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— FILE —  
**Alaska State Legislature**

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Vice Chairman — Legislative  
Regulations Review  
Resources  
Finance Sub Committee on Labor



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**House of Representatives**

John J. Liska

May 9, 1984

M E M O R A N D U M

TO: Senate Judiciary Committee

FROM: Rep. John J. Liska

REFERENCE: The purpose of HB 626, "An Act relating to the crime of conspiracy".

The purpose is to make easier the arrest of individuals who are involved in the planning and organization of criminal activities. Such as drug dealers and pornographers.

The following material is attached:

A. Alaska Statute 11, Chapter 31-attempt and solicitation.

B. Department of Public Safety position paper.

C. Fiscal Note.

D. Articles on organized crime.

1. From Bital Speeches of the Day - "Combatting Organized Crime".
2. Newsweek - "How the Mob Really Works", January 5, 1981.
3. Newsweek - "A Squealers Secrets", January 5, 1981.  
"And Now the Israeli Mafia"
4. Newsweek - "Rico the Enforcer", August 20, 1979.
5. Business Week - "Investment", January 10, 1983.
6. Newsweek - "Life in Hiding", January 5, 1981.
7. Nations Business - "Bad News for Labor Racketeers", Oct. 1982.
8. Business Week - "A New Ploy to Fight Takeovers", May 24, 1982.

Secs. 11.20.140 — 11.20.277. Larceny. [Repealed, § 21 ch 166 SLA 1978. For current provisions on theft, see AS 11.46.100 — 11.46.290.]

Secs. 11.20.280 — 11.20.340. Embezzlement. [Repealed, § 21 ch 166 SLA 1978. For theft by failure to make required disposition of funds received or held, see AS 11.46.210.]

Sec. 11.20.345. Extortion. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.41.520.]

Sec. 11.20.350. Receiving Stolen Goods. [Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.190 and 11.46.210.]

Secs. 11.20.360 — 11.20.510. False Pretenses and Frauds. [Repealed, § 21 ch 166 SLA 1978. For theft by deception, see AS 11.46.180; for business and commercial offenses, see AS 11.46.600 — 11.46.730.]

Secs. 11.20.515 — 11.20.650. Malicious Mischief and Trespass. [Repealed, § 21 ch 166 SLA 1978. For criminal trespass, see AS 11.46.320 — 11.46.350; for criminal mischief, see AS 11.46.480 — 11.46.486.]

Sec. 11.20.660. [Renumbered as AS 11.76.120.]

Secs. 11.20.670 — 11.20.690. Misuse, Damage, or Destruction. [Repealed, § 21 ch 166 SLA 1978. For criminal mischief, see AS 11.46.480 — 11.46.486.]

### Chapter 22. Alaska Credit Card Crimes Act.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.285 — 11.46.290.]

### Chapter 30. Offenses Against Public Justice.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.56.]

### Chapter 31. Attempt and Solicitation.

<p>Section 100. Attempt 110. Solicitation 140. Multiple convictions barred</p>	<p>Section 150. Substantive crimes involving attempt or solicitation</p>
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Collateral references. — 21 Am. Jur. 2d Criminal Law, §§ 158 — 162.

22 C.J.S., Criminal Law, §§ 73 — 78.  
What amounts to attempt to manufacture intoxicating liquor within criminal law, 22 ALR 225.

Solicitation to crime is substantive common-law offense, 35 ALR 961.

What constitutes attempt to commit robbery, 55 ALR 714.

What conduct amounts to an overt act or act done toward commission of murder so as to sustain charge of attempt to murder, 93 ALR 918.

Criminal offense of obtaining money under false pretenses, or attempting to do so, predicated upon receipt or claim of benefits under insurance policy, 135 ALR 1167.

Attempt to commit crime as to driving, being in control of, or operating a motor vehicle while intoxicated, 47 ALR2d 590.  
Entrapment to commit or attempt abortion, 53 ALR2d 1156.

What justifies escape or attempt to escape, or assistance in that regard, 70 ALR2d 1430.

Attempt to commit assault as criminal offense, 79 ALR2d 587.

Fact that gun was unloaded as affecting criminal responsibility for attempt to commit murder, 79 ALR2d 1432.

Attempts to receive stolen property, 85 ALR2d 259.

Attempt to escape or commit prison breach as affected by means employed, 96 ALR2d 520.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 ALR2d 241.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR2d 1351.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony, 34 ALR2d 858.

Comment note on impossibility of consummation of substantive crime as defense in criminal prosecution for conspiracy or attempt to commit crime, 37 ALR2d 375.

What constitutes attempted murder, 54 ALR2d 612.

Temporary unauthorized absence of prisoner as escape or attempted escape, 76 ALR2d 695.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny, 76 ALR2d 842.

Robbery, attempted robbery, or assault to commit robbery, as affected by intent to effect or secure debt or claim, 100 ALR2d 1309.

...of information in receiving property or in attempting to escape, rather than in taking property, as element of robbery, 93 ALR3d 643.

What constitutes attempted bank robbery under 18 USC § 2113(a), making it offense to take or attempt to

take, by force, violence, or other threat of any property, money, or other thing of value from bank, 37 ALR Fed. 233.

Criminal responsibility under 18 USC § 21(a) of one who lacks capacity to commit an offense but who causes another to do so, 62 ALR Fed. 769.

Sec. 11.31.100. Attempt. (n) A person is guilty of an attempt to commit a crime if, with intent to commit a crime, the person engages in conduct which constitutes a substantial step toward the commission of that crime.

(b) In a prosecution under this section, it is not a defense that it was factually or legally impossible to commit the crime which was the object of the attempt if the conduct engaged in by the defendant would be a crime had the circumstances been as the defendant believed them to be.

(c) In a prosecution under this section, it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, prevented the commission of the attempted crime.

(d) An attempt is a

- (1) class A felony if the crime attempted is an unclassified felony;
- (2) class B felony if the crime attempted is a class A felony;
- (3) class C felony if the crime attempted is a class B felony;
- (4) class A misdemeanor if the crime attempted is a class C felony;
- (5) class B misdemeanor if the crime attempted is a class A or class B misdemeanor.

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony. (§ 2 ch 166 SLA 1978; am § 1 ch 102 SLA 1980; am § 10 ch 45 SLA 1982)

Cross references. — For legislative purpose of ch 45, SLA 1982, see § 1, ch. 45, SLA 1982 in the Temporary and Special Acts

Effect of amendments. — The 1980 amendment added subsection (e).

The 1982 amendment, substituted "an unclassified felony" for "murder in any

degree or kidnapping" in subsection (d).  
Legislative history reports. — For a report on Chapter 102, SLA 1980 (1979 CSSL 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 72, May 28, 1980.

...notes. — Many of the cases cited in the note below were decided under former AS 11.06.020.

The word "attempt" generally means the kind of physical effort to do a particular thing. Woodridge v. United States, 410 F. 773 (9th Cir. 1916).

When attempt complete under former law. — See Lemke v. United States, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954); Woodridge v. United States, 410 F. 773 (9th Cir. 1916).

The mere presence of attempt, criminal liability was present under former AS 11.06.020 where there was the formation of criminal intent, a preparation to commit the crime, and a direct unequivocal act toward its perpetration. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 171 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978)).

Preparation to commit a crime, as followed by an overt act done toward its commission, did not constitute an attempt under former AS 11.06.020. There were borderline cases where it was difficult to determine whether preparation to commit a crime has come close enough to the accomplishment of the crime so that an attempt had been committed. Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

Preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt. Laska v. United States, 14 Alaska 587, 410 F.2d 773 (9th Cir. 1954).

When one's acts were of such a preliminary nature as to constitute mere preparation for the contemplated crime, there was no crime of attempt. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Question of degree. — Whether acts were done in contemplation of the commission of a crime were merely preparatory and did not constitute attempt, or whether they were sufficiently close to the commission of the crime to amount to attempt, was a question of degree and depended upon the facts and circumstances of a particular case. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Inadequacy of former statute. — Former AS 11.06.020 was apparently inadequate to codify effectively as a crime the situation involving the single act of contracting for another to perform a criminal act. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Where defendant contracted with someone to kill another, when he instructed the killer to visit the victim, his intention being that there would be fostered a relationship of trust and confidence between the killer and the victim, thus placing the killer in a position where he would be closer to the victim and could more readily kill him, the killer's visit with the victim, at defendant's direction, was the doing of a direct, unequivocal act toward the commission of the crime of murder, which followed the formation of a criminal intent and a preparation to commit this crime. Braham v. State, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Factual impossibility not apparent to actor. — A factual impossibility which was not apparent to the actor at the time should not, as a matter of policy, insulate him from conviction for attempting the commission of the offense. Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

"Empty pocket doctrine". — See Gargan v. State, Sup. Ct. Op. No. 452 (File No. 773), 436 P.2d 968 (1968).

Attempt statute applied to attempted violation of narcotic drug statute. — Persons attempting to commit the crime defined by AS 17.10.010 of the Alaska Uniform Narcotic Drug Act (now repealed) were not exempted or excepted from the provisions of the attempt statute. Simpson v. United States, 17 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

An attempt was necessarily included in an indictment for statutory rape. Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Indictment need not specify intent to be proved for attempted rape. — There is authority for the proposition that a specific intent must be proved for the crime of attempted rape. But there is no authority supporting the proposition that the indictment must specify that intent. State v. Thomas, Sup. Ct. Op. No. 1077 (File No. 2234), 625 P.2d 1092 (1974).

Even though there is no question that the crime of attempt requires a specific intent, it seems equally beyond dispute that a charge of attempt to commit a specific crime clearly advises the defendant of the offense with which he is charged. *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Indictment charging attempted rape and citing only the rape statute held sufficient. — See *State v. Thomas*, Sup. Ct. Op. No. 1077 (File No. 2234), 525 P.2d 1092 (1974).

Defendant may be found guilty though attempt not expressly charged. — Jury could find defendant guilty of the attempt to commit the crime of possessing narcotic drugs despite the fact that the attempt was not expressly charged. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Substantial evidence of attempt. — In a prosecution for possession of narcotic drugs, although there was no substantial evidence that defendant committed the crime charged in the information, there was substantial evidence that she attempted to commit the crime charged. *Simpson v. United States*, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Same offense for sentencing purposes. — A suit with intent to rob and attempted robbery constituted the "same offense" for sentencing purposes. *Brookins v. State*, Sup. Ct. Op. No. 1936 (File No. 3972), 600 P.2d 12 (1979).

Sentence upheld. — See *Bovic v.*

*State*, Sup. Ct. Op. No. 769 (File No. 1477), 491 P.2d 800 (1972); *Spearman v. State*, Sup. Ct. Op. No. 1210 (File No. 2520), 542 P.2d 202 (1976); *Ibrahim v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 677 (1977), cert. denied, 436 U.S. 910, 56 S.Ct. 2246, 56 L. Ed. 2d 410 (1978); *Johnson v. State*, Sup. Ct. Op. No. 1656 (File No. 3324), 580 P.2d 700 (1978); *Ferguson v. State*, Sup. Ct. Op. No. 1791 (File No. 3890), 599 P.2d 43 (1979); *Morris v. State*, Sup. Ct. Op. No. 1830 (File No. 4132), 572 P.2d 1244 (1979); *Hambl v. State*, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980).

Sentence held excessive. — See *Hanson v. State*, Ct. App. Op. No. 2180 (File No. 6955), 657 P.2d 862 (1983).

Applied in *Nicholson v. State*, Ct. App. Op. No. 1931 (File No. 6192), 656 P.2d 129 (1982).

Stated in *State v. Silas*, Sup. Ct. Op. No. 1854 (File No. 4237), 595 P.2d 651 (1979); *Coleman v. State*, Sup. Ct. Op. No. 2199 (File No. 4116), 621 P.2d 869 (1980); *Barclay v. State*, Sup. Ct. Op. No. 2217 (File No. 4944), 619 P.2d 722 (1980); *Clark v. State*, Ct. App. Op. No. 96 (File No. 5658), 645 P.2d 1236 (1982); *Tarruk v. State*, Ct. App. Op. No. 195 (File No. 6954), 655 P.2d 784 (1982).

Cited in *Hambl v. State*, Sup. Ct. Op. No. 2155 (File Nos. 4946, 4953), 615 P.2d 627 (1980); *Wulber v. State*, Ct. App. Op. No. 234 (File No. 6304), 662 P.2d 949 (1983).

**Sec. 11.31.110. Solicitation.** (a) A person commits the crime of solicitation if, with intent to cause another to engage in conduct constituting a crime, the person solicits the other to engage in that conduct.

(b) In a prosecution under this section,

(1) it is not a defense

(A) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(B) that a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation;

(2) it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime.

(c) Solicitation is a

- (1) class A felony if the crime solicited is an unclassified felony;
- (2) class B felony if the crime solicited is a class A felony;
- (3) class C felony if the crime solicited is a class B felony;
- (4) class A misdemeanor if the crime solicited is a class C felony;
- (5) class B misdemeanor if the crime solicited is a class A or class B misdemeanor.

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony. (1 2 ch 166 SLA 1978; am § 2 ch 102 SLA 1980; am § 11 ch 45 SLA 1982).

**Cross references.** — For legislative purpose of ch. 45, SLA 1982, see 4 1, ch. 45, SLA 1982, in the Temporary and Special Acts; for legal accountability based on the conduct of another and complicity, see AS 11.16.110.

**Effect of amendments.** — The 1980 amendment added subsection (d). The 1982 amendment substituted "an

unclassified felony" for "murder in any degree or kidnapping" in subsection (a)(1).

**Legislative history reports.** — For a report on Chapter 102, SLA 1980 (11CS CSSR 541), see 1980 Senate Journal Supplement, No. 44 May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

**Former law construed.** — See *McConkey v. State*, Sup. Ct. Op. No. 855 (File No. 1464), 562 P.2d 823 (1972); *Cassell v. State*, Ct. App. Op. No. 91 (File No. 5135), 645 P.2d 219 (1982), decided under former AS 11.10.070.

