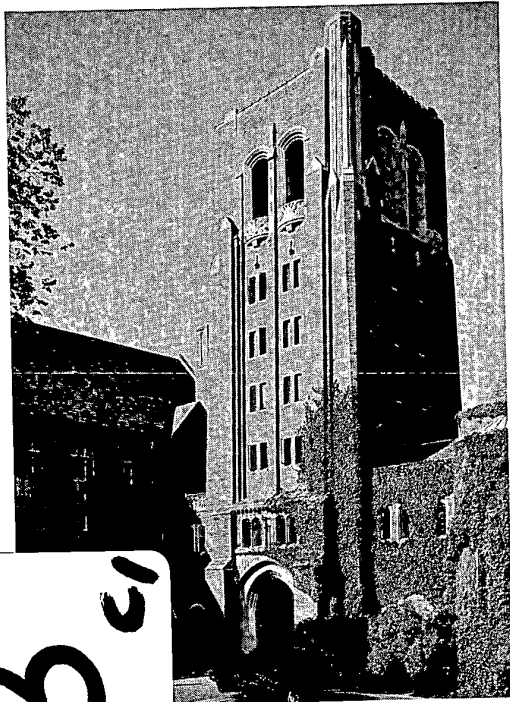
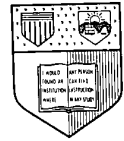


Cornell Institute on Organized Crime  
1980 Summer Seminar Program



# The Investigation and Prosecution of Organized Crime and Fraud

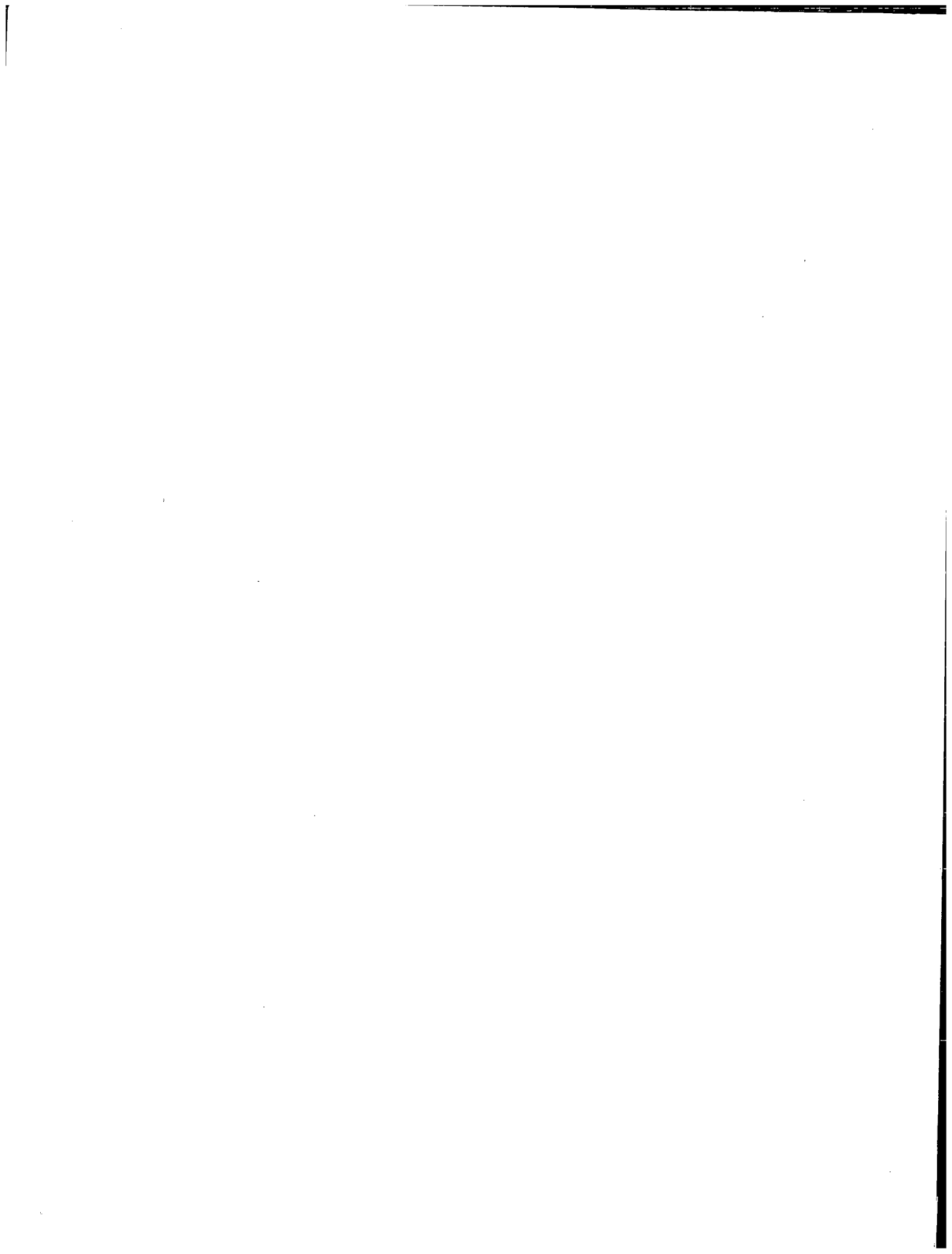
Fraud:  
Background  
Materials

## A Simulated Investigation

with  
Teacher's Guide

G. Robert Blakey

75625





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and Prosecution of  
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Simulated Investigation  
with Teacher's Guide

Edited by

G. Robert Blakey

August, 1980

Ithaca, New York

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I  
FRAUD  
BACKGROUND



FRAUD: BACKGROUND

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"No matter how supple the rule  
the rush of life is always swifter"<sup>1</sup>

I.

WHITE COLLAR CRIME, ORGANIZED CRIME,  
AND FRAUD

Question: What do Spiro Agnew,<sup>2</sup> Joe Valachi,<sup>3</sup> and a healthy, ever-growing percentage of all automobile repairmen<sup>4</sup> in the United States have in common? Answer: They are all white-collar criminals, and their otherwise varied biographies buttress FBI Director William Webster's caution that "there is no such thing as white-collar crime as a term of art. It...is a cluster of criminal activities, which distinguishes it from other types of activities."<sup>5</sup>

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<sup>1</sup>J. Goebel, Felony and Misdemeanor, xxxvii (1937)

<sup>2</sup>See text accompanying notes 47-49, infra.

<sup>3</sup>By his own account, Valachi trafficked in counterfeit ration coupons during World War II. See P. Maas, The Valachi Papers (1969)

<sup>4</sup>From 1971 to 1974, U.S. Department of Health, Education, and Welfare's Office of Consumer Affairs reported that auto repairs ranked number one of all consumer complaints recorded by state, county and local consumer protection offices. The list of abuses is long and varied. Carowners frequently reported paying for unnecessary repairs or replacement of parts, or being charged for services not performed. Other consumers told of unknowingly buying used parts for new parts, accepting fraudulent guarantees or discounts, or simply paying for incompetent work.

A large number of complaints also involved corrupt mechanics who tried to unfairly raise estimates after repairs were underway. Under these schemes, customers refusing the more expensive work were still required to pay the original estimate merely to have their cars reassembled. National Conference of State Legislatures, The States Combat White-Collar Crime, 20-21 (1976)

<sup>5</sup>W. Webster, "The FBI and White Collar Crime Today." 50 N.Y.S.B.J. 635,636 (1978)

The distinction lies in the means of perpetration. The Justice Department's working definition of white-collar crime for 1980 is "those classes of non-violent illegal activities which principally involve traditional notions of deceit, deception, concealment, manipulation, breach of trust, subterfuge or illegal circumvention."<sup>6</sup> The "cluster" is thus an agglomeration of discreet "economic" crimes and corruption offenses. The former represent the great bulk of white collar criminal activity and include false advertising, embezzlement, securities theft, restraints of trade, and an ever-burgeoning array of frauds. Corruption is principally "public", or breaches of trust by government employees, but also includes commercial bribery and abuses of other fiduciary relationships.<sup>7</sup>

Because concealment is so woven into the pattern of these offenses, the "cost" of white collar crime is but vaguely perceived. The United States Chamber of Commerce calculated the gross take of white collar offenders at "certainly not less" than 40 billion dollars annually.<sup>8</sup>

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<sup>6</sup>P. Heyman, "Introduction to White Collar Crime Symposium," 17 Am. Crim. L. Rev. 271, n.1 (1980)

<sup>7</sup>Definitions, or descriptions, of "white-collar crime" are legion. See e.g. E. Sutherland, White-Collar Crime, 9 (1949); H. Edelhertz, The Nature, Impact and Prosecution of White-Collar Crime, 3 (1970); National Conference of State Legislatures, The States Combat White Collar Crime, 5 (1975) The list presented in the text is not gospel - but it is appropriate for purposes of this paper.

<sup>8</sup>Chamber of Commerce of the United States, Handbook on White Collar Crime, 5 (1974)

But this six-year old "ball-park" measure of direct, short-term loss encompassed neither illegal price-fixing nor industrial espionage. The total current loss is probably much higher. At the individual enterprise level, reliable figures drawn from prosecuted cases reveal an ungodly profit margin. One mob-run arson racket, operating between 1969 and 1975, pulled down approximately \$500 million.<sup>9</sup>

Dollars are not the only cost of white collar crime, only the most obvious one. Other costs are the number and kind of people victimized. While institutions like government are frequently the targets of bigger rip-offs, the typical consumer fraud counts its victims by the hundred, if not by the thousand, and gathers them from the middle and lower classes. Hence the financial loss and personal demoralization attending victimization are visited upon those who can least afford them. The Rio Rancho real estate fraud, for instance, involved the sale of 77,000 separate parcels of New Mexico desert, almost wholly to individual purchasers whose lot represented a parcel of the future.<sup>10</sup>

More important is the demoralization of society which white-collar crime portends. Dishonest practices retard economic growth by debasing competition.<sup>11</sup> Where one

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<sup>9</sup>C. Karchmer, "Arson and The Mob," 2 Firehouse 22 (August 1977) [hereinafter Karchmer].

<sup>10</sup>See text accompanying note 22, infra.

<sup>11</sup>Handbook, supra note 8, at 7.

firm is willing to compete illegally or pay-off government officials, others in the same market are obliged either to follow suit or face eventual failure and bankruptcy. The actual result in many cases is the departure of reputable firms from the infected market. In addition, as the public loses confidence in the private sector's ability to police itself, consumer "backlash" looms.

Case in point: an investigative task force reported that one cause of the Watts riot in 1965 was "retribution on merchants who were guilty of consumer exploitation".<sup>12</sup>

This effect of snowballing illegality is especially pronounced when organized crime<sup>13</sup> gets into the act. Securities theft, arson fraud, "bust-out" or bankruptcy fraud, sophisticated looting of labor unions and businesses within its control, illegal operation of "legitimate" businesses, and official corruption have long complemented such mob staples as gambling and narcotics. The "organized"

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<sup>12</sup>Id.

<sup>13</sup>A single, standard definition of "organized crime" (or "white-collar crime" for that matter) is neither necessary nor wise. The terms have evolved in response to a growing realization that the conduct and offender groups so designated presented a greater threat to society than that contained in common crimes.

A definition or either need only be adequate for purposes of analysis. The terms might be used for such varying purposes as allocation of jurisdictional authority or investigative and prosecutorial resources, determining availability of a special legal or investigative tool (wiretaps, subpoenas, grand juries), and classifying prisoners. For a discussion of some uses of term "organized crime", see G. Blakey, R. Goldstock, Techniques in the Investigation and Prosecution of Organized Crime: Manuals of Law and Procedure, ¶4-10 (1978).

white collar criminal, drawing upon huge reserves of capital, enjoying access to a vast network of criminal operatives and on-going schemes, and with compromised politicians and police in his camp, benefits from economies of scale in each of his rackets.

The bottom line of the bill presented by white-collar criminals is this: widespread flouting of legal constraints by "respectable" people - businessmen, politicians, lawyers - erodes the moral base of law. When those who, as a class, produce law treat it in practice as merely an obstacle to their enrichment, what can law be but the instrument of ruling class greed? To the extent this perception permeates society, the voluntary consensus upon which society's institutions rest is jeopardized.

Fraud is a choice case study in organized and white collar crime not only because its definition - conduct, less than forthright, intended to deprive another of money, property or a legal right without the use of force<sup>14</sup> - tracks that of white-collar crime so closely, but also because fraud offenses constitute a hefty proportion of all white-collar crime. The chief advantage of studying fraud, though, is that it perfectly illustrates the remaining aspect of the problem: fraud, like white-collar crime generally, is highly resistant to investigation and prosecution. Part of the reason of course is that a salient

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<sup>14</sup> Again, this need not be a term of art, but merely a working definition.

feature of these crimes is concealment of all evidence indicating that a crime has been committed. But the key is a congeries of impediments to effective deterrence, most prominently a criminal justice system which has developed historically in response to predatory crimes. Robert Peel's parliamentary argument for instituting a modern professional police force fully applies. Quite simply, "the art of crime...has increased faster than the art of detection,"<sup>15</sup> and the issue is whether law enforcement has the legal tools, concepts, and imagination to make a race of it again.

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<sup>15</sup>Quoted in T. Critchley, A History of Police in England and Wales 900-1966, 53 (1967).

## II.

### FRAUD: DIMENSIONS OF THE PROBLEM

#### A. Overview

Fraud is a dynamic, multi-faceted reality. It is democratic.<sup>16</sup> Frauds are committed by destitute beneficiaries of welfare programs who conceal income to qualify for benefits; by civil servants who demand gifts and kick-backs from government contractors; and by high level public officials who have complex conflicts of interest or who demand political contributions for special treatment.

Frauds are perpetrated by single individuals falsifying invoices for government reimbursement, manipulating businesses, or working a simple confidence game like the pigeon drop. Frauds are perpetrated, as well, by conspiracies and organized crime rings. Government benefit programs are systematically looted by procuring payment for services never rendered or goods never supplied; entire industries - like insurance - are defrauded by demanding payment for phony accidents or intentionally set fires.

The schemes may be simple, age-old ones committed quickly during a single perpetrator/victim encounter, the case in most bunco schemes and confidence games,<sup>17</sup>

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<sup>16</sup>H. Edelhertz, supra note 7, at 4.

<sup>17</sup>See, e.g., Confidence Games and Swindles, 23 Am. Jur. P.O.F. 1 (1959-61).

or very complex ones with no direct offender-victim contract (because the victim is an institution) perpetrated over time by the manipulator of government or business records, the case in many modern computer embezzlements.<sup>18</sup>

The amounts defrauded may be small, such as the few dollars gained by the welfare recipient misrepresenting the number of his dependents, or they may be enormous, the case in major investment swindles, such as the Equity Funding rip-off, involving an estimated loss of \$2 billion.<sup>19</sup>

Bureaucracies - private and public - are the primary victims of fraud.<sup>20</sup> They are logical targets given the resources under their control, their unpopularity, the low visibility of fraud, the rationalizations available to offenders, and the nature of the bureaucratic response to victimization.<sup>21</sup>

The real victim, however, is the public, which bears the burden by paying higher taxes and increased costs of goods and services. The impact of fraud falls on individuals, and on their physical and psychological integrity and security. That impact is not very different from the impact of "common" crime, except that the effects of fraud are longer lasting.<sup>22</sup>

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<sup>18</sup> See, e.g., D. Moffit, ed., Swindled: Classic Business Frauds of the Seventies (1976); W. Porter, "Computer Raped by Telephone," N.Y. Times Magazine September 8, 1974, at 40; D. Parker, Crime by Computer (1976).

<sup>19</sup> See J. Conklin, Illegal but Not Criminal, 4 (1977).

<sup>20</sup> See, e.g., E. Smigel, Crimes Against Bureaucracies (1970); D. Cressey, Other People's Money (1973).

<sup>21</sup> E. Smigel, supra note 20, at 9.

<sup>22</sup> H. Edelhertz, supra note 7, at 9.



The classification of frauds used herein - fraud against the government, fraud against business, fraud against individuals - is considerably more tidy than the reality. Fraud against the government, for example, is also fraud against individual taxpayers. Fraud against business may also be fraud against the government and individuals where, for instance, the torching of government insured property causes the government to pay out to the policy holder. Individual citizens must then endure higher taxes and higher fire insurance premiums. Nevertheless, the distinctions are indispensable for discussion purposes, and do minimum disservice to the facts they represent.

#### B. Fraud Against the Government

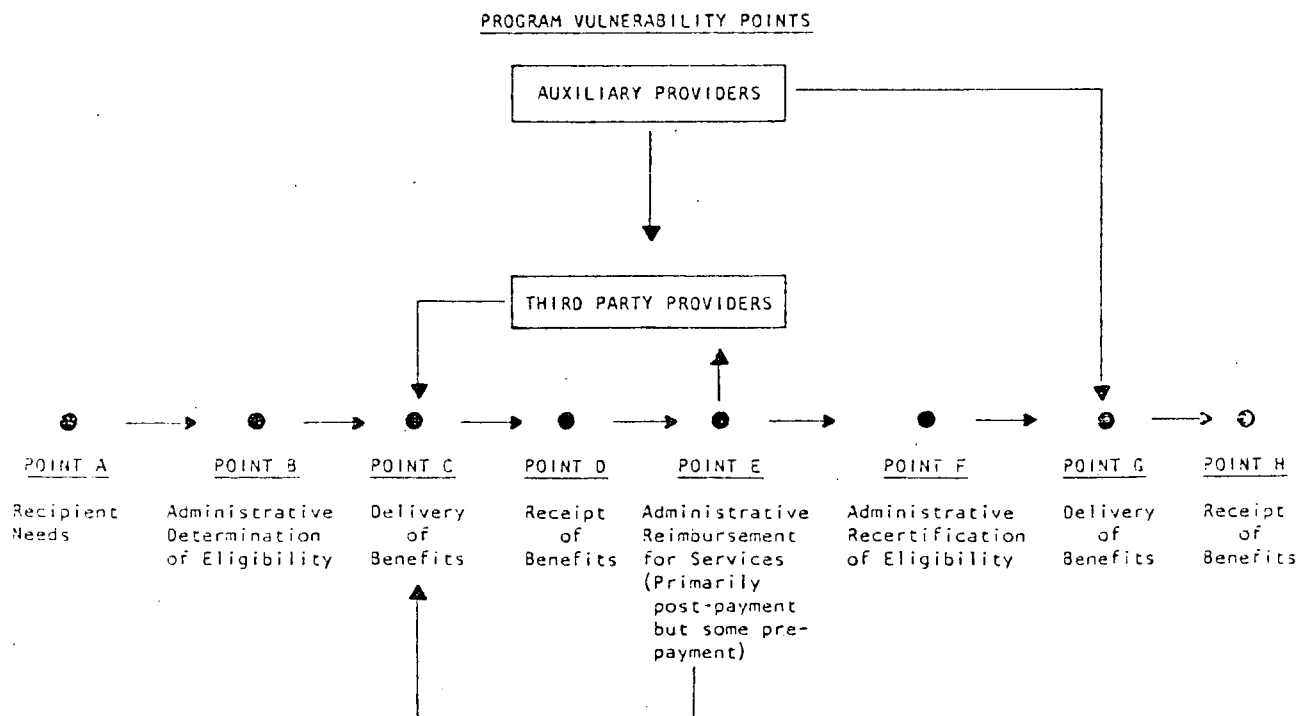
Local, state and federal governments collect revenues, contract for goods and services, and distribute funds through various benefit programs. Governments can be defrauded while performing any of these functions. The focus of this section is fraud in benefit programs and government contracts at the federal level.

##### 1. Benefit Program Fraud

In a G.A.O. report published in late 1978, the Comptroller General stated that opportunities for defrauding the government were virtually unlimited because of the number, variety, and value of federal programs. These programs, involving innumerable recipients, providers of goods and services, and public employees entrusted with administration, account for more than half of all federal outlays. The G.A.O. reported expenditures of \$250 billion annually in economic assistance programs, and that the Justice

Department estimated the incidence of fraud at 1-10 per cent, resulting in 2.5 to 25 billion dollars of fraud in government programs, exclusive of tax fraud.<sup>23</sup>

These programs are susceptible to fraud by four classes of people: 1) recipients, those persons who directly receive the benefits; 2) administrators of the programs; 3) third-party providers; and 4) auxiliary providers, those persons responsible for providing the benefits directly to the recipients, or to third party providers and administrators. Offenses may be committed by individuals in any of the above classes, acting alone or assisted by individuals in other classes. Programs are vulnerable to fraud at many transactional points. The flow diagram<sup>24</sup> below helps conceptualize these opportunities.



<sup>23</sup> Federal Agencies Can and Should Do More to Combat Fraud in Government Programs: Report of the Comptroller General (1978) [hereinafter G.A.O. Report].

<sup>24</sup> A. Lange, Fraud and Abuse in Government Benefit Programs, 19 (1979) [hereinafter Benefit Programs] Government studies distinguish fraud from abuse. Abuse is the improper utilization of a

Recipient offenses fall into four basic categories. The first is misrepresentation of information to qualify for initial benefits where legitimate qualification would be impossible, or to secure benefits beyond recipient's legitimate entitlement. Second is creation of "ghost" eligibles to receive duplicative assistance; third, intentional misreporting or failure to report relevant changes of eligibility status; finally, improper use of benefits.<sup>25</sup> Since most of these offenses are unsystematic, low level abuses, they should be handled by internal organizational and audit controls and procedures, unless evidence of a conspiracy with program administrators or providers comes to light.

Third party provider and administrator offenses require heightened law enforcement attention because the amounts involved are significantly greater than in recipient offenses. The offenses are also probably chronic and better concealed, the perpetrators may be among those charged with internal audit

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(24 cont'd)

benefit or benefit system and rests on an official determination of impropriety. When the impropriety is proscribed by law and criminal intent can be shown, abuse is fraud. Often benefits are obtained or used in ways not contemplated by the law but which are not specifically prohibited by law or regulation. Program abuse includes practices as diverse as making administrative errors on eligibility forms to the irregular and inadequate provision of quality-of-life care for nursing home residents. Abuse also entails the improper interpretation of policies and program guidelines and taking advantage of ambiguous policies. For this reason most enforcement officials perceive abuse as far more damaging to program integrity than fraud. No accurate estimates of abuse in government programs have been ventured to date. Id. at 16.

<sup>25</sup>Id. at 20-23.

and control, and, in addition, may be members of conspiracies or organized crime groups.<sup>26</sup> Perhaps most important, administrative personnel are uniquely situated to defraud the government because of their familiarity with program operations -- they are often intimately familiar with the agency's anti-fraud strategy and its weaknesses.

The schemes perpetrated by administrative personnel acting without collusion of recipients or providers are limited to the creation of ghosts. A computer technician responsible for payment of health claims to providers, for example, may manipulate the program to create a ghost provider and ghost patients and then embezzle the payments.<sup>27</sup> Administrative personnel acting in collusion with providers are a threat of a different order: they defraud taxpayers but also undermine the very integrity of their programs. An administrator's approval for payment of a false claim injures the taxpayer; the same administrator's failure or refusal to monitor provider performance injures those needy recipients who require the faithful service of government employees.<sup>28</sup>

There is only slight evidence so far of organized crime involvement in benefit program fraud.<sup>29</sup> According to a recent study of fifteen government benefit programs,

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<sup>26</sup>Id. at 23-35.

<sup>27</sup>Benefit Programs, supra note 24, at 35.

<sup>28</sup>Id.

<sup>29</sup>See Fraud and Racketeering in Medicare and Medicaid: Hearing Before the Select Committee on Aging, U.S. House of Representatives [Ninety-Fifth Congress Second Session], October 4, 1978.

only two percent of the respondents suspected organized crime involvement. Organized crime elements allegedly used such techniques as black market trafficking, counterfeiting, and forgery to accomplish benefit-related crimes.<sup>30</sup>

The following table <sup>31</sup> summarizes the potential offenses and offenders in government benefit programs.

TAXONOMY OF OFFENDERS AND OFFENSES

	RECIPIENTS	SPONSOR AGENCY	THIRD PARTY PROVIDERS	AUXILIARY PROVIDERS
MISREPRESENTING ELIGIBILITY	•	•	•	
CREATING "GHOST" ELIGIBLES	•	•	•	
IMPROPERLY USING BENEFITS	•			
RECEIVING ADDITIONAL BENEFITS	•		•	•
OVERCHARGING FOR SERVICES			•	•
WITHHOLDING SERVICES		•	•	•
OFFERING UNNEEDED SERVICES			•	
ACCEPTING OR PAYING KICKBACKS		•	•	•
TAMPERING WITH RECORDS	•		•	
EMBEZZLING OR STEALING BENEFITS		•		
OVERPAYING OR UNDERPAYING BENEFITS		•		
COUNTERFEITING BENEFITS	•	•		
ILLEGALLY OWNING BENEFIT SERVICES			•	

(29 cont'd)

The appendix includes "The Corrupt and Fraudulent Practices Resulting from the Factoring of Medicaid Bills," a November 4, 1968 grand jury report, New York County, N.Y., and a collection of articles reprinted from newspapers, magazines, and other hearings reporting organized crime involvement. Organized crime involvement was reported in the ownership of nursing homes, prepaid health plans, pharmacies, clinical laboratories, supply houses, computer firms, factoring companies, and hospitals.

<sup>30</sup> Benefit Programs, supra note 24, at 18.

<sup>31</sup> Id. at 40.

2. Case Study of Provider Fraud: The Nursing Home Industry

Nursing home revenue rose dramatically from \$500 million in 1960 to \$14 billion in 1978.<sup>32</sup> The government provides more than half of this income; private pay residents, constituting 30 percent of the nursing home population, account for the other half.<sup>33</sup> Note that the status of private residency is fluid: the Congressional Budget Office estimated that 47.5 percent of Medicaid nursing home residents were admitted as private pay.<sup>34</sup> With average monthly charges of \$1,000 it is no wonder that most elderly residents quickly exhaust their financial resources.<sup>35</sup>

The characteristics of the market, the victims, and the government reimbursement system promote fraud and poor health care. The most serious frauds and abuses involve the manipulation of costs to inflate vouchers for government reimbursement.<sup>36</sup> The following extract from an F.T.C. policy briefing<sup>37</sup> illustrates three of the more complex methods used to manipulate costs to receive unjust reimbursement.

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<sup>32</sup>See E. Taylor, "Policy Implications of Long Term Care for the Elderly" (App. A in an F.T.C. policy briefing on health issues to be published in the future), 116.

<sup>33</sup>Id. at 118.

<sup>34</sup>Congressional Budget Office, Long Term Care for the Elderly and Disabled, 24 (1977).

<sup>35</sup>Taylor, supra note 32, at 118.

<sup>36</sup>See Kickbacks Among Medicaid Providers: Hearings Before the Senate Special Committee on Aging, 95th Cong., 1st Sess. (Comm. Print 1977).

<sup>37</sup>See Taylor, supra note 32.

#### A. Real Estate Transactions

The nursing home business appears to be a lucrative market for real estate speculators. Those who buy, sell, or lease nursing homes are reimbursed for all their transaction costs by state and federal government as long as they participate in the Medicaid and Medicare programs. Allowable costs include lease or mortgage fees, depreciation, interest rates, excise taxes, and insurance--all calculated anew each time a facility is sold or leased. Incentives exist for both buyers and sellers to enter into sales transactions at higher than market prices: purchasers can get higher Medicaid or Medicare payments and the capital gains tax benefits the seller. Reports of such activities have come from Washington, Maryland, New York, Missouri, Montana, Ohio, Nebraska, Texas, and California. They involve some of the largest nursing home chains, as well as the smallest facilities.

#### B. Service and Management Contracts

Nursing homes with high operating expenses receive larger Medicaid and Medicare payments. As a result, one finds nursing homes that have contracted with related or sympathetic vendors for various goods and services at higher than market prices. Such items include: house-keeping, computer or management services; insurance; medical equipment; hospital furniture; building construction; and food distribution. Because these goods are included as part of a nursing home's daily costs, they are difficult to detect; nonetheless, they add significantly to the basic cost of care.

An increasingly common example of "making profit off cost" is for a nursing home to enter into a management agreement with itself or another company. The management company is reimbursed for a reasonable profit, while its fees are treated as costs to the facility and are also reimbursed. Some management contracts are doubtlessly genuine, improving care and saving money for residents and taxpayers alike. Nonetheless, it is difficult not to be skeptical about the motives behind many such multiple-layered operations, under the current reimbursement system.

Another, more subtle form of increasing nursing home costs is for a company to build its own facility, charging more for its construction than is necessary or justified. Because it is very difficult for state auditors to prove inflated construction costs,

this is a relatively easy and safe way to manipulate higher reimbursement levels. As one authority has stated,

Preopening profit possibilities abound in arrangements which produce a profit on land, construction, financing and consulting. The end result is that the owner is selling these items or services to himself. The profits made go both into the pocket and as equity for the project. Through these mechanisms, a knowledgeable operator can produce a facility with virtually one hundred percent financing and a considerable amount of in-pocket cash prior to opening. All of such profit is, of course, in the form of increased debt for the facility which is then repaid over the years through cost reimbursement. Anyone who thinks that this is not being done is naive.

(Markham, Cost Reimbursement - The Basic Program, Nursing Homes, July/August 1977 at 8.)

### C. Ancillary Goods and Services

A third means of manipulating expenses can occur when a nursing home arranges with outside retailers to supply its residents with ancillary goods and services that are not part of its daily fee. The most common items are prescription and non-prescription drugs, therapy, laboratory work, and various medical supplies, such as wheelchairs and crutches. Inasmuch as residents are seldom able to shop for these goods themselves, they are the epitome of a captive audience, routinely relying on the nursing home's choice of drug stores, laboratories, wheelchair suppliers and therapists for their needs. The situation is ripe for exploitation.

Unfortunately, nursing homes do not always have an incentive to select ancillary providers with the lowest prices. On the contrary, since reimbursement for such goods comes directly from the private resident or the government, certain schemes involving high-priced vendors can actually benefit operators. Kickbacks are the most obvious of these, there, in order to get a nursing home's business, a retailer must kick-in a little extra for the administrator. This "little extra" is then passed on to residents in the form of higher prices. A second and perhaps more lucrative way to increase profits is through related-party transactions, where a nursing home owns the company that sells the ancillary goods and services to its residents. Indeed, instances of self-dealing are becoming increasingly common



among nursing home providers. It has been reported that after one nursing home chain purchased its own pharmacy, its drug prices went up 40 percent.

In the nursing home industry, normal market forces such as a mobile and alert consumer, a free flow of information, and ample competition are weak. Self-dealing may be a means of deceiving consumers about the market prices for ancillary goods and services. It may also inflate nursing home costs generally and may serve to circumvent Medicaid reimbursement regulations.

All of the above abuses or frauds have been documented by the State of New York Special Prosecutor for Nursing Homes, Health and Social Service since its creation in 1975.<sup>38</sup> Four years of investigation revealed that New York's profit-making nursing home operators submitted over \$63 million worth of inflated claims for Medicaid reimbursement between 1969 and 1975, costing the taxpayers of New York \$42.6 million (approximately five cents of every Medicaid nursing home dollar subsidized fraud). Of this amount, \$31.2 million is being recovered through court actions (\$7 million has already been returned); the remainder will be sought after investigations are completed.<sup>39</sup>

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<sup>38</sup> See Analysis of New York's Profit-Making Long-Term Care Facilities (1978) [hereinafter Analysis] for typical schemes used by nursing home operators, including personal luxury fraud, kick-backs, and pyramid schemes related to sales and lease arrangements. See also Willow Point, Special Report by Charles J. Hynes Deputy Attorney General for Nursing Homes, Health and Social Services (March 20, 1978) for a report of the year long investigation of the Willow Point Nursing Home and Health Related Facility, involving the construction and sale of the facilities to the public at a profit to the entrepreneurs of \$3 million on a \$100,000 investment.

<sup>39</sup> Fourth Annual Report of the Deputy Attorney General for Nursing Homes, Health and Social Services in N.Y. State, 7 (1978).

Recovery has been accomplished by restitution in criminal cases as part of a negotiated plea, and by independent civil actions where the provider received \$25,000 or more in Medicaid overpayments.<sup>40</sup> Criminal restitution to date is responsible for recovery of \$6.2 million of the total \$7.25 million.<sup>41</sup> The money has been placed in an interest bearing account for eventual distribution to the appropriate various federal, state, and local governments.<sup>42</sup>

The challenge for nursing home investigators, auditors, and attorneys is in unmasking the financial interests in the homes so that reimbursable costs can be analyzed. Then, where self-dealing, conflicts of interest, kickbacks, and other pyramid schemes are exposed, those responsible must be prosecuted and the illegal gain recovered. This strategy, coupled with the imposition of administrative sanctions such as termination of a provider's certification, can be effective in controlling and deterring such schemes.

### 3. Fraud in Government Contracts

The potential for fraud and abuse in government contracting, as in benefit programs, is substantial. Federal procurements for fiscal year 1977 were about \$80 billion including G.S.A. procurements for supplies and services and D.O.D. procurement of major weapon systems.<sup>43</sup> The Justice Department's estimate suggests fraud approximating 1 - 10 billion dollars.

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<sup>40</sup>Analysis, supra note 38, at 23-25.

<sup>41</sup>Id. at 28.

<sup>42</sup>Id.

<sup>43</sup>See, "Preventing Fraud and Error and Increasing Public Confidence In Federal Programs - Top Priorities," remarks of Comptroller General of U.S. [reprinted in The Secretary's National Conference on Fraud, Abuse and Error] (December 13, 1978) at 14.

The pervasiveness of fraud in government contracting can be attributed to: federal procurement policies; antiquated design specifications which discourage competition; the failure to limit noncompetitive procurement and to assure proper monitoring of contract performance; and favoritism, conflicts of interest, and other types of subjectivity in the award of grants and contracts.<sup>44</sup>

4. Case Study: The G.S.A. Self-Service Stores

Allegations of widespread corruption in the General Service Administration surfaced early in 1978 and soon blossomed into a major scandal attracting national news coverage.<sup>45</sup> On September 18, 1978, then-Deputy Attorney General Benjamin Civiletti created a special G.S.A. Task Force within the Justice Department. The G.S.A. self-service stores in Region 3, covering the District of Columbia, Virginia, Maryland, Pennsylvania, Delaware, and West Virginia, were principal targets of the inquiry.<sup>46</sup>

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<sup>44</sup>Id. at 163.

<sup>45</sup> See generally G.S.A. Contract Fraud Investigation: Hearings Before the Subcommittee on Federal Spending Practices and Open Government of the Committee on Governmental Affairs, United States Senate (Ninety-Fifth Congress, Second Session), June 22, 23; September 18, 19, 1978.

<sup>46</sup> For the most recent summary of the status of the G.S.A. investigation and cases under prosecution see Statement of William Lynch, General Service Administration Investigations: Hearings Before the Subcommittee on Federal Spending Practices and Open Government of the Committee on Governmental Affairs, United States Senate, January 29, 1980. This narrative is composed primarily of material contained in a memorandum prepared by Daniel Clemens, Assistant U.S. Attorney for the District of Maryland, December 10, 1979.

The G.S.A. operates approximately 75 self service stores in various regions around the country. The primary purpose of the stores is to supply federal agencies with administrative goods and industrial supplies. The stores receive goods either from G.S.A.'s central depot or on the open market from vendors licensed to do business with G.S.A. There are two methods of procurement from private sources. In a "goose" contract the vendor enjoys the exclusive right to sell a certain item to the government at a preset price. Or, vendors may be party to a blanket purchase agreement -- a "B.P.A." -- which allows him to bid for G.S.A. store supply contracts. Thus if the U.S. Attorney's office requires legal pads (and the central depot is out of them), the store manager calls B.P.A. holders for prices on immediate delivery to the store. The manager must accept the lowest price quoted. Then the low bidder delivers the goods to the store where an individual from the U.S. Attorney's Office picks them up. The G.S.A. charges the Department of Justice's account.

In early June of 1977 the G.S.A. Office of Investigation received an anonymous telephone call alleging improprieties at store #17 in Baltimore. A task force of auditors was dispatched to the store. After questioning, the store manager confessed that he provided tires for personal use to military employees at Fort Meade, who signed false invoices for official army purchases.

Ordinarily a vendor has a B.P.A. with only the store in his immediate vicinity. Further investigation revealed, however, that several companies doing business with store

#17 held B.P.A.'s with numerous self service stores. On that basis the investigation was expanded to all 30 stores in Region 3. In early September of 1977 the first eight grand jury subpoenas, seeking records of all dealings with the G.S.A. stores, were issued to the companies under suspicion.

The original subpoenas were issued by a regular grand jury sitting in Baltimore. After examining the documents returned on the subpoenas, G.S.A. investigators determined that a special grand jury was necessary. The court convened a special grand jury in January of 1978, and all previously obtained documents were transferred to it. This grand jury issued over 250 subpoenas, thereby securing some 200,000 separate documents.

The company records showed sales to the G.S.A. stores far beyond the supply of goods purchased by the companies from manufacturers and wholesalers. One firm, James Hilles Associates, billed the federal government for over 4.4 million hanging folders when its records showed the purchase of only 1 million folders. This discrepancy accounted for false billings of \$630,000.

The agents did an analysis of company purchase records. They found an assortment of items not normally purchased in the suspects' line of business which could not have been properly resold to the government. The total false billings for Hilles alone was \$1,300,000, representing the cost of carpeting, trips, televisions, guns, and other items given to government employees for abetting the fraud invoices.

After completing the document review, teams of one G.S.A. agent and one F.B.I. agent interviewed targeted

individuals in the G.S.A.; in all, about 150 employees. The interviews began with an advice of rights, an explanation of the subject matter of the interview, and a request for voluntary statements. In most cases the target refused to speak until confronted with documents showing false invoices to his store and his receipt of goods for personal use. Approximately 50% to 55% of the individuals confessed when so confronted.

The interviews flushed out some remarkably simple schemes. The Hilles Co. even found a way to pass the cost of their bribes along to the government and make a profit of 30% in the process. If a store manager wanted a pool table costing \$1000, for instance, he went to a retail store designated by Hilles and charged it to Hilles' account. When Hilles received the retailer's bill it prepared false invoices showing goods and services worth \$1300, not \$1000, delivered to the self-service store. In fact, none had been delivered. The store manager then forwarded the false bill to the G.S.A. for payment.

Initial audits failed to detect irregularities because the stores were operated on a cash inventory basis (rather than an item inventory basis), so a store manager had only to show sales equal to purchases. Managers therefore developed two means of passing through false invoices without alerting auditors. Sometimes they over-charged their legitimate customers a small amount, eventually balancing their cash inventory account. The second method required the corruption of

store customers within the federal establishment. In return for bribes, government employees overcharged the G.S.A. for items purchased at the self-service stores. Thus a store manager might take in \$1,000 for legal pads costing him \$800.

As a result of the interviews, many targets retained counsel and plea bargaining followed. Prosecutors established ranges of recommended sentences depending on the level of the accused's involvement in the scandal. This was a non-negotiable point during the plea discussions. Included within the plea bargaining process was a substantial amount of pre-indictment discovery. This extraordinary route was taken because government attorneys made no attempt to convince targets that the cases against them were airtight. Prosecutors simply presented the facts and an opportunity to plead. The gamble paid off. Of the 48 individuals indicted, 42 pleaded guilty to felonies. Of the six defendants tried, 5 were found guilty. Most were charged with conspiracy to defraud the U.S. in violation of 18 U.S.C. § 371; the other charges were filing false claims under 18 U.S.C. § 287 and bribery under 18 U.S.C. § 201.

As a result of the investigation the G.S.A. redesigned its self-service store procedures, five stores were closed as a result of lack of business, and billings to federal agencies using the stores decreased \$25 million annually.

5. Case Study: Spiro T. Agnew<sup>47</sup>

Fraud in government contracting wrought the resignation of then Vice-President of the United States Spiro Agnew. A 1973 investigation by U.S. Attorney for Maryland, George Beall, into political corruption in Baltimore County revealed that Agnew, while county executive, and later as Maryland governor and as Vice-President, received kickbacks on county and state construction contracts. The denouement came on October 10 of that year when, after extensive plea negotiation, Agnew pleaded nolo contendere to one charge of tax evasion, admitting receipt of payments in 1967 not used for political purposes, which he knew were taxable. District Judge Hoffman imposed a three-year suspended sentence and a fine of \$10,000.

The details of the investigation illustrate the intricacy of white-collar crime prosecution. In the third week of January, 1973 federal prosecutors issued a thousand subpoenas over the name of Assistant U.S. Attorney Russell T. Baker for records of construction, engineering, and architectural firms that had done business with the county.

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<sup>47</sup> Based on R.M. Cohen and J. Witcover, A Heartbeat Away--The Investigation and Resignation of Vice President Spiro T. Agnew (Viking 1974) [hereinafter Heartbeat] See also R. Nossen, The Seventh Basic Investigative Technique (Law Enforcement Assistance Administration 1975) and G. Robert Blakey and Ronald Goldstock, The Investigation and Prosecution of Organized Crime and Corrupt Activities: Official Corruption (Cornell Institute on Organized Crime 1977).



Since legitimate businesses seldom keep cash idle, attempts to raise money for kickbacks or bribes may stand out in the financial records. Agents from the I.R.S. Baltimore office searched the documents for such signs of cash accumulation. The books of Gaudreau, Inc., an architectural firm, provided the tip-off. According to the chroniclers of the Agnew resignation:

Shortly after the firm received an installment payment from the county government for the design of a public building, it would issue a check to a corporate officer, and the amount of the check was almost always 5 per cent of the recent installment from the county. This seemed like an unmistakable method for generating cash. The Gaudreau firm, the agents concluded, was probably kicking back 5 per cent of its fees.<sup>48</sup>

On January 25, Paul Gaudreau admitted kickbacks to William E. Fornoff, county administrator and chief aide to Baltimore Democratic boss Dale Anderson.

The subpoenaed records contained even more clues. IRS agents uncovered signs of cash generation in the books of Matz, Childs, an engineering firm. This time it was a pattern of bonuses - returnable, minus taxes, to the firm as cash - and payments for suspicious sounding consultations.

Lester Matz and John Childs, along with State Roads Commissioner Jerome Wolff, then became the investigation's targets. Matz, Child employees testifying before a grand jury under grants of use immunity, confessed to paying back part of their bonuses. Next, Fornoff, the recipient of the kickbacks, pleaded guilty to one count of tax evasion in return for a no-jail recommendation. Then he sang for the grand jury.

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<sup>48</sup>Heartbeat, supra note 47, at 56.

Matz, Childs, and Wolff still held out. But with a strong case against their primary targets, government attorneys were not offering immunity. Instead Beall and his staffs applied more pressure. "Look," an assistant said to defense counsel, "the boat is filling up. When it's full it will be too late for your client."

On May 18 the prospective defendants played what they thought was their ace. Joseph Kaplan, attorney for Matz and Childs, told Baker that his clients could incriminate Vice-President Agnew, not only for his dealings as county executive (which were barred by the statute of limitations), but also for transactions while Agnew was governor and as Vice-President. The prosecutors now took aim at the big game. But without offering immunity, they pressed toward indictment of Matz and Childs.

Meantime, Wolff's lawyer, Arnold Weever, informed Beall that his client was ready to cooperate. Shortly thereafter, Matz and Childs threw in the towel.

The dam broke. Matz' attorney told of cash payments to Agnew to secure state contracts, made in the State House and later in the Old Executive Office Building. Wolff told his story on July 10. He paid cash to Agnew for appointment as chairman of the State Roads Commission, from which he in turn received payoffs to be split with Agnew and Bud Hammerman, a Maryland developer and close associate of Agnew. To bolster their case against the Vice-President, the prosecutors conducted a "net worth" investigation of Agnew - a comparison of his total purchases during the period of the scheme with his total reported income for the same period. The former greatly exceeded the latter.

Hammerman's testimony clinched the case. On August 17 he described to government lawyers his role as intermediary in the kickback scheme, receiving and splitting cash with Agnew. A check of the visitor logs from the Old Executive Office Building confirmed frequent visits to the Vice-President by Hammerman and Matz. The case for conspiracy, extortion, bribery, and tax evasion was solid.

Agnew began to act. First he threatened to "go to the House," that is, to seek an inquiry in the House of Representatives calculated to embarrass the White House. Attorney General Richardson then received overtures from Agnew's lawyers. An extraordinary plea bargaining episode ensued. Richardson laid down four requirements.

First, he insisted, there must be prompt resolution of the matter--resignation--in the national interest. Second, justice must be done. Third, any agreed solution had to be publicly understandable and perceived by the public as just. Fourth, full disclosure of the facts against Agnew had to be made, preferably as part of the court record, so that the public would have a basis on which to conclude that justice had indeed been done and that the solution was equitable.<sup>49</sup>

On September 13, Judah Best, counsel to the Vice-President, intimated that Agnew might plead nolo contendere to one count, and resign, for a recommendation of no jail.

Richardson resisted the no-jail condition, and Agnew refused to publicly acknowledge criminal wrongdoing. Then the Vice President temporarily abandoned the negotiations and took the offensive. He told President Nixon he had decided to seek an impeachment inquiry in the House. His

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<sup>49</sup>Id. at 220-21.

lawyers filed a motion on September 28 to prohibit the grand jury investigation on the grounds of prejudicial publicity, and on constitutional grounds. In a speech to the National Federation of Republican Women in Los Angeles Agnew attacked Henry Peterson, now heading up the investigation, charging that the leaks to the press were deliberate and malicious, and claiming that he has been singled out for prosecution to enhance Peterson's record. The offensive backfired. An enraged Nixon ordered his Vice-President to stop attacking Peterson. The Democratic majority in the House scuttled the proposed House investigation.

Negotiations resumed on October 5. Three days later Judge Hoffman met with Agnew's lawyers, and Peterson, Beall, and Barney Skolnik, for the government. The next day they met again, this time with Richardson present. Finally, Richardson agreed to the no-jail recommendation. The deal was closed.

### C. Fraud Against Business

#### 1. Generally

The business enterprises which suffer most acutely from fraud are the larger corporations. They may be either the direct victim of fraud through loss of property or by being placed at a competitive disadvantage, or the indirect victim through public loss of confidence in business generally.<sup>50</sup> Business losses due to fraud may be relatively

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<sup>50</sup> See Herbert Edelhertz, Ezra Stotland, Marilyn Walsh, Milton Weinberg, The Investigation of White Collar Crime, (April 1977) [hereinafter Investigation].

minor and assimilable, or so massive that bankruptcy results. Consider, for example, the forced closing of 100 banks during a 20 year period primarily due to the fraudulent activities of employees acting in concert with outside confederates.<sup>51</sup>

Frauds against business may be perpetrated by (1) insiders acting alone - embezzlement; (2) insiders acting in concert with outsiders - commercial bribery and conflicts of interest ("where a corporate officer or employee causes his company to enter into a contractual agreement with outside firms in which he has an interest"<sup>52</sup>; and (3) outsiders unassisted by insiders - credit card fraud, check kiting, bank fraud, and insurance fraud.

Businesses are increasingly vulnerable to organized crime penetration. Criminal syndicates enter legitimate business through loan-sharking, enforced collection of gambling debts, and outright purchases: once inside, they execute traditional schemes like bankruptcy scams and the marketing of stolen securities by using them as collateral at banks.<sup>53</sup>

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<sup>51</sup>See Chamber of Commerce of the United States, White Collar Crime, 5 (1974).

<sup>52</sup>Investigation, supra note 50, at 14.

<sup>53</sup>Id., at 15.

2. Case Study: Arson-For Profit:

Insurance companies are easy prey for organized crime rings and unscrupulous property owners engaged in arson-for-profit, and the public pays for the insurer's vulnerability. Arson-for-profit removes buildings from the tax rolls, raises fire insurance premiums, wipes out businesses upon which entire communities rely,<sup>54</sup> puts the lives and properties of innocent people at risk,<sup>55</sup> and increases the cost of fire protection.

Arson-for-profit is our costliest and fastest growing crime, with direct losses estimated at \$2 billion a year<sup>56</sup> and annual indirect losses estimated at \$10 billion.<sup>57</sup> Between

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<sup>54</sup>See "The Sheton Affair: The Hidden Cost of Arson," Fire Journal, March 1976, at 22-24. Reprinted in Arson-For-Profit: Its Impact on States and Localities: Hearings Before the Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs, United States Senate [Ninety-Fifth Congress, First Session], at 109, December 14, 1977 [hereinafter Arson-For-Profit Hearings].

<sup>55</sup>Id., at 2.

<sup>56</sup>Senator Sam Nunn, Opening Statement, Arson-For-Hire: Hearings Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate [Ninety-Fifth Congress, Second Session (August 23, 1978)], at 1 [hereinafter Arson-For-Hire Hearings].

<sup>57</sup>Arson-For-Profit Hearings, supra note 54, at 106.

1965 and 1975 the number of building arsons increased 325%<sup>58</sup> and continues to increase at a rate of 25% a year.<sup>59</sup> Unfortunately, the magnitude<sup>60</sup> of the arson problem is widely unappreciated because we lack a well known source of reliable statistics.<sup>61</sup> (Arson was just recently reclassified as a Part I crime on the F.B.I.'s Uniform Crime Report.)<sup>62</sup>

Whether a particular piece of property will be torched depends upon the property's profitability; as profit decreases

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<sup>58</sup>John F. Boudreau, Quon Y. Kwan, William E. Faragher, and Genevieve C. Denault, Arson and Arson Investigation: Survey and Assessment, 91, National Institute of Law Enforcement and Criminal Justice (October 1977) [hereinafter "Survey"].

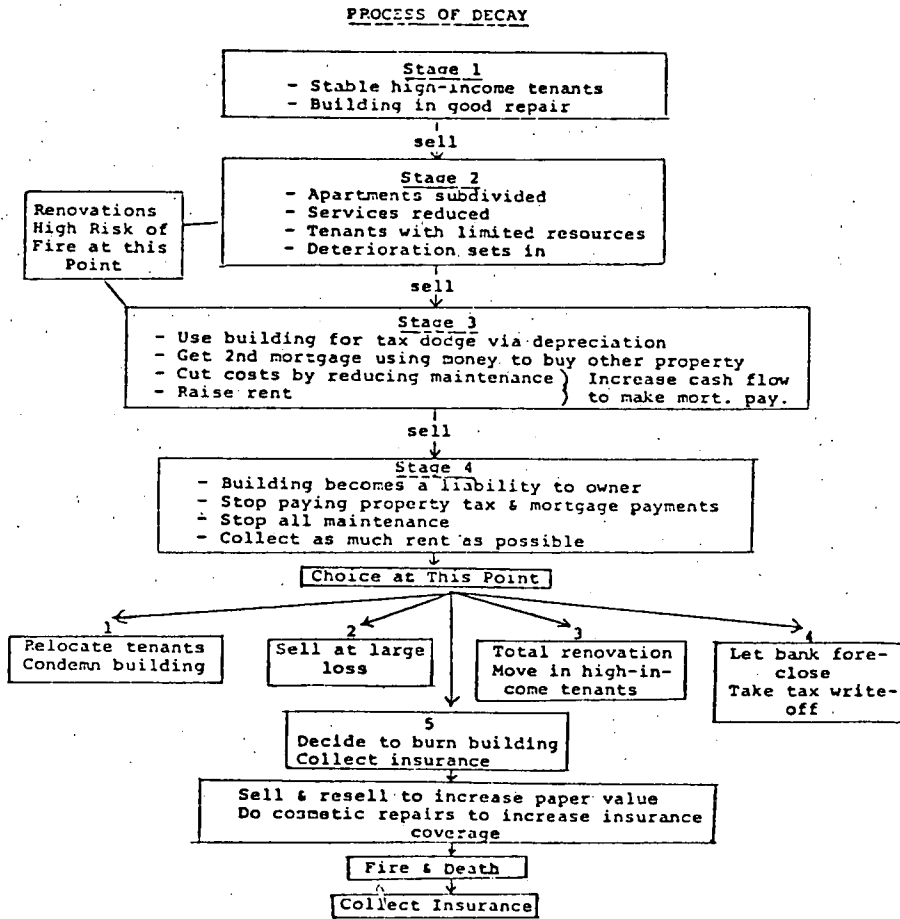
<sup>59</sup>Arson-For-Hire Hearings, supra note 56, at 1.

<sup>60</sup>Moreover, note that many experts believe that one half of all the fires that are classified as suspicious or of unknown cause are incendiary in origin. See "Survey," note 58, at 14. That would make arson the cause of 36% of the building fire losses in 1974. Id. at 5.

<sup>61</sup>Id., at 91.

<sup>62</sup>Part I crimes include: murder, rape, aggravated assault, robbery, burglary, larceny, arson and motor vehicle theft. Previously arson was classified as a Part II crime which placed it among the ranks of vagrancy, public intoxication, violating a curfew, and other petty crimes. See Senator John Glenn, Opening Statement, Arson-For-Profit-Hearings, supra note 89 at 3. It is hoped that this move will improve the statistical problem by providing a national source of arson statistics. See "Survey," supra note 54 at 91.

the probability of arson increases. The chart below<sup>63</sup> depicts the gradual decay of a multifamily income producing property and the likely flash points along the way.



This state of affairs gives organized crime, with its limitless resources, a made-to-order business opportunity. One commentator writes: "[T]he mob has entered the arson-for-hire market by offering something its unorganized competitors cannot, package deals, starting with the fire and ending with complete arrangements for the insurance settlement."<sup>64</sup>

<sup>63</sup>"Arson-For-Profit-Hearing," *supra* note 54, at 216.

<sup>64</sup>Karchmer, *supra* note 9, at 23.



