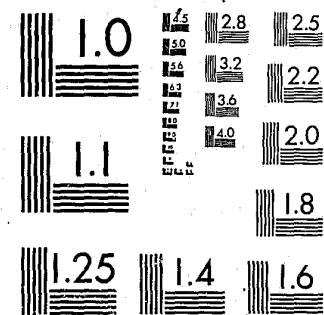


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OF THE STATE OF NEW YORK

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PREFACE

JOHN:* Hello.
CONFIDENTIAL
INFORMANT:** Hello [John]?
JOHN: Yeah.
C.I.: This is [the informant]...

JOHN: [Interrupting] Lemme ask you. What would - what would Nice 'n Easy*** cost us, now. Give me an
C.I.: [Interrupting] [\$45.00] a case...

C.I.: Now the wholesale on that, I think is around 52 and change
JOHN: The wholesale now - it's up...

C.I.: I have about [25] cases of Nice 'n Easy...

JOHN: While, of course, we're not looking for [25] cases, [Twenty-five] cases don't mean nothing to us.
C.I.: I realize that.
JOHN: 'Cause we, you know, our -- our volume is, pretty big.
C.I.: That's why -- I understand that. But you know --
JOHN: Yeah.
C.I.: I have to take what these guys steal.
JOHN: Yeah.
C.I.: If they steal a truck, I get a truck.
JOHN: Yeah.
C.I.: If they steal 50 cases, I get 50 cases.
JOHN: Yeah, yeah...

JIM: Hello. That [you]?
C.I.: Yeah...

* The names of the participants in this conversation have been changed at the request of federal law enforcement authorities

** In order to preserve the anonymity of the Commission's confidential informants, the letters C.I. will be used in lieu of informants' names.

*** Nice 'n Easy is a popular hair coloring product manufactured by Clairol.

JIMMY: Are there invoices -- to this?
C.I.: If you want, I'll get you -- I'll bill you.
JIMMY: Okay.
C.I.: That's no problem. Naturally, you understand that this is all stolen merchandise. Cause I don't want you to under --- I don't want to sell it under - you know, telling you it's close-outs.
JIMMY: How can you talk like that on the phone?
C.I.: There's no problem here. I'm not worried about it. I never call from home, to begin with.
JIMMY: Yes, but we got a line. We got a line.
C.I.: [slight laughter]. There shouldn't be any problem there... [U.T].*

This telephone conversation took place in January, 1977. Within one week after the conversation, Jimmy and John had entered into negotiations to purchase a trailerload of "stolen" Nice 'n Easy for approximately \$65,000. The vendor of the Nice 'n Easy was an informant for the New York State Commission of Investigation. Jimmy and John are employees of a multimillion dollar corporation which maintains its principal office outside of New York State.

* Transcripts of testimony given at private hearings before the Commission will be referred to by the letters "P.H." Sworn testimony before Commission counsel will be prefaced by the letters "S.T."; transcripts of unsworn statements will be designated by the letters "U.T."

The telephone conversation and the subsequent negotiations occurred during the course of this Commission's one-year study of the wholesale distribution of stolen property in New York State. The primary goal of this study, which was funded by a grant from the New York State Division of Criminal Justice Services, has been to identify wholesale fences and to document their manner of operation.

I. INTRODUCTION

A. Background of Study

Several years ago, the Commission authorized an investigation into the acquisition, possession and disposition of stolen property. The investigation was initiated following discussions with law enforcement authorities throughout the State which indicated that little systematic research had been done into the wholesale distribution of stolen merchandise in New York State.*

* In 1967, the President's Crime Commission on Law Enforcement and the Administration of Justice, Task Force on Assessment, noted that "[l]ittle research had been done on fencing despite its central role in professional crime." Since that time, there have been a number of examinations of the role and functions of the criminal receiver and the need for law reform by academicians, law enforcement authorities, state crime commissions and the United States Senate. See, e.g., Hearings on Criminal Redistribution Systems and their Economic Impact on Small Business Before the U.S. Senate Select Committee on Small Business, 93rd Cong., 1st & 2nd Sess. (1973-74) (hereinafter "Hearings");

(Footnote continued on following page)

In a preliminary study, the Commission inquired into several specific criminal receiving cases. That study suggested that the prosecution of criminal receivers and perpetrators of large scale larcenies seldom proceeds past the point of those

* Footnote contined from previous page.

U.S. Dept. of Justice, Strategies for Combating the Criminal Receiver of Stolen Goods (1976); Blakey & Goldsmith, Criminal Redistribution of Stolen Property: The Need for Law Reform, 74 Mich. L. Rev. 1511 (1976); C. Klockars, The Professional Fence (1974); Walsh & Chappell, Operational Parameters in the Stolen Property System, 2 J. of Crim. Just. 113 (1974); Chappell & Walsh, "No Questions Asked," A Consideration of the Crime of Criminal Receiving, 20 Crime & Delinquency 157 (1974); Roselius & Benton, Marketing Theory and the Fencing of Stolen Goods, 50 Denver L.J. 177 (1973); Memorandum from Mimi Walsh to Chief of Detectives Degenhart summarizing basic research findings on criminal receiving in Buffalo, N.Y., (July 23, 1973). See also J. Hall, Theft, Law and Society (2d Ed. 1952) (hereinafter "Hall").

Generally, a fence is defined as a person who purchases stolen property for purposes of resale. His role in the acquisition and distribution of stolen property, as described in various studies, includes (1) providing an assured, reliable market for stolen property, (2) influencing the thief's choice of property by indicating a preference for particular items through price differentials, specialization or by contracting for the theft of a particular property, (3) assisting in the research and planning of thefts by identification of potential victims, (4) financing of the theft or facilities necessary for its commission (5) altering stolen property by removal of identifying characteristics, and (6) transporting, storing, concealing, marketing and redistributing stolen property.

initially arrested. The preliminary inquiry also indicated that local law enforcement authorities rarely possess sufficient resources to determine the manner in which thefts are planned, merchandise redistributed, ultimate purchasers found or proceeds disguised and absorbed. Upon obtaining funds from the New York State Division of Criminal Justice Services, this Commission initiated its study. Commission investigators uncovered a pattern of seemingly legitimate businessmen playing a crucial role in the redistribution of stolen property. It is not easy to obtain proof that the merchants participating in the redistribution process know the property is stolen. Because of this difficulty, little attention has been focused on this group even though their participation is an essential factor in the marketing of stolen merchandise.*

* The Commission's findings were not without precedent. Earlier studies have noted that the traditional emphasis of law enforcement resources and activity has been the thief rather than the criminal receiver. See, e.g., Walsh & Chappell, Operational Parameters in the Stolen Property System, 2 Jour. of Crim. Just. 113 (1974). Other studies have commented on the small number of criminal receivers who are prosecuted and the even smaller number who are convicted and imprisoned. See, e.g., Hall, 1978.

According to Captain Francis R. Herron, originator of an imaginative investigation run by the New York City Police Department which attacked the selling of stolen property, the business fence is one of the major categories of criminal receivers.*

* Another major category of criminal receiver -- the professional fence -- was described by Herron as the individual whose principal business is the disposition of stolen property. According to Herron, the professional fence category contains three different levels of criminal receiver. At the uppermost level are those individuals who never see or touch the stolen property but organize and arrange for its theft and distribution. At an intermediate level are those individuals who are in direct communication with the thief. Their role is to arrange for the concealment and storage of property after its theft. At the lowest level are those individuals who take physical possession of the property and transfer it to a business fence. Herron testified that the business fence buys stolen property from one of the two lower levels of professional fences.

Similar distinctions among criminal receivers are drawn in a number of studies. A recent article on the need for reform of criminal receiving statutes sets forth four categories of criminal receiver: (1) the "neighborhood connection" -- individuals who purchase small quantities of stolen merchandise from local shoplifters and cargo company employees and openly sell it, without alteration, in local bars or garages or to local retailers or pawnshops, (2) the "outlet fence" -- businesses which "primarily market legitimate merchandise" but serve "as convenient outlets for large quantities of low-cost stolen goods", (3) the "professional fence" whose primary business is the criminal redistribution of stolen property and (4) the "master fence" who organizes large scale thefts or serves as a middleman for other organizers. See Blakey and Goldsmith, Criminal Redistribution of Stolen Property: The Need for Law Reform, 74 Mich. L. Rev. 1511, 1529-38 (1976). See also Hearings, 1st Sess., 40-41 (1973).

Herron describes the business fence as the individual without a criminal record who maintains a place of business and restocks his shelves with merchandise he knows to be stolen.* He states that it is difficult

(Footnote continued from previous page.)

For purposes of this report, the Commission will use the term "business fence" to denote concerns which primarily market legitimate merchandise but also serve as outlets for large quantities of stolen property.

* Herron indicated that the business fence usually knows he is purchasing stolen goods by virtue of the combination that the purchase is not in the usual course of trade, that is, payment is in cash, the purchase price is low, and the goods are sold without warranty.

Other commentators have noted the distinctions between transactions in the usual course of business and transactions in stolen merchandise. Hall notes that in the latter transactions, "cash is paid... despite the fact that such transactions, when legal, are on credit"; sellers rarely have an "established place of business" and "are not listed in trade reports" and "[t]he merchandise is sold for much less than its market price." He refers to characteristics which are the norm in business transactions, noting that "[t]he Association of Grand Jurors of New York County has summarized these characteristics as follows:

'When a commodity is offered for sale to a business-wise merchant, firm or corporation it is reasonable to presume that he or it knows or will ascertain, before buying, certain things. These are:

1. The market value of the commodity.
2. The cause for its price being disproportionately low.
3. That certain identification marks usually appearing on the article or its container have not been removed or altered.

(Footnote continued on following page.)

to identify business fences who are major receivers and to document their participation in the redistribution of stolen property.

(Footnote continued from previous page.)

4. That the seller has the legal right to sell and conforms to the customs of the trade in so doing.
5. That the seller represents a firm known to the trade or is personally known to the buyer.
6. That the seller has a permanent address.
7. If the seller is a stranger to the buyer that he can furnish trade and other reliable references as to his good standing.
8. That nothing connected with the seller or his goods indicates fraud.' Prison Committee of the Association of Grand Jurors of New York County, Criminal Receivers in the United States (1928) 69-70.

And they have added the recommendations of experts in this field:

'Mr. Leon Hoage of the New York office of the Holmes Electric Protection Company...holds that an alleged fence should be required to explain to the jury acts or omissions, such as the following:

1. Failure to keep bona fide books of account in connection with a business enterprise.
2. Neglect of dealer to keep bills received with goods delivered to him, for a reasonable period, such as two years.
3. Omission of the dealer to demand and keep as bills the receipts given in his commercial transactions.
4. Lack of itemized bills of job lots of standard goods purchased, apart from the balance of the items.
5. Inability or unwillingness of the possessor of goods ostensibly covered by a bill of sale from a reputable firm, to communicate with the firm, at the time the purchase is made, to corroborate the sale.
6. Presentation of a bill of sale, the billhead of which gives the name and address of a non-existent firm.
7. Purchase of valuable merchandise from a push cart, or similarly unreliable vendor.' Id. 70-1. Hall, 224-25 n.72.

The role of the businessman in the distribution of stolen property has received attention from the United States Senate Select Committee on Small Business. A 1972 staff report stated:

[T]he ultimate buyer of stolen property is the consumer, usually unaware that the goods were stolen. However, the awareness among the channels that the goods pass through on the way to the consumer is questionable. There is a strong feeling among law enforcement people that legitimate businessmen too frequently purchase stolen goods, knowingly, from fences for resale through their wholesale or retail outlets.

The Illinois Crime Commission said:

'There is a disturbing lack of interest on the part of some legitimate business concerns regarding the identity of the persons with whom they deal.' *

In the course of hearings, Senator Alan Bible, Chairman of the Senate Select Committee, stated:

Part of the blame for the ease with which it appears fences can at present market stolen goods must rest with legitimate business itself.

Too many legitimate businessmen are willing to buy hot merchandise if it assures them of a higher profit.**

* Staff of Senate Select Comm. on Small Business, 92d Cong., 2d Sess., An Analysis of Criminal Redistribution Systems and their Economic Impact on Small Business, 7 (Comm. Print 1972) (hereinafter "Staff Report").

** Hearings, 469. The Staff Report, quoting Hall, noted that most professional receivers tend to be offshoots from legitimate businesses and require most of the qualifications necessary for the conduct of any business (See Staff Report 5).

Marilyn Walsh, a research scientist, in a statement before the Committee, reported that a three-year investigation of criminal receiving in one metropolitan area resulted in a finding that 67% of the receivers were proprietors of otherwise legitimate businesses who dispose of stolen property either directly or through their business or by using the resources of the business to do so.*

B. The Magnitude of the Stolen Property Problem in New York State

The estimated total value of property reported stolen during the commission of crimes in New York State was over \$650 million during 1976.** This represents an increase of 32% over the estimated value of property reported stolen in 1975, an increase of 66% over the estimated value of property reported stolen in 1974, and an increase of 90% over the estimated value of property stolen in 1973.

The value of property reported stolen in New York State represents a large portion of the estimated value of property reported stolen in the nation. According to the Federal Bureau of Investigation, in 1976 property valued at

* Hearings 511-12.

** Source: FBI, Uniform Crime Reports: New York State Supplement Data -- see Appendices I and II. New York City Police Department data indicate that the comparable figure for New York City was \$483,123,892. According to the New York City Police Department 1976 Statistical Report, Complaints and Arrests, an additional \$491,149 worth of property was reported stolen in New York City in 1976, but not reported to the FBI. Totals reported to the FBI are used throughout this section in order to maintain consistency.

\$4.4 billion was reported stolen in the United States;* the value of property reported stolen in New York State - over \$650 million - accounted for approximately fifteen percent of that total.** New York City Police Department data indicate that the estimated value of property stolen in New York City alone accounted for nearly 11% of the value of property reported stolen nationally in 1976.***

It is difficult to assess accurately the number and magnitude of theft crimes. A recent study notes that "in terms of frequency of occurrence, number ... of victims, and economic impact, theft constitutes this country's number one crime problem.**** It reports that "two or perhaps three

* A Commerce Department report estimates that the national cost of crime to American business reached \$23.6 billion for 1975. Losses from inventory shortages for 1975 were estimated at \$2.4 billion in the wholesaling sector of industry and \$4.02 billion in the retailing sector. See United States Dept. of Commerce, The Cost of Crimes Against Business 1, 16 (1976).

** See Appendix I.

*** See Appendix II. New York City Police Department data indicate that the value of property reported stolen in New York City increased 19.5% between 1975 and 1976 and approximately 40% between 1974 and 1976. As indicated by the 1975 and 1976 New York City Police Department's Statistical Reports, Complaints and Arrests, the value of property recovered did not keep pace with the value of property reported stolen. The percentage of the value of the recoveries of stolen property reported to the FBI declined nearly 2% between 1975 and 1976; the percentage increased by 1.1% from 1974 to 1975.

**** United States Dept. of Justice, Strategies for Combating the Criminal Receiver of Stolen Goods I (1976).

times as many thefts occur as are reported" and points to Congressional hearings in 1973 and 1974 which revealed that "real losses due to cargo theft are similarly under-reported" thus "concealing yet another sizeable part of the true incidence of theft."* Government officials familiar with stolen property reporting advised the Commission of their doubts about the accuracy of values attributed to property reported stolen or recovered. Despite these evident inaccuracies, reported thefts and reported recoveries provide the framework within which the stolen property market must be evaluated.

According to data supplied by the Uniform Crime Reporting Section of the Federal Bureau of Investigation, \$106,873,920 of property reported stolen in New York State was recovered during 1976. This represents a decline of approximately one percent from the value of property stolen

* Id. A report by the Waterfront Commission of New York Harbor found that many substantial cargo thefts occurring at New York-New Jersey airports have not been reported. It estimated cargo losses due to thefts at New York-New Jersey airports at \$16 million per year. See Waterfront Comm. of N.Y. Harbor, Report on The True Extent of Cargo Theft at the New York-New Jersey Airports 2, 6-7 (1975).

An officer of a major airline advised the Commission that the airline ceased reporting thefts involving amounts less than \$100 to law enforcement officials after being advised that such reports "clutter our files up."

in New York State which was recovered during 1975.*

It is difficult to enumerate fully the variety of goods which are stolen in this State and which ultimately find their way from the thief to the consumer.** Simply stated, anything that is marketable appears to be a likely subject of theft.

* The Bureau indicated that 16.4 percent of the property stolen in New York State in 1976 was recovered during 1976. It noted that this was a steady decline from the 20 percent recovery rate reported throughout New York State during 1973.

The 1975 Uniform Crime Reports report the estimated value of property stolen and recovered nationally in 1975 as follows:

Total Value of Property Stolen	\$3,213,000,000
Total Value of Property Recovered:	\$ 961,300,000
Percent Recovered:	30

See Appendices I and II for New York State and New York City data.

** See Appendix III for data compiled by the New York State Motor Truck Association.

Merchandise is stolen at every point from the manufacturer to the ultimate consumer. Thefts studied by the Commission occurred from factories, warehouses, trucks, retailers and residences. Neither the multinational corporation nor the individual householder was immune.*

Nationally, it is estimated that theft-related cargo losses in United States commerce exceed \$1 billion annually.** Retailers, wholesalers

* The 1975 FBI Uniform Crime Reports, at 28, notes that victims suffered a loss of \$1.4 billion in 1975 through the offense of burglary; residential losses amounted to \$925 million, and nonresidential losses were \$446 million. Larceny-theft victims suffered losses of \$992 million in 1975.

