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SUBPOENA POWER FOR PRESIDENT'S COMMISSION ON ORGANIZED CRIME



HEARING BEFORE THE SUBCOMMITTEE ON CRIME OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

H.J. Res. 490

SUBPOENA POWER FOR PRESIDENT'S COMMISSION ON ORGANIZED
CRIME

APRIL 5, 1984

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U.S. Department of Justice
National Institute of Justice

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ACQUISITIONS

SUBPOENA POWER FOR PRESIDENT'S COMMISSION ON ORGANIZED CRIME

THURSDAY, APRIL 5, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, at 11:10 a.m., in room 2141, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes and Sawyer.

Staff present: Hayden W. Gregory, counsel; Eric E. Sterling, assistant counsel; Charlene Vanlier, associate counsel; and Theresa Bourgeois, staff assistant.

Mr. HUGHES. The Subcommittee on Crime will come to order.

The Subcommittee on Crime is pleased to welcome Judge Irving R. Kaufman of the U.S. Court of Appeals for the Second Circuit, the Chairman of the President's Commission on Organized Crime. The Commission has been charged with the duty of making an analysis of organized crime, to define its nature, the source of its income, how it uses that income, to identify the members of organized crime networks, and to evaluate Federal laws that are used or needed to combat organized crime. It is a most important mission and I am sure that the Commission realizes that it has a long agenda.

Today we want to examine the question of the powers that are necessary for the Commission to carry out its extraordinary duties. Pending before us is House Joint Resolution 490, a proposal drafted by the Justice Department on behalf of the Commission before the Commission had been organized and its staff selected.

[A copy of H.J. Res. 490 follows:]

98TH CONGRESS
2D SESSION

H. J. RES. 490

Authorizing the President's Commission on Organized Crime to compel the attendance and testimony of witnesses and the production of information.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1984

Mr. RODINO (by request) introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Authorizing the President's Commission on Organized Crime to compel the attendance and testimony of witnesses and the production of information.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 That for purposes of this joint resolution:

4 (a) The term "Commission" means the Commission es-
5 tablished by the President by Executive Order 12435, dated
6 July 28, 1983, as it now exists and as it may be extended
7 pursuant to amendments to that order.

8 (b) An oath taken before the Commission, or before a
9 member of the Commission or a member of the staff of the
10 Commission designated by the Commission for such purpose,

1 shall be deemed to be an oath taken before a competent officer or person within the meaning of section 1621 of title 18, United States Code (relating to the offense of perjury).

4 (c) A proceeding before or ancillary to the Commission shall be deemed to be a matter within the jurisdiction of, or before, a department or agency of the United States within the meaning of section 1001, of title 18, United States Code (relating to the offense of making a false statement) and section 1505 of title 18, United States Code (relating to the offense of obstruction of proceedings).

11 (d) A proceeding before or ancillary to the Commission shall be deemed to be an official proceeding within the meaning of section 1512 of title 18, United States Code (relating to tampering with a witness, victim, or an informant) and section 1513 of title 18, United States Code (relating to retaliating against a witness, victim, or an informant).

17 (e) For the purposes of section 7, the terms "agency", "individual", "maintain", "record", and "accounting" have the meanings set forth in section 552a, title 5, United States Code.

21 SEC. 2. ISSUANCE OF SUBPENAS.

22 The Commission shall have the power to issue subpoenas, under the signature of the Chairman of the Commission or of another member of the Commission authorized by the Commission, requiring the attendance and testimony of

1 witnesses before the Commission, or before a member of the
2 Commission or a member of the staff of the Commission des-
3 ignated by the Commission for such purpose, and the produc-
4 tion of information relating to a matter under investigation by
5 the Commission. A subpoena may require the person to whom
6 it is directed to produce such information at any time prior to
7 the time at which such person is to testify, and may require
8 the attendance of a witness and the production of information
9 from any place within the jurisdiction of the United States at
10 any designated place of hearing.

11 **SEC. 3. ENFORCEMENT OF SUBPENAS.**

12 In case of contumacy or refusal to obey a subpoena
13 issued to a person under section 2, a court of the United
14 States within the jurisdiction of which the person is directed
15 to appear or produce information, or within the jurisdiction of
16 which the person is found, resides, or transacts business, shall
17 have jurisdiction, upon application by the Attorney General
18 on behalf of the Commission, to issue to such person an order
19 requiring such person to appear before the Commission, or
20 before a member of the Commission or a member of the staff
21 of the Commission designated by the Commission for such
22 purpose, there to give testimony or produce information re-
23 lating to the matter under investigation, as required by the
24 subpoena. A person who fails to obey such order of the court
25 may be punished by the court as provided in section 401 of

1 title 28, United States Code (relating to criminal contempt),
2 or may be confined pursuant to section 1826 of title 18,
3 United States Code (relating to civil contempt), but such con-
4 finement shall not exceed the life of the Commission, includ-
5 ing extensions, and in no event shall such confinement exceed
6 eighteen months.

7 **SEC. 4. TESTIMONY OF PERSONS IN CUSTODY.**

8 If the Commission determines that it requires the testi-
9 mony of a person in custody, a court of the United States
10 within the jurisdiction of which the person is to testify, or
11 within the jurisdiction of which such person is held in custo-
12 dy, shall have jurisdiction, upon application by the Attorney
13 General on behalf of the Commission, to issue a writ of
14 habeas corpus ad testificandum requiring the custodian to
15 produce such person before the Commission, or before a
16 member of the Commission or a member of the staff of the
17 Commission designated by the Commission for such purpose.

18 **SEC. 5. COMPULSION OF TESTIMONY.**

19 If a person who has been or may be called to testify or
20 provide other information refuses, on the basis of his privilege
21 against self-incrimination, to testify or provide such informa-
22 tion, the Commission may, with the approval of the Attorney
23 General, issue an order requiring the person to give testimo-
24 ny or provide other information which he refuses to give or

1 provide on the basis of his privilege against self-incrimination
2 in the same manner and subject to the same conditions as an
3 agency of the United States is authorized to issue such an
4 order pursuant to sections 6001, 6002, and 6004 of title 18,
5 United States Code.

6 **SEC. 6. TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE.**

7 The Commission, or a member of the Commission or
8 member of the staff of the Commission designated by the
9 Commission for such purpose, may conduct hearings, admin-
10 ister oaths and affirmations, examine witnesses, and receive
11 documentary or other information in evidence.

12 **SEC. 7. ACCESS TO OTHER AGENCY RECORDS.**

13 (a) Disclosure otherwise prohibited by subsection (b), of
14 section 552a of title 5, United States Code, of a record main-
15 tained by an agency, may, upon application to such agency
16 by an attorney for the Commission who has been authorized
17 by the Commission to make such an application, be made to
18 the Commission and members of the staff of the Commission
19 for use in the performance of the Commission's duties.

20 (b) An agency disclosing a record under subsection (a)
21 shall not make the accounting required by subsection (c) of
22 section 552a of title 5, United States Code, to be made avail-
23 able to the individual named in the record.

1 SEC. 8. LIMITATIONS ON DISCLOSURE.

2 A person to whom disclosure of information is made
3 under section 7, shall use such information solely in the per-
4 formance of his duties for the Commission and shall make no
5 disclosure of such information except as provided for by this
6 joint resolution, or as otherwise authorized by law.

7 SEC. 9. SERVICE OF PROCESS, WITNESS FEES.

8 (a) Process and papers issued by the Commission, or by
9 a member of the Commission or a member of the staff of the
10 Commission designated by the Commission for such purpose,
11 may be served in person, by registered or certified mail, by
12 telegraph, or by leaving a copy thereof at the residence or
13 principal office or place of business of the person required to
14 be served. When service is by registered or certified mail or
15 by telegraph, the return post office receipt or telegraph re-
16 ceipt therefor shall be proof of service. Otherwise, the veri-
17 fied return by the individual making service, setting forth the
18 manner of such service, shall be proof of service.

19 (b) Process of a court to which application may be made
20 under this joint resolution may be served in a judicial district
21 wherein the person required to be served is found, resides, or
22 transacts business.

23 (c) A witness summoned before the Commission, or
24 before a member of the Commission or a member of the staff
25 of the Commission, shall be paid the same fees and mileage
26 as are paid witnesses in the courts of the United States, and

- 1 a witness whose deposition is taken and the person taking the
- 2 same shall severally be entitled to the same fees as are paid
- 3 for like services in the courts of the United States.

○

Mr. HUGHES. Last month, James Harmon, the Executive Director and Chief Counsel, sent to the committee a substitute proposal to set forth the Commission's powers. A copy of that proposal has also been circulated to the members of the subcommittee.

[Documents follow:]

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

FEB 15 1984

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(202) 633-5589/5652

Chairman:
Honorable Irving R. Kaufman

Executive Director and
Chief Counsel:
James D. Harmon, Jr.



Commissioners:
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Jesse A. Brewer, Jr.
Carol Corrigan
Justin J. Dintino
William J. Gutt, Jr.
Judith R. Hope
Phillip R. Marquis
Thomas F. McBride
Eugene H. Mathvin
Edwin L. Miller, Jr.
Manuel J. Rayst
Honorable Peter W. Rodino, Jr.
Charles H. Rogovin
Barbara A. Rowan
Francis A. Scifani
Samuel K. Skinner
Honorable Potter Stewart
Honorable Strom Thurmond

February 6, 1984

Alan A. Parker, Esq.
General Counsel
Committee on the Judiciary
U.S. House of Representatives
Washington, D. C. 20515

Dear Mr. Parker:

On November 18, 1983, the Department of Justice submitted to the Speaker of the House, on behalf of the President's Commission on Organized Crime, a draft bill that would authorize the Commission to compel the attendance and testimony of witnesses by subpoenas, writs of habeas corpus ad testificandum, grants of immunity, and court orders. Because I had not yet been offered the position of Executive Director and Chief Counsel to the Commission, neither I nor any member of my staff was available at that time to contribute to the preparation of this draft.