The most common financing arrangement is the free-lance contract, where a businessman, after deciding to burn his building or factory (due to operating losses, usually) shops for a torch. The mob typically demands 25 percent of the final insurance payment, with 25 percent of that amount up front.<sup>65</sup> The balance is due when the insurer has paid on the policy. Before the fire an insurance broker with mob connections steers the customer to an insurance company known for generous coverage and lax claims payment procedures - a company hailed for paying "in a hurry."<sup>66</sup> After the fire an obliging insurance adjuster makes a quick and favorable settlement. Often, a high official in the fire department is cooperating with the mob; he writes the fire off as something other than "incendiary" or "suspicious," and ensures that the best arson investigators are assigned to other fires.<sup>67</sup> An insurance broker, who recently pleaded guilty to arson fraud recounted: "Our group had all the elements.... We had the insurance adjuster...accommodating insurance agents, the torches, and the fire department, all working to defraud the insurance companies....We had an arson empire."<sup>68</sup>

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<sup>65</sup>In other words, the mob would take 6 and 1/4 percent of the insurance value of the property in cash, before anything was done. This payment was a way of testing the owner's "good faith." See Testimony of Angelo Monachino, Arson-For-Hire Hearings, supra note 56, at 39.

<sup>66</sup>Testimony of Joseph J. Carter, Arson-For-Hire Hearings, supra note 56, at 88.

<sup>67</sup>See Testimony of Angelo Monachino, Arson-For-Hire Hearings, supra note 56, at 40, 46.

<sup>68</sup>Testimony of Joseph J. Carter, Arson-For-Hire Hearings, supra note 56, at 88.

"Arson empires" run on a free-lance contract basis have generated profits in the millions. Mob figures have also used the torch as a collection device. A businessman in debt to a loan shark or a gambling syndicate may be forced to collect on his insurance policy to avoid more unpleasant inducements. Estimates are that mob-related arsons arising from gambling and loan-sharking now equal the number of business "contract" fires.<sup>69</sup>

D. Fraud Against Individuals

1. Generally

Individuals, we have seen, are indirectly victimized by frauds against government and business in their capacities as taxpayer and citizen, and consumer, respectively. They are also directly cheated in each capacity. Nursing home abuses, for example, fall upon individual patients entitled to quality care as citizens eligible for Medicare and Medicaid benefits. Consumer frauds typically deprive individuals of their property and too frequently their aspirations as well.

The cost cuts deep. Individuals' ability to satisfy their basic human needs is undermined by consumer frauds designed to divert the consumer's assets to the crook without giving benefit of the bargain in return. These frauds range from weight and measure or food quality frauds to home improvement and landlord misconduct, to auto repair, medical supply, and prescription drug frauds.

With respect to their aspirations, individual hopes for improved employment are dashed by phony trade and occupational schools, correspondence courses, shady talent schools

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<sup>69</sup>Karchmer, supra note 9, at 24-25.

and agencies.<sup>70</sup> Other schemes frustrate the dream of self-employment, crushing hopes for a business of one's own through franchise frauds, pyramid schemes, and vending machine frauds.<sup>71</sup>

2. Case Study: The Rio Rancho Real Estate Swindle<sup>72</sup>

Simple thievery is uniquely joined with the devastation of individual futures in the case of consumer land sale fraud. The classic case is close at hand. AMREP Corporation and its subsidiaries were in the business of buying and selling land. One of their ventures involved land in Sandoval County, New Mexico, located about fifteen to twenty miles northwest of downtown Albuquerque. Rio Rancho Estates, Inc., a subsidiary of AMREP, acquired a 91,000-acre tract of rolling hills and sandy soil, sparsely covered with sagebrush and native grasses, for a total purchase price of \$17,800,000. Rio Rancho staked out the property into 86,000 lots.

It then proceeded to sell the land, centering its efforts on tightly organized and carefully scripted promotional dinners. At these affairs, the promoters explained that Albuquerque was "bursting at the seams." The city, they asserted, had "one unique, serious problem"--it was surrounded

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<sup>70</sup>Investigation, supra note 50, at 12.

<sup>71</sup>Id., at 13.

<sup>72</sup>The following fact pattern is drawn from United States v. AMREP Corp., 560 F.2d 539 (2d Cir. 1977), cert. denied, 434 U.S. 1015 (1978), and supplemented by Husted v. AMREP Corp., 429 F. Supp. 298 (S.D.N.Y. 1977), a civil action concerning the same land-sale fraud.

by mountains and government land on three sides and could grow only to the northwest, through Rio Rancho. Rio Rancho was "where the city must grow to, grow into, grow out of." The promoters also claimed that the purchase of a Rio Rancho lot would prove a safe and profitable investment. Purchasers, they contended, could make up to 25% a year from this "land investment program."

The sellers' offer and sales contract had some interesting provisions. A disclaimer in the offer stated that "resale for a profit might be difficult for a number of years." The sales contract granted the purchaser the option to cancel the contract and receive a full refund if, upon inspection of the property within six months of the sale, he was dissatisfied. The purchaser could exchange his unimproved lot without charge for an improved lot; however, only a limited amount of improved property was available for exchanges.

Many purchasers jumped at the chance to obtain land with such a rosy future, even though most of the lots were on unpaved roads and lacked utilities. By 1976, ATC Realty Corporation, another AMREP subsidiary, had sold over 77,000 lots, mostly to persons not residing in New Mexico. The lots brought a total sale price of \$170,000,000, nearly ten times the original purchase price paid by Rio Rancho. The purchasers found, however, that Rio Rancho's representations were, to say the least, a bit optimistic. It turned out that Albuquerque had abundant undeveloped suburban land located closer than Rio Rancho. Moreover, the city was expanding most rapidly to the northeast, not the northwest. The promoters' projections of potential profits had been based on property dissimilar to

the Rio Rancho land. In short, the resale market for Rio Rancho lots was extremely limited. As a market survey conducted for AMREP in 1965 had predicted, Rio Rancho could likely achieve only a "small and selective market penetration" between 1966 and 1985.

### III.

#### DETECTION AND INVESTIGATION OF FRAUD

Fraud is an offense that is neither readily discovered nor easily perceived as criminal; it is not simply or cheaply investigated, and not readily offered or accepted for criminal prosecution.

Both victim institutions and law enforcement agencies are responsible for identifying and preventing fraud. In practice, effective control of fraud requires a close, cooperative effort. The bureaucracies must handle the identification and prevention of low level fraud; law enforcement agencies must offer technical assistance in investigating organized frauds and accept appropriate cases for prosecution.

#### A. Victim Strategies

The bureaucracies have not shouldered their burden. A recent G.A.O. report, for example, sharply criticized federal agencies for failing to act aggressively to detect program fraud. The report found that many agencies had no idea as to how much fraud existed in their programs, nor to what types of frauds their programs were most susceptible. While most agencies had collected data of individual incidents, few, if any, attempts had been made to collect and analyze the data to develop an anti-fraud strategy.<sup>73</sup> The study also

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<sup>73</sup>G.A.O. Report, supra note 23, at iii.

discovered that the agencies had no uniform policies for policing the individuals involved, and no mechanism to assure referral of suspicious matters to the Justice Department.<sup>74</sup>

Most agencies simply had not made fraud detection a high priority. They had not assumed a proactive posture with respect to identifying and investigating fraud, and had unjustifiably relied on state, local, or private sector institutions responsible for administering programs to identify and report frauds.<sup>75</sup> The need for reform was brought home by abuses in the medicare-medicaid programs, the General Services Administration, and the student loan programs, among others. Much legislation on point, including the creation of the Offices of Inspector General in executive departments and agencies, has recently been enacted, but is too early to judge the effectiveness of most of these changes.

Controlling fraud and abuse in government benefit programs requires the development of prevention, detection, and deterrent strategies for each program. To deter fraud, a recent National Institute of Law Enforcement and Criminal Justice report recommended that: (1) state Offices of Inspector General be established; (2) state and local audits and investigations be consolidated; (3) state welfare fraud statutes be enacted; (4) programs be redesigned to combat opportunities for program abuse; (5) staff

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<sup>74</sup>Id. at iv.

<sup>75</sup>Benefit Programs, supra note 24, at 47-56.

responsibilities be redesigned; (6) financial incentives be created for states to pursue fraud control; and (7) fraud and abuse research be continued.

The same report recommended with respect to detection<sup>76</sup> that (1) program investigatory authority be lodged in an autonomous unit; (2) internal and external fraud audits be regularly conducted; (3) computer use be expanded to screen recipients and providers; (4) employee caseload and job responsibilities be rotated; (5) the investigation team concept be used more widely; and (6) surveys and surveillance of targeted providers be conducted.

On the basis of a survey sent to all State Attorneys General and program administrators, the report concluded that no particular enforcement strategy could yet be recommended.<sup>77</sup> The respondents considered criminal litigation more effective than civil actions from the perspectives of monetary recoupment and deterrence. The study determined that an insufficient number of prosecutions had been recorded to assess their relative effectiveness.<sup>78</sup>

Administrative procedures and sanctions are viable alternatives to criminal prosecutions.<sup>79</sup> A permanent adjudicative

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<sup>76</sup>Id. at 63-77.

<sup>77</sup>Id. at 80.

<sup>78</sup>Id. at 81.

<sup>79</sup>Id. at 83.



structure may promote uniform handling of fraud cases, and better utilize resources than the assignment of prosecutors to small cases or to extensive training seminars to successfully try big cases. Administrative penalties which exact restitution, or suspend and terminate program participation, may be powerful tools to police providers dependent on governmental reimbursement for a substantial portion of their revenue.<sup>80</sup>

Business, like government, has an ethical obligation to control fraud by developing anti-fraud strategies and by cooperating with law enforcement officials. The strategies for detecting and investigating fraud in the private sector are similar to those appropriate to the public sector.

Avoiding public harm and maintaining the marketplace's integrity ought to be sufficient incentives to enlist business support in combating fraud. But more selfish motives abound. A business's reputation may be ruined by insider fraud. Note that business reputation is important on four levels: (1) within the enterprise; (2) among customers; (3) in relationships with other businesses; and (4) in the general community.<sup>81</sup> In addition, fraud tends to encourage other illegal activity, and thereby increases the risk of stockholder derivative suits against corporate directors and officers charged with incompetence in failing

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<sup>80</sup>Id. See also, Byron G. Lee, "Fraud and Abuse in Medicare and Medicaid," 30 Administrative Law Review 1 (Winter 1978).

<sup>81</sup>Investigation, supra note 50, at 15.

to deal with the problem.<sup>82</sup> In addition, evidence of fraud or vulnerability to fraud may seriously impair a company's ability to secure necessary financing and credit. Finally, if fraud or abuse is pervasive in an industry, and the industry fails to police itself, it may become the target of laws and regulations imposing costs and constraints far greater than those flowing from self-regulation.

In short, bureaucracies, public and private, need to identify the types of frauds to which they are most susceptible. Only then can they develop an adequate antifraud strategy, providing for organizational redesign, internal fraud audits, and the restructuring of management responsibilities to minimize the potential for employee self-dealing or corruption.<sup>83</sup> Uniform procedures must be developed for dealing with employee offenders, including referral to law enforcement authorities when appropriate. Targeted investigations of suspect employees, suppliers, officers, or purchasers, and of suspect programs, contracts, or business accounts is a must for both government agencies and public corporations.<sup>84</sup>

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<sup>82</sup> Id.

<sup>83</sup> Anti-fraud strategies for government agencies are developed in a state of the art study recently completed. See Benefit Programs, supra note 24; anti fraud strategies for businesses are articulated with great detail in Investigation, supra note 50, at 32-97.

<sup>84</sup> For a discussion of these techniques by government agencies, see, Special Agent R.P. Kusserow, Federal Bureau of Investigation, Principles of Targeting 86-167 (unpublished manual by the Chicago Division, 1979), Office of Inspector General, Dept. of Health Education and Welfare, Annual Report.

B. Law Enforcement Strategies

The uniqueness of the challenge of fraud is portrayed by the following chart - indicating the differences between fraud and predatory crimes - coupled with the realization that tools currently available to police and prosecutors are products of the fight against predatory offenses.

<u>PREDATORY CRIMES</u>	<u>FRAUD</u>
A. OFFENDER'S CONDUCT	
1.overt implementing act	1. covert - overt acts with appearances of legitimacy
2.readily identifiable as criminal	2. not readily identifiable as criminal - may require investigation
3.criminal by nature ( <u>malum in se</u> )	3. criminal by act ( <u>malum prohibitum</u> )
4.violent or threatening	4. non-violent
5.without victim assistance	5. voluntary victim cooperation
6.concealment of offender identity but rarely of the crime itself	6. reliance by offender on ignorance or carelessness of victim
	7. concealment of violation
B. IMPACT OF THE OFFENSE	
1.immediate impact	1. immediate or continuing impact
2.direct injury to person's body, direct taking of person's property	2. indirect taking of property or legal right by deceit of individual, business or public at large.
C. DETECTION	
1.detection < victim complaints informants	1. detection primarily by proactive investigation by officials or by informant or victim's complaints some time after the crime.

2. investigation simpler - does not require special professional help.

2. investigations complex and requiring special trained investigators, auditors, prosecutors.

#### D. INVESTIGATION

3. victim has information invaluable for investigation and prosecution, willing to cooperate and testify

3. victim often bureaucracy reluctant to cooperate and often has little knowledge of how fraud perpetrated

4. alternatives are clear cut - pursue prosecution or do not.

4. other alternatives exist beside criminal sanction - may be more appropriate, e.g. civil restitution, administrative sanctioning and mediation.

#### E. PROSECUTION

5. more serious the crime greater likelihood of successful prosecution

5. more serious/more complex the fraud the greater the difficulty of preparing and successfully prosecuting the case.

6. perpetrator often perceives himself and is perceived by the public at large as a criminal - often a recidivist

6. perpetrator often perceives himself and is perceived as a non-criminal - rarely has a criminal record

#### F. SANCTIONING

7. sentencing is perceived as appropriate to safeguard society from a dangerous offender and as an effective deterrent.

7. strict sentencing is perceived to be inappropriate and of questionable deterrent effect.

These differences provide law enforcement officials with convenient rationalizations for inaction.<sup>85</sup> But the impact of fraud is enormous and must be met with such creative techniques as targeted investigation of suspect groups,<sup>86</sup> fraud audits, greater

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<sup>85</sup> See Investigation, supra note 50, at 8-10.

<sup>86</sup> See R. Kusserow, supra note 84, passim.

use of intelligence systems,<sup>87</sup> wiretapping, investigatory grand juries, and internal fraud-control systems.

Law enforcement may be reluctant to act to prevent and deter fraud for other reasons. Reticent investigators can fall back on several rationalizations:

(1) They lack subject matter jurisdiction.

(2) The case is more appropriate for civil action.

(3) They cannot ascertain whether a prosecutable crime has been committed until an investigation is conducted, requiring a commitment of time and manpower beyond the agency's resources.

(4) The victim invited its property loss by using sloppy internal procedures and controls.

(5) The victim's only interest is restitutionary. It will therefore be uncooperative in a criminal action which may damage its public image.

Jurisdictional problems also plague law enforcement officials in economic crime cases. Most offenses violate laws in multiple jurisdictions, either vertically (State-Federal) or horizontally (between States, between jurisdictions in one State, or between jurisdictions in the Federal Government).<sup>88</sup> This presents problems of coordination where two or more jurisdictions are on the case; of cooperation where one jurisdiction assumes or is ceded the laboring oar; of conflict; or of attempts to avoid responsibility by claiming another jurisdiction has

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<sup>87</sup> Investigation, supra note 50, at 98-121.

<sup>88</sup> H. Edelhertz, supra note 7, at 27.

primary responsibility.<sup>89</sup>

Law enforcement officials must protect the prosecutorial process from improper exploitation by private parties.<sup>90</sup> Where the victim's overriding concern is restitution and not retribution, there is a real danger that the criminal sanction may be abused as a device for collecting private debts. Failing to obtain restitution in a civil action because of insufficient evidence, for example, a defrauded private party may file a criminal complaint, while continuing its civil action, to obtain the benefits of a public investigation. He may be motivated by a desire to get proofs which would not be avail-

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<sup>89</sup>The following extract illustrates the vagaries of multi-jurisdictional crime:

A good example of a multi-jurisdictional crime would be a charity fraud in New York which collects money in the streets and by mail and other solicitations within and outside New York. To start with, the "charity" must register with the State Department of Social Services, and it may be enjoined from operation for non-registration or for violations of the New York Social Services Law. The State attorney general would investigate. Street collections must be licensed by New York City, and while a violation would only be an offense, it would still be criminal. The local police would investigate. Collections by means of false representations would violate the State larceny statute, and thus could be prosecuted by the district attorney of any of the five counties in New York City and be investigated by the New York City Police. Interstate mail solicitations could be a violation of the Mail Fraud Statute, to be investigated by the Post Office Department. TV or radio solicitations, or use of interstate telephone lines to solicit or conduct other related business could constitute a violation of the Wire Fraud Statute, which is within the investigative jurisdiction of the FBI. There is also the parallel tax problem to be considered, with the New York State Tax Commission and the Internal Revenue Service investigating with respect to the taxability of the "charity" and its personnel. Id. at 27-28.

<sup>90</sup>Id. at 29.

able to him as part of civil discovery proceedings, or to exploit the possible collateral estoppel or res judicata effects of a criminal conviction.<sup>91</sup>

Concurrent maintenance of a civil suit and a criminal action engenders conflicting interests between law enforcement officials and victims. Civil settlement during investigation or prosecution leaves the prosecutor with a victim reluctant to testify and the inference that the conduct was not criminal but a civil abuse.<sup>92</sup> Moreover, the victim may be uncooperative for other reasons. He may fear the adverse publicity of a criminal action, or the possibility of political consequences (in the case of government agencies), or the possibility of exposure to civil liability for officer or director negligence (in the case of public corporations).<sup>93</sup>

Business victims have consequently preferred to seek restitution of defrauded property by civil suit or arbitration, followed by sanction or discharge of the offenders. The government ought to do the same, but it has neither aggressively sought restitution, nor disciplined its employee offenders.<sup>94</sup>

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<sup>91</sup>Id. at 33.

<sup>92</sup>Id. at 30.

<sup>93</sup>Investigation, supra note 50, at 10.

<sup>94</sup>G.A.O. Report, supra note 23, passim.

C. Case Study: Investigating Arson-For-Profit

The problems encountered in detecting and investigating arson typify those of fraud generally. A fire is assumed to be accidental or natural unless proven otherwise.<sup>95</sup> An investigation is necessary to establish that a crime has been committed.<sup>96</sup> Jurisdictional responsibility in most locales is confused; it may be with the local police, state police, local fire department, state fire prevention bureau, state fire marshal, or the insurance company involved.<sup>97</sup> Even when jurisdictional responsibility is clear the responsible agency often lacks the resources and trained manpower to handle the case. Since arsons are seldom witnessed,<sup>98</sup> the evidence required to prove intentional burning is often damaged or destroyed by the fire itself.

The rationalizations of law enforcement officials for failing to act in white collar crimes are equally available in arson, especially where no innocent parties are injured. Since investigations are time-consuming, costly, and not certain to produce a prosecutable crime, officials may treat the burning as a private problem and abandon the inquiry. This decision

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<sup>95</sup>Survey, supra note 58, at 31.

<sup>96</sup>Id. at 92.

<sup>97</sup>Id. at 91.

<sup>98</sup>Id.



rests upon a profound misimpression. Arson-for-profit<sup>99</sup> is not low-level program fraud but systematic fraud committed by conspiracies and organized crime rings,<sup>100</sup> with significant direct and indirect costs. Statutory authority<sup>101</sup> and existing prosecutorial tools should be utilized to take the profit out of arson.

Insurance industry practices also retard the fight against arson. Valuation<sup>102</sup> and adjustment procedures,<sup>103</sup> insurers' reluctance to fight claims or cooperate with law enforcement officials,<sup>104</sup> and fear of countersuits for violation of

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<sup>99</sup>There are six generally recognized motives for arson. Id. at 19-21. Unfortunately there is very little data as to the relative frequencies of these motives, but estimates of fraud as a motive range from 5 to 20 percent. Id. at xiv.

<sup>100</sup>See text accompanying note 9, supra.

<sup>101</sup>The criminal forfeiture provisions and civil (treble damage) provisions of R.I.C.O., 18 U.S.C. §§ 1961-1968 (1976), and traditional statutes have been used with some success. For a good discussion of the use of these various statutes to fight arson-for-profit see Matthew Gable, "Techniques in the Investigation and Prosecution of Organized Crime: Materials on RICO", (Cornell Institute on Organized Crime 1980) [hereinafter Gable] vol. 1 at 211.

<sup>102</sup>Insurance companies often fail to inspect either the buildings they insure or records of property value assessments or property tax payments. Nor do they consult with the owner as to the building's actual market value; nor do they inspect a building when the owner claims improvements -rather they merely increase the amount upon the owner's verbal representation. Id. at 220.

<sup>103</sup>Id. at 220-21.

<sup>104</sup>See id. at 221-22.

privacy acts<sup>105</sup> permit unscrupulous owners and arson rings to overinsure properties, torch them, and reap the profits without fear of prosecution.<sup>106</sup>

Law enforcement agencies have recently stepped up their attacks on fraud and other economic crimes. Since November 1977 the Justice Department has focused especially on white-collar crime, organized crime, official corruption, and drug trafficking.<sup>107</sup> On February 8, 1979, the Office of Economic Crime Enforcement was set up in the Criminal Division of the Justice Department. Within two years, similar specialized units will be established in 30 U.S. Attorney offices.<sup>108</sup> These units will cooperate with the LEAA financed National District Attorney's Association's Economic Crime Project units, presently operating in 34 states serving 41% of the population.<sup>109</sup> Based on the success of Inspector General offices in H.E.W., H.U.D. and Agriculture, similar offices were organized in seven executive departments

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<sup>105</sup>Includes the Federal Privacy Act of 1974, 5 USC 552(a) (1976) and various state statutes. These statutes in their aggregate prohibit the free exchange of information among insurance companies, fire marshals, and law enforcement agencies. Insurance companies are wary of releasing information that may expose them to damage suits for violation of the fiduciary relationship between policyholder and company. See id. at 222.

<sup>106</sup>See id. at 220-22.

<sup>107</sup>See Attorney General's Report on Federal Law Enforcement and Criminal Justice Assistance Activities, 68 (1979).

<sup>108</sup>Id.

<sup>109</sup>Id. at 89.

and six executive agencies.<sup>110</sup> As a result of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of October 25, 1977,<sup>111</sup> state medicaid fraud control units have been established in many jurisdictions.<sup>112</sup>

Fraud cases involving organized crime or public corruption may be handled by one or all of three sections of the Justice Department's Criminal Division -- the Criminal Fraud Section, the Public Integrity Section, or the Organized Crime and Racketeering Section.<sup>113</sup> The remaining fraud cases are handled by the Fraud Section of the Civil Division's Commercial Litigation Branch, charged with enforcement of the False Claims Act,<sup>114</sup> the Anti-Kickback Act,<sup>115</sup> the Federal Property and Administrative Services Act,<sup>116</sup> and the whole gamut of common-law remedies.

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<sup>110</sup> Inspector General Act of 1978, P.L. 95-452. Those executive departments are Agriculture, Commerce, H.U.D., Interior, Labor and Transportation. The executive agencies are Community Services Administration, E.P.A., G.S.A., N.A.S.A., S.B.A. and V.A.

<sup>111</sup> P.L. 95-142.

<sup>112</sup> State Medicaid Fraud Control Units have been created pursuant to regulations promulgated by the then Secretary of H.E.W. under his rule making power under the Social Security Act § 1102, 42 USC 1302 (1976). Those regulations were promulgated on September 29, 1978, 42 F.R. 45262 and codified in 42 CFR 455.

<sup>113</sup> As to the resources devoted to fight fraud and related corruption by the Justice Department, see generally Resources Devoted By the Dept. of Justice to Combat White Collar Crime and Public Corruption, Report of the Comptroller General (March 19, 1979).

<sup>114</sup> 31 U.S.C. §§ 231 et seq. (1976).

<sup>115</sup> 40 U.S.C. § 276(c) (1976), 41 U.S.C. §§ 51 to 54 (1976).

<sup>116</sup> 40 U.S.C. §§ 471 et seq. (1976). Civil remedies and penalties provisions at 40 U.S.C. § 489.

IV.

PROSECUTION: THE LAW OF FRAUD

A. Historical Background

The British Law Commissioners in 1843 recognized that criminal law was the "Cinderella of jurisprudence."<sup>117</sup> "The criminal law," they wrote in their Seventh Report, "has suffered greatly from neglect."<sup>118</sup> With rules of procedure that precluded regular high court consideration, and without the economic stake to attract learned practitioners,<sup>119</sup> the criminal law by the nineteenth century bore even fewer traces of rational organization than the present law of federal crimes. It was simply a century's long compilation of narrowly drawn responses to narrowly conceived problems of public order. Probably the most unedifying feature of this ramshackle construction was the law of larceny,<sup>120</sup> and the least admired part of that was the law of fraud.

1. Larceny

The law of fraud's arrested development was assured by a rule appearing in the Year Books for 1329, which made wrongful

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<sup>117</sup>A. Ashworth, "The Making of the English Criminal Law (4) Blackstone, Foster and East" 1978 Crim. L. Rev. 389 (1978).

<sup>118</sup>Id.

<sup>119</sup>Id.

<sup>120</sup>See J. Kaye, "The Making of English Criminal Law (1) The Beginnings-A General Survey of Criminal Law and Justice Down to 1500," 1977 Crim. L. Rev. 4,11 (1977).

taking an indispensable element of larceny. The effect was to exclude from the felony sanction any misappropriation where possession was originally accomplished with the owner's consent.<sup>121</sup> Obtaining title by false pretences was similarly unindictable. Stephen later speculated that the holding was rooted in the sentiment that "against open violence people ought to be protected by law, but that they could protect themselves against breaches of trust by not trusting people."<sup>122</sup> Chief Justice Holt put this rather severe metaphysic differently: "Shall we indict one man for making a fool of another?"<sup>123</sup>

'Not trusting people' proved an unmanageable social ethic. The increasingly commercial English economy ran on transactions between remote parties personally unacquainted, and merchants required more security of exchange than that provided by "caveat emptor." The common-law judges responded by broadly interpreting the "possession" requirement of larceny. The trend started with Carrier's Case in 1474.<sup>124</sup> The defendant carrier, having agreed to transport bales of merchandise to Southampton, broke open the bales and made off with the contents. The Court wanted to sustain the indictment, but floundered on how to square that result with the Common law. The Chancellor, unhappy with the

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<sup>121</sup>Id.

<sup>122</sup><sub>3</sub> J. Stephen, A History of the Criminal Law of England, 124 (1883).

<sup>123</sup><sub>2</sub> W. Russell, A Treatise on Crimes and Misdemeanors, 520-21 (1877).

<sup>124</sup>J. Kaye, supra note 121, at 11.

trespassory taking requirement, argued that larceny should depend upon the fraudulent intent of the defendant. Justice Choke maintained that the carrier took possession only of the container, and that the owner continued to possess the contents. Neither persuaded a majority. The decision affirmed the common-law rule, but determined that "breaking bulk" terminated the bailment, thus rendering conversion of the contents a new "taking" from the owner's possession.<sup>125</sup>

Later decisions further expanded the concept of "possession." Particularly useful was the notion of "constructive possession," which extended larceny to, for example, a servant's misappropriation of his master's property. As one commentator explained; "A man who tells his servant to hold his horse for him . . . was felt to retain his control over the horse" as if he held the bridle in his own hand. "[I]t was accordingly asserted that if the servant . . . made away with the thing in his charge, he was guilty of theft."<sup>126</sup> The doctrine might also apply to a guest who steals the cup his host has graciously allowed him to drink from. In both cases, the owner's presence constituted "possession."

During the eighteenth century, the doctrine of "constructive possession" was supplemented by what was then generally called "larceny by trick." But for the judges' insistence on

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<sup>125</sup> 3 J. Stephen, supra note 122, at 139.

<sup>126</sup> Id. at 151.

cabining the facts within the traditional definition of larceny, we would say they were punishing fraud. "Larceny by trick" involved a thief who, intending to convert the victim's property, obtained actual possession through false representations. In Pear's Case<sup>127</sup> the defendant rented a horse, planning all the while to sell it and to keep the proceeds. Held indictable because the owner retained "possession," in some sense, until the time of sale.

## 2. Fraud

Acquiring title to the horse, or the "property" in it, by false pretences was not larceny. A contrary holding would have required a clean break with precedent - by what fiction could the voluntary transfer of title and possession be designated felonious? - and there were several reasons for the courts' reluctance to take the giant step. One was lingering affection for the rule of caveat emptor. As late as 1761, Lord Mansfield dismissed an indictment for fraud, castigating the plaintiff instead for his own carelessness in the marketplace.<sup>128</sup>

A more important reason was the English constitutional struggle. Parliament had gradually secured the judges' respect, and the courts evinced a willingness to pass responsibility for legal reform to the legislature.<sup>129</sup> In addition, judicial sympathy

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<sup>127</sup>168 Engl. Rep. 208 (K.B. 1779).

<sup>128</sup>2 W. Russell, supra note 123, at 522.

<sup>129</sup>Model Penal Code § 206, Appendix A (Tent-Draft No.1, 1952).

for the concept of natural law rendered judges "interpreters of immemorial custom rather than framers of policy."<sup>130</sup> Perhaps most significantly, the eighteenth century punishment for all but petty larceny was capital punishment, and courts were doubtless reluctant to condemn mere defrauders to death.<sup>131</sup>

By the middle of the eighteenth century, then, there was still no general crime of fraud. "Cheating," defrauding by means inimical to the public generally (by false weights or tokens, for instance), had long been a misdemeanor at common law,<sup>132</sup> but only civil remedies were available to redress the acquisition of title through false representations. Then, in 1757, Parliament passed a statute apparently intended to fill the gap.

Whereas divers ill-disposed persons, to support their profligate way of life, have by various subtle stratagems, threats and devices, fraudulently obtained divers sums of money, goods . . . all persons who knowingly and designedly, by false pretence, or pretences, shall obtain from any person or persons, money, goods, wares, or merchandizes, with intent to cheat or defraud any person or persons of the same . . . shall be deemed offenders [misdemeanants]<sup>133</sup>

The statute was not authoritatively interpreted until 1789. The hapless complainant in Young v. The King<sup>134</sup> was

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<sup>130</sup> Id.

<sup>131</sup> Id.

<sup>132</sup> 2. W. Russell, supra note 123, at 522.

<sup>133</sup> J. Hall, Theft, Law and Society, 40 (1952).

<sup>134</sup> 100 Eng. Rep. 475 (K.B. 1789).



persuaded to contribute 20 guineas toward a wager on a race from Gloucester to Bristol. The defendants, who never placed the bet, were successfully prosecuted for fraud. Justice Ashurst, displaying an attitude strikingly different from his predecessors, reasoned that "[t]he Legislature saw that all men were not equally prudent, and this statute was passed to protect the weaker part of mankind."<sup>135</sup>

The Young decision, by according the false pretenses statute a scope coextensive with its broad, sweeping language, removed the last impediment obstructing the development of a general law of fraud. Subsequent decisions further defined the conduct prohibited by the statute. In perhaps the most significant development, an 1805 court held that the defrauder's acts could constitute false pretenses - oral representations were not necessary.<sup>136</sup>

The developments in the English common law had a profound effect on the criminal law of the American states. Even today, most states retain the separation of larceny and theft by false pretenses.<sup>137</sup> These offenses, together with the crime of embezzlement, constitute the entire law of theft.<sup>138</sup> The passage of time, however, has revealed both theoretical and practical difficulties

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<sup>135</sup> 100 Eng. Rep. at 478.

<sup>136</sup> Rex v. Story, 168 Engl. Rep. 695, 696 (1805).

<sup>137</sup> W. LaFave, A. Scott, Handbook on Criminal Law, 622 (1972) [hereinafter LaFave and Scott.]

<sup>138</sup> Id. at 673.

with this tripartite division. Distinctions between offenses are often arbitrary and difficult to maintain. Larceny by trick, for example, requires the obtaining of possession, while theft by false pretenses requires the obtaining of possession and title. Whatever the merit of defining entirely separate offenses by reference to technical property concepts, the distinction is difficult to draw when, for instance, the defendant purchases property from the complainant on conditional sale.<sup>139</sup> Blurry distinctions have also encouraged what LaFave and Scott call "a favorite indoor sport played for high stakes in our appellate courts: A defendant, convicted of one of the three crimes, claims on appeal that, though he is guilty of a crime, his crime is one of the other two."<sup>140</sup>

Some modern drafters, lacking the "sporting" instinct, have recognized that the tripartite division merely complicates the work of courts and prosecutors and provides the thief a means of avoiding or postponing punishment. They have attempted to avoid these drawbacks by consolidating all three offenses into one general crime of theft.<sup>141</sup> The next section examines this modern trend, focusing on the approach taken by the Model Penal Code.

#### B. The Model Penal Code Approach

The Model Penal Code combines larceny, embezzlement, false

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<sup>139</sup>Id. at 675.

<sup>140</sup>Id. at 673.

<sup>141</sup>Id. at 677.

pretenses, and several other property offenses into one general crime of theft.<sup>142</sup> It then classifies theft into several types, based upon the circumstances attending the theft or upon the nature of what is stolen.<sup>143</sup> At first glance, we might wonder what the drafters accomplished by abolishing the traditional distinctions, merely to replace them with a new classification. The consolidation, however, goes a long way toward meeting the problems mentioned in the previous section. First, it achieves simplicity and rationality by grouping together and according similar punishment to crimes that are essentially the same. Second, it eliminates the guilty defendant's claim or appeal that he was convicted of the wrong offense. Section 223.1 provides that "[a]n accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this Article, notwithstanding the specification of a different manner in the indictment or information." The only limitation on discrepancies between the indictment and evidence at trial is the defendant's right to fair notice of the crime charged.<sup>144</sup>

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<sup>142</sup> See Model Penal Code § 223 (Proposed Official Draft 1962).

<sup>143</sup> The several types are: theft by unlawful taking or disposition (§223.2); theft by deception (§223.3); theft by extortion (§223.4); theft of property lost, mislaid, or delivered by mistake (§223.5); receiving stolen property (§223.6); theft of services (§223.7); theft by failure to make required disposition of funds received (§223.8); and unauthorized use of automobiles and other vehicles (§223.9).

<sup>144</sup> Model Penal Code §223.1 (1) (Proposed Official Draft 1962).

Section 223.3 relates most directly to crimes of fraud. It provides as follows:

A person is guilty of theft if he obtains property of another by deception. A person deceives if he purposely:

(a) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise; or

(b) prevents another from acquiring information which would affect his judgment of a transaction; or

(c) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or

(d) fails to disclose a known lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid, or is or is not a matter of official record.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

#### 1. Elements of the Offense

##### a. Conduct

Section 223.3 requires the prosecution to show that the defendant obtained the property of another. The defendant "obtains" property when he "bring[s] about a transfer or purported transfer of a legal interest," whether to himself or to a third party.<sup>145</sup> "Property" includes "anything of value."<sup>146</sup> The phrase "of another" merely requires that some person have "an interest which

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<sup>145</sup>Id. §223.0 (5).

<sup>146</sup>Id. §223.0 (6).

the [defendant] is not privileged to infringe.<sup>147</sup> Thus the statute generally applies to property in which both the defendant and victim have interests; an exception excludes property in the defendant's possession if the complaintant has only a security interest.<sup>148</sup>

b. Attendant Circumstances

The second element of a section 223.3 violation is deception. Under subsection (a), the thief deceives the victim when he "creates or reinforces a false impression." In proscribing creation of a false impression, the drafters merely intended to rephrase the traditional "misrepresentation" requirement; the provision effects no substantive change but simply codifies the common-law decisions prohibiting "deceptive non-verbal behavior."<sup>149</sup> The "reinforcing" language, however, extends more broadly to reach cases where the defendant "confirms [a prior] false impression for the purpose of inducing consent."<sup>150</sup>

The statute does not require that the defendant's representations be false, but rather that the impression created be false.<sup>151</sup> Thus, "statements which are literally true, but misleading be-

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<sup>147</sup> Id. §223.0 (7).

<sup>148</sup> Id.

<sup>149</sup> Model Penal Code §206.2, Comment (Tent. Draft No.2, 1954).

<sup>150</sup> Id.

<sup>151</sup> Id.

cause of the omission of necessary qualifications" may suffice.<sup>152</sup>

Subsections (b), (c), and (d) deal with cases where the defrauder does not actually communicate misleading information to the victim, but takes advantage of the victim's ignorance. The drafters treaded carefully here, in an effort to avoid "jeopardizing normal business practices or entering the field of controversial moral obligations."<sup>153</sup> The provisions thus do not broadly prohibit such overreaching--they just establish certain "special circumstances imposing a duty to correct the [victim's] mistake."<sup>154</sup>

There is no restriction on the subject matter of the "false impression" required under subsections (a) and (c). The Code thus rejects the traditional requirement that the thief's deception relate to existing fact,<sup>155</sup> and reaches all "false impressions as to law, value, intention or other state of mind."<sup>156</sup> The drafters recognized that such a broad provision might permit creditors to allege that a defaulting debtor created a false impression that he would pay a debt.<sup>157</sup> Therefore, subsection (a)

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<sup>152</sup> Id.

<sup>153</sup> Id.

<sup>154</sup> Id.

<sup>155</sup> Id.

<sup>156</sup> Model Penal Code §223.3(a) (Proposed Official Draft 1962).

<sup>157</sup> Model Penal Code §206.2, Comment (Tent Draft No.2, 1954).

protects debtors from harassment by precluding an inference of deception from the mere failure to pay.<sup>158</sup>

The last paragraph of Section 223.3 carves out two exceptions to the definitions of deception contained in subsections (a) through (d). First, it excludes deception "as to matters having no pecuniary significance," on the theory that non-pecuniary matters do not relate closely to the protection of property interests.<sup>159</sup> Second, it protects mass advertising<sup>160</sup> by exempting "puffing" that is "unlikely to deceive ordinary persons in the group addressed." The drafters recognized that such advertising might "mislead a fringe group of the exceptionally gullible."<sup>161</sup> They adopted an "ordinary person" standard so as not "to create a pressure for communication in terms suitable to the most stupid."<sup>162</sup>

c. State of Mind

Section 223.3 does not associate any particular state of mind requirement with the conduct element of obtaining the property of another. Under one of the Code's general rules of construction,<sup>163</sup> it is, however, proper to imply a requirement

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<sup>158</sup> Id.

<sup>159</sup> Id.

<sup>160</sup> Id.

<sup>161</sup> Id.

<sup>162</sup> Id.

<sup>163</sup> Model Penal Code §2.02(3) (Proposed Official Draft 1962).

of recklessness.<sup>164</sup> Nevertheless the Code allows the defendant in a theft case to plead as an affirmative defense that he "was unaware that the property or service was that of another."<sup>165</sup>

In contrast, Section 223.3 explicitly requires purposefulness to accompany the attendant circumstance of deception. The defrauder must not only intend to mislead the victim, but he must also mislead for the purpose of persuading the owner to give up his property.<sup>166</sup>

## 2. Modern State Codes--The Influence of the Model Penal Code

In attacking fraud, many of the more populous states have recognized the advantages of statutory consolidation. Pennsylvania and New Jersey, for example, have adopted the Code's theft provisions.<sup>167</sup> Florida, Massachusetts, and New York, on the other hand, achieve consolidation through a general theft or larceny statute which explicitly includes the various common-law theft offenses.<sup>168</sup> All five states retain other provisions com-

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<sup>164</sup>"When the culpability sufficient to establish a material element of an offense is not prescribed by law, such element is established if a person acts purposely, knowingly, or recklessly." Id. Thus, the minimum state of mind requirement is recklessness.

<sup>165</sup>Id. §223.1 (3) (a).

<sup>166</sup>Model Penal Code §206.2, Comment (Tent. Draft No.2, 1954).

<sup>167</sup>See N.J. Stat. Ann §§ 2C:20-1 to 20-10 (West Special Pamphlet 1979); 18 Pa.Cons. Stat. Ann. §§ 3901-3928 (Purdon 1973).

<sup>168</sup>See Fla. Stat. Ann. §812.012, 812.014 (West Supp. 1978); Mass. Ann. Laws ch. 266, §30 (Michie Law. Co-op); N.Y. Penal Law §155.05 (2) (a), (2) (d) (McKinney 1975).



bating particular types of fraud.<sup>169</sup>

C. The Federal Law of Fraud

The mail<sup>170</sup> and wire<sup>171</sup> fraud statutes are the basic

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<sup>169</sup> See, e.g., Fla. Stat. Ann §§817.01--.561 (1976 & West Supp. 1978) Mass. Ann. Laws ch 266, §31; N.J. Stat. Ann. §2C:21 (West Special Pamphlet 1979); N.Y. Penal Law §§ 170.00-190-65 (McKinney 1975 and Supp. 1979); <sup>18</sup> Pa. Cons. Stat. Ann. §§ 4101-4116 (Purdon 1973 and Supp. 1978).

<sup>170</sup> 18 U.S.C. § 1341 (1976) provides:

Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

<sup>171</sup> 18 U.S.C. § 1343 (1976) provides:

Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

federal antifraud provisions.<sup>172</sup> Repeat offenders may engage in a "pattern of racketeering activity" and thereby also run afoul of the Racketeer Influenced and Corrupt Organizations Act.<sup>173</sup>

1. Mail and Wire Fraud

a. Purpose

The purpose of the mail and wire fraud statutes is to prevent the use of the Postal Service and interstate communication facilities to effect fraudulent schemes.<sup>174</sup> The two statutes are in pari materia; cases construing the mail fraud statute are applicable to wire fraud.<sup>175</sup> Thus, the materials below that focus on mail fraud are relevant to wire fraud as well.

b. Elements of Mail Fraud

The mail fraud statute provides in pertinent part:

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<sup>172</sup> See generally Senate Comm. on the Judiciary, 93d Cong., 2d Sess., Criminal Justice Codification Revision, and Reform Act of 1974, 685-91 (1975); Note, "A Survey of the Mail Fraud Act," 8 Mem. St. U.L. Rev. 673 (1978); Comment, "Survey of the Law of Mail Fraud," 1975 U. Ill. L.F. 237; Criminal Division, Executive Office for U.S. Attorneys, U.S. Dep't of Justice, U.S. Attorneys' Manual Title 9, chs. 43-44 (May 23, 1978).

<sup>173</sup> 18 U.S.C. §§ 1961-1968 (1976).

<sup>174</sup> Parr v. United States, 363 U.S. 370, 389 (1960); Durland v. United States, 161 U.S. 306, 314 (1896); United States v. Keane, 522 F.2d 534 544 (7th Cir. 1975), cert. denied, 424 U.S. 976 (1976).

Although the stated purpose of § 1341 is prevention of misuse of the mails, the real target of the statute is fraud. The federal government cannot reach conduct controlled by the state fraud laws without a federal basis for jurisdiction. Thus, although the true purpose of the mail and wire fraud statutes is to prevent the perpetration of fraudulent schemes, the stated purposes focus upon the U.S. Postal Service and interstate commerce.

<sup>175</sup> United States v. Tarnopol, 561 F.2d 466, 475 (3d Cir. 1977); United States v. Donahue, 539 F.2d 1131, 1135 (8th Cir. 1976).

Whoever, having devised or intending to devise, any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting to do so, places in any post office . . . any matter . . . to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter . . . or knowingly causes to be delivered by mail . . . any such matter . . . shall be fined . . . or imprisoned . . . or both.<sup>176</sup>

The elements of the offense are:

- (1) a scheme to defraud, and
- (2) use of the mails.<sup>177</sup>

i. Scheme to Defraud

(A) Conduct

The concept of a scheme to defraud is broad and inclusive--any scheme involving trickery or deceit is within the statute.<sup>178</sup> In Isaacs v. United States,<sup>179</sup> the court discussed the nature of fraud:

[W]e recognize that the forms of fraud are as multifarious as human ingenuity can devise; that courts consider it difficult, if not impossible, to formulate an exact, definite, and all-inclusive definition thereof; and that each case must be determined on its own facts. In general, and in its generic sense, fraud comprises all

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<sup>176</sup>18 U.S.C. § 1341 (1976).

<sup>177</sup>Pereira v. United States, 347 U.S. 1, 8 (1954); United States v. Sparrow, 470 F.2d 885, 889 (10th Cir. 1972), cert. denied, 411 U.S. 936 (1973); Blachly v. United States, 380 F.2d 665, 671 (5th Cir. 1967). Cf. United States v. Pearlstein, 576 F.2d 531, 534 (3d Cir. 1978) (third element is "culpable participation by the defendant").

<sup>178</sup>Criminal Justice Codification, Revision, and Reform Act of 1974, supra note 172, at 686.

<sup>179</sup>301 F.2d 706 (8th Cir.), cert. denied, 371 U.S. 818 (1962).

acts, conduct, omissions, and concealment involving breach of legal or equitable duty and resulting in damage to another.<sup>180</sup>

The courts have held that a "scheme or artifice to defraud" includes land sale schemes,<sup>181</sup> advance fee rackets,<sup>182</sup> schemes to defraud investors,<sup>183</sup> schemes to defraud insurance companies,<sup>184</sup> schemes involving breach of official or fiduciary duties or

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<sup>180</sup>Id. at 713. Cf. Weiss v. United States, 122 F.2d 675, 681 (5th Cir.), cert. denied, 314 U.S. 687 (1941), where the court stated, "[t]he law does not define fraud; it needs no definition; it is as old as falsehood and as versable as human ingenuity."

See also Ballentine's Law Dictionary 1249 (3d ed. 1969) (definition of swindling); Black's Law Dictionary 788 (rev. 4th ed. 1968) (definition of fraud; actor intends to deprive another of something he rightfully holds or to do him an injury by means of perversion of the truth, false representations, employment of an artifice, or concealment of the truth).

<sup>181</sup>E.g., United States v. AMREP Corp., 560 F.2d 539 (2d Cir. 1977), cert. denied, 434 U.S. 1015 (1978); Lustiger v. United States, 386 F.2d 132 (9th Cir. 1967), cert. denied, 390 U.S. 951 (1968).

<sup>182</sup>E.g., United States v. Sampson, 371 U.S. 75 (1962); United States v. Kaplan, 554 F.2d 958 (9th Cir.), cert. denied, 434 U.S. 956 (1977); Gusow v. United States, 347 F.2d (10th Cir.), cert. denied, 382 U.S. 906 (1965).

<sup>183</sup>E.g., Deaver v. United States, 155 F.2d 740 (D.C. Cir.) (burial lots), cert. denied, 329 U.S. 766 (1946); United States v. Culver, 224 F. Supp. 419 (D. Md. 1963) (savings and loan associations).

<sup>184</sup>E.g., United States v. Cady, 567 F.2d 771 (8th Cir. 1977), cert. denied, 435 U.S. 944 (1978); United States v. Unger, 295 F.2d 889 (7th Cir. 1961).

breach of trust,<sup>185</sup> merchandising schemes,<sup>186</sup> securities frauds,<sup>187</sup>  
tax frauds,<sup>188</sup> planned bankruptcy schemes,<sup>189</sup> debt consolidation  
schemes,<sup>190</sup> credit card schemes,<sup>191</sup> chain referral schemes,<sup>192</sup>  
schemes involving false applications or statements to obtain

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<sup>185</sup>E.g., United States v. Rabbitt, 583 F.2d 1014 (8th Cir. 1978) (official corruption), cert. denied, 99 S. Ct. 1022 (1979); United States v. Hasenstab, 575 F.2d 1035 (2d Cir.) (breach of employee's duties to employer), cert. denied, 99 S. Ct. 100 (1978); United States v. Staszczuk, 502 F.2d 875 (7th Cir. 1974) (official corruption), modified, 517 F.2d 53, cert. denied, 423 U.S. 837 (1975); United States v. George, 477 F.2d 508 (7th Cir.) (breach of employee's duties to employer), cert. denied, 414 U.S. 827 (1973); Shushan v. United States, 117 F.2d 110 (5th Cir.) (official corruption), cert. denied, 313 U.S. 574 (1941); United States v. Proctor & Gamble Co., 47 F. Supp. 676 (D. Mass. 1942) (breach of employee's duties to employer).

<sup>186</sup>E.g., United States v. Press, 336 F.2d 1003 (2d Cir. 1964), cert. denied, 379 U.S. 965 (1965).

<sup>187</sup>E.g., United States v. Sparrow, 470 F.2d 885 (10th Cir. 1972), cert. denied, 411 U.S. 936 (1973).

<sup>188</sup>E.g., United States v. Mirabile, 503 F.2d 1065 (8th Cir. 1974), cert. denied, 420 U.S. 973 (1975).

<sup>189</sup>E.g., Jacobs v. United States, 395 F.2d 469 (8th Cir. 1968).

<sup>190</sup>E.g., United States v. Bertin, 254 F. Supp. 937 (D. Md. 1966).

<sup>191</sup>E.g., United States v. Maze, 414 U.S. 395 (1974); Parr v. United States, 363 U.S. 370 (1960); United States v. Kelem, 416 F.2d (9th Cir. 1969), cert. denied, 397 U.S. 952 (1970); Adams v. United States, 312 F.2d 137 (5th Cir. 1963).

<sup>192</sup>E.g., Blachly v. United States, 380 F.2d 665 (5th Cir. 1967).

credit or loans,<sup>193</sup> election frauds,<sup>194</sup> franchise schemes,<sup>195</sup> work-at-home schemes,<sup>196</sup> correspondence school schemes,<sup>197</sup> check-kiting,<sup>198</sup> marital schemes,<sup>199</sup> divorce mills,<sup>200</sup> and charitable frauds.<sup>201</sup>

As the statutory language implies, the scheme to defraud need not aim at obtaining tangible possessions.<sup>202</sup> Thus, a scheme directed at depriving an employer of the faithful ser-

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<sup>193</sup> E.g., United States v. Young, 232 U.S. 155 (1914); United States v. Blassingame, 427 F.2d 329 (2d Cir 1970) (wire fraud), cert. denied, 402 U.S. 945 (1971); United States v. Hancock, 268 F.2d 205 (2d Cir.), cert. denied, 361 U.S. 837 (1959).

<sup>194</sup> E.g., United States v. States, 488 F.2d 761 (8th Cir.), cert. denied, 417 U.S. 909 (1973).

<sup>195</sup> E.g., United States v. Pearlstein, 576 F.2d 531 (3d Cir. 1978) (pen marketing distributorships); Irwin v. United States, 388 F.2d 770 (9th Cir. 1964) (mail order franchises), cert. denied, 381 U.S. 911 (1965).

<sup>196</sup> E.g., United States v. Baren, 305 F.2d 527 (2d Cir. 1962).

<sup>197</sup> E.g., Babson v. United States, 330 F.2d 662 (9th Cir.), cert. denied, 377 U.S. 993 (1964).

<sup>198</sup> E.g., United States v. Foshee, 569 F.2d 410 (5th Cir. 1978); Williams v. United States, 278 F.2d 535 (9th Cir. 1960).

<sup>199</sup> E.g., Pereira v. United States, 347 U.S. 1 (1954).

<sup>200</sup> E.g., United States v. Edwards, 458 F.2d 875 (5th Cir.), cert. denied, 409 U.S. 891 (1972).

<sup>201</sup> E.g., Koolisk v. United States, 340 F.2d 513 (8th Cir.), cert. denied, 381 U.S. 951 (1965).

<sup>202</sup> United States v. States, 488 F.2d 761, 764 (8th Cir.), cert. denied, 417 U.S. 909 (1973).

vices of an employee,<sup>203</sup> depriving citizens of the honest and faithful services of a public official,<sup>204</sup> or depriving the public of its right to honest and representative government<sup>205</sup> falls within the section.

(B) State of Mind

The defendant must intend to execute the scheme to defraud.<sup>206</sup> This state of mind requirement breaks down into two parts:

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<sup>203</sup> E.g., United States v. George, 477 F.2d 508 (7th Cir.), cert. denied, 414 U.S. 827 (1973); United States v. Proctor & Gamble Co., 47 F. Supp. 676 (D. Mass. 1942).

In George, the cabinet buyer for Zenith took kickbacks from the cabinet maker in exchange for preferential treatment. The court held:

Here the fraud consisted in [the defendant's] holding himself out to be a loyal employee, acting in Zenith's best interests, but actually not giving his honest and faithful services, to Zenith's real detriment.

477 F.2d at 513.

Similarly, the court held in Proctor & Gamble that by causing Lever Brothers' employees to reveal their employer's trade secrets, the defendants defrauded the employer of its "lawful right" to his employees' loyal and honest services. 47 F. Supp. at 678.

<sup>204</sup> E.g., United States v. Isaacs, 493 F.2d 1124 (7th Cir.) (bribery of governor), cert. denied, 417 U.S. 976 (1974); Shushan v. United States, 117 F.2d 110 (5th Cir.) (bribery of Lever Board member), cert. denied, 313 U.S. 574 (1941).

<sup>205</sup> E.g., United States v. States, 488 F.2d 761 (8th Cir.) (election fraud), cert. denied, 417 U.S. 909 (1973).

<sup>206</sup> See Durland v. United States, 161 U.S. 306, 313 (1896); United States v. Sparrow, 470 F.2d 885, 889 (10th Cir. 1972), cert. denied, 411 U.S. 936 (1973); Williams v. United States, 278 F.2d 535, 537 (9th Cir. 1960).

- (1) intent to deprive another of something, to harm another, or to gain a benefit for oneself; and
- (2) recklessness as to the truth or falsity of representations made in the course of the scheme.

First, the accused must intend the result of his scheme. He must intend to deprive another of something of value, to do some injury to another, or to gain a benefit for himself by means of such harm or deprivation.<sup>207</sup> It follows that good faith is a complete defense to a charge of mail fraud, because it negates intent.

When the scheme involves depriving persons of money or property, the requisite intended result is evident. A scheme contemplating harm to an intangible right, however, presents more difficult problems in ascertaining intent.<sup>208</sup>

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<sup>207</sup> See United States v. Mandel, 415 F. Supp. 997, 1005 (D. Md. 1976), rev'd on other grounds, 591 F.2d 1347 (4th Cir. 1979).