** Sec. of Transp., Report to the President on the National Cargo Security Program 16 (1977) (hereinafter "NCS Report"). The NCS Report states that "[i]f a pie chart were to show the distribution of total theft-related losses in U.S. commerce, the motor carriers might be shown close to three-fourths of the pie with rail and maritime making up the remainder of the 100 percent, except for a very thin slice representing air cargo losses at something less than 1 percent." Id. 22. It notes that \$72 million of theft-related claims were reported paid in 1975 by large motor carriers of general freight. The data base used to estimate losses did not contain cargo loss data from the surface freight forwarders nor from the maritime industry. Actual dollar losses to claimants were more than the \$5 million reported by air carriers because air cargo is shipped on a limited liability basis. Id. 21. See also Waterfront Comm. of N.Y. Harbor, Report on True Extent of Cargo Theft at the New York-New Jersey Airports 2, 6 (1975).

and manufacturers also estimated large theft losses. A Commerce Department study of the cost of crimes against business reports estimated inventory shortages of \$2.4 billion in the wholesaling sector of business and estimated losses from inventory shortages of \$4.02 billion in the retailing sector during 1975.* Service industries are also affected by huge crime losses. A recent report indicates that crime in the service industries costs American businesses \$9.2 billion a year.**

Carriers indicate that 80 to 85 per cent of cargo theft losses are employee-related, that is, committed by or with the assistance of those having legitimate access to cargo.*** A Commerce Department study reports that other sectors of industry are similarly plagued by employee theft.****

* United States Dept. of Commerce, The Cost of Crimes Against Business 16 (1976).

** Crime Held Costing Service Industries \$9.2 Billion A Year, N.Y. Times, Nov. 18, 1977 §D at 1.

*** NCS Report, Appendix H, p.8; Address by Joseph L. Schmit, Fifth Avenue National Cargo Security Conference (March 30, 1976).

**** United States Dept. of Commerce, The Cost of Crime Against Business 15-16, 18-19 (1976). See also Crime Held Costing Service Industries \$9.2 Billion A Year, N.Y. Times, Nov. 18, 1977, §D at 1.

The magnitude of theft losses, the low percentage of recoveries and the predominance of goods as objects of theft suggest the existence of a substantial and efficient market for the distribution of stolen property. This study reports on one facet of that market -- the role of apparently legitimate businessmen in the distribution of stolen merchandise.

C. Methodology and Matters Examined

The Commission commenced this study by requesting law enforcement officials throughout New York State to provide previously adjudicated cases involving various types of larceny and criminal possession of stolen property.* The individuals involved in those cases were questioned both informally and, on occasion, at private hearings before the Commission. In conjunction with that questioning, the Commission's accounting staff examined the financial records of several concerns through which stolen property had allegedly been filtered. Using these methods, the Commission examined cases

* Previously adjudicated cases were examined in order to lessen or avoid claims of self-incrimination and requests for immunity.

involving a wholesale distributor of pharmaceuticals, a burglary ring dealing in antiques, several shoplifters, and the robbery of a food warehouse.*

The Commission also reviewed police reports on undercover fencing investigations** and interviewed the officers charged with the day-to-day operation of those investigations. It questioned several individuals who had participated in the theft and distribution of stolen merchandise. The police reports and the subsequent interviews revealed that the distribution of stolen merchandise on a large scale is an organized process which ordinarily depends for its success on the participation of seemingly legitimate businessmen. However, each of the businessmen questioned denied that his participation in the distribution of stolen

* The first two examinations are discussed in Part II of this report.

** Two of the undercover fencing investigations were outgrowths from investigations into other areas of criminal activity.

property was accompanied by knowledge that the property was stolen.* Rather, each claimed that the exceptionally low purchase price, the absence of labels and the payment in cash were due to the fact that the merchandise consisted of closeouts, overruns, seconds, or returns. Each businessman ascribed the unusual methods of billing or delivery to his vendor's desire to conceal the source of his merchandise and prevent competition for sources of supply.

* Such claims frequently strained credibility. In one instance, the general sales manager of a retail and wholesale outlet for womens' sportswear purchased approximately 200 womens' raincoats from an acquaintance. The sales manager testified that his acquaintance had insisted upon payment in cash and had arranged that the transfer of the merchandise take place at a Manhattan diner. The manager's son had rented a truck, driven it to Manhattan and turned it over to two individuals who were waiting at the diner. The truck, loaded with raincoats, was returned to the manager's son at the diner. The sales manager indicated that he did not suspect that the raincoats were stolen although (1) he knew that his acquaintance was in the business of selling cigars, (2) the manufacturer's label had been removed from the raincoats, (3) payment was made in cash at a diner in Manhattan, (4) a time and method of delivery were not agreed upon at the time the purchase was negotiated and (5) possession of the raincoats was transferred at a place unconnected with either the purchaser's or the seller's place of business.

It was to pierce such explanations and to identify channels through which stolen merchandise is distributed that the Commission instituted its Sell Operation.*

The Commission's Sell Operation involved the bulk sale of allegedly stolen health and beauty aid products to apparently legitimate business concerns.** Two informants were employed to

* A sell operation involves the sale of property, which is represented to be stolen, to individuals who have previously been identified as fences.

** The health and beauty aid market encompasses a wide variety of products. It includes everything from cosmetics to cold tablets. That market was chosen as the subject of the Sell Operation as a result of a preliminary inquiry which indicated that several concerns were purchasing health and beauty aid products from New York wholesalers at a price lower than those available from the manufacturers of those products. A number of the purchases occurred shortly after the manufacturers had experienced thefts. Concentration on one product market, rather than on individual fences in various markets, enabled the Commission more easily to follow distribution patterns.

telephone prospective purchasers,* offer merchandise which was identified as stolen at well below its wholesale price and deliver the merchandise in the manner specified by the purchaser.** The means of payment and method of documenting the transaction were determined by the purchaser. The choice of prospective purchasers was generally left to the informants; in most cases they chose concerns with which they had had previous dealings.

* The following conversation is illustrative of the initial contact with a prospective purchaser.

OPERATOR: Hello. [Company name].
C.I.: Hello. Can I speak to Eddie, please?

EDDIE: ...Hello.
C.I.: Hello, Eddie, this is [the informant].
EDDIE: [The informant?] From who?
C.I.: Uh, from the Nice 'n Easy. Remember?
EDDIE: Yeah, where the hell ah, 've you been?
C.I.: Uh, been trying to make another contact.
EDDIE: Yeah - you get it?
C.I.: I've been able to get a driver who has a guy on a platform who's stealing it, so so I've got five pieces for ya.

EDDIE: Five cases?
C.I.: Yeah.
EDDIE: An' what numbers? (U.T.).

** The Commission informants had assisted other law enforcement agencies in the past and were knowledgeable about the fencing of stolen merchandise.

The Sell Operation was conducted from November, 1976 through March, 1977. Seventeen firms were offered merchandise, nine firms purchased* and two firms indicated a willingness to purchase a trailerload of allegedly stolen goods. All conversations were recorded and whenever possible, a photographic record was made of the delivery.**

Thirteen sales, involving merchandise with a retail value of \$20,000, were completed.***

* Most of the purchasers were distributors of health and beauty aid products. They ran the gamut from small retailers to large wholesalers. None of the firms that declined to purchase did so because the merchandise was represented to be stolen. In each case, the problem was either the product offered or the inability of the offeree to locate a purchaser. In the course of offering the merchandise, Commission informants were advised of the availability of counterfeit drivers' licenses, baptismal certificates and social security cards.

** 96 telephone conversations and 12 sales were recorded. An equipment malfunction prevented recording the thirteenth sale.

*** The wholesale value of this merchandise was approximately \$11,400. The 13 sales grossed \$4,550. Payment to informants totalled \$3,224.

The merchandise sold included 80 cases of Clairol's Nice 'n Easy, 1,448 bottles of Revlon's Charlie Cologne, 384 bottles of Revlon's Charlie Concentrated Perfume Oil, 157 bottles of Charlie Spray and 100 dozen Burlington Mills panty hose.* It cost the Commission \$1,821 to purchase the merchandise used in the Sell Operation.

Upon completion of the sales, Commission staff in most cases examined the financial records of firms which had purchased merchandise from the informants and questioned the individuals who had approved those purchases. The results of the Sell Operation are described in Part II of this report.

* Nice 'n Easy, a popular hair coloring product, was easily sold at prices of \$35 to \$45 per case (approximately 15-35% below wholesale). The Charlie products were more difficult to market because prospective purchasers were unfamiliar with the particular items offered, since packaging and sizes differed from those which they customarily handled. Despite an extremely low price, only one concern was willing to purchase the cologne and only four concerns were willing to purchase the perfume. The panty hose was the most difficult item to sell. The brand offered by the Commission was not customarily sold through health and beauty aid outlets and distributors were reluctant to handle panty hose which was not of the one-size-fits-all variety. The panty hose regularly retails at \$1.75 per pair. The sole purchaser paid only \$.25 per pair.

Numerous interviews were conducted during the course of this study to ascertain whether statutory revisions are necessary and to document the effect of stolen property crimes in New York State. The interviews included meetings with prosecutors, conferences with representatives of private industry and discussions with various administrative agencies. In addition, questionnaires were submitted to various publications for the purpose of soliciting the views of the antique industry with respect to the increase in thefts and the need for regulation to interdict the redistribution of stolen property. The results of those interviews are described in Part III of this report; the questionnaire and a summary of responses are in Appendix IV.

II. A SAMPLING OF FENCING ACTIVITIES

A. The Sell Operation

1. Introduction

The Sell Operation enabled the Commission to identify a number of seemingly legitimate businessmen who knowingly engaged in the purchase and resale of allegedly stolen health and beauty aid products. Through one of its informants, the Commission performed functions of a professional fence; through another, it assumed the functions of both the thief and the fence. The Operation allowed the Commission to progress from the sale of 15 cases of "stolen" merchandise to the negotiation of a sale involving a trailerload of "stolen" property.

The Sell Operation demonstrated that some businesses in the health and beauty aids market are more than passive conduits through which stolen property is disposed. It showed that certain businessmen take an active role in the redistribution of stolen merchandise and in insulating both the thief and the professional fence from detection and apprehension.

During the course of the Sell Operation, apparently legitimate businessmen:

- 1) purchased merchandise after being told it was stolen;
- 2) conspired with Commission informants to dispose of trailerloads of "stolen" merchandise;
- 3) located other outlets for the Commission's "stolen" merchandise in return for a promised five percent commission;
- 4) advised a Commission informant of a concern that was under surveillance by a District Attorney's office;
- 5) cautioned a Commission informant against dealing with a firm that had "problems" with stolen and counterfeit merchandise;
- 6) referred a Commission informant to firms that would purchase "stolen" merchandise;
- 7) utilized otherwise unexceptionable business procedures to conceal the purchase of "stolen" property;
- 8) falsified business records to conceal transactions in "stolen" merchandise;
- 9) instructed Commission informants on appropriate methods for documenting "stolen" property transactions; and
- 10) conspired with otherwise legitimate businessmen to conceal the purchase of merchandise which they had reason to believe was stolen.

The businessmen and concerns that engaged in these activities do not conform to the stereotype of the fence. The financial records of one concern reflected gross sales of \$18.1 million for the year ending March 31, 1977.

A credit reporting bureau stated that another had gross sales of more than \$30 million during its 1976 fiscal year.

The wholesale health and beauty aids business is a closely knit industry. A wholesaler's involvement in stolen property transactions or the presence of stolen products in the market is quickly communicated among those involved in the market.

The industry in which these firms operate is highly competitive. Distribution and pricing frequently do not conform to standard patterns. Large wholesalers may be found buying quantities of merchandise from retailers or other wholesalers at prices lower than those charged wholesalers by the manufacturers of that merchandise.* Less than wholesale is often the norm.

* A practice known as diversion exists in the health and beauty aids industry. Diversion involves the rechanneling of low priced merchandise from its intended recipient to a firm which would otherwise be unable to acquire the merchandise at that price. Wholesalers reported that the practice is a result, in part, of their desire to take advantage of regional or retailer-oriented promotions offered by manufacturers and to avoid manufacturers' limitations on the quantity of merchandise which may be purchased by wholesalers.

The Sell Operation began with the informant's sale of 15 cases of allegedly stolen health and beauty aids to a Brooklyn wholesaler. Within seven weeks thereafter, the informant had entered into negotiations to sell 1,900 cases of "stolen" health and beauty aids to a wholesaler located outside of New York State. The informant's ability to market increasing amounts of "stolen" property was a result of referrals made by two Westchester County businessmen. Those businessmen knew or had reason to believe that the informant was selling stolen merchandise at the time they referred him to other potential customers.

The referral process operated on two levels -- inter-firm and intra-firm. At the inter-firm level, a referral by a supplier was often the only means by which the informant could begin selling to that firm.* On an intra-firm level, referral of the informant by one buyer to another seemed to assuage the second buyer's asserted reluctance to deal with a theretofore unknown supplier.

* A buyer for the "X" Company subsequently advised the Commission that in order to deal with him, it was "most likely" that a new supplier would have to indicate that he had been referred by one of X's existing suppliers (U.T.).

Generally the informant was referred to potential customers as an accommodation. Referrals were usually made without request for remuneration. In one instance, however, a Westchester County businessman agreed to assist the informant in disposing of allegedly stolen merchandise and sought compensation for his services. The services of that businessman gave the informant an opportunity to dispose of quantities of merchandise which he could not otherwise sell.

2. The Individual Firms

Many of the firms that became the subjects of the Sell Operation had previously been parties to transactions involving questionable merchandise. The principals of those firms often had reason to believe that particular transactions involved stolen merchandise. However, they rarely questioned the source of their vendors' wares and frequently cooperated in the concealment of transactions which involved questionable property.* The manner in which purchases from the informants were handled

* The principal of one of those firms explained:

When I buy merchandise, I do not ask if it's stolen. ... [S]omebody will say to me that this is available, and this is the price. Do you want to buy it? ... The question of whether the merchandise is stolen is never brought into the conversation. So when you say did you buy merchandise that is stolen, I don't know. (S.T.)

varied with the size of the firms. The smaller firms concealed their purchases by buying for cash and failing to record the transaction. The larger concerns exhibited greater sophistication and treated transactions with the informants as they treated all other transactions. This section describes the firms that were the subjects of the Sell Operation and the manner in which they handled transactions in merchandise which they had reason to believe was stolen.

a) Sudon Distributors, Inc.

Sudon Distributors, Inc., located in Brooklyn, New York, is a wholesaler of health and beauty aids with reported sales of over \$900,000 during its 1976 fiscal year. Fifty percent of the shares of Sudon are owned by Donald Solof and his wife Susan, who serve as President and Secretary-Treasurer of the Company, respectively. Sudon's customers include a number of pharmacies and retail health and beauty aid outlets as well as a number of other wholesalers with gross sales substantially greater than those of Sudon. Its suppliers include many of the same wholesalers to which it sells, as well as various manufacturers and peddlers.

Sudon's business has experienced a substantial growth in sales since its incorporation in 1969 -- in 1971, its records reflected gross sales of \$380,000; by 1976, purchases were \$873,000 and gross sales were \$925,000.* The purchases and sales reported in Sudon's records constitute only a portion of its actual purchases and sales. Many of the Company's transactions are not recorded either as purchases or as sales (S.T.).** Some of those transactions involve the purchase and resale of stolen pharmaceuticals and "stolen" health and beauty aids.

On November 15, 1976, at approximately 8:00 A.M., a Commission informant telephoned Donald Solof, advised Solof of his ability to obtain quite a bit of "swag", and indicated that he would have 15 cases of Nice 'n Easy available for delivery the following day.

* Purchase figures were derived from cash receipts and cash disbursements records and do not take into consideration end of year adjustments. 1976 gross sales were derived from the Corporation's Federal Income Tax Return.

** Solof testified that he did not reflect any cash purchases in the records of the Company (S.T.). Many sales of merchandise purchased for cash were not shown in the Company's records (S.T.). Income derived from those cash sales was deposited into the Company's checking account as the need arose (S.T.).

Solof had previously purchased merchandise from this informant and subsequently testified that it wouldn't surprise him if the merchandise purchased from the informant over the last three years had been stolen. He stated: "knowing the individual, and knowing he is not in the health and beauty aids business, it would seem like a good chance that the merchandise might be stolen" (S.T.).

On November 16, 1976, the informant delivered the 15 cases of Nice 'n Easy to Solof. Prior to receiving payment of the purchase price, the informant advised Solof that "I have this guy on the platform, and the driver, the guy from the platform steals it and gives it to the driver", and that he, the informant, then obtains the merchandise from the driver. Solof expressed concern that the driver might be apprehended and identify the informant, but nevertheless purchased the 15 cases of Nice 'n Easy for \$600. He also agreed to assist the informant in obtaining a counterfeit hair care product while warning him that "there was a big batch stolen."

On February 2, 1977, a second Commission informant sold eight cases of allegedly stolen Nice 'n Easy to Solof for \$35.00 per case.* The second informant was unknown to Solof prior to the date of this transaction. He merely walked into Sudon Distributor's warehouse, offered Solof panty hose and Nice 'n Easy and told Solof that a truckdriver named Leroy had sent him. Leroy was a fictitious name. During the course of this transaction, the informant advised Solof that Leroy "bring me all the stolen merchandise and I get rid of it." Solof responded, "[B]ad word to use. Don't ... don't ever use that." His indifference to the origin of the Nice 'n Easy was paralleled by the reaction exhibited by the other businessmen whom the Commission studied.

Solof's only qualms were about Leroy's identity and the identity of people to whom the informant had previously sold merchandise. Solof repeatedly

* In both transactions, the Commission's informants were paid in cash. When the Commission's accountants audited the financial records of Sudon for this period, no record of these purchases was found.

asked "who's Leroy" and "who are some of the people you sold goods to?". Despite his evident concern, Solof purchased the Nice 'n Easy, assisted the informant in unloading it and suggested that the informant bring him a sample of the panty hose.

On March 3, 1977, Solof appeared as a witness at a private hearing before the Commission. In sworn testimony, he denied that he had purchased any merchandise which he had been advised was stolen.

Donald Solof and Sudon Distributors first came to the attention of the Commission as a result of their involvement in the redistribution of prescription pharmaceuticals which had been reported missing from an E.R. Squibb and Sons pharmaceutical plant in New Brunswick, New Jersey. One month after the theft, a Squibb sales representative observed some of the pharmaceuticals in two Brooklyn pharmacies. One pharmacist identified Solof as the vendor of the pharmaceuticals.* Both Solof and the pharmacist were arrested by the New York City

* The Commission's accountants audited Sudon's records for the relevant period. The records did not reflect the sale of the stolen pharmaceuticals.

