

U.S. DEPARTMENT OF COMMERCE
National Technical Information Service

PB-253 610

COMMISSION ON THE REVIEW OF THE NATIONAL POLICY
TOWARD GAMBLING

DEPARTMENT OF JUSTICE AND IRS HEARINGS HELD AT
WASHINGTON, D. C. ON MAY 15, 1974

COMMISSION ON THE REVIEW OF THE NATIONAL
POLICY TOWARD GAMBLING

15 MAY 1974

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DEPARTMENT OF JUSTICE & IRS 5/15/74

CONFIDENTIAL

Washington, D.C.

Wednesday, May 15, 1974

ACE - FEDERAL REPORTERS, INC.

Official Reporters

415 Second Street, N.E.
Washington, D. C. 20002

Telephone:
(202) 547-6222

NATIONWIDE COVERAGE

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NATIONAL TECHNICAL
INFORMATION SERVICE
U.S. DEPARTMENT OF COMMERCE
SPRINGFIELD, VA. 22161

BIBLIOGRAPHIC DATA SHEET		1. Report No. RGC-76/C2	2.	3. Recipient's Accession No. FD-253 116
4. Title and Subtitle Commission on the Review of the National Policy Towards Gambling: Department of Justice and IRS Hearings Washington, D.C. May 15, 1974			5. Report Date May 15, 1974	
			6.	
7. Author(s)			8. Performing Organization Rept. No.	
9. Performing Organization Name and Address Commission on the Review of the National Policy Towards Gambling 2000 M Street, NW, Suite 3302 Washington, D.C. 20036			10. Project/Task/Work Unit No.	
			11. Contract/Grant No.	
12. Sponsoring Organization Name and Address same			13. Type of Report & Period Covered	
			14.	
15. Supplementary Notes				
16. Abstracts Testimony heard before the National Gambling Commission by representatives of the Department of Justice and Internal Revenue Service. Hearings conducted in Washington, D.C. on May 15, 1974				
17. Key Words and Document Analysis. 17a. Descriptors				
17b. Identifiers/Open-Ended Terms				
17c. COSATI Field Group				
18. Availability Statement No restriction on distribution. Available from NTIS Springfield, Va. 22151			19. Security Class (This Report) UNCLASSIFIED	
			20. Security Class (This Page) UNCLASSIFIED	
			21. No. of Pages 147	
			22. Price 6.75	

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ADJOURNMENT

1 COMMISSION ON THE REVIEW
2 OF THE
3 NATIONAL POLICY TOWARD GAMBLING
4 - - -
5

6 Room 457
7 Russell Senate Office Building
8 Washington, D.C.

9 Wednesday, May 15, 1974

10 The hearing was convened at 10:00 a.m.,

11 Charles H. Morin, Esq., Chairman of the Commission, presiding.

12 COMMISSION MEMBERS PRESENT:

13 DR. ETHEL D. ALLEN, Physician and Surgeon, City
14 Councilwoman, Philadelphia, Pennsylvania

15 THE HONORABLE HOWARD W. CANNON, Senator, Nevada

16 JAMES M. COLEMAN, ESQ., Attorney, Prosecutor of
17 Monmouth County, New Jersey

18 DAVID D. DOWD, JR., ESQ., Prosecuting Attorney,
19 Stark County, Ohio

20 MR. JOSEPH A. GIMMA, Partner, Hornblower & Weeks-
21 Hemphill, Noyes; Chairman, New York State Racing
22 Commission

23 ROBERT F. LIST, ESQ., Attorney General, State
24 of Nevada

25 STAFF:

MR. JAMES RITCHIE, Executive Director

P R O C E E D I N G S

CHAIRMAN MORIN: We are ready now to begin our second formal hearing of the Commission on the Review of the National Policy Toward Gambling.

The purpose of this hearing is to hear testimony from representatives of the Department of Justice, dealing generally with their experience in the field of enforcing gambling laws. We hope that they will have some suggestions for us. We are, indeed, a commission under the Organized Crime Control Act, and our function, I think, is to be as constructive as possible. We are working very closely with the Department of Justice as well as with other law enforcement agencies in the field, and we are very, very grateful for the help of the Department, and we are pleased to welcome here this morning Mr. Henry Dogin, who is Deputy Assistant Attorney General of the Criminal Division of the Department, and Mr. Edward T. Joyce, who is with us for the second time -- thank you for coming again, sir --

MR. JOYCE: You are welcome.

CHAIRMAN MORIN: -- Deputy Chief of the Organized Crime and Racketeering Section.

These gentlemen, I think, can speak with more authority than anybody in the country on the problems which there may be in this area.

I shan't take any more of your time.

1 (Whereupon, Mr. Henry Dogin and Mr. Edward T. Joyce
2 were sworn by Mr. Ritchie.)

3 TESTIMONY OF HENRY DOGIN, DEPUTY ASSISTANT ATTORNEY
4 GENERAL, CRIMINAL DIVISION, AND EDWARD T. JOYCE,
5 DEPUTY CHIEF, ORGANIZED CRIME AND RACKETEERING
6 SECTION

7 MR. DOGIN: Mr. Chairman, my name is Henry Dogin. I
8 am the Deputy Assistant Attorney General, Criminal Division of
9 the Department of Justice. I am accompanied by Mr. Edward T.
10 Joyce, Deputy Chief of the Organized Crime and Racketeering
11 Section of the Criminal Division.

12 We are here today representing Assistant Attorney
13 General Henry E. Petersen, the Chief of the Criminal Division.

14 We are happy to be here. We would like to present
15 to you today the assessment of the Department of Justice of the
16 problem of illegal gambling in this country and the experience
17 of the Department in the field of gambling legislation and en-
18 forcement since the early 1960's.

19 Gambling in the United States is pervasive and
20 exists in every imaginable form. These forms range from social
21 or entertainment games of chance to clandestine and illegal
22 wagers on horse races and sporting events. The social forms
23 of gambling are generally played among friends, whereas much
24 of the large-scale illegal gambling is associated with large,
25 diversified, criminal syndicates.

1 It is the unanimous conclusion of the President,
2 the Congress, and law enforcement officials that illegal
3 organized gambling is the largest single source of revenue for
4 organized crime. Gambling revenues are used to finance the
5 expansion of organized crime figures into other illegal activi-
6 ties and to provide capital for their acquisition of legitimate
7 businesses. Gambling revenue provides the initial investment
8 for narcotic trafficking, hijacking operations, prostitution
9 rings, and loan-sharking schemes.

10 The same organized crime figures who are involved
11 in illegal gambling are involved in these other nefarious
12 activities.

13 Gambling losers often turn to larcenous pursuits,
14 such as burglaries or the theft of stocks and bonds, to pay
15 off their debts. The losers are often forced to borrow from
16 organized crime loan sharks who by threat of strong-arm
17 tactics often become silent partners in the legitimate busi-
18 nesses of the losers.

19 To protect its gambling income, organized crime
20 spends millions of dollars to bribe, suborn and corrupt crimi-
21 nal justice officials. Organized crime figure Vincent C.
22 Teresa told the Permanent Investigations Subcommittee of the
23 Senate Government Operations Committee on July 27, 1971, that
24 organized crime figures have bought their way into police
25 stations and State courts across the country.

1 The 1971 hearings of the New York City Commission to
2 Investigate Alleged Police Corruption, the Knapp Commission,
3 pointed out how closely tied together were illegal gambling
4 operations and corruption of police officials. The hearings
5 produced dramatic testimony describing a pervasive and elaborate
6 system of payoffs to police officers. The methods of corruption
7 ran from the payoff to the uniformed officer by the numbers
8 collector, to the pad or pool of money established by the book-
9 maker or controller for the benefit of the plainclothesman or
10 the detective, to the payoffs of high police officials to pro-
11 tect the numbers bank or the illegal casino.

12 Recent investigations by the Justice Department's
13 Organized Crime and Racketeering Section's Strike Forces in the
14 field have uncovered payoffs to prominent police officials by
15 organized crime figures.

16 In December 1973 in Baltimore, eight police officers,
17 including the Commanding Officer of the Western District of the
18 Baltimore City Police Department, were indicted for accepting
19 bribes from a local gambling organization. In 1971, in the
20 famous Anchor Bar case in Detroit, payoffs to local police were
21 videotaped and recorded. The case resulted in the indictment of
22 17 police officers, including an inspector.

23 The illicit profits generated by illegal gambling for
24 the benefit of organized crime have been estimated to be between
25 \$7 billion and \$50 billion a year. The Organized Crime and

1 Racketeering Section has made a study of illegal gambling in the
2 United States which includes a breakdown between illegal gambling
3 operations controlled by the organized crime families and those
4 controlled by "independent" criminal elements. The term
5 "independent" in this context includes operators, some of whom
6 pay tribute to organized crime families for the purpose of
7 operating in a particular area.

8 The study made by the Section is based primarily on
9 an intensive two-year national investigation into illicit
10 gambling operations by the FBI for the period of 1971 and 1972,
11 on the activities and intelligence generated by the strike
12 forces, and on evaluations made by local U.S. Attorneys in those
13 geographical areas where no strike force officers were present.

14 During the course of study, New York City was care-
15 fully examined. New York City was the geographical area with
16 the most complete and comprehensive data. This was due primarily
17 to the fact that the five organized criminal families located
18 within the bounds of the New York City metropolitan area have
19 been fully investigated by Federal and local authorities and
20 because of the availability of several extensive private studies
21 on gambling in New York City.

22 From the information that was compiled from these
23 sources throughout the country, an estimate or a projection was
24 then made of gambling activities by the Section for 1973. It
25 should be emphasized that these projections were deliberately

1 conservative and were the absolute minimum sums involved in
2 illicit gambling.

3 The Organized Crime and Racketeering Section pro-
4 jected that in 1973 gross illegal wagers in the United States
5 probably amounted to between \$29 billion and \$39 billion.
6 Breaking this figure down into the three primary forms of
7 illegal gambling by percentages, we find that wagers on sporting
8 events amounted to 64.02 per cent of that figure; wagers on
9 numbers or policy amounted to 24.9 per cent of that figure; and
10 wagers on horse racing bets amounted to 10.9 per cent.

11 The study estimated that organized criminal families
12 controlled about 41.8 per cent of the gross illegal wagers
13 during 1973, while the gross profits controlled by the organized
14 crime families amounted to over \$4 billion.

15 Now, in examining the situation, a determination that
16 a book was controlled by an organized crime family was based on
17 sound, intelligence data. If there was any doubt concerning the
18 control of a particular book, the operation was considered con-
19 trolled by an independent criminal element.

20 In order to better understand the nature of organized
21 criminal control of illicit gambling, the study divided the
22 nation into New York City and five geographical areas. I will
23 briefly discuss the impact of organized criminal families upon
24 illicit gambling in each of these areas.

25 First, New York City. During 1973, gross illegal

1 wagers in New York City, according to this projection, amounted
2 to just under \$4.2 billion. Breaking this figure into respec-
3 tive percentages of wagers made on sporting events, numbers
4 games and horse racing, we find 66.7 per cent sporting events,
5 22 per cent numbers, and 11.3 per cent horse racing. The
6 organized criminal families controlled then 50.8 per cent of the
7 gross wagers which amounted to over \$2.1 billion. According
8 to the study, independent operators had \$2.1 billion also.

9 During 1973, gross wagers in the Northeast region
10 were \$7.4 billion. Wagers on numbers, sporting events and horse
11 racing accounted for 50.9 per cent, 45.6 per cent and 3.5 per
12 cent of this figure, respectively. The organized criminal
13 families controlled just over \$2.2 billion or 55.4 per cent of
14 the gross wagers for this region.

15 As far as the Southeast is concerned, during 1973
16 the projection or the estimate, the gross wagers in the South-
17 east amounted to just over \$5.0 billion. Wagers on sporting
18 events, numbers, and horse racing accounted for 65.4 per cent,
19 28.4 per cent, and 6.2 per cent of this figure, respectively.
20 Organized crime families controlled just over \$900 million or
21 35.7 per cent of the gross wagers for the region.

22 During 1973 the gross wagers in the Middle West
23 amounted to just under \$7.0 billion. Wagers on sporting events,
24 numbers and horse racing accounted for 56.3 per cent, 25.7 per
25 cent and 18 per cent of this figure, respectively. In the

1 Midwest, organized crime families controlled gross wagers just
2 under \$2.5 billion or 47.4 per cent for the region.

3 The information was rather scanty in the Southwest
4 but the projection ran along these lines: During 1973 gross
5 wagers in the Southwest amounted to just over \$1.4 billion.
6 Wagers on sporting events and horse racing accounted for 88.8
7 per cent and 11.2 per cent of this figure, respectively.

8 Organized crime families controlled gross wagers just under
9 \$35 million, 2 per cent.

10 Finally, the Far West. In 1973 gross wagers in the
11 Far West were just over 4.6 billion. Wagers on sporting
12 events and horse racing amounted to 86.7 per cent and 13.3
13 per cent of this figure, respectively. Organized crime families
14 controlled gross wagers just over \$830 million or 29.2 per cent.

15 To reiterate, then, organized criminal families
16 control about 50 per cent of the gross profits for illegal
17 gambling in the Northeast, including New York City, and Midwest
18 regions of the country; whereas they only dominate about a third
19 of the gross profits in the Southeast and Far West.
20 The majority of the Justice Department's 17 strike forces
21 operate in the Northeast and Midwest, where the highest gambling
22 is, as far as organized criminal families are concerned. All but
23 four of our 17 strike forces operate in the Northeast and
24 Midwest, and there are three alone in the metropolitan area of
25 New York City.

1 In the 1960's the Federal Government became more
2 acutely aware of the pervasive nature of illegal gambling and
3 of its importance as a source of revenue to organized crime in
4 financing such other more vicious activities as narcotics
5 purveying and loan-sharking, as well as the systematic
6 corruption of public officials. The Department of Justice
7 was also aware that the primary enforcement of the gambling
8 laws was the responsibility of State and local governments.
9 However, the history of the early '60's has shown that because
10 of corruption in many areas of the country, and because of the
11 fact that most significant gambling operations were multi-state
12 in nature, there was little or no significant local attack on
13 depriving organized crime of its gambling revenues.

14 To that end, Congress increased the Federal Govern-
15 ment's role in gambling enforcement by enacting a number of
16 statutes which Mr. Joyce will go into in length. The two most
17 important were Title 18, Section 1952 of the U.S. Code, the
18 Interstate Transportation in Aid of Racketeering Enterprises
19 statute in 1961, and in 1970 Congress passed Title 18, Section
20 1955 of the U.S. Code prohibiting illegal gambling businesses.

21 These statutes were then a response to the need for
22 more rigorous gambling enforcement and a recognition of illicit
23 gambling's importance to organized criminal elements in this
24 country.

25 Gambling enforcement at the Federal level rests

1 within the purview of the Organized Crime and Racketeering
2 Section. The Section's leadership role was due to the Depart-
3 ment of Justice's recognition of the intimate relationship be-
4 tween syndicated multi-jurisdictional gambling and organized
5 crime and the need for nationwide coordination of gambling
6 intelligence and enforcement.

7 The Organized Crime and Racketeering Section's cadre
8 of dedicated, talented career personnel, experts in the field of
9 gambling enforcement, made it uniquely qualified to assume this
10 leadership position.

11 The Organized Crime and Racketeering Section of the
12 Criminal Division of the Department of Justice was created
13 within the Division in the 1950's following the Kefauver inves-
14 tigation into organized crime. In 1956, the Section was staffed
15 with less than 10 attorneys and it was primarily concerned with
16 intelligence-gathering.

17 Following the Appalachian meeting in Upstate New York
18 in 1957, the office was expanded to include over 20 attorneys,
19 and several field offices were established, their function being
20 to gather intelligence concerning organized crime, and data
21 gathered was forwarded to the United States Attorneys.

22 Following investigations conducted by Senator
23 McClellan, the Section was expanded to just over 40 attorneys,
24 and the area coordinator concept was instituted. This concept
25 required frequent intelligence-gathering forays in the area

1 covered by each coordinator. The information gathered in this
2 manner was disseminated to the appropriate authorities. In-
3 vestigative grand juries were convened with resulting indict-
4 ments.

5 In January 1967, a strike force was set up and sent
6 to Buffalo, New York. This pilot project was the brainchild of
7 Henry Petersen. It was modeled on the model of the New York
8 County District Attorney's office created by Thomas Dewey and
9 carried forward by Frank S. Hogan. The Rackets Bureau in the
10 New York D.A.'s office with its detectives working with Assist-
11 ant District Attorneys was the prototype for the strike force.
12 Essentially, the strike force consisted of high-level repre-
13 sentatives of most Federal investigative agencies under the
14 supervision of an Organized Crime and Racketeering Section
15 attorney and in coordination with the local United States
16 Attorney. This highly successful project was replicated in 16
17 other cities where the organized crime problems are most acute.

18 Since the expansion of the strike-force concept,
19 the conviction rate of organized crime family members has
20 doubled. Of 730 organized crime-family members who were
21 indicted between 1959 and 1963, 136 were indicted for gambling.
22 Of 385 members convicted on these charges, 47 were for gamb-
23 ling charges, and a number of these cases were still pending.

24 Many significant organized crime figures have been
25 convicted because of their involvement in illegal gambling

1 activities, and because of the Justice Department's use of the
2 tools that Congress gave to us. The Justice Department's
3 anti-gambling organized crime enforcement program has resulted
4 in the convictions of the heads of several major crime families.
5 Raymond Patriarca in New England; and Sam "the Plumber"
6 Decavelcante, New Jersey; were all convicted as a result of
7 involvement in illegal gambling activities. Joe Colombo in
8 Brooklyn was indicted on gambling charges.

9 Mr. Joyce, who is one of the most experienced pro-
10 fessional prosecutors in the Organized Crime and Racketeering
11 Section, and one of the most knowledgeable men in the country
12 in the field of gambling enforcement, will outline for you those
13 statutes used by the Department of Justice to deprive organized
14 crime of its gambling revenues.

15 These anti-gambling tools have proven to be the most
16 effective organized crime tools for us as well.

17 Mr. Joyce.

18 CHAIRMAN MORIN: Would you prefer to follow directly
19 and then have us question both of you together?

20 MR. JOYCE: I think that would be preferable, Mr.
21 Chairman.

22 Before I get into a discussion of the details of the
23 legislation, I think it would be profitable to discuss the
24 situation as we saw it before the enactment of those statutes.

25 In the intelligence that we were receiving about
gambling throughout the United States, we noted that there were

1 widespread walk-in bookmaking operations in places such as
2 Louisville, Tulsa, and many other metropolitan areas.

3 There were many illegal gambling casinos along the
4 Gulf Coast in Florida; Covington, Kentucky; and again many
5 areas.

6 The only enforcement agency for the Federal Govern-
7 ment at that time was the Internal Revenue Service which was
8 responsible for the enforcement of the wagering tax statutes.
9 They had about 1200 agents involved in that enforcement at that
10 time for the entire United States.

11 In addition to the illegal casinos and the open
12 bookmaking operations, there were widespread large multi-State
13 layoff operations.

14 Just before the enactment of the statutes, as Mr.
15 Dogin pointed out, Appalachin had occurred, and there was a
16 meeting in June of 1960 between the Assistant Attorney General
17 in charge of the Criminal Division, Malcolm Wilkie, now Circuit
18 Court Judge for the District of Columbia Circuit, and Mr. J.
19 Edgar Hoover, Director of the FBI.

20 During that meeting, Mr. Hoover was asked for
21 recommendations as to legislation that would be needed in order
22 to get the FBI vitally involved and deeply involved in the
23 fight against organized crime.

24 Mr. Hoover recommended that legislation be enacted
25 which would prohibit the travel across State lines by hoodlums

involved in the illegal activities, legislation which would prohibit the use of telephones to carry on illegal gambling operations in interstate commerce, and legislation which would prohibit the transportation of wagering paraphernalia across State lines.

In June of 1960, the Department began work on the preparation of such legislation and proposed three statutes. The draft bills were ready for the incoming Kennedy Administration, and they were introduced in Congress at the request of President Kennedy.

The legislation which ended up as Section 1952, Section 1953, and Section 1084 of Title 18, United States Code, was the result of this drafting.

Section 1952, as first proposed, indeed followed Mr. Hoover's recommendation and prohibited travel across State lines in order to conduct a business enterprise involving gambling, narcotics, liquor, and prostitution enterprises, as well as bribery and extortion.

Section 1953 prohibited the carrying in interstate commerce of wagering paraphernalia.

And Section 1084 prohibited the use of a wire communication facility by someone in the business of betting or wagers or transportation of information assisting in the placing of bets and wagers.

During the legislative process, the proposals were

1 recommended by the Attorney General, Robert Kennedy, and the
2 Assistant Attorney General, Herbert J. Miller.

3 Section 1952 was amended, broadened so that it not
4 only prohibited travel in interstate commerce but prohibited
5 the use of any facility in interstate commerce to carry on the
6 illegal activities.

7 As a result of that broadening, there is an over-
8 lapping at the present time between Section 1952, Section 1953,
9 and Section 1084.

10 Section 1952, with respect to gambling offenses,
11 is so broad that it covers almost every situation that is also
12 covered by the other two statutes.

13 The enactment of the statutes gave the FBI for the
14 first time jurisdiction to investigate gambling operations.
15 They proceeded to investigate and raid the illegal casinos, and
16 in the event there is any nostalgia on the part of any persons
17 present with respect to those casinos, let me tell you that in
18 every instance in which an illegal casino was raided and the
19 material was confiscated, the material turned out to be fixed.
20 That is, the dice tables were wired, the dice were loaded, the
21 cards were marked. And there was never a single instance where
22 the equipment was not crooked equipment. And that included
23 such places as Down at the Homestead in Virginia, the Panhandle
24 of West Virginia, and the Gold Coast of Biloxi.

25 As a result of the enforcement activities of the

1 FBI, there are very few, if any, illegal casinos around the
2 United States today.

3 In addition, as I said before, there was widespread
4 layoff bookmaking operations throughout the United States. As
5 a matter of fact, at the time of the enactment of the statute,
6 Section 1952, there was an investigation and eventually a trial
7 of one of the largest layoff operations in the history of the
8 United States. And unfortunately, at the time the only statute
9 available for the prosecution of that operation was a wire-
10 fraud statute. That is, in the conduct of the layoff operation,
11 these bookmakers had corrupted telephone company employees,
12 the long-line employees, mainly in Canada, so the long-line
13 employees were furnishing free long-distance telephone service
14 to all these layoff centers in New Orleans, Baton Rouge, Miami,
15 Baltimore, Louisville; and the individuals Beckley, Nolan and
16 DiPiazza, Clyde Deming and Kaufman were indicted for defrauding
17 the telephone company and defrauding the United States of the
18 tax revenue on the tolls.

19 The prosecution was unsuccessful, but the investiga-
20 tion by the FBI into the continuing operation -- which, inciden-
21 tally, continued right through the trial in New Orleans -- showed
22 they were continuing their operations from the telephones in
23 the hallway.

24 The FBI and the telephone company continued the in-
25 vestigation, and we were able to indict and convict Gilbert
Beckley, probably one of the largest layoff bookmakers in the

1 United States; Eugene Nolan, one of his confreres who was
2 operating out of Baton Rouge; Sam DiPiazza, who was operating
3 out of New Orleans; and Clyde Deming who was operating out of
4 Covington, Kentucky.

5 Incidentally, DiPiazza and Deming between them were
6 exchanging in excess of \$400,000 a month in horse-race bets alone.

7 Because of the activities of the FBI and the Internal
8 Revenue Service, where the FBI at that time was concentrating
9 on the major interstate operations and the Internal Revenue
10 Service was concentrating on those intrastate operations that
11 did not have wagering tax stamps, it appeared that the prosecu-
12 tion of gambling at that time was fairly well under control.

13 In January of 1968, the Supreme Court handed down the
14 Marchetti-Grosso decision which held that a person indicted under
15 the wagering tax statutes had a valid defense of the Fifth
16 Amendment to any prosecution. As a result of that decision,
17 some 1600 prosecutions for gambling by the Internal Revenue
18 Service had to be dismissed.

