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SUMMARY OF TESTIMONY AND FINDINGS AND CONCLUSIONS RESULTING FROM HEARINGS IN NEW YORK ON DRUG LAW ENFORCEMENT

SECOND INTERIM REPORT

OF THE

SELECT COMMITTEE ON NARCOTICS ABUSE AND CONTROL

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BACKGROUND

Pursuant to House Resolution 1350 the House Select Committee on Narcotics Abuse and Control held 9 days of hearings in September 1976, chaired by Representative Lester L. Wolff (Democrat, New York) in Washington, D.C. As stated by the chairman, these hearings were "designed to inform the committee on the current status of the Federal Government's narcotics control programs." Specific testimony was elicited during these hearings on the unique problems of drug law enforcement in New York City, especially in Harlem. Subsequent to those hearings, Mayor Abraham Beame, in a letter to Attorney General Levi (see appendix, exhibit A), requested the Federal Government to assume the cost of narcotics law enforcement in New York City. He pointed out that 30 percent or more of the Nation's drug addicts reside in New York City.

In partial response to this request, hearings were held in New York City, November 19, 1976, chaired by Congressman Charles B. Rangel (Democrat, New York). Testimony was taken from Nicholas Scoppetta, chairman, criminal justice coordinating council and commissioner of investigations; borough president Perry Sutton; Sgt. Alvin Ingram and Officer Clarence Morgan, narcotics division, New York City Police Department; special narcotics prosecutor Sterling Johnson; deputy chief inspector, New York Police Department, Joseph Preiss, and deputy police commissioner James Taylor. Mr. Charles Kenyatta, a community representative, was also a witness.

On December 10, 1976, in Washington, D.C., testimony was taken from Associate Deputy Attorney General Rudolph W. Giuliani of the Justice Department and from John P. Cooney, Jr., assistant U.S. attorney for the Southern District of New York, chief of the narcotics division.

THE ISSUES AND PROBLEMS

There were two specifically stated concerns that necessitated the hearings. In his opening statement on November 19, Congressman Rangel said:

> The purpose of today's hearings by the House of Representatives' Select Committee on Narcotics Abuse and Control, is to respond to Mayor Beame's press release, in which he requested that the Federal Government assume the cost of narcotics law enforcement, pointing out that 30 percent or more of the Nation's drug addicts reside in New York City. We all recognize that drug trafficking on the streets of New York City is occurring now without any apparent enforcement of either the State or Federal laws as they relate to violations of the narcotics law. [See appendix.]

In his later statement on December 10, Congressman Rangel noted:

> On November 19, we held a hearing in New York City and asked city officials to state for the record their current narcotics law enforcement capabilities,

resources, and strategies and to tell us what kind of additional Federal assistance was being sought and, if granted, how effectively it would be used.

The committee challenged city officials to disprove the allegation that the New York City Police Department had adopted a "no arrest" policy for many narcotics violators and in so doing, had abandoned the streets of Harlem to this criminal element. I personally challenged the city officials to take the same tour a number of colleagues had already taken in Harlem to see the open hawking and selling of dope in open defiance of the law.

The Harlem Tour: Observations

On three separate occasions, trips in police vans and a walking tour were taken by Members of the Committee, Chief Counsel Joseph L. Nellis, and witnesses who testified at the hearings. Because what was seen is inextricably intertwined in the testimony of all the witnesses, their observations are reported in part. Additionally, a film, slides, and pictures were offered for the record during the hearing in New York City.

Chairman Wolff, at the Federal agency oversight hearings held by the committee in September 1976, made the following comments:

> Last Friday, members of this committee had a vivid and horrifying illustration of what unchecked drug trafficking can produce. As we drove along the streets in an unmarked police car, street pushers literally thrust themselves through our windows and offered to sell heroin, cocaine, marihuana, and a variety of drugs at prices as low as $5 to $7. These pushers knew we were surrounded by police, and they didn't care. Their contempt for the consequences of the law is that great. However, it may be suggested that these street pushers have learned their lesson: in reality, they risked little * * * they know the result of cutbacks—that no busts are being made for marihuana—and they know that even if they are unlucky enough to get arrested for hard drugs, they will be released on bail, which has simply become one more bit of overhead, a couple of extra sales to be made. What happened Friday in New York is happening at this very moment in Washington, D.C., San Francisco, and in small towns across our Nation. While we watched, we saw kids getting out of cars with license plates from Pennsylvania, New Jersey, Delaware, and Ohio. These things are happening, and they will continue to happen, for the simple reason that the Federal Government has been unable to prosecute the major suppliers of the pushers.

The borough president of Manhattan, Percy Sutton, described a walking tour, where accompanied by Congressman Rangel, special narcotics prosecutor Sterling Johnson, and plainsclothes officers, he said they saw what every citizen, shopkeeper, homeowner, or resident of Harlem sees every day: the hawking of drugs as though they were fish on a street corner.

> [We] saw a thoroughly drugged mother standing there, deep in her high, at the corner of 117th and 8th Avenue, selling packets of drugs over the heads of her two children, neither of which could have been more than 5 years of age. I can tell you that we were not disguised (and) they knew we were public officials. So confident were they that nothing would happen, one of the persons attempting to sell us cocaine had someone tug on his sleeve to tell him, "Hey man, those are public officials, don't do that." As he kept pushing, the man said, "Man, don't do that." So he (the seller) decided to discuss politics with us. He said, "Man, how does it look for Carter?" But he wasn't worried about us.

Mr. Sutton told the panel that in days gone by, sales were not made that openly, that the money would be paid to one person and delivery would be around the corner. Today, however, drugs are sold right out in the open, out of a shopping bag, with someone selling stolen goods near the corner to get enough money to be able to make a purchase. Mr. Sutton offered a series of pictures, one, of three murdered persons, so

no one will leave here with the impression that it is a harmless thing. The borough president said:

> So outrageous is the drug traffic . . . that in these supermarkets on the streets, drugs are sold by brand name: Malcolm Green, The Judge, No-Monkey-Business, Ruby's Red Cup, Space Walk, etc. These are just some of the almost 200 brand names of drugs that are sold. So bold is the traffic, that they can stamp it so that one who wishes to purchase can know the quality, the strength of the drug, because the brand name, like Libby's or any other that we see in the supermarket, is there. And I have some of the stamps that are on the packets of drugs that are sold.

In commenting on what he had observed and described, the borough president said:

> Something is wrong when public officials and undercover policemen can walk into crowds of drug pushers and users on the street and hear them singing out a litany of names of drugs for sale (and) who are so confident that they will not be arrested that they will come to the corners and out of their shopping bags, in sight of all, pull out and sell packages or decks of heroin by their brand names.

He agreed with Mr. Biaggi that the nature of the business, coupled with the absence of proper law enforcement, has permitted this to become a stable market.

Sergeant Ingram, New York City Police Department, narcotics division, who was present during all the trips, did not take issue with any part of the borough president's testimony and confirmed that on-duty police officers were present in identifiable squad cars.

In describing the events being depicted on the silent film shown during the hearing, Sergeant Ingram indicated at one point, an area, the southwest corner of 117th and 8th Avenue, which he called "the marketplace".

Congressman Rangel established that Sergeant Ingram could identify the locations shown in the film and when questioned as to the significance of the groupings portrayed, confirmed the common knowledge that those groupings represented participants in drug trafficking:

> I would say . . . everyone that is standing in that crowd is an addict, because nobody else would stand there. You will be told, "If you are not buying, don't stand here." In fact, this happened to us on the tour. We were all told, the borough president, Congressman Rangel, "If you don't want any, get out of here."

He said that this kind of activity takes place every day and had been for the 4 years he had been with the narcotics division and before, (and) "in fact, it is even worse, as it has spread out even further."

He also testified that he had seen uniformed officers ride by every day and to his knowledge nothing was done; that for a period of time he had commanded an observation post for the sole purpose of recording drug transactions on film, and that the pictures and film properly reflected those types of transactions which he would witness in the normal couse of that kind of activity.

Questioned as to whether there was "any type of policy that would prevent uniformed police officers from making arrests when a felony is being committed in their presence" he said:

> Well, if you direct that toward narcotics, I have been informed that there is not a written policy per se that arrests will not be made, but that they are discouraged from making them, basically, (because) they feel that the courts would not be able to prosecute most of these cases. . . .
>
> Most uniformed men that see a violation of this type, and who want to make an arrest, are also required to call or attempt to get a supervisor present on the scene.

Questioned further as to whether the narcotics traffickers would attempt to hide their illegal conduct, whether or not a call could be made to a superior officer, Ingram replied,

No sir, the sales will go on. If they happen to notice you . . . or maybe I eyeball them too much, they just go around the corner and continue . . . And if an arrest was made, . . . what they do once they feel you got your piece for the day and you leave, they will come right back; a replacement will be right there.

In a further effort to show the open and flagrant violations of the drug laws, slides of street corner scenes were shown of congregations of people, whom one could expect would not be there unless they were addicts or dealers. Shown in the film was an unusually large group the police cars had happened upon. Followed by camera, documented by clearly visible street signs, the group dispersed and reformed down and around the block until it wound up at the initial corner.

Presentation of the City's Position

Because the mayor was out of the country, Mr. Nicholas Scoppetta, subsequent to the hearings appointed deputy mayor for criminal justice, testified for the city. He detailed the dimensions of the problem in terms of the percentage of addicts in New York and the percentage of Federal help accruing to the city.

We have an enormous commitment in New York City in dollars and personnel to deal with the problem. Together with our rehabilitation efforts, our drug treatment problem, all of these programs together exceed $100 million. So that this city, already faced with the difficulties imposed by enormous fiscal constraints, simply is not able any longer to shoulder this expense locally, for a problem that is essentially one that is national and even international in its origins. It is a problem that is enormous in its local dimensions, but really is one of Federal implications, in the sense of being outside any locality's ability to deal with it. We don't manufacture hard drugs in the United States (nor) do we grow poppies here. No locality is going to be able to stem that flow into the United States, so that in New York City, a major port city, we need additional enforcement here.

He said the request was two-pronged, in that more Federal financial assistance was being requested to support local law enforcement efforts and additional Federal law enforcement efforts within the city.

. . . It is primarily a problem of Federal enforcement to keep the drugs out of this country, and then to make those investigations work that will detect and prosecute the important narcotics traffickers. However, we will always realistically, be left with a portion of the problem, so that we are asking for help financially in addition to that we already spend.

Questioned as to whether his statement inferred a complete Federal takeover of the problem of drug abuse as it relates to crime he answered:

I don't think that is realistic. But the primary obligation (because) of the nature of the problem is really with the Federal Government, so first and foremost most of the resources should be Federal.

He testified further, that $1.5 billion had been spent on the criminal justice system (and) "even with our cuts this year, the city would spend over $1.3 billion." He conceded, however, that $22 million went to the police department for narcotics enforcement, which totaled 3 percent of the amount spent on the total enforcement budget. Prodded by Congressman Gilman who said that while he recognized that the city was not getting an equitable share from the Federal Government,

this did not indicate a high priority within the city administration, Mr. Scoppetta demurred saying:

The $22 million attributed directly to the narcotics enforcement effort, only begins to tell how much the New York Police Department spends on narcotics enforcement, because so many of the matters that began with arrests end up in treatment centers. So that the realistic figure was much higher.

Asked whether he would be recommending increased expenditure in the city budgeting specifically for narcotics enforcement as compared to prior years, Scoppetta said:

I don't think we are going to be recommending increased expenditures in criminal justice . . . because New York City, in order to meet our deadline with the Federal Government for balancing our budget, must cut out about $435 million of our budget. Narcotics enforcement is going to have to be considered just like all the other enforcement in New York City. But as I say, my province is the criminal justice agencies. . . . We anticipate they are going to have to take some cuts in criminal justice, because with (such cuts) you are talking about the areas where the money is being spent—police, fire, sanitation, welfare, and education. . . . So that we will obviously consider narcotics enforcement one of our highest priorities. It should be one of the highest priorities in any criminal justice effort. But it is going to have to be considered along with that need for $435 million.

. . . we would love to spend more money on criminal justice and on narcotics . . . and that is why we are delighted to be able to speak to a congressional committee about some coordinated effort to work on this problem.

Congressman Gilman continued to be concerned that the city had not placed a high enough priority within its own budgeting on enforcement when narcotics problems "are increasing to a crisis proportion," and pointed out that the previously mentioned $100 million included rehabilitation. Mr. Scoppetta replied that (rehabilitation) "is related to enforcement."

Mr. Biaggi said:

As a former police officer, who has never lost contact with the police department, that $100 million deals with enforcement, tangentially perhaps. (But) the narcotics problem, as far as the policy of the city is concerned, has been subordinated and less than 3 percent of the $100 million is, in fact, applied precisely to law enforcement. The rehabilitation aspect of it and the consequences of narcotics addiction are not on point . . . And the fact of the matter is the narcotics division has been reduced. The stated policy of the administration is one thing. Practical policy as far as application is concerned is another thing. At the outset you said that this is fundamentally a Federal problem. As far as the importation of narcotics is concerned, you are absolutely correct. But as far as the presence of drugs thereafter, it bcomes the responsibility of every level of government.

Congressman Morgan Murphy was concerned that those Members of Congress not from New York and not understanding its fiscal crisis, might regard the mayor's request as an attempt to eliminate $100 million from the New York City budget by having the Federal Government provide these funds. He inquired into the reasoning behind the mayor's proposal and raised the question of the amount of oversight the city would permit and that the Federal Government would insist upon. He also wondered whether the mayor anticipated the Federal Government assuming not only the salaries for narcotics enforcement but the pensions, equipment, and uniforms also.

Mr. Scoppetta replied that the administration would give assurance "up front" that any dollars earmarked for narcotics enforcement would be used for narcotics enforcement. He reiterated that the city was not talking about the Federal Government picking up local costs

that are legitimately local or that the Federal Government assume the city's local law enforcement burden. He said further, that the city was also not talking about substitution, that is, "giving us $100 million so that we can spend that on day care centers," and that allocations (of Federal funds) are clearly subject to meaningful controls.

Questioned as to whether in his opinion there has been a satisfactory coordinated effort between the State planning agencies in fighting drug abuse, he cited coordination as a matter of enormous importance in the effort to fight crime:

> [T]he whole question of planning and coordination is very unsatisfactory in criminal justice today, especially in a city like New York. . . . [We] don't have sufficient planning and coordination in criminal justice and we certainly don't have it in narcotics, and not enough between Federal, State, and local. . . . [The] new position at the deputy mayor level, whose function is to coordinate the efforts of the criminal justice system . . . should not stop with city agencies . . . (but) should also involve coordination with State and Federal authorities.

Chairman Rodino commented that the recently enacted extension of LEAA provides specifically for this kind of coordinated effort and extensive research, in order to try to determine the relationship between drug abuse and crime. He said that he would like to see that kind of coordination, because "We feel that there really has been no coordinating effort that has in any way been exercised in this area; that the agencies of Government have gone their own separate ways." He further questioned as to whether Congress should set up a formula that would mandate moneys to high drug abuse areas in proportion to the problem that exists within those areas in the urban community, and asked whether the city was prepared as a result of this hearing to propose the kind of research studies that (would) be helpful to the local officials in the projects (so that) they might better be able to deal with this problem and have a better understanding of the relationship between drug abuse and law enforcement. "The result would be that we would really know when Federal moneys are allocated that they are being allocated in an area that would actually be useful and beneficial." [See appendix.]

Mr. Scoppetta responded that formula grants would be a way to try to fairly and equitably distribute the limited resources that are available and that he would be delighted through his office to offer up their thoughts and proposals in that regard, because (in his opinion) "that is the fundamental issue concerning the expenditure of funds in criminal justice . . . that the planning and coordination has not existed in the past, and we have only begun to address that problem".

Mr. Rangel inquired as to any knowledge of any city policy enunciated by the mayor or his office that because of lack of Federal funds or adequate Federal funding, . . . overt narcotics sales arrests are not made by the New York City Police Department.

Saying that the question could more appropriately be addressed to Police Commissioner Codd, Mr. Scoppetta answered:

> I would say that because of the enormous volume in New York City with respect to narcotics trafficking, clearly the police department must have an attitude that says they go toward the most important dealers, (and) . . . try to make the most important cases; that numbers alone, of street traffickers . . . people selling to support their own habit, is not the answer to the problem. So that I would suppose . . . inevitably they are forced to, for lack of funding and resources and personnel . . . to set their priorities so that some of that activity may go on.

It was determined from his testimony that the mayor provided the budget projections to the New York City Police Department and the allocations between the various law enforcement functions would be determined by the police department and not dictated by the mayor.

New York has the most severe narcotics laws in the United States. That they have been unsuccessful is evident from consideration of the level of street offenses. A life sentence provision for small sales provides New York with neither a general nor specific deterrent. The drug laws of New York have not changed or influenced conviction rates or added deterrence, or prevention, which does not negate the obligation of the city to enforce them. Having agreed to the foregoing, Chief Counsel Nellis, reminding Mr. Scoppetta that he spoke for the mayor, asked why it was, then, that in a recent trip through Harlem, he had seen no less than 12 narcotics transactions . . . within the space of less than an hour and a half. Mr. Scoppetta replied:

> I would say that the resources we have are inadequate for the job, and I know narcotics are being sold in the city on the streets . . . And I cannot offer up to you an explanation of why. . . .

And in answer to the suggestion by Mr. Nellis that possibly the police department has adopted a policy of ignoring these sales on the streets and that felonies had been observed being committed in the presence of police officers and that nothing was done:

> I am not aware of any police department policy that says they would ignore a crime committed in plain view.
>
> The mayor's office would say the obligation of every police officer is to apprehend anyone committing a crime that he has knowledge of. And that would be a position I would take, whether I were the police commissioner, the deputy mayor for criminal justice, or the commissioner of investigations . . . setting the policy in the police department.
>
> My philosophy would never allow for such a policy. I could make the distinction between setting priorities within my police department; that is, aiming for important drug traffickers. But a policy that says that a police officer seeing a narcotics sale in his presence cannot make the arrest, because there is a superior officer absent, wouldn't seem to make such sense, at all.

SPECIFIC ASPECTS OF THE DRUG PROBLEM IN NEW YORK CITY

The Effect on Citizens, Manhattan Borough President Percy E. Sutton

As an elected official and chief executive officer of the borough of Manhattan, the testimony of Percy Sutton, borough president, focused on the effect of the lack of drug law enforcement on the citizens of New York. In his prepared statement he said:

> Nothing is so injurious, so pervasive, so devastating to life in the city of New York as is crime. And the overwhelming majority of people in this city perceive the problem of crime to have its principal base in the use and sale of hard drugs in New York City.

He said that:

> Until a recent time, three out of five of the people who came to bring their problems to me came to ask for my assistance in getting housing for their families. Today, three out of five of those people come to complain about crime and the drug problem.

and that:

> . . . the streets of Harlem have been taken over by users and pushers of heroin and cocaine, as though our streets have been abandoned to (them) . . . we have

severe State and Federal narcotics control laws, yet, we have little effective enforcement of those laws.

Mr. Sutton stressed the importance of knowing that there are good people in Harlem, who go to work every day, who have had their stairwells taken over, who can be mugged, robbed, or killed as they come down the steps. He continued:

. . . it isn't just the exchange that occurs here in Harlem, but it has to do with what people see and how it causes a breakdown of respect for policemen. When a policeman rides by in a police car and in uniform, the kids who are on the block see him and see the people selling drugs openly. What do you expect the community to think with regard to the police and to the social order, when no arrests are made?

In response to the discussion that had taken place during Mr. Scoppetta's testimony, he said that the Federal Government has a greater obligation to the city of New York, that—

You must be aware that these are not just New Yorkers. When the drug addicts are arrested or die because of an overdose, more than 60 percent of them come from elsewhere.

He said also:

In New York, you are talking about more people who are addicts, than about the number of occupants or residents of many cities in America . . . a population that comes from all over this country to the city of New York.

Mr. Nellis related that he had observed, on his tour in the van, that a considerable number of out-of-State cars containing white addicts, would get on the corner, make their deals, and holding their glassine packages in their hands, get back in their cars and drive off.

Mr. Sutton said that while other cities have higher percentages of people dying of violent crimes, "the television cameras are here, so the impact and burden on the citizen who lives here is greater than in those other cities." He said that one of the arguments used by the police, when accused of not doing anything, is that the people will riot. To this he said:

The people in Harlem and New York will not riot if you attempt to do something about it. As a matter of fact, they may riot if you don't do something, soon.

In discussing the failure to hire black undercover agents and the impact on the problem of drug law enforcement in New York City, he said:

White undercover agents have virtually no value in Harlem, any more than black undercover agents have any value in other parts of the city where persons congregate on the streets. Out of 300 undercover agents in the city of New York, and northern New Jersey, 10 are black.

In terms of the ability of the criminal justice system to handle its part of the problem and the related budget problem, he said:

It is a difficult thing deciding what your priorities shall be. Every element of society feels it ought to be first. The question is, then, what shall be the priority for all of us. I think unless we give priority to the curing of the question of crime, we are not going to be able to have our tax income, the sales tax that we use to support our bonds (and) every element of life is going to suffer.

Narcotics Division Plainclothesmen: Sgt. Alvin Ingram and Officer Clarence Morgan

Present also as witnesses were two plainclothes officers, Sgt. Alvin Ingram and Officer Clarence Morgan from the New York City Police

Department's Division of Narcotics. As policemen familiar with and therefore more able to adequately describe the extent of the overt narcotics trafficking, their testimony put in perspective the de facto priority and policy of the city as regards drug law enforcement.

It was established that the narcotics division, with primary responsibility for enforcing the State narcotics laws, has 70 men in the Manhattan North jurisdiction, which covers half of Manhattan and which has more than half of the entire city's drug population. In the sixth district, in which Sergeant Ingram and Officer Morgan worked, which is central Harlem, encompassing 3 precincts, the personnel complement for the division is 33 men, of which 8 men are responsible for street enforcement. Sergeant Ingram testified that during any 24-hour period 3 to 4 men were available for duty, with the balance of the 33 having responsibility for dealers in drugs in the amounts of 1 ounce to 1 kilo. He also said that he had an all-black eight-man team and it might be considered a large team at this time, as one sergeant had only two men.

Sergeant Ingram, a police officer for 19 years and a 4 year investigator of narcotic law violations, said that in his opinion, "50 percent of the drug trafficking of the entire city took place in Harlem." Officer Morgan noted that they, "are concerned with the neighborhood that we are serving because most of the members of our team come from that neighborhood."

Asked about the relationship with the DEA and Federal agents that have a responsibilty to enforce the Federal laws, Sergeant Ingram replied:

I have communications with them by phone when they need information perhaps on the street operation. We had an operation with them in March of 1975 and they brought in numerous Federal undercover officers and manpower. We concentrated that in the vicinity of 117th Street, just in the one block, for about 3 to 4 months. I would say we must have had about 10 undercover officers from out of town, plus our own. . . . in that period we made over 200 arrests, just in street sales, but there is no Federal presence now.

Special Narcotics Prosecutor Sterling Johnson, Jr.

The testimony of Sterling Johnson, special narcotics prosecutor, with citywide jurisdiction for all drug cases, focused on the city's assertion that drug law enforcement was a high priority from the perspective of prosecution after a drug violator is arrested.

Mr. Johnson's office is funded by city and State matching funds. With a combined original funding of $2.4 million, in the first month, he testified that his budget was slashed to $1.3 million and that at the present time he is functioning with a budget of $1.1 million. He further testified that the last budget cut imposed by the city required the dismissal of 15 assistant district attorneys and 15 support personnel, representing 40 percent of his total staff. He said:

I was able to persuade the Federal Government, LEAA, to allow me to use some accruals, and I saved those positions. However, June 30 of next year, those accruals will be finished and I will have to dismiss (those people).

Mr. Johnson said:

If you arrest an individual, with my backlog, he is going to be out on the street for maybe 1 or 2 years waiting for his trial, and at the same time he is going to be out there selling drugs again to pay for the lawyer or to put something away for his family. The police and DEA agents are not going to invest any more enforcement energies to arrest him or make another buy, because there is already

a pending buy. And he is a living example to the rest of the drug people who are thinking about going into drugs that the system doesn't work.

Questioned as to whether the drug traffickers were aware of the problems faced by the police department, the D.A.'s office and the office of the special prosecutor, Johnson replied:

There is no doubt in my mind. And then when we have access to informers and we speak to them, they will tell you this to your face. They laugh at the police (and) prosecutors.

Questioned as to the effect of "sufficient" personnel with instructions to apprehend and strictly enforce and prosecute, and whether not only a reduction but the elimination of drug trafficking would occur, Mr. Johnson replied:

Just money alone and dollars alone and people alone is not going to eliminate the problem . . . if we had sufficient resources and commitment on the part of the Federal Government and the city, (and) if when an individual is apprehended, he is brought to trial, and sentenced to jail right away, it might change the attitude you see out in the street right now.

He further said, in detailing what is needed for an effective and comprehensive confrontation with the problem:

. . . if you are talking about drugs in New York, or Chicago, or Detroit, you are really talking about drugs in the urban ghetto areas. To buy drugs effectively you need minorities—blacks, females, Hispanics. (Those) that we had in the New York City Police Department, have been terminated because of the fiscal crises. As far as the drug enforcement agency is concerned, they don't have them. Out of 2,200–2,300 agents, they have about 120 black enforcement agents to service the whole world. You have cities like Detroit with one black DEA agent, none in Cleveland, one in New York.

Subsequently, he agreed with Mr. Nellis that if he had all the money he could use, there would still be the problem of the criminal justice system itself, which, even if the backlog could be brought to trial would require many more courts, judges, public defenders, prosecutors, and the like than were available.

Agreeing in response to a statement that one cannot violate New York State narcotic laws without violating the Federal narcotics laws, Mr. Johnson testified that the U.S. attorney's office is selective in exercising prosecutorial discretion.

There have been occasions where the Drug Enforcement Administration will come in with a 1-ounce buy and they feel that this is not the quality of case that deserves Federal treatment, and they will decline prosecution. That case will be referred to me . . . if the case is not in jeopardy of being dismissed for lack of speedy prosecution, I am obliged to take that particular case.

In a discussion on the effectiveness of New York State narcotics law as a deterrent to "not only the street scene, but to the wholesale and import scene in drug dealing," the special prosecutor agreed that harsher penalties and stiffer confinements do not necessarily deter this kind of trafficking.

On this point, the pervasiveness of drug trafficking, Mr. Charles Kenyatta, a community resident, and introduced by Congressman Rangel as a man "who had earned the right to speak out on these issues," having done community street work for the "last 15 years," testified that:

In this community (Harlem), there is not a family in 2 miles in any direction that is not involved in this traffic one way or the other, either as a victim, purchasing, or selling it. It has become a way of life.

Using the "Mr. Big," class A–1 cases involving an ounce or more of heroin, the question was put to Sterling Johnson, of how many of these were out on bail.

I would say the majority of them. . . . (They) can post bail, and will be back out on the street and in business again, not worried about being arrested again, because he was already arrested once and he can only do 15 years to life, one time. If he does get caught again, the sentences will run concurrently.

It was determined, in summary, that even if arrested, and a class A–1 case made, there would not be a speedy trial if the bail requirement is met. With the present bail system a well-heeled dealer can put up his 10-percent security, get out, and the chances are that he will never get tried.

Questioned as to how big was a "Mr. Big", Mr. Johnson replied:

Assuming that an individual has a kilo of heroin, and he "whacks it up" and puts it into the street, he can make $300,000 to $400,000 per kilo, conservatively. An individual with 50, 60 kilos can make $10 million to $15 million a year.

He said that one individual was a 16-year-old youth, who was not and would not be considered a Mr. Big, had delivered 6 kilos of heroin, and that this kind of case made up a third of the special prosecutor's backlog.

Responding to a question as to whether LEAA has a broader role to play in fighting drug-related crime, he said:

Yes, I do, but I am put in the unfortunate posture of LEAA pointing the finger at the city government and saying that "You are not doing enough in this war on drugs, and we have supported you for x amount of years, and the city government is saying it is a Federal problem."

He said further, that notwithstanding what either the city or Federal Government said, drug law enforcement and prosecution is not a top priority in New York City. Queried as to the results if arrests were made, consonant with the number of violations, he said that the situation would revert to that of August 1969 to August 1970, when 50,000 narcotics arrests were made, and only 40 trials were held.

OFFICIAL POSITION OF POLICE DEPARTMENT: JOSEPH PREISS, DEPUTY CHIEF INSPECTOR, NARCOTICS DIVISION AND JAMES TAYLOR, DEPUTY POLICE COMMISSIONER

Joseph Preiss, Deputy Chief Inspector, narcotics division, and Deputy Police Commissioner James Taylor appeared for Commissioner Codd at his request to present the views of the police department. In his prepared statement Mr. Preiss said that the New York City Police Department's effort to control the drug problem was directed primarily toward the arrest of those who illegally possess or sell drugs within the city, and that the department was not normally involved in enforcing laws dealing with the importation or manufacture of drugs.

Detailing the three forms of enforcement effort, he listed the narcotics division as handling cover investigations at all levels of the drug trade; the drug enforcement task force which handles mid- and high-level traffickers, "especially when the violations extend outside of New York City," and all of the other department units, not specifically assigned to narcotics enforcement. About this last group he said:

The nonspecialized units make narcotics arrests where covert investigations are not needed. These units have accounted for about 90 percent of the total narcotics arrests in the first 8 months of this year.

He further said this trimodel enforcement effort had produced a sizable number of arrests, and that:

The incidence of drug violations in the 28th precinct is quite high, and much of our effort is concentrated there. This precinct is quite small in area, consisting of only 0.49 square miles, and since the first of the year there have been over 2,000 arrests on various drug-related charges in that precinct.

Questioned as to the amount of discretion existing in enforcing the criminal law, Mr. Preiss said he didn't think there was a great deal of discretion; that the policy of the department was that if officers saw "a violation in their presence, where there is a legal basis for an arrest, they should make an arrest and that the officer was not only authorized, he is required to make an arrest."

At a later point in response to a direct question, Deputy Chief Inspector Preiss admitted it was his conclusion that arrests will not solve the problem, but noted that this was his personal conclusion and denied that this opinion influenced arrest policies among officers.

Congressman Murphy responded:

That may be your conclusion. But I think if a city administration saw that film I saw here this morning, with crowds going from street corner to street corner (and) even if you took them off the streets for a week or two weeks at a time. * * * I would know my wife walking with my kids wouldn't have to fight her way through almost a convention of drug pushers. At least chase them indoors. In Chicago they do it clandestinely. They are not at State and Madison, and they don't have trademarks.

I get the distinct impression as an outsider here that the city administration in this financial crisis is saying, "We are cutting out all prosecution, all police work on narcotics. We will hand that over to the Federal Government and let them pick it up."

Mr. Preiss denied that he had made the statement that arrests were not being made because the department felt there was a lack of community support and that arrests in areas might cause a riot. He said that the statement was made in response to a different question, that is, why the streets were not swept clean, and that he had taken that to mean "that we were to run some kind of a dragnet down the street and scoop everyone up. I said that this would cause a riot."

Mr. Rangel persisited and asked if Mr. Preiss thought the proper question to be whether or not street sellers and buyers in a particular location necessitated "the area being swept clean." The answer was that they did make arrests in these areas.

Mr. Rangel asked Mr. Preiss, as a New Yorker, if he thought the situation would continue at 68th and Park in the same manner; he responded that arrests would be made and that "they may be dealt with more severely after we get finished with them."

When questioned as to whether to have a more effective conviction rate it would be necessary to substantially increase the narcotics division, he answered that "all the courts together had disposed of 2,100 drug indictments last year, and that the task force and narcotics division alone can give the net number of felony arrests this year." He denied, however, that the department conditioned their arrests on the ability of the court to handle the cases or of the prosecutor to prosecute, saying:

It has been suggested to us, already, that a great deal of low-level arrests are going to clog the courts, but we have had to make our arrests based on the circumstances that we found.

Chairman Rodino, referring to Mr. Preiss' support of the mayor's request in his prepared statement, and to Mr. Preiss' conclusion as to the lack of effectiveness of arrests, asked what would be done with any funds that might be available.

Mr. Taylor answered:

In June 1975, we had 31,000 sworn police officers. Today, we have 25,800. The crime rate has gone up 17 percent, the highest rate of increase anywhere in the country. We had a cutback and had to do the same job with fewer people.

At that time (also), our narcotics division, at its peak, ran close to 700 people. Today, it is 480 . . . last year, we got a (Federal) grant to rehire laid-off police officers (which), stipulated that we use the officers in certain areas of law enforcement. (Of the) 205 officers rehired, 37 were mandated narcotics.

Mr. Preiss said in addition:

I think the best we can hope for with arrests is a suppressive effect. I don't think you are going to cure the problem with arrests. And . . . that is a mistake that has been made, year after year, with everyone studying the narcotics problem.

Mr. Rodino answered:

Understanding what I have heard and seen today, and the events related by the two undercover agents, it seems to me, that if the Federal Government were to assume a greater share of the responsibility, we would be giving money to put more men on who are not going to make arrests because arrests don't mean anything.

I don't see a clear picture of what there would be in the mayor's request to justify the Federal Government making a greater allocation if there isn't some showing that arrests are being made that substantially deter the drug traffic.

If we are to do anything at all to be of assistance, we certainly would want to have the assurance that what we saw today is not a matter of policy, and we would want to see before we could present a case to the Federal Government for more substantial assistance, that there is this input on the part of the city and local law enforcement.

JUSTICE DEPARTMENT TESTIMONY: ASSOCIATE ATTORNEY GENERAL RUDOLPH W. GIULIANI AND ASSISTANT U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, JOHN P. COONEY, JR.

On December 10, 1976, the Select Committee heard from Associate Deputy Attorney General Rudolph W. Giuliani of the Justice Department and assistant U.S. attorney for the Southern District of New York, chief narcotics division, John P. Cooney, Jr.

In his introductory remarks prior to the hearing, Congressman Rangel said the New York City Police Department had decided, as a matter of policy, which criminal law and statutes they will and will not enforce. In certain areas of the city, narcotics dealers have had the opportunity to take over numerous street corners and sell their wares in clear view of both uniformed and undercover police. It is impossible to violate local narcotics laws without at the same time violating the Federal narcotics laws, Mr. Rangel noted. Thus, the purpose of the hearing was to determine "whether the Federal Government has taken the same position as the local government in New York City: namely, law enforcement will decide which crimes it will prosecute or whether the Federal authorities recognize that when a Federal law is violated, enforcement must follow".

Referring to Mayor Beame's letter to the Attorney General, Mr. Giuliani began his testimony by noting that the city of New York, being the largest city in the country, obviously faces the problems created by drug abuse more acutely than any other city in the United

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States, but said that the problem of drug abuse is not limited just to New York City, and that all adversely affected governmental entities call upon the Federal Government for assistance whose resources unfortunately, like those of State and local governments, are limited. He conceded the appropriateness of active and direct participation by the Federal Government in narcotics law enforcement, and offered the rationale that the illegal distribution of even small amounts of narcotic drugs depends on coordinated, sophisticated criminal activity, involving hundreds of other individuals. This, he said, requires an equally coordinated enforcement response.

Queried as to whether, under the oath taken by U.S. attorneys, they have the constitutional right to decide which part of a conspiracy they will prosecute, Mr. Giuliani said that it was a practical problem more than a constitutional one.