Intent as to result, according to several courts, is an intent "to deceive persons of ordinary prudence and comprehension." Blachly v. United States, 380 F.2d 665, 671 (5th Cir. 1967); Gusow v. United States, 347 F.2d 755, 756 (10th Cir.), cert. denied, 382 U.S. 906 (1965); Silverman v. United States, 213 F.2d 405, 410 (5th Cir.), cert. denied, 348 U.S. 828 (1954). Cf. United States v. Regent Office Supply Co., 421 F.2d 1174, 1182 (2d Cir. 1970) (sales pitch not in violation of § 1341; insufficient evidence that the scheme contemplated any harm or injury).

<sup>208</sup> Comment, "Survey of the Law of Mail Fraud," 1975 U. Ill. L.F. 237, 245-48.



Second, the defendant must be reckless as to the truth or falsity of representations made in the course of the scheme.<sup>209</sup> He need not know that his representations are false or misleading; his recklessness in failing to acquire that knowledge is sufficient. State of mind is rarely amenable to direct proof; therefore, the prosecutor or plaintiff must often use circumstantial evidence.<sup>210</sup> Intent to deprive or harm another or to benefit oneself may be inferred, for example, from evidence of an actual deprivation, a harm inflicted, or a benefit gained.<sup>211</sup> In the Rio Rancho fact pattern, the prosecution could establish state of mind by introducing evidence showing

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<sup>209</sup>United States v. Pearlstein, 576 F.2d 531, 537 (3d Cir. 1978); United States v. Henderson, 446 F.2d 960, 966 (8th Cir.), cert. denied, 404 U.S. 991 (1971); Irwin v. United States, 338 F.2d 770, 774 (9th Cir. 1964), cert. denied, 381 U.S. 911 (1965).

<sup>210</sup>Aiken v. United States, 108 F.2d 182 (4th Cir. 1939). The court discussed the circumstances from which intent could be inferred:

Fraudulent intent . . . is too often difficult to prove by direct and convincing evidence. In many cases it must be inferred from a series of seemingly isolated acts and instances which have been rather aptly designated as badges of fraud. When these are sufficiently numerous they may in their totality properly justify an inference of a fraudulent intent . . .

Id. at 183.

<sup>211</sup>United States v. Meyer, 359 F.2d 837, 839-40 (7th Cir.), cert. denied, 385 U.S. 837 (1966).

The converse is also true. "[T]he failure to benefit from a scheme . . . may mirror the defendant's good faith." Id. at 840.

that the purchasers suffered financial losses from their unprofitable investments and that the schemers enjoyed unreasonably large profits.

Another possible source of circumstantial evidence is the defendant's conduct in the execution of the scheme. The prosecutor may introduce evidence of deceptive conduct, such as false or misleading representations<sup>212</sup> or non-disclosure or concealment of material facts,<sup>213</sup> from which the jury may infer an intent to defraud. For example, the Government could show that the AMREP salesmen made false representations and promises to encourage land purchases. Claims that Albuquerque must grow through Rio Rancho were false because other land was available for expansion. Promises as to the future profitability of the land investment program never came true; the land's value did not appreciably increase. Moreover, important facts were concealed from the purchasers. The report done for AMREP indicated the resale market for Rio Rancho lots would be poor for at least twenty years. Defendants concealed this information from the purchasers, even though it was relevant to the transaction.

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<sup>212</sup>Misrepresentations as to intentions regarding future acts were not subject to prosecution at common law; however, this common law rule does not restrict the mail fraud statute. "[I]t includes everything designed to defraud by representations as to the past or present, or suggestions or promises as to the future." Durland v. United States, 161 U.S. 306, 313 (1896).

<sup>213</sup>Non-disclosure and concealment most commonly arise in political corruption cases. See, e.g., United States v. Mandel, 591 F.2d 1347 (4th Cir. 1979); United States v. Rabbitt, 583 F.2d 1014 (8th Cir. 1978), cert. denied, 99 S. Ct. 1022 (1979); United States v. Isaacs, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974).

Courts do impose limits, however, on circumstantial evidence. A misrepresentation must relate to what is bargained for to be evidence of intent to defraud;<sup>214</sup> the defrauder must deceive his victim as to the quality or nature of the deal. Land schemers must convince the purchasers that desert land is a profitable investment; insurance company defrauders must convince the company that the personal injury claims are genuine;<sup>215</sup> the bribed official must convince the public that it is receiving his honest and loyal services.<sup>216</sup> Evidence of misrepresentations about unimportant or extraneous matters does not suffice.<sup>217</sup>

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<sup>214</sup> See United States v. Pearlstein, 576 F.2d 531, 544 (3d Cir. 1978); United States v. Regent Office Supply Co., 421 F.2d 1174, 1182 (2d Cir. 1970).

<sup>215</sup> United States v. Unger, 295 F.2d 889, 890 (7th Cir. 1961).

<sup>216</sup> United States v. Staszczuk, 512 F.2d 875, 877 (7th Cir. 1974), modified, 517 F.2d 53, cert. denied, 423 U.S. 837 (1975).

<sup>217</sup> In Pearlstein, the appellants were salesmen for GMF/ElginPen. As part of their sales pitch to potential distributorship purchasers the salesmen exaggerated their roles in the company's operation and made false statements about their own business backgrounds. The court held that:

such misrepresentations did not relate to the essential feature of their presentations . . . and hardly can be construed as fraudulent.

576 F.2d at 544.

In Regent, stationery salesmen gained the sympathetic ear of their customers by making false statements regarding being referred to the customer by a friend, being a professional person, or needing to dispose of stationery due to the death of a friend. The court held that evidence of such statements alone showed no attempt to deceive as to the bargain being offered and, therefore, no fraudulent scheme. The court further stated:

Where the false representations are directed to the quality, adequacy, or price of the goods themselves, the fraudulent intent is apparent because the victim is made to bargain without facts obviously essential in deciding whether to enter the bargain.

421 F.2d at 1182.

Furthermore, a seller's puffing or innocent exaggeration of the qualities his wares possess is not sufficient circumstantial evidence.<sup>218</sup> If the seller goes beyond mere puffing, however, and makes false statements, and then acts fraudulently, his conduct allows the finder of fact to infer intent from result.

Similarly, recklessness regarding the truthfulness of representations may be established by the facts and circumstances surrounding the transaction. If the schemer is put on notice of the possibility that his claims are false, and yet he continues to make the same representations, a jury may infer his reckless disregard of their validity.<sup>219</sup> For example, a scheme in which the perpetrator induces the victim to invest money for future profits usually involves representations as to the amount of profit to be realized. But if the "business" is new, the perpetrator does not know whether his facts and figures are accurate. His failure to inquire into their accuracy may lead to an inference that he is indifferent to the truth.<sup>220</sup>

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<sup>218</sup> Comment, "Survey of the Law of Mail Fraud," 1975 U. Ill. L.F. 237, 244.

On sellers' puffing, see generally Comment, "Mail Fraud-Fraudulent Misrepresentations Must Be Distinguished from 'Puffing' or 'Sellers' Talk' in Offenses Under 18 U.S.C. § 1341," 22 S.C.L. Rev. 434 (1970).

<sup>219</sup> United States v. Press, 336 F.2d 1003, 1011 (2d Cir. 1964), cert. denied, 379 U.S. 965 (1965).

<sup>220</sup> United States v. Pearlstein, 576 F.2d 531, 537 (3d Cir. 1978) (reckless disregard for validity of revenue projections used in promoting sale of distributorships); Irwin v. United States, 338 F.2d 770, 774 (9th Cir. 1964) (reckless indifference as to truth of representations that mail order franchises would be profitable), cert. denied, 381 U.S. 911 (1965).

In the land fraud case, the promoters projected future profits from investment in Rio Rancho, using examples of dissimilar Albuquerque property. The properties were different, and the profits were likely to be different; these facts may lead to the inference that the promoters recklessly disregarded the veracity of their profit estimates.

(c) Result

There is no result requirement for mail fraud. Thus, unlike most state fraud statutes, the mail fraud statute does not require the actual obtaining of property. Section 1341 requires that the schemer intend to execute a scheme or artifice to defraud, but it does not require that the scheme be completed or successfully carried out.<sup>221</sup> Section 1341 is intended to prevent misuse of the Postal Service,<sup>222</sup> and the offense is complete when the mails are used. Because completion or success of the scheme is not a part of the offense, a showing of actual damage or harm to the victim is unnecessary,<sup>223</sup> although it may indicate the defendant's state of mind.<sup>224</sup>

ii. Use of the Mails

The second element of mail fraud is use of the mails. The statute provides that anyone who "places in any

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<sup>221</sup>Blachly v. United States, 380 F.2d 665, 673 (5th Cir. 1967).

<sup>222</sup>See note 174 and accompanying text supra.

<sup>223</sup>Blachly v. United States, supra note 71; United States v. Andreadis, 366 F.2d 423, 431 (2d Cir. 1966), cert. denied, 385 U.S. 1001 (1967).

<sup>224</sup>See note 211 and accompanying text, supra.

post office or authorized depository . . . , or takes or receives therefrom . . . , or knowingly causes to be delivered by mail"<sup>225</sup> any matter for the purpose of executing a fraudulent scheme commits the offense of mail fraud. Each use of the mails is a separate offense.<sup>226</sup>

(A) Conduct

If the defendant himself, or his agent,<sup>227</sup> sends or receives material through the mail, he is chargeable under §1341. But it is only necessary that he "cause" the use of the mails.<sup>228</sup> In Pereira v. United States,<sup>229</sup> for example, a §1341 violation occurred where the sender and receiver were two banks, neither of which was a perpetrator of the scheme.<sup>230</sup>

The defendant's use of the mails must, however, be in execution or in furtherance of the scheme to defraud. The sequence of events and the closeness of the relationship between the mailing and the scheme determine whether this requirement is satisfied.

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<sup>225</sup>18 U.S.C. § 1341 (1976).

<sup>226</sup>See Badders v. United States, 240 U.S.391, 394 (1916).

<sup>227</sup>United States v. Kenofsky, 243 U.S. 440, 443 (1917).

<sup>228</sup>As causation requires no act by the defendant, it is treated in these materials as a part of the state of mind for the offenses.

<sup>229</sup>347 U.S. 1 (1954).

<sup>230</sup>Id. at 8-9.

In general, if the mailing occurs before the conception<sup>231</sup> or after the completion of the scheme,<sup>232</sup> the use of the mails is not in furtherance of the scheme.<sup>233</sup>

Hence in United States v. Maze,<sup>234</sup> the Court held that mailings of credit card invoices from the merchant to the credit company or from the company to the cardholder were not mailings in furtherance of a credit card swindle, even though the defendant caused the mailings.<sup>235</sup> The defendant had stolen the card and used it to pay for motel accommodations and restaurants. The Court held that the scheme was completed when the defendant checked out of the motel, having irrevocably received the fraudulently obtained goods and services. The subsequent mailings were for the purpose of adjusting the accounts among the defrauded parties and in no way affected the success of the

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<sup>231</sup>United States v. Beall, 126 F. Supp. 363, 365 (N.D. Cal. 1954).

<sup>232</sup>United States v. Maze, 414 U.S. 395, 402 (1974); Parr v. United States, 363 U.S. 370, 393 (1960); Kann v. United States, 323 U.S. 88, 94 (1944); cf. United States v. Wolf, 561 F.2d 1376-1380 (10th Cir. 1977) (mailings subsequent to defendant's sale of accounts receivable and receipt of payment were not in furtherance of scheme); United States v. West, 549 F.2d 545, 556 (8th Cir.) (phone calls subsequent to defendant's gaining physical possession of cattle through fraudulent means were not in furtherance of scheme), cert. denied, 430 U.S. 956 (1977).

The point at which the schemer obtains the fruits of his efforts is considered the completion of the scheme. United States v. Kenofsky, 243 U.S. 440, 443 (1917).

<sup>233</sup>Comment, "Survey of the Law of Mail Fraud," 1975 U. Ill. L.F. 237, 249.

<sup>234</sup>414 U.S. 395 (1974).

<sup>235</sup>414 U.S. at 399.

scheme. Because the use of the mails occurred after the scheme's fruition and had no relation to its success, it was not in furtherance of the swindle.<sup>236</sup>

Courts have created an exception to the general rule, however, for the mailing of lulling letters. Lulling letters are designed to convince the fraud victim that all is well and there is no cause for worry; they preserve or create the appearance of a legitimate transaction, thereby postponing inquiries and complaints and avoiding detection.<sup>237</sup> Such letters, even though mailed after the completion of the scheme, are considered to be in furtherance of it.<sup>238</sup> In United States v. Sampson,<sup>239</sup> for example, the defendants used lulling letters in the execution of an advance-fee racket. After obtaining a loan application form and a filing fee from each applicant, the defendants failed to carry out their promises to aid the applicants in obtaining loans.

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<sup>236</sup> 414 U.S. at 402. Compare United States v. Adamo, 534 F.2d 31 (3d Cir.), cert. denied, 429 U.S. 841 (1976) (merchants participating in credit card swindle; fruition when bank or credit company made payment in response to merchant's mailing of invoices; mailings in furtherance of scheme) with United States v. Maze, 414 U.S. 395 (1974).

<sup>237</sup> E.g., United States v. Sampson, 371 U.S. 75 (1962); United States v. McDonald, 576 F.2d 1350 (9th Cir.), cert. denied, 99 S. Ct. 105 (1978); cf. United States v. Staszczuk, 502 F.2d 875, 881 (7th Cir. 1974) (public hearing notices were not lulling letters because they were not used to conceal and continue a fraud), modified, 517 F.2d 53, cert. denied, 423 U.S. 837 (1975).

<sup>238</sup> United States v. Ashdown, 509 F.2d 793, 800 (5th Cir.), cert. denied, 423 U.S. 829 (1975).

<sup>239</sup> 371 U.S. 75 (1962).



The defendants mailed accepted applications and letters of assurance to the applicants to lull them into a false sense of security and to postpone complaints. The Court held that these mailings were in furtherance of the fraudulent scheme.<sup>240</sup>

The second component of the "in furtherance" requirement mandates that the mailing be "sufficiently closely related"<sup>241</sup> to the scheme.<sup>242</sup> This component is fulfilled when the mailing is "incident to an essential part of the scheme."<sup>243</sup> In Pereira the mailing of the \$35,000 check from one bank to another was incident to an essential part of the scheme, namely, obtaining

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<sup>240</sup> Id. at 80-81. The Court also held that Parr and Kann did not set down an absolute rule that use of the mails after obtaining the fruits of the scheme can never be for the purpose of executing the scheme. 371 U.S. at 80.

This holding was reiterated in Ashdown, where the court states, "there is no rule that the money must change hands after the mailing."

<sup>241</sup> United States v. Maze, 414 U.S. 395, 399 (1974).

<sup>242</sup> Many courts have elaborated on the nature of the relationship between the mailing and the scheme. E.g., United States v. Brown, 583 F.2d 659, 668 (3d Cir. 1978), cert. denied, 99 S. Ct. 1217 (1979) ("if the mailing is a part of executing the fraud, or is closely related to the scheme, a mail fraud charge will lie"), United States v. LaFerrieu, 546 F.2d 182, 187 (5th Cir. 1977) ("the dependence in some way of the completion of the scheme or the prevention of its detection on the mailings in question"); Adams v. United States, 312 F.2d 137, 140 (5th Cir. 1963) ("significantly related to those operative facts making the fraud possible or constituting the fraud").

<sup>243</sup> Pereira v. United States, 347 U.S. 1, 8 (1954).

the money.<sup>244</sup> In general, the Pereira "incident to an essential element" test has been interpreted narrowly.<sup>245</sup>

Another description of the required relationship is that the use of the mails must be in furtherance of the scheme, not merely incidental or collateral to it.<sup>246</sup> To further the scheme, the mailing must aid it in some way. Furthermore, its purpose must not be at odds with the successful completion of the scheme.<sup>247</sup> Therefore, use of the mails that only increases the

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<sup>244</sup>The defendant had his wife sell some securities she possessed in Los Angeles. She received a \$35,000 check from her L.A. broker and gave it to her husband, who endorsed it for collection to an El Paso bank. The check was mailed from Texas to California in the ordinary course of business. The check cleared, and a cashier's check for the amount was drawn in favor of the defendant, who absconded with the money.

<sup>245</sup>See United States v. LaFerrieu, 546 F.2d 182, 186 (5th Cir. 1977), where the court stated:

The Court's language [in Pereira] does not mean . . . that a mailing somehow related to an aspect of the scheme brings the scheme within the scope of the mail fraud statute.

The court held that an attorney's letter on behalf of his client demanding verification that money deposited was still in escrow was not a necessary step in the scheme although it was somehow related to the post-fruition lulling element.

But see Ohrynowicz v. United States, 542 F.2d 715, 718 (7th Cir.), cert. denied, 429 U.S. 1027 (1976) (opening of checking account was essential part of scheme; mailing pursuant to ordering of personalized checks is in furtherance of scheme even though the defendant used only unpersonalized checks in the scheme).

<sup>246</sup>United States v. Edwards, 458 F.2d 875, 883 (5th Cir.), cert. denied, 409 U.S. 891 (1972); Adams v. United States, 312 F.2d 137, 139 (5th Cir. 1963).

<sup>247</sup>United States v. Staszczuk, 502 F.2d 875, 880 (7th Cir. 1974), modified, 517 F.2d 53, cert. denied, 423 U.S. 837 (1975). In Staszczuk, the scheme was to obtain approval of zoning amendments by means of bribery. The purpose of the mailing of public hearing notices was "to provide an opportunity for affected persons to state objections to the proposed zoning changes." Id. This purpose conflicted with the execution of the scheme.

likelihood of detection and apprehension is not within § 1341.<sup>248</sup>

Courts have also held that legally compelled mailings or routine mailings to carry out convenient procedures of a legitimate business are not in furtherance of a scheme, even though they may incidentally benefit it.<sup>249</sup> Innocent mailings are not rendered fraudulent merely because they occurred while a scheme was in progress.<sup>250</sup> Of course, if the routine mailing is a part of perpetrating the fraud, or is closely related to the scheme, it is within the mail fraud statute despite its secondary legitimate function.<sup>251</sup>

Other types of mailings held to be sufficiently closely related to the scheme include mailings that are products of

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<sup>248</sup>United States v. Maze, 414 U.S. 395, 403 (1974) (mailing of credit card invoices made detection more likely); United States v. LaFerrieu, 546 F.2d 182, 187 (5th Cir. 1977) (attorney's letter of complaint would "further detection of the fraud or . . . deter its continuation").

<sup>249</sup>Parr v. United States, 363 U.S. 370, 391 (1960) (legally compelled letters, tax statements, receipts, and checks are not within § 1341); United States v. Brown, 583 F.2d 659, 668 (3d Cir. 1978), cert. denied, 99 S. Ct. 1217 (1979) (business mailings in connection with obtaining a loan under false pretenses unrelated to the fraud).

In Brown, the court held that:

A mailing . . . for the purpose of fulfilling a business of legal procedure unrelated to the fraud and . . . not closely connected with [it] . . . is too remote to convert a state law fraud into federal mail fraud, even though the mailing has the incidental effect of assisting the scheme.

<sup>250</sup>United States v. Tarnopol, 561 F.2d 466, 472 (3d Cir. 1977) (routing mailing of packing slips).

<sup>251</sup>United States v. Brown, 583 F.2d at 668 (request for wholesale financing as part of scheme to obtain new car inventory, sell cars for cash, and abscond with the cash under guise of robbery).

the scheme,<sup>252</sup> mailings incidentally informing co-schemers of the plan's progress,<sup>253</sup> and mailings of certificates or securities to the victim following a purchase.<sup>254</sup>

Mailings causing a delay necessary to the completion or continuation of a scheme are also in furtherance of the scheme.<sup>255</sup> Such mailings often are instrumental in the success of check-kiting schemes and credit card swindles.<sup>256</sup>

(B) State of Mind

The statute requires no particular state of mind to accompany a sending or receiving of mails. When the prosecution seeks to establish the conduct element by showing that the defendant "caused" the use of the mails, however, it must also demonstrate that he knowingly did so.

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<sup>252</sup>United States v. Hasenstab, 575 F.2d 1035, 1039 (2d Cir.), cert. denied, 99 S. Ct. 100 (1978) (mailing of requisitions closely connected with kickback scheme).

<sup>253</sup>United States v. Craig, 573 F.2d 455, 483 (7th Cir. 1977) (notices of meetings informed co-schemers of the status of a bill; goal of scheme was passage of the bill).

<sup>254</sup>United States v. Tallant, 547 F.2d 1291, 1298 (5th Cir.), cert. denied, 434 U.S. 889 (1977) (mailing securities was integral part of scheme); United States v. Edwards, 458 F.2d 875, 883 (5th Cir.), cert. denied, 409 U.S. 891 (1972) (mailing of divorce decrees is final step in scheme).

<sup>255</sup>Cf. United States v. Maze, 414 U.S. 395, 403 (1974), where the Court rejected the contention that the delay caused by the mails was essential to continuation of the scheme by postponing its detection; the delay was due to distance, not to the mail service.

<sup>256</sup>E.g., United States v. Foshee, 569 F.2d 401, 406 (5th Cir. 1978); Williams v. United States, 278 F.2d 535, 538 (9th Cir. 1960); cf. United States v. Braunig, 553 F.2d 777, 781 (2d Cir.), cert. denied, 431 U.S. 959 (1977) (bank policy of crediting international checks to the account before confirmation from drawee bank allowed defendant to withdraw funds before discovery of forgery).

The courts' definition of causation renders this state of mind element relatively easy to prove. In Pereira, for example, the defendant had endorsed a check to a bank for collection. Since banks mail endorsed checks in the ordinary course of business, the Court reasoned, it was reasonably foreseeable that the endorsement would result in a use of the mails. The Court concluded that "where [use of the mails] can reasonably be foreseen, even though not actually intended, then [the defendant] 'causes' the mails to be used."<sup>257</sup> Similarly, some courts have held that use of a credit card resulting in the mailing of invoices from the merchant to the credit company or from the company to the cardholder also constitutes causing the use of the mails.<sup>258</sup> The mailings are reasonably foreseeable because they are the normal result of using a credit card. In short, section 1341 requires only that the defendant knowingly take some action which has the reasonably foreseeable result of a use of the mails.

The Rio Rancho fact pattern would probably provide many examples of uses of the mails or channels of interstate communication. An AMREP employee might well send a letter of solicitation or advertising brochure. The company might place an ad in

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<sup>257</sup>Id. at 8-9. The full definition of causation is as follows:

Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he "causes" the mails to be used.

Id.

<sup>258</sup>United States v. Maze, 414 U.S. 395 (1974); United States v. Kelem, 416 F.2d 346 (9th Cir. 1969), cert. denied, 397 U.S. 952 (1970).

a newspaper delivered by mail, or accept a phone inquiry from a potential purchaser, or buy television time to promote the property. At the very least, each of these acts would "cause" such a use, under the broad judicial interpretations of sections 1341 and 1343.

## 2. Conspiracy

Section 371 of Title 18 prohibits a conspiracy "to commit any offense against the United States."<sup>259</sup> Conspiracy principles of liability apply to multi-member mail-fraud schemes, however, without regard to whether a conspiracy is charged.<sup>260</sup> Each participant is criminally liable for the reasonably foreseeable actions of his co-schemers in furtherance of the fraud, regardless of whether he knew of or agreed to those actions.<sup>261</sup> Once an agreement to participate in the scheme is established,<sup>262</sup> every member is responsible for acts within the general scope of the scheme,<sup>263</sup> including reasonably foreseeable mailings.<sup>264</sup>

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<sup>259</sup>18 U.S.C. § 371 (1976).

<sup>260</sup>United States v. Joyce, 499 F.2d 9, 17 (7th Cir.), cert. denied, 419 U.S. 1031 (1974).

<sup>261</sup>See United States v. Craig, 573 F.2d 455, 483 (7th Cir. 1977), cert. denied, 99 S. Ct. 82 (1978); United States v. Wilson, 506 F.2d 1252, 1257 (7th Cir. 1974).

<sup>262</sup>Cf. United States v. Allied Asphalt Paving Co., 451 F. Supp. 804, 812 (N.D. Ill. 1978) (defendant must be party to scheme and must have specific intent to defraud).

<sup>263</sup>United States v. Cohen, 516 F.2d 1358, 1364 (8th Cir. 1975).

<sup>264</sup>United States v. McDonald, 576 F.2d 1350, 1360 (9th Cir.), cert. denied, 99 S. Ct. 105 (1978).

An affirmative act of withdrawal by the defendant will relieve him of liability.<sup>265</sup>

3. The Racketeer Influenced and Corrupt Organizations Act  
The Racketeer Influenced and Corrupt Organizations Act<sup>266</sup> [hereinafter RICO] is a useful supplement to the mail and wire fraud statutes. RICO prohibits the running of an enterprise engaged in interstate commerce through a "pattern of racketeering activity."<sup>267</sup> A "pattern of racketeering activity" consists of at least two violations of certain designated offenses that are (a) committed within ten years of each other,<sup>268</sup> and (b) related to a common enterprise.<sup>269</sup> Mail and wire fraud are among the designated offenses.<sup>270</sup> The statute provides not only for criminal penalties<sup>271</sup> but for damages<sup>272</sup> and injunctive relief<sup>273</sup> as well.

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<sup>265</sup>United States v. Cohen, 516 F.2d 1358 (8th Cir. 1975).

<sup>266</sup>18 U.S.C. §§ 1961-1968 (1976).

<sup>267</sup>Id. § 1962(c).

<sup>268</sup>Id. § 1961(5).

<sup>269</sup>See S. Rep. No. 617, 91st Cong., 1st Sess. 158 (1969); United States v. Elliot, 571 F.2d 880, 899 (5th Cir. 1978); Blakey and Goldstock, "On the Waterfront": RICO and Labor Racketeering, 17 Am. Crim. L. Rev. 341, 354-55.

<sup>270</sup>Id. § 1961(1).

<sup>271</sup>Id. § 1963.

<sup>272</sup>Id. § 1964(c).

<sup>273</sup>Id. § 1964(a).

a. Application: Rio Rancho Scheme

The early English jurists would not have found the Rio Rancho scheme worthy of criminal punishment. Common-law larceny required a trespassory taking, an element not satisfied here since the Rio Rancho purchasers handed over their money willingly. Even "larceny by trick" would not apply, inasmuch as the defrauders obtained title, not just possession.

The 1757 false pretenses statute and the Model Penal Code provision derived from it, however, would proscribe the venture. Like the defendants in Rex. v. Young, AMREP acquired title to property through oral misrepresentations. Under the Model Penal Code formulation, only the required showing that the defendants intended to mislead the victim would present any difficulties to the prosecution. But even this obstacle could be readily overcome by evidence that AMREP continued to predict large resale profits even after a study it had commissioned projected small market penetration.

Similarly, the federal mail and wire fraud statutes are broad enough to encompass the Rio Rancho scheme. Land sale schemes fall within the "scheme to defraud" requirement, and the Government can show intent to execute the scheme by introducing circumstantial evidence establishing the success of the scheme and the defendant's conduct in furtherance of it. Any use of solicitation letters or advertising brochures, or purchase of television time, would satisfy the "use of the mails or channels of interstate communication" requirement.

Finally, RICO should prove a particularly powerful weapon against defendants like AMREP. The prosecution should find it



relatively easy to obtain a conviction by proving two instances of mail or wire fraud within ten years of each other, and showing that the defendants conducted the business through such activity. Moreover, civil remedies may then be brought to bear. An injunction may be issued to halt the continuing fraud, or an individual purchaser injured by the fraud may recover treble damages.

b. Application: Arson-for-Profit.

Prosecutors, are also not without statutory authorities to effectively deal with the problem of arson-for-profit. To date they have used the criminal RICO statute, and the more traditional methods (mail fraud, etc.) with moderate degrees of success. It is clear, however, from the statistics that a more effective weapon is needed against the thriving arson-for-profit operations of organized crime groups. Simply stated, there are too many groups and members to prosecute successfully, and not enough resources or personnel in the law enforcement camp. As noted, the problems of proof in a criminal arson prosecution can be insurmountable. At the same time, the profit incentives of arson are too large for any unscrupulous group to ignore.

The civil (triple damages) provisions of RICO are ideally suited to the arson-for-profit problem. First, the statute is aimed at the heart of the problem -- the profit factor. Remove the enormous profit (indeed, any profit at all) and you have removed the threat of arson-for-profit. Here, the damages collectible from a defrauder are threefold the actual damages as well as the cost of suit and reasonable attorney's fees.

The civil RICO provisions could thus eliminate the type of "arson empires" discussed earlier by depriving them of all available assets, legitimate or otherwise.

Like the other frauds discussed in this paper prevention of arson requires a commitment by all the parties directly or indirectly involved. The public can and has made a dent in the regional incidence of arson. Many state legislatures have responded to the privacy problem with immunity statutes and the community cost problem with statutes imposing liens on proceeds of fire insurance for outstanding taxes and demolition expenses. The insurance industry has begun to review their underwriting, valuation, and adjustment procedures, inspect their properties, and cooperate with law enforcement officials.

## CONCLUSION

When a round-the-clock professional police force to keep the peace in London was first proposed to Parliament in 1785, members denounced it as incompatible with the traditional liberties of Englishmen. Forty-four years of general urban lawlessness later, the M.P.'s discovered that disorder was even more incompatible. Agreeing with Peel that "it was absolutely necessary to devise some means to give greater security to persons and property,"<sup>274</sup> Parliament then passed the Metropolitan Police Act, thereby validating the insight into genuine freedom proffered by R.H. Tawney: "It is still confidently asserted by the privileged classes that when the state holds its hand what remains as a result of that inaction is liberty. In reality, as far as the mass of mankind is concerned, what commonly remains is not liberty but tyranny."<sup>275</sup>

The intuition that state intervention can be the guarantor of personal freedom must be our guide in approaching the challenge of fraud, whether committed by white-collar crime, organized crime, or any other group or individual. Whether circumstances evoking application of the insight are present is a matter of fact, and the facts are: our post-industrial economy is rife with opportunities for illegal gain through deception; white-collar as well as organized crime offenders always are willing and able to exploit human and institutional

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<sup>274</sup>W. Lee, A History of Police in England, 245 (1971).

<sup>275</sup>B. Whitaker, The Police in Society, 14 (1979).

weaknesses; our criminal justice system, already overburdened with the task of preserving physical security in the streets, is simply incapable, as presently constituted, of effectively policing the marketplace; and finally, with a constantly eroding moral order, there is little prospect of society policing itself.

What are the alternatives? Short of the moral reconstruction of society, we must, if we are serious about combatting the fraudulent activities of white-collar or organized crime offenders, be open to the use of innovative law enforcement techniques -- like RICO and the creation of special prosecutors and Inspectors General offices. We must turn our attention, too, to efforts to get law enforcement as organized as organized crime and white-collar offenders. As Edmund Burke said, "the only thing necessary for the triumph of evil is for good men to do nothing."<sup>276</sup>

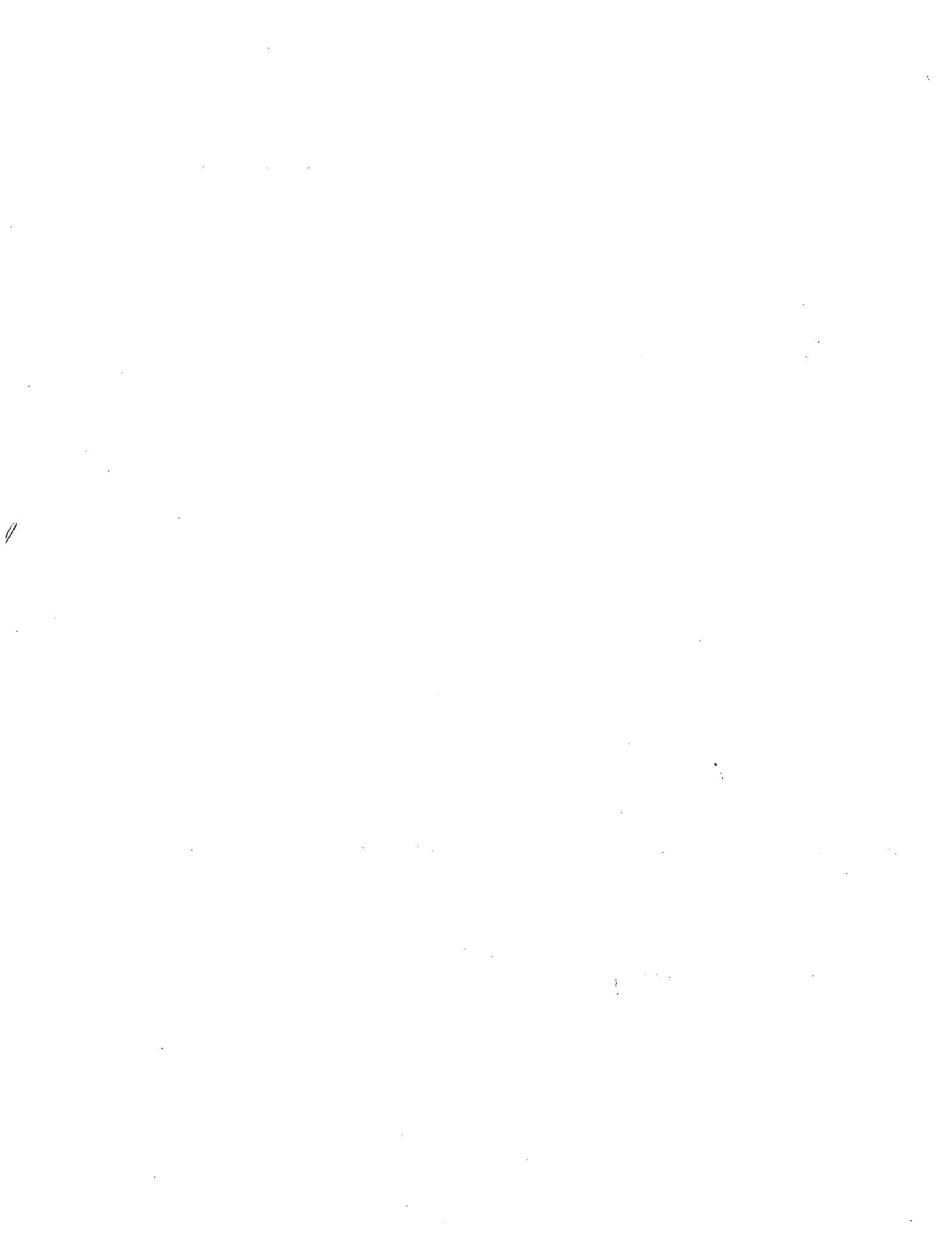
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<sup>276</sup>Letter of Edmund Burke to William Smith, January 9, 1795.

II

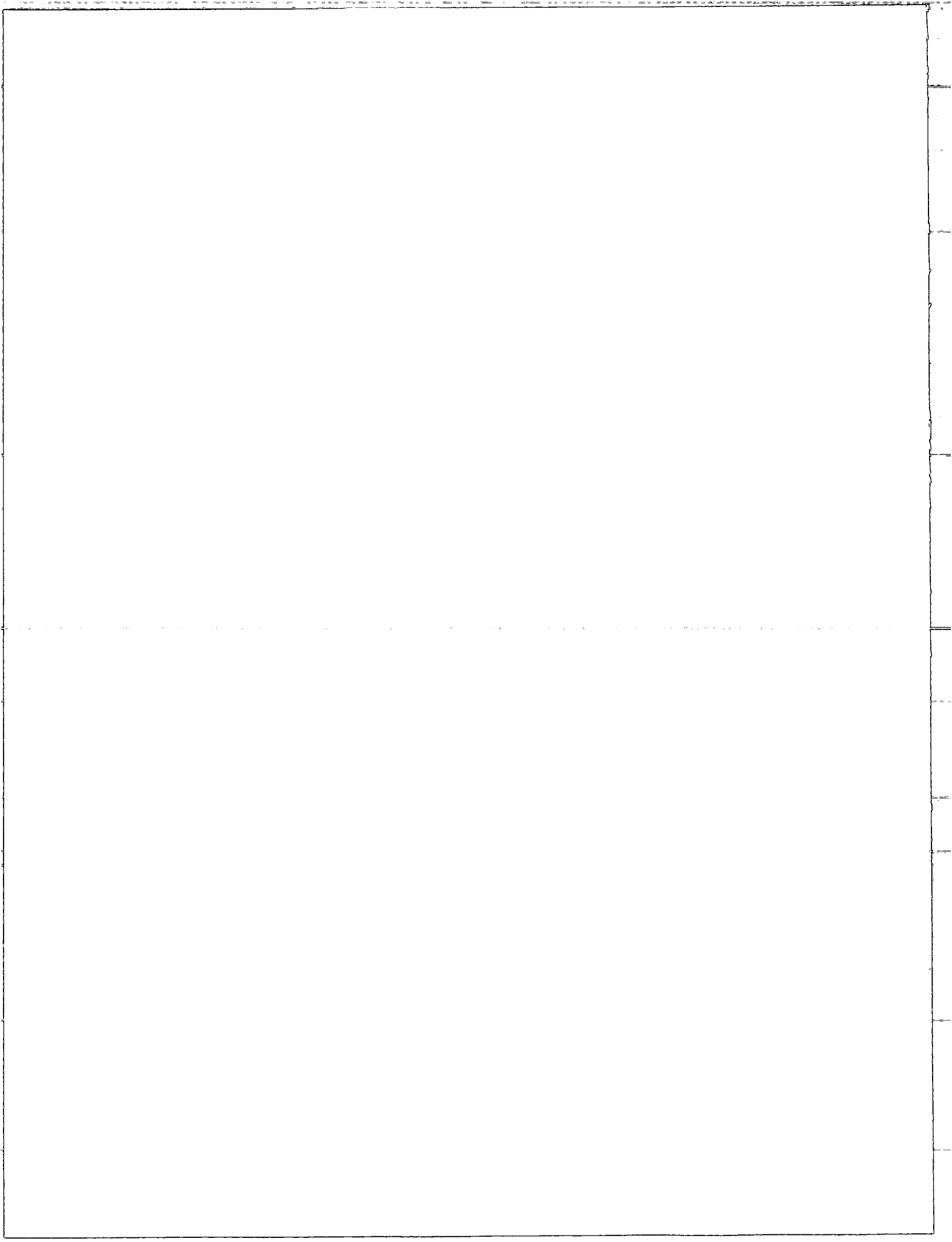
FRAUD

A SIMULATED INVESTIGATION  
WITH TEACHER'S GUIDE



Workshop #1:  
Investigative Planning

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## Workshop #1 - Investigative Planning

Premise: You are an assistant district attorney in Tompkins County, Ithaca, Homestate\*. District Attorney Thomas E. Hogan has assigned you to the Rackets Bureau.

The Chief of the Rackets Bureau has assigned you to the Lenny's Bar investigation and has asked you to review the progress of the investigation so far and develop an investigative plan for further action, if any, in light of the attached investigative reports.

\*Homestate means that you are to answer this problem according to the law and practice of your "home state." Seminar discussions will compare and contrast the law and practice of your jurisdiction and other jurisdictions, including, where relevant, federal law and practice.



**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT		UNIT REPORTING	
6/18/80			
CASE STATUS:			
<input checked="" type="checkbox"/> ACTIVE		<input type="checkbox"/> CLOSED	<input type="checkbox"/> UNFOUNDED
ALARM NO.		DATE TRANSMITTED	
OFFICER'S NAME (Printed) RANK, FIRST, LAST			COM'D.
Det. Francis Gilmurray			DAOS

**COMPLAINT FOLLOW-UP**

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

1. On June 17, 1980, IT-OC-7 informed the captioned that Cosimo "Gus" Lumia and "Bill" LNU were working out of Lenny's Bar, 83 W. 27th Street, Homestate. Lumia, who IT-OC-7 knew from high school, offered to sell IT-OC-7 "some good liquor, cheap."

According to IT-OC-7, Lumia has just been released from a Missouri conviction for receiving stolen property and has moved back to Ithaca, where he grew up.

2. IT-OC-7 is a confidential informant in the organized crime area who has provided reliable information in the past that has lead to more than one criminal conviction.



**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT		UNIT REPORTING
6/18/80		
CASE STATUS:		
<input checked="" type="checkbox"/> ACTIVE	<input type="checkbox"/> CLOSED	<input type="checkbox"/> UNFOUNDED
ALARM NO.	DATE TRANSMITTED	

**COMPLAINT FOLLOW-UP**

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed)	RANK, FIRST, LAST	COM'D
Det. Francis Gilmurray		DAOS

1. Attached hereto are the biographic key data sheet and the F.B.I. identification record for Cosimo "Gus" Lumia. It shows an extensive record for theft-related offenses.
2. A check with Captain William Duffy, Intelligence Unit, Organized Crime Division, Ithaca Police, this date, indicated that Lenny's Bar is a known hangout for thieves, hijackers, and burglars. It is thought to be owned or at least controlled by Ricardo Barcelona, CR 274189, a consiglieri in the Bustamonte crime family.
3. Attached is a biographic key data sheet on Ricardo Barcelona.

ORGANIZED CRIME DIVISION

INTELLIGENCE UNIT

BIOGRAPHIC KEY DATA

NAME Cosimo Lumia

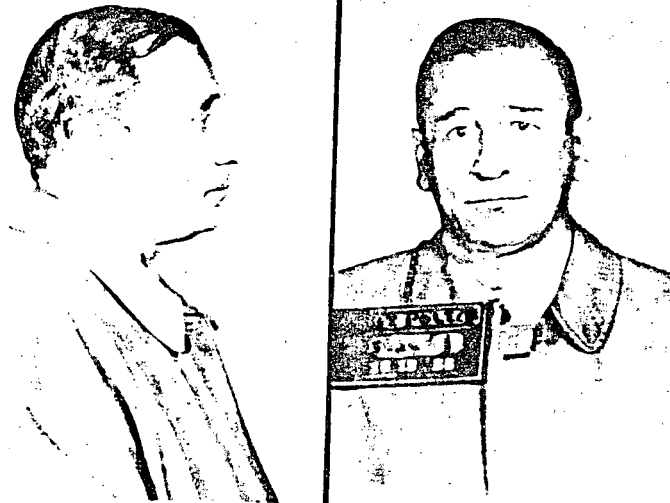
ALIAS

NICKNAME "Gus"

DESCRIPTION

SEX Male HGT 5'10"  
DOB 2/8/33 WGT 200  
POB Ithaca EYES Brown  
COLOR White HAIR Black  
OTHER

PICTURE



IDENTIFICATION NOS

CR 582561  
FBI 101331E  
SOC SEC  
LICENSE

RESIDENCE

4849 Schyler Place, Ithaca, Homestate

BUSINESS INTERESTS

Spectacular Management Corp., 840 127th St., Ithaca  
Tropical Fruit Processors Local 904

LOCATIONS FREQUENTED

## MOST RECENT PREVIOUS ARRESTS

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
12/23/51	petty larceny	dismissal
4/10/56	petty larceny	\$100 fine
5/25/58	ADW	conv., six months

## ORGANIZED CRIME POSITION OR AFFILIATION

Associated with Charles Bustamonte family. Membership status not clear

## KNOWN CRIMINAL ACTIVITIES

assault  
theft  
receiving stolen property

## SUSPECTED CRIMINAL ACTIVITIES

loansharking  
arson

## ASSOCIATES

<u>NAME</u>	<u>CR#</u>
Thomas DeNoto	583187
Ricardo Barcelona	274189
Vincent Rucci	512589
Roger Stoneton	
William Meli	

## BACKGROUND AND MISCELLANEOUS

Subject was a "hanger on" in the operations of Ricardo Barcelona. Left Ithaca in 1960. Went to St. Louis. Has not been heard from since that time.

UNITED STATES DEPARTMENT OF JUSTICE 6-18-80 33JI  
 FEDERAL BUREAU OF INVESTIGATION  
 WASHINGTON 25, D. C.

IDENTIFICATION DIVISION

The following FBI record NUMBER 101331E

is furnished FOR OFFICIAL USE ONLY.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
IT. P.D.	Cosimo Lumia #582561	12-23-51	petty larceny	dismissed
IT. P.D.	Cosimo Lumia #582561	4-10-51	petty larceny	\$100 fine
IT. P.D.	Cosimo Lumia #582561	5-25-58	ADW	six months
P.D. University City, Mo.	Cosimo Lumia #4335	1-2-61	susp burg & larc	rel no evidence
P.D. St. Louis, Mo.	Cosimo Lumia #86936-5	2-26-62	inv sus removing mfg seal plate from auto	
P.D. St. Louis, Mo.	Cosimo Lumia #89669	11-2-62	susp. burg. & AT	
St. Hwy. Pat. Kirkwood, Mo.	Cosimo Lumia #C-10810	11-2-62	in-poss & disposing of stln prop	rel 11-2-62
St. Hwy. Pat. Kirkwood, Mo.	Cosimo Lumia #C-10810	4-29-63	1) inv dispos stln prop 2) inv stealing over \$50	rel 4-29-63 rel 4-29-63
P.D. St. Louis, Mo.	Cosimo Lumia #89669	10-19-63	burg	rel
USM St. Louis,	Cosimo Lumia #388-1634	5-11-65	consp (Dyer Act)	P.G. 2 yrs \$2000 F \$35 c susp sent
P.D. St. Louis, Mo.	Cosimo Lumia #89669	5-11-65	conspir to viol Dyer Act	
USM Springfield Ill.	Cosimo Lumia #1031	5-11-65	conspiracy viol Title 18 See 371 USC	
P.D. St. Louis, Mo.	Cosimo Lumia #89669	8-13-65	susp burg & stealing	war not apl
THIS RECORD IS FURNISHED FOR YOUR OFFICIAL USE AND SHOULD NOT BE FURTHER REPRODUCED OR DISSEMINATED.				

Information shown on this Identification Record represents data furnished FBI by fingerprint contributors. Where final disposition is not shown or further explanation of charge is desired, communicate with agency contributing those fingerprints.

Notations indicated by \* are NOT based on fingerprints in FBI files but are listed only as investigative leads as being possibly identical with subject of this record.

IDENTIFICATION DIVISION

The following FBI record NUMBER 101331E

is furnished FOR OFFICIAL USE ONLY.

CONTRIBUTOR OF FINGERPRINTS	NAME AND NUMBER	ARRESTED OR RECEIVED	CHARGE	DISPOSITION
P.D. Alton, Ill.	Cosimo Lumia #9653	12-17-65	att burg	
SO Edwardsville	Cosimo Lumia #3452	3-3-66	attempt	
P.D. St. Louis, Mo.	Cosimo Lumia #89669	2-12-69	sus stl 0/50	
St. Louis Co. P.D. Clayton, Mo	Cosimo Lumia #38212	4-5-76	suspect burg stealing 2299	
City P.D. Clayton, Mo.	Cosimo Lumia #76-987	4-5-76	susp burg	RLOE
St. Louis Co. P.D. Clayton, Mo	Cosimo Lumia #38212 SID 240970	3-2-78	warrant receipt of stln prop over \$50 (2899)	convicted 2 years F \$5 C
Mo. State Prison	Cosimo Lumia #3849-10	3-8-78	receipt of stln prop	sent 2 years F \$5 C

THIS RECORD IS FURNISHED  
 FOR YOUR OFFICIAL USE AND  
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Notations indicated by \* are NOT based on fingerprints in FBI files but are listed only as investigative leads as being possibly identical with subject of this record.

ORGANIZED CRIME DIVISION

INTELLIGENCE UNIT

BIOGRAPHIC KEY DATA

NAME Ricardo Barcelona

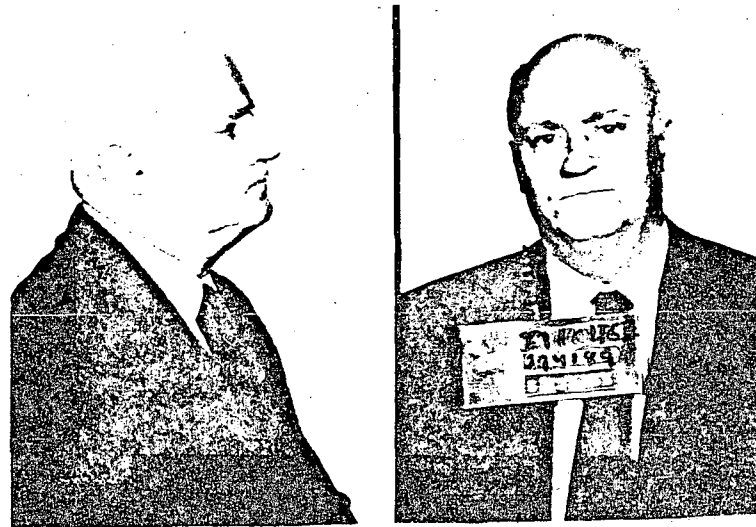
ALIAS Rick Barcelono

NICKNAME Uncle Ricky

DESCRIPTION

SEX male HGT 5' 7"  
DOB 6/12/28 WGT 160 lbs.  
POB Ithaca EYES brown  
COLOR white HAIR grey  
OTHER

PICTURE



IDENTIFICATION NOS

CR 274189  
FBI  
SOC SEC  
LICENSE

RESIDENCE

11-12 Parkway Court, Ithaca, Homestate

BUSINESS INTERESTS

Roving Metal Comp., 414 South Main Street, Ithaca, Homestate  
(reputed to be owner);

TNT Jukeboxes and Entertainment Productions, 1626 Business Way,  
Ithaca, Homestate (owner of record);

Commercial Candies Inc., 2192 Cable, Ithaca, Homestate

Local 96, International Brotherhood of Teamsters, Ithaca

LOCATIONS FREQUENTED 595 Broadway, Ithaca, Homestate

Lenny's Bar, 83 W. 27th Street, Ithaca, Homestate

Charm Florists, 197 Avenue A, Ithaca, Homestate



## MOST RECENT PREVIOUS ARRESTS

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
12/15/63 197 Avenue A	Dis Con.	dism.
2/07/76 197 Avenue A	Dis Con.	\$50/5 days

## ORGANIZED CRIME POSITION OR AFFILIATION

Bustamonte family (caporegina)

## KNOWN CRIMINAL ACTIVITIES

hijacking  
loansharking  
fencing  
arson/fraud

## SUSPECTED CRIMINAL ACTIVITIES

cigarette smuggling  
pay-off welfare funds

## ASSOCIATES

<u>NAME</u>	<u>CR#</u>
Vincent Rucci	512589
Thomas DeNoto	283187
William Meli	594328
Phillip Tarrant	211582
Carl Plant	286219
Yuri Gismondi	(son-in-law)

## BACKGROUND AND MISCELLANEOUS

Subject is believed to be extremely influential in Bustamonte family and after the conviction of Vincent Rucci in 1977 was likely to be named consiglieri. Sources indicated that like Rucci he is anti-narcotics and urges the infiltration of legitimate business as a way of utilizing gains from hijacking, loansharking, fencing, and other traditional organized crime activities.

Subject is extremely effective in utilizing layers of insulation to protect himself from prosecution. He successfully avoided indictment in the 1976 DeNoto hijacking case by this technique.



**POLICE DEPARTMENT**  
Ithaca.

<input checked="" type="checkbox"/> DATE OF THIS REPORT . UNIT REPORTING 6/24/80	
CASE STATUS: <input checked="" type="checkbox"/> ACTIVE <input type="checkbox"/> CLOSED <input type="checkbox"/> UNFOUNDED	
ALARM NO	DATE TRANSMITTED
OFFICER'S NAME (Printed) RANK, FIRST, LAST	COM.D.
Det. Francis Gilmurray	DAOS

**COMPLAINT FOLLOW-UP**

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

1. On June 23, 1980, at 9:30 P.M., IT-OC-7, pursuant to the plan of the captioned, went to Lenny's Bar, 83 West 27th Street, Ithaca, Homestate. IT-OC-7 observed "Bill" LNU, a M/W/47, 5" 9", 185 lbs., thinning, straight brown hair, fair complexion, talking to several groups of men and periodically using the two phones in the bar, one located behind the bar, the other, coin-operated, located near the men's room. IT-OC-7 said that Cosimo "Gus" Lumia appeared to be working with "Bill" LNU. IT-OC-7 asked Lumia if his "offer was still good." Lumia then sold IT-OC-7 Case # B376820, containing Seagrams 7 Whiskey for \$45. Lumia said, "For you, old buddy, there is more where that came from. If there is anything else you need, let me know. We take orders, too! Maybe I can get it for you, 'wholesale.'" He then laughed.

2. IT-OC-7 overheard "Bill" LNU discussing with some unidentified men that one or more "Big People" were "putting up the money" and had "a piece of the action."



**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT UNIT REPORTING

6/26/80

CASE STATUS:

ACTIVE

CLOSED

UNFOUNDED

ALARM NO

DATE TRANSMITTED

**COMPLAINT FOLLOW-UP**

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST

COM'D.

Det. Francis Gilmurray

DAOS

The captioned, this date, reviewed the records of the Safe Loft and Burglary Squad of the Ithaca Police Department and the 44th Detective Squad. Those records reveal the following:

At 3:30 A.M. on June 1, 1980, more than a half-dozen men, arrived with pistols, took over the Highland Freight Yard of the Hudson Central Railroad in Tompkins County. After overpowering and holding captive the fifteen employees and the guard on duty, they took and carried away four tractors and trailers containing an estimated half million dollars worth of freight. Of this freight, \$80,000 worth consisted of Seagrams Whiskey and Shivas Regal scotch, owned by Seagrams Distillers Co., 375 Park Avenue, Ithaca, Homestate.