19 It was apparent, since the Internal Revenue Service
20 could no longer investigate intrastate gambling, that other
21 legislation was necessary. And in 1968 the Department drafted
22 what became in 1970 Section 1955 of Title 18, United States
23 Code. This prohibits five or more persons from engaging in
24 gambling in violation of the laws of the State if they do
25 \$2,000 or more a day or are in continuous operation for 30 days

1 or more.

2 In addition, because it was apparent that the intra-
3 state gambling thrived where there was corruption in the
4 criminal justice system, the Department proposed and the Con-
5 gress enacted Section 1511 of Title 18, United States Code,
6 which makes it an offense to interfere with the criminal justice
7 system engaged in gambling investigations by bribery.

8 After the enactment of 955 and 1511, the FBI then
9 had jurisdiction over the major intrastate bookmaking operations.

10 By the use of wiretaps, the FBI again had very great
11 success. As a matter of fact, in 1973 there were 212 convic-
12 tions under Section 1955, most of them based upon wiretaps.

13 As you probably know, a defect in the procedure for
14 processing the wiretaps developed in 1970 and 1971, resulting
15 in the Giordano opinion of Monday, which is going to cause us
16 to dismiss approximately 60 indictments involving some 600
17 defendants.

18 In the companion case of Chavez, the procedures of
19 the Department were upheld and we have now pending some 300
20 additional prosecutions based upon good taps.

21 I think on the basis of the statutes that we have, and
22 the involvement of the Federal Bureau of Investigation in the
23 gambling prosecutions, that we are able to hold under control
24 the interstate gambling activities, and we can probably
25 investigate and prosecute the most significant of the intrastate

1 gambling activities.

2 And we can probably help the States in their activi-
3 ties by helping to keep the criminal justice system clean
4 through prosecutions under Section 1511.

5 As Mr. Dogin said, it is our firm conviction that
6 the major bookmaking operations are firmly in the control of
7 the la Cosa Nostra or organized crime families.

8 Because of that, we are convinced that vigorous law
9 enforcement activity is necessary in this area.

10 I have nothing further.

11 CHAIRMAN MORIN: Thank you very, very much, Mr.
12 Joyce. As usual, you give us a great deal of information that
13 is very dramatic as you give it. It is a sort of horrifying
14 story.

15 Was I correct in the Beckley and Nolan and ~~the~~
16 prosecutions and convictions you used defrauding the telephone
17 company?

18 MR. JOYCE: That was in the original indictment in
19 what we called "Operation Freeload" down in New Orleans. They
20 defrauded the telephone company and the United States. They
21 defrauded the United States of the excise tax on the telephone
22 tolls that the United States would have gotten had they not
23 been getting free service.

24 But that conspiracy resulted in acquittal of all of
25 the defendants.

1 The subsequent prosecutions were for the use of the
2 interstate facilities to carry on the gambling operations in
3 violation of Section 1952, and every significant bookmaker in-
4 volved in that original layoff operation has been convicted.
5 As a matter of fact, Nolan and DiPiazza are in Leavenworth and
6 Atlanta, respectively, and I think we are convinced that
7 Beckley is dead.

8 CHAIRMAN MORIN: And just for our education, the
9 Marchetti-Grosso case had to do with the gambling tax stamp?

10 MR. JOYCE: That is correct.

11 CHAIRMAN MORIN: It was declared unconstitutional?

12 MR. JOYCE: No, it wasn't declared unconstitutional.
13 What they did hold was that the defendant could at the time
14 of trial raise his Fifth Amendment privilege against incrimi-
15 nating himself, and that would be a valid defense to a prosecu-
16 tion.

17 You see, the wagering tax statute required a gambler
18 to buy a stamp and to register. And that registration was made
19 public. And since gambling was a violation of State law in all
20 States except the State of Nevada, the Supreme Court held that
21 he could refuse to register. And he did not have to refuse to
22 register at the time he was required to register, but he could
23 also interpose the Fifth Amendment privilege as a defense at
24 the time of trial, which effectively prohibited any wagering
25 tax prosecutions.

1 But it was not held unconstitutional. As a matter
2 of fact, we are making very effective use of the wagering tax
3 statute today. That is, where the FBI has a wiretap and there
4 has been a conviction for a violation of Federal law, we then
5 turn the wiretap information over to the Internal Revenue Ser-
6 vice and they collect the 10 per cent wagering excise tax
7 civilly by jeopardy assessments. I think they collected about
8 \$1.5 million in the Boston area based upon wiretaps supplied
9 by the FBI to the Internal Revenue Service.

10 CHAIRMAN MORIN: I assume that that is legal?

11 MR. JOYCE: Pardon?

12 CHAIRMAN MORIN: I assume that that is legal, that
13 that is a legal use of the legal wiretap.

14 MR. JOYCE: Yes, it is.

15 CHAIRMAN MORIN: Is that a new technique? I don't
16 think that has come to our attention.

17 MR. JOYCE: Well, it is something we have been urg
18 the strike forces to do, and they are now doing quite regular
19 It is another facet of what we call the genius of the strike
20 force, that is, the utilization by numerous investigative
21 agencies of the information compiled by one of them.

22 CHAIRMAN MORIN: Incidentally, for those of us who
23 don't read these things as analytically as you, what is the
24 difference in these two Supreme Court cases is the fact that
25 the Attorney General had initialed the wiretap authorization

1 in one case and not in the other.

2 MR. JOYCE: Not necessarily that he had initialed
3 but that he had approved. The language of the Chavez opinion
4 does not use the fact that he had initialed. It said that he
5 had approved. And I think in some of the situations we have,
6 Mr. Lindenbaum called General Mitchell and told him about it,
7 and the Attorney General approved it, and then Mr. Lindenbaum
8 put the Attorney General's initials on the application.

9 Now, that was not directly addressed in either of
10 the opinions, but it is our opinion that as long as it was
11 approved, the initialing is not a necessary step.

12 But in none of the cases involved in Giordano had the
13 Attorney General approved at all.

14 CHAIRMAN MORIN: He had simply delegated that
15 authority?

16 MR. JOYCE: He had simply permitted Mr. Lindenbaum
17 to approve it.

18 In some of them he had ratified it, but the court
19 held that that was not what the statute required; the statute
20 required the prior approval, not the ratification of approval
21 by someone else.

22 CHAIRMAN MORIN: You say this is going to cause or
23 force the Justice Department to dismiss how many indictments?

24 MR. JOYCE: Approximately 60 indictments, with
25 600-some-odd defendants.

1 CHAIRMAN MORIN: Are these largely gambling or are
2 they other?

3 MR. JOYCE: No. For example, in one of the strike
4 forces, there are 19 police officers who were involved in a
5 1511 violation, which has a basis of gambling, but the real
6 thrust of the statute is bribery.

7 There are 16 narcotics wiretaps, and approximately
8 100-and-some-odd gambling.

9 In fact, Giordano, the case that the Supreme Court
10 had, was a narcotics wiretap.

11 CHAIRMAN MORIN: I suggest, with your permission,
12 that we have about a five-minute recess and let the Commis-
13 sioners perhaps get their thoughts together and then we can
14 resume, in just about five minutes.

15 (Whereupon, a short recess was taken.)

16 CHAIRMAN MORIN: It has been our policy in the
17 questioning of witnesses before the Commission to permit first
18 questioning by the Congressional members of the Committee be-
19 cause of their commitments, and I will turn the questioning
20 over to Senator Cannon.

21 SENATOR CANNON: Thank you very much, Mr. Chairman.

22 Gentlemen, along the last part of the discussion
23 relating to the bookies and the wagering stamp situation, I'd
24 like to pursue that just a little further.

25 Of course, as you stated, Nevada is the only State

1 that has legal gambling and particularly in many of the areas,
2 but I am wondering what the net effect is in your judgment of
3 the wagering tax registration provision with respect to the
4 bookies.

5 Now, keeping in mind that the imposition of the tax
6 applies both to legal and illegal operations and in our judg-
7 ment in our own State results in a driving of betting from legal
8 bookies to illegal ones because of the imposition of the tax,
9 do you have any views on that particular point?

10 MR. JOYCE: Well, in our experience, the legal
11 bookies in Las Vegas have in the past kept two sets of books,
12 one set for the Internal Revenue Service for some of the cus-
13 tomers, mostly the unknown customers, and they took the 10 per
14 cent excise, and they kept another set of books where they
15 didn't charge the 10 per cent excise tax.

16 But in addition, there are a number of bookmakers
17 in the State of Nevada who are not licensed, and have not
18 obtained the wagering tax stamp. And I am sure that --

19 SENATOR CANNON: They are operating illegally as
20 bookies both under the Nevada law and the Federal law because
21 they haven't registered; is that correct?

22 MR. JOYCE: That is correct.

23 SENATOR CANNON: What in your judgment was the pur-
24 pose of that legislation? Was it as a revenue-raising device
25 or was it simply to assist in the control of unlawful actions?

MR. JOYCE: I have never gone deeply into the

1 legislative history of the wagering tax, but as I recall it was
2 enacted subsequent to the Kefauver Committee hearings, at which
3 time that committee was deeply concerned about the great pro-
4 liferation of illegal gambling. And it would be my opinion that
5 the law enforcement aspects of that were just as important as
6 the revenue aspects.

7 SENATOR CANNON: In going over the summary that you
8 have given of the results of prosecutions over the last few
9 years, it seems that the conviction results have not been very
10 outstanding, and I am wondering if in your judgment there are
11 some weaknesses in current legislation now that ought to be
12 looked at from the enforcement standpoint.

13 MR. DOGIN: I can't see that the problem is the
14 weaknesses in the current legislation, Senator. I think we
15 have got the tools. We have got wiretapping at the Federal
16 level; we have 1955. We even have civil remedies, 1964.

17 I think some of the problems rest with the way the
18 statutes are being handled in terms of what is happening out
19 there.

20 And I will point out the problem of sentencing.

21 Now, part of my responsibility for Mr. Petersen is
22 to go out to the strike forces, monitor and evaluate the strike
23 forces, and see what is happening.

24 And I am coming back with some disturbing informa-
25 tion on the problem of sentencing in some of the judicial

1 districts. Some of the members of the Federal judiciary are
2 not using the sentencing techniques; there are many suspended
3 sentences and minimal fines. And again, I am not talking across
4 the board but I am talking about certain areas. I guess they are
5 reflecting the attitudes of the community or they are not in
6 our opinion aware or perceiving what we feel is the relationship
7 to organized crime.

8 Other problems are that some of the States them-
9 selves don't have the techniques. The State legislatures have
10 not given them the kinds of weapons that we have in the immunity
11 statutes, wiretapping statutes, contempt statutes, civil
12 remedies. I think that is part of the problem.

13 As far as weaknesses in Federal legislation, I think
14 we have the legislation.

15 SENATOR CANNON: Do you think part of that result
16 is occasioned by the apathy of the public towards enforcement
17 of these types of laws?

18 MR. DOGIN: To some extent, yes. But I don't think
19 the public in some areas perceives or has been made dramatically
20 aware of the relationship to organized crime, the relationship
21 of gambling money to narcotic money, which is a much more
22 dramatic situation to the average citizen.

23 I'd say that is part of it, yes.

24 SENATOR CANNON: In your statistics of the family
25 control, you indicated that in the Northeast the family control

1 was about 50 per cent, and in the West, the Southwest, as I
2 recall, about a third.

3 What would result in that disparity of family con-
4 trol?

5 MR. DOGIN: A lot of that, I am told, is the lack
6 of information, the lack of cases, lack of statistics being
7 given us by the U.S. Attorneys and the fact there is no strike
8 force in the Southwest Region.

9 So part of our problem in the Southwest -- and I
10 indicated this -- is a lack of data, whereas we have much more
11 data in these other areas.

12 SENATOR CANNON: You have no strike force in the
13 Southwest?

14 MR. DOGIN: No, that is correct; we do not. The
15 closest strike force we have to the Southwest is in New Orleans
16 -- but that has quite a jurisdiction to cover. It has to cover
17 Texas, Arkansas, and the Southeast. It is very difficult with a
18 small staff of attorneys to cover that kind of area.

19 SENATOR CANNON: Well, I am wondering if you and I
20 define the Southwest as the same area, because I had occasion
21 to visit with some of the strike-force people in what I define
22 as the Southwest, so I find it rather surprising to hear you
23 say you don't have a strike force.

24 MR. DOGIN: We have New Orleans but it does cover a
25 fairly substantial area.

1 MR. JOYCE: The Senator is talking about Nevada.

2 MR. DOGIN: You will have to forgive me, Senator.

3 I am a New Yorker and I still think that is the hub of the
4 universe.

5 SENATOR CANNON: I do not define New Orleans as the
6 Southwest. The California-Nevada-Arizona area --

7 MR. DOGIN: Nevada and parts West would be covered
8 in our study by the figures on the Far West; am I correct?

9 MR. JOYCE: Yes, that is correct.

10 SENATOR CANNON: I was wondering in my mind whether
11 perhaps that lower percentage of family control might be due in
12 part to the fact that Nevada does have legal gambling there,
13 and as far as we know, as far as the Attorney General believes,
14 I think, we don't have much of a problem with family control
15 in Nevada.

16 MR. DOGIN: I'd have to defer to my colleague who is
17 responsible for the supervision of the Los Angeles strike force
18 which covers Nevada for the answer to that question.

19 MR. JOYCE: Well, I don't think I am quite as
20 optimistic as either Attorney General List or yourself,
21 Senator, with respect to the control of illegal gambling in
22 the State of Nevada. From the wiretaps we had back before the
23 raids on Caesar's Palace, we had pretty firm evidence of
24 control from New York and Miami of what we consider to be a
25 very large-scale layoff operation going into the cage in

1 Caesar's Palace.

2 SENATOR CANNON: Well, then, what would you say is
3 the difference in the percentage figures that you came up with?

4 MR. JOYCE: Mainly the fact that we have such little
5 information in the areas that the man compiling the information
6 considered it to be the Southwest. And he was primarily talk-
7 ing about New Mexico, Arizona and Texas and Oklahoma.

8 SENATOR CANNON: I see.

9 MR. JOYCE: We just don't have a strike force there.
10 But we just didn't have many wiretaps or many gambling inves-
11 tigations because we didn't have a strike force on site in
12 those areas.

13 SENATOR CANNON: You are referring to those areas
14 rather than the Los Angeles-San Francisco areas?

15 MR. JOYCE: Yes, that is correct.

16 SENATOR CANNON: What does the percentage run in
17 that area, the West?

18 MR. DOGIN: The Far West, the gross wagers were just
19 over \$4.6 billion, and the organized crime families' control
20 amounts to just over \$830 million or 29.2 per cent. That is
21 broken down into wagers on sporting events, 86.7 per cent and
22 horse racing 13.3 per cent.

23 We do have two strike forces in the area that we
24 would define as the Far West, one in San Francisco and one in
25 Los Angeles.

1 SENATOR CANNON: Both of which I may say operate
2 some in Nevada. You said Los Angeles had jurisdiction there
3 but both strike forces do operate in Nevada.

4 MR. JOYCE: At the time of this study, the San
5 Francisco strike force had the northern part of Nevada and the
6 LA strike force had the southern part. That has been changed
7 and it has all been consolidated under the LA strike force.

8 SENATOR CANNON: Now, can you tell me what, if any,
9 effect the legalization of lotteries has impacted on your
10 problem?

11 MR. DOGIN: As far as the problem of organized
12 crime in the area of a competing market -- and I would imagine
13 they'd be competing with the numbers operation -- from my
14 experience as a prosecutor in New York City, very little.

15 There is apparently -- the numbers racket is much
16 more attractive. There is easy credit. It is more convenient
17 for the bettor.

18 I don't think, speaking from my local experience
19 that it has in any way in New York City affected the illegal
20 numbers racket which is a substantial operation.

21 SENATOR CANNON: What have you found to be the im-
22 pact of convictions that you have been able to accomplish -- what
23 effect does that have on the overall problem? Has this helped
24 to lessen the degree of family control or lessen the degree of
25 illegal gambling, or what has it done?

1 MR. JOYCE: Well, our judgment is that it has
2 decreased the amount of illegal gambling, and it has tended
3 to firm up the control of organized crime of the remaining
4 gambling.

5 We no longer see the independent layoff operators.
6 As a matter of fact, one of the consequences appears to have
7 been that we have driven all of the major layoff operators
8 into your State, Senator, that Nevada now has become a layoff
9 center for the illegal wagering.

10 And by doing that, I think we have forced more con-
11 trol by the organized crime elements on that illegal gambling.

12 But at the same time, because the independents are
13 no longer in existence, I think we have curtailed the overall
14 problem.

15 The major layoff operators that we knew of ten
16 years ago are no longer in business. Most of them are currently
17 incarcerated.

18 SENATOR CANNON: Well, would you say, then, that
19 the amount of illegal gambling today or in 1974 is less than
20 depicted by the Task Force in 1967?

21 MR. JOYCE: No, I'd say that it has increased,
22 that it is larger today than it was in '67, and it is growing
23 but it is not growing at the rate it would have grown had we
24 not been active in law enforcement.

25 SENATOR CANNON: Have you in your department adopted

1 any mechanism to gauge the impact of anti-gambling enforcement?

2 MR. JOYCE: Just in our gathering of intelligence
3 and weighing of the amount of gambling that we find on the
4 wiretaps, and eventually, if we can get the proper multiple,
5 that is, if we can find out what percentage of gambling that
6 is going on in the country we are actually investigating and
7 overhearing, we will have a pretty good indicator.

8 We don't have this multiple now. It is pretty much
9 a guesstimate.

10 SENATOR CANNON: I take it from what you said earlier
11 that you don't think the recent decision is necessarily going
12 to affect you too much, with the exception of these indictments
13 that were already issued.

14 MR. JOYCE: Except for the indictments that had
15 been handed down and the wiretaps that had been utilized during
16 1970 and '71 it will not have any effect.

17 SENATOR CANNON: So you will be able to proceed
18 without being hampered as a result of that decision.

19 MR. JOYCE: In all of our cases since 1972.

20 SENATOR CANNON: Mr. Chairman, I don't want to
21 monopolize the time too much.

22 CHAIRMAN MORIN: Thank you.

23 I think it is fair to say that all of the members
24 of the Commission are now aware of the frustrations that might
25 be felt by prosecuting attorneys who go to a lot of work

1 prosecuting a case and have a conviction and then get a very
2 light sentence. And I think we can be a little less restrained
3 than the Department of Justice in being critical of the judi-
4 ciary.

5 I gather from Mr. Dogin's statement that the light-
6 ness of the sentences handed out in many of these cases may at
7 least be part of the failure of real enforcement of the gambling
8 statutes.

9 I mean we all have the greatest respect for what
10 these strike forces are doing. We have first-hand information
11 from Mr. Ritchie under whom, I might add, the Chavez prosecution
12 and conviction was accomplished, the one the Supreme Court
13 upheld.

14 But I wonder, not speaking for the Department, if
15 you would have any opinion as to why these sentences are so
16 light in certain areas of the country -- as an individual and
17 not speaking for the Department if you feel free to express it.

18 MR. DOGIN: I can again give you my experience in
19 New York City. It is a very sophisticated, cosmopolitan area.
20 There is a lot of crime; there is a lot of violent crime. When
21 I was a local prosecutor in Frank Hegan's office where I worked
22 for six years, we had to make a value judgment because we were
23 given 50 cases. We had a fairly small staff with an inordinate
24 backlog of cases. A judge would see our cases and see a serious
25 robbery, a maiming, a homicide, and these were the cases

1 that they reacted to.

2 They would see a gambling case, and even though
3 there was the tie with organized crime, because of the serious
4 backlog the judge would say, "I am going to concentrate my
5 efforts and my attentions on what I and the public perceive to
6 be the more dramatic case."

7 So I think the problem is backlog. I think the prob-
8 lem is a number of other more dramatic crimes and less atten-
9 tion to this kind of crime in a large urban area like New York
10 City.

11 CHAIRMAN MORIN: To what extent is the prosecuting
12 attorney in these cases able to call to the attention of a
13 jury, for example, the close relationship between gambling and
14 organized crime and such activities as loan-sharking?

15 MR. DOGIN: To a jury? I'd say that is a very good
16 way of getting a mistrial. You can't do it.

17 CHAIRMAN MORIN: It is impossible to be brought to
18 the attention of the jury?

19 MR. DOGIN: It can be brought to the attention of
20 the judge at the time of sentencing or parole -- but not before
21 a jury.

22 CHAIRMAN MORIN: Then you are talking about the
23 sentence a judge notes out after conviction, the fact that
24 there are light sentences.

25 MR. DOGIN: In some areas of the country, that is

1 correct.

2 MR. JOYCE: I don't think it is true that where we
3 have a definite link to organized crime we necessarily get
4 light sentences.

5 For example, I was discussing Eugene Nolan and Sam
6 DiPiazza a little while ago. During the course of that inves-
7 tigation the FBI installed a microphone on the outside wall
8 of an apartment where they were conducting their bookmaking
9 operation. And one of the conversations that was overheard
10 by the FBI on that microphone which was then legal was about
11 the payments that DiPiazza had to make to the "big man," as he
12 called him, who was Sam Giancona, in Chicago, in order to keep
13 his gambling franchise. And although he said he had gone to
14 the "little man," who was Carlos Marcello, he was of no assis-
15 tance. He nevertheless had to pay the tribute to Mr. Giancona
16 in Chicago.

17 Now, that was a legal microphone and that informatic
18 was made available to the sentencing judge, and Sam DiPiazza
19 received ten years and Eugene Nolan received eight years, which
20 are remarkable sentences for gambling activities.

21 So where we can show the intimate tie into organized
22 crime, we do get heavy sentences.

23 Gilbert Beckley received ten years. I think Julius
24 Salsbury in Baltimore was sentenced to 15 years, again on
25 gambling violations.

1 So in the major prosecutions we do get it.

2 But where you have a 25-defendant numbers operation
3 and the judge thinks about the time that is going to be spent
4 in trying that case, that is where we get the suspended sen-
5 tences.

6 MR. DOGIN: It is easy when you talk about Decaval-
7 canti, the judge will sentence. But on a lower echelon case
8 where it is difficult to prove the tie to a Decavalcanti, that
9 is where the problem is.

10 CHAIRMAN MORIN: Would it make any effect if a
11 minimum sentence were statutory?

12 MR. DOGIN: It might.

13 CHAIRMAN MORIN: But a judge could still suspend.

14 I won't take more than my allotted time, but I am
15 impressed by the fact, if it is a fact, that there is apparently
16 widespread local police corruption. Certainly the Knapp Com-
17 mittee pointed to that in New York.

18 I don't recall having heard of any at the Federal
19 level. Am I correct? I am not aware of any corruption at
20 the Federal level in terms of the Federal police corruption.

21 MR. DOGIN: I don't believe there has been anything
22 of any substantial nature, no.

23 CHAIRMAN MORIN: I would like to find out why at
24 some point. I mean, why is it that the standards of the FBI
25 can't somehow be inculcated into local police organizations?

1 Do you have any opinion?

2 MR. JOYCE: If the Commission can find out how to do
3 it, it would solve a great deal of our problem.

4 CHAIRMAN MORIN: All right, I yield to Dr. Allen.

5 DR. ALLEN: Either Mr. Dogin or Mr. Joyce, you say
6 gambling is the chief source of wealth to organized criminal
7 groups. Is it not possible that the cause of this is not in
8 the nature of gambling per se, but as a result of the very
9 illegality? For example, 50 years ago activity among the
10 organized crime groups was alcohol -- and during the prohibition
11 period especially. Once the repeal of prohibition occurred,
12 that activity virtually disintegrated.

13 Do you feel perhaps the repeal of gambling laws
14 might result in the same type of circumstance?

15 MR. JOYCE: I don't. First of all, I don't think
16 it's correct that bootlegging stopped after prohibition. I
17 think there is probably more bootlegging going on in the City
18 of New York today than was going on in 1928 and '29. I don't
19 think it has stopped the illegal alcohol violations.

20 But I don't think repealing the criminal sanctions
21 would decrease the amount of gambling or the control by
22 organized crime, no.