Police Department and charged with criminal possession of stolen property. The pharmacists' cases were Adjourned in Contemplation of Dismissal; Solof pleaded guilty to a violation of Penal Law Section 240.20 (disorderly conduct) and was fined \$150.

In conversations with the Police Department and the Commission, Solof went to great lengths to conceal the identity of the supplier of the stolen pharmaceuticals. At first, he claimed to have obtained the pharmaceuticals from a "Gene" of Ameris Trading Company - a defunct entity.* Later he claimed that an individual whom he identified only as "Jerry" had telephoned him at home, offered him the pharmaceuticals, and delivered the pharmaceuticals to Sudon's warehouse.

* Solof produced an invoice from Ameris documenting the sale of the stolen pharmaceuticals to Sudon for \$1,740. He also produced an invoice from Sudon to Ameris evidencing the sale of some goods by Sudon to Ameris for \$1,740. Police Department records indicate that Ameris, a dealer in pots and pans, had been out of business for four years prior to the date of these transactions.

After much questioning, Solof ultimately revealed the name of his pharmaceuticals supplier to the Commission - Leo Weinstock of Aronoff Sales Corporation (see Part B., infra, p. 69 et seq.). He subsequently testified that he knew the pharmaceuticals were stolen at the time he purchased them, although Weinstock had advised him that the pharmaceuticals were "going out for export" and therefore priced at below current market value (P.H.) Solof testified:

Q At the time you purchased [the pharmaceuticals] were you aware that that merchandise was stolen?

A I would say I would be aware of it, yes.

Q How were you aware of that fact.

A By the price that was quoted me.

Q Was the price well below accepted market price?

A Yes (S.T.).

Since the purchase of the stolen pharmaceuticals, Solof has engaged in a number of transactions which have characteristics similar to the pharmaceuticals transaction. A few of those transactions are described below:

(1) During a four to five year period, Solof made 30 to 40 purchases involving truckloads of

health and beauty aids, allegedly destined for shipment overseas, from an individual whom Solof identified only as "Jerry". Solof purchased the health and beauty aids at 30% below the manufacturers' wholesale price, paid cash, and did not receive an invoice or bill documenting the transactions.* The cartons in which the merchandise was packaged were either stripped of all labels indicating destination or unmarked. Evidently these characteristics were sufficient to raise a question in Solof's mind with respect to the origin of the merchandise. Solof testified: "I would have to believe that there might be a situation where the goods might be stolen" (S.T.). According to Solof, prior to each transaction, Jerry telephoned him to offer the merchandise, but never gave his full name or a telephone number at which he could be reached. Jerry allegedly delivered

* Solof testified that Jerry "said that if I wanted a bill ... we could not do business." Solof said that Jerry's response led him to believe that Jerry had merchandise that was for export and that a bill would spoil the situation (S.T.). In an earlier interview, however, Solof stated that the request of a seller to eliminate bills is a suspect practice, indicating a likelihood that merchandise is stolen.

the health and beauty aids to Sudon's warehouse in a station wagon or rented truck.* In 1974, Solof engaged in fifteen purchases of this nature involving \$10,000 to \$20,000 per purchase. None of these purchases were recorded in the Company's books. Upon receipt of an offer from Jerry, Solof telephoned a number of his large wholesale accounts and offered the merchandise at prices which were 25% below the manufacturers' direct price. Merchandise purchased from Jerry was allegedly sold to Interstate Cigar Company and L.S. Amster Co., Inc., two health and beauty aids wholesalers located on Long Island. Solof testified that those sales were recorded in Sudon's records and documented by an invoice or bill. However, when asked to produce the relevant bills, Solof responded "No. Those bills were destroyed in a fire in my building" (S.T.)

* It should be noted that Solof previously tried to conceal the identity of a supplier of stolen pharmaceuticals by fabricating a similar explanation of the transaction.

(2) In 1976, Solof purchased a quantity of Ex-Lax from a salesman for another health and beauty aids distributor. The salesman was selling the merchandise for his own account, rather than on his employer's behalf (S.T.). Solof testified that he paid for the merchandise in cash and did not receive a bill. The purchase was not recorded in the financial records of Sudon Distributors. Solof also testified that the Ex-Lax was disposed of at a price which was approximately 5 percent above Sudon's cost, whereas Sudon's "regular" merchandise is sold at a markup of 10 to 12 percent above cost.* Sudon sold the Ex-Lax to one of its regular wholesale accounts. By agreement between Solof and that account - another concern involved in the Sell Operation - the documentation reflecting the sale did not refer to Ex-Lax. Solof testified:

* Solof explained that when he sold "regular" merchandise to retail stores, he tried to maintain a 10 to 12 percent markup. (Regular merchandise was defined as merchandise purchased from manufacturers and wholesalers with which Sudon deals). When he sold merchandise which had been purchased for cash to individual retailers, his prices were based on the current market price. Sales to purchasers of quantities of merchandise were made at prices five percent above Sudon's cost.

A What I did do on the Ex-Lax ... I didn't bill it out as Ex-Lax; I billed it out as other merchandise to get to the figure that I needed.

Q What do you mean?

A In other words, if I sold him two thousand dollars worth of Ex-Lax, I didn't put down any Ex-Lax; I put down two thousand dollars worth of merchandise that I had in my stock, and gave him an invoice for two thousand dollars, and he, in turn, gave me a check for two thousand dollars.

Q Why didn't you reflect the --

A Because I did not have any invoice to show that I had purchased Ex-Lax, and I sold it to him substantially below the market.

Q How much below the market?

A Maybe twenty-five, thirty percent below the market (S.T.).

(3) Solof purchased twenty-three cases of Nice 'n Easy from Commission informants at prices ranging from \$35.00 to \$40.00 per case.* The purchases were not reflected in Sudon's records. Solof testified that the merchandise was mixed in with Sudon's other inventory and was sold to a number of the Company's accounts for about \$48.00 per case - a price which was approximately \$6.00 less than wholesale. Solof testified that

* As indicated previously, the purchase price was paid in cash.

those sales were accompanied by invoices or bills and that he was paid in cash or by check.

According to Solof, approximately half of the Commission's Nice 'n Easy was sold to the "D" Company* at \$45.00 per case after Solof had called the principals of "D" to advise them of the product's availability. "D" received a discount on the Nice 'n Easy because it purchased in quantity. The principals of "D" allegedly requested that Sudon give them an invoice for the Nice 'n Easy. However, according to Solof, "they said they wouldn't mind taking an invoice for something else" (S.T.).** Solof's testimony indicates that this was one of two instances in which "D" knowingly participated in this kind of arrangement.

(4) On one or two occasions during 1976, Solof purchased merchandise from another health and beauty aids concern. The purchases were not reflected in Sudon's books. At the seller's

* This is a fictitious name.

** Solof testified that only one other account had agreed to accept a similar billing arrangement.

request, the purchases were paid for in cash.

Solof either removed the sales invoices from Sudon's files or destroyed them in order to conceal the cash purchases.*

Sudon's ability to dispose of questionable merchandise would be seriously hampered if its customers failed to cooperate in various subterfuges or if they declined to purchase merchandise which they had reason to believe was stolen. A number of Sudon's accounts had reason to question the source of its merchandise but failed to do so. In one instance, a Brooklyn pharmacist purchased stolen pharmaceuticals from Sudon. He did not question the transaction although the pharmaceuticals were sold to him at substantially below market price by a supplier which was not licensed to sell prescription drugs and did not usually do so. In a second instance, two of Sudon's accounts cooperated in a procedure whereby Sudon would bill them for items other than those which were actually

* Solof testified that "the bill might have been taken out of the file because there was no record of [the purchase of the merchandise]." He subsequently testified that "[t]here were no invoices, but when I paid for it, the invoices were, more or less, destroyed" (S.T.).

sold. Other instances of cooperation between Sudon and its customers exist.

The criminal receiver "is in precisely the same position as the thief as regards his dependence upon a market for stolen goods."* Without cooperative businessmen to facilitate redistribution, the flow of stolen merchandise would be seriously hampered.

b) Daily Toiletries, Inc.

Daily Toiletries, Inc., located in Mount Vernon, New York, is a wholesale distributor of health and beauty aids, which reported gross sales of over \$1 million in 1976.** As of May 1977, Henry Koffler, the President of Daily, and Irving Goldfarb, its Secretary, were the sole shareholders and sole employees of the Company. At one time, Daily Toiletries owned twelve retail stores in the Bronx and Manhattan in addition to its wholesaling business.

* Hall at 161.

** Although Daily reported gross sales of \$1,021,803 in 1976, losses were incurred from the operation of the business in 1976 and in the two previous years.

Daily's customers include a number of wholesalers with gross sales substantially greater than those of Daily. Its customers include many of the firms which were the subjects of the Sell Operation.* A large percentage of Daily's business with major wholesalers involves diverted merchandise.

According to Daily's records, its suppliers have included Sudon Distributors, Inc., Allou Distributors, Inc., Weinstock Sales Corp., Interstate Cigar Company, Inc., and L.S. Amster & Co., Inc. Its smaller suppliers include several salesmen who sell merchandise for their own accounts, rather than on behalf of the firms which they represent. The invoices received by Daily from several of those salesmen are written on scraps of paper.** Some of those invoices document the sale of merchandise to Daily at prices substantially less than wholesale.*** Other

* Daily's financial records reflected sales to Action Drugs, Sudon Distributors and Allou Distributors, as well as Interstate Cigar Company, Inc., and L.S. Amster & Co., Inc.

** The Commission's audit of Daily's records also revealed several purchase invoices that were not recorded in the purchase books or cash disbursements of Daily Toiletries.

*** Irving Goldfarb was another merchant who testified that an exceptionally low price on particular merchandise might raise a question in his mind as to whether that merchandise had been stolen.

invoices do not reflect the merchandise actually purchased by Daily.*

In late November, 1976, a Commission informant telephoned Daily Toiletries, identified himself as Don Solof's friend and offered Henry Koffler ten cases of Nice 'n Easy. The informant explained that he "made a contact with a guy, he's a driver, and he's got a hook-up with a guy on the platform who's stealing some stuff for me." Koffler rejected the informant's offer because the product assortment did not contain a sufficient quantity of the most popular shade. One week later, the informant again telephoned Daily Toiletries and offered Charlie Concentrated Perfume Oil and Cologne to Irving Goldfarb, the Secretary of the Company. The informant advised Goldfarb that "these were stolen by some guys I know." This offer was

* See p. 40 supra. One of Daily's suppliers testified that Daily had agreed to accept invoices which falsely reflected the merchandise actually sold to the Company. Irving Goldfarb, the Secretary of Daily, invoked his privilege against self-incrimination when asked whether the invoices received by Daily accurately reflected the merchandise which Daily had purchased (S.T.).

subsequently rejected on the ground that the items offered were not regular sizes.

Despite their initial rejection of the informant's offers, the principals of Daily, on two subsequent occasions, agreed to purchase Nice 'n Easy from the informant. On each of those occasions, they evidently located an outlet for the merchandise prior to accepting the informant's offer. The first purchase -- ten cases of Nice 'n Easy at \$40.00 per case -- was delivered to Irving Goldfarb, who paid the purchase price by check. The second purchase -- twelve cases of Nice 'n Easy at \$40.00 per case -- was delivered to Henry Koffler, who also paid the purchase price by check.* The first transaction was documented by an

* The Nice 'n Easy may have been sold to a wholesaler/retailer of cigarettes, soda and sundries located in Westchester County. An invoice, dated January 3, 1977, reflects a sale by Daily to a Westchester concern of 36 dozen Nice 'n Easy at \$45.00 per case.

invoice* which did not adequately identify either the vendor or the product purchased. The invoice, consisting of a Daily sales invoice with the billhead ripped off, reflected the quantity of merchandise sold, the name of the manufacturer, the sales price and another notation identifiable to the Commission's investigator. It did not contain the product name, the size of the product, or the informant's address. There was evidence of both transactions in Daily's records.

* The existence of an invoice is frequently used to support the businessman's claim that he lacked knowledge that the merchandise purchased was stolen property. This exchange between the informant and Henry Koffler best explains that attitude:

HENRY: [A businessman wants a bill from an identifiable supplier] ... so in case something happens, he can say 'he did it, not me. I didn't know'. ...

INFORMANT: But he actually knows it's stolen.

HENRY: Oh that. You know ... you know and don't want to know.

INFORMANT: That's right.

HENRY: Don't tell me and I know it. He doesn't want to hear the word (U.T.).

Daily Toiletries was more than an outlet for small quantities of allegedly stolen goods. The officers of Daily also acted as brokers,* enabling the Commission informant to gain access to firms with which he had no previous contact and to dispose of merchandise which could not otherwise be sold. One officer expressed willingness to solicit the Company's customers to locate counterfeit merchandise for the informant;** the other agreed to the informant's suggestion that Daily's warehouse be used as a "drop" for stolen merchandise.

* See p. 49 infra. One of the officers provided the informant with an introduction to a firm that would buy quantities of allegedly stolen products in return for a promised commission of five percent of the informant's sales.

** This was not Daily's first involvement with counterfeit products. Irving Goldfarb, Secretary of the Company, testified that he had purchased two counterfeit hair conditioning products, without knowledge that they were counterfeit.

c) The "X" Company*

The "X" Company is a wholesaler of cosmetics and health and beauty aids, with approximately 100 employees and multimillion dollar gross sales. The major portion of its health and beauty aids sales is to retailers; the remaining fraction to wholesalers. The "X" Company sells its products by catalogue; its catalogues are often used by retailers and wholesalers in the New York area to determine the wholesale price and standard size of particular products.

A large percentage of the merchandise sold by the "X" Company is purchased directly from manufacturers; the remainder is purchased from retailers.** A very small percentage of "X's" stock is acquired from peddlers.

* The identity of this firm has been concealed because the Commission did not have evidence that the acts of its buyers were known to the Company's principals.

** Representatives of several wholesalers testified that wholesalers purchased various products from retailers when the manufacturers of those products (1) refused to deal with wholesalers, (2) limited the quantities that wholesalers were able to purchase, or (3) offered merchandise at promotional prices only to retailers.

A Commission informant was referred to Lenny K., a cosmetics buyer for the "X" Company, by Henry Koffler, an officer of Daily Toiletries. The informant had asked whether the "X" Company would purchase certain Charlie products and whether Koffler knew anyone at that concern. Koffler responded, "[C]all Lenny [K.] and tell 'im Irving gave you his name."

Shortly thereafter, the informant telephoned the "X" Company, advised K. that "Irving, from Daily Toiletries, gave me your number" and offered him Charlie Concentrated Perfume Oil, unboxed Charlie Cologne*and Nice 'n Easy at prices substantially less than wholesale. K. noted that the retail price quoted for the perfume was "way off" and asked to see a sample. He then referred the informant to William R., "X's" health and beauty aids' buyer to discuss the Company's purchase of Nice 'n Easy.

* A representative of the manufacturer advised the Commission that on or about the date of these transactions, the Charlie Concentrated Perfume Oil had a wholesale price of \$4.50 per item and a suggested retail price of \$7.00. The Commission's informant offered the perfume at \$1.00 a bottle. The 1.8 ounce Charlie Cologne was evidently a promotional item; it had a wholesale price of \$2.25 per bottle and a suggested retail price of \$3.75. The Commission's informant originally offered the unboxed cologne at \$.50 per item.

R. accepted the informant's offer of ten cases of Nice 'n Easy at a purchase price of \$40.00 per case.* He asked whether the informant had sold merchandise to K. and indicated that he was willing to purchase all the Nice 'n Easy the informant had available. Despite his evident eagerness to purchase the Nice 'n Easy R. would not engage in the transaction unless

* R. had reason to believe that the Nice 'n Easy was stolen, from the low purchase price and the informant's reluctance to give him a bill. R. testified:

Q How would you be able to discern whether the merchandise was stolen ...?

A By the price. ...

Q What price would indicate to you that the merchandise was stolen.

A Like in Bristol-Meyers [sic], you know, twenty-five percent, thirty percent off regular cost. ...

Q If you had been offered Nice 'n Easy at forty dollars a case, would that indicate to you that it was stolen?

A Yes (S.T.).

the informant gave him a bill for the merchandise.*

The following day, the informant delivered ten cases of Nice 'n Easy and samples of Charlie Perfume and Cologne to the "X" Company. In the course of that delivery, the informant indicated to K. that he would lower the price of the cologne if the "X" Company were willing to purchase all the available stock.** K. agreed to purchase

* The importance of a bill to "X" Company's buyers is best illustrated by this exchange between the informant and William R.

BILL: ... Okay, what's the name of the company? Or you have no company name?

C.I.: No. ...

BILL: It's with a bill now, right?

C.I.: I don't have a bill to give you.

BILL: Forget it.

C.I.: Well, do you want me to give you a bill?

BILL: Yeah ... I don't, we don't buy without a bill.

C.I.: All right, we'll make up a bill and give you one (U.T.)

** Like R., K. insisted that the informant furnish the "X" Company with an invoice. He refused the informant's request that the purchase price be paid in cash, explaining, "we don't pay anything in cash; only by check." (U.T.)

the perfume but wished to consult with another cosmetics buyer regarding the purchase of the cologne.* A few days later, the "X" Company purchased 1,448 bottles of the Charlie Cologne for \$506.80 and 384 bottles of the Charlie Concentrated Perfume Oil for \$384.** According to "X's" unvarying practice, the purchase price was paid by check

* K. agreed to purchase the perfume although the informant's statements and the exceptionally low purchase price should have given him reason to believe that the perfume was stolen. During the course of the first delivery, the Commission's informant had substantially understated the retail price of the Charlie Perfume. When K. advised the informant that the retail price of the perfume was \$7.00 per unit rather than \$3.75, the informant explained that "[m]any things that these guys end up stealing, I have no way of knowing the price on it." Moreover, K. purchased the perfume at \$1.00 a bottle, when he knew that its retail price was \$7.00 a bottle. He subsequently stated:

Q Would a price of a dollar per unit on an item that retailed for \$7.00 a unit give you reason to believe the merchandise was stolen?

A Possibly, depending on the item again. ...

Q Let's assume it was not closed out merchandise but current stock.

