

S B

l b 9

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
2/17	Bill introduced/referred
2/25	Dept. of Public Safety Position Paper
4/2	Hickson memo; Editorial;
	Dept. of Law letter
4/24	- J.N. memo from Public Safety + Law
	- contacted Sam Crane - ACYU - 276-5152
	- contacted Del Smith - Chiefs of Police 279-1441
	✓ Invite to make copies - Hal Brown
	271-5071
	✓ Paul Grant - ACYU Board Member
	586-2701 (w) -
	will let us know if/who will testify
4/21/80	Public Safety FN - zero
4/30	Talked to Gayle Hovetski - she will
	let us know if there is a new Dept of Law
	position. 3429.
2/5	Called Paul Grant - NCID - Rep will attend
	" Del Smith - Chiefs of Police NOT in office today
	" Gayle Hovetski - DCL - will have someone
	available for questions

**ANCHORAGE CHAMBER OF COMMERCE CRIME COMMISSION****CRIME COMMISSION BOARD RECOMMENDATION**

During the course of receiving input from various state and federal law enforcement agencies, the one consistent point was the lack of a conspiracy law in the state of Alaska.

Because none of the committees addressed that particular issue, members of the Crime Commission Board felt they should make a recommendation concerning the need for the state to have a conspiracy law. Therefore, it is the unanimous recommendation of the Board of Directors of the Anchorage Chamber of Commerce Crime Commission that the state pass a conspiracy law during the 1985 session of the legislature.

The passage of a State Conspiracy Law will provide a very important tool for Alaska Law Enforcement in dealing with sophisticated crimes involving drugs, white collar crime, stolen property, and arson, to name a few.

**LAW ENFORCEMENT/CRIME COMMITTEE**

Committee Chairman: George King

**NARCOTICS****RECOMMENDATIONS**

1. The State Legislature should pass a bill similar to the 1984 House Bill 698, "Act Relating to Marijuana." i.e., the recriminalization of marijuana should be uniform with Federal law.
2. The Anchorage Municipality and/or the State Legislature should pass new or rewrite existing laws and ordinances to prohibit the display or sale of items used solely by drug users. The Municipal Ordinance Chapter 8.20 should be amended to prohibit the sale of products with implied drug usage.
3. Increase Anchorage Metro Unit and APD manpower, equipment, and budgets to aid in the investigation, arrest, and documentation of cases for prosecution to effectively control and deter this crime category.

ALASKA STATE LEGISLATURE  
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN  
SENATOR TIM KELLY, VICE-CHAIR  
SENATOR JAN FAIKS  
SENATOR RICK HALFORD  
SENATOR ROBERT ZIEGLER, SR.



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3717

JANUARY 31, 1986

TO: MIKE SPAAN

FROM: ANN PLUNKETT

As promised, I'm leaving you relevant portions of the 1977 Alaska Criminal Code Revision, as well as the "original" conspiracy bill introduced by John Liska in 1984. The language contained in Sec. 1 of our SB139, narrowing the wording to controlled substances and prostitution, is a Rodey amendment.

If you have any more questions, just call. See you on Thursday.

SENATOR PATRICK RODEY, CHAIRMAN  
SENATOR TIM KELLY, VICE-CHAIR  
SENATOR JAN FAIKS  
SENATOR RICK HALFORD  
SENATOR ROBERT ZIEGLER, SR.



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3717

January 21, 1986

U.S. Attorney Michael Spaan  
701 C Street  
Anchorage, AK 99501

Dear Mr. Spaan:

The Senate Judiciary Committee will be hearing Senate Bill 139, "An Act relating to the crime of conspiracy," on Thursday, February 6, at 1:30 p.m. You are invited to attend and share your comments with members of the committee.

Enclosed you will find a copy of SB 139; if you require any further information, please contact Ann Plunkett at 465-3717.

Sincerely,

A handwritten signature in cursive script that reads "Pat".

Patrick M. Rodey

Encl.

SENATOR TIM KELLY, VICE-CHAIR  
SENATOR JAN FAIKS  
SENATOR RICK HALFORD  
SENATOR ROBERT ZIEGLER, SR.



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3717

January 23, 1986

Harold M. Brown  
Attorney General  
Pouch K  
Juneau, AK 99811

*HAL*  
Dear General Brown:

The Senate Judiciary Committee will be hearing Senate Bill 139, "An Act relating to the crime of conspiracy," on Thursday, February 6, at 1:30 p.m. You are invited to attend and share your comments with members of the committee.

Enclosed you will find a copy of SB 139; if you require any further information, please contact Ann Plunkett at 465-3717.

Sincerely,

*Pat*  
Patrick M. Rodey

Encl.

Introduced: 2/13/84  
Referred: Judiciary and Finance

BY LISKA

1 IN THE HOUSE

2 HOUSE BILL NO. 626

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the crime of conspiracy."

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 11.31 is amended by adding new sections to read:

9 Sec. 11.31.120. CONSPIRACY. (a) An offender commits the crime  
10 of conspiracy if, with the intent to promote or facilitate an illegal  
11 activity, the offender agrees with one or more persons to engage in or  
12 cause the performance of that activity and the offender or one of the  
13 persons does an overt act in furtherance of the conspiracy.

14 (b) If an offender commits the crime of conspiracy and knows  
15 that a person with whom the offender conspires to commit a crime has  
16 conspired or will conspire with another person or persons to commit  
17 the same crime, the offender is guilty of conspiring with that other  
18 person or persons to commit that crime, whether or not the offender  
19 knows their identities.

20 (c) In a prosecution under this section, it is not a defense

21 (1) that the defendant belongs to a class of persons who by  
22 definition are legally incapable in an individual capacity of com-  
23 mitting the crime that is the object of the conspiracy; or

24 (2) that a person with whom the defendant conspires could  
25 not be guilty of the crime that is the object of the conspiracy  
26 because of

27 (A) lack of criminal responsibility or other legal  
28 incapacity or exemption;

29 (B) unawareness of the criminal nature of the conduct

1 in question or of the criminal purpose of the defendant; or

2 (C) any other factor precluding the culpable mental  
3 state required for the commission of the crime.