**One contracting with another to kill a third person was guilty of attempted first-degree murder, not solicitation.** —

See *Ibrahim v. State*, Sup. Ct. Op. No. 1522 (File No. 2558), 571 P.2d 631 (1977), cert. denied, 436 U.S. 910, 56 S.Ct. 2246, 56 L. Ed. 2d 410 (1978), decided under former AS 11.10.070 and 11.15.010.

Cited in *Hoover v. State*, Ct. App. Op. No. 73 (File No. 6223), 611 P.2d 1263 (1982); *P.S. v. State*, Ct. App. Op. No. 191 (File No. 6870), 655 P.2d 1119 (1982).

**Sec. 11.31.140. Multiple convictions barred.** (a) It is not a defense to a prosecution under AS 11.31.100 or AS 11.31.110 that the crime that is the object of the attempt or solicitation was actually committed pursuant to the attempt or solicitation.

(b) A person may not be convicted of more than one crime defined by AS 11.31.100 or AS 11.31.110 for conduct designed to commit or culminate in commission of the same crime.

(c) A person may not be convicted on the basis of the same course of conduct of both (1) a crime defined by AS 11.31.100 or AS 11.31.110; and (2) the crime that is the object of the attempt or solicitation.

Title 11  
Criminal Law

This section does not bar inclusion of multiple counts in a single indictment or information charging commission of a crime defined by AS 11.31.100 or AS 11.31.110 and commission of the crime that is the object of the attempt or solicitation. (§ 2 ch 166 SLA 1978)

NOTES TO DECISIONS

**Conspiracy is separate offense.** — The crime of conspiracy is generally regarded as a separate offense from the substantive crime that is the object of the conspiracy. Unlike the other preliminary offenses of attempt and solicitation, conspiracy does not merge into a conviction for the substantive crime. *Lythgoe v. State*, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

The no merger rule means that a defendant can be convicted of both conspiracy and the object of the conspiracy. One reason advanced for this special treatment of conspiracy as a separately punishable offense is that conspiracy has been regarded as a serious crime in itself. *Lythgoe v. State*, Sup. Ct. Op. No. 2235 (File No. 4497), 626 P.2d 1082 (1980).

**Sec. 11.31.150. Substantive crimes involving attempt or solicitation.** Notwithstanding AS 11.31.140(d),

(1) a person may not be charged under AS 11.31.100 if the crime allegedly attempted by the defendant is defined in such a way that an attempt to engage in the proscribed conduct constitutes commission of the crime itself,

(2) a person may not be charged under AS 11.31.110 if the solicitation in question is defined as a specific crime under other provisions of law. (§ 2 ch 166 SLA 1978)

**Chapter 35. Abandonment and Nonsupport.**

*[Repealed, § 1 ch 39 SLA 1970 and § 21 ch 166 SLA 1978. For current law on desertion and nonsupport of a minor, see AS 11.51.100 — 11.51.120.]*

**Chapter 36. Failure to Permit Visitation with Minor Child.**

*[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.125.]*

**Chapter 40. Crimes Against Morality and Decency.**

*[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.51.130, 11.51.140, 11.61.110, 11.61.130, 11.61.140 and 11.66.100 — 11.66.150.]*

**Chapter 41. Offenses Against The Person.**

**Article**

- 1. Homicide (§§ 11.41.100 — 11.41.140)
- 2. Assault and Reckless Endangerment (§§ 11.41.200 — 11.41.250)
- 3. Kidnapping and Custodial Interference (§§ 11.41.300 — 11.41.370)
- 4. Sexual Offenses (§§ 11.41.410 — 11.41.470)
- 5. Robbery, Extortion, and Coercion (§§ 11.41.500 — 11.41.530)

**Cross references.** — For provisions authorizing arrest without warrant in certain cases where the police officer has rea-

sonable cause to believe that the person has committed a crime under this chapter, see AS 12.25.030(b).

NOTES TO DECISIONS

Cited in *Leuch v. State*, Sup. Ct. Op. No. 2419 (File No. 5255), 633 P.2d 1066 (1981).

**Article 1. Homicide.**

**Section**

- 101. Murder in the first degree
- 110. Murder in the second degree
- 115. Defenses to murder
- 120. Manslaughter

**Section**

- 130. Criminally negligent homicide
- 135. Multiple deaths
- 140. Definition

**Collateral references.** — 41 Am Jur 2d, Homicide, § 1 et seq.

40 C.J.S., Homicide, § 1 et seq.  
Homicide by wanton or reckless use of firearm without express intent to inflict injury, 5 ALR 603; 23 ALR 1551.

Homicide or assault in attempting to prevent elopement, 8 ALR 660.  
Wife's confession of adultery as affecting degree of homicide in killing her paramour, 10 ALR 470.

What amounts to participation in homicide on part of one not the actual perpetrator, who was present without preconcert or conspiracy, 12 ALR 275.

Intoxication as reducing homicide from murder to manslaughter, 12 ALR 898; 79 ALR 897.

Responsibility of persons participating in jail delivery for homicide committed by one of their number, 15 ALR 456.

Recommendation for mercy, 17 ALR 117; 55 ALR 619.

Homicide by unlawful act aimed at another, 18 ALR 917.

Criminal responsibility of peace officers for killing or wounding one whom they wished to investigate or identify, 18 ALR 1368; 61 ALR 321.

Homicide as affected by time elapsing between wound and death, 20 ALR 1006; 93 ALR 1470.

Humanitarian motives, homicide as affected by, 25 ALR 1067.

Discharge of firearm without intent to inflict injury as proximate cause of homicide resulting therefrom, 55 ALR 921.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

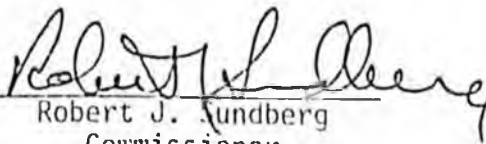
Support

March 3, 1984

HB 626 - "An act relating to the crime of conspiracy."

This legislation would facilitate the arrest and prosecution of those individuals who historically are positioned in the upper levels of criminal organizations but who never enter the areas of "hands on" physical criminal activity and therefore avoid being charged, despite their clear responsibility. The most important impact of passage of this legislation would be in prosecutions of those criminal elements involved in narcotics trafficking in Alaska.

We can see a potential for conflict between 11.31.140 (c) and (e). The former prohibits conviction for both conspiracy and the crime which is the object of the conspiracy. 11.31.140 (e) indicates that if multiple crimes are the object of a conspiracy only one count of conspiracy is charged. If two people conspire to commit four similar crimes, under (e) this is one conspiracy count. If, in fact, three crimes are committed, the fourth to occur at a later date and arrests are made before the fourth crime is attempted, under (c) conspiracy could not be charged for the fourth crime because (e) defines one conspiracy count for all four planned crimes and (c) prohibits conviction for both conspiracy and the criminal act itself.

  
Robert J. Lundberg  
Commissioner

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 626  
 Title: "An act relating to the  
 crime of conspiracy."  
 Sponsor: Representative Liska  
 Requestor: House Judiciary  
 Date of Request: 3-6-84

FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Administration of Justice  
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<u>OPERATING</u>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<u>TOTAL OPERATING</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<u>CAPITAL</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<u>REVENUE</u>						

FUNDING: (Thousands of Dollars)

<u>GENERAL FUND</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
<u>FEDERAL FUNDS</u>						
<u>OTHER</u>						
<u>TOTAL</u>						

POSITIONS:

<u>FULL-TIME</u>						
<u>PART-TIME</u>						
<u>TEMPORARY</u>						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691  
 Division: Alaska State Troopers Date: 03/02/84  
 Approved by Commissioner: *[Signature]* Robert J. Sundberg Date: 3/6/84  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

those differences can be resolved?"

Well, those differences are differences in Government structure and philosophy. The common interests have to do with the things of everyday life for people everywhere.

Just suppose with me for a moment that an Ivan and an Anya could find themselves, oh, say, in a waiting room or sharing a shelter from the rain or a storm with a Jim and Sally. And there was no language barrier to keep them from getting acquainted.

Would they debate the differences between their respective Governments? Or would they find themselves comparing notes about their children and what each other did for a living? Before they parted company, they would probably have touched on ambitions and hobbies and what they wanted for the children and problems of making ends meet.

And as they went their separate ways, maybe Anya would be saying to Ivan, "Wasn't she nice. She also teaches music."

And Jim would be telling Sally what Ivan did or didn't like about his boss. They might even have decided they were going to get together for dinner some evening soon.

Above all they would have proven that people don't make wars. People want to raise their children in a world without fear and without war. They want to have some of the good things over and above bare subsistence that make life worth living. They want to work at some craft, trade or profession that gives them satisfaction and a sense of worth. Their common interests cross all borders.

If the Soviet Government wants peace, then there will be peace. Together we can strengthen peace, reduce the level of arms and know in doing so that we have helped fulfill the hopes and dreams of those we represent and, indeed, of people everywhere.

Let us begin now.

## Combating Organized Crime

### PUBLIC AWARENESS AND SUPPORT

By WILLIAM FRENCH SMITH, *Attorney General of the United States*

*Delivered at the Town Hall of California, Los Angeles, California, December 19, 1983*

I WOULD like to discuss a subject that affects all of us every day, even though it stays generally hidden from public view. It causes our taxes to go up. It adds to the cost of what we buy. And, worst of all, it threatens our personal safety and that of our families — indeed our very freedom. Nothing causes untold damage to human lives and human wealth, yet its revenues are estimated to exceed the net profit of all the Fortune 500 corporations combined. I am speaking of organized crime.

Although combating organized crime is a difficult undertaking, it is not impossible. Indeed, as I will later explain, many successes are now being achieved in that battle. Unfortunately, the public is little aware of the problem or of what the government is doing to combat it. With greater public awareness of the nature and the threat of organized crime, and with greater citizen participation, we could make substantially more headway.

First, in order to provide the context for our efforts today, some history is in order. During the first years of this century, organized crime was a local enterprise. A gang worked a city, often just a neighborhood. The local police were alone in trying to stop organized crime, and the task proved beyond their powers. There was no federal government involvement. And with the ratification of the Eighteenth Amendment, organized crime began a significant expansion in power and influence.

During Prohibition, organized crime groups vied for shares of a market attracting more and more members, and frequently fought each other as they tried to expand beyond their once limited turf. Nonetheless, crime, mobsters and gang rivalries gradually abated during Prohibition, as cooperation became necessary in the effort to control larger and larger markets. At a 1929 meeting, leading organized crime figures from many cities recognized the need for a national body to mediate differences among groups and formulate national policy.

The year 1929 is also notable for the federal government's first substantial appearance in the history of organized crime. It was an inauspicious entry. Distracted by the lawlessness of Prohibition, President Hoover established that year the National

Commission on Law Observance and Enforcement. Named after its chairman, George Wickersham, the Commission urged an "immediate, comprehensive, and scientific nationwide inquiry into organized crime" in order to "make possible the development of an intelligent plan for its control."

No such inquiry took place, however, and no intelligent plan for the control of organized crime was developed. The FBI did what it could against the gangsters, arresting a few such as Al Capone, who served time for income tax evasion. But the FBI lacked statutory authority to investigate most of the activities of the crime syndicates, during the thirties and forties, despite laudable law enforcement efforts by some local and state authorities, organized crime prospered as the federal government generally failed to make a response.

Alcohol provided the major source of income for criminal groups from 1920 until the end of Prohibition in 1933. But organized crime had by then already learned how to diversify. The syndicates vastly renewed and increased previous involvements in gambling, prostitution, and narcotics. They began investing in legitimate businesses, and also infiltrated labor unions. Organized crime extended its reach nationwide — establishing operations on the West Coast, including Los Angeles.

Not until 1930 did the federal government finally begin to make a systematic inquiry into organized crime. A special Senate committee directed by Justice Kefauver investigated gambling and racketeering activities in interstate commerce. The committee uncovered a national pattern of bribery and protection payments to law enforcement officials and payoffs to local and state political figures to ensure protection from prosecution. The committee determined that a national criminal organization which it referred to as "The Mafia" did exist, and recommended the creation of a rackets squad within the Justice Department.

The Kefauver hearings stimulated local investigations in cities where the committee had exposed organized crime oper-

ations and public corruption. But even with the knowledge obtained from the hearings, the federal government itself still did not take sustained action. The Department of Justice initiated a drive against the leading racket figures identified in the Senate hearings, but while some convictions and deportations resulted, no permanent investigative or prosecutorial units were established until 1954. Even then, only three lawyers in the department were assigned to the Organized Crime and Racketeering Section, which consequently enjoyed only limited success. Again, the federal government failed to see the immediate and growing threat presented by organized crime — a national threat requiring a national response.

The lack of an effective government response was costly. During the Fifties the syndicates continued to grow and consolidate. Organized crime became more deeply involved in white-collar crime and in politics. Mobsters more frequently appeared in respectable places and with respectable people.

Not until the early Sixties did the federal government begin to make a substantial enforcement effort against organized crime. Under Attorney General Robert Kennedy, the FBI began monitoring the activities of 400 of the nation's leading organized crime figures. The number of attorneys in the Organized Crime Section jumped to 17 in 1961, and to 55 in 1962. Gradually, — the number of convictions per year began to increase — from 45 in 1960, to 546 in 1964.

Several years later a commission created by President Johnson made numerous recommendations for changes in the criminal law — each of them designed to challenge organized crime. The Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act of 1970 incorporated all eight of the commission's recommendations regarding proof of criminal violations. The 1968 Act was the first federal law to define the term "organized crime" and included a provision for electronic surveillance under a carefully detailed warrant procedure and strict court supervision. The 1970 Act strengthened the government's legal tools in the evidence-gathering process. One provision — the Racketeer Influenced and Corrupt Organizations Act, or RICO — is arguably the most powerful statute available to federal law enforcement officials, because among other things it allows government to seize the illicit profits of organized crime.

Another important initiative at this time was the creation of the first Organized Crime Strike Force. In 1966, the Department of Justice placed a five-man team of attorneys and supervisory personnel from federal investigative agencies in Buffalo, N.Y. Within a short time, the group, dubbed the "Strike Force," convicted the mob underboss and several syndicate figures. In 1969, the Department of Justice began an expansion of the Strike Force program.