23 DR. ALLEN: Do you then feel that the transfer of
24 gambling sanctions to individual governmental authorities on
25 the municipal level, the county level, or the State level,

1 would serve to decrease the level of gambling activity as far
2 as organized crime is concerned?

3 MR. DOGIN: Dr. Allen, I think they have the primary
4 responsibility now, units of the State and local government.
5 And history has shown us that is part of the problem. That is
6 why the Federal Government is in as deeply as it is because of
7 problems of apathy, problems of corruption, inability to en-
8 force and not having the tools in the State. There are many
9 States that don't have wiretapping statutes, many States don't
10 have immunity statutes. These are the chief weapons to go
11 after illicit gambling.

12 So I think again to turn it all over to the State
13 and local governments and repealing the Federal law is not the
14 answer. I think it will be worse than ever.

15 DR. ALLEN: Are you saying there is a correlation
16 of the lightness of the sentence or the level of law enforce-
17 ment activity and the level of illegal activity that is going
18 on? In other words, the greater the illegal activity, the
19 less law enforcement and the less the judiciary participates.

20 MR. DOGIN: I'd say in areas where gambling is the
21 highest, yes.

22 DR. ALLEN: Under those circumstances, would you
23 then say if we took special pains to see that, as you say, the
24 statutory changes of sentencing requirements for certain
25 illegal activities in gambling -- if that was mandated, say,

1 by the public on a referendum or something of this nature --
2 Do you feel that might decrease the level of apathy as far as
3 the community is concerned and raise the level of consciousness
4 of judiciary and law enforcement officials?

5 MR. DOGIN: I think in order to control gambling,
6 you have to look at a number of different strategies, some of
7 the things you just mentioned.

8 You have got to create an awareness in the public
9 that gambling is related to organized crime. You have got
10 show that those people who play the numbers racket ^{AND} bet wit.
11 the bookie, in a way are deliberate subsidizers of organized
12 crime. And when you do it by publicity or however, that is
13 one approach that State and local governments should think
14 about.

15 Greater enforcement at the local level -- I believe
16 that is warranted. Greater techniques, again, I repeat, I
17 think are warranted.

18 I think there are a number of different strategies.
19 I think the Federal Government has taken the leadership and
20 the States in many ways should emulate the kinds of weapons
21 that we have.

22 DR. ALLEN: How would you compare the cost of your
23 strike force activity versus the, say, 2 to 4 per cent -- the
24 grand total that you say in your presentation? In other words,
25 does it cost more for your strike force to operate than the

1 4 per cent of the grand total you cite? Which cost is greater?

2 Basically what I am saying is: Is it costing us
3 more to enforce the gambling laws than it is worth?

4 MR. JOYCE: Insofar as the cost of the study that
5 we performed, we recovered more in the seizures and in fines
6 than the cost of the wiretapping investigation itself. So we
7 really had a net profit in our enforcement insofar as the cost
8 of the taps was concerned.

9 DR. ALLEN: That was then. Now in light of the
10 Supreme Court's ruling on Monday, how is that going to balance
11 that?

12 MR. JOYCE: That shouldn't have any effect at all,
13 Dr. Allen. We will still be able to recover more in the
14 seizures and in the fines than it costs us to conduct the
15 investigation.

16 DR. ALLEN: Thank you, Mr. Chairman.

17 CHAIRMAN MORIN: Mr. Gimma. Mr. Gimma is chairman
18 of the New York State Racing Commission.

19 MR. GIMMA: Since the introduction of OTB in New
20 York City, in your opinion has the illegal gambling activity
21 been decreased any?

22 MR. DOGIN: Are you talking about the spectrum of
23 illegal gambling?

24 MR. GIMMA: That is right.

25 MR. DOGIN: It is hard to say, but my guess -- and

1 again it is a guess -- I don't think so. Again, OTB is a
2 very exciting product the city and the State are selling. I
3 think it has added to revenues and we certainly wouldn't say
4 that the States don't have the right to pass such revenue
5 measures as OTB.

6 But as far as your question is concerned, the
7 illegal bookmaker is still there in New York as far as we know.

8 MR. GIMMA: Is it on the increase or decrease in
9 your opinion?

10 MR. DOGIN: I can't say, but I don't think it's
11 made any great dent. I don't think there has been any
12 dramatic decrease in illegal bookies.

13 MR. JOYCE: If I may add a comment, we had a lot
14 of taps up in New York and we never heard a bookie say, "Oh,
15 OTB is killing me."

16 (Laughter.)

17 MR. GIMMA: But you didn't hear him say that they
18 were thriving, did you?

19 What is the percentage in your studies or your in-
20 vestigations -- what is the percentage of illegal activity in
21 New York City of family control?

22 MR. JOYCE: I think it was 50.2 per cent.

23 MR. DOGIN: It is over 50 per cent in illegal gam-
24 bling.

25 MR. GIMMA: It is?

1 MR. DOGIN: Yes.

2 MR. GIMMA: As high as that?

3 MR. DOGIN: Oh, yes, and again we are talking about
4 the five boroughs of New York.

5 MR. JOYCE: Again, that is direct control and not
6 those who are paying tribute.

7 MR. GIMMA: And since the introduction of the
8 lottery in New York, would you say that the numbers activity
9 has increased any in New York City?

10 MR. DOGIN: I don't know if it has increased but
11 again I don't see any dramatic decrease. The number of cases
12 brought in the Manhattan and other criminal courts is sub-
13 stantial. I don't think it in any way has affected the numbers
14 racket.

15 MR. GIMMA: Well, do you have any recommendation
16 of what could be implemented with the legalization of the OTB
17 and lottery, how you can bring about a decrease in the illegal
18 activity in your neck of the woods, Mr. Dogin?

19 MR. DOGIN: I really don't -- you are asking for a
20 recommendation to legalize a form of gambling and again I'd say
21 as a Federal official that is up to the States to do. And I
22 really don't have any recommendation in the area.

23 I can tell you from my experience that it hasn't
24 dramatically hurt the numbers racket or the illegal bookies. That
25 is all I am really prepared to say. And I think you will

1 have to draw your own conclusions from there on legality.

2 MR. GIMMA: I have no further question, Mr. Chair-
3 man.

4 CHAIRMAN MORIN: I think it's Mr. Dowd's turn to
5 question. Mr. Dowd is a prosecuting attorney from Ohio --
6 from Massillon County?

7 MR. DOWD: Stark County.

8 CHAIRMAN MORIN: Stark County.

9 MR. DOWD: On your convictions for which you have
10 supplied statistics, do you have comparable statistics that
11 relate to sentences, probation, for instance, or suspended
12 sentences?

13 MR. DOGIN: Those, I believe, are being compiled
14 by Mr. Ritchie's staff and the Department. We don't have
15 those yet. I'd like to see them myself. My remarks today are
16 based on conversations I have had in my monitoring of the 17
17 cities and my gut reaction to what is happening out there.
18 But I would imagine those statistics should be obtained within
19 a reasonable time.

20 MR. DOWD: On the subject of strike forces, is
21 there any established policy within the Justice Department
22 for the strike-force personnel on the subject of their in-
23 volvement with local officials, either on a voluntary basis
24 or an attempt to involve the local officials in any ongoing
25 effort of cooperation?

1 The reason I ask the question is that, frankly,
2 I made the effort several times with the Cleveland strike force
3 and finally gave up on the matter because I found no continuing
4 interest -- I tried to promote the idea they would meet
5 periodically with major county prosecutors, major county
6 sheriffs, major metropolitan police chiefs, and the suggestion
7 died. And in my area, the strike force operates in a total
8 vacuum as far as local enforcement, for whatever value it has
9 in Ohio, is concerned. And it seems to me there ought to be
10 at least an effort.

11 And my question is: Is there really a policy on the
12 question of cooperation or inviting the local people to share
13 in this?

14 MR. JOYCE: Well, going directly to your question
15 as to the policy, it is our policy to get involved as much as
16 possible with the locals in the investigation and prosecution
17 of those cases where we can profitably cooperate.

18 MR. DOWD: Who makes the decision as to whether
19 it is profitable?

20 MR. JOYCE: What?

21 MR. DOWD: Who makes the decision as to whether it
22 is profitable and how to implement the policy?

23 MR. JOYCE: Well, right now we are feeling our way
24 with respect to the cooperation with the State governments.

25 We have, for example, in some of our strike forces --

1 we have joint strike forces. And we establish them. We co-
2 operated with the local police department as much as we could.
3 But we wanted to see how it worked out.

4 And it has worked out very successfully where we
5 have established them. And I think we will probably be trying
6 to establish them in all parts of the country.

7 Now, I don't know what Dave Margolis has been doing
8 in the Cleveland strike force. He is one of our best strike
9 force chiefs. But I don't supervise that strike force. I
10 can find out, and there is no reason why there shouldn't be
11 as much joint cooperation as possible, with the understanding
12 that in many of these situations it is a one-way street. That
13 is, we will take whatever you give us, but because of restric-
14 tions on disclosure of Internal Revenue Service information
15 outside the Federal Government and other restrictions, we can
16 not give you back what you might want as a quid pro quo.

17 But outside those restrictions, we try to cooperate
18 as much as possible.

19 MR. DOWD: Well, I take it the basic answer to my
20 question is there is no written policy. There is no policy you
21 can point to and say, "There it is."

22 MR. DOGIN: The broad policy is to reverse history.
23 And you know the history. The locals used to think about the
24 Federal Government and the Bureau as a one-way street and they
25 got nothing, and the Federal Government said, "They are

1 corrupt."

2 But we are trying to break that down through the
3 strike forces. And I think the strike force is the one vehicle
4 that is reversing that trend, but we are going slowly.

5 As far as the policy is concerned, there is a broad
6 policy, "Let's try to cooperate."

7 As far as the implementation of the policy, we are
8 looking to the strike force chief who is the guy out there who
9 knows the intelligence and knows who he can work with. We
10 rely heavily on him.

11 The broad policy is, "Let's cooperate; let's bring
12 the State and local governments into the program" -- yes.

13 MR. DOWD: What percentage of the market do you
14 believe your efforts in the past several years have reached?

15 MR. JOYCE: I think we have probably reached about
16 2 per cent.

17 MR. DOWD: What percentage would you consider neces-
18 sary before you have an impact sufficient to reverse this
19 escalation that you say is going on? I suppose that is specu-
20 lation.

21 Do you have some goal of a market you feel you
22 should reach?

23 MR. JOYCE: No, just to --

24 MR. DOWD: -- do the best you can.

25 MR. JOYCE: As they say in basketball, put on a

1 full court press, but not to deprive our other areas of inves-
2 tigation which are just as important, the fencing and counter-
3 feiting and Internal Revenue violations.

4 MR. DOWD: How many U.S. Attorneys throughout the
5 United States are actually involved on a fairly full-time
6 basis with your effort against organized crime in the gaming
7 context?

8 MR. JOYCE: That is hard to say.

9 MR. DOGIN: That is hard to say.

10 MR. JOYCE: I would say we have about 115 in the
11 field, and all of them at one point in time have some involve-
12 ment in either the wiretapping or the preparation of the
13 search warrants, or the presentation to the grand jury, or the
14 trial.

15 But I wouldn't think that any of them are full time.

16 MR. DOGIN: You have to add to that also some U.S.
17 Attorney's office might handle some gambling cases where there
18 are no strike forces in the judicial district.

19 MR. DOWD: Do you have a way of arriving at an
20 estimate of what total man-hours in the Justice Department are
21 involved with the gambling problem?

22 MR. DOGIN: The only way would be to go out to the
23 93 U.S. Attorneys offices and 18 strike forces and ask them
24 to make that kind of an estimate. We don't have those statis-
25 tics available at this time, no.

1 MR. DOWD: Well, a way to perceive what that per-
2 centage might be -- is it less than 5 per cent, would you say,
3 or less than 10 per cent?

4 I am asking because I think the Commission needs
5 to know what percentage of the Justice Department effort is
6 really directed to the gambling problem because it relates to
7 our overall judgment of what relates to State and local level
8 if they have any kind of meaningful impact.

9 I don't know what percentage of our time ought to
10 be spent on gambling. I know it is precious little from a
11 prosecutor's standpoint, but I am kind of interested in what
12 the biggest prosecuting department in the country has.

13 MR. DOGIN: If you want a guess, I'd say 60 to 75
14 per cent of the time of the strike force attorneys is involved
15 in some facet of the gambling operations, that is, talking
16 with the agents, working with the taps, which is a tremendous
17 manpower burner, or preparing it afterwards on the search
18 warrants or hearing before the grand jury, trial of the case,
19 and writing of the brief. I'd say 60 to 75 per cent.

20 MR. DOWD: All right, what percentage of the Justice
21 Department is the strike force?

22 MR. DOGIN: We have about 104 in the Organized Crime
23 Section, about 110 in the strike forces, and I think prob-
24 ably there are 1500 Assistant U.S. Attorneys.

25 MR. DOWD: Thank you. Let me go on to a different

1 thing.

2 Can you perceive of a system of legalization of
3 gambling on a State basis or throughout the country that could
4 be designed in such a way as to substantially curtail the in-
5 fluence of organized crime on gambling?

6 MR. JOYCE: Well, not speaking for the Department
7 but my own personal opinion --

8 MR. DOWD: That is what I want.

9 MR. JOYCE: -- there is no way. There is no way
10 that the State can compete with the bookmaker. There is no
11 way that the State could operate on the margin that a sports
12 bookmaker operates on. There is no way that the State could
13 furnish the services that the bookmaker furnishes -- telephone
14 call, credit, the reluctance or refusal to inform the Interna
15 Revenue Service by a 1099 when the man makes a big win; the
16 ability to lay off in order to make sure that you aren't hurt
17 badly in the bookmaking, the sports bookmaking.

18 There is just no way that I can conceive of that
19 the State can compete with the illegal bookmakers.

20 MR. DOWD: Now, if, in fact, there is to be, at
21 least in some States, a rather broad-scale legalization of
22 gambling, and taking into consideration your judgment on the
23 continued influence of organized crime, do you think the
24 problem of enforcement, local enforcement with gambling, woul
25 be more severe than it is today in the context of gambling

1 being legalized, so to speak, by the State?

2 MR. JOYCE: Oh, I would think that it would be
3 compounded very greatly. That is, if there are certain book-
4 makers who are licensed to accept bets, you would have a great
5 deal of difficulty getting meaningful sentences in the court
6 for those who don't get the license, particularly if the license
7 is going to cost \$50.

8 I think the Internal Revenue Service ran into that
9 a good deal, that is, the punishment for failure to obtain a
10 wagering tax stamp would be a fine of \$50, which is the cost
11 of the wagering tax stamp. And I think they would be unable
12 to have any successful prosecutions of illegal gambling where
13 there is legal gambling.

14 MR. DOWD: One final question. You mentioned that
15 in the raids on the illegal casinos, without exception you
16 found they were fixed in the sense it was fixed against the
17 customer.

18 Do you feel that phenomenon would continue with the
19 so-called legalization of casino gambling?

20 MR. JOYCE: I don't think that we ever found, with
21 respect to any investigations of the casinos in Las Vegas,
22 that there was widespread fixing or widespread cheating on the
23 part of the house against the customer. But we found it
24 invariably in the illegal casinos, that is, the house was
25 cheating the customer.

1 But that was not reflected in our investigations in
2 the State of Nevada.

3 MR. DOWD: Thank you.

4 CHAIRMAN MORIN: General List, Attorney General of
5 the State of Nevada.

6 MR. LIST: I was impressed by some of your figures
7 provided to the Commission staff which indicated only 20 per
8 cent of the gambling offenders who had been convicted received
9 sentences of a year or more. We talked about a lax attitude
10 on the part of the sentencing judges.

11 Do you believe that there is a possibility that
12 there is more to it than simply a backlog of cases, more to
13 it than the fact it is a less dramatic crime, more to it even
14 than the fact that there is apathy, as you call it, on the part
15 of the public?

16 What I am suggesting is there may be the possi-
17 bility that rather than apathy, it is more in the nature of a
18 desire on the part of the people to gamble; that there is, on
19 the part of a vast percentage of our population, a vast demand
20 for an outlet in terms of gambling and the awareness of that
21 desire on the part of the courts which leads to this light
22 sentencing?

23 Is that conceivable?

24 MR. JOYCE: Oh, I'm sure it is a factor. It must
25 be.

1 MR. DOGIN: There wouldn't be the service if there
2 wasn't the desire to have the service.

3 MR. LIST: I am suggesting perhaps the courts recog-
4 nize that in their treatment of gambling offenders.

5 MR. JOYCE: I am sure that is the way some of the
6 courts rationalize their sentencing, that is right.

7 MR. LIST: I have a question about the effect of
8 the Giordano decision Monday. You have indicated there are
9 some 60 pending indictments which will have to be dismissed.
10 Were there convictions and, if so, how many obtained pursuant
11 to wiretaps secured during the period of the Giordano?

12 MR. JOYCE: I am not aware of anywhere there are con-
13 victions that must be overturned. We haven't completed a full
14 study of all of the possibilities and ramifications of both
15 Chavez and Giordano, but at this point I am not aware of any
16 convictions that have to be overturned.

17 MR. LIST: Earlier, under Chairman Morin's question-
18 ing, the subject came up of the strike forces for the FBI
19 making available to the Internal Revenue Service data and
20 information recovered through wiretaps.

21 I would appreciate it if you would expand on it a
22 little bit in terms of the policies there and when that infor-
23 mation is made available and how frequently the IRS has been able
24 to utilize it for the recovery of civil tax liabilities.

25 MR. JOYCE: Well, after the trial of a gambling

1 case involving wiretaps and those wiretaps then become public
2 records, they are then made available to whatever investigative
3 agencies may wish to utilize them, and it is a fairly simple
4 matter of compiling the gross wagers on the tap and identifying
5 the people, if they haven't already been identified on the pub-
6 lic record, and looking into their financial situation and
7 making a jeopardy assessment and seizing whatever property you
8 find.

9 We have seized automobiles and --

10 MR. LIST: So there is, as I understand it, a re-
11 striction on the disclosure of that information prior to trial.

12 MR. JOYCE: Oh, prior to the time of trial it is
13 sealed by the court and can only be utilized by the attorneys
14 and the investigative agency in preparation for the trial.

15 MR. LIST: And subsequent to the trial, is only the
16 evidence from the wiretap which was admitted in the court
17 proceedings of public record, or is the entire transcript or
18 tape itself available whether or not it was introduced in
19 evidence?

20 MR. JOYCE: I am not aware in that detail of what
21 the procedure is. I would think the better procedure itself
22 certainly would be only to use the public record. But I am not
23 fully cognizant of all of the steps that have been taken in
24 all of the strike forces.

25 MR. LIST: Are those records automatically turned

1 over to IRS or simply left to the discretion of IRS as to when
2 they request to see records?

3 MR. JOYCE: No, we urge our attorneys to in turn
4 urge the representatives on the strike force to view them.

5 MR. LIST: But you don't know when they make every-
6 thing available or simply the limited portions introduced in
7 evidence at the time of trial?

8 MR. JOYCE: No, I don't know.

9 MR. LIST: Has the Internal Revenue Service utilized
10 data secured in that fashion against the players as well as
11 the operators of the illegal gambling establishments?

12 MR. JOYCE: I would think not, but I don't know what
13 the Internal Revenue Service does.

14 MR. LIST: I am interested generally in the relation-
15 ship between your strike forces and the IRS, and I think I
16 understand what you have gone into so far.

17 Are there other instances where the strike force
18 assists the IRS in civil proceedings?

19 MR. JOYCE: Is there anything specific you are
20 pointing towards? In the course of an Internal Revenue
21 Service investigation, where that investigation is conducted
22 by both the revenue agent and the special agent, there is very
23 often cooperation with the strike force attorney. And if in
24 that cooperation there are records seized, records brought
25 before the grand jury that may assist later on in a civil case,

1 why yes, that is eventually, under court order, turned over to
2 the Revenue agent for whatever purposes he may use them in
3 the course of the civil trial.

4 MR. LIST: The strike force, however, as I under-
5 stand it, is primarily intended to delve into criminal activi-
6 ties as opposed to civil?

7 MR. JOYCE: Oh, we do not get involved in the civil
8 activities alone. It is only when the civil penalties may
9 arise out of a criminal investigation, criminal fraud investi-
10 gation, that the strike force gets involved.

11 MR. LIST: I am aware of certain situations where
12 civil investigations are taking place within the Internal
13 Revenue Service, and apparently in conjunction with those
14 civil investigations there is a concurrent strike force
15 criminal proceeding inquiry before a Federal grand jury.

16 In those situations do the strike force personnel
17 make available to the Internal Revenue Service the results of
18 their grand jury inquiries?

19 MR. JOYCE: Well, I am not aware of any situation
20 where an Internal Revenue Service investigation would be a
21 civil investigation. That is, if there is a tax audit by a
22 Revenue agent and he finds fraud, that would not be a civil
23 investigation. And I don't know of any investigation where
24 a Revenue agent ever starts and says, "I am going to do a
25 civil investigation, and if I find evidence of a crime I am

1 not going to tell anybody."

2 MR DOGIN: Maybe I could just interject there. This
3 may be a little off the point since you are talking about IRS,
4 but since 1970 we have had a statute which permits use of in-
5 junctive relief by the Federal Government to enjoin an illegal
6 gambling business. And we have been waiting for the right case,
7 the right set of circumstances, and we have one in Chicago where
8 we are using for the first time a civil remedy to enjoin, to
9 cease and desist an illegal bookmaking operation.

10 And this case was originated in February by the U.S.
11 Attorney in Chicago, together with the strike force and we are
12 now in the stage where we have had a preliminary ruling by a
13 district court judge that the statute is constitutional, and we
14 have attempted to depose and take testimony from illegal gamblers
15 who have refused to testify, and we are at the contempt stage
16 now.

17 So we do have civil remedies in the area of illegal
18 gambling and we are slowly and cautiously attempting to use these
19 remedies. The statute I'm talking about, Section 1964.

20 There are some problems with that section we are
21 exploring.

22 In a civil proceeding, of course, you have complete
23 discovery, and this raises the issue of informants testimony
24 which you would not want public during a criminal proceeding.
25 That is why we are moving slowly to see what we have.

But I can tell you we received word from our strike

1 force in Chicago that the gamblers in that community are very
2 concerned about the ramifications of the civil remedies, and
3 I think the gambling community is taking a pretty good look
4 at what is going to happen in Chicago, just as we are, with this
5 particular case.

6 MR. LIST: What I am specifically referring to are
7 situations where audits are taking place and through the
8 grand jury process information has been sought by ~~strike~~ forces
9 which relates not only to the particular audits underway, but
10 also relates to broader matters touching upon individuals who
11 are not subject to audit, or at least not subject to current
12 audits, in such a manner as to constitute such an interchange
13 between the regular normal audit and the strike force, leading
14 to what could be construed as a kind of a fishing expedition.

15 What I am really striving for is some comments
16 from either of you concerning an abuse of the grand jury criminal
17 proceedings for the purpose of assisting the Internal
18 Revenue Service in its auditing function.

19 MR. JOYCE: Well, I am aware of a number of in-
20 stances where the charges have been made that in the course of
21 a grand jury investigation the process has been abused because
22 as the charge was made, the grand jury is being used in order
23 to make a civil tax case.

24 I am aware of no instances where those charges have
25 in fact been substantiated.

1 MR. LIST: In other words, it is the firm policy of
2 the Justice Department to refrain from using its forces and its
3 grand jury proceedings for the purposes of assisting Internal
4 Revenue Service with its civil audit?

5 MR. JOYCE: It is the firm purpose of the Department
6 of Justice to utilize a grand jury for the sole purpose of
7 investigating the possible commission of a Federal offense.
8 And a civil tax audit does not fit in there. And that is the
9 only purpose that we use the grand jury information.

10 MR. MORIN: I wonder if you might yield for ten
11 minutes. I think Mr. Ritchie has some questions that he would
12 like to ask. He will come back to you. And Senator Cannon
13 also has some questions he'd like to ask.