4 (d) In a prosecution under this section, it is a defense that,  
5 if the criminal objective were achieved, the defendant would not be  
6 legally accountable under AS 11.16.120(b) for the conduct of the  
7 person with whom the defendant conspired.

8 (e) In a prosecution under this section it is an affirmative  
9 defense that the defendant, under circumstances manifesting a volun-  
10 tary and complete renunciation of the defendant's criminal intent,  
11 gave timely warning to law enforcement authorities or otherwise made  
12 proper effort to prevent the commission of the crime that was the  
13 object of the conspiracy. Renunciation by one conspirator does not  
14 affect the liability of another conspirator who does not join in the  
15 renunciation.

16 (f) The liability of a conspirator for offenses committed in  
17 furtherance of the conspiracy, including a crime that is the object of  
18 the conspiracy, shall be determined under AS 11.16.

19 (g) Conspiracy is a

20 (1) class A felony if the object of the conspiracy is a  
21 crime punishable as an unclassified felony;

22 (2) class B felony if the object of the conspiracy is a  
23 crime punishable as a class A felony;

24 (3) class C felony if the object of the conspiracy is a  
25 crime punishable as a class B or class C felony.

26 (h) In this section "illegal activity" means an offense

27 (1) against the person under AS 11.41, punishable as a  
28 felony;

29 (2) against property under AS 11.46, punishable as a class

1 A or class B felony;

2 (3) against public administration under AS 11.56, punish-  
3 able as a felony;

4 (4) against public order under AS 11.61, punishable as a  
5 felony;

6 (5) involving controlled substances under AS 11.71, punish-  
7 able as an unclassified, class A, or class B felony; or

8 (6) involving alcoholic beverages under AS 04, punishable  
9 as a felony.

10 Sec. 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITA-  
11 TIONS OF ACTIONS. (a) For purposes of applying AS 12.10 governing  
12 limitations of actions, in a prosecution under AS 11.31.120, con-  
13 spiracy is a continuing course of conduct that terminates

14 (1) when the crime that is its object is completed;

15 (2) when the agreement is abandoned by the defendant and by  
16 the person with whom the defendant agreed; or

17 (3) as to an individual defendant, when the defendant  
18 abandons the agreement by advising the person with whom the defendant  
19 agreed of the defendant's abandonment or the defendant informs law  
20 enforcement authorities of the existence of the conspiracy and of the  
21 defendant's participation in it.

22 (b) For purposes of (a)(2) of this section, abandonment of an  
23 agreement is rebuttably presumed if neither the defendant nor anyone  
24 with whom the defendant conspired does an overt act in furtherance of  
25 the conspiracy during the applicable period of limitations.

26 \* Sec. 2. AS 11.31.140 is amended to read:

27 Sec. 11.31.140. MULTIPLE CONVICTIONS BARRED. (a) It is not a  
28 defense to a prosecution under AS 11.31.100 - 11.31.120 [AS 11.31.100  
29 OR AS 11.31.110] that the crime that is the object of the attempt,

1 conspiracy, or solicitation was actually committed pursuant to the  
2 attempt, conspiracy, or solicitation.

3 (b) A person may not be convicted of more than one crime defined  
4 by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] for conduct  
5 designed to commit or culminate in commission of the same crime.

6 (c) A person may not be convicted on the basis of the same  
7 course of conduct of both (1) a crime defined by AS 11.31.100 - 11.-  
8 31.120 [AS 11.31.100 OR AS 11.31.110]; and (2) the crime that is the  
9 object of the attempt, conspiracy, or solicitation.

10 (d) This section does not bar inclusion of multiple counts in a  
11 single indictment or information charging commission of a crime de-  
12 fined by AS 11.31.100 - 11.31.120 [AS 11.31.100 OR AS 11.31.110] and  
13 commission of the crime that is the object of the attempt, conspiracy,  
14 or solicitation.

15 (e) If a person conspires to commit more than one crime under  
16 AS 11.31.120, the person commits only one crime of conspiracy if the  
17 multiple crimes are the object of the same agreement.

HOUSE JUDICIARY  
STANDING COMMITTEE  
March 29, 1984  
1:43 p.m.

Members Present: Rep. Bussell, Chairman  
Rep. Liska, Vice-chairman  
Rep. Clocksin  
Rep. Barnes  
Rep. Hayes

Members Absent: Rep. Malone  
Rep. Wendte

COMMITTEE CALENDAR

HB 626 "An Act relating to the crime of  
conspiracy."

HB 562 "An Act relating to service of process in  
cases involving domestic violence."

WITNESS REGISTER

Gayle Horetski  
Department of Law  
Pouch KC  
Juneau, AK 99811  
465-3428

Position Statement: Testified in favor of HB 626

PREVIOUS ACTION

HB 626 First reading - 2/13/84. Judiciary  
Committee Report and Fiscal Note is on page  
3100 of the 1984 House Journal. Committee  
referrals - Judiciary, Finance and Rules.

HB 562 First reading - 2/1/84. C&RA Committee  
Report and Fiscal Note is on page 2981 of  
the 1984 House Journal. Committee referrals  
- Community & Regional Affairs, Judiciary,  
Finance and Rules.

ACTION NARRATIVE

TAPE# 139  
Recording  
Number 0005

The Judiciary Committee meeting was called  
to order by Chairman Bussell at 1:43 p.m..

Roll was taken and he read the bills up for consideration today. States that HB 562 had a CS prepared which failed to answer the questions and problems before the troopers and the city of Anchorage. It is noted that there will be further work on HB 562.

Number 0030

Chairman Busseil turns the time to HB 626.

Number 0035

Gayle Horetski comes before the committee. "This bill adds additional sections to the criminal law for conspiracy. Most states have some laws for conspiracy. When the criminal code was adopted in 1986, the conspiracy sections were not adopted because of the belief of lack of need. Now we have to prove that someone attempted to commit a crime. Very hard to do."

Ms. Horetski refers to "illegal activity". Reads section (h), page 2.