In retrospect, the federal law enforcement and legislative initiatives of the Sixties mark a turning point in the history of the government's response to organized crime. To be sure, during the past 20 years there have been periods when the government has not been as effective as it could have been. At times the effort has been confused and misdirected. Even so, it is in the past two decades that the federal government finally has organized a serious law enforcement response and devised mechanisms such as the Strike Forces that have proved so valuable in combatting organized crime.

In the past three years, the Strike Force program has been augmented in order to better lead the fight against traditional organized crime. Specialized cadres of experienced trial attor-

neys coordinate the activities of criminal investigators from all the major federal law enforcement agencies, as well as the local police.

The strike forces have indicted and convicted many of the principal leaders of the traditional crime families in many of our major cities. They have successfully brought major cases in New York, Boston, Cleveland, Chicago, Denver, Kansas City, Miami, Detroit, Philadelphia, San Francisco, Milwaukee, New Orleans — and Los Angeles. During the past three years, in large part because of the efforts of the Strike Forces, the Department of Justice has indicted, tried, and convicted more than 2,600 members and associates of organized crime.

The use of important enforcement mechanisms developed in the Sixties and Seventies have proved immensely helpful. Electronic surveillance under a carefully detailed warrant procedure and strict court supervision has enabled us to gather information on the very secretive crime families. So has the Witness Security Program, which provides protection for informants willing to testify against former underworld associates. In addition, federal officials have successfully gone undercover, posing as members of organized crime, and also set up undercover operations designed to ferret out members of organized crime.

One of our most successful undercover operations occurred here in Los Angeles. The FBI knew that members of the Mafia regularly extorted pornographers and bookmakers, but no extortion victim was willing to testify. So, the FBI set up its own pornography enterprise, named Forex. Forex was located in Van Nuys and ostensibly sold pornography to South America and Mexico.

Forex wanted to be extorted, but organized crime kept its distance, apparently suspicious of the legitimacy of the new business. So after three months, the FBI used an informant to spread the word on the street that the government was looking into Forex. That helped establish the company's bona fides with organized crime. Still, however, there was no extortion attempt. Next an undercover agent with the new name of Vince Lombard put the word out that the company was being extorted.

That tactic worked. The mobsters moved in. They told Lombard never to extort a pornography business again and to leave the country. They gave Forex the choice of making payments to them or never again doing business anywhere in the United States. At this point we moved in. As a result of our effort which was called "Pornex," the entire ruling hierarchy of the Los Angeles organized crime family was convicted of RICO charges.

With the help of operations such as Pornex, the Organized Crime Strike Forces have destroyed the myth that the leadership of organized crime is "untouchable." One reason the syndicates gained such a foothold in American society is just this myth, which made it easier for them to recruit new members and enforce loyalty. Now that we have more knowledge of how organized crime works, we have been able to decimate the top tiers in many areas.

Although the Strike Force program is an important part of the effort against organized crime, other new approaches have been undertaken in the past three years. Today, organized crime is mainly involved in drug trafficking. Indeed, the drug trade is now our nation's number one crime problem — especially where one considers the criminal activities spawned by drug traffic. For example, a recent study done of the Baltimore area found that 233 addicts committed a total of almost a half million crimes over an 11-year period — or an average of 2,000

each — one every other day.

The Posse Comitatus law, passed after the civil war, prevents the armed forces from engaging in law enforcement activities. We have sought and obtained an amendment to this law which now permits us to utilize the resources and intelligence gathering capability of the military — for the first time. This has already been enormously valuable in the fight against drug trafficking.

And for the first time, too, we have brought the FBI into the drug enforcement effort by consolidating the Drug Enforcement Administration with the FBI. The FBI has a sophisticated understanding of the organizational and financial aspects of the organized crime cartels. It has unique knowledge of, and ability to follow, the flow of money. This expertise is essential to combatting the highly sophisticated activities of modern organized crime, and it is now being put to work in the fight against drug trafficking. Our departmental reorganization has been highly successful, resulting currently in 765 FBI cases and almost 600 joint DEA-FBI cases.

South Florida has long been the hot spot for drug trafficking. In response, the South Florida Task Force was established in 1982. For the first time, all of the agencies of the federal government dealing with this problem were brought together within a single entity.

The success of this Task Force guided us in formulating the major enforcement initiative against organized crime and drug trafficking announced by President Reagan last year. The centerpiece of the program was the creation of 12 new task forces patterned on the South Florida model and deployed throughout the country. These Task Forces are now fully operational. Already more than 100 indictments against more than 1,000 defendants have been brought. And more than 200 individuals have been convicted.

Of the 125 cases now under investigation by the District Task Forces, only a small number involve traditional organized crime. Most involve new or emerging groups attracted to the lucrative profits of drug trafficking. Some names you will recognize but most you will not. They include the Hell's Angels, the Outlaws, the Pagans, the Banditos, La Nuestra Familia, the Mexican Mafia, the Aryan Brotherhood, the Black Guerilla Family, the Japanese Yakuza, the Chinese Triad Societies, the Israeli Mafia, and the Cocaine Cowboys.

These modern cartels are involved in the importation and distribution of drugs, the financing of drug trafficking, and money laundering schemes. As is also true of traditional organized crime, they are also engaged in continuing criminal enterprise, abuse of the bank secrecy laws, narcotics conspiracy, and public corruption. Employing the law enforcement weapons developed to fight traditional organized crime, we are mounting an assault on these organizations even as they are developing.

Today, as organized crime is developing in new and different forms, it is also experiencing another evolution — international in focus to international, a change native related to drug trafficking. Of the three drugs that most trouble us from a law enforcement perspective, two — heroin and cocaine — come exclusively from abroad, and one, marijuana, comes predominantly from abroad. Because of the drug trade, the relationships between organized crime families in Los Angeles and Palermo are strikingly similar to those historically existing between organized criminals in New York and Chicago.

It is essential that we develop close working relationships at

the highest levels with the governments of countries that are the source of illegal drugs or through which drugs travel. It is equally important that we understand the problems faced by those countries and that they understand our concerns. Cooperation on procedural matters is an essential step. To this end, we have negotiated, and are continuing to negotiate, mutual assistance law enforcement and extradition treaties with the various countries involved.

Already we have been successful in crop control and eradication programs — notably in Turkey and Mexico. And we are working — however slow the results — with other countries to control the supply and processing of opium and coca plants and their derivatives.

As we proceed with enforcement programs at home and cooperative efforts abroad, we must also keep our knowledge of organized crime up to date. In the past we did not recognize organized crime for the problem that it was. High government officials and some academics often treated the threat of organized crime, and even its existence, with skepticism. For decades organized crime grew because it was not stopped from growing. We — all of us — have paid for the fact that for many years there was no organized response to organized crime. History counsels the wisdom of learning as much as we can about the new and emerging crime cartels so that we can attack them before they become as entrenched as the Mafia did.

At the end of November the President's Commission on Organized Crime held its first meeting in Washington. As part of the President's effort to combat organized crime and drug trafficking, the Commission will study organized crime as it exists today, issue special attention to the emerging drug cartels. The Commission will focus public attention on the hidden world of organized crime and the evil that it inflicts on

victims of drug wars. The Commission calls for strengthening the federal government's fight against organized crime. These include strengthening law enforcement, and numerous other reforms and suggestions to improve our law enforcement ability.

I cannot overstate the importance of congressional action on the crime bill. It makes a point of cases where current law simply fails to give top interests of justice. For example, under the current law, a defendant is given such judicial discretion that a convicted organized crime figure — facing up to 10 years in prison — can be sentenced — if you can call it that — to a year to a local opportunity treatment center followed by five years of probation. This criminal must spend only five nights at the treatment center. The day he will be free to do as he pleases. This is the disappointing result, after thousands of hours of effort by investigators, prosecutors, and other law enforcement officials.

In the last Congress, the Senate passed a crime bill containing 50 financing and other reforms by a vote of 95 to 1. We hope that both the Senate and the House of Representatives will similarly act before the end of the current session in 1984.

Organized crime is a force *Americans* will have to contend against. The Department of Justice — the federal government — cannot do the job alone. Public knowledge about organized crime and support of the government's law enforcement efforts are key to future success.

With greater public awareness of organized crime, and greater public support of the federal law enforcement effort, we can achieve a future different from our past — a future in which the cancer of organized crime is finally brought under our control.



JUSTICE

# How the Mob Really Works

They are the criminals Americans have loved to hear of for 70 years, the barons of organized crime have lived off the nation's thirst for vice: lust liquor, when women, gambling, drugs and usurious cash. At the same time, they have become legends in their own land, hyperbolized in the press and pop culture as figures of Evil and Honor, concepts that mean little to the hoodlum on the street. Today, in its middle age, the mob finds itself in a difficult period of transition. Its top leadership is aging. Its young bloods chafe at traditional hierarchies. Its forays into the straight economy are increasingly risky. Most worrisome of all, it faces unprecedented efforts by law enforcement agencies, which have finally found ways to disrupt, if not destroy, criminal networks. Still, the mob is hardly a declining industry. Its principal commodities—lust, greed and blood—remain very much in fashion.

1980 was not a good year for the underworld. About 600 mobsters were convicted in Federal courts. They include bosses Frank Tieri of New York, Nicholas

and an informant masqueraded for a year as crooked insurance agents to record conversations with Carlos Marcello, the reputed boss of the New Orleans crime family. The 70-year-old Marcello was indicted last June for racketeering, fraud and conspiracy. He was accused of agreeing to help the agents bribe Louisiana officials, they were to get state contracts and he was to receive a piece of their action. In courtrooms along the Gulf and East coasts, evidence gathered during a five-year inves-

tigation into dock corruption has brought the convictions of more than a hundred union officials and shippers on bribery and extortion charges. Despite all this, lawmen say they are only containing the mob. "Organized crime is powerful," says Francis M. Mullen, executive assistant FBI director of investigations. "We do not really hope to eliminate it. We hope to diminish its influence."

Within their traditional markets the mob's influence—and profits—keep climb-

*Lawmen are making things tougher, but organized crime is finding new ways to make crime pay.*

Civella of Kansas City and the entire top echelon of the Los Angeles crime family, who were convicted of racketeering, and former New York boss Joseph Bonanno, who was convicted of conspiracy to obstruct justice. (All of the bosses are appealing.) Tieri and members of southern California's "Mickey Mouse Mafia" were targeted by the most important informer in two decades, Jimmy (The Weasel) Frattino, who now wields his memory the way he once used a garrote (page 76). "These prosecutions illustrate that organized crime is penetrable," says Attorney General Benjamin Civiletti. "It is not, as we sometimes hear, an organization which has such a strong oath of silence it is immune from Federal investigation."

The FBI has learned the value of going undercover to beat the mob on its own turf. In the Horab case, two FBI agents



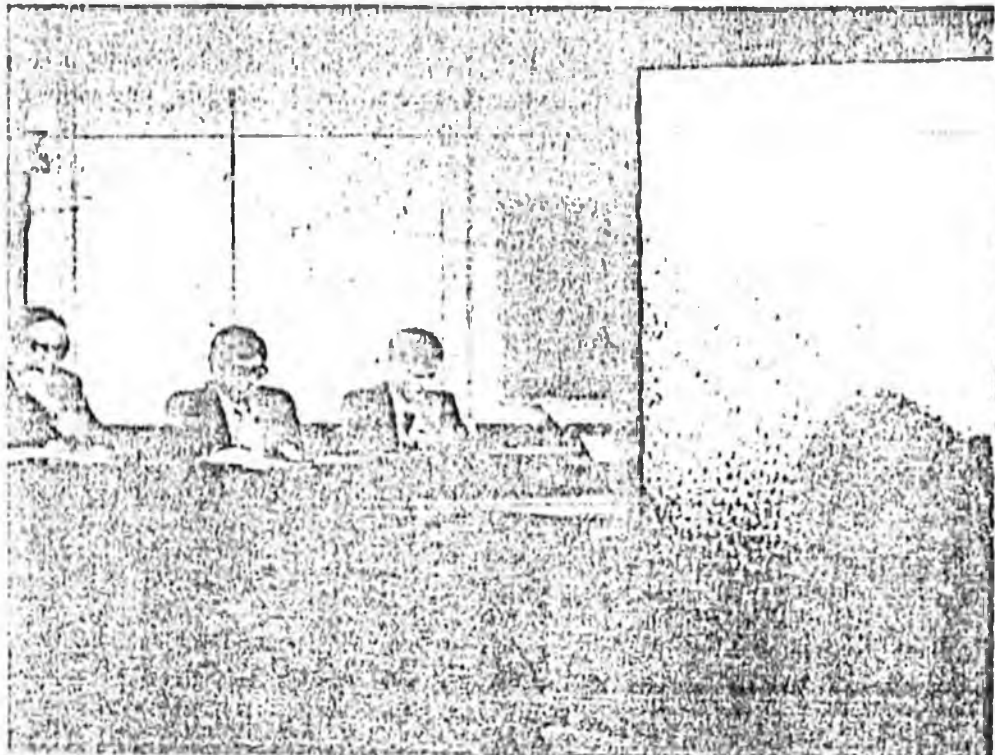
Michael Rizzitello  
Los Angeles



Frank Tieri  
New York



Dominick Brooklier  
Los Angeles



*Mafia informants concealed at Senate hearing. Mobsters are like cockroaches. You step on them one place and they turn up*

ing. Heroin smuggling is again a growth industry. Agents from the Federal Drug Enforcement Administration seized 400 pounds of heroin in the first eleven months of 1970, up one third from all of 1969. The police are not suddenly better; they're just skimming the foam off a flood tide. Professional fences can barely keep up with the loads of hijacked goods they wash clean through burgeoning flea markets and street peddlers. And, says Dominic Antonia, chief of the Organized Crime Strike Force in Manhattan, "the amount of loan sharking on the street has never been higher." Inflation has driven hordes of businessmen and bill payers to loan sharks for money borrowed at up to 200 to 300 percent annual interest, using their firms—and their bodies—as collateral.