**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT UNIT REPORTING	
6/30/80	
CASE STATUS:	
<input checked="" type="checkbox"/> ACTIVE	<input type="checkbox"/> CLOSED
<input type="checkbox"/> UNFOUNDED	
ALARM NO	DATE TRANSMITTED
OFFICER'S NAME (Printed) RANK, FIRST, LAST	
COM'D.	
Det. Francis Gilmurray	

**COMPLAINT FOLLOW-UP**

★FOR OFFICE USE ONLY  
(Do Not Fold This Report)

The captioned, this date, was informed by F. Peter Groden, the sales manager of Seagrams Distillers Company, 375 Park Avenue, Ithaca, Homestate, that Case #B 37 6820 was contained in the load stolen in the Highland Frieght Yard robbery on June 1, 1980. It had been consigned to Mack's Liquor Store, Syracuse, New York.

The captioned was also informed by sales manager Groden that the retail price of a case (one quart size, 12 bottles) of Seagrams 7 Whiskey is \$85.44.



POLICE DEPARTMENT  
Ithaca.

DATE OF THIS REPORT UNIT REPORTING

7/1/80

CASE STATUS:

ACTIVE  CLOSED  UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST COM'D

Det. Francis Gilmurray DAOS

Surveillance Lenny's Bar

1. On June 30, 1980, at 9:30 P.M., the captioned, along with Detective John Montell, DAOS, commenced surveillance of Lenny's Bar, 83 W. 27th Street, Ithaca, Homestate, entering through the main entrance. The Bar is divided into four general areas. There are booths to the right and left of the main entrance. There is a divider, about eye-level high, that runs down the center of the Bar. The bar itself is on the right as you enter. There are booths on the left. At the rear of the Bar is an area of tables with chairs. The bathrooms are at the back, men on the right, women on the left. There is a pay phone on the wall at the rear near the cigarette machines. There is also a phone behind the bar at the rear of the Bar.

2. Cosimo "Gus" Lumia was at one of the tables in the rear talking primarily to a male who was referred to as "Jimmy" during the first fifteen or twenty minutes of the meeting. The other people near them allowed them privacy. After a while they were all talking together, but Lumia was the center of attention. He was called to the phone at least twice by his name. Once the bartender called out, "It's Charm."

3. It was apparent that the phone calls were business in character. On occasion, Lumia was overheard to say "trucks" and "jobs" in a manner which the captioned considers consistent with a hijacking operation.

4. The captioned believes that attempting continued surveillance from within the Bar would serve little useful purpose and, in any event, would be imprudent since the Bar area is very small and Lumia and the others appear to be quite wary of strangers who stay for lengthy periods.

5. The following plates were taken from cars in the parking lot just outside:

TPB 349 - Cadillac  
TPB 868 - Chevrolet  
695-UZW Mo. - Cadillac  
TPB 940 - Cadillac  
TPB 281 - Cadillac  
TPB 980 - Cadillac  
TPB 293 - Cadillac

6. License Plate TPB 281 is listed to James Bradson, Reyes Hotel, Ithaca, Homestate. Bradson is known to the police department as Jimmy "The Flea" through technical information obtained in 1965. According to reliable informants, "The Flea" is reputed to be an expert arsonist who has torched a number of buildings for insurance purposes. He has never been arrested. Identifications by captioned officers of "Jimmy" above as James Bradson was made through a 1965 surveillance photo. License Plate 695 UZW is registered to Angela Lumia, 555 Ozark Drive, St. Louis, Missouri.

7. The information in paragraph 6 was obtained from Captain William Duffy, Intelligence Unit, Organized Crime Division, Ithaca Police, this date.



**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT		UNIT REPORTING	
7/2/80			
CASE STATUS:			
<input checked="" type="checkbox"/> ACTIVE	<input type="checkbox"/> CLOSED	<input type="checkbox"/> UNFOUNDED	
ALARM NO.		DATE TRANSMITTED	
OFFICER'S NAME (Printed) RANK, FIRST, LAST			COM'D.
Det. Francis Gilmurray			DAOS

**COMPLAINT FOLLOW-UP**

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

Surveillance Lenny's Bar

1. On July 1, 1980, at 9:00 P.M., the captioned, along with Detective John Montell, DAOS, commenced surveillance of Lenny's Bar, 83 W. 27th Street, Ithaca, Homestate, from across the street in a parked surveillance car.

2. Pertinent observations included the following:  
At 11:30 P.M. Lumia and UWM 45-48, 5' 9" to 5' 10", 185 to 200 lbs., exited Bar and entered vehicle, Plate No. 695-UZW Mo., and drove over the Inlet Bridge. Lumia, who was driving, drove into the A&P Supermarket parking lot at 925 Main Street, Ithaca, Homestate, and remained there for a short period of time. Neither Lumia nor UWM left the vehicle. Lumia then left, but due to evasive maneuvers, the captioned were unable to follow the automobile.





POLICE DEPARTMENT  
Ithaca.

DATE OF THIS REPORT UNIT REPORTING

7/3/80

CASE STATUS:

ACTIVE

CLOSED

UNFOUNDED

ALARM NO

DATE TRANSMITTED

COMPLAINT FOLLOW-UP

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST

COM

Det. Francis Gilmurray

DAOS

1. On July 2, 1980, at 9:00 P.M., the captioned, along with Detective John Montell, DAOS, commenced surveillance of Lenny's Bar, 83 W. 27th Street, Ithaca, Homestate, from across the street in a parked surveillance car.

2. Pertinent observations included the following:

(a) At 11:30 P.M. Lumia and UWM (same individual report of 7/2/80) exited Bar and entered vehicle, Plate No. 695-UZW Mo., and drove over Inlet Bridge. Lumia, who was driving, drove into the A&P Supermarket parking lot at 925 Main Street, Ithaca, Homestate, and remained there for a short period of time. Neither Lumia nor UWM left the vehicle. Lumia then drove away and, despite evasive maneuvers, were followed to Charm Florists, 197 Avenue A, Ithaca, Homestate, where even though the Florists was closed, they knocked and were let in by UWM. They stayed about 30 minutes, after which they left and returned to the Bar.

(b) Observed paneled truck parked across the street from Charm Florists. License Plate No. TPB 991. Captain William Duffy, Intelligence Unit, Organized Crime Division, Ithaca Police, confirmed this data; truck assigned to his Unit for surveillance. Duffy requested conference re surveillance and our interest in Charm.



**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT UNIT REPORTING

7/9/80

CASE STATUS:

ACTIVE

CLOSED

UNFOUNDED

ALARM NO

DATE TRANSMITTED

**COMPLAINT FOLLOW-UP**

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST

COM'D

Det. Francis Gilmurray

DAOS

1. On July 8, 1980, captioned, along with Detective John Montell, DAOS, met with Captain William Duffy, Intelligence Unit, Organized Crime Division, Ithaca Police, re surveillance of Charm Florists, 197 Avenue A, Ithaca, Homestate.

2. Duffy told of the captioned's interest in Lenny's Bar, 83 W. 27th Street, Ithaca, Homestate; Cosimo "Gus" Lumia; and possible hijacking ring.

3. Duffy advised that Intelligence Unit has had Ricardo Barcelona under surveillance for about six weeks.

4. According to Captain Duffy, Ricardo Barcelona was identified by Joseph Valachi before McClellan Committee in 1963 as a member of the Bustamonte crime family.

5. Special Agent Howard Clearwater III, F.B.I., informed the Intelligence Unit that F.B.I. current intelligence information based on court order bug is that Ricardo Barcelona is a consiglieri in the Bustamonte crime family.

6. According to Captain Duffy, results of six-week surveillance by Intelligence Unit shows that Barcelona leaves his residence at 11-12 Parkway Court, Ithaca, each weekday about 1:30 P.M. He then visits:

1. Roving Metal Company  
414 South Main Street  
Ithaca, Homestate
2. TNT Jukeboxes and Entertainment Productions  
1626 Business Way  
Ithaca, Homestate
3. Commercial Candies  
2192 Cable  
Ithaca, Homestate
4. Charm Florists  
197 Avenue A  
Ithaca, Homestate

The pattern varies, but over the course of a week each place will be visited at least once.

7. Confidential informants of the Intelligence Unit, who have given reliable information in past, say Charm Florists, 197 Avenue A, Ithaca, Homestate, is owned by Ricardo Barcelona.

8. According to Captain Duffy, the results of the six weeks surveillance by the Intelligence Unit also shows that Barcelona usually goes to Charm Florists in the afternoon, where he stays until 6 or 7 p.m. (Surveillance at night has also placed him in Charm several times after business hours, which are 9 to 5.) The visits to Roving Metal, TNT Jukeboxes, and Commercial Candies only last for an hour or so and take place early in the afternoon.

Numerous times late in the afternoon and at night, meetings have been observed in Charm Florists. Known members of the Bustamonte crime family have been observed going into Charm, staying an hour or two, and then leaving, while Barcelona was known to have been present at Charm.

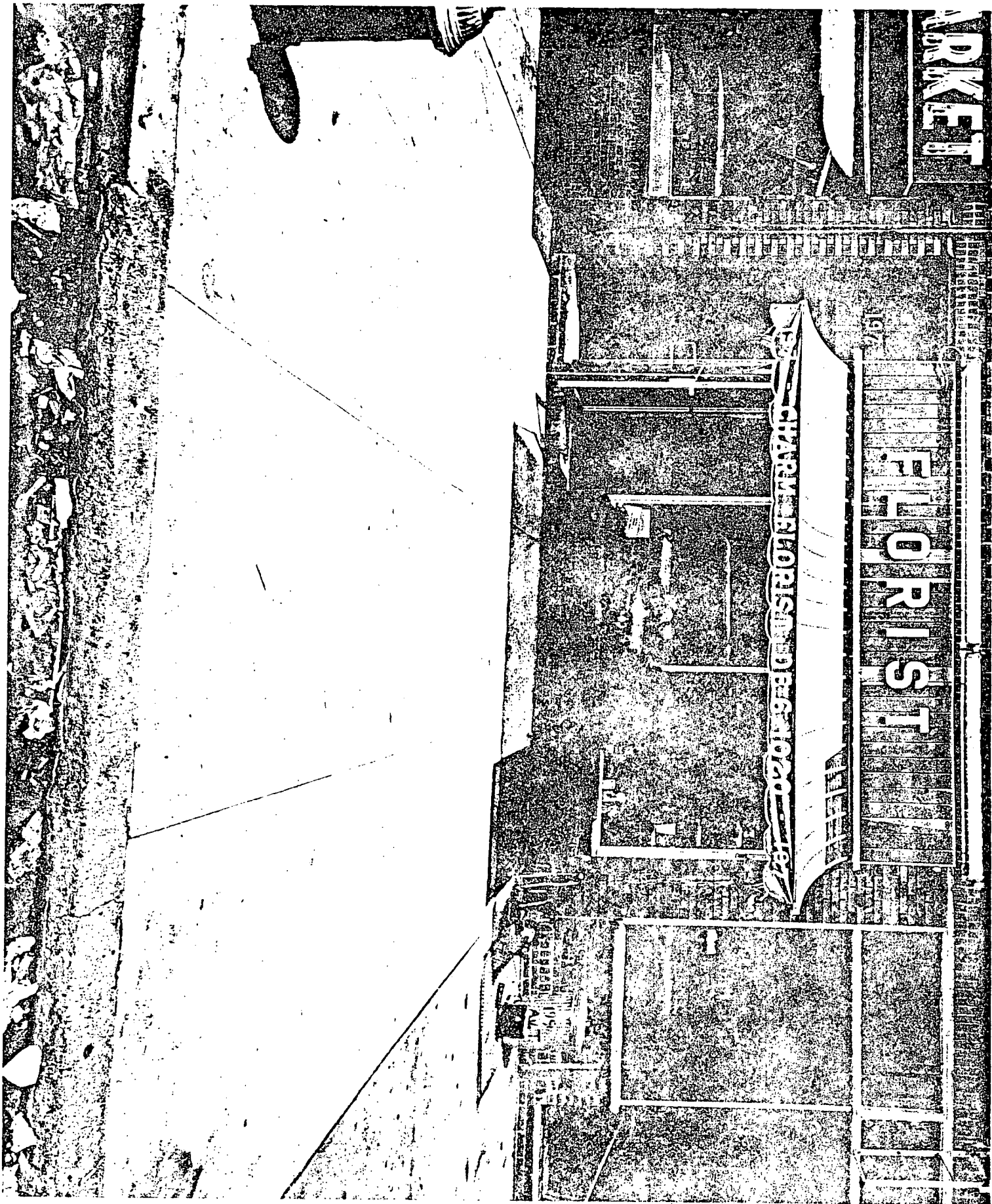
9. According to Captain Duffy, Barcelona is now under a federal R.I.C.O. indictment in California as part of the F.B.I.'s BRILAB investigation into the Teamsters Union. Among those seen

going into Charm has been Harold Jacobs, who represents Barcelona in the California case, even though he is an Ithaca attorney.

10. Captain Duffy says that, based on his experience, Charm is being used by Barcelona as a meeting place to conduct the business of the Bustamonte crime family. Captain Duffy says that he has no information about the particular subject matter of the meetings, but that since Barcelona is a consiglieri in the Bustamonte crime family, the meetings must be about Bustamonte family business.

11. According to Captain Duffy, Barcelona is into hijacking, loan sharking, and arson fraud.

12. Attached is a surveillance photo of Charm Florists, 197 Avenue A.





**POLICE DEPARTMENT**  
Ithaca.

DATE OF THIS REPORT UNIT REPORTING

7/10/80

CASE STATUS:

ACTIVE

CLOSED

UNFOUNDED

ALARM NO

DATE TRANSMITTED

**COMPLAINT FOLLOW-UP**

★FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed) RANK, FIRST, LAST

COM'D

Det. Francis Gilmurray

DAOS

The following telephone listings were received from Ms.

Subin of the Ithaca Telephone Security Office:

Lenny's Bar DE4-1468  
83 W. 27th Street  
Ithaca, Homestate

Coin Operated Phone DE4-9346  
Lenny's Bar  
83 W. 27th Street  
Ithaca, Homestate

Cosimo Lumia AR3-4401  
1811 60th Street  
Ithaca, Homestate  
(non-published)

Charm Florists DE6-1020  
197 Avenue A  
Ithaca, Homestate

# GUIDE

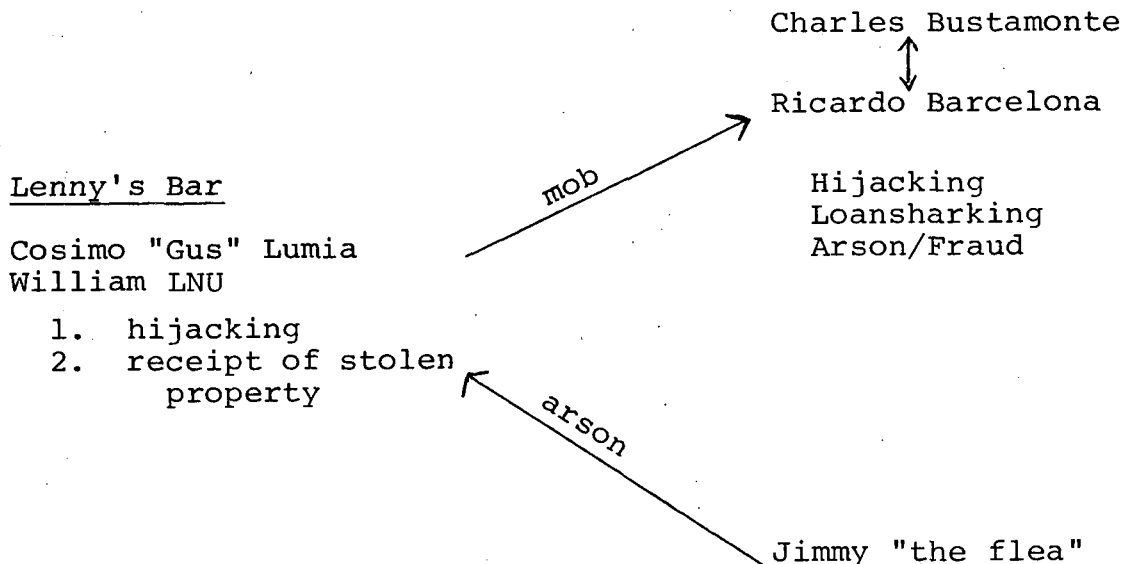




Guide: Workshop #1 - Investigative Planning

- I. The instructor should undertake the following analysis in developing an appropriate investigative plan. (Note: an after action report that relates how the plan, in fact, worked should be filed at the end of the investigation.)
- . Identify targets and potential targets by name, position, or function and articulate the goals of the investigation.
  - . Suggest alternative means of proceeding and determine potential impact of each on producing the desired result.
  - . Identify and resolve legal issues associated with each means discussed.

A. Targets



1. What are the relevant factors in identifying the appropriate goals and targets of the investigation?
  - a. most "significant" criminal activity?
  - b. most dangerous individuals?
  - c. highest ranking (most powerful) organized crime figure?
  - d. development of leads for new investigations?
  - e. recruitment of informants?
  - f. most likely to be successful with reasonable allocation of resources?
  - g. likely to have greatest impact on a specific criminal activity?
  
- B. Would the continued use of conventional means of investigation succeed in achieving those aims?
  1. Physical surveillance
    - a. experience to date in Bar
    - b. use of maneuvers to avoid physical surveillance
  2. Informants:
    - a. IT-OC-7 cannot be used since he could be identified based on high school relationship.
    - b. have no other informants with specific information about Lumia; he just returned to Ithaca
  3. Witnesses
    - a. witnesses to whiskey hijacking can't tell you anything other than fact of the theft
    - b. have no concrete arson information about "Flea"
    - c. no others to anything

4. Search warrants  
might obtain stolen property (p.c. how stale?) but  
how would you go higher if overt action taken?
5. Grand jury and compulsion of testimony
  - a. insufficient information with which to question  
effectively
  - b. roles are not known — problem of who, if anyone,  
should be granted immunity
  - c. corroboration requirement if accomplice

## II. Electronic Surveillance

### A. Is it suitable?

1. Conventional means have not and could not succeed
2. Criminal activity is of serious nature and poses  
a threat to community
3. Use of telephones and oral conversations
  - a. sufficient for requirements of statute
  - b. would, in fact, produce evidence and investi-  
gatory leads
4. Matters which cannot be answered from observation  
reports
  - a. manpower - quantity and quality
  - b. money resources - equipment
5. Probable cause  
Must demonstrate that (1) identifiable persons are  
using (2) particular phones or places to conduct  
(3) designated crimes.

If past years' experience holds true, there should be a fairly lively discussion as to whether or not probable cause for a warrant exists and if so, for what location(s). Individual police reports should be analyzed for relevant information. Is more recent information needed to avoid a staleness question? Reasonable deductions regarding the observation, overheards, and intelligence should be made and the significance of the deductions made explicit. Kinds of evidence that can be used to show probable cause should be noted, that is, informant information, citizen information, police records, police observations, physical things, expert testimony, other "lawful/unlawful surveillance", etc.

Obviously, the focus of the discussion should be on Lenny's Bar and Charm Florists. The Bar represents a slim case of traditional probable cause for stolen property:

1. criminal record of Lumia
2. reputation of Bar
3. purchase of stolen goods by IT-OC-7
4. continuing activity
  - a. regular use of phones
  - b. "We take orders."

"more where that came from"

5. some corroboration in overhears in Bar, i.e.  
"trucks", "jobs"

There is, of course, insufficient probable cause for arson at the Bar. One meeting, even if criminal in character (which was hardly established), does not establish a probability that additional criminal meetings would occur between specific people, at specific times, at specific places, or with specific subject matter under discussion. Finally, the question of the "public" character of the coin operated phone should be raised. What difference, if any, does that make?

The far more interesting question is — could a bug be put in Charm? There is, of course, ample probable cause to show that "known" crime family members regularly meet at a specific place. Person (at least generally) and place are met. What of crime?

Discussion should focus on conspiracy to murder.

Expert testimony could be obtained to show that the underlying "glue" that holds a crime family together is the promise of murder to help members out in their individual criminal endeavors, that is, hijacking, receipt of stolen property, and arson.

In addition, internal family discipline is maintained by the threat and fact of murder. Doesn't that make joining a crime family the equivalent of entering

into a conspiracy to murder? Compare United States v. Bufalino, 285 F.2d 408 (2d Cir. 1960) (insufficient evidence to infer conspiracy from meeting) with New York Times, June 21, 1980, p. 25, cols. 5-6 (conviction of mob figures for "criminal cartel" furthering murder, extortion, gambling, and loansharking) and Id. July 1, 1980, p. B1, col. 3 (indictment of Frank Tieri as "boss of one of the five New York City 'families' of La Cosa Nostra" under RICO where predicate crimes from which he received "tribute" included extortion, gambling, fraud, narcotics and murder). All family business, therefore, would be relevant to showing the membership, roles, conduct, etc. of a conspiracy to murder. How would an affidavit be drafted that embodied such a theory? How much detail would be needed? How much of the expert reasoning process would have to be set out? What kinds of information of a general character could be included, that is, government studies, congressional hearings, statements from members in the Witness Protection Program, etc. What of public wiretaps from trials? What of old illegal, i.e., pre-1968 surveillance? The person known at the Bar would be at least Cosimo "Gus" Lumia. It is necessary or proper to include "Bill" LNU? The students should discuss this issue. The judge should also be told that Barcelona might be overheard ("It's Charm"), but there is no probable

cause as to him; the judge should then be asked if he has any particular minimization instructions for Barcelona, in light of the California indictment. In addition, attention should be focused on where in Charm the bug should be put. The surveillance has not pinpointed (as far as we can tell) where the meetings occur and where it should go. Should you have it in a specific room?

B. Location of tap(s) or bug(s)

There are at least two serious possibilities to consider:

1. taps or bug at Bar,
2. bug at Florist.

The continuation of the simulation presupposes a decision to install wiretaps at the Bar and a bug at the Florist. Section leaders should skillfully lead the students to that conclusion. If necessary, you can say that the District Attorney overruled their careful and thoughtful recommendations against surveillance at any one place, and said: "Let's take a chance!"

Note: "Can't do" prosecutors want an informant to give the whole picture and police work in corroboration sufficient to convict. The students should have their imaginations stretched to think "probabilities" and "can do."





Workshop #2:  
Execution of Eavesdropping Orders



Workshop #2 - Execution of Eavesdropping Orders

Premise: Based on your recommendations in the Lenny's Bar investigation, District Attorney Thomas E. Hogan decided that two eavesdropping orders should be applied for:

- (1) a wiretap for the two phones in the Bar, and
- (2) a bug for the Florists.

Problem: I. What criticisms, if any, can be made of the way in which your legal intern drafted the orders for your review?

II. After analyzing the Daily Plant Reports, decide what, if any, additional investigation should be conducted.

Assume no changes were made in the order.

WIRETAP ORDER: BAR

SUPERIOR COURT OF ITHACA, HOMESTATE  
MOTION TERM

In the Matter	X	
	X	
of	X	
	X	
the interception of certain wire	X	EAVESDROPPING
communications transmitted over	X	
telephone line and instrument	X	
presently assigned numbers DE-4-1468	X	WARRANT
and DE-4-9346 located in Lenny's	X	
Bar, 83 W. 27th Street, Ithaca,	X	
Homestate.	X	
	X	

It appearing from the application and affidavit of District Attorney Thomas E. Hogan and affidavit of Detectives Francis Gilmurray and John Montell, D.A.O.S., said affidavits having been submitted in support of this eavesdropping warrant and incorporated herein as a part hereof, that there is probable cause to believe that evidence of the felonies of Criminal Possession of Stolen Property and Arson and Conspiracy to commit said crimes may be obtained by intercepting certain wire communications transmitted over the above-captioned telephone line and instrument, and the Court being satisfied that comparable evidence essential for the prosecution of said crimes could not be obtained by other means, it is hereby

ORDERED, that the said District Attorney or any Ithaca police officer acting under the direction and supervision of said District Attorney is hereby authorized to intercept and record the telephonic communications of:

Cosimo Lumia a/k/a "Gus" and "William" LNU as those conversations pertain to the crimes set forth above, as those conversations are transmitted over the above-captioned telephone line and instrument and it is further

ORDERED, that this warrant shall be executed in a manner designed to minimize the interception of conversations not described above, and nothing contained herein shall be construed as authorizing the District Attorney or his agents to overhear or intercept any communications which appear privileged or unrelated to the aforementioned crimes, and it is further

ORDERED, that the agents and employees of the Home-state Telephone Company are directly constrained not to divulge the contents of this order nor the existence of electronic eavesdropping over the above-captioned telephone line and instrument to any person including but not limited to the subscribers of the above-captioned telephone instrument whether or not the said subscribers request that the said telephone instrument be checked for the existence of said electronic eavesdropping equipment, and it further

ORDERED, that this eavesdropping warrant shall be executed as soon as practicable and shall be effective the 10th of August, 1980, and its authorization shall continue until the evidence described in the aforementioned affidavit of Detectives Francis Gilmurray and John Montell, D.A.O.S., shall have been obtained, and said authorization shall automatically terminate when the communications described

herein have been first obtained, but in no event shall said authorization exceed fifteen (15) days from its effective date, to wit, the 25th day of August, 1980.

Warren Younger, J.  
Justice of the Trial Court

Dated: August 10, 1980

Time: 12:30 p.m.

BUG ORDER: FLORISTS

TRIAL COURT OF ITHACA, HOMESTATE  
MOTION TERM

	x	
In the Matter	x	
	x	
of	x	
	x	
the interception of certain oral	x	EAVESDROPPING
communications uttered in Charm	x	
Florists, 197 Avenue A, Ithaca,	x	WARRANT
Homestate.	x	
	x	

It appears from the application and affidavit of District Attorney Thomas E. Hogan and affidavit of Captain William Duffy, Intelligence Unit, Organized Crime Division, Ithaca Police, said affidavits having been submitted in support of this eavesdropping warrant and incorporated herein as part hereof, that there is probable cause to believe that evidence of the felony of Conspiracy to Commit Murder may be obtained by intercepting certain oral communications uttered in the captioned place, and the Court being satisfied that comparable evidence essential for the prosecution of said crime could not be obtained by other means, it is hereby

ORDERED, that the said District Attorney or any police officer assigned to the Ithaca Police Department and acting under the direction and supervision of said District Attorney, is hereby authorized to intercept and record the oral communications of Ricardo Barcelona, Cosimo Lumia (a/k/a "Gus") and "William" LNU, their agents and coconspirators, some of whom are as yet unknown, as those conversations pertain to the operations of the Charles Bustamonte crime family

in its various illegal and legal endeavors and the use of violence, including murder, to protect those endeavors and to enforce family discipline, and it is further

ORDERED, that this warrant shall be executed in a manner designed to minimize the interception of those conversations not described above and of those which are privileged; and it is further

ORDERED, that this eavesdropping warrant shall be executed as soon as practicable and shall be effective the 11th day of August, 1980 and its authorization shall continue until the evidence described in the aforementioned affidavit of Captain William Duffy, shall have been obtained, and said authorization shall not automatically terminate when the communications described herein have been first obtained, but in no event shall said authorization exceed ten (10) days from its effective date, to wit, the 21st day of August, 1980.

Warren Young J.  
Justice of the Trial Court

Dated: August 10, 1980

Time: 12:30 p.m.



## EXECUTION OF ELECTRONIC EAVESDROPPING ORDERS

### INTRODUCTION

Before conducting any electronic surveillance read the authorizing Order and Supporting Affidavits especially noting the designated crimes and subjects.

The goal is to execute the Order, recording those conversations which are designated, and minimizing the interception of non-relevant or privileged communications.

No machine is to be left unattended on automatic. "Minimization" requires the police officer to determine whether or not each conversation is relevant and subject to interception.

Anytime a conversation or *any part thereof* is monitored it is to be recorded. If the machine has a separate monitor switch, such switch is not to be activated unless the machine is recording. However, if the machine malfunctions, or a tape has just run out, monitoring is permissible, while the situation is being remedied.

### PROCEDURE

Listen to the beginning of each conversation only so long as is necessary to determine the parties thereto and the subjects thereof.

1. If the parties and subjects are covered by the Order, continue to listen and record as long the conversation remains pertinent.

2. If either the parties or subjects are not covered by the Order, turn off the machine. Check periodically by activating the monitor *and record* switches to determine if the parties or subjects have changed and fall within category No. 1 above. Note the length of time occurring between the periodic checks, and the time of each check.

3. If the conversation does not fall within category No. 1, but it is apparent at the outset that a crime is being discussed, record the conversation insofar as it is pertinent to said crime. Immediately notify the supervising ADA of the conversation for instructions.

Generally, the Order will authorize the interception of conversations of certain named persons, as well as the agents, co-conspirators, and accomplices. If a named person is a participant in the conversation, the statements of the other participants may be intercepted if pertinent to the investigation specified in the Order.

In determining the relevancy of the conversation, the executing officers may take into account the coded, guarded and cryptic manner in which persons engaged in criminal activity often converse. It is therefore imperative that the officers be familiar with the background of the investigation and the conversations already intercepted in order to properly evaluate the meaning of the language used by the subjects.

Conversations between a husband and wife, doctor and patient, attorney and client, and an individual and member of the clergy are privileged and are not to be intercepted and recorded. Such conversations lose the privileged status when the participants are co-conspirators in the criminal activity which is the subject of the conversation, but such decision must be made by the supervising ADA.

### DAILY PLANT REPORT

Abstracts of each conversation are to be made at the time of interception and are to be included in the DPR (see Appendices H&I). If the conversation was not entirely recorded, an appropriate notation should be made as to why not (e.g., non-pertinent, privileged). Where the exact words used by the participants are important, that portion of the conversation should be transcribed verbatim. The original of the DPR should be delivered to the supervising ADA at the beginning of the following day.

### OBSERVATION REPORTS

Electronic surveillance is used as the last resort in any investigation. Conventional means of investigation are preferred and in any event should be used in conjunction with court ordered electronic surveillance. Whenever meaningful observations are feasible, they should be made and should be recorded on OR's, the originals of which should be submitted with the DPR's.

### REELS

The intercepted conversations are to be recorded on pre-numbered Investigation Bureau reels. After each reel has been completed, it is to be rerecorded, and the original is to be returned to the Investigation Bureau vault. *Under no circumstances* should any portion of any tape be erased.

Each officer is to read the Order, affidavits and regulations. Since the Order incorporates the supporting affidavits, it is absolutely essential that each officer read the affidavits and pay particular notice to the designated crimes, subjects and described conversations. Thereafter, the Assistant District Attorney should satisfy himself that the Order and regulations are understood by the officers and they have no doubts as to the scope of the Order and the proper manner of execution.

The supervising officer should then designate a member of his team to pick up the pre-numbered Investigation Bureau reels and DPR forms which are to be used on the plant. Each reel is signed out to the officer and when returned is checked back in by an investigator. Tapes are kept in the locked technical room vault of the Investigation Bureau.

DAILY PLANT REPORT (Lenny's Bar: DE-4-1468)

PLANT # 80/17

LINE # \_\_\_\_\_

INTERCEPTED AND RECORDED BY:

DATE August 10

PAGE 1 OF 8

Det. John Montell

REEL # 7916A

P.O. Doris Anderson

Changed to \_\_\_\_\_ at \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
10:18 000/025	Incoming	Male (out) to U/M (in) - Male asks, "Is he there?" U/M (possibly bartender) says, "Are you kidding - he's not here until after 11:00." Male will call back.
10:25 025/093	DE3-6217	U/F (in) to Al (out) - discuss trip to Bermuda. Apparently female is interested in going on a trip at a discount fare, but Al is not sure. Female states that that kind of thing "goes on here all the time . . . they would laugh at you."
10:40 093/176	Incoming	Al (out) to Sue (in) [Sue is U/F in above conversations, apparently the cocktail waitress] - Al states that he still thinks that it is a bad idea and that with his luck they would get caught. N/P - off 30 sec. Discussion regarding sportswear. N/P - off.
11:08 176/205	Incoming	Male (out) to Lumia (in) [male is same in 10:18 call] - Male says "the old man" wants me "to talk to you"; wants Lumia to find buyer for "load" of

# of int. calls \_\_\_\_\_ # of incr. calls \_\_\_\_\_

# of new persons int. \_\_\_\_\_

DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		refrigators. Lumia says, "See what I can do."
11:15 205/382	DE-4-7709	Lumia (in) to Ciro LNU (out) - Asks if Ciro had a buyer for a truck load of refrigerators. Ciro says he would contact the guy at the "discount place" they dealt with before. Ciro says "where are they?" Lumia says he does not know. Ciro says he will call back.
11:24 382/427	DE-8-9196	Lumia (in) to U/F out - Lumia asks for Mr. Smithburg. U/F says he is not there and that she is the maid. Lumia asks her to tell Smithburg that they might have another "deal" and that he should get in contact with him as soon as possible.
11:47 427/457	DE-8-5448	Lumia (in) to U/M (out) - Lumia asks U/M if he was interested in 5,000 pairs of Father and Son shoes for about \$20,000. He should call him back soon since they wont "be ordered" unless they can be placed."
11:55 457/618	DE-9-6845	Lumia (in) to Jack (out)  out: Hello, Peking Restaurant.  in: Who's this, Jack?  out: Yeah.

DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		in: Jack, you got it for me?
		out: No.
		in: No? Hello. Hello.
		out: Yeah.
		in: Tell Wong I'm coming over; I gotta get that.
		out: He is not here.
		in: Ahh - you're kidding me.
		out: Yeah, I'm by myself here.
		in: Ahh, he's supposed to give me 150.
		out: I don't know anything about it.
		in: All of a sudden you don't know.
		out: I know every Sunday I have . . .
		in: You're responsible.
		out: It's his restaurant.
		in: I don't want to hear anything - either I
		come away with the money or Wong will have to
		find a new maitre-D while you recover from an
		unfortunate accident.
		out: you don't have to threaten me.
		in: I'm only telling you what's going to happen -
		I'll be there at 6.
		out: Look, you will get it tomorrow. I promise
		you.
		in: Okay, but if not, somebody gets hurt.

DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
12:17 618/675	Incoming	U/F (out) to Lumia (in) - U/F says that he promised to take her shopping. Lumia says he can't, he's on his way "to see the old man and then another fellow for lunch." U/F says that all she is is somebody to keep house and sleep with.
12:20 675/724	Incoming	U/M (out) to Lumia (in) - U/M says he got a job with Security Protection, Inc., stating he does "offices, stores, and warehouses." Lumia says that was "good," especially the "warehouses." U/M says he would bring "his stuff" over. It includes "diagrams." Lumia says he will have some "guys study them."
12:32 724/747	Incoming	U/M (out) to Sue (in) - Sue says they are at lunch and should be back around 2:30.
12:35 747/801	DE3-6217	Sue (in) asks for Al (out) - Sue says that she knows somebody to call about the tickets. Al says that he is still ready to pay the "legit price." Sue says that he is "a square" but "sweet."

DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
12:40 801/921	DE7-1928	Sue (in) to Superior Travel - asks for Ann (out)
		in: My name is Sue. Did Frank tell you that
		I would call?
		out: Yeah. Where do you want to go?
		in: Bermuda.
		out: My favorite place --- (3 minute conver- sation re Bermuda).
		in: What can you do for us?
		out: How many?
		in: Two - round trip.
		out: One-half - do you have the flight numbers?
		in: I'll call back tomorrow.
		out: Okay. Around this time.
1:40 to 2:40		No calls - but odd sounds on line.
2:45 921/195	DE6-9951	Bartender (in) to telephone business office (out) -
		in: Where is guy to fix the pay phone?
		out: Order for end of week. Asks if that is all right.
		In says let me check.
	Phone off hook, background.	Footsteps and arguing - two people apparently sit down by the bar telephone, conversation regarding money (generally inaudible) then:

DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		Lumia: The people I borrow from I don't get -
		inaudible - Regardless it's go on and on. Now
		here he hasn't been up here for months cause he
		doesn't wanta pay me - inaudible - I have a
		separate contract with him. When this is over.
		All I want is my money. Now I'm telling you
		nicely, that he has hit me with a hundred different
		excuses and I know, and I tell Rickie that I
		know - but - inaudible - I ask him, are you, do
		you want to be a tough guy? Do you want to
		call somebody that you think is vicious and
		have him visit you? You see I don't know what
		to do. I don't want to see anybody hurt. I
		don't want to be blood thirsty, but Jesus Christ
		almighty, I got to get my money. There's nobody
		that's alive that wants to take his chance to
		take my money.
		U/M: Let me, let me tell you something. He
		has no intention of hurting you or holding back
		the money. I don't know if he told you just
		why this happened or how it happened. But it's
		unfortunate. But I know one thing that he knows
		he's going to have to pay it. Because the day
		he, before I brought him up there. I said to
		him, you're taking money from a guy who is

DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		"wise," and it must be paid back.
	phone put back on hook.	
3:30 195/205	411	U/M (in) to information number of Lakeview Country Club, DE1-0808.
3:31 205/357	DE6-1020	U/M (in) to U/M (out) - in: Let me speak to Mr. Barcelona. out: Just a minute. in: Okay. out: This is Mr. Barcelona. in: This is Bill. Gus said that I should call you. I took care of the problem. out: Thank you. I wouldn't like to have something like this happen again. in: Let me assure you, it won't. out: Is he there - put him on. U/M gets on phone, 5 minute conversation in Italian.
4:02 357/397	Incoming	Flea (apparently James Bradson) (out) to Lumia (in) - out: He said that I should let you know. in: Who is this? The connection is not good. I can't hear you.



DAILY PLANT REPORT (CONT'D)

PLANT # 80/17      LINE \_\_\_\_\_      REEL # 7916A      & \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
		out: It' me, "the Flea."
		in: How was the trip?
		out: Fine.
		in: How did it go?
		out: Like the last scene in Brando's movie. Did
		he talk to "the lawyer." Look, I don't want to
		wait like Mitchell Street.
		in: I will talk to him.
5:00 397/417	DE6-9300	Bill (in) asks for Mr. Meli - tell her it's
		her brother-in-law. Bill asks when they are
		coming to the barbeque -- off -- N/P.
5:30 417/445	DE1-9335	Lumia (in) to Male (out) - Lumia places bets
		on horse races, \$100 win on 3 races.

DAILY PLANT REPORT

PLANT # 80/17

LINE # \_\_\_\_\_

INTERCEPTED AND RECORDED BY:

DATE August 11

PAGE 1 OF 1

Det. John Montell

REEL # 7916A

P.O. Doris Anderson

Changed to \_\_\_\_\_ at \_\_\_\_\_

Speed 3 and 3/4, 20 lines/min.

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
10:05 445-465	Incoming	Jack (out) to Lumia (in) - out: Are you going to be there? in: Of course, you s---, I work here! out: I am coming down with the 150. in: You had better be here quick, you are already late.
10:30 465/485	Incoming	U/M (out) to Lumia (in) - out: He called to say that the line is no good. in: S---!
11:20 485/525	DE7-1928	Sue (in) to Ann (out) - Sue orders two tickets for Bermuda for August 20th with open return.

# of int. calls \_\_\_\_\_ # of incr. calls \_\_\_\_\_

# of new persons int. \_\_\_\_\_

DAILY PLANT REPORT

PLANT # 80/18

LINE # \_\_\_\_\_

INTERCEPTED AND RECORDED BY: \_\_\_\_\_

DATE August 11

PAGE 1 OF 1

REEL # 8416A

Changed to \_\_\_\_\_ at \_\_\_\_\_

TIME & METER #	# CALLED	SUBSTANCE OF INTERCEPTED CONVERSATION
2:00-2:05 000/100		Door opens. Footsteps. U/M and Barcelona have conversation re arson and possible loan shark debt (see attached transcript). U/M leaves. Barcelona leaves. No activity.
3:15-3:45 100/500		Door opens. Footsteps. U/M and Barcelona have conversation re sports -- off 30 sec. -- on N/P -- sports -- off 30 sec. Door opens - U/M enters. Conversation re organization (see attached transcript). U/Males leave.
4:00-4:05 500/520		Telephone rings. Barcelona has conversation with unknown person (FNU Maas? - see 5:00) (see attached transcript).
5:00-5:15 520/820		Door opens. Barcelona and lawyer talk (apparently Harold Jacobs). Lawyer leaves (see attached transcript). NEED TO NOTIFY F.B.I.
5:30-6:15 820/180		Door opens. Barcelona, "Woody" LNU and 2 U/K males talk (see attached transcript). DEVICE MALFUNCTIONS

# of int. calls \_\_\_\_\_ # of incr. calls \_\_\_\_\_

# of new persons int. \_\_\_\_\_

DATE \_\_\_\_\_

TRANSCRIPT

2:00-2:05 cut

U/M Mr. Maglie - the guy on Seneca Street - wants to burn down the joint - and I got the guy. He owes us money.

Barcelona: Who's the guy?

U/M A friend of "the Flea". . . . As far as Gus is concerned - he says "okay." It's up to you now.

Barcelona: What's he want to pay for it?

U/M: He's gonna pay 15,000. That's all - I'll give him a break. The usual is 25%, but I gave him a break. He's got ninety thousand insurance on it.

Barcelona: I don't even know nothing.

U/M: Okay. Done - okay?

Barcelona: How's he gonna pay you - when he collects the money or what?

U/M: He's gonna give . . . I let the kid make the arrangements. I didn't step in. I just introduced them. So - he's gonna give the kid a thousand - to get the stuff, you know.

Barcelona: I don't want to know nothing about it.

U/M: You don't want to know . . . . Alright? So I told Gus, and he said, "Well, I don't care." I said, "Look, then I didn't tell you nothing? You want to leave it that way?" "Yeah," he said, "I don't care."

Barcelona: Forget about it.

U/M: Okay. I didn't tell Gus. I spoke to you or nothing - so, it's forgotten. But you still have to get to Maas, okay?

Barcelona: Yeah.

TRANSCRIPT

3:15-3:45 cut

U/M #1: So, what's new?

Barcelona: Oh, a little trouble over there, in New York.

U/M #1: New York?

Barcelona: Yeah. Close the door. Nobody's supposed to know.

U/M #1: Rickie, if you don't want to tell me you don't have to tell me.

Barcelona: It's about Joe Bonanno's borgata. The Commission don't like the way he comporting himself.

U/M #1: The way he's conducting himself, you mean?

Barcelona: Well, he made his son consiglieri--and it's been reported, the son, that he don't show up. They sent for him and he didn't show up. And they want to throw him out of the Commission. So just now they figure that the coolest place is Rhode Island. You know what I mean? It's a pain in the neck. I feel sorry for the guy, you know. He's not a bad guy.

U/M #1: How old is he?

Barcelona: Sixty, sixty-two. His son is a bedbug. I'm not afraid of him so much as I am his son . . . . I had an appointment.

U/M #2: You went to see him?

Barcelona: Yeah. So I went with Joe Bayonne. They got one car in front and one car in back. I told him the old man wanted me to talk to him. I said, "What's going on here? Are we being followed?" He said, "No, don't worry." He made sure like I didn't have nobody to set him up. Gasparino is the one that started the ball rolling. They're blaming him.

U/M #2: Oh. He was a caporegima with Bonanno?

Barcelona: Yeah [inaudible] with Eboli and Magaddino.

U/M #2: Oh, they threw him out for that.

Barcelona: You see a message was sent by Ange Bruno, before he was hit. Joe ----- and I went with these guys. And we spoke to Johnny Burns and his son. He said the father made guys in Canada--he made them in Arizona. There was a few beefs that the Commission wants to talk to him about. But Ange Bruno and Zerilli were supposed to only ask. So they said, "We want to talk with your father. It's very important. Get him down there." They told him why! So the kid said, "How can I get a hold of you?" So I gave him my number. So he calls me the next day and he tells me, "My father's on the way in. He wants to see the two of you." So the Commission told me to go and tell him. But he wants to talk to the two of us. So Joe couldn't go, but I went again. Now he insists he wants the message--so we cancelled it. He said he wanted the original message by Joe Zerilli and Sam Rizzo. So we said, "No, we want to see you." So now they told me to call Angelo Caruso, Joe Notaro, and tell them the Commission wants to see them. So they bring me back notice, "The Administration is staying behind Joe Bonanno."

U/M #2: Oh, this Angelo and Notaro are on the Administration?

Barcelona: Yeah. Part of his Administration. Do you understand this now? Now I don't know where he's at. I think to myself, "Where do they come off protecting him? This a Cosa Nostra family!" He's telling me over the telephone, "The Commission told me not to try anything with this guy because the Commission is responsible for him." He don't care! He thinks nobody is responsible. He belongs to his family . . . . They took an attitude he was thrown out of their family and that nobody should have anything to do with him, and where are they coming off protecting him."

U/M #2: Maybe the guy wasn't wrong, right?

Barcelona: Who?

U/M #2: The guy they threw out. What does Joe Bayonne think?

Barcelona: That's his father. Right or wrong it's his father. He don't think . . . . That's all the government would want--a thing like this to happen!

U/M #2: It would be all over. It wouldn't be like it was with the Gallo boys. This would be an entirely different affair now.

Barcelona: It would be like World War III!

U/M #2: That's right!

Barcelona: I don't know what to think anymore. Nobody's got any morals.

TRANSCRIPT

4:00-4:05

Barcelona: I told you not to call me here.

Incoming:

Barcelona: You have got nothing to worry about. You sent in the right stuff, didn't you?

Incoming:

Barcelona: What can the insurance people do? The official report controls. They paid off, didn't they?

Incoming:

Barcelona: He did. I'll talk to him. Don't worry. It won't happen again.

Incoming:

Barcelona: Listen. I don't talk on the phone.



TRANSCRIPT

5:00-5:15

Barcelona: Good to see you consellor. How was the trip to California? Tell me where I stand.

Lawyer: I can't stay. I have to be at a bar association dinner. But Marcello wanted you to have this. It is a list of the witnesses. The judge ordered it as part of the Bill of Particulars. He got it from that file clerk. Nobody knows about her. One of them is now living in Homestate. Look who it is. Would you have ever thought? He said you would take care of it.

Barcelona: Yeah, the dirty c-----r. I know what to do.

Lawyer: Is there anything else?

Barcelona: Yeah, Maas says you did not pay him right away. He says there was a delay.

Lawyer: I can't pay Maas until the insurance people settle. He's too greedy. The papers weren't filled out correctly. Barrows pays him as soon as we get paid.

Barcelona: Always give him the money as soon as you can and hold his hand. He is edgy. The insurance people have been moving around Mitchell Street

Lawyer: Okay.

TRANSCRIPT

5:30-6:15

Barcelona: Congratulations on that air cargo score.

Woody LNU: Thanks.

Barcelona: It was such a nice score that I wanted you come and tell me about it. You eat dinner yet?

Woody LNU: No.

Barcelona: Go get us two pizzas from that guy around the corner.

U/M #1: What do you like on yours, Mr. Barcelona?

Barcelona: Extra cheese, that's all. That okay by you, Woody?

Woody LNU: Sure.

Barcelona: While them pies are cookin, let's get started. I wanna hear how you did this caper. Detail by detail. But, first, I wanna hear the final score.

Woody LNU: The papers blew it way out of proportion. It wasn't anything like five point eight million dollars. In fact, the inside man at Luftansa messed us up. We hit the place on the wrong day.

(Sound of someone getting hit)

Barcelona: I said tell me the final score.

Woody LNU: The final score is going to be less than 3 million in cash and 1 million in jewelry. This took a lot of people to do, and its got to be split up so they each take down their share.

Barcelona: They all knew their share in advance.

Woody LNU: To the point.

Barcelona: So how come I didn't know my share.

Woody LNU: I don't understand, Mr. Barcelona. I mean, I want to, but I don't. This isn't like that hijack we worked together. If you were part of this score, you know you'd get your points. But you weren't in the picture on this one.

Barcelona: I got to explain you something basic. I'm always in the picture. You sit down here and be comfortable, and I'm going to tell you why that is. You comfortable?

Woody LNU: You bet.

Barcelona: You remember where I left off?

Woody LNU: About how you are always in the picture?

Barcelona: You got a good memory, Woody. Now this is what I want you to understand. When you get a job with the telephone company or maybe even the airlines, they take something out of every paycheck for taxes, right?

Woody LNU: Right.

Barcelona: And every year, it gets to be a little more. Now, people gripe, but they pay those taxes, Woody. They pay it, because if they don't, the government is going to tromp down on them. It's a fact of life. Now why, you may ask, does the government have a right to make you pay taxes? Well, it's a fair question. The answer to that question, Woody, is that you pay taxes for the right to live and work and make money at a legit business. Does that make sense?

Woody LNU: Yes.

Barcelona: Well, it's the exact same situation. You did a crooked job in Ithaca. You worked hard and you earned a lot of money. Now you got to pay your taxes on it just like in the straight world. Because we let you do it. We're the government. That's why I say we're always in the picture. Am I making sense, Woody?

Woody LNU: Yeah, sure it makes sense. It's just that . . . .

Barcelona: Just what? I mean, I want this to be fully understood.

Woody LNU: Oh, nothing. Tell me what you want, Mr. Barcelona.

Barcelona: You mean, what do your taxes come to? Well, let me point out something. If you'd come to us up front and told us about this job, then we'd have quoted you the normal rate. But you didn't do that, Woody. We had to find you and bring you to

this here tax court. So now you got to pay a penalty on the arrears. Your taxes come to one half the take.

Woody LNU: My God, Mr. Barcelona, be reasonable. All the risk here was on the part of ---

(Sound of someone getting hit.)

Barcelona: You think about the situation for the rest of the night. My boys here will keep you company. You let me know how you feel about it in the morning. You call me tomorrow and tell me okay. They will give you a dime for the phone. Now get out of here.

U/M #2: You want that we should stay with him?

Barcelona: Take him back to his hotel room.

(Device malfunctions.)

## GUIDE



Guide: Workshop #2 - Execution of Eavesdropping Orders

I. WIRETAP ORDER: BAR

Taking each point in the order in which it appears in the order:

(1) Note: the order incorporates the affidavit. Why? Should this be a standard feature of all orders? It permits the courts to read the order in light of the affidavit. For example, orders authorizing wiretaps have not been held void for failure to describe with particularity the communications to be intercepted or failure to set forth related offenses when affidavits incorporated into the order contain the relevant descriptions. United States v. Tortorello, 480 F.2d 764 (2d Cir. 1973), cert. denied, 414 U.S. 866 (1973); United States v. Masciarelli, 558 F.2d 1064 (2d. Cir. 1977). See Bloom v. State, 283 So. 2d 134 (4th Fla. DCA 1973) (search warrant bad since did not incorporate).

(2) "Arson" is designated even though there was insufficient probable cause shown for its inclusion.

(3) Note: Both Lumia and "William" are named. The probable cause on "William," however, is thin to insufficient, even though he is "known." [Barcelona has been wisely omitted.] The phrase "and others as yet unknown" is not included. What is the effect? See United States v. Kahn, 415 U.S. 143, 155-58 (1974), where the Supreme Court held the phrase permitted the interception of coconspirator's communications, even though the named party was not a participant in them. Mr. Justice Douglas in dissent called the phrase an authorization for a "national dragnet." 415 U.S. at 163.

(4) Should the particularization of the conversations have been keyed to more than the crimes in the state statute? Would it have at least been better practice to include some language keyed to the facts of this surveillance, that is, "relating to the receipt, possession, transportation, storage, and sale of stolen property"?

(5) What authority under local law authorizes a court to order a phone company to cooperate? See New England Telephone & Telegraph Co. v. District Attorney, \_\_\_\_\_ Mass. \_\_\_\_\_, 373 N.E. 2d 960 (1978) (Massachusetts court of general jurisdiction has common law and statutory authority to order telephone company to provide technical assistance (including lease lines) to effectuate the wiretap). See generally Mass. Gen. Laws Ann. ch. 2 § 99 (West); N.J. Stat. Ann. §2A: 156A-1 (West).

(6) Note: There is obviously a typing error in the termination clause. "Not" has been omitted. What is the effect of such mistakes? See United States v. Poeta, 455 F.2d 117 (2d Cir. 1972), cert. denied, 406 U.S. 948 (1972) (order from which nontermination paragraph was accidentally stricken was in substantial compliance with 18 U.S.C. 2518(4)). Several courts have held that Rule 36 of the Federal Rules of Criminal Procedure gives the issuing court the power to amend an order to correct a technical omission. Dudley v. United States, 320 F. Supp. 456 (N.D. Ga. 1970) (date omitted); United States v. Diadone, 558 F.2d 775 (5th Cir. 1977) (failure to sign order). See State v. Buffa, 347 So.2d 688 (4th Fla. DCA 1977) (error in street address). But see United States v. Lamonge, 458 F.2d 197 (6th Cir. 1972) (omission of date from order rendered it invalid on its face despite amendment).



## II. BUG ORDER: FLORISTS

Taking each point in the order in which it appears in the order:

(1) Should the room or area in the florist shop have been designated? Would there be a difference between a back room and the public part of the shop?

(2) Is it proper (or wise) to give the organized crime connection of a police officer (or attorney) in legal papers? See United States v. Bally Manufacturing Corp., 345 F. Supp. 410, 436 (E.D. La. 1972) ("Racketeering" in caption of indictment and job-title following U.S. attorney's signature stricken).

(3) Do you have probable cause to designate Lumia and "William" in the bug order?

(4) Could more be done to specify the character of what may be intercepted? This language is better than designation by crime. Nevertheless, it brings out both the problem with the Bar order and the difficulty with the theory of the Florist surveillance. If you can get this particular, it may meet one of the objections to the theory. Note, however, if the theory is sound, the nature of the conspiracy in fact, not the legal theory, sets the framework of the order and the permissible limits of the surveillance. If your "criminal enterprise" is all encompassing, then surveillance that is similarly broad should not be objectionable.