(h) In this section "illegal activity" means an offense

(1) against the person under AS 11.41, punishable as a felony;

(2) against property under AS 11.46, punishable as a class A or class B felony;

(3) against public administration under AS 11.56, punishable as a felony;

(4) against public order under AS 11.61, punishable as a felony;

(5) involving controlled substances under AS 11.71, punishable as an unclassified, class A or class B felony; or

(6) involving alcoholic beverages under AS 04, punishable as a felony.

HB 626 requires that a person do things. Sec. (a) page 1. An offender commits the crime of conspiracy if, with the intent to promote or facilitate an illegal activity, the offender agrees with one or more persons to engage in or cause the performance of that activity and the offender or one of the persons does an overt act in furtherance of the conspiracy.

There will be provisions for a person to back out of the conspiracy. It is taken from existing law. Penalties are outlined on page 2.

Multiple conviction barred is taken from existing law.

Number 0175

Rep. Barnes asks Ms. Horetski if she supports this bill as is.

Ms. Horetski answers yes.

Number 0185

Rep. Hayes asks if prostitution is covered in this bill. The answer is no.

Number 0210

Rep. Barnes moves and asks unanimous consent to pass HB 626 from committee with individual recommendations. There is no objection.

Number 0220

With no further business to come before the committee, Chairman Bussell adjourns at 1:53 p.m..

# Alaska State Legislature

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3733

DISTRICT 15  
STAR ROUTE BOX 421  
EAGLE RIVER, ALASKA 99577  
(907) 688-2526



VICE-CHAIRMAN  
Judiciary  
Legislative Regulations Review

MEMBER  
Resources  
Rules  
Finance — Sub. Com. Labor

Representative John J. Liska

March 28, 1984

## MEMORANDUM

TO: 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.

*file conspiracy*  
BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW**  
CRIMINAL DIVISION

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTOR  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 3  
ANCHORAGE, ALASKA 99501-599  
PHONE: (907) 279-7424

October 17, 1984

Ms. Elizabeth Hickerson  
Senate Advisory Council  
1024 W. 6th Avenue, Suite 203  
Anchorage, AK 99501

Dear Ms. Hickerson:

This is in response to your September 13 letter to Assistant Attorney General Gayle Horetski, requesting this Department's position on conspiracy legislation along the lines of HB 626, introduced last session. As we discussed during our telephone conversation last week, this Department is generally in favor of some type of conspiracy law. However, we do not think that it is appropriate that such a law be passed right now, nor do we think that law enforcement in Alaska is being adversely affected without a conspiracy law at the present time.

As you know, conspiracy laws can easily create unforeseen legal and tactical problems which arise whenever the class of potential co-defendants is expanded. For example, the usual problems with using co-defendant statements are further compounded when more and more people are charged or can be charged as conspirators. More importantly, and of primary concern to us at this time, is that the existence of a conspiracy law makes it possible for a greater number of witnesses to assert fifth amendment rights, even if they are not charged. As a result of such claims, the state will be forced to give more and more grants of immunity in order to obtain needed testimony. We believe that expanding the number of immunity grants is inappropriate (1) because of the unsettled nature of the law on immunity in Alaska, and (2) because unnecessary grants of immunity subject witnesses to lines of cross-examination that are detrimental to the prosecution in any criminal case.

For these reasons we do not favor a conspiracy law at this time and, if one is ultimately to be introduced at some point in the future, it must be limited in such a way as to avoid the problems raised above.

As I mentioned to you over the phone, we do not think our prosecution program is suffering because we do not have a

Ms. Hickerson

October 17, 1984

Page 2

state conspiracy law. At the present time we have a close working relationship with the United States Attorney's Office for the District of Alaska whereby appropriate cases have been prosecuted in federal court under applicable conspiracy laws and well-settled federal immunity provisions. The State of Alaska is participating in the U.S. Department of Justice Cross-Designation Program, which permits state prosecutors to become specially designated assistant U.S. attorneys to handle criminal cases in federal court under the direction of the U.S. Attorney for Alaska. Therefore if the state uncovers a large narcotics conspiracy, for example, it can be prosecuted in federal court by the state prosecutor who is most familiar with the case because of his or her involvement in the initial investigation.

We hope we have been responsive to your concerns, and we apologize for the delay in getting back to you.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By: 

Dean J. Guznelli  
Assistant Attorney General

DJG/so-39

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

Support

2/20/85

SB 139 "An Act relating to the crime of conspiracy."

Alaska is the only state that does not have a conspiracy statute. Presently law enforcement agencies are unable to charge suspects with a felony even if they can prove that a crime was planned with every intention of carrying it out.

  
Robert J. Sundberg  
Commissioner

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

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

**REQUEST**

Bill/Resolution No. : SB 139  
 Title : "an act relating to the crime of conspiracy"  
 Sponsor : Senator Rodey  
 Requestor : Senate Judiciary  
 Date of Request : 1/24/86

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Alaska State Troopers  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Kathy Niles, Admin. Ass't  
 Division : Commissioner's Office

Phone : 465-4336  
 Date : 1/24/86

Approved by Commissioner : [Signature]  
 Agency : Public Safety

Date : 1-25-86

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No. : SB 139  
 Title : "An Act relating to the crime of conspiracy."  
 Sponsor : Sen. Rodev  
 Requestor : Senate Judiciary Committee  
 Date of Request : January 24, 1986

FISCAL DETAIL

Agency Affected : Department of Law  
 BRU : Prosecution  
 Components : Third Judicial District

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		60.0	73.6	75.8	78.1	80.4
TRAVEL		4.5	5.6	5.8	5.9	6.1
CONTRACTUAL		11.2	13.8	14.2	14.6	15.0
SUPPLIES		3.5	2.5	2.6	2.7	2.8
EQUIPMENT		1.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>80.7</b>	<b>95.5</b>	<b>98.4</b>	<b>101.3</b>	<b>104.3</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		80.7	95.5	98.4	101.3	104.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached analysis.