A Then I would assume it is either stolen or counterfeit (U.T.).

** K. denied having knowledge that the Charlie products were stolen although in the course of the delivery of that merchandise, he was asked whether another specified buyer knew "that this stuff is stolen merchandise." K. responded, "It's alright" and indicated that all future "negotiations" should be conducted with the specified buyer.

upon receipt of an invoice. However, unlike the great bulk of "X's" suppliers, the Commission informant was paid immediately upon delivery of the merchandise.

The purchase of the unboxed Charlie Cologne was "X" Company's one deviation from its normal procedure of buying fragrances in their customary packaging. K. bought the cologne because the item was in "scarce supply" and "X" Company was able to resell it at a good price" (U.T.).* In fact, assuming all the cologne purchased to have been sold at its catalogue price, "X" would have realized a profit of \$637 or 125% on its cost of \$506.80.

"X" Company was required to store the unboxed Charlie Cologne until a new cosmetics catalogue was published.** The cologne was listed in "X's" January, 1977, catalogue

* "X's" cosmetics division works on a markup of approximately 12%. The markup on the unboxed Charlie Cologne was substantially higher -- over 100%.

** "X" had to add the cologne to its catalogue in order to market it. K. at first rejected the item, noting that the Company usually sold the cologne in a 2 ounce size with a box." (The Commission's cologne was a 1.8 ounce size and was unboxed). K. explained that "we sell only by catalogue" and "have to create [the 1.8 ounce cologne] as a separate number" and "say 'unboxed'" (U.T.). The quantity of cologne available was evidently as important a factor as the low purchase price in K.'s decision to purchase it.

at a price of \$.79 per bottle.* It was the only item in "X's" entire catalogue for which an arrow appeared in the margin to call attention to the product.

"X's" buyers refused to deviate from the Company's standard purchasing procedures when buying stolen merchandise from the Commission's informant. Their insistence upon invoices and payment by check was evidently designed to protect the "X" Company from claims that it was involved in the distribution of stolen property. In effect, the buyers' practices elevated form over substance. As indicated at pages 50 and 52 supra, "X's" buyers knew or had reason to believe that the Commission informant was selling stolen merchandise. Plainly, they had concluded that adherence to the Company's customary purchasing procedures was sufficient to insulate the Company and themselves from any liability for purchasing stolen merchandise.

* The "X" Company purchased the cologne for 35¢ per bottle. Its catalogue suggested that the customer "call [a specified buyer] for [a] quantity discount" on the cologne.

d) The "Z" Company*

The Commission's Sell Operation was not limited to firms located in one geographic region. In a major undertaking outside New York State, a Commission informant began negotiations for the sale of a trailerload of stolen merchandise to the "Z" Company.** That sale was not to be an isolated event. Rather, it was to be the start of a continuing relationship between the informant and the "Z" Company in which the informant was assured of an experienced, reliable outlet for vast quantities of stolen merchandise. The evidence developed by the Commission with respect to the "Z" Company has been turned over to the appropriate federal authorities and, at their request, will not be made public at this time.

Recorded conversations between "Z" Company's representatives and the Commission's informant indicated that this was not the Company's first

* The identity of this company is being concealed at the request of federal law enforcement authorities who are utilizing the evidence turned over to them by this Commission.

** The informant was referred to the "Z" Company by a principal of a local firm after the informant had advised the principal that he was "gonna be getting quite a bit of this stolen merchandise in."

venture into stolen property. During the course of those conversations, "Z" Company's representatives instructed the informant regarding the purchase, distribution, delivery and invoicing of a trailerload of stolen merchandise. Adherence to those instructions would have concealed all details of the transaction and insulated both "Z" Company and the informant from detection by law enforcement authorities.

e) Paramount Beauty Distributing Associates, Inc.

Paramount Beauty Distributing Associates, Inc., located in Brooklyn, New York, is a wholesaler and retailer of beauty supplies with thirty employees and gross sales in excess of \$4 million during its 1976 fiscal year. Allan Hagler, President of Paramount and Bernard Elmowitz, its Vice-President, are the sole shareholders of the Company. Paramount has three divisions -- a retail professional beauty products division consisting of retail outlets in Brooklyn and Manhattan, a beauty parlor division and a wholesale division. A large percentage of Paramount's business consists of the wholesale distribution

of beauty supplies to beauty parlors and wholesalers in the metropolitan area.* Paramount's customers and suppliers include a number of concerns which were the subjects of the Sell Operation.

After a series of telephone calls from a Commission informant, the Vice President of Paramount agreed to purchase ten cases of allegedly stolen Nice 'n Easy at \$35.00 per case.** Upon delivery of the merchandise, the informant was paid \$350 in cash. According to a principal of the Company, funds for the purchase were taken from the Company's petty cash funds; this transaction, as well as a previous purchase from the informant, was not reported in the Company's financial records.

* The distribution of sales revenues among its various divisions was described as follows:

(a) Retail Professional Beauty Products -	
\$450,000 - \$500,000	
1. Manhattan Store	
2. Brooklyn Store annexed to the	
Company's warehouse	
(b) Beauty Parlor Division	-\$1,000,000
(c) Wholesale Division	-\$2,500,000

** Both the President and the Vice President of the Company were on notice that the informant was selling stolen merchandise. In a conversation with "Allan", the informant stated that various colognes were "stolen merchandise, like I have all the other stuff" (U.T.). In a subsequent conversation he advised "Bernie" that "I have no control over what these guys steal. They steal the stupidest numbers (U.T.)."

Although one of the principals of the Company expressed some reluctance to purchase "stolen" merchandise and even indicated fear that such purchases might jeopardize his business, the sale was nevertheless consummated. The reluctance to purchase "stolen" goods was overcome by the Company's need for the particular product offered and the low price at which it was offered. Offers of other merchandise were rejected.*

Despite initial hesitancy to purchase stolen stolen property, the principals of the Company nevertheless assisted in its distribution and thereby provided both the informant and the firm insulation from detection by law enforcement agencies. One of the principals suggested a firm which might purchase the "stolen" Charlie products; the other principal warned the informant against dealing with another firm which had evidently engaged in several questionable transactions.**

* One of the principals of the Company was unwilling to purchase the Charlie Cologne because it was unboxed and declined to purchase the perfume until he had a customer for it.

** In the course of a discussion of stolen and counterfeit merchandise, one of the principals advised the informant to "[b]e careful about this [dealing with a particular firm]. Donnie is involved with something. ... I know he was bagged once before with Wella Balsam. ... And, now I understand that he's involved with something else. So I'm just saying something to you ..." (U.T.).

f) H&E Stores, Inc.
Alan Jay Cosmetics Corp.

Transactions similar to those described previously occurred with H&E Stores, Inc. and Alan Jay Cosmetics Corp. In each case, goods were described as stolen,* the purchase price was paid in cash and

* An excerpt of the initial conversation between the informant and a representative of H&E is set forth below:

OPERATOR: Hello. H&E.
C.I.: Hello. Can I speak to Eddie, please? ...

C.I.: Hello, Eddie, this is [the informant].
EDDIE: [The informant]? From who?
C.I. From the Nice 'n Fasy. Remember?
EDDIE: Yeah, where the hell have you been? ...

C.I.: I've been able to get a driver who has a guy on a platform who's stealing it, so I've got five pieces for you.
EDDIE: Five cases?
C.I.: Yeah.
EDDIE: An' what numbers?
C.I.: [States available colors]. ...

EDDIE: How much does it come out to? ...
C.I.: Oh, 45 a carton.
EDDIE: How many in a case? Three?
C.I.: Three dozen, yeah. ...

EDDIE: There's no markings on them or nothing, is there?
C.I.: Nothing.
EDDIE: Okay.
C.I.: If anything is on them, I'll have them removed. (U.T.).

A similar explanation of the origin of the Nice 'n Easy was given to an employee of Alan Jay Cosmetics Corp.

the transactions were not recorded in the purchaser's books and records.

Alan Jay Cosmetics Corp. and H&E Stores, Inc. are not insubstantial firms. Commission accountants estimate that Alan Jay Cosmetics Corp., a wholesale distributor of health and beauty aids located in Brooklyn, New York, has gross sales of approximately \$2 million per year. H&E Stores, Inc., which operates a retail general merchandise store in Brooklyn, had gross sales of approximately \$350,000 in 1976.

g) B&J Toys and Sporting Goods Distributors

John Doran and William Torrey are partners in B&J Toys and Sporting Goods Distributors, a retail store located in an active, heavily traveled, small business district in the Richmond Hill section of Queens. B&J sells toys, books and some sporting

equipment. The principals of B&J, unlike the other individuals and concerns examined during the Sell Operation, apparently do not use channels of commerce developed in the course of their legitimate business to redistribute "stolen" property. During a four month period of operation, the gross cash receipts of that business were only \$2,447.*

One of the principals of B&J - John Doran - was imprisoned for ten months as a result of his role in the disposition of approximately \$600,000 worth of checks which had been stolen by an employee in the payroll department of another concern. Prior to his imprisonment Doran owned a flower shop in Richmond Hill, Queens.

William Torrey, the other principal, pleaded guilty to a charge involving possession of a stolen credit card. Prior to his association with B&J Toys, Torrey was the owner of a limousine service. Torrey and Doran have been acquainted for fifteen years.

* B&J is a new enterprise. Doran and Torrey filed a business certificate for partners on November 15, 1976. Doran testified that B&J had done relatively little business prior to January 15, 1977 (S.T.).

Doran and Torrey came to the attention of the Commission as a result of their purchase of approximately \$1,100 worth of allegedly stolen health and beauty aids during the course of the Sell Operation. The transaction occurred on the premises of B&J; arrangements to dispose of the merchandise were evidently made prior to its delivery by the Commission's informant. Neither the purchase nor the sale of the health and beauty aids was reflected in the financial records of B&J.*

The Commission took sworn testimony from Doran and Torrey** and examined the financial records of B&J Toys and Sporting Good Distributors. Because of a separate police investigation, the Commission limited the timing, scope and subject matter of its examination. Two weeks after their appearance

* Torrey claimed his constitutional privilege against self-incrimination when asked whether all of B&J's purchases and sales were reflected in the Company's financial records (S.T.).

** Because of protections provided by the statute of limitations, the major part of the testimony elicited from Doran and Torrey related to pre-1972 transactions.

and testimony before the Commission, Doran and Torrey were arrested and indicted. The indictments alleged criminal possession of stolen negotiable securities, paintings, and traveler's checks.* According to the Queens County District Attorney's Office, the traveler's checks alone had a value of \$440,000.

Doran's transactions in high value, low bulk stolen property are not of recent origin. He testified that prior to 1972, a portion of his income had been derived from the purchase and resale of stolen property and from his role as a broker in stolen property transactions.** In the latter capacity, Doran has arranged for the disposition of stolen corporate checks, negotiable securities, and negotiable blank United States Postal Money Orders.*** Some of that property was stored in his apartment, while he or an accomplice attempted to locate a purchaser. Doran claimed that his fee for brokerage services

* A third person was named as a co-defendant with Doran and Torrey in the indictment alleging criminal possession of the stolen travelers checks.

** He also told of his role in a transaction involving stolen construction equipment.

*** Doran has also demonstrated a willingness to deal in a truckload of stolen commodities.

was paid by the purchaser, and, on occasion, by both the purchaser and the seller.* Doran's brokerage transactions were separate from his retail business.

The determination as to whether Doran functioned as a broker or a distributor in a particular stolen property transaction depended upon the value of the property involved and whether its disposition would result in his identification.**

Q What types of securities or negotiable instruments [did you purchase or sell] ...?

A I never really purchased them. I would never have the amount of money to purchase them.

Q You acted as a middleman; is that correct?

A That's about the size of it (S.T.).

Doran indicated that in his role as a distributor of stolen property, he had purchased or been the consignee of a wide variety of merchandise, including

* Doran stated that he received a commission of two points on certain transactions; in other cases, he received fees which ranged from \$200 to \$3,000.

** Doran is 53 years old, weighs over three hundred pounds, and has white hair.

watches, credit cards,* television sets, tires, clothing, jewelry, shoes, small appliances, coins and a silver tray. He admitted purchasing a portion of that merchandise from the thief or from another fence, generally after having been shown a sample. Items such as clothing were sold for cash to individuals at prices fifty percent higher than Doran had paid. The purchaser would nevertheless realize a saving since the value of an item might be twice the price being charged by Doran.

Some items were sold from Doran's place of business; however, those transactions were kept separate from his retail business and not reflected in its books. Doran testified that a transaction in stolen merchandise "would have nothing to do with the business" although "it could be in the same location." He explained that "[i]t would be a totally separate transaction entirely because the fellow

* Doran testified that "credit cards came into the operation" and were "passed on to somebody else for a fee" (S.T.). He purchased stolen credit cards for fifteen to twenty-five dollars and sold them for fifty dollars (S.T.). Doran stated that there are fewer stolen credit cards on the market today as a result of increased security measures adopted by credit card companies (S.T.).

that brought it to you would want cash, and naturally when you sold it you would want cash" (S.T.).

William Torrey, Doran's partner in B&J claimed to specialize in the sale of clothing; he had also engaged in transactions involving stolen televisions, radios and credit cards.* Torrey purchased stolen clothing in quantities ranging from 10 suits to 200 womens dresses and slacks from various racetrack acquaintances. He testified that the quantity of clothing purchased depended upon his finances, explaining: "To tell you the truth, you would buy what you would have the money to buy" (S.T.). Torrey opined that the clothing was the product of employee pilferage

* Torrey testified that during a six month period in 1972-73, he purchased twenty credit cards from a mailman at a bar in Queens at a purchase price of \$20.00 per card. Torrey stated that he used the credit cards to purchase food and beverages in restaurants. He testified that the effective life of a stolen credit card was thirty to forty-five days and that his use of stolen credit cards had never been challenged by the establishments in which they were used. Torrey explained that he ceased using a stolen card when it appeared on a list distributed to merchants by the credit card companies. He testified that he checked those lists after he purchased a credit card but prior to each use. He indicated that it was not necessary to own a business to check those lists, explaining: "You could really go any place to get a book" (S.T.).

and that the vendor had probably purchased the clothing from someone else.

Torrey used his limousine business to dispose of stolen clothing.* He generally sold the clothing to individuals at approximately twice his cost which, again, would still represent a considerable saving for any purchaser. Torrey claimed his constitutional privilege against self incrimination when asked whether he had reported to the Internal Revenue Service his profit on the disposition of two hundred items of women's clothing.

h) E&J Repair Center

E&J Repair Center is a sewing machine repair shop in Manhattan which sells notions, sewing supplies, sewing machines and small appliances.** Edwin Irizarry claims to be the sole owner of E&J.***

* Torrey claimed his constitutional privilege against self-incrimination when asked whether he was selling stolen property at B&J Toys and Sporting Goods Distributors.

** Irizarry's unfiled 1976 income tax return reported that total sales for 1976 were \$10,125, total income \$6,090 and net profit \$2,385. Irizarry advised Commission staff that he takes home approximately \$150 to \$200 a week during non-summer months.

*** In the course of a telephone conversation with a Commission informant, an unidentified male indicated that he was one of two partners in the business.

In the course of a telephone conversation, a Commission informant offered panty hose to an unidentified male who had answered E&J's telephone.* The informant explained that for the \$300 purchase price of the stolen merchandise, "surely you could get your money back." Shortly thereafter the informant delivered 100 dozen panty hose to E&J.** After some discussion, the informant was paid \$100 in cash and given a \$200 postdated check.*** As agreed, the informant returned later in the week to exchange the check for cash. No invoice was requested or offered.

An agent of the Commission visited the shop two weeks later and found a sign in the window advertising the panty hose for sale at 3 pairs for \$1.99. Inside the shop, the panty hose were

* The informant had offered the panty hose to E&J previously. That conversation was not recorded.

** In an interview with Commission staff, Irizarry estimated that he purchased only 40 to 60 dozen pairs of panty hose.

*** Irizarry explained that this method of payment was used because he did not have enough cash on hand that day. In the course of discussion, the informant advised those present that "I steal all this stuff."

strewn about on a table. The agent entered the store and purchased three pair.*

An examination of E&J's books did not reflect the purchase of 100 dozen panty hose. The stub for the check given to the informant bore the notation "Phone, \$52.50" and was marked "VOID". The stub for a prior check bore the same notation. Irizarry told the Commission that he had entered the words "Phone, \$52.50" on the check stub marked "VOID" after his initial interview by Commission staff.

B. Leo Weinstock - The Low Cost of Crime

The Sell Operation enabled the Commission to document the movement of allegedly stolen merchandise in a limited market. It substantiated the existence of a conspiracy of silence among a small group of businessmen and demonstrated the manner in which business records are used to "legitimize" transactions in "stolen" property and to attempt to

* Irizarry indicated that he felt he could double his money on the panty hose. He evidently exceeded his expectations. The 100 dozen panty hose were purchased from the Commission's informant for \$300 or 25 cents a pair and sold for approximately 66 cents a pair.

shield criminal practices from detection by law enforcement and taxing authorities.

The history of Leo Weinstock's involvement in stolen property transactions underscores the ease with which such property is redistributed and the role of merchants in the distribution process. It suggests that the absence of substantial sanctions undermines the deterrent value of detection and arrest.*

In late January, 1973, 64 cartons of a prescription drug named Mycolog were reported missing from the packaging area of an E.R. Squibb and Sons pharmaceutical plant in New Brunswick, New Jersey.** Police reports indicate that the Mycolog bore a distinctive control number, which had not as yet been distributed by Squibb. One month later, a Squibb

* One metropolitan District Attorney indicated that the prosecution of business fences is not a high priority matter since business fences are "small potatoes." He observed that the business fence may be arrested by the police but that it is unlikely that he will ever be sentenced to imprisonment.