(5) Should special minimization provisions have been written into this order in light of the pending California indictment? Intercepted statements that are not deliberately elicited do not fall within attorney-client privilege and

do not interfere with effective assistance of counsel are admissible. United States v. Hinton, 543 F.2d 1002 (2d Cir. 1976), cert. denied sub. nom. Bates v. United States, 429 U.S. 1066 (1977); Hoffa v. United States, 385 U.S. 293 (1966); Weatherford v. Bursey, 429 U.S. 545 (1977). While United States v. Henry, 27 Crim. L. Rptr. 3155 (6-18-80), excluded postindictment admissions obtained by cell mate, Justice Burger's opinion distinguished "an inanimate electronic" device from an informant under the Sixth Amendment's Massiah v. United States, 377 U.S. 201 (1964) (postindictment admissions deliberately elicited without counsel excluded). 27 Crim. L. Rptr. 3157 n.9.

(6) What of progress reports? Particularly in light of the scope of the order and the potential Sixth Amendment questions. Progress reports are not statutorily required and are within the discretion of the supervising judge. United States v. Ianelli, 340 F. Supp. 151, 156 (W.D. Pa. 1977). Judicial supervision is recognized as an effective aid to minimization and a major factor in the determination of the adequacy of minimization. See United States v. Bynum, 485 F.2d 490, 501 (2d Cir. 1973), vacated on other grounds, 417 U.S. 903 (1974); United States v. Cox, 462 F.2d 1292, 1301 (6th Cir. 1972).

(7) Is it proper to have an effective day different from the day the order is signed?

[Section 2518(5) of Title 18] requires the time of the warrant to be carefully tailored to the showing of probable cause. The period of authorized interception is intended to begin when the interception -- in fact -- begins . . . . A wiretap can take up to several days or longer to install. Other forms or devices may take even longer. The

provision is intended to recognize that each case must rest on its own facts. But the execution must be prompt. Otherwise there is a danger that the showing of probable cause and the additional information in the application will become stale (citations omitted). S. Rep. No. 1097, 90th Cong., 2d Sess. 2112, 2192 (1968).

(8) Should an entry (and reentry) clause have been included? Yes. See Dalia v. United States, 441 U.S. 238, 259 n.22 (1979) (not required by Fourth Amendment or Title III, but "preferable approach").

### Instructions

Instructions are a good idea. They go a long way to establishing good faith. Note, however, that they are not overly specific or technical. They have been drafted in that fashion to avoid motions to suppress based on a failure to comply with internal memoranda. See United States v. Morse, 491 F.2d 149, 156 (1st Cir. 1974); United States v. Caceres, 545 F.2d 1182, 1187 (9th Cir. 1977). Students should be queried as to procedures that are utilized by their individual offices to illuminate those practices that have proved particularly valuable.

### III. DAILY PLANT REPORTS: BAR

Note: The wiretap on the public phone malfunctioned, so that we only have the Daily Plant Report for the bar phone. (Query: if you were concerned about privacy and the tap of the public phone, would it have been a good idea "to have arranged" for the public phone to have malfunctioned? It is unlikely that the public would have used the bar phone that much, and it would have "concentrated" the business use by the subjects.)

Discuss each entry in chronological order to determine whether or not minimization has been achieved and to see if any action is required (for example, amendment).

Note: minimization requirements are less stringent at the inception of the execution of an order. Thus, where appropriate, you should require the students to analyze the interceptions as if they had occurred at a later period in the surveillance.

A. 8/10/80

10:18 A.M.: In this call an unknown male (out) speaks to an unknown male (in) about an unknown subject matter. (If the male (in) is in fact the bartender, why had someone on the plant not arranged to go into the Bar to become acquainted with his voice?) The conversation, therefore, should have been minimized. The call was, however, of a short duration, about 1 minute and 15 seconds (25 lines at 20 lines/minute). Generally, all courts will allow executing officers to listen at the onset of the conversation for a short period of time--usually two minutes. United States v. Armocida, 515 F.2d 29, 45 (3d Cir. 1975), cert. denied, 423 U.S. 858 (1975). For example, Mr. Justice Brennan (Douglas and Marshall concurring) noted in a dissenting opinion opposing the Supreme Court's decision to deny certiorari in Bynum v. United States, 423 U.S. 952, 954 (1975), "Necessarily

calls of short duration will generally have to be monitored in toto; agents must inevitably listen briefly to all calls in order to determine the parties to and the nature of the conversation."

Note: The wiretap order was dated and timed (August 10, 1980 at 12:30 P.M.). It is, of course, possible to begin the process of execution - talking to phone company, setting up equipment, etc. - before the listening begins. (This can also be an issue where a continuance is obtained.) But care must be used to guarantee that privacy invasion does not begin (or continue) until the order for extension is signed. Here the order is timed 12:30; this call is timed at 10:18. It was, therefore, illegally intercepted. (This is also true of the other morning calls, but need not be repeated each time.)

10:25 A.M.: This second call involved two unnamed parties engaging in a conversation about "discount fares." A variety of issues are raised:

(1) The only sure argument (other than short duration) justifying interception is that it occurred very early in the surveillance:

During the early stages of surveillance the agents may be forced to intercept all calls to establish categories of nonpertinent calls which will not be intercepted thereafter. Interception

of those same types of calls might be unreasonable later on, however, once the nonpertinent categories have been established and it is clear that this particular conversation is of that type.

Scott v. United States, 436 U.S. 128, 141 (1978).

(2) Since the order does not have Kahn (415 U.S. 143, 155-58) language ("and others as yet unknown"), it does not authorize surveillance of unnamed parties. See United States v. Civella, 533 F.2d 1385 (8th Cir. 1976), cert. denied, 430 U.S. 905 (1977), where order was limited to named party and conversations in which he was a participant. (This issue could be raised on a number of subsequent calls; it should not be necessary to repeat it each time.)

(3) There is a substantial problem with how to classify the subject matter of this call. The people talk about "discount fares." At worst, that could be termed suspicious. If it is stolen airline tickets, there is an even more sophisticated issue. The order says "criminal possession of stolen property." The subject matter of the call falls within that class. But the objection may be raised that the probable cause supporting the order went to Lumia's operation that was dealing in stolen property, not some other group. (This is the point raised above on the order illustrated.) While the call fits within the statute, does it fit within the

probable cause showing of the order? What if a jurisdiction had a special statute dealing with airline tickets? Could an argument be convincingly made that the order would have to specify the particular statute to authorize the interception of the particular subject matter?

(4) If we decide that it is new matter, a "plain view" problem is posed, both on the question of (a) lawful interception and (b) the need for amendment.

(a) Interception. 18 U.S.C. § 2517(5) (1976) provides that intercepted communications relating to "offenses other than those specified in the order of authorization" may be disclosed or used when inadvertently overheard in the course of an authorized wiretap. Additionally, it is well settled that, under appropriate circumstances, the police may seize evidence in plain view without a warrant. Coolidge v. New Hampshire, 403 U.S. 443, 465 (1971). A similar statute, N.Y. Crim. Proc. Law § 700.65(4) (McKinney 1971) has been construed as engrafting the "plain view" exception upon the general constitutional requirement that seized evidence must be particularly described in the application for a warrant. People v. DiStefano, 38 N.Y.2d 640, 648, 345 N.E.2d 548, 552, 382 N.Y.S.2d 5, 9

(1976) (eavesdropping warrants based substantially the same principles applicable to search warrants for physical evidence); see Berger v. New York, 388 U.S. 41, 53-60 (1967).

Several district courts have held that the "plain view" doctrine also applies to electronic searches under Section 2517(5). United States v. DePalma, 461 F. Supp. 800, 825 (S.D.N.Y. 1978); United States v. Aloi, 449 F. Supp. 698, 717 (E.D.N.Y. 1977); United States v. Perillo, 333 F. Supp. 914, 920 (D. Del. 1971); United States v. Sklaroff, 323 F. Supp. 296, 307 (S.D. Fla. 1971); United States v. Escandar, 319 F. Supp. 295, 300-01 (S.D. Fla. 1970).

In United States v. Cox, 449 F.2d 679 (10th Cir. 1971), the tenth circuit held Section 2517(5) constitutional. It relied upon the fact that Section 2517(5) demands an original warrant in accordance with the highly specific requirements of 18 U.S.C. § 2518(4) (1976). Id. at 686. The court further recognized that the nature and probable consequence of authorized wire-tapping is discovery of unanticipated and undescribed communications. The "plain view" doctrine, however, was declared to be an imperfect analogy because "the search for property is a different and less traumatic



invasion than is the quest for private conversations." Id. at 687. Nevertheless, the court stated that it would be the height of unreasonableness to distinguish between information specifically authorized and that which is unanticipated and develops in the course of an authorized search. Id. at 685.

Under the plain view doctrine, seizure may only occur when there is probable cause to believe that the item to be seized (the conversation) constitutes evidence of a crime. United States v. Worthington, 544 F.2d 1275, 1280 (5th Cir. 1977); United States v. Johnson, 541 F.2d 1311, 1316 (8th Cir. 1976); Commonwealth v. Wojcik, 358 Mass 623, 645, 266 N.E.2d 645, 650 (Mass. 1971).

Probable cause is held to exist where the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient within themselves to warrant a man of reasonable caution to believe that an offense has been or is being committed. Carrol v. United States, 267 U.S. 132 (1925).

Where probable cause does not exist, seizure of the interception can be justified only if it was incidental to spot-monitoring. In this case, spot-monitoring does not appear to have been employed, and since it can not

be convincingly shown that there is probable cause to believe that this conversation deals with any crime, it should not have been intercepted.

(b) Amendment. If it is decided that the subject matter is clear enough ("to a probability") and that it relates to a crime, two additional issues are presented. First, is it within the order (i.e., stolen property)? (See above.) If so, nothing need be done. Second, if it is new matter (i.e., a different stolen property ring or a different kind of crime - stolen airline tickets), do you have to get a retroactive amendment? Even if it falls within the order, suppose you want to use it in a grand jury or trial to prove a different crime?

The cases indicated that an amendment should be obtained without delay ("as soon as practicable") before it can be used in a grand jury or trial where it relates to a new offense or when the use to be made of it, even though it relates to the designated offense, is to prosecute for a different offense; that is, even though it falls within "possession of stolen property" if the prosecution is under a specific statute for "possession of stolen airline tickets", an amendment has to be obtained. Compare United States v. Marion, 535 F.2d 697 (2d Cir. 1976) and United States v. Brodson, 528 F.2d 214 (7th Cir. 1975)

with Moore v. United States, 513 F.2d 485 (D.C. Cir. 1975) and United States v. Daly, 535 F.2d 434 (8th Cir. 1976), in light of United States v. Capra, 501 F.2d 267 (2d Cir. 1974), cert. denied, 420 U.S. 990 (1975).

(5) Finally, a general point can be made:

[C]onversations of persons who are not targets of the investigation may be monitored for brief intervals to assure that their use of the phone is not a ruse to mask a suspect's use of the phone or to convey information regarding the crimes being investigated.

People v. Floyd, 41 N.Y.2d 245, 252, 360 N.E.2d 935, 941-42, 392 N.Y.S.2d 257, 263 (1977).

10:40 A.M.: This call is similar to the preceding one, with an increasing suggestion of an unknown type of criminality. Here spot-monitoring was correctly utilized.

11:08 A.M.: This call involves a named party ("Lumia") and it seemingly relates to the designated offense ("stolen property"). It was properly intercepted. Nevertheless, this is the first call in which Lumia was a participant. The officers should, therefore, be questioned to determine if there was adequate voice, or visual identification, or other means of recognition of Lumia from the context of the conversation. (See problem with bartender, supra.) Failure to amend promptly after inadequate and mistaken identification has led to suppression. United States v. Capra,

501 F.2d 267, 276 (2d Cir. 1974), cert. denied, 420 U.S. 990 (1975). Dellacava, unnamed, was confused with DellaValle, named, due to a similarity of voice.

11:15 A.M.: This call is similar to the preceding one.

11:24 A.M.: While the subject matter of the proposed meeting and hence the call is far from clear, it does involve a named party, "another deal," and follows the previous interceptible call. There is no reason, however, to believe Mr. Smithburg's maid is in anyway connected with any criminal activity. Nevertheless, as a message taker, she is an "agent," and thus, even if she acts without knowledge of the purpose of the messages to the extent those messages related to Lumia's criminal activities (subject to the Kahn problem, supra), the conversations are subject to lawful interception. (See, e.g., United States v. Bynum, 485 F.2d 490, where an unwitting babysitter was used to convey to participants information relating to a large-scale narcotics conspiracy.) See also United States v. Falcone, 364 F. Supp. 877 (D.N.J. 1973), aff'd, 500 F.2d 1401 (3d Cir. 1974) (right to listen, at least to portion of conversations, of "unwitting tool").

11:47 A.M.: This call was properly intercepted (named party ["Lumia"] and designated subject matter ["stolen property"]). Note: it reflects common practice.

Most property today is stolen on order or at least resale is set up before theft occurs. See generally Blakey and Goldsmith, "Criminal Redistribution of Stolen Property: The Need For Law Reform," 74 Mich. Law Rev. 1511, 1535-38 (1976).

11:55 A.M.: This call is one of a named party (Lumia), but it obviously is not the designated offense (stolen property); it sounds like loansharking. First, was it overheard in plain view? It would appear so. Second, is there a need for a retro-active amendment? Yes. What of a prospective amendment?

If you have probable cause to believe that subsequent calls of this character will occur (and have time to obtain an amendment, that is, a new order for the new subject matter), you must do so. Otherwise, the subject matter, if it occurs again, will not be "unanticipated," so that the "plain view" doctrine will not serve to justify interception. See generally United States v. Welsch, 446 F.2d 220, 223 (10th Cir. 1971); People v. DiStefano, 38 N.Y.2d 640, 345 N.E.2d 548, 382 N.Y.S.2d 5 (1976). See generally Comment, "Post-Authorization Problems in the Use of Wiretaps: Minimization, Amendment, Sealing, and Inventories," 61 Cornell Law Rev. 92 (1975) (excellent student note anticipating DiStefano result).

12:17 P.M.: This conversation could be considered relevant to determine where a named party might be for the rest of the day, as an aid to physical surveillance. Cf. United States v. Falcone, 364 F. Supp. 877, 882 (D.N.J. 1973), aff'd, 500 F.2d 1401 (3d Cir. 1974). From the context of the discussion, however, it appears that Lumia is speaking with his wife. Such conversations are, of course, privileged. 18 U.S.C. § 2517(4). Some investigation, therefore, should be undertaken to determine the identity of the "U/F" to whom he was speaking (use of a ruse to obtain sample of wife's voice). If there is reason to believe that the person was in fact Lumia's wife, procedures should be established for minimizing-out similar conversations in the future.

12:20 P.M.: This conversation is between a named party (Lumia), and it is related to the subject matter (stolen property), at least to the degree that it seems directed toward future burglaries, a means by which stolen property is obtained.

12:32 P.M.: This call was so short that it probably could not have been minimized. In addition, it could be considered a surveillance assistance call.  
(See supra 12:17.)

12:35 P.M.: This conversation is similar to the ones which occurred at 10:25 and 10:40, and a similar analysis should be used. There is no question, moreover, that there are now strong indications that

the "tickets" are in some way illegal. (Note: we are building up probable cause to believe that future similar calls will be received. What is the effect of that development?) Without knowing what types of tickets are being referred to, or whether they are stolen or forged, however, can probable cause to satisfy Wojcik, supra, exist? Put another way, does the wiretap law require probable cause to exist for a "specific crime" rather than "crime" in general? See Berger v. New York, 388 U.S. 41 (1967). Thus, under ordinary circumstances, this conversation probably should have been spot-monitored, particularly if the statement about the "legit" price occurred after the initial two-minute period.

Information obtained from previous conversation does, however, raise another interesting point. Should the officers spot-monitor when they know that the named parties are not present at the location? Probably yes:

The District Judge specifically found that the wiretap was needed to "reveal the identities of [Irving Kahn's] confederates, their places of operation, and the nature of the conspiracy involved." It is evident that such information might be revealed in conversations to which Irving Kahn was not a party. For example, a confederate might call in Kahn's absence, and leave either a name, a return telephone number, or an incriminating message. Or, one of Kahn's associates might himself come to the family home and employ the target telephones to conduct the gambling business.

United States v. Kahn, 415 U.S. 143, 156-57 (1974). And see People v. Floyd, 41 N.Y.2d 245, 251, 360 N.E.2d 935, 941, 392 N.Y.S.2d 257, 263 (1976).

But, where, under these circumstances, there was no expectation that such information might be revealed by spot-monitoring, the decision to terminate all monitoring of that conversation would be evidence of a good faith effort to minimize. Such evidence is useful at the inevitable pretrial suppression hearing. Cf. United States v. Tortorello, 480 F.2d 764, 785 (2d Cir. 1974).

12:40 P.M.: The same problem still exists. The parties are not named; there is no probable cause to believe that a specified crime is being committed. Thus, the conversation should have been spot-monitored, and incriminating information obtained, if at all, only as a result. They could then be used after an appropriate retroactive amendment pursuant to 18 U.S.C. § 2517.

Paragraph (5) [of 18 U.S.C. § 2517 (1976)] provides that if an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized in the chapter, intercepts wire or oral communications relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (1) and (2) of this section,



discussed above. Such contents and any evidence derived therefrom may be introduced in evidence under subsection (3) of this section only when authorized or approved by a judge of competent jurisdiction as defined in section 2510(9) where such judge finds on subsequent application that the contents were otherwise intercepted in accordance with the provisions of this chapter. they need not be designated "offenses." Such subsequent application would include a showing that the original order was unlawfully obtained, that it was sought in good faith and not as subterfuge search, and that the communication was in fact incidentally intercepted during the course of a lawfully executed order.

S. Rep. No. 1097, 90th Cong., 2d Sess. 100, reprinted in [1968] U.S. Code Cong. & Ad. News 2112, 2189.

On the other hand, can these interceptions be said to have been "incidental" or "inadvertent" (as required by the Statute and the plain-view doctrine, Coolidge v. New Hampshire, 403 U.S. 443 (1971)), given the previous conversations? See People v. DiStefano, 38 N.Y.2d at 649, 345 N.E.2d at 553, 382 N.Y.S.2d at 10 (1976):

the . . . conversations could [not] have been foreseen and, thus, were not proscribed anticipated discoveries. While it may be true that . . . the authorities knew of defendant and even may have entertained questionable suspicions as to his plans, nevertheless, . . . the authorities lacked probable cause to seek amendment of the warrant to include either the crimes . . . or to even name the defendant or his cohort. Indeed, the police had no grounds upon which they could reasonably have asserted that defendant would use [that]

. . . telephone again. We conclude, therefore, that the . . . conversations were inadvertently overheard and, thus, were discovered in 'plain view.'

2:45 P.M.: This call between unnamed parties may be interceptible on the theory that it is likely to provide information required to maintain continued effective surveillance of the subject.

The Government also concedes that 75 calls or 6.3 percent were to the New Jersey Bell Telephone Company. I find that these calls were pertinent to the investigation in that they permitted the monitoring agents to find out if telephone service might be discontinued, thereby ending the electronic surveillance without the agents' knowledge.

United States v. Falcone, 364 F. Supp 877, 882 (D.N.J. 1973), aff'd, 500 F.2d 1401 (3d Cir. 1974). Changing or adding a telephone is, as a practical matter, little different from discontinuing service. Moreover, the privacy interests of the telephone business office in a commercial transaction would seem to be of substantially less importance than those involved in personal calls. 18 U.S.C. § 2511(2) (a). Cf. Pittsburgh Press Co. v. Pittsburgh Com'n on Human Rel., 413 U.S. 376, 384 (1974). While this broad definition of pertinency has been attacked as of "dubious constitutionality" in that it grants excessive discretion to monitoring officers, J. Carr, The Law of Electronic Surveillance (1977), courts

have consistently sustained interception of calls of a "kind that would aid the investigators in perceiving the size, nature, identity, and mode of operation of the criminal enterprise." See generally Comment, "Post-Authorization Problems in the Use of Wiretaps. Minimization, Amendment, Sealing, and Inventories," 61 Cornell L. Rev. 92 (1975).

During the period of time that the telephone was left off the hook, however, the mouthpiece acted as a bug, a device not authorized in the order. How does that aspect of the situation affect the lawfulness of the surveillance?

Where background conversation is intercepted during the course of an ongoing telephone communication, the courts have reached differing conclusions as to its admissibility. Two district judges in Michigan, on the basis of the "plain view" doctrine, would admit the conversations into evidence. United States v. Luna, 525 F.2d 4 (6th Cir. 1975), cert. denied, 424 U.S. 965 (1976); United States v. Bourgeois, Crim. No. 48456 at 11-12 (E.D. Mich. Nov. 1973), cited in J. Carr, The Law of Electronic Surveillance 296, n.53 (1977). A different conclusion was reached in United States v. King, 335 F. Supp. 523, 548 (S.D. Cal. 1971), cert. denied, 417 U.S. 920 (1974). Nevertheless,

because of the difficulty of minimizing the background conversation, the courts will apparently not suppress the telephone conversation itself. United States v. Lanza, 349 F. Supp. 929 (M.D. Fla. 1972); United States v. Leta, 332 F. Supp. 1357 (M.D. Pa. 1971), rev'd on other grounds, 467 F.2d 647 (3d Cir. 1972). Note that here, however, where there was no telephonic communication at all, the considerations that moved these courts are not applicable. The interception of the oral communication between Lumia and U/M, no matter how relevant, was not authorized by the order nor permissible under the plain view theory.

3:30 P.M.: Information calls by named parties (note: this is not a named party) are arguably subject to interception in order to determine the identity of the parties with whom the party intends to communicate. See United States v. Falcone, 364 F. Supp. 877, 882 (D.N.J. 1973), aff'd, 500 F.2d 1401 (3d Cir. 1974).

While it may be interesting to debate the various factors involved in the decision to minimize this particular conversation, it is not likely that the courts will care one way or the other, that is, whether the party was named or not.

Many of the remaining calls were very short, such as wrong number calls, calls to persons who were not available to come to the phone, and calls to the telephone company to hear the recorded weather message which lasts less than 90 seconds.

Scott v. United States, 436 U.S. 128, 141-42 (1978).

Even Mr. Justice Brennan would specifically exclude "calls to such services as information and the weather" as being irrelevant in determining whether minimization was achieved. 423 U.S. at 954.

3:31 P.M.: There are two problems with this call. First, it does not involve a named party. But it was so short before Bill says, "Gus said, etc.," that it was objectionable to that point. It then became a Kahn issue. Is it incriminating? At this stage, it is not possible to know. Second, the conversation in Italian presents a special problem. Now, we have a named party. But among the executing officers at the plant, there was no qualified language expert to translate and to determine relevance; the meaning of the conversation could only be discovered after the conversation was seized. Of course, the interpreter could "minimize," but "interception" had already occurred. Given the context in which that portion of the conversation took place,

there were reasonable arguments for interception. Nevertheless, if such conversations are to be intercepted in the future, it would be desirable to have an Italian-speaking officer at the plant.

The difficulty of identifying what was relevant and what was not was increased by the use of codes and often, by use of colloquial Spanish rather than English. Thus, only after translation could the agents evaluate the conversations. Chief Judge Robson, prior to giving his authorization, was advised of some of these difficulties. He limited the initial tap to 20 rather than the statutory maximum of 30 days. He required, and received, reports from agent Petrossi at five-day intervals throughout the tap.

Under these circumstances we find that the government has made a prima facie showing of reasonableness, and that the burden is shifted to the defendants to suggest what alternative procedure would have better minimized interception of noncriminal conversation while still permitting the government to achieve its legitimate objectives. United States v. Quintana, 508 F.2d 867, 875 (7th Cir. 1974). See United States v. Manfredi, 488 F.2d 588, 599-600 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974).

[Query: What do you do if the conversation is in a North American Indian language which you cannot identify and which is not spoken by any law enforcement officer?]

4:02 P.M.: This call, of course, involves a named party (Lumia), but it is not clear that the subject is stolen property. Recall that Bradson, "the Flea," was identified as an arsonist. If that identification was tainted, what of this identification? He was seen in the Bar and identified

by his license number. An independent source? What is the reference to "Brando's movie"? Those who have seen "Apocalypse Now" will know what the last scene was like. (Fire all over the place.) What does "like Mitchell Street" refer to? Another fire? (Look in the newspaper. Talk to the Fire Department.)

5:00 P.M.: This call (not named; not subject) may be intercepted on several grounds. First, it was short. Second, it identified one of the probable co-conspirators (Meli).

5:30 P.M.: Interceptible under the plain view theory. Note that a retroactive amendment would be necessary if the conversation is to be used in a court proceeding for gambling against the unknown male. If, however, the conversation is only to be used as the basis of a new order for the phone of the bet taken, then an amendment is not necessary. 18 U.S.C. § 2517(2); United States v. Johnson, 539 F.2d 181 (D.C. Cir. 1976), cert. denied, 429 U.S. 1061 (1977).

B. 8/11/80

10:05 A.M.: This call (named party [Lumia] but probably not designated subject matter [loansharking rather than stolen property - see 8/10/80 at 11:55]) presents another variation of the "plain view" problem posed in other times previously and considered in People v. DiStefano, supra. Could

this call have been anticipated to a probability?  
Was there time to obtain a prospective amendment?

10:30 A.M.: This call was too short to have been minimized.

In addition, it is a named party. The subject matter, however, is not easy to classify. Would efforts to fend off the police be part of the stolen property conspiracy? Probably. If so, it is within the order. But it also relates to bribery(?) and obstruction of justice(?). This poses an amendment problem like 8/10/80 at 10:25, point number (4) (b).



#### IV. DAILY PLANT REPORTS: FLORISTS

Note: It took only a day (a very short period of time) to get the bug installed. It often takes much longer or is impossible altogether.

Discuss each entry in chronological order, as above. Some preliminary discussion, however, may be in order to learn how taps and bugs differ in the way various offices handle them, installation, minimization, etc. Most offices will have little experience with bugs. (The Annual Report for 1980 of the Administrative Office of the U.S. Courts indicates that in 1979 that of 533 surveillances, 484 were wiretaps, 26 were bugs, and the rest (23) were combinations (at p. 3).) What experience is present should be drawn upon.

August 11, 1980

2:00-2:05: This conversation is among the named party (Barcelona) and his "and others as yet unknown." The subject matter is arson and possibly loan-sharking. Note how the theory of the surveillance (conspiracy to murder to further an unlimited range of specific crimes) makes minimization "not necessary" where any criminal activity is discussed. (A great deal of other conversation will also be relevant.) This may be either the great boon in the theory or its undoing. (This conversation, slightly modified, actually occurred on June 3, 1965, between Samuel DeCavalcante, an LCN boss in New Jersey, and an underlying. See II Commission Hearings: National Commission For

The Review of Federal and State Laws Relating  
to Wiretapping and Electronic Surveillance 1605  
(1976).)

3:15-3:45: This conversation does not touch on a specific crime, as above. But it should be considered within the order since it relates to the nature of the conspiracy to murder that the mob itself actually is.

Fear is sometimes expressed that bugs cannot be minimized. Note that there was some apparent effort here to spot-monitor. Not true. Spot-monitoring will always be appropriate and sometimes successful. How successful will depend on how "directed" the conversations are. In a business office, where visitors come in one by one, for example, the situation should not be that much different from wiretaps. Difficulties will, of course, arise with long, rambling conversations. But what is not different in kind from the problems posed by surveillance of complex drug conspiracies where codes are used. And, after all, only good faith efforts, not perfection, is what is required. See United States v. Scott, 436 U.S. 128 (1978); United States v. Manfredi, 488 F.2d 588, 592-93 (2d Cir. 1973), cert. denied, 417 U.S. 936 (1974). Compare United States v. Cox, 462 F.2d 1293, 1300-01 (8th Cir. 1972) (properly minimized in drug surveillance), cert. denied, 417 U.S. 918 (1974) with United States v.

Sisca, 361 F. Supp. 735, 744-45 (S.D.N.Y. 1973),  
aff'd, 503 F.2d 1337 (2d Cir.), cert. denied, 419  
U.S. 1008 (1974) (failure to minimize even though  
code and guarded language was used, and many  
apparently innocent conversations later were  
found to be pertinent to the investigation).  
These conversations, slightly modified, actually  
occurred on August 31, 1964, and thereafter,  
between DeCavalcante and underlying. See J. Volz  
and P. Bridge, The Mafia Talks, pp. 147-85  
(Fawcett ed. 1969).

4:00-4:05: This is a named party (Barcelona). The subject  
matter (it sounds like some sort of insurance  
fraud) is not clear, but that should not pose too  
great a difficulty in light of the theory of  
the surveillance. While it is a phone conver-  
sation, only one half of what has been spoken  
has been overheard. It should still be termed  
a bug.

5:00-5:15: This is a named party (Barcelona), but he is  
talking to a lawyer; it is apparently, moreover,  
about the pending California case. Post-indictment  
admissions that are elicited by questions outside  
the presence of the defendant's lawyer will be  
suppressed in the trial of that charge. Massiah  
v. United States, 377 U.S. 201 (1964) (wired informer  
questioned defendant); United States v. Henry, 27

Crim. L. Rptr. 3155 (6-18-80). Where a defendant is overheard, but there was not questioning, there is no Sixth Amendment right to counsel grounds for the suppression of admissions. United States v. Hinton, 543 F.2d 1002 (2d Cir. 1976), cert. denied, 429 U.S. 1066 (1977) (wiretap admissible in different prosecution where admissions not elicited). Nevertheless, while there may be no right to counsel question that will suppress admissions, a fair trial issue that can result in a new trial can be posed; the lawyer and the client are entitled to privacy in the preparation of the defense. Coplon v. United States, 191 F.2d 749, 757, 759 (D.C. Cir. 1951), cert. denied, 342 U.S. 926 (1952) (wiretap). Cf. Hoffa v. United States, 385 U.S. 293 (1966) (informant in defense camp); Weatherford v. Bursey, 429 U.S. 545 (1977) (same). The issue is one of prejudice. The utmost care must be used in listening to any lawyer conversations. When defense strategy is overheard, it must not become communicated to the prosecutor who is handling the trial--Weatherford, supra. Indeed, it could be argued that prudence would indicate not to listen to lawyer conversations at all. But see United States v. Hyde, 574 F.2d 856, 870 (5th Cir. 1978) ("It would be unreasonable to expect agents to ignore completely any call to an attorney or doctor . . . .") Here, however,

it becomes clear that the lawyer is not merely defending the client, but participating in at least an effort to obstruct justice. As such, there is no lawyer-client or Sixth Amendment right implicated. See generally 8 J. Wigmore, Evidence (McNaughton rev. 1961) §§ 2290, 2291, 2298, 2310, 2321, 2326; Note, "Government Interceptions of Attorney-Client Communications," 49 N.Y.U. L. Rev. 87 (1974).

In addition, the arson-fraud-public corruption character of previous conversations emerges. (After the contract arson to collect the insurance is fulfilled, someone is fixing up the official report.) Finally, some effort has to be made -- without, if possible, revealing the fact of the surveillance -- to warn the F.B.I. (or the witness) without delay. It looks like a hit is going to be ordered. The class should be asked for suggestions how to both warn the witness and protect the bug. (Note: your ability to protect the witness may ultimately depend on your continued coverage.)

5:30-6:15: Here, this conversation is like the one at 2:00. (It is taken from a court order surveillance undertaken in September, 1964, of Carmine Persico, a New York mob figure. See A. Seedman and P. Hellman, Chief, pp. 182-84 (Avon 1975). There should be no trouble in justifying its interception under the theory of the order.

Other questions are, however, posed by the malfunction of the device. May the agents enter to fix the bug? Yes. Do they need an explicit order? No. Should the original order have authorized entry explicitly? Yes. Should the authorizing judge now be told about the reentry? Yes. See United States v. Dalia, 439 U.S. 817 (1979).

#### V. POSSIBLE FUTURE INVESTIGATION

In only a short period, both the tap and bug have been unusually productive. In the order of their relative importance (human life, public integrity, property), you now have leads or evidence of:

(1) conspiracy to murder a witness

bug: 8/11/80 - 5:00

(2) public corruption

(a) file clerk: bug: 8/11/80 - 5:00

(b) police (phone company?) warning: tap: 8/10/80 -  
10:30

(c) arson/fraud: bug: 8/11/80 - 4:00 and 5:00

(3) mob activity

(a) Bonanno war: bug: 8/11/80 - 3:15

(b) extortion/robbery: bug: 8/11/80 - 5:30

(4) arson fraud

(a) arson: tap: 8/10/80 - 4:02

(b) arson: bug: 8/11/80 - 2:00

(c) arson/public corruption: bug: 8/11/80 - 4:00

(d) arson/public corruption: bug: 8/11/80 - 5:00

- (5) loansharking
  - (a) extortion: tap: 8/10/80 - 11:55
  - (b) extortion: tap: 8/10/80 - 2:45
  - (c) extortion: tap: 8/11/80 - 10:05
- (6) theft/fencing/burglary/stolen airline tickets
  - (a) fencing: tap: 8/10/80 - 11:08
  - (b) fencing: tap: 8/10/80 - 11:15
  - (c) fencing(?): tap: 8/10/80 - 11:24
  - (d) fencing/theft: tap: 8/10/80 - 11:47
  - (e) burglary: tap: 8/10/80 - 12:20
  - (f) stolen airline tickets: tap: 8/10/80 -  
10:25; 10:40; 12:35; 12:40  
tap: 8/11/80 - 11:20
- (7) gambling
  - bookmaking: tap: 8/10/80 - 5:30

The students may differ on their sense of what is important, but it would seem that the first order of business would be protecting the witness. Here that is a question of telling the F.B.I. After that, the most important area would seem to be the arson/fraud/public corruption scheme. (Note: arson is responsible for 10,000 injuries and 1,000 deaths each year, including 45 firefighters; arson for profit is an estimated \$2 billion a year business (Opening Statement of Senator Sam Nun, Arson for Hire, Hearings Before the Permanent Subcommittee on Investigation of the Committee on Governmental Affairs, United States Senate, 95th Cong., 2d Sess. 1 (1978)); and 25 percent of all home insurance goes to pay for arson (Opening Statement of Senator John Glen, id. at 6); yet for every 100

"incendiary or suspicious fires, only 9 persons are arrested, 2 convicted and .7 incarcerated" (John F. Boudreau, Quon Y. Kwan, William E. Faragher, and Genevieve C. Denault, Arson and Arson Investigation: Survey and Assessment, National Institute of Law Enforcement and Criminal Justice (October 1977)); so when you get leads of this character, they should be pursued.) The arson matter, moreover, not only involves one or more past fires, but a contemplated one. The other matters (theft, fencing, burglary, stolen airline tickets, loansharking, and gambling) can be handled later or referred to other agencies.

On the arson matter, we need several things.

First, we need some corroboration of the information that the tap and bug have picked up. Yet we must be careful not to alert the subjects of the investigation too soon. Suggestions? For that matter, who all of the subjects are is not clear. Who is Maas? (Maas would seem to have some connection with the fire department.) Who is Barrows? (He would seem to have some connection with TNT.) What happened on Mitchell Street?

Should we try to get to Maglie on Seneca Street to see if he can be turned? Wire him for talk with arsonists? What about some newspaper research for a fire on Mitchell Street sometime in the last couple of months?

Then maybe subpoenae for:

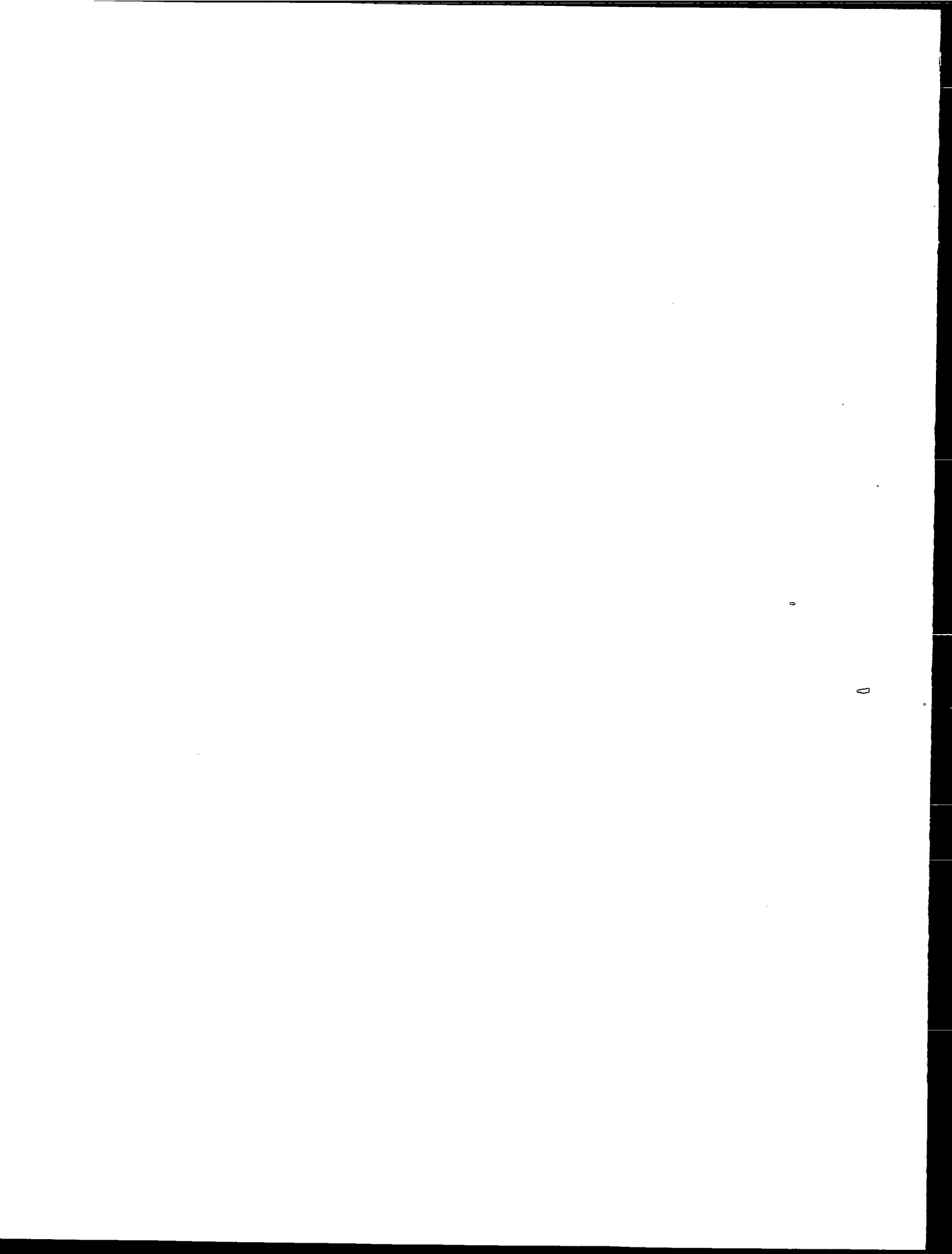
- (1) the owners records,
- (2) the insurance company's records,
- (3) the fire department's records, and
- (4) the books and records of TNT?



Can you think of any way that the thrust of these subpoenae  
can be disguised?



**Workshop #3:**  
**Analyzing Books and Records**



Workshop #3 - Analysis of Books and Records

Premise: Based on your analysis of the Daily Plant Reports, the following investigative steps were taken:

- (1) The files of the Ithaca Journal were searched for articles about a fire on Mitchell Street.
- (2) A subpoena was executed on the State Farm Insurance Company for its records in connection with the Mitchell Street fire.
- (3) Subpoenae were executed on the Marine Midland Bank for:
  - (a) the statements and cancelled checks of Louis Goldberg, and
  - (b) the statements and cancelled checks of TNT Jukeboxes.
- (4) A telephone conversation was recorded between Casper Barrows and City Fire Marshall Frank Maas.

In addition, Gilmurray has picked up some materials on the Mitchell Street fire from the Fire Department.

Problem: Analyze the materials to determine what, if any, additional investigation should be conducted.



(1) ITHACA JOURNAL FILE





# ***Night Of Fire***

By **HELEN SCHWARTZ and  
JOSEPH MUNDELL**  
*Journal Writers*

A Collegetown residence was destroyed early yesterday by a fire which took 60 firefighters more than two hours to control. The residence, at 414 Mitchell Street, was that of Louis and Sarah Goldberg. Goldberg is a local clothing store owner. The cause of the fire was not known, Fire Marshall Frank Maas said.

The first call to the fire department was made at 2:56 a.m. yesterday.

The blaze was difficult to fight because of the house's structure, Maas said. When firefighters arrived, flames were coming out of the east, north and west sides of the residence at 414 Mitchell St.

An open stairway on the east side of the structure "acted like a chimney,"

conducting flames and heat upward. The stairway was consumed on the second and first floors, and the roof collapsed into the front of the first floor, Maas said.

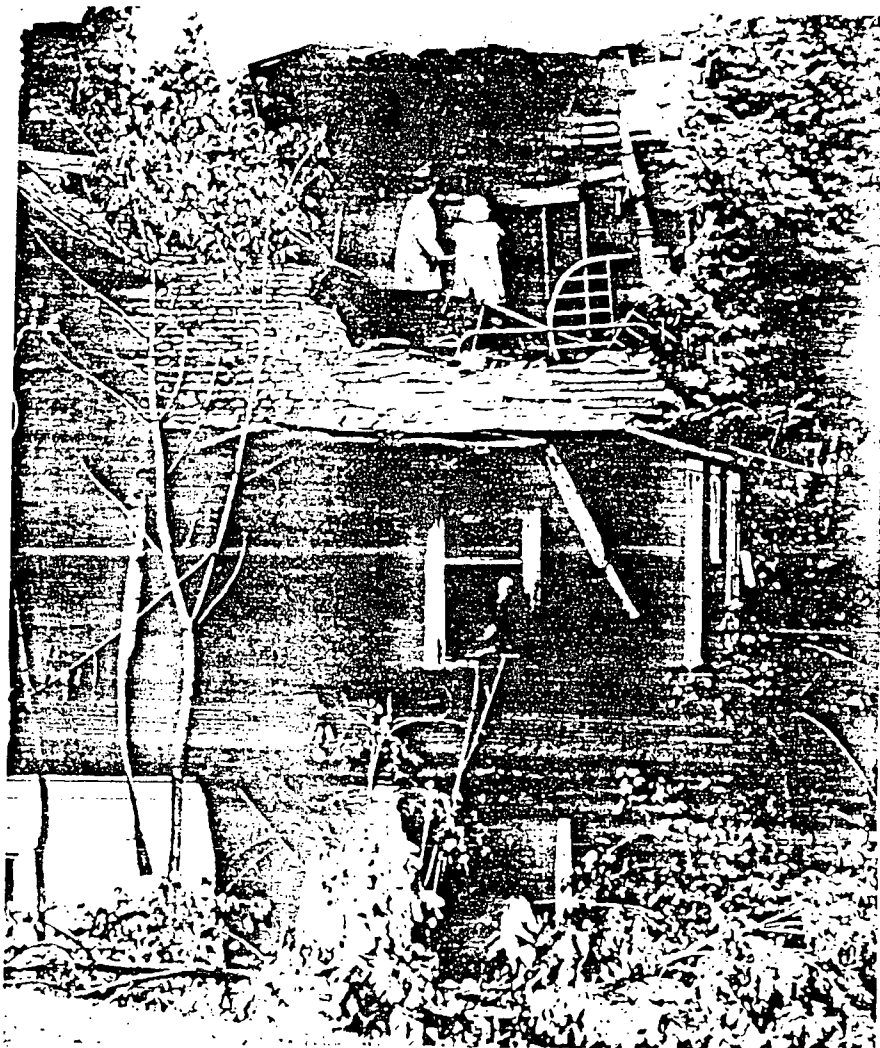
That further complicated the firefighter's task because "what you need to do is to wall inside, but it is impossible when the structure is burned away, and there's nothing to stand on," Maas said.

As a result, firefighters used ladders to gain access to the building.

Firefighters pumped up to 1,500 gallons of water a minute at times, fire officials said.

Owned by Louis Goldberg, the residence at 414 Mitchell Street is assessed at \$65,000.

Goldberg, who was out of town when the blaze occurred, was unavailable for comment.



*Photo by Damon Mark*

Firemen inspect damage from blaze in Collegetown.

(2) STATE FARM FILE





FIRE AND CASUALTY CLAIM REPORT

STATE FARM FIRE AND CASUALTY COMPANY [X] STATE FARM COUNTY MUTUAL INSURANCE CO. OF TEXAS [ ] CALL AGENT [ ] CLAIM NO. 32-146-789

1. NOTICE OF CLAIM

INSURED: Goldberg, Louis and Sarah POLICY NUMBER: 32-039-5055-3
MAILING ADDRESS: Louis Goldberg & Sons, Inc. 40 W. Main Street, Ithaca, Homestate 14850
BUS: 256-7580
LOCATION OF INSURED PREMISES: 414 Mitchell Street Ithaca Homestate 14850
PLACE OF OCCURRENCE: 414 Mitchell Street Ithaca Homestate 14850
DATE OF LOSS: 5/11/80 TIME OF LOSS: 2:56 AM [X] PM [ ] DATE REPORTED TO AGENT: 5/12/80
OTHER APPLICABLE INSURANCE? NO [X] YES [ ] IF YES, EXPLAIN
CAUSE OF LOSS: Fire PROBABLE AMOUNT OF LOSS: BLDG. \$ total CONT. \$ total OTHER \$

HAVE YOU EVER BEFORE HAD A SIMILAR LOSS? [X] YES [ ] NO IF YES, WHEN? WHAT COMPANY(IES) PAID THE LOSS(ES)?

SUMMARY OF FACTS OF LOSS OR INJURY: Fire totally destroyed home.

2. COMPLETE FOR THIRD PARTY AND MED. PAY. CLAIMS

NAME OF CLAIMANT: ADDRESS: NUMBER AND STREET CITY STATE ZIP CODE PHONE
FOR BI CLAIMS: DOCTOR HOSPITAL
PERSON CAUSING DAMAGE OR INJURY: AGE
NAME AND ADDRESS OF EACH WITNESS:

WARNING: THIS POLICY MAY BE VOID IF ANY INSURED INTENTIONALLY CONCEALS OR MISREPRESENTS ANY FACT REGARDING A LOSS. THE FACTS ON THIS FORM REGARDING MY LOSS ARE CORRECT.

SIGNED: Louis Goldberg DATE: 5/12/1980

APPLICABLE ONLY IN CALIFORNIA: FOR YOUR PROTECTION CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM. IT IS UNLAWFUL TO: (A) PRESENT OR CAUSE TO BE PRESENTED ANY FALSE OR FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS UNDER A CONTRACT OF INSURANCE (B) PREPARE, MAKE OR SUBSCRIBE ANY WRITING, WITH INTENT TO PRESENT OR USE THE SAME, OR TO ALLOW IT TO BE PRESENTED OR USED IN SUPPORT OF ANY SUCH CLAIM EVERY PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS PUNISHABLE BY IMPRISONMENT IN THE STATE PRISON NOT EXCEEDING THREE YEARS, OR BY FINE NOT EXCEEDING ONE THOUSAND DOLLARS OR BY BOTH.

3. AGENTS CERTIFICATION OF LOSS

(COMPLETE THIS SECTION IF LOSS TO BE HANDLED DIRECT WITH THE REGIONAL OFFICE) BUILDING DEPRECIATION? [NO] [YES] SALVAGE? [NO] [YES] AMT \$ --- DEDUCTIBLE AMOUNT \$ 100
I RECOMMEND PAYMENT OF \$ AS PER ATTACHED: [ ] ESTIMATE [ ] INVOICE [ ] SCHEDULE OF LOSS [X] PAYMENT WILL BE RECOMMENDED BASED ON FIGURES TO FOLLOW
INCLUDE REPAIR FIRM AS PAYEE ON CHECK SUBROGATION? [NO] [YES] SHOW NAME AND ADDRESS OF SUBROGEE IN SUMMARY
I HAVE INSPECTED THIS LOSS: [NO] [YES] [X] AGENT: Joseph Peters CODE: 1079

4. AGENTS CERTIFICATION OF COVERAGE

(COMPLETE THIS SECTION IF LOSS TO BE HANDLED BY STATE FARM FIELD CLAIM REPRESENTATIVE OR INDEPENDENT ADJUSTER) POLICY TERM: 4-16-80 EXPIRATION: 4-16-81
FORM NOS. (& EDITION DATES) OR COVERAGES IN FORCE: FP7103; FE7380; FE7232; FE3201.2; and FE3388
OTHER INTERESTS: Marine Midland Bank, 1 Marine Midland, Buffalo, Homestate
BUILDING LIMIT \$ 100,000 CONTENTS LIMIT \$ 50,000 OTHER LIMIT \$ 30,000 ON additional living R. C. CERTIFIED? YES [X] NO [ ]
LEFT QUESTION? NO [ ] YES [ ] DEDUCTIBLES APPLICABLE: No. 1 [X] No. 2 [ ] No. 2 MOD [ ] No. 3 [ ] No. 4 [ ] NONE [ ] DEDUCTIBLE AMOUNT(S):

NAME OF INDEPENDENT ADJUSTING FIRM ASSIGNED: Crawford & Company, The Village Green, Robert A. Deyo



*Insurance Adjusters*

TELEPHONE: (607) 257-6734

THE VILLAGE GREEN, 840 HANSHAW RD.  
ITHACA, 14850

ROBERT A. DEYO,  
ADJUSTER-IN-CHARGE

Date 5-14-80

**FIRST NOTICE AND/OR ACKNOWLEDGMENT OF ASSIGNMENT**

RE: Co. Claim No. 32-146-789  
Company State Farm Fire & Casualty  
Policy # 32-039-5055-3 Term 4-16-80/4-16-81  
Agent Joseph Peters  
Location Ithaca, Homestate  
Kind of Loss Fire  
Date of Loss 5-11-80  
Our File # 1507

Gentlemen:  
The following loss was reported to us on 5-13-80 by  
Joseph Peters. Preliminary investigation reveals the basic  
information as indicated below.

Insured: Name Louis & Sarah Goldberg  
Address 414 Mitchell Street, Ithaca, Homestate 14850

Insurance:  Verified by  Policy  Agents Advices  Company Advices  
 Homeowners  Deductible \$100 Item Amount  
 Fire and E.C.  Co-insurance \_\_\_\_\_  
 All risks  Forms \_\_\_\_\_  
 Other \_\_\_\_\_

Mortgagee: Marine Midland Bank  
Extent of Damage: total

Remarks/Reserves:  
Insurance coverage \$100,000/\$50,000/\$30,000

Enclosures:

Robert A. Deyo Adjuster

RECORDED STATEMENT

Claim No: 32-146-789  
Insured: Louis Goldberg  
Interviewing: Peter Nelli

5-15-80

This is Robert Deyo, interviewing Peter Nelli, in person on May 14, 1980. This interview concerns a fire that occurred on May 11, 1980, at 414 Mitchell Street, resident of Louis and Sarah Goldberg.

Q. Will you give me your full name please?

A. Peter Joseph Nelli.

Q. What is your residence address, Peter?

A. Route 2 Box 141 B Newfield, 14867.

Q. Okay uh now you are aware that this conversation is being recorded?

A. Yes sir.

Q. Alright now on May 11, 1980, well before we get into that, you work with the Ithaca Fire Department right?

A. Yes sir.

Q. How long have you been there?

A. Since August 18, 1977.

Q. Okay where did you work before that?

A. Jim Walker Resources, Newfield.

Q. Alright now on the 11th of May you responded to a fire at 414 Mitchell Street, at the residence of Louis & Sarah Goldberg, is that right?

A. Yes sir.

Q. You were actually driving the second truck on the scene, is that right?

A. Yes sir.

Q. Where was the fire when you arrive on the scene?

A. It was towards the middle part of the house more towards the front working its way back to the the right of the house if you are standing in front of it, it was right in the middle towards the front.

Q. Okay it had broken through the roof structure at that time?

A. Yes sir.

Q. Uh could you tell me what you did when you get there how you set up and what you set up and things like that?

- A. I was in truck two and I had the closest plug to the house which Paul informed me of the plug he went in first. Then I had to plug and come on up line 2 1/2 inch long to truck number 2. After it was hooked into the plug the number two truck, I had water going into the truck from the plug. We rolled off a additional 2 1/2 inch that was off of number 2 truck and set up for uh a 2 1/2 discharge on to the fire. Uh then I thought if I called Paul and handle that 2 1/2 I pick up a inch and a half and went into the garage on the house.
- Q. Alright now the front door was opened?  
A. Yes sir.
- Q. Well when I say opened they weren't actually opened they were unlocked?  
A. Unlocked yes sir.
- Q. Okay uh alright now when you went in the house where was the fire?  
A. It was up it hadn't broke through right over the living room through the roof yet it was up in the ceiling.
- Q. Alright uh you didn't smell anything usual or see anything usual at that time?  
A. No sir the fire condition at the time I had a lot of sinus problems.
- Q. Alright us how did the fire react when you hit it with water?  
A. It didn't knock down like it should have it just seem like it was taking more water than usual.
- Q. The uh the fire that you could see was it burning from the house up uh licking the roof structure or was the roof structure actually on fire?  
A. It pretty well licking the roof structure it spread pretty rapidly even after I was inside and we I come back outside to go around to the back it had already burnt through to the eve of the house to the far right hand side.
- Q. That was on the back?  
A. It was on the side of it when we went around to the back.
- Q. Okay and after you pulled out of the house I believe you said that the roof structure prior to your pulling out of the house it collapsed into the what the middle of the house and you backed out at that time?  
A. Yes sir it had already collapsed and I wasn't sure how strong the structure was right above me I didn't want to chance it going in there any farther.
- Q. Alright then you went around to the back is that right?  
A. Yes sir.



Q. Uh when you got around the back uh did you try the house doors or anything like that?

A. Yes sir the uh back door was locked and there was fire up inside the rafter, the top of the basement to the bottom of the floor. And I took my helmet and knocked the glass out and unlocked it.

Q. Alright you went in did you go in there at that time in the house I mean in the basement?

A. Well I couldn't open the uh door all the way up cause of some of the ceiling had fallen down on the kitchen floor and I couldn't get it all the way open.