Since then, I have reviewed the draft bill at some length. Although the draft would undeniably provide the Commission with some of the powers that are essential to its work, certain features of the draft warrant closer inspection:

1. Compulsion of Testimony. Although Section 2 of the draft authorizes the Commission to issue subpoenas, it states that the attendance of a witness or the production of information would be required "from any place within the jurisdiction of the United States." This provision fails to make clear whether the subpoenas would compel attendance only from within the territorial jurisdiction of the United States, or, as in the case of the Walsh Act (28 U.S.C. §1783), would also compel the attendance of U.S. citizens or residents who are in foreign countries. Because there appears to be a substantial number of U.S. citizens and resident aliens who hold responsible positions in foreign banks, accounting firms, and corporations that may be significantly involved in the laundering of profits from illegal activities within the United States, this ambiguity, if left

unclarified, may permit a court to infer that the Commission lacks authority to issue subpoenas to such persons. In addition, section 2 does not make clear whether a Commission subpoena would be considered an "administrative subpoena" that would require the Commission to comply with the provisions of the Right to Financial Privacy Act (12 U.S.C. §§3401-3422) in obtaining financial records or information under that Act.

Section 3 of the draft permits a court, upon application, to issue an order requiring the appearance of a witness or production of information, and to impose sanctions for either civil contempt, under 28 U.S.C. §1826, or criminal contempt, under 18 U.S.C. §401. Section 3, however, does not make clear that under 28 U.S.C. §1826, the court has discretion to impose fines, terms of confinement, or both in order to compel the testimony or production of information. Moreover, by stating that a person who fails to obey the court order "may be punished by the court as provided in (18 U.S.C. §401), or may be confined pursuant to (28 U.S.C. §1826)," section 3 may prompt a court to infer that in enforcing a Commission subpoena, it should invoke criminal contempt sanctions before invoking civil contempt sanctions. Such an inference, if articulated by the court, would be vulnerable to challenge under the doctrine in Shillitani v. United States, 384 U.S. 364, 371 n.9 (1966), that a judge must "first consider the feasibility of coercing testimony through the imposition of civil contempt (and) should resort to criminal sanctions only after he determines, for good reason, that the civil remedy would be inappropriate."

A more general consideration, which pervades my thinking about the Commission, is that the powers to issue subpoenas and to seek contempt citations -- which sufficed for commissions as diverse in subject matter as the Public Land Law Revision Commission and the National Commission on Food Marketing -- may not suffice for a commission that has specifically been charged with the responsibility for investigating and bringing to light the participants in, and activities of, various criminal organizations throughout the United States. If my experience with grand jury investigations, and the 1950 hearings of the Kefauver Committee, provide any guidance, members of organized criminal enterprises are likely to evade or flee service of subpoenas by the Commission, in an effort to avoid valid service until the expiration of the Commission's authority. See W. H. Moore, The Kefauver Committee and the Politics of Crime 1950-1952 at 158 (1974).

2. Access to Agency Records. Section 7 of the draft permits the Commission only to apply to an agency for disclosure of records when such disclosure would otherwise be prohibited by the Privacy Act of 1974. This provision apparently would not authorize the members of the Commission or members of the staff of the Commission to receive disclosure of the contents of Title III intercepts, either in private interviews or as evidence in hearings of the Commission.

Title III information, however, would be a vitally important resource that could contribute substantially to the ultimate success of the Commission. One of the principal responsibilities assigned to the Commission by the President is to "evaluate Federal laws pertinent to

the effort to combat organized crime." While many Federal laws can be reviewed and analyzed without reference to Title III information, the Commission and its staff cannot adequately evaluate the Title III statute -- perhaps the single most important Federal law designed to combat organized crime -- or assess its effectiveness and value to law enforcement, without obtaining authorization to receive and use information obtained from Title III interceptions. It is precisely for this reason that Congress granted such authorization to the National Commission for the Review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance. See Pub. L. No. 93-609, §3, 88 Stat. 1972, 1973 (1975); H.R. Rep. No. 1343, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Ad. News 7173, 7174.

Another principal responsibility of the Commission is to "develop in-depth information on the participants in organized crime networks." In this regard, Title III information would provide an invaluable source of information about organized crime. As the Senate Report on Title III pointed out, "intercepting the communications of organized criminals is the only effective method of learning about their activities." S. Rep. No. 1097, 90th Cong., 2d Sess., reprinted in 1970 U.S. Code Cong. & Ad. News 2112, 2157. Although the Commission does not need access to the contents of electronic surveillances that are in progress or that were conducted in violation of Title III, access to and use of the contents of past electronic surveillances would speed the progress of Commission investigations and permit the Commission and its staff to make adequately informed judgments about the current methods and activities of organized crime. If the Commission is unable to obtain access to and use of any Title III information in private interviews, or to have selected portions of such information presented in public testimony, its ability to fulfill its responsibilities to the President and the Attorney General will be substantially impaired.

3. Representation of the Commission. Sections 3 and 4 of the draft state only that "the Attorney General on behalf of the Commission" may apply to a court for enforcement of subpoenas or issuance of writs of habeas corpus ad testificandum. These provisions do not make clear whether attorneys for the Commission, as employees paid through Department of Justice appropriations, will themselves have authority to make such applications, or must rely on attorneys assigned to various divisions or U.S. Attorneys' offices within the Department. These provisions also do not make clear whether attorneys for the Commission will be responsible for defending the Commission in any civil action that might be instituted against the Commission under such statutes as the Freedom of Information Act (5 U.S.C. §552), the Privacy Act of 1974 (5 U.S.C. §552a), or the Federal Advisory Committee Act (FACA) (5 U.S.C. App. I), which generally governs the operations of Federal advisory committees such as this Commission.

Where enforcement of Commission subpoenas and related matters are concerned, Commission attorneys -- because of their familiarity with the Commission's sources of authority, rules of conduct, and needs for certain types of information relevant to its investigations -- are best suited to filing applications and representing the Commission in court. Where matters of less urgency require representation of the Commission

in court, it may be appropriate for attorneys for the Commission to provide such representation in conjunction or consultation with Department attorneys who are particularly knowledgeable about current interpretations of particular statutes.

4. Conduct of Hearings. Section 6 of the draft states, in pertinent part, that "the Commission, or a member of the Commission or member of the staff of the Commission . . . , may conduct hearings" The effect of this provision, when read in conjunction with the provisions of the FACA, is unclear. Under the FACA, members of the staff of a Federal advisory committee do not appear to have authority to conduct public meetings (i.e., "hearings") outside the presence of the Commission, although the staff undoubtedly would be able to conduct interviews or interrogations of witnesses in private. Moreover, it is conceivable that if members of the staff of a Federal advisory committee were to conduct such hearings and to perform other functions typical of advisory committees, those members would be required to obtain a separate charter as a Federal advisory committee in order to continue such activities. See 48 Fed. Reg. 19324 (April 28, 1983) (interim GSA rule on Federal advisory committee management).

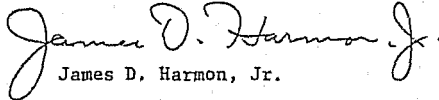
A more fundamental concern regarding the conduct of future Commission hearings is that neither the draft bill nor the FACA specifically authorizes the Commission to adopt rules and regulations, including rules of procedure for its hearings. Under what appear to be well-settled principles of law set forth in Greene v. McElroy, 360 U.S. 474 (1959), and Hannah v. Larche, 363 U.S. 420 (1960), whenever a court determines that an action taken by an inferior Federal agency was accomplished by procedures that arguably raise serious constitutional questions (e.g., the right to be apprised of informants' identities or to cross-examine witnesses), the court's initial inquiry will be "whether the President or Congress, within their respective constitutional powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use." 360 U.S. at 507. In order to withstand a challenge to its authority in litigation, the Commission must be able to demonstrate that it has specific authorization, in the text and the legislative history of its statute, to adopt procedures that are comparable to those adopted by other Executive branch commissions (e.g., the Commission on Civil Rights) and Congressional committees, but that do not incorporate all of the procedural protections that would be available to a witness in a criminal trial.

5. Powers of Investigators. Because the Commission is likely to draw its investigators from a number of investigative agencies (e.g., the FBI, the INS, the IRS, and state and local law enforcement) that confer different enforcement powers on their agents, Commission investigators apparently would have no authorization under the draft bill to carry firearms, to serve warrants, or to make arrests with such warrants. In addition, it is not clear that the members and staff of the Commission are subject to any of the provisions in title 18 that prohibit assault or more serious bodily harm of certain specific categories of Federal officers and employees. As a result, Commission

investigators would be uncertain of their ability to defend themselves or members or staff of the Commission with firearms should a dangerous situation arise, or to aid the Commission in enforcement of its subpoenas.

In light of these concerns, I have taken the liberty of enclosing herewith a proposed modification of the draft bill for your review, and would welcome an opportunity to discuss it with you at your earliest convenience. A section-by-section analysis of the proposal is also enclosed.

Sincerely,

A handwritten signature in dark ink, reading "James D. Harmon, Jr." in a cursive script. The signature is fluid and extends to the right.

James D. Harmon, Jr.

Enclosures

cc: The Honorable D. Lowell Jensen
The Honorable William H. Webster
Robert J. Short

PRESIDENT'S COMMISSION ON ORGANIZED CRIME

Joint Resolution to confer certain powers on the President's Commission on Organized Crime, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That for purposes of this joint resolution --

(1) The term "Commission" means the President's Commission on Organized Crime established by the President by Executive Order 12435, dated July 28, 1983, as it now exists and as it may be extended pursuant to amendments to that order.

(2) The term "Chairman" means the Chairman of the Commission.

(3) The term "person" means any person or enterprise, as those terms are defined in section 1961, title 18, United States Code, and includes any department, agency, or other unit of the Federal Government or of a State or local government.

(4) The term "foreign country" means any country other than the United States or any territory, dependency, or possession thereof, and includes any colony, territory, dependency, or possession of any such country.

(5) The term "national of a foreign country" includes any person which is created or organized under the laws of, or has its principal place of business or its center of activities or its siege social in, any foreign country.

(6) The term "national of the United States" includes any person which is created or organized under the laws of the United States, or of any State, territory, or possession thereof, or of the District of Columbia.

(7) A proceeding before or ancillary to the Commission shall be deemed to be a proceeding held under the authority of the United States within the meaning of subsection (3) of section 2517, title 18, United States Code (relating to authorization for disclosure and use of intercepted wire or oral communications).

(8) An oath or affirmation taken before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose, shall be deemed to be an oath taken before a competent officer or person within the meaning of section 1621, title 18, United States Code (relating to the offense of perjury).

(9) A proceeding before or ancillary to the Commission shall be deemed to be a matter within the jurisdiction of, or before, a department or agency of the United States within the meaning of section 1001, title 18, United States Code (relating to the offense of making a false statement) and section 1505, title 18, United States

Code (relating to the offense of obstruction of proceedings before departments, agencies, and committees).