The mob has also moved into new enterprises. "These people are like cockroaches," says one veteran investigator. "You step on them one place and they turn up somewhere else." Record and tape pirates working with underworld backing now sell enough counterfeit albums to shake tax stats weep. Not only legitimate chemical companies dump toxic wastes illegally, now the mob does too. Last April an allegedly Mafia-connected chemical waste warehouse in New Jersey exploded, the lethal mess still hasn't been completely disposed of. Gangsters were also quick to observe that coal mining seems profitable again. They are not only stealing expensive heavy equipment from the sites, but they sell shares in nonexistent or nonproductive mines. The gangs have become so successful

that seven states have passed a law providing resources to fight the crime.

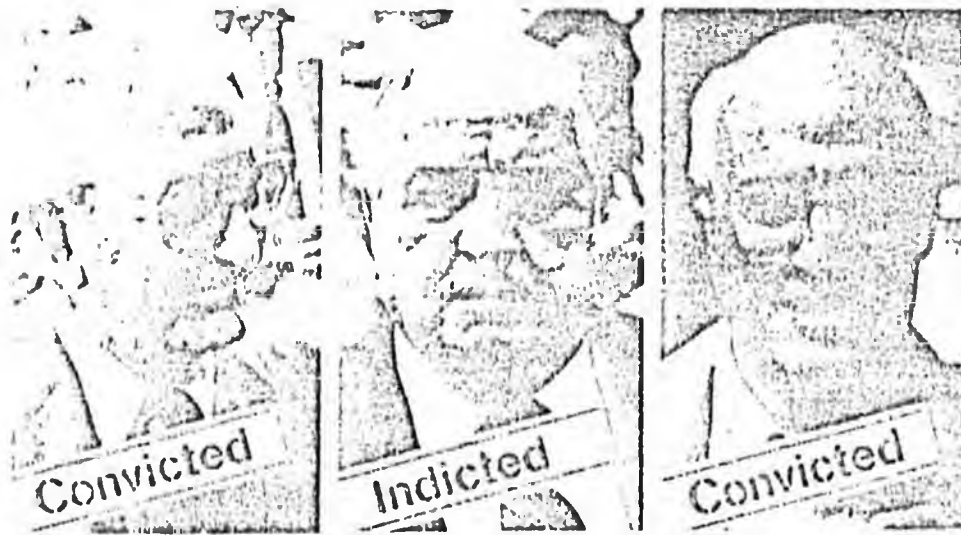
The Reagan Justice Department is expected to maintain the new pressure. At times, Criminal designate William French Smith publicly a national group of tough, aggressive professional prosecutors and a reformed but still controversial Witness Security Program (page 42).

**Pizza:** Why should the ordinary citizen care about any of this? Because like it or not, the mob has become a fact of everyday life. If you buy clothes, eat at restaurants with linen napkins, shop in stores that use private garbage services, gamble in casinos, invest in high flying stocks, have a yen for dirty books, can't start the day without a fresh bagel or finish it without a pizza pie, the mob is there to help. And if you are afraid to venture out at night lest some junkie mugger will be lurking, it's the mob that feeds his habit. "Organized crime is draining millions of dollars—tax free dollars—from our nation's economy," says FBI director William H. Webster. "Its impact is felt throughout our society."

At the same time, it's important to understand what the mob isn't. The Mafia is not the principal source of economic crimes—price-fixing or shaving work—and product safety standards. Those are the provinces of conniving businessmen. The kickbacks or other favors that some corporations give politicians often rival anything the mob provides. "Organized crime is a serious problem, but one which is sometimes exaggerated and sometimes minimized for political purposes," says Deputy Assistant Attorney General Irvin Nathan.

Harvard sociologist Daniel Bell once wrote that the underworld serves as one of America's "queer ladders of social mobility." Some criminals climb and get off, others can't wait to get on, and some never leave. The Italian syndicate, called La Cosa Nostra by some gangs and by the FBI, and the Mafia by everyone else, fits the last category. So much has been written about this group that it's difficult to separate myth from fact. This at least seems true: the Mafia is a loose confederation of gangs spread around the country. They work together on projects such as Las Vegas gambling, and operate independently on local affairs such as protection rackets or labor racketeering (chart, page 38).

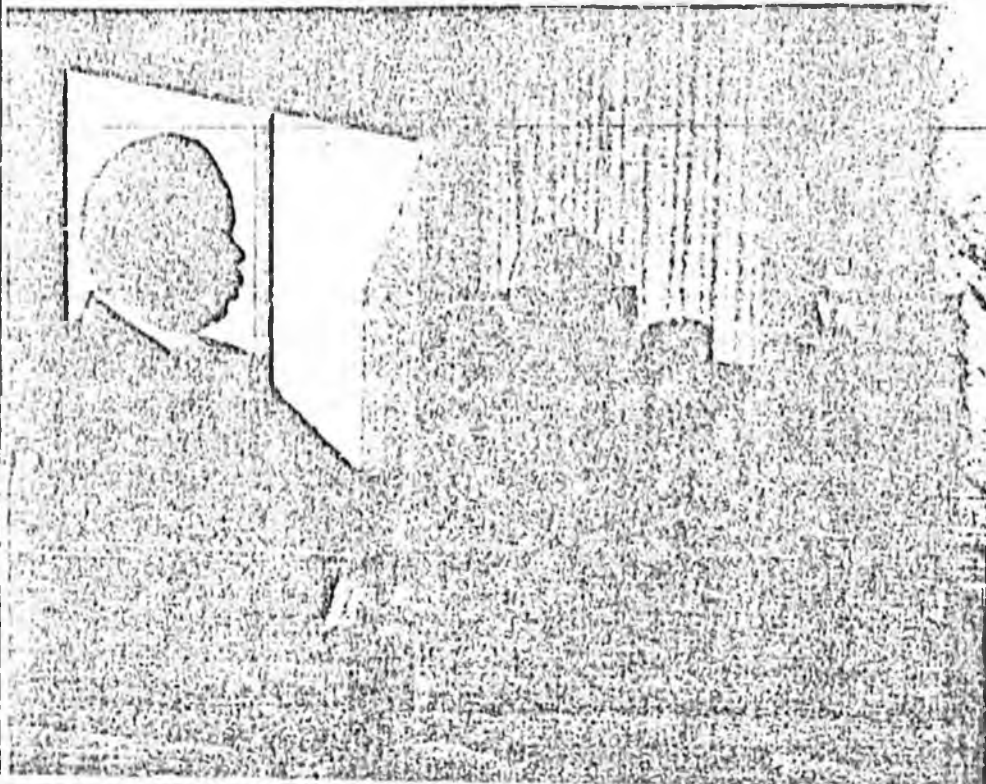
**Shakedown:** Organized crime, however, is by no means an Italian monopoly. Jewish and Irish hoodlums have long cooperated with the Mafia. "Guys that hate each other will sit down for money," says a New York police detective. But now new groups have begun to climb Bell's curious ladder. Black outfits in Philadelphia and New York run—in concert with the Mafia—much of the gambling and narcotics action. Chinese gangs shake down San Francisco merchants, the self-proclaimed Israeli Mafia (page 40) extorts money in Los Angeles. Colombian and Cuban drug rings have flooded Florida with their products—and



Joe Bonanno,  
Tucson

Carlos Marcello  
New Orleans

Louis Tom Dragna  
Los Angeles



some quilling based on one end of the rope. What he did was what you'd expect he did. The guys I killed were killers, too.

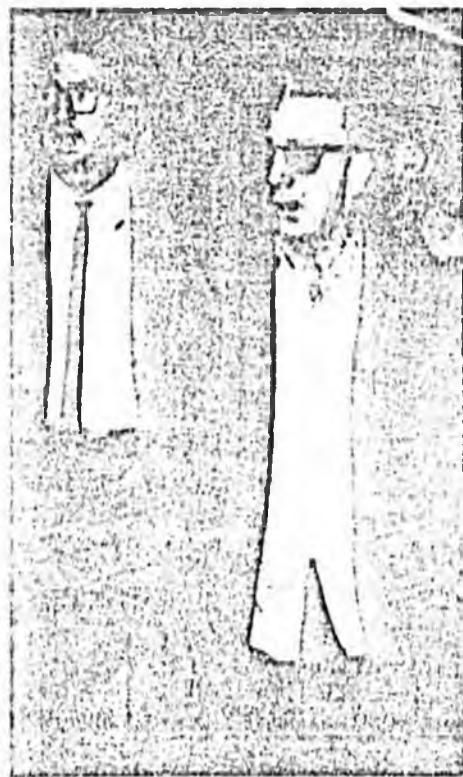
In prison for a short time from 1934 to '40 he— and his brother, often known as a blood brother. The family refused to turn the money he had left behind from drinking and gambling operations— extracted by parole from living in Los Angeles. Frattano moved to northern California. Continuing the construction job learned from his father, Frattano's motto and a questionable San Francisco mob loan, he built a million-dollar trucking business in Sacramento. But by 1970 his money was gone, spent to pay debts, partner and fines levied by a state administration intent on separating his family from state conflicts.

**Hoaxes:** Frattano, who had transferred his official allegiance to the Chicago family, was asked in the mid-'60s by his L.A. colleagues to come back and help run their operations. The following years are the most important to government prosecutors. Frattano mingled in the often impenetrable realm of crime bosses. He was friendly with Sam Giancana of Chicago, Vincent Santos, Trafficante in Florida. He sat with Genovese family boss Frank Leri in a back room session at which the old man pointed thumbs down while saying "hit," giving the order to kill a family enemy. And he helped the Los Angeles family set up Frank Tompaseo, who was discovered to be an FBI informer.

What the family did not know is that is then Frattano himself had begun selling information to the Feds, who tempted him with cash when he ended still another prison term in 1975. To the ever hustling Weasel, the information seemed insignificant—another way of making some money. But the contact turned out to be life-saving. Some members of the Los Angeles family thought Frattano was using his position as an acting boss to aggrandize himself—perhaps to lift his northern California operation into competition with the L.A. mob. Before long he discovered that a contract was out on his life. Since he was facing several new indictments for gambling and racketeering, it was not a difficult choice for him to graduate from part-time tipster to star informant.

**Scalping:** He testified first at the trial of ten men accused of fraudulently bankrupting the Westchester Premier Theater in Larkstown, N.Y. As legitimate investors were losing money in the operation, Mafia members and associates were skimming the profits and scalping their own tickets for extra dollars of side income. One of the theater's stars was Frank Sinatra, who performed several concerts there and was the subject of a New York Federal grand jury investigation for allegedly re-

ceiving \$50,000 of the skimmed profits. Now 67 and about 1,000 pounds, Frattano talks to exhaustion about his past, he cannot talk to his security. In an hour or so, regular court appearances, his credibility is attacked by defense attorneys who point to a well-documented history of lying on his oath. Frattano's response is that in the past he lied because he had to, now with the truth keeps him alive. There is just one bit too a book recounting his adventures will be published next month. "Who should I get paid for writing about the things I've done?" he muses. "I see the point. But I don't want to make a million. I just want something in the bank to leave something for my wife and kids. I think



*Under arrest: From shaved dice to murder*

it's a service to the country, what I did."

The government agrees, up to a point, but that may no longer be good enough. Soon the testimony will be over, his official protection will end and Frattano will live by his hit man's wits. In a Salt Lake City hotel room this fall, watched over by two Federal marshals, he belabored over the telephone to a Justice Department official in Washington. "I wanta be someplace where there's no mad guys. Where you're taking me, there's a hundred." Then he hung up the phone and chewed stonically on a long Mexican cigar. "Nothing bothers me. What do I give a damn? If it comes, it comes. I ain't gonna age myself on account of it."

*By Tom De Haven, The New York Times Magazine, and by Richard M. Tompkins, Time Magazine.*

## JUSTICE

its banks with their profits. The business Frattano grew out of his father's was a kind of organization that was based on a kind of prison work, with about 100 members with the West Coast. As seen in the Dwight D. Smith Jr. and Richard D. Villa have written, organized crime must be recognized as a part of American society, not feared and shaped by American courts, stances, not simply as an alien, parasitic force.

After decades of books and movies, the gangster is more than a creature of the mean streets; he is a fixture in the American imagination. But his role and symbolic value keep changing, and with it the nation's perception of the underworld. In the 1931 movie "Little Caesar," Edward G. Robinson portrayed the paradigmatic mobster, Rico Bandello, an unrepentant boss who deserved killing. By 1954, the boss had shifted to the victim, exemplified by Marlon Brando's Terry Malloy, a broken-down pug left to work on the waterfront after his gangland brother forced him to throw a fight. "I coulda been a contender," was Terry's complaint, if only the mob hadn't intervened. His recourse, to strike back, first with testimony against a corrupt union boss, then with his fists in a triumphant climax where good whips evil on the docks. Only in the movies. Finally, there is the latter-day Brando as The Godfather, Vito Corleone, the gangster as hero, who makes people offers that they cannot refuse.

**Warnings:** The real-life mob hasn't forgotten how to persuade people. When Peter Salerno, a former Mafia thug who now testifies for the FBI, began his enforcement career, his principal job was simply to stand menacingly, with his broad shoulders and bulging biceps, while his superiors issued warnings to warring numbers runners or other shaky operatives. Once, he says, during the construction of New York's World Trade Center, he saw a mobster threaten to shove a union foreman down an elevator shaft because the foreman was complaining about phony time cards being punched for nonworking mob members—a modest scam that netted the family \$100,000 in one year.

Sometimes Salerno got more involved. "I've burned big warehouses so people can collect insurance," he says. "We shot up people's houses. I beat up a lot of people. I picked up money from restaurants and businesses that had to pay protection." But always Salerno managed to rationalize his activities—by reminding himself that his victims were bad guys, after all, and by insisting that his heart wasn't in it. "I did it because it was a job, but I got no enjoyment out of it," he claims. "I know one guy, he'd get great enjoyment. I've seen him hit a guy with a bat and put his arm on the curb and break it, then put his leg up and break that too."

To their surprise, however, police have



## JUSTICE

tion exposed the rampant corruption in the Teamsters union. Then, as his brother's Attorney General, Kennedy stepped up the assault on organized crime.\*

The Justice Department has now made organized crime a top priority. Federal laws have also strengthened its hand both in prosecuting individual mobsters and chasing down their assets. Special strike forces in 26 cities concentrate specifically on organized crime. They combine the resources of Justice lawyers, the FBI, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Department of Labor, and the Internal Revenue, the Customs and Postal services so that the bad guys do not manage to slip between the law-enforcement cracks.