14 I think it would be perhaps helpful to us if we let
15 Mr. Ritchie proceed.

16 MR. LIST: Certainly.

17 MR. RITCHIE: Thank you, Mr. Chairman.

18 MR. RITCHIE: Gentlemen, I take it there is
19 absolutely no question in the Department's judgment that wire
20 tapping is one of the most effective enforcement tools against
21 organized crime; is that correct?

22 MR. DOGIN: That is correct. I'd say the law en-
23 forcement community would agree to that, yes.

24 MR. RITCHIE: Do you feel that the Department of
25 Justice has, through its strike force program, adequately

1 covered the problem? Or can you share with us perhaps a prognosis
2 of expansion of more enforcement through the strike force con-
3 tent or through the Department of Justice?

4 Or can you prognosticate with us about the future?
5 Should the Commission be more concerned about creating a better
6 enforcement atmosphere in the States than in the Federal Govern-
7 ment?

8 MR. DOGIN: Well, I'd say you have to take a look at
9 what is happening in the States. As far as the Federal Govern-
10 ment is concerned, again I repeat, we have the tools and we are
11 using them, and our strike forces are going after major gambling
12 operations. I can only say I'd like to see the States more in-
13 volved.

14 MR. RITCHIE: Well, would it be your opinion that in
15 order to involve the States adequately, we must emulate the
16 tools which Congress has given the Department of Justice to
17 utilize against illegal gambling?

18 MR. DOGIN: You mean the States?

19 MR. RITCHIE: Yes.

20 MR. DOGIN: I think so.

21 MR. RITCHIE: Then it would be your recommendation
22 that the types of immunity, the types of grand juries, and
23 generally those matters in the Organized Crime Control Act of
24 1970, be suggested as model legislation for the States?

25 MR. DOGIN: I don't know about model legislation,

1 but I think those States with significant gambling problems
2 should take a good look at what is available to the Federal
3 Government.

4 MR. RITCHIE: Utilizing electronic surveillance,
5 from your testimony, I would judge is a valuable asset to law
6 enforcement, in enforcing the gambling prohibition; is that
7 correct?

8 MR. DOGIN: That is correct.

9 MR. RITCHIE: From the statistics that we have
10 seen from the administrative office of U.S. courts, there has
11 been a decline in the utilization of wiretaps in 1973 from
12 1972.

13 Can you comment as to whether or not this reflects
14 a change in policy of enforcement?

15 MR. JOYCE: No, I think it reflects the concern of
16 the Department with the pending cases of Giordano and Chavez.
17 And also the competition of the intensification of gambling
18 operations.

19 MR. RITCHIE: The quandary that I think the Commis-
20 sion may find itself in based upon the testimony offered here
21 this morning is that recognizing that gambling is the pervasive
22 problem that you have described, and that the effort of the
23 Federal Government by and large has been the most active in
24 terms of enforcement, and the utilization through the strike
25 forces and through the U.S. Attorney's office of enforcement

1 tools that you have -- we have only reached, according to your
2 testimony, Mr. Joyce. two per cent of the illegal market.

3 You have stated that your solution is not legaliza-
4 tion. Is it more enforcement? Is the Commission going to have
5 to recommend that the Department of Justice increase its man-
6 power, that the FBI increase its devotion to this problem?

7 MR. JOYCE: No, I don't think that you will ever
8 be in a position where the Federal Government can handle any
9 crime problem for 220 million people; that the major brunt of
10 the law enforcement effort has to be on the part of the State
11 and the local police officers. They have many, many more than
12 we have.

13 And all I am saying is that we can do the important
14 interstate law enforcement, but the local and State law enforce-
15 ment are going to have to do the rest of it. They are the ones
16 that are fully aware of the problem. The beat cop knows where
17 the numbers operator is. He knows where every seller of the
18 numbers slips is.

19 The FBI agent has to go out and find that and find
20 it, as you know, with a tap or with an informant.

21 They can do the job. They are there. They are
22 better equipped to do the job. There are more of them. And
23 they ought to do the job.

24 And I think it is unrealistic to think that the
25 Federal Government can cure any single law enforcement problem.

1 MR. RITCHIE: Again, do you believe that reaching
2 2 per cent of the market, which I take is a constant effort
3 and a fairly constant figure in your judgment of the illegal
4 market that is being recommended by the Federal effort -- is
5 that correct?

6 MR. JOYCE: Yes.

7 MR. RITCHIE: Do you believe that 2 per cent of the
8 illegal market constitutes what the Federal effort should be?
9 Is that the end result?

10 MR. JOYCE: Well, that is a value judgment that
11 has to be made based upon the availability of resources and
12 everything else. And I am not in a position now to recommend
13 any increase in the appropriations or the strength of the agen-
14 cies concerned or of the Department.

15 MR. RITCHIE: Mr. Dogin, the figures you were giving
16 us from the intensification program, how did you identify mob
17 control, or la Cosa Nostra?

18 MR. JOYCE: That was done by the Strike Force Chief
19 who was interrogated by the researcher, Mr. Alfred King, to
20 determine whether there was on tap, by informant information,
21 or any other reliable intelligence-gathering facet -- whether
22 there was a known, an identified, LCN member involved.

23 MR. RITCHIE: Again, back to the figures given
24 generally from the intensification program, the estimate of
25 the dollar volume -- is that a total wager -- or how did you

1 arrive at that? Because that is not a net profit figure, is

2 MR. JOYCE: That is not a net profit figure. That
3 is gross wagers. And from the gross wagers the gross profit was
4 determined, based upon the type of activities, that is, that
5 there is a variance between the profit on a sports bookmaking
6 operation as differentiated against a numbers operation or a
7 horse-race operation.

8 MR. RITCHIE: Could you tell us your opinion, or if
9 your experience, the types of profits available in these
10 various illegal games?

11 MR. JOYCE: Well, just as a rule of thumb, in a
12 sports-betting operation, a bettor usually has to bet \$11 in
13 order to win \$10.

14 Now, if a bookmaker has a completely balanced book
15 he will take in -- for example, on the New York Giants-
16 Washington Redskins game, he will take \$11 from the Giant
17 bettor and \$11 from the Redskins bettor. If the Redskins win
18 he will have to give back \$11 to the Redskins bettor, plus a
19 \$10 profit. So out of the \$22 he has to give back \$21 so he
20 makes a dollar on it or a profit of 4.5 per cent.

21 Most books pay no more than track odds on the horse
22 racing, and assuming that their action reflects the track
23 action -- and that is an assumption that we make that we can
24 prove but we consider that it all averages out -- then the book-
25 maker's profit will be the same as the parimutuel profit or

1 18 per cent.

2 In the numbers operations in most areas of the
3 country they pay out \$600 on a numbers bet of a dollar, and the
4 odds are 1,000 to 1 so the profit is 40 per cent. The profit
5 would be 4.5 per cent on sports book, about 18 per cent on the
6 horses, and about 40 per cent on the numbers.

7 MR. RITCHIE: Do you have any such figures for sports
8 pool or parlay operations?

9 MR. JOYCE: No, they haven't been a significant
10 factor in our investigation, so I don't have that. But I think
11 that those odds are even more prohibitive than the numbers.

12 MR. RITCHIE: And again, to be specific, your ex-
13 perience in those States -- excluding Nevada -- that have re-
14 cently inaugurated either off-track betting or lotteries, you
15 have seen no decrease in the illegal market in those States?
16 Is that your testimony?

17 MR. JOYCE: That was Mr. Dogin's testimony and I'd
18 fully agree with him.

19 MR. DOGIN: I don't know that much about the ex-
20 perience of some of the States with lotteries, but from my
21 experience with OTB in New York, I don't see any significant
22 decrease.

23 MR. RITCHIE: The figure you were talking where you
24 talk about the fines giving the government a net profit over
25 the cost of the operation -- those costs are the costs of the
wiretap, not the cost of the total enforcement effort; is that

1 correct?

2 MR. DOGIN: That is correct.

3 MR. RITCHIE: Does the Department maintain cost
4 figures on these various operations that would allow an analysis
5 from the standpoint of what we are accomplishing in terms of
6 eradicationg the illegal market or versus what it is costing the
7 government to maintain the operation?

8 MR. DOGIN: I don't know whether the Justice Depart-
9 ment keeps those figures or not.

10 MR. RITCHIE: Mr. Chairman, I have no further
11 questions.

12 CHAIRMAN MORIN: Thank you.

13 I think listening here to Mr. Dogin and Mr. Joyce
14 about the importance of the local police organizations and the
15 prevalence of police corruption in those areas where illegal
16 gambling is a major factor, it seems that 1511 is a major
17 weapon in your arsenal. We don't have the statistics. That
18 is the one that would give --

19 MR. DOGIN: Would give us Federal jurisdiction, yes.

20 CHAIRMAN MORIN: Can you say he'd tend to use that
21 section more than at present or are you using it?

22 MR. DOGIN: We are using it, yes.

23 MR. JOYCE: We are using it, yes, but one of the
24 most dramatic cases was the one Mr. Dogin talked about, the
25 Anchor Bar, which is one that goes down the tube because of

1 Giordano.

2 CHAIRMAN MORIN: It seems to me that section will
3 cut down on police corruption to some degree.

4 MR. DOGIN: We hope so.

5 SENATOR CANNON: You said the Federal effort reaches
6 2 per cent. Now, what per cent does the local law enforcement
7 reach?

8 MR. JOYCE: I don't think we can give you that.

9 SENATOR CANNON: You don't have any statistics?

10 MR. DOGIN: No.

11 SENATOR CANNON: I was trying to get at how much
12 illegal activities is not being reached by any law enforcement
13 agency.

14 MR. DOGIN: I don't know.

15 MR. JOYCE: I would guess, if you want to guess,
16 that it is a very substantial portion of the industry which is
17 not --

18 SENATOR CANNON: Not being reached at all.

19 MR. JOYCE: By anyone.

20 SENATOR CANNON: By any agency whatever?

21 MR. DOGIN: State or local.

22 SENATOR CANNON: You have stated the State and local
23 effort would be the more desirable to get at the problem. What
24 recommendations would you suggest for improvement at the local
25 level?

1 MR. DOGIN: Statutory tools, one; wiretapping,
2 immunity, contempt, special grand juries.

3 My own personal feeling is that I'd like to see more
4 special prosecutors like Nigari in New York, solely to handle
5 the problem of criminal justice corruption. It is unique.
6 There is only one local special prosecutor in this country and
7 that is in New York City, and that came about as a result of
8 the Knapp Commission hearings and as Executive Order by Governor
9 Rockefeller following the Knapp Commission hearings.

10 I think there is a uniformity of opinion that police
11 corruption is a problem, and I think the utilization by States
12 of special prosecutors might not be a bad idea.

13 SENATOR CANNON: Do you believe it is possible to
14 eliminate illegal gambling in this country, substantially elimi-
15 nate it?

16 MR. DOGIN: Probably not as long as there is a de-
17 sire on the part of the public to gamble and there is a profit
18 to the operators, and I think the best we can do is control it
19 with a State and Federal effort.

20 SENATOR CANNON: Certainly if the Federal level is
21 going to have a substantially larger impact than the 2 per cent
22 you referred to, you are going to have to have considerably
23 larger resources at your control, are you not?

24 MR. DOGIN: You are speaking about the Federal
25 Government?

1 SENATOR CANNON: Yes.

2 MR. DOGIN: I am not prepared to make that judgment
3 that we need no more resources in the field. I think Mr. Joyce
4 would agree with that.

5 MR. JOYCE: I think it's axiomatic that if we do
6 get more, we will be able to reach more. But I don't think
7 that we at this point can handle additional --

8 SENATOR CANNON: So you are not recommending it
9 necessarily?

10 MR. JOYCE: No, sir.

11 SENATOR CANNON: What would your response be if I
12 were to say, "How would you bring this 2 per cent up to 4 per
13 cent?"

14 MR. DOGIN: Involve the States and local governments
15 more in gambling enforcement.

16 SENATOR CANNON: You said the Federal Government
17 was 2 per cent. I am talking now about how in the Federal
18 Government it could go up to more than 2 per cent, say 4 per
19 cent.

20 MR. JOYCE: I don't know that we can increase it
21 that much. I don't know that we can put more of these cases
22 on the dockets and get the kind of treatment that we think
23 ought to be given to the gambling cases without hearing the
24 complaint that we hear that this isn't the magistrate court,
25 this is the Federal District Court, and what are you bringing

1 these cases in here for?

2 And I am not convinced that we can increase our
3 effort to the point where we can effectively destroy illegal
4 gambling. I think all we can do is to make that effort within
5 the system that we think is the maximum.

6 SENATOR CANNON: What regions or localities in the
7 country do you consider to have a more serious gambling problem
8 than others?

9 MR. DOGIN: Northeast.

10 SENATOR CANNON: Northeast?

11 MR. DOGIN: A more serious gambling problem?

12 SENATOR CANNON: Yes.

13 MR. DOGIN: Oh, yes, Northeast and the Midwest.

14 SENATOR CANNON: Is that principally due to the
15 greater number of people present?

16 MR. DOGIN: That is part of it, and the location and
17 heavy concentration of organized crime families, this heavy
18 concentration. That is also a part of it, yes.

19 SENATOR CANNON: How widespread -- you may have
20 answered this in your initial statement -- how widespread is
21 the distribution of the organized families? That is, are there
22 hundreds of families involved in this or a relatively small
23 number?

24 MR. DOGIN: I think we are talking about 26 families.
25 The bulk of the concentration of the families is in the

1 northeastern and midwestern parts of the United States.

2 SENATOR CANNON: And it is concentrated in about
3 26 families, you say?

4 MR. DOGIN: Yes.

5 SENATOR CANNON: Thank you, Mr. Chairman.

6 CHAIRMAN MORIN: I promised General List we'd get
7 back to him. I have in mind we will get back to him.

8 Do you have any further questions, Mr. Dowd?

9 MR. DOWD: I'd like to get back to what Mr. Dogin
10 touched on very briefly when you described your New York ex-
11 perience where gambling cases come in this great flow of
12 cases to the court?

13 MR. DOGIN: Especially in an urban setting?

14 MR. DOWD: Right. Don't you think that has a
15 comparable impact on the local effort as well as corruption.
16 simply the decision process made at both the enforcement and
17 prosecutorial levels at the local level, that there are just
18 more problems that seem to have to be taken care of immedi-
19 ately?

20 MR. DOGIN: Yes.

21 MR. DOWD: And isn't this particularly important
22 in the States where the States have primary responsibility for
23 many offenses for which the Federal prosecutorial authorities
24 do not, such as homicide, rapes, most robberies, burglaries?
25 They are basically local enforcement problems.

1 MR. DOGIN: Yes.

2 MR. DOWD: Do you have any suggestion from your New
3 York experience how we might persuade local enforcement and
4 local prosecutorial efforts to give more attention to the
5 handling of the problem -- accepting that that may be part of
6 the problem as well as corruption?

7 MR. DOGIN: It is harder to do what I am suggesting
8 as a possibility in New York City, but I think it has to be
9 brought home more dramatically -- to not just the criminal
10 justice system but the average public, the relation between
11 organized crime and gambling. It doesn't stop with gambling.
12 It is drugs, loan-sharking, hijacking -- it is all those
13 other distasteful activities.

14 And until we really can bring it home to the
15 average citizen, it is still going to be hard to get them to
16 worry about gambling; and for the judges to sentence because they
17 reflect the mood of the community and the mores of their
18 society.

19 It is tough to do but I think you have to do it.

20 CHAIRMAN MORIN: Mr. Gimma has one question.

21 MR. GIMMA: I am aware of the fact that States
22 cannot compete with bookmakers and States cannot have round-
23 robins and set the day on payday and bookmakers can take bets
24 on all kinds of sports, where OTF or lotteries are confined
25 just to their particular activities.

1 In your personal opinion, do you think if you were
2 to license a bookmaker as you license stockbrokers -- do you
3 think that would bring illegal gambling under better control
4 and perhaps eliminate it?

5 MR. JOYCE: I don't think the experience of the
6 British Government would indicate that that is feasible. My
7 understanding is that there are as many illegal bookmakers
8 in England as there are legal bookmakers. And I don't think
9 that the experience in Nevada would indicate that. We find
10 much more volume of illegal gambling going into the illegal
11 bookmakers than we find legal gambling going to the legal
12 bookmakers.

13 MR. GIMMA: Well, if you had the licensing, don't
14 you think you could have more enforcement powers to the
15 illegal side?

16 MR. JOYCE: I don't know of any illegal activity
17 that you can control by licensing. I am just not aware of any.
18 I don't think that licensing of liquor establishments has been
19 an effective control over the liquor industry, illegal liquor
20 industry. I don't know of any effective control of an illegal
21 activity by licensing.

22 CHAIRMAN MORIN: Would your answer be the same if
23 the winnings were made tax-free and the licensed agent was
24 authorized to give credit?

25 MR. JOYCE: If the winnings were tax-free?

1 CHAIRMAN MORIN: Yes, and the licensed bookmaker
2 authorized to grant credit?

3 MR. JOYCE: I don't think so. He'd still have to
4 pay his own taxes and he'd still have to account to whatever this
5 agency is for his own volume, and I am sure he doesn't want to
6 do that.

7 CHAIRMAN MORIN: Who doesn't?

8 MR. JOYCE: The bookmaker.

9 CHAIRMAN MORIN: But wouldn't the public better be
10 just as likely to go to the bookmaker who was licensed who'd
11 give him credit if the winnings were tax-free?

12 MR. JOYCE: But I am talking about whether you --

13 CHAIRMAN MORIN: You could have unlicensed ones at
14 the same time that would be illegal.

15 MR. JOYCE: I am sure you would.

16 CHAIRMAN MORIN: Why would the person go to the
17 illegal one when he could go to the legal one and get the
18 credit and tax-free money?

19 MR. JOYCE: If you are talking about the normal
20 customer of the illegal bookmaker, you are talking about a
21 man who has a good deal of money, who is undoubtedly busy.
22 He may be a Wall Street stockbroker. And I just can't imagine
23 him walking down and standing in line to spend \$1,000.

24 CHAIRMAN MORIN: He picks up the telephone and says
25 "This is Mr. Morgan here, and I'll like to place a bet." Why

1 would he go to the illegal one?

2 MR. JOYCE: He'd go to the legal one, I guess, as
3 long as he has credit.

4 CHAIRMAN MORIN: General List.

5 MR. LIST: Just a couple of quick questions on my
6 part.

7 Again concerning the grand jury utilization --

8 MR. JOYCE: I don't mean to interrupt again, but I
9 understand that this afternoon you are going to have the
10 Director of Intelligence and the Commissioner of Internal
11 Revenue Service, and they are much more appropriate witnesses
12 to talk to the Internal Revenue procedures than I am.

13 MR. LIST: My question has to do with your policy,
14 though, insofar as the strike forces making available their
15 services, and the information they collect to the IRS. You
16 are on the giving end and they are on the receiving end.

17 My specific question is: Is the evidence or data
18 gathered through your strike force inquiries available to the
19 Internal Revenue Service?

20 MR. JOYCE: Are you talking about gambling informa-
21 tion now?

22 MR. LIST: Yes, in gambling inquiries.

23 MR. JOYCE: In gambling inquiries? The information
24 would be available to the Internal Revenue Service at the
25 termination of the criminal case that was being investigated

1 by the grand jury upon an order of the court.

2 MR. LIST: It is not available during the investi-
3 gative time?

4 MR. JOYCE: It is not available to a Revenue agent
5 for a solely civil case.

6 MR. LIST: The other point I wanted to invite you
7 to expand upon or clear up concerns your efforts to the layoff
8 matter in the so-called raid of the cage of Caesar's Palace.

9 As I understand it -- and this is more for the
10 record than anything else -- it didn't involve the hotel or
11 casino but rather one or two employees who privately were
12 involved in layoff.

13 MR. JOYCE: That may well be your understanding but
14 that is not my understanding.

15 CHAIRMAN MORIN: Mr. Ritchie.

16 MR. RITCHIE: The testimony offered regarding the
17 estimated volume of wagers would indicate that generally
18 across the board 65 per cent or so involves sports bookmaking.
19 You have testified that the best, the optimum profit to the
20 bookmaker is 4.5 per cent.

21 Can you give us some kind of a rationale as to how
22 the wagering excise tax was set at 10 per cent? Was that to
23 prohibit bookmaking or was it to raise revenue in the view of
24 the Department?

25 MR. JOYCE: I don't know, but a bookmaker who charges

1 the 10 per cent would have to get higher odds than the book-
2 maker who doesn't. And I think it has that effect of driving the
3 legal bookmaker out of business unless he collects as a service
4 that 10 per cent additional.

5 MR. RITCHIE: But the complaint that is raised
6 generally by legal bookmakers in the State of Nevada is that
7 the 10 per cent excise tax makes them non-competitive with il-
8 legal operations. Do you have a view on that?

9 MR. JOYCE: I think they are absolutely right.

10 MR. RITCHIE: Now, the statistics that have been
11 supplied to the Commission involving the Department's utiliza-
12 tion of 18 USC, 1301 and 1302, would indicate in the past ten
13 years there have been only a total of ten indictments utilizing
14 those particular lottery statutes.

15 Is it your testimony that there is no Federal,
16 national lottery presently existing?

17 MR. JOYCE: Well, there are from time to time circu-
18 lated illegal lotteries on a national basis. Annually the
19 Irish Sweepstakes are circulated throughout the United States.

20 So I can't say that, no, there is no illegal lottery
21 on a nationwide scale.

22 MR. RITCHIE: But I guess my question is: If the
23 Department has been called upon to use the anti-lottery
24 statutes so seldom in the past ten years, does this reflect
25 that these laws are outdated or not needed at this point? Or

1 is it your judgment that they are still necessary?

2 MR. JOYCE: Well, in order to carry out the Federal
3 policy of keeping the channels of interstate commerce clear
4 of oppression by one State of another in that the legalized
5 lotteries go unsolicited into the States where they are pro-
6 hibited, I think that those statutes are necessary. I think
7 that they effectively accomplish the job without prosecution,
8 as do many punitive statutes.

9 MR. RITCHIE: I have nothing further.

10 CHAIRMAN MORIN: May I ask for your indulgence.
11 Dr. Allen would like to ask one more question. I forgot to
12 identify Dr. Allen. She is a city councilwoman in Philadelphi-
13 and also an orthopedic surgeon, with a certain amount of versa-
14 tility.

15 DR. ALLEN: And no good as a gambler.

16 (Laughter.)

17 Have any techniques been devised or is there
18 currently under study any technique that has been devised
19 that would cut into the level of profits that the criminal
20 element gets out of gambling?

21 MR. JOYCE: None, except to enforce taxation, that
22 I know of.

23 DR. ALLEN: Force taxation?

24 MR. JOYCE: Enforce taxation, that is, enforcing
25 the wagering tax and enforcing the income tax against the

1 illegal gamblers. That is the only thing I can think of.

2 DR. ALLEN: In other words, it is your assessment
3 that the competitive activities of things like OTB have not
4 deterred the criminal elements from maintaining the level of
5 profits that they had prior to OTB.

6 MR. JOYCE: We have no information that it has.

7 DR. ALLEN: Thank you.

8 CHAIRMAN MORIN: All right.

9 I want to thank you gentlemen very, very deeply for
10 coming here. It has been very helpful. I know you are
11 terribly busy and we appreciate it very much.

12 These hearings will stand adjourned until 2:00
13 o'clock when the Internal Revenue Service will be heard from.

14 MR. DOGIN: Thank you, Mr. Chairman.

15 MR. JOYCE: Thank you, Mr. Chairman.

16 (Whereupon, at 12:20 p.m., a luncheon recess was
17 taken until 2:00 p.m.)
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AFTERNOON SESSION

CHAIRMAN MORIN: This afternoon we will hold the third set of hearings of the Commission on the Review of the National Policy Toward Gambling.

This afternoon we will hear testimony from the Internal Revenue Service, and we are very pleased and honored to have Mr. John Olszewski, Director, Intelligence Division, and the Commissioner himself.

(Whereupon, Donald Alexander and John Olszewski were sworn by Mr. Ritchie.)