(10) A proceeding before or ancillary to the Commission shall be deemed to be an official proceeding within the meaning of section 1512, title 18, United States Code (relating to tampering with a witness, victim, or an informant) and section 1513, title 18, United States Code (relating to retaliation against a witness, victim, or an informant).

(11) For the purpose of section 8(a) and section 8(b) of this joint resolution, the terms "wire communication," "oral communications," "intercept," and "contents" have the meanings set forth in section 2510, title 18, United States Code.

(12) For the purpose of section 8(c) and section 8(d) of this joint resolution, the terms "agency," "individual," "maintain," "record," and "accounting" have the meanings set forth in section 552a, title 5, United States Code.

(13) The records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which are made available to or prepared for or by the Commission or any subcommittee of the Commission shall be deemed to be investigatory records compiled for law enforcement purposes within the meaning of sections 552 and 552b, title 5, United States Code.

SEC. 2. SUBPOENAS OF PERSONS IN UNITED STATES

(a) The Chairman, or any member of the Commission or the Executive Director of the Commission when so authorized by the Chairman or the Commission, shall have power to issue subpoenas. A subpoena may command each person to whom it is directed to attend and to give testimony, at the time and place specified therein, before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, objects, or other information designated therein relating to or touching any matter in question or under investigation by the Commission. A subpoena may require the person to whom it is directed to produce such books, papers, documents, objects, or other information designated in the subpoena before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose, at any time prior to the time at which such person is to testify. Such attendance of witnesses and production of information may be required from any place within the jurisdiction of the United States at any designated place of hearing.

(b) In case of contumacy or refusal to obey a subpoena issued under this section, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the

jurisdiction of which the inquiry or investigation by the Commission is carried on, or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process, upon application by an attorney for the Commission when so authorized by the Chairman or the Commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose, there to give testimony or to produce information relating to or touching the matter in question or under investigation, as required by the subpoena. If a person fails to obey such order of the court, the court may --

(1) impose a fine upon, or summarily order the confinement of, such person, or both, pursuant to section 1826, title 28, United States Code (relating to civil contempt), provided that no period of such confinement shall exceed the life of the Commission, including extensions thereof, and in no event shall the period of such confinement exceed eighteen months; and

(2) after determining that the remedies provided in paragraph (1) of this subsection have not been, or are not likely to be, effective in securing compliance with such order, punish such person by fine or imprisonment, pursuant to section 401, title 18, United States Code and Rule 42, Federal Rules of Criminal Procedure (relating to criminal contempt).

SEC. 3. SUBPOENAS OF PERSONS IN FOREIGN COUNTRIES

(a) If the Commission determines that it requires the attendance and testimony of --

(1) 'any person who is a national or resident of the United States and who is in any foreign country; or

(2) any person who is a national or resident of any foreign country, and who is owned or controlled by, or subject to the direction of, any person who is a national or resident of the United States and who is in a foreign country, or that it requires the production of a specified document or other thing or information by such person, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, upon application by an attorney for the Commission when so authorized by the Chairman or the Commission, shall have jurisdiction to order the issuance of a subpoena requiring that a person who meets the criteria set forth in paragraph (1) of this subsection shall appear and testify or produce the specified document or other thing or information, or shall direct the person who meets the criteria set forth in paragraph (2) of this subsection to appear and testify or produce such specified document or thing or information, before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission designated by said court for such

purpose, in accordance with the provisions of section 1783, title 28, United States Code.

(b) In case of contumacy or refusal to obey a subpoena issued under this section, the court which has issued the subpoena, upon application by an attorney for the Commission when so authorized by the Chairman or the Commission, shall have jurisdiction to issue an order to show cause and to take all other actions that it deems appropriate in accordance with the provisions of section 1784, title 28, United States Code.

SEC. 4. TESTIMONY OF MATERIAL WITNESSES

(a) If it appears by affidavit that the testimony of any person is material in any proceeding before or ancillary to the Commission, and it is shown that it may become impracticable to secure the presence of such person by subpoena, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which the inquiry or investigation is carried on, or within the jurisdiction of which such person is found or resides or is domiciled or transacts business or has appointed an agent for receipt of service of process, upon application by an attorney for the Commission when so authorized by the Chairman or the Commission, shall have jurisdiction to issue a warrant for the arrest of such person as a material witness, and shall thereafter impose conditions of release pursuant to section 3146, title 18, United States Code.

(b) If any person, having been released pursuant to subsection (a) of this section and section 3146, title 18, United States Code for appearance as a material witness, willfully fails to appear before the Commission as required, the court may --

(1) impose a fine upon, or summarily order the confinement of, such person, or both, pursuant to section 1826, title 28, United States Code (relating to civil contempt), provided that no period of such confinement shall exceed the life of the Commission, including extensions thereof, and in no event shall the period of such confinement exceed eighteen months; and

(2) after determining that the remedies provided in paragraph (1) of this subsection have not been, or are not likely to be, effective in securing compliance with such order, punish such person by fine or imprisonment, pursuant to section 401, title 18, United States Code and Rule 42, Federal Rules of Criminal Procedure (relating to criminal contempt).

SEC. 5. TESTIMONY OF PERSONS IN CUSTODY

If the Commission determines that it requires the testimony of a person in the custody of the Attorney General of the United States or of any department, agency, or other unit of a State or local government, any district court of the United States or the United States court of any territory or possession, or the District Court of the United States for the District of Columbia, within the jurisdiction of which such person is to testify, or within the jurisdiction of which such person is held in custody, upon

application by an attorney for the Commission when so authorized by the Chairman or the Commission, shall have jurisdiction to issue a writ of habeas corpus ad testificandum requiring the custodian to produce such person before the Commission or any subcommittee of the Commission, or before any member of the staff of the Commission designated by the Chairman or the Commission for such purpose.

SEC. 6. COMPULSION OF TESTIMONY

If a person who has been or may be called to testify or to provide information before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose, refuses, on the basis of his privilege against self-incrimination, to testify or to produce such information, the Commission may, with the approval of the Attorney General, issue an order requiring the person to give testimony or to provide information which he refuses to give or to provide on the basis of his privilege against self-incrimination, in the same manner and subject to the same conditions as an agency of the United States is authorized to issue such an order pursuant to sections 6001, 6002, and 6004, title 18, United States Code.

SEC. 7. TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

(a) The Commission, or any subcommittee of the Commission when so authorized by the Chairman or the Commission, may conduct

hearings, administer oaths and affirmations, examine witnesses, and receive documentary or other information in evidence. Any member of the Commission, or any member of the staff of the Commission, designated by the Chairman or the Commission for such purpose may administer oaths and affirmations, examine witnesses, and receive documentary or other information in evidence.

(b) Whenever the Chairman or the Commission, or any subcommittee of the Commission when so authorized by the Chairman or the Commission, determines to meet in a closed session, subsections (a)(1), (a)(3), and (b) of section 10 of the Federal Advisory Committee Act shall not apply with respect to such meeting, and section 552, title 5, United States Code, shall not apply to the records, reports, and transcripts of any such meeting.

SEC. 8. ACCESS TO OTHER AGENCY RECORDS

(a) Nothing in chapter 119, title 18, United States Code shall be deemed to prohibit any investigative or law enforcement officer who, by any means authorized by said chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, from disclosing such contents to the Commission or any subcommittee of the Commission, or to any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose, to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure, or the official duties of the Commission, the subcommittee of the

Commission, the member of the Commission, or the member of the staff of the Commission receiving the disclosure.

(b) Nothing in chapter 119, title 18, United States Code shall be deemed to prohibit any investigative or law enforcement officer, or any member of the Commission or any member of the staff of the Commission, who, by any means authorized by said chapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, from using such contents to the extent that such use is appropriate to the proper performance of his official duties.

(c) Disclosure otherwise prohibited by subsection (b) of section 552a, title 5, United States Code, of a record maintained by an agency may, upon application to such agency by an attorney for the Commission when so authorized by the Chairman or the Commission, be made to the Commission and members of the staff of the Commission for use in the performance of the Commission's duties.

(d) An agency disclosing a record under subsection (c) of this section shall not make the accounting required by subsection (c) of section 552a, title 5, United States Code, to be made available to the individual named in the record.

(e) Section 3413, title 12, United States Code is amended by adding the following new subsection (k): "(k) Nothing in this chapter shall apply to any subpoena issued by the President's Commission on Organized Crime, or by any member or the Executive Director of said Commission."

(f) A person to whom disclosure of information is made under this section shall use such information solely in the performance of his official duties for the Commission and shall make no disclosure of such information except as provided for by this joint resolution, or as otherwise authorized by law.

SEC. 9. SERVICE OF PROCESS; WITNESS FEES

(a) All process and papers issued by the Commission, or by any member of the Commission or any member of the staff of the Commission designated by the Chairman or the Commission for such purpose, shall be served at any place within the jurisdiction of the United States, by a United States marshal, by his deputy, or by any other person who is not a party and who is not less than eighteen years of age, in person, by registered or certified mail, by telegraph, or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served or at the principal office or place of business of the agent whom the person required to be served has appointed for receipt of service of process. When service is by registered or certified mail or by telegraph, the return post office receipt or telegraph receipt therefor shall be proof of service. Otherwise, the verified return by the individual making service, setting forth the manner of such service, shall be proof of service.

(b) With the exception of process and papers issued by a court pursuant to section 3 of this joint resolution, all process and papers of any court to which application may be made under this

joint resolution may be served in any judicial district wherein the person required to be served is found, resides, is domiciled, transacts business, or has appointed an agent for receipt of service of process. All process and papers issued by a court pursuant to section 3 of this joint resolution may be served in the manner and as provided in sections 1783 and 1784, title 28, United States Code.

(c) A witness summoned before the Commission or any subcommittee of the Commission, or before any member of the Commission or any member of the staff of the Commission, shall be paid the same fees and mileage as are paid witnesses in the courts of the United States. A witness whose deposition is taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

SEC. 10. POWERS OF INVESTIGATORS

(a) Investigators for the President's Commission on Organized Crime are authorized to carry firearms, to serve warrants issued pursuant to subsection (b) of section 2 or to section 4 of this joint resolution, and to make arrests with such warrants or without warrants for any felony cognizable under the laws of the United States committed in their presence. This authorization shall in no way constitute a repeal, abridgement, or limitation of any authority that such investigators possessed, at the time of their appointment to the staff of the Commission, as law enforcement officers under any statute or regulation of the United States, or of any State, county, or municipality therein, or of the District of Columbia.