**Dirty-Movie Dealers:** FBI director Webster has committed more than one-fifth of the bureau's money and manpower to fighting organized crime. The bureau now relies heavily on underworld informants such as Fratiano and undercover "sting" operations run by its own agents. Agents Pat Livingston and Bruce Ellavsky, for instance, spent two years and \$400,000 posing as dirty-movie dealers. They traveled the country, having a drink in Las Vegas, buying films in Miami, attending movie conventions in Los Angeles, making contacts with the mob. "It puts law enforcement face to face with the criminals," says one top FBI agent. "They are so well insulated and so sophisticated that there is no other way to do it." The Livingston-Ellavsky sting led to the indictment of 47 alleged members of a national pornography network, many with strong links to mobsters.

The biggest haul by far came from an operation called Umrac, for union racketeering. Started in 1975, after a Miami shipper named Joseph Teitelbaum tired of paying off International Longshoremen's Association leaders and complained to the cops, the daring investigation turned up corruption on docks from New Orleans to New England. By 1980, 150 government agents had infiltrated the waterfront, developed informants and planted three dozen electronic bugs. So far, Umrac has produced 128 indictments and 110 convictions of union and waterfront-company officials. Among those found guilty of racketeering (their cases are now on appeal): Michael Clemente and Tino Fiumara, top members of New York's Genovese crime family who had effectively controlled crime in the port of New York; snazzy Anthony Scotto, president of ILA Local 1814 in Brooklyn, and a power in New York politics, who took his bribes in posh restaurants; and George Barone, president of Miami Local 1922, who investigators believe also served

as a fugitive for San Francisco gangsters.

Umrac was unusual because it relied in part on undercover agents but on electronic surveillance devices. The bugging evidence often was sensational: one bug planted in Scotto's bleached buff desk recorded him complaining that the payroll wasn't coming in on schedule. Then, on tape, Scotto conceded his effort: "I figured it wrong. I must have gotten screwed up when you did a double one at Christmas." As dramatic as such testimony may prove in court, the government no longer relies heavily on recording devices, simply because it is difficult to obtain a warrant to use them. Under a 1968 Federal law, an investigator must convince a judge in advance that a particular phone or room is being used for criminal purposes, and that there is no other way to obtain evidence. That's a simple standard to meet when pursuing bookmakers, but more difficult in com-



*Pornography: The mob's hard-core profits*



U.S. Customs Service

*Cocaine (above) and toxic wastes: Two growth industries for the underworld*

plicated economic crimes. One compromise has been for agents to wear recording devices to meetings. This doesn't require a warrant, but if they are caught, they may be killed.

**Seized Assets:** Frustrated lawmen know that putting big-time mobsters in jail will not break up the underworld; when a gang's head is cut off, it merely grows a new one. To fight the entire apparatus, Congress passed in 1970 the Racketeer Influenced and Corrupt Organizations Act (called RICO, an apt echo of the character in "Little Caesar"). This law allows prosecutors to charge gangsters with the crime of running criminal enterprises and to seize assets illegally used or gained. Before RICO, "we had put a lot of people in jail, and some big people, but that's all we did," says Ed Sharp, FBI agent in charge of the Brooklyn-Queens field office. "Now, instead of going after individuals, we're attacking organizations. We've got to take



AP/WIDE WORLD

\*At the same time, according to recent reports, the CIA was trying, with Mafia hit men to arrange the assassination of Fidel Castro.

## JUSTICE

introduced a pile of union funds that he was willing to deposit, even in low interest accounts. All he wanted in return were personal and most of unsecured loans for himself, for relatives and for friends who couldn't pass a credit check that wasn't fixed. Some bankers readily took the bait. Robert Prodan, who was then president of the Bank of Bloomfield, N.J., later testified that he would not have made the loans had it not been for the union deposits. Predictably, the loans soon turned sour. According to the Organized Crime Strike Force in Newark, the Bloomfield bank was out \$389,000 in loans made through Palmeri when it collapsed; he was convicted of racketeering and is appealing. Two other New Jersey banks, the State Bank of Chatham and the Springfield State Bank, also folded, in part because of similar Teamster deals.

Bankers aren't the only people who prove that business schools grant degrees and not halos. In the case of the Magic Marker stock manipulation, for example, the president of the New Jersey pen company, the chief executive of a Philadelphia brokerage house, Delpin Capital Corp., and a stock promoter named Jack Silberger conspired to artificially pump up the company's stock. Yiddy Bloom, a longtime associate of Meyer Lansky, provided Silberger with more than \$100,000 and helped arrange a bank loan for him; with this seed money, Silberger set up a command post in his Miami Beach apartment, with a bank of telephones and a WAIS line, and began to make purchases in Magic Marker through different accounts at different brokerages in a dozen cities.

**Bubble:** Silberger quickly drove the price from \$6.50 to \$31 a share. He used a variety of techniques: bribing a stock-exchange professional for inside information, paying a \$1 bonus to brokers for each share they bought for their clients, and giving \$20,000 to a New York analyst to write a favorable article on the company. When the bubble finally burst, brokers tried to shore up the stock's price by making spot purchases, sometimes without notifying their clients. By then, of course, Bloom had sold out. Lawyers for the Or-



*New York's Galanti, hit in a cafe: The old must give way*

ganized Crime Strike Force in Philadelphia say that he pocketed a \$50,000 profit. Scores of innocent investors lost perhaps as much as \$20 million.

The mob also loves to operate, or at least get a piece of, a "bust-out," which is a scheme to defraud creditors. In the early '70s, Kenneth Weiner and some associates opened discount stores along the South Shore of Massachusetts that sold everything from clothing to calculators. The owners stocked the stores with merchandise

*Philadelphia's Bruno, killed outside his home: Revenge was quick*



organized crime as a group of entrepreneurs taking advantage of opportunities as they arise. Nowhere does that seem more evident than in the toxic-waste industry. For decades, the mob has controlled private garbage hauling in many urban areas. And what is chemical waste but fancy trash?

When William Carracino ran the Chemical Control Corp. of Elizabeth, N.J., he held down costs by occasionally disposing of his lethal wares in a nearby dump. Although Chemical Control was in bankruptcy, Carracino claims that he refused help from the mob. But one day, Carracino recently told a New York crime committee, a reputed Tieri family member named John Albert came to his office and ordered him out. In the parking lot, Albert pushed Carracino against his car, pulled a gun and asked, "Do you want it now or later?"

Carracino never went back to his office, and Albert took effective control of the company. Last April 60,000 55-gallon drums, stockpiled in Chemical Control's Elizabeth warehouse, exploded; it took firemen ten hours to control the blaze and only favorable winds kept the enormous clouds of toxic smoke from floating over New York City. In November a Federal grand jury indicted Albert and others for fraudulently assuring chemical firms that they would dispose of their wastes.

The mob also makes money from cleaner, small-time crime. At the moment, police say, these are the favored new schemes:

- Minting phony credit cards, then running up false bills with a cooperating merchant who

## JUSTICE

the assets—and get rid of the incentive.”

Unfortunately RICO has promised more than the government has delivered. It has seen a marvelous tool to obtain convictions—prosecutors can enthrall juries with minimal histories and gangland ties—but getting the assets has proven far more difficult. For instance, in the ten years since RICO and a similar narcotics-forfeiture law were passed, only \$675,000 has been forfeited in narcotics cases. “The Justice Department’s record in attacking the financial foundations of organized crime has been very nearly nonexistent,” says Sen. Joseph Biden Jr. of Delaware. “Indeed, I believe it is a major reason [that] illicit drug trafficking continues to flourish in this country.” Other parts of the 1970 statutes also he fallow. Federal prosecutors have seldom sought civil penalties under RICO or the long prison terms they may ask for under the companion Dangerous Special Offenders Act. “Ultimately this record is a failure of imagination and will,” says Prof. G. Robert Blakey of the Notre Dame Law School, an authority on organized crime. “The law is there, but they haven’t used it.”

Turning Point: The government has, however, used RICO in a novel way this year in two significant cases against top mafiosi. It has contended that Mafia families themselves are “illegal enterprises.” In one case, a jury convicted Frank Terr, head of New York’s Genovese crime family, of extortion and fraud—and of being a Mafia boss. In the other trial, Dominick Brooklier, Louis Tom Dragna, Samuel Sciortino, Jack Loeicero and Michael Rizzitello of the Los Angeles gang were convicted on racketeering and conspiracy charges. The government has not moved to seize assets in either case—and if it did, it might never find any.

Well-placed Federal sources say that they are preparing another round of important cases. Grand-jury investigations aimed at mobsters are under way in Chicago, Detroit, Milwaukee, Kansas City, Philadelphia, Miami and Las Vegas. Significant labor-racketeering cases against officials of the Laborers’ International Union in Florida, New England and Illinois are also expected to surface soon. And FBI agents are buzzing that another hot undercover sting is afoot.

The first big mob test for the Reagan Administration may not come in a courtroom at all, but in negotiations between the Internal Revenue Service and the Teamsters Union’s Central States Pension Fund. The pension fund—with assets of \$2.2 billion—has long been known as “the mob’s bank,” providing funds for casinos and speculative real-estate deals. In 1977, after the IRS threatened to lift the fund’s tax exemption, the trustees resigned and outside managers were hired for five years. No one believes that all the mobsters have lost their influence—especially not under



Dun Carl Malton



Justice's Margolis

*FBI's Webster, Justice's Margolis: First get the gangsters, then their profits*



*Agents Ellavsky, Livingston in Las Vegas: Living face to face with the criminals*

the lackluster Carter Labor Department—and what happens when the managers’ contract expires in 1982 is unclear. But the Teamsters union hopes to have positioned itself to block new restrictions; it was one of two major unions to support Reagan.

**Handicap:** Lawmen have few illusions about what their year of success means; they are in no danger of jailing all the mobsters and having to find other work. Some of the new strategies are obviously promising. Retiring Attorney General Civiletti, for example, favors industry-wide investigations, rather than the piecemeal headhunting of the past. But the government always starts with a handicap. “For all our talks about goals and strategies, law enforcement in a free society is primarily reactive,” says David Margolis, chief of Justice’s Organized Crime section. “No matter how effective we are, one kind of crime or another is not going to be stamped out.”

Margolis is right; there is no quick fix for any sort of crime. The government could

make a small dent, perhaps, by legalizing such “victimless” crimes as pornography or gambling. But there are obviously limits beyond which the statutory line cannot be nudged.

It has been the conventional wisdom, in some circles, to look on the Mafia as something of a service industry; loan sharks serve people the banks won’t touch; corrupt labor leaders serve “legitimate” bosses who don’t want to negotiate with an honest union. Certainly there would be less business for the mob if there were fewer people in desperate want or more who could control their greed. But the new Mafia, like the old, is not about to be stamped out by a few social improvements, or anything else short of unforeseeable changes in the human animal. At this point, the criminals Americans love to fear have become the criminals they often do business with, the mobsters who won’t disappear when the lights go up.

ARIC PRESS with ELAINE SHANNON, RON LABRECQUE and bureau reports

# A Squealer's Secrets

Federal investigators call Jimmy the Weasel Frattiano the most informative and reliable witness they have ever dealt with over the past three months

NEWSWEEK'S Ron Lattreque spent hours with Frattiano following him out to court, listening to his testimony in court and his bluster in private. Lattreque's report

Jimmy Frattiano remembers the play-out evening in 1948 that he drove his new Cadillac to a Los Angeles winery. In a dingy, vat-lined workroom, 30 men awaited him around a long wooden table on which a gun and a dagger lay crossed. The men joined hands and one of them recited the rules of the group in a Sicilian dialect that Frattiano did not know. Frattiano did understand *omertà*, the code of silence which dictates that a man leaves the organization only when he is dead—at the hands of his colleagues if he reveals their secrets. Frattiano's finger was pricked with the dagger. Then, after kissing each of his new brothers on the cheek, he became a "man of respect," a "made" member of La Cosa Nostra.

For the next three decades Frattiano engaged in a series of criminal schemes—including murders on contract—that alternately landed him in prison or boosted him in the Mafia hierarchy. But in 1977 the guns seemed about to turn on him; the Los Angeles family believed incorrectly he was ready to launch a rival faction. Acting as always out of self-interest, he sold himself to the government for protection. Now, with the same passionless conscience that made him a successful murderer, he regales investigators with a richly detailed expose of Mafia life, from petty jealousy killings to high-council business transactions. Frattiano's testi-

mony has helped convict a Frankfurter, a Beatty, two Francoses and Mafia bosses in Los Angeles and New York, and his out-of-court revelations have provided invaluable intelligence on the mob.

Frattiano began to learn the ropes in Cleveland, where he earned the nickname "Weasel" after he threw a rotten tomato at a cop who couldn't catch him. The son of immigrant parents, he attended Catholic schools until he learned as a teen-ager to shave dice and started operating profitable crap games in the neighborhood on Sunday mornings. "I was a good hustler. I always had money, so I just went on to organized crime," Frattiano says. "You grow smart because of your environment."

Charmer: Frattiano first went to jail after he and his partners beat up a bookmaker who didn't pay off on a 1937 Indians Red Sox game. But eight years in Ohio prisons only hardened his survival skills. "I ain't out a week and I gotta get even right away," he says. "I'm looking to rob somebody. There's no thought at all about going back to jail." The target was a West Virginia gambling hall. His share was \$20,000. He parlayed postwar black market sales into \$90,000 in just a few months, then, looking for bigger prey, took his wife and daughter to Los Angeles. Soon he met Johnny Rosselli, a dapper charmer with show-business friends and a hidden foothold in Las Vegas. Rosselli liked Frattiano and sponsored him for membership in the L.A. family.