TESTIMONY OF DONALD ALEXANDER, COMMISSIONER OF THE INTERNAL REVENUE SERVICE; JOHN OLSZEWSKI, DIRECTOR, INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE; AND MERVIN D. BOYD, PROGRAM ANALYST, INTELLIGENCE DIVISION, INTERNAL REVENUE SERVICE

CHAIRMAN MORIN: Would you proceed, Mr. Commissioner.

COMMISSIONER ALEXANDER: Mr. Chairman, I have a statement here, and I am about to ask Mr. Boyd whether it has been distributed.

MR. BOYD: Yes, it has.

COMMISSIONER ALEXANDER: I'd like to file the statement for the record, Mr. Chairman, but not read it all, with your permission.

CHAIRMAN MORIN: Very well, sir.

COMMISSIONER ALEXANDER: I'd like to skim some of

1 it. Of course, Mr. Chairman, I am comparatively new at the
2 Internal Revenue Service and have found in the year that I have
3 been over here that the things to do exceed the time available
4 to do them.

5 Today we are testifying before you and this Commis-
6 sion with respect to Internal Revenue ethics and Internal Revenue
7 views in a highly specialized area of tax enforcement.

8 Mr. Olszewski is far better qualified than I to re-
9 spond specifically to the questions that this Commission may
10 have with respect to what we are doing, what we have been doing,
11 and why we have been doing certain things and not doing others.

12 I'd like to touch generally on some of the points
13 made in the statement that you have.

14 Now, we, the Internal Revenue Service, are interest-
15 ed first in seeing to it that people report their income
16 accurately and pay the taxes that are imposed by law with re-
17 spect to this income, whatever the source of the income.

18 We are quite interested in seeing to it, to the
19 extent our resources permit, that income derived from gambling
20 attracts the same tax as income derived from other sources.

21 And we have some problems in this respect, as we
22 will develop with you.

23 We are also interested in enforcing, to the extent
24 of our responsibilities and to the extent of our capabilities,
25 all the Internal Revenue laws. We lack the resources to engage

1 in as comprehensive and as vigorous and as effective enforce-
2 ment activities as we would like, and as we would hope that
3 we will be permitted to do, given greater resources in the
4 future.

5 It is well-known that the income tax statutes have
6 never contained an exemption of income derived from gambling
7 -- and there have been a number of cases, starting, I guess,
8 with the famous one involving Al Capone, showing Internal
9 Revenue efforts to enforce the tax laws with respect to income
10 from gambling activities.

11 More recently we have the Licavoli case, the Mickey
12 Cohen case, and a case with which I am quite familiar because
13 it occurred across the river from Cincinnati, involving a former
14 football player called Tito Carinci.

15 We are continuing to investigate income tax evasion
16 by gamblers and other members of organized crime. And for
17 the past few years, this program has been largely carried on
18 through our participation with the Department of Justice
19 strike forces -- and I understand that the Department of Justice
20 officials testified before this Commission this morning.

21 The Wagering Occupational and Excise Tax Statutes
22 were part of the Revenue Act of 1951 which was a revenue-
23 raising measure in connection with the Korean War but which
24 also followed closely on the heels of the Kefauver investiga-
25 tion. These statutes provided for a \$50 occupational tax

1 stamp and a 10 per cent excise tax on the gross amount of
2 wagers accepted by an individual in the business of accepting
3 wagers.

4 Internal Revenue Service opposed enactment of these
5 taxes and former Commissioners have testified frequently about
6 Internal Revenue concerns about the wagering taxes. But the
7 IRS request for additional funds to enforce these taxes was
8 turned down by Congress, and we had to carve out these re-
9 sources from those generally available to us for enforcement
10 of the other tax laws.

11 I suppose the reason why the former Commissioners
12 expressed their concerns about these taxes basically was, I
13 believe, that we are in the tax business, and the tax business
14 involves, of course, judgments as to incentives, judgments as
15 to decentives, judgments as to things we want to encourage and
16 things we want to discourage.

17 But the tax system is not the best or the perfect
18 weapon to try to meet society's ills. Particularly this is
19 true in the income tax area. If judgments about the need for
20 the assertion and collection of a tax transcend the careful
21 judgment required to determine income correctly and the tax
22 correctly, then the Internal Revenue Service is involved in
23 using tax powers and tax tools for non-tax ends.

24 At best this is awkward and troublesome. At worse,
25 it simply goes beyond the powers of the Internal Revenue

1 Service within the statutes.

2 Of course, this committee is well aware -- this
3 Commission, forgive me. I am accustomed to testifying before
4 committees, but Commissions are somewhat new to me.

5 This Commission is aware of the Marchetti-Grosso
6 decisions of the Supreme Court in January of 1968 which, in
7 effect, provided gamblers with a defense under the Fifth
8 Amendment for failure to comply with the laws as then written.
9 The Court did not rule the wagering statutes to be unconstitu-
10 tional but instead focused on the disclosure features and found
11 that those who properly assert their constitutional privilege
12 could not be criminally punished for failure to comply with
13 their requirements.

14 So that affected a vigorous effort the Commissioner
15 had underway at that time and limited the effort largely to
16 States where the defense of the Fifth Amendment was not appli-
17 cable because the activity was in violation of a criminal
18 statute, or cases where an improper return, wilfully improper,
19 had been made, and therefore the prosecution could be advanced
20 without regard to this particular aspect of the wagering
21 statutes.

22 Well, several efforts were made to change the laws
23 not only to improve revenue administration in the wagering area,
24 but also to take care of the particular problem and restore crimina-
25 sanctions, but these efforts weren't successful except for the

1 Gun Control Act which eliminated the disclosure requirement,
2 as I understand it.

3 Now, as I mentioned, we had a rather vigorous en-
4 forcement effort prior to the Marchetti-Grosso cases. This
5 effort was largely the responsibility of the Intelligence
6 Division which John Olszewski now heads, and the information
7 that is contained in this written statement came largely from
8 the Intelligence Division records.

9 The Audit Division, of course, furnished Internal
10 Revenue agents to perform their part in joint investigations,
11 but unlike some of our other joint investigations the larger
12 part of the manpower and the larger part of the work was in
13 the Intelligence Division.

14 John has advised me the ratio is perhaps two to
15 one or 70-30, is that correct?

16 MR. OLSZEWSKI: It is 70-30.

17 COMMISSIONER ALEXANDER: We had various types of
18 activities, Wagering Excise, known as WE, Wagering Occupational,
19 known as WO, and Coin-Operated Gaming Devices, or COGD.

20 From 1955 through 1973, we investigated 22,303
21 preliminary WE and WO cases. And 13,609 of these became full-
22 scale investigations. A preliminary investigatin is one
23 opened for a brief time to see whether the allegations appear
24 to be true.

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25 But if the allegations have merit, then we undertake

1 a full-scale investigation in an effort to obtain the evidence
2 necessary to support an allegation that there has been a criminal
3 violation.

4 Of these 13,609 cases that I mentioned, 11,772
5 were WO, Wagering Occupational, and the remaining 1,837 were
6 Wagering Excise. And 11,957 of this aggregate contained
7 recommendations for prosecutions.

8 In 1967, the last full fiscal year before the
9 Marchetti-Grosso decisions, we completed over 1,000 full-scale
10 investigations; and in 1968, which was a split year, we completed
11 782. But in the next five years combined we completed
12 only 73 full-scale cases.

13 Prosecution recommendations showed a corresponding
14 decline.

15 In our wagering cases, the courts imposed rather
16 substantial sentences when notorious individuals or significant
17 operations were involved. We recommended prosecution in about
18 88 per cent of the full-scale investigations. Eighty-six per
19 cent of these recommendations resulted in indictments, and 76
20 per cent of those indicted were convicted.

21 Sentences ranged from probation for minor violators
22 to five years in prison for more significant offenders. And
23 these more significant offenders were generally violators of
24 the 10 per cent excise tax requirement which contained a
25 heavy, extremely heavy, burden, as contrasted with the WO types.

1 We had 6,266 arrests and property valued at \$2.7
2 million and currency of \$4.5 million were seized.

3 Additional tax and penalties that were recommended
4 for assessment in the cases fully investigated by Intelligence
5 Division during this period of active enforcement were \$2
6 million for COGD, \$26.1 million for wagering occupational, and
7 \$208 million, approximately, for wagering excise. And that
8 total is \$236 million.

9 These figures don't include preliminary or dis-
10 continued cases, nor do they include separate audit examina-
11 tions.

12 Of course, this amount that I have mentioned is
13 that recommended for assessment. The amount actually assessed
14 and the amount actually collected from this aggregate is dif-
15 ferent, and it is not readily available.

16 Historical records don't distinguish between the
17 amounts voluntarily declared and paid and those collected
18 through our direct enforcement efforts. But on page 11 of my
19 statement, at the top, you will find a recital of the actual
20 IRS collections in these three categories of taxes that I have
21 discussed. It shows an aggregate of slightly over \$424 million
22 for the period 1955 through 1973.

23 As I mentioned, on the remaining portion of page 11
24 of the statement, our collections follow our cases because we
25 develop our criminal cases first, and complete the development

1 of those cases before engaging in actual collection actions and
2 follow-up audit actions.

3 Now, these results, as I have stated, were achieved
4 by diverting Service manpower from other activities, principally
5 our general enforcement programs.

6 And we increased our manpower diverted to wagering
7 enforcement each year, with the exception of 1958, until it
8 reached its peak in 1964. Then our manpower leveled off
9 through 1967 and dropped sharply, as one would expect, in 1968.

10 Since 1969, manpower resources of the Internal
11 Revenue Service used in these activities has been very small,
12 one-half of 1 per cent of the available investigative time of
13 the Intelligence Division.

14 The identifiable costs attributable to our enforce-
15 ment efforts from 1955 to 1971 were about \$24.6 million in the
16 Intelligence Division. Now, this figure covers only the
17 Intelligence Division. It does not cover Audit or other
18 resources of the Service.

19 As we all know, the professional gambler earns his
20 living by operating some type of gambling business, a scheme,
21 legal or illegal. He is a businessman; he makes direct levies
22 on the play, or receives a percentage of the play, thereby
23 making certain that the odds are in his favor. Legal gambling
24 professionals, as in Nevada, would be more likely to report
25 their gambling income for tax purposes, although comparative

1 statistics of reported and corrected incomes in this respect
2 are not available.

3 Most professional gamblers engaged in illegal gambling
4 activities appear to understate or omit portions of their
5 gambling winnings, or they assert losses, as one might expect.

6 We find in some instances where the gambling income
7 is included, it is included as miscellaneous or other income,
8 rather than labeled as what it is.

9 We generally apply methods of reconstruction of
10 income based on bank accounts and other net-worth methods of
11 determining income in such situations, and we have difficulty
12 in determining the accuracy of income tax returns filed by
13 casinos as well as by individuals. Of course, casino procedures
14 do afford, sometimes, the opportunity for the removal of cash
15 by skimming and the concealment or omission from accounting
16 records of cash received.

17 Most of the cases involving gambling income,
18 as I mentioned earlier, are now connected with organized
19 crime investigations and with our strike force activities in
20 connection with the Department of Justice. Presumably you
21 heard about strike forces this morning.

22 Now, we have required that a Form 1099, Information
23 Return, be submitted on certain payments in excess of \$600 made
24 to individuals, and we have had trouble in applying this
25

1 requirement to race-track winners. We apply it very selectively,
2 and in a very limited way, to the pay-offs of special pool
3 betting, such as Daily Double and some unpronounceable types of
4 specialized betting that I am quite unfamiliar with, but I am
5 sure Mr. Olszewski can discuss with you.

6 So we reach only the rare and extraordinary cases
7 and don't reach most of the winnings with our Form 1099. We
8 do our best to do something with these Forms 1099 after we
9 receive them, but we don't receive many of them. And the few
10 that we do receive relate to a very small percentage of the
11 aggregate winnings at the race track. And if we did try to
12 impose this requirement across the board, it might well impose
13 a very heavy burden of compliance on race tracks.

14 So the Service has in the past attempted to take
15 into account the administrative burden, the problem of com-
16 pliance with the tax, and the Service's needs for information
17 returns.

18 After looking at this part of the statement, it seems
19 to me our practice deserves reevaluation, Mr. Olszewski, and
20 I would propose that we reconsider our effort on the one hand
21 to be practical and sensible, and on the other hand to enforce
22 the tax laws in a practical, sensible and effective way.

23 We have had a problem with the Ten Percenters, as
24 is well-known, and the Ten Percenter problem remains a

CONTINUED

1 OF 2

1 substantial one.

2 A study in one district disclosed that during the
3 period 1969 through 1971, Ten Percenters were responsible fo-
4 cashing 17 per cent of all big Exacta winners at the six race
5 tracks in that district. Total winnings from these events were
6 about \$50 million.

7 We have been engaged in developing some criminal
8 cases with respect to Ten Percenters. We won one, and I remember
9 that one. Mr. Olszewski reminded me today that we have recently
10 lost two. So our record is one out of three at this point,
11 John?

12 MR. OLSZEWSKI: No, we have been successful in prose-
13 cuting more than one, but they were under willful evasion
14 rather than the 7206 violation.

15 COMMISSIONER ALEXANDER: The las part of my state-
16 ment, beginning on the top of page 18, covers another area
17 that I understand is of interest to the Commission. I can
18 assure you it is of interest at this time to the Internal
19 Revenue Service. That is the applicability of the excise
20 tax on wagers placed in legal State-operated lotteries.

21 The law now provides that the lottery is exempt if
22 the results of the lottery are determined by the results of a
23 horse race. The law was so written, I understand, to fit the
24 original practice of the State of New Hampshire, which had the
25 first lottery, and which used as a model a well-known

1 lottery in which the results are rather clearly determined by
2 a horse race.

3 Now, this is awkward and it presents some problems.
4 Representatives of, I think, the seven additional States that
5 have lotteries now, as well as New Hampshire, met with me early
6 after I became Commissioner of Internal Revenue, in an effort
7 to see whether the methods used by these particular States to
8 determine the winners of their lotteries were in compliance
9 with this rather narrow requirement and rather rigid require-
10 ment of law, and to express their thoughts about solutions,
11 which would meet their needs for conducting their lotteries
12 soundly and well, and meet our needs for enforcing the tax
13 laws.

14 I am getting in touch with these representatives
15 again with a view toward further consideration of this diffi-
16 cult problem. And in the meantime, I believe that several
17 bills are under consideration in Congress to change and soften
18 the present rather narrow requirements for the method by which
19 lottery winners are determined.

20 The Treasury Department, of course, speaks on
21 policy matters through the Office of the Assistant Secretary,
22 not through my office. I understand that the Assistant
23 Secretary has made it clear to Congress that the Treasury and
24 the Internal Revenue Service do not oppose enactment of
25 legislation which would soften the present requirement of the

1 determination of lottery winners.

2 I would think both the Treasury and the Service
3 would hope that a withholding requirement might be imposed
4 with respect to lottery winners. But this withholding require-
5 ment, in the view of the Treasury and the Service, which
6 Congress might well address itself to, involves a difficult
7 problem of enforcement on our part and a difficult problem
8 of compliance on the part of the lotteries.

9 This completes my statement, Mr. Chairman and
10 members of the Commission. I'd be glad to take your questions.

11 (The complete statement of Commissioner Alexander
12 is as follows:)

13 Mr. Chairman and members of the Commission, I am
14 pleased to appear before you to supply data and information
15 relating to the IRS activities in the enforcement of the
16 wagering and income tax statutes in connection with gambling
17 income.

18 First, let me review briefly the history of such
19 taxes. The income tax statutes have always provided for the
20 taxing of income from gambling and there have been many cases
21 of income-tax fraud involving gambling and other income from
22 illegal sources. One of the early ones, and probably one of
23 the most notorious, was Al Capone. More recently, Pete
24 Licavoli, of Detroit, was sentenced in 1958 to two-and-one-
25 half years in prison and fined \$10,000; Mickey Cohen of

1 Los Angeles, was sentenced in 1961 to 15 years in prison and
2 fined \$30,000; Fred Mackey of Gary, Indiana, was sentenced in
3 1964 to five years in prison and fined \$50,000; and two
4 Newport, Kentucky, individuals (Carinci and Maius), who oper-
5 ated a gambling casino, were each sentenced in 1965 to three
6 years in prison and fined \$15,000.

7 We are continuing to investigate possible income-
8 tax evasion by gamblers and all other members of organized
9 crime. For the past few years this program has been carried
10 on through our participation in the Department of Justice
11 Strike Forces which are located throughout the country.

12 The Wagering Occupational and Excise Tax statutes
13 became effective November 1, 1951. They seem to have resulted
14 indirectly from information developed during the Kefauver
15 Committee hearings. The Ways and Means Committee was con-
16 sidering legislation relating to wagering taxes during and
17 subsequent to the Kefauver hearings, and when the Revenue Act
18 of 1951 was enacted it contained the wagering tax provisions.
19 They provided for an annual \$50 Occupational Tax Stamp and a
20 ten per cent excise tax on the gross amount of wagers accepted
21 by an individual in the business of accepting wagers.

22 Internal Revenue Service opposed enactment of these
23 taxes from the beginning on the grounds that they were un-
24 enforceable and unproductive. Following their enactment, the
25 Service requested additional resources for the enforcement of

1 the wagering provisions, but Congress did not appropriate the
2 necessary funds.

3 Over the years, my predecessors have testified before
4 various committees about the wagering tax. They have voiced
5 opposition on the grounds that if not properly enforced they
6 would breed contempt for other tax provisions; that if the law
7 was intended to eliminate gambling then it was not a true
8 revenue measure; that such enforcement was a local police
9 activity; and that the disclosure provisions were self-defeating
10 and militated against voluntary compliance.

11 The Marchetti-Grosso decisions were reported by the
12 Supreme Court on January 29, 1968 and, in effect, provided
13 gamblers with a defense under the Fifth Amendment for failure
14 to comply with the laws. The Court did not rule the wagering
15 statutes to be unconstitutional but focused on the disclosure
16 features and the assertion of the constitutional privilege
17 against self-incrimination as to certain provisions. The
18 Court stated:

19 "We emphasize that we do not hold that these
20 wagering tax provisions are as such constitutionally imper-
21 missible; we hold only that those who properly assert the
22 constitutional privilege as to these provisions may not be
23 criminally punished for failure to comply with their require-
24 ments."

25 Thereafter, the Intelligence Division of necessity

1 discontinued criminal investigations directed toward prosecu-
2 tion for failure to register and pay the \$50 occupational tax
3 and willful failure to file wagering excise tax returns except
4 for cases involving wagering operations which were legal within
5 a state.

6 Several attempts have been made to change the
7 wagering laws to improve revenue administration in the wagering
8 area and, after Marchetti-Grosso, to restore the availability
9 of criminal sanctions for wagering tax noncompliance. None of
10 these attempts have, however, resulted in the enactment of legis-
11 lation except the Gun Control Act which eliminated the disclosure
12 requirement to release the names of stamp holders.

13 Now, I would like to take a few minutes to tell you
14 about the Service's enforcement of the wagering laws.

15 Because the Service was not provided the additional
16 manpower to enforce these laws, enforcement activity was, by
17 necessity, limited in the early years. Furthermore, enforcement
18 activities were somewhat limited until the question of the
19 constitutionality of the statutes was decided by the Supreme
20 Court decision in the Kahriger case on March 3, 1953.

21 The enforcement of these statutes was basically the
22 responsibility of the Intelligence Division, and the data you
23 have been presented came mostly from their records. The Audit
24 Division has also furnished Internal Revenue agents to perform
25 their functional part in joint investigations, in accordance

1 with Service procedures. However, all wagering tax cases were
2 not investigated jointly with Audit, the general exception being
3 in the occupational stamp tax area. Of course, other functional
4 components of the Service performed duties as necessary.

5 In presenting the enforcement data, I will break it
6 down into the type of activity, i.e., Wagering Excise (WE),
7 Wagering Occupational (WO), and Coin-Operated Gaming Devices,
8 (COGD). The Revenue Act of 1951 initiated the Wagering Excise
9 and Wagering Occupational taxes and increased the Coin-Operated
10 Gaming Device tax from \$150 per machine to \$250. All this was
11 effective on November 1, 1951. The statistical data available
12 covers the period 1955 to 1973, inclusive, with minor exceptions.

13 From 1955 through 1973, the Service investigated
14 22,303 preliminary WE and WO cases, of which 13,609 became
15 full-scale investigations. Since the terms "preliminary"
16 and "full scale" will be mentioned frequently, it might be well
17 to explain them. A preliminary case denotes one that is
18 opened for a brief investigation to determine if the allegations
19 received appear to be true.

20 If the allegations appear to have merit, a full-
21 scale investigation is then undertaken to attempt to obtain the
22 evidence necessary to support a determination that there has
23 been a criminal violation.

24 Of the 13,609 full-scale cases closed during this
25 period, 11,772 were WO and 1,837 WE. Going on to the next step,

1 11,957 (10,437 WO, 1,520 WE) contained recommendations for
2 prosecution for violations of the wagering statutes.

3 In order to show the impact of the Marchetti-Grosso
4 decisions, I would like to use some comparative figures. In
5 1967, the last full fiscal year prior to the decisions, we
6 completed 1,030 full-scale investigations; in 1968, a split
7 year, we completed 782; in the next five years combined, we
8 completed 73 full-scale cases. Prosecution recommendations
9 show the same picture: 940 in 1967, 586 in 1968 and a combined
10 total of 71 for the next five years.

11 Sentences imposed in our wagering cases were sub-
12 stantial when notorious individuals or significant operations
13 were involved. The Service recommended prosecution in 83
14 per cent of the full-scale investigations closed; 86 per cent
15 of these recommendations resulted in indictments; and 76
16 per cent of those indicted were convicted. Sentences for the
17 7,724 individuals convicted ranged from probation for minor
18 violations to five years in prison for the more significant
19 offenders who generally were violators of the 10 per cent
20 excise-tax requirement. In the wagering-excise-type cases,
21 the majority of those convicted were sentenced to prison.

22 During the wagering enforcement activities, there
23 were 5,266 arrests and property valued at \$2.7 million and
24 currency of \$4.5 million were seized. COGD enforcement re-
25 sulted in 92 arrests and the seizure of property valued at

1 \$1 million and currency of \$100,000.

2 Additional tax and penalties recommended for assess-
3 ment in the cases fully investigated by Intelligence Division
4 during this period was \$2 million for COGD, \$26.1 million for
5 WO and \$207.9 million for WE, for a total of \$236 million.
6 These figures do not include preliminary or discontinued cases,
7 nor do they include separate Audit Division examinations as
8 that data is not available.

9 It should be kept in mind that the amount recom-
10 mended for assessment is subject to review and adjustment prior
11 to actual assessment. Actual assessments are not readily
12 available.

13 Our historical records relating to actual tax col-
14 lections do not distinguish between amounts voluntarily de-
15 clared and paid by taxpayers and amounts collected through
16 direct enforcement efforts.

17 Actual IRS collections for the period 1955 through
18 1973 are as follows:

19	WE	\$106,082,000
20	WO	10,669,000
21	COGD	<u>307,273,000</u>
22	Total	\$424,024,000

23 Another factor affecting collections which should be
24 considered is that the actual collection function on criminal
25 cases does not normally begin until after the criminal features

1 are closed. This is done to avoid any issue which might be
2 raised in a criminal action. The lapsed time between the period
3 covered by the investigation and the time when actual collection
4 action is undertaken can be as long as several years. Because
5 of this delay, taxes recommended in one year will not show as
6 collected until several years later.

7 The results of the Service's enforcement activities
8 which I have just given you were accomplished mainly by diverting
9 manpower and other resources from other programs because, as
10 noted previously, the Service was not provided additional re-
11 sources to enforce these statutes.

12 With the exception of 1958, when there was a slight
13 decrease, manpower diverted to wagering enforcement increased
14 each year until it reached its peak in 1964. Thereafter, it
15 leveled off through 1967 and then dropped sharply in 1968.
16 Since 1969, manpower used in wagering activities has been
17 negligible at about one-half of 1 per cent of available inves-
18 tigative time of the Intelligence Division. In 1955, the
19 percentage of time was about 2.9 per cent and increased
20 gradually to a high of 11.4 per cent in 1964. During the
21 several years just prior to Marchetti-Grosso, which was January
22 1968, the Service expended between 9.8 per cent and 11.4
23 per cent (250 to 300 man-years) on this function.