(b) Section 1114, title 18, United States Code is amended by inserting immediately after "any officer or employee of the Federal Bureau of Investigation of the Department of Justice," the following: "any member or employee of the President's Commission on Organized Crime,".

SEC. 11. RULES AND REGULATIONS

The Commission shall have full power and authority to make such rules and regulations as are necessary to carry out the purposes of Executive Order 12435 and this joint resolution, including the power and authority to make and to adopt rules of procedure for the conduct of hearings by the Commission.

Mr. HUGHES. Our first and only witness today is judge Irving R. Kaufman. Judge Kaufman has served on the Federal bench with great distinction since he was appointed to the U.S. District Court for the Southern District of New York by President Truman in 1949. In 1961 President Kennedy appointed Judge Kaufman to the U.S. Court of Appeals for the Second Circuit. He served as chief judge of the second circuit from 1973 to 1980. In addition to his work on the Commission, he is carrying a full docket on the second circuit.

Judge, we are just delighted to have you with us this morning. We have your statement which, without objection, will be made a part of the record in full and you may proceed as you see fit. Welcome.

TESTIMONY OF HON. IRVING R. KAUFMAN, CHAIRMAN, PRESIDENT'S COMMISSION ON ORGANIZED CRIME, ACCOMPANIED BY JAMES HARMON, EXECUTIVE DIRECTOR

Judge KAUFMAN. Well, you're very kind, Mr. Chairman.

Mr. Chairman, Mr. Sawyer, and counsel of the subcommittee, I have to apologize for the delay but I will have to at the same time apologize for the weather which caused us to sit on the runway for 2 hours this morning. I'm sorry to delay this subcommittee convening.

I can read this statement or I can give you a quick summary. Perhaps I ought to start and if it's beginning to get protracted, then I will go to a summary.

Mr. HUGHES. That will be fine, however you desire to proceed.

Judge KAUFMAN. Thank you, Mr. Chairman.

I have been a Federal judge for 35 years, and I have had the privilege of appearing before subcommittees of the Committee on the Judiciary on numerous occasions. Today, however, I offer this statement not in my role as a member of the Federal judiciary, nor as a representative of the U.S. Judicial Conference, but rather as the Chairman of the President's Commission on Organized Crime, to urge your favorable consideration of House Joint Resolution 490.

As you know, the Commission was established by Executive order in July 1983. In announcing the formation of the Commission, President Reagan charged us with the difficult task of conducting a nationwide investigation of organized crime in both its traditional and emerging forms, and producing recommendations for legislative change, reforms in the administration of justice, and institutional remedies which would allow Federal, State, and local law enforcement authorities to confront more effectively the growing power of organized crime. As one aspect of this mandate, the Commission is directed to expose to the American public the nature and scope of organized criminal activity through a series of public hearings conducted across the Nation.

Cognizant of the enormity of our mission, the Commission on Organized Crime has commenced its investigation with dedication and vigor. The membership of the Commission includes persons with a broad range of expertise concerning the problems engendered by organized crime. Virtually all of the Commissioners are or have been engaged in law enforcement activities, some as prosecu-

tors, others as investigators or police officers. The Commission also includes two members of the Federal judiciary—your speaker and Supreme Court Justice Potter Stewart, two Members of Congress—Chairmen Thurmond and Rodino, two professors of law and a number of practicing attorneys. Our staff includes some of the Nation's most experienced organized crime prosecutors—here is one right to my right, Jim Harmon—including several attorneys who were members of the special organized crime strike forces which operate across the country. The Commission's investigators include agents from the Federal Bureau of Investigation, the Department of Labor, the Internal Revenue Service, and other Federal and State agencies. Together, the Commissioners and staff bring many years of insight and experience to our investigation. We believe that as a group, the President's Commission on Organized Crime is uniquely well situated to conduct an indepth, comprehensive investigation of organized crime, and to recommend changes that will allow law enforcement at all levels to challenge this menace.

The Commission has successfully launched this effort. We have conducted two public hearings—the first in Washington in November and recently in New York City. The Commission has also commenced work on several projects that may lead to the issuance of periodic staff reports.

The Commission's investigation will not be a superficial overview of organized crime, nor will our hearings merely present information already in the public domain. Rather, the Commission will endeavor to add to the knowledge that already exists concerning organized crime and the nature and scope of its influence. We expect that in many cases the disclosures that we make will provide new information to both the public at large and its elected or appointed representatives. Similarly, our recommendations will not be mere rubberstamps for the positions of any particular individual or political party. The Commission will be examining the phenomenon of organized crime with a fresh perspective, and it hopes to make a substantial contribution to the national effort against organized crime.

As you know, Chairman Rodino has introduced, at the request of the Department of Justice, House Joint Resolution 490, which would enable the Commission to subpoena witnesses, would authorize the initiation of civil or criminal contempt proceedings against persons who ignore these subpoenas, and would provide, in appropriate cases, for the compulsion of testimony from recalcitrant witnesses who invoke their constitutional privilege against self-incrimination.

It has become increasingly clear that we will be unable to fulfill our mandate unless Congress acts favorably on our request for subpoena, contempt, compulsion of testimony and other powers. I believe that it is critical and urgent that the Commission be vested with such authority if its work is to succeed. It is the hope of the Commission that the members of this subcommittee will appreciate the importance and urgency of these needs and will act expeditiously on the resolution which Chairman Rodino has introduced.

Our investigation is still at its early stages, but we have already encountered significant reluctance among individuals we have asked to meet with members of the staff, much less to appear at a

public hearing. Persons who have been directly involved in unlawful activities are understandably not enthusiastic over the prospect of presenting information to the Commission, yet such individuals are ideally situated to provide us with the knowledge we seek. Even more troubling, however, has been the reluctance of respectable, law-abiding members of the public to provide testimony or evidence to the Commission and its staff. In preparing for our most recent hearing in New York City, for example, the Commission's staff communicated with a number of representatives of the banking industry. To our dismay, almost all of them refused to even meet with members of the staff, and others who agreed to see them, declined our invitation to testify at the hearing.

Although we believe that our latest hearing was successful in exposing some of the problems associated with financial laundering schemes, we were and continue to be hampered by our inability to compel the production of testimony and evidence. As our work progresses, we have every reason to believe that this problem will become even more critical, since potential witnesses may have engaged in questionable conduct. Unless we are authorized to issue subpoenas and seek their enforcement through court orders of contempt, we are simply unable to develop and present the information we must to fulfill our mandate. What end does it serve to have a Presidential Commission to investigate organized crime, if it lacks subpoena power and is unable to compel attendance, testimony and the production of information. It makes such a Commission impotent, I submit.

Another critical requirement of the Commission on Organized Crime is not addressed in the proposed resolution. It is widely recognized that court-authorized wiretaps are a vital tool in investigations of organized crime figures, and the Commission seeks legal authority to obtain access, where appropriate, to the transcripts of court-authorized wiretaps.

The value of electronic surveillance in organized crime investigations cannot be overstated. Indeed, the legislative history of title III of the Omnibus Crime Control and Safe Streets Act of 1968 is replete with references to the importance of wiretaps in organized crime trials. The Senate report accompanying the draft bill, for example, quotes New York District Attorney Frank Hogan as stating that, "wiretapping is an indispensable weapon in the fight against organized crime," and the report further observes that "electronic surveillance techniques by law enforcement officials are indispensable legal tools" in organized crime cases. Similarly, the final report of President Lyndon Johnson's Commission on Law Enforcement and Administration of Justice—this is in 1967—noted that wiretaps are the most important tool which law enforcement authorities can employ in investigations of organized crime figures. I might note in passing that Justice Lewis Powell—I think he had just finished his term as the president of the American Bar—was on that Commission on Law Enforcement which was headed by Mr. Katzenbach.

I emphasize the Commission does not request authorization to conduct electronic surveillance, nor does it seek to disclose or to use information obtained through wiretaps in ongoing investigations and prosecutions where such disclosure or use would jeopard-

ize Federal law enforcement interests. The Commission believes, however, that title III information now available in files in Government agencies would be invaluable both in examining the wide range of activities in which criminal cartels engage, and in developing proposals to counteract the growing influence of these groups. The Commission does not seek blanket authorization to disclose the contents of the transcripts it may obtain, but does request authorization to make such disclosure in a limited number of cases. We would, of course, work closely with all concerned agencies, to guarantee that no disclosure would compromise an ongoing investigation or would improperly reveal confidential investigative techniques. Furthermore, the proposed statutory authorization concerning the Commission's access to this material—and what we're talking about is access, it's material already there—would provide explicitly for formal review of our requests by the Attorney General or his designee. I am confident that this mechanism is more than adequate to protect the interests of all parties in these circumstances.

Thus far, the President's Commission on Organized Crime has been undaunted in its effort to fulfill its goals without relying on subpoena, contempt, and compulsion authority, but it has been, I must confess, a frustrating task for the staff and Commission. We believe, moreover, that if the Commission is to complete its vital mission, it must be vested promptly with legal power to obtain the information it requires. The problem of organized crime is one which affects every American citizen. This disease transcends all geographic, ethnic, political, and social divisions, and is truly a matter of national concern. We ask for your support so that we may be able to accomplish the critical task to which we have been assigned.

I have already submitted a resolution which was adopted by the Commission on March 13—and that was a unanimous vote of the Commission—requesting your favorable consideration of House Joint Resolution 490.

I am very grateful to you for your courtesy to me for waiting for me and this opportunity to present this statement.

Perhaps it would be worthwhile before closing to read a portion of the President's talk in the rose garden when the Commission was sworn in. This is just one paragraph. "More than 23 years ago, as he sentenced defendants in a trial following the notorious Appalachian Conference in upstate New York, a Federal judge noted"—well, we might as well brush aside the anonymity, I am the Federal judge—"noted that the defendants before him had not stumbled into criminal activity thoughtlessly or because of underprivileged backgrounds. He referred to them as hardened, sophisticated criminals who thought of themselves as a group above the law, men who placed loyalty to each other above loyalty to their country and its law-abiding citizens. He noted that these men wear two faces, that they cloaked themselves in the respectability of charitable or civic organizations, even as they work to prey on innocent people and undermine the very moral foundations of our society."