Prepared by : Richard I. Pegues, Director Phone : 465-3672  
 Division : Administrative Services Division Date : 2/05/86  
 Approved by Commissioner : Richard I. Pegues / FOR /  
Harold M. Brown, Attorney General Date : 2/05/86  
 Agency : Department of Law

Distribution (by Agency preparing fiscal note) :

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

This bill makes it a crime for two or more persons to "conspire" together to violate state or municipal laws regarding drugs and prostitution. Enactment of this bill will permit state attorneys to prosecute conspirators even though the crime that was the object of a conspiracy may not have been completed.

With the limits set by the bill, the major focus of enforcement attention will be upon the major narcotics rings which have appeared in the state during the last few years.

Investigation and prosecution of large-scale drug trafficking cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A good example is the single big drug case that the state was able to pursue in FY 85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. So far there have been no acquittals, although a few defendants have fled the state and are now fugitives.

The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors consulted on a daily, sometimes hourly, basis with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers to keep track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compile telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions, but leading to more effective enforcement of our drug laws. Effective enforcement of these laws, especially at this point in Alaska's history, is critical. With the opening of the new international wing at the Anchorage airport, there has been an increase in the number of international flights with passengers "off-loading" in Anchorage. With new routes of access

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

to Alaska, and new types to drugs to deal in, traffickers will have a field day. We must try to prevent the infiltration into the state of new organizations intended to fill the void left by the prosecution of the Resek-Marin family (FY 84), the Black Gold ring (FY 85) and, most recently, the Azzarella-Serra organizations (FY 86).

Considering the increase in sophisticated narcotics trafficking, and the efforts necessary to adequately meet this threat, the Department of Law believes that the dedicated services of at least one full-time attorney in Anchorage will be required to effectively carry out conspiracy prosecutions under this legislation.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

## Fund Summary - SB 139

	<u>Attorney IV</u>	<u>Total</u>
71000	60.0	60.0
72000	4.5	4.5
73000	11.2	11.2
74000	3.5	3.5
75000	1.5	1.5
	<hr/>	<hr/>
TOTAL	80.7	80.7

FY 87 costs are on a 10 month, first-year basis. Costs beyond FY 87 are on a 12 month, full-year basis, less one-time costs, and including a 3% annual inflation factor.



DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

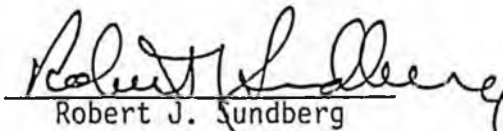
Support

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. Sundberg  
Commissioner

# Alaska State Legislature

Advisory Council Members  
Senator Kerttula, Chairman  
Senator Bennett  
Senator Fahrenkamp  
Senator Vic Fischer



1024 W. 6th Avenue, Suite 203  
Anchorage, Alaska 99501  
Phone: (907) 274-1426

## SENATE ADVISORY COUNCIL

TO: SENATOR JAN FAIKS  
FROM: ELIZABETH J. HICKERSON  
RE: CONSPIRACY LAW  
DATE: DECEMBER 12, 1984

A handwritten signature in black ink, appearing to be "Elizabeth J. Hickerson", written over a horizontal line.

In response to your request for information regarding the law of conspiracy, I offer the following.

### DEFINITION

Although the crime of conspiracy is somewhat vague and difficult to define, it is generally recognized under modern statutes as a combination for the purpose of committing a crime.<sup>1</sup> Since no criminal act has been completed, conspiracy is known as an inchoate offense. Thus, conspiracy permits punishment not merely on the basis of what a person did, but upon what he or she would do if not stopped first.

### RATIONALE OF CONSPIRACY

Traditionally, the crime of conspiracy has been considered a means "to prevent and to punish criminal partnerships in crime and to stop, if possible, such criminal combinations of<sup>2</sup> persons before attempts to commit substantive crimes are made." While state prosecutors do not utilize conspiracy charges very often, federal law enforcement officers "more often view conspiracy statutes as very important weapons in their fight against organized crime."<sup>3</sup>

### PRINCIPLES OF CONSPIRACY

The basic elements of conspiracy include: (1) an agreement between two or more person; (2) with specific intent; (3) to engage in an illegal and criminal act or a legal act by illegal or criminal means. In the majority of states an overt act in furtherance of the criminal plan is also required.<sup>4</sup>

The agreement must be actual, but it may be either explicit or tacit and it need not be formal. There<sup>5</sup> must be a meeting of the minds, "a unity of design and purpose." Specific intent to

accomplish the act must be established. Both elements may be proven through circumstantial evidence.

A combination of two or more guilty person is required to constitute a conspiracy. Each conspirator need not know the identity of all conspirators.<sup>6</sup> It has been held that an acquittal of all persons with whom the defendant is alleged to have conspired precludes his conviction. However, courts have held that a grant of immunity to all but one conspirator is "merely a declaration by the prosecution that it will not presently pursue the charge further"<sup>8</sup> and thus does not bar prosecution for the remaining defendant.

In those jurisdictions which require an overt act, courts agree that more is needed than an act of preparation. A substantial step must be taken toward the commission of a crime, and only one conspirator need commit the overt act for liability to attach for all conspirators.<sup>9</sup> Even a minor act which could not justify a conviction for attempt will be sufficient to establish an overt act. Depending on the facts in each case, the following have been held as sufficient overt acts for conspiracy conviction: making a phone call,<sup>10</sup> attending a lawful meeting, and an interview with a lawyer.

In most jurisdictions, conspiracy does not merge with the substantive crime, and therefore a person can be charged with conspiracy and the completed crime, i.e., conspiracy to murder and murder.