24 The identifiable costs attributable to the Service's
25 enforcement efforts from 1955 through 1971 were about \$24.6

1 million. This is only the Intelligence Division. This figure
2 includes such support expenses as secretaries and supplies but
3 does not include overhead, such as building maintenance nor
4 minor clerical tasks or tasks performed by other divisions.

5 My statement so far has been concerned primarily
6 with the wagering statutes. I did mention briefly that the
7 Service has investigated many instances of income-tax evasion
8 involving gambling and other illegal income. Such cases are
9 always being investigated by the Intelligence Division or
10 examined by Audit Division as a regular part of their programs.
11 However, we do not maintain separate statistical data relating
12 to these cases so my observations will be of a general nature.

13 The professional gambler earns his living by
14 operating some type of gambling scheme, legal or illegal. He
15 usually does not gamble, but, as a businessman, makes direct
16 levies on the play, or receives a percentage of the play, the
17 odds being in his favor. Legal gambling professionals (as in
18 Nevada) would be more likely to report their gambling income
19 for tax purposes, although comparative statistics of reported
20 and corrected incomes in this respect are not available.

21 Professional gamblers engaged in illegal gambling
22 activities almost universally appear to understate or omit
23 substantial portions of their gambling winnings.

24 Generally, those engaged in illegal gambling, when they do
25 report income, or a portion of it, on their tax return use a

1 net figure after deducting losses. In those instances where
2 the gambling income has been included on returns filed, it is
3 listed only as "miscellaneous" or "other" income. Detailed
4 records of gambling income are seldom available for inspection
5 by the Service. Reconstruction of income by the Service is
6 generally based on available bank accounts and a determination
7 of non-deductible expenditures and net-worth criteria.

8 The Service also has difficulty in determining the
9 accuracy of income tax returns filed by casinos as it is not
10 able to verify cash receipts. Casino procedures for handling
11 cash receipts present opportunities for the removal of cash
12 (skimming) and the concealment or omission from the accounting
13 records of cash received.

14 During the period prior to Marchetti-Grosso, most
15 of the income tax cases involving gambling income were identi-
16 fied because of the wagering enforcement action against the
17 same individuals. Presently, most of these cases are connected
18 with organized crime investigations.

19 The Service requires that an Information Return,
20 Form 1099, be submitted on certain payments in excess of \$600
21 made to individuals. Enforcement of this requirement with re-
22 spect to race-track winnings has long been administratively
23 limited to pay-offs from special pool betting such as Daily
24 Double, Quinella, Exacta, Perfecta, et cetera. One of the
25 major defects of the present system of withholding on gambling

1 winnings is that it reaches only the rare and extraordinary
2 windfall, leaving most winnings untouched.

3 For example, according to available information,
4 the New York Off-Track Betting Corporation reported that between
5 April 1, 1971, its first day of operation, and August 30, 1971,
6 it had occasion to file only 53 Forms 1099, whereas it accepts
7 between 120,000 and 150,000 bets daily, and about 10 per cent
8 of these produce winning pay-offs. In terms of dollars and
9 cents, the Information Returns of OTB reported winnings of
10 \$58,754, or about one-third of 1 per cent of the \$17.5
11 million in winnings paid out during the same period.

12 Even those race-track winnings reported on Forms
13 1099 may not result in payment of the tax since many winners
14 pick up discarded losing tickets in an attempt to establish
15 offsetting losses for the year. Other winners may employ the
16 services of the so-called "ten percenters" to cash their winning
17 tickets in return for a fee, and thus cause false Forms 1099
18 to be prepared.

19 The "ten percenter" problem is a substantial one.
20 For example, a study in one district disclosed that during the
21 period 1969 through 1971, "Ten Percenters" were responsible
22 for cashing 17 per cent of all big Exacta winners at the six
23 race tracks in that district. Total winnings from these events
24 were about \$50 million.

25 Although the Service was unsuccessful in the

1 beginning by using Section 7206(2) (Wilfully aids and assists
2 in, or advises the preparation of a false document as to any
3 material matter), we have more recently been successful through
4 the use of our failure to file and evasion sections.

5 It was concluded in a 1972 study that information
6 from Forms 1099 could shed little light on compliance patterns
7 by the large majority of taxpayers as the information return
8 requirements apply to such a small fraction of the winnings.
9 It was further concluded that most people not covered by infor-
10 mation returns still do not report their winnings and that most
11 bookies, and other persons associated with illegal gambling,
12 fail to report their income from these sources.

13 Turning to another area of interest to the Commission
14 the applicability of the excise tax on wagers placed in legal
15 State-operated lotteries first became an issue as it applied
16 to the New Hampshire Sweepstakes. The Treasury Department
17 originally held the Sweepstakes subject to the tax. As a re-
18 sult, Section 4402, IRC 1954, was amended to exempt State-
19 conducted sweepstakes, the ultimate winners in which are de-
20 termined by the results of a horse race. The wager must have
21 been placed with the State agency conducting such sweepstakes,
22 wagering pool or lottery or with its authorized employees or
23 agents.

24 Since New Hampshire, seven other States have
25 legalized lotteries, and some have adopted legal off-track

1 parimutuel betting. The applicability of the wagering laws
2 to these operations is presently under study by the Service.
3 One joint discussion has been held with various State officials,
4 and a follow-up is now being planned for the near future. In
5 addition, several bills to specifically exempt State lotteries
6 have been introduced in Congress.

7 This concludes my statement, and thank you for your
8 attention. I will be happy to provide answers to questions
9 which the Commission may have.

10 CHAIRMAN MORIN: Is Mr. Olszewski going to provide
11 us with an additional statement?

12 MR. OLSZEWSKI: No, sir, I am not.

13 CHAIRMAN MORIN: In keeping with our habit here, I
14 think I'd like to declare a five-minute recess and let the
15 members of the Commission get their thoughts together, if we
16 could just stay around and reconvene in about five minutes.

17 (Whereupon, a short recess was taken.)

18 CHAIRMAN MORIN: May we reconvene?

19 MR. OLSZEWSKI: Mr. Chairman, I think Mr. Mervin
20 Boyd, who is particularly expert in this area, will also
21 be testifying, and I suggest he be sworn.

22 CHAIRMAN MORIN: Thank you very much.

23 (Whereupon, Mr. Mervin D. Boyd was sworn by Mr.
24 Ritchie.)

25 CHAIRMAN MORIN: As I understand it, the Service has

1 prepared certain charts in order to better explain some of
2 the law enforcement statistics in the Marchetti-Grosso case.

3 Who is going to present it?

4 MR. OLSZEWSKI: Well, Mr. Chairman, I think the
5 charts were prepared by the Commission.

6 MR. RITCHIE: Yes, if I could explain, I think it
7 would be helpful. These are not the charts prepared by the
8 Internal Revenue Service, Mr. Chairman. These are charts which
9 the Commission staff prepared and then graciously the Internal
10 Revenue Service reproduced them for us.

11 So essentially if I could invite the Commission's
12 attention to Exhibit 3 in that body of material that you have
13 for the Internal Revenue Service, you will see there statis-
14 tically the wagering investigations information, and then the
15 chart immediately following the statistical recitation is the
16 chart which we had previously on the viewgraph. And that
17 generally can be the order of progression.

18 In those cases where we do not have a chart, we will
19 just have to skip over the exhibit because in some cases the
20 information did not lend itself to a graphic demonstration.

21 SENATOR CANNON: Can you identify the lines for us?

22 MR. OLSZEWSKI: The line in black -- I believe it
23 is black -- is the total number of cases in which prosecution
24 was recommended in the wagering tax area from 1955 through
25 1973.

1 The blue line is the line reflecting the total number
2 of occupational wagering tax cases in which prosecution was
3 recommended.

4 And the red line is the number of criminal prosecution
5 cases recommended in the wagering excise tax return cases.

6 Now, the reason you will see a larger number of the
7 wagering occupational tax cases is that there are a larger
8 number of employees working in a gambling operation who are
9 required to purchase and register and obtain the stamp, and the
10 prosecution for the excise tax violation -- those cases in
11 which prosecution was recommended -- were against those in-
12 dividuals who were subject to the ten per cent excise tax.

13 And as you can see, beginning with 1955, there
14 was a sizable inventory, and there was a decline in the program
15 up through about 1960, and sometime in 1961 the program began
16 to increase its momentum as a result of coordinated efforts
17 with the various enforcement agencies of the Federal Government
18 and the IRS, and it increased to a peak in about 1964.

19 And, of course, you will have some flexibility,
20 some peaks and valleys, based primarily on the fact that you
21 have your cases being worked. There will be dead time when
22 cases are completed and prosecution is recommended and periods
23 during which trials take place for the violations.

24 And then you see a drastic decline -- at the top
25 of the chart you will see M-G, and I believe the author of the

1 chart indicates that is the Marchetti-Grosso decision period
2 and there is a sharp decline in cases submitted in which prose-
3 cution was recommended.

4 At that point those cases early in '69 were those
5 carried over from the period prior to the January '68 decision
6 down to a low.

7 Now, you will find a small number of prosecution
8 cases in 1970 to 1973. Those cases are violations which are
9 committed by individuals who register, who file the returns,
10 but file a false return. And those are the wagering excise
11 tax cases that we worked. Those are not cases of failure
12 to file violations.

13 The prosecution cases, by the way, included
14 both failure-to-file situations as well as evasion back during
15 the period '55 through '71. But the majority of those cases
16 would be failure to file violations.

17 Jim.

18 MR. RITCHIE: This can be Exhibit 4 in the Com-
19 mission's notebook, Mr. Chairman.

20 MR. OLSZEWSKI: These are apparently wagering
21 investigations and not prosecutions. Oh, I see. This chart
22 reflects prosecutions recommended, indictments, and convic-
23 tions. The red line is cases in which prosecution was recom-
24 mended, and I believe that is a duplication of the first
25 chart, the one line in the first chart.

1 The blue line would be the cases in which indictments
2 -- Jim, I am having difficulty reading your chart.

3 MR. RITCHIE: That represents the indictment figures,
4 I believe, Mr. Olszewski.

5 MR. OLSZEWSKI: It must. And then the convictions
6 would be the green line.

7 (Discussion off the record.)

8 MR. OLSZEWSKI: Convictions would be the bottom line.
9 There, again, you see the correlation of the application of
10 our resources to the number of investigations with the drastic
11 decline in investigations and indictments and convictions after
12 the Marchetti-Grosso decision.

13 CHAIRMAN MORIN: I notice in this and the former
14 one that here is the decision here in early '68 but the decline
15 in activity starts in '67. Is that because of a lower court
16 decision or something?

17 MR. OLSZEWSKI: Yes, sir. At the time the case was
18 decided in the lower court, of course, we began to reassess
19 our position in the investigations. We weren't about to
20 continue to devote large numbers of men to the investigations
21 if there was the likelihood that the law would be held un-
22 constitutional.

23 MR. COLEMAN: Mr. Ritchie, is the one in our book?

24 MR. RITCHIE: In the Commission's book there are
25 two.

1 MR. COLEMAN: The last one, the prosecutions recom-
2 mended and indictments.

3 MR. RITCHIE: There are two charts under
4 "Prosecutions Recommended." One appears under Exhibit 3 in
5 the Commission's book, and then again that same information
6 is reflected in the chart entitled "Wagering Investigations."

7 The red line --

8 MR. COLEMAN: In the book you have indictments
9 higher than prosecutions recommended. The red line is --

10 MR. RITCHIE: I'm sorry. The coding is incorrect.
11 You are absolutely correct, Mr. Coleman.

12 Mr. Chairman, there are two charts under Exhibit 4.
13 The first Mr. Olszewski has just addressed his attention to,
14 and the second is also in the Commission's book immediately
15 following that chart.

16 MR. OLSZEWSKI: You will find this particular chart,
17 I believe, reflects the volume of wagering investigations and
18 convictions. And you will find the lower line, the red line,
19 is a relatively consistent line with some variations. And
20 that is the wagering excise tax convictions, the total number
21 of convictions.

22 And the green and the black lines -- the black line
23 reflects the total convictions. The blue line reflects the
24 wagering occupational tax convictions.

25 Now, what that merely represents is that there were

1 more people charged with occupational tax violations because,
2 again, you have more people on the streets accepting wagers
3 who are part of a conspiracy to evade the tax laws, and the
4 red line reflects the number of persons who were convicted
5 as a result of the trials or pleas.

6 MR. RITCHIE: Mr. Chairman, this is number 5, both
7 the statistical data and the chart in the Commission's books.

8 MR. OLSZEWSKI: This chart represents the sentencing
9 practices for wagering convictions under the Federal occupa-
10 tional wagering and excise tax laws.

11 And as you can see, the number who were given pro-
12 bation exceed generally the numbers who are given confinement
13 sentences. And then, of course, you have -- that is a blue
14 line in which you have the concurrent sentences which were
15 suspended.

16 And there, again, you see the application of the
17 resources. You see an increase in the convictions and the
18 sentencing and again a decline sometime in 1967 and '68.

19 MR. RITCHIE: This next chart reflects Exhibit 6
20 in the Commission's books, Mr. Chairman.

21 MR. OLSZEWSKI: During the early phase of the
22 program, the early phase from '55 through '57, the Service
23 found there was a high degree of non-compliance in the coin-
24 operated gaming devices.

25 This would not apply certainly to Nevada but

1 primarily in the States where these devices were illegal or
2 where they may have been legal, but they were not complying
3 with the stamp requirement, which was a \$250 tax stamp.

4 So in 1955 there was a concerted effort, and
5 generally it was a consistent program up through about 1960
6 and '61. And during the period you will see a decline in the
7 number of investigations and the number of prosecutions and
8 indictments recommended, because we found there was a higher
9 degree of compliance with the coin-operated gaming device laws
10 during that period of enforcement.

11 One of the reasons I think this happened is that
12 the coin-operated gaming device is something that cannot be
13 used except in the open. It must be open to the public. It
14 is highly visible. They are required to disclose a stamp.
15 And as a result, they were much easier to detect, and in co-
16 ordination with our collection officers as well as the special
17 agents, I think this demonstrated the enforcement effort was
18 quite effective.

19 MR. COLEMAN: Did you go out of business in '69?

20 (Laughter.)

21 MR. OLSZEWSKI: No, we still have had some minor
22 cases but for the most part it is not a serious enforcement
23 problem.

24 You can't very well hide a pinball machine where
25 they pay off for winning combinations.

1 MR. RITCHIE: Mr. Chairman, this next series of
2 information is No. 7 in the Commission's book.

3 MR. OLSZEWSKI: You will find that contrary to the
4 comparison of sentences in the wagering excise tax violation
5 and the wagering occupational, in the coin-operated gaming de-
6 vices most of the sentences which resulted were, for the most
7 part, probation or concurrent sentences, with some confinements,
8 but overall the vast majority were non-confinement sentences.

9 MR. RITCHIE: Mr. Chairman, this is the first of two
10 exhibits under Exhibit 9 in the Commission's book.

11 MR. OLSZEWSKI: Mr. Ritchie, as I discussed with
12 one of your staff people, I don't understand really what this
13 chart intends to depict, so perhaps you may be able to explain
14 it.

15 MR. RITCHIE: It is an attempt to describe manpower
16 application in terms of one criterion of sentences imposed --
17 perhaps not a very accurate attempt, but that was what we in-
18 tended to try to describe, Mr. Olszewski.

19 MR. OLSZEWSKI: I just might comment that it may re-
20 flect the fact that you have the higher percentage of people
21 being confined to prison or probation for violation as there is
22 a slight increase in the resources applied, but I don't know
23 if that is necessarily true. But it appears to be.

24 MR. RITCHIE: This is the same information only re-
25 flected in terms of man-months of prison, trying to show again

1 the same relationship, I believe, Mr. Olszewski.

2 MR. OLSZEWSKI: Yes, this does reflect an increase in
3 the incarcerations as compared also with an increase in the
4 application of resources to the actual investigations being
5 conducted at a given period of time, and then after the
6 Marchetti-Grosso case, again you see a decline in the number
7 of confinements, obviously because we had reduced our number
8 of investigative applications.

9 MR. RITCHIE: This is Exhibit 11, Mr. Chairman.

10 MR. OLSZEWSKI: This chart reflects the additional
11 taxes and penalties from 1955 through 1973, reflecting that
12 the coin-operated gaming device, which is the upper line, the
13 green or the black line, reaches its peak in 1961 and then
14 seems to level off, while the wagering excise tax and occupa-
15 tional tax seem to maintain a fairly consistent level of from
16 \$7 million down to about \$4 million and back up to about \$5
17 million at the end of '73.

18 MR. RITCHIE: The next three exhibits are under
19 Exhibit 12 in the Commission's book, and these were prepared
20 by the Internal Revenue Service and reflect the various taxes
21 imposed on the various levels of the illegal operations.

22 And Mr. Chairman, I might say from long experience
23 I know of no person better qualified to describe this than Mr.
24 Olszewski.

25 MR. OLSZEWSKI: Thank you, Jim.

1 This is the generally accepted organizational struc-
2 ture for a bookmaking operation, either horse bets or sports
3 bets.

4 We are not talking about the small independent. This
5 is the relatively large, sophisticated organization that the
6 Service would be interested in applying its resources to, since
7 this is where the revenue would be. And our purpose was to
8 enforce the wagering excise tax laws, and also the companion
9 income tax laws for those individuals engaged in this activity
10 who were attempting to evade and defeat either one of the taxes.

11 As you can see, the only persons required to pay
12 either the occupational wagering tax or the excise tax are
13 those listed in the red. The banker is the man liable for the
14 wagering excise tax. He is the man who bankrolls the operation
15 and is in effect the businessman who derives the profit.
16 Not only is he liable for the excise tax liability, but also for
17 income taxes on the net profit from the overall operation at the
18 end of the year.

19 Now, in many areas the banker consisted not of one
20 person but a number of individuals. They could be a syndicate;
21 they could be a partnership; or they could be some sort of
22 association of individuals who pool their money for a large
23 bankroll which is required in this type of activity.

24 They have under them a number of people who are paid
25 a salary or a percentage perhaps of some of the action that

1 that particular operation might take in.

2 The settle-up man or the moneyman is on salary and
3 he receives information from the controller as to who the
4 winners are and he arranges for the settlements.

5 Now, the settlements are made usually on the street
6 in a surreptitious fashion or in a place of business that
7 affords him some protection from detection.

8 The controller who receives the action from the
9 bookies, who in turn receive the information of the bets
10 from the bettors, maintains the controls and the accounting
11 records and maintains a current control every day to determine
12 which of the horses or sporting events is receiving the largest
13 volume of bets. When he determines that a particular horse or
14 a particular game, a team, is being played very heavily, he
15 then seeks out a layoff operator to share some of the risk
16 should the bettors make any particular large hits

17 And this is nothing more than insurance. He is
18 spreading the risk.

19 You have bookies who may occupy any number of
20 positions. They may occupy a position of bookie on a full-time
21 basis. They may have a telephone operation in an apartment
22 house, in the basement of a hotel or motel, a room in a motel.
23 Or he may be a businessman operating a bookie operation on a
24 part-time basis. It could be a dry-cleaning establishment,
25 a news and magazine store, a cigar store. It could be a bookie
in a factory who accepts wagers from his associates. It could

1 be a man in an office. It could even be somebody in one of
2 the Federal buildings.

3 They, in turn, phone the bets in to the wireroom
4 where the bets are collated and controlled.

5 The bettors are required to report their gains at
6 the end of the year on their income tax returns. The phone
7 and wireroom operators are required to report their salaries
8 or commissions, if they are on a commission basis, on their
9 income tax returns as are the controller and settle-up men.

10 The bookies operate on a percentage. If they
11 happen to have been hit pretty heavily and the backer requires
12 them to share the losses, they may have only a small income at
13 the end of the year. At the least, they are required to report
14 their net income based on the percentage after deducting expenses
15 for their particular office that they operate.

16 Oh, I missed the odds maker. The odds maker is
17 extremely important in the horse and sports bets. There
18 are a few specialists around the country who receive a sizable
19 fee from your major bookies and bankers for this very special
20 information. Because all you need is a very slight change in
21 the odds, the point-spread in a sporting event, and a bookmaker
22 or a bankroller can be wiped out.

23 There is a common term that is used for a banker or
24 bookmaker who gets careless, who accepts a wager without
25

1 checking the odds very carefully, and that is, the sharp bettors
2 will slip him a "bullet." And the "bullet" is a bet on an event or
3 a horse where the odds offered by the banker or the bookmaker
4 are greater than what they would be with any other bookmaker or
5 at the track.

6 Now, there have been instances where syndicated
7 criminal groups have utilized an odds maker who will slip bad
8 odds to a competitor in order to wipe him out.

9 Now, this has happened a few times in the past.

10 CHAIRMAN MORIN: What do they do? Bet the other
11 side with another bookie?

12 MR. OLSZEWSKI: You bet they do.

13 The numbers operation -- I heard a statement when
14 we arrived that sports and horse bets were the largest in the
15 illegal gambling operations, but in certain areas the numbers
16 operations will give the horse and sports-bet operators a great
17 deal of competition in terms of their gross wagers received,
18 and certainly a higher percentage of profit in the operation
19 than what the bookmakers receive.

20 This again is a very highly organized, highly
21 structured operation.

22 If you start with the bettors, the bettors are
23 street people. They are people who work in factories, they
24 are housewives, they are elderly people who seek out the
25 numbers writers for hopefully the bonanza, should they hit the

1 winning number, and certainly for entertainment as part of the
2 action.

3 And they place the bets with numbers writer who
4 receive a percentage of the wagers bet.

5 Now, the professional numbers writer who has a
6 large number of customers will keep his percentage, and this
7 is his income which is required to be reported on his income
8 tax return.

9 On the other hand, you will find a large number of
10 writers who are small people who may accept only \$100 or \$200
11 a day in action, who will in turn bet back into the system a
12 sizable percentage of the commissions or profits that they de-
13 rive from writing the bets.

14 The numbers writer, then, arranges with a
15 runner to carry the bet slips to the house, the counthouse,
16 and they will use various means as drops.

17 Now, the drop as it is used in the numbers opera-
18 tions is the same as a drop used in espionage. It is a con-
19 cealed location or a location that is not easily identified
20 as a numbers drop where they put the bet slips and the runner
21 or pick-up man picks up the slips and takes them to the count-
22 house, or the counthouse runner does.

23 And timing is crucial, because in most areas the
24 numbers operation, the winning number, is based on a combina-
25 tion of parimutuel computations from a known or designated
race track. And they designate a last race. And the numbers

1 must be in before the last race is run, because there, again,
2 if the operator is careless and he accepts a number after the
3 race is run, you have some very sharp operators in the numbers
4 business, too, who will slip a numbers house a "bullet." Because
5 if they have a telephone line open to the race track that is
6 being used, they can get the winning combination before the
7 numbers house does, and they can get a winning bet in that can
8 again wipe out a sizable portion of the bankroll.

9 Then the couthouse -- the couthouse can be mis-
10 leading. In a very large operation, they not only have more
11 than one couthouse, they have stand-by locations that they can
12 shift from time to time and from week to week in order to avoid
13 detection by the local or State police or by Federal agents,
14 should they be in violation of the Federal law.

15 Then the banker has a settle-up man who takes care
16 of the pay-offs.

17 One thing that you should notice is that the
18 numbers writers send the numbers tickets, the bets, along one
19 line of communications, and the money follows another line.

20 An area controller or pick-up man picks up the
21 money while the numbers slips go another route.

22 The reason is they may pick up a bag man carrying
23 numbers, and they get only a bag full of bet slips. But they
24 take a great deal of care to avoid having the moneyman picked
25 up.

1 One thing that happens with the numbers operators
2 and even with the independent operators, in the event they
3 believe they have a "fancy number" that is being played heavy
4 and that fancy is likely to come through, if they are monitor-
5 ing the digits as they fall, it is not uncommon for someone in
6 the numbers organization to call up a local police official and
7 advise them there is a runner with a bag^{FULL} of numbers slips
8 and they arrest him and as a result they don't have to pay off
9 that particular day.