Then he said, "Judge Kaufman, your words were true then, and unfortunately, they are true today. I want you and the members of the Commission here to know, as you seek subpoena power from

the Congress and go about the difficult tasks ahead of you, that you have my full support."

I thank you and, of course, I'm available for any questions you might want to put to me. I suggest, however, that Jim Harmon is far more knowledgeable on this subject, having spent most of his life, if not all of his adult life, in the prosecution and running down of organized crime, having started out with Frank Hogan and going on under Morgenthau and switching over to the Federal side with the strike forces and so forth. I'm sure Mr. Harmon will be happy to answer any questions you may have. Thank you.

[The complete statement follows:]

STATEMENT OF HON. IRVING R. KAUFMAN, CHAIRMAN, PRESIDENT'S COMMISSION ON ORGANIZED CRIME

I have been a federal judge for thirty-five years, and I have had the privilege of appearing before subcommittees of the Committee on the Judiciary on numerous occasions. Today, however, I offer this statement, not in my role as a member of the federal judiciary, nor as a representative of the United States Judicial Conference, but rather as the Chairman of the President's Commission on Organized Crime, to urge your favorable consideration of House Joint Resolution 490.

As you know, the Commission was established by Executive Order in July 1983. In announcing the formation of the Commission, President Reagan charged us with the difficult task of conducting a nationwide investigation of organized crime in both its traditional and emerging forms, and producing recommendations for legislative change, reforms in the administration of justice, and institutional remedies which would allow federal, state and local law enforcement authorities to confront more effectively the growing power of organized crime. As one aspect of this mandate, the Commission is directed to expose to the American public the nature and scope of organized criminal activity through a series of public hearings conducted across the nation.

Congnizant of the enormity of our mission, the Commission on Organized Crime has commenced its investigation with dedication and vigor. The membership of the Commission includes persons with a broad range of expertise concerning the problems engendered by organized crime. Virtually all of the Commissioners are or have been engaged in law enforcement activities, some as prosecutors, others as investigators or police officers. The Commission also includes two members of the federal judiciary—your speaker and Supreme Court Justice Potter Stewart, two members of Congress—Chairmen Thurmond and Rodino, two professors of law and a number of practicing attorneys. Our staff includes some of the nation's most experienced organized crime prosecutors, including several attorneys who were members of the special organized crime strike forces which operate across the country. The Commission's investigators include agents from the Federal Bureau of Investigation, the Department of Labor, the Internal Revenue Service and other federal and state agencies. Together, the Commissioners and staff bring many years of insight and experience to our investigation. We believe that as a group, the President's Commission on Organized Crime is uniquely well situated to conduct an in-depth, comprehensive investigation of organized crime, and to recommend changes that will allow law enforcement at all levels to challenge this menace.

The Commission has successfully launched this effort. We have conducted two public hearings—the first in Washington, D.C., in November, and recently in New York City. At our hearing in New York, we explored the problems engendered by financial laundering schemes, and we received testimony from a number of witnesses, including a federal agent with direct experience in laundering schemes, a major organized crime figure, and an official from the United States Department of the Treasury. The Commission has also commenced work on several projects that may lead to the issuance of periodic staff reports, and we have been actively progressing with our investigation of topics that will be the subjects of future hearings.

The Commission's investigation will not be a superficial overview of organized crime, nor will our hearings merely present information already in the public domain. Rather, the Commission will endeavor to add to the knowledge that already exists concerning organized crime and the nature and scope of its influence. We expect that in many cases the disclosures that we make will provide new information to both the public at large and its elected or appointed representatives. Similarly, our recommendations will not be mere rubberstamps for the positions of any par-

ticular individual or political party. The Commission will be examining the phenomenon of organized crime with a fresh perspective, and it hopes to make a substantial contribution to the national effort against organized crime.

As you know, Chairman Rodino has introduced, at the request of the Department of Justice, House Joint Resolution 490, which would enable the Commission to subpoena witnesses, would authorize the initiation of civil or criminal contempt proceedings against persons who ignore these subpoenas, and would provide, in appropriate cases, for the compulsion of testimony from recalcitrant witnesses who invoke their Constitutional privilege against self-incrimination.

It has become increasingly clear that we will be unable to fulfill our mandate unless Congress acts favorably on our request for subpoena, contempt, compulsion of testimony and other powers. I believe that it is critical and urgent that the Commission be vested with such authority if its work is to succeed. It is the hope of the Commission that the members of this Subcommittee will appreciate the importance and urgency of these needs and will act expeditiously on the resolution which Chairman Rodino has introduced.

Our investigation is still at its early stages, but we have already encountered significant reluctance among individuals we have asked to meet with members of the staff, much less to appear at a public hearing. Persons who have been directly involved in unlawful activities are understandably not enthusiastic over the prospect of presenting information to the Commission, yet such individuals are ideally situated to provide us with the information we require. Even more troubling, however, has been the reluctance of respectable, law-abiding members of the public to provide testimony or evidence to the Commission and its staff. In preparing for our most recent hearing in New York City, for example, the Commission's staff communicated with a number of representatives of the banking industry. We had hoped that these individuals would be able to inform us of the internal practices which banks have adopted or might consider implementing to assure that these financial institutions are not unwittingly used as a conduit for the transfer of unlawfully obtained funds to off-shore jurisdictions. To our dismay, almost all of them refused to even meet with members of the staff, and others who agreed to see them, declined to appear at the hearing.

Although we believe that our latest hearing was successful in exposing some of the problems associated with financial laundering schemes, we were and continue to be hampered by our inability to compel the production of testimony and evidence. As our work progresses, we have every reason to believe that this problem will become even more critical, since potential witnesses may have engaged in questionable conduct. Unless we are authorized to issue subpoenas and seek their enforcement through court orders of contempt, we are simply unable to develop and present the information we must to fulfill our mandate. What end does it serve to have a presidential commission to investigate organized crime, if it lacks subpoena power and is unable to compel attendance, testimony and the production of information?

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I emphasize the Commission does not request authorization to conduct electronic surveillance, nor does it seek to disclose or to use information obtained through wiretaps in ongoing investigations and prosecutions where such disclosure or use would jeopardize federal law enforcement interests. The Commission believes, however, that Title III information now available would be invaluable both in examining the wide range of activities in which criminal cartels engage, and in developing proposals to counteract the growing influence of these groups. The Commission does not seek blanket authorization to disclose the contents of the transcripts it may

obtain, but does request authorization to make such disclosure in a limited number of cases. We would, of course, work closely with all concerned agencies, to guarantee that no disclosure would compromise an ongoing investigation or would improperly disclose confidential investigative techniques. Furthermore, the proposed statutory authorization concerning the Commission's access to this material provides explicitly for formal review of our requests by the Attorney General or his designee. I am confident that this mechanism is more than adequate to protect the interests of all parties in these instances.

Thus far, the President's Commission on Organized Crime has been undaunted in its effort to fulfill its goals without relying on subpoena, contempt and compulsion authority, but it has been a frustrating task. We believe, moreover, that if the Commission is to complete its vital mission, it must be vested promptly with legal power to obtain the information it requires. The problem of organized crime is one which affects every American citizen. This disease transcends all geographic, ethnic and social divisions and is truly a matter of national concern. We ask for your support so that we may be able to accomplish the critical task to which we have been assigned.

I submit with this statement, a resolution which was adopted by the Commission on March 13, 1984, requesting your favorable consideration of House Joint Resolution 490.

Thank you for your time and consideration. James H. Harmon, the Commission's Executive Director and Chief Counsel, and I would be pleased to answer your questions.

RESOLUTION

Whereas Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (18 U.S.C. §§ 2520-2510) regulates the interception of wire or oral communications by investigative or law enforcement officers and the disclosure and use of the contents of such communications, or evidence derived therefrom, to other investigative or law enforcement officers; and

Whereas it appears that the legislative history and judicial interpretations of Title III do not permit the members and staff of the President's Commission on Organized Crime to be considered "investigative or law enforcement officers" to whom disclosure of information obtained pursuant to Title III may be made; and

Whereas the Senate Judiciary Committee has stated, with reference to Title III, that "intercepting the communications of organized criminals is the only effective means of learning about their activities"; and

Whereas the Commission has been charged by the President of the United States with the responsibilities, inter alia, for "evaluat[ing] Federal laws pertinent to the effort to combat organized crime" and "develop[ing] in-depth information on the participants in organized crime networks"; and

Whereas the Commission believes that even the authority to issue subpoenas, to immunize witnesses, and to seek judicial enforcement of Commission subpoenas—while vital to the work of the Commission—will not suffice for the Commission to fulfill these responsibilities if it is unable to obtain access to and use of Title III information (other than information from surveillances that are in progress or that were conducted in violation of Title III);

Now, therefore, be it resolved that the Chairman of the Commission be, and hereby is, authorized and directed by the Commission to inform the relevant committees and subcommittees of Congress that the members of the Commission unanimously agree that the Commission must have the authority to obtain access to, and to use, Title III information in order to fulfill its responsibilities.

Mr. HUGHES. Thank you, Judge, for a very fine statement and welcome, Mr. Harmon. Mr. Harmon has indeed had a most distinguished career and I've been following it over the years very closely.

Let me just, if I might, first try to garner some idea of just what type of staff you expect to take on and have taken on. You have been charged with finding the sources and amounts of organized crime income and the uses to which that income is put. I don't have to tell you that's an extremely complex undertaking.

Do you expect to hire consultants for that purpose? Do you expect to receive assistance from the various Federal agencies that might have that type of expertise or a combination of both?

Judge KAUFMAN. I'll answer it briefly and then turn it over to Mr. Harmon. The answer to that is unequivocally yes. We have members on the staff already who are so equipped and we expect to get the cooperation of representatives of the various agencies, and I believe Mr. Harmon can give you more detail.

Mr. HARMON. Yes, Mr. Chairman, we do intend to retain consultants to devise a method by which we can undertake this study, in essence, for the first time from the sources of information available to law enforcement. From what we've seen in the past, attempts to estimate organized crime's income have been made from public source information.

We would also point out that one of the techniques that we intend to examine as a way of making this determination is to, in essence, accept what organized crime figures have said is the source and the amount of their income, and we think that, based on my experience, that electronic surveillance and access to electronic surveillance is one of the surest ways to make that determination.

For example, it might be that there are results of electronic surveillance which when taken as a whole define and explain the skim that organized crime is in a position and does obtain as a result of casino gambling in some areas.