The duration of the conspiracy is important, because once the conspiracy is terminated (at abandonment or success) the statute of limitations begin to run.<sup>11</sup>

Punishment for conspiracy varies throughout the jurisdictions, and may be a misdemeanor regardless of its object, may be a set sentence regardless of its object, or may be tied to the substantive crime which was the object of the agreement.<sup>12</sup>

#### EXITING LAWS AVAILABLE IN ALASKA

It is important to note that in addition to numerous federal conspiracy laws (see attached), other Alaska laws (attempt, solicitation, scheme to defraud) exist for the punishment of illegal acts not completed. In addition, under AS 11.16.110 a person may be prosecuted for the conduct of another if:

- (1) the person is made legally accountable by a provision of law defining the offense;
- (2) with the intent to promote or facilitate the commission of the offense, the person
  - (A) solicits the other to commit the offense; or

(B) aids or abets the other in planning or committing the offense; or

(3) acting with the culpable mental state that is sufficient for the commission of the offense, the person causes an innocent person or a person who lacks criminal responsibility to engage in the proscribed conduct.

"Aid and abet" has been defined by the Alaska Supreme Court as meaning, "to help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission." Thomas v. State, 391 P.2d 18 (1964).

Organizations may be held legally accountable for conduct constituting an offense. AS 11.16.130 Organization means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose. AS 11.81.900(b)(37)

#### CRITICISMS

The crime of conspiracy has been criticized by judges, courts, commentators and the public. The major arguments advanced against conspiracy include:

use of conspiracy against labor unions and political defendants;

serious threats to the freedom of speech and association;

inherent vagueness in the crime of conspiracy (uncertainty over what is sufficient to constitute the agreement, what mental state must be shown, and what constitutes an overt act);

venue guarantees of the Sixth Amendment are infringed (trial may be held in any district in which any parts of agreement are made, or where any overt act took place);

co-conspirator hearsay exception is often overbroad and applied beyond the rationale;

most conspiracy convictions are based upon circumstantial evidence and often admitted under rather loose standards of relevance;

defendants are often prosecuted in a joint trial which presents disadvantages for individuals when group rights are exercised jointly by all defendants;

potential prosecutorial abuse of the conspiracy indictment;  
and,

utilization of other laws (attempts, solicitation, etc.)  
adequately protect society from criminal activity and are  
less confusing than conspiracy.

These criticisms should be weighed against the underlying  
rationale for the crime of conspiracy. A strictly drafted law  
provides the best protection against infringement of  
constitutionally protected rights.

#### HISTORY OF CONSPIRACY LAW IN ALASKA:

Until 1978, Alaska had two laws regarding conspiracy: conspiracy  
to kidnap and conspiracy against rights. Both were repealed when  
the criminal code was revised. In 1975, the Alaska Legislature  
in cooperation with the Attorney General, formed a "blue ribbon  
commission" to make recommendations to the Ninth Legislature,  
Second Session, regarding the criminal code. That commission—the  
Criminal Code Revision Subcommittee—included conspiracy language  
in its tentative draft of revisions to Title 11 and limited the  
offense to five crimes: murder, first degree arson, kidnapping,  
extortion and scheme to defraud in the first degree. The  
Subcommittee said about its conspiracy provisions:

The decision to include a limited conspiracy  
statute in the Revised Code was one of the most  
debated issues considered by the Subcommittee. The  
conspiracy statute appearing in the Code is the most  
narrowly drafted of any state conspiracy statute.<sup>14</sup>

The Subcommittee's recommendations were incorporated into House  
Bill 661 in 1978, but not into the final act. No minutes or  
other information is available from the Legislative Reference  
Library explaining why conspiracy provisions were dropped from  
the bill when the committee substitute was prepared.

The most recent attempt at enacting a law against conspiracy was  
House Bill 626 in 1984 which contained all of the provisions  
recommended by the Subcommittee in 1977. Ms. Gayle Horetski,  
Assistant Attorney General, supported the bill in the House  
Judiciary Committee. House Bill 626 passed the House in May,  
1984. In the Senate, it was referred to Judiciary, but was not  
taken up in committee.

The Department of Law was contacted during September to solicit  
the Department's current position on the need for an Alaskan  
conspiracy law. Dean J. Guaneli, Assistant Attorney General,  
stated in his letter of October 17, 1984, that because of the  
problems inherent in conspiracy law (in his view, defendants  
claiming the Fifth Amendment resulting in the State being forced

to grant immunity) and because of the State's participation in the "Cross-Designation Program" and its ability thereby to prosecute conspiracy cases in federal district court, it would not be appropriate to pass a conspiracy law in Alaska at this time.

The Anchorage Chamber of Commerce Crime Commission released its 1984 report and recommendations on November 20. The top priority of the Commission was establishment of a conspiracy law for Alaska. Although conspiracy was at the top of the Commission's wish list, it was not studied by any of the committees, nor were supporting documents attached.

#### FEDERAL CONSPIRACY LAW

Federal conspiracy laws are numerous and include:

- Conspiracy to commit offense or defraud United States, 18 USC § 371
- Conspiracy against civil rights, 18 USC § 241.
- Conspiracy to obtain allowance or payment of claims, 18 USC § 286.
- Conspiracy to impede or injure officer, 18 USC § 372.
- Conspiracy to gather defense information, 18 USC § 794.
- Conspiracy to injure property of foreign government, 18 USC § 956.
- Conspiracy to kidnap, 18 USC § 1201.
- Conspiracy to cast away or destroy vessel, 18 USC § 2271.
- Seditious conspiracy, 18 USC § 2384.

The Racketeer Influenced and Corrupt Organization (RICO), 18 USC § 1961, is part of the Organized Crime Control Act, which became law on October 15, 1970. It is the weapon used increasingly by government prosecutors against racketeering, white-collar crime, and organized criminal activities.

Eighteen states have added RICO-type language to their statutes, most supplementing their existing conspiracy statute with the RICO provisions.

#### MODEL PENAL CODE

The American Law Institute, an organization which is devoted to clarification and improvement of the law, adopted the Model Penal Code in 1962. Included in the MPC is a section on conspiracy. Twenty of the forty-nine state conspiracy statutes appear to be based on the language contained in the MPC. An attached chart compares the wording of the MPC with other conspiracy laws advanced.

F O O T N O T E S

<sup>1</sup>Rollin Perkins and Ronald N. Boyce, Criminal Law, (Mineola, New York: The Foundation Press, 1982), Third Edition, p. 696.