** Two days later, 18 cartons of Rauzide tablets were also reported missing from the Squibb plant.

sales representative observed dozens of tubes of the missing Mycolog in two Brooklyn pharmacies. In early March, 1973, search warrants were executed at the two Brooklyn pharmacies and tubes of the Mycolog seized as evidence.* One pharmacist revealed that he had purchased the Mycolog from Donald Solof, President of Sudon Distributors, Inc. The two Brooklyn pharmacists and Solof were arrested and charged with criminal possession of stolen property.**

In mid-March, 1973, another Squibb sales representative observed twelve tubes of Mycolog, bearing a distinctive control number, at a pharmacy in Trenton, New Jersey. The New Jersey pharmacist stated that he had purchased the Mycolog from a pharmacy in Morrisville, Pennsylvania. The proprietor of the Pennsylvania pharmacy revealed that in January, 1973 he had purchased a quantity of Mycolog and other pharmaceuticals from Aaronoff Sales Corporation on

* Both pharmacies purchased the Mycolog at less than wholesale prices. One pharmacist testified that the wholesale price for Mycolog at the time of his purchase was approximately \$2.60 a tube. He purchased the stolen Mycolog at \$2.00 per tube.

** The pharmacists' cases were adjourned in contemplation of dismissal; Solof pleaded guilty to disorderly conduct and was fined \$150.

East 17th Street in Manhattan.* After questioning by the Commission, Donald Solof also acknowledged that he had obtained the Mycolog from Leo Weinstock of Aaronoff Sales Corporation.

Leo Weinstock was the President of Aaronoff Sales Corporation, a wholesale distributor of drugs and sundries located on East 17th Street in Manhattan. He was also involved in several other corporate entities, including Weinstock Sales Corporation.

On two occasions, once in 1972 and once in 1973, Weinstock purchased a quantity of Mycolog and other pharmaceuticals from a peddler named Bernard Bailey.** Neither the purchase nor the subsequent resale of the Mycolog to various customers was recorded in the records of Aaronoff Sales Corporation.*** However, an examination of the Company's sales invoices and cancelled checks revealed that Weinstock had developed

* The proprietor of the Pennsylvania pharmacy produced a sales slip for the goods written on the reverse side of a sheet of paper bearing the name of a member firm of the New York Stock Exchange.

** Bailey was subsequently murdered.

*** Weinstock admitted that the corporate records of Aaronoff Sales Corporation did not reflect all of its sales.

a variety of methods to conceal the purchase and resale of questionable merchandise by Aaronoff Sales Corporation.* The financial records also revealed

* Commission accountants examined the sales invoices of Aaronoff. Invoices which reflected large quantities of unknown composition (such as 100 dozen of assorted merchandise) were confirmed with the purchasers. On several occasions, Commission accountants found that two different invoices had been prepared for one transaction in order to conceal the sale of the stolen Mycolog and other pharmaceuticals. The invoice given to the purchaser reflected what was actually purchased. This invoice had the billhead removed. (The billhead contained Aaronoff Sales Corporation's name, address and telephone number.) Although the purchaser possessed a correct invoice, Weinstock kept no copy for the Company's files. When a check arrived from the purchaser, a second invoice in the amount of the check was prepared for a large quantity of fictitious items. The Commission's audit of Aaronoff's cancelled checks revealed a number of checks payable to cash which had been endorsed and cashed by Weinstock. Comparing the checks with the related entries in the Corporation's cash disbursement book disclosed that the disbursements were for purchases. The purchase invoices covering those purchases were then reviewed and were found in many instances to be makeshift documents. In one instance, a check for \$2,935 was made payable to cash and was cashed by Weinstock. It was entered in the Corporation's cash disbursement book as a purchase from Jackson Salvage, Waterbury, Connecticut. The purchase invoice reflected a purchase of 587 cases of assorted candy and gum. No record of a Jackson Salvage at this location could be found.

At private hearings before the Commission, Weinstock testified:

(Footnote continued on following page)

that Aaronoff Sales Corporation transacted business with many of the firms involved in the Sell Operation.*

Weinstock's distribution of a quantity of stolen Mycolog was neither his first nor his last venture in stolen property. In 1967, Weinstock was arrested in Nassau County on a charge of criminal possession of stolen property.** He pleaded guilty to a misdemeanor

(Footnote continued from previous page)

Q Did you ever do business with Jackson Salvage, 17 Waterbury Road in Waterbury, Connecticut?

A I don't remember, I may have. ...

Q Mr. Weinstock, who did you do business with at Jackson Salvage?

A I don't remember.

Q Did you do business.

A ... I didn't do business at Jackson Salvage.

Q In fact, didn't you write out this bill?

A Yes. (P.H.)

* Commission accountants examined the financial records of Aaronoff Sales Corporation for the years 1972 and 1973, and the period January 31, 1974 to August 31, 1974. The records reflected purchases from Sudon Distributors, Inc. and Daily Toiletries, Inc; they reflected sales to the "X" Company and the "Z" Company.

** Record, vol. 5, at 14, United States v. Camarota, Crim. No. 76-118 (D.N.J. 1976) (hereinafter "Camarota").

and was fined \$250.00 (Record, vol. 5, at 14-15, Camarota). Investigators' reports indicate that five months after Weinstock's testimony before the Commission, the Federal Bureau of Investigation recovered from rooms under Weinstock's control 145 cartons of Faberge products valued at \$24,300, and 55 cartons of stolen Smith Kline & French pharmaceuticals valued at \$13,500.* Weinstock was arrested and pleaded guilty to one count of possession of property stolen from an interstate shipment (see Record, vol. 5, at 10-11, Camarota). He received a five year suspended sentence and was placed on probation for two years.

Investigators' reports indicate that the pharmaceuticals found under Weinstock's control were part of a trailerload of stolen Smith Kline & French drugs. The path traveled by those pharmaceuticals was described in investigative reports and in the case of United States v. Camarota. That path illustrates the role of seemingly legitimate businessmen in the redistribution of stolen merchandise.

* Investigators' reports indicate that the Faberge products were part of a trailerload of merchandise valued at \$50,000 which was hijacked in New Jersey on October 16, 1975.

On October 15, 1975, at 1:10 A.M., a tractor trailer was stolen at gunpoint from the terminal of a trucking company in Yardley, Pennsylvania (see Record, vol. 1, at 73-77 Camarota). Investigators' reports indicate that the trailer contained Smith Kline & French pharmaceuticals, valued at \$1 million wholesale and \$2 million retail. The pharmaceuticals were in transit from Pennsylvania to Missouri.

Within hours after the robbery, Marvin Berkoff, the owner of a pharmacy in Philadelphia, allegedly received a telephone call from Charles Camarota* (Record, vol. 2 at 6-7, Camarota). According to Berkoff, Camarota asked him to assist in disposing of some merchandise stored on a horse farm in Manalapan, New Jersey (see Record, vol. 2, at 7, Camarota). Shortly thereafter, Berkoff was shown samples of the Smith Kline & French pharmaceuticals and asked to contact his friends in New York to dispose of them** (Record, vol. 2, at 8-9, Camarota).

* Investigators' reports indicate that Camarota was the owner of several donut shops in Pennsylvania.

** Berkoff's contacts were apparently crucial to the distribution of the stolen pharmaceuticals.

Within ten days after the theft, a portion of the Smith Kline & French pharmaceuticals passed through the hands of five different individuals and entities. The pharmaceuticals were traced from the horse farm in New Jersey to the owners of a wholesale general merchandise business on Long Island to Leo Weinstock* (see Record, vol. 2 at 10-11, 15-18; vol. 5, at 15, 16-24, Camarota). From Weinstock, a portion of the pharmaceuticals were traced to a New Jersey wholesaler who evidently disposed of them to a Queens wholesaler (Record, vol. 5, at 21-22, 47, 71, Camarota). Investigators' reports indicate that all purchasers paid substantially less than wholesale prices** and that only the last two

* According to Berkoff, two co-defendants who were the principals of a wholesale general merchandise business on Long Island, made several trips to the horse farm to purchase the pharmaceuticals (Record, vol. 2, at 17-24, Camarota). Berkoff indicated that the proceeds of such purchases were generally divided among Camarota, the owner of the horse farm, several unidentified individuals, and himself (Record, vol. 2, at 21-27, Camarota).

** Weinstock testified that one defendant advised him that a large quantity of pharmaceuticals were available at 40% off wholesale price (Record, vol. 5, at 19-20, Camarota). After receiving samples of the pharmaceuticals, Weinstock offered the pharmaceuticals to an individual named Mike at a Manhattan drug store for 35% less than wholesale. Mike, in turn, offered them to a New Jersey wholesaler at approximately 30% less than wholesale. Weinstock delivered a portion of the pharmaceuticals to the New Jersey wholesaler shortly after receiving an order (see Record, vol. 5, at 21-24, 47, 71 Camarota).

transactions were documented by invoices.

The path traveled by the stolen pharmaceuticals illustrates the importance of seemingly legitimate merchants in the distribution of stolen property. The lenient punishment meted out to Leo Weinstock by the Courts suggests that when insubstantial sanctions are imposed upon such merchants, they will not be effectively deterred from further dealings in stolen property.

C. Identification of Questionable Transactions
By Accounting Techniques

Fencing is frequently a series of recurring transactions carried on within the framework of an otherwise legitimate business. An examination of financial records will often disclose a pattern of transactions documented in accordance with customary business practices.

The financial records that should be examined in order to detect suspect transactions are:

- 1) the bank statements, canceled checks and deposit tickets for a stated period of time,
- 2) cash disbursement books for the same period,* and

* The cash disbursement book usually provides the following information for each disbursement: the date of the disbursement, the check number, the amount of the disbursement, the purpose of the disbursement and the name of the payee.

- 3) purchase invoices for the same period.*

These three basic sources are generally all that are needed to determine whether a transaction is suspect.

In a legitimate transaction, the purchaser usually receives a purchase invoice, consisting of a printed form with the seller's name, address and telephone number printed at the top. The purchaser then draws a check made payable to the seller. An examination of the canceled check will disclose that the seller (whose name appears in the letterhead of the invoice) also endorsed and deposited the check. The check is usually recorded in the cash disbursement book. Payment for merchandise is generally made sometime after the invoice date - i.e., ten to thirty days subsequent thereto, depending on sales terms and discounts available for early payment. This, in brief, is the usual manner by which a business records purchases.

* The purchase invoice should contain the name and address of the buyer and the seller written on the seller's letterhead, the date of the transaction, the terms, the quantities, a description of the goods and the price. The seller usually gives an invoice to a buyer at about the time the goods are delivered. From the viewpoint of the seller, the invoice is a sales invoice; to the buyer, it is a purchase invoice.

The Commission, in the course of its investigation, has determined from an examination of various concerns' financial records that a putatively legitimate business engaged in fencing attempts to imitate the foregoing procedure in the acquisition of stolen merchandise. This is done in order to give a facade of legitimacy to questionable transactions. A record of the purchase and resale furnishes the fence with appropriate inventory controls and provides him with a method of documenting income tax deductions. In addition, the existence of appropriate documentation will tend to support a fence's claim that he acquired property without knowledge that it was stolen.

When it is suspected that a concern is engaged in occasional fencing, a review of the firm's canceled checks has been found to be most fruitful. All checks of significant amount payable to cash or to a named payee and then cashed, should be segregated. These checks should be compared with the related entries in the cash disbursement book. For all cashed checks that have been recorded in the cash disbursement records as purchases, the invoice covering the purchases

should be reviewed.* The Commission's experience has been that invoices relating to stolen property are makeshift documents, with the seller's name either handwritten or rubber stamped. The distinctions between the legitimate purchase and the suspect purchase are:

- 1) the nature of the payment (i.e., a check payable to cash or to a named payee who cashes the check), and
- 2) an invoice covering the purchase which indicates that the merchandise was not acquired from an established source.

Some specific examples of questionable transactions are included to illustrate the results of the foregoing method.

a) Leo Weinstock and Aaronoff Sales Corporation, discussed in Part B supra, operated in the following fashion:

1. To record a purchase of questionable merchandise, Weinstock wrote a check to cash on the checking

* The date of each check should be compared with the date on the related invoice. If a review of the firm's practices indicates that it pays its purchase invoices within 30 days, checks dated the same day as the invoice will frequently be found to have been cashed and supported by makeshift invoices.

The check issued to pay for this purchase was not made payable to Jackson Salvage nor was it cashed by that concern. However, the entry for the purchase in the Aaronoff cash disbursements book indicated that check number 1155 issued on March 9th was to Jackson Salvage in the amount of \$2,935 for purchases.

The Jackson Salvage transaction reflects several unusual characteristics. First, the date of the check and the date of the invoice are the same although most firms do not pay on the same date as the invoice but rather delay payment for a period of ten to thirty days. Second, the check and the related invoice are both dated February 9, although the check was cashed and recorded March 9 and the sequence of check numbers indicates that the transaction was probably consummated on March 9th. Third, the ambiguous description of the merchandise on the Jackson Salvage invoice may reflect an attempt to conceal the nature of the merchandise actually purchased.

2. In another instance, Weinstock falsified the sales records maintained by Aaronoff Sales Corporation in order to conceal the sale of certain merchandise.

Figure IV illustrates an invoice with the seller's name (Aaronoff Sales), address and telephone number torn off. It is stamped paid \$2,232 by check number 6388 dated February 1, 1973. The invoice was supplied to the Commission by Barwein Industrial Supply Company. It was received by Barwein in connection with the purchase of the listed items from Aaronoff Sales Corporation.

THIS PORTION TORN OFF
(LINE BELOW MARKS TEAR)

BARWEIN

Invoice No. 1279
Date: 2/1/73 19
Terms:

QUANTITY	DESCRIPTION	UNIT PRICE	AMOUNT
144	THERAPY HEMATENIC	3.00	432.00
72	MUSTELIN F.	9.50	684.00
144	RAWZIOE	4.00	576.00
72	PENTIDS 800 MG	7.50	540.00
			2232.00

2232.00
6388
2/1/73

Figure IV

The corresponding sales invoice found in the files of Aaronoff Sales Corporation was strikingly different. Figure V illustrates Aaronoff's sales invoice.

AARONOFF SALES CORPORATION
26 East 17th Street
NEW YORK, N. Y. 10003

(212) 298-8866-7

TO: **BARWEIN INDUSTRIAL**
10 MILLERS WAY
AVONEL, N.J.

INVOICE NO. 4753

INVOICE DATE: 3/1/73

SHIP TO: [Handwritten initials]

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
3oz & 2oz	VASELINE INTENSIVE CRME 10"	\$66	1134
	JO-J SANDER 9"	\$50	1100
			2234

SG

Figure V

The invoice in Figure V reflects the amount of the check received from Barwein in payment of the invoice shown in Figure IV. The invoice that was found in Aaronoff's files is written on a preprinted sales form which bears Aaronoff Sales Corporation's name, address and telephone number. The date of

the invoice is the same as the date of the invoice given to Barwein. The invoice reflects a sale to Barwein but the items shown are not the same as those shown in Figure IV. The description of the items sold on Figure V was evidently designed to conceal the disposition of questionable merchandise.

b) A somewhat different technique was used by Daily Toiletries, Inc. Daily occasionally issued small checks payable to cash for office supplies. Other than this, Daily never made checks payable to cash for purchases of merchandise, although it evidently did purchase merchandise for cash on occasion. (See Figure VI).

Order No. _____ Date: 11/19 1972

Ship to: **DAILY COSMETICS**

At: _____

How Ship: _____

Terms: _____ When: _____

Salesman: _____ Buyer: _____

5	15	WELLA BALSAM COND. SHAMPOO FOR	1050	157 50
3	6	CASTOL 100	3550	231 00
				388 50
		CHECK PRICE ON		
		WELLA BALSAM REG. COND. FOR		
		6d VIAL SASSLOW PACE	750	45 00
				433 50
		12d LAMARE TUBE	433.50	120 -
				553 50

PAID 12-1-76

Figure VI

The invoice in Figure VI is a makeshift document that gives no indication of the seller's address or telephone number. It was found in the course of an examination of Daily's records by a Commission accountant. The accountant did not find a record of this transaction in Daily's books and records.* The fact that purchases were effected and not recorded on the books and the availability of cash for this purpose are indicia of unrecorded sales.

In other questionable transactions Daily tended to emulate its customary method of recording purchases. That method involved paying by check and obtaining an invoice reflecting the amount of the check.

* The accountant found several purchase invoices which were not recorded in the Company's books and records.

As an example, Daily Toiletries' records contained the purchase invoice shown in Figure VII.* The purchase price shown by this invoice was paid by check.

Handwritten notes on lined paper:
Sold to
Daily Toilet
100 lb P.V.S. - 100
@ 20 ~~100~~
P.D. 12/18/76
ck # 52504
\$2000.00
(P.48)

Figure VII

* Identification information has been deleted.

CONTINUED

1 OF 2

The transaction was considered questionable by virtue of the purchase invoice illustrated in Figure VII. That invoice was a makeshift document written on a torn piece of lined paper. It contained the name and address of the seller. The invoice shown in Figure VII is markedly similar to the document which reflected Daily's purchase from the Commission's informant. In both cases, the invoices were makeshift documents written on torn pieces of paper. In both cases, the purchase price was paid by check to a named individual. In the transaction with the Commission's informant, Daily purchased goods which its officers were told were stolen. The transaction illustrated in Figure VII is questionable, by virtue of its similarity to Daily's transaction with the informant.

c) Sudon Distributors utilized a variety of methods to conceal transactions involving questionable merchandise. One method involved the payment of cash for merchandise purchased. Neither the merchandise purchased nor the amounts paid were reflected in Sudon's records. The use of this method of concealing purchases may be uncovered by confirming sales of merchandise with a concern's regular customers. Sudon utilized another method to dispose of questionable merchandise. That method was a variation on the method employed by Aaronoff Sales Corporation.

According to Donald Solof, President of Sudon, Sudon would occasionally invoice its customers for merchandise which was different from the merchandise actually delivered. The items shown on Sudon's invoice would consist of merchandise which could be traced to Sudon's purchase documents or to its existing inventory.

One of the instances in which the latter method was used was documented by the Commission's audit of Sudon's records. Four invoices relating to the sale of Trac II 9, a Gillette product, were found in Sudon's records. Invoices from Daily Toiletries to Sudon, dated January 12 and January 19, 1976, reflected the sale of large quantities of Trac II 9's to Sudon at a price of \$16.40 a dozen (See Figure VIII).