Mr. HUGHES. The budget anticipates a staff of 20 persons, as I understand it. Can you tell us generally the responsibilities of the staff, whether that anticipated staff of 20 persons is still relevant to what you deem to be your needs; and second, whether the staff will be conducting independent investigations?

Mr. HARMON. Well, the figure of 20 people as members of the staff refers to 20 permanent personnel assigned to the staff. In addition to that, we have been advised and we have taken advantage of the capability to have assigned to the Commission on a detail basis active agents from both Federal and local law enforcement who will be full-time members of the staff, thus, in that way extending the number of people on the staff beyond 20.

At this point, it looks like—well, I can tell you what the present status is. We have six attorneys presently onboard with the staff. We will probably increase that to seven. We will probably have a total of 16 to 17 investigators, plus the administrative support staff. The investigators themselves are headed by Chief Investigator Manuel Gonzales who spent approximately 6 years with the New York City Police Department as a detective and the balance of his time of 7 or 8 years with the FBI in New York handling organized crime cases.

So we will have a balance of both Federal agents, detectives from the New York City Police Department, as well as possibly two detectives from the Los Angeles Police Department. The chief of police there has our request under consideration.

Beyond active agents and detectives, we do have two investigators who have worked as investigators for various congressional committees in the past.

So we think that the budget that has been established and the way in which we are able to bring people onboard is sufficient for the Commission's purposes. In essence, there will be some investigative work done by the agents, in essence, to further develop areas which for one reason or another law enforcement may not have been able to develop in specific cases, always directed toward fulfilling the mandate from the President; that is, to determine the makeup of organized crime networks, organized crime's income and sources of that income.

Mr. HUGHES. Now obviously the law enforcement agents that are detailed to work with the Commission will have arrest, search, and seizure authority and the power to carry firearms. At one time the Commission sought such authority. As I understand it, that request has been dropped.

Mr. HARMON. Yes, sir. We have reached an alternate way of accomplishing the same effect through discussions with the Department of Justice. The Department of Justice has agreed on a case-by-case basis, individual by individual, to consider to deputize specific investigators with the President's Commission which would then give them the power to respond in unforeseen situations where they might be dealing with dangerous criminals to be in a position where they, for example, could defend themselves; in addition to that, to be able to serve Commission subpoenas. We think that would adequately handle the situation.

Judge KAUFMAN. That is deputized as Federal officers.

Mr. HUGHES. Yes; I understand. I have a number of questions about the Commission's request for access to wiretap transcripts, that is title III material. There have been a number of amendments to House Joint Resolution 490 recommended by the Department of Justice as submitted with their letter to Chairman Rodino copying Mr. Fish, Mr. Sawyer and myself. I notice that the letter that comes from the Department of Justice makes no mention of concurrence by the Commission.

[Information follows:]

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 4, 1984.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: On November 18, 1983, we transmitted to the Speaker, on behalf of the President's Commission on Organized Crime, a legislative proposal to provide the Commission with the statutory authority necessary for the performance of its important responsibilities. Subsequently, you kindly introduced the proposal, on behalf of the Commission, as H.J. Res. 490.

As the result of further review of the Commission's needs, we believe that section 7 of H.J. Res. 490 should be amended to authorize the Commission, in certain circumstances, to have access to and to use wire and oral communications intercepted in accordance with the provisions of Title III of the Organized Crime Control Act of 1970, 18 U.S.C. 250 et seq. Access to and use of such information would be important to the Commission's ability to discharge its responsibilities in developing detailed information concerning the operation of organized crime networks.

Enclosed are suggested amendments to section 7 of H.J. Res. 490 to accomplish this end. More specifically, we propose the redesignation of subsections (a) and (b) as subsections (e) and (f) and the addition of four new subsections. The proposed subsections (a), (b), (c), and (d) conform closely to the language of 18 U.S.C. 2517 (1), (2), and (3) but do not amend the provisions of Title III directly. The principal modification of the language now in Title III is the addition of a requirement that the Attorney General determine that disclosure of Title III information "will not jeopardize feder-

al law enforcement interests." The purposes of this limitation are to help assure against any accidental jeopardizing of ongoing law enforcement activities or disclosure of the identities of confidential informants, and otherwise to reduce the potential for disclosures that unknowingly could undermine law enforcement efforts.

With this modification, we believe H.J. Res. 490 would give the Commission important powers it needs to carry out the mission assigned it by the President. Of course, representatives of the Department of Justice are available at your convenience to discuss any aspect of H.J. Res. 490 with you or your staff. In the meantime, we appreciate your prompt attention to this issue.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General.

Enclosures.

PROPOSED AMENDMENTS TO H.J. RES. 490

(1) Paragraph (e) of section 1 is amended by inserting the following language after "section 7,": "the terms 'wire communication', 'oral communication', 'intercept', and 'contents' have the meanings set forth in section 2510, Title 18, United States Code, and".

(2) Subsections (a) and (b) of section 7 are redesignated subsections (e) and (f), respectively.

(3) New subsections (a), (b), (c), and (d) are inserted in section 7, reading as follows:

"(a) Nothing in chapter 119, Title 18, United States Code shall be deemed to prohibit an investigative or law enforcement officer who, by a means authorized by said chapter, has obtained knowledge of the contents of a wire or oral communication, or evidence derived therefrom, may disclose such contents to the Commission or to a member of the Commission or a member of the staff of the Commission designated by the Chairman or the Commission for such purpose, to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure, or the official duties of the Commission, the subcommittee of the Commission, the member of the Commission, or the member of the staff of the Commission receiving the disclosure, and conforms with procedures promulgated by the Attorney General to ensure that he, or his designee, can determine that such disclosure will not jeopardize current or future federal law enforcement interests.

(b) Nothing in chapter 119, Title 18, United States Code shall be deemed to prohibit a member of the Commission or a member of the staff of the Commission, who, by a means authorized by this Act, has obtained knowledge of the contents of a wire or oral communication, or evidence derived therefrom, from using such contents to the extent that such use is appropriate to the proper performance of his official duties.

(c) Nothing in Chapter 119, Title 18, United States Code, shall be deemed to prohibit the Commission, or a member of the Commission, or a member of the staff of the Commission, who by a means authorized by said chapter, has obtained knowledge of the contents of a wire or oral communication, or evidence derived therefrom, may disclose such contents to the extent that such disclosure is appropriate to the proper performance of his or the Commission's official duties, with the approval if the Attorney General, or his designee, determines that such disclosure will not jeopardize federal law enforcement interests.

(d) Nothing in chapter 119, Title 18, United States Code, shall be deemed to prohibit a person who has received, by a means authorized by said chapter, information concerning a wire or oral communication, or evidence derived therefrom, intercepted in accordance with the provisions of said chapter, from disclosing the contents of that communication or such derivative evidence while giving testimony under oath or affirmation in a proceeding before or ancillary to the Commission, if the Attorney General or his designee determines that such disclosure will not jeopardize federal law enforcement interests.

Mr. HUGHES. Is the proposed amendment one that the Department has developed or is the Department merely transmitting it on behalf of the Commission? I wonder if you could enlighten me. Does the Commission have any reservations about the proposed amendment?

Judge KAUFMAN. Mr. Harmon has been involved deeply in discussions with the Department about that.

Mr. HUGHES. Well, this is the area that gives me the most concern. Can somebody tell us just exactly what the status of that is. Is that the position of the Commission?

Mr. HARMON. Yes, sir. We have, after discussions in which the Department's concern has been expressed to the Commission, in essence, the Department of Justice and the Commission have agreed on the substance of the proposed legislation and, in addition to that, to the specific procedures by which, if enacted, this legislation would be implemented.

Mr. HUGHES. I want to get into that just a little bit more if I might. In the first subsection providing for disclosure for the Commission to receive any title III material, the investigative officer who has knowledge of the title III contents cannot disclose the contents to the Commission unless the officer conforms to the procedure promulgated by the Attorney General and ensures that the contents will not jeopardize Federal law enforcement interests.

That raises a number of very important issues to me. First, I wonder if you can explain what procedures are envisioned that would ensure that Federal law enforcement interests will not be jeopardized? Have they been agreed upon? Are they available for submission to this subcommittee? If not, when can we expect that to be promulgated?

Mr. HARMON. The procedures have been agreed upon. I am prepared to outline those for you now, Mr. Chairman, and submit them in writing subsequent to the hearing this morning.

Mr. HUGHES. That will be fine.

Mr. HARMON. The Department of Justice and the President's Commission have agreed upon the means by which the proposed legislation would be implemented in the event of its passage in its present form.

Recognizing the need for expedition and flexibility in the conduct of the Commission's affairs, the Commission's investigators, in most cases Federal agents familiar with the conduct of electronic surveillance, would be advised of the existence of pertinent electronic surveillance at the field agent level in order to determine its relevance, if any, to the work of the Commission.

If upon this preliminary inquiry the Commission's investigator believes that the electronic surveillance information is necessary for the performance of the Commission's duties, then the Commission staff, upon notice to the Department of Justice, will request the investigative agency to furnish the Commission with copies of designated tapes, logs, transcripts or associated documentary materials.

The investigative agency may decline to furnish those materials if to do so would jeopardize the interests of Federal law enforcement. The Department of Justice has agreed that all such requests would be acted upon within 24 hours of their having been made by the Commission.

Once in possession of the Commission, electronic surveillance materials would be maintained under secure conditions.

In the event that the Commission contemplated the disclosure of the contents of electronic surveillance, for example, at a public

hearing or in an interim or final report to the President and to the Attorney General, any such disclosure could be accomplished only upon the approval of the Attorney General or his designee. If approval were withheld, the Attorney General would certify to the Commission that the contemplated disclosure would jeopardize Federal law enforcement interests.

So if I could summarize that for a moment, Mr. Chairman, our investigators would be advised in very general terms that there existed certain electronic surveillance which would be relevant to the work of the Commission. Before going into any more detail, the Attorney General's approval would be required in conjunction with a request made by the agency.

Once access has been given to the Commission, in the event that disclosure is contemplated beyond that in some public fashion, once more the approval of the Attorney General would be required.

We think this accommodates the needs of the Commission to have ready access to this material and it also accommodates the needs of Federal law enforcement.

Mr. HUGHES. Are you asking for access to title III information only in regard to closed cases or also ongoing investigations? I noticed in the statement that was prepared for submission 2 weeks ago that it referred, I believe, to closed cases. Now I've noted that you dropped any reference to that. Can you enlighten me on that?