He said that:

> . . . prosecutorial discretion is exercised notwithstanding that the budget was set up to selectively prosecute cases and (he doubted that) our society would want the U.S. attorney to prosecute every single case brought to his attention.

Mr. Rangel said that he had been part of this policy, believing that it was impossible to expect the U.S. attorney's office to enforce every Federal statute that was broken, but, that attitude had encouraged New York City police to assume this very elitist attitude.

Mr. Giuliani responded by saying:

> First of all, we are faced with a history of budget requests made to the Congress for increased resources that almost invariably are cut in half. Practical reality makes it impossible for the U.S. attorney, certainly in the southern district of New York, to prosecute more cases than he is presently prosecuting.

Mr. Giuliani in response to a query as to what authority allows the U.S. attorney to decline cases said:

> It is a very well accepted legal doctrine that a prosecutor exercises discretion on any number of grounds. One of those recognized by the ABA and by cases is the simple practical decision as to how he is going to use his resources most effectively. If you have *x* number of attorneys, and that is all the Congress will give you, even though you have asked for more, you have to use them in the way you think is most effective.

Mr. Guiliani agreed that he would like to see the narcotics enforcement resources of both State and local governments expanded, but stated that if this could not be done, the Justice Department should be expanded to deal with the additional strain resulting from limited State and local resources.

Congressman Gilman, referring to the President's White Paper on Drug Abuse, noted that the report called for mobilization of forces and unified action, resulting in changes of attitude and direction. He asked what policy change or written directive had been issued in that Department to reflect the change called for in the white paper. The witness noted that there had been none.

Saying that the Attorney General had not issued any policy directive subsequent to the President's declaration of narcotics enforcement as a priority, the witness said that the Justice Department was not a highly bureaucratized agency, but that management changes had taken place. Specifically, he cited "at least 10 to 12 major statements (speeches) before assembled groups of narcotics enforcement officers and U.S. attorneys on the necessity for reorienting their priorities to deal more effectively with narcotics prosecutions."

Mr. Cooney was asked what impact the executive proclamation has had on his unit during the year that he had been in his present position. He said a good deal of the new directives received from the narcotics unit in the Department were really directives issued to units throughout the country, to model their narcotics units after the one in New York. He noted:

> There has been a substantial amount of monitoring and recording concerning the development of major cases against major violators, which is a fairly new practice. They have set up what are known as CENTAC groups.

Questioned as to the effectiveness of CENTAC units, he mentioned the case of a major New York narcotics violator in which 33 people were indicted and convicted. He said also that that type of case is being developed in other parts of the country, where the same coordination in developing conspiracy cases is a relatively new development, and that it is probably beneficial because it spreads knowledge and intelligence information throughout the country.

He agreed that the goal of this new unified approach is to confer with the local prosecutors and to try to develop a strategy for the type of case that is ideal for prosecution.

Congressman Rangel expressed amazement at the degree of cooperation and high successes in prosecutions that have occurred in recent years, when in some 10 or 15 years before, cases were made that involved conspirators in France and Canada, "and we were dealing with heads of countries to extradicate narcotics violators. Not only did we have local cooperation, we had international cooperation. And now we seem to be so satisfied here if DEA and customs are talking to each other".

Questioned by Mr. Nellis, chief counsel, as to the number of cases that had been originated by the New York Police department and brought to his office, Mr. Cooney promised to submit for the record the number of cases that have come in through the task force and through the New York City Police, which have been picked up by the U.S. attorney's office and prosecuted as a result of that intelligence. The purpose of this questioning was to demonstrate that the U.S. attorney's office in the southern district of New York could very well take on more cases originally developed for prosecution by the city's special narcotics prosecutor, who is backlogged some 1,200–1,500 major cases.

DISCUSSION/SUMMARY

Members of the select committee expressed outrage and disbelief at the scope and nature of the lack of drug law enforcement in New York City.

Congressman Biaggi said that the attitude seemed to be that with increasing numbers of drug traffickers and addicts, the problem is without solution. He commented that there was a reign of terror in New York and most of the crime that plagues the people is the consequence of drug trafficking.

Congressman Gilman said that there was a lack of public consciousness of the problem, a lack of adequate funding, and a lack of an all-encompassing program for narcotics control. Congressman Murphy said that the problems in New York will shortly be found in other great metropolitan areas, and asserted that if Congress took over local

police funding, Mayor Beame would have to come to Congress with some plans for what he would do if the money were available.

Chairman Rodino, in response to the contention of the city that controlling the illicit and illegal traffic coming into the country is a Federal responsibility, said, "Controlling the illicit and illegal traffic coming into the country is a Federal responsibility. Nonetheless, the violations that occur in the local communities are local responsibilities. There is no other national policy in this area."

From the elicited testimony and as shown in the pictures and slides at the November 19, 1976, hearing, it can reasonably be inferred that a no-arrest policy exists in New York whether express or implied. The conflicting testimony as to whether the uniformed officers make narcotics arrests, would seem to fall in favor of the testimony that they do not, since committee members and witnesses acknowledged that overt sales in the presence of uniformed police officers who did nothing were hourly occurrences. It is also difficult to give credence to Mr. Preiss' expressed personal belief that arrests have no impact on street dealing, or on the line officers, over whom he has supervisory responsibility.

The city's assertion that narcotics enforcement is a high priority would also seem to be in conflict with the reality testified to by Sterling Johnson, the special narcotics prosecutor. With regard to the lack of black, Hispanic and female officers, the police department agreed that the availability of such persons would make for more effective control of drug trafficking. In citing the lack of funds, budget cuts and the voluntary nature of drug assignments, the appropriate response would seem to be that given to the Justice Department by Congressman Rangel: "Are the communities where the flagrant violations are taking place supposed to accept these reasons as the way things are supposed to be?"

The Select Committee did not discard Mayor Beame's request for Federal aid in drug law enforcement out of hand, but it was not impressed with the declaration by the police department that any forthcoming Federal funds would be used for making arrests. Mr. Scoppetta, the mayor's representative, clearly indicated, however, that earmarked funds would be used as specified.

There was general consensus that because of the amount of drug trafficking the city had to deal with, it could focus on the need for Federal, State and local governments coordinating their efforts to resolve this problem. While sympathetic to the fiscal constraints the city presently functions under, there was concern expressed that budget cuts had not been made with sensitivity to the effects on people, respect for the police and the maintenance of the social order.

The Select Committee concludes, based on the testimony of the Justice Department officials, that narcotics law enforcement in New York City at the street level is not a high priority of the Federal Government. That this lack of priority had contributed to creating "a class of citizenry that can no longer expect enforcement of the law on a local or State level" was poorly received.

This conclusion is based on the testimony that cites the double budget cuts imposed by the executive branch and Congress. Notwithstanding the President's urgent proclamation for a high priority response, no policy changes or written or verbal directives could be cited by the Justice Department which gave effect or purpose to the President's directives.

FINDINGS AND CONCLUSIONS

1. Drug trafficking is occurring on the streets of New York City without substantial enforcement of either State or Federal drug laws. While New York has the most severe anti-narcotics laws in the Nation, these laws do not act as a deterrent and have had little or no effect on traffic and use.

2. Drug related crime in New York City is now at a level of 50 percent of all crime. In 1976, there were 17,000 arrests for such crimes alone.

3. The testimony indicates that drug law enforcement is not a high priority of the city or of the police department as reflected in budget figures and resource commitment.

4. New York City is in a crisis state because of drug related crime and passive law enforcement, with implications for an unstable social order and lack of respect for law.

5. A "no-arrest" policy as to street drug sales exists in New York City whether express or implied.

6. Because of budget constraints resulting in massive layoffs, New York City's current narcotics enforcement capability is insufficient for the scope of drug trafficking that exists.

7. Budget considerations have severely hampered the entire criminal justice system's ability to effectively fulfill its prosecutorial and judicial responsibilities.

8. The criminal justice system in New York City is in almost total collapse. The narcotics court has a backlog of 1,200–1,500 cases and even if street enforcement was vigorously pursued, there would be inadequate prosecutorial and court facilities available to give speedy trials to the accused.

9. There is no operational integration of enforcement and treatment efforts with the result that across the board cuts have exacerbated the problem.

10. Notwithstanding the appointment of a Deputy Mayor for Criminal Justice, there is an apparent lack of the needed ability required for effective planning and integration of the criminal justice function.

11. The Federal Government has a shared responsibility with States and cities in drug law enforcement as they have concurrent jurisdiction over narcotics violations. In addition, narcotics trafficking involves international transactions and includes aspects of interstate commerce and thus further falls within the responsibility of the Federal Government.

12. New York has no comprehensive or focused effective plan that would appreciably affect the existing drug problem. The Federal Government must rely on local law enforcement to confront street level trafficking, as Federal resources are being focused on high level cases, including conspiracy prosecutions and other targets which involve interstate and international connections. It is important that the States prepare a plan before the Federal Government is called upon for emergency help.

13. The Select Committee's experiences in New York City, which are recounted in this second interim report, are certain to require further investigation and study. New York City may not be typical of other American cities, but its recent history of lax law enforcement will serve as a basis for studies of other cities, designed to determine if local law enforcement is doing its job adequately and vigorously.

APPENDIX

Events Following November 19, 1976

Alleged rejection of LEAA money by New York City Police Commissioner

An investigation into an alleged rejection of earmarked LEAA funds, by Commissioner Codd, revealed that a proposal was submitted to the State Commissioner for Criminal Justice, who delivered it to Judge Altman, of the Criminal Justice Council, to obtain Commissioner Codd's approval. The rejection of the proposal, not the money, was said to be based on the perceived lack of control of officers whose salaries would have been paid with Federal funds and supposed restrictions imposed by the city charter. Nevertheless, it was determined, also, that the funds did not and had never existed.

Submission of police proposal for Federal moneys

On November 26, 1976, pursuant to a request made by the hearing panel, the NYPD submitted a proposal for an annual grant of $21 million, to provide for an increase in personnel within the Narcotics Division and the Organized Crime Bureau, funds for additional chemists, confidential investigation expenses such as buy money and the rehiring of police officers for uniformed duty/presence in various precincts consistent with their existing drug problem.

It was said that the increase in the incidence of open narcotics violations was the result of recent reductions in the strength of the New York City Police Department, accompanied by the continuing failure of the Federal Government to stem the influx of dangerous drugs into the city.

Mayor Beame's field trip through Harlem

Because of the passive narcotics law enforcement situation in Harlem, as characterized in the hearing record, a meeting with Mayor Beame took place in his office on Monday, November 22, with Police Commissioner Codd, Manhattan Borough President Sutton; Central Harlem Councilman Fred Samuel, and Congressman Charles Rangel.

Mr. Rangel and Borough President Sutton asked the mayor to take a firsthand look at the street situation. He agreed and set a field trip for the following day.

On Tuesday, at approximately 5 p.m., the tour commenced in an unmarked Narcotics Division van, driven by Sergeant Ingram, narcotics division plainclothes officer, with Mayor Beame, Police Commissioner Codd, Special Narcotics Prosecutor Sterling Johnson, State Senator Carl McCall and Congressman Rangel.

The trip covered Lenox Avenue and 114th Street, Eighth Avenue from 117th to 123d Street and St. Nicholas Avenue at 126th and 127th Streets. At this last location, approximately 200 to 300 people were congregated. Narcotics sellers were hawking their wares and yelling out brand names. While stopping at 127th and St. Nicholas, a young male attempted to sell cocaine with the visible brand name, "No Respect" to the driver of the van, Sergeant Ingram, who grabbed the cocaine and asked the pusher, "Do you know who I am?" The pusher replied, "Oh, yeah, you're the police," and casually sauntered away.

The mayor, sitting a few feet in the rear of the driver, witnessed the incident, turned to the police commissioner and indicated that action had to be taken.

Commissioner Codd promised to act immediately. Noting that increased narcotics arrests would exceed the capacity of the city's special prosecutor, the commissioner also decided to explore the possibility of turning offenders over to the U.S. attorney for prosecution under Federal law.

On Monday, November 29, a special complement of police officers went to work on the streets of Harlem to try and regain control.

Results of Mayor Beame's field trip

On Tuesday, December 1, 1976, some 3 weeks after the Select Committee's hearing, the *New York Times* reported a "new crackdown against narcotics sellers in Harlem, acting after Mayor Beame secretly observed open street sales of illegal drugs on upper Eighth Avenue."

As of December 28, 1976, Deputy Commissioner James Taylor, reported that "Operation Drug," begun November 24, 1976, had effected 1,111 arrests of which only 3 had been discharged for insufficient evidence, of which 453 were felony arrests and the remainder, misdemeanors. Additionally, 2,583 summonses were issued, mostly traffic violations, or cruisers considered to be potential sellers or purchasers. Commissioner Taylor also said that this was a coordinated effort of 183 men and officers of the uniformed and narcotics divisions, and that from November 26 to December 18, the cost to the police department of this operation, excluding overtime, was $663,991. Questioned as to community response, he said his reports indicated only high praise for the police department's actions. He said that the department traditionally "ran three sweeps a year," but that the problem was its inability to continue the pressure on violators. The Times reported that the department was "apparently reacting to strong political and public pressure about narcotics trafficking in Harlem," but also said that Francis J. McLoughlin, a deputy commissioner in charge of public information, had denied that the department had responded to political pressure in starting the sudden unannounced drive. The news account quoted Sidney Frigand, Mayor Beame's press secretary as saying, "The mayor was kind of shaken by what he saw," (and) "was amazed how open it was and how impotent the present system is to deal with the problem."

The article reports, however, that other police officials, who asked that their identities be withheld, had said that political pressure had influenced the quick decision to organize a special task force to effectuate some semblance of law and order on the streets of New York City. The article continued:

"Street sales of heroin and other drugs have been conducted openly for years in Harlem with little police interference. Police officials have generally asserted that campaigns against low-level narcotics dealers are ineffective since some pushers are quickly replaced by others. Departing from a longstanding police practice, undercover and uniformed officers have been told to make arrests on observations of sales or possession. Previously, most narcotics buys were made with marked money by undercover policemen with backup officers watching so as to have strong court cases. The task force also has been instructed to crack down on low-level sellers—another change in police strategy of concentrating on medium- or high-level dealers who are believed to control the narcotics business in New York City."

Assistant Police Chief Harold Schryver, commanding officer of all precincts north of 59th Street, is reported to have said that several medium-level drug dealers had been arrested, commenting:

"We've made some good narcotics arrests and also some good gun arrests because of this drive."

This prompt and rather spectacular change of local law enforcement policy in New York City again demonstrates that when a Committee of Congress holds public hearings on an acute problem of this kind, the public is quick to demand prompt action. The Select Committee is justifiably proud of its role in effectuating this change of policy.

EXHIBIT A

THE CITY OF NEW YORK,
OFFICE OF THE MAYOR,
New York, N.Y., October 26, 1976.

Hon. EDWARD H. LEVI,
The Attorney General,
Washington, D.C.

DEAR ATTORNEY GENERAL LEVI: I am asking your urgent attention to the problem of narcotics law enforcement, prevention, and treatment which has a disproportionately heavy impact on the city of New York and its residents.

According to our best estimates, the city of New York has between 35 and 40 percent of the Nation's narcotics addicts. Ironically, however, the city receives perhaps 3 percent of the Federal funds earmarked for treatment, prevention, and enforcement.

According to the Federal budget figures for fiscal year 1977, Federal programs to this city totalled only $15.1 million for various enforcement, prevention, and treatment programs, compared to $18.5 million in fiscal year 1976. Almost all of these funds are for purposes of treatment, and pale in comparison to the almost $100 million expended by the city in its own tax revenues for such purposes.

A large percentage of the crimes reported in this city are drug related. In 1975, for example, the police department of the city of New York logged 7,775 drug-related felony arrests and 9,473 drug-related misdemeanor arrests. In a time of fiscal crises for the city, the strain on our criminal justice system to divert its efforts toward drug trafficking and drug-related crimes places an undue burden upon our city's taxpayers.

I believe it is imperative that the Federal Government institute as rapidly as possible a major revision in its program priorities to deal with the total problem of narcotics addiction and the traffic of illegal drugs that finds their way into the streets of our city.

At minimum, the cost of operating the city's police narcotics division and other functions of the criminal justice system dealing specifically with drug-related crimes should be borne as a Federal funding responsibility. This action alone would enable the city of New York to provide an additional 750 police officers to regular street patrols and enable us to wage a more successful effort in our continuing war against crime.

Clearly, the apprehension of offenders is of little value unless there is an adequate program to provide for the speedy prosecution of such offenders and ultimately, the rehabilitation of those in custody. The office of prosecution, which was established specifically to prosecute narcotics offenses in New York City, now faces the loss of Federal and State funds. As a result of budget cutbacks, that office, already critically short of the staff necessary to handle a backlog of nearly 1,500 pending narcotics indictments, will lose 15 assistant district attorneys and the courts will be forced to close 5 of the 12 court trial parts. The situation is now so serious that the possibility is imminent that important indictments will be dismissed because of an inability to speedily prosecute them.

The area of treatment and prevention is woefully underfunded in this city. Out of $482 million for treatment purposes in the Federal budget, the city of New York will receive only $14.7 million in fiscal year 1977. This is a gross inequity which must be corrected if indeed the city and this country are to begin to make worthwhile inroads into curbing the narcotics epidemic which is draining the energies of our municipal system and permitting a cloud of terror to hang over our law abiding citizens.

I would like to meet with you to see how we can move ahead with a total narcotics program which can assist us in coping with the problem that will just not go away unless the resources of our Federal Government are concentrated where the problem exists.

Thank you for your consideration.

Sincerely,

ABRAHAM D. BEAME,
Mayor.

EXHIBIT B

THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., December 1, 1976.

Hon. ABRAHAM D. BEAME,
Mayor, the City of New York,
Office of the Mayor, New York, N.Y.

DEAR MAYOR BEAME: This is in response to your letter of October 26, 1976 to Attorney General Levi concerning the problems of narcotics law enforcement, prevention, and treatment in the city of New York. The Department of Justice and other departments involved in the Federal effort to combat drug abuse share in your grave concern over the drug abuse problem. Although none can dispute the gravity of the situation in New York City, drug abuse is a pervasive problem throughout the United States and has prompted other State and local government officials to turn to the Federal Government for assistance.

Unfortunately, Federal resources, like those of State and local governments, are limited and cannot possibly satisfy all the competing requests. As you know, the Department of Justice does not have any direct responsibility for overseeing or financing drug treatment and prevention programs. Such programs would fall within the jurisdiction of the Department of Health, Education, and Welfare. Justice does, however, have substantial responsibility for enforcing the Federal narcotics statutes and for assisting through the Law Enforcement Assistance Administration, State and local governments in enforcing their narcotics laws. I trust that the following discussion of Federal efforts in the area of narcotics law enforcement will be of assistance to you in understanding the competing con-

siderations which we face in making resource allocations, as well as providing information on the substantial Federal efforts which have been and continue to be made to assist New York City in drug enforcement.

No one would dispute the appropriateness of the Federal Government's active and direct participation in the narcotics enforcement effort. This is so because the illegal distribution of even small amounts of narcotic drugs depends upon the coordinated efforts of many individuals performing distinct yet complementary roles in different areas within the United States and diverse nations throughout the world. In narcotics cases, as with any coordinated sophisticated criminal activity, it is most difficult to reach those at the highest level of the organization. The organizational pattern exists not only to make possible the manufacture, importation, and widespread distribution of narcotics, but also to insulate from detection those who finance, plan, and otherwise direct from afar all the elements of the narcotics traffic. Common sense dictates that this type of coordinated sophisticated criminal activity requires an equally coordinated and sophisticated enforcement response.

Thus, the role of the Federal Government in narcotics enforcement cannot be limited to, or even primarily directed at, providing financial assistance to State and local communities in enforcing their own narcotics laws. The Federal Government must perform certain functions that cannot be adequately handled by State and local governments—interdicting drugs being smuggled into this country, investigating those cases which penetrate the interstate and international organizations which support every narcotics transaction, and uncovering those at the highest levels of narcotics organizations who make such transactions possible. In other words, the Federal role in narcotics enforcement is and must be to perform those activities necessary to the enforcement effort which are beyond the jurisdiction, limited resources, and professional expertise usually available at the State and local level.

This does not mean that the Federal Government should direct all of its resources to these goals. Of course, the Federal Government must, to some extent, participate directly and indirectly in making so-called street cases—arrests of low level retail narcotics dealers. It simply means that the primary focus of the Federal effort must be at those organizations and violators who are beyond the reach of State and local jurisdictions, while State and local governments must assume the primary responsibility, with appropriate assistance from the Federal Government, for arresting the retail dealers who sell narcotics within their respective jurisdictions.

All this is by way of emphasizing that the Federal contribution toward narcotics enforcement in New York City cannot be measured simply by looking at the percentage of Federal funds budgeted for narcotics activities which are directly received by the city. In a very real sense it can be said that just as New York City has a large percentage of the Nation's narcotics addicts and dealers, so too it receives a large percentage of the benefits from the overall Federal narcotics enforcement effort. For example, the arrest and conviction in San Diego, Calif., of individuals engaged in a narcotics conspiracy to import heroin from Mexico through the border in southern California for eventual distribution in New York City obviously benefits New York City and relieves its police, prosecutors, and courts of burdens that would otherwise be borne by them. Narcotics trafficking is by no means a local phenomenon, and Federal enforcement efforts throughout the country and indeed around the world have an impact upon the narcotics problem within New York City.

The extent of the Federal enforcement effort within New York City is itself very substantial. The Drug Enforcement Administration's New York Regional Office consists of over 300 employees, including 167 special agents. DEA plans to assign 23 additional agents to this office. The two U.S. attorneys' offices in New York City employ a total of 18 assistant U.S. attorneys who work exclusively on major narcotics cases. In addition, approximately 25 or more assistants in both offices spend a large portion of their time on narcotics prosecutions. In all, approximately 25 to 30 percent of the resources in these two districts covering New York City are devoted to narcotics enforcement. Obviously, this means that a very significant portion of the Federal court caseload in New York City also involves narcotics prosecutions.

Of course, I am in complete sympathy with the central point of your letter that local narcotics enforcement nonetheless imposes a tremendous burden on New York City's resources, a burden which you believe should be alleviated by the Federal Government assuming the entire burden of funding New York City's

narcotics law enforcement efforts. However, the level of Federal aid to local narcotics enforcement in New York City is already quite substantial, and far exceeds that provided to any other State or city. The Federal Government bears almost the entire cost of the New York drug enforcement task force. DEA provides agents, funds for purchasing evidence and paying informants, rental of physical facilities, and vehicle maintenance from its budget. At present 39 special agents are assigned to the task force, and 4 more should be brought in soon to bring DEA staffing up to a ceiling of 43 agents. The cost to DEA in fiscal year 1976 of agents' salaries and the other expenses listed above was $2,397,623. DEA has also purchased the 115 vehicles for the task force, at an additional cost of $443,754. During the past 5 years, over $4 million in LEAA grants have been made available to New York City to defray the costs of the city policemen's participation in the task force.

Moreover, DEA's New York regional office provides intelligence assistance to the New York City Police Department. For example, over the past 13 months DEA in New York supplied approximately 12,300 names of suspected narcotics traffickers and their associates in response to requests for intelligence information, most of which involved direct requests from your police department.

Indeed, LEAA has overall provided a significant amount of money to New York City for drug abuse control. Since fiscal year 1972, well over $25 million has been made available for drug enforcement, prevention, and treatment. Perhaps the most significant indication of Federal aid which has been given to New York City for drug enforcement is the fact that of the total of approximately $64 million in LEAA discretionary grants to State and local jurisdictions for drug enforcement which were made in fiscal year 1972 through fiscal year 1976, roughly $22.6 million, or more than one-third, went to New York City. The special narcotics court program alone has accounted for almost $17 million, with the remainder going to such efforts as the unified intelligence division and the task force program. These resource commitments far exceed drug abuse support in any other local jurisdiction. Moreover, when the totality of LEAA funds which have been provided to New York City for all purposes is considered, and not simply those funds specifically provided for drug enforcement efforts, the records reveal that New York City has received approximately $110,000,000 since fiscal year 1972.

While it can be said that much more could be done, the level of LEAA assistance which has been provided is quite remarkable in view of the statutory constraints on LEAA's budget and the competing pressures for its limited funds. By statute, 85 percent of all action funds received by LEAA must be turned over to the States in the form of block grants, and the Federal Government cannot direct how these funds are to be allocated by State planning agencies. It is our understanding that in recent years the New York State planning agency has cut back its use of LEAA block grant funds for drug abuse programs, since such programs have been financed with State funds instead. Moreover, even the 15 percent of the LEAA budget which is retained by it for distribution as discretionary grants is not subject to distribution at LEAA's unfettered discretion. Both directly by statute and indirectly by expressions of intent, Congress has set certain priorities for the distribution of these funds. Since 1973, Congress has established the areas of juvenile delinquency, courts, and corrections as priorities in the awarding of LEAA grants. Thus, only a very small percentage of the total LEAA action budget of $487,057,000 in fiscal year 1977 is available for distribution for drug abuse programs.

The funding problems of the New York City special office for narcotics prosecutions illustrate another of the constraints upon the use of Federal funds to support local narcotics enforcement efforts. This component by the special narcotics court program has been funded by LEAA discretionary grants, which by statute may only be used to fund "demonstration" programs, not local programs per se. The funding of this program for 5 years already constitutes an exception by LEAA to its normal policy whereby such programs receive only 3 years of financial assistance. While LEAA discretionary funds are no longer available, block grant funds could be used to continue Federal financing of this office. This decision rests with the New York State planning agency.

Wholly apart from the above considerations relating to the amount of Federal resources which can be made available to jurisdictions such as New York City for local drug enforcement programs, there is of course the additional broad policy question of the extent to which local enforcement efforts should be federally financed. In this connection, it should be mentioned that DEA developed an LEAA grant application for $8 million in January 1976 for the New York

City Police Department to support the salaries of some 155 policemen. This application was subsequently rejected by the police commissioner due to his concern that it would result in these policemen being too far removed from his control. Moreover, he felt that such assistance would be antithetical to the city charter, since he would be relinquishing certain city responsibilities enumerated in that charter.

Enforcing the Federal laws prohibiting the distribution of dangerous drugs is, and I am sure will remain, a major priority of the Justice Department. An increase in those efforts in New York City, substantial as they have been in the past, certainly should be considered. However, I do not believe it is at all realistic or prudent to expect the Federal Government to assume the entire burden, financial or otherwise, for enforcing the New York State laws prohibiting possession and distribution of dangerous drugs. Indeed, to do so would require the Federal Government to assume that responsibility in any number of other cities throughout the United States and such an extensive Federal assumption of local police powers is unwarranted and unwise. I believe that the best answer to this problem is to be found in close and effective coordination among the three levels of government—Federal, State and local—responsible for containing the drug abuse problem. The emphasis in Federal enforcement efforts must remain upon the interdiction of narcotics entering this country, the disruption of narcotics trafficking networks, and the investigation and prosecution of major drug violators. As mentioned earlier, this Federal strategy should have an effect upon the quantity of substances entering this country and their subsequent redistribution, resulting in a decline in drug availability in the streets, and thereby alleviating narcotics related problems in New York City and other areas. At the same time, the Federal Government through LEAA assistance to local law enforcement efforts and HEW assistance to local prevention and treatment programs can, and should continue, to lend financial and technical support.

I am at your disposal to discuss with you or any of your representatives any reasonable increases in financial or technical support within the legal and practical constraints placed upon the Federal Government and in particular upon the Justice Department.

Sincerely,

HAROLD R. TYLER, Jr.

EXHIBIT C

THE CITY OF NEW YORK,
DEPARTMENT OF INVESTIGATION,
New York, N.Y., December 22, 1976.

Hon. PETER W. RODINO,
Room 2462, Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN RODINO: Enclosed is a copy of a proposal for use of Federal funds which have been requested to assist New York in the enforcement of the law as it relates to narcotics prosecutions. You may remember that you asked me to supply you with this information when I testified before your committee on November 19, 1976. This information has also been forwarded to Chairman Lester Wolff by First Deputy Police Commissioner James Taylor.

If you have any questions with respect to this proposal, I would be delighted to discuss the matter with you further. Thank you for your interest and assistance in this regard.

Sincerely yours,

NICHOLAS SCOPPETTA,
Deputy Mayor for Criminal Justice.

Proposal: For grant of Federal funds.

Request: For $21 million.

Problem: With the recent reductions in strength of the New York City Police Department, accompanied by the continuing failure of the Federal Government to stem the influx of dangerous drugs into the city of New York, the incidence of open narcotics violations has increased considerably.

Proposal: To address that problem the following proposal is made:

A grant of $21 million annually be made to the city of New York.

These funds would be used as follows:

(1) To intensify the enforcement of the narcotics laws, the narcotics division would be increased from 481 personnel to 800, with provision for maintaining a supervisory staff consistent with the increased complement.

The number of rehired police officers would be 319, and promotions would be made to provide an appropriate level of supervision in the narcotics division and to maintain the existing level of supervision in the rest of the department. (Schedule of expenses—A)

(2) Personnel within the Organized Crime Control Bureau would be increased, including the supervisory staff, to maintain the same level of support as presently exists. This would be an increase in staff of 35. It would result in the rehiring of 35 police officers, and promotions would be made to provide an appropriate level of supervision in the support units and to maintain the existing level of supervision in the rest of the department. (Schedule of expenses—B)

(3) Thirty-seven (37) additional chemists would be hired to process the additional drugs seized by the increased personnel. (Schedule of expenses—C)

(4) An increase in special expenses, including buy money and other confidential investigation expenses, would be budgeted to provide for the additional personnel. (Schedule of expenses—D)

(5) An allowance of 5 percent of the foregoing costs would be budgeted to provide for equipment, transportation, and other overhead costs. (Schedule of expenses—E)

(6) With the remaining funds, 269 police officers would be rehired, to be assigned to uniform duty in various precincts, consistent with the size of the street narcotics problem existing in such precincts, for the purpose of providing increased uniform presence and attention to the narcotics problem. (Schedule of expenses—F)

NARCOTICS ENFORCEMENT ENHANCEMENT PROGRAM, SCHEDULE OF EXPENDITURES

Rank	Number of people: Increase	Number of people: Required promotions	Number of people: Required rehiring	Incremental cost (per person)	Total cost of changes
A. Additional narcotics division personnel required to increase ND personnel to 800:					
Deputy inspector	2	2		$2,759	$5,518
Captain	4	6		12,603	75,618
Lieutenant	13	19		5,123	97,337
Sergeant	43	62		7,613	472,006
Police officer	257		319	27,758	8,854,802
Total	319	89	319	NA	9,505,281
B. Additional personnel for OCCB support services:					
Lieutenant	3	3		5,123	15,369
Sergeant	8	11		7,613	83,743
Police officer	24		35	27,758	971,530
Total	35	14	35	NA	1,070,642
Cumulative total cost					10,575,923
C. Additional personnel for crime laboratory: Civilian chemist	37			17,500	647,500
Cumulative total cost					11,223,423
D. Special expenses (See explanatory note on next page.)					1,662,526
Cumulative total cost					12,885,949
E. Overhead allowance (See explanatory note on next page.)					644,297
Cumulative total cost					13,530,246
F. Additional personnel for field services assignment to narcotics-prone areas: Police officer	269		269	27,758	7,466,902
Cumulative total cost					20,997,148

EXPLANATORY NOTES TO SCHEDULE OF EXPENDITURES

A. and B. For each supervisory rank transferred to Narcotics Division or to OCCB support services one vacancy will exist elsewhere in the department. Therefore, promotions for each rank include the number needed to meet the new complement of that rank plus the number in that rank who were promoted to the next higher rank.

D. A. above increases the number of Narcotics Division investigators by 74.5 percent. Accordingly, the same percentage increase is anticipated in special expenses as follows:

Expenditure category	Current cost	Anticipated increase
Overtime and night differential	$778,782	$580,222
Narcotics buy money	1,113,003	829,600
Miscellaneous expenses [1]	340,010	252,704
Total	2,231,795	1,662,526

[1] Includes investigator expenses, payments to confidential informants, costs of use of private automobiles and of special rental vehicles, and expenditures on special projects.

E. For the department as a whole, about 95 percent of its total budget goes to personnel expenses. Hence, a 5-percent allowance is taken for overhead costs.

EXHIBIT D

THE CITY OF NEW YORK,
POLICE DEPARTMENT,
New York, N.Y., November 26, 1976.

Congressman LESTER WOLFF,
Chairman, Select Committee on Narcotics Abuse and Control,
Washington, D.C.

DEAR CONGRESSMAN WOLFF: On November 19, 1976, at a public hearing conducted by the Select Committee on Narcotics Abuse and Control, held at the New York State Office Building, 163 West 125th Street, New York City, chaired by Representative Charles Rangel, the committee requested that I forward a program for attacking the narcotics problem in New York City, in the event Federal funding was made available for this purpose.

The attached proposed plan is respectfully submitted for the review and consideration of the committee. The granting of $21 million in Federal funds, as this plan proposes, will enable us to vigorously combat the narcotics problem in our city.

Yours truly,

JAMES TAYLOR,
Acting Police Commissioner.

Proposal: For grant of Federal Funds.

Request: For $21 million.

Problem: With the recent reductions in strength of the New York City Police Department, accompanied by the continuing failure of the Federal Government to stem the influx of dangerous drugs into the city of New York, the incidence of open narcotics violations has increased considerably.

Proposal: To address that problem the following proposal is made:

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(5) An allowance of 5 percent of the foregoing costs would be budgeted to provide for equipment, transportation, and other overhead costs. (Schedule of expenses—E)

(6) With the remaining funds, 269 police officers would be rehired, to be assigned to uniform duty in various precincts, consistent with the size of the street narcotics problem existing in such precincts, for the purpose of providing increased uniform presence and attention to the narcotics problem. (Schedule of expenses—F)

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E. Overhead allowance (See explanatory note on next page.)					644,297
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F. Additional personnel for field services assignment to narcotics-prone areas: Police officer	269		269	27,758	7,466,902
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EXPLANATORY NOTES TO SCHEDULE OF EXPENDITURES

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D. A. above increases the number of Narcotics Division investigators by 74.5 percent. Accordingly, the same percentage increase is anticipated in special expenses as follows:

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Total	2,231,795	1,662,526

[1] Includes investigator expenses, payments to confidential informants, costs of use of private automobiles and of special rental vehicles, and expenditures on special projects.

E. For the department as a whole, about 95 percent of its total budget goes to personnel expenses. Hence, a 5-percent allowance is taken for overhead costs.

EXHIBIT E

U.S. DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
New York, N.Y., December 2, 1976.

MS. JEANNE ROBINSON,
House Select Committee on Narcotics Abuse and Control,
Room 3260, House Annex Two,
Washington, D.C.

DEAR MS. ROBINSON: In November of 1975 the attached draft proposal was submitted to the Criminal Justice Coordinating Council of the city of New York and to the New York City Police Department recommending the payment of salaries of the 155 New York City police officers and 21 State troopers assigned to the New York Drug Enforcement Task Force and the Unified Intelligence Division in the city of New York.

The support of these 155 local officers, that is, clerical, equipment, office space, et cetera, were already supplied by Federal funds from the DEA budget and a LEAA grant with matching funds from the city of New York.

Also attached is the 1973 proposal submitted to the Department of Justice by the city of New York. This proposal was accepted in concept, a planning committee was assigned to implement by phase that portion of the proposal acceptable to the participating agencies, namely: The Drug Enforcement Administration; The New York City Police Department; and The New York State Police.