Q. The floor had already collapsed above it the main level floor?

A. Yes sir some of it had.

Q. Was uh now after the fire of course there was a large pile of (inaudible) laying right there above that hole in the floor, was that pretty well where it was when you got there to open that door as far as you could?

A. Yes sir it was uh it had a pretty good size hole in the floor from what I could see.

Q. Did you ever take the hose on the inside of the house?

A. No sir I was mostly outside. Well at one point uh the man that relieved me off the back and I come round the front and there was a time I did go through the front door it was in the front hallway.

Q. Was the fire still burning pretty good at that time?

A. Yes sir it was still there around that I hole I told you about when we went in the front door.

Q. Alright uh was there anybody with a hose in there at that time, this is the foyer area I would say in the front door?

A. Uh huh.

Q. What I call a foyer area.

A. Uh I believe uh one of the volunteers had a line went through I believe it was where the bedroom was.

Q. Through the window?

A. Uh huh one of the one pretty well right at ground level they had gone through that window and they was knocking what they could out of there too the left of it.

Q. In other words, back over in the back?

A. Uh huh.

Q. Back area back there back in this bedroom area over here to the left of the hole in the floor?

- A. Yes sir the hole in the floor was right in this area right here. And when I went in I was starting right along in here and one or two of the volunteers was in this room fighting starting in this area.
- Q. Do you know who pulled the (inaudible) in this front bedroom?
- A. No sir I don't.
- Q. Would you have normally pulled that sheetrock fighting the fire or uh waited until you pretty well got it about down?
- A. Uh probably would have waited until we got it pretty well knocked down (inaudible) they would pull it down to get to it.
- Q. Alright uh when you came in this door was the area down here the living room the dining room had it been on fire at that time?
- A. Yes sir.
- Q. Basically the inside of the house was gutted out by that time?
- A. Uh huh.
- Q. Well that pretty well covers it I guess, is there anything that you wish to add to the interview?
- A. Pretty well covered what I can of it.
- Q. Okay alright then the statements that you made in the recording are true to the best of your knowledge?
- A. Yes sir.
- Q. Again this recording was made with your knowledge and consent?
- A. Yes sir.

This concludes the recorded interview.

RD:de

RECORDED STATEMENT

Claim No: 32-146-789  
Insured: Louis Goldberg  
Interviewing: Paul Politz

5-15-80

This Robert Deyo, interviewing Paul Politz, by uh in person on May 14, 1980. This interview concerns a fire that occurred at 414 Mitchell Street on uh May 11, 1980. This is the residence of Louis and Sarah Goldberg.

Q. Will you give me your full name please?

A. Paul Robert Politz.

Q. That's P-O-L-I-T-Z?

A. Correct.

Q. And what is your residence address, Paul?

A. Number 1 Colonial Acres, Ithaca.

Q. Alright you are a fireman on D shift for Ithaca Fire Department right?

A. Correct.

Q. Okay uh how long have you been a fireman?

A. Originally I was in the volunteers November of 76 I became full time with Ithaca Department in December of 77.

Q. Alright then uh on May 11 your department your shift received a run uh to 414 Mitchell Street, Ithaca, Homestate, the residence of Louis and Sarah Goldberg, is that right?

A. Yes it is.

Q. Do you remember approximately what time that came in?

A. Rough guess approximately 3 something in the morning between 2:30 and 3:00.

Q. Uh alright now you and Pete Nelli was working that shift is that right?

A. Correct.

Q. Alright now I believe you told me that you drove one truck and Pete drove another truck in that right?

A. Correct. There were other pieces of equipment, too.

Q. Alright you were the first on the scene?

A. Right.

Q. Alright would you tell me what you did when you got there?

A. When we got there, I got there rather set up the pump and pulled the line off charged the line and myself and the police officer. Took the line and tried to get close enough to the fire to do some good with it because of the heat of

it we really couldn't get close enough for that line at the time. After just a couple of minutes had passed Pete got there with the other truck and brought the line in from the plug. We tired that line into the truck pulled a 2 1/2 inch line off set up one 2 1/2 inch line approximately 30 feet I'd say from the house, between the driveway and a imaginary line coming out from the front door to the roof. Then set up (inaudible) to the half lines trying to get them through the front door.

Q. Alright now uh this police officer this Stacy McCain?

A. Correct.

Q. M-C-C-A-I-N?

A. Correct.

Q. Alright uh now you hit the door the front door with an engine ax is that right?

A. Right.

Q. Alright did you have to force that door?

A. No I did not the door was unlocked.

Q. It offered you no resistance other than just turning the knob or however the handle on it was?

A. I grasped the handle mashed the button down the door opened.

Q. Alright now when you opened the door, where was the fire that you saw?

A. I first noticed the fire to my left, above me and progressing down the steps.

Q. Alright to your left in the foyer working the steps going up to the second level right?

A. Right.

Q. Alright and uh you say it was upstairs and coming down the stairs?

A. Yes.

Q. Would you say it was halfway down the stairs, 3 quarters the way or what?

A. About a third of the way down between a third and halfway down.

Q. Was there any fire in the foyer at all?

A. In the top of the foyer to the left side where it had come down under the down the opening from the second floor to the first floor coming down the steps, it was starting to burn on the roof there. The ceiling of the first floor or just a couple of feet.

- Q. Alright could you see down the hall or down through the foyer to the back of the house at that time?
- A. No I didn't really pay enough attention to it to notice what was going on back there.
- Q. Alright of course to your right there was a opening into the living room dining room, was there any fire in there?
- A. Not any substantial amount of fire that I can recall?
- Q. But there was some fire in there?
- A. I believe that there was some fire in there.
- Q. Alright uh you told me a while ago that the ceiling basically the ceiling of the foyer was still tack other than the part of it licking out?
- A. Yes sir.
- Q. Uh from the stairway?
- A. Right.
- Q. Alright uh could you see where the ceiling in the den not the den but the uh living room had collapsed?
- A. No I didn't not at that time.
- Q. Alright uh how long did you stay in the foyer area?
- A. Maybe a minute.
- Q. What did you do then?
- A. Backed out and tried to find another route to get to the fire.
- Q. Where did you go then?
- A. At that time from there to the upstairs bedroom on the left on the up hill side of the house.
- Q. Okay.
- A. And It was new there but it was involved I could tell that, I could see that through the window and tell by the roof.
- Q. Alright now one thing I forgot to ask you, when you first drove up where was the fire that you saw?
- A. The fire well the first fire that I saw had already come through the ceiling through the roof.
- Q. Through the roof adding structures decking things of that nature.
- A. Right.
- Q. Uh was that on the front side or the backside of the house?
- A. All I could see at the time was the front side and it was well involved.

- Q. Okay alright uh in relationship uh you had a couple of roof lines uh that wasn't previous discussed over the bedroom area upstairs you had a ridge line running from the front to the rear of the house and then over the center of the house your ridge line run the length of the house?
- A. Right.
- Q. Alright where was the fire on the front of the house that you saw it?
- A. The only fire that I could see from where I was at the time or that could be seen from the front of the house area that we were in was from the two intersecting ridge line moving forward 15 or 20 feet maybe moving towards the garage area.
- Q. Alright there is a valley running down.
- A. It moved across the valley probably 10 feet down through the valley across the the ridge area 20, 25 feet towards the garage area.
- Q. In other words, this circle that I'm drawing here on this (inaudible) about like that?
- A. Yeh.
- Q. Okay now alright when you backed out the front door you went around and tried to get water to the upstairs is that right?
- A. To upstairs right.
- Q. Uh were you successful in doing this?
- A. We did get water to the upstairs yes.
- Q. What did the fire do when you hit it with water?
- A. Well it you might say it was spreaded it didn't seem to be doing too much damage to the fire.
- Q. Uh you said that you had a variable nozzle on that and you hit original with a (inaudible). Uh in past experience when you hit a house like this that's burning like this what does the fire nozzle do to it?
- A. The fire nozzle tends to spread your water out more when it hits the fire it converts to steam, steam is the main factor in extinguishing the fire.
- Q. In other words, does it dampen the fire to a large extent when you hit it with that?
- A. Right.
- Q. Did it do that this time?
- A. It didn't seem to have much effect on dampen it.

Q. Did you try a direct stream on it?

A. I did on the stairwell.

Q. What did that do?

A. On the wall above the stairwell it, it didn't seem to do much good there. But the heat being the main factor there the reason we couldn't stay in that area.

Q. You had to back out after a short period of time?

A. Right, right.

Q. But when you hit it with the (inaudible) or direct stream it didn't do any good?

A. Well it seem to dampen the particular area you hit but it would catch back up in just a matter of 20 seconds.

Q. In past experience when you hit it and it dampens it down like that, does it normally come back?

A. It tends to come back maybe a little later on but not at that time. Not in that period of time.

Q. Did you smell anything unusual?

A. No I didn't notice anything.

Q. Did you check any of the other doors?

A. Personally no.

Q. Well is there anything else about this fire that you would like to comment about?

A. Nothing particularly.

Q. The statements that you made in this recording are true to the best of your knowledge?

A. Yes it is.

Q. You were aware that this conversation was recorded?

A. Yes I was.

This concludes the recorded interview.

RD:de

RECORDED STATEMENT

Claim No.: 32-146-789  
Insured: Louis Goldberg  
Interviewing: Louis Goldberg

5-17-80

This is Robert Deyo of Crawford & Company, The Village Green, Ithaca, Homestate 14850, interviewing Louis Goldberg in person on May 16, 1980. This interview concerns a fire that occurred at 414 Mitchell Street on...uh...May 11, 1980.

Q. Will you give me your full name please?

A. Louis Goldberg.

Q. What is your current address?

A. 414 - No. We are now living with my wife's mother in Newfield, 4810 Route 96, Newfield. We have been there since Mother's Day, when the fire occurred.

Q. Okay uh now you know that we are recording this statement.

A. Yes.

Q. And that is with your permission?

A. Yes.

Q. Where do you work?

A. I run Goldberg and Sons at 40 West Main Street here in Ithaca.

Q. Are you the owner?

A. Yes.

Q. How long have you been in business?

A. 25-30 years.

Q. Is the business in any difficulty?

A. Business could be better, but we do all right.

Q. Are you in debt?

A. No. Well, maybe American Express. Oh, and the mortgage on the house. Nothing else.

Q. Were you at home the night of the fire?

A. No. We had gone to my wife's mother's place for Mother's Day. We did not find out what happened until we got back. We lost everything. The house, the furniture...all our records...everything. I called Joe...that is...Joseph Peters, my insurance agent, the next day and told him about it. He said, "Lou, don't worry. You are insured. We will take care of you."



Q. Do you need an advance right away?

A. No. We can manage. We are living with my mother-in-law. There is no pressure on us.

Q. Do you know how the fire started?

A. No.

Q. Have you had any trouble with the neighbors kids or anything?

A. No. It's a nice neighborhood. Do you think something might have happened?

Q. We always have to check to see.

A. Oh. I guess you do. Do whatever you think is right.

Q. Do you have anyone who would want to hurt you?

A. Me? No. How am I hurt? I have insurance. Inconvenienced, but not hurt. What's a little furniture? Sarah will enjoy buying new things. Clothes, who needs them? I have a store full. Do you need a suit? Come in and see me. I have one that would look just right on you.

Q. Can you think of anything that we should know?

A. No. But if I do I will call you.

Q. Okay. The statements you have made are true, is that right?

A. Of course.

Q. And this recording was made with your knowledge?

A. That's right.

This concludes the recorded interview.

RD/dae

SWORN STATEMENT IN PROOF OF LOSS

\$ 100,000
AMOUNT OF POLICY AT TIME OF LOSS
4-16-80
DATE ISSUED
4-16-81
DATE EXPIRES

32-039-5055-3
POLICY NUMBER
Ithaca
AGENCY AT
Joseph Peters
AGENT

To the State Farm Fire & Casaulty Company
of 1750 Route 23, Wayne, New Jersey 07470
At time of loss, by the above indicated policy of insurance you insured my residence at 414 Mitchell Street, Ithaca, Homestate

against loss by fire to the property described under Schedule "A." according to the terms and conditions of the said policy and all forms, endorsements, transfers and assignments attached thereto.

1. Time and Origin: A fire loss occurred about the hour of 2:56 o'clock A.M.

on the 11 day of May 19 80. The cause and origin of the said loss were: fire cause and origin unknown

2. Occupancy: The building described, or containing the property described, was occupied at the time of the loss as follows, and for no other purpose whatever: myself and wife

3. Title and Interest: At the time of the loss the interest of your insured in the property described therein was fee simple incumbrance thereon, except: mortgage, Marine Midland Bank, Judd Falls Branch, Ithaca, Homestate

4. Changes: Since the said policy was issued there has been no assignment thereof, or change of interest, use, occupancy, possession, location or exposure of the property described, except: none

5. Total Insurance: The total amount of insurance upon the property described by this policy was, at the time of the loss, \$ 100,000 as more particularly specified in the apportionment attached under Schedule "C." besides which there was no policy or other contract of insurance, written or oral, valid or invalid.

Table with 2 columns: Question number and Amount. Row 6: Actual Cash Value \$98,016. Row 7: Whole Loss and Damage \$36,984. Row 8: Less Amount of Deductible \$100. Row 9: Amount Claimed \$134,900.

The said loss did not originate by any act, design or procurement on the part of your insured, or this affiant; nothing has been done by or with the privity or consent of your insured or this affiant, to violate the conditions of the policy, or render it void; no articles are mentioned herein or in annexed schedules but such as were destroyed or damaged at the time of said loss; no property saved has in any manner been concealed, and no attempt to deceive the said company, as to the extent of said loss, has in any manner been made. Any other information that may be required will be furnished and considered a part of this proof.

The furnishing of this blank or the preparation of proofs by a representative of the above insurance company is not a waiver of any of its rights.

State of Homestate
County of Tompkins
Insured

Subscribed and sworn to before me this 16 day of May 1980

Susan M. Pelletier Notary Public

STATEMENT AS TO FULL COST OF REPAIR OR REPLACEMENT  
UNDER THE REPLACEMENT COST COVERAGE  
SUBJECT TO THE TERMS AND CONDITIONS OF THIS POLICY

To the State Farm Fire & Casualty ..... Ins. Co.

of 1750 Route 23, Wayne, NJ 07470 Policy No. 32-039-5055-3

Agency at Ithaca, Homestate Agent Joseph Peters

Insured Louis and Sarah Goldberg

Location 414 Mitchell Street, Ithaca, Homestate 14850

Type of property involved in claim Residence

Date of loss May 11, 1980

1. Full Amount of Insurance applicable to the property for which claim is presented was	\$ 100,000
2. Full Replacement Cost of the said property at the time of the loss was	\$ 115,312
3. The Full Cost of Repair or Replacement is	\$ 115,312
4. Applicable Depreciation is	\$ 17,296
5. Actual Cash Value loss is (Line 3 minus Line 4)	\$ 98,016
6. Less deductibles and/or participation by the insured	\$ 100
7. Actual Cash Value Claim is (Line 5 minus Line 6)	\$ 97,916
8. Supplemental Claim, to be filed in accordance with the terms and conditions of the Replacement Cost Coverage within 180 days from date of loss as shown above, will not exceed (This figure will be that portion of the amounts shown on Lines 4 and 6 which is recoverable)	\$ 2,184

*Louis Goldberg* ..... Insured

State of Homestate

County of Tompkins

Subscribed and sworn to before me this 16 day of May 1980

Form FCF03

*Anne M. Pelletier* ..... Notary Public

# SQUARE FOOT APPRAISAL FORM

*for use with the* **RESIDENTIAL COST HANDBOOK**

Appraisal for State Farm Fire & Casualty Property owner Louis & Sarah Goldberg  
 Address 1750 Route 23, Wayne, NJ 07470  
 Appraiser Robert A. Deyo Date \_\_\_\_\_

<b>TYPE</b>	<b>QUALITY</b>	<b>STYLE</b>	<b>EXTERIOR WALLS</b>
Conventional <input checked="" type="checkbox"/>	Low <input type="checkbox"/>	No. Stories <input type="checkbox"/>	Stucco <input type="checkbox"/>
Modern <input type="checkbox"/>	Fair <input type="checkbox"/>	Split level <input type="checkbox"/>	Siding or shingle <input type="checkbox"/>
Rustic <input type="checkbox"/>	Average <input type="checkbox"/>	1½ story - Fin. <input type="checkbox"/>	Brick veneer <input type="checkbox"/>
Apartment <input type="checkbox"/>	Good <input type="checkbox"/>	1½ story - Unfin. <input type="checkbox"/>	Common brick <input type="checkbox"/>
Town house <input type="checkbox"/>	Very good <input type="checkbox"/>	End row <input type="checkbox"/>	Face brick or stone <input checked="" type="checkbox"/> stucco over brick
Row house <input type="checkbox"/>		Inside row <input type="checkbox"/>	Concrete block <input type="checkbox"/>

Floor areas: 1st 1140 2nd 1140 3rd 570 Total 2850  
 Basement area: Unfinished \_\_\_\_\_ Finished 855 Garage area \_\_\_\_\_ Detached  Attached   
 Number multiple units \_\_\_\_\_ Total floor area \_\_\_\_\_ Built-in  Carport   
 Porches (a) 100 (b) 100 Other \_\_\_\_\_ Number of plumbing fixtures 11

### APPRAISAL COMPUTATIONS

	Quan.	Cost	Extension
1. COMPUTE RESIDENCE BASIC COST: Floor area x selected sq. ft. cost	2850	26.7	76,009
2. Basic residence cost adjustments Lines 3-13. Describe and indicate plus or minus			+ -
3. Roofing <u>ash shingle</u>	2850	.15	427
4. Flooring 1st floor <u>carpet</u>	1140	1.60	1,824
5. Flooring upper floors <u>carpet</u>	1140	1.60	1,824
6. Heating - Cooling <u>hot water</u>	2850	.53	1,510
7. Ceiling insulation <u>plaster</u>	2850	.58	1,653
8. Plumbing <u>11 fixtures</u>			345
9. Built-in appliances <u>dishwasher</u>			405
10. <u>disposal</u>			145
11. _____			3,000
12. Fireplace <u>three 2 story</u>			86,288
13. Miscellaneous _____			86,288
14. SUBTOTAL ADJ. RESIDENCE COST: Line 1 plus or minus Lines 3-13	1140	5.94	6,771
15. BASEMENT, <del>UN</del> FINISHED _____			
16. Add for basement garage: Single <input type="checkbox"/> Double <input type="checkbox"/>			535
17. Add for basement outside entrance, below grade _____	855	3.28	2,804
18. Add for basement interior finish _____	100	4.39	439
19. Porches or balconies, describe <u>100 sq. feet</u>	100	7.45	745
20. <u>100 sq. feet w/roof</u>	100	7.45	745
21. SUBTOTAL RESIDENCE COST: Total of Lines 14-20			97,582
22. GARAGE OR CARPORT - sq. ft. area x selected sq. ft. cost			+ -
23. Attached garage - deduct for common wall _____			
24. Garage roofing adjustment _____			
25. Garage miscellaneous _____			
26. SUBTOTAL GARAGE COST: Line 22 plus or minus Lines 23-25			97,582
27. SUBTOTAL OF ALL BUILDING IMPROVEMENTS: Sum of Lines 21 and 26			115,312
28. Current Cost Multiplier <u>1.17</u> x Local Multiplier <u>1.01</u> x Line 27			17,296
29. Depreciation: Age <u>51</u> Condition <u>good</u> Deduction <u>15</u> % of Line 28			98,016
30. Depreciated cost of building improvements: Line 28 less Line 29			---
31. Yard improvements cost: List, total, apply local multiplier and depreciate on reverse side			---
32. Landscaping cost: List and compute on reverse side			---
33. Lot or land value _____			98,016
34. TOTAL INDICATED VALUE: Total of Lines 30-33			98,016

# CRAWFORD AND COMPANY Insurance Adjusters

# Additional Living Expense Worksheet

Insured \_\_\_\_\_ File No. \_\_\_\_\_  
 Policy Address \_\_\_\_\_ Date of Loss \_\_\_\_\_  
 Temporary Address \_\_\_\_\_ Temporary Phone No. \_\_\_\_\_  
 Insureds Occupation \_\_\_\_\_ Business Phone No. \_\_\_\_\_  
 Wifes Occupation \_\_\_\_\_ Business Phone No. \_\_\_\_\_  
 Estimated Family Annual Income (Husband - Wife - Others) \$ \_\_\_\_\_

**Circumstances:**

Type of Residence ( 1 family - duplex - apt. - other) \_\_\_\_\_ No. Rooms \_\_\_\_\_  
 Replacement Cost of Dwelling or Unit \_\_\_\_\_ ACV \_\_\_\_\_  
 Insurance Carried - Dwelling or Unit \_\_\_\_\_ Form No. (s) \_\_\_\_\_  
 Rental Value - Furnished (Monthly) \_\_\_\_\_ Number living at location \_\_\_\_\_  
 Estimated Loss - Dwelling or Unit \_\_\_\_\_ Contents \$ \_\_\_\_\_  
 Time to Restore for Occupancy - Estimated \_\_\_\_\_ As Agreed  Insured  Contractor

**NECESSARY INCREASE IN LIVING EXPENSE DURING PERIOD OF UNTEENANTABILITY**

EXPENSES	NORMAL		INCURRED	
Housing	\$		\$	
Temporary Housing Receipts - Hotel - Apt.				
Mobile - Other				
Utilities				
Heat				
Electricity - Gas				
Water - Sewer Fee				
Telephone				
Other				
Food				
Residence Food Cost				
Motel - Restaurant - Receipts				
Other				
Services				
Laundry				
Dry Cleaning				
Other				
Transportation				
Automobile - Storage - Gas				
Taxi - Train				
Other				
<b>Totals</b>	\$		\$	
<b>Deduct Total Normal Expense from Incurred Expense</b>			\$	
<b>Additional Living Expense Loss</b>			\$	

ADDITIONAL LIVING EXPENSE  
 WORKSHEET NOT COMPLETED  
 FOR SIMULATION AMOUNT =  
 \$5,500  
 (current estimate for settlement)



# *Point Engineering, Inc.*

1740 OXMOOR ROAD, SUITE E • 800 HATCH ST. ELMIRA, N.Y. • (607) 871-9485

May 30, 1980

State Farm Insurance Company  
2100 18th Street South  
P.O. Box 2661  
Ithaca, Homestate 14850

Attn: Mr. Bob Deyo, Crawford & Company

Re: Our File #1507  
Your Insured: Louis & Sarah Goldberg  
414 Mitchell Street  
Ithaca, Homestate 14850

Dear Mr. Deyo:

At your request I have inspected the burned down residence of your referenced insured on May 20, 1980, to determine cause and origin of fire.

I could find no direct evidence whatsoever of causation of this particular fire by electrical means. The origin of this fire from burn patterns and from the amount of roof which was burned away, indicated that the fire originated either at the extreme left rear portion of the residence or somewhere toward the middle portion of the residence. An accurate determination could not be made by this investigator.

Several National Electrical Code rules had been violated in installing the electrical system of the residence. For example, there was no ground to the copper water pipe. Instead, there was only a ground wire run to the driven ground rod located near the service entrance. Also, there was no separate neutral wire from the service entrance panel to the lighting panel. This is in violation of the NEC. Inside the lighting panel several number 14 copper wires had been connected to 20 amp one pole breakers. This is in violation of the NEC since number 14 wire is good for only 15 amps. Also, in the same panel, number 12 wire was connected to a 40 amp two pole breaker and number 10 wire was connected to a 40 amp two pole breaker. These two are both in violation of the NEC since number 12 wire is good for only 20 amps and number 10 wire is good for only 30 amps.

There was no disconnecting means for the two outside air conditioning units. This again is in violation of the NEC.

State Farm Insurance Company  
Attn: Mr. Bob Deyo, Crawford & Company  
May 30, 1980  
Page 2

Further inspection of the residence indicated that copper wiring had been melted in almost all areas of the house which indicated that the fire reached a very hot temperature in excess of 2,000 degrees Fahrenheit. The melted copper wiring was not confined to any one area, but was spread throughout the entire residence ranging from the left rear portion of the residence to the right rear portion of the residence, in the middle and all toward the front of the residence. Since all of the breakers had been tripped out in the lighting panel except for three or four such short circuits most likely occurred during the fire and were caused from the fire melting the insulation on the wires and possibly melting the copper also.

If only one piece of copper wire was found melted then we would investigate the good probability that the fire was caused from electrical short circuiting. However, due to the numerous pieces of copper wiring found melted in this residence, no such isolation can be made.

During the course of inspection it was noticed that one piece of flexible copper tubing was used for gas piping in the basement. This gas piping, although the connections that this investigator saw had been made with flanged type connections, according to the fire chief the flexible copper tubing used for gas lines in this residence did violate the local as well as Northern Standard Building Codes. Also, during the course of inspection, a mysterious burned hole was found in the left rear portion of the house which was a bedroom. This hole was adjacent to the wall and extended downward into the basement. Also, there was extreme burning right above this hole which had burned through the two-by-four studs and had burned through the insulation (sheet foam). The burn patterns in that particular room indicated from the other walls however, that the fire spread from top to bottom. This is an unexplained mystery to this investigator at this present time.

In summary it is my opinion that the causation of fire electrical means more than likely can be ruled out since no direct evidence of electrical short circuiting was found. Also, it is my opinion that the origin of the fire was either from the left rear portion of the house or from the mid portion of the house with such fire after it started spreading from the top and going down.

When I can be of future assistance please advise. Thank you very much.

Yours very truly,  
POINT ENGINEERING, INC.

*Harold Point, Jr.*

Harold Point, Jr.  
President

HP:de





*Insurance Adjusters*

ROBERT A. DEYO,  
ADJUSTER-IN-CHARGE

TELEPHONE: (607) 257-6734

THE VILLAGE GREEN, 840 HANSHAW RD  
ITHACA, 14850

MEMORANDUM

TO: James Crimes, State Farm Fire & Casualty  
FROM: Robert Deyo  
DATE: June 20, 1980  
CLAIM NO.: 32-146-789  
INSURED: Louis and Sarah Goldberg  
414 Mitchell Street  
Ithaca, Homestate 14850

Combined Fire Report

Insured

This policy (#32-039-5055-3) was issued in the name of Louis and Sarah Goldberg. The insured resided at 414 Mitchell Street, Ithaca, Homestate 14850. They have lived at this address since 1973. Previously they lived at 609 Sunset Drive, Newfield 14867. They are 55 and 54 years old and have been married since April 14, 1945. Mr. Goldberg is the owner of Louis Goldberg & Sons, Inc. at 40 W. Main Street, Ithaca, a clothing store for men and women. Goldberg opened it shortly after he returned from the War. Mrs. Goldberg does not work.

Previous Loss

In regard to previous loss experience, I have found no claims of any nature.

Coverage - Defenses

We have involved on this claim a limit of \$100,000/50,000/30,000. There is a \$100 deductible. There is a coverage question as to origin of the fire, which I will explain in detail below. A reservation of rights letter has been transmitted to the insured by you.

James Crimes, State Farm Fire & Casualty  
June 20, 1980  
Re: Claim # 32-146-789  
Page 2

#### Risk

We have a dwelling-type structure. It was occupied by insured in 1973. It was built in 1929. The insured redid the house in 1973. The building (with attic and basement) contained 3705 square feet. Photographs have previously been submitted.

#### Title Encumbrances

We have only one mortgage in the amount of \$29,000 with Marine Midland Bank. The mortgage was recorded on April 14, 1973. It is at Volume 73, page 29, at the Tompkins County Court House. The mortgage was a twenty-year term. It now has 13 years to go. They owe Marine \$255 per month. They used to pay regularly. The Marine people I spoke with say that in the last year or so they have been slow paying, although at the time of the fire (May 11, 1980) they were not behind.

#### Date and Time of Occurrence

The fire was discovered at approximately 2:56 A.M. on May 11, 1980. The fire was called in by neighbors. The Goldbergs say they were out of town at Mrs. Goldberg's mother's house. The fire department responded quickly, but there was little that could be done. The roof collapsed and that caused the side walls to fall. The house and its contents were totally destroyed. Two of the firemen on the scene were interviewed. They said that the fire did not water right.

#### Adjustment Remarks

This loss was reported by telephone to Agent Joseph Peters on May 12, 1980. This writer received it on May 13, 1980. The insured filled out a sworn statement of loss on May 16, 1980. The full replacement cost of the residence is \$115,312, less depreciation or \$98,016. The schedule of items, which is reasonable, equals \$31,484. The full bill for additional living expenses is not yet determined, but the insured says he will rebuild and will settle for \$5,500, which is reasonable.

City Fire Marshall Frank Maas sent sample of wood, fabric, and rug to the New York State Lab. It came back June 9, 1980 negative on accelerants, which hurts our position. We had Point Engineering look at the house, and the fire was hot enough to melt the copper wire, although that could be explained by the total building going up. Maas says he thinks it was an accidental electrical fire. The Engineering report is inconsistent with that position, but in the absence of accelerants, we will have a hard time making out a case of arson.

James Crimes, State Farm Fire & Casualty

June 20, 1980

Re: Claim # 32-146-789

Page 3

The insured have good reputations in Ithaca. Goldberg's business has apparently done well. The Credit Bureau gives them a good rating, although the store has not done as well in recent years as it did in the '60's. Currently, they are a little behind in paying their bills, and while they would have a hard time selling or borrowing, their credit standing is all right and they are making a living. Goldberg had had a reputation for gambling, but I could not find any evidence of big unpaid debts.

Attorney

The insured is not represented by counsel.

Other Insurance

There is no other insurance.

Desirability of Risk

Goldberg has a State Farm policy on his store. His risk factor is high in light of what happened to his house. While I am going to recommend paying on the house, I believe all of his other policies should be cancelled.

Salvage

None.

Unfinished Items

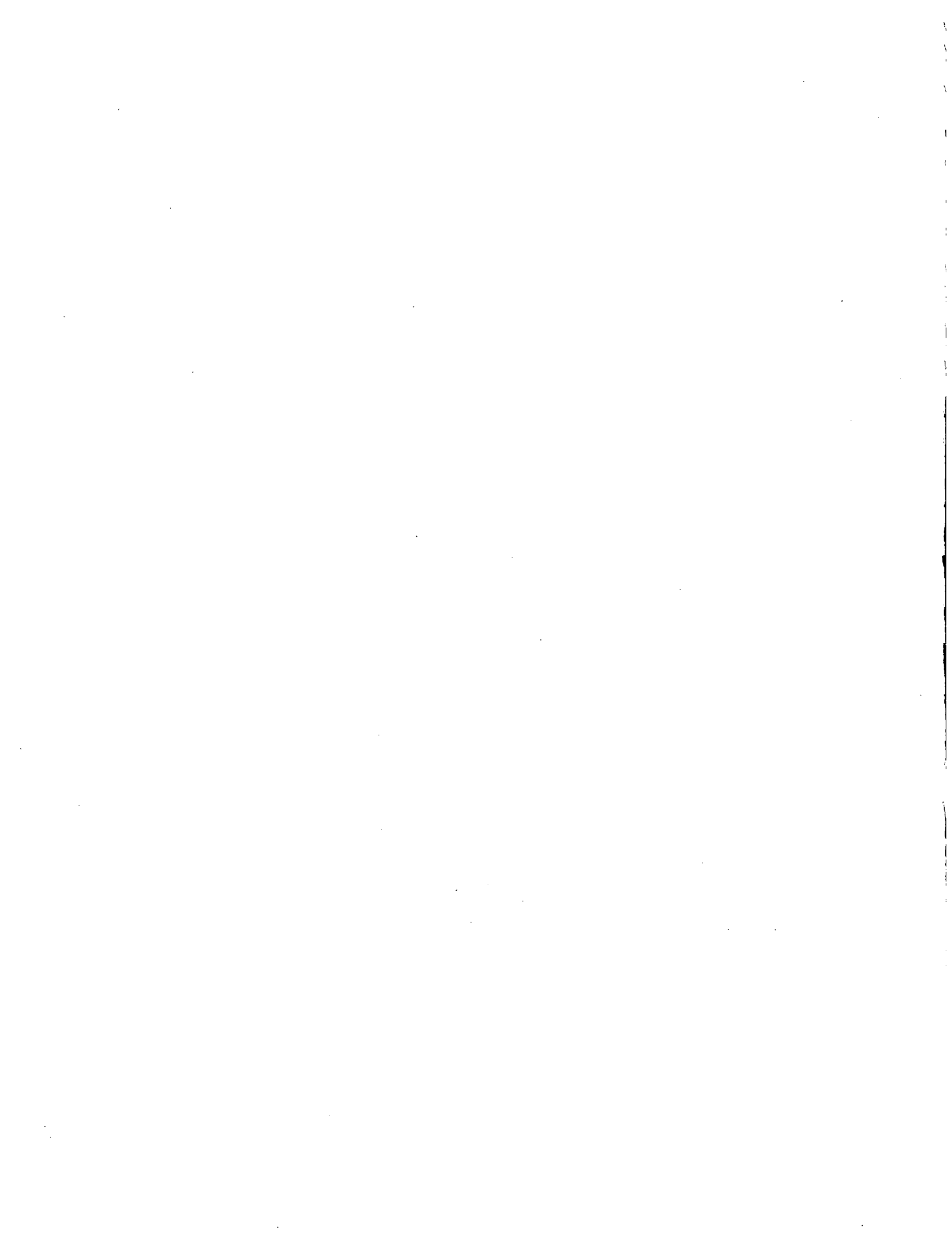
I have done about all that can be done. I think arson was involved, but it does not look like proof of it will turn up.

Recommendation

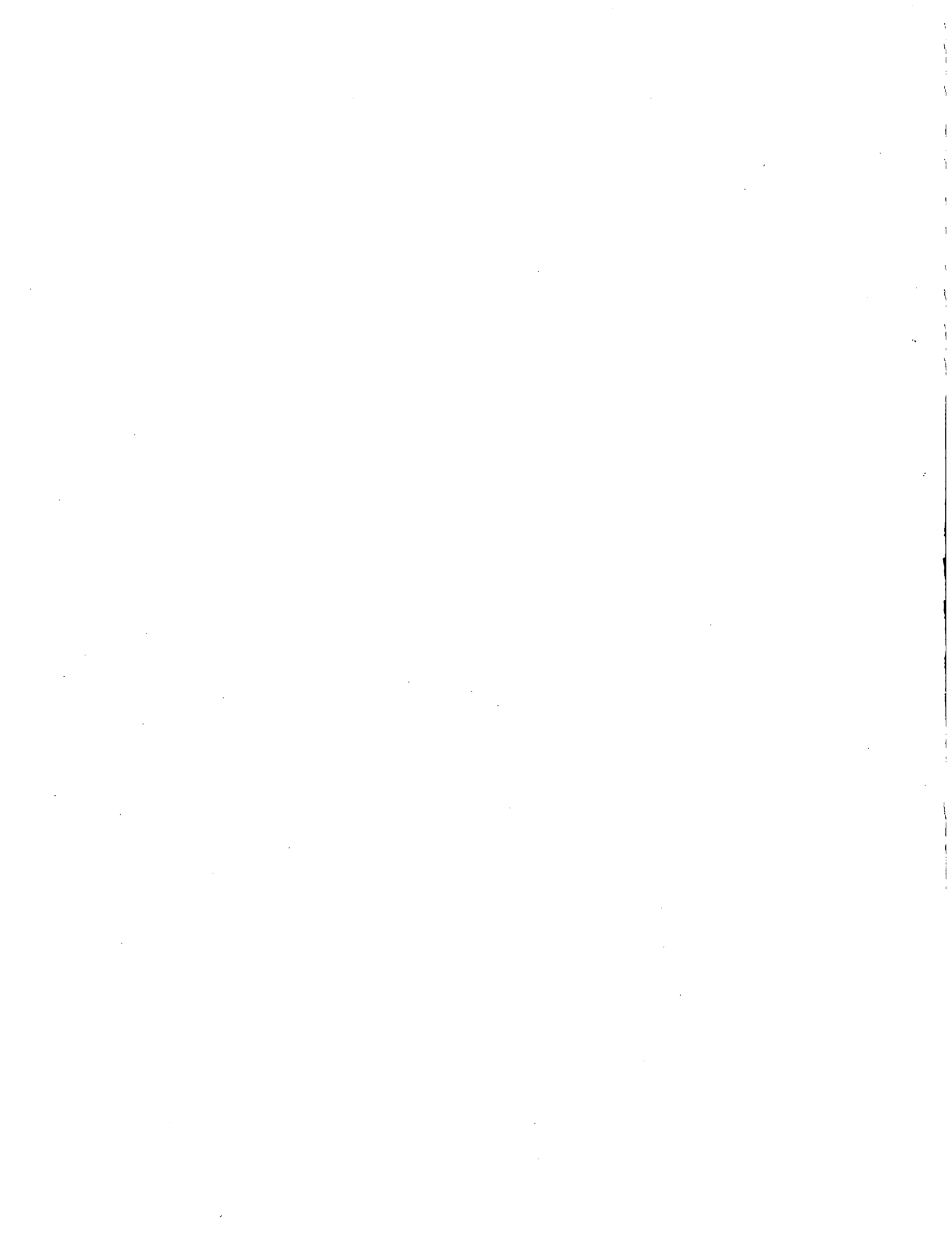
Full payment in the amount of \$134,900.

Enclosure

None. (All documents previously forwarded.)



(3) MARINE MIDLAND FILE





DATE OF LAST STATEMENT	THIS IS STATEMENT PERIOD ENDING	ACCOUNT NUMBERS		
04-25-80	05-24-80	332	70959	3

26

18

Louis Goldberg  
 414 Mitchell Street  
 Ithaca, New York 10000

Please examine at once: If no error is reported within fourteen days of mailing or delivery, the account will be considered correct. All items are credited subject to final payment.

Should you change your address, be sure to notify your branch office of your new address.

Please refer to the reverse side of this statement for:

1. An explanation of the codes shown below, and
2. Procedures for balancing your statement.

BALANCE FORWARD		DEBITS		CREDITS		TOTAL MONTHLY CHARGES ON THIS PAGE	
DATE	CHECKS	DEBITED	IN ORDER	PAID	LEFT TO RIGHT	DEPOSITS	
	1108875	181	375466		363151		1096560
04-25-80	25500		3000				1080375
04-26-80	50175						1030200
05-01-80	160000						870200
05-05-80	2498		90000	4033			773669
05-09-80						300000	1073669
05-15-80	2500		17760			23151	1076560
05-20-80	6849		8954	4197		40000	1096560

JOIN OUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVINGS MARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.



MARINE MIDLAND BANK, N.A.

STATEMENT OF ACCOUNT WITH

JUDD FALLS ROAD OFFICE

DATE OF LAST STATEMENT	THIS IS STATEMENT PERIOD ENDING	ACCOUNT NUMBER		
05-25-80	06-23-80	332	70959	3

26

Louis Goldberg  
 414 Mitchell Street  
 Ithaca, Homestate 10000

Please examine at once: If no error is reported within fourteen days of mailing or delivery the account will be considered correct. All items are credited subject to final payment.

Should you change your address, be sure to notify your branch office of your new address.

Please refer to the reverse side of this statement for:

1. An explanation of the codes shown below
2. Procedures for balancing your statement

BALANCE FORWARD	CHECKS	DEBITS	DEBITS	CREDITS	TOTAL MONTHLY CHARGES ON THIS PAGE	DEPOSITS	BALANCE
1086560	15	734410	3	550000			902150
DATE	CHECKS	DEBITS	DEBITS	CREDITS	DEPOSITS	BALANCE	
05-26-80	360098	1059			450000	1175403	
05-27-80	50000					1125403	
06-02-80	4300	3912	37500			1079691	
06-05-80	90000					989691	
06-06-80	6755	12280				970656	
06-09-80	3000					967656	
06-10-80	65573					902083	
06-13-80					50000	952083	
06-16-80	6490					945593	
06-17-80	80000	5533	7910			852150	
06-23-80					50000	902150	

JOIN OUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVINGS MARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.





DATE OF LAST STATEMENT	THIS IS STATEMENT PERIOD ENDING	ACCOUNT NUMBER		
06-24-80	07-23-80	332	70959	3

26

Louis Goldberg  
 414 Mitchell Street  
 Ithaca, Homestate 10000

Please examine at once. If no error is reported within fourteen days of mailing or delivery, the account will be considered correct. All items are credited subject to final payment.

Should you change your address, be sure to notify your branch office of your new address.

Please refer to the reverse side of this statement for:

1. An explanation of the codes shown below, and
2. Procedures for balancing your statement.

BALANCE FORWARD	DEBITS	CREDITS	TOTAL MONTHLY CHARGES	ENDING BALANCE
902150	9177940	13708633		5432843

DATE	CHECKS	DEBITS	IN ORDER	PAID	LEFT TO RIGHT	DEPOSITS	BALANCE
06-25-80	154088						748062
06-26-80	2350	60000		7280			678432
06-27-80	1600	2433		967			673432
07-01-80						100000	773432
07-02-80	61490						711942
07-07-80	90000						621942
07-08-80	4488	11200		7516			598738
07-11-80						12300	611038
07-14-80						106333	717371
07-15-80	1660	60540					655171
07-18-80	9055	140470					505646
07-21-80						13490000	13995646
07-22-80	8500000	60398					5436248
07-23-80	2405						5432843

JOIN OUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVING MARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.



Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

562

APR 21 '86  
April 21 1986 50-42  
213

PAY TO THE  
ORDER OF

Marine Midland \$ 255.00

Two Hundred Fifty Five and <sup>00</sup>/<sub>100</sub> DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

PAID  
Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

563

APR 23 '86  
April 23 1986 50-42  
213

PAY TO THE  
ORDER OF

Alves Drug PAID \$ 30.00

Thirty and <sup>00</sup>/<sub>100</sub> DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

PAID  
Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

564

APR 25 '86  
April 25 1986 50-42  
213

PAY TO THE  
ORDER OF

Republic Books PAID \$ 58.75

Five Hundred Eight and <sup>75</sup>/<sub>100</sub> DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

PAID  
Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

ALVES DRUGS

REPUBLIC BOOK CO.

FIRST BANK  
ITHACA HOMESTATE

ITHACA BANK  
ITHACA. HOMESTATE  
ITHACA. HOMESTATE

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

565

April 29 1980 50-42  
213

MARLAND D&T

PAY TO THE  
ORDER OF

Campbell Construction \$ 1,600.00

One Thousand Six Hundred and 00/100 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

0501 Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

566

May 2 1980 50-42  
213

MARLAND D&T

PAY TO THE  
ORDER OF

De Witt T. ... \$ 24.98

Twenty Four and 98/100 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

567

May 4 1980 50-42  
213

MARLAND D&T

PAY TO THE  
ORDER OF

Fidelity Finance Corp. \$ 900.00

Nine Hundred and 00/100 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

FIRST BANK  
ITHACA HOMESTATE

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

568

May 3 1980  $\frac{50-42}{213}$

PAY TO THE ORDER OF Pacific Telephone \$ 40.33  
Forty and  $\frac{33}{100}$  DOLLARS

MARLAND 067



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

569

May 13 1980  $\frac{50-42}{213}$

PAY TO THE ORDER OF Emanuel Center for the Blind \$ 25.00  
Twenty Five and  $\frac{00}{100}$  DOLLARS

MARLAND 067



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

PAID  
051480

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

570

May 14 1980  $\frac{50-42}{213}$

PAY TO THE ORDER OF Master Charge \$ 177.00  
One Hundred Seventy Seven and  $\frac{00}{100}$  DOLLARS

MARLAND 067



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

PAID  
051480

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

PACIFIC TELEPHONE

E.M.C.F.T.B.

MASTER CHARGE CORP.

ITHACA BANK

FIRST BANK  
ITHACA HOMESTATE

ITHACA HOMESTATE



Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

571

PAID

May 17 1980 50-42  
213

PAY TO THE  
ORDER OF

*Eisen Lumber Co* \$ 68.49

052080

*Sixty Eight and 49/100*

DOLLARS

MARLAND 087



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332⑆709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

572

May 18 1980 50-42  
213

PAY TO THE  
ORDER OF

*Mobil Oil* \$ 89.54

PAID  
2080

*Eighty Nine and 54/100*

DOLLARS

MARLAND 087



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332⑆709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

573

May 18 1980 50-42  
213

PAY TO THE  
ORDER OF

*Beef and Boar Nuts* \$ 41.97

0520

*Forty One and 97/100*

DOLLARS

MARLAND 087



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332⑆709493⑆0552⑆

EISEN LUMBER CO.

MOBIL OIL CORP.

BEEF AND BOOZE  
RESTAURANTS

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

574

May 21 1980 50-42  
213

PAY TO THE  
ORDER OF

Blakeney's A-1 Auto Mart \$ 3,400.98

Three Thousand Four Hundred and 98/100 DOLLARS

MARLAND 087



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

575

PAID

May 23 1980 50-42  
213

PAY TO THE  
ORDER OF

Kolen Cleaners \$ 10.59

Ten and 59/100 DOLLARS

MARLAND 087



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

576

PAID

May 27 1980 50-42  
213

PAY TO THE  
ORDER OF

Cash \$ 500.00

Five Hundred and 00/100 DOLLARS

MARLAND 087



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆0552⑆

BLAKEY'S A-1 AUTO

KOLEN CLEANERS

*Louis Goldberg*

**FIRST BANK  
ITHACA HOMESTATE**

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

577

May 30 1980 50-42  
213

PAY TO THE  
ORDER OF

Pacific Telephone

PAID

43.00

Forty Three and 00/100

DOLLARS

MARLAND 067



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

578

June 1 1980 50-42  
213

PAY TO THE  
ORDER OF

Mills S. G. A.

PAID

\$ 39.12

Forty Nine and 12/100

DOLLARS

MARLAND 067



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

579

June 1 1980 50-42  
213

PAY TO THE  
ORDER OF

Rosal Duke

PAID

\$ 375.00

Three Hundred Seventy Five and 00/100

DOLLARS

MARLAND 067



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

PACIFIC TELEPHONE

MILL'S

*Paul Dale*

ITHACA BANK

ITHACA. HOMESTATE

BANK

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

580

PAY TO THE  
ORDER OF

*Fidelity Fiduciary Corp. - \$ 900.00*

*PAID 0605 June 2 1980 50-42 213*

*Nine Hundred and 00/100* DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

581

PAY TO THE  
ORDER OF

*Missing Auto Parts - PAID 67.55*

*PAID 0605 June 2 1980 50-42 213*

*Sixty Seven and 55/100* DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

582

PAY TO THE  
ORDER OF

*Phacis Products - \$ 122.50*

*PAID 0605 June 3 1980 50-42 213*

*One Hundred Twenty Two and 50/100* DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

FIDELITY FINANCE

MISSING AUTO PARTS

PHAEDO PROD.

FIRST BANK  
ITHACA HOMESTATE

FIRST BANK  
ITHACA HOMESTATE



Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

583

PAID

APPROVED June 5 19 80 50-42  
213

PAY TO THE  
ORDER OF

General Electric and

30.00

MARLAND DRY

Thirty and 00/100

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA.

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

584

PAID

June 8 19 80 50-42  
213

PAY TO THE  
ORDER OF

Paulig Associates \$ 655.73

MARLAND DRY

Six Hundred Fifty Five and 73/100

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA.

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

585

June 10 19 80 50-42  
213

PAY TO THE  
ORDER OF

Master Charge \$ 64.90

MARLAND DRY

Sixty Four and 90/100

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA.

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

GENERAL ELECTRIC  
AND GAS CORP.

PAULIG ASSOCIATATES

MASTER CHARGE CORP.

ITHACA BANK

ITHACA, HOMESTATE

FIRST BANK  
ITHACA HOMESTATE

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

586

MARLAND 087

PAY TO THE  
ORDER OF

Cash

PAID

June 16 1980 50-42  
213

\$ 800.00

Eight Hundred and 00/100

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

587

MARLAND 087

PAY TO THE  
ORDER OF

Red Optical

June 16 1980 50-42  
213

\$ 55.33

Fifty Five and 33/100

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

588

MARLAND 087

PAY TO THE  
ORDER OF

Thomas Quinn

PAID

June 14 1980 50-42  
213

\$ 79.10

Seventy Nine and 10/100

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberger

REED OPTICAL

T. Aquinas

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

589

June 18 1980 50-42  
213

MARLAND DET

PAY TO THE ORDER OF Roberts Nursery \$ 1,546.88

One Thousand Five Hundred Forty and 88/100 DOLLARS

PAID  
06258



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

590

June 24 19 50-42  
213

MARLAND DET

PAY TO THE ORDER OF Rohdes D - Laid Printing \$ 23.50

Twenty Three and 50/100 DOLLARS

PAID  
06258



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

591

June 24 1980 50-42  
213

MARLAND DET

PAY TO THE ORDER OF De Witt Food Mart \$ 72.80

Seventy Two and 80/100 DOLLARS

PAID  
06258



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

ROBERT'S NURSERY

ROHDE'S D-LUX

DEWITT

FIRST BANK  
ITHACA HOMESTATE

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

592

PAY TO THE  
ORDER OF

*Emmett Interiors PAID*

*June 24 1980* 50-42  
213

\$ *16.00*

*Sixteen and 00/100* 162580 DOLLARS

MARLAND DET



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

593

PAY TO THE  
ORDER OF

*Parlevia Pige PAID*

*June 25 1980* 50-42  
213

\$ *24.33*

*Twenty Four and 33/100* 162780 DOLLARS

MARLAND DET



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

594

PAY TO THE  
ORDER OF

*Bears Place PAID*

*June 25 1980* 50-42  
213

\$ *9.67*

*Nine and 67/100* 162780 DOLLARS

MARLAND DET



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332⑆709493⑆⑆0552⑆

EMNETT INTERIORS

PARKVIEW PIZZA

BEAR'S PLACE  
[GOOD FOOD - FROSTY LIBATIONS]

FIRST BANK  
ITHACA HOMESTATE



Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

595

*June 29* 19*80* 50-42  
213

PAY TO THE  
ORDER OF

*Cash*

**PAID**  
*06268* \$ *600.00*

*Six Hundred and 00/100* DOLLARS



JUDD-FALLS-ITHACA OFFICE  
**MARINE MIDLAND BANK**  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

MARLAND 067

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

596

**PAID**

19*80* 50-42  
213

PAY TO THE  
ORDER OF

*Prior Analytics Corp*

\$ *614.90*

*Six Hundred Fourteen and 90/100* DOLLARS



JUDD-FALLS-ITHACA OFFICE  
**MARINE MIDLAND BANK**  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

MARLAND 067

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

597

**PAID**  
*070780*

*July 3* 19*80* 50-42  
213

PAY TO THE  
ORDER OF

*Fidelity Finance Corp*

\$ *900.00*

*Nine Hundred and 00/100* DOLLARS



JUDD-FALLS-ITHACA OFFICE  
**MARINE MIDLAND BANK**  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

MARLAND 067

PRIOR ANALYTICS

FIDELITY FINANCE

*Louis Goldberg*

FIRST BANK  
ITHACA HOMESTATE

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

598

PAY TO THE  
ORDER OF

*Pacific Telephone*

*July 5 1986* 50-42  
213

PAID

\$ 44.88

*Forty Four and 88/100*

*070730*

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

599

PAY TO THE  
ORDER OF

*Ruskin's Garage*

*July 6 1986* 50-42  
213

PAID

\$ 112.00

*One Hundred Twelve and 00/100*

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

PAID

JUL 7 1986

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

600

PAY TO THE  
ORDER OF

*General Electric*

*July 6 1986* 50-42  
213

\$ 75.16

*Seventy Five and 16/100*

DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Louis Goldberg*

⑆02⑆300420⑆ 332709493⑆0552⑆

PACIFIC TELEPHONE

ITHACA BANK

ITHACA. HOMESTATE

*J.G. Ruskin*

GENERAL ELECTRIC  
AND GAS CORP.

ITHACA BANK

ITHACA. HOMESTATE

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

601

MARLAND 067

PAY TO THE  
ORDER OF

Wash. - a - Tomm P. PAID July 11 1980 50-42  
213 \$ 16.60

Sixteen and <sup>60</sup>/<sub>100</sub> DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA.

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

602

MARLAND 067

PAY TO THE  
ORDER OF

PAID July 12 1980 50-42  
213 Euthyphro Furniture \$ 605.40

Six Hundred Five and <sup>40</sup>/<sub>100</sub> DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA.

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

603

MARLAND 067

PAY TO THE  
ORDER OF

PAID July 18 1980 50-42  
213 Larry Merry \$ 90.55

Ninety and <sup>55</sup>/<sub>100</sub> DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA.

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

WASH-A-TONN D.C.

EUTHYPHRO FURNITURE

*Larry Marx*

**FIRST BANK  
ITHACA HOMESTATE**

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

604

**PAID**  
JUL 17 '80  
July 16 1980

PAY TO THE  
ORDER OF

State Farm Ins. \$ 1,404.70

One Thousand Four Hundred and Fourteen and 70/100 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

605

**PAID**

PAY TO THE  
ORDER OF

F N F Sales boxes July 21 1980 \$ 85,000.00

Eighty Five Thousand and 00/100 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

606

**PAID**

PAY TO THE  
ORDER OF

Vivido Business Machines July 21 1980 \$ 603.98

Six Hundred Three and 98/100 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆02⑆300420⑆ 332709493⑆0552⑆

ONE STATE INSURANCE CORP.

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

VIVALO BUSINESS MACHINES



Louis Goldberg  
414 Mitchell Street  
Ithaca, Homestate 10000

607

July 21 1980 <sup>50-42</sup>/<sub>213</sub>

PAY TO THE ORDER OF Notell Match \$ 24.05

MARLAND 067

Twenty Five and 04/100 PAID 07/21/80 DOLLARS



JUDD-FALLS-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Louis Goldberg

⑆021300420⑆ 332709493⑆0552⑆

NOTELL MOTEL



MARINE MIDLAND BANK, N.A.