Mr. HARMON. Well, insofar as closed versus ongoing cases are concerned, the same matters and the same way of resolving the issue would be dealt with with the Department of Justice. It may be that in certain very limited instances—the question perhaps is resolved by what is meant by a closed case and what is meant by an ongoing case.

Mr. HUGHES. Let me be more specific. Let's assume we have an ongoing wiretap. Are you seeking access to that information?

Mr. HARMON. Not to that information, no; but it may be that in an ongoing investigation the electronic surveillance has been concluded and it may be the conclusion of the Department of Justice, for example, that giving access to electronic surveillance which has been completed would not compromise any law enforcement interests.

Judge KAUFMAN. May I interject something at this point, Mr. Chairman?

Mr. HUGHES. Yes, sir.

Judge KAUFMAN. Chairman Rodino, as a member of the Commission, knows of the many weeks of discussion that I had with representatives of the Department over the independence of this Commission and, finally, I feel perfectly at ease over the fact that Attorney General Smith is absolutely determined that the Commission be independent. As a matter of fact, the idea of this Commission was his and he took it up with the President and the President endorsed it.

At the beginning, there was some uncertainty as to whether we were merely going to be an arm of the Department of Justice. Well, I was assured—after some discussions that I wasn't involved in—that I wasn't undertaking anything where I was in effect becoming at this late stage in my career an employee of the Department of Justice, that we had our independence.

At the same time, having been way back in my career in the Federal D.A.'s office, I have to be pragmatic and understand that we cannot interfere if there is a legitimate ongoing investigation and it may jeopardize that inquiry, and that we ought to, in a case of that kind, accept the word of the Attorney General and sit on the sidelines until we're sure that we will not jeopardize that and let them go ahead with the prosecution.

Mr. HUGHES. I understand. As you know, title III is the basic wiretap law for the entire country, not just Federal law enforcement but for State enforcement personnel as well.

Will this procedure—that is the Attorney General review—be applied to any State or local law enforcement official's disclosing title III contents to the extent that such disclosure is appropriate in the proper performance of that official's duties?

Mr. HARMON. The legislation does not address in any way access to a State-conducted electronic surveillance.

Mr. HUGHES. Shouldn't we attempt to address that?

Mr. HARMON. We think it's a question of who is in the best position to protect that information and we would suggest that, because of the wide variety of electronic surveillance statutes that exist State by State, that that can be handled by the Commission staff on a case-by-case basis dealing face-to-face with local law enforcement.

Mr. HUGHES. Suppose the Attorney General of the State of New Jersey determines that the title III information would jeopardize his ongoing investigation and requests you not to move forward? What would prevent you from moving forward and disclosing that information publicly under the proposal which has been submitted? Are there any impediments?

Mr. HARMON. This proposed legislation simply does not address that question at all.

Mr. HUGHES. Well, my question is, should we not be addressing that issue as well? Isn't it just as important to protect State investigations?

Mr. HARMON. We think it is important. I can speak from our experience thus far. We have received many requests, both from the Federal and State and local law enforcement, not to disclose or not to follow up on certain leads for the very same reasons which you suggest. We have honored those in every case.

It may also be a question, since the Department of Justice in essence plays no role in the approval of the conduct of State-conducted electronic surveillance in the first place, it may be a question that I'm certainly not prepared to address at this point as to whether or not there is a Federal power to deal with that situation in the case of a stalemate with a State agency. But as I say, we think this can be addressed on a case-by-case basis and the answer is from the standpoint of the Commission staff that we would abide by the decision of law enforcement which is in the best position to know whether or not the disclosure or giving us access to electronic surveillance information would jeopardize or compromise State law enforcement interests.

Mr. HUGHES. Well, obviously, the Justice Department, looking strictly speaking at Federal law enforcement ongoing investigations, was concerned that there would be some veto as such with

ongoing investigations, or insofar as closed cases where it might compromise assets, informants and other individual identities felt that there should be that right of the Justice Department to protect the Federal law.

Why shouldn't the parallel with regard to State law enforcement apply?

Judge KAUFMAN. If I may inject at this point, Mr. Chairman, isn't this similar to the problem encountered regularly by U.S. attorneys and isn't it worked out generally by cooperation with State authorities?

Mr. HUGHES. Sometimes.

Judge KAUFMAN. Sometimes, and sometimes it isn't. I do not perceive that a U.S. attorney has any power over a State law enforcement body like the attorney general of the State of New York, for instance, to compel him to disclose something. It's a question I better not speak on. It may come before our court. But at the present moment, they seem to work in harmony, and most recently we all read about the 21 defendants arrested in the city of New York and the U.S. attorney and the State people and the city police commissioner, et cetera, all being present at a press conference and taking the necessary bows for what had been achieved.

So I imagine it would put us pretty much in the same position. I wouldn't like to see any prohibition written into the act dealing with the State authorities. They can raise the question and I'm sure that we are sensible enough to know what to do.

Mr. HARMON. If I could point out one other thing, Mr. Chairman, in response to that question, as you can see from the composition of the Commission itself and from the staff, there is a recognition that State and Federal and local law enforcement are equal partners in the fight against organized crime. Also, in addition, having representation both on the staff of the Commission and the Commission itself from local law enforcement, the staff is organizing regional advisory teams around the country to deal with a region-by-region analysis which we are required to do which also will consist of Federal, State, and local law enforcement.

So I really echo and elaborate on the statement that Judge Kaufman has made that we think that these kinds of concerns, although we are not a law enforcement agency, will be worked out in the same fashion as is the custom with law enforcement.

Mr. HUGHES. The gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman.

Judge, at some point in the past there was some request or something that I read about the investigators carrying guns.

Judge KAUFMAN. It's been eliminated, Mr. Sawyer.

Mr. SAWYER. Also, the power of arrest and warrants?

Judge KAUFMAN. That's what Mr. Harmon referred to that has been worked out with the Department of Justice so, if necessary, they would be deputized.

I think a good many of the commissioners, upon reflection, did not want to appear as if we have a lot of gun-toting investigators.

Mr. SAWYER. Do you have any ability within your rules to close your meetings or conduct closed meetings?

Judge KAUFMAN. That's a very interesting question. We can only do that under the Sunshine Act and that poses many problems be-

cause there are very restrictive exceptions. So on two occasions when we have closed for the day we have had to try to meet one of those exceptions.

But in this area, where one is dealing with organized crime, it is entirely conceivable that someone may say:

Well, you had a closed meeting and you came within the spirit of one of those exceptions but we don't think you actually fell within that exception, and therefore we are going to litigate.

Now I said I was pleased you raised the question because coming down here I was thinking about the fact that this Commission has less than 2 years to go. All we need now is to be tied up in litigation over some uncertain language and we close our meetings and put proper notice in the Federal Register and so forth, but it is a constant source of concern to us that we can't have more closed hearings and this type of inquiry lends itself to a closed meeting occasionally.

Although the President's mandate is to have open hearings in the manner in which the Kefauver committee had operated, which is more than 30 years ago, so the public could be informed, it is a matter of concern that we may not fall squarely within these exceptions in the Sunshine Act and perhaps it would be entirely up to the committee to consider whether or not we should have an exemption from it.

Mr. SAWYER. Well, I asked the question because a number of Congresses ago I was on the Select Committee on Assassinations in the House. We investigated both the King and Kennedy assassinations and we did have occasion to have closed meetings. We found out, as I'm sure you either have known from your own experience or will know, that these kind of hearings, particularly televised ones, tend to attract nuts much in the way a flame will attract a moth. Before you can stop them they suggest in testimony the names of FBI agents that they knew were conspiring to murder the President or something like that and naming names. No matter what you do you can't really undo the damage that they have done.

Judge KAUFMAN. That's a very perceptive observation. It's happened already. I received some letters after our last meeting.

Mr. SAWYER. We became aware of that problem and eventually we adopted a practice of conducting closed hearings. When we had covered a certain amount of subject matter and eliminated that kind of material, we opened the meetings and went back over the part that we felt was legitimate and had some sound foundation and were not just unfounded accusations against people.

I just was concerned about that.

Judge KAUFMAN. How did you achieve that? Did you have it written right in your powers?

Mr. SAWYER. We had a regular little litany but it has now been so long ago that it escapes me, but it had something to do with having the likelihood to damage or impugn the reputations of innocent people.

Judge KAUFMAN. Congress gave you that power when the committee came onboard?

Mr. SAWYER. Yes; there was a regular little litany where we would read from the rule something about the material being

likely to involve the damaging of reputations of innocent people or something to that effect.

Judge KAUFMAN. I wonder if Mr. Harmon knows about that.

Mr. SAWYER. We would close the meeting and then after we found out that whatever information we gathered had some support in evidence and even though maybe it was not proved at least it was not just whole cloth. We ran into a lot of things that were whole cloth; witnesses named names of people that in the view of the witness had something to do with the assassination of the President or the assassination of King, and some of it we could outright prove to the contrary with information we already had. We were constantly fighting a battle of not getting innocent people involved. In this kind of hearing, for example, where you have called in banks and so on, certainly very damaging implications could be raised on something that turns out to be totally innocent and not involved at all. It just seemed to me there was some advantage to being able to at least hear and then check out those things before you give some bird the national podium to make a lot of unfounded accusations.

Judge KAUFMAN. On the way down, as a matter of fact, I said to my former law clerk acting temporarily as my assistant here to help me, that I was concerned over the need for us to draft a bill of rights—and I called it a bill of rights—for those who will be appearing before the Commission, and I think that should be an early order of business of our executive director and the Commission and staff.

Moreover, I believe it would be wise—I will leave it to Mr. Harmon for him to discuss this further perhaps with your committee counsel and work out some language if it can be worked out. Is that feasible, Jim?

Mr. HARMON. Yes; it is, Judge Kaufman. In our draft that was submitted to Alan Parker, there is reference in there to exemption from the notice requirements of the Federal Advisory Committee Act that we think would give us the flexibility that we need to do just that kind of thing.

In addition to that, in our proposed draft to Mr. Parker, we also do address the idea of adopting rules of procedure which would cover in a very specific way the concerns of dealing with innocent people where there is no basis for laying on the record certain allegations against them which may be unfounded. We intend, before we do anything—make any reference to any person—for it to be obvious on the record that there is a reliable and credible and provable basis for presenting evidence at a public hearing.