For all intents and purposes that proposal is not dead but we are in phase III with LEAA support for the Unified Intelligence Division, phase officially ending December 31, 1976.

Very truly yours,

ARTHUR GRUBERT,
Associate Regional Director,
Intelligence/Planning.

Attachment.

SYNOPSIS

The following proposal is submitted to maintain the initiative gained by law enforcement, in the city of New York, in its effort against illicit drug traffic in this city.

Substantial inroads have been made by the three major enforcement agencies with the responsibility of enforcing the narcotic laws in the city and State of New York, namely: The Drug Enforcement Administration; the New York State Police; and the New York City Police Department.

One of the major accomplishments of these agencies has been their ability to work together, coordinate their activities, and, in fact, introduce to the Nation a new concept in enforcement; a completely coordinated, structured, unified operational unit known as the New York Drug Enforcement Task Force and a unified intelligence division. The latter was tasked with the mission of identifying those problems of greatest concern in drug trafficking and developing an enforcement policy endorsed by the parent agencies to attack the problem where it would result in the greatest success in New York City. The gathering and analyzing of all available data would permit the agency administrators to develop a strategy to curtail the problem of illicit abuse and traffic in drugs. Therefore, to react to the changes in the trafficking patterns recently identified in the New York City area and to prevent a return to the intolerable conditions of drug abuse that we witnessed in the 1960's and early 1970's, funding is requested in the amount of $7,411,370.

In his letter of transmittal which accompanied the Domestic Council Drug Abuse Task Force's "White Paper on Drug Abuse," the Vice President of the United States, Nelson D. Rockefeller, introduced his task force's report to the President of the United States by stating that:

"Drug abuse is one of the most serious and most strategic problems this country faces. Its cost to the Nation is staggering; counting narcotics-related crimes, health care, drug program costs, and addicts' lost productivity, estimates range upward of $17 billion a year. In addition to these measurable costs, the Nation bears an incalculable burden in terms of ruined lives, broken homes, and divided communities.

"The task force believes that the optimism about 'winning the war on drugs' expressed so eloquently and confidently only a few years ago was premature. It urgently recommends that the Federal Government reaffirm its commitment to combatting drug abuse and that the public officials and citizens alike accept the fact that a national commitment to this effort will be required if we are to ultimately succeed.

"The task force submits this white paper in the knowledge that it does not provide all of the answers to solving the drug abuse problem. The issues are complex and changing and the Federal effort represents only part of the Nation's total response. However, I believe that the recommendations contained in the white paper provide a solid base upon which a reinvigorated national effort can be built."

Taking these words of the Vice President as seriously as they were meant, the following is submitted as a proposal, which if carried out, would evince an effort on the part of the Federal Government to positively reaffirm its commitment to combatting drug abuse in the New York metropolitan area.

Background

For New York City and its environs, the last half of the 20th century brought with it a dramatic and deadly increase in the magnitude of the drug abuse problem. All the statistical indicators, addict counts, narcotic related arrests, narcotic related deaths, incidents of hepatitis, number of drug treatment program registrants, et cetera, pointed out an alarming growth of the disease of drug abuse.

The growth of the problem was, of course, nationwide but the unique position of New York did more than reflect the nationwide trend, it magnified it. Intelligence sources all agreed that New York City contained over half of this Nation's addicts. Moreover, the city's natural position as the leader in commerce and finance equipped it well for its infamous distinction of being the drug distribution center for the entire country. These considerations made two conclusions manifestly obvious; first, that the enforcement problem in New York was well beyond the scope and resources of the local authorities, and second, that Federal enforcement efforts should reach a high level of concentration here.

Despite increases in the separate efforts of Federal and local enforcement agencies, the problem worsened. Supplies of illicit drugs increased in spite of seizures. Profitability was high and a lenient attitude in the local courts made arrest little more than a nuisance and deterrence little more than a word in the parlance of legal theorists. As an illustration, the New York City Police Department arrested 26,799 persons for narcotic-related felonies in 1970, of which less than 2 percent were convicted of a felony and sentenced to over a year in jail.

Historically hampered by the profusion of overlapping jurisdictions under which he had to work, the agent or officer engaged in the enforcement of drug laws labored under another handicap which sprang, enigmatically, from his own comrades in the war against drugs. We are speaking of the profusion of enforcement entities and the spasmodic appearance and disappearance of cohesive strategies for dealing with the drug problem. In addition to the New York City Police Department with its 26,800 police officers, there are at least 15 other municipal agencies which employ large staffs of peace officers. New York State has a number of enforcement units in the area and until recently, enforcement of the Federal narcotics laws was a major responsibility of four Federal agencies (BNDD, ODALE, ONNI, Customs). Lack of coordination, meaningful cooperation, duplication of effort, and internecine disputes characterized the drug enforcement effort up to 1969 and without a doubt, greatly impaired the effectiveness of the courageous men who fought against the rising tide of drug abuse, against the waste and destruction that it breeds.

Faced with a tremendous increase in drug addiction and an increased supply of heroin from Europe during the late 1960's and early 1970's, drug enforcement in New York City was ready to take a long stride in the right direction. February 1970 saw the formation of the New York Joint Narcotic Task Force which was comprised of enforcement officers from BNDD, NYCPD, and the New York State Police. This first attempt at coordinating and pooling the resources of Federal, State, and local enforcement agencies was by any measure, a success. This was a timely reaction to a very real problem.

In the first 3 years of operation, they effected over 800 arrests of a higher order of violator than was previously considered the norm. More significant, however, was the fact that over 90 percent of those arrested were convicted. The task force was created with the specific mission of attacking the midlevel distributor.

Despite these visible and important advances in the fight against drug abuse in New York, narcotics were still to be had in certain areas and were controlled

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by certain types of violators. Therefore, the mission of the various agencies in drug law enforcement was somewhat altered. The New York Drug Enforcement Task Force and the Unified Intelligence Division received an LEAA grant in order to meet the changes brought about by the increased enforcement efforts of the early 1970's. This grant provided moneys for the New York Drug Enforcement Task Force to purchase evidence and information. The city of New York provided matching funds required by the terms of the discretionary grant. With these PE/PI moneys, the task force was able to change its mission from the mid-level distributor per se to the "networks" servicing and supplying those responsible for drug traffic within New York City. Appendix A sets forth the accomplishments of the task force during its operation.

Under the same grant from the Law Enforcement Assistance Administration, the formation of a Unified Intelligence Division was effected in another effort to reap the proven benefits of the cooperation between enforcement agencies and the coordination of their efforts.

The creation of the Unified Intelligence Division formally merged for the first time, the intelligence efforts of the Federal Government, the State of New York, and the city of New York in the drug area by the gathering, analyzing, and disseminating that intelligence which is needed for top management in these areas to create the proper strategy.

In addition to its crucial function of gathering, analyzing and disseminating the intelligence necessary to form a cohesive strategy in the fight against drug abuse in New York, the unified intelligence division set itself other important goals. These goals were:

1. To insure the elimination of duplication of work,
2. To provide tactical intelligence to the operating units of the three participating agencies, and
3. To identify the major drug distribution networks affecting the city and further, to identify new and emerging leaders in drug trafficking.

We believe that these goals are being met as well as the mission identified for the enforcement task force. However, for this type operation to be successful, it must be innovative and act rather than react to the changes in the trafficking and abuse patterns. We must be continually alert to innovative methods to improve the efficiency of operations. Therefore, in agreement with the Domestic Council's recommendations for increasing the effectiveness of law enforcement efforts which included the following:

"The development of enhanced capabilities to conduct conspiracy investigations and otherwise target enforcement resources at high level violators."

and

"Strengthen capabilities of State and local enforcement agencies, and improved cooperation between them and Federal agencies."

While these two recommendations speak eloquently for themselves, let us amplify the first statement on the need to develop conspiracy investigations against high level violators. It is generally recognized by those in a position to know that conspiracy prosecution is a major tactical weapon and that it is often the only way to reach the high level trafficker who is, in most cases, well insulated from the mundane mechanics of the drug trade. Emphasis on the development of conspiracy strategy will enable enforcement authorities to more effectively allocate their resources toward the apprehension of the leaders of the drug trafficking networks.

On the subject of intelligence, which the white paper speaks of as ". . . an integral part of the overall supply reduction program," other needed changes come to light. Operation and tactical intelligence, which has heretofore suffered from competitive attitudes within and among enforcement entities, must be emphasized. The white paper points to the fact that in the present, as well as the past, this function has suffered from a lack of funding during the allocation of internal resources.

In keeping with our conscious goal of timely reaction to needed changes which have been recognized by others as well as ourselves, we propose that an operational and tactical intelligence unit be created within the unified intelligence division.

Operational and tactical intelligence unit

The creation of an operational and tactical intelligence unit is absolutely essential to drug law enforcement within the metropolitan New York area. Good strategic intelligence on trends in drug abuse with an up to the minute or

current assessment, operational and tactical intelligence are vital in order that resources be allocated more efficiently on a less random basis. Information obtained subsequently by such a unit would, in turn, revitalize that which is constantly being obtained by the strategic intelligence elements. Intelligence functions must be expanded in such a way as to integrate, to some extent, with enforcement activities. One element of this new unit would be a conspiracy group comprised of Federal, State, and local investigators with expertise in the conspiracy development area of enforcement. The primary function would be the review of all Federal, State, and local drug cases, after their substantive conclusion, for potential in the conspiracy development area. All too often, such cases are closed after successful prosecution without total review and involvement of the drug enforcement community to ferret out all information and provide for the extraction of data that would contribute to the total enforcement efforts. The concept here is that no case would be closed, even after prosecution, without total review. In this way, we would benefit from all available information, even that pertaining to customers as well as distributors, to enhance our network analysis functions. As members of these networks are immobilized, new members will have to fill the void. For this reason, we must also consider the customer level, for intelligence purposes, in order to obtain a meaningful drug picture.

A third function of this unit would be extensive informant development. This one unit would be in a key position to develop those individuals necessary for intensive drug enforcement. Informants having value strictly in the substantive area would be funneled to the proper enforcement entity while those having value in the development of conspiracies would be retained for use by that unit.

In the manner described above, the operational and tactical intelligence unit would serve as a multi-faceted approach to the current drug trafficking situation while not directly competing with the operational entities. This is virgin territory and one which intelligence must enter and explore to fulfill its mission and responsibility. It is an extremely difficult area, one which by its very nature, long range. Too often we have fallen prey to the glory of the quick arrest, the "white powder on the table theory." It is now time to react through a change in strategy which will be effective in the years to come in order that repetition of existing tragedies in drug abuse do not recur.

FINANCIAL SUPPORT

The grant application requests LEAA funding to support New York City police officers and 21 New York State police officers, clerical personnel, and ancillary support items. Appendix G provides the necessary cost data in justification of the amount requested.

The previously existing weakness in law enforcement within the New York metropolitan area, which took the form of counterproductive competition, has been greatly diminished by the formation of the New York drug enforcement task force and the unified intelligence division. Funding is now requested to continue with the inroads previously made while at the same time implementing the new and innovative concepts discussed.

EXHIBIT F

[New York Post, Dec. 9, 1976]

IT'S EASY TO SCORE AT CORNER DRUG "STORE"

(By John L. Mitchell)

I bought $45 worth of heroin on the streets of Harlem this week. No questions asked.

Never having to leave my car, I went to two drive-in markets and purchased the two $10 and one $25 bags—enough dope to satisfy the needs of an average junkie's daily habit.

The heroin bazaars are out in the open. Street peddlers hustled back and forth from car to car, touting their wares.

There are few cops to be seen. Most of the pushers appeared to be between the ages of 12 and 15—hired by older dealers to circumvent the stiff penalties for possession and sale of narcotics.

My first buy was made on the corner of 147th St. and Eighth Ave., a mini-market, where a group of teenagers stood huddled together to ward off the cold.

They were standing outside a bar and watched me as I pulled up. They waited for me to make the first move.

The young pushers wore hooded jackets, and as they stood each would stomp his sneakers and blow warm air into his ungloved hands.

One ran briskly over and serviced a man in a car that had pulled up just before mine. The driver was white and drove a car with New Jersey plates. Residents in the community say many whites buy drugs at this market—particularly from New Jersey—because it is close to the George Washington Bridge.

While I was waiting my turn, with my motor running, a shiny blue Lincoln Continental with a gypsy cab sticker on the door drove up and double-parked next to my car, hemming me in.

Two teenagers, who were standing on the corner, jumped into the Lincoln. The interior was cushiony white vinyl.

I rolled down my window and shouted to one of the occupants: "Where can I get some dope?"

Never rolling down his back window, he looked at me disdainfully over his shoulder. His lips formed the word, "No." But one of the teenagers left the car from the other side and asked me what I was looking for.

"Dope," I said.

He pulled out a wad of cellophane bags wrapped in a rubber band and asked, "How many?" He called the dope "Death Boy" and each bag had a little red stamp to identify the brand.

"How much is it?" I asked.

"Ten dollars a bag," he said, running his thumb over the stack of packets, each the size of a Sweet 'n Low, with the deftness of a card hustler.

"I'll take two," I said, handing him the money as he handed me the dope. "Is it any good?"

"Sure it's good; do you want to taste it?" he said with a smile that exposed decayed teeth.

I declined the offer. He thrust the stack of dope back in the pocket of his torn green ski jacket and jumped back into the Lincoln. He moved the car and let me slip away from the curb.

Next, I went to an open air market at 114th St. and Lenox Ave. As I drove up, I was spotted by a young pusher who was standing among a group of men and women warming themselves next to a garbage can that held burning rubbish.

He winked at me. I nodded at him and he strolled over to the car window.

"We're selling quarters and ripdowns of the Brown Bomber," he said with an easy smile. "A quarter sells for $50 and a ripdown for $25."

"What is a ripdown?" I asked.

"Where have you been?" he said with a look of disbelief on his face.

"I've been out of town for awhile."

"Well, a ripdown is half of a quarter or about three and a half spoons of dope. A quarter is seven spoons," he replied, rattling off the information like a stockbroker quoting the ticker.

"I'd like a ripdown."

He pushed off the car, into which he had been peering through the open window, and walked to the corner where a fast-moving courier handed him something. When he came back he had a bag of dope that had been ripped in half. He gave me the dope; I gave him the $25.

"Is the dope any good?" I asked.

"This is the best brown dope around," he replied.

"Do you have any white dope?" I asked.

"There isn't any white dope in the city," he said, as he spotted another potential customer and started easing off.

Brown heroin comes from Mexico. White is generally believed to be refined in Europe.

The three small packets I bought were turned over to the U.S. Customs and the police department narcotics division for laboratory tests to determine the heroin content and country of origin. Preliminary results showed that "it is heroin but in small quantities," said a Customs lab technician.

On November 26, the police department, acting on orders from Mayor Beame, assigned a 170-man task force to combat heroin sellers and pushers in Harlem. But yesterday, at the two markets where I bought the dope, it was business as usual.

EXHIBIT G

[New York Times, Jan. 2, 1977]

STIFF ANTIDRUG LAWS HELD NO DETERRENT—A SURVEY OF NEW YORK CITY JUDGES FINDS STATE STATUTES UNAVAILING

(By Selwyn Raab)

A survey of 100 New York City judges and rehabilitation specialists has found that most believe that the State's current tough narcotics laws have failed to deter illegal drug use in the city.

More than half of the judges and officials said that the laws, which have sentences of up to life in prison, have "contributed to a worsening of the situation" by introducing juveniles into drug trafficking. Youngsters under the age of 18 are immune from the harsher prison provisions and are known to be used as couriers by narcotics dealers.

Jerome Hornblass, commissioner of the city's addiction services agency, in releasing the findings yesterday, proposed that the legislation "consider decriminalization" or the dropping of criminal charges against addicts who are arrested for possession of small amounts of narcotics.

The study, which was conducted by Mr. Hornblass's agency, showed that a majority of the judges and officials supported decriminalization of the possession of small amounts of heroin. Addicts now arrested for possession of heroin can be prosecuted on felony charges, which could bring life sentences or a prison term followed by a lifetime under parole supervision.

In the survey, most judges said that they would make possession of small quantities of heroin a "violation," subject to fines rather than prison terms.

There was, however, no general agreement on what constituted "a small amount." Heroin is believed to be the most widely used illegal narcotic in the city.

According to Mr. Hornblass, those surveyed overwhelmingly rejected legalization of heroin, heroin-maintenance programs, or harsher criminal penalties than are now in effect.

Mr. Hornblass said that 300 judges and rehabilitation specialists had been sent questionnaires last November on the effectiveness of the drug laws. More than 80 judges, sitting in supreme or criminal courts, and 20 specialists have replied so far. Mr. Hornblass said statisticians said the results were "a valid indication of the widespread views of these people."

"This marks the first major survey in the United States that finds judges and drug treatment specialists expressing a common desire to deemphasize the use of courts and law-enforcement agencies to deal with the drug problem and to begin treating addiction as an emotional and physical problem rather than as a crime," Mr. Hornblass asserted.

A series of "get-tough" narcotics laws were enacted in 1973 during the administration of former Gov. Nelson A. Rockefeller. The statutes, commonly known as "the Rockefeller laws," also restricted the use of plea bargaining—allowing a defendant to plead guilty to a reduced charge and thereby get a lighter sentence.

LAWS "NOT WORKING"

Mr. Hornblass said the laws had been approved "in a period of hysteria over the rising heroin epidemic" and "are not working."

"The survey shows," Mr. Hornblass said, "that this emphasis on prison sentences for possessors of small amounts of heroin brings them into contact with hard-core criminals and further alienates them from society."

Those who replied to the survey endorsed heavy sentences for narcotics sellers. But they said that law-enforcement emphasis should be on "the importer and large-scale dealers rather than the small-time, user-pusher who sells to support his habit."

Mr. Hornblass denied that the survey and a planned series of conferences on narcotics problems were part of a campaign to get budget cuts restored to his agency.

Because of the city's financial difficulties and reduced Federal grants, public funds for drug treatment in New York City have been reduced to $35 million last year compared with $62 million in 1974.

The addiction services agency is influential in awarding these grants and monitors the treatment programs.

"This isn't a drive for money," Mr. Hornblass said in an interview. "We are the central agency for drug abuse in the city and we have to take a leading role in modifying a system which everyone agrees isn't working."

Mr. Hornblass said previous large-scale State rehabilitation programs had failed because "they relied on a penal approach in the guise of treatment."

Police officials have said that as much as half of the crimes committed in the city are drug-related. Although experts disagree over the definition of "an addict," most believe that about 100,000 people here are habitual narcotics users.

EXHIBIT H

U.S. DEPARTMENT OF JUSTICE,
U.S. ATTORNEY,
SOUTHERN DISTRICT OF NEW YORK,
U.S. COURTHOUSE,
New York, N.Y., February 8, 1977.

HON. LESTER WOLFF,
Chairman, Select Committee on Narcotics Abuse and Control, Room 3260 HOB Annex 2, Washington, D.C.

DEAR CONGRESSMAN: During the course of my testimony before the Select Committee on Narcotics Abuse and Control, (the "Committee") on December 10, 1976 I asked permission to submit to the Committee a report of the recent activities of the Narcotics Unit of the Office of the United States Attorney for the Southern District of New York. Congressman Rangel, Acting as Chairman in your absence granted that request. Accordingly, I enclose the Report of the United States Attorney for the Southern District of New York to the Attorney General for 1976 (the "Report"). The Report, which was released to the public as of January 18, 1977, includes a preface describing what this Office views as the appropriate role of federal enforcement in New York's narcotic problem, followed by a description of some of the more important narcotics cases which the Office prosecuted during the calendar year of 1976. (Report, pages 17–22). Obviously, space allowed that we describe in detail only a small number of the 250 narcotics cases brought by this Office during the year and, of course, there has been prosecutions since the issuance of the Report not reflected therein. In that regard, I would be derelict in not bringing to your attention the recent conviction of Codell Griffin by this Office. Griffin was charged with being at the head of a Harlem organization which distributed approximately $50,000 worth of heroin per week through a group of street sellers. Griffin and two of his associates were convicted January 20, 1977 and will be sentenced on March 9, 1977.

I also include a copy of the portions of prior report for the period June 1973 through October 1975 concerning the activities of the Narcotics Unit. Again, it should be emphasized that this report merely highlighted some of the major cases brought by this Office and does not reflect the hundreds of less significant narcotics violators indicted and prosecuted during the period.

During the course of the hearing on December 10, 1976, Mr. Nellis requested that we provide the Committee with a breakdown of how many of the cases with which we have dealt during the past year have been generated by investigation and intelligence by federal as distinct from local enforcement activities.[1] As indicated by my testimony, during the past year the Narcotics Unit has received its cases from three sources: first, investigations conducted with the Drug Enforcement Administration; secondly, investigations conducted with the New York Joint Task Force; and thirdly, investigations conducted with the New York Police Department. As I indicated in my testimony, because of the extensive sharing of intelligence information and other substantial investigative cooperation between federal and local authorities in New York, it is almost impossible to discern which cases, if any, have been investigated entirely unilaterally. However, in an attempt to comply with your request, a review of the approximately 250 cases handled by the Office during 1976 supports an estimate that approximately five-percent of those cases came to this Office from the New York City Police Department without any prior federal or state assistance in the investigation. In 95 percent of our cases, the investigation was developed through federal or federal-state-local efforts.

[1] Specifically, Mr. Nellis asked "what percentage of your cases, Mr. Cooney, are self generated through DEA or other Justice Department information?" (Transcript on page 264) as distinguished from New York Police Department information or investigation.

In this connection I was asked several questions concerning federal declination in Narcotic cases in favor of prosecution by the New York State authorities. Let me take this opportunity to put this issue in context. The procedure followed by this office when it declines in favor of State prosecution is to forward to the Special Narcotics Prosecutor for the City of New York the federal prosecutive file with a cover letter from the undersigned. In reviewing the salient correspondence files for the year 1976 during which I have been Chief of the Narcotics Unit, I find there has been only one case, that of Noel Forbes, referred to New York State authorities for prosecution.

I trust the enclosures satisfy your requests. If I can be of any further assistance, please do not hesitate to contact me. Further, let me extend to each of the members and staff of the Committee an invitation to visit this Office so that you may see and be briefed in person on its activities.

Finally, on behalf of this Office let me thank the Committee for the opportunity to testify on the pressing local and national problem of narcotics trafficking. The Office is especially appreciative of the laudatory comments made by Committee members concerning the Unit's efforts to curb this plague. (Transcript, pages 231, 273). Please be assured that the United States Attorney's Office for the Southern District of New York will continue to place the highest priority on narcotics prosecution and, with the continued support of the public and its representatives in Congress, we are confident of future success in smashing major narcotics conspiracies.

Respectfully yours,

ROBERT B. FISKE, JR.,
U.S. Attorney.
BY JOHN P. COONEY, JR.,
Assistant U.S. Attorney.

UNITED STATES ATTORNEY

Southern District of New York

Annual Report

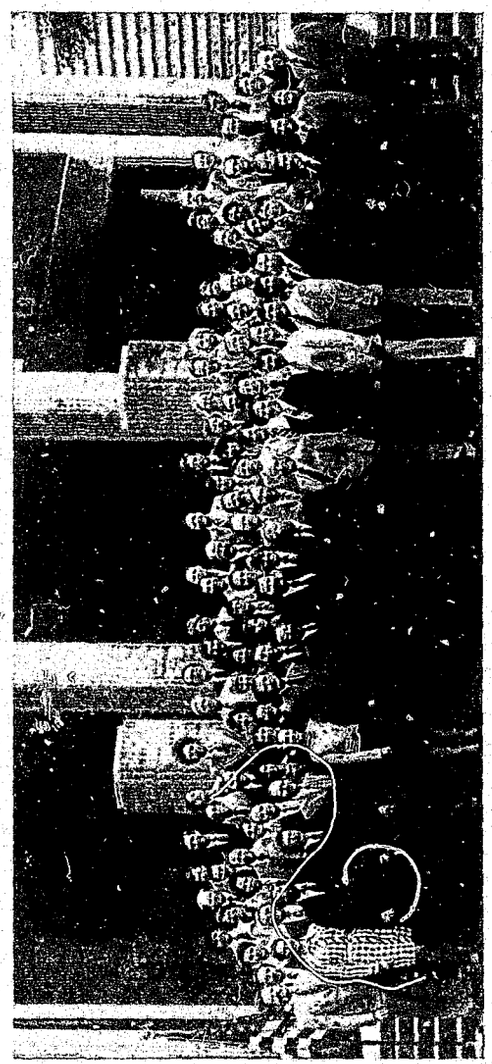
1976

REPORT OF
THE UNITED STATES ATTORNEY
FOR THE
SOUTHERN DISTRICT OF NEW YORK
TO THE
ATTORNEY GENERAL

1976

ROBERT B. FISKE, JR
United States Attorney
Southern District of New York

January 18, 1977



UNITED STATES ATTORNEY'S OFFICE
JUNE 14, 1976

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Report Of The United States Attorney For The Southern District Of New York To The Attorney General

INTRODUCTION

In submitting this report concerning the work of the Office of the United States Attorney for the Southern District of New York for the calendar year 1976, I would like to acknowledge at the outset the contribution made by my predecessors, Paul J. Curran and Thomas J. Cahill. Many of the cases which were initiated, and many of the cases which were concluded, during 1976 resulted from investigations they started. More important, I am grateful to them, and to their predecessor Whitney N. Seymour, Jr., for appointing the outstanding group of Assistant United States Attorneys which it was my good fortune to join when I took office on March 1.

I would also like to pay tribute at the outset to the magnificent leadership provided by the Executive Staff of the Office. I am particularly indebted to Daniel R. Murdock, William H. Tendy, Joseph Jaffe and Elkan Abramowitz, all of whom had served the Office with distinction as Assistant United States Attorneys in prior administrations and returned to the Office this year in the key positions of Chief Assistant, Executive Assistant, Administrative Assistant and Chief of the Criminal Division, and to Taggart D. Adams, who was Chief of the Civil Division under Paul Curran and who has stayed on to continue to provide strong leadership in that important position.

Finally, I would like to express my appreciation for the encouraging support we have received throughout the year from the Department of Justice in Washington under the leadership of Attorney General Edward H. Levi and Deputy Attorney General Harold R. Tyler, Jr. We have also enjoyed excellent relationships with Robert M. Morgenthau, Mario Merola and the other District Attorneys with whom we have worked, as well as with Special State Prosecutors John F. Keenan and Charles J. Hynes, the Special Narcotics Prosecutor, Sterling Johnson, Commissioner of Investigations, Nicholas Scopetta, and the New York Police Department under the leadership of Michael C. Codd.

THE ESTABLISHMENT OF PRIORITIES

A major function of any United States Attorney is the establishment of priorities. The matters which the office has stressed in the last year are as follows:

Criminal Division Priorities

The Office has devoted a major portion of its resources to combating business crime. Additional experienced Assistants have been added to the complement of the Business Fraud Unit in the Criminal Division. Relationships with investigative agencies have also been strengthened.

Splendid assistance has been received from the Securities and Exchange Commission and the Internal Revenue Service, both of which have made significant contributions to the work of the Office in this area. We have been particularly gratified in this regard by the increased efforts of the Federal Bureau of Investigation, culminating at year end with the FBI's assignment of a select group of agents to work exclusively with this Office in the drive against white collar crime. The results of the increased efforts by these agencies can been seen in the report of indictments obtained. To an even greater extent, the benefit from this effort lies in the progress of investigations currently underway which have

not reached the point where they are appropriate for public discussion.

The enforcement of the narcotics laws must be given the highest priority by any United States Attorney in this District and we have done that. Our Narcotics Unit, with 14 Assistant United States Attorneys, is the largest single specialized unit in the Criminal Division, and the largest narcotics unit in any federal prosecutor's office in the United States. In 1976, this commitment, with the continued effective support of the Drug Enforcement Administration, produced noteworthy results in the convictions of many kingpins in the narcotics trade. As noted in detail later in the report, more than 30 important narcotics traffickers, convicted in 10 separate cases during 1976, were sent to jail for prison terms of from 10 to 30 years; 21 of those defendants received sentences of 15 years or more.

A third priority, developed during the year, has involved greater attention to the investigation and prosecution of fraud in connection with Government-financed programs. Unfortunately, it has become all too clear that a tremendous potential for fraud exists in a wide variety of programs for which Congress has appropriated large sums of money. These programs, designed to benefit the needy, lack effective systems for monitoring where the money goes. The net result has been widespread fraud. In recognition of this fact, the jurisdiction of the Official Corruption Unit has been expanded and the Unit strengthened by the addition of more Assistants to deal specifically with this pernicious type of criminal activity. The Internal Revenue Service, the FBI, the Department of Agriculture, and the Department of Health, Education and Welfare have all worked effectively with this Unit in these investigations, while at the same time continuing to provide needed assistance in the Unit's continuing efforts against official corruption.

Finally, one of the most significant developments of 1976 was the merger into this Office of the Joint Strike Force Against Organized Crime so that investigation and prosecution of organized crime in this District is now the responsibility of this Office. We are confident that this merger will in the long run bring added strength to the fight against organized crime in this District which will be one of our major priorities in 1977.

Civil Division Priorities

On the civil side, an increased effort was made to initiate civil actions on behalf of the United States to protect important governmental and public interests. These included not only civil rights cases, but also proceedings in which the judgment conferred benefits, financial or otherwise, on a large class of persons affected by illegal conduct. In addition, the Office has implemented a policy of using civil remedies, including those provided in False Claims Act, in conjunction with, or as an alternative to, criminal actions in a way which should provide a further deterrent to illegal conduct and also provide revenues to the Government.

Training and Recruitment

The hallmark of this Office over the years has been its ability to attract to Government service young attorneys of the highest quality and dedication. The continuation of that tradition during the past year has been one of the office's top priorities and one of its most significant achievements.

The Office now receives over 25 applications for every available position. Selections are made from this group solely on professional merit and totally without regard to political considerations. Many Assistants come from the country's leading law firms, at very substantial salary cuts. Others have been law clerks to Justices of the United States Supreme Court or to Circuit or District Court Judges, and come to work here at far less than they could earn elsewhere. Of the Assistants who accepted positions during 1976, well over half were editors of their law school Law Reviews. Three were editors-in-chief.

At the same time, we have recognized that academic distinction should not be the sole criterion for selection; for it is surely not the only key to success as an Assistant. Accordingly, a balance has been struck in the over-all

selection of Assistants, combining academic distinction with other important qualities, including proven experience in civil or criminal practice. Four of the Assistants hired for the Criminal Division in 1976 came to us from other prominent prosecutors' offices.

The training of new Assistants, which is a principal responsibility of the Chief and Assistant Chiefs of each Division has received stronger emphasis during 1976. Each Division conducts a series of lectures on investigative, trial, appellate and other techniques which are delivered by senior attorneys including the United States Attorney and members of the Executive Staff. In each Division there is an Appellate Section which reviews and revises Assistants' briefs to the Court of Appeals to assure the high level of quality which has characterized the work of the office in that Court over the years. In addition, the Appellate Sections are responsible for the conduct of moot court arguments in advance of every appeal in which members of the Section and other Assistants participate as judges, a practice which has proved highly valuable in improving the quality of oral argument.

The preparation and conduct of the first trial by each new Assistant, which is generally a relatively simple case, is personally supervised by the Chief or an Assistant Chief of the Division, and the preparation and conduct of the next few trials are closely supervised by senior Assistants in the Division. In addition, less experienced Assistants are regularly scheduled as second persons on more complicated trials in order to both assist and learn from senior Assistants. Included in this group of senior Assistants are the United States Attorney and the many members of the Executive Staff who have personally conducted important trials, hearings and appeals during the past year.

Finally, and perhaps most important of all, has been the continuation of one of the great traditions of the Office which makes it the highest responsibility of every Assistant to provide counsel and assistance to another in a time of need.

Speakers Program

As an interesting and provocative adjunct to the intra-office lecture series, the Office scheduled during the year a series of lectures by prominent outside speakers. The first speaker in the program was the Honorable J. Edward Lumbard, presently Senior Judge of the United States Court of Appeals for the Second Circuit and previously United States Attorney for this District and Chief Judge of the Court of Appeals for the Second Circuit.

Succeeding speakers included:

the Honorable Irving R. Kaufman, Chief Judge of the Court of Appeals for the Second Circuit;

the Honorable Edward Weinfeld, United States District Judge for the Southern District of New York;

the Honorable Marvin E. Frankel, United States District Judge for the Southern District of New York;

the Honorable Harold R. Tyler, Jr., Deputy Attorney General of the United States;

Simon H. Rifkind, former federal Judge and senior partner in the firm of Paul, Weiss, Rifkind, Wharton & Garrison;

John J. McCloy, senior partner in the firm of Milbank, Tweed, Hadley & McCloy; and

John E. Zuccotti, First Deputy Mayor of the City of New York.

Student Program

The Office has continued to expand the Student Intern Program begun by Judge Lumbard in 1953. Under the program, law students work in the Office on a full time basis in the summer and on a part time basis during the school year. This program introduces law students to the Office in two ways.

The Summer Student Assistant Program is for students in the summer following their second year in law school. Each student is assigned to an Assistant United States Attorney and works closely with the Assistant in

the conduct of the Assistant's cases. This permits the student to assist in trials, in depositions, in writing briefs, in interviewing witnesses, and in whatever Office business the Assistant is conducting.

Last summer, 85 students from 25 law schools participated in this program. They provided invaluable assistance to the Office and, in the process, obtained the type of first-hand litigation experience that cannot be offered by any private law firm. The best evidence of the program's merit and popularity is that there were over 1,500 applicants for the 85 positions. Standing alone this statistic is impressive. It becomes even more impressive with the added fact that a large percentage of the Summer Assistants receive no compensation at all, and those that can be paid receive on the average less than 25% of what they could earn in a law firm. It is particularly gratifying that as word of this program's attractions spreads among the law schools, the number of outstanding applicants increases annually.

The other phase of the Student Intern Program involves approximately 60 second and third year law students from nearby law schools who work in the Office part-time during the school year. Their activities are much the same as in the summer program. While none of these students is paid, approximately 40 obtain credit from their law schools for participating in a clinical program. These students must work here at least 15 hours per week.

Proving Federal Crimes

In April 1976, the Criminal Division completed work on the sixth edition of *Proving Federal Crimes*. This edition was begun under the direction of former United States Attorney Paul J. Curran and former Chief Assistant United States Attorney Silvio J. Mollo. Preparation of this sixth edition was supervised by Assistant United States Attorney V. Thomas Fryman, Jr., and 31 Assistant United States Attorneys in the Criminal Division contributed to the book. The sixth edition, like the preceding five editions prepared periodically by this Office since then United States Attorney J. Edward Lumbard conceived the idea for the first edition in 1954, was designed as a practical manual for quick and ready reference for Assistant United States Attorneys throughout the country responsible for the prosecution of criminal violations of federal law. The 230-page book has been distributed by the Department of Justice to all Assistant United States Attorneys throughout the United States and has been made available to all federal judges through the Administrative Office of the United States Courts. A second printing of the sixth edition of *Proving Federal Crimes* is now under way, and later this year the book will be available to the public through the Superintendent of Documents.

SOME PROBLEM AREAS

The separate reports of the important cases conducted by the Office speaks to the accomplishments of the past year. Problem areas must also be highlighted.