DAILY TOILETRIES, Inc.

PHONES 3330 3331
WYANDOTTE 2
DATE 1/12/76
SOLD TO Sudon

No.	QUANTITY	DESCRIPTION	PRICE	AMOUNT
	120 DL	TRAC II 9'	1640	1968 00
	36 DL	BRITISH SHAVE	148	528 00
	12 DL	MINI A/P	66	79 44
	24 DL	A/P	940	225 60
	57 DL	SPRAY	656	373 92
				3220 08

Common 4-1 - ex. 3/11/76

DAILY TOILETRIES, Inc.

PHONES 3330 3331
WYANDOTTE 2
DATE 1/19/76
SOLD TO Sudon

No.	QUANTITY	DESCRIPTION	PRICE	AMOUNT
	120 DL	TRAC II 9'	1640	1968 00

Common 4-2 - 3/11/76

Figure VIII

Figure IX is a sales invoice from Sudon Distributors to Daily Toiletries which indicates that on January 29, 1976, Sudon sold 80 dozen Trac II 9's back to Daily at \$17.00 per dozen.

212- 641-9275

INVOICE

SUDON DISTRIBUTORS, INC.
P.O. BOX 136
HOWARD BEACH, NEW YORK 11414

NO. _____
DATE 1/29/76
PURCHASER'S ORDER NO. _____

SOLD TO Daily Toiletries SHIP TO _____
ADDRESS 41xx White Plains Rd ADDRESS _____
CITY Barns STATE NY ZIP _____ CITY _____ STATE _____ ZIP _____
REMARKS _____ TERMS _____

SALESMAN	SHIP VIA	DATE REQUIRED	F.O.B.		
QUANTITY	STOCK NUMBER/DESCRIPTION		PRICE	PER	AMOUNT
80	702C II 91		17 00		1360 00
BUYER			TOTAL 1360 00		

ORIGINAL *Common Ex 4 - 3/31/77 - lt*

Figure IX

Figure X reflects a subsequent sales invoice from Daily to Sudon and indicates that once again, Daily was selling Trac II 9's to Sudon at \$16.40 per dozen.

DAILY TOILETRIES, Inc.

PHONES
WYANDOTTE 2 { 3330
3331.

DATE 3-8 1976

SOLD TO Sudon

No. _____

QUANTITY	DESCRIPTION	PRICE	AMOUNT
48	Pouls CC 6.1 oz	1277	61296
60	Maple Wall 12oz	1768	10608
420	" " 8oz	1290	54180
240	" " 5oz	826	19824
24	RG 5oz 204A-179	657	15848
24	" " " " blue	657	15848
48	" " 12oz 204A blue	1519	72912
22	" " " silver	1519	33418
24	" " " " reg	1519	36456
1200	Trac II 91A	1640	196800
18	Secret 130	1728	31104
18	" " 130	1653	29754
24	" " 3oz	1387	33288
			611296

Common Ex 3 - 3/31/77 - lt

Figure X

The Trac II 9 transaction reflected in Figure IX was deemed questionable for two reasons. First, Daily Toiletries purchases merchandise directly from Gillette and would derive no benefit from purchasing that same merchandise from another source at prices higher than those charged by Gillette. Second, it seemed unusual that Daily would purchase an item from Sudon at higher prices than it was selling that same item to Sudon.

When questioned about this transaction, Donald Solof, the President of Sudon, stated:

Q That transaction does not reflect a transaction in Trac II 9s?

A It's January. I would say probably it didn't....

Q What did it reflect?

* * *

A ... Could have been Nice & Easy [sic]. That could have been a Nice & Easy transaction. In other words, it could have been an equivalent amount of Nice & Easy reflecting the Trac II 9s.

Q Did you ever discuss this procedure with Daily Toiletries?

A Yes.

Q What was the substance of that discussion?

A I told him I have some Nice & Easy that I bought for cash and it's below the market and I will not

bill him for it, would he like to buy something else that would reflect the same amount of money. He said, that's okay (S.T.).*

d) The "X" Company's method of recording transactions differed from the methods described above. "X" apparently records all transactions and pays for all merchandise by check. It requires an invoice for each purchase. Transactions involving questionable merchandise that are routinely recorded and documented are difficult to detect. Such transactions may be deemed suspect when the vendor of the merchandise is a known dealer in stolen property or when the sales price reflected by the invoice is exceptionally low.

The examination of the financial records of a businessman suspected of fencing can supply the authorities with valuable information. An audit by an accountant may yield a number of transactions that bear further investigation and may disclose a pattern of tax evasion. It is a technique that should be employed more often.

* Solof testified that the Trac II 9's shown on Sudon's invoice to Daily reflected the sale of either Nice 'n Easy or Ex-Lax (S.T.).

D. Distribution of Stolen Antiques

In the Summer of 1976, the Syracuse Police Department advised the Commission of the arrest of several members of a burglary ring specializing in the theft of antiques. One of the thieves, James Swank, admitted to having committed more than 50 burglaries in various parts of New York State, many involving the theft of antiques. According to Swank, the burglars sold the stolen antiques to various antique dealers in the Syracuse area.

Commission staff interviewed two dealers, the brothers James and David Swank, who admitted to having purchased antiques from the burglars. The dealers denied having knowledge that the goods were stolen.* The interviews nevertheless disclosed several practices which facilitate the theft and disposition of stolen goods. According to Swank and his brother, antique dealers employed thieves, supplied them with information about where specific items could be located, and purchased stolen items from them. Purchasers and

* Donald McGann (infra, p. 97) indicated that on several occasions the Swanks offered him property, which they said was "hot", or which they indicated would be stolen on order.

dealers showed a marked lack of interest in the previous ownership of items they acquired. Transactions went unrecorded or were recorded in a fashion inadequate to identify the goods purchased.

Donald McGann is an antiques and second-hand dealer who had been dealing in antiques in Syracuse since 1974. According to McGann, James Swank and another burglar began frequenting his shop in early 1975, and soon began to sell him antiques regularly.*

James Swank claims that McGann advised him and an associate of the location of various items. Swank explained that on occasion he and his associate would steal those items and sell them to McGann. According to Swank, McGann "never mentioned stealin' it, but like ... it was a thing between us. We knew what he was talking about" (U.T.).

Martin Ryan, an auctioneer who allegedly persuaded McGann to sell all his goods at an auction in Pennsylvania, also purchased antiques from

* McGann stated that he employed James Swank and other individuals as "pickers". He claims that he instructed his pickers to purchase particular items. McGann indicated that he loaned money to Mrs. Swank to post bail for James Swank, after Swank's arrest in 1975.

the Swanks. Ryan has been an antiques dealer for ten years. During the last five years he has also worked as an auctioneer.

Ryan stated that he met the Swanks in 1975 when he rented the shop next to McGann's. Ryan testified that he befriended the Swanks and employed David Swank on at least one occasion. When James Swank was arrested, Ryan posted part of the bond for him. Ryan stated that he stopped purchasing antiques from Swank after that arrest.

James Swank claims that on several occasions Ryan indicated where valuable items might be located and arranged to meet with the Swanks after they had obtained those items. Swank explained that on one occasion, Ryan

went to a lady's house to purchase a lamp and it wasn't for sale. So ... he took my brother and I up there. He showed us the house, showed us the lamp, told us it was a Handel lamp and said that if we could get it, he'd pay us good for it.... I told him I was sure we could get the lamp and he says what time do you want me to meet you and I says 'meet me at my house about 10:30 ...' So, we went to these people's house. We took the lamp off their ... sun porch and brought it to my house and ... I took the lamp up to his house in Fulton - and sold the lamp to him for ... \$250 (U.T.).

Ryan admitted that he discussed the Handel lamp with the Swanks after his offer to purchase it had been rejected.* He acknowledged purchasing several lamps from the Swanks, but claimed that he was unable to say with certainty whether the Handel lamp was among the lamps purchased.** Ryan also wrote an appraisal of the lamp for its owner after the burglary occurred.***

The Ryan and McGann testimony disclosed several business practices which facilitate the disposition of stolen antiques. Those practices are rarely interrupted by either tax or law enforcement authorities.

According to Ryan and McGann, antiques and second-hand dealers conduct their business primarily in cash. Two motives for dealing in cash would be: (a) the fear of receiving a bad check and (b) the

* According to Ryan, he "might have said [to the Swanks], if you can get [the lamp], I'd buy" (P.H.).

** Ryan subsequently stated that it was "very possible" that the Swanks had brought a Handel lamp to his house (P.H.).

*** The Handel lamp incident was one of several incidents in which Ryan was involved. Ryan acknowledged that he and another auctioneer purchased an antique clock, which had been stolen from a branch of the Syracuse Public Library, from the Swanks (P.H.). The clock was sold through the auctioneer's gallery to a New York City acquaintance of Ryan. Ryan "cooperated" with the Syracuse Police by locating and photographing the clock.

desire to conceal the business and thereby avoid income tax liability. McGann, for example, as of February 1977, had not filed income tax returns for the year 1975.

Ryan and McGann also told of the failure of dealers to record purchases and sales, despite local ordinances which require such recording. Ryan estimated that only one dealer in ten keeps complete and accurate records of purchases and sales.

These two practices allow unscrupulous dealers to conceal purchases and sales of stolen antiques. A third practice, the use of auctions to dispose of stolen property, provides unethical dealers with an extra margin of safety. Ryan testified that:

[I]f you stole a piece of merchandise ... you wouldn't want to have it in [your possession] too long.

* * *

So you want to get rid of it as quick as you can and the auction would be that source.

Q Why?

A Because there are so many sloppily run auctions, that you can stick it in an auction and it's sold and it's gone somewhere.

Maybe a South Carolina dealer ... or a Florida dealer, whatever, might buy it and it would be taken.

[I]f you sold it to a dealer -- which happened to me in a particular instance ... and then the dealer takes it around and tries to sell it to another dealer in that immediate area, then you have a tendency to get caught (P.H.).*

The City of Syracuse has adopted ordinances which are intended to regulate second-hand dealers; the ordinances are only sporadically enforced. Syracuse requires that second-hand dealers obtain a license yearly before doing business in the City.** The ordinances also require that second-hand dealers maintain a bound volume recording in ink certain information about each purchase,*** and that dealers make a copy of this information each day on forms provided by the City and deliver the forms upon request.**** Syracuse also requires that second-hand dealers hold all items purchased or received for 7 days after making the daily report.*****

* Ryan noted that the practice of accepting items for auction immediately prior to a sale facilitates the undetected circulation of stolen goods (P.H.). Often, such last minute items are unadvertised, unlisted in the auction catalogue, and unavailable for inspection prior to the auction.

** Syracuse, N.Y., Rev. Gen. Ordinances §9-99.

*** Id. §9-102(a).

**** Id. §9-102(c).

***** Id. §9-102(f).

McGann testified that he had been in business for a year before he received any information regarding his duties as a licensee. He stated that since 1974, he has been given the forms that he is required to complete under the Syracuse ordinances on only one occasion; only twice were those forms picked up. McGann testified that he was arrested in 1975 for failure to keep proper records, and that he has not been arrested since then for violation of the ordinance, despite the fact that he has been dealing in second-hand goods without a license since December, 1975.* A representative of the Syracuse Police Department confirmed that little effort is made to enforce the applicable Syracuse ordinances due to a lack of manpower. Records are checked only when there is a specific reason to do so.

A Syracuse Police Department official recommended to the Commission that statewide legislation might facilitate greater control over the activities of second-hand dealers and auctioneers. He suggested that the following proposals would assist the efforts of law enforcement officials in this area:

* On his 1976 arrest, he was charged with criminal possession of stolen property.

- 1) licensing of auctioneers and enactment of regulations which would require the reporting of the date, time and location of auctions;
- 2) a requirement that auctioneers maintain a record of the buyer and seller of each item sold as well as a description of the item;
- 3) weekly distribution to second-hand dealers and auctioneers of lists describing items stolen; and
- 4) a requirement that second-hand dealers and auctioneers forward a record of each day's business to the Police Department. The record should contain a description of the merchandise purchased and fully identify the vendor of that merchandise.

These suggestions are discussed in Part III of this report.

E. Summary

Fencing is not unique to the health and beauty aids business, the pharmaceuticals business, or the antiques business. The Commission has observed certain business practices which facilitate the distribution of stolen property in virtually every product market. These observations are corroborated by independent studies. The most frequently observed occurrences are as follows: first, business records are falsified, inaccurate or incomplete; second, merchandise is purchased from vendors whose offer of particular merchandise necessarily creates suspicions (no inquiry is made into the vendors' sources of title); third, purchasers generally understand that merchandise is stolen if it is offered at substantially less than wholesale prices by vendors who lack an established place of business; fourth, distribution channels developed in the regular course of business are used to dispose of stolen property; and fifth, legitimate businessmen actively participate in fencing, without concern for penal sanctions. Only the Internal Revenue Service is feared.

The sanctions imposed upon the criminal receiver, including those with "legitimate" businesses, have proven insufficient to deter his activity. The cost to those exposed as dealers in stolen property must be greatly increased if effective deterrence is to be a realistic goal.

III. GENERAL ISSUES

A. Statewide Regulation Of Certain Businesses

Syracuse police officials have recommended to the Commission that statewide legislation be enacted to regulate second-hand dealers and auctioneers. An exhibit furnished to the Senate Select Committee on Small Business indicated that antiques dealers, auctioneers and art appraisers are often used as outlets for stolen property.* Public officials throughout this State expressed similar views. Both public officials and antiques dealers indicated that some flea market exhibitors also serve as outlets for new and used stolen goods.**

* Hearings 524.

** The Ulster County Antiques Dealers Association highlighted another aspect of the antiques trade. The Association noted that there "are thousands of state residents engaging in totally unregistered businesses at flea markets and pseudo garage and yard sales" selling new, used and antique merchandise without regulation by licensing or taxing authorities.

In order to ascertain whether statewide legislation is necessary, the Commission reviewed local ordinances in various jurisdictions and conferred with regulatory and licensing authorities throughout the State.* Commission staff interviewed selected antiques dealers, auctioneers and second-hand dealers and distributed questionnaires to various antiques industry publications. The Commission found that the ordinances regulating these groups vary. The Commission also found that efforts to enforce local ordinances are generally minimal.

1. Second-hand Dealers

Regulation of the business of most second-hand dealers is generally the subject of local ordinances. The definition of a second-hand dealer varies from jurisdiction to jurisdiction.**

* Commission staff reviewed relevant ordinances in the following cities: Albany, Elmira, Troy, Rochester, Syracuse, Binghamton and New York City.

** For example, in Rochester, the definition of a second-hand dealer includes any person who engages in the purchase or sale of any second-hand item, goods, merchandise or products, including one who accepts goods in exchange for or as part of the payment for any second-hand article. See Rochester, N.Y., Code §96-1(B), (C). In New York City, in addition to the general statement that a second-hand dealer is any person who deals in the purchase or sale of second-hand articles, the New York City Administrative Code specifies several types of merchants who qualify for this designation (New York City, N.Y., Admin. Code §B32-126.0 (a) (1)-(9)), and also exempts certain transactions, and articles, from the regulated category. *Id.*, §B32-126.0 (b) (1)-(5).

(Footnote continued on following page)

An individual desiring to buy and sell antiques might be required to obtain a second-hand dealer's license in some municipalities but not in others.

A licensed second-hand dealer has certain obligations. For example, he may be required to maintain a book and record certain information regarding sales or purchases;* he may be restricted as to the length of time an item must be retained prior to resale;** there may be restrictions on his hours or days of business;*** and he may be required to cooperate with the local police department by reporting his transactions or by making his books and records and his business premises available for inspection.****

(Footnote continued from previous page)

The ordinance in Syracuse requires dealers in certain types of articles to be licensed. See Syracuse, N.Y., Rev. Gen. Ordinances §9-98.

* See, e.g., New York City, N.Y., Admin. Code §B32-132.0; Rochester, N.Y., Code §96-4(A); Syracuse, N.Y., Rev. Gen. Ordinances §9-102(a).

** See, e.g., New York City, N.Y., Admin. Code §B32-130.0 (d), (e), Rochester; N.Y. Code §96-4(F); Syracuse, N.Y. Rev. Gen. Ordinances §9-102 (f).

*** See, e.g., New York City, N.Y., Admin. Code §B32-130.0 (c); Rochester, N.Y. Code §96-4(G); Syracuse, N.Y., Rev. Gen. Ordinances §96-4(G); Syracuse, N.Y. Rev. Gen. Ordinances §9-102 (g).

**** See, e.g., Rochester, N.Y., Code §96-4(B), (C); Syracuse, N.Y. Rev. Gen. Ordinances §9-102 (c), (d).

Unlike the pawnbroker, the second-hand dealer obtains title from his seller and is free to sell the item on such terms as he may choose. A second-hand dealer in possession of stolen property is in a better position than a pawnbroker because he may sell the property immediately. The more quickly stolen property is sold, the less likely it is that it will be discovered by the police or the victim.

The Commission is not alone in thinking that second-hand dealers play a role in the market place for stolen goods. In January, 1977, there were proposals for the regulation of second-hand dealers under consideration in Nassau County. It is the opinion of a representative of the Nassau County Police Department that, although the problem is not overwhelming at present, the proliferation of second-hand dealers and the high incidence of burglary in the county signal a trend that should be arrested at an early stage.*

* The proposed amendments to the Nassau County Administrative Code are similar to regulations in effect in other municipalities, but would be of county-wide applicability. Briefly, the regulations would require that a second-hand dealer obtain a license from the county (Nassau County, N.Y., Proposed Ordinance §9-22.3), and refrain from certain acts (such as conducting his business at a place other than the one designated in the license, purchasing second-hand articles from a minor, doing business between ten o' clock in the evening and seven o' clock in the morning, disposing of second-hand property within fifteen days of its acquisition, and conducting the business of a pawnbroker). (Id. §99-22.10).

(Footnote continued on following page.)

The Commission has interviewed licensees, licensing authorities, and law enforcement officials in selected municipalities. Although there is almost universal agreement that there is a problem, the responses to it by the different groups interviewed differ greatly.