Judge KAUFMAN. I might add in connection with the last public hearing that every one of the witnesses had been seen, as were others, privately by staff, not the Commission but by the staff, and screened privately.

Mr. SAWYER. I presume that your meetings have been televised or at least are available for television.

Judge KAUFMAN. Yes; I suppose so. You're talking about the open meetings?

Mr. SAWYER. Yes; I would just throw out the caveat that we ran into early on some problems with that. We had these professional investigators who wanted to come in and testify or book writers or

what not, just to get on national television. They will do about anything and, unfortunately, say about anything. So I'm glad you have that concern because I personally have no problem with these subpoena powers or certainly the powers to review wiretaps or anything else to responsible people but, strangely enough, the Congress has a great fear of giving subpoena powers. As a practicing attorney you can go over to the clerk's office and get a handful of signed subpoenas and just throw them out of your office and have them served. Congress seems to feel like it is giving you the power to administer the death penalty and I don't know where it gets that, but even on the congressional committees it is very loathe to give subpoena power.

Judge KAUFMAN. Congress has voted in the past to give subpoena powers, of course, to the Warren Commission, the Wiretap Commission, and the President's Commission on the Accident at Three-Mile Island and the National Gambling Commission and there have been others, so this is not the first. As a matter of fact, I think probably the mandate in this particular instance requires that subpoena power more than even any of these others, even though they did too. As I said before, we are absolutely impotent without subpoena powers. The question is to be sure that it's not misused and that concerns me daily as a judge, and I am concerned also about the part you raised, very much concerned about it, and I talked with Jim Harmon about that early on and we agreed that we would never have what some other committees have engaged in and that is a circus, have the bag on the head or anything of that kind.

Mr. SAWYER. In a courtroom you do not provide the attraction for the kind of people that these open committee hearings do with national television.

Judge KAUFMAN. We get enough of that.

Mr. SAWYER. If something is said in the courtroom it's still pretty much under the control of the judge and probably doesn't reach the national media anyway very often, and I'm just delighted to hear you are conscious of the problem because it's a problem that concerns me. These kind of hearings as opposed to grand jury investigations where you don't have that risk or that problem is what concerns me.

Well, thank you very much. I yield back, Mr. Chairman.

Mr. HUGHES. Thank you. I too want to echo my colleague's sentiments. I am very happy to learn of your sensitivity. That was the next area of inquiry I was interested in, the question of potential to harm innocent people, and as my colleague from Michigan has aptly stated, that there are those who will say anything to get headlines. I think it is important to have in place procedures to scrutinize particularly wiretapping intervention that often carries gratuitous comments by people in talking who are braggadocio in nature that often has little substance, but public disclosure can damage one's reputation without any foundation.

Judge KAUFMAN. It's a very serious thing. I have been critical in the past of congressional committees, privately critical, I might say over the years. So I just hope we can be very conscious of that problem.

Mr. HUGHES. I gather that one of the major goals at least citing from the Executive order of the Commission is to expose to the American people the small group of career criminals who run the rackets and the mandate is to mobilize the American people and trigger the kind of public support that is vital. So it's contemplated, as I gather from the Executive order and from what I have seen thus far, that one of the rules of the Commission is to publicize the identities of the participants and the details. Am I correct in that?

Judge KAUFMAN. That's right. That's what the President wanted.

May I just in connection with that read what I had to say in the White House press conference before the Commission members were presented. I quoted from my sentencing of the Appalachian case where 20 defendants were sentenced, and then I went on and I said:

These words are as true today as they were 23 years ago. Organized crime is like a pervasive cancer spreading throughout all levels of society. It is not enough to kill individual cells. We must devise new ways of getting at the cancer itself or we will never get rid of the scourge of organized crime.

I have on one or two other occasions enlarged on that, and it seems to me that a dent hasn't even been made in the fight against organized crime. I do not for one moment denigrate what the Department of Justice or prosecutors have done, but you put these fellows in jail and they seem to have others standing in line ready to take their place or they operate out of prison. So something has to be found.

Crime is more organized. There are different types of organized crime today than there ever were and it's growing, if anything. And so I think that we ought to consider ourselves, in addition to everything else, almost like a research body. What is it that has not been done that could be done so that we can get at this?

Off the top of my head, I would say devising methods to get at the money, the profits, cut it off in some way. Putting them in jail apparently has not been the answer. It's necessary, but it has not answered it.

Mr. HUGHES. I quite agree. I think that we all share your strong sentiments that they should be identified, the organized crime elements in our society. The first order of business is to protect criminal investigations that are ongoing and equally important is to protect the innocent people who perhaps in the context of investigations suffer some type of disclosure which could damage irreparably fine people throughout the country. Certainly attempting to ascertain what emerging types of crime we see so that we can attempt to anticipate and develop new tools and techniques and strategies to deal with the criminal element is important and your Commission can provide invaluable assistance to the law enforcement community and this country, and I fully expect good work to come out of the Commission.

Judge KAUFMAN. You're very kind, Mr. Chairman. Sometimes I wonder, to be very candid with you, why I ever accepted this. At my time in my career, after 35 years as an active Federal judge of all of the courts except the Supreme Court, but there was a call to duty and I couldn't resist it, and it has been very difficult to this point and there's never a day that passes that I do not say how did I get into this?

Mr. HUGHES. I thought maybe you missed a meeting. I was always elected secretary of organizations when I missed a general meeting. I thought perhaps that you missed some meetings. [Laughter.]

In any event, I'm sure you were selected because the President felt that you would do a superb job providing leadership to this Commission.

The gentleman from Michigan.

Mr. SAWYER. I might say that Chief Justice Warren was led kicking and screaming into the chairmanship of the Warren Commission too, if you recall.

Judge KAUFMAN. Yes; he was, and I might say he regretted it time and time again. He told me so.

Mr. SAWYER. There is one thing you or your counsel might take a look at. Italy within the last year or two has adopted a horrendous law—I do not think it would fit within any part of our Constitution—aimed at the Mafia, and it has been fantastically successful. There are virtually no heads of any organized crime families that are still alive and not fugitives or not in prison now under that law and it allows arrest by association. If you're seen with other people with known records you can be held without bail and with trial for up to 4 years and released for 2 days and then re-arrested for another 4 years.

I'm sure there may be some parts of that law, though, that maybe we could use. At least they ought to be studied because they have just rendered a fantastic difference in Italy in the last 2 or 3 years since the general of police was killed in Sicily. That killing had a tremendous impact. At least it is something we ought to take a look at to see if there's anything we might use.

Judge KAUFMAN. I might say en passant that I heard the other day on the air that the chief prosecutor in Sicily had been assassinated and I don't know whether the chairman would like to hear this, but nevertheless, the trail leads back to New Jersey.

Mr. SAWYER. Most trails do lead back to New Jersey. The chairman comes from the only crime-free part of New Jersey, Atlantic City. I feel comfortable with the chairman who was a former prosecutor up there. But New Jersey has always been, as I keep telling him, quite an infamous State in the Mafiosa way.

Mr. HUGHES. We get them from Michigan and New York. [Laughter.]

I represent a very beautiful area of the State of New Jersey, the seashore area.

Judge, I was assured to know of your sensitivity, particularly with regard to information. As my colleague from Michigan said, I did serve 10 years in law enforcement and so my natural bent is to be extremely supportive of law enforcement initiatives, but I saw in Abscam in particular how reputations can be held up to ridicule without any foundation whatsoever, and once again, most vividly, it made me realize how important our system of protection of individual rights are.

Thank you very much. We look forward to working with you and we appreciate your testimony and good luck with your endeavors.

Judge KAUFMAN. Thank you, Mr. Chairman.

Mr. HUGHES. The subcommittee stands adjourned.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

ADDITIONAL MATERIAL

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 11, 1984.

Hon. WILLIAM J. HUGHES,
Chairman, Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: By letter dated April 4, 1984, the Department of Justice forwarded to Chairman Rodino proposed amendments to H.J. Res. 490 that would authorize disclosure to and by the President's Organized Crime Commission of wire and oral communications intercepted in accordance with provisions of Title III of the Organized Crime Control Act of 1970, 18 U.S.C. 2510 et seq., if the Attorney General or his designee determines that such disclosure will not jeopardize federal law enforcement interests. At the April 5 hearing held by the Subcommittee on Crime you expressed interest in the procedures that would be applicable to Title III disclosures if the proposed legislation were adopted. This letter sets forth in summary fashion the basic elements of the arrangement between the Department of Justice and the Commission regarding this matter. In essence, the procedures outlined below are those referred to in the testimony of Judge Kaufman and James Harmon at the hearing.

With respect to disclosure of Title III information to the Commission, a four-step authorization process is contemplated, as follows:

(1) A federal agent who becomes aware of the relevance of Title III information in his possession to the Commission's work will promptly inform the Commission investigator who is conducting an inquiry into the subject area of the existence, but not the content, of such information.

(2) Upon request by the investigator for access to such information, the agent will immediately apply to the Attorney General or his designee, in accordance with agency procedures established for the purpose, for authorization to disclose the information.

(3) Within 24 hours of the investigator's request, the Attorney General or his designee will authorize such disclosure as he determines is appropriate to the proper performance of the agent's duties and will not jeopardize federal law enforcement interests.

(4) If the Attorney General or his designee authorizes disclosure, the agent having custody of the tapes, logs, or transcripts containing the requested information will promptly make copies available to the investigator. The Commission will maintain such material under conditions of security equal to those employed by the agency from which the material was obtained.

The agreed upon procedures for authorizing disclosure of Title III information by the Commission—whether in public testimony or in an interim or final report—will be as follows:

(1) The Executive Director will make application to the Attorney General or his designee for authorization to make the disclosure, specifying the information to be disclosed and the manner of disclosure.

(2) Upon such application, the Attorney General or his designee will authorize such disclosure as he determines will not jeopardize federal law enforcement interests.

Interest has also been expressed, on behalf of the Subcommittee, with regard to authority to seek writs of habeas corpus ad testificandum and court orders enforcing subpoenas issued by the Commission, as provided in Sections 3 and 4 of H.J. Res. 490. The Department has advised the Commission that any such applications will be made promptly, and that attorneys for the Commission will assist in the preparation of the necessary papers and participate fully in the presentation of oral argument to the court.

I trust that this information will assist you, and thank you for your prompt attention to the proposed legislation.

Sincerely,

ROBERT A. McCONNELL,
Assistant Attorney General.