The Speedy Trial Act

In July 1976, the Speedy Trial Act became effective. This act places stringent time limits on the time within which criminal cases must be tried. By July 1, 1979 all criminal cases will have to be tried within 60 days of arraignment, subject to certain exclusionary time periods which in most cases will not provide for any significant extensions.

At present, the District Court is operating under interim time limits which require cases to be tried within 180 days of arraignment, except for six judges who, as a pilot group, are already attempting to calendar criminal cases for trial within the 60 day deadline.

This greatly accelerated time schedule has placed extreme pressure on the Criminal Division and has required some major adjustments. One immediate impact of the Act has been that the Chief of the Division and the Assistant Chiefs have had to devote an inordinate amount of time scheduling, assigning and reassigning cases among Assistants in order for the Office to meet the trial deadlines, often set on very short notice, by 26 separate District Judges. Pressure is particularly acute

in cases where trials are set to start almost immediately after arraignment. Largely because of the short time periods involved defendants in most of these cases wait until the date of trial before deciding whether they will plead guilty. Since it is necessary to prepare all of these cases for trial, an inordinate amount of time has been wasted on a very significant number of cases where a plea of guilty is entered at the last minute.

This problem has been compounded by the fact that senior Assistants participate in and supervise the preparation and conduct of the first several cases tried by a new Assistant. Every one of these cases in which guilty pleas are entered on the trial date has thus resulted in a double waste of effort and has unnecessarily taken experienced Assistants away from what should be their principal function in the Office—the investigation and prosecution of complex and important cases. The problem is further compounded when because of conflicting trial dates, a case already prepared or partially prepared by an Assistant has to be reassigned to another.

The Speedy Trial Act has also required our Office to reevaluate our policies as to the types of cases that we will prosecute. In the past year it was necessary to decline an increased number of potential cases in favor of local prosecution or, in some cases, no prosecution at all. This is by no means an ideal solution, particularly since the local courts and prosecutors' offices are badly overloaded already, but in terms of priorities, we have made the judgment that the resources of this Office should be concentrated to the greatest extent possible on the development and prosecution of major cases in the areas of priority already described.

The short trial deadlines have had other effects. One has been upon defense counsel, who are generally less prepared for trial than the Government at the time of indictment, and who accordingly suffer more from short deadlines. Another has been upon the trial of civil cases, which frequently have been deferred in order to meet the deadlines for trial of criminal cases. We are concerned that as the deadlines shrink over the next two and a half years down to the 60 day period now prescribed by the Act it will be increasingly difficult to try all criminal cases within the prescribed time without intensifying these problems to an even greater degree. We believe that this problem will be particularly acute in this District which has a significantly greater number of long and complex trials than other Districts.

The impact of the Speedy Trial Act on the administration of justice in the Southern District of New York is under active and continuing study by the Bench, by this Office and by interested Bar Associations and other public groups. In the last analysis, we believe that it is essential that a balance be struck which fairly protects the right of the defendant to a speedy trial and the interests of the public in prompt disposition of criminal charges, without neglecting the equally important public interest in allowing the Office to devote sufficient resources to investigating and prosecuting important and complex cases.

Tax Returns and Bank Records

A second major problem which developed during 1976 and which gives every indication of becoming worse in 1977, is the inclination of Congress to pass legislation which, while intended to protect individual rights of privacy, materially impairs the prosecutor's ability to uncover and prosecute sophisticated criminal activity. A prominent example of this type of legislation are those portions of the Tax Reform Act which severely limit the Government's right to obtain income tax returns of persons under investigation. Of even more concern is legislation introduced in 1976, which will undoubtedly be resurrected in 1977, proposing severe restrictions on the right of the Grand Jury to subpoena bank records. It is ironic indeed that at the same time law enforcement officials are being called upon to intensify their efforts against white collar crime so that the criminal laws are not discriminatorily enforced against the indigent and the powerless, legislation is being called for, and adopted, which makes the prosecution

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of sophisticated, wealthy businessmen even more difficult to accomplish. For it is precisely in the investigation of sophisticated business crime that access to income tax returns and bank records is the most crucial.

Insane Defendants

Due to the lack of appropriate federal legislation or a federal medical facility for the treatment of insane or incompetent defendants, considerable difficulty has arisen in a number of cases involving such defendants. We continued this year to be plagued by the absence of any federal legislation to deal with the criminally insane. Unlike most state jurisdictions, where defendants found not guilty by reason of insanity are subject to restraint, in the federal system such defendants are merely released, regardless of the dangers they pose to society. This year, as in prior years, we found ourselves unable adequately to deal with several defendants, who had committed such crimes as bank robberies or armed assaults on federal agencies or employees, because of the substantial possibility that their acquittal by reason of insanity would lead to their immediate release. Unfortunately neither the New York State criminal system nor its public health system, both of which are notoriously overburdened and underfinanced, has proved capable of fully protecting the public interest in this situation. It is clear, in our opinion, that federal legislation authorizing and implementing restraint on criminally insane persons is essential to fill this void in the federal criminal system.

A closely related problem is that, if a defendant is examined pursuant to 18 U.S.C. § 4244 and found by the Court to be incompetent to stand trial, he is then committed to the Medical Center for Federal Prisoners at Springfield, Missouri, until he becomes competent. However, if the psychiatrists at Springfield certify that the defendant will not be competent within a reasonable time, he cannot be maintained at that institution, because it is a short-term facility. In addition, under New York State law, a defendant cannot be involuntarily committed to a state mental institution while criminal charges are pending against him. As a result, the federal indictment or complaint must be dismissed before commitment to a state institution can occur. Invariably, when federal charges are dismissed, the defendant remains in state custody for no more than sixty days, after which he is released unless found to be an actual danger to the community. Because he is still incapable of standing trial, the criminal charges cannot be reinstated, and the defendant goes free.

This situation could be remedied by establishing a federal institution for the treatment of such persons or by revising the New York State Mental Hygiene Law to permit treatment of patients pending criminal charges. With the speedy trial rules tolled for a period of incompetency, a prosecution could then be instituted as soon as the defendant became competent to stand trial.

Interstate Detainer Agreement

Another problem arises out of the recent decision of the Court of Appeals for the Second Circuit on October 26, 1976 in *United States* v. *Mauro*, in which the Court ruled, for the first time, that the Interstate Agreement on Detainers applies to situations in which Federal authorities — that case involved the Eastern District of New York — obtain the presence of a defendant who is already serving a New York State sentence by issuance of a writ of *habeas corpus ad prosequendum*, and that the Agreement prohibits the federal authorities' returning such a prisoner to state custody prior to his federal trial. This ruling invalidated our pre-*Mauro* routine practice of returning such prisoners, after arraignment, to state custody to await trial. Requiring such prisoners to await trial in federal custody places an unnecessary additional burden on federal detention facilities and removes such prisoners, while awaiting federal trial, from whatever rehabilitation programs are available to them, as sentenced prisoners, in the State prison system. The relevant provisions of the Justice Reform Act of 1975, now pending in Congress, which would modify the

Agreement as it applies to the Federal government, appears to solve this problem.

Staffing and Resources in Civil Litigation

Of increasing concern in the Civil Division is the problem of adequate staffing and resources to meet the exigencies created by a greatly increased caseload compounded by the fact that the nature of the cases has become significantly more complex.

The Civil Division, by its very nature, has less discretion than the Criminal Division in the allocation of its resources and the establishment of priorities; when the Government is sued, we have no discretion not to handle the case. With the steadily increasing volume and complexity of suits against the Government, a great strain is placed upon the resources necessary for the investigation and development of the affirmative action cases which should be an important Civil Division priority.

In 1976 over 2,300 cases and matters were assigned to Assistants in the Civil Division, each of whom is responsible for between 60 and 140 active cases at any one time. As pointed out in the section describing Civil Division accomplishments, a number of separate suits against the Government in 1976 required practically the full time attention of several Assistants. It is unquestionably true that in many cases now being litigated in the Civil Division, the time of legal, paraprofessional and investigative manpower allotted to them by the opposing party is twice or three times as much as is available to this Office. Furthermore, many of the larger firms in New York City involved in civil litigation with the Government have developed computer research capability and information retrieval systems far surpassing anything available to the Assistants in this Office. The successful results which have been achieved in such areas as tax litigation, civil rights and public health and safety, despite these growing problems, are a tribute to the dedication and ability of individual Assistant United States Attorneys and the high calibre of the Office. Nevertheless, the Government can ill-afford to be at such disadvantage when the stakes are so high.

THE CRIMINAL DIVISION

Elkan Abramowitz
Chief, Criminal Division

Ira Lee Sorkin
Assistant Chief
(resigned December 31, 1976)

Frank H. Wohl
Assistant Chief

T. Barry Kingham
Assistant Chief

Don D. Buchwald
Assistant Chief

Daniel J. Beller
Chief, Major Crimes Unit

John P. Cooney, Jr.
Chief, Narcotics Unit

Patricia M. Hynes
Chief, Consumer Frauds Unit

Daniel R. Murdock
Acting Chief, Organized Crime (Strike Force) Unit

Bart M. Schwartz
Chief, Official Corruption & Special Prosecutions Unit

George E. Wilson
Chief, Health & Welfare Frauds Unit

John R. Wing
Chief, Business Frauds Unit

Lawrence B. Pedowitz
Chief Appellate Attorney

Frederick T. Davis
Deputy Chief Appellate Attorney

Audrey Strauss
Deputy Chief Appellate Attorney

During 1976, there were many important administrative and policy changes affecting the Criminal Division. These changes—some discussed in more detail elsewhere in this report—include:

(1) the creation of a Major Crimes Unit and the appointment of a unit chief to supervise its work;

(2) the expansion of the Frauds Unit by adding more Assistant United States Attorneys, and by incorporating major financial cases not involving securities law violations, previously prosecuted in other units;

(3) the merger of the Organized Crime and Racketeering Section of the Department of Justice (Strike Force) with the Office; and

(4) the expansion of the Official Corruption Unit to include special prosecutions of government program frauds and labor racketeering involving unions not connected with organized crime.

These changes were made without sacrificing the resources of the Consumer Frauds, Narcotics and General Crimes Units, which continued their fine efforts in the investigation and prosecution of important consumer cases, significant drug offenses, counterfeiting, highjacking, postal thefts, gun control law violations and related offenses.

It is gratifying that the hard work of each Assistant in the Division has resulted in a year of enormous accomplishment. During the past year, nearly 1,300 indictments and informations were filed, 98% of which resulted in convictions of one or more of the defendants. Of those cases which were tried, the Office similarly prevailed 85% of the time.

Our success in the District Court was matched by our achievements in the Second Circuit during 1976. Defendants filed 135 appeals from convictions or orders adversely affecting them; this Office obtained affirmances in 95% of them. The Office was successful in 8 of the 13 cases in which the government sought mandamus or appealed pursuant to 18 U.S.C. § 3731.

Reorganization was deemed desirable to balance the problem of handling the high volume of federal criminal cases within the time strictures of the Speedy Trial Act and continuing this Office's long tradition of investigating and prosecuting significant financial and government program fraud cases.

With the implementation of the Speedy Trial Act on July 1, 1976, Assistants were faced with stringent time requirements for indictment and trial of arrested defendants. The sixty-day arrest-to-indictment requirement in particular has led to several changes. For example, during 1976, the number of defendants placed on deferred prosecution increased markedly over prior years. Under appropriate circumstances, defendants placed in this status are not prosecuted during the period —usually a year—and charges are dismissed at the end of the period if the defendant has lived up to the terms of the agreement under the supervision of the Probation Office. In this connection, this Office's attempts to accommodate the pressures of the Speedy Trial Act has caused us to request the various Federal law enforcement agencies with which we work to reform many of their procedures. The cooperation of the Secret Service, Postal Service, Customs Service, the Immigration & Naturalization Service, the Bureau of Alcohol, Tobacco & Firearms and other agencies has been extraordinary, and our Office is profoundly indebted to the representatives of these agencies for their dedication, diligence and patience.

During 1976, the Office, in cooperation with the District Court, authorized the acceptance of pleas to misdemeanors before United States Magistrates. Since in certain cases, such as those arising out of less serious stolen mail incidents when mitigating factors are present, the Office will often accept a plea to a misdemeanor charge, this procedure has resulted in conservation of substantial grand jury, judicial and prosecutorial resources; it has also provided an alternative plea possibility for some defendants.

Other administrative changes were instituted in an effort to comply with the pressures created by the Speedy Trial Act. The so-called Complaint Assistant—the Assistant United States Attorney assigned to process all cases in which an arrest was effected by a federal agency—now is rotated throughout the entire Criminal Division and some members of the Civil Division. Before July 1, 1976, this work had been done by the General Crimes Unit. This intrusion into the continuity of the work of the specialized units of the Criminal and Civil Divisions was deemed necessary to accommodate the accelerated time requirements of the Act, thereby easing the burdens of the Assistant United States Attorneys assigned to the General Crimes Unit.

Despite these intrusions, however, the Office was still able to maintain its long tradition of working with grand juries to investigate complicated crimes. These investigations—often generated from civilian complaints, rather than from other federal agencies—permit the Office to continue to respond to recognized

public problems, which the various federal agencies, with defined jurisdictions, cannot do. In this connection, a total of 48 grand juries sat in the Southern District of New York last year, a number far in excess of any other District.

Several steps were taken during the past year to insure consistency of positions taken by Assistant United States Attorneys in implementing Office policy. For example, all indictments must now be approved for substance and form by the Unit Chief, acting in conjunction with an Assistant Chief, rather than rotating that assignment throughout the Criminal Division through an "Indictment Committee". Additionally, during the past year, it was decided that agreements with cooperating defendants be approved by the Chief of the Criminal Division personally, and be written, thus minimizing the possibiilty of misunderstandings. This procedure also assures uniformity in the decisions to enter into these agreements. Finally, the Division returned to the practice of weekly meetings at which policy and administrative matters are discussed. The effect of these administrative changes has improved communication as well as the quality and consistency of approach in an expanded office which has been, and will continue to be, forced to act under unprecedented time pressures.

In late November, an Organized Crime Unit was added to the Criminal Division following the Department of Justice's announcement that the Joint Strike Force Against Organized Crime in this District, instituted in 1969, was to be merged into our Office. The Strike Force was part of a national effort to bring together on a single team Justice Department attorneys and investigators from various federal law enforcement agencies, to focus on the top rackets figures in the New York area. While fully supporting the concept of the team effort, it was our view that it would work more efficiently and more effectively in the Southern District of New York as part of the United States Attorney's Office. The Office had established an impressive record of convictions of organized crime figures not only before the establishment of the New York Strike Force, but during its years of operation as well.

The new Unit's staff consists of six Assistants who previously served as Special Attorneys with the Strike Force; it will also have two S.E.C. attorneys serving as Special Assistant United States Attorneys. In addition, two other Assistants from our Office have been reassigned to the Unit to expand its capabilities.

The merger should make the drive against organized crime more successful in this District because now the resources and expertise of the Narcotics, Business Frauds and Official Corruption/Special Prosecution Units of our Office can be utilized. The coordination and cooperation among various law enforcement agencies, operating through representatives assigned to a centralized unit of prosecutors, is essential to an effective campaign against organized crime.

The following pages contain descriptions of the important prosecutions of 1976. The results reflect the dedicated work of all the Assistant United States Attorneys, Criminal Investigators and Legal Assistants assigned to the Criminal Division whose performance during the past year has in every respect maintained the high standards and traditions of this Office.

BUSINESS CRIME

Business crime, unlike most street crime, occurs in secret and is not visible to the public. Yet the overall dollar damage to our society from business crimes is tremendous. The United States Chamber of Commerce has estimated that the short-term direct cost of business crimes is at least $40 billion annually. To put that estimate in perspective, it is more than 100 times the amount stolen in all bank robberies in this country in 1976.

In addition to the tangible damage of dollar loss, there is a possibly more serious intangible harm to our society from business crime. The free enterprise economic system is premised on giving to private individuals and companies the primary responsibility to provide necessary goods and services rather

than having these goods and services provided by government-owned institutions. Over the years, private business has filled this role, earning a privileged position in our economic structure, not unlike that of an elected or appointed government official acting within his area of public responsibility. Corruption by businessmen in executing this quasi-public function undermines public confidence in the free enterprise system just as corruption of public officials destroys confidence in government. Our economic system is based on the concept that success results from honest hard work. The notion which underlies white collar crime—that cheating pays—weakens the work ethic in our society to the extent that such criminal activity appears to succeeed. Finally, it is important that the criminal laws be applied with equal vigor to wealthy businessmen as to the prosecution of often indigent street criminals.

The Office in 1976 continued to wage a vigorous campaign in the investigation and prosecution of major business crimes, and this effort was rewarded with significant results. Convictions were obtained in *United States* v. *Bordoni* on the first indictment to emerge from the investigation, begun in 1974, into the Franklin National Bank fiasco, probably the largest bank failure in American history, and certainly an example of criminal conduct at the very top of our economic structure. The convictions of high level bankers, businessmen and financiers in *United States* v. *Amanatides* and *United States* v. *King* should serve as a warning to others tempted to employ fraud as a tool for achieving profit or advancement. Similarly the tax evasion convictions in *United States* v. *Davis* and *United States* v. *Klock*, based on allegations of what amounted to theft from the public corporations of which these two defendants were the chief executives, reflect the Office's continued commitment to promoting equal enforcement of the law at all levels of society.

Summaries of some of the most important business crime cases prosecuted by the Office this year are set forth below:

Securities Frauds

United States v. *John M. King and A. Rowland Boucher*

After months of investigation culminating in a six-week trial, Denver's multi-millionaire oil and gas financier John M. King and his chief associate, Rowland Boucher, were convicted on fraud and conspiracy charges in connection with their sale of oil and gas interests in the Canadian Arctic. The indictment charged and the evidence showed that these sales were fraudulently used as a basis for a $100,000,000 revaluation by King's major customer, the IOS-controlled Fund of Funds. The essence of the fraud was that King and Boucher arranged fraudulent Arctic sales at inflated prices based on secret guarantees to the purchasers and then falsely represented the transactions to be arms-length bonafide sales purportedly reflecting the accurate market value of the property. The evidence showed that this sophisticated scheme was designed to persuade King's primary customer to continue funneling millions of dollars to King's companies for the acquisition of natural resources. The evidence showed that as a result of the fraudulent Arctic sales the 150,000 shareholders of this Fund lost in excess of $28 million. King was sentenced to a prison term of one year. Boucher was sentenced to a prison term of seven months. (AUSAs Wing and Vizcarrondo).

United States v. *David Stirling, Jr., et al.*

Another major investigation extending over a six-month period resulted in the indictment of four former principal officers and an attorney of the now-bankrupt Stirling Homex Corporation, a manufacturer of factory built modular housing, for fraud in connection with the 1970 and 1971 public distribution and sale of almost $40 million of Stirling Homex stock. The defendants are charged with inflating earnings reported in the SEC registration statements by boosting sales and profits through substantial sales of land to shell corporations which lacked any real ability to pay, and by making sales at prices which were artificially inflated. The defendants are also charged

with including a fraudulent sale of modular housing to a shell corporation on the basis of a forged $15 million Government financing commitment. The indictment further alleges material omissions in Stirling Homex's registration statement relating to payoffs made by the company to officials of labor organizations. The case is on trial as of the issuance of this report. (AUSAs MacDonald and Macbeth).

United States v. *Arnold Nelson Mahler, et al.*

After a year-long investigation, a twenty-count indictment was filed charging Mahler and nine co-defendants with a nationwide securities fraud involving the common stock of Industries International Inc., a now-bankrupt manufacturing company located in Denver, Colorado. Eight other defendants pleaded guilty to felony charges in separate informations covering their participation in one or more aspects of the same fraud. The fraud involved the stimulation of an artificial demand for Industries International stock by fraudulently touting the capabilities of the company to manufacture and market a pump. The defendants manipulated the price of Industries Initernational stock, driving it from 50¢ per share to more than $6.50 per share and were able to dispose of thousands of shares of the over-priced Industries International stock on the unsuspecting public and reap windfall profits that, together with "Black Market" sales of the stock that occurred after the trading was suspended, totaled more than $1,500,000. (AUSA Rakoff).

United States v. *Robert L. Vesco, et al.*

In January 1976, an indictment was filed charging Robert L. Vesco and six of his associates with fraudulent misapplication and misappropriation of more than $100 million from the IOS mutual funds. The investigation by this office, together with the SEC, into highly complex sophisticated transactions of Vesco and his cohorts extended over more than a two-year period with one experienced Assistant devoting almost all of his time to the case for an entire year. The nine-count indictment charges that Vesco and his associates were responsible for various fraudulent investments of the IOS fund's money, including a $20 million investment in Bahamian companies owned by a co-defendant and a $60 million investment in a Costa Rican company. This investigation also resulted in a separate six-count indictment against Milton F. Meissner, former president of IOS, for failing to report taxable income of over $150,000 which Meissner had received from IOS, and five separate contempt indictments against Vesco and his co-defendants for failing to appear before the grand jury investigating the main case. All of the defendants are fugitives. (AUSA Sagor).

United States v. *James E. Corr, et al.*

After an extensive investigation, a six-week trial produced the conviction of James E. Corr and Roger Drayer on charges of fraud and conspiracy involving a highly unusual stock manipulation. Corr was also convicted for committing perjury, giving false statements before the SEC, selling unregistered stock and filing a false bank loan application. The evidence showed that Corr, Drayer and five other defendants who pled guilty prior to trial had manipulated market prices of the common stock of Jerome Mackey's Judo, Inc. from approximately $3 a share to approximately $34 per share. Corr also received over $1 million from the sale of Mackey stock through various nominee brokerage accounts. The overall fraud resulted in a loss to the public of millions of dollars. Corr was sentenced to two and a half years' imprisonment and a $10,000 fine. The other defendants received sentences ranging from probation to four months' imprisonment. (AUSAs Sorkin and Weinberg).

United States v. *Maurice Rind, et al.*

Three principals and the cashier of the bankrupt brokerage firm, Packer, Wilbur Co., Inc. of New York were indicted after a lengthy investigation on charges of defrauding their customers by selling customers' securities held in trust by the firm and using the proceeds of approximately one quarter of a million dollars for the firm's business and their own benefit. Rind, the former vice-president, and Robert Berkson, the secretary, were

convicted after trial and James Gallentine, the cashier, pleaded guilty. These defendants, together with Wilbur Hyman, who remains a fugitive, were charged with using forged customers' signatures on stock transfer powers in order to facilitate this unauthorized sale of stock to other brokers and retail customers. Rind received a sentence of eighteen months in prison. Gallentine received a sentence of three months, and Berkson received a suspended sentence. (AUSA Lowe).

United States v. *Douglas P. Fields, et al.*

Another major investigation resulted in a twelve-count indictment charging an attorney and four officers of two publicly held corporations with fraud in the use of false proxy statements and a false prospectus in connection with a public offering of over 700,000 shares of stock. The charges were based on a series of schemes designed to funnel to the defendants more than $400,000 in kickbacks which were not disclosed in the proxy statement or prospectus. The case is awaiting trial. (AUSA Cutner).

United States v. *Leon Mayer, et al.*

After an eight-day trial, Leon Mayer, a former manager of the New York Stock Exchange firm of A. C. Kluger and Co., was convicted of accepting a secret cash payment of almost $20,000 from Joseph Lichtman and Murray Lichtman, the owner of Minute Approved Credit Plan Inc., in connection with an offering of that company's common stock for which the Kluger firm was serving as underwriter. Mayer participated in a scheme with the Lichtmans and three co-defendants to process fictitious sales for approximately half of the total stock offering. The Lichtmans and the three co-defendants, including the infamous swindler Ivan Alan Ezrine, all pleaded guilty prior to trial. (AUSA Fryman).

United States v. *Edwin Mendlinger, et al.*

Three defendants, Edwin Mendlinger, Stanley Schildinger and Barrett Kobrin, were convicted after trial on charges of securities fraud, false statements on tax returns and perjury in a scheme to manipulate the price of the common stock of Belair Financial Company from $1 per share to $15 per share in four months. Another defendant, Stuart Schiffman, pleaded guilty and testified at the trial. Mendlinger and Schildinger each received four-month prison terms and fines, while Kobrin was fined $7,500. (AUSAs Schatten and Cushman).

United States v. *Podlofsky, et al.*

Gabriel Podlofsky, President, and Marvin Rosenbaum, Treasurer, of Airways Enterprises, Inc., a Delaware corporation whose sole subsidiary, North Cay Airways, Inc., a Puerto Rican corporation, ran a commuter airline serving Puerto Rico and the neighboring islands, were indicted and pleaded guilty to conspiracy and securities fraud charges. Rosenbaum is also a certified public accountant. According to the indictment, from October, 1969 to approximately April 30, 1975, the defendants and co-conspirators materially overstated Airways' and North Cay's profits and employed accountants who did not actually perform audits and who received kickbacks on the work that they did perform. The name of the accounting firm that purportedly audited the company's financial statements for the fiscal year ending November 30, 1973, was forged. The defendants also sold stock to the public by means of false and misleading prospectuses and obtained loans from banks by the use of fraudulent financial statements. They are awaiting sentence. (AUSAs Bush and Fortuin).

Consumer Frauds

United States v. *Nocera, et al.*

Roland R. Nocera, the former President and Chief Executive Officer of Holiday Magic, Inc., William Dempsey, former President of Sales Dynamics, Inc., the recruiting arm of Holiday Magic, and Melvin Christie and David Smile, both former Vice-presidents of Sales Dynamics, were charged with defrauding the public and other related charges in the sale of distributorships in Holiday Magic. Although this operation purported to manufacture and distribute cosmetics, the indictment charged that it was nothing more than a pyramid promotion swindle, promising

fantastic profits and resulting in an endless chain of recruitment of distributors, a sophisticated variation on the classic *Ponzi* scheme. Nocera and Smile pleaded guilty to securities fraud. Dempsey pleaded guilty to filing false bank loan applications; Christie is currently on trial. (AUSAs Lowe, Block and Hemley).

United States v. *Amrep Corp., Rio Rancho, Inc., et al.*

In November, trial commenced on an 80-count land and mail fraud indictment which was filed against three corporations—Amrep Corporation and two of its subsidiaries, Rio Rancho Estates, Inc., and ATC Realty Corp.—and certain of their major officers, directors and shareholders. The defendants were charged with defrauding the public of more than $200 million by selling undeveloped semi-arid desert lots, as part of a 91,000 acre subdivision known as Rio Rancho Estates located in Sandoval County, near Albuquerque, New Mexico, to more than 45,000 victims throughout most of the United States. (AUSAs Hynes, Kaufman, Devorkin and Special AUSA John F. Kaley).

United States v. *Silver and Pepperman*

Issac Silver and Ronald Pepperman were convicted of mail fraud after a two-week trial. The defendants were principals in Perthshire Scotch Whisky Company, a concern whose sole business was the sale of warehouse receipts for scotch whiskey which was lying in bonded warehouses in Scotland. The defendants sold the receipts to investors throughout the United States at grossly inflated prices on the basis of fraudulent and misleading representations that the whiskey would appreciate in value as it aged. Investors who have sold their holdings have suffered as much as a 90% loss on their original investment. The defendants await sentencing. (AUSAs Marmaro, Sarah S. Gold and Hemley).

Banking and Other Financial Frauds

United States v. *Carlo Bordoni, et al.*

On August 11, 1975 the first step of another massive investigation was successfully concluded when an 87-count indictment was filed charging two former directors of the Franklin New York Corporation, the parent company of the now-defunct Franklin National Bank, and the senior foreign exchange trader of the Franklin National Bank, as well as four other traders and the head of the foreign exchange "back office," with bank fraud. The indictment charged that the defendants had misapplied more than 30 million dollars of the bank's funds by unauthorized speculation in the foreign currency markets and that the defendants had concealed this speculation and resulting losses from federal banking officials, among others, by falsifying the bank's books for more than a year. In February, 1976 the traders pleaded guilty and received sentences ranging from three to six months. One of the directors also pleaded guilty but has not yet been sentenced. The other is a fugitive in Venezuela, where extradition proceedings are in progress. The 14-month investigation, which led to these convictions continued throughout 1976 and is still proceeding. (AUSA Kenney).

United States v. *Amanatides, et al.*

Two Greek shipowners, who were the former principal officers of the now-defunct Tidal Marine International Corporation, the Vice-President of Tidal Marine, three former officers of the National Bank of North America, one former officer of Bank of America, Tidal Marine's admiralty lawyer, and others, were indicted on various charges relating to a scheme to defraud banks in the United States and England of over 60 million dollars. The bank officers and three Tidal Marine officers were also charged with participating in a scheme to pay and receive bribes.

The trial of Joseph Metzger, a Vice-President of the National Bank of North America, resulted in his conviction on charges of misapplying over $3,500,000 of the bank's funds. He was sentenced to three year's imprisonment.

In a separate trial, Tidal Marine's lawyer, its Vice-President, and another employee were convicted on a total of 26 counts charging various offenses in connection with their participation in obtaining loans for Tidal Marine by fraudulently misrepresenting the purchase price of oil tankers and dry cargo vessels and by submitting false and fraudulent charters as collateral for loans. Tidal Marine's Vice-President was also convicted on charges involving a scheme to bribe three bank officers of the National Bank of North America. The evidence at trial revealed that the three bank officers received a total of approximately $500,000 from Tidal Marine officers. Tidal Marine's lawyer was sentenced to five years' imprisonment; the other two defendants were sentenced to lesser terms of imprisonment. (AUSAs Glekel, Marmaro and Gordan).

United States v. *William Hockridge, et al.*

On August 27, 1976, six defendants were indicted for conspiring to defraud the Chemical Bank and the Bank of New York and with embezzling over one million dollars from the Chemical Bank.

The indictment charged that the defendants had created a virtually worthless mini-conglomerate with a number of worthless companies and that they then obtained loans for these companies through the defendant Hockridge, a lending officer at the Chemical Bank, by means of filing false financial statements with the Chemical Bank and by Hockridge's filing false reports about the alleged loan negotiations with the Bank.

One defendant pleaded guilty to the conspiracy count, and the trial of the remaining defendants is in progress. (AUSAs Amorosa, David O'Connor and Bush).

United States v. *Howard E. Saft, et al.*

Howard E. Saft, a former president of Adlay Jewelry, Inc., and two accountants in the accounting firm of Chaikin & Fialkow, Norman Fialkow and Edward Weizer, were indicted on charges of submitting false financial statements to obtain $3 million dollars in bank loans for Adlay Jewelry which later went into bankruptcy. The indictment also charged Saft with tax evasion and with looting Adlay Jewelry in the amount of nearly $450,000, including $200,000 to remodel a house that he owned in East Hampton, Long Island. All three defendants pleaded guilty to submitting false financial statements and Saft also pleaded guilty to a charge of tax evasion. Fialkow is awaiting sentence. Saft has not yet been sentenced, because of a subsequent motion to withdraw his previously entered guilty pleas. Weizer, a junior accountant in the Chaikin & Fialkow firm, has been fined. (AUSAs Schatten and Salerno).

United States v. *Anne Lamont*
United States v. *John Stoessinger*

This was a mail and wire fraud prosecution. Anne Lamont was charged with defrauding a Canadian businessman of $60,000 and a West Virginia bank of over $200,000. Among the means employed by Miss Lamont were the exploitation of false, misleading and exaggerated letters of recommendation, obtained from John Stoessinger, who was then Acting Director of Political Affairs at the United Nations and a Professor at CUNY. After a three-week trial, Miss Lamont was convicted on seven counts of mail and wire fraud. Dr. Stoessinger, who testified for the government at the trial, pled guilty to misprision of a felony. Both Miss Lamont and Dr. Stoessinger are awaiting sentence. (AUSAs Schatz and Siffert).

United States v. *Gregory Aurre, Jr.*
United States v. *Louis Sklaroff*

After a substantial investigative effort by this Office, Gregory Aurre, Jr. and Louis Sklaroff entered guilty pleas to indictments charging that Aurre filed false and fraudulent loan application documents with the Trust Company of New Jersey, where Sklaroff was a loan officer, to obtain $255,000 worth of corporate loans. Both defendants are awaiting sentence. Other fraudulent loan prosecutions are anticipated as part of this investigation. (AUSA Neiman).

United States v. *Michael S. Gardner*

Gardner, a long-time violator active in a wide range of fraudulent activity ranging from stock manipulations to the fencing of stolen securities, was convicted on thirteen counts of an indictment charging an "advance

fee" scheme and other swindles. On July 7, 1976, Gardner was sentenced to five years' imprisonment.

Although "advance fee" frauds have been common for many years, prosecutions in this and other districts have been rare. However, the investigation in this case not only led to the imprisonment of Gardner, who, despite two prior felony convictions had never spent a day in jail prior to his arrest in this matter, but also led to the indictment of more than half a dozen other swindlers allied with Gardner, one of whom (James E. Lofland) has now been convicted. The others are scheduled to go to trial. (AUSAs Rakoff and Kaplan).

United States v. *Mohammed H. Naimi*

Mohammed H. Naimi was charged with interstate transportation of $2.3 million worth of forged securities. The indictment charged that Naimi, an Iranian citizen who owns a discotheque in Alexandria, Virginia, opened a checking account at Citibank in New York, deposited $2.3 million dollars worth of checks drawn on fictitious accounts at out-of-state banks and withdrew $600,000 based on the worthless deposits.

In a related case, another Iranian citizen, Hossein Mohammad Kia, was recently charged with the interstate transportation of $5.7 million dollars worth of forged securities. The indictment charged that Kia opened a checking account at Chase Manhattan Bank in New York, deposited $5.7 million dollars worth of checks drawn on fictitious accounts at out-of-state banks and withdrew $2.7 million based on worthless deposits. (AUSA Goldstein).

Tax Evasion

This year the Office filed over seventy tax indictments. Many of these prosecutions, such as *United States* v. *Bernard Deutch; United States* v. *Bernard Goldenberg* and the Hillel School cases, attacked criminal conduct directed primarily against the tax collection system; while other tax cases dealt with tax violations which also revealed corruption in government—*United States* v. *Sanford Engelhardt*—or in business—*United States* v. *Clive Davis* and *United States* v. *Donald Klock*. Among the more important convictions and indictments in this area were the following:

United States v. *Donald M. Klock*

Donald M. Klock, a former president of Duffy-Mott Co., Inc., a producer of Mott's food products and a subsidiary of American Brands, Inc. (formerly The American Tobacco Company), was indicted on charges of tax evasion, mail fraud, false statements and obstruction of justice. The indictment charged that during the period from 1966 to 1974 Klock arranged, through the use of false and fictitious invoices, for Duffy-Mott to pay for $400,000 worth of goods and services for Klock's personal benefit which he failed to report as income on his tax returns. The indictment also alleged that Klock, in connection with his election as a director of American Brands, caused the issuance of false proxy statements that failed to tell the shareholders that he was receiving large amounts of undisclosed income from Duffy-Mott.

Klock pleaded guilty to two counts of tax evasion and is awaiting sentence. (United States Attorney Fiske and AUSA Schatten).