<sup>2</sup>Thomas J. Gardner and Victor Manian, Criminal Law, Principles, Cases, and Readings, (St. Paul: West Publishing Company), Second Edition, p. 66.

<sup>3</sup>Ibid.

<sup>4</sup>Wayne R. LaFave and Austin W. Scott, Jr., Handbook on Criminal Law, (St. Paul: West Publishing Company, 1972), p.470.

<sup>5</sup>Perkins and Boyce, Criminal Law, p. 683.

<sup>6</sup>Ibid., p. 684.

<sup>7</sup>LaFave and Scott, Handbook on Criminal Law, p. 488.

<sup>8</sup>Ibid.

<sup>9</sup>Perkins and Boyce, Criminal Law, p. 686.

<sup>10</sup>LaFave and Scott, Handbook on Criminal Law, p. 478.

<sup>11</sup>Ibid., pp. 482-485.

<sup>12</sup>Ibid., p. 494.

<sup>13</sup>Ibid., p.455-459; See Phillip E. Johnson, "The Unnecessary Crime of Conspiracy", 61 California Law Review 1137 (1973); Bruce M. Montgomerie, "Conspiracy: Legitimate Instrument or an Unconstitutional Weapon?", 3 Columbia Survey of Human Rights Law 94, (1970-71).

<sup>14</sup>Criminal Code Revision Subcommittee, Alaska Criminal Code Revision, Tentative Draft, Part 4, November, 1977, p. 7.

# **ALASKA CRIMINAL CODE REVISION**

## **TENTATIVE DRAFT, PART 4**

**CONSPIRACY; CRIMINAL MISCHIEF; BUSINESS  
AND COMMERCIAL OFFENSES; ESCAPE AND  
RELATED OFFENSES; OFFENSES RELATING TO  
JUDICIAL AND OTHER PROCEEDINGS;  
OBSTRUCTION OF PUBLIC ADMINISTRATION;  
PROSTITUTION; GAMBLING**

**CRIMINAL CODE REVISION SUBCOMMISSION  
HONORABLE TERRY GARDINER, CHAIRMAN  
NOVEMBER 1977**

ALASKA REVISED CRIMINAL CODE

CHAPTER 31. Attempt and Related Offenses (Part 2)

COMMENTARY

SECTION ANALYSIS OF REVISED CODE

I. TD AS 11.31.120. CONSPIRACY

A. Existing Law

A general conspiracy statute does not appear in existing law. With the exception of conspiracies to kidnap, AS 11.15.270, and "Conspiracies against rights of persons", AS 11.60.340, mere agreements to commit crimes, even if accompanied by an overt act toward the commission of the crime, are not criminal unless the conduct reaches the level of attempt or solicitation.

B. The Code Provision

The decision to include a limited conspiracy statute in the Revised Code was one of the most debated issues considered by the Subcommittee. The conspiracy statute appearing in the Code is the most narrowly drafted of any state conspiracy statute. See generally Note, Conspiracy: Statutory Reform Since the Model Penal Code, 75 COLUM. L. REV. 1122 (1975). Conspiracy is limited to agreements to commit any of five crimes - murder (TD AS 11.41.110), arson in the first degree (TD AS 11.46.400), kidnapping in any degree (TD AS 11.41.300-.310), extortion (TD AS 11.46.195) and scheme to defraud in the first degree (TD AS 11.46.600). (It is likely that the proposed conspiracy statute will be amended after Dec. 10, 1977, to include the existing crime of "Conspiracies against rights of persons.")

In limiting conspiracy to agreements to commit five crimes, the Revised Code recognizes both the potential for abuse of a general conspiracy statute (see Johnson, The Unnecessary Crime of Conspiracy, 61 CAL. L. REV. 1137, (1973)) and the need to criminalize agreements to commit crimes involving serious danger to persons and aggravated economic offenses (see MODEL PENAL CODE § 5.03, Commentary at 96-101 (Tent. Draft No. 10, 1960)). With the exception of scheme to defraud in the first degree (discussed in this Tentative Draft), the five crimes listed in the conspiracy statute have been examined in Parts 1 - 3 of the Tentative Draft. The reader is referred to those provisions for a discussion of the target crimes included in the proposed conspiracy statute.

1. Subsections (a) and (b) - Conspiracy;  
Conspiratorial Relationship

To commit conspiracy a person must act with an "intent to promote or facilitate conduct constituting murder, arson in the first degree, kidnapping in any degree, extortion or a scheme to defraud in the first degree." The intent requirement for conspiracy is similar to the culpable mental state requirement in TD AS 11.16.110, liability based on conduct of another: complicity. Acting with the requisite intent, the person must agree "with one or more persons to engage in or cause the performance" of conduct constituting that crime. In addition to the intent and the agreement requirements, proof that one of the parties committed an overt act in furtherance of the agreement must be established. Though some recently revised codes

have not included the "overt act" requirement (see, e.g., OR. REV. STAT. § 161.450 (1973); PROPOSED MICH. REV. CRIM. CODE § 1015 (1967)), the Subcommittee concluded that this limiting element should be included in the statute. There is significant case law interpreting what conduct is sufficient to constitute an "overt act." See generally R. PERKINS, CRIMINAL LAW 616-18 (2d ed. 1969).

The issue of who is included in a conspiracy other than the defendant and the person he specifically agreed with is addressed in subsection (b) of the draft. Consider the case where John agrees with Steve to commit murder and Steve in turn hires Peter to commit the crime. In such a circumstance, is there a conspiracy among John, Steve and Peter or only individual conspiracies - John and Steve, and Steve and Peter? Subsection (b) provides that a conspiracy exists between all three if John knows that Steve will conspire with Peter to commit the offense.

The combined effects of subsections (a) and (b) are summarized in the Commentary to the Model Penal Code

The Draft relies upon the combined operation of [TD AS 11.31.120(a)-(b)] to delineate the identity and scope of a conspiracy. All . . . provisions focus upon the culpability of the individual actor. [TD AS 11.31.120(a)-(b)] limit the scope of his conspiracy (a) in terms of its criminal objects, to those crimes which he had the purpose of promoting or facilitating and (b) in terms of parties, to those with whom he agreed, except where the same crime that he conspired to commit is, to his knowledge, also the object of a conspiracy between one of his co-conspirators and another person or persons."