STATEMENT OF ACCOUNT WITH

TRIPHAMMLER ROAD OFFICE

DATE OF LAST STATEMENT	THIS IS STATEMENT PERIOD ENDING	ACCOUNT NUMBER		
05-01-80	05-30-80	331	76717	1

26

TNT Jukeboxes and Entertainment Prod  
 1626 Business Way  
 Ithaca, Homestate 10000

Please examine at once: If no error is reported within fourteen days of mailing or delivery, the account will be considered correct. All items are credited subject to final payment.

Should you change your address, be sure to notify your branch office of your new address.

Please refer to the reverse side of this statement for:

- 1. An explanation of the codes shown below, and
- 2. Procedures for balancing your statement.

BALANCE FORWARD	DEBITS	CREDITS	TOTAL MONTHLY CHARGES ON THIS PAGE	ENDING BALANCE
1893400	23 5410300	4 4433700		916800

DATE	CHECKS	DEBITS IN ORDER	PAID	LEFT TO RIGHT	DEPOSITS	BALANCE
05-01-80					949200	2842600
05-05-80	208300	700000				1934300
05-08-80	50000	750000				1134300
05-09-80	400000					734300
05-12-80	646000					88300
05-15-80	22000					66300
05-16-80	300000	15000	20000		1230800	962100
05-19-80	30000					932100
05-20-80	200000					732100
05-22-80	60000	150000	75000	87500		359600
05-23-80	87500	300000	450000		1190900	713000
05-26-80	25000	300000				388000
05-29-80	323000					65000
05-30-80	11000	200000			1062800	916800

WIN OUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVING  
 MARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.



MARINE MIDLAND BANK, N.A.

STATEMENT OF ACCOUNT WITH

TRIPHAMMER ROAD OFFICE

DATE OF LAST STATEMENT	THIS IS STATEMENT PERIOD ENDING	ACCOUNT NUMBER		
05-31-80	06-29-80	331	76717	1

26

TNT Jukeboxes and Entertainment Prod.  
 1626 Business Way  
 Ithaca, Homestate 10000

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BALANCE FORWARD		DEBITS		CREDITS		TOTAL MONTHLY CHARGES ON THIS PAGE	
916800	35	3573800	4	4443300			1786100
DATE	CHECKS	DEBITS	IN ORDER PAID	LEFT TO RIGHTS	DEPOSITS		
06-02-80	10000	15000	40000	25000			518500
	208300	100000					
06-06-80	150000	75000	60000	87500	1011300		1069800
	87500						
06-09-80	45000	300000	102500				622300
06-10-80	39300	60400					522600
06-12-80	323000	11000	200000	250000	1169300		907900
06-13-80	7500	25000					875400
06-19-80	150000	75000	87500	60000			415400
	87500						
06-20-80	300000				1050800		1166200
06-23-80	102200	101600	102200				860200
06-24-80	60000	15000					785200
06-27-80	11000	200000			1211900		1786100

JOIN OUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVING MARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.



MARINE MIDLAND BANK, N. A.

STATEMENT OF ACCOUNT WITH

TRIPHAMMER ROAD OFFICE

DATE OF LAST STATEMENT	THIS STATEMENT PERIOD ENDING	ACCOUNT NUMBER		
06-30-80	07-29-80	331	76717	1

TNT Jukeboxes and Entertainment Prod.  
 1626 Business Way  
 Ithaca, Homestate 10000

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1. An explanation of the codes shown below, and
2. Procedures for balancing your statement.

BALANCE FORWARD	DEBITS	CREDITS	TOTAL MONTHLY CHARGES
1786100	35 4682400	5 13222000	10325700

DATE	CHECKS	DEBITS	IN ORDER	PAID	LEFT TO	RIGHTS	DEPOSITS	BALANCE
6-30-80	354000	65000		7500				1359600
7-01-80	10000							1349600
7-03-80	87500	75000		60000	150000			889600
	87500							
7-04-80							1065000	1954600
7-07-80	114100	9500		20000				1811000
7-08-80	631100	200000						979900
7-10-80	10000							969900
7-11-80	102500							
7-14-80	7500	65000		100000			1394600	2262000
7-15-80	162300	39800						2089500
7-17-80	150000	75000		87500	60000			1887400
	87500							1427400
7-18-80	200000	100000						
7-21-80	100000	300000					1191300	2318700
7-22-80	101600						8500000	10418700
7-23-80	7500	6900		48100				10317100
7-25-80	1000000							10254600
7-28-80							1071100	9254600
								10325700

WIN CUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVINGS ARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.



MAY 3

19 80 No. 908

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID  
050480

Spectacular Management \$ 2,083.00

Two Hundred Eighty Three and <sup>00</sup>/<sub>100</sub> DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0002

PAID  
050480

MAY 3

19 80 No. 909

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Art's Furniture \$ 2,000.00

Seven Thousand and <sup>00</sup>/<sub>100</sub> DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0003

PAID  
050380

MAY 7

19 80 No. 910

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Ithaca Insurance \$ 500.00

Five Hundred DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0001

SPETACULAR MANAGEMENT

ART'S FURNITURE

ITHACA INSURANCE

FIRST BANK  
ITHACA HOMESTATE

FIRST BANK  
ITHACA



MAY 7

19 80 No. 911



**PAID** 050880 TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS Ithaca, Homestate 50-42 213

PAY TO THE ORDER OF Dynamite Vending Co. \$ 2,500.00  
Seven Thousand Five Hundred DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

MAY 8

19 80 No. 912



**PAID** 050480 TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS Ithaca, Homestate 50-42 213

PAY TO THE ORDER OF Schmitt's Vending \$ 4,000.00  
Four Thousand DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

MAY 11

19 80 No. 913



**PAID** 051280 TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS Ithaca, Homestate 50-42 213

PAY TO THE ORDER OF Commercial Candy Inc. \$ 6,460.00  
Six Thousand Four Hundred Sixty DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

DYNAMITE VENDING

SCHMITT'S VENDING

COMMERCIAL CANDY, INC.

FIRST BANK

ITHACA HOMESTATE  
FIRST BANK

FIRST BANK

MAY 14

19 80 No. 914

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

W. J. ...  
PAID  
051680

\$ 220.00

Two Hundred

DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

MAY 14

19 80 No. 915

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID  
051680

Allen Cigarette Co. \$ 3000.00

Three Thousand

DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

MAY 15

19 80 No. 916

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID  
051680

Ray's Material \$ 150.00

One Hundred Fifty

DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

WILSON CO.

ALLEN CIGARETTE CO.

RAY'S JANITORIAL

MAY 15 19 80 No. 917

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Pacific* **PAID** *051680* \$ 200.00  
*Two Hundred* DOLLARS

*C. Barrow*

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0002

MAY 18 19 80 **PAID** No. 918

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Gen. & Gas* **PAID** *051680* \$ 300.00  
*Three Hundred* DOLLARS

*C. Barrow*

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0003

MAY 18 19 80 No. 919

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Royal Cars & Trucks* **PAID** *051680* \$ 2,000.00  
*Two Thousand* DOLLARS

*C. Barrow*

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0004

PACIFIC TELEPHONE

GENERAL ELECTRIC  
AND GAS CORP.

ROYAL CARS AND TRUCKS

ITHACA BANK

ITHACA. HOMESTATE  
BANK ITHACA

ITHACA BANK

ITHACA. HOMESTATE

MAY 21 19 80 No. 920



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 52380

Stow Housman \$ 1,500.00

One Thousand Five Hundred DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0002

MAY 21 19 80 No. 921



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 52380

Edwin Lemison \$ 750.00

Seven Hundred Fifty DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0003

MAY 21 19 80 No. 922



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 52380

Ronald Sigues \$ 600.00

Six Hundred DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0001

Arthur Housman

Edward Reinson

Paul J. J. J.

FIRST BANK  
ITHACA HOMESTATE



MAY 21 19 80 No. 923

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Phillip Davis PAID  
052380

\$ 875.00

Eight Hundred Seventy Five

DOLLARS

C. Barrow

⑆021300420⑆ 331767171⑆ 0002



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

MAY 21 19 80 No. 924

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Pete Harding PAID  
052380

\$ 875.00

Eight Hundred Seventy Five

DOLLARS

C. Barrow

⑆021300420⑆ 331767171⑆ 0003



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

MAY 22 19 80 No. 925

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Sing. Lic. Steel Co. PAID  
052380

\$ 3,000.00

Three Thousand

DOLLARS

C. Barrow

⑆021300420⑆ 331767171⑆ 0001



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*Phillip Newman*

FIRST BANK  
ITHACA HOMESTATE

*F. Gardin*

FIRST BANK  
ITHACA HOMESTATE

SIMPLICITY STEEL CO.

MAY 23 19 80 No. 926



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 052580  
City Construction — \$ 4,500.00

Four Thousand Five Hundred — DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0002

MAY 25 19 80 No. 927



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 052580  
Royal Cars Trucks — \$ 250.00

Two Hundred — DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0003

MAY 25 19 80 No. 928



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 052580  
Royal Cars Trucks — \$ 3,000.00

Three Thousand — DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0001

QUALITY CONSTRUCTION

ROYAL CARS AND TRUCKS

ROYAL CARS AND TRUCKS

MAY 29

1980 No. 929

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Commercial Cardy \$ 3,230.00

Three Thousand Two Hundred Thirty DOLLARS

PAID 053080

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

MAY 29

1980 No. 930

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Wiles \$ 110.00

One Hundred Ten DOLLARS

PAID 053080

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

MAY 29

PAID

No. 931

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Allen Cigarette Co. \$ 2,000.00

Two Thousand DOLLARS

PAID 053080

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

COMMERCIAL CANDY, INC.

WILSON CO.

ALLEN CIGARETTE CO.

May 30 1980 No. 932

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Harold Jacobs

\$ 100.00

One Hundred

DOLLARS

PAID  
060280

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

June 1 1980 No. 933

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Roy's Tena foria

\$ 150.00

One Hundred Fifty

DOLLARS

PAID  
060280

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

June 1 1980 No. 934

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Pacific Telephone

\$ 400.00

Four Hundred

DOLLARS

PAID  
060280

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0004

*Harold Jacobs*

RAY'S JANATORIAL

PACIFIC TELEPHONE

FIRST BANK  
ITHACA HOMESTATE



June 1 1980 No. 935



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Gen Elec ~~11/11~~ \$ 250.00

Two Hundred Fifty — DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

June 1 1980 No. 936



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID  
Guernsey Mount \$ 2,087.00

Two thousand Eighty Three — DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

June 1 1980 No. 937



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID  
Local 94 \$ 1,000.00

One Thousand — DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

GENERAL ELECTRIC  
AND GAS CORP.

SPECTACULAR MANAGEMENT

LOCAL 904

**ITHACA BANK**

**ITHACA.HOMESTATE**

June 4 1980 No. 938



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Hellaw Hausner \$ 1,500.00

One Thousand Five Hundred PAID 60680 00 DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

C. Barrow

June 4 1980 No. 939



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Edna Lennison \$ 750.00

Seven Hundred & No PAID 60680 00 DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

C. Barrow

June 4, 1980 No. 940



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Donna Dargatz \$ 600.00

Six Hundred PAID 60680 00 DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0004

C. Barrow

Arthur Hanson

Edward Benson

Benjamin Jackson

FIRST CLASS

ITHACA HOMES 1A1E

June 4 19 80 No. 941



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF *William D. Corso* \$ 875.00

*Eight Hundred Seventy Five* DOLLARS

*C. Barrow*

TRIPHAMMER-ITHACA OFFICE MARINE MIDLAND BANK ITHACA

⑆021300420⑆331767171⑆0002

June 4 19 80 No. 942



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF *Peter Hardin* \$ 875.00

*Eight Hundred Seventy Five* DOLLARS

*C. Barrow*

TRIPHAMMER-ITHACA OFFICE MARINE MIDLAND BANK ITHACA

⑆021300420⑆331767171⑆0003

June 5 19 80 No. 943



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF *Ronald W. Trucks* \$ 400.00

*Four Hundred* DOLLARS

*C. Barrow*

TRIPHAMMER-ITHACA OFFICE MARINE MIDLAND BANK ITHACA

⑆021300420⑆331767171⑆0001

Philip Scorsone

ROYAL CARS AND TRUCKS

ITHACA HOMESTATE

A. Mardin

ITHACA HOMESTATE

FIRST BANK  
ITHACA HOMESTATE

June 6 19 80 No. 944



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 6/9/80  
Repair Serv. \$ 3,000.00

Three Thousand DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆02⑆300420⑆33⑆767⑆7⑆0002

June 7 19 80 No. 945



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 6/9/80  
City Steel Co. \$ 1,025.00

One Thousand Twenty Five DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆02⑆300420⑆33⑆767⑆7⑆0003

June 7 19 80 No. 946



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 6/9/80  
Building Prod \$ 393.00

Three Hundred Ninety Three DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆02⑆300420⑆33⑆767⑆7⑆0004

CHARLEY'S REPAIR

SIMPLICITY STEEL CO.

B&W BUILDING PRODUCTS



June 7 19 80 No. 947



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Hudson Rd

\$ 604.00

Six Hundred Four

DOLLARS

PAID 061280  
080980

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0002

June 11 19 80 No. 948



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 061280  
080980

\$ 3230.00

Three Thousand Two Hundred Thirty

DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0003

June 11 19 80 No. 949



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

PAID 061280  
080980

\$ 110.00

One Hundred Ten

DOLLARS

C. Barrow



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0001

HUDSON PROD.

COMMERCIAL CANDY, INC.

WILSON CO.

FIRST BANK  
ITHACA HOMESTATE

June 11 19 82 No. 950

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Allen G. Gatter Co.* \$ 2,000.00

*Two thousand* DOLLARS

PAID  
061280



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

*C. Barrow*

June 11 19 82 No. 951

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *W. J. Crismond* \$ 2,500.00

*Two thousand five hundred* DOLLARS

PAID  
061280



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

*C. Barrow*

June 12 19 80 No. 952

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Stevens Office Supply* \$ 75.00

*Seventy five* DOLLARS

PAID  
061280



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

*C. Barrow*

ALLEN CIGARETTE CO.

*Yuri Chumali*

STEVENS OFFICE SUPPLY

June 12 19 80 No. 953

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Ithaca \$ 250.00

Two Hundred Fifty PAID DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

June 18 19 80 No. 954

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Arthur Howman \$ 1,500.00

One Thousand Five Hundred PAID DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

June 18 19 80 No. 955

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Edward Lewis \$ 750.00

Seven Hundred Fifty PAID DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

COUNTY OF ITHACA

*Arthur Hoerner*

*Edw J Lewis*

FIRST K  
ITHACA HOMESTATE

June 12 19 80 No. 956



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Carole Dargatzis* \$ 600.00

*Six Hundred* DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆ 331767171⑆ 0002

June 12 19 80 No. 957



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Phillip Navarro* \$ 875.00

*Eight Hundred Seventy Five* DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆ 331767171⑆ 0003

June 12 19 80 No. 958



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Pete Gardin* \$ 875.00

*Eight Hundred Seventy Five* DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆ 331767171⑆ 0001

*Roman Sigurd*

*Phillip Dawson*

*A. Hardin*

FIRST BANK  
ITHACA HOMESTATE

FIRST BANK  
ITHACA HOMESTATE



June 19 19 80 No. 959

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213



PAY TO THE  
ORDER OF

*Sans Ser. L. 062080*  
*Three Thousand* \$ *3,000.00*  
DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆331767171⑆0002

June 21 19 80 No. 960

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213



PAY TO THE  
ORDER OF

*062280*  
*One Thousand Twenty Two* \$ *1,022.00*  
DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆331767171⑆0003

June 21 19 80 No. 961

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213



PAY TO THE  
ORDER OF

*06216*  
*One Thousand Sixteen* \$ *1,016*  
DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆331767171⑆0001

SANS SERIF CATERING

SIMPLICITY STEEL CO.

B&W BUILDING PRODUCTS

June 21 19 80 No. 962



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF Hudson P.C. \$ 1,022.00

One Thousand Two Hundred Twenty Two - DOLLARS

PAID 062828

C. Barrow

TRIPHAMMER-ITHACA OFFICE MARINE MIDLAND BANK ITHACA

⑆021300420⑆ 331767171⑆ 0002

June 21 19 80 No. 963



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF Love & Trucks \$ 600.00

Six Hundred - DOLLARS

PAID 062828

C. Barrow

TRIPHAMMER-ITHACA OFFICE MARINE MIDLAND BANK ITHACA

⑆021300420⑆ 331767171⑆ 0003

June 22 19 80 No. 964



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF Office Supply \$ 150.00

One Hundred Fifty - DOLLARS

PAID 062828

C. Barrow

TRIPHAMMER-ITHACA OFFICE MARINE MIDLAND BANK ITHACA

⑆021300420⑆ 331767171⑆ 0001

HUDSON PRODUCTS

ROYAL CARS AND TRUCKS

STEVENS OFFICE SUPPLY

June 25 19 80 No. 965

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Wilson Co. **PAID 2780**

\$ 116.00

One Hundred Ten DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆026300420⑆ 331767171⑆ 0002

June 25 19 80 No. 966

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Allen Cigarette Co. \$ 2,000.00

Two Thousand **PAID 084080** DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆026300420⑆ 331767171⑆ 0003

June 29 19 80 No. 967

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Hold Tax **PAID 040180**

\$ 100.00

One Hundred DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆026300420⑆ 331767171⑆ 0001

WILSON CO.

ALLEN CIGARETTE CO.

*Harold Jacobs*

FIRST BANK  
ITHACA HOMESTATE

June 29 19 80 No. 968

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Spectacular Mgmt. — \$ 3,540.00

Three Thousand Five Hundred Forty DOLLARS

PAID 070180  
C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

June 29 19 80 No. 969

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Pacific Telephone — \$ 650.00

Six Hundred Fifty DOLLARS

PAID 070180  
C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

June 29 19 80 No. 970

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Reg's Tavernaich — \$ 75.00

Seventy Five DOLLARS

PAID 070180  
C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0004

SPECTACUALR MANAGEMENT

PACIFIC TELEPHONE

RAY'S JANATORIAL

ITHACA BANK

ITHACA HOMESTATE



July 1 1980 No. 971



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Arthur Hausman \$ 1,500.00

One Thousand Five Hundred DOLLARS

PAID 07180



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆331767171⑆0002

July 1 1980 No. 972



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Edward Remy \$ 750.00

Seven Hundred Fifty DOLLARS

PAID 070380



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆331767171⑆0003

July 1 1980 No. 973



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

Ronan Payne \$ 600.00

Six Hundred DOLLARS

PAID 070380



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆331767171⑆0001

*Arthur Howland*

*Edward Lemmon*

*Robert J. Jorgensen*

FIRST BANK  
ITHACA HOMESTATE

July 1 19 80 No. 974

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Phillip D'Avirro \$ 875.00

PAID 07/01/80  
Eight Hundred Seventy Five DOLLARS

C. Barrow

⑆021300420⑆331767171⑆0002



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

July 1 19 80 No. 975

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Peter Gardin \$ 875.00

PAID 07/01/80  
Eight Hundred Seventy Five DOLLARS

C. Barrow

⑆021300420⑆331767171⑆0003



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

July 6 19 80 No. 976

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Simplicity Store \$ 1,141.00

PAID 07/06/80  
One thousand one hundred forty one DOLLARS

C. Barrow

⑆021300420⑆331767171⑆0001



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

Philip D'Avirro

P. Hudson

SIMPLICITY STEEL CO.

FIRST BANK  
ITHACA HOMESTATE

FIRST BANK  
ITHACA HOMESTATE

July 6 19 80 No. 977

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

**PAID**  
070780  
PAY TO THE ORDER OF *Office Supply* \$ 95.00

*Ninety Five* DOLLARS

*C. Barrow*

⑆026300420⑆331767171⑆0002



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

July 6 19 80 No. 978

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

**PAID**  
PAY TO THE ORDER OF *Gen. Elec. & Gas* \$ 200.00

*Two Hundred* DOLLARS

*C. Barrow*

⑆026300420⑆331767171⑆0003



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

July 7 19 80 No. 979

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

**PAID**  
070780  
PAY TO THE ORDER OF *Commercial Candy* \$ 6,311.00

*Six Thousand Three Hundred Eleven* DOLLARS

*C. Barrow*

⑆026300420⑆331767171⑆0001



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

STEVEN'S OFFICE SUPPLY

GENERAL ELECTRIC  
AND GAS CORP.

COMMERCIAL CANDY, INC.

ITHACA BANK

ITHACA HOMESTATE

FIRST BANK  
ITHACA HOMESTATE

July 7 19 80 No. 980



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Paul Cass & Trucks* \$ 2,000.00

*PAID 07/08/80*  
Two ~~Thousand~~ *0880* DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0002

*C. Barrow*

July 7 19 80 No. 981



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

*PAID* Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *0880* *Marty's Sign* \$ 160.00

*One Hundred* DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0003

*C. Barrow*

July 9 19 80 No. 982



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *PAID 07/14/80* *UP-rod* \$ 1,250.00

*One Thousand Twenty Five* DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆000⑆

*C. Barrow*

ROYAL CARS AND TRUCKS

*Marley Berg*

MENO PRODUCTS



July 12 19 80 No. 983



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Wilson Co. \$ 75.00

Seventy Five PAID 071480 DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆02⑆300420⑆33⑆767⑆7⑆0002

July 12 19 80 No. 984



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Hudson Prod 071480 \$ 650.00

Six Hundred PAID 071480 DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆02⑆300420⑆33⑆767⑆7⑆0003

July 12 19 80 No. 985



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF J & B Bunting \$ 1,000.00

One Thousand PAID 071480 DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆02⑆300420⑆33⑆767⑆7⑆000⑆

WILSON CO.

HUDSON PROD.

J&B ADVERTISING

July 13 19 80 No. 986



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Allen Cigarette Co — \$ 1,223.00

One Thousand Two Hundred Twenty Three DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0002

July 14 19 80 No. 987



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Big Building Prod. — \$ 398.00

Three Hundred Ninety Eight DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0003

July 16 19 80 No. 988



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF Arthur Hausman — \$ 1,500.00

One thousand Five Hundred DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆ 331767171⑆ 0001

ALLEN CIGARETTE CO.

B&W BUILDING PRODUCTS

*Arthur Hovane*

July 16 19 80 No. 989



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF Edward Lemison \$ 750.00  
PAID 07/17/80  
Seven Hundred Fifty DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0002

C. Barrow

July 16 19 80 No. 990



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF Ramon Vasquez \$ 600.00  
PAID 07/17/80  
Six Hundred DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0003

C. Barrow

July 16 19 80 No. 991



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF Phill. Vasquez \$ 875.00  
PAID 07/17/80  
Eight Hundred Seventy Five DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆02⑆300420⑆33⑆767⑆7⑆0004

C. Barrow

*Edward Peniston*

*Ronan Jackson*

*Philip Daverco*

FIRST BANK  
ITHACA HOMESTATE

FIRST BANK  
ITHACA HOMESTATE

July 16 1980 No. 992



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF

PAID 071780  
Eis Hardin \$ 875.00

Eight Hundred Seventy Five DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆331767171⑆0002

July 17 1980 No. 993



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF

PAID  
Carpetland Inc \$ 2,000.00

Two Thousand — 071780 DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆331767171⑆0003

July 17 1980 No. 994



TNT JUKEBOXES AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42 213

PAY TO THE ORDER OF

PAID 071780  
Single Steel Co \$ 1,000.00

One Thousand DOLLARS

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

C. Barrow

⑆021300420⑆331767171⑆0001

*A. Hardin*

CARPETLAND

SIMPLICITY STEEL CO.

FIRST BANK  
ITHACA HOMESTATE



July 17 19 80 No. 995

**TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS**

Ithaca, Homestate

50-42  
213

**PAY TO THE ORDER OF** Hudson Road \$ 1,000.00

One Thousand ~~180~~ DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0002

July 17 19 80 No. 996

**TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS**

Ithaca, Homestate

50-42  
213

**PAY TO THE ORDER OF** Local 904 \$ 3,000.00

Three Thousand DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0001

July 21 19 80 No. 997

**TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS**

Ithaca, Homestate

50-42  
213

**PAY TO THE ORDER OF** Bick Building \$ 1,060.00

One Thousand Sixty DOLLARS

C. Barrow

TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆ 331767171⑆ 0003

HUDSON PRODUCTS

LOCAL 904

B&W BUILDING PRODUCTS

July 22 19 80 No. 998

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Stevens Office Supply* \$ 75.00

*Seventy Five* DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0002

*C. Barrow*

July 22 19 80 No. 999

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Sovereign Express* \$ 19.00

*Sixty Nine* DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0001

*C. Barrow*

July 22 19 80 No. 1000

TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE ORDER OF *Charley's Repair Serv.* \$ 481.00

*Four Hundred Eighty One* DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

⑆021300420⑆331767171⑆0003

*C. Barrow*

STEVENS OFFICE SUPPLY

SOVEREIGN EXPRESS

CHARLEY'S REPAIR

July 23 19 20 No. 1001



TNT JUKEBOXES  
AND ENTERTAINMENT PRODUCTIONS

Ithaca, Homestate

50-42  
213

PAY TO THE  
ORDER OF

*Harold Jacobs*

\$ 10,000.00

*Ten Thousand*

PAID 430

DOLLARS



TRIPHAMMER-ITHACA OFFICE  
MARINE MIDLAND BANK  
ITHACA

*C. Barrow*

⑆021300420⑆ 331767171⑆ 0002

Deposit into acct #  
343-69915-7

Harold Jacobs

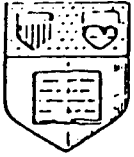
ITHACA BANK

ITHACA, HOMESTATE

(4) TELEPHONE CONVERSATION







POLICE DEPARTMENT  
Ithaca.

DATE OF THIS REPORT	UNIT REPORTING
8/12/80	
CASE STATUS:	
<input checked="" type="checkbox"/> ACTIVE	<input type="checkbox"/> CLOSED
<input type="checkbox"/> UNFOUNDED	
ALARM NO	DATE TRANSMITTED

COMPLAINT FOLLOW-UP

\*FOR OFFICE USE ONLY  
(Do Not Fold This Report)

OFFICER'S NAME (Printed)	RANK, FIRST, LAST	COM.D.
Det. Francis Gilmurray		DAOS

1. On this date, subpoena for books and records of TNT Jukeboxes and Entertainment Productions, 1626 Business Way, Ithaca, Homestate, was executed on Casper Barrows, bookkeeper, said company.

2. Barrows telephoned Harold Jacobs, attorney-at-law, in captioned's presence.

3. Barrows then informed captioned that Jacobs told him to tell captioned that the books and records of TNT were taken in a burglary of the company offices on August 10, 1980, and that a letter to this effect would be sent, this date, to the District Attorney's Office.

4. Captioned engaged Barrows in conversation, and Barrows said as follows:

a. That TNT's bank was Marine Midland, Judd Falls Branch, Ithaca.

b. That everybody was "in trouble," and he was fearful of going to jail.

5. Captioned said that Barrows could help himself by cooperating and that no one would necessarily have to find out that he was cooperating.

6. Barrows then informed captioned that he would need protection, since the people he was working for were "Mafia."

7. Captioned then telephoned Chief Assistant District Attorney Franklyn Aron who authorized captioned to tell Barrows that no prosecution would be made of him for any nonviolent offenses if he cooperated and told the truth.

8. Barrows, after securing a promise of confidentiality, then informed the captioned as follows:

a. He became the bookkeeper for TNT after he lost his job with Terminal Taxi, when he was caught embezzling. He said he had to take the money to pay back a loan shark, William Meli, who worked for Ricardo Barcelona. Mr. Barcelona then gave him his present job.

b. He said that he takes his order from either Harold Jacobs or Barcelona.

c. Barrows stated that his wife has been very sick for a number of years and needs his help, and his medical bills have been very high and that is why he is cooperating. He has always feared that he was eventually going to be caught by the police or hurt by his employers and is relieved to tell his story and get it over with, but he is afraid.

d. Barrows says that the company is not being run legitimately and that Jacobs and Barcelona take money out of it.

e. Barrows says that he does not know what kind of crooked deal is going on, but that Jacobs and Barcelona have some relationship with City Fire Marshall Frank

Maas. He says that he has made out checks to Jacobs and that when he has asked how he should enter them in the books, Jacobs has laughed and said, "fire insurance," but then he has told him to charge it to "legal fees." He says that Barcelona, Jacobs, and Maas have had meetings in the offices while he was there, but that they always closed the door. He also says that he has given Maas messages for Jacobs and Barcelona.

9. Captioned asked Barrows if he would record a conversation with Jacobs or Barcelona, but he refused, saying that they had ways to find out and that Barcelona would "get him."

10. Captioned asked Barrows if he would make and record a phone call to Maas.

11. Barrows reluctantly consented.

12. Attached is a transcript of the phone call.

B=Bookkeeper [Barrows]  
M=Marshall [Maas]  
U/F=Unknown Female

Recorded: 8/12/80

Location: TNT Jukeboxes and  
Entertainment Productions  
1626 Business Way  
Ithaca, Homestate 14850

11:15 A.M.

U/F - Office of the Fire Marshall.  
B - Is Mr. Maas there?  
U/F - No, I'm sorry, he's not in today. Who's calling, please.  
B - This is Mr. Barrows, from TNT. Would you have him call  
me at 336-6199?  
U/F - 336-6191.  
B - 99.  
U/F - Oh 99, I'm sorry. Yes I will. He usually calls in for  
messages around this time.  
B - Thank you.  
U/F - Good-bye.

\*\*\*\*\*

12:20 P.M.

[Introductory remarks not recorded---recorded not hooked up.]

B - . . . . That's better, I'm sorry but I had someone in the  
office.  
M - What can I do for you?  
B - We may have a problem.  
M - What kind of problem.  
B - Well, the police were here and . . . .  
M - Why don't you leave your office and call here from a  
public phone booth outside the building.  
B - Uh, okay.  
M - I'm at 339-9124.  
B - Is your number okay?  
M - Yeah, it's a public phone.  
B - Okay, it'll take about 5 minutes.  
M - I have time. Better safe than sorry.

\*\*\*\*\*

12:24 P.M.

M - [rings] Yeah.  
B - Mr. Maas.  
M - Yeah.  
B - Good. Listen, uh, the police were here and they were,  
uh, asking about the checks.  
M - Oh, my God! What did you tell them?  
B - Well, I said that they were for legal fees.  
M - That's right.

- B - But I'm not, uh, sure they, uh, believed me.  
M - What d'ya mean?  
B - Well, they said that they did not look right.  
M - They can say what they want to say. Listen, they don't know anything about me anyway, do they?  
B - I think they know about everything.  
M - How could they? Oh, my God!  
B - Maybe someone talked.  
M - They're bluffing.  
B - What if they, uh, get your records.  
M - They can't, I gave them to my lawyer--Besides, they're perfect.  
B - Wait a sec [pause 15 seconds] . . . . Oh yeah, Mr. Jacobs was real happy about the way, uh, everything turned out.  
M - He should be, I took one hell of a chance and for a pitance, too.  
B - Did you, uh, ever, uh, do anything like that before?  
M - What business is it of yours?--Hey, what number are you calling from?  
B - What?  
M - What f----- number are you calling from?  
B - Why?  
M - I want to . . . . Listen, I don't know what you are talking about. If you want to speak to me about official business, you call me at my office. Everything is on the up-and-up. I worked long and hard getting where I am. Do you understand?  
B - I just wanted to let you know that they were asking about the fire on Mitchell Street.  
M - Mitchell Street! I don't know what you're talking about. Who the hell do you think you're talking to. I'm hanging up, I don't have to listen to this garbage. [hangs up]  
B - [background . . . . he hung up, it didn't work.]



ADDITIONAL MATERIALS





JACOBS & JACOBS, P.C.

521 FIFTH AVENUE

August 12, 1980

Honorable Thomas E. Hogan  
District Attorney  
Ithaca, Homestate 14850

Re: TNT Jukeboxes and Entertainment  
Productions - Subpoena

Dear Sir:

In response to your subpoena duces tecum, I am authorized by my client, TNT Jukeboxes and Entertainment Productions, 1626 Business Way, Ithaca, Homestate, to inform you that its offices were the subject of an unauthorized entry on August 10, 1980, and its books and records were taken along with other items of value.

Sincerely,



Harold Jacobs  
Attorney-at-Law

HJ/dae

# BASIC FIELD INCIDENT REPORT

Fire Department Code 5, 5, 0, 0, 9

Revised Report

A	1	Incident No. 1601	Exp	Mo. 5	Day 11	Year 80	Day of the Week Sunday	Alarm Time 0256	Time: "In Service" 0456
B	Tax Map No. 150070084-3-4	CORRECT ADDRESS No # Dir. 414 Mitchell		Name		Type	Zip Code 14850	Census Tract	
C	Occupant Name Louis Goldberg, 414 Mitchell St.			Address			Telephone 256-7590	Room or Apt. ---	
D	Owner Name Same			Address Same			Telephone Same		
E	Method of Alarm from Public phone 273-8000		Person Reporting		/Phone No.		Type of Situation Found Fire		
F	Type of Action Taken extinguishment			Co. Inspection District city		Shift D	No. Alarms 3	Mutual Aid <input type="checkbox"/> Rec'd <input type="checkbox"/> Given	
G	No. Fire Service Personnel Used at Scene 60		No. Engines Used at Scene 3		No. Aerial Apparatus Used at Scene 1		No. Other Vehicles Used at Scene 2		

COMPLETE ON ALL INCIDENTS

H	2	No. Incident-related injuries* Fire Service 1 Others 2		No. Incident-related Fatalities* Fire Service 0 Others 0		Structure Type Residence			
I	Fixed Property Use Residence			Complex		Mobile Property Type**			
J	Area of Fire Origin U/K		Level of Fire Origin U/K		Construction Type Frame		Construction Method Site Built		

COMPLETE IF CASUALTY OR FIRE

K	Equipment Involved in Ignition (if any)** U/K			Form of Heat of Ignition U/K					
L	Type of Material Ignited Wood Fabric.		Form of Material Ignited Structure Furniture			Ignition Factor U/K			

IGNITION

M	Extent of Flame Damage Total		IF FLAME SPREAD BEYOND ROOM OF ORIGIN:		Type of Material Generating Most Flame Finished Material		Avenue of Flame Travel Up		
N	Extent of Smoke Damage Total		IF SMOKE SPREAD BEYOND ROOM OF ORIGIN:		Type of Material Generating Most Smoke Finished Interior Goods		Avenue of Smoke Travel lateral vert		
O	Extent of Water Damage throughout		Extent of Fire Control Damage total		Termination Stage flame				

COMPLETE IF FIRE FIRE GROWTH

P	Time of Alarm to Agent Application 3 min.		Method of Extinguishment water			Detector Performance did not work			
Q	Estimated Total Dollar Loss 7,000.00		Property Damage Classification 50,000 to 99,999			Sprinkler Performance ---			
R	Member Making Report Lt. Olmstead			Officer in Charge Asst. Chief Weaton					
	If Mobile Property		Year	Make	Model	Serial No.	License No. (if any)		
	If Equipment Involved in Ignition		Year	Make	Model	Serial No.	Voltage (if any)		

COMPLETE IF FIRE GROWTH

COMMENTS Damage and Cause

Alarm Dispatched

3' 4" 5' 6' Hose Used per Engine in Feet  
 400' 1 1/2" 500' 1/2" 150

Box No.  
Bell 2124

Extinguishers Used \_\_\_\_\_ Hydrant Locations **corner Mitchell & Cornell** Gas. Water Used **500** Water Dept. Notified **yes**  
 Department \_\_\_\_\_ Division \_\_\_\_\_ NYSEG Notified **yes**

Port Gen Hrs. **yes one 2 hrs.** Smoke Ejector Hrs. **none** Power Saw Min. **one 20 min.** Tarpaulins Used **no** Master Stream Devices **one**

Air Masks Used **8** Number of Hose Streams and Feet  
 1" x : FL. 1 1/2" x **4: 800** 2 1/2" x **2: 500** Port. Pump Hrs. **---** Feet of Ladders **100'**

Other Equipment **none**

Damage and Missing Equipment Accidents to Apparatus **none**

Owner Insurance Agent **Joseph Peters** Address **40 W. State Street State Farm**

Occupants \_\_\_\_\_ Insurance Agent \_\_\_\_\_ May Be Reached at \_\_\_\_\_

COMPANIES RESPONDING					
VEH. I.D.	Driver	VEH. I.D.	Driver	VEH. I.D.	Driver
901	La Buff				
909	Wanck				
939	Barkee				
905	Updike				

DRIVER: \_\_\_\_\_ ATNDT: \_\_\_\_\_ EMT # \_\_\_\_\_ ATNDT: \_\_\_\_\_ EMT # \_\_\_\_\_

**PATIENT DATA**

NAME \_\_\_\_\_ AGE \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ M  F  
 PH # \_\_\_\_\_

PHYSICIAN \_\_\_\_\_

**SUSPECTED ILLNESS OR MAJOR SYMPTOM PRESENTED**

PAIN (LOCATION) \_\_\_\_\_  HEMORRHAGING FROM \_\_\_\_\_  
 CARDIAC \_\_\_\_\_  POISONING / OVERDOSE SUBSTANCE \_\_\_\_\_ TIME \_\_\_\_\_  
 CVA/STROKE \_\_\_\_\_  DIABETIC RELATED (SPECIFY) \_\_\_\_\_  
 RESPIRATORY \_\_\_\_\_  PREGNANCY RELATED (SPECIFY) \_\_\_\_\_  
 SHOCK \_\_\_\_\_  OTHER \_\_\_\_\_  
 CONVULSIONS \_\_\_\_\_  
 NAUSEA / VOMITING \_\_\_\_\_  
 DIZZINESS / FAINTING \_\_\_\_\_  
 (HEAT) OR (COLD) RELATED \_\_\_\_\_  
 ABNORMAL BEHAVIOR EXHIBITED \_\_\_\_\_

**BASIC LIFE SUPPORT MANAGEMENT**

AIRWAY CLEARED  
 ORAL AIRWAY INSERTED  
 SUCTION USED  
 OXYGEN GIVEN @ \_\_\_\_\_ L.P.M., METHOD \_\_\_\_\_  
 ARTIFICIAL VENTILATION, METHOD \_\_\_\_\_  
 C.P.R. STARTED @ TIME \_\_\_\_\_

**SPECIFIC PROCEDURES**

BLEEDING CONTROLLED, METHOD \_\_\_\_\_  
 ANTI-SHOCK GARMENT APPLIED  
 (HEAT) OR (COLD) APPLICATION  
 VOMITING INDUCED @ TIME \_\_\_\_\_ METHOD \_\_\_\_\_  
 LIMB IMMOBILIZATION,  FIXATION  TRACTION  
 SPINAL IMMOBILIZATION,  NECK  BACK  
 RESTRAINTS APPLIED, TYPE \_\_\_\_\_  
 BABY DELIVERED @ TIME \_\_\_\_\_  
 ALIVE  STILL  MALE  FEMALE

**ADVANCED LIFE SUPPORT MANAGEMENT**

AIRWAY INSERTED:  EOA  ENDO-TRACH  
 EKG MONITORED (ATTACH TRACING)  
 DEFIBRILLATION NO. TIMES \_\_\_\_\_ WITH \_\_\_\_\_ WATT / SEC.  
 IV/MEDICATION ADMINISTERED (RECORD BELOW)

TIME	RESP.	PULSE	B.P.	CONSC.	R PUPILS	L	SKIN
	RATE <input type="checkbox"/> SHALLOW <input type="checkbox"/> LABORED			<input type="checkbox"/> FULL <input type="checkbox"/> SEMI <input type="checkbox"/> UN	<input type="checkbox"/> NORMAL <input type="checkbox"/> DILATED <input type="checkbox"/> CONSTRICTED <input type="checkbox"/> NO-REACT	<input type="checkbox"/>	
	RATE <input type="checkbox"/> SHALLOW <input type="checkbox"/> LABORED			<input type="checkbox"/> FULL <input type="checkbox"/> SEMI <input type="checkbox"/> UN	<input type="checkbox"/> NORMAL <input type="checkbox"/> DILATED <input type="checkbox"/> CONSTRICTED <input type="checkbox"/> NO-REACT	<input type="checkbox"/>	

1  ASPHYXIATION CAUSE \_\_\_\_\_ 7  SPRAIN / STRAIN  
 2  WOUND \_\_\_\_\_ 8  DISLOCATION  
 3  BLEEDING  SEV  MOD. 9  FRACTURE  OPEN  CLOSED  
 4  AVULSION / AMPUTATION 10  BURN \_\_\_\_\_ DEG \_\_\_\_\_ % AREA  
 5  INTERNAL INJURY 11  LOSS OF MOTION / FEELING  
 6  CONCUSSION 12  OTHER \_\_\_\_\_

COMMENTS \_\_\_\_\_ CAUSE OF INJURY/HISTORY: \_\_\_\_\_ PATIENT TAKEN TO \_\_\_\_\_

NEW YORK STATE POLICE  
SCIENTIFIC LABORATORY  
EVIDENCE SUBMISSION FORM

**PRINT OR TYPE ONLY**

<b>FOR LABORATORY USE ONLY</b>	
CASE #	LAB CASE 80A-Z-99
METHOD OF TRANSMITTAL:	
<input checked="" type="checkbox"/>	IN PERSON _____
<input type="checkbox"/>	CERTIFIED MAIL # _____
<input type="checkbox"/>	REGISTERED MAIL # _____
<input type="checkbox"/>	OTHER _____

<b>FOR STATE POLICE USE ONLY</b>	
TROOP	_____
STATION	_____
BCI #	_____
SUBMITTED BY	_____
	NAME & RANK

<b>FOR USE BY AGENCIES OTHER THAN STATE POLICE</b>	
NAME OF CHIEF, SHERIFF, DIRECTOR, ETC.	Frank Maas
AGENCY NAME	Office of City Fire Marshall
CASE #	It-5-13
AGENCY ADDRESS	Ithaca Fire Department
	Ithaca, Homestate 14850
SUBMITTED BY	Frank Maas, City Fire
	NAME & RANK Marshall

NAME OF DEFENDANT, DECEASED, VICTIM,  
COMPLAINANT (CIRCLE ONE)

ADDRESS 414 Mitchell Street, Ithaca, Homestate 14850

NATURE OF COMPLAINT OR NAME OF CRIME suspected arson

PLACE & DATE OF OCCURRENCE 414 Mitchell Street, Ithaca Tompkins 5/11/80  
C-V-T COUNTY DATE

BRIEF DESCRIPTION OF EVENTS Fire destroyed residence and contents.

ITEMS SUBMITTED (ONLY ONE ITEM PER LINE)

- ITEM 1 plastic bag wood first floor living room
- ITEM 2 plastic bag fabric materials "
- ITEM 3 plastic bag rug materials "
- ITEM 4

**EXAMINATION REQUESTED**

test for presence of  
accelerant

LIST REMAINING ITEMS SUBMITTED ON THE REVERSE SIDE OF THIS FORM

MID-HUDSON REGIONAL  
CRIME LABORATORY  
P.O. BOX 6065  
STEWART AIRPORT  
NEWBURGH, NEW YORK 12550  
(914) 564-4330

STATE OF NEW YORK



SOUTHERN TIER REGIONAL  
CRIME LABORATORY  
P.O. BOX 213  
TOWN HALL, PARK STREET  
PORT CRANE, NEW YORK 13833  
(607) 648-4127

NEW YORK STATE POLICE  
CRIME LABORATORIES

HEADQUARTERS LABORATORY  
STATE CAMPUS, BUILDING #22  
ALBANY, NEW YORK 12226  
(518) 457-1208

June 9, 1980

Lab Case 80A-Z-99

TO: Frank Maas  
City Fire Marshall  
Ithaca Fire Department  
Ithaca, Homestate 14850

SUBJECT: LOUIS GOLDBERG  
LOCATION: 414 Mitchell Street  
Ithaca, Homestate 14850

RECEIPT:

Evidence delivered to the Laboratory on May 12, 1980 by City Fire Marshall Maas.

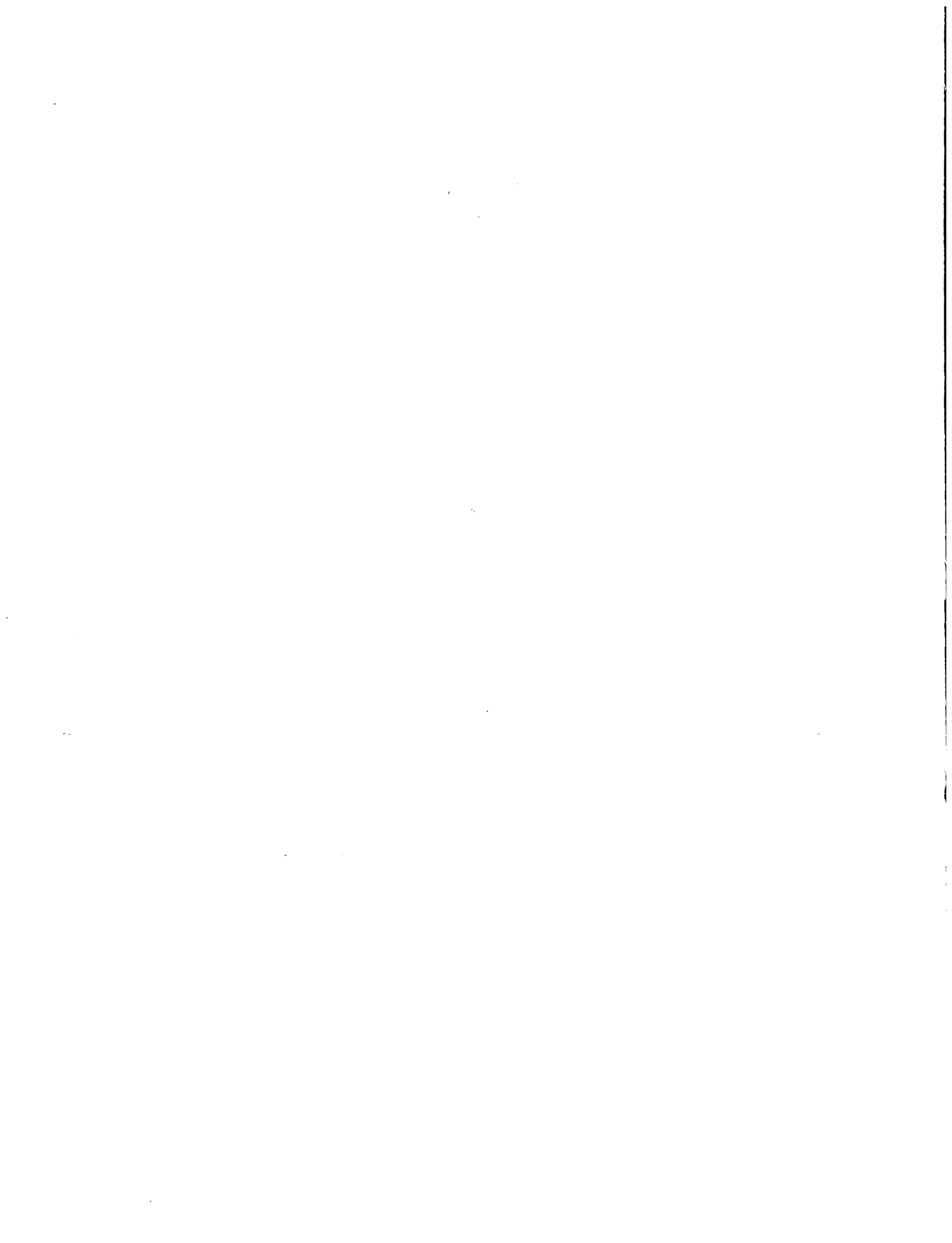
DESCRIPTION:

1. A plastic bag containing wood from first floor living room of captioned premises.
2. A plastic bag containing fabric materials from first floor.
3. A plastic bag containing rub materials from first floor.

EXAMINATION:

Chemical examination of items #1, #2, and #3 reveal the presence of no accelerant.

This report is made to your Department pursuant to the Memorandum of Understanding of January 1, 1969, between the Attorney General of Homestate and the Superintendent of the New York State Police.



# GUIDE





Guide: Workshop #3 - Analysis of Books and Records

Approach

The conduct of any investigation is always a matter of systematically asking questions and then methodically seeking their answers in light of the law, both as it relates to what must be shown to make out a crime and as it restricts the process of investigation.

The first question that must be asked (and reasked) is always: who is involved? An effort must be made to keep a careful "program" of the "cast of characters." Here that "cast" has begun to narrow to:

- (1) Barcelona, the racketeer.
- (2) Lumia, an underlying.
- (3) Meli, an underlying.
- (4) Bradson, the torch.
- (5) Maas, the fire marshall.
- (6) Jacobs, the crooked lawyer.
- (7) Goldberg, the "victim."
- (8) Barrows, the bookkeeper.
- (9) State Farm Insurance, the victim.

Note: This cast is fairly typical of most organized crime investigations. Only the names, not the roles, will be different.

The second question should focus on the possible criminal transaction under inquiry: what happened? In the usual investigation, this question will be initially answered by an hypothesis, that is, a theory of what may have happened. The investigation then is an effort to confirm or refute that hypothesis. Obviously, where a known crime has been committed

(i.e., a dead body shows up having not died of natural causes), the movement in a typical reactive investigation is toward an unknown criminal(s), who is (are) treated as a suspect(s). Where neither the crime nor the criminal(s) is (are) in clear focus--the typical situation in aggressive proactive organized crime investigation--the task facing the investigator is different. The investigation may be of a single past event, which must be reconstructed, or it may be of an ongoing series of events, which must be interdicted and then reconstructed. Apparently, what we have here, at least, is a series of single events: arsons and their accompanying insurance frauds. The problem is to reconstruct the details of one or more of these events. There is no particular order that ought to be followed in analyzing the materials gathered in our last round of investigation. What follows takes each set of materials and distills out those portions relevant to the task of filling out the particular details of an arson fraud.

Hypothesis: Insurance Fraud/Public Corruption

1. Was fire set by an arsonist? (evidence of accelerant)
2. Where did insurance payment go? (paper chase to arsonists)
3. Did a public official benefit from the insurance settlement? (paper chase to public official)

Review of New Evidence

1. Newspaper
  - a. fire at 414 Mitchell Street
  - b. May 11, 1980, at 2:56 A.M.
  - c. homeowner: Louis Goldberg, out of town

- d. fire marshall: Frank Maas
  - e. \$65,000 assessment
2. Field incident report of fire

basic confirmation of newspaper

Note: Michigan v. Tyler, 436 U.S. 499 (1978):

[E]ntry to fight a fire requires no warrant, and . . . once in the building, officials may remain there for a reasonable time to investigate the cause of the blaze. Thereafter, additional entries to investigate the cause of the fire must be made pursuant to the warrant procedures governing administrative searches. Evidence of arson discovered in the course of such investigations is admissible at trial, but if the investigating officials find probable cause to believe that arson has occurred and require further access to gather evidence for a possible prosecution, they may obtain a warrant only upon a traditional showing of probable cause applicable to searches for evidence of crime.

The procedures employed by fire marshalls ought to be checked to see if they comply with the courts new rules.

3. Laboratory submission and report

- a. submitted in person by Maas
- b. materials (wood, fabric, rug) from house
- c. test for accelerant
- d. negative

4. Insurance company file

- a. amount of insurance claim - \$134,900

Note: replacement value and loss exceeds assessment of \$65,000 per newspaper.

- b. paid to Goldberg July 17, 1980
- c. firefighters' statements show:

(1) fire did not "water" normally (accelerant),

- (2) door unlocked, and
- (3) fire spread widely.
- d. engineering report shows:

- (1) heat melted copper (over 2,000° F)

Note: copper melts at 1981° F. Normal structural fires, in early stages (i.e., less than full involvement), seldom produce temperatures at or near ceilings in excess of 1600° F.

- (2) possible two places of origin (rear or middle) (accidental fire generally has one point of origin).

Note: State law will sometimes make insurance company data confidential and it must be subpoenaed. Yet note how it helps fill out what happened.

5. Goldberg's bank statements and checks

- a. deposit of \$134,900 July 21, 1980
- b. check for \$85,000 July 22, 1980, to TNT

6. TNT bank statements and checks

- a. deposit of \$85,000 on July 21, 1980
- b. regular legal fees to Jacobs of \$100 per month
- c. \$10,000 payment to Jacobs on July 25, 1980

Note: An effort to trace the \$10,000 out of Jacobs's accounts would be futile. Numerous figures near or same fraction of \$10,000 move through his account, many of which are cash payments to people for "general" purposes.

Note: A full reconstruction and analysis of TNT's books and records from third parties would be possible

despite the burglary. From the endorsements on the checks, it would be possible to identify suppliers and customers. Invoices and receipts could then be obtained from them. If this were done, it would show, inter alia, the following:

- (1) profits from "short" machines (more machines bought than records show placed: skim)
- (2) rent paid in excess of fair market value (lease on office space not arms length: skim)
- (3) more than fair market value paid for machines and products sold (purchases not arms length: skim)
- (4) automobiles for personal use (skim)
- (5) fictitious employees (skim)
- (6) goods not delivered to company, but owners residence (skim)

Each situation represents apparent movement of money in one direction with real movement in opposite direction.

7. Barrow's statement

- a. TNT's account at Marine Midland (made possible subpoena of TNT bank records)
- b. money "in and out of" TNT
- c. relationship of some kind (insurance fraud?) between Barcelona, Jacobs, and Maas
- d. recording with Maas
  - (1) checks
  - (2) Mitchell Street

8. Jacobs's letter

no TNT records.