United States v. *Clive J. Davis*, and related cases

This series of cases, charging various employees of Columbia Records (the records group of CBS, Inc.) including Clive J. Davis, the former President of Columbia, with tax evasion growing out of various schemes fraudulently to obtain personal benefits from the company, resulted from an investigation begun by the United States Attorney's Office in Newark, New Jersey and the Internal Revenue Service, and concluded by this Office. Davis pleaded guilty to tax evasion in 1972, admitting that he had falsely failed to report as income over $8,000 in travel and vacation accommodations obtained from the company for himself and his relatives. Davis received a $10,000 fine. David Wynshaw, Davis' chief assistant and Director of Artist Relations of Columbia, who pleaded guilty to tax evasion and mail fraud, was sentenced to a one-year term of imprisonment. Anthony Rubino and

George Surdis, Columbia accounting department employees, who admitted participating in the falsification of invoices for the benefit of themselves and their superiors, received sentences of four months. Pasquale Falconio, a talent agent who also participated in the scheme, received a two-year sentence to run consecutively to a sentence he was already serving as a result of a prior narcotics conviction. (AUSAs Wohl and Reilly).

United States v. *Bernard Deutsch*

The largest tax evasion case in the last twenty years in the Southern District of New York charged two well-known stock swindlers, Bernard Deutsch and Stanley Duboff, with evading almost $4,000,000 each in income taxes. The case was developed after more than a year of investigation by the Frauds Unit into various stock manipulation schemes of these defendants. Both Deutsch and Duboff pleaded guilty and received five-year prison terms. (AUSA Sorkin).

United States v. *Bernard Goldenberg*

Bernard Goldenberg, a well-known swindler previously convicted of perjury by this office, was convicted on tax evasion charges after a 5-day trial. The case involved $540,000 which Goldenberg had received from proceeds of the sale of stock of Mastercraft Electronics Corp. and which he failed to report as income. The proof at trial described an elaborate scheme by Goldenberg to conceal his receipt of the money. Mastercraft's attorney was directed to pay Goldenberg's share of the proceeds to a shell corporation set up by Goldenberg in the name of Superior Plans, Inc. Goldenberg then issued convertible debentures from Superior Plans, Inc. to Mastercraft's attorney ostensibly in return for the proceeds, however, he cancelled out the debentures by requiring the attorney to prepare an undated letter exercising his right to convert the debentures into the worthless stock of Superior Plans. Goldenberg then moved the proceeds out of the shell company by drawing Superior Plans checks payable to himself which were used to purchase bank checks which in turn were cashed at a check casher to avoid disclosure of the large-scale cash withdrawals. Goldenberg was sentenced to 6 months imprisonment and a $15,000 fine. (AUSA Littlefield).

United States v. *Robert Berkson*, and related cases

From 1969 through 1973, Martin Frank, a New York City attorney, arranged for a number of his clients, colleagues and friends to give stock to the Hillel School, a Long Island parochial school. The gifts were accompanied by letters from the donors backdated to a time during the prior year when the price of the donated stock was considerably higher than at the time the stock was actually given to the school. The administrator of the Hillel School, anxious to obtain funding for his debt-ridden school, in turn sent the donors acknowledgment letters backdated to within a few days of the dates on the donors' letters. The donors then listed on their tax returns grossly inflated charitable deductions corresponding to the value of the stock on the dates fraudulently listed on the backdated letters.

As a result of indictments and informations returned in these cases, Martin Frank, Robert Berkson, Aaron Perel, Jesse Krieger and Murray Frank pleaded guilty to federal felonies relating to the filing of false tax returns; Jack Levine was convicted after trial of tax evasion; and proceedings against Sidney Feldshuh, Martin Frank's former law partner, and Randolph Pace are presently pending in the District Court. (AUSAs Bush, Littlefield, Pedowitz and Rosenthal).

United States v. *Irwin T. Denberg*

Irwin T. Denberg, an executive of Spotless Stores, Inc., Paterson, New Jersey, was indicted October 13, 1976, for the wilful evasion of over $500,000 in federal income taxes on unreported income of approximately $700,000 for the calendar year 1969. The defendant is awaiting trial. (AUSA Sussman).

NARCOTICS

The Office has sought to maximize the impact of federal narcotics enforcement by concentrating its resources on major narcotics distribution networks and those individuals who control them. With the assistance of Fed-

eral, New York State and New York City law enforcement agencies, we seek to first identify and isolate the organizations—from sources through wholesalers and street peddlers—which provide the bulk quantities of narcotics sold in New York City. Then, using the federal narcotics conspiracy laws,* numerous members of these illicit business organizations are brought to trial at the same time. This approach is advantageous both because it makes possible the presentation to the court and jury of the cumulative, as well as individual, culpability of each link in the narcotics chain, and because it allows the Government to remove an entire distribution system with one fell swoop, fostering both judicial and prosecutive economies. When their total malfeasance is measured in the conspiracy context, stiff sentences have been obtained which remove from circulation high level professional traffickers for substantial periods of time, and which may deter other potential offenders.

The targets of this type of prosecution have changed with a recognition of the changes in the sources, routes and profiles of narcotics violators. Traditionally, the Office has prosecuted the so-called "French Connection"—Turkish heroin processed in Europe and distributed by organized crime figures in the United States—in such cases as *United States* v. *Cirillo*, *United States* v. *Tramunti*, *United States* v. *Mallah*, and *United States* v. *Papa*. In part because of these and many other major prosecutions brought by this office in the past, this "French Connection" has been effectively severed. Reliable intelligence now demonstrates that the sources of most of the opiates sold in the Southern District of New York are Mexico and the Orient. South America has become a greater problem area both as a conduit for heroin and as the source of the increasing influx of cocaine. Black and Hispanic violators have usurped control of levels of importation and distribution formerly dominated by organized crime members.

It was upon these new networks that the Office's Narcotics Unit focused its attention in 1976, and the results were outstanding. Conspiracies responsible for the importation of multi-kilogram quantities of heroin from the Orient were smashed in the *Madona, Head, Lombardi,* and *Laig Mong Wah* cases. The largest "Mexican Connection" yet detected was prosecuted in the related cases of *United States* v. *Valenzuela, United States* v. *Cortes-Rios,* and *United States* v. *Gutierrez and Ramirez.* Enormous cocaine importation rings, responsible for bringing into the United States literally thousands of pounds of that drug from South America, were convicted in the *Bravo* and *Mejias* trials. The traditional target of the Office's major narcotics cases, the narcotics networks controlled and financed by organized crime, also were prosecuted in the *Stassi, Flores, Panebianco* and *Alessi* cases. Finally, and of special note, is *United States* v. *Alvarez, et al.,* a prosecution against an expansive conspiracy, with tentacles in New York, Washington, Chicago, and Miami which represented a malignant symbiosis of South American, organized crime and the so-called "Black Mafia" violators through whom approximately 1,000 pounds of heroin and cocaine were distributed. Besides these major cases, many other prosecutions against substantial wholesale-level narcotics violators made up the Office's total of over 250 narcotics indictments in 1976. Among the most significant of these cases were the following:

United States v. *Juan Antonio Alvarez, et al.*

This indictment charged thirty-three defendants from five different states with combining in a loose-knit narcotics business organization that operated at three levels: importers and suppliers of cocaine and heroin; middlemen

* There exists overlapping federal and state proscriptions upon trafficking in narcotics. However, because of the expansive jurisdiction accorded by the federal conspiracy statutes, this Office is empowered to prosecute international and interstate narcotics networks. State and local authorities are more limited in their jurisdiction. As a result, to maximize the cumulative resources of all law enforcement personnel, the Office concentrates on multi-tiered conspiracies while state and local authorities concentrate upon individual narcotics transactions and so-called "street crime" within their geographic borders.

who purchased and financed the purchase of narcotics in bulk; and wholesale distributors of narcotics, operating in various cities in the United States. The defendants were charged with distributing from 1968 through 1974 approximately 1,000 pounds of cocaine and heroin in New York, New Jersey, Washington, D. C. and Chicago, Illinois. The trial lasted fourteen weeks, from August 10, 1976 until November 12, 1976, when seventeen of the twenty-two defendants on trial were convicted. Among those convicted were Juan Antonio Alvarez and Angel Rodriguez of Miami, Florida, the importers and suppliers of all the cocaine involved in the conspiracy; Benny Intersimone, a well known organized crime figure and heroin supplier; Frank Moten, known in Harlem as "The Black Godfather" who financed the narcotics operations and was chairman of the "Counsel of Twelve," an organization consisting of the most important black narcotics dealers in New York City, and is identified by law enforcement officials as a kingpin in extortion, gambling, loan sharking and all other forms of organized crime activities in the Harlem area; and Yvonne Shennault who succeeded her husband, presently incarcerated, as the major narcotics distributor in Chicago. Sentencing for these defendants and the others convicted has been scheduled for January 21, 1977. (AUSAs Beller, Sear and Cushman).

United States v. *Fernando Valenzuela* and related cases.

On March 20, 1976, five defendants, members of the Gallardo heroin organization which was responsible for the importation of approximately 100 pounds of Mexican heroin during a three-month period in 1974 through Southern California for sale in New York, were convicted after trial. Those defendants received sentences of up to 7½ years imprisonment.

A lieutenant in the Gallardo heroin organization, William Cortes-Rios, was subsequently convicted and sentenced to twelve years imprisonment and a $20,000 committed fine. Cortes-Rios was the financial overseer of the Gallardo organization and personally transported Mexican herion from Los Angeles to New York on its behalf during 1974. Cortes-Rios laundered more than a half-million dollars in organization money during 1975 through banks in Puerto Rico.

Hermino Gutierrez and Victor Ramirez were charged with having together distributed over fifty pounds of heroin for the Gallardo organization in the summer of 1975. Gutierrez fled shortly after the filing of the indictment. Ramirez was convicted at trial and is presently awaiting sentence. (AUSAs Buchwald, Kaufman and Moss).

United States v. *Matthew Madonna and Salvatore Larca*

On November 16, 1976, Matthew Madonna, Salvatore Larca and another were convicted of importing twelve pounds of pure Thai heroin concealed in false-sided suitcases, transported by two couriers via Honolulu to New York City. Madonna is a well documented organized crime figure who had been convicted of a narcotics-related murder at the age of 19. Since 1969, Madonna and Larca, his partner, are reported to have been the suppliers for major black violators, including Leroy "Nicky" Barnes, in the New York area. On December 21, 1976, Madonna and Larca were sentenced to thirty and fifteen years imprisonment, respectively. (AUSA Flannery).

United States v. *James Panebianco, et al.* and related case.

On February 6, 1976, seven defendants including James Panebianco, Laurence Iarossi, well-documented organized crime narcotics dealers, and Snyder Blanchard, allegedly the largest heroin dealer in Baltimore, Maryland, were convicted on charges involving the distribution of multi-kilogram quantities of heroin obtained from the Vincent Papa organization to dealers in Baltimore and Pittsburgh. On March 24, 1976, ten-year sentences were imposed on these defendants.

On November 12, 1976 Virgil Alessi, the chief lieutenant in the Vincent Papa heroin organization, who had been severed from the *Panebianco* trial, pleaded guilty to related

heroin sales. On January 5, 1977, Alessi was sentenced to thirteen years imprisonment on these charges and two years consecutive thereto on related tax charges. (AUSAs Lavin and Garnett).

United States v. *Antonio Flores*

During 1970, Antonio Flores was the purchaser of approximately 600 pounds of heroin smuggled into New York from Europe. The heroin was concealed, in, among other things, musical amplifiers and the borrowed cars of several unsuspecting women. When Flores' connection was arrested in New York in April of 1971, Flores fled the United States for France and Spain where he remained a fugitive until his extradiction in January, 1976. Flores was convicted after a trial on August 28, 1976, and was sentenced on October 3, 1976 to twenty years imprisonment. (AUSA Flannery).

United States v. *Joseph Stassi, et al.*

This indictment charged five defendants with conspiring to import into the United States approximately 240 kilograms of heroin and the actual importation of 110 kilograms. The importations of this heroin were arranged by defendants and co-conspirators who were imprisoned at the Federal Penitentiary in Atlanta, Georgia, and actually carried out by others they selected to act for them in France, Montreal and New York. The heroin was brought into the United States concealed in automobiles which were packed with heroin in France, shipped to Montreal and then driven by couriers across the border and into the New York Metropolitan area. After a six-week trial, Joseph Stassi, a well known organized crime figure, and his two co-defendants, Anthony Stassi and William Sorenson, were convicted. On February 26, 1976 they received sentences of 30 years, 25 years and 25 years, respectively. (AUSAs Nesland and Sear).

United States v. *Rev. Alberto Mejias, et al.*

On July 30, 1976 seven co-defendants were sentenced to terms of fifteen years imprisonment each for their part in a wide-ranging conspiracy to import and distribute cocaine from Colombia, South America during 1973 and 1974. A jury had convicted the defendants on June 30, 1976, after a six-week trial. Six of the seven defendants were illegal aliens from Colombia. The proof at trial was that the members of the Mejias organization imported $250,000 worth of cocaine per week for approximately two years. AUSA Michael Q. Carey, received an award for Superior Performance by an Assistant United States Attorney from the Attorney General for his investigation and trial of this case and the *Bravo* case. (AUSAs Carey and Akerman).

United States v. *Alberto Bravo, et al.*

On January 23, 1976, twelve defendants were convicted on charges relating to their importation of 500 kilograms of cocaine from Colombia, South America to New York. New York during the years 1969 through 1974. On March 15, 1976, the chief importers were each sentenced to fifteen years imprisonment. Their co-defendants received sentences of from ten to five years imprisonment. (AUSAs Carey and Bloch).

United States v. *Lai Mong Wah* and related case.

On June 15, 1976, the first of two related trials was completed involving the importation of 80 pounds of pure heroin from Hong Kong for distribution in New York. Two of the importers, Lai Mong Wah and Cheung Kin Ping were convicted on June 15, 1976 and were sentenced to fifteen and seven years, respectively. At a second trial in September, the recipient of the heroin, Larry Lombardi, was convicted. He was subsequently sentenced to ten years imprisonment. (AUSA Engel).

United States v. *Warren Robinson, et al.*

On April 2, 1976, seven defendants were convicted after two months of trial on charges relating to membership in a multi-kilogram heroin distribution chain operated during the period 1969 through 1973 in and between the cities of New York and Washington, D. C. These defendants received sentences ranging up to fifteen years imprisonment. (AUSAs Engel and Siffert).

United States v. *Arnold Head and Bruce Wheaton*

On May 11, 1976 two ex-servicemen were convicted for importing pure heroin in pound quantities from Thailand through the Armed Forces mail. The heroin thus imported was distributed through a network of purchasers in New York, California and Washington, D.C. In June, 1976, Head and Wheaton were each sentenced to 15 years imprisonment. (AUSA Virella).

United States v. *Tripp Stone et al.*

On September 23, 1976, Tripp Stone and a co-defendant were convicted on charges relating to conspiracy and distribution of cocaine. Stone is identified as one of the country's largest cocaine dealers and the largest supplier of cocaine for the cities of Detroit and Cleveland. On November 12, 1976, Stone was sentenced to ten years imprisonment. (AUSA Costello).

United States v. *Raymond Anderson, et al.*

This indictment charged nine defendants with participating in a large-scale heroin distribution network that operated in New York City; various cities in New Jersey; Williamsport, Pennsylvania; Baltimore, Maryland; Washington, D.C.; and Atlanta, Georgia from September 1972 through June 1974. The source of the heroin was one Raymond Anderson, who operated out of his restaurant in New York City. The other defendants and co-conspirators operated as couriers for Anderson or as bulk buyers in the various cities where the network operated. The testimony at trial showed that the defendants distributed approximately 30 packages of heroin, each between one eighth of a kilogram and a full kilogram in weight.

Four defendants were convicted after trial in November, 1976 and received sentences ranging up to five years imprisonment. (AUSA Frederick T. Davis).

United States v. *Alphonse Sisca, et al.*

On December 20, 1976, a parcel containing 3 pounds of 94% pure heroin mailed from Bangkok and addressed to a fictitious address-see in Saugerties, New York was intercepted by federal authorities. The seizure was the largest from the mail in Drug Enforcement Administration history. As a result of further investigation, Alphonse Sisca was arrested as the ultimate recipient of the heroin. Sisca had recruited a postal employee at the Saugerties, New York Post Office to assist him in developing this new route of heroin importation. They were indicted and are awaiting trial. (AUSA Neugarten).

United States v. *Samuel Glasser, et al.*

This indictment charged a sophisticated importation and distribution scheme to import raw cocaine paste from South America. Samuel Glasser, an attorney, and Joseph Valverde used the cover of a wine importing concern to mask the true purpose of their frequent trips to Argentina, Bolivia and Chile. Once the cocaine was in New York, Glasser used his brother-in-law Eugene Piper as a wholesaler to distribute the cocaine. Three other distributors under Piper sold the cocaine to other distributors and users in New York. Piper and his "salesmen" pleaded guilty. Glasser and Valverde were convicted after trial and on January 16, 1976, each received a sentence of four years. (AUSAs Engel and Flannery).

United States v. *Jeffrey Rudd and Gary Fields*

These two related investigations culminated in the immobilization of the largest known clandestine methalqualone manufacturing and distribution organization in the United States. The operation was responsible for distributing in excess of twenty million illicitly manufactured quaalude tablets, valued at more than sixty million dollars. All sixteen defendants pleaded guilty and were sentenced to terms of up to six years imprisonment. (AUSA Batchelder).

United States v. *Gerardo Sanchez, et al.*

On November 9, 1976, Gerardo Sanchez, an attorney, Hector Echeverria, a prior narcotics violator, and Luis Reyes pleaded guilty to separate criminal informations charging them with conspiring to sell cocaine in violation of the federal tax laws. This case arose out of

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an attempt by the defendants to smuggle multi-kilogram amounts of cocaine from Mexico into the United States. Six kilograms of pure cocaine were seized in connection with this case. On December 20, 1976 all three defendants received sentences of five years imprisonment. (AUSA Marmaro).

United States of America v. *Benjamin Rodriguez a/k/a "Benny One Eye"*

In this case, Benjamin Rodriguez, a well-known dealer in narcotics, was convicted of income tax evasion for the tax year 1967, as well as filing a false income tax return in which he reported his sole income as $6,960 claiming he had received this income as mortgage interest and "consultation fees." He paid a total income tax of $494.20. At trial the Government proved that Rodriguez failed to report income of at least $184,140, on which he should have paid taxes of $101,791.80. Rodriguez was sentenced to two years imprisonment, and now awaits trial on another indictment charging tax violations in 1969 and 1970. (AUSAs Bush and Kelleher).

CRIMES AGAINST THE GOVERNMENT

Fraud in Government Programs

As noted earlier, in the past year the Office has made a major commitment to the investigation and prosecution of crimes involving fraud in Government-financed programs.

In these cases the Office has worked closely with a number of investigative agencies. The development of these prosecutions has resulted in large part from the ability of the Assistant United States Attorneys involved to work with the investigative agencies from the outset of the investigation. This departure from the outmoded principle that the investigative agencies investigate and the United States Attorney's Office prosecutes has enabled the investigations to be conducted in a way which has produced better results in a shorter period of time. This concept, which has also been used effectively in other areas in the Office and which indeed is at the heart of the Organzed Crime (Strike Force) concept, is one which the Office intends to implement as fully as possible in all areas of criminal investigation.

This year the Office filed over 130 indictments charging fraud against the United States Government. Among the major cases commenced or concluded in this category were the following:

Medicare and Medicaid Fraud Cases

As a result of several Medicaid and Medicare fraud investigations, a total of twenty-six defendants have been convicted, including eight medical doctors, two podiatrists, fifteen chiropractors, and three non-professional clinic employees. These defendants pleaded to, or were convicted of, felonies including conspiracy to defraud the United States, false claims, false statements, mail fraud, income tax evasion and the filing of false tax returns. Sentences have ranged up to five-year jail terms. In addition, civil actions, brought under the Federal False Claims Act against the convicted defendants, have resulted in civil settlements totalling over $600,000, which amounts to double the false claims plus an additional amount to cover roughly the cost of the investigations to date.

The schemes included submission by physicians of false invoices for services never rendered; kickback arrangements among physicians, medicaid clinics and medical laboratories; kickback arrangements between insurance carriers and beneficiaries; and double billing by several doctors for the same medical services. As a result of his extraordinary work in these and other cases AUSA George E. Wilson received the Attorney General's Special Commendation Award. (AUSAs George E. Wilson, Neiman, Rosenthal, Harris, Bloch, Batchelder, Neugarten and Schatz).

Small Business Administration

This investigation into Small Business Administration loan fraud resulted in convictions during 1976 in seven separate cases. The investigation focused on bribery and extortion by SBA officials and fraud by borrowers, their accountants, attorneys and bankers. Andrew J. Semon, Assistant Regional Director of the Small Business Administration, was convicted after trial in March, 1976 and sentenced to 6 months imprisonment. In addition, 2 CPA's, 6 businessmen, and 5 loan application preparers, including one attorney, were convicted of conspiracy, bank fraud and false statements and sentenced to terms ranging from probation to 4 years in cases involving dozens of SBA loans. (AUSAs George E. Wilson, Levine and Cutner).

United States v. *A. Michael Stagg, et al.*

In a separate investigation from that described above, a scheme to defraud the Small Business Administration and the State of Pennsylvania out of in excess of $500,000 was discovered. The scheme centered around Stagg Construction Corporation's application to the SBA for a business disaster loan of $702,000 to repair damages caused to a shopping center located in Pennsylvania by Hurricane Agnes in June, 1972. In fact only about $200,000 in damages were actually incurred. Applications for such loans were made first to the State of Pennsylvania for an interim loan and also to the SBA. The proceeds of the SBA loan were to be used to repay Pennsylvania. The evidence established that defendants A. Michael Stagg, Gene L. Simmons and Robert Geffen used forged and fictitious invoices to document the excessive damage claims.

The first indictment, filed in 1975, named Albert Bisland, Frank DeAngelis and Robert Bloch. DeAngelis and Bloch pleaded guilty and were sentenced to 6 months and 2 years probation, respectively. Bisland went to trial, was convicted and received a sentence of four months. All three agreed to testify during the Stagg case. In 1976, Stagg pleaded guilty and Simms and Geffen were convicted after trial. Simms was sentenced to 2 years, Geffen to 6 months. (AUSAs Mukasey and Costello).

United States v. *Bernard Bergman* and related cases.

Bergman was the owner, Mark Loren the administrator and Samuel Dachowitz the accountant of the Towers Nursing Home in New York City. While these men controlled Towers, they concealed from the state and federal governments the existence of several undisclosed partners to whom partnership shares in Towers had been sold by Bergman. They also submitted to the New York State Department of Health over one million dollars in inflated claims for Medicaid reimbursements. They set up a cleaning company, Sani-Interiors, which was ostensibly a provider of services to Towers but which in reality served as a conduit for secret payments to the undisclosed partners of Towers. Dachowitz also embezzled over $300,000 from Towers, which he repaid only when prosecution was imminent.

Bergman pleaded guilty to conspiracy to defraud the United States and to filing a false tax return and received a sentence of four months' imprisonment. Loren pleaded guilty to conspiracy to defraud the United States and received a sentence of three months' imprisonment and a fine of $75,000. Dachowitz pleaded guilty to conspiracy to defraud the United States, filing a false tax return, and submitting false statements to an agency of the United States. He was sentenced to imprisonment for a term of one year and one day, and was fined $175,000. (AUSAs Mukasey and Epstein).

United States v. *Collazo, et al.*

As part of a continuing investigation into fraud in connection with the United States Department of Agriculture food stamp program, twelve defendants were indicted in a conspiracy to defraud the United States Department of Agriculture out of approximately $2 million in food stamp coupons. It is charged that certain defendants obtained stolen authorization-to-purchase cards and transferred these cards to Rosado, an authorized food stamp retailer. Rosado thereafter went to check cashers, five of whom were charged in the indictment, and redeemed the cards for food stamps. Rosado then deposited the stamps in his bank account and, after the bank credited his account for the cash value of the stamps, Rosado withdrew money and paid the check cashers and those from whom he got the cards.

Rosado and Rivera have pleaded guilty; the other defendants are scheduled for trial. (AUSA Weinberg).

United States v. *Lane*

In another food stamp fraud case, the owner of a number of White Plains check cashing stores was charged with embezzling $1,067,102 in proceeds from the sale of food stamps at his stores. The defendant was also charged with making numerous false statements in connection with his food stamp transactions and with tax evasion for the years 1972, 1973 and 1974. The trial commenced January 17, 1977. (AUSA Harris).

United States v. *Bartholomew Buigues et al.*

This was the first prosecution resulting from a continuing investigation into fraud in the United States Department of Agriculture's Special Summer Food Service Program for Children. The program, commonly called the "summer lunch program" is designed to provide free meals to needy children during the months of July and August. The defendants were all affiliated with a non-profit organization, Youth In Government. Buigues was at the time employed by the Office of Civil Rights of the Department of Health, Education and Welfare. Puig was employed by the Vera Institute of Justice. Horowitz was a former employee of the Mayor's Education Task Force in New York City. Sammarco was a Republican district leader in Port Chester, New York.

All five defendants were charged with conspiracy to defraud the United States and filing false claims against the United States. All were convicted after a jury trial and received sentences ranging from probation to three months' imprisonment. (AUSA Epstein).

Corruption of Government Officials

This year the Office continued to emphasize, as it has for many years, the importance of aggressive investigation and prosecution of corrupt government officials as well as those who seek to profit from such corruption. In 1976 the Office filed over fifty indictments charging over 110 defendants with bribery and related crimes. The significance of convicting a high level official such as Andrew Semon, the former Assistant Regional Director of the Small Business Administration, should not be allowed to eclipse the importance of vigorous pursuit of lower level government employees whose dishonesty can have a major impact on the effectuation of public policy and on the citizens' confidence in their government.

The most important of these cases in the Office this year were the following:

United States of America v. *Andrew J. Semon*

On April 12, 1976 Andrew J. Semon, former Assistant Regional Director of the Small Business Administration, was found guilty of bribery, extortion and receiving unlawful gratuities in the performance of his duties. According to the indictment, Semon received $6,000 in illegal kickbacks on SBA loans totalling almost $1 million during the period 1970-1973. The evidence showed that Semon approached a lawyer, Bernard Chodosh, representing various companies applying for loans and told him that the loans would only be approved if Semon was paid. The Government proved that starting in 1968 Semon extorted money in this manner from Chodosh and that from 1968-1973 Semon received over $11,000, representing ½ to ¾ of a percent of the total loan. (AUSAs Levine, George E. Wilson and Feffer).

United States v. *James W. Allen* and related cases.

One supervisor and fifteen inspectors of the Meat and Poultry Inspection Program of the U.S. Department of Agriculture have been indicted for taking money on a weekly basis from companies they inspected. Each of the meat inspectors indicted was charged with taking up to $50 weekly from as many as eight different meat processing companies over periods as long as six months.

The indictments were the result of a continuing joint investigation by the Federal Bureau of Investigation, the Office of Investigation of the Department of Agriculture, and the United States Attorneys' Offices for the Southern and Eastern Districts of New

York. In addition to the inspectors indicted in the Southern District, fifteen inspectors were indicted in the Eastern District. More than 50 meat wholesalers in Manhattan, Brooklyn and the Bronx had cooperated in this investigation and will be prosecuted for supplementing the salaries of Federal officials.

One inspector has pleaded guilty to the felony of accepting an unlawful gratuity. The other defendants are awaiting trials. (AUSA Iason).

United States v. *Joseph A. Martinez-Carcano, et al.*

Six defendants, including two federal correction officers at the Metropolitan Correctional Center, were convicted of participating in a scheme to assist a woman facing serious narcotics charges to escape from the MCC in return for $25,000. The defendants were also convicted of bribery based on a $5,000 payment to the two corrections officers. The guards were sentenced to two-year prison terms and an inmate co-conspirator to six years to run consecutively to a previously imposed narcotics sentence (AUSAs Siegel and Tendy).

United States v. *Alan Douglas, et al.*

Two guards at a federal halfway house were indicted for taking payments from prisoners in exchange for letting the prisoners stay out all night and for extended weekends. One of the guards, who pleaded guilty to a gratuity count, received a suspended sentence. Alan Douglas, the other guard, who went to trial and was convicted on two bribery counts, received a two-year prison sentence. (AUSA Iason).

United States v. *William Tolentino*

William Tolentino, a former Criminal Investigator with the United States Department of Justice, Immigration and Naturalization Service, was sentenced on July 20, 1976 to one year in prison following his guilty plea to one count of an eleven count indictment charging him with having accepted bribes totalling approximately $1650 in return for unlawfully secreting official Immigration and Naturalization Services files of aliens in order to delay and interfere with deportation proceedings. (AUSA Schwartz).

United States v. *Sanford Engelhardt*

Engelhardt, Associate Counsel for the New York City Human Resources Administration, received more than $40,000 in bribes during 1970 and 1971 from construction contractors in connection with his part in approving contracts for renovation of manpower centers used by HRA. He pleaded guilty to evasion of income taxes for the year 1970 and was sentenced by Judge Lasker to one month in prison. He was subsequently sentenced to a year in prison in New York County Supreme Court for attempted bribe receiving, to which he also pleaded guilty. Also convicted on tax charges in connection with $30,000 in bribes paid to Engelhardt were Arthur Shaw, Gary Shaw and Charles Kaufman, the principals and accountant of Burke & Shaw Corporation, a construction company. Arthur and Gary Shaw pleaded guilty to filing a false corporate income tax return and are awaiting sentence. Charles Kaufman, the accountant, was sentenced to three years' probation. (AUSA Kingham).

LABOR RACKETEERING

United States v. *Fred R. Field, Jr.*

After more than a year of investigation by this Office, a high ranking official of the International Longshoremen's Association was indicted on anti-racketeering charges for taking cash payments totalling $89,000 from the United Brands Company. The defendant Fred R. Field, Jr. occupies a number of key positions in the International Longshoremen's Association including the office of General Organizer of that union. He is also the President of the Banana Handler's Council, President of the New York District Council, and Secretary-Treasurer of Local 856 of the International Longshoremen's Association in New York. The indictment charges Field with engaging in a pattern of racketeering activity by demanding and receiving cash payments from United Brands Co., formerly

United Fruit Company, on 14 separate occasions in 1968, 1969 and 1971. The investigation into events in later years is continuing. (AUSAs Wing and Levine).

United States v. *Theodore G. Daley*

Theodore G. Daley is awaiting trial on an indictment charging him with extortion and with accepting free construction materials and trucking services from employers of members of his union. Daley is Secretary-Treasurer of Local 445 of the International Brotherhood of Teamsters of Newburgh, New York, which has contracts with the trucking and construction industry in Westchester, Orange, Ulster and other upstate counties.

The indictment charges that Daley used his union position to pressure a number of teamster employers to supply him with truckloads of crushed stone and wooden beams for use at his home in Windham, New York, as well as to provide free services of trucks and truck drivers. (AUSAs Jaffe and Kingham).

EXPLOSIVES AND FIREARMS

United States v. *Russel Kelner, et al.*

During the period August 1975 through June 1976, in the New York metropolitan area, shots were fired into certain buildings associated with the Soviet Union; and pipe bombs were placed at various locations, including the United Nations and Iraqui Mission to the United Nations. After each of these incidents, persons claiming to represent the Jewish Armed Resistance placed telephone calls to the news media stating that the actions were the work of the JAR. In August 1976, after an extensive investigation, five defendants, including Russel Kelner, chief of the New York office of the Jewish Defense League, and four other members and former members of the JDL, were charged with numerous violations of the Federal firearms and explosives laws in connection with these shootings and bombings. The investigation involved coordination among three U.S. Attorneys' Offices, the F.B.I., B.A.T.F., the N.Y.C. Police Department, the Gloucester County, N.J. Prosecutor's Office and the Sullivan County, N.Y. Sheriff's Department.

All defendants pleaded guilty to one or more counts of the indictment. Three defendants were each sentenced to the custody of the Attorney General until released by the Parole Commission. Kelner was sentenced to a 3 year prison term. The fifth defendant received a suspended sentence. (AUSAs Jaffe, Mazur and Kelleher).

United States v. *Dominick Cagianese, et al.*

Seven defendants were convicted of conspiring to violate the Gun Control Act of 1968 and of having filed false documents with the United States Department of State. The defendants included five American businessmen, an El Salvadorean businessman and Col. Manuel Alfonso Rodriguez, the Chief of Staff of the Armed Forces of El Salvador. At trial, the Government's proof established a scheme to illegally sell 10,000 submachine guns in this country, by making false representations to the State Department that these weapons would be sold to the Republic of El Salvador for the exclusive use of its armed forces. Following the filing of three false documents at the State Department, Col. Rodriguez and his codefendants were arrested in May 1976 in New York, where the Colonel had received a cash payoff of $75,000. Col. Rodriguez was sentenced to ten years imprisonment. Three other defendants received prison sentences ranging from four to five years. (United States Attorney Fiske, AUSAs Robert Gold and Moss).

United States v. *Frank Grady and John Jankowski*

Frank Grady and John Jankowski, a federally licensed firearms dealer, were convicted of ten counts of falsifying federal firearms transaction records and of one count of conspiring to do so. In addition, Grady was convicted of one count of exporting firearms without a license or other authorization. The proof showed that in mid-1970, Grady and Jankowski falsified Jankoski's firearms transaction records with respect to twenty .30 calibre semi-automatic rifles and that Grady exported them to Northern Ireland for the use of the Irish Republican Army.

Jankowski was sentenced to three years imprisonment. Grady received a sentence of two years imprisonment, with all but four months suspended, and to a term of three years probation. (AUSA Carey).

VIOLENT CRIMES

During 1976, the office filed over seventy-five bank robbery indictments, and obtained sentences ranging up to thirty years in cases of bank robbery convictions. In addition numerous other prosecutions against crimes of violence were initiated or concluded. Among the most significant prosecutions were the following:

United States v. *Pereira and Lind*

Hector Luis Pereira pleaded guilty to conspiracy to kidnap, and Pedro Lind was convicted after trial of kidnapping and related charges in connection with the abduction of a seventeen-year-old girl whom they physically and sexually assaulted before her rescue by agents of the Federal Bureau of Investigation. Pereira was sentenced to thirty years in prison, and Lind was sentenced to forty years in prison. (AUSA Vizcarrondo).

United States v. *Mulligan, et al.*

Dennis Mulligan, a New York City Police Department homicide detective, was indicted for armed bank robbery. The indictment charges that Mulligan and others robbed the First National City Bank branch at 435 E. 70th Street (at York Avenue), New York, New York, on December 10, 1971 of $45,000 in cash. According to the indictment, Mulligan drove the getaway car and received approximately $11,000 of the loot. Trial is scheduled for the spring of 1977. (AUSA Fortuin).

United States v. *Lugenia Barnes and Charles Thomas*

These two defendants were convicted of perjury before a grand jury as a result of their testimony that a van they had rented had been stolen from them. Only 2½ hours after the defendants rented the van it was parked on Claremont Avenue at 122nd Street across from Riverside Church. When, the following Sunday morning, church-goers were bothered by the horrendous stench coming from the van, it was opened and found to contain the maggot-laden, bullet-riddled bodies of Oscar Wilson a/k/a "Chink", a registered Drug Enforcement Administration informant, and Oswald Peterson a/k/a "Atlantic City Pete". At the time of his death Peterson, a big-time Atlantic City organized crime figure and narcotics dealer, was awaiting trial in the case of *United States of America* v. *Tutino, et al.* After their conviction at trial, Barnes received a sentence of two months imprisonment and Thomas a sentence of fifteen months imprisonment to run consecutively to a sentence of six to twelve years which Thomas is now serving for first degree manslaughter. (AUSA Fortuin).