One of his first assignments as a made mobster was the assassination of Micky Cohen, a splashy gambler who headed a rival syndicate. Frattiano planted a bomb beneath Cohen's bedroom and lit the fuse—but it fizzled out. A few months later Frattiano helped make another attempt on Cohen's life. With his wife and daugh-



Frattiano: A life inside the mob

ter Jimmy dropped by the mobster's Hollywood clothing store, then signaled to gun-toting colleagues that Cohen was in-sane and vulnerable. The setup ended in failure when the target fortuitously went to the bathroom. But Frattiano eventually made his first hit—on a friend. Frank Nicolosi was a Cohen hit man, a loyalist who scorned the pleas of the Italians to defect. Not knowing that Frattiano and his friends were the ones trying to kill his boss, Nicolosi visited Frattiano's home one night. "We just took a rope around him and choked him," Jimmy remembers. "It took three minutes, you know, didn't take long."

'Juice': Frattiano also helped dispatch Los Angeles family member Frank Borga. "They just told me to do this, and that's it," he says. "A lot of guys get killed for nothing. If I get into an argument with a guy and I have more juice with the boss, then he gets killed. If he has more juice, then I get killed." It took Frattiano more than a year to track down Louis (Russian Louie) Strauss on a contract from a Las Vegas casino owner. Finally Frattiano lured Strauss to a Palm Springs house where he was efficiently strangled. Fra-

Jimmy the Weasel (second from right) with Frank Sinatra, and with Dean Martin: A man with friends in high and low places





# JUSTICE

- Subsequently gets into trouble for a crime
- Selling packages wrapped with labels listing addresses and mailing checks mailed to be forged
- Running custom-made car shops that install stereo equipment and burglar alarms. While the cars are being worked, copies of the keys are made and then passed to thieves who later steal the cars

While authorities may have some ideas about what the middle-class underworld in crime remains a mystery. Official pursues usually begin at \$120 billion. That dou-

The Montreal Mafia is another name for a criminal underworld that has been built up in the region. They figure out who are at least gangsters. They keep their fingers and toes. They have been known to pressure the Triads. The Triads were started by the Triads who were in the underworld. The underworld takes in \$100 million. He says that he is a large amount.

**Head Start:** The money began to flow freely during Prohibition when criminals organized to develop complex distribution networks for illegal whisky and to buy the required political and police protection. Ever since, law enforcement has always lagged behind the mob. There's been in business almost since the turn of the cen-

... in the 1930s. A... .. We... .. 1960. There's a... ..

State of the... .. the government... .. J. Edgar Hoover... .. qualified to address the... .. of... .. Law... ..

## And Now, the 'Israeli Mafia'

Not long ago some men dropped by a store owned by a Jewish merchant on Fairway Avenue in Los Angeles and strongly hinted that the businessman should pay them for protection. If he didn't, they suggested, his store and his merchandise might be damaged—or some harm might come to his family. The shopkeeper declined, and within 48 hours he received word that a grenade had exploded at his father's house. No one was hurt, but the merchant was convinced that the thugs meant business. His father lived in Tel Aviv.

It was a typical ploy of a group calling itself the "Israeli Mafia." A gang of ex-cons and former commandos who began as black marketeers in the Israeli seaside city of Haifa, they have migrated to America—some by lying on their immigration forms, others simply by entering as tourists and staying illegally—and have established a sophisticated crime ring that trades in extortion, insurance fraud, narcotics and murder. They have neither the breadth nor depth of the Cosa Nostra; they lack its hierarchical structure and the protection it gains from political corruption. But, says one investigator, "they've managed in five years what the Italians took 40 years to do."

From its start in shaking down Jewish merchants in Los Angeles, the Israeli Mafia quickly built its first big money base—insurance fraud. Members are said to maintain a network of businesses in the Southwest. In a variation of what is known as a "bust out," they establish a good credit rating for one of the businesses, report a mysterious fire or burglary and collect on insurance claims. Then the supposedly lost merchandise reappears in another store owned by another gang member. Though the scam has yielded millions to the gang, few insurance companies have challenged the claims because of the cost involved and the difficulty of proving fraud.

**Cost of Silence:** In the past year the Israeli Mafia has channeled its energies into the even more profitable field of narcotics trafficking. They supply half the cocaine in L.A., one lawman says. Some gang members have contacts with Israeli drugsmen in the East and West coasts, and a series of murders has cut off their ties to the

group to drug deals in Mexico City and Miami. The most recent killing was discovered in October, 1979, when a drifter named Dan Van Meter, ramnaging through trash bins outside a liquor store in Van Nuys, Calif., came across a plastic bag containing a woman's leg. Police soon found more parts of a young woman identified as Esther Ruvenc and of her husband, Elhan. Charged with their murder are three men, Joseph Zakaria, Jehuda Avital and Elhan Komerehero, whom police link to the Israeli Mafia. Officials speculate that the Ruvencs were cocaine dealers who fell into a dispute over a \$70,000 payment; they were apparently lured to a meeting at the Bonaventure Hotel in Los Angeles, where they were backed to bits with meat cleavers and knives and stuffed into bags and suitcases.

The savvy, savvy and cross-continent reach of the Israeli Mafia makes the gang increasingly worrisome to law enforcement officials, who have had little success penetrating it. "Their code of silence is more rigidly enforced than the Italians," complains one investigator. The government has deported some members, but no one believes those efforts are sufficient to shut down the gang. A federal grand jury in Long Beach, in narcotics trafficking is expected to begin hearing testimony soon on the Israeli Mafia—a step toward the kind of painstaking investigation that will surely be needed to keep the gang from becoming even more like its namesake.

BY SSSIA WILLIAMS and ROSE FRIEDLBERG in Los Angeles

Van Meter, police with the remains of Mrs. Ruvenc. "Managing in five years what the Italians took 40 years to do."



# RICO THE ENFORCER

## JUSTICE

NEWSWEEK

*J. Ray McDermott & Co., a major builder of oil platforms, paid \$509,615 in bribes to the vice chairman of Tenneco Oil Co. to undertake lucrative construction projects in the Gulf of Mexico. But the cost of doing business jumped unexpectedly last year after the firm pleaded guilty on seven criminal counts. A Federal judge in New Orleans not only fined McDermott \$105,000, but confiscated its \$897,000 in illegal profits from the Tenneco deals.*

*While serving as mayor of Lansing, Ill., for sixteen years, Jack O. McNary shook down real-estate developers and invested his booty in two private businesses. Convicted last year of extortion, McNary was sen-*

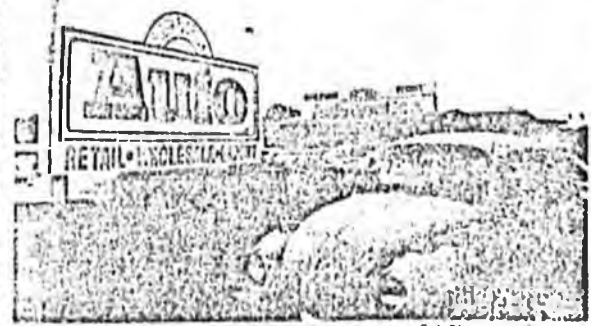
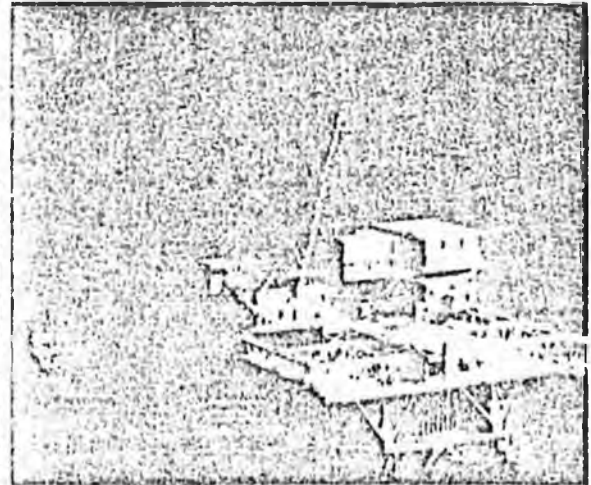
pit as underworld hit men. While Justice officials concede the law must be applied cautiously, they see no need to sheath their weapon. "This is a valuable tool," says Attorney General-designate Benjamin Civiletti. "We will not shy away from using it to pursue corrupt enterprises which do not fit the layman's view of organized crime." With about 200 RICO cases already filed, and the government increasing its use of the statute, the American Bar Association has scheduled a special seminar on how to deal with RICO at its convention this week.

RICO is one of the broadest criminal statutes Congress has ever passed. The law first enumerates 24 Federal and eight



Charles Pugh—Atlanta Journal Constitution

*A new spoils system: The government could not seize a private mansion, but it could take profits from an oil rig, and possibly a used-car lot*



Bob Sherman—Camera 5

*tenced to three years in prison. He will also have to ransom his businesses, which the government now effectively controls.*

These cases share a dubious distinction. The Justice Department prosecuted them—and other button-down crimes—with a law designed specifically to convict Mafia capos. Known as RICO (Racketeer Influenced and Corrupt Organizations), the nine-year-old law allows the government to seize legitimate businesses if they have been used for illegal schemes or as investments for dirty money. Says Chicago attorney Sherman Magidson, "RICO can reach out and castrate people."

The RICO law frightens many lawyers and judges. They worry about language so loosely drawn that it lets the government sweep even small-time white-collar defendants and public officials into the same

state crimes such as murder, extortion or mail fraud; then it states that anyone found to have participated in two of them within a ten-year period has undertaken a pattern of racketeering. If prosecutors can link such patterns to an interstate "enterprise"—loosely defined as virtually any personal association or business—the defendants become subject to imprisonment for up to twenty years, fines of \$25,000 per count and forfeiture. "Taking away businesses from these guys is like taking away tools from a burglar," says New Jersey Federal prosecutor George Wilson.

RICO is an extremely potent weapon for prosecutors. In plea bargaining, when most cases are settled, the potential RICO penalties often lead defendants to make a deal with the government rather than take their chances with a jury. In Chicago, for instance, the fear of forfeiting their businesses

led seven nursing-home owners and three pharmacists to plead guilty and pay fines of \$1 million.

The law also gives prosecutors extraordinary latitude to trace crime back to the otherwise insulated kingpin. "The statute allows a prosecutor to paint a broader picture than could be normally seen by a jury," says Jeremiah T. O'Sullivan, chief of the Organized Crime Strike Force in Boston. For instance, John Christopher was tried in Tampa, Fla., in 1975 for masterminding a ring that kidnapped women and forced them into prostitution. Normally, the scope of the evidence would have been limited to the specific kidnapping; at the RICO trial, however, the judge permitted

50 witnesses to describe Christopher's criminal behavior over thirteen years.

The government has used RICO in several important prosecutions against reputed mobsters. In Chicago, two alleged organized-crime hit men were sent to prison for 30 years after RICO convictions. And in Boston, after convicting four extortionists, the government seized the contents of five massage parlors—including 5 gallons of massage lotion and a Christmas tree.

**VICTORY:** Much of the controversy about RICO has focused on white-collar and government corruption cases. Federal officials won an important victory last month when the U.S. appeals court in New York upheld a guilty verdict in a complicated RICO hospital-fraud prosecution. Prosecutors established that Karl R. Huber, a Phi Beta Kappa Princeton graduate and Harvard law-school-trained attorney, had

# MACHINE CANDIDATE

## IDEAS

NEWSWEEK

"First of all," intones the speaker, "let me say that the United States is not a failure. I recognize that it's foolhardy to unilaterally disarm, but..." So begins an upbeat, let's-look-at-the-record foreign-policy speech that could well be the sickoff of the 1970 primaries. The speaker, however, is not Jimmy Carter, Ted Kennedy or even Howard Baker, but a fresh political voice from the Midwest. The name? IBM-370.

The slick-tongued computer-orator is the brainchild of two communications professors who believe that getting elected to

three "dramatic" views of the world, then play to the most widespread of the views. Set in a foreign-policy context, these three attitudes translated into cold-war, neo-isolationist and power-politics mind-sets. On the Panama Canal, for instance, the cold-war view held that the U.S. ought not to surrender the Canal Zone, the neo-isolationist view dictated that the U.S. get out of Panama and the power-politics view supported the negotiation of a new treaty to protect U.S. interests in the zone.

The professors picked twenty such issues to be covered by the speech. They culled

newspapers and magazines for months, jotting down quotes that reflected all three positions on all twenty issues, then transferred the quotes onto 60 index cards. Finally, they went to—where else?—Peoria, Ill., to see how the opinions played. Sixty Peorians were asked to sort the cards in order of preference, from those most reflective of their views to those least reflective. Then the subjects rearranged the cards to show the important each issue was to them.

1974-1976: Cragan and Shields fed the results into the computer and instructed it to write a speech based on the most prevalent opinions, complete with adverbs and adjectives. They pushed a button and out came the hypothetical candidate's carefully considered opinion on how best to handle U.S. foreign policy—for Peorians. "The point," says Cragan, "is that you can't take any idiot, parade him around the country for twelve months, and get him elected."

But the ultimate purpose behind this slightly 1934-ish project, say the two professors, is to force politicians out of the business of

manipulating symbols and back into the business of governing. To that end, their IBM-370 is about to churn out perfect speeches on energy, foreign policy and domestic policy. "When we publish these speeches in 1980," says Cragan, "we hope it will spark enough controversy for someone to ask the candidates why their speeches sound so much like our computer's. Maybe that will get them to say what they really think for a change."

So far, that message hasn't got through. Instead of coming clean, six political aspirants, including a candidate in a gubernatorial primary and a mayoral contender, have already called on Cragan and Shields for a little help from their computer. All were turned down—and lost their races.

DIANE K. SHAH with RICHARD MANNING in Chicago



Jeff Lowenthal—Crawford

Cragan and computer: 'My fellow Americans...'

public office is becoming more a matter of manipulating campaign symbols than dealing with substance. To prove their thesis, they set out to program the IBM-370 to write the "perfect" foreign-policy speech—one guaranteed, that is, to appeal to the most and offend the fewest in any given audience. "We figured that if we did the proper market-type research and programmed the computer to write a speech reflecting the findings, the speech would end up sounding pretty much like the genuine article churned out by a pack of poll-watching speechwriters," says John Cragan of Illinois State University.