Many licensing authorities and law enforcement agencies recommend the enactment of a statute of statewide applicability which sets forth a clear and workable definition of the second-hand dealer and imposes specific obligations similar to those governing the pawnbroker.* The response of the merchants to this idea was lukewarm.

Most of the antiques dealers responding to the Commission's inquiry indicated that statewide licensing would not be burdensome, but fewer than half thought that licensing would be an effective means for controlling the flow of stolen goods.

(Footnote continued from previous page.)

In addition, second-hand dealers would be required to keep a bound volume of consecutively numbered transactions, in which certain information must be recorded at the time of every transaction involving a person other than a dealer in second-hand articles. The information recorded would include a description of every second-hand article purchased or sold, the name and address of the purchaser or seller, the day and hour of the purchase, and a description of the seller in the case of consignments, along with whatever proof of identity is offered (Id., §9-22.13, §9-22.14).

* See Section III A 3 infra.

Among the suggested provisions of a statewide licensing statute were (1) a requirement that merchandise be held for a certain length of time before resale,* (2) a requirement that detailed and accurate records be kept of each transaction, (3) a requirement that detailed reports of purchases and sales be submitted to the local police department on a regular basis,** and (4) a requirement that dealers require and record the names, addresses, and proofs of identity of persons from whom they purchase merchandise.

The evidence is mixed as to whether compliance with a reporting requirement would be enforced. In Syracuse, for example, the city ordinances provide the potential for such a system by requiring second-hand dealers to complete forms detailing each transaction and to submit these forms to the Police Department upon request.*** We have been told that the forms

* This holding period should be sufficiently long to permit the police to investigate a theft, but not so long as to force merchants to tie up more capital in inventory than they can afford.

** Law enforcement officials and antiques dealers disagreed most strongly over a proposed requirement that detailed reports of all sales and purchases be submitted to the police on a regular basis. The response of law enforcement officials was nearly unanimous in favor of such a requirement; the response of the dealers was nearly unanimous in their opposition, some dealers indicating that such a requirement would drive them out of business.

*** Syracuse, N.Y., Rev. Gen. Ordinances §9-102(c).

are neither provided nor collected due to a lack of manpower. In Rochester, police officials state that they have recently devoted greater enforcement effort to second-hand dealers and auctioneers and have achieved excellent results. In New York City, as in Syracuse, we have been told that inadequate manpower hampers any effective enforcement effort. The actual enforcement effort in New York City consists of responding to complaints and making spot checks on dealers who have reputations for dealing in stolen goods or who conduct their businesses in areas where the burglary rate is high.

Although the Commission recognizes the validity of some of the arguments in support of statewide regulation of second-hand dealers, it does not recommend enactment of such legislation at this time because of the improbability of statewide enforcement. The substance of such legislation is now part of the ordinances of many municipalities. The primary problem with the present regulatory structure does not appear to be the absence of statewide regulation. Rather, the main problem appears to be that the ordinances that now exist are only sporadically enforced. That problem will not be eliminated by another level of

regulation.*

Syracuse police officials also suggested that lists of stolen articles ("hot sheets") be published in trade journals and circulated weekly among second-hand dealers, antiques dealers and auctioneers. This proposal was supported by both law enforcement officials and dealers. Logic suggests that the circulation of "hot sheets" in New York City would be an extremely cumbersome process which would be unlikely to result in increased recovery of stolen property. However, the circulation of "hot sheets" might be effective in an area less populous than New York City.**

* Local ordinances might be strengthened by addition of the provisions discussed on page 110, supra.

** It has been suggested that the "hot sheet" would tend to eliminate the defense of lack of knowledge that a particular item was stolen. This suggestion assumes that the items listed on the sheet will not be fungible and that their description will be sufficiently explicit to enable a dealer to identify them as items on the sheet.

A basic assumption underlying the "hot sheet" concept is that the dealer who has purchased an item listed on the sheet will report that purchase to the local police department. An incident which an antiques dealer related to the Commission indicates that this assumption may be unrealistic. Martin Ryan testified that he purchased a wooden bicycle from the Swanks. Upon learning that a wooden bicycle had been stolen, Ryan decided that he "wasn't going to take any chances" so he just disposed of it.* If Ryan's reaction is typical, then the circulation of "hot sheets" might hamper police efforts to recover stolen property, rather than aid them. It might be appropriate to initiate a pilot project to test the effectiveness and practicability of the "hot sheet" concept, particularly where items lend themselves to individual description.

2. Auctioneers

Several studies have described auctions as convenient outlets for stolen property.** Martin Ryan, who also worked as an auctioneer, confirmed this viewpoint, noting that the business practices of

* Syracuse Police Department memoranda indicate that Ryan sold the wooden bicycle at an auction in Pennsylvania.

** Klockars, The Fence: Caveat Emptor, Caveat Vendor in Images of Crime: Offenders and Victims 12 (T. Thornberry & E. Sagarin ed. 1974); Hearings 524.

some auctioneers* encourage the use of auctions to market stolen merchandise.

In New York State, Article 3 of the General Business Law contains many of the regulations which govern auctioneers. Where applicable,** these provisions limit the commissions which an auctioneer may collect,*** provide penalties for the conduct of mock auctions,**** require the keeping of records which describe the essentials of each acquisition,*****

* Representatives of certain auction galleries in New York City were interviewed in the course of this inquiry. Several galleries reported business practices which would tend to deter the use of auctions as outlets for stolen property. These practices include (a) inspecting merchandise at the seller's residence or place of business, (b) acceptance of merchandise only on consignment, (c) lengthy holding periods and (d) refusal to accept single items for sale.

** N.Y. Gen. Bus. Law §28 (McKinney 1968) limits the application of the provisions dealing with records to be kept by auctioneers, inspection by certain public officials, and penalties to cities of the first class. New York City is expressly excluded from its provisions.

*** Id. §21.

**** Id. §24.

***** Id. §25.

mandate that these records be open to inspection by selected public officers,* and list penalties for the breach of the record-keeping and inspection of records provisions.**

Many municipalities throughout the State have enacted ordinances which further regulate the business auctioneers. Although these ordinances vary, they are generally similar in substance. For example, many of the ordinances reviewed require the licensing of auctioneers, although the fee charged and the amount of the bond required to be posted varies. False representations as to the character, quality and ownership of merchandise are generally prohibited. However, few of the ordinances studied require that local authorities be supplied with an inventory of items to be auctioned prior to the auction date. Even fewer require auction galleries to hold

* Id. §26.

** Id. §27.

merchandise for any length of time prior to its disposition.

Local authorities might consider the adoption of both the notification and holding period provisions.* The first provision would serve to put local authorities on notice of the existence, location and inventory of a particular auction in advance of the auction date. The second provision might arrest the flow of stolen goods for the duration of the holding period.

* The Commission suggests that the holding period not be so lengthy as to unduly burden auctioneers.

3. Pawnbrokers

The nature of the pawnbroker's business is such that it can easily lend itself to the disposition of stolen property.* A thief may pledge goods with a pawnbroker, never return to claim them, and allow the pawnbroker to sell them. The only loser is the victim of the theft.

Article 5 of the New York State General Business Law catalogues the duties of pawnbrokers.** Many municipalities have also adopted ordinances

* Jerome Hall noted that pawnbrokers, like auctioneers and dealers in second-hand goods, "provide large outlets for the sale of stolen goods." He stated that these businesses are regulated "in such a perfunctory manner that they continue to be active in both the receipt and the disposal of stolen property." Hall 162-63. Interviews with local licensing and law enforcement agencies in New York State indicate that there are relatively few licensed pawnbrokers.

** For example, a license must be obtained, a bond must be posted, a book must be maintained to record at the time of each loan certain essentials of the transaction, a memorandum of pledge must be given to the borrower at the time of the pawning, the aforementioned book must be open to the inspection of selected public personnel, no second-hand goods may be purchased, and procedures for the sale of unclaimed pledges, publication of notice of such sale, and disposition of surplus proceeds are established (N.Y. Gen. Bus. Law §§40-1, 43-5, 47-50).

regulating the conduct of the pawnbroker's business. Quite understandably, different requirements are set in different jurisdictions.* The pervasiveness of local regulation also varies. The ordinances of Rochester, for example, require that the pawnbroker make daily reports to the Chief of Police,** they limit those with whom the pawnbroker is permitted to deal,*** and they provide for special treatment of initialed and defaced articles.**** This system affects more aspects of the pawnbroker's business than that of Syracuse, which is in large part an enactment of the General Business Law.

* In Rochester, for example, a book must be maintained recording at the time of each loan a description of the article pawned, the amount of the loan, the time of the pledge, the rate of interest, and the name and residence of the person pawning the property (Rochester, N.Y. Code §80-5(B)). A pledge must be identified either by a person known to the pawnbroker or by a person presenting a social security card (Rochester, N.Y. Code §80-5(L)). In Syracuse, the provisions of the General Business Law governing record keeping are expressly adopted (Syracuse, N.Y. Rev. Gen. Ordinances §9-75). The General Business Law has no provision requiring pledgers to furnish proof of identity.

** Rochester, N.Y., Code §80-5(A).

*** Id., §80-5(H).

**** Id., §80-5(K).

B. Laws Pertaining to the Criminal Possession of Stolen Property

Section 165.40 of the New York State Penal Law provides, in pertinent part, "[A] person is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof."* As the statute indicates, the elements of the offense of criminal possession are: the possession of stolen property; knowledge that the property is stolen, and an intent to benefit a person other than the owner or to impede recovery by the owner.** Any one of several aggravating factors

* Criminal possession of stolen property in the third degree is a class A misdemeanor.

** Section 165.55 of the Penal Law creates several rebuttal presumptions. One of those presumptions - that one who knowingly possesses stolen property is presumed to possess it with intent to benefit himself or a person other than the owner or to impede recovery by an owner - permits a jury to infer the requisite intent.

is sufficient to raise the level of the crime to criminal possession of stolen property in the second degree.* The level of the crime is raised to criminal possession of stolen property in the first degree if the value of the property exceeds fifteen hundred dollars.**

Several studies have suggested that changes in the law of criminal receiving are necessary to control fencing activities effectively.*** One of those studies recommends the enactment of statutes

* In summary, a person is guilty of criminal possession of stolen property in the second degree when he knowingly possesses stolen property with the requisite intent, and when (1) the value of the property exceeds two hundred fifty dollars; or (2) the property consists of a credit card; or (3) he is a pawnbroker or is in the business of buying, selling or otherwise dealing in property; or (4) the property consists of one or more firearms, rifles and shotguns as such terms are defined in Section 265.00 N.Y. Penal Law (165.45 (McKinney 1975)). Criminal possession of stolen property in the second degree is a class E felony.

** N.Y. Penal Law, §165.50 (McKinney 1975).

*** See, e.g., G.R. Blakey and M. Goldsmith, Criminal Redistribution of Stolen Property: The Need for Law Reform, 74 Mich. L. Rev. 1511 (1976) (hereinafter "Blakey & Goldsmith"); Hall, Theft, Law and Society (2d Ed. 1952).

similar to the Model Theft and Fencing Act.*

Commission staff interviewed a number of prosecutors throughout the State concerning reform of the New York State laws pertaining to criminal receiving. Generally, their response was that the law is adequate as it now stands.** They viewed the problem as fundamentally one of priorities and allocation of resources. Influenced by this response, the Commission does not, at this time, recommend revision of the criminal possession of stolen property laws of this State.

C. Civil Remedies: A Treble Damage Statute

Blakey and Goldsmith suggest that "[a]ppropriate provisions for civil liability" can "add new dimensions to law enforcement efforts" to control fencing activities.***

* Blakey & Goldsmith at 1547-48.

** The interviews considered a number of specific statutory changes as well as a host of other topics. Among the statutory changes discussed was the addition of a statutory presumption of knowledge that property is stolen based upon (1) unexplained possession of recently stolen property, or (2) unexplained purchase of stolen property by a dealer in property out of the ordinary course of business, or (3) unexplained purchase of stolen property at a price substantially below fair market value. The advisability of a treble damage statute was also considered. Some of those interviewed responded positively to one or two of the proposed amendments, but the general opinion was that they were unnecessary.

*** Blakey & Goldsmith at 1601.

Section 10 of the Model Theft and Fencing Act authorizes a civil suit for damages, "adopting an approach used by the federal antitrust statutes."* In summary, that Section provides that a person damaged by reason of any conduct constituting an offense in violation of the Act may bring a civil action and recover three times the actual damages sustained and, where appropriate, punitive damages.** In addition to treble damages, Section 10 of the Act authorizes the recovery of attorney's fees and costs of investigation and litigation.

Blakey and Goldsmith suggest two ways in which civil statutes can play an important role in the process of making redistribution of stolen property financially less profitable:

First, by permitting and encouraging victims of theft to initiate civil suits under fencing statutes to recover damages against purchasers of their stolen goods, appropriately drafted civil provisions will increase the likelihood a violator will be discovered and will thus greatly enlarge his penalties. Second, at least to the extent that punitive damages are awarded, civil suits provide a means for sanctioning those receivers who

* Id. §1603.

** Id. §1624-25.

cannot be convicted under criminal statutes. Private plaintiffs seeking damages from receivers enjoy important substantive and procedural advantages not available to the prosecution in criminal actions since most of the constitutional protections accorded a criminal defendant are not applicable in civil litigation.*

Once again, the Commission sought the views of prosecutors and law enforcement officials in New York State respecting the effectiveness of a treble damage statute. The responses were mixed; however, most of those interviewed felt that the statute might have a positive effect.**

Public officials in states which have enacted treble damage statutes generally indicated that there have been very few actions involving those statutes. The response of a Utah official was typical. He stated:

I personally have noticed little or no effect as a result of this statute on pawnbrokers or on their receipt of stolen merchandise. I am not aware of any litigation of a civil nature being commenced invoking this statute. My experience is that few victims desire to litigate their loss civilly as a result of theft. In addition, our bar

* Id. 1601.

** Captain Francis Herron of the New York City Police Department noted that the threat of a civil suit for damages might discourage some fencing activity.

association is somewhat uninformed of this statutory recourse.*

A treble damage statute has the potential for making fencing less profitable, particularly as expertise is developed by attorneys. Its efficacy depends, in part, upon the development of a "fencing" bar in New York State. Although the Commission recognizes the limitations of the treble damage statute, it, nevertheless, suggests that the legislature consider its adoption.

D. Problems and Priorities

In the course of this study, Commission representatives were advised of a variety of problems, including the setting of priorities, which hamper or dilute the effective enforcement of the criminal possession laws of this State. Many of these problems have been alluded to or discussed extensively in

* Letter to the Commission from William R. Hyde, Chief Deputy County Attorney, Salt Lake County, Criminal Division (February 25, 1977). According to Hyde, the statute applies only to the crime of theft by receiving and then only if the receiver is a pawnbroker or a second-hand dealer.

earlier studies.* A brief discussion of several of these issues follows:

1. Identification of Property

With one exception,** prosecutors throughout the State agreed that a major difficulty in proving criminal possession cases is proving that the property found in the defendant's possession is the same property that was stolen.*** The prosecutor's difficulty in identifying the origins of the property recovered parallels the difficulty encountered by the police. Related to this is the finding of one study that crime victims are generally unaware of the basic requirements of loss reporting and that they do not

* See, e.g., E.K. Proctor, Identification and Recovery of Stolen Property, Stanford Research Institute Internal Research and Development Project No. 077531-010 (August, 1970) (hereinafter "Proctor"); F.R. Herron, The Impact of a Pilot Project Designed to Recover Additional Stolen Property in a Municipal Police Department (April 30, 1975) (unpublished thesis) (hereinafter "Herron"); Blakey & Goldsmith 1521-22.

** One Chief Assistant District Attorney in New York City stated that identification mechanisms, such as serialization and recording, are valuable in dealing with lower level fencing and that the presence of serial numbers permits identification of stolen property to be made more easily. He noted, however, that it is possible to track down 200 cases of perfume despite the absence of serial numbers and that the absence of serialization is not the reason that police fail to arrest fences.

*** One District Attorney stated that identification "knocks out 90% of the cases before you ever get to court" (U.T.).

have "property descriptor-type information (serial number, model number, style, etc.) readily available."*

The study also notes that interviews with police officials in major cities reveal that "there is a vacuum of concern" regarding increased property recovery efforts.**

Some efforts have been undertaken to increase the identifiability of property.*** Operation Identification is one of such efforts.

* Herron 22, 39. Herron's study indicates that a segment of crime victims are reluctant to describe property losses completely. He ascribes part of this reluctance to the fact that some persons are "less than candid with their insurance brokers or their appliance dealers." Id. 40. Herron's statement was supported by the prosecutors interviewed in the course of the Commission's study. Most of them believed that losses are frequently overstated by theft victims.

** Id. 16. This "vacuum of concern" may partially account for the low stolen property recovery rates. Using 1972 data, Herron notes that "the national recovery rate of property, exclusive of the category 'locally stolen autos', is reported as 10.8% [and that] the New York City recovery rate is 3.9%." Id. 4.

*** See, e.g., Baer, Fingerprinting of Works of Art: An Identification Technique for Theft Prevention/Recovery, Technology & Conservation 20 (Winter 1976).

Detective James Wegman, Project Director of New York City's Operation Identification Program* reported that there were 63,098 participants in the New York City program during the period July 22, 1972, to August 1, 1977. He attributes the disappointing rate of participation to the lack of a continuous program of advertising and to the indifference of New Yorkers, noting that participation in the program substantially increases after some publicity or a spate of burglaries in a particular area.