United States v. *Albert Duke, et al.*

Eight persons were convicted of conspiracy and interstate transportation of over $500,000 in securities stolen from the Toledo Trust Co. in Toledo, Ohio. At trial, after five of the defendants pleaded guilty, the Government's proof established that one defendant stole the securities from the Toledo Trust Co., where he was employed as a messenger, and delivered them to his confederates who subsequently took the securities to New York and delivered them to other co-conspirators. All the defendants are awaiting sentence. (AUSA Goldstein).

United States v. *Eric Daniels, et al.*

After a seven-day trial, three defendants were convicted of the armed robbery of the United States Post Office, Hellgate Station, 153 E. 110th Street, New York City. The Government proved that while holding the postal employees at gunpoint, the defendants stole 1,004 blank postal money orders and validating equipment of a potential value of over $300,000. (AUSA Kelleher).

APPEALS

The increasing number and complexity of criminal appeals led us in June, 1976 to expand the Appellate Section from two Assistants to three. This additional staffing was also designed to permit the members of

the Appellate Section to handle some of their own cases in the District Court.

Among the more significant appeals handled during the last year were the following:

United States v. *Papa*

The conviction of Vincent Papa, Sr.—the head of a substantial, long-term narcotics organization—was affirmed in the face of claims that an earlier conviction and a plea bargain in the Eastern District of New York barred his conviction in the Southern District of New York. The Court of Appeals held that the earlier indictment was for a separate crime and that the plea bargain did not confer immunity on Papa for the crimes charged in the Southern District of New York. (AUSAs Beller, Cooney and Sabetta).

United States v. *Alessi*

The same plea bargain involved in the *Papa* case was again the subject of dispute in this case, where Alessi, like Papa, claimed that his indictment in this District for narcotics offenses was barred by the plea bargain in the Eastern District, to which he was also a party. In rejecting Alessi's claim on the merits, the Court of Appeals was forced to reject our claim that since the matter was raised prior to trial, there was no appellate jurisdiction. In a lengthy opinion by Judge Friendly, however, the panel explicitly accepted our position that recent, prior decisions on appellate jurisdiction—while unfortunately controlling—were wrongly decided. The panel decided not to suggest that the issue be referred to the *en banc* Court since the Supreme Court may well review the same appellate jurisdiction issue this year. (AUSAs Lavin and Davis).

United States v. *Corr*

In this case which involved stock manipulation causing the loss of millions of dollars to the investing public, the claims on appeal included Corr's contention that his conviction on certain false statement counts should be set aside because the false statements were unresponsive answers to questions posed to him and therefore not subject to prosecution under *Bronston* v. *United States*, 409 U.S. 352 (1973). The Court of Appeals affirmed the conviction, holding that, although unresponsive, the statements were false, distinguishing *Bronston* where the statements were literally true. (AUSAs Sorkin, Weinberg and Sabetta).

United States v. *Stassi*

This was a "French Connection" narcotics case involving the importation into the United States of 110 kilograms of high quality heroin. The conspiracy to import the heroin was hatched among prisoners in the Federal Penitentiary in Atlanta, Georgia. Before the defendants were indicted, however, one of their number, a previously convicted French heroin dealer named Jean Claude Otvos, was paroled from the Atlanta penitentiary and then ordered deported by the Parole Board. The defendants raised the ingenious claim on appeal that they had been deprived of their constitutional right to call upon witnesses to testify because, if Otvos had not been deported, he would have been called as a defense witness and would have allegedly testified that no narcotics-related discussions ever took place in the penitentiary. The Court of Appeals agreed with the Government that this claim should be rejected, ruling: (1) that there was a substantial probability that, even had Otvos been called as a defense witness, he would have asserted his Fifth Amendment privilege against self-incrimination; and (2) that any negligence of the Parole Board in deporting Otvos should not be imputed to the prosecution. (AUSAs Nesland, Sussman and Pedowitz).

United States v. *Santos-Figueroa*

Here, the Government successfully obtained a writ of mandamus to prevent a United States District Judge from communicating to a defendant, over the Government's objection, the sentence that would be imposed if the defendant were to enter a guilty plea. The Court of Appeals ruled that such pre-plea communications, in the face of the Government's opposition, constituted judicial sentence bargaining which violated Rule 11 of the Federal Rules of Criminal Procedure. (United States Attorney Fiske; AUSAs Block and Goldstein).

United States v. *Flores*

The District Court ruled in advance of trial that the Government would be precluded from introducing evidence of the defendant's participation in the conspiracy that antedated the effective date of the extradition treaty under which he was extradited from Spain to the United States. On appeal by the Government, the Court of Appeals not only ruled that such prospective evidentiary rulings in advance of trial are appealable by the Government under 18 U.S.C. § 3731, but also that the District Court wrongly confused the issue of whether the defendant could be *tried* for crimes for which no treaty existed with whether *evidence* prior to the effective date of the treaty was admissible. After remand to the District Court, Flores was convicted and received a sentence of twenty years. (AUSAs Flannery, Davis and Pedowitz).

United States v. *Amrep*

This case involved another successful Government appeal from pre-trial evidentiary rulings. In this major land fraud case, the Court also ruled that it was error for the District Court to dismiss counts of an indictment before trial in an effort to expedite the proceedings. (United States Attorney Fiske; AUSAs Hynes, Kaufman, Devorkin and Pedowitz).

United States v. *Cruz*

The District Judge ruled that, when he sentenced a defendant as a Young Adult Offender under the Youth Corrections Act, 18 U.S.C. § 5005 *et seq.*, he nonetheless could impose a "ceiling" upon the number of years the defendant could serve. The Second Circuit, ruling on an issue of first impression among the Courts of Appeals, accepted the Government's position that unless the sentencing court imposed a period of probation under § 5010(a), it could impose only an indeterminate term with a statutorily imposed maximum of six years, with the actual term to be left to the Parole Board. (AUSAs Bentley and Davis).

CIVIL DIVISION

Taggart D. Adams
Chief, Civil Division

Naomi Reice Buchwald
Assistant Chief

William G. Ballaine
Chief, Tax Unit

Dennison Young, Jr.
Chief, Civil Rights Unit

Anne Sidamon-Eristoff
Chief, Environmental Protection Unit

Robert M. Jupiter
Chief, Claims Unit

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In 1976 the Civil Division experienced a rapidly increasing caseload coupled with the responsibility for some of the largest and most complex Government civil cases in the country. In addition to meeting these challenges successfully the Civil Division maintained its enviable record in prosecuting major civil rights cases and increased its civil prosecutions in the areas of consumer protection and public safety. Additional emphasis was placed on the Federal False Claims Act in conjunction with, or as an alternative to, criminal prosecution as a major weapon in effecting civil recovery and deterring fraudulent schemes against the Government. New legislation and court decisions also resulted in a substantially larger number of cases in which the Office was called upon to defend the Government in Freedom of Information suits, prisoner habeas corpus actions and environmental cases.

The United States Attorney's Office represents the United States in nearly all lawsuits involving the Government within the geographical confines of the Southern District of New York. In the District Court for the Southern District of New York, the busiest of all federal district courts, the United States is a party in approximately 15% of all civil cases filed. Assistant United States Attorneys in the Civil Division also regularly appear in State and local jurisdictions, Surrogates Court, and Bankruptcy Court.

In the last two years the Civil Division caseload increased by about 16% while its available manpower has expanded by less than half of that percentage. In spite of this rising caseload the Assistants in the Civil Division were able to complete and terminate 30% more cases and matters in 1976 than in 1975.

Statistics alone, however, transmit only part of the picture of the enlarged responsibility of Civil Division Assistants. 1976 saw the development of several significant and complex cases requiring all or a substantial part of the time of one or more Assistants. The case of *Socialist Workers Party* v. *Attorney General,* still in the discovery stage, has taken nearly the full-time of two Assistants and a substantial portion of a third's. *United States ex rel. Wolfish* v. *Levi* (involving the conditions at the Metropolitan Correctional Center) and *United States* v. *Reynolds Tobacco Co.* (enforcement of a FTC consent order) are other cases which are still in the pre-trial stage, yet have required for all practical purposes the full-time attention of one or more Assistant United States Attorneys. As a result of those circumstances the Civil Division has taken several constructive steps to increase its capability to litigate the federal government's interests in the Southern District. An increased allocation of Assistant United States Attorneys was accomplished in late 1976. In addition, we have obtained the valuable services of an attorney from the Regional Attorney's Office of HEW for a period of six months as a Special Assistant United States Attorney. A third Special Assistant United States Attorney in the immigration unit was allocated by the Immigration and Naturalization Service earlier in the year. In 1977 further efforts in this regard are expected to include the increased utilization of college students on work-study programs, the hiring of a full-time investigator and one or more lawyers as legal assistants.

During the past year a number of programs have been instituted to strengthen the presentation of the Government's case in federal civil litigation and maintain the high traditions of this office. In 1976 the Division commenced a series of lectures delivered by senior attorneys, including the United States Attorney, on various aspects of federal civil trial practice. Another innovation was the development of a program to provide Civil Division Assistants with criminal trial experience. In this program, commenced in the summer of 1976, Assistants in the Civil Division take on the responsibility as Complaint Assistant to handle all incoming criminal cases on a specific day, and to prosecute those matters through to conclusion. The program is designed to provide increased familiarity with the criminal justice system and greater exposure to jury trial experience.

The skill and conscientious dedication of the Assistants in the Civil Division made it possible for this Office to continue its tradition of providing the Government with the very highest level of legal advocacy and counsel. The record of their work is reflected in the following pages.

AFFIRMATIVE RELIEF

While, by its very nature, much civil litigation involving the government casts the Civil Division in the role of defendant's counsel, this Office has prided itself on the large number of suits, many developed here, which it brings on behalf of the United States to protect important governmental and public interests. Many such cases are described in the separate sections involving civil rights and environmental litigation; other cases illustrative of these efforts are mentioned in the following paragraphs. The broad range of these affirmative cases litigated in 1976 confirms the important role that Assistant United States Attorneys can and should play in developing legal rights and remedies in the public interest.

A significant case in the public interest area was *United States* v. *Nehring Brothers,* a suit alleging violations of federal rent regulations enacted under the Economic Stabilization Act. The United States successfully contended at trial that Nehring, a real estate management organization in charge of over 300 buildings in Manhattan and the Bronx, had raised tenants' rents in violation of federal anti-inflationary guidelines. The Court ordered Nehring Brothers to refund to tenants all rent overcharges. Failing that, Nehring would be held liable for civil penalties in the amount of three times the rent overcharges which the Government estimates at approximately $250,000. (AUSAs Glassman and Parker).

In the field of labor relations the Office continued to prosecute suits brought under the Labor-Management Reporting and Disclosure Act challenging the validity of union elections when election procedures violated federal laws. In the most hotly contested suit in this area the Office won a significant victory in *Usery* v. *International Organization of Masters, Mates and Pilots,* an action to declare void the 1971 election of the union's officers. The District Court decision overturning the election was rendered in March, 1976, following four motions by the United States to compel essential discovery. The Second Circuit affirmed the order declaring the election void (538 F.2d 946), and a second appeal by the union concerning the District Court's order scheduling a new election is presently *sub judice.* Dennison Young, Jr., the Assistant in charge of this case, received a Special Achievement Award from the Attorney General for his untiring efforts in the successful prosecution of this matter and others.

The False Claims Act, 31 U.S.C. § 231, provides for the recovery of double damages and a $2,000 penalty for each false or fraudulent claim made or presented to the United States. In the past year this Office has developed the Act into an extraordinarily effective weapon assuring repayment to the government of sums paid out as a result of fraudulent schemes and deterring such activities.

On March 4, 1976 this office filed eighteen actions against physicians, chiropractors and a clinic administrator, alleging the submission for payment of numerous fraudulent Medicaid invoices. Each of the defendants had pleaded guilty to related criminal charges. Shortly thereafter two more civil suits were brought against similar defendants. Seventeen of these twenty-one civil actions have been disposed of by means of consent judgments assuring payment to the federal government of approximately $700,000. All such judgments resulted in defendants paying double the Federal damages from the fraudulent invoices and include a *pro rata* share of the Government's investigative costs. Recognizing that in a typical Medicaid case there are also valid civil claims on behalf of New York State and the City of New York, we have implemented a procedure to expedite and assure the recovery by the State and City of their parallel claims to the funds of the defendants in these types of cases. (AUSA Gerber).

The office has sought to impose a constructive trust upon sums received by a Congressman's law firm in payment for his intervention with the Federal Aviation Agency and Civil Aeronautics Board on behalf of a client seeking route certification between Florida and the Bahamas, in violation of the Federal conflict of interest statute, 18 U.S.C. § 203, *United States* v. *Podell*. The Congressman had pleaded guilty to criminal charges involving the same conduct. (U.S. Attorney Fiske and AUSA McCarthy).

The *Podell* case and those involving recoupment of Medicaid fraud losses discussed above represent the initial results of increased attention being given to the coordinated use of civil and criminal proceedings where appropriate. Such an approach imposes an effective deterrent through penal sanctions and full recovery for the public treasury.

The United States Attorney's Office during 1976 commenced several injunctive actions under 39 U.S.C. § 3007 prohibiting the use of the mails by persons or businesses seeking to obtain money under false pretenses. In one such case the District Court enjoined a pyramiding scheme based on newspaper advertisements appearing in May by an organization called the Lloyd Foundation which offered New York City Transit tokens to the public at the price of 30 cents as compared to their actual value of 50 cents. Since Lloyd Foundation had no source of funds to absorb the difference between its price and the token's actual value many cash mail orders went unfilled. *United States Postal Service* v. *Lloyd Foundation*. (AUSA McCarthy).

Using statutory provisions in the Controlled Substances Act, (21 U.S.C. § 882) the United States sought to enjoin the operation of a methadone maintenance clinic which was alleged to have violated government regulations controlling the distribution of that drug. In January, 1976 the defendants agreed to a Consent Order barring acceptance of further patients until the program was brought into compliance with federal rules as verified by the Food and Drug Administration inspections. *United States* v. *Sacolick*. (AUSA Samuel Wilson).

In *United States* v. *R.J. Reynolds Tobacco Co.*, and five related cases, the United States is seeking sizable penalties for violations of a Federal Trade Commission consent order requiring the American cigarette industry to make clear and conspicuous disclosure of the Surgeon General's warning concerning the hazards of cigarette smoking. (AUSAs Weisberg and Dolinger).

Most recently in the Office's first case brought on behalf of the Consumer Product Safety Commission, we obtained a favorable settlement of a penalty suit against Christian Dior of New York, Inc., for violations of a prior consent order forbidding the sale of dresses in violation of the Flammable Fabrics

Act. *United States* v. *Christian Dior*. The settlement involved the highest dollar penalty per violation ever obtained by the Commission. (AUSA Barth).

United States v. *Emons Industries*, involved the sale of drugs to Vietnamese importers during the Vietnam war. The United States sued to recover the money it had expended to finance these sales through the AID Program when it learned that the drugs in question fell below FDA standards. Distinguishing a prior adverse decision on the issue in another district, the District Court for the Southern District of New York ruled that the United States had a valid cause of action to recover its financial aid. 406 F. Supp. 355. The decision is viewed by AID as a major victory in efforts to prevent fraud in the foreign assistance program. (AUSA Barth).

DEFENDING THE GOVERNMENT

In 1976 the Civil Division was faced with a vastly increased number of civil suits seeking injunctions and monetary damages based on broad and often extremely serious allegations of misdeeds by various law enforcement, intelligence and military agencies and officials of the federal government. These cases were generally founded on claims under the Federal Tort Claims Act or alleged causes of action for violations of constitutional rights under the rationale of *Bivens* v. *Six Unknown Named Agents*, 403 U.S. 388 (1971).

In *Socialist Workers Party* v. *Attorney General*, plaintiffs are suing for damages and injunctive relief arising out of the government's 35 year investigation of the party. Plaintiffs allege that various investigative techniques such as the use of informants, electronic surveillance, interviews and the FBI's Counter Intelligence Program have "chilled" their exercise of First Amendment rights. The case, which is now in the intensive pre-trial discovery and preparation stage, raises extraordinarily important issues regarding the legitimate scope of investigative activities and procedures employed by the law enforcement and intelligence gathering arms of the federal government. During 1976 the Attorney General, acting under recently promulgated guidelines, halted the on-going FBI investigation of the Socialist Workers Party. However, trial on the issues of damages and the scope and propriety of future injunctive relief is expected to begin in 1977. (AUSAs Brandt, Moseley, Parker and Murdock).

In a similar case filed in December, 1975 the United States Labor Party sought to enjoin the FBI's investigation of that party on grounds that it impinged on First Amendment rights and obstructed its political campaigns. In September, 1976 the District Court refused to grant a preliminary injunction, finding that the FBI's investigative activities were adhering to federal guidelines on domestic security investigations. (AUSA Gerber).

Coupled with these on-going suits several new cases alleging serious legal or constitutional violations by the government were filed. In *Spock* v. *National Security Agency*, the well-known pediatrician is seeking $200,000 in damages for alleged illegal interception of wire communications by NSA. (AUSA Cooper). In *Clavir, Kunstler et al* v. *Levi*, the plaintiffs have alleged that the FBI, as part of a long campaign of harassment and surveillance, placed an illegal tracking device on their automobile. (AUSA Dolinger). The recent reports of the Rockefeller Commission and Church Committee on the CIA has given rise to a case, *Victoria Wilson* v. *United States*, seeking damages for the interception of mail to and from Russia in the 1950's and 1960's by the CIA. (AUSA Cooper).

In *Barrett* v. *Hoffman*, and *Barrett* v. *United States*, plaintiff, the administratrix of the estate of Harold Blauer, alleges that Blauer died in 1953 in a New York State hospital as a result of the injection of an experimental drug supplied by the United States Army to New York State. Plaintiff further alleges that the settlement of an earlier medical malpractice case arising out of Blauer's death is invalid since the United States failed to disclose its involvement in either the experimental program or the settlement. (AUSA John O'Connor).

A major area of the Civil Division's responsibility is the defense of cases alleging negligence and medical malpractice against government agencies and personnel. In 1976 the Office opened files in 114 suits against the Government under the Federal Tort Claims Act. This number represents about 6% of all the tort cases filed against the United States annually.

The subject matter of tort suits against the government ranges from complex issues of air traffic control and innovative medical procedures to slip and fall cases on government property. Each case must be analyzed carefully from the perspective of potential liability and damages with a view to minimizing the government's monetary liability. We have maintained a firm policy of settling as quickly as possible those cases where the government's liability is clear and a reasonable assessment of damages is available. On the other hand, we have developed the concommitant policy of refusing to settle for "nuisance value" those cases where allegations of liability are patently frivolous or claims of damages are grossly inflated. Because of the variety of factors to be considered and the intangibility of many of those factors, the judgments called for are often difficult. The record of the Civil Division in making those judgments is an excellent one, as witnessed by the fact that in 1976 all cases which the Division determined should be tried were won.

Another significant aspect of the Civil Division's responsibility includes the legal defense of various challenges to the broad social programs undertaken by the government and the wide range of other governmental activities affecting the public.

During the past year several major challenges to social programs under the jurisdiction of the Department of Health, Education and Welfare were mounted in this District. *Professional Factoring Service Association* v. *Mathews*, involved a challenge to a recently promulgated HEW regulation explicitly prohibiting payment of Medicaid benefits to anyone other than a patient or a provider of services. Concern over fraudulent and inflated claims in the Medicaid Program had led Congress to enact a statute in 1972 prohibiting the reassignment of claims for Medicaid benefits. However, factoring services such as the plaintiff in this case continued to submit Medicaid claims for payment by evolving a practice whereby the checks, although in the provider's name, would be mailed directly to the factor and cashed by means of a power of attorney. Plaintiffs challenged the 1976 regulation, claiming that it exceeded HEW's statutory authority, was arbitrary and capricous, and in violation of due process. The District Court denied a request for a preliminary injunction, finding that the evidence of practices designed to undercut the Congressional purpose was ample support for the stronger regulation and that the plaintiffs' constitutional arguments lacked merit. (AUSA McCarthy).

In *Greater New York Hospital Association* v. *Mathews*, 536 F.2d 494 (2d Cir. 1976), the Second Circuit affirmed the District Court's opinion, holding that the decision by HEW to make interim Medicare reimbursement payments to hospitals three weeks after costs were incurred was a decision committed to agency discretion and not subject to judicial review, so long as it did not conflict with the express provisions of the statute and so long as the applicable regulations were consistent with the reimbursement requirements under the Medicare Act. The District Court's decision followed a hearing on a motion for a preliminary injunction consolidated with a trial on the merits. (AUSA Schaffer).

Another case which should be tried in early 1977 is a suit brought by the Hospital Association of New York State, Inc., challenging the amount of money paid by the state and federal governments as reimbursement to hospitals for services rendered by them to Medicaid patients. *Hospital Association* v. *Toia*. The challenges are directed to the "New York State Plan," attacking it as no longer providing for reimbursement of reasonable costs as provided by the Medicaid Act. HEW is joined as defendant because of its statutory responsibility to approve the State plan. On behalf of HEW we will contend that its approval is non-reviewable and

that, in any event, the approved formula does reimburse the hospital for the reasonable costs. Specifically, the ceilings included in the reimbursement formula are necessary and appropriate to restrict unnecessary increases in hospital costs and the passing along of those unnecessary increases to the taxpayer. (AUSA John O'Connor).

A fourth case seeking to enjoin the application of regulations promulgated by HEW relates to the implementation of the Work Incentive Program ("WIN") of the Social Security Act. The plaintiffs in *McLean* v. *Mathews*, challenged the regulations as being in conflict with the express provisions of the Social Security Act, 42 U.S.C. § 602(19)(F). These regulations deregister, for fixed periods, individuals who without good cause fail to participate in the WIN program. Plaintiffs claim that the "if and for so long as" language of the statute requires sanctions tailored to a period of non-cooperation and not fixed as HEW regulations provide. A preliminary injunction was issued against the enforcement of the regulations and our motion for summary judgment is now under consideration. (AUSA Mack).

The recent and much publicized cheating scandal at West Point has resulted in two cases concerning the Academy's Honor Code. The first of them was *Ringgold* v. *Berry*, a constitutional challenge to enforcement of the Honor Code. The plaintiff cadet claimed that the Secretary of the Army did not have the authority to promulgate the Honor Code and that, as enforced, it violated due process. The District Court in June denied the motion for a preliminary injunction and later in September dismissed the complaint for failure to state a claim. An appeal to the Second Circuit is currently pending. The second case arising out of the cheating scandal is *D'Arcangelo* v. *Berry*, a case challenging the recent regulation of the Secretary of the Army, permitting cadets charged with honor code violations to resign and reapply to the Academy one year later. Plaintiffs claimed that the Secretary did not have authority to promulgate the regulation and also challenged the enforcement of the Honor Code at West Point. The court has informed the parties by letter that the complaint will be dismissed and that an opinion would be filed at a later date. (AUSA Gerber).

Several cases have been brought by reservists to enjoin their induction into the armed forces. *Ornato* v. *Hoffman* was a suit by a reserve medical officer whom the Army sought to call-up for two year's service. Plaintiff doctor is the director of the paramedic program of New York Hospital and claimed that his call-up would constitute a community hardship within the meaning of Army regulations. The Second Circuit has recently affirmed the District Court's denial of a preliminary injunction on the ground that the Army's decision was not reviewable and further on the ground that plaintiff did not meet the regulatory criteria for a community hardship delay. (AUSA Dolinger). A second case is *Silverman* v. *Middendorf*, involving a program called the "Berry Plan" in which a doctor agrees to serve on active military duty for a period of two years and the military agrees to defer the service until after the doctor completes his medical training. Dr. Silverman, who had requested and received six years of deferrals, sought to prohibit the Navy from ordering him to serve his two-year commitment on the grounds that he was now over 35 years old and hence too old for military duty. The District Court disagreed, and dismissed the doctor's complaint. An appeal has been taken from that decision. (AUSAs Cooper and Corsi). Lastly, *Iarossi* v. *Hoffman*, involved a challenge to the Army's regulations which call to active duty a member of the National Guard who has not performed satisfactorily, (e.g., has missed an excessive number of Guard meetings). The District Court upheld the Army's regulation and an appeal is *sub judice*. (AUSA Zupa).

During the past year, we have continued our successful defense of the Food and Drug Administration's regulation making vitamins A and D prescription drugs. Earlier this year the Second Circuit had remanded the case for further examination of the issue of whether these vitamins were drugs. On remand the

District Court adhered to its earlier decision that at the regulated levels these vitamins were properly classified by the FDA as drugs. Other issues raised in the course of the remand proceeding involved the scope of the agency record in informal rule-making and the propriety (the court holding it improper) of cross-examination of the defendant agency head in such a remand proceeding. This case will hopefully provide useful authority in the defense of other agency actions. In addition, the Office defended the FDA's refusal to issue a regulation requiring birth control pills to bear a warning that their use increases the risk of breast cancer. Our motion to dismiss was granted. (AUSA Naomi Buchwald).

Indicating the wide-ranging subject matter of the defensive litigation for which this office is responsible is *New England Petroleum Corporation* v. *FEA and Zarb*. This case raises a challenge to an administrative determination regarding exceptions relief from regulations which permit only domestic refiners of residual fuel oil to participate in the Entitlements Program. Plaintiff, a non-domestic refiner, claims that because of serious hardship or gross inequity, it should fully participate in the program and be issued more entitlements benefits than the FEA had decided upon as adequate. Summary judgment motions have been submitted. (AUSA Mack).

Two cases are illustrative of the nature of constitutional issues which frequently face this office. In *United States ex rel. Wolfish* v. *Levi*, the Office is defending a broad constitutional attack on conditions at the newly constructed Metropolitan Correctional Center adjacent to the United States Attorney's Office building. This class action challenges the constitutionality and propriety of a number of practices and standards of the Federal Bureau of Prisons in effect at this institution. The District Court recently ruled that the practice of putting two inmates in the cell violated constitutional standards. A number of other contested issues will be tried in the Spring. (AUSAs Corsi, Schaffer, and Zupa).

On July 2, the New York Civil Liberties Union filed suit to enjoin the United States Postal Service from banning demonstrators at the Democratic National Convention, scheduled to convene the next week, from congregating on the steps of the large GPO building across Eighth Avenue from Madison Square Garden. After a two day hearing the District Court ruled in *Russek* v. *Strachan* that the Postal Service action did not violate the First Amendment since it was in the interest of public safety and part of an overall scheme of crowd control developed by the New York Police Department, which would provide the putative demonstrators with ample access to the Convention delegates and media. (AUSAs Adams, Mack, and Schaffer).

Suits brought under the Freedom of Information Act continue to require increased effort by this Office as their numbers grow and as the courts work to strike the balance the Act contemplates between public disclosure and governmental interests in confidentiality. Furthermore, 1976 saw the advent of the so-called "reverse Freedom of Information Act" suit in this District. In such actions one who has provided material to an agency seeks to prevent that agency from disclosing the material to others who have requested its disclosure pursuant to the Act. Another impact upon this Office has been the number of requests made under the Act for documents from our files in both pending and closed cases. Massive amounts of attorneys' time has had to be diverted from active cases to index and analyze closed files in response to requests for documents in our files. Thousands of hours had to be devoted just to responding to requests concerning the prosecutions in the 1950s of Julius and Ethel Rosenberg and Alger Hiss.

Classified documents are frequently the target of cases under the Act and these cases raise problems concerning the proper methods of obtaining adjudication. In *Bennett* v. *Department of Defense*, 419 F. Supp. 663, the plaintiff sought classified documents of the Department of Defense, Central Intelligence Agency and National Security Council relating to post-1958 United States-Cuban relations. We were successful on summary judgment in persuading the Court that *in camera* examination and detailed itemization and indexing of the withheld documents was inappropriate. Disclosure of the documents was denied based upon the agency affidavits submitted. (AUSA

Naomi Buchwald). The opposite result was reached in a case with similar issues, *Wilber Ferry* v. *C.I.A.*, but reargument of that decision is now pending. (AUSA Daly).

Corporate plaintiffs continue to use the Act as a means of discovery in preparation for challenges to agency action. *Ciba-Geigy Corp.* v. *Mathews*, involves a drug company's effort to obtain data to support a challenge to a proposed labeling regulation for drugs used in the treatment of diabetes. A major issue in this case, now *sub judice*, is whether all research done under public grants becomes "agency records" available under the Act to any person requesting it. (AUSA Naomi Buchwald). In *Lord & Taylor* v. *Department of Labor*, the plaintiff sought undisclosed portions of the agency's procedural and investigative manual in connection with enforcement action taken against it by the Labor Department. We were successful in upholding the agency's refusal to disclose most of these law enforcement and purely internal materials. (AUSA Salerno).

It is worthwhile to note that our function in some Freedom of Information Act cases has been to counsel agencies to disclose documents which are properly requested under the Act. Such advice was accepted in *American Cyanamid* v. *Roudebush*, disposing of the case, and eliminating the possibility of an award of attorneys' fees to the plaintiff as provided for in the Act. (AUSA Moseley). In *Kaye* v. *Burns*, 411 F. Supp. 897, a case of first impression under the Act, the District Court denied attorney's fees to the plaintiff where the requested document had already been turned over to the plaintiff and the initial denial of the FOIA request had had a reasonable basis in law. (AUSA Parker).

The variety of federal civil litigation is illustrated in the case of *Estate of James Bertram*. The decedent was a native of Scotland and a resident alien in the United States from 1913 until his death in 1934. His will provided a life interest in the estate to his wife and then to his daughter. In the event his daughter died without issue the estate was devised to Great Britain for the purpose of making payment on that country's World War I debts to the United States. The daughter, now in advanced years, has no issue and petitioned the Westchester County Surrogate's Court to declare the corpus of the $800,000 estate her property since she argued the World War I debts were now null and void. After trial the Surrogate's Court found that the debt to the United States did exist despite the failure of Great Britain to make payments for many years and ruled that the provisions of Bertram's will were valid and in effect. (AUSAs Pamela Davis and Daly).

IMMIGRATION CASES

The United States Attorney's Office is responsible for litigating the large number of immigration and naturalization cases which arise in this District. All petitions to review final orders of deportation in the Southern District are under the original jurisdiction of the Court of Appeals for the Second Circuit and are defended by this Office. In the District Court we litigate habeas corpus and mandamus petitions and declaratory suits to review actions of the Immigration and Naturalization Service. Cases seeking review of labor certifications, decisions of the Department of Labor and visa actions by the State Department are also regularly defended by the United States Attorney. The Office has been well represented in these efforts by Special Assistant United States Attorneys Mary Maguire, who resigned from the Office in December, 1976, Thomas Belote and Robert Groban.

As noted in our report dated October, 1975 the number of immigration suits has sharply increased over the past two years. The Office has been seriously concerned with the growing number of patently frivolous petitions for review filed in the Circuit Court of Appeals which allow the alien an automatic statutory stay of deportation provided by Federal statute. In *Acevedo* v. *INS*, 538 F.2d 918, the Second Circuit, at the instance of this Office, denied the petition and assessed double the costs of the appeal against the petitioner's attorney personally on the basis that the petition was totally without merit and frivolous. It is hoped that this precedent will reduce the num-

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ber of petitions filed solely for the purpose of delaying deportation. (AUSA Young and Special AUSA Belote).

In *Marcelina Diaz Rivera de Gomez* v. *Kissinger*, 534 F.2d 518, the Second Circuit, in face of an increasing judicial tendency to reject a defense that official action is non-reviewable, upheld the government's claim that a federal court lacks jurisdiction to review the acts of an American Consular official in determining whether or not to issue a visa. (Special AUSA Maguire). In *Zamora* v. *INS*, 534 F.2d 1055, petitioners claimed that the admission of Department of State recommendations pertaining to political asylum deprived them of the opportunity to confront and cross-examine adverse witnesses. Noting the differences between the adjudica- of an asylum application under 8 C.F.R. § 108 and withholding of deportation under 8 U.S.C. § 1253 (h) the Court reasoned that the Department of State recommendations were admissible in a proceeding under 8 U.S.C. § 1253(h) where the State Department conclusions informed the Immigration Judge of legislative rather than adjudicative factors. (Special AUSA Belote). In *DeLeon* v. *INS* the Second Circuit rejected a contention that the statutory waiver of deportation of persons with citizen spouses could operate to protect an illegal alien who had been convicted of using a false identity card upon entering the country. (AUSA Adams).

The majority of cases handled by this Office involve judicial review of discretionary decisions by the Board of Immigration Appeals or by the INS District Director. In this respect it should be noted that we have successfully defended every challenge to these discretionary actions in both the District Court and the Court of Appeals.

BANKRUPTCY

The United States Attorney's Office also represents the United States in numerous bankruptcy and insolvency proceedings filed within the Southern District of New York. The specific types of proceedings may include liquidating bankruptcies, Chapter XI arrangements, corporate reorganizations, railroad reorganizations, state assignments for the benefit of creditors and insolvent decedents' estates.

The major responsibility of the Office's bankruptcy work is to ensure that the claim of the particular federal agency is properly filed and that it receives a priority upon distribution of the debtor assets. A great part of the daily activity concerns litigation over outstanding federal tax liabilities, but we also represent all other federal agencies which seek to enforce their claims as creditors of the insolvent debtor. At the present time the office is in charge of prosecuting in bankruptcy court six separate priority claims of more than $1 million. The largest of these claims is for $74 million in taxes in the W.T. Grant bankruptcy.

Assistant United States Attorneys Paul Silverman, Daniel Pykett (until his recent departure from the Office) and Eileen FitzGerald have been handling the bulk of the Division's bankruptcy work. Their tasks have been steadily increasing and becoming more demanding in view of the declining economic climate and because the Southern District of New York is one of the busiest commercial districts in the country. Additionally, the work is further complicated by the fact that in many cases, in order to preserve the debtor's assets or for other reasons, emergency applications affecting the liens or claims of the United States are brought on by Order to Show Cause or other expedited means. In spite of these difficulties the Office enjoys a successful record and an outstanding reputation among the bankruptcy judges and the bankruptcy bar.

TAX LITIGATION

Our Office is one of three such offices in the country maintaining a separately constituted Tax Unit with primary responsibility for representing the interests of the United States in civil tax matters. Our responsibility extends to the preparation and presentation of cases in the District Court and the briefing and arguing of appeals to the

Second Circuit. The Tax Unit consists of a Chief and four other Assistants. For his work as Chief of the Tax Unit, as well as his efforts in several important non-tax cases, William G. Ballaine received in December, 1976 a Special Achievement Award from the Attorney General.

The Tax Unit's responsibilities encompass all Federal civil tax matters arising in any court within the geographical boundary of the Southern District of New York. In litigating these cases, this Office cooperates closely with the Tax Division of the Department of Justice and with the Internal Revenue Service. In the District Court, we are responsible for representing the United States in all tax refund suits commenced within the District. These suits frequently involve significant tax revenues and complicated substantive issues arising under the Internal Revenue Code. Our District Court responsibilities also extend to the enforcement of Internal Revenue Service administrative summonses and levies, proceedings which may involve issues of constitutional dimensions, and to actions by taxpayers to enjoin tax collection suits which may bring into play the delicate balancing of private interests and the Government's revenue needs. This Office also handles all Federal Court litigation of tax collection cases and tax interpleader cases, matters which necessitate litigation in both District Court and the Bankruptcy Court. In addition, our responsibilities require us to appear in the various state courts of general jurisdiction to assert Federal tax claims in suits such as interpleader and property foreclosure actions where the United States maintains a tax lien priority. We also litigate in the state surrogates' courts where we represent the interests of the United States in tax collection matters and in the enforcement of a fidiciary's obligation to file Federal tax returns.