MODEL PENAL CODE § 5.03 Commentary at 119-20 (Tent. Draft No. 10 1960).

2. Subsection (c) - Renunciation

Subsection (c) provides for the affirmative defense of renunciation to conspiracy. The defense parallels the defense set forth in TD AS 11.16.120(a)(3)(B) which allows for renunciation by accomplices. The reader is referred to Commentary accompanying Tentative Draft, Part 2 at 33-34 for a discussion of the requirements of this defense.

3. Subsection (d) - Accomplice Liability Based on Conspiracy

Subsection (d) follows the lead of the National Commission on Reform of Federal Criminal Laws in rejecting the doctrine of Pinkerton v. United States, 328 U.S. 640 (1946), that mere membership in a conspiracy creates criminal liability for all offenses committed in furtherance of the conspiracy. National Commission on Reform of Federal Criminal Laws, A Proposed New Federal Criminal Code, Final Report § 1004(5), Comment at 72 (1971). To establish accomplice liability, the ordinary rules set forth in chapter 16, parties to a crime, must be satisfied. Mere participation in a conspiracy will not, in and of itself, be sufficient to establish complicity for the substantive offense if the conspiracy is successful.

II. TD AS 11.31.125. DURATION OF CONSPIRACY FOR PURPOSES OF LIMITATIONS OF ACTIONS

This section is derived from OR. REV. STAT. § 161.465 (1973). The Commentary to the Oregon Revised Criminal Code, at 61, discusses the section:

This section provides that the conspiracy terminates for purposes of the statute of limitations as to all parties to the conspiracy when the object of the conspiracy, the crime, has been abandoned by all as evidenced by a lack of any overt act during the time limitation period. The conspiracy terminates for the purpose of time limitation for the individual conspirator if he expresses his wish to abandon either to his co-conspirators or if he tells the police of the existence of the conspiracy and his intention to abandon it. Note here that this does not necessarily constitute a renunciation as provided in [TD AS 11.31.120(c)], supra. Abandonment starts the limitation statute running but is not otherwise a defense to a charge of conspiracy. . . . Subsection . . . [(a)(2)] of the draft, relating to abandonment by all the conspirators, represents the generally accepted view, according to the comments to the Model Penal Code section. With respect to subsection [(a)(3)], abandonment by the individual conspirator, the cases are fewer and the law less well settled. The major problem turns on what the individual is required to do before he can show he has abandoned. The choice of the Model Penal Code, as reflected in the draft section, seems reasonable. By requiring him to inform his co-conspirators of his intention to abandon the scheme, the policy goal is served whereby the co-conspirators may be discouraged and dissuaded by the announced defection. If the individual chooses instead to tell the police of his desire to abandon, it is obviously more likely that the conspiracy will be smashed before its criminal goal can be achieved.

Note that under subsection (b), abandonment of the conspiracy by all parties is rebuttably presumed if no party commits an overt act within the statutory time period following the initial agreement. This presumption may be overcome and continued vitality of the agreement shown by conduct not rising to the level of an overt act, i.e., constant and continued reference to the agreement by a participant.

III. TD AS 11.31.130. DEFENSES TO SOLICITATION AND CONSPIRACY

The statute specifically precludes two defenses to conspiracy and solicitation and recognizes one defense to those crimes.

1. Subsection (a)(1)

This subsection is the counterpart of TD AS 11.16.120(b)(2), Exemptions to criminal liability for conduct of another (discussed in Tentative Draft, Part 2 at 35). Like that provision, it is based on the generally accepted principle that a person who is not capable in his individual capacity of committing a crime may nevertheless be liable for conduct of another that constitutes an offense.

2. Subsection (a)(2)

This subsection parallels TD AS 11.16.120(b)(3) (discussed in Tentative Draft, Part 2 at 35). The following commentary, taken from the Proposed Michigan Revised Criminal Code, examines the effect of this subsection.

The provision is based on the universally acknowledged principle that one is no less guilty of a crime because he uses or attempts to use the overt behavior of an innocent or irresponsible agent. The only special problem presented here concerns the situation in which there are two parties to the agreement and one is immune from criminal responsibility for any of the reasons listed in the subsection. Although there are no Michigan decisions on point, decisions in other jurisdictions have held that there can be no conspiracy in such situations because a conspiracy, as an agreement of two or more persons, requires at least two guilty conspirators (citations omitted). It is suggested that the danger of the

conspiracy arising from the prospective joint action remains essentially the same whether or not one of the conspirators is immune from prosecution. Moreover, the major basis for imposing liability in the area of inchoate crimes, the unequivocal evidence of a firm purpose to commit a crime, is present irrespective of the co-conspirator's innocence or immunity. PROPOSED MICH. REV. CRIM. CODE § 1015, Commentary at 107 (Final Draft, 1967).

3. Subsection (b)

This provision is a counterpart to TD AS 11.16.120(a) (discussed in Tentative Draft, Part 2 at 32). The subsection is designed to insure that a person who would not be criminally liable as an accomplice if a crime was completed will not be liable for solicitation or conspiracy when the crime is not completed.

TD AS 11.16.120(a)(1) provides that a victim of a crime, e.g., the fifteen-year-old in statutory rape, is not liable as an accomplice to the crime even if he or she solicited the commission of the crime. Similarly, TD AS 11.31.130(b) provides that the fifteen-year-old is not liable for solicitation or conspiracy if the substantive offense is not completed.

TD AS 11.16.120(a)(2) provides that a person is not liable as an accomplice if his behavior is "inevitably incidental" to the commission of the offense unless a statute specifically imposes liability. If the potential accomplice is not liable for the commission of a completed offense, TD AS 11.31.130(b) provides that there is also no liability for solicitation or conspiracy.