**DRAMA:** To begin with, Cragan, 35, and partner Donald Shields, 34, of the University of Missouri-St. Louis, theorized that all a politician need do to get elected is recognize that voters generally subscribe to one of

helped rescue his father's failing business empire by overcharging hospitals for equipment. Convicted last year on 30 criminal counts, Huber now faces four years in jail and a fine of \$108,000. He does have one choice: he can pay a fine of an additional \$100,000 or forfeit his corporate holding company to the government.

**RICO** charges against public officials have a particularly odd twist: the "enterprise" usually involved is the government. A jury convicted the Macon, Ga., police detectives who took money and "carnal" bribes to overlook prostitution and other illegal activities. The criminal enterprise with which they were connected was the vice squad. Florida state judge Samuel Smith was tried for selling acquittals; his judicial district was named as the enterprise.

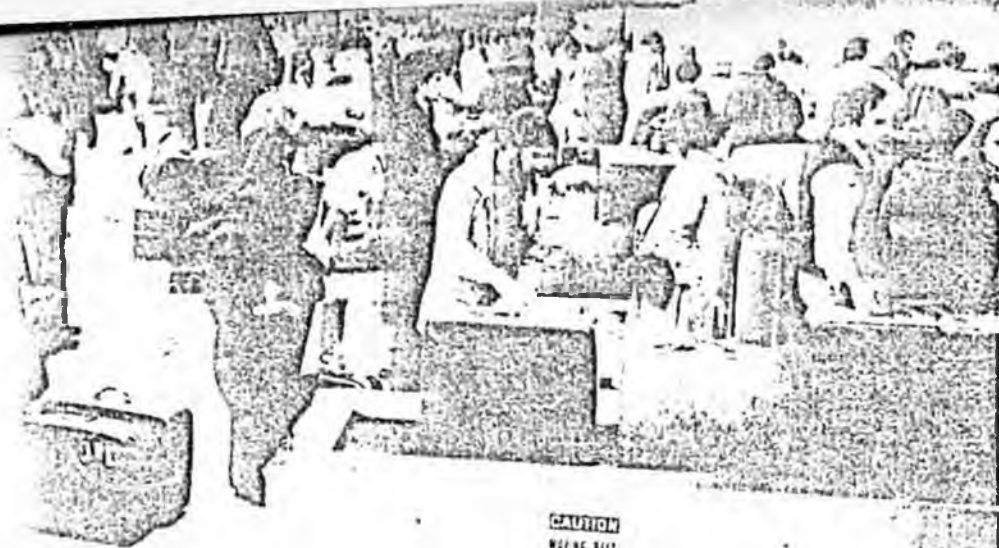
**FORFEIT:** Some judges are uncomfortable with this creative use of RICO. In May, U.S. Judge Ross Sterling in Texas dismissed a Federal indictment of five Texans accused of an oil swindle. "RICO was designed to keep racketeers out of business, not to make racketeers out of businessmen," Sterling said. Last week, Atlanta Federal Judge Harold Murphy dismissed part of a RICO indictment against porn king Michael Thevis. It would have forced Thevis to forfeit \$1 million in cash and jewelry and his \$4 million mansion if convicted. The law does not extend to what a criminal might have fought with illicit profits, Murphy ruled.

**RICO** appears flawed in several ways. One is its broad language, which allows the government to collect a batch of minor crimes and call it general racketeering. "We have a joke that if you have a job and send out letters, the government is going to confiscate your property," says prominent Washington defense lawyer William Hundley. The forfeiture provision—not often used—also causes trouble. The statute does not state precisely what happens when profits from racketeering are mixed with legitimate funds to operate a business.

**CHIEFTAINS:** Nor is it clear how closely tied property need be to the criminal enterprise before it can be confiscated. In Miami, two alleged chieftains of the "Black Tuna" ring—accused of smuggling 500 tons of marijuana into the U.S.—are arguing that the government has no right to seize a used-car business, three houses or a houseboat featured in the indictment.

Whatever its weaknesses, RICO gives the government an effective threat against sophisticated crime. Justice officials, who must approve RICO prosecutions, insist they study every case carefully before proceeding. But they find white-collar criminals especially elusive. "The psychology of these business types is that they're not going to get caught, and if they are, they'll find a way around it," says New York lawyer Grey Ullman. At the least, for white-collar criminals as well as gangsters, RICO seems to be evolving up the odds.

IN PRESS with LAINE SHANNON in Washington, MEL A. LEISSIMONS in Chicago and bureau reports



Flocks of holiday travelers won't be enough to get the major airlines on an uptrend.

## AVIATION

### A bleak new year for airline profits

A 2-ft. snowfall grounded planes in Denver on Christmas Eve, but elsewhere most airlines reported holiday traffic heavy enough to bring a moment of cheer to even the gloomiest executives. "I don't take much solace out of that," says Randall Malip, senior vice-president for marketing at USAir Inc. "It just means people who are working have a little more money and are still doing the traditional things. I see no change in the basic underlying problems."

Despite lower fuel bills, lower interest rates, and a slowing in labor-cost increases, 1982 is likely to be the third straight year of record losses for the 11 largest airlines, which lost \$417 million on operations in 1981. What is more, total revenues are expected to drop for the first time in the industry's history.

**An insane probability:** The outlook for 1983 is not encouraging. "As empty as we're flying," says one airline president, "there's an insane probability of sharply increased capacity." Spurred by lower fuel prices, the increased availability of landing slots at large airports, and the major airlines' determination to hold market share against aggressive smaller competitors, carriers are expected to increase flights by nearly 10% in 1983. By adding more seats to planes, industry capacity, in available seat miles, could be up by 15% or more. Northwest Airlines, Frontier Airlines, United Airlines, and Delta Air Lines will be showing some of the heftiest increases.

Although Trans World Airlines Inc. says it is trying to exercise "capacity restraint," the restructuring of its route system is adding capacity at its St. Louis hub. Other airlines have been making similar moves to strengthen their operations, thus increasing the likelihood of an all-out war as carriers slash fares to bring connecting traffic to their hubs.

Dallas will become an especially bloody battleground next spring if PSA Inc. launches a proposed new venture in that city with 30 planes leased from failed Braniff International Corp. Industry sources also fear that the death throes of weak carriers could spark a repeat of the havoc caused when Braniff slashed fares systemwide in its final days.

**Permanent discounts?** With the economy recovering only in fits and starts, at best, overcapacity is already chronic. All those empty seats, as well as the cash squeeze at weaker airlines, have led to never-ending fare wars. More than 80% of tickets were sold at discounts averaging 53% in October, the latest month for which figures are available. Revenue per passenger mile was 5.7% lower than in October, 1981. "There'll be this kind of pricing so long as any carrier feels the need to look at things on a short-term basis because of its own situation," says Eva Davis Holman, vice-president at Donaldson, Lufkin & Jenrette Inc.

This year's traffic growth—1.7% in the first 11 months for the major carriers—came most totally from deeply discounted prices. Travelers are becoming so accustomed to rock-bottom fares, says Julius Maldutis, a vice-president at Salomon Bros., that "we could find the industry establishing itself in a permanent discount structure."

Managements cling to the hope that prices will rise when demand revives, but even the staunchest believers are wavering. Says Morton Ehrlich, senior vice-president for planning at Eastern Air Lines Inc.: "There's something very compelling about very large red bracketed numbers quarter after quarter. I hope I turn out to be right in terms of a little bit of sanity coming back into the business. Unfortunately, logic isn't what brought us to this state." ■

## INVESTMENTS

### Can a racketeering law be applied to brokers?

Six investors in California, Nevada, and Virginia bought large amounts of Levitz Furniture Corp. stock on margin in 1981, allegedly on the recommendation of a Smith Barney, Harris Upham & Co. account executive who claimed he knew the furniture warehouse chain was a takeover target. But no takeover occurred, Levitz stock dropped precipitously, and the investors lost \$2.6 million. Now the investors are about to file a joint complaint in Manhattan federal court against Smith Barney. Their stockholder suit will probably be the largest yet to attempt to wield a relatively old legal weapon—the Racketeering Influenced & Corrupt Organizations Act of 1970 (RICO)—in a new way. Under RICO's treble-damages allowance, the investor group will seek amounts totaling \$65.8 million.

"Investing is not like playing blackjack," says Arthur M. Schwartzstein, a Washington lawyer representing four of the six plaintiffs. "If you feel you've been wronged, you don't have to swallow it. There may be avenues of recourse," including RICO.

**Aimed at crime:** Courts and lawyers remain divided over RICO, which outlaws the use of income received from a "pattern of racketeering" and was aimed at eradicating organized crime. But, says Peter H. Morrison, former chief of the fraud section of the U.S. attorney's office in Manhattan, the law's "reach extends considerably beyond that." Thus, while violations of securities laws are not usually viewed as racketeering, Congress defined the term to include "any offense involving . . . fraud in the sale of securities." And a pattern is defined as two violations of a number of laws, including securities laws, over 10 years.

To date, no court has upheld a claim against a broker under RICO. Future use of the racketeering statute may depend on the Smith Barney case, which is likely to wend its way to the Supreme Court. Smith Barney refused to comment until a complaint is filed.

Schwartzstein and other lawyers who believe RICO applies in securities fraud were heartened by a recent federal court ruling. It dismissed a claim by Shearson/American Express that Congress never intended the law to overlap with the antifraud provisions of the federal securities acts. Says Schwartzstein: "RICO gives David a little negotiating power with Goliath." ■



## Life in Hiding

Frank Calimano came home from the Korean War to find his brother a heroin addict and vowed to get revenge from the mobsters who peddled dope. By the mid-'70s he was a successful heating and air-conditioning contractor in New York, where hoodlums are as common as hammers in the construction trade. Calimano volunteered to feed information to local authorities. Eventually, he penetrated the Mafia's highest circles and became pals with the late gangland chief Carlo Gambino. In 1978 Calimano told his story to a Federal grand jury investigating labor racketeering. Then, to protect him and his family, the government placed the Calimanos in its Witness Security Program and sent them off to Houston with fresh identities.

Almost immediately, Calimano ran into trouble. Because he had no credit record, Calimano had difficulty starting a new business. Old friends recognized him on the street. And Federal prosecutors back in New York did not offer any further help. Calimano fell into a depression; last June he was found hanged in a hospital room, an apparent suicide. Says his widow, Vivian: "I don't want anyone to go into this program the way it is now. You can get better protection from the Mafia."

**Born-Again Lives:** Calimano was a victim of what had seemed a good idea. The government believed that it owed something to witnesses who provided information about organized crime but feared retaliation from mobsters. It started its assistance in 1970 with "safe houses." When they proved inadequate, Federal authorities agreed in 1975 to do much more: they would move informants and their families to different communities and help them begin completely new lives. But the execution of the plan has always been flawed. At U.S. Senate hearings this month, a string of "protected witnesses," hidden behind a screen and guarded by Federal marshals, confirmed that their born-again lives have been filled with poorly delivered promises, erratic assistance and, sometimes, tragedy.

The program is unusual enough that other government agencies seem unable to cope with it. One thing a protected witness needs at once is a new social-security card so that he can get a job, but the Social Security Administration has been painfully slow in issuing new numbers or transferring old accounts. Fourteen states refuse to provide new birth certificates; some state officials contend that if a witness committed a fraud after they had given him the new identification, they might be held liable.

The U.S. marshals assigned to help the witnesses are often not properly trained for the job and their efforts can be sadly comic. One marshal booked a witness on an airplane under the name "T. Kennedy" and another gave a witness—the alias "John Philip Sousa"—ploys guaranteed to attract unwanted and possibly deadly attention. Marshals have given away the new locations of their charges during casual courtroom conversations or in idle barroom chatter. In one Catch-22 incident,

the marshal service refused to give a witness a copy of his own agreement with the government because it included his old name; another marshal told a veterinarian treating the man's dog that the animal was part of the Federal witness-protection program.

Most of the informants in the program are not innocent bystanders. They tend to be either former hoodlums who fell out of favor with their gangs or convicted felons who decided to trade information for better treatment. The reward that the authorities offer is a chance at a fresh start, at least for the informants' families. "I did not want my children to grow up in that environment, because they would have become a part of organized crime," says Joe Cantalupo, who has testified against his former mob colleagues in Brooklyn. But many of these crooks do not know how to live anywhere except in the underworld; they have few skills to sell in straight society.

Informants still in prison can pose special problems. Security in many Federal jails is poor, and protected witnesses suspect that other inmates often can get access to supposedly secret records disclosing their true identities. Fearful that some other prisoner may have a contract to kill them, they fight to stay in isolation. Several witnesses have sued the government to prevent their transfers into the general prison population. These prisoners are effectively cut off from their families as well: even these visits are considered a security risk and are usually limited.

**Not Easy:** The worst problems, however, occur when the government tries to help law-abiding citizens such as Calimano who have agreed to help the police. Only about 5 per cent of the witnesses fall into this category, but they have the most to lose. It is not easy for a business executive or an accountant to erase his history and start from scratch. Usually, the witness must sacrifice his career, his friends and, for a while at least, a comfortable standard of living. Vivian Calimano's problems continue—Her oldest son cannot establish a line of credit, and she has not received any social-security bene-



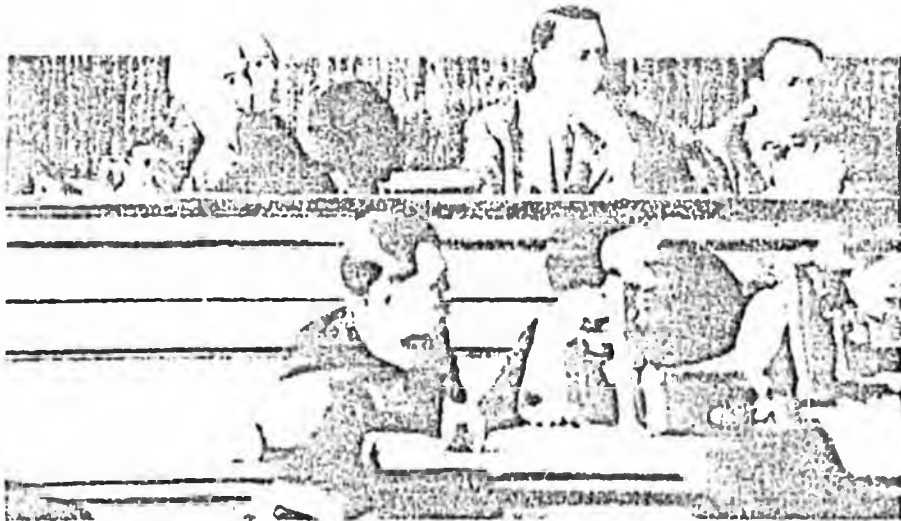
Cantalupo with a friend: A new start for his kids

fits because her husband's old account has not been transferred to his new number.