Presently, this Office is actively involved in six separate tax refund suits in the District Court in which the potential tax revenue impact is well in excess of one million dollars. In one of these refund suits, the potential revenue loss has been determined to be more than sixteen million dollars and in a second the Federal taxes in issue, roughly estimated, may exceed fifty million dollars. In addition, we are presently handling or have just completed our work on a number of tax cases resulting in substantial recoveries of outstanding taxes and interest. In one bankruptcy matter, for example, this Office has just recently succeeded in collecting over nine hundred thousand dollars. In a second, we have completed efforts resulting in the Government's collection of some two million dollars covering income tax liabilities owed by the late Jack Dick. In a third case, not in bankruptcy, we successfully recovered almost six hundred thousand dollars in outstanding liabilities, a collection which we effected out of proceeds from the sale of the taxpayer's substantial property holdings to the Reverend Moon's organization, the Holy Spirit Association for the Unification of World Christianity.

Over the past year this Office has achieved several noteworthy legal decisions in the tax field. In *United States* v. *Davey*, 404 F. Supp. 1283 (S.D.N.Y. 1975), *modified in part*, CA No. 76-6040 (2d Cir. Sept. 27, 1976), we succeeded in obtaining judicial enforcement of an Internal Revenue Service administrative summons directing the production of computer tapes used by the taxpayer, a billion dollar insurance company, for financial record-keeping purposes. This appears to be the first reported case in which the Government's authority under the Internal Revenue Code to direct the production of books and records was specifically extended to computer tapes. In upholding the Government's authority, the Second Circuit rejected the taxpayer's argument that the Internal Revenue Service was limited by statute to requiring production of computer print-outs rather than the underlying tapes. (AUSAs Silverman and Ballaine).

Another successful result was obtained by this Office in *Stone* v. *United States*, 405 F. Supp. 642 (S.D.N.Y. 1975), *affirmed*, 76-1 USTC ¶ 9471 (2d Cir. May 19, 1976), *cert. denied*, 45 U.S.L.W. 3330 (U.S. Nov. 2, 1976). In this case, plaintiff Andrew L.

Stone sought to enjoin a jeopardy assessment made against him and his wife for taxes, interest and penalties exceeding seven million dollars. At the time he commenced his injunctive action, the taxpayer, who had previously been convicted of criminal fraud, was defending against a separate twelve million dollar non-tax civil fraud claim asserted by the United States in another District. Stone's claim for injunctive relief was based primarily upon his assertion that the Government's tax claim was arbitrary and that the assessment was being used for non-tax purposes to render Stone financially unable to defend himself in the Government's civil fraud action. The District Court dismissed Stone's injunctive action after finding that the Government's tax claim had a substantial foundation and rejecting Mr. Stone's argument of bad faith. The Court's dismissal of Stone's injunctive action was affirmed by the Second Circuit. (AUSA Ballaine).

In *City of New York* v. *United States*, 75-1 USTC ¶ 16,188 (S.D.N.Y. May 14, 1975), *affirmed*, 76-1 USTC ¶ 16,225 (2d Cir. Feb. 11, 1976), *cert. denied*, 45 U.S.L.W. (U.S. Oct. 5, 1976), this Office succeeded in defending the Federal airfare excise tax against a constitutional challenge asserted by the City of New York. The District Court upheld the imposition of the tax, rejecting the claim that such a tax imposed an unconstitutional burden upon the City when its employees traveled by air on official business. The Second Circuit affirmed on the opinion below. Subsequently, the City brought another suit asserting the same claim, but for a later tax period. This suit was dismissed by the District Court and the City's appeal was dismissed by agreement of the parties. (AUSAs Siffert and Silverman).

A significant success was achieved this past year by the Office in *United States* v. *Matheson, Executor of the Will of Dorothy Gould Burns, Deceased*, 75-1 USTC ¶ 9474 (S.D. N.Y. May 9, 1975), *affirmed*, 532 F.2d 809 (2d Cir. 176), *cert. denied*, 45 U.S.L.W. 3250 (U.S. Oct. 5, 1976). While this case involved tax refunds of only approximately $25,000, its resolution controlled the outcome of a $3,500,000 estate tax action pending in the U.S. Tax Court. The sole issue was whether Mrs. Burns, a granddaughter of Jay Gould, was expatriated from the United States by virtue of signing an application for a certificate of Mexican Nationality in 1944. After extensive discovery proceedings, the District Court in a lengthy opinion granted summary judgment for the United States. The Second Circuit affirmed, concluding that on the undisputed evidence, Mrs. Burns did not intend to relinquish her American citizenship, but rather viewed herself as a dual national. (AUSAs Barkan and Brandt).

Finally, the Office succeeded in obtaining a noteworthy legal decision in *LeBeau Inter-America Tours* v. *United States*, 415 F. Supp. 48 (S.D.N.Y.), *affirmed per curiam*, CA No. 76-6013, (2d Cir. Nov. 23, 1976). The taxpayer in this refund action asserted the right to recover some one hundred thousand dollars in taxes, claiming a special tax deduction as a Western Hemisphere trade corporation. A New York based corporation, taxpayer packaged travel arrangements in Latin America and the West Indies and then promoted and sold these packages to American tourists through retail travel agents. LeBeau argued that more than 95 percent of its income from these services was derived from sources outside the United States. The District Court, in what it termed a case of first impression, rejected the taxpayer's contention, and the Second Circuit affirmed. (AUSAs Bronner and Ballaine).

CIVIL RIGHTS ENFORCEMENT

The civil rights efforts of this office have continued unabated during the past year. Under the strong leadership of Dennison Young, Jr., the Civil Rights Unit has been realigned to make additional resources and time available for the development of new investigative efforts. With the help of our very able legal assistants, Anita Kramer and Astrid Garcia, it is anticipated that we will be able to develop significant cases in the housing, public employment and revenue sharing fields.

In addition, criminal matters involving civil rights are now being coordinated through one of the three Deputy Chiefs of the Criminal Division in cooperation with the Chiefs of the Civil Rights Unit and other related units of our Office. This now allows for a more intensive effort in investigating and prosecuting criminal violations in such fields as voting rights, housing discrimination and police brutality.

During 1976 this Office, in conjunction with the Voting Rights Section of the Department of Justice, undertook a strong effort to investigative and prevent violations of federal voting laws during the primary and national elections. As part of that effort the Office maintained several public telephone lines open during election days and monitored by Assistant United States Attorneys to receive complaints and reports of possible irregularities at the polling booths.

The Office has heretofore focused much of its efforts in combating employment discrimination in the building trades in New York. The trials of a number of these cases have been mentioned in previous reports by this Office. In 1976, for the most part, our efforts in these Title VII actions have been directed at the less spectacular but nevertheless crucially important aspect of insuring full compliance and implementation of court decrees ordering affirmative and remedial action to redress the efforts of past discrimination.

EEOC v. *Locals 14 and 15, International Union of Operating Engineers*, (AUSAs Glassman and Devorkin) involved a range of employment and union membership problems, as well as conflicts between local licensing requirements and union membership. After a month long trial the Court, in an exhaustive opinion filed in May, 1976, found that these defendants, engaged principally in the operation and maintenance of construction equipment, practiced various forms of discrimination. The broad order entered by the Court not only enjoins further discriminatory practices but also requires that the defendant unions and employers initiate an effirmative action program over the next five years to end discrimination and achieve a 36% Black and Hispanic union membership by September 1, 1981, and awards back pay to all Blacks and Hispanics who can establish that they were discriminated against by the unions. An appeal from this order has been argued and is awaiting decision.

In *Rios* v. *Enterprise Association, Steamfitters, Local 638*, the Equal Employment Opportunity Commission, represented by this Office, successfully appealed a District Court decision restricting back pay eligibility to only certain union members who had actually applied in writing for union membership between specific dates and who met other rigid criteria. As a result of the Second Circuit's holding, the class of non-whites eligible for back pay in a Title VII case was substantially broadened. The appellate court ruled that back pay claims may be awarded to any non-white steamfitter, whether a union member or not, who can prove damages resulting from discrimination, and that back pay awards may be made to individuals until the discrimination actually ceases rather than up to some arbitrary cut-off date (in this case the date of the District Court's final order). 542 F.2d 579 (2d Cir. 1976). Back pay hearings are scheduled in the near future. (AUSAs Corsi, Glassman and McCarthy).

In *Equal Employment Opportunity Commission* v. *Local 28, Sheet Metal Workers Union*, the District Court ordered extensive remedial relief including a requirement that the union, then with a non-white membership of less than 4%, and its apprentice program reach a level of 29% non-white membership by July 1981. 401 F. Supp. 467; 421 F. Supp. 603. The broad findings of discrimination and a comprehensive program of affirmative remedial action ordered by the District Court were affirmed on appeal. 532 F.2d 821 (2d Cir. 1976). While certain recruitment ratios based on race were eliminated, the Second Circuit also expanded the eligibility for back pay for non-whites on the EEOC's cross-appeal. It was this case which first established that individuals discriminated against may be awarded back pay upon the presentation of either written or testimonial evidence. (AUSAs Adams and Corsi).

In addition to working to assure full compliance with the affirmative action decrees in the *Local 638* and *Local 28* cases, in *Patterson* v. *Newspaper and Mail Deliverers' Union*, the Office has spent many weeks seeking specific compliance on matters involving back pay, entry level application procedures and promotion procedures. (AUSA Mack). Similarly, the Office has presented numerous claims of workers involving back pay, job referrals and work rule changes to the Administrator appointed in *United States* v. *Wood, Wire & Metal Lathers Int'l Union, Local Union No. 46*, a Title VII action initially brought several years ago. (AUSAs Dolinger and Siegel).

After a number of years of investigation by our Office and upon our request, the EEOC issued charges of employment discrimination against Local 1 of the International Union of Elevator Constructors and twenty-eight companies engaged in elevator construction and repair. (AUSA Schaffer). In July, 1976, after further investigation and recommendation by our Office, the EEOC issued a decision in which it found that Local 1 and twenty-two of the companies had engaged in a pattern and practice of racial discrimination in the areas of recruitment, hiring, referral, training, promotion and union membership.

With respect to housing discrimination, since the filing of the complaint in *United States* v. *J. I. Sopher & Co., Inc.*, massive discovery has been undertaken by the United States. (AUSAs Daly and Young). In another housing matter, our Office, together with the Department of Justice, in September, 1976 brought a sex discrimination suit against the *Builders Institute of Westchester and Putnam Counties* (a trade organization consisting of several hundred individuals and firms associated with the homebuilding industry, including owners and managers of apartments) and the *Apartments Owners Advisory Council* (an unincorporated association of approximately six hundred apartment owners and managers in Westchester and Putnam Counties established in cooperation with and as a constituent part of the Builders Institute). The complaint alleged that defendants recommended that member owners and managers not consider the income of an applicant's wife under the age of 35 in evaluating the financial qualifications of an applicant for housing, and not rent to working mothers. This suit was settled upon the entry of a consent judgment in which the defendants were enjoined from discriminating on the basis of sex and were required to adopt and recommend to their members new standards for the sale, rental and financing of housing which affirmatively promote equal housing without regard to sex, race, color, religion or national origin. (AUSA Corsi).

Our fine working relationship continues with the New York State Division on Human Rights and the New York City Commission on Human Rights and the many private organizations working in the civil rights field such as the Open Housing Center of the New York Urban League, the NAACP, and the Recruitment and Training Program, Inc. We are greatly appreciative of the extremely helpful information provided us by organizations such as these.

ENVIRONMENTAL LITIGATION

In 1976, the Office continued its varied and active role in the area of environmental litigation. After several months of investigation and negotiation the Office filed suit early in 1977 alleging that the City of New York had violated the Federal Water Pollution Control Act by failing to comply with schedules for the construction and upgrading of three municipal sewage treatment plants. The City and State of New York agreed on January 14, 1977 to a broad consent judgment establishing detailed timetables for the completion of these three projects which will provide secondary treatment for 250 million gallons of City sewage. Concurrent with the consent judgment the Environmental Protection Agency agreed to make available federal funds to assist in financing the construction projects and the City agreed to make discrete appropriations of these funds to assure that they would be utilized for the sewage treatment plants. *United States* v. *City of New York*. (AUSA Eristoff).

In the field of air pollution two civil suits were filed seeking implementation by the City and State of New York of the provisions of the Transportation Control Plan (TCP) for the City which the City and State had adopted pursuant to the mandates of the Clean Air Act. The first of these suits seeks to obtain compliance by the City and State with the TCP strategy requiring emissions inspection of City taxicabs three times a year. The second suit seeks to require compliance by the State with the TCP strategies for annual emissions inspection and maintenance of all trucks and passenger vehicles. (AUSA Eristoff).

In a more traditional vein, Tuck Industries, Inc., of Beacon, New York pleaded guilty and was fined $43,500 for discharging pollutants into Fishkill Creek in violation of the Federal Water Pollution Control Act and the Refuse Act; and Tri-State Canada Dry Inc. of Greenport, New York, agreed to a settlement of $105,000 in payment of penalties and clean-up costs for an oil spill into Claverack Creek. (AUSA Eristoff). Civil complaints have also been filed for penalties and injunctive relief stemming from effluent permit violations and the unlawful dumping of fill material into the Hudson River. (AUSA Eristoff).

As counsel to EPA, the Office defended a number of actions taken by that agency. *In Sun Enterprises, Ltd.* v. *Train*, 532 F.2d 280 (2d Cir. 1976), we successfully overcame a challenge by downstream property owners to the granting of an effluent discharge permit by EPA to a condominium housing project authorizing sewage disposal into Brown Brook in Westchester County. (AUSA Bronner). In *Moran Towing and Transportation Co., Inc.* v. *EPA*, the Court upheld EPA's authority to assess a civil penalty for violation of the Ocean Dumping Act against a challenge that the exaction was criminal in nature and, accordingly that the Government must prove its case beyond a reasonable doubt. (AUSA Eristoff). In a recent suit, *Union Carbide Corp.* v. *Train*, challenging EPA's alleged failure to comply with its own regulations on bidding for a water-pollution control project, we have moved for summary judgment on the grounds that plaintiff as a non-bidder lacks standing to sue and that EPA had a rational basis for denying administrative relief to plaintiff. (AUSAs McCarthy and Stauffer).

A considerable amount of environmental litigation challenges federal action on the ground that the agency involved failed to comply with the National Environmental Policy Act by not publishing an adequate Environmental Impact Statement ("EIS"). Notably, the Office successfully defended an eleventh hour suit brought by the residents of East 63rd Street in Manhattan to enjoin the construction of a major new subway link between the boroughs of Manhattan and Queens. Within ten days the Office had defeated a motion for a preliminary injunction, briefed and argued the appeal from that denial and obtained a decision from the Court of Appeals which held that the equities weighed heavily against the plaintiffs and affirmed the District Court's finding that there was no violation of NEPA. (AUSA Salerno).

Significant as well is the Office's defense on behalf of seven federal departments and agencies of an action brought by the State of New York to halt air transportation of plutonium and enriched uranium until completion of an environmental impact statement with respect to such transportation. The District Court denied the State's motion for a preliminary injunction because plaintiff failed to show that irreparable injury would likely result from the continued air shipment of special nuclear material and that the public interest would not be served by the injunction since these nuclear materials supply valuable government research projects and assist our foreign allies in developing peaceful uses for atomic energy. We are presently awaiting the decision of the Second Circuit on plaintiff's appeal. (AUSA Richter).

CLAIMS COLLECTION

The Claims Unit of the United States Attorney's Office headed by Assistant United States Attorney Robert M. Jupiter, was created to process and accelerate the collection of criminal fines, bail forfeitures, civil pen

civil judgmnts obtained after litigation and other debts owed the United States.

During 1976 there were total collections by the Claims Unit in the amount of $7,174,000 or an average of more than $137,000 per week. A total of 1589 individual payments were made to the U.S. Attorney's Office in addition to payments made to the court and directly to federal agencies. There are presently a total of 476 civil judgments and 610 criminal fine cases pending for collection in the unit.

A large number of cases handled by the Claims Unit involve the United States as a party defendant, pursuant to 28 U.S.C. § 2410, in private actions where a Government tax or judgment lien has been filed against real estate which is the subject of a foreclosure suit. Approximately 250 such cases are referred to the Claims Unit each year and the number of pending cases in this category exceeds 700.

The Claims Unit carefully scrutinizes each step in these cases where the United States is involved to ensure that any judgments entered affect only the Government interest described in the compaint. Appropriate steps are taken to protect the Government's right to any surplus monies in accordance with its proper priority.

When taxpayers refuse to comply with Internal Revenue Service requests to examine their books and records, the United States Attorney's Office initiates proceedings to secure compliance. Refusal to obey court orders enforcing summons can be punished as contempt of court. Seventy-nine summons enforcement actions were handled by the Claims Unit in 1976, and 43 of these were closed with a high percentage of compliance. In two cases it was necessary to obtain a writ of body attachment against recalcitrant respondents.

Illustrative of the work of the Claims Unit is the case of Louis Ostrer who was convicted on ten counts of stock fraud and fined $55,000. Ostrer claimed insufficient assets to pay the fine but refused to submit financial reports to substantiate the claim. After an appearance before the District Court the Claims Unit succeeded in obtaining two guarantors for the the payment of the fine in monthly installments. At the present time the Office has received $39,000 on this outstanding fine.

In *Westbury Paper Stock Corp. et al* v. *City of New York* the United States held substantial tax liens on real property which was condemned by the City of New York. Despite this lien, the condemnation judgment in the New York Supreme Court failed to provide for payment to the United States. Through extraordinary efforts of the Claims Unit the United States was successful in setting aside the original order and obtained payment of over $66,000 from the City in satisfaction of the tax liability.

The defendant in *United States* v. *Ben Ross* was convicted of extortion and tax evasion in connection with loan sharking. A variety of enforcement procedures were necessarily employed in the Government's pursuit of Mr. Ross' assets in order to achieve satisfaction of the $75,000 fine imposed upon him. Despite numerous initial collection efforts no payments were made whatever. The Court stated that it regarded "this case as a real test between a convicted extortionist and tax cheat on the one hand and the Government on the other."

Payments were not voluntarily made by Ben Ross or members of his family until discovery devices available under the law were utilized. Writs of execution were employed to obtain more than $9,000 from a bank account and more than $17,000 through the liquidation of stock owned by the debtor. In addition, it was necessary to bring an action under applicable New York State law against the Dreyfus Fund and the Bank of New York for their failure to heed the Government's writ of execution. We obtained judgment compelling the garnishee to liquidate 3,289 shares of mutual fund stock and pay the proceeds to the Government. As a result of these efforts, the debt has been paid in full despite the hostile and uncooperative attitude of members of the defendant's family and holders of the assets.

ADMINISTRATIVE DIVISION

The Administrative Division, under the leadership of Joseph A. Vitale,, Administrative Officer, provides a wide range of services and support to the office. It is comprised of professional, para-professional, legal-clerical, clerical, and secretarial personnel.

The Division is functionally organized into the following sections:

Administration — Under the supervision of Marie A. Defenthis this section provides payroll, personnel, budgeting and fiscal accounting support.

Civil Clerks — Supervised by Pauline Troia, this Section performs the necessary legal-clerical services regarding the litigation of civil cases and matters including docketing and reporting of cases and matters, filing of legal papers in the U.S. District Court, U.S. Court of Appeals, and state and municipal civil courts and other related services.

Criminal Clerks — Under the supervision of Lawrence Farkash, the Section performs the necessary legal-clerical services essential to the processing of criminal cases and matters including docketing and reporting, monitoring progress of cases and matters, filing indictments, processing nolle prosequi, preperation of court calendars and other related services.

Grand Jury Reporting — Guided by Emily Cordes, the Section provides verbatim reporting and transcription of proceedings before the Grand Jury in the Southern District of New York.

Library and Reference — Supervised by Barbara Zelenko the law library provides essential services to the staff for legal research and reference purposes.

Mail & Records — Mary Smith directs the operations of this Section performing mail management and distribution functions to offices spread over seven floors of the building. In addition, the Mail & Records Section has responsibility for maintenance and disposal of records.

Office Services — Under the direction of Edward O'Brien this Section is responsible for materials and supplies, equipment, reproduction services, office furniture and other miscellaneous services.

Word Processing Center — Led by Ann Seifer during the day and Iola Krezic at night the Center is the primary source of typing and transcription support. Staffed by experienced and skilled personnel the Center utilizes magnetic-card typewriters in addition to selectric and standard typewriters.

During 1976 considerable attention was devoted to improving the quality of life in the Word Processing Center. Confronted by increasing workload and tighter deadlines resulting in large part from the Speedy Trial Act, the capabilities of the staff were stretched almost beyond their limits. While their loyalty, cooperation and conscientiousness have carried us through thus far, it is apparent that a long-term solution is essential to establishing an efficient and smooth operation. As a result of careful study, analysis of work distribution and statistical workload data and discussions with equipment manufacturers, recommendations have been submitted to the Executive Office for U.S. Attorneys to permit us to purchase additional dictating and transcribing equipment, to rent additional magnetic-card equipment, and to establish mini-centers throughout the office capable of responding to attorneys' urgent needs, with a back-up Word Professing Center to handle long documents and heavy revision work.

An additional forward step was taken with the recognition that increased reproduction equipment was required. In 1976 it became increasingly clear that changes in the type and number of copying machines were necessary to meet the ever-increasing demand for service. With the participation of equipment manufacturers an evaluation was made and recommendations submitted which are expected to substantially increase in-house reproduction capability and reduce overall costs.

It is equally important that operators of magnetic-card typewriters and other text-editing be given the recognition deserved. Present CSC testing techniques for mag-card operators

are non-existent and classification standards fail to take into account the high skill levels required to be an efficient, productive operator. This office, joined by the United States Attorney for the Eastern District of New York and the United States Attorney for the District of New Jersey, made a strong effort to increase the current grade ceiling, so far without success. The failure to grant grade increases will present an ever-increasing problem as experienced operators leave the office for substantially higher paying jobs. Our office will continue to press for higher classification of these positions, believing that it is a matter which deserves and requires prompt action.

The functions of the Criminal Clerks Section were also the subject of intensive review this year, to bring about better and more timely control over criminal cases and matters. The study resulted in a closer integration and merger of case control activities with the Criminal Clerks Section and the establishment of teams or units to deal directly with a specified group of attorneys. This internal realignment will more definitively establish clear lines of responsibility for carrying out the necessary tasks of opening cases, docketing, reporting, follow-up and closing or disposal of cases. It is also expected that the new alignment will provide the Chief of the Criminal Division with more timely information upon which to take action to insure prompt disposition of cases and more accurate data for evaluating the case load of Assistant U.S. Attorneys.

During 1976, special awards were conferred by the Attorney General on a number of employees in the Administrative Division in recognition of sustained superior performance. They are as follows:

Marie A. Defenthis	Lydia Nales-Diaz
Irene Faulk	Janeanne Perrier
Barbara Jenkins	Serena Rivers
John F. Kaley	Eileen Swanton
Sandra King	Pauline Troia
Loretta May	Euthila Wilson
Jean McPherson	Martin Wishnew

The dedication and loyalty of the administive staff is aptly demonstrated by the fact that over 25 percent of the personnel have worked in the federal service 15 years or more. They are:

Katherine Allman	28 yrs.	Audrey Manning	18 yrs.
Lillian Argano	15 yrs.	John Miller	35 yrs.
Leonard Bain	21 yrs.	Mary Napoli	25 yrs.
Annabelle Chaney	21 yrs.	Edward O'Brien	32 yrs.
Anthony Conti	21 yrs.	John O'Connell	28 yrs.
Emily Cordes	31 yrs.	William Parsons	15 yrs.
Marie Defenthis	33 yrs.	Alice Prokopik	16 yrs.
Johnny E. Dent	21 yrs.	Mildred Rothenberg	25 yrs.
Irene Faulk	25 yrs.		
Daniel Fineman	20 yrs.	Carmen Rudder	29 yrs.
Delia Gildea	27 yrs.	Anna Schwartz	36 yrs.
Lynwood Hayes	17 yrs.	Rosalind Schwartz	30 yrs.
Edith Kaltman	16 yrs.	Ann Seifer	33 yrs.
Helen Kowalski	32 yrs.	Dolores Shaw	25 yrs.
Ralph Lee	21 yrs.	Pauline Troia	32 yrs.
Lillian Lomanto	25 yrs.	Joseph Vitale	34 yrs.
Isidore Malament	20 yrs.	Euthila Wilson	16 yrs.
Sivelo Mancuso	35 yrs.	Martin Wishnew	23 yrs.

Respectfully submitted,

ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York.

January 18, 1977

UNITED STATES ATTORNEY'S OFFICE SOUTHERN DISTRICT OF NEW YORK

ROBERT B. FISKE, JR.
United States Attorney

Executive Staff
1976

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Executive Asst. U.S. Attorney

JOSEPH JAFFE
Administrative Asst. U.S. Attorney

Criminal Division
1976

Division and Unit Chiefs

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Chief, Criminal Division

DON D. BUCHWALD
Assistant Chief

T. BARRY KINGHAM
Assistant Chief

FRANK H. WOHL
Assistant Chief

DANIEL J. BELLER
Chief, Major Crimes Unit

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1976

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Assistant U.S. Attorneys Who Resigned During 1976

Bannigan, Eugene	(Chief, Narcotics Unit) Resigned 1-30-76
Barkan, Mel P.	(Assistant Chief, Civil Division) Resigned 3-5-76
Bronner, William R.	Resigned 10-22-76
Bush, John N.	Resigned 8-17 76
Davis, V. Pamela	Resigned 11-5-76
Edwards, Thomas D.	(Chief, Criminal Division, Chief Asst. U.S. Attorney) Resigned 6-15-76
Feffer, Gerald A.	(Assistant Chief, Criminal Division) Resigned 5-21-76
Glassman, Steven J.	(Civil Appellate Attorney) Resigned 5-7-76
Gordan, John D. III	(Chief Appellate Attorney, Executive Asst. U.S. Attorney) Resigned 6-5-76
Harris, Jeffrey	Resigned 4-3-76
Hemley, Robert E.	Resigned 7-2-76
Hoskins, Richard J.	Resigned 1-16-76
Kuriansky, Edward J.	Resigned 1-2-76
Littlefield, Bancroft Jr.	Resigned 7-30-76
Maguire, Mary P.	Resigned 12-10-76
Mukasey, Michael B.	(Chief, Official Corruption Unit) Resigned 3-26-76
Nesland, James E.	Resigned 9-17-76
Potter, Gregory J.	(Administrative Asst. U.S. Attorney) Resigned 10-9-76
Pykett, Daniel J.	Resigned 5-21-76
Sabetta, John C.	(Chief Appellate Attorney) Resigned 7-31-76
Sagor, Elliot G.	Resigned 5-31-76
Sorkin, Ira L.	(Assistant Chief, Criminal Division) Resigned 12-31-76
Timbers, John W.	Resigned 9-10-76
Wile, Richard	Resigned 6-28-76

Report of Activities June 1973 - October 1975

UNITED STATES ATTORNEY

Southern District of New York

CONTINUED

1 OF 2

NARCOTICS ENFORCEMENT

By

Eugene F. Bannigan
Chief, Narcotics Unit

This office's reputation as the leading prosecutor's office in the United States is largely based on its long history of successful prosecutions of large scale narcotics dealers. Our office was the first federal prosecutors office to create a specialized unit of attorneys to investigate and prosecute narcotics cases. The effectiveness of this concept is evidenced by the narcotics prosecutions which have been successfully undertaken over the years. Cases such as United States v. Genovese, United States v. Bentvena and United States v. Cirillo are examples of successful prosecutions of the major domestic narcotics dealers of their day. The Narcotics Unit has carried on that tradition and cases such as United States v. Tramunti, United States v. Sperling, United States v. Mallah and United States v. Capra are examples of successful prosecutions of those who currently control the narcotics traffic.

However, the contribution of the Narcotics Unit in the past two years has in fact exceeded even its own past standards and that contribution has been in several areas: (1) the number of major narcotics dealers convicted exceeds any past period in our office's history; (2) the prosecution of large narcotics conspiracy cases, which make possible the breaking up of an entire narcotics distribution network, has greatly increased; and (3) the prosecution of South American and Far Eastern sources and domestic distribution networks have demonstrated and exposed hitherto unknown syndicates.

During the period 1973 through October, 1975 the Narcotics Unit has successfully prosecuted an unprecedented number of major narcotics dealers and in many cases has succeeded not only in convicting the main figures but also in exposing and convicting those involved at all the various levels of the importation-distribution chain.

Many of these networks were controlled and financed by Organized Crime. For example, United States v. Tramunti involved a vast ring of narcotics dealers headed by Carmine Tramunti responsible for distributing multimillion dollar quantities of heroin over a four year period. United States v. Sperling and the related case of United States v. Mallah involved an organization of over 30 individuals who distributed staggering amounts of narcotics in the New York area. United States v. Casamento and United States v. Capra also involved large scale networks which had operated untouched by law enforcement for many years.

In addition to these very significant prosecutions of the traditional Organized Crime dominated distribution networks, recent indictments and prosecutions have revealed other sources and networks which have been, and are, responsible for importing and selling as much, if not more, heroin and cocaine as the so-called Organized Crime syndicates. Since 1969 and 1970 narcotics enforcement experts have been saying that there are a number of loosely organized yet very efficient foreign dominated importation distribution networks responsible for importing from various South American countries as much narcotics as the Organized Crime networks. This office's successful prosecutions in cases such as United States v. Veciana, United States v. Torres, and United States v. Ortega-Alvarez, established the validity of this theory. The Veciana case involved the importation from Bolivia by Bolivian diplomats of 25 kilograms of pure cocaine. The Torres case involved the importation of more than 300 pounds of heroin and cocaine from Argentina by concealing it in antique picture frames. The Ortega-Alvarez case involved twelve individuals who imported over 45 kilograms of pure heroin from Argentina to New York City.

Similarly, this office's involvement with DEA in the investigation of the importation of heroin from the Far East has resulted in the indictment of 25 defendants who were part of a narcotics importation network that imported over 200 pounds of heroin and 100 pounds of opium from Bangkok, Thailand into the United States and Canada.

One other case, United States v. Rivera, prosecuted by the Narcotics Unit deserves special mention. Rivera was one of three individuals who was involved in the murder of Special Agent Frank Tummillo and the wounding of Special Agent Thomas Devine. Rivera was convicted and sentenced to life imprisonment.

82-018 O - 77 - 7

UNITED STATES v. CARMINE TRAMUNTI, et al.

In a major narcotics prosecution, Carmine Tramunti, a major figure in organized crime, and seventeen others were convicted of conspiracy to violate the federal narcotics laws. The evidence at trial disclosed trafficking over a four year period in multi-kilogram quantities of heroin and cocaine, worth millions of dollars even at the wholesale level, and distributed in both New York City and Washington, D.C. Among the more notorious defendants were:

Carmine "Mr. Gribs" Tramunti, the financier of the operation, had earlier been convicted for perjury in testimony he gave while a defendant in a securities fraud trial in the Southern District;

Louis "GIGI" Inglese, the operational head of the narcotics distribution ring was previously convicted in the Southern District for offering a $200,000 bribe to a federal agent to learn the whereabouts of a federal witness so that the witness could be murdered;

Joseph DiNapoli, arrested carrying nearly one million dollars in cash to be used to purchase narcotics to supply the operation, was previously convicted in this district for loansharking.

The trial lasted eight weeks before the Honorable Kevin T. Duffy. Originally, thirty-two defendants were indicted, but many including several significant narcotics violators were fugitives at the time of trial. It is anticipated that additional trials will result from this investigation. The prosecution resulted from investigations conducted by the New York City Police Department and the Drug Enforcement Administration. The prosecution would not have been possible without the aid of the witness protection program: four Government witnesses received new names and identities and they and their families were relocated.

Tramunti was sentenced to fifteen years imprisonment consecutive to 5 years he is now serving; Inglese, who was convicted of thirteen violations of the narcotics laws, to forty years consecutive to 15 years he is now serving; and DiNapoli to twenty years.

(U. S. Attorney Paul J. Curran;
Assistant United States Attorneys:
Walter Phillips, Thomas Engel and
Thomas Fortuin.)

cocaine in the Metropolitan New York area. Pacelli had been previously convicted for narcotics sales and sentenced to 20 years imprisonment.

The proof at trial showed that Pacelli and Sperling were two interrelated narcotics distribution rings. Pacelli's group furnished Sperling's with kilogram quantities of cocaine and, in turn, Sperling supplied heroin to Pacelli.

Mallah was Sperling's partner and acted as a source of funds. During the course of the investigation a New York City Police Officer hidden in the trunk of a Cadillac overheard Sperling and Mallah on one occasion standing next to the car discussing a $50,000 narcotics transaction.

Mallah received a 10 year sentence while Catino and Barrett received sentences of 12 and 5 years. Pacelli, who received 15 years, is awaiting trial for the murder of a witness in an earlier case.

(Assistant United States Attorney
James Lavin)

UNITED STATES v. JOHN CAPRA, et al.

The indictment in this case charged John Capra, Leoluca Guarino, Stephen DellaCava, Robert Jermain, Alan Morris, George Harris and five others, in five counts, with federal narcotics violations. The evidence established that Capra, Guarino and DellaCava were the key figures in a New York centered narcotics ring which engaged in the massive marketing of heroin and cocaine from 1969 to 1973. Guarino secured the drugs from importers; Capra acted as distributor; and DellaCava made the deliveries.

Joaquin Ramos, who testified for the Government at t l and his partner Robert Jermain purchased drugs from Capra and Guarino and resold them to Alan Morris and George Harris, two major drug dealers in Detroit.

After a five week trial before Judge Marvin E. Frankel, the defendants were found guilty. The sentences included prison terms ranging from 8 to 18 years.

(Assistant United States Attorneys
Gerald Feffer and Lawrence Feld)

UNITED STATES v. GENNARO ZANFARDINO, et al.

The indictment in this case charged 13 defendants in 6 counts with various violations of the federal narcotics laws. Five of the defendants, Oreste Abbamorte, Thomas Lentini, George Coumoutsos, James Odierno and Joseph Mack pleaded guilty before trial. Three defendants, Gennaro Zanfardino, John Campopiano and Arcadio Boria, were tried before Judge Charles L. Brieant and a jury. The jury found the defendants guilty on all counts.

The evidence showed that Zanfardino was the kingpin of a major narcotics ring whose operation centered in the Bronx and East Harlem. Campopiano, Zanfardino's principal aide, assisted by Lentini and Abbamonte, directed the day to day distribution of large amounts of heroin and cocaine. Coumoutsos and Odierno served as couriers in the distribution of the narcotics. The Government's principal witness, Dolores Martinez, testified that she and her husband purchased large quantities of heroin and cocaine from this ring, which they, in turn, sold to various customers throughout the Harlem community, including Boria and certain of the other named defendants.

Before trial, Zanfardino, Campopiano, Lentini, Abbamonte and two others paid $100,000 in cash as a down-payment on a $200,000 bribe to two police officers for the destruction of certain evidence in the case, namely, 106 reels of videotape film which were taken by the police during the course of its surveillance of the defendants and for information concerning the whereabouts of Dolores Martinez, who had then been relocated, in order to enable them to murder her.