10 (Laughter.)
11 *INSERT*

12 *A* → So the people who bet with the numbers business
13 are probably the greatest or the victims in society, in the
14 gambling business. Because ^{THE OPERATORS} ~~they~~ either fix the number or if
15 they are going to get busted with a big hit, they will find
16 some way to avoid it.

16 Yes, ma'am.

17 DR. ALLEN: Under what circumstances -- what charge
18 would you render against the area controller or pick-up man,
19 the moneyman?

20 MR. OLSZEWSKI: Conspiracy, conspiracy to violate
21 the State gambling laws, *OR CONSPIRACY TO EVADE THE*
22 *WAGERING TAX LAWS.*

22 DR. ALLEN: Isn't that rather difficult to prove?

23 MR. OLSZEWSKI: Oh, no, ma'am. An investigation is
24 -- let me back up a little bit.

25 An investigation of a numbers operation is a

1 difficult task. It requires a large number of people on the
2 street in surveillance. It requires a very skillful group of
3 people dealing with informants and sources. It requires many
4 of the local and State police officials using undercover people.
5 And it is a question of identifying the routes, identifying the
6 pick-up man through surveillance and bringing them together at
7 some point in the action.

8 Your area controller picks up money from the writers.
9 Your runner and pick-up men also pick up money from the writers.
10 So where you see the pattern developing, you see the tickets
11 and the money ultimately going up to the settlement man.

12 It is difficult but that is the way the cases are
13 made.

14 Any time you have a poorly designed or poorly con-
15 ceived enforcement effort, you will find police officials
16 arresting numbers writers and having little effect upon the
17 banker, the controller, the settlement, where the real profits
18 are made. Because for every numbers writer that is busted,
19 two or three will take his place.

20 They may do this as a technique to obtain witnesses,
21 so its technique is not without merit, except that if you find
22 that there isn't a concerted effort to build the entire package,
23 where you have the millions of dollars being made yearly by
24 the banker, then the enforcement program can be in trouble.
25

1 DR. ALLEN: Thank you.

2 MR. OLSZEWSKI: The policy lottery operation is
3 very, very similar to the numbers operation, and I won't go into
4 the flow of the bets and the money because basically it is the
5 same system.

6 You have writers accepting a large number o. bets.
7 The writers are liable for your excise and your wagering
8 occupational tax. The banker is liable for the excise tax.
9 And the other people are on a salary.

10 And in the policy lottery operation, the winning
11 number combination is not determined from a horse race. It is
12 determined through the use of a wheel similar to the old bingo
13 wheel where you have all the numbers and the drawing may be made
14 in private with a few so-called representatives of the public,
15 or it can be made where gambling is wide open, in a public
16 situation, where there may be a significant number of the
17 bettors who participate in the drawing..

18 This is not too popular at the present time. There
19 is too great a risk involved in it and it is probably one of the
20 easiest ways to cheat the bettors because in drawing the
21 numbers they already know which are the heavy bets because
22 they compute the total action of bets on a particular number
23 and then they have a drawing.

24 Well, in order to avoid the risk of a large pay-off
25 that again could damage the financial stability of the bankroller,

1 they will palm the last digit of the number and in the drawing
2 draw out a number so that the true number is not hit, if there
3 is a danger that it is going to be a big-played number.

4 And they can tell this as the digits fall. If it
5 is a three-digit policy bet and again numbers 9 and 1 are the
6 first two digits, any combination of 91, 918, 917 -- there is
7 no large action on the number -- then they will make a regular
8 drawing and there will be a legitimate drawing.

9 But again if they have a 918 that has a lot of
10 money bet on it, they will find some way to have a number
11 chosen that is not 918.

12 Basically it is the same as the numbers operation.

13 CHAIRMAN MORIN: Now, is that banker going to file
14 an excise tax return?

15 MR. OLSZEWSKI: He is liable for the excise tax
16 return, but for the most part, most of the people engaged in
17 the wagering business, bankrollers and the like -- the majority
18 do not file the excise tax returns, and the reason for it is
19 they were also obligated to apply for an occupational tax
20 stamp. They were required to identify their employees, the
21 runners, the location of their office. And under the law as
22 it was originally passed, that was a matter open to the enforce-
23 ment people as a matter of public record.

24 And in many jurisdictions it was considered to be
25 prima facie evidence of a State gambling violation. And the law in

1 a way was self-defeating in that it jeopardized the gambler
2 who may have wanted to comply with the law.

3 CHAIRMAN MORIN: I have in mind that the demands
4 on Commissioner Alexander's time are very great today. I
5 wonder if you could describe very briefly how you enforce the
6 excise tax against that banker. What steps are used? Are
7 wiretaps used?

8 MR. OLSZEWSKI: No, sir. Currently if we have an
9 excise tax situation where a banker or bankroller does, in
10 fact, file an excise tax return and we have reason to believe
11 that he is grossly understating his wagers or that he has filed
12 a false return, for the most part, since Grosso-Marchetti, we
13 rely pretty much on referral cases from the State and local
14 people or the FBI, where we may adopt some of the information
15 from the books and records. They have it pursuant to a legal
16 search warrant and provided the search warrant is legal we
17 will examine the books and records, and should we find the
18 returns to be false, we would recommend prosecution.

19 CHAIRMAN MORIN: This is income, then?

20 MR. OLSZEWSKI: No, excise tax. And during the time
21 prior to Grosso-Marchetti, in order to assure ourselves that
22 our manpower was being applied to the major violators and not
23 to just the low-level people where the tax liability would be
24 minimal, we were required to work those cases on a current
25 basis. We would conduct surveillance, identify the runners,

1 identify bettors, identify the writers or the bookmakers, con-
2 duct surveillance, determine the flow of money, identify the
3 meet, locate the couthouse, conduct surveillance of the count-
4 house to see runners come in with bags of money and bet slips,
5 and through circumstances and testimony of individuals who may
6 have been present or, for that matter, some of our agents in
7 an undercover capacity may, as working people, be available to
8 place bets themselves so they in turn know that they placed a
9 wager with somebody -- we develop a probable cause and at that
10 time we'd obtain a search warrant, execute the search warrant
11 and seize the books and records which form the basis for the
12 computation of the gross wagers received.

13 Now, that isn't always the easiest task since the
14 records are kept sometimes in code and oftentimes reflect only
15 65 per cent of the wagers accepted, with 10 per cent going
16 as a commission to some of the pick-up men and 25 per cent to
17 the writer.

18 CHAIRMAN MORIN: This is all done by the Internal
19 Revenue Service?

20 MR. OLSZEWSKI: Well, there were times when we
21 worked jointly with the local police or other Federal agencies.

22 CHAIRMAN MORIN: Our practice here is to have the
23 Congressional members of the Commission do the questioning
24 first, so I will first call on Senator Cannon.

25 SENATOR CANNON: Were the excise and occupational

1 taxes intended to be a deterrent to illegal gambling?

2 COMMISSIONER ALEXANDER: Do you want to respond to
3 that, and then I may add something to it.

4 MR. OLSZEWSKI: From the statute and the statements
5 we reviewed at the time the law was being considered, the
6 Service considered it to be a revenue-raising measure, and
7 according to the best estimates at that particular time, they
8 anticipated that it should produce a sizable sum of money as
9 revenue. I believe the sum was estimated as \$400 million.

10 Congress, on the other hand, as we read some of the
11 background on it -- there seemed to be a difference. There is
12 some conflict as to whether all of Congress believed that it
13 should be a revenue measure and others, whether or not it was
14 an effort to curtail illegal gambling.

15 But as far as the Revenue Service was concerned, it
16 was intended to be a revenue-raising measure.

17 COMMISSIONER ALEXANDER: At least I think we treat
18 taxes that impose obligations on taxpayers, whether income or
19 excise, as revenue-producing measures, which indeed they are.

20 But if the tax is an example of selective enactment
21 and if the tax, as excise taxes reputedly do, fall on a type
22 of transaction or a type of product, then by excluding other
23 transactions and excluding other products, the tax acts as a
24 deterrent to that particular transaction or to the acquisition
25 of that particular product as well as a revenue measure.

1 I think this tax contains elements of both. Cer-
2 tainly it has produced revenue.

3 As I stated in my statement, and as John Olszewski
4 stated, it also would seem clear, not only by reason of the
5 change in 1951 following on the heels of the Kefauver investi-
6 gation, but because of the nature of the tax itself, to be a
7 tax intended by Congress to have a deterrent effect upon the
8 activities, the transactions on which a tax is imposed.

9 SENATOR CANNON: Would you say it has been effective
0 from the standpoint of being a revenue-producer?

11 COMMISSIONER ALEXANDER: From the standpoint of a
12 revenue producer?

13 The tax has produced comparatively little in the
14 way of revenue when taken in connection with the size, or what
15 we believe to be the size, of the activities subject to the
16 tax.

17 Is that a fair statement?

18 MR. OLSZEWSKI: Yes, it is. As a matter of fact,
19 if we use the conservative estimate, the most conservative
20 estimate of the total wagers accepted in illegal operations
21 of, say, \$10 billion, if the people were to pay their taxes
22 we should have derived \$1 billion in revenue.

23 If we go to the more reasonable estimate of illegal
24 gambling which we would estimate as \$25 billion to \$30 billion,
25 we again should have had \$2 billion to \$3 billion in revenue.

1 However, keep in mind that if they did file their
2 returns, did purchase the occupational tax stamp and filed the
3 application, in those States where gambling was illegal they
4 could very well be out of business shortly after they filed it.

5 SENATOR CANNON: Now, in which forms precisely were
6 the excise tax?

7 MR. OLSZEWSKI: They were applied to any type of
8 activities -- well, primarily lottery, numbers, and bookmaking
9 -- where the determination of the winner was not in the
10 presence of the public.

11 Now, there were specific areas or specific activi-
12 ties exempt. The casino operations, bingo operations, keno
13 operations, your roulette, your card games, it was decided in
14 the presence of everyone, were exempt.

15 The other, your numbers, your policy, your bolita,
16 your lottery, your sports-bet pool tickets -- you recall the
17 weekly tickets that you find any number of places in bars where
18 you choose a number of football teams and you have a point
19 spread. Those are all subject to the excise tax.

20 SENATOR CANNON: Mr. Commissioner, from what you
21 said, apparently in the area of lotteries there is only one
22 State that clearly has an exemption. Is that your testimony?

23 COMMISSIONER ALEXANDER: Senator Cannon, we are con-
24 cerned about this matter, and we are concerned, as I testified,
25 about meshing two goals or responsibilities that may be to some

1 extent in conflict.

2 One responsibility is ours to enforce the law under
3 which the exemption applies only to a lottery in which the ultimate
4 winners are determined by the results of a horse race.

5 The other is the responsibility of the States that
6 we fully recognize, to conduct their lotteries in a fair and
7 a responsible way that will be accepted by the public.

8 I don't want to give the impression that the Internal
9 Revenue Service has made any determination that only one State
10 qualifies, because no such determination has been made.

11 We are considering this problem, and we hope that
12 Congress will address itself to the problem so that the States
13 may determine their ultimate winners in a way that they best
14 find to meet their responsibilities, irrespective of whether
15 that determination is made by the results of a horse race.

16 MR. OLSZEWSKI: Senator Cannon, I did omit -- and I
17 should correct the record -- the State-licensed parimutuel
18 enterprises and the State-conducted lotteries by law have an
19 exemption provided they comply with the law as Congress passed
20 it, in addition to the other specifics that I described.

21 SENATOR CANNON: Now, the parimutuels have a
22 specific exemption. Does that exemption carry now to the
23 person who is the off-track bettor betting on parimutuels?

24 MR. OLSZEWSKI: You mean in the legal State-
25 operated parimutuel windows, the off-track betting?

SENATOR CANNON: Yes.

1 MR. OLSZEWSKI: Yes, I believe it does, based on the
2 interpretation that has been described to me.

3 MR. BOYD: If the parimutuel is a pool type of
4 operation -- as I recall the law refers to it -- licensed by the
5 State, as parimutuel betting is at the tracks, then it would
6 be exempt. And it is my understanding that the Off-Track
7 Betting Corporation in New York operates as a pool type of
8 operation.

9 SENATOR CANNON: What is the effect of wagering en-
10 forcement on the incidence of --

11 MR. BOYD: Pardon? I didn't hear it.

12 SENATOR CANNON: What is the effect of wagering
13 enforcement on the incidence of illegal gambling? That is,
14 does this thing express it?

15 MR. OLSZEWSKI: It depends on the program that is
16 effective. In certain areas where there was a very effective
17 program with a high degree of coordination and cooperation by
18 an exchange of information regarding the illegal operators
19 and the State and local people were vigorously enforcing the
20 law, as was the Federal Government through either the FBI or
21 the IRS, we did learn that there was a diminishment in the
22 incidence of illegal gambling of the organized syndicated group
23 in some areas.

24 But where you didn't have an effective program,
25 where you didn't see the coordination and a follow-up by local

1 enforcement people -- as I say, if they hit the lower levels
2 they could be replaced very easily and there was not a signifi-
3 cant deterrent effect on illegal gambling.

4 SENATOR CANNON: Are some of the lottery tickets
5 sold through coin-operated devices?

6 MR. OLSZEWSKI: I don't know, sir.

7 MR. BOYD: I understand some States do use a vending
8 type machine to dispense the lottery tickets.

9 Like you could put 50 cents in the machine and work
10 the mechanism and get one lottery ticket in return.

11 It is my understanding we do not have an official
12 ruling, but it is understood that those would not be con-
13 sidered coin-operated gaming devices.

14 SENATOR CANNON: That was going to be my next
15 question: Would that constitute a coin-operated gaming
16 device?

17 MR. BOYD: No, because there is not a prize as such
18 You are merely buying a ticket. It dispenses the ticket and
19 you could go in a store someplace and for 50 cents you could
20 buy the same kind of ticket.

21 SENATOR CANNON: On one of these slides you have
22 furnished, I saw some interesting statistics. It says "Number
23 of stamps sold" by fiscal year. And in '69, for example, you
24 point out the gaming-device stamps sold were 19,713, and wager-
25 ing 13,527.

1 In 1970 the amount of gaming device stamps dropped,
2 and in the next year it was 17,000; in 1972, 15,605, and in
3 1973 jumped up to 58, 554.

4 What is the significance of that?

5 MR. BOYD: These figures came from the annual re-
6 port, the Commissioner's annual report.

7 The 1973 report had not yet been published. These
8 figures were given to me from the service centers, and this is the
9 only figure which I have at this time. However, I have to
10 check it again because I agree with you that it is out of line
11 with the other figures as shown.

12 This is the latest information available.

13 SENATOR CANNON: I wondered if there had been some
14 particular event which had occurred that made the sale of
15 these particular stamps jump 400 per cent in that particular
16 year.

17 MR. OLSZEWSKI: I won't speak for the total figures,
18 but we have all noticed that in certain States that the local
19 people, the local enforcement people, have been bringing to
20 our attention the fact that more institutions have been
21 utilizing the types of machines that are subject to the stamp.

22 Our Revenue officers have an obligation, an enforce-
23 ment responsibility, to determine whether or not there is, in
24 fact, a liability due, and to notify these people. Generally,
25 they will do it by personal contact, advising the operator

1 of the liability for a stamp, that one is due and that
2 the tax must be paid.

3 COMMISSIONER ALEXANDER: Senator Cannon, on what
4 appears to be a very decided jump in these figures, I'd like
5 permission of the Commission to submit additional material for
6 the record, to check into this jump, or apparent jump, and
7 clarify it.

8 CHAIRMAN MORIN: Mr. Alexander, I am sure we are
9 going to be working a great deal with your Department over the
10 next year, and I do appreciate that, as I am sure does Mr.
11 Ritchie.

12 I have promised Mr. Alexander he could be released
13 from this hearing at about 4:00 o'clock.

14 SENATOR CANNON: I will just wrap this up with one
15 final question because I want to get your thoughts on it.

16 I am sure you recognize that in the legislative
17 business we are constantly confronted with the idea of
18 exemption of legal gambling winnings so many times. And I
19 just wonder if you'd care to express your view on that par-
20 ticular subject, and whether you think that such an exemption
21 would make legalized forms of gambling more competitive with
22 illegal gambling.

23 COMMISSIONER ALEXANDER: It might make legalized
24 gambling more competitive with illegal gambling, but we think,
25 Senator Cannon, this would be a very poor way of achieving this

1 particular objective.

2 And we think the exemption of gambling winnings in
3 comparison, let's say, with earned income and wages, salaries,
4 income that would presumably remain taxable, would be a long
5 step in the wrong tax direction; that the way to solve the
6 problem of illegal gambling would not be through drawing a
7 distinction by exempting gambling income on the one hand, and
8 all other types of income remaining taxable.

9 But we think the problem of illegal gambling should
10 be met through enforcement of the laws designed to cope with
11 this problem, and perhaps additional measures like some of
12 those that States have taken with respect to State lotteries
13 and the like.

14 But drawing a line -- drawing a distinction -- between
15 gambling earnings and rendering them exempt like the exemption
16 of interest on State and municipal bonds, for example, while
17 taxing other income more heavily, would shift the tax burden
18 in a way that we think would be wrong, and would use the tax
19 system in an effort which might well not be successful in
20 achieving the social goal, but might well be successful in
21 achieving a goal that the tax-paying public would find ex-
22 tremely difficult to accept, of suggesting that wages remain
23 fully taxable, but that gambling winnings should be exempt.

24 SENATOR CANNON: Do you have a ballpark figure, an
25 estimate of the entire Federal revenue that Internal Revenue

1 receives from the tax on the gambling industry?

2 MR. OLSZEWSKI: Yes, we have.

3 (Discussion off the record.)

4 MR OLSZEWSKI: Gambling from income tax?

5 SENATOR CANNON: Yes.

6 MR. OLSZEWSKI: No, sir. There is no breakdown on
7 that because we don't make a line-by-line analysis.

8 However, I want to make one point. The Commis-
9 sioner's remarks are extremely important. I am in the enforce-
10 ment business in trying to administer the tax laws. I do not
11 believe there should be an exemption for gambling. If we
12 provide this escape, we will find ourselves in the same situation
13 as that of other countries, of giving to the person who is un-
14 scrupulous, the person who desires to cheat on his income tax,
15 a certain amount of so called tax-free revenue that he could use
16 to conceal his true taxable income. The increase in net worth
17 and expenditures investigation which is so frequently the
18 determination on which our tax liabilities are made, would be
19 clearly in jeopardy as a means of identifying tax evaders.

20 SENATOR CANNON: Thank you, Mr. Chairman.

21 CHAIRMAN MORIN: I think we could go on for many
22 hours with you gentlemen, possibly, and I hope we will have an
23 opportunity later.

24 Dr. Allen did have a couple of questions.

1 DR. ALLEN: In the interest of time, I will elimi-
2 nate one. What is the position of the Service towards further
3 legalization of gambling, such as numbers and sports betting,
4 including the extension in various States of lotteries?

5 MR. OLSZEWSKI: We believe that is a legislative
6 question. It is a policy question on the part of Treasury,
7 and I don't have a position on the legalization of those types
8 of activities.

9 COMMISSIONER ALEXANDER: Speaking for my office,
10 nor do I. You see, the Internal Revenue Service has the re-
11 sponsibility for administering the tax laws. We have not been
12 given the responsibility of the Treasury Department to speak on
13 matters of tax policy except to the extent that tax policy has,
14 in the instance I have previously mentioned, already been
15 developed by the Treasury and communicated.

16 This matter far transcends even tax policy. It
17 goes to the matter of national policy, the matter of State and
18 legislative policy.

19 And the Internal Revenue Service cannot express a
20 view on it. The business of the Internal Revenue Service is the
21 tax business. Tax laws don't work very well, very effectively,
22 most of the time in attempting to meet goals which transcend
23 the proper determination of tax liability, in the income tax area
24 particularly, or the proper computation of income and the payment
25 and collection of tax.

1 DR. ALLEN: And on the basis of your activity you
2 would not have an advisory function to any Executive depart-
3 ment or--

4 COMMISSIONER ALEXANDER: We have advised the
5 Treasury Department as to the administratability of any tax
6 proposal, how we'd do it, and what would be included.

7 We also advise the Treasury Department, working
8 with the Office of the Assistant Secretary for Tax Policy, as
9 to specific policy questions when the Treasury seeks our ad-
10 vice. This particular matter goes far beyond the adminis-
11 tratability. It goes far beyond the tax policy of the
12 Treasury and is a matter, of course, in which this Commission
13 has had and should have a very great interest.

14 My concern, as I have expressed, is one of trying
15 to make the tax system work well. And to the extent that addi-
16 tional things are added to the burden of coping with the tax
17 system, the job of the Internal Revenue Service in meeting its
18 responsibilities is increased.

19 To the extent we are given the responsibility of
20 enforcing laws that the public would find very difficult to
21 accept, the job of enforcing the laws that we and we alone
22 can enforce and should enforce, the tax laws, is rendered
23 more difficult.

24 CHAIRMAN MORIN: Mr. Coleman, you haven't had
25 a chance today at all.

1 MR. COLEMAN: Mr. Commissioner, as to the use of
2 wiretapping, do you consider that essential to the success of
3 your prosecution?

4 COMMISSIONER ALEXANDER: Absolutely not. We don't
5 use wiretapping.

6 MR. COLEMAN: I assume the activity of the Treasury
7 Department on the illegal gaming activities --

8 COMMISSIONER ALEXANDER: I think Mr. Olszewski has
9 responded, but I want him to respond again to this particular
10 point you brought up.

11 MR. OLSZEWSKI: When they have invested and ob-
12 tained a Title 3 authorization through the court, that infor-
13 mation is not made available to the Service, to my knowledge,
14 until after the adjudication of the matter before the courts,
15 when the case is completed. At that point, the court can de-
16 termine it can be made available to the Service following
17 determination of a tax liability, but not before.

18 MR. COLEMAN: How about cooperation with State and
19 local law enforcement agencies. Do they turn that information
20 over to you?

21 MR. OLSZEWSKI: If it was legal installation, if
22 they obtained it according to the law, and after the adjudica-
23 tion of their matters, if our Department of Justice attorneys
24 or counsel said that we could accept it legally, then we would
25 accept it. If there is a taint, we will not accept it.

1 MR. COLEMAN: But you do no wiretapping yourself?

2 MR. OLSZEWSKI: No, we don't.

3 COMMISSIONER ALEXANDER: No, we don't, and we are
4 not going to.

5 CHAIRMAN MORIN: Mr. Dowd.

6 MR. DOWD: I get the impression from your combined
7 testimonies that most, if not almost all, of the gambling
8 winnings go unreported on income tax returns. As I get it from
9 your answers, you have never audited or made a study to deter-
10 mine to what extent the total income reported by the taxpayers
11 in the United States represents the winnings.

12 COMMISSIONER ALEXANDER: Are you covering legal
13 gambling winnings as well as illegal?

14 CHAIRMAN MORIN: Both.

15 COMMISSIONER ALEXANDER: Well, I think perhaps I
16 gave you a wrong impression. I am not suggesting, and did not
17 intend to suggest in my part of this testimony, that most of
18 total gambling winnings go unreported. However, we do have a
19 compliance problem with respect to gambling, particularly when
20 it is illegal gambling winnings.

21 The portion of my testimony that touched on this
22 particular problem dealt with the illegal, rather than the
23 legal. And I would not suggest to you that most of
24 total gambling winnings go unreported.

1 MR. DOWD: Let me refer to your testimony on pages
2 15 and 16 when you discussed the very scant record that you
3 had from the New York Off-Track Betting Corporation. You indi-
4 cate in terms of dollars you only had reported winnings on
5 Form 1099 which represent one-third or \$17 million of the
6 winnings paid out during that period.

7 Now, what do you point to that suggests that you
8 know about and in fact the other 99-2/3 per cent of those
9 winnings is in fact --

10 MR. OLSZEWSKI: Let me respond to that.

11 First of all, we have made a study where 1099
12 reports are filed. And we find that there is a high correla-
13 tion between reported income -- when the 1099 reports are
14 filed with the Service -- and the income tax being reported
15 by the individual.