Yet no one wants to eliminate the program. "An efficient and effective Federal witness-security program is a vital tool in the fight against organized crime," says Sen. Sam Nunn, whose investigating committee conducted the recent hearings. Some steps have been taken to make the program more efficient. Witnesses now sign a 21-page memorandum of understanding that spells out what they can expect. Prosecutors must brief marshals before handing witnesses into their custody. One hundred and thirty marshals have been trained as "security specialists," and the remainder of the marshal corps is receiving instruction in how to cope with the witnesses' needs. More than 150 major companies now participate in a job pool for protected witnesses. The revamped program seems to be working for some. Still, says Howard Sahr, chief of the marshals' protection operation: "Witnesses should only enter when there is no other alternative."

ARIC PRESS with ELAINE SHANNON in Washington

# Bad News for Labor Racketeers . . .



Present efforts to curb corruption among union leaders date back to the 1950s and a committee chaired by Sen. Estes Kefauver (third from right at rear).

**T**HE CHARACTERS change, but it is the same old story, and a disturbingly frequent one. It was recited again a few months ago. A Labor Department official told a Senate committee about the activities of a labor union official, this one a Floridian.

As president of one local, manager of another, president of a district labor council and trustee of a workers' benefit plan, he had access to union workers' funds and embezzled from six labor organizations. Although convicted, he remained in office pending appeals and siphoned off another \$1 million.

Congress now seems determined to close off such opportunities. The vehicle is the Labor Management Racketeering Act. Already passed unambiguously by the Senate, it will be taken up this fall by the House Education and Labor Committee. The bill's sponsor, Sen. Sam Nunn (D-Ga.), says it is a signal to "organized crime and corrupt union leaders that Americans will no longer tolerate" criminal influence and activity in organized labor.

In effect, the bill would amend three existing acts—the Labor Management Reporting and Disclosure Act, the Labor Management Relations Act and the Employment Retirement Income Security Act.

A key provision would provide stronger incentives for unions to purge criminal elements from their ranks. For example, it would be a felony to employ a misdemeanor or felon convicted of a crime to engage in a payroll, siphon funds and hire a union or worker to con-

fit fund to hire or employ a convicted criminal.

In addition, the bill doubles to 10 years the period during which a criminal is disqualified from employment with such organizations after conviction or imprisonment.

The bill extends the disqualification to all positions with a union or benefit fund by eliminating the current exemption for "clerical" or "custodial" employees. Thus unions could no longer employ otherwise disqualified criminals as highly paid "clerks" or "custodians."

To prevent convicted criminals from continuing to work for unions or trust funds during lengthy appeals, the bill provides that disqualification for conviction begins on "the date of the judgment of the trial court," regardless of whether the judgment is appealed.

The bill would, however, protect the interests of an individual whose conviction is overturned. His salary would be placed in escrow upon his conviction. If the verdict is reversed, the individual is paid the accrued salary; if the verdict is upheld, the funds are restored to the union.

**L**ABOR DEPARTMENT attitudes would be important to the success of such legislation. The department's role in investigating organized crime within unions in years past—specifically, its reluctance in some instances to initiate probes—has been criticized.

The bill therefore amends previous acts by assigning not merely the authority to investigate but also the responsibility

to the Labor Department. The bill also states that the Department of Labor is the party that should be notified of convictions.

A Labor Department federal prosecutor and the FBI and the Department of Labor had taken a role in the government's fight against criminal corruption of the New York-New Jersey waterfront.

That fight with the International Longshoremen's Association dating back to the 1950's was the genesis of the present bill. At the time the nation was shocked by revelations of massive kickbacks and payoffs to longshoremen's union leaders uncovered by the Senate crime committee chaired by the late Sen. Estes Kefauver (D-Tenn.). The late Sen. John L. McClellan (D-Ark.) later made a stir as chairman of the Senate Permanent Subcommittee on Investigations when it exposed criminal activities by Teamsters union officials.

**A**CCORDING TO Sen. Don Nickles (R-Okla.), one of the co-sponsors of the bill, the fact that corruption has existed within labor's ranks for so many years is due in part "to the enactment of laws that seem to encourage crime." The fact that a convicted union official has been able to remain in office until appeals are exhausted is one example.

"It is time that we change the course of this country's labor laws—time that the laws reflect the high standards Americans expect of us," Nickles says.

In a letter to Nickles, the Justice Department put its weight behind the bill. It wrote:

"Recent convictions involving labor-management corruption on the waterfront and in other industries have demonstrated the continuing need for strong federal legislation to deter the use of extortion, bribery and payments involving conflicts of interest among the parties to collective bargaining."

According to Sen. Warren B. Rudman (R-N.H.), a former attorney general in his state, "Larceny, sabotage and labor disruption have become so prevalent in some union areas that they are included as part of the cost of doing business."

Labor Secretary Raymond J. Donovan has assured the Senate Labor and



Sen. Sam Nunn (D-Ga.) believes that unions need the help of Congress to rid themselves of corruption.

Human Resources Committee that his department would do what was expected of it.

"Our department has an unwavering commitment to protect workers and benefit plan participants. We will use every tool presently available to us to safeguard the integrity of labor organizations and benefit plans... and we would welcome the additional tools that would be given by the proposed legislation."

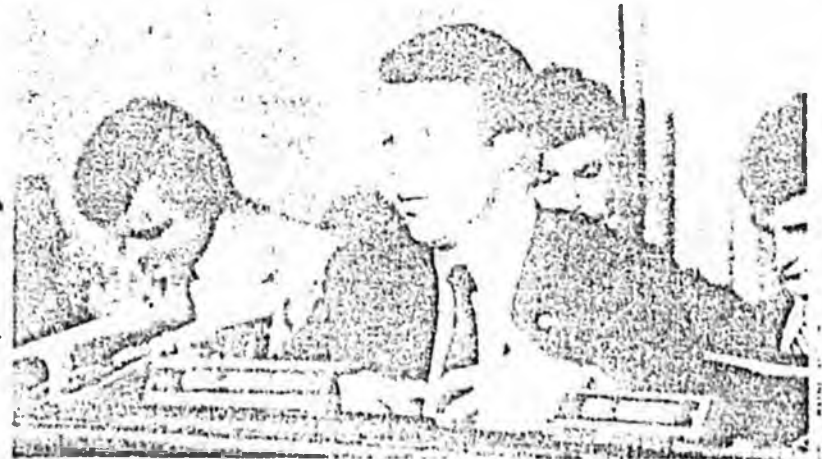
The bill would require Donovan's department to investigate abuses of a criminal, not merely a civil, nature. This section of the bill has been opposed on the ground that it encroaches on the crime-fighting authority of other federal investigative and prosecuting agencies. To allay concerns, the bill says

that nothing in it should be construed as precluding other agencies from conducting their own probes into both civil and criminal violations.

One aspect of the bill that is due for scrutiny by the House is the proposed mandatory disqualification of union officers on conviction. Considering that punishment would be meted out before appeals have run their course, the proviso raises "troubling civil liberties issues," says AFL-CIO President Lane Kirkland.

Two other portions of the bill also concern Kirkland. One is a section referring to employer contributions to union-managed trust funds. Kirkland explains that a union official can make an honest error "that has nothing to do with under-the-table employer pay-

and good news for union members is a Senate-passed bill that awaits action in the House



The Senate anti-bracketeering bill, says Sen. Don Nickles (R Okla.), is a long-awaited change in the course of this country's labor laws.

ment" and that he fears the section's misapplication.

Kirkland also contends that the 10-year disqualification from office could be too severe. "I can't persuade myself that all cases are alike," he says. He has suggested that trial judges be authorized in fact to impose disqualification periods of not more than 10 years at the time of conviction.

**D**ESPITE THESE reservations about the bill, Kirkland has endorsed it. His endorsement, he says, stems from organized labor's recognition that it "simply does not have the resources—the trained manpower, the subpoena, the grand jury, the authority to indict and punish perjury, the due process trial procedures... and the effective sanctions to punish the guilty.

Understandably, Kirkland feels the bill puts the spotlight too harshly on union officials. "Unlike bankers, businessmen and politicians, union officers are judged according to their worst examples," he told the senators.

Nunn believes that the bill does not take anything from labor but provides the extra tools needed for unions to "clean up themselves" of corrupt practices. "The unions have labored to be the cleanest of the people," he says. "For years, but in many cases, they have been unable to do so alone. I believe the unions need the help of Congress."

—JIM MATHIS



Organized labor does not have effective sanctions to punish the guilty on its own, says AFL-CIO President Lane Kirkland.

## A new ploy to fight takeovers

During the non-trading days between last Jan. 20 and Feb. 1, New York investors Carl U. Leahn and companions by controls purchased some 1 million shares of Marshall Field & Co. common stock. Together with stock of the Chicago retailer that it already owned, the sudden transactions boosted the Leahn group's holdings to 5 million shares, about 1/3 of total Field stock outstanding.

The company's reaction was predictable. It hired a law firm to fight the threat that Leahn would seek control and possibly liquidate the company to sell off its large real estate holdings.

But the legal claim was novel. Skadden, Arps, Slate, Meagher & Flom, the New York law firm well known for its

### The racketeering charge could deter investors from making hostile tender offers

corporate takeover department, charged Leahn and his group on Field's behalf with "racketeering," although there has never been any suggestion that Leahn or his companies are in any way affiliated with organized crime, the usual target of the racketeering laws.

**Cynical judges.** The legal claim was based on an interpretation of the federal Racketeering Influenced & Corrupt Organizations Act of 1970 (RICO) that has caused considerable comment within corporate legal circles in the past year. Some lawyers believe that the racketeering charge, which causes legitimate businesses considerable embarrassment and may work to deter professional investors from making hostile tender offers, could become more common in the coming months.

RICO outlaws the use of income received from a "pattern of racketeering" to acquire a business. A pattern of racketeering is defined, in turn, as any two violations of a number of different laws, including the securities laws, during a 10-year period.

Citing a consent decree that Leahn had just signed with the Securities & Exchange Commission in connection with his acquisition of Hammermill Paper Co. shares, as well as other Leahn activities that had been drawn into question by federal and state agencies, Field insisted that the allegations, if proved, amounted to a pattern of racketeering.

Although RICO has been the law for 12 years, it has surfaced in civil suits only during the past year or so. The reasons given by securities lawyers who refuse to be quoted by name, are twofold. One

is that federal judges, especially those on the U.S. District Court in Manhattan that bears a large percentage of the nation's takeover cases, are becoming increasingly cynical about the usual claims made by a target company's lawyers. The judges view many cases as legally unjustified attempts by entrenched management to fight off an acquisition justifiable on business or financial grounds.

The second reason is that in 1977 the Supreme Court threw doubt on the right of a target company to sue for fraud under the securities laws. By law, whoever acquires more than 5% of a company's stock must submit to the SEC in a Schedule 13D a statement of his intentions. Defense lawyers have traditionally alleged that the 13D filing is false or misleading because the acquirer did not disclose his true purposes. But now "the courts are divided over whether a target company has standing to sue," says Martin Lipson, a New York takeover lawyer not connected to the Field case. Under RICO, however, a target company has the explicit right to sue.

In his Schedule 13D, Leahn denied that he and his group had formed any plans to liquidate Field, sell off its assets, merge it with another company, or make any other major change in its corporate structure. The claim was greeted with some skepticism. Since 1975, Leahn had purchased large positions in a number of companies and gained a reputation of seeking control, merger, and sale of assets. Often he ultimately sold the shares back to the companies at a considerable profit.

**Severe sanctions.** On Feb. 8, Field sued Leahn in Manhattan federal court, charging that he had failed to disclose a plan to acquire 35% of the stock, seize control, and engage in "extraordinary corporate transactions." At the same time, Field laid the groundwork for its racketeering charge.

Beyond the publicity value, a racketeering charge can be worrisome because of the severe sanctions open to judges to impose. RICO allows treble damages, attorneys' fees, and an injunction that theoretically could prevent an investor from attempting future takeovers for a period as long as 10 years.

In the Field case, Skadden Arps attor-

neys persuaded District Judge Percy N. Levai to issue a temporary restraining order while Leahn made further disclosure of his plans, giving Field 10 days to scout up a "white knight" to counter Leahn's acquisition bid. Leahn cited the defects Judge Levai lifted the restraining order, and Leahn continued to buy, ultimately acquiring some 80% of Field shares. Within three weeks, however, Field arranged through Goldman, Sachs & Co. a merger with HATS Inc. at \$20 per share. It is expected to be completed this summer.

**Vulnerability.** Litigation between Leahn and Field was dropped on Mar. 30, before Judge Levai could rule on the racketeering charges. Had the suit continued, however, Field's lawyers would likely have pressed for documents from Leahn that might have proved their racketeering claims. Under RICO, it is unnecessary to show a conviction, only that



Lawyers may paint investors as racketeers

the alleged violations of law actually occurred. Most of what was discovered during the two months of litigation was sealed by agreement of the parties, who will not comment publicly on the case.

Some corporate lawyers privately condemn the use of RICO in takeover suits as "sewer tactics," "just a diversionary tactic," and "silly." But many agree that the fear of being labeled a racketeer could influence future takeover strategy. And, says one, "those especially vulnerable are professional investors, like Leahn, with a track record."

Whether RICO charges will catch on remains to be seen, but a few attorneys think that their use in the Field case was an important psychological turning point. Says one well-regarded takeover lawyer: "I don't think the racketeering charge is of any moment, but don't quote me because I may have to use it in a case tomorrow."