IV. TO AS 11.31.140. MULTIPLE CONVICTIONS BARRED

Subsection (a) is designed to permit prosecution for attempt, solicitation or conspiracy even if the target crime was completed. Although prosecution is allowed for both the preparatory as well as the completed crime, subsection (c) prohibits convictions of both crimes. As used in this statute "conviction" refers to the imposition of multiple sentences for the listed offenses, not the jury's return of multiple guilty verdicts.

Subsection (b) precludes conviction of more than one preparatory crime for conduct designed to culminate in commission of the same target crime. The subsection reflects the policy of finding the evil of preparatory action in the danger that it may culminate in the substantive offense that is its object; there is no reason to cumulate convictions of attempt, solicitation and conspiracy to commit the same crime.

Subsection (d) is included to emphasize that subsections (b) and (c) deal only with convictions and not with prosecutions. Prosecution may be for one or more preparatory crimes as well as for the completed crime.

Subsection (e) is discussed in the commentary to the Proposed Missouri Criminal Code.

Subsection . . . [e] states the normal rules where there is more than one criminal objective. If there is only one agreement there is only one conspiracy. If various offenses are the product of a continuous relationship they should be considered part of one conspiracy. Otherwise multiplication of sentences might become almost fortuitous and, considering the extremely inchoate nature of conspiracy, oppressive and unjust.  
PROPOSED MO. CRIM. CODE § 9.020(e), Commentary at 121 (1973).

V. TD AS 11.31.150. PENALTY

Punishment for conspiracy is set one class lower than the target crime. This classification system is consistent with the Code's classification of attempt and solicitation.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: SB 139  
 Title: "An Act relating to the crime of conspiracy."  
 Sponsor: Sen. Rodev  
 Requestor: Senate Judiciary Committee  
 Date of Request: January 24, 1986

FISCAL DETAIL

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: Third Judicial District

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		60.0	73.6	75.8	78.1	80.4
TRAVEL		4.5	5.6	5.8	5.9	6.1
CONTRACTUAL		11.2	13.8	14.2	14.6	15.0
SUPPLIES		3.5	2.5	2.6	2.7	2.8
EQUIPMENT		1.5	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>80.7</b>	<b>95.5</b>	<b>98.4</b>	<b>101.3</b>	<b>104.3</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		80.7	95.5	98.4	101.3	104.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

-Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/05/86  
 Approved by Commissioner: Richard I. Pegues / For / Harold M. Brown, Attorney General Date: 2/05/86  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

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

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

This bill makes it a crime for two or more persons to "conspire" together to violate state or municipal laws regarding drugs and prostitution. Enactment of this bill will permit state attorneys to prosecute conspirators even though the crime that was the object of a conspiracy may not have been completed.

With the limits set by the bill, the major focus of enforcement attention will be upon the major narcotics rings which have appeared in the state during the last few years.

Investigation and prosecution of large-scale drug trafficking cases is extremely time-consuming and labor intensive. Major narcotics rings are carefully planned and organized, and it requires the same degree of planning and organization to detect, investigate, infiltrate, and ultimately break the rings. A good example is the single big drug case that the state was able to pursue in FY 85 -- the "Black Gold" heroin ring in Anchorage. The case involved 29 separate individuals (most charged with selling heroin), almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. So far there have been no acquittals, although a few defendants have fled the state and are now fugitives.

The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors consulted on a daily, sometimes hourly, basis with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers to keep track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compile telephone records and other evidence in order to discover links between individuals and organizations.

Under a conspiracy law, the scope of enforcement authority would be expanded to include more persons involved in the ring, leading to larger and more complicated investigations and prosecutions, but leading to more effective enforcement of our drug laws. Effective enforcement of these laws, especially at this point in Alaska's history, is critical. With the opening of the new international wing at the Anchorage airport, there has been an increase in the number of international flights with passengers "off-loading" in Anchorage. With new routes of access

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

to Alaska, and new types to drugs to deal in, traffickers will have a field day. We must try to prevent the infiltration into the state of new organizations intended to fill the void left by the prosecution of the Resek-Marix family (FY 84), the Black Gold ring (FY 85) and, most recently, the Azzarella-Serra organizations (FY 86).

Considering the increase in sophisticated narcotics trafficking, and the efforts necessary to adequately meet this threat, the Department of Law believes that the dedicated services of at least one full-time attorney in Anchorage will be required to effectively carry out conspiracy prosecutions under this legislation.

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 139

## Fund Summary - SB 139

	<u>Attorney IV</u>	<u>Total</u>
71000	60.0	60.0
72000	4.5	4.5
73000	11.2	11.2
74000	3.5	3.5
75000	1.5	1.5
	<hr/>	<hr/>
TOTAL	80.7	80.7

FY 87 costs are on a 10 month, first-year basis. Costs beyond FY 87 are on a 12 month, full-year basis, less one-time costs, and including a 3% annual inflation factor.



ALASKA 1984 LEGISLATIVE SE  
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
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

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

## A new ploy to fight takeovers

During the non-trading days between Jan. 31 and Feb. 1, New York investor Carl C. Icahn and companies he 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 Icahn group's holdings to 15 million shares, about 15% of total Field stock outstanding.

The company's reaction was predictable. It hired a law firm to fight the threat that Icahn would seek control and possibly liquidate the company to sell off a 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 Icahn and his group on Field's behalf with "racketeering," although there has never been any suggestion that Icahn 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 9-year period.

Citing a consent decree that Icahn had just signed with the Securities & Exchange Commission in connection with his acquisition of Hammermill Paper Co. shares, as well as other Icahn 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 hears 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 Lipton, 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, Icahn 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, Icahn 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 Icahn 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 Pierre N. Leval to issue a temporary restraining order while Icahn made fuller disclosure of his plans—giving Field 10 days to scout up a "white knight" to counter Icahn's acquisition but Icahn cured the defects. Judge Leval lifted the restraining order, and Icahn continued to buy, ultimately acquiring some 30% of Field shares. Within three weeks, however, Field arranged through Goldman, Sachs & Co. a merger with HATS Inc. at \$80 per share. It is expected to be completed this summer.

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