### Additional Investigation

This investigation has been carried about as far as it can at this point. We have about all of the physical evidence (re fire) we are going to get. Electronic surveillance (recording tap and bug) has been used and some admissions obtained. There is little hope that the use of a search warrant would turn up anything. More books and records could be subpoenaed, i.e., third-party suppliers of TNT, but that will not, in all likelihood, move the arson fraud forward. It would be possible to interview additional people in hopes of obtaining witness to some aspect of the situation, i.e., neighbors of Goldberg. But that would probably obtain only circumstantial evidence of what we already know. What we need is a witness to the illicit transaction. The issue then is which of the cast of characters should be a witness and not a defendant?

The students may, of course, differ in their evaluation of the answer to this question, but it would seem that

1. Barcelona (mob),
2. Bradson (violent), and
3. Jacobs (lawyer)

ought to be targets for jail time. They should not be considered for the status of witness voluntary (plea bargain) or involuntary (immunity). That leaves:

1. Lumia (minor figure)
2. Meli (minor figure)
3. Maas (public official)
4. Goldberg (victim)
5. Barrows (little guy).

Barrows has already "agreed" to cooperate. But note that he has hardly been candid. He should have known not only about checks, but the \$10,000 July check in particular. Students should discuss the practice of their offices on debriefing witnesses. When do you write up the comprehensive statement of a turned witness? What kinds of notes do you keep in the process? Even so, Barrows probably does not know much more than you can already prove. Barcelona, Bradson, and Jacobs are in the most trouble already. The evidence is weakest against Maas. We need a witness who can give us information on him.

Lumia-Meli. Since both of these two underlings are in fact minor characters in the arson fraud, they could be considered, but there is little evidence that points toward their having substantial new information.

Goldberg himself, obviously, is a possible candidate. There is a lot he would have a hard time explaining. He is, in all likelihood, either a gambling or a loan shark victim. (\$85,000 is a high figure to pay to have your house burned down. Usually, 25 percent of the recovery is the figure charged for the fire where a sophisticated ring is involved: \$33,725. See Testimony of Angelo Monachine, Arson for Hire Hearings Before the Permanent Subcommittee on Investigation of the Committee on Governmental Affairs, United States Senate, 95th Cong., 2d Sess. 39 (1978). Less complicated schemes pay fixed fees, a couple of hundred dollars, maybe a thousand.) It looks like Goldberg owed somebody around \$50,000 (\$85,000 - 33,725 = \$51,725). That means that the arsonist will have been paid around \$8,431.25 (25 percent of the price) (Id.), and the

organized crime figure will have kept the rest. (Id.) He must split the 25 percent with anyone who referred the Goldberg case to him as a finder's fee and take care of any bribery as his expenses. (Id.) The probable actual breakdown here, in round figures, looks like:

\$85,000 pay off split:

\$50,000 debt of some kind

\$35,000 arson fee split:

\$ 5,000 for the arsonist (Bradson)

\$ 5,000 for the bribe (Maas)

\$25,000 for the organized crime figure

(Barcelona-Jacobs)

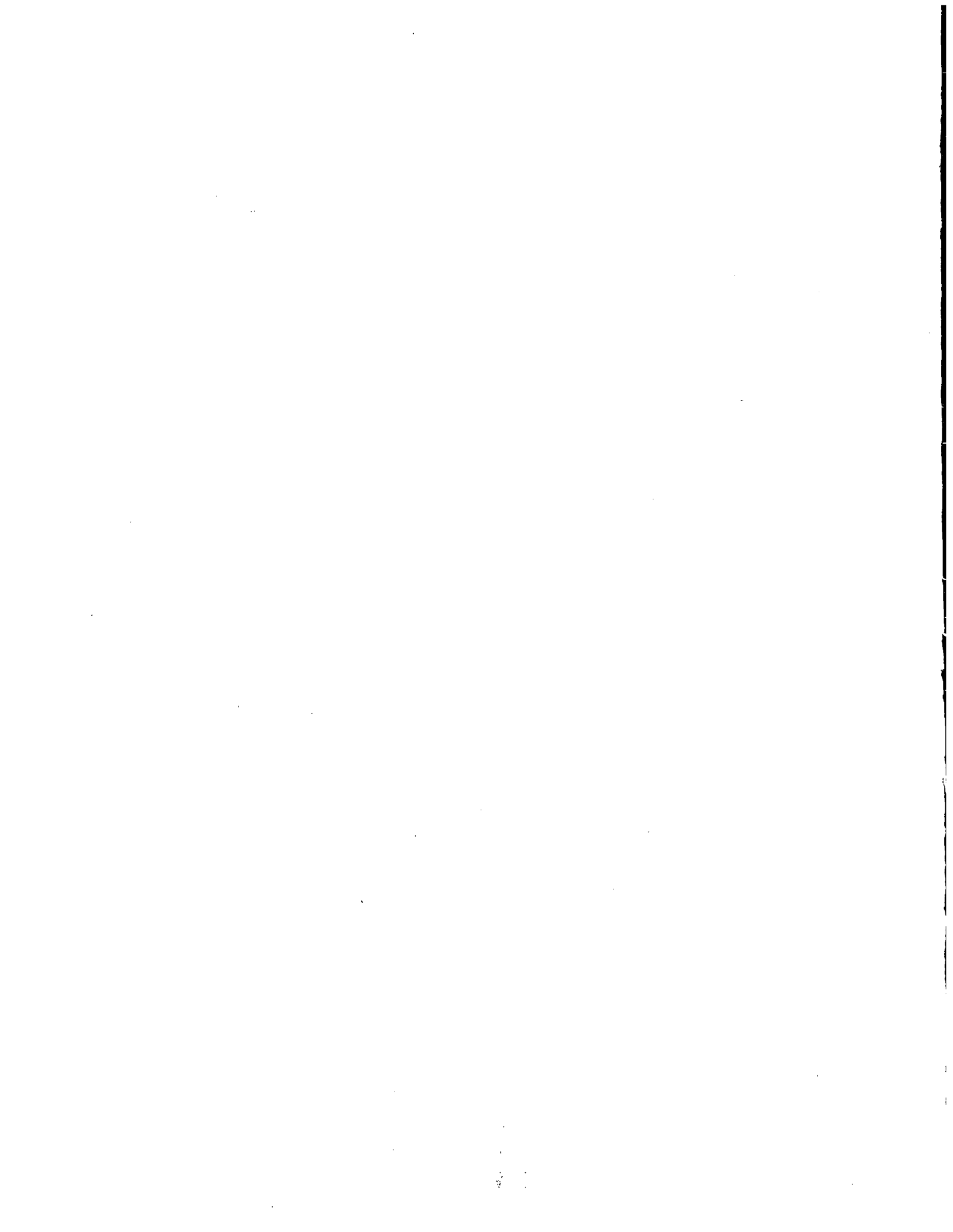
Maas himself appears to be the best target for a session with the grand jury. Because he is a public official, it is unlikely that he will claim his privilege against self-incrimination. In fact, there is a possibility that he might "voluntarily" waive his privilege, and his testimony could then be used against him. People v. Gluckman, 35 N.Y.2d 341, 320 N.E.2d 633, 361 N.Y.S.2d 892 (1974). If he doesn't, his "failure to account" could cost him his job. See Garrity v. New Jersey, 385 U.S. 493 (1967) (statement of police officer who waives privilege to avoid loss of job inadmissible); Spevall v. Klein, 385 U.S. 511 (1967) (lawyer not accounting for performance of his profession may remain silent in disbarment proceedings); Gardner v. Broderick, 392 U.S. 273 (1968) (policeman may be dismissed for failure to account). Of course, if he does testify under compulsion, his testimony cannot be used against him criminally, but if it reveals criminal conduct, it could still cost him his job, which would at least prevent



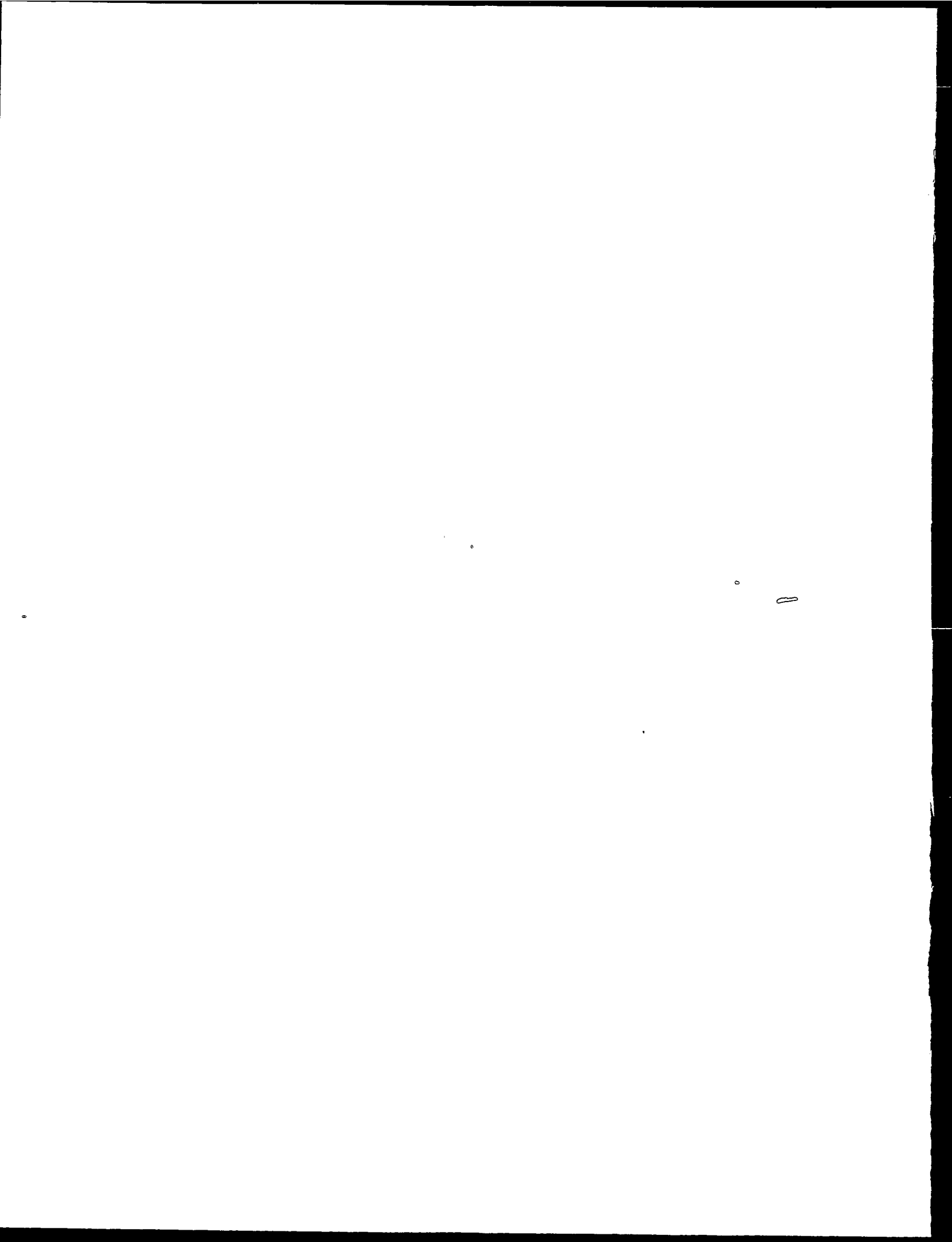
him from doing future harm; if it were contemptuous or false, he might be proceeded against for contempt or prosecuted for perjury. Maas, moreover, is not a professional criminal. The loss of his job or the threat of imprisonment may well turn him around. As a witness, he could, in any likelihood, sink both Barcelona and Jacobs. Since there is sufficient time in light of the statute of limitation to spend some period of time with Maas, an attempt to turn him should, therefore, be made.

The instructor should skillfully lead the seminar students to the decision to call Maas. Others may also be called, but the continuation of the simulation presupposes that Maas appears before the August 1980 Grand Jury.

Depending on the time available, the session could end at the point where the decision is made or it might go on and begin to prepare an agenda for Maas. Workshop #4 will deal with that agenda and Maas's actual interrogation.



**Workshop #4:**  
**Examination of the Recalcitrant Witness**



Workshop #4 - Examination of Recalcitrant Witness

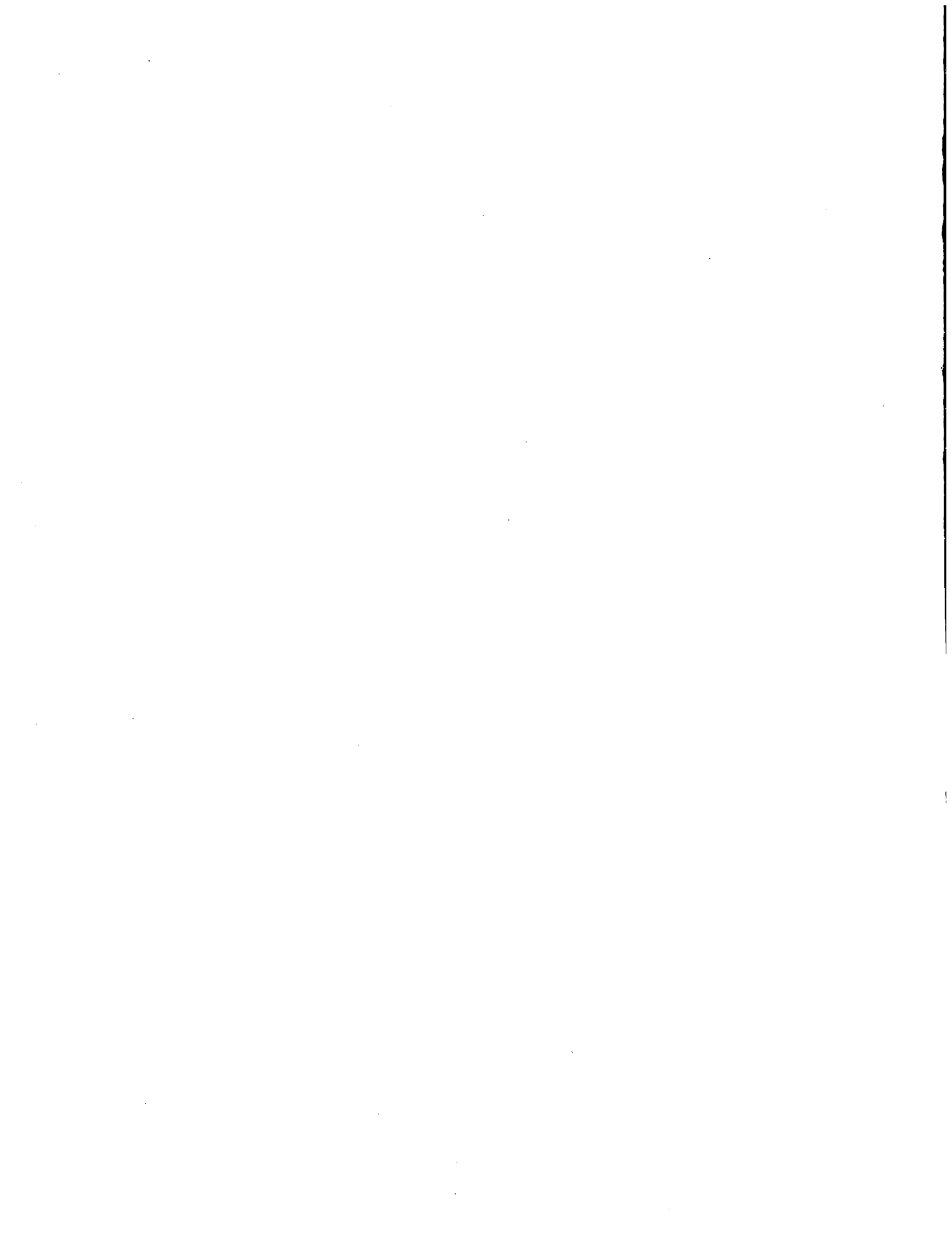
Premise: Based on your analysis of the books and records, a subpoena has been issued to City Fire Marshall Frank Maas.

Problem: Prepare an agenda for Maas's appearance and conduct his examination. (A Maas will be provided for each section.)

Note: Maas has agreed to appear and waive any privileges that he might have. In addition, he has voluntarily turned over his bank statement for July, and he has informed the District Attorney's Office that he does not have a savings account or a safety deposit box.



MAAS BANK STATEMENT  
(checks omitted)







DATE OF LAST STATEMENT	THIS STATEMENT PERIOD ENDING	ACCOUNT NUMBER		
07-03-80	08-01-80	21	73288	4

Frank Maas  
 320 W. 15 St.  
 Ithaca, Homestate

Please examine at once: If no error is reported within fourteen days of mailing or delivery, the account will be considered correct. All items are credited subject to final payment.

Should you change your address, be sure to notify your branch office of your new address.

Please refer to the reverse side of this statement for:

1. An explanation of the codes shown below, and
2. Procedures for balancing your statement.

BALANCE FORWARD	DEBITS	CREDITS	MONTHLY CHARGES	ENDING BALANCE
619783	18 609969	8 1103960		1108875

DATE	CHECKS	DEBITS	ORDERS	PAID	LEFT TO RIGHT	DEPOSITS	BALANCE
07-03-80						105335	725118
07-06-80	2500						722618
07-07-80	90000						632618
07-08-80						36500	669118
07-09-80	3000	90000					576118
07-10-80						106128	682246
07-13-80	2500	4066		18129			657551
07-15-80						40000	697551
07-19-80	103633					88832	677551
07-24-80	3000					32000	706551
07-27-80						500000	1206551
07-30-80	7609	10477		16100		106333	1278698
07-31-80	4997	7773		50000	90000		1125928
08-01-80	51257	54928				88832	1108875

CIN CUR GOLD RUSH GET YOUR GIFT WITH 6-MONTH OR 2 1/2 YEAR MONEYMARKET SAVINGS! ARCH 20/APRIL 26 ONLY. ENTER OUR POUND OF GOLD SWEEPSTAKES TO WIN SOLID GOLD.

DEPOSIT TICKET

NAME Frank Maas  
 ACCOUNT NO. 21-72388-4  
 DATE July 19 1980

CASH		
LIST CHECKS SINGLEY	888	32
TOTAL FROM OTHER SIDE		
<b>TOTAL</b>	888	32
LESS CASH RECEIVED		
TOTAL ITEMS	NET DEPOSIT	888 32



50-264  
213 O

USE OTHER SIDE FOR ADDITIONAL LISTING

BE SURE EACH ITEM IS PROPERLY ENDORSED



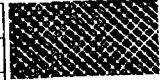
DELUXE NO-18

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT.

DEPOSIT TICKET

NAME Frank Maas  
 ACCOUNT NO. 21-73288-4  
 DATE July 24 1980

CASH		
LIST CHECKS SINGLEY	320	00
TOTAL FROM OTHER SIDE		
<b>TOTAL</b>	320	00
LESS CASH RECEIVED		
TOTAL ITEMS	NET DEPOSIT	320 00



50-264  
213 O

USE OTHER SIDE FOR ADDITIONAL LISTING

BE SURE EACH ITEM IS PROPERLY ENDORSED



DELUXE NO-18

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT.

DEPOSIT TICKET

NAME Frank Maas  
 ACCOUNT NO. 21-73288-4  
 DATE July 27 1980

CASH		
LIST CHECKS SINGLEY	5,000	00
TOTAL FROM OTHER SIDE		
<b>TOTAL</b>	5,000	00
LESS CASH RECEIVED		
TOTAL ITEMS	NET DEPOSIT	5,000 00



50-264  
213 O

USE OTHER SIDE FOR ADDITIONAL LISTING

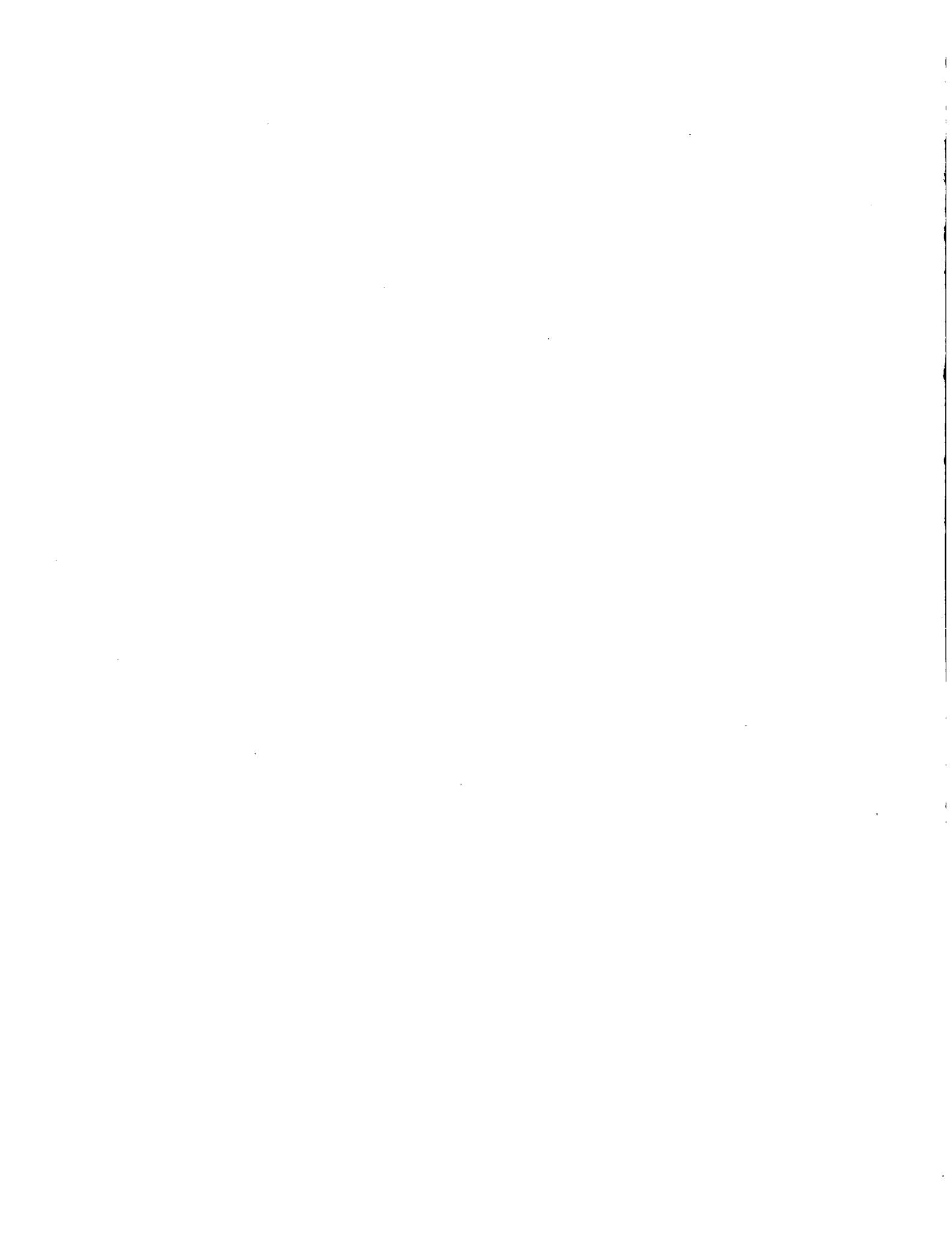
BE SURE EACH ITEM IS PROPERLY ENDORSED



DELUXE NO-18

CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT.

# GUIDE



Guide: Workshop #4 - Examination of the Recalcitrant Witness

This workshop should be divided into three parts. The first part should be a discussion of the strategy of handling Maas. Based on how that strategy is formulated, an agenda should be prepared. The second part should be devoted to an interrogation of "Maas," who will be provided to the seminar. One or two students should be selected "to execute" the seminar's strategy. ("Maas" will be a firefighter, who has been briefed on the crucial evidence. How he actually handles himself will be up to him.) The third part of the session should be devoted to a critique of how the "prosecutors" handled the strategy.

The agenda should cover:

a) basic facts

- 1) name
- 2) age
- 3) residence

b) outline of evidence: chronology

key events, who participated in them, dates and times, what was said, supporting documents (pre-numbered as grand jury exhibits)

c) outline of interrogation

This is a matter of art, not science. Usually, however, an interrogation ought to build to some crucial point. One strategy is to give the witness easy questions at first that may be explained. Then

harder questions, particularly those supported by documents or transcripts that are more difficult to get around. As the witness gets in deeper and deeper, his duplicity will become more and more apparent. It is doubtful that the witness will "crack." But it does happen. In any event, the nature of his testimony should be clear both to him and anyone else (judge, grand jury, petty jury) reading it. Note: if you expect that you may have to use the transcript in a contempt or perjury trial, your conduct, too, will be on trial. Not only because it's right and required by law, but because it is necessary for persuasion; you must be courteous and fair and appear to be both.

Workshop #5:  
Perjury and Contempt Indictments





Workshop #5 - Perjury and Contempt Indictments

Premise: Frank Maas has appeared before the August 1980 Grand Jury, and a transcript of his testimony has been prepared. Certain sections of his testimony have been singled out as possible bases for contempt or perjury charges.

Problem: I. Which, if any, of the selected portions are legally sufficient to support a count in an indictment?

II. How should each be charged?

- I.
- Q. Do you know Ricardo Barcelona?
- A. I've met him once or twice.
- Q. Under what circumstances did you meet him?
- A. He was introduced to me as a businessman.
- Q. Did you know anything else about him?
- A. Nothing, except what I read in the papers.
- Q. What have you read about him?
- A. He is supposed to be a gangster.
- Q. Did he ever talk to you about your work as Fire Marshall?
- A. I don't recall.
- Q. Mr. Maas, you do, of course, recognize the need to keep the fire department free of underworld influence.
- A. Yes, I take my job very seriously. What are you trying to say?
- Q. And if you were approached by a person having a reputation as a gangster, would you discuss departmental business with him?
- A. Most certainly not.
- Q. Have you ever, to your knowledge, discussed the fire department's business with any person having such a reputation?
- A. I already said I don't recall.
- Q. Do you recall the fire at 414 Mitchell Street on May 11, 1980?
- A. I do.
- Q. Did you ever discuss an insurance company investigation of that fire with Mr. Barcelona?
- A. I can't recall.
- Q. Did you discuss an insurance company investigation with Mr. Barcelona on the telephone any time this month, that is, August, 1980?
- A. I told you that I don't recall.

Q. Do you deny it?

A. No.

Q. Do you admit it?

A. I have no recollection one way or the other.

\* \* \* \* \*

II.

Q. Mr. Maas, do you know Mr. Harold Jacobs.

A. Yes.

Q. Who is he?

A. A lawyer.

Q. On or about August 11, 1980, did you tell Mr. Barcelona that Mr. Jacobs had not yet paid you money?

A. No, why would I?

Q. You then deny having told him?

A. Yes--there would be no reason to.

Q. A yes or no is sufficient.

A. No--I don't recall any such conversation.

Q. Are you saying that it didn't happen, or you are not sure.

A. Not to my recollection.

Q. Could it have happened?

A. Anything could have happened.

Q. Mr. Maas, yes or no. Did you tell Mr. Barcelona that Mr. Jacobs had not yet paid you money?

A. I have no recollection

Q. Do you deny it?

A. No, I just don't remember.

\* \* \* \* \*

III.

Q. Mr. Maas, do you have a bank account at First National Bank of Ithaca?

A. I gave you the bank statement, didn't I?

Q. Mr. Maas, I'll show you what has been marked as August 1980 G. J. Exhibit No. 85. What is it?

A. It is my bank account statement.

Q. Let me direct your attention to the deposit of \$5,000 on July 27, 1980. Did you make that deposit?

A. Yes.

Q. Was it a deposit of cash?

A. Yes.

Q. Where did you get the cash?

A. I won it playing poker.

Q. When?

A. On July 24th.

Q. Where?

A. At the Ithaca Country Club.

Q. Who was playing?

A. Some guys.

Q. What were their names?

A. Well, I don't generally play poker with strangers, but I was out there -- see, it's my wife's bridge night, and I didn't want to hang around the house -- and I was walking through the locker room, and I stopped to watch this game, and after a while, they just invited me to get in. There were six of them, and I made seven. One name was "Bill." Another guy was John -- maybe it was Jack. I don't remember the other names. I never saw them before, and I haven't seen them since.

\* \* \* \* \*

IV.

Q. Mr. Maas, have you told this grand jury that you know Harold Jacobs?

A. Yes.

Q. Isn't it a fact that you got the \$5,000 cash from Mr. Jacobs?

A. I'm sorry, anything between Jacobs and me is a matter between me and my lawyer. You ain't got no right to ask me nothing about that.

Q. Mr. Maas, no aspect of the lawyer-client privilege precludes this grand jury from learning if a lawyer paid you money.

A. My lawyer done told me you can't ask me about that.

Q. As legal advisor to the grand jury, I am telling you that you must answer the question, and a refusal may be punished for contempt.

A. 'Cause my lawyer said I don't have to, I ain't gonna answer that question.

\* \* \* \* \*

V.

Q. You know Casper Barrows, don't you, Mr. Maas?

A. Yeah.

Q. You also know where he works, don't you?

A. Yeah.

Q. You have had many conversations with him, haven't you?

A. Well . . . .

Q. In fact, you had a conversation with him just this week, didn't you?

A. Maybe.

Q. Mr. Maas, it is a fact that on August 12, 1980, at 12:27 P.M., you had a conversation with Casper Barrows on the telephone. Admit it?

A. I don't remember.

Q. Do you deny that you did?

A. No.

Q. Do you admit that you did?

A. No.

\* \* \* \* \*

VI.

Q. Didn't you tell Mr. Barrows in a conversation on the telephone on August 12, 1980, that you -- I quote -- "took one hell of a chance and for a pittance, too"?

A. No. I never said nothing like that to nobody.

\* \* \* \* \*

VII.

Q. Is it your testimony that on or about August 12, 1980, in a conversation with Casper Barrows you did not say to him that you "took one hell of a chance and for a pittance, too"?

A. That's right. I don't care what anybody says. That is my testimony, and...and I am sticking to it.

\* \* \* \* \*

VIII.

Q. Mr. Maas, did you tell Mr. Barrows that the police can't get your records because you gave them to your lawyer?

A. Somebody else must have told him that.

\* \* \* \* \*

IX.

Q. Did you tell him to call you back on a safe phone?

A. No.

\* \* \* \* \*

X.

Q. Is it a fact that Mr. Barrows called you at your office and told you that the police had been asking about the checks?

A. No. It ain't true.

\* \* \* \* \*

XI.

Q. Mr. Maas, you do know Mr. Jacobs, don't you?

A. Yes.

Q. And you say he is your lawyer?

A. Yes.

Q. Mr. Maas, you say you were in business with Mr. Jacobs. Deals. Business deals. What is he, your lawyer or your business partner?

A. He is my business partner.

\* \* \* \* \*

XII.

Q. Mr. Maas, if Mr. Jacobs is your business partner, why is a payment of money to you protected by an attorney-client privilege?

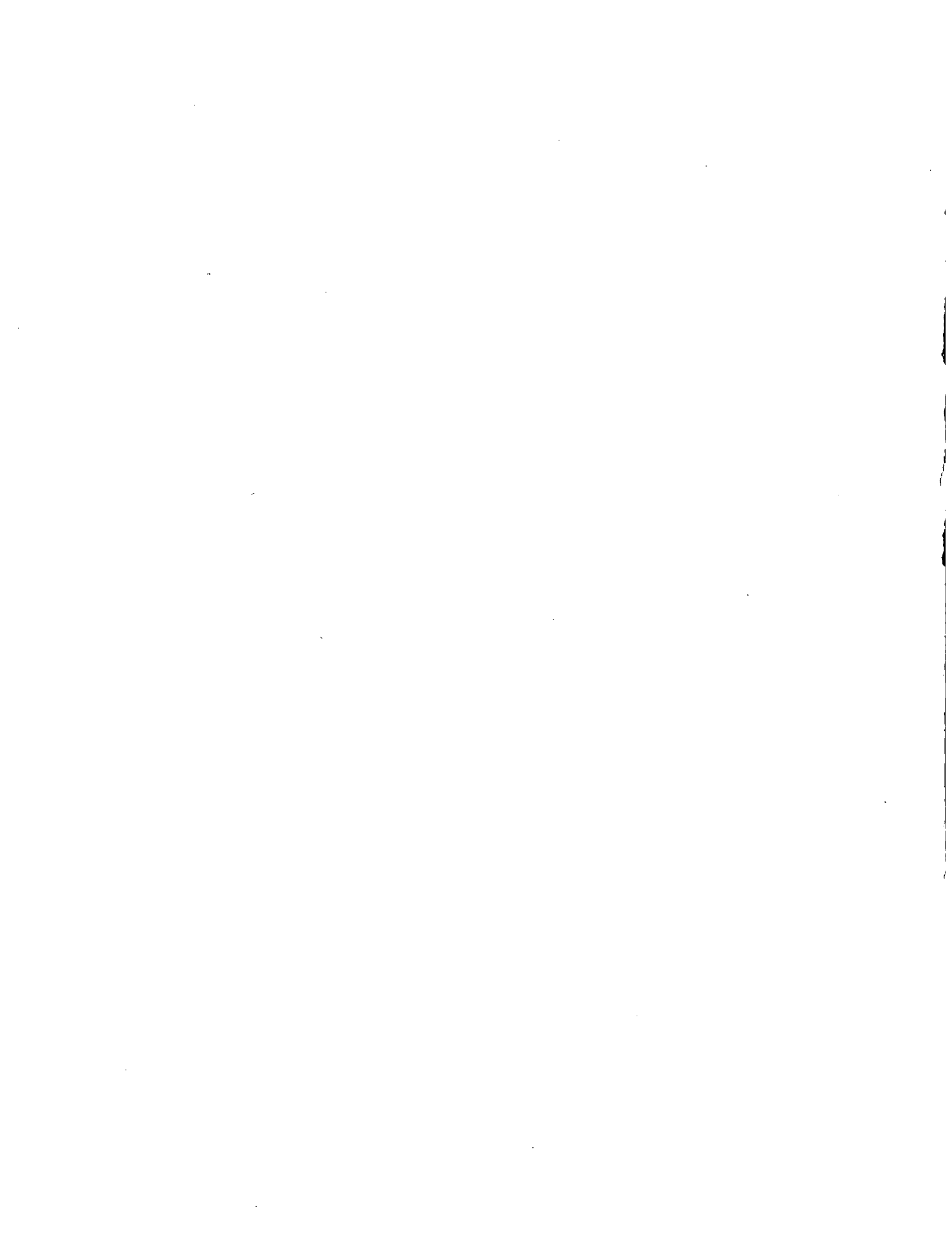
A. I never said he paid me no money.

Q. Did he?

A. No, you see it was not like . . . .

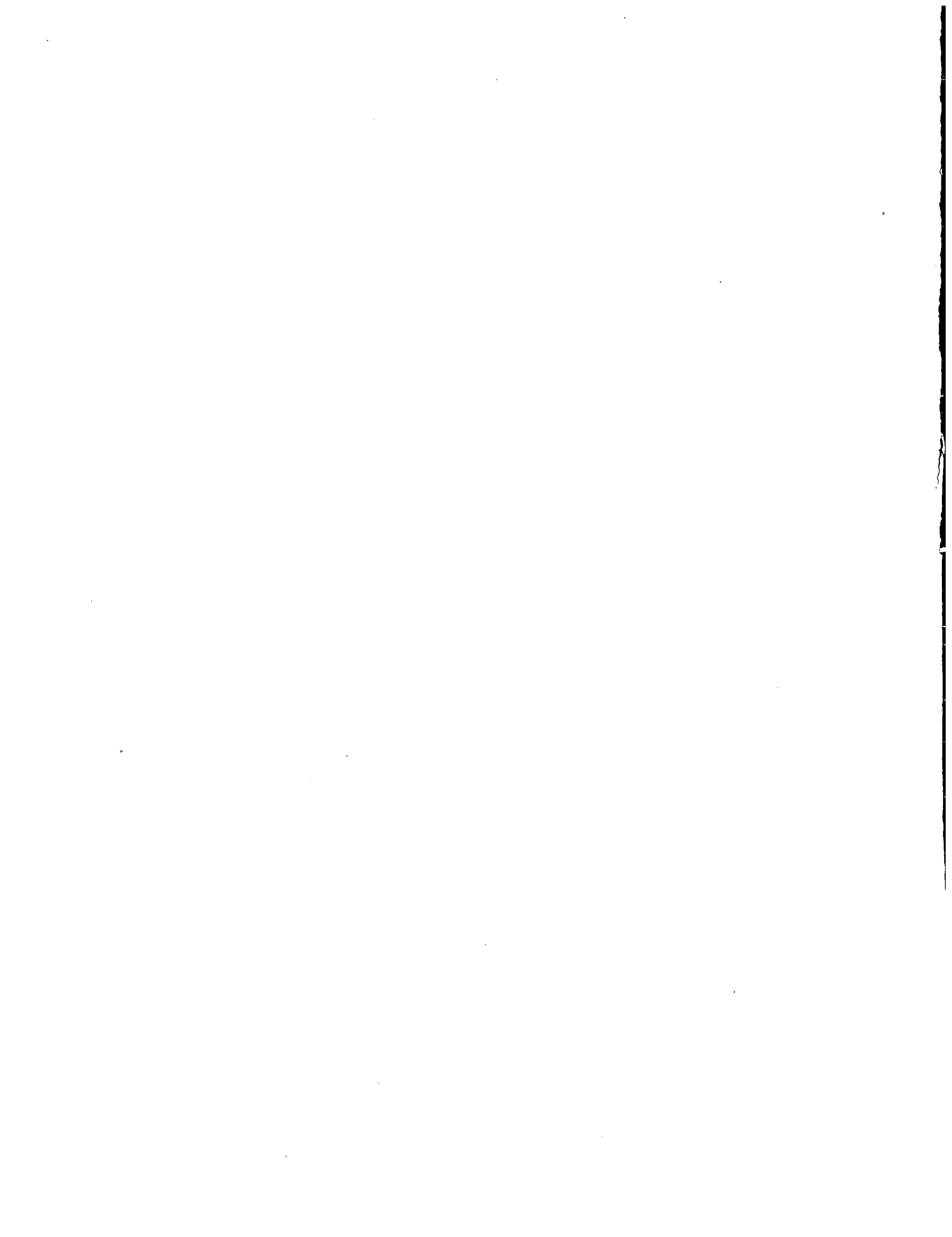
Q. That's all, Mr. Maas.

\* \* \* \* \*





# GUIDE



Guide: Workshop #5 - Perjury and Contempt Indictments

I. Probably both contempt and perjury. Contempt is distinguishable from perjury. Contempt is a refusal to answer. Perjury is a false answer. Nevertheless, not all responses must be considered "answers." Sometimes a response is tantamount to a refusal to answer. The rule was stated by Judge Learned Hand, in the leading case of United States v. Appel, 211 F. 495 (1913).

If the witness' conduct shows beyond any doubt whatever that he is refusing to tell what he knows, he is in contempt of court. That conduct is, of course, beyond question when he flatly refuses to answer, but it may appear in other ways. A court, like any else who is in earnest, ought not to be put off by transparent sham, and the mere fact that the witness gives some answer cannot be an absolute test. For instance, it could not be enough for a witness to say that he did not remember where he had slept the night before, if he was sane and sober, or that he could not tell whether he had been married more than a week. If a court is to have any power at all to compel an answer, it must surely have power to compel an answer which is not given to fob off inquiry. Nevertheless, this power must not be used to punish perjury, and the only proper test is whether on its mere face, and without inquiry collaterally, the testimony is not a bona fide effort to answer the questions at all.

The distinction between contempt and perjury carries with it crucial consequences. Witnesses may be held in civil contempt and committed to jail for a failure to answer. See, e.g., Giancana v. United States, 352 F.2d 921 (7th Cir.), cert. denied, 382 U.S. 959 (1965).

Usually, if the contempt is clear, no bail is permitted during appeal. See, e.g., United States v. Coplon, 339 F.2d 192 (6th Cir. 1964). If the conduct is perjury, it is necessary to bring an indictment, give the defendant a jury trial, prove the offense beyond a reasonable doubt, etc. Usually, too, special rules of evidence will be applicable. See, e.g., Hammer v. United States, 271 U.S. 620, 626 (1926) (two-witness rule).

While an "I don't remember" can be contempt, Kings County Grand Jury v. Cirillo, 12 N.Y.2d 206, 88 N.E.2d 138, 237 N.Y.S.2d 709 (1963) ("I don't remember" as failure to testify contempt), it may also be perjury. See, e.g., the leading case of People v. Doody, 172 N.Y. 165, 64 N.E. 807 (1902). The problem does not arise when it is both. An "I don't remember" may be a contemptuous refusal to answer as well as a false answer. But when it is not a refusal to answer, but an answer that is false, then it is only perjury, and there is no option to proceed by way of a contempt hearing.

Note: False testimony or a refusal to answer may also be "obstruction of justice" under 18 U.S.C. § 1503. Compare United States v. Essex, 407 F.2d 214 (6th Cir. 1969) (false affidavit alone not obstruction) with United States v. Griffin, 589 F.2d 200 (5th Cir. 1979) (false grand jury testimony that obstructs and violates § 1503, but Essex criticized) See generally In re Michael, 326 U.S. 224 (1945) (false testimony alone does not constitute contempt); Clark v. United States, 289 U.S. 1 (1933) (false

answer on voir dire that obstructs trial constitutes perjury and contempt).

II. Perjury, yes. But contempt? When considered as evasive contempt, these questions raise a special New York problem. Maas at first denied that he told Barcelona that Jacobs had not yet paid him the money; he only equivocated after further questioning on the same subject.

See People v. Renaghan, 33 N.Y.2d 991, 992, N.Y.S.2d 962, 963; 309 N.E.2d 425, 425-26 (1974).

Defendant's initial responses to the District Attorney's inquiries expressly denied that he was told by Keeley that Mulligan requested the transfer of Sangiriardi. This explicit testimony was neither incredible as a matter of law nor was patently false and if later shown to be false, could provide a sufficient basis for a perjury charge. Accordingly, even if perjurious, the subsequent testimony could not properly be deemed a refusal to answer . . . . For whatever purpose and however the question was there-after rephrased by the District Attorney, it had already been answered with firmness and without equivocation. In these circumstances there is no indication that defendant's alleged failure to unequivocally respond to the rephrased questions on the same subject obstructed in any way the Grand Jury's proceedings. (citations omitted)

But see People v. Martin, 47 A.D.2d 883, 367 N.Y.S.2d 8 (1st Dep't 1975), aff'd, 42 N.Y.2d 882 (1977), where Renaghan was distinguished on the basis that:

1. the record as a whole demonstrated a refusal to answer,

2. the questioning dealt with the "recent past,"
3. the circumstances about which the witness was questioned involved "unusual circumstances," and
4. the witness admitted that the events should have left an impression upon him.

Although research has disclosed no parallel cases from other jurisdictions, the Ninth Circuit has stated:

If a court divines that the purpose of repetitious questioning is to coax a witness into the commission of perjury or contempt, such conduct would be an abuse of the grand jury process.

Burse v. United States, 466 F.2d 1056, 1080 n.10 (9th Cir. 1972).

Note, however, that in this portion of the testimony it may be questioned if Maas actually gave an unequivocal answer. In each case, he tended to qualify his responses with a question or reason.

Some additional matters, not dealing with the Renaghan problem, which might be explored are:

1. charging obstruction of justice if the jurisdiction's statute is applicable.
2. charging perjury by inconsistent statements-- "No" v. "I don't remember."
3. charging perjury ("I don't remember") after demonstrating by questioning that he would have to remember [cf. People v. Martin, supra].

III. Not contempt. At worse, perjury. Although the witness' testimony strains the imagination, it could have happened, and hence requires extrinsic proof to demonstrate falsity. It is not false on its face. This is the "Aesop's Fable" problem. [Matter of Steingut v. Imrie, 270 App. Div. 34, 37, 58 N.Y.S.2d 775, 781 (3d Dep't

1945) -- "The story [given by the witness] . . . relates the transaction to the age of Aesop rather than to that of Calvin Coolidge."]

But see People v. Titlotta, 84 Misc.2d 170, 375 N.Y.S.2d 965 (Sup. Ct. Kings Cty. 1975) (fabrication held contempt).

IV. Probably contempt, but several issues are presented. The statement of the problem for workshop #4 says that Maas waived "any privileges that he might have." What was the scope of that waiver? Did it extend beyond the privileges against self-incrimination? Can it be withdrawn?

A waiver of the privilege against self-incrimination must be knowing and voluntary. Gardner v. Broderick, 392 U.S. 273 (1968). But the fact that Maas, as a public employee, could forfeit his office for failure to account does not render his waiver per se involuntary. People v. Glucksman, 35 N.Y. 2d 341, 346, 320 N.E.2d 633, 638, 361 N.Y.S. 2d 892 (1974). Further, a waiver of any privileges that he might have "may cover the privilege against self-incrimination and immunity." Cf. Stevens v. Marks, 383 U.S. 234 (1966) (waiver of all "benefits, privileges, rights and immunity which I would otherwise obtain from indictment, prosecution and punishment" included both privilege against self-incrimination and immunity from prosecution).

If Maas voluntarily reveals incriminating facts, he cannot invoke the privilege against self-incrimination to avoid disclosure of the details. Rogers v. United

States, 340 U.S. 367, 373 (1951). He can, however, refuse to answer any questions that would tend to incriminate him further and effectively withdraw his waiver of the privilege against self-incrimination. See Illinois v. McCulloch, 507 F.2d 292 (7th Cir. 1974); Stevens v. Marks, supra. Is this a matter covered by the attorney-client privilege?

J. Wigmore, Evidence, § 2321 (McNaughton rev. 1961): "[U]nder modern theory, it (the attorney-client privilege) is plainly the client's, not the attorney's. This is now never disputed."

The fact of attorney-client relationship and the payment of fees, moreover, are not within the attorney-client privilege. See, e.g., United States v. Ponder, 475 F.2d 37 (5th Cir. 1973). See generally J. Wigmore, Evidence, §§ 2303, 2313 (McNaughton rev. 1961).

Assuming all of those questions are, in fact, resolved favorably to the prosecution, the general rule is that reliance of the advice of counsel is not a proper defense to a charge of contempt. United States v. Snyder, 428 F.2d 520 (9th Cir.), cert. denied, 400 U.S. 903 (1970); People v. Einhorn, 45 App. Div. 2d 75, 356 N.Y.S. 2d 620 (1st Dep't 1974), rev'd on other grounds, 35 N.Y. 2d 948, 324 N.E. 2d 551, 365 N.Y.S. 2d 171 (1975).

As the court in Einhorn noted:

Defendant's first contention is that he was advised by counsel that he had a constitutional right to decline to answer, and that, regardless of whether the advice was sound or not, his refusal lacked the intent to be contumacious. What this amounts to is that a witness who has sufficient sophistication to find a lawyer who will



advise him that he need not answer is immune from the consequences of defying the grand jury and may freely disobey the court's direction to answer. Such is not and never was the law. Matter of Grand Jury (Cioffi), 10 App. Div. 2d 425, 202 N.Y.S.2d 26 (2d Dep't 1960), aff'd, 8 N.Y.2d 220, 168 N.E.2d 663, 203 N.Y.S.2d 841 (1961).

Nevertheless, reliance on advice of counsel in other contexts has been successfully argued to show that a defendant lacked a requisite "bad intent." See, e.g., United States v. Murdock, 290 U.S. 389 (1933) ("willfully" in § 1114(a) of the Revenue Act of 1926 meant bad motive). But see Licavoli v. United States, 294 F.2d 207 (1961) (advice of counsel is no defense to a charge of failing to answer a pertinent question before Congress as "willfully" in 2 U.S.C. § 192 means deliberate intent). When it is raised, it is best to confer with the witness and his counsel to clarify the situation. In short, put them on notice of what the law is, and, if possible, make clear their "bad faith."

V. Neither perjury nor contempt. Not all "I don't remembers" are contempt. While it is tempting to handle this as contemptuous and false testimony, the problem lies in the specificity of the key question. It is unlikely that the witness does, in fact, remember the exact time (12:27 P.M.) of the conversation.

Note: Is the way in which this portion of the examination conducted objectionable? See United States v. Boberg, 565 F.2d 1059, 1062-63 (8th Cir. 1977):

. . . . The prosecutor's interrogation of Boberg before the grand jury consisted almost entirely of leading questions. The indictments rest upon

Boberg's somewhat cryptic responses to those questions. This kind of interrogation always creates a great risk that the witness will misunderstand the questions or that the prosecutor will put words in the witness' mouth. We think that a grand jury witness, particularly one who may be the target of the prosecution, ought to be given a fair opportunity to respond fully to questions and not be limited to the "yes" or "no" that typifies answers to leading questions. We intend this comment as a fair warning to prosecutors that we shall strictly scrutinize for fairness any indictment and conviction for perjury before a grand jury that rests upon a witness' responses to leading questions.

VI. Neither contempt nor perjury. Maas did tell Barrows that he took "one hell of a chance and for a pittance, too," but the answer "no" was to a negative question "Didn't you . . . ?" While implying an answer in the negative, is a double negative, which literally means "yes." Consequently, the witness' answer will be ambiguous whether it is "yes" or "no."

This is similar to United States v. Cook, 489 F.2d 286, 287 n.2 (9th Cir. 1973):

Q: You don't have any knowledge of anybody currently on the force who participated in shakedowns?

A: I do not.

The Court reversed the conviction.

But see United States v. Andrews, 370 F. Supp. 365, 367 (D. Conn. 1974):

Q: In November of 1972, were you engaged in bookmaking activities involving a numbers operation?

A: I am not engaged in bookmaking period. I mop floors for a living.

Q: Is the answer no?

A: No.

Q: In December of 1972.

A: No.

Here the Court held that the answer "no" to the question "Is the answer no," in the context of the testimony, did not mean "No, the answer is not no." See also United States v. Chapin, 515 F.2d 1274, 1279-81 (D.C. Cir. 1975); United States v. Williams, 536 F.2d 1202, 1205 (7th Cir. 1976) (when the question and answer may have more than one meaning standing alone, their intended meaning is ordinarily an issue for the jury to determine from their context and other indicia of the witness' intent in giving the answer).

For additional cases, see Annot. 69 A.L.R.2d 993 (1976) (incomplete, misleading, or unresponsive but literally true statements as perjury).

In questioning a witness in preparation for a possible perjury indictment, one should keep in mind the opening words in United States v. Tonelli, 577 F.2d 194, 195 (3d Cir. 1978):

In preparing a true-false test, perceptive teachers, while aware of the possibility of pure chance-guessing, will phrase the false statement to be so close to the truth that students are required to be precise in making their choice. In drafting an indictment for perjury, however, a grand jury must take exactly the opposite tack. No guessing is tolerated and the indictment must set out the allegedly perjurious statements and the objective truth in stark contrast so that the claim of falsity is clear to all who read the charge.

VII. Neither contempt nor perjury. It is literally true. This form of questioning is common, but it ought to be avoided.

Cf. United States v. Cuevas, 510 F.2d 848, 850

(2d Cir. 1975):

Q: Is it your testimony that you have never given anybody even a small amount of cocaine?

A. No.

This answer was held ambiguous, and it was taken out of case by agreement of counsel at trial. (The Court also found that the question and answer were not "central to the charge.")

This form of questioning can serve as a valid base for a perjury indictment if carefully crafted additional questions are asked:

Q: Is it your testimony that . . . ?  
(nature of testimony clarified)

Q: Do you want the grand jury to believe your testimony?  
(intent to deceive established)

Q: Is it true?  
(actual perjurious testimony)

VIII. Neither perjury nor contempt. This is a classic example of an unresponsive answer. Such an answer cannot form the basis of a perjury indictment or a proceeding for contempt. While "Somebody else, etc." implies that Maas did not, the response is not, in fact, a denial. See Bronston v. United States, 409 U.S. 352, 354 (1973):

Q: Do you have any bank accounts in Swiss banks, Mr. Bronston?

A: No, sir.

Q: Have you ever?

A: The company had an account there for about six months, in Zurich.

The Court held that it was undisputed that the defendant's answers were literally true; it then aptly observed:

. . . . It does not matter that the unresponsive answer is stated in the affirmative, thereby implying the negative of the question actually imposed; for again, by hypothesis, the examiner's awareness of unresponsiveness should lead him to press another question or reframe his initial question with greater precision. Precise questioning is imperative as a predicate for the offense of perjury.

It may well be that petitioner's answers were not guileless, but were shrewdly calculated to evade. Nevertheless, . . . any special problems arising from the literally true but unresponsive answer are to be remedied through the "questioner's acuity" and not by a federal perjury prosecution. Id. at 362. (emphasis added) See also Annot. 69 A.L.R.3d 993 (1976).

Note that the question is also troublesome. Maas did not say "because." Maas just said each part. The prosecutor has improperly inserted a connective that Maas never used.

IX. Neither contempt nor perjury. While Maas clearly meant for Barrows to use a "safe" phone, i.e., one that could not be subject to electronic surveillance, he did not use that term. [Maas actually said, "Why don't you leave your office and call here from a public phone booth outside the building."]

Terms of art should not be used, unless the exact words were used in the subject conversation.

X. Neither contempt nor perjury. While Barrows called Maas, it was not at his office the second time, but

at a public phone booth. Thus, the answer "no" was literally true. Compound and complex questions must always be avoided.

Cf. United States v. Esposito, 358 F. Supp. 1032, 1033 (N.D. Ill.), cert. denied, 414 U.S. 1135 (1973).

Q: Now did you ever drive in an automobile from the Hyatt House to the Thirsty Whale accompanied by Edward Speice?

A: No, I haven't.

The Court held that the answer was not perjury, when the testimony disclosed that Esposito left the Hyatt House alone and picked up the passenger on the way to the Thirsty Whale.

XI. Neither contempt nor perjury (by inconsistent statement). While the statements are inconsistent, they are not mutually exclusive. Jacobs may be both Maas's lawyer and his business partner.

XII. Neither contempt nor perjury. The witness was cut off before the answer had been given.