The indifference of New Yorkers is not unique. Herron states:

There is clearly an apathy on the part of manufacturers, shippers, distributors, retailers and other business people in the area of property accountability. And because of the lack of accurate accounting for those existing model and serial numbers, large numbers of items are stolen each day and

* In brief, New York City's Operation Identification program involves the engraving of an individual's social security number followed by the letters "NYC" on various items and the pasting of decals referring to Operation Identification on windows and doors of participants' residences and places of business. The participant then completes a card listing his name, address, telephone number and social security number and files it with the Police Department. The goal of the program is to prevent the initial crime from taking place; property recovery and successful prosecution were afterthoughts. Wegman reports that federal, city and state agencies have enrolled in the program and that participation in the program increases at the rate of approximately 700-800 per month. The program was started in 1972 as a pilot project.

enter the illegal market with no possibility of future identification.*

Several approaches to increasing property identification and accountability have been suggested. One proposal would require that any item valued at \$200 or more be traceable by serial numbers or model numbers from the time of its manufacture to its sale to the ultimate consumer. Another would require that merchants record serial numbers of all items received and sold and retain those records for a period of three years.** Other suggestions include requiring manufacturers to put identification marks on goods and their shipping containers and penalizing those in possession of goods on which identification marks have been altered or removed.***

The Commission does not have sufficient data to recommend any legislative solution at this time. It, therefore, suggests that efforts to increase identifiability of property be continued, and that greater publicity be given to existing programs.

* Herron 53-54.

** Id. 53.

*** See Proctor at 29,31. Proctor notes that the insurance industry might cooperate in the development and implementation of an improved identification system, but indicates his doubts about this solution. Id. at 32, 34. He concludes that implementation of any new identification system would require legislative action, but that the passage of such legislation is unlikely (Id. 31,36).

2. The Low Priority

In April, 1974, Bernard J. Garmire, then Chief of Police of the City of Miami, Florida Police Department, testified before the Senate Select Committee on Small Business as follows:

Senator BIBLE: Was there resistance within your department as you moved in this new concept and had an independent fencing unit?

Mr. GARMIRE: I would not say that it was resistance, as much as it was a lack of knowledge of the importance of controlling the fencing activities in our community.

We are confronted, within the police service, to a certain extent, with the same amount, or at least a degree, of apathy when it comes to the enforcement of white collar crime control. It is much more appealing, frankly, as a police officer, to arrest a burglar or a robber than some innocuous fence.*

Interviews with public officials throughout New York State indicate that a similar attitude toward the fence exists today among some prosecutorial and police agencies. The public officials interviewed did not characterize their attitude toward the fence as "apathy" or indifference. Rather, they explained that fencing is not a high priority matter. One official justified that

* Hearings 479.

low priority by explaining that other areas of investigation are more cost-effective. Another explained that less emphasis is placed on property crimes because nobody cares if his property is stolen. A third official emphasized the need to deal with higher level fences, asserting that the business fence is "small potatoes" and rarely goes to jail. A fourth official stated that a prosecutor is a politically sensitive creature whose priorities are based upon public sentiment. He noted that he did not hear much of a hue and cry about stolen property.

There are manifestations of this lack of priority. Two prosecutors reported that certain federal and local police agencies use the criminal receiver as an informant and, in effect, give him a license to continue his business.* Once that

* These opinions are not unique. Jerome Hall states:

A number of criminal receivers in large cities manage to be regular informers not only for the police but occasionally, also, for insurance companies. The consideration for these services takes three forms: cash payments, protection from prosecution for past offenses, and permission to operate as receivers without interference. Here is a phase of modern large-scale theft which makes elimination of criminal behavior seem a Utopian dream -- police shutting their eyes at the commission of serious crimes, protecting their informers from imprisonment and obtaining the cooperation of the prosecuting authorities in this regard in order that they may secure information about other criminals (Hall at 201-2). See also Blakey & Goldsmith at 1521-22.

license is revoked and the fence is arrested, penalties are rather light. Six individuals who came to the attention of the Commission as a result of their alleged involvement in fencing were arrested for stolen property crimes.* Only one was imprisoned. The remainder received fines or probation or adjournments of their cases in contemplation of dismissal.

* The six individuals were Donald Solof, Leo Weinstock, Martin Ryan, Donald McGann, John Doran and William Torrey. They are discussed in Part III of this report.

CONCLUSION

The purpose of the Commission's inquiry was to examine the participation of legitimate business in the distribution of stolen property. The Sell Operation showed that the business fence is not the "small potatoes" that one law enforcement official believed him to be. It demonstrated that apparently legitimate businessmen take an active role in the marketing of stolen merchandise and in insulating both the thief and the professional fence from detection and apprehension.

Both case studies and interviews suggest that the otherwise legitimate businessman need not fear prosecution or imprisonment for his role in the distribution of stolen merchandise. Local laws intended to deter his activities go largely unenforced.

Simple addition of the value of property stolen does not reflect the economic importance of fencing. The 650 million dollars of property reported stolen in New York State represents only a portion of the consequences of theft and fencing on the economy of the State. It does not reflect the loss of sales revenues or the increased cost of doing business which must, of necessity, be passed on to the consumer. In New York State premiums on theft-related lines of insurance have risen dramatically since 1975. Theft-plagued businesses contemplate leaving - and do leave - New York City. Manufacturers report that the distribution of stolen merchandise has resulted in millions

of dollars in lost sales. Lost profits and failure to report transactions in stolen merchandise result in considerable loss of tax revenues.

The magnitude of the income tax loss comes into focus when one considers that property valued at over \$650 million was reported stolen in New York State in 1976. During the Sell Operation, informants who sold allegedly stolen merchandise to otherwise legitimate businesses received \$4,550 for products having a retail value of approximately \$20,000. This constitutes a relationship of 22.75 percent. If we apply this percentage to the gross value of property reported stolen in New York State - \$650 million - we arrive at \$148 million of monies which evaded taxation. A median New York State individual income tax rate of 7 percent applied to the sum that escaped taxation would yield a loss in excess of \$10 million for a single year.

The above projection relates only to the tax evaded by those who sell merchandise to the business fence. As we have already observed elsewhere in this report, apparently legitimate businessmen engaging in purchases and sales of suspect merchandise have, on a number of occasions, omitted these transactions from their books and records. The New York State income tax revenues lost at this level, while not susceptible to reasonable estimate, are nevertheless believed to be considerable.

The federal income taxes evaded in the course of fencing operations must be dramatically greater due to higher rates of taxation. Referring back, for example, to the fact that those who sold stolen merchandise to business fences in New York State evaded tax payments on \$148 million of revenues, the minimum amount of income taxes lost to the Federal government, using a 20 percent rate, amounts to almost \$30 million. The losses in tax revenues in New York, both federal and state, for a single year, therefore, are estimated to be \$40 million as these losses relate to that phase of fencing which involves sales to the business fence. The total impact of fencing on tax revenues is obviously much greater.

The implications of the Commission's study are so far-ranging that we are not making specific recommendations at this time. Rather, we are committing ourselves to continued pursuit of a criminal practice that so permeates the commercial structure of our society. Certainly opportunity exists for specific corrective actions by state and local legislatures, the insurance industry, law enforcement agencies, prosecutors and criminal justice planning bodies. But individual proposals misrepresent the main thrust of this Report, which is that untold millions of dollars are accumulated by criminals engaged in fencing with the cooperation of an identifiable sector of the business community and the absence of a systematic and coordinated response from the law enforcement community.

It is because of this conclusion that the Commission will continue its work in this area.

Respectfully submitted,
ERIC A. SEIFF, Chairman
EARL W. BRYDGES, JR.
THOMAS J. CULHANE
ADAM WALINSKY

December 26, 1978

APPENDIX I -- NEW YORK STATE

Value of Property Stolen and Recovered*

	1976		1975		1974	
	Stolen	Recovered	Stolen	Recovered	Stolen	Recovered
TOTAL	\$650,574,906	106,873,920	492,202,232	85,912,468	391,923,333	75,800,016
Currency, Notes Negotiable Securities	61,153,279	2,671,805	49,798,313	1,958,622	41,177,182	2,432,281
Jewelry & Pre- cious Metals	78,852,427	2,310,782	68,256,089	2,481,226	50,859,705	2,027,599
Clothing & Furs	32,263,430	2,248,620	26,137,553	1,902,930	22,190,226	1,927,534
Locally Stolen Motor Vehicles	268,356,520	87,740,715	193,137,121	69,867,701	139,772,246	58,877,171
Office Equipment	10,282,885	289,967	8,584,197	447,749		
Televisions, Radios, Stereos (anything used to reproduce sight or sound)	62,293,802	1,917,491	39,704,926	1,614,252		
Firearms	1,536,733	285,799	933,388	132,523		
Household Goods	10,306,529	494,681	7,456,849	480,571		
Consumable Goods (items such as food or cosmetics which are used by humans for nutrition, en- joyment or hygiene and that no longer exist in the same form after use)	5,992,048	429,480	4,719,508	536,453		
Livestock	271,323	64,358	209,508	33,878		

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Miscellaneous (credit cards, boats, trailers, vehicle parts, household pets, shrubbery, books)	1976		1975		1974	
	Stolen	Recovered	Stolen	Recovered	Stolen	Recovered
	119,264,930	8,419,222	93,264,780	6,456,563	137,923,974	10,115,431

*SOURCE: FBI Uniform Crime Reports: New York State Supplement Data.

APPENDIX II -- NEW YORK CITY

Value of Property Stolen and Recovered
as Reported to the FBI

	1976*		1975*		1974**	
	Stolen	Recovered	Stolen	Recovered	Stolen	Recovered
Locally Stolen Motor Vehicles	\$208,653,199	51,724,128	163,184,529	50,412,574	126,788,813	43,048,187
Currency and Notes	42,938,489	600,731	37,285,170	833,844	33,033,466	699,546
Jewelry & Precious Metals	62,194,482	1,131,803	59,628,892	1,680,503	46,911,409	1,146,458
Furs & Clothing	27,888,426	1,470,483	23,716,947	1,559,985	21,473,821	1,551,722
Firearms	495,705	96,207	392,038	42,840		
Office Equipment	8,352,468	142,474	7,329,899	305,000		
Televisions, Radios, Cameras, etc.	42,960,272	782,758	32,785,580	927,562		
Household Goods	6,675,689	114,776	5,927,017	318,149		
Consumable Goods	4,315,308	256,170	3,991,556	375,198		
Miscellaneous	<u>78,649,854</u>	<u>2,716,643</u>	<u>70,025,436</u>	<u>3,110,944</u>	<u>115,303,955</u>	<u>12,455,421</u>
Total Reported to FBI:	\$483,123,892	58,496,173	404,267,064	59,566,599	343,511,464	58,901,334
Value of Property Stolen and Recovered, not Reported to FBI:	<u>491,149</u>	<u>664,161</u>	<u>791,338</u>	<u>150,944</u>	<u>389,754</u>	<u>837,052</u>
TOTAL:	\$483,615,041	59,160,334	405,058,402	59,717,543	343,901,218	59,738,386

* SOURCE: New York City Police Department, Statistical Report: Complaints and Arrests (1976), 14.

** SOURCE: New York City Police Department, Statistical Report: Complaints and Arrests (1975), 9.

APPENDIX III*

The Security Council of the New York State Motor Truck Association, Inc. compiles statistics of reported hijackings and grand larcenies of trucks and their contents in New York City. Their 1976 statistics, as set forth in Appendix L to the Report to the President on the National Cargo Security Program by the Secretary of Transportation, are set forth below:

<u>Commodity</u>	<u>Frequency</u>	<u>Dollar Value</u>
Clothing	45	\$ 1,459,510
Meats	17	337,100
Foodstuffs (includes 6 thefts of coffee with a total value of \$416,000)	16	532,200
Sea Food	12	505,655
Miscellaneous	10	345,875
Radios, Stereos, TVs and Cassettes	6	168,500
Cigarettes and Tobaccos	6	128,000
Liquor	6	112,513
Appliances	6	67,500
Furs and Skins	5	144,997
Metals, Ingots	4	231,400
Watches and Watch Movements	4	211,000
Furniture and Rugs	4	63,000
Toilet Preps. and Cosmetics	3	---
Gold, Silver and Currency (Precious Metals)	3	60,000
Calculators	2	137,880
Auto Parts	2	48,000
Tools	2	40,000
Cameras and Flash Bulbs	2	36,000
Building Materials	2	31,348
Tires	-	40,000
All others	16	189,442

*SOURCE: Report to the President on the National Cargo Security Program by the Secretary of Transportation, March 31, 1977, Appendix L, 12-13.

APPENDIX IV

Survey of Antiques Dealers

The annexed questionnaire was published in Antiques and The Arts Weekly and in Collectors News. The Antique Monthly, The Gray Letter and the magazine Antiques published notices about the questionnaire. Responses were received from all parts of the country. Most respondents identified themselves as antiques dealers (63%); the rest had some connection with the antiques and fine arts market.

The responses indicated that the theft and redistribution of antiques and objects of art is a growing problem: 96% of the respondents agreed that the theft and distribution of stolen antiques had increased materially in the last two years. Of the antiques dealers responding, 79% had personally encountered the theft of antiques or objects of art whose value exceeded \$500; 50% had experienced an increase in theft and/or burglary insurance; and half had been offered goods under circumstances that indicated they were stolen.

The respondents indicated a great willingness to cooperate with law enforcement officials in the establishment of an identification system for antiques and objects of art (93%). Most said that at least some antiques and objects of art were sufficiently identifiable to be the subject of such a system (73% of dealers responding; 82% of total responses). Dealers and experts indicated that a great variety of goods

are capable of such identification.* Some expressed concern that identifying marks would damage antiques and greatly reduce their value, but others asserted that most items could be identified without marking them, by means of photographic records.

All the dealers agreed that the periodic circulation by law enforcement agencies of lists describing items recently reported stolen would assist in controlling the distribution of stolen antiques. Virtually all dealers indicated it would not be burdensome to report possession of an item which appeared on such sheets.

Uniform statewide licensing of antiques dealers, second-hand dealers, pawnbrokers and auctioneers received a mixed reaction: although 27% of the dealers responding thought that such licensing would be burdensome, less than half thought that statewide licensing would help control the distribution of stolen antiques and objects of art.

Nearly all dealers opposed a proposal that they be required to report all purchases and sales to the police: 93% said that such a requirement would be ineffective, 81% said it would be burdensome; several said that such a requirement would ruin their businesses.

* The following goods were mentioned as being capable of identification: paintings, sculpture, wooden objects, clocks and watches, fine furniture, guns, sterling items, glass, porcelain, bronze items, any handcrafted items, and, of course, items with serial numbers.

STATE AGENCY PROBING DISTRIBUTION OF STOLEN ANTIQUES

The New York State Commission of Investigation is presently conducting a study and analysis of the criminal acquisition and distribution of stolen property, with particular reference to the impact of stolen property crimes on increased insurance premiums, increased consumer costs and increased costs of doing business. It has come to our attention that the heightened public interest in the collection of antiques and objects of art has resulted in a concomitant growth in their theft and distribution. The Commission seeks your assistance in attempting to define the nature and limits of this problem. Please complete the questionnaire below and return it to: New York State Commission of Investigation, 270 Broadway, New York, N.Y. 10007.

	<u>Percentage of Total Answered</u>
1. What is your involvement in the antiques and fine arts market?*	
Antiques Dealers	63
Auctioneer	4
Second Hand Dealer	0
Flea Market Exhibitor	0
Other Professional (Appraiser, Insurance Adjuster, Porcelain Restorer, Writer)	17
Private Collector	13
Concerned Citizen	3

* Some answers indicated membership in several categories; the one category indicating the greatest involvement was chosen.

	Antique Dealers %*		Total %	
	Yes	No	Yes	No
2. To your knowledge, has the theft and distribution of stolen antiques and objects of art increased within the past two years?	100	0	96	4
3. Within the last two years have you encountered any of the following situations:				
(A) theft of antiques or objects of art whose value exceeded \$500;	79	21	75	25
(B) received an offer of antiques or objects of art which you were told were stolen;	13	87	10	90
(C) received an offer of antiques or objects of art under circumstances which would indicate they were stolen;	50	50	35	65
(D) inadvertantly purchased stolen antiques or objects of art?	14	86	10	90
4. In your opinion, are any of the following regular markets for the purchase or sale of stolen antiques and objects of art:				

	Dealers	Total
Pawnbrokers	23%	30%
Second-Hand Dealers	31%	35%
Auctioneers	23%	30%
Jewelers	38%	30%
Flea Markets	46%	45%
Garage Sales	37%	25%

* Auctioneers are included in this category.

	Antique Dealers %		Total %	
	Yes	No	Yes	No
5. Have your burglary and/or theft insurance premiums increased within the past two years?	50	38	45	41
No Insurance		12		14
Responses regarding percentage increase varied from 2% to 175%. Some said they could no longer afford any insurance at all.				
6. Are you required by law to maintain records identifying purchasers and sellers?	38	62	35	65
7. Are you required by law to record the proof of identity offered by sellers?	31	69	25	75
8. Would you be willing to cooperate with law enforcement agencies in the establishment of an identification system for antiques and objects of art?	93	7	96	4
9. Are any types of antiques or objects of art sufficiently identifiable to be the subject of a property identification system?	73	27	82	18
10. Would any of the following assist in controlling the distribution of stolen antiques and objects of art?				
(A) Periodic distribution by law enforcement agencies of lists describing items recently reported stolen	100		95	5
(B) Periodic reporting by dealers of all purchases and sales to a local law enforcement agency	7	93	11	89

	Antiques Dealers %		Total %	
	Yes	No	Yes	No
(C) Uniform statewide licensing of antiques dealers, second-hand dealers, pawnbrokers and auctioneers;	47	53	57	43
(D) Other. Recommendations suggested were:				
1. Greater police effort				
2. Improved local licensing				
3. Inspection of vans by Police Department				
4. License appraisers				
5. Require listing of inventory				
6. Reporting of losses				
11. Upon receiving lists of stolen items (per 10(A) above) would reporting possession of such items to a local law enforcement agency be burdensome?	13	87	18	82
12. Would any of the following recommendations unduly burden the conduct of your business?				
(A) periodic reporting by dealers of all purchases and sales to a local law enforcement agency	81	19	80	20
(B) uniform statewide licensing of antiques dealers, second-hand dealers, pawnbrokers and auctioneers	27	73	33	67

13. Please specify any other suggestions, comments or recommendations.

Suggestions made were:

1. Strict punishment
2. Resale license
3. Antiques theft squad
4. Signed bill of sale
5. Greater dealer cooperation
6. Circulate information to dealers about thieves' techniques
7. Committee to standardize identification and reporting.

The questionnaire appeared in several trade papers. Twenty-four responses were received; not all those responding answered every question. Percentages do not include non-answers.

END