On October 13, 1973 Judge Brieant sentenced Zanfardino as a second narcotics offender to 25 years imprisonment. Campopiano, also a second narcotics offender, received a 20-year term of imprisonment to run consecutively to a 5-year term previously imposed in another narcotics case and to a consecutive 15-year term imposed for his participation in the conspiracy to obstruct justice and bribery connected with the attempt to destroy evidence and murder the Government's principal witness. Boria received a 6-year term of imprisonment and Zanfardino received a concurrent 15-year term of imprisonment.

(Assistant United States Attorneys Gerald Feffer, Mel Barkan and Larry Feld)

United States v. Eduardo Arroyo, et al.

This case, called by the Court of Appeals for the Second Circuit "one of the largest heroin importation conspiracies of recent years", involved the smuggling by the defendants of over one third of a ton of pure heroin.

In the summer of 1972 Alfredo Aviles, under indictment for other narcotics crimes, informed this office that a Frenchman in New York and several South Americans in Argentina were arranging for the importation of 132 pounds of heroin. A Spanish-speaking New York City detective assigned to the New York Joint Task Force posed as a willing buyer of this shipment. The detective, operating out of a midtown hotel room, spoke by telephone to the importer in Belguim and the South Americans in Argentina. At the same time the detective was introduced by the cooperating defendant to several persons in New York, all major narcotics distributors, who agreed to purchase all or some of the 132 pounds from the detective when it arrived.

In October, 1972, Brazilian authorities seized the load of heroin from a ship off the coast of Brazil, thereby preventing it from reaching its destination.

The investigation also disclosed that this narcotics ring was responsible for at least two other shipments one of 250 pounds of heroin which had been smuggled successfully into the country in secret recesses of a Volvo automobile.

Two defendants pleaded guilty and testified for the Government at the trial of five other defendants, all of whom were convicted after a three week trial. These included the defendants Eduardo Arroyo, Rafael Gonzalez, and Carlos Sanchez who were to be the purchasers of the smuggled shipments of heroin. Arroyo was sentenced to thirty years imprisonment, Gonzalez, to twenty-five, and Sanchez to fifteen. Three additional defendants were unavailable for trial as they were incarcerated in foreign countries for their part in the scheme and another defendant was murdered.

On March 22, 1974, the Court of Appeals affirmed the convictions.

(Assistant United States Attorney Franklin B. Velie)

United States v. Vincent Papa, et al.

A three count indictment was filed on March 18, 1974 charging Vincent Papa with conspiring to violate the federal narcotics laws, possession with the intent to distribute, and distribution of heroin. Named as Papa's co-defendants were Victor Euphemia, Antony Stanzione, Jack Locorrieri, Vincent Papa, Jr., and Peter Giamarino. Count One of that indictment charged that the defendants were members of a conspiracy to distribute multi-kilogram quantities of heroin. That count also charged that, on February 3, 1972, Vincent Papa possessed approximately $967,000 in cash in furtherance of the conspiracy.

The second count of the indictment also charged Vincent Papa and Anthony Stanzione with possession of approximately 160 pounds of heroin in two suitcases in early 1972, with the intention to distribute that heroin.

Despite $500,000 bail the defendant Stanzione fled on the eve of trial. Vincent Papa, Sr., was convicted on all counts and sentenced to concurrent terms of 20 years and 15 years imprisonment. Also, Victor Euphemia was sentenced to 14 years imprisonment.

(Assistant United States Attorneys John P. Cooney, Jr. and Daniel J. Beller)

United States v. D'Amato, et al.

In September, 1973, Frank D'Amato, who was described by witnesses at his trial as having taken over the heroin business of Vincent Papa after Papa went to jail in 1972, was convicted with two of his associates, Philip Abramo and Richard Zito, of conspiracy and sale of heroin. Prior to trial the fourth defendant, Frank Burdieri, who had acted as front man for D'Amato during negotiations with the undercover agent was murdered and his body was found washed up on Silver Beach in the Bronx. D'Amato received a sentence of 8 years imprisonment, Abramo 7 years imprisonment and Zito 5 years imprisonment.

(Assistant United States Attorney Bancroft Littlefield)

United States v. Malizia

In 1971, Ernest Malizia and his brother Joseph Malizia, major wholesale narcotics distributors in Manhattan were indicted for conspiracy and sale of heroin and cocaine. Following the indictment both became fugitives and it was not until December, 1973, that Ernest Malizia was arrested. In March, 1974, Malizia was convicted despite the fact that the Government informant who had made the purchase of narcotics from him disappeared before the trial and did not testify. After the conviction Malizia was sentenced to 10 years imprisonment. In September, 1974, the day after his conviction was affirmed by the United States Court of Appeals, Malizia escaped from the Federal House of Detention and he has not as yet been re-apprehended.

(Assistant United States Attorney Bancroft Littlefield)

United States v. Joseph Magnano, Anthony DeLutro, Frank Lucas, et al.

This indictment filed in January, 1975 charges 19 defendants with conspiring to violate and with substantive violations of the federal narcotics laws. Pursuant to a search warrant executed on January 28, 1975 at the New Jersey home of one of the defendants, Frank Lucas, over $580,000 in cash was seized as evidence of the conspiracy charged in the indictment. The indictment charges that the defendants Ernest Malizia and co-conspirators Mario Perna and Anthony Verzino were involved in a partnership to purchase and sell hundreds of thousands of dollars worth of heroin. It charges that these three partners purchased heroin from three sources and in turn sold the heroin to various customers in the Bronx and Manhattan.

The defendants Joseph Magnano, Frank Palatta, Richard Bolella, Louis Macchiarola, Michael Carbone, Dominick Tufaro, Frank Ferraro and Carmien Margiasso supplied the Malizia-Perna-Verzino partnership with over 18 kilograms of heroin in March and November 1973. The defendant Anthony DeLutro supplied this same partnership with the kilograms of heroin in November 1973 and the defendants DeLutro and Joseph Malizia supplied 3 kilograms of heroin in January 1974.

The Malizia-Perna-Verzino operation then sold this heroin to various customers in the Bronx and Manhattan. The defendant Frank Lucas in March and December, 1973 purchased from the partnership 13 kilograms of heroin and 2 kilograms of cocaine and in turn distributed these narcotics within the New York Metropolitan area. The defendants John Gwynn, Gerard Cachoian, Roberto Rivera and Frank Caravella are also charged with purchasing heroin from this same partnership.

On October 24, 1975 following a five week trial before the Honorable Irving Ben Cooper, eight of the nine defendants on trial were convicted. As second offenders Lucas and DeLutro face substantial sentences.

(Assistant United States Attorneys
Dominic Amorosa; Federico Virella
and Rudolph W. Giuliani)

United States v. Anthony Manfredonia, et. al.

This fourteen count indictment charges Anthony Manfredonia, and eight other persons with conspiring to violate the federal narcotics laws and possession and distribution of kilogram amounts of heroin and cocaine.

The other defendants are:

Lawrence Iarossi;
Graziano Rizzo, a/k/a Ju-Ju;
Leonard Rizzo;
Joseph Barone, a/k/a Frankie;
Fiore Rizzo;
Renato Croce, a/k/a Rene;
Patsy Anatala, a/k/a Bart.

The indictment, which was filed on February 21, 1975 charges that from January 1, 1968 to the present the nine defendants along with others were members of a conspiracy to distribute large amounts of heroin both in New York City and Pittsburgh. The indictment charges that various of the defendants supplied half and full kilogram quantities of heroin to other persons approximately twice a week steadily for over two years. The drugs were delivered to the defendants at Kennedy, LaGuardia and Newark Airports and then redistributed to ultimate customers in Pittsburgh, Pennsylvania and New York City. This case is scheduled for trial in January 1976.

(Assistant United States Attorney James Lavin)

United States v. Joseph Stassi, Anthony Stassi, Jean Claude Otvos, William Sorenson, and Jean Guidicelli.

This indictment charges five defendants with conspiring to import into the United States approximately 240 kilograms of heroin and the actual importation of 110 kilograms. The importations of this heroin were arranged by defendants and co-conspirators who were imprisoned at the Federal Penitentiary in Atlanta, Georgia and actually carried out by others they selected to act for them in France, Montreal and New York. The heroin was brought into the United States concealed in automobiles which were packed with heroin in France, shipped to Montreal and then driven by couriers across the border and into the New York Metropolitan area.

The defendants are:
Joseph Stassi, a/k/a "Joe Rogers;"
Anthony Stassi;
Jean Claude Otvos;
William Sorenson, a/k/a "Bubby;"
Jean Guidicelli, a/k/a "the Uncle;"

The indictment charges that the crimes were planned and organized within the Federal Penitentiary, Atlanta, Georgia. According to the indictment in March, 1970, four prisoners, defendants Joseph Stassi and Jean Claude Otvos and co-conspirators Mario Perna and Anthony Verzino, agreed to arrange for the importation of large amounts of heroin. They agreed to recruit others such as defendant Anthony Stassi, who was not in jail, and defendant William Sorenson, who was about to be released, to negotiate and arrange the actual importations. According to the indictment, Anthony Stassi met with the defendant Jean Guidicelli, a/k/a "the Uncle," in May, 1970, and negotiated for the importation of 120 kilograms of heroin from France to the United States.

The indictment also charges that pursuant to this agreement in September, 1970, co-conspirator Michel Mastantuono imported from France to New York 40 kilograms of heroin concealed in a Citroen automobile. According to the indictment, Mastantuono drove the Citroen from Biarritz to Paris, France, had it shipped to Montreal, and later drove it to Westchester county, where he delivered the 40 kilograms of heroin to the defendant Anthony Stassi for eventual distribution in the New York area.

The indictment also alleges a second importation of 70 kilograms of heroin which occurred in June, 1971. According to the indictment, this 70 kilograms was also imported by concealing it in an automobile, and it was eventually delivered to Anthony Stassi for local distribution.

(Assistant United States Attorneys
Rudolph W. Giuliani and James Nesland)

United States v. Burnie McCall

McCall, one of the largest narcotics dealers in Buffalo, was convicted of organizing and managing a large heroin distribution network between Buffalo, New York City and New Orleans. The proof at trial showed that McCall and his co-conspirators every month shipped kilogram quantities of heroin between those cities using female couriers. Payment was made in cash and by Western Union money orders.

McCall had previously been convicted in a state narcotics case and sentenced to 20 years imprisonment, but his sentence was reversed on appeal. Subsequently in another state case the indictment charging him with narcotics sales was dismissed because the narcotics were discovered missing from the police department safe.

In the instant case McCall was sentenced to seventeen years imprisonment, his conviction was affirmed in the Court of Appeals, and certiorari was denied by the Supreme Court.

The case was prosecuted with the assistance of Andrew J. Maloney, Director of the Northeast Region of the Office of Drug Abuse and Law Enforcement.

(Assistant United States Attorney
John H. Gross)

United States v. Samuel Glasser, Joseph Valverde, Eugene Piper, Martin Kreimen, Stanley Greenstein

This indictment is significant because it involves a South American importation-distribution conspiracy allegedly run and operated by relatively young upper middle

class professionals. Samuel Glasser, a 30 year old Manhattan attorney, and Joseph Valverde, a 26 year old businessman are principals in Vintage Vendors, Inc., a company that imports wine from Argentina. The indictment charges that Glasser and Valverde over a one and a half year period imported cocaine from various South American countries, including Bolivia and Argentiana and distributed that cocaine in the New York area.

The defendant Eugene Piper, a 27 year old male model, is charged as one of the middlemen in the operation. It is alleged that Glasser and Valverde sold some of the imported cocaine to Piper who in turn distributed the drugs to the defendants Steven Greenstein and Martin Kreimen.

Greenstein and Kreimen have already pleaded guilty. Piper, during a suppression hearing held in May, 1975, admitted his involvement and explained under oath that his source for cocaine was Glasser and Valverde. The case is pending for trial.

(Assistant United States Attorneys
Rudolph W. Giuliani and John Flannery).

United States v. Ortega-Alvarez, et al.

On October 10, 1973, a federal grand jury in the Southern District of New York filed a multi-count indictment charging 22 defendants with conspiracy to traffic in heroin and substantive offenses. All but one of the defendants was Cuban and most were large scale wholesaler-retailers operating in New York, New Jersey and Florida. The substantive charges related to the distribution in 1970 by Raul Ortega-Alvarez, the lead defendant, of 60 kilograms of 80-90% pure heroin imported from Argentina.

Eight defendants were convicted by a jury after a four-week trial conducted in Spanish and English. Three more defendants plead guilty and one defendant tried separately was also convicted. The defendants received sentences ranging from 5 to 12 years in prison. Among the major violators convicted were: Raul Ortega Alvarez, Jorge Infiesta, Armando Alvarez and Charles Busigo Cifre. The convictions were affirmed by the Second Circuit Court of Appeals on November 8, 1974.

(Assistant United States Attorneys
Shirah Neiman and Alan Kaufman)

United States v. Luis Reyes

Luis Reyes, a fugitive defendant at the time of the Ortega-Alvarez trial, was apprehended on August 25, 1975. Reyes was tried before Judge Edmund Palmieri and a jury and convicted of conspiracy to violate the federal narcotics laws. Reyes, a multi-kilogram dealer of heroin and importer of cocaine, faces a minimum sentence of five years imprisonment.

(Assistant United States Attorney Daniel Beller)

United States v. Casamento, et al.

In 1972, more than 90 kilograms of heroin were smuggled into the United States from Portugal and sold in New York to two major wholesale distributors in Brooklyn, Carlo Zippo and Phillipo Casamento. The international network responsible for this smuggling operation consisted of two French ex-patriots, Lucien Sarti and Christian David, narcotics financiers who organized the network from South America; two unidentified Corsicans who manufactured the heroin in laboratories in Marseilles, France, and transported it to Lisbon, Portugal; Luis Filippe de Costa Pires, a steward for the Portuguese airlines who smuggled the heroin from Lisbon to New York on regularly scheduled TAP flights, Michel Nicoli, a Frenchman living in Brazil who was in contact with the buyers in New York; two other French narcotics dealers, Claude Pastou and Leon Petit, living in South America who were sent to New York by the financiers to receive the heroin, deliver it to the buyers and smuggle the proceeds back to Brazil in false bottomed suitcases, and the buyers in New York, Carlo Zippo and Phillipo Casamento.

David, Pires, Nicoli and Pastou have plead guilty to conspiracy in the United States. Sarti is dead. Pastou and Nicoli have served as government witnesses in a number of cases involving international smuggling of drugs. Casamento was convicted after trial and was sentenced to the maximum sentence of 15 years imprisonment.

(Assistant United States Attorney Bancroft Littlefield)

United States v. Calabrese, et al.

In September, 1973, Adolfo Sobocki, indicted in this District in 1972, and one of the largest South American cocaine traffickers known to DEA was brought to the United States from Chile. After pleading guilty to the charges against him, Sobocki served as a government witness and admitted in trial testimony distributing more than 500 kilograms of cocaine for sale in the United States between 1963 and 1973.

In related investigations, five major South American traffickers Vladimir Banderas, Juan Carlos Canonico, Emelio Qinteros, Selim Valenzuela and Francisco Guinart, were brought to the United States from Chile. These defendants have all plead guilty to cases involving the importation and sale of drugs totalling more than 1,000 kilograms. Methods of smuggling admitted by the defendants include wine bottles, airplanes, boats, trucks, table tops, shoes, aerosol cans and milk jugs.

(Assistant United States Attorney Bancroft Littlefield)

United States v. Anthony Torres and Robert Rivera

From September, 1971, to September, 1972, an international group of narcotics distributors smuggled more than 330 pounds of heroin and cocaine into the United States from Argentina concealed in hollowed out antique picture frames. This method of smuggling was discovered in September, 1972, when United States Customs Agents at John F. Kennedy Airport found 18 kilograms of heroin and 9 kilograms of cocaine secreted inside four picture frames airfreighted to New York from Buenos Aires. Following the seizure arrests were made in Manhattan of the receivers of the frames and subsequent investigation by Customs Agents and Agents of the Bureau of Narcotics and Dangerous Drugs revealed 6 prior shipments of frames from the same source to the same receiver.

Thereafter a number of international narcotics smugglers, including Vladimir Banderas and Alfredo Mazza, were arrested, plead guilty to their roles in financing and organizing the picture frame narcotics shipments and agreed to serve as Government witnesses. Their testimony implicated the wholesale buyers in New York and after trial the two chief buyers, Anthony Torres and Roberto Rivera, were convicted of conspiracy and distribution of heroin and

cocaine. Rivera received the maximum sentence of 15 years imprisonment. Torres, as a second offender, was sentenced to 20 years imprisonment. Both convictions were affirmed by the Court of Appeals.

(Assistant United States Attorney Bancroft Littlefield)

United States v. Veciana, et al.

In 1972 and 1973, Antonio Veciana, Ariel Pomares and Agustin Barres, three wealthy Cuban businessmen living in Miami, Florida who worked as boxing and baseball promoters, smuggled 25 kilograms of pure cocaine into the United States from Bolivia, employing Bolivian diplomats to carry the cocaine through United States customs. In July, 1973 Barres was arrested while selling seven kilograms of cocaine to an undercover agent in a Manhattan hotel and Barres subsequently testified at trial against the other defendants. After conviction Veciana received a sentence of 7 years imprisonment and Pomares 5 years imprisonment.

(Assistant United States Attorney Bancroft Littlefield)

United States v. MA SSU TS'UNG, et al.
United States v. BING HIN LOW, et al.

In September, 1974, 25 defendants in these related cases were indicted for conspiracy to import into the United States and Canada over 200 pounds of pure heroin and more than 100 pounds of opium. The indictments, which resulted from a two year joint investigation by the Drug Enforcement Administration and Royal Canadian Mounted Police, charged that the defendants smuggled the narcotics from Bangkok, Thailand to North American and distributed it in New York, Chicago, Illinois, San Francisco, California, Montreal and Vancouver, Canada.

On October 20, 1975, following a one month trial before the Honorable Robert J. Ward, three of the four defendants who were available for trial were convicted. Two additional defendants had earlier plead guilty. Another defendant was arrested in Norway, convicted and sentenced to 7 years imprisonment. Other trials will be scheduled, pending the outcome of this office's requests to Canada and Thailand for the extratition of additional defendants.

(Assistant United States Attorneys Eugene Bannigan, Alan Kaufman, John Flannery and Angus Macbeth)

United States v. Wing Pui Lai, et al.

In September, 1973, four defendants were charged with conspiracy to distribute multi-kilogram quantities of heroin in New York City. During the course of the trial WING PUI LAI was shown to be the source for ten pounds of heroin seized in New York City in June, 1973 and an additional 25 pounds seized in Toronto, Canada by the Royal Canadian Mounted Police, in March, 1973. Records seized from Lai at the time of his arrest established that during the eight months prior to his indictment Lai had received over half a million dollars from his narcotics trafficing business. Three of the defendants including Lai, were convicted following a jury trial. Lai was sentenced to a 10 year term of imprisonment; his co-defendants' received prison sentences of 7 and 5 years respectively. The fourth defendant, Lai's wife, was acquitted after a trial by the Court.

(Assistant United States Attorney Eugene Bannigan)

UNITED STATES V. ISMAEL RIVERA

In June, 1974, Ismael Rivera was convicted of first degree murder, assault and attempted robbery, for his involvement in the October, 1972 killing of Special Agent Frank Tummillo and the wounding of Special Agent Thomas Devine of the Bureau of Narcotics and Dangerous Drugs. Rivera's arrest and subsequent conviction resulted from a year and a half joint investigation conducted by DEA and the office of the United States Attorney for the Southern District of New York. Rivera received a sentence of life imprisonment for the murder and a consecutive 25 years imprisonment for the attempted robbery and assault. Agent Tummillo, a courageous agent, was murdered when the defendant and his accomplices, believing he was a purchaser of drugs, attempted to steal the money he had brought with him to make an undercover purchase of narcotics. Rivera's conviction was affirmed by the United States Court of Appeals for the Second Circuit on March 13, 1975.

(Assistant United States Attorney Eugene Bannigan)

United States v. Pacelli

During the course of his 1972 trial for violation of the federal narcotics laws, Pacelli brutally murdered a Government witness to prevent her testifying against him. He was subsequently indicted for this murder under the Civil Rights Act, convicted and sentenced to life imprisonment. Pacelli's conviction was affirmed by the United States Court of Appeals for the Second Circuit on July 24, 1975.

(Assistant United States Attorneys Thomas D. Edwards and James E. Nesland)

United States v. Coraluzzo, et al.

Ernest Coraluzzo and nineteen co-defendants were indicted for conspiracy to violate the federal narcotics laws and for distributing multi-kilogram quantities of heroin and cocaine in the New York and Miami, Florida areas. Following a month long trial, Coraluzzo and eleven of his co-defendants were convicted and each was sentenced to five years imprisonment.

(Assistant United States Attorneys James Lavin and T. Gorman Reilly)

United States v. Peter Daly

Peter Daly, a former member of the Special Investigations Unit of the New York City Police Department, was tried and convicted for violating the federal narcotics law. Specifically, Daly was charged with stealing five kilograms of heroin from a 105 kilogram seizure and then selling the five kilograms. Daly, who fled to Ireland prior to his indictment, was extradicted from England, was convicted following a one week jury trial and sentenced to 10 years imprisonment.

(Asssistant United States Attorneys Joseph Jaffe and Eugene F. Bannigan)

United States v. Louis Inglese, et al.

Louis Inglese and five major narcotics dealers paid $100,000 in cash to two New York City policemen, who were acting undercover, to cause them to destroy videotapes and tap recordings which were to be used by the Government as evidence in the defendants' pending narcotics trials. The defendants also offered to pay an additional $100,000 for the address of the Government's key witness, with the intention of causing the witnesses' murder. Inglese and his five co-defendants were convicted of bribery and obstruction of justice.

(Assistant United States Attorneys John Gross and Walter M. Phillips)

United States v. Trabacchi

Trabacchi was indicted for conspiracy to violate the federal narcotics law. Specifically, it was charged that in concert with others Trabacchi sold in excess of 15 kilograms of heroin. Following a one week jury trial Trabacchi was convicted. He was subsequently sentenced to 7 years imprisonment; and his conviction was affirmed.

(Assistant United States Attorney Robert Gold)

United States v. Earl Foddrell

Foddrell, a major Harlem narcotic wholesaler and an associate were convicted on November 27, 1974 of selling heroin to an undercover agent. Foddrell was sentenced to 10 years imprisonment. His conviction was affirmed in July 1975.

(Assistant United States Attorney Thomas E. Engel)

United States v. Marquez and Peralta

On October 27, 1975, a jury convicted Lionel Marquez, a/k/a "Chile Marquez," and Sergio Peralta Oyanedel of possession of approximately one kilogram of cocaine in August, 1972. Marquez is, in addition to having been involved in major smuggling and distribution of narcotics

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since his release from prison on a prior narcotics violation in 1972, a recognized participant in organized crime and gambling organizer. The testimony at trial included, in addition to three eye-witnesses of the narcotics transaction, proof that Mr. Marquez approached the fiance of Lina Gotes, the major witness against him, and offered to pay her $200 per week if she agreed not to testify against him. During the attempt to suborn perjury, Marquez also admitted his participation in a wide-ranging conspiracy to import more than 50 kilos of cocaine from South America, for which he had been acquitted in December, 1974.

(Assistant United States Attorney Frederick T. Davis)

Exhibit I

FCBI 1977

THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

February 10, 1977

Honorable Charles B. Rangel
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Rangel:

During my appearance before the Committee on December 10, 1976, in connection with its hearings on New York City Narcotics Law Enforcement, additional information on several matters was requested for inclusion in the record. The following information is being submitted pursuant to the Committee's request.

I. The number of additional Assistant United States Attorney positions requested by the Department of Justice, and the number received following review of the Department's request by the Office of Management and Budget, and the Congress.

For Fiscal Year (FY) 1976, the Department requested 220 additional Assistant United States Attorney positions. This request was reduced to 111 positions in the budget submitted by the Office of Management and Budget to Congress. Congress approved only 70 additional positions. A supplemental request was also submitted by the Department for FY '76, for 113 additional Assistant positions. The Office of Management and Budget approved a request for 47 positions, but only as an advance on the FY 1977 budget. The request for 47 additional positions was approved by Congress.

For FY 1977, the Department requested 251 additional Assistant positions; the Office of Management and Budget approved a request for 138 positions (in effect, only 85 new positions because of the 1976 advance), and Congress ultimately approved only 72 positions.

For FY 1978, the Department has submitted a request for 434 new positions for the United States Attorneys Offices; 184 of this total is for additional Assistant United States Attorneys, and the remainder is for support staff.

In addition to the above figures, in FY 1976 the Department requested the transfer of 32 attorney positions from the Criminal Division to the United States Attorneys Offices for assignment to Controlled Substances Units. This transfer was approved, and 32 new Assistant positions were thereby created, while the number of attorney positions in the Criminal Division was reduced by the same amount. It should be noted that the number of positions involved in this transfer does not reflect the total number of Assistant United States Attorneys who have been assigned to Controlled Substances Units. At present, some 70 Assistants are working in such units. Nor are these the only federal prosecutors conducting narcotics prosecutions. Controlled Substances Units have been established in only 19 of the 94 United States Attorneys Offices, and these units do not handle all of the narcotics cases brought even in those offices. Rather, the units are designed to prosecute complex, multi-defendant drug offenses; street level cases are frequently handled by other Assistants in the office.

With the exception of the transfer situation, the Department submitted the above requests for additional Assistant United States Attorney positions without designating a particular number as necessary for narcotics prosecutions, or any other specific prosecutorial activity. There is overall a critical shortage in the number of Assistant United States Attorneys available to prosecute matters of federal interest, and in its various budget submissions the Department has attempted to set forth the extent and the consequences of this shortage. In particular, the Department has pointed out that limited manpower in the United States Attorney's Offices has forced them to decline prosecutions in areas of federal concern, that overburdened state and local governments are frequently unable to prosecute cases deferred to them, and that increasingly, cases not prosecuted by the federal government cannot be prosecuted at all. The narcotics enforcement effort has been cited in the

Department's submissions as among the primary areas requiring an increase in federal prosecutors. It would be difficult to provide a detailed breakdown of the number of additional assistants required specifically for narcotics prosecutions, since, but for those cases brought by Controlled Substances Units, narcotics cases are handled by assistants who perform a variety of other functions as well. However, it can be said that as much as one third of the caseload in some United States Attorneys Offices is generated by narcotics prosecutions, and that the need for increased resources to prosecute narcotics violations accounts for a significant proportion of the additional Assistant United States Attorney positions requested by the Department.

II. Additional attorneys assigned to narcotics matters since April, 1976.

Since April 1976, the number of attorney positions in the Narcotic and Dangerous Drug Section of the Criminal Division in the Department of Justice has been increased from an authorized strength of 22 and a ceiling of 19 positions, to a total of 25 positions. Further increases are being considered.

Also since April, 1976, three United States Attorneys Offices, which previously did not have Controlled Substances Units, have been allocated additional Assistant United States Attorneys to handle controlled substances cases. The Baltimore and San Juan offices each received one additional Assistant United States Attorney; the Philadelphia office received two.

III. Policy Changes Made by the Department of Justice since the President's April 27, 1976 Message to the Congress on Drug Abuse.

The Department of Justice made no policy changes regarding narcotics enforcement as a result of the President's April 27, 1976 Message to the Congress on Drug Abuse. Although the President's message contained several proposals, primarily legislative, for improving the federal government's response to the problem of drug abuse, it did not announce or call for any new policy in drug law enforcement. Rather, it stressed the need to continue to afford the problem of drug abuse the high priority which it has received from the federal government in recent years, and to continue efforts to strengthen narcotics law enforcement.

As this Committee is aware, the primary federal enforcement policy is to target federal enforcement resources at high level narcotics violators, penetrating the interstate and international chains which make narcotics transactions possible. Since the President's April message, the Department has continued its efforts to strengthen the programs it had previously undertaken to implement this policy. For example, in February, 1975 the Department began a program of establishing Controlled Substances Units in selected United States Attorneys Offices across the country. These units are composed of specific prosecutors and agents who have been designated to work together in developing and prosecuting major conspiracy cases. Nineteen units have been established, and, as I mentioned earlier, three other United States Attorneys offices, in Baltimore, San Juan and Philadelphia have recently been allocated additional prosecutors to handle controlled substances cases.

The Department also has conducted a series of Controlled Substances Conferences, at which both investigating agents and federal prosecutors are given several days of concentrated instruction in the methods of developing and prosecuting major drug cases. Six such conferences have been held in different cities across the country, two of them since April, 1976. The Controlled Substances Units and Conferences promote not only a concrete focus upon penetrating the higher levels of narcotics operations, but also the emergence of the prosecutorial-investigatorial cooperation necessary to successful enforcement.

The Drug Enforcement Administration has also taken several measures within the past year to improve its effectiveness as a law enforcement agency. A number of internal management initiatives were undertaken to reorient its focus to higher level violators, including a reorganization of the Office of Enforcement, revision of the G-DEP system, the establishment of a headquarters staff to support conspiracy cases, and a revision of agent evaluation forms. Changes have also been made in DEA's intelligence operations, and additional budgetary resources have been allocated to intelligence activities. An agreement was signed between DEA and the Customs Service in December, 1975 and since that time most of the problems which interfered with DEA and Customs' establishing an effective working relationship have been resolved. These measures and others have previously been described for the Committee in greater length in statements submitted by the Drug Enforcement Administration. Further detail can be provided, however, if the Committee so desires.

It should be noted that although the President's April, 1976 message did not announce or result in any new drug law enforcement policy, it did contain two specific proposals for Executive Branch action which have been adopted. On May 12, 1976 the Attorney General was named Chairman of the newly created Cabinet Committee on Drug Law Enforcement. Representatives of DEA and all other agencies whose activities effect drug enforcement comprise the Working Group of this Cabinet Committee, and have been discussing, inter alia what measures can be taken to improve inter-agency cooperation. As one outgrowth of the Cabinet Committee's activities, the FBI has begun to devote additional attention to the problem of drug law fugitives.

The President's message also announced that the Secretary of Treasury and the Commissioner of Internal Revenue had been directed to develop a tax enforcement program aimed at high level drug violators, in concert with the Attorney General and the Administrator of the Drug Enforcement Administration. On July 27, 1976, an agreement was signed between IRS and DEA, and an initial identification of 375 Class I suspects has been forwarded to IRS.

IV. Status of San Diego CENTAC

Although Congressman Gilman asked several questions concerning the status of "the San Diego CENTAC," we believe that the Congressman may have been referring to a Criminal Division Conspiracy Unit in San Diego, and not a CENTAC Unit. A CENTAC Unit is by nature a temporary operation established by the Drug Enforcement Administration and aided by the Criminal Division. The purpose of such units is to localize and immobilize illicit narcotics operations which are operating on a multi-district basis. The units are managed from DEA headquarters in Washington, D.C., and are continually formed and disbanded as circumstances require. To our knowledge, no CENTAC Unit involving narcotics activities in the San Diego area has been disbanded because of dissension. Indeed, there are presently two CENTAC Units operating in the San Diego area which have yet to complete their functions.

There was a Criminal Division Narcotic Conspiracy Unit located in San Diego, California that was disbanded in July, 1976. This Unit was not dissolved because of any dissension, however, but rather because it was replaced by a Controlled Substances Unit formed in the San Diego United States Attorney's Office. Since the function of the Conspiracy Unit was taken over by members of the United States Attorney's

staff assigned to the Controlled Substances Unit, there was no longer any need for permanent deployment of Criminal Division attorneys to the office in San Diego.

V. Number of narcotic cases in the Southern District of New York United States Attorney's Office which originated with the New York City Police Department, or the Task Force.

This information is being furnished to the Committee directly by John F. Cooney, Chief of the Narcotics Section in the United States Attorney's Office for the Southern District of New York.

VI. Proposal to provide $7.5 million in federal assistance to the New York City Police Department for narcotics enforcement.

You asked during my testimony for further details concerning New York City's failure to take advantage of some $7.5 million in federal assistance for narcotics enforcement.

During the Fall of 1975 when New York City was experiencing severe fiscal problems, the city was discussing the layoff of numerous city employees including a large number of policemen. DEA has approximately 155 New York policemen assigned to the New York Joint Task Force and the Unified Intelligence Division. It was anticipated that general police layoffs would eventually reduce the city's ability to contribute to these narcotic enforcement programs.

DEA Associate Regional Director Arthur Grubert was aware that the New York State Department of Criminal Justice Services had $8 million of FY 1973 and 1974 unobligated LEAA funds which would have to be returned to LEAA unless used. Mr. Grubert discussed this with Mr. Frank Rogers, Commissioner of that State agency and confirmed the presence of those funds.

Mr. Grubert then prepared a draft proposal for the New York City Police Department to obtain $7.5 million of those dollars to pay the salaries of the New York Police Department officers assigned to the Joint Task Force and Unified Intelligence Division.

On October 20, 1975, Mr. Grubert accompanied by Mr. James Taylor, First Assistant Commissioner, New York Police Department, and Mr. Eisdorfer, Organized Crime Control Bureau, New York Police Department met with Mr. Frank Rogers to discuss the proposal. Mr. Rogers indicated that he was sympathetic with the proposal and would do what he could to help obtain the funds. He advised that the City of New York would have to submit the proposal for consideration. Shortly thereafter DEA also sent the proposal to the Criminal Justice Coordinating Council. The Council is responsible for handling all grants for New York City and would have to review, prepare and forward the final draft to the State agency.

Additionally, in January, 1976, officials from the DEA New York Regional Office met with Mr. Richard Parsons, Associate Director and Counsel, Domestic Council, who was interested in what could be done from the federal standpoint to assist New York City in the narcotics enforcement area. DEA recommended that Mr. Parsons support the city's request for the $7.5 million and also help the city in obtaining an additional $2.5 million of LEAA money for use in improving local prosecution efforts. New York City officials did review the proposal, but apparently decided for reasons they can best explain not to submit it. The Police Department never advised DEA of the status of the proposal, nor of any specific problems they may have had with it.

In summary, DEA located available funds, prepared the draft proposal and paved the way for the New York City Police Department to obtain $7.5 million to offset the salaries paid to police officers assigned to DEA programs. New York City never proceeded with the proposal and as such they lost the opportunity to obtain these funds.

After spending 8 1/2 years in public service, as a law clerk, as an Assistant United States Attorney in the Southern District of New York and as Associate Deputy Attorney General, on February 11, 1977, I will be resigning to enter the private practice of law in New York City. During most of those years I have been deeply involved in dealing with the criminal justice response to the problems created by drug abuse. While I was in the United States

Attorney's Office I served as Chief of its Narcotics Unit and here at the Department of Justice I have spent a great deal of time giving whatever guidance and assistance I could offer to carrying out the Department's responsibilities for narcotics law enforcement. My wife has also spent a large part of her professional life working in, and then supervising narcotics rehabilitation programs for women addicts in New York City. Thus, I believe I have seen and experienced enough of the practical effects of this problem so that I can qualify as an expert. As such, I must say that I am extremely pleased by the attitude taken by the Members and staff of this Committee. Too often committees, Congressional and otherwise, seek publicity rather than solutions. Your committee has avoided the short answer—high publicity approach and by its display of expertise both on the part of the Members and staff, and its attempt to deal with important and difficult problems, it has gained the respect of professionals in narcotics law enforcement.

If there is any way you believe I can be of assistance to the Committee, please do not hesitate to call upon me.

Sincerely,

Rudolph W. Giuliani
Associate Deputy Attorney General

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