16 You have to also keep in mind that where you have
17 \$17 million in winnings, generally you have people who are
18 habitual in their activities -- they are daily bettors,
19 weekly bettors, or frequent bettors. And if you know any
20 people who have engaged in this activity to any degree, you
21 are going to find their winnings are plowed in behind their
22 losses. And frequently -- and if you will just take a look at
23 the progression of a dollar bet in an 85 per cent payout of
24 the money being bet, they get 85 cents of their dollar bet
25 on one day and bet it back the next day and ultimately, if

1 they kept winning on an even basis, they'd lose their money.
2 So most people who are bettors are not big profit-makers and
3 don't have sizable incomes from gambling activities -- most bettors.

4 MR. DOWD: That is a generalization about gambling
5 per se. What data do you have on gambling winnings paid to
6 taxpayers that suggest there is any widespread reporting of
7 gambling winnings?

8 MR. OLSZEWSKI: We don't have anything because that
9 happens to be a line-type item. If they report it as miscel-
10 laneous income, there is no way to determine it is gambling
11 income unless the return is audited and we say, "Okay, what
12 is the source of your miscellaneous income?"

13 COMMISSIONER ALEXANDER: May I respond a bit further
14 to that? We make taxpayer surveys on a regular basis. They
15 are made on a carefully selected sample of taxpayers throughout
16 the country, and gamblers are not excluded in any way from the
17 sample. We think the sample is a very scientific sample.
18 We make a very, very careful audit of those lucky enough to
19 be included in the sample. And that very, very careful audit
20 is not limited to deductions. It also includes all sources or
21 probable sources of income, and income of all nature, including
22 gambling winnings. From these studies we determine taxpayer
23 compliance and from these studies we determine audit needs and
24 the use of audit resources.

25 We do believe that compliance, although hardly

1 perfect, particularly not perfect in the area that we are
2 discussing, is there. It is not there to the extent that we
3 would like, but we think it is there to the extent that I
4 indicated.

5 I can't accept the proposition that most of total
6 gambling winnings fail to attract tax. I hope the opposite is
7 true, but I do think that we need to do a better job of making
8 sure that those who are lucky enough to gamble and win are also
9 lucky enough to pay the tax on those winnings.

10 MR. DOWD: Thank you, Mr. Commissioner.

11 Do you have any explanation for why such a small
12 percentage of the off-track bettings and winnings are reported
13 on Form 1099 as referred to in your testimony?

14 MR. RITCHIE: May I comment on that? The informa-
15 tion I have on New York off-track betting was prior to their
16 exotic betting, and most of it their exotic betting would
17 produce. And currently they are filing an average of 200
18 1099's each day of their six-day week. So I think probably
19 the 1972 and '74 figures would be radically different in terms
20 of compliance.

21 COMMISSIONER ALEXANDER: I might add that the failure
22 to file a Form 1099 does not mean necessarily the failure to
23 report the income that should have been reported on that infor-
24 mation return, Form 1099. And we hope and expect to do a con-
25 siderably better job of matching Forms 1099 in the future,
beginning rather quickly. And when we do that better job we

1 will be more appreciative of the results of this change in per-
2 formance that you mentioned.

3 MR. DOWD: You have given one reason for why gambling
4 taxes should be reported, to wit the net-worth case, and I can
5 appreciate and understand that. But you have also given an
6 argument that most gambling winnings are offset by gambling
7 losses so in the scheme of things I question to what extent
8 we receive tax income from gambling winnings. Is that a
9 significant form of taxed income in the United States?

10 MR. OLSZEWSKI: If the only taxed winnings were from
11 State legalized lotteries where the winning payment could be
12 identified and controlled, that would not be a problem for us
13 in terms of enforcement of the general income tax laws.

14 But should gambling income per se from any source
15 be exempt from taxation, then it would be very easy for anyone
16 to devise a scheme to say that he obtained gambling income
17 which was not taxable, and this is where the increase in
18 assets came from.

19 MR. DOWD: Your position goes more to enforcement
20 than it does to revenue.

21 COMMISSIONER ALEXANDER: I think it goes both ways.
22 I think one is a problem of, "Is this the right direction to
23 go?" Wholly apart from the enforcement side. The enforcement

1 side that John Olszewski developed with you is the view of the
2 agency having enforcement responsibilities that suggests other
3 solutions to this problem.

4 CHAIRMAN MORIN: I hope we have another opportunity
5 to discuss this. I don't mean to keep you too long.

6 Mr. Gimma, do you have any questions?

7 MR. GIMMA: No.

8 CHAIRMAN MORIN: I know General List who is Attorney
9 General of Nevada had one question.

10 MR. LIST: I think you have pretty well answered it.
11 I wonder if you'd care to add anything concerning the relation-
12 ship between the cost of enforcement of the wagering statutes
13 and the monies collected pursuant to those costs.

14 COMMISSIONER ALEXANDER: I can't add anything. Can
15 you, Mr. Olszewski?

16 MR. OLSZEWSKI: No; I think the relationship is
17 there. The amount of voluntary contributions or payment as
18 a result of enforcement really can't be identified. And we
19 have never kept statistics on an individual basis in order for
20 us to tell you how much resulted from enforcement and how much
21 of the collections came from voluntary payments.

22 MR. LIST: Thank you.

23 COMMISSIONER ALEXANDER: Mr. Chairman, I am going
24 to have to take you up on my commitment to leave, but Mr.
25 Olszewski can stay.

1 CHAIRMAN MORIN: I personally would be very happy
2 if Mr. Olszewski could stay. I think the staff has some ques-
3 tions they would like to ask. But you have been kind enough to
4 come as it is, and we could always have another hearing.

5 If Mr. Olszewski could stay for a half-hour --

6 COMMISSIONER ALEXANDER: And Mr. Boyd can also stay.

7 CHAIRMAN MORIN: Fine. I want to thank you, Mr.
8 Commissioner, for all of us for coming and for the cooperation
9 your Service has given us.

10 COMMISSIONER ALEXANDER: Thank you. It has been
11 a pleasure to cooperate with this Commission in its very impor-
12 tant work.

13 CHAIRMAN MORIN: Mr. Gimma.

14 MR. GIMMA: I don't have any questions.

15 CHAIRMAN MORIN: Would you like to continue, General?

16 MR. LIST: I have one other area I wanted to inquire
17 about. I wonder if you have any thoughts or theories about
18 whether the 10 per cent excise tax, where it is imposed in a
19 legal wagering environment, in fact drives bettors to illegal
20 bookmakers.

21 MR. OLSZEWSKI: Well, based upon experience -- let
22 me go back historically. When the new law in the early '50's
23 began to be applied and we began to apply our enforcement
24 efforts, we found that the illegitimate bookmakers, even those
25 in States where it was legal, attempted to increase the cost of

1 the bet by adding a 10 per cent factor to the gross bet in order
2 to cover the 10 per cent excise tax; that where the legitimate
3 bookmaker was paying off on the odds and was in effect straight
4 with his clients, he had a difficult time making a significant
5 profit in the activity.

6 And where you have illegal gambling, in a State
7 where bookmaking is legal, I think that it does place the
8 legal bookmaker in an uncompetitive posture.

9 MR. LIST: The legal bookmaker?

10 MR. OLSZEWSKI: Yes, because obviously his net profit
11 has to be less unless he adds 10 per cent to the top.

12 But I don't believe it affects the customers'
13 betting habits. As a matter of fact, the customer would be
14 well-advised to place his bet with a legal bookmaker because he
15 knows he will get his payment if he wins.

16 MR. LIST: Apart from the greater assurance of pay-
17 ment in the event he will win, however, it would seem that a
18 great many bettors might be inclined to go to the illegal book-
19 maker simply for the purpose of holding onto that 10 per cent,
20 would it not?

21 MR. OLSZEWSKI: I don't really believe the illegal
22 bookmakers are adding the 10 per cent factor, so it doesn't
23 affect the bettor at all. In many areas or jurisdictions
24 where enforcement is active, the illegal bookmaker has some
25 unusual costs to his operation which are not imposed on the

1 legal bookmaker in a State where he can conduct business.

2 We find in a State where bookmaking is illegal, they
3 must have stand-by locations. If corruption exists, they must
4 have money to pay protection. Some of their money is paid to
5 other gangsters or racketeers to avoid being hijacked or
6 to avoid being given bad bets - bullets.

7 So there are hidden costs even to the illegal book-
8 making.

9 SENATOR CANNON: Can I just follow up a little on
10 that very point?

11 Needless to say, coming from the State of Nevada,
12 I have had a lot of conversations with bookmakers, although I
13 am not a client.

14 But the argument that they gave me, the legal
15 bookmakers, is that they can't put that 10 per cent on because
16 then, if they do attempt to put the 10 per cent on it, that
17 drives the bettor to the illegal bookmaker who you can find
18 anyplace on the street, and therefore the Federal Government
19 doesn't get the 10 per cent and the business goes to the
20 illegal operator.

21 The suggestion has been made to me by some of the
22 legal operators that they could perhaps absorb a 1 or a 2
23 per cent fee that could be used for policing, and in light of
24 the fact that the revenue that the Federal Government gets is
25 very minimal in this area, they have suggested that if the

1 10 per cent tax were reduced to, say, 1 or 2 per cent which they
2 could absorb themselves, and then paid for the purpose of
3 policing to the Federal Government, that it would be a step
4 forward.

5 Do you have any thoughts on that?

6 MR. OLSZEWSKI: I do. That is a policy matter, of
7 course, and as far as the Service's position is concerned and
8 Treasury's position, that is something they must deliberate
9 upon. I know that has been a recommendation at least con-
10 sidered at times by various groups within the Service.

11 I have my own personal view, and I think it is a
12 simple matter to take some of the statistics from our informa-
13 tion on coin-operated gaming devices. That tax is only \$250,
14 and the revenue derived from the coin-operated gaming device
15 is significantly larger than the occupational tax or the
16 excise tax. So that if the percentage of excise tax imposed
17 upon the illegal wagers was reduced, and there was a greater
18 incentive for compliance, and the law did not provide for dis-
19 closure, I think voluntary compliance could be achieved and
20 there'd certainly be higher compliance on the part of legal
21 bookmakers and greater incentive to comply with the law, and I
22 suspect revenue would rise as a result of it.

23 CHAIRMAN MORIN: I wonder if I could take friendly
24 issue with you on the matter of the tax exemption for the
25 gambling winnings.

I understand the position of the Service in respect

1 to how this could be used to feed the net worth method of
2 computation.

3 But supposing it were phrased this way, that
4 gambling winnings from legal gambling operations realized by
5 one who was not in the trade or business of gambling, that is,
6 the casual gambler, would be exempt but only if reported on a
7 return and affirmatively claimed -- in other words, the exemp-
8 tion would be only for the amount of money you put on an in-
9 come tax return and claimed exemption for. That would give
10 an auditor the ability of simply denying the exemption and put
11 the burden of proving it wasn't fact --

12 MR. OLSZEWSKI: I think if you added another factor,
13 that at the time the gambling win is paid the organization, if
14 it is legalized, if it is a legal operation, submitted a 1099
15 or a report to document and support the payment to the winner
16 -- I think that that would probably solve the problem. Be-
17 cause then you'd have a declaration of exempted income,
18 coupled with corroboration of a payment by, say, the State
19 organization paying the hit, or in the case of Nevada, by the
20 bookmaker who is a registered legitimate bookmaker doing
21 business and making the report.

22 CHAIRMAN MORIN: It seems to me to present the
23 possibility -- as you say, it is just an impression -- to
24 present the possibility of at least lessening the competitive
25 disadvantage of legal gambling while at the same time not a

1 revenue loss -- it may be a revenue gain.

2 MR. OLSZEWSKI: I think that may have possibilities
3 provided the broad definition of gambling income is not exempted.

4 CHAIRMAN MORIN: Oh, I understand that. I emphasize
5 the word "winnings."

6 MR. BOYD: I think the problem would not be with the
7 State-operated lotteries. The problem would arise from the
8 winnings from your State-licensed parimutuel betting, going out
9 to the racetrack and winning the money.

10 I think we could identify who won the money as far
11 as the State-operated lotteries were concerned. There are
12 records of that. It would be hard to use that money as a hidden
13 source of income in building up net worth. We could check that.
14 We could find out whether so-and-so won this money from the
15 State lottery. But it would be very difficult to go back to
16 determine whether or not the individual had won it through
17 parimutuel betting at racetracks.

18 CHAIRMAN MORIN: In other words, to make it exempt,
19 he'd have to tell you. If he didn't tell you, he'd be in the
20 same position he is now; he would be guilty of fraud.

21 MR. BOYD: If he told us he won it at the racetrack,
22 how could we say he didn't win it at the racetrack?

23 CHAIRMAN MORIN: You could make him prove he did.

24 MR. BOYD: We have had this happen. He could even
25 pick out a race and a horse that has won in the past. And

1 he'd make a record of that and keep it just in case he is
2 asked and determine what the payoff would be and how much money
3 he would have to bet to get a substantial payoff.

4 CHAIRMAN MORIN: Well, I think we have all been in
5 the position of having to convince a Revenue agent and not
6 being successful. It is a matter of what proof you have.

7 Dr. Allen.

8 DR. ALLEN: I have nothing else.

9 CHAIRMAN MORIN: Anyone else?

10 The staff hasn't inquired. Mr. Ritchie.

11 MR. RITCHIE: Mr. Olszewski, does the Service have
12 a position in conjunction with their 1999 program about off-
13 track betting in the parimutuels, enacting a withholding
14 process in conjunction with the withholding requirement?

15 MR. OLSZEWSKI: That is one of the matters being
16 considered, and I believe the Commissioner alluded to that
17 in his testimony, that there would be some hope that should
18 the situation continue, there would be some form of with-
19 holding at the source at the time of the payment.

20 Now, we do have a problem in this respect. Your
21 State gambling lotteries are conducted on a weekly basis
22 generally, and if there was a withholding, I question whether
23 or not the public may be initially, at least, discouraged by
24 the withholding in light of the fact that numbers operations
25 and lotteries are conducted daily and there is no withholding.

1 But it is something the Service is interested in
2 pursuing with the States.

3 MR. RITCHIE: Some of the materials presented in
4 response to the staff request would indicate that a review of
5 the current operations of the State lotteries might cause some
6 question about there being conducted pursuant to the exemption
7 of the income tax statutes.

8 Do you have any statement which would give us some
9 indication of your opinion or the opinion of the Internal
10 Revenue Service, if you have one, about those operations?

11 MR. OLSZEWSKI: No, I don't think I'd be in a
12 position to discuss it, particularly since the Commissioner
13 and other members of the staff are in the process of meeting
14 with the directors of the State lotteries and are discussing
15 this very matter.

16 MR. RITCHIE: The Department of Justice testified
17 this morning that they viewed gambling enforcement as a major
18 tool in their fight against organized crime.

19 Now, do you have some views which you could share
20 with the Commission about the relation of gambling enforcement
21 from the Internal Revenue Service as it relates to anti-
22 organized-crime measures?

23 MR. OLSZEWSKI: Yes, I do. As I stated during the
24 testimony, our efforts were designed to attack the major
25 operators of gambling industries. We couldn't afford -- our

1 resources are too limited to attack the "two-bit," the small
2 operator, the drug-store bookmaker. And as a result of this,
3 this naturally carried us into the big operations which we
4 found for the most part to be almost totally related to or-
5 ganized or syndicated criminal activity.

6 If they were so-called semi-independent, we found
7 they were paying tribute to the syndicate or the organization.

8 We also found that one area that we have not
9 discussed -- it is legal in Nevada, but your in-house gambling
10 is another very large, sizable source of revenue to syndicated
11 criminal groups. When I talk about in-house gambling, I am
12 talking about your organized poker, craps, baccarat, and so on.
13 Where there is an organization, they go so far as to build
14 buses especially designed with bars and hostesses and take them
15 to the gambling place where businessmen have lost their entire
16 business. They become victimized, as a result of gambling
17 losses, by loan-shark operators and have become indebted, and
18 we have found cases where an entire business has been taken
19 over and not taken over as a result of any illicit prostitution
20 activity, not as a result of anything but gambling.

21 MR. RITCHIE: Well, we have seen graphically and
22 through your testimony the effect of the Marchetti-Grosso
23 decision. Has this had the same effect on the Internal Revenue
24 Service with relation to organized crime that it had upon
25 the level of gambling investigations and enforcement of those

1 statutes?

2 MR. OLSZEWSKI: The effect of Grosso-Marchetti
3 applied primarily to the wagering.

4 Now, our wagering investigations were an exceptionally
5 valuable tool in making available to us records of the gambling
6 operations which were not being reported, by the way, on the
7 individual income tax returns of your bankroller or your
8 operator.

9 We have continued our investigations of major
10 gambling figures where we have been able to identify them
11 through our normal investigative activities, and frequently in
12 conjunction with the Department of Justice strike forces in
13 about 17 locations.

14 And to that extent, we have continued our efforts
15 in trying to administer the tax laws and enforce the tax laws
16 as they relate to the organized criminal element.

17 MR. RITCHIE: Mr. Olszewski, your reputation in the
18 field of enforcement and particularly in the field involving
19 organized crime enforcement is well-known to the Commission.

20 If gambling legislation was a valuable tool for
21 you once to get into and combat organized crime, is it your
22 professional or personal recommendation, if you can make one,
23 that this Commission should consider laws which would correct
24 the types of deficiencies that were alluded to by the Supreme
25 Court, or consider in particular some of the legislation which

1 has been introduced before Congress in the past, or is presently
2 pending introduction regarding wagering laws?

3 MR. OLSZEWSKI: Well, I believe if Congress deems
4 that the wagering tax law is a reasonable revenue measure and
5 the tax imposed is one that is not confiscatory, if the re-
6 sources were given to us -- because I am sure there would be
7 a need for additional resources to enforce the law -- we could
8 probably have a decided impact on the organized, illicit,
9 syndicated criminal element.

10 On the other hand, if we were to be confronted again
11 with the same problem we had in 1951 through '60, where they
12 had passed the law and it was a problem law to begin with,
13 and then did not provide the resources to work these cases, I
14 think it could be a mistake. Because our resources are lean
15 and fit. We don't have any fat in the organization. We have
16 what we consider to be a limited number of agents for the
17 entire country, and to divert them from enforcement of the
18 general tax program to concentrate any sizable group on a
19 wagering tax program could adversely affect the administration
20 of our general tax laws.

21 So if the laws are to be passed by Congress they
22 would have to recognize the responsibility to also provide
23 for enforcement resources.

24 MR. RITCHIE: I see.

25 MR. OLSZEWSKI: I can say this, that when we had

1 the law -- as I stated during my testimony -- where there was
2 effective coordination, effective enforcement, we did see at
3 times some significant adverse impact on the organized
4 criminal element.

5 MR. RITCHIE: Could you relate to the Commission if
6 information exists which reflects an increase in reporting based
7 upon enforcement against organized crime figures by the Internal
8 Revenue Service?

9 MR. OLSZEWSKI: I wish I had -- maybe Mr. Boyd may
10 have some specifics, but I can relate some of our own personal
11 experience in the District in which we worked.

12 At one particular time -- I believe it was in the
13 early or mid-'50's -- we were asked to determine and identify
14 those individuals engaged in illicit gambling, numbers operators
15 and bookmakers, to examine their returns and determine what they
16 were reporting.

17 With the assistance of enforcement officials, local,
18 State, and Federal, FBI and our own sources, we did in fact
19 identify the returns of people engaged in this activity.

20 Some were \$1,000, \$2,000, annually. One individual
21 specifically was reporting about \$7500 a year on his income
22 tax return from "Other Income" or "Gambling."

23 Subsequently, we engaged in a planned approach to
24 these particular cases. And after enforcing the wagering
25 excise tax laws and occupational tax laws in conjunction with

1 income, we found the same individuals began to report \$50,000,
2 \$60,000, and \$100,000 in income.

3 So there was a decided effect, and I think a higher
4 degree of compliance from these people by having in effect
5 a coordinated program.

6 MR. RITCHIE: The Internal Revenue Service, I know,
7 has a policy about restricting its efforts to the tax statutes,
8 but there are instances where a tax investigation turns to a
9 different type of violation, are there not?

10 MR. OLSZEWSKI: Well, there are Title 26 investiga-
11 tions which uncover evidence or indications of violations of
12 Title 18. And if they do not arise out of substantially
13 the same evidence, the same testimony of the Title 26, we would
14 refer those violations to the Department of Justice. They, in
15 turn, would refer the testimony or the evidence to the respec-
16 tive Federal enforcement agency with the responsibility to en-
17 force the Title 18 violation.

18 MR. RITCHIE: Do you have any estimate of the number
19 of instances where your tax investigations led to convictions of
20 substantial individual organized crime figures for other
21 types of violations, other than tax violations?

22 MR. BOYD: I don't actually have any figures. Let
23 me answer it this way. Basically, there was a tax investiga-
24 tion underway for a Title 26 violation. During the course of
25 that investigation, we would find a Title 18 violation and,

1 during the time that we are speaking of, something to do with
2 interstate transportation, communication, and so forth.

3 Sometimes we would follow through on that with our
4 tax case. We would have a tax case also.

5 At the time of indictment, they would be indicted
6 under the tax violation under Title 26. They would also be
7 indicted for other violations for which the same evidence would
8 support the indictment.

9 So your Title 18 indictments were obtained at the
10 same time as your Title 26 indictments. And there were
11 some convictions in this manner.

12 But basically, each of our investigations was
13 started as a tax investigation.

14 MR. RITCHIE: I'm sorry, but the point I am trying
15 to make is: It is generally accepted that if you can't con-
16 vict a gambler for gambling, you can get him for tax evasion.
17 And it becomes a responsibility of the Internal Revenue Service
18 to investigate and prosecute a number of instances of greatly
19 protected individuals who are organized crime figures.

20 I am saying: Do you have any estimate of the re-
21 verse, where you have actually uncovered in your tax investiga-
22 tion a large percentage of other types of violations which led
23 to their convictions?

24 MR. OLSZEWSKI: I don't have the statistics, but I
25 think we could give you some examples.

1 If you are investigating a major bookmaking opera-
2 tion, a major numbers operation, and there are people who may
3 lose sizable sums of money and they become indebted to loan
4 sharks, and we obtain testimony and evidence that they are paying
5 juice to a loan-shark operator, obviously while we are proving
6 gambling and loan-shark activity, we are also establishing
7 extortion violation or Hobbs Act violation.

8 MR. RITCHIE: My last question, if I may, Mr.
9 Chairman, relates to the area of police or public corruption.

10 What is the Internal Revenue Service's experience
11 with gambling as a multiple of corruption in either the police
12 or in the political areas?

13 MR. OLSZEWSKI: Well, over the many years that we
14 have worked with the wagering tax laws and income tax laws, we
15 have certainly found indications of public corruption. How-
16 ever, from my own personal experience, when we have found
17 these indications, if there was a Federal violation involved
18 they were promptly brought to the attention of the United
19 States Attorney or the strike force attorney or the Department
20 of Justice. And if it was a State violation we were frequently
21 working with the finest local and State police officers in the
22 country, we believe, and it was brought to their attention and
23 they in turn through their internal security, internal affairs
24 organization, attempted and frequently were able to surface
25 these problems, and they prosecuted the officers.

1 There is no question that illegal activity is a
2 corrupting influence. I am sure that those of us who live in
3 Maryland, if we just follow the newspapers, can read the number
4 of instances that have resulted in indictments and prosecutions.
5 However, as I indicated, when we do find this we do report it
6 to the appropriate authorities, and if there is a tax violation
7 we have prosecuted the public officials, the police officers,
8 for tax violations.

9 MR. RITCHIE: Thank you, Mr. Chairman.

10 CHAIRMAN MORIN: Let me repeat my thanks, Mr.
11 Olszewski and Mr. Boyd, for your coming here. Thank you for
12 appearing.

13 MR. OLSZEWSKI: Thank you for the opportunity of
14 appearing here.

15 CHAIRMAN MORIN: The hearing is adjourned.

16 (Whereupon, at 4:25 p.m., the hearing was adjourned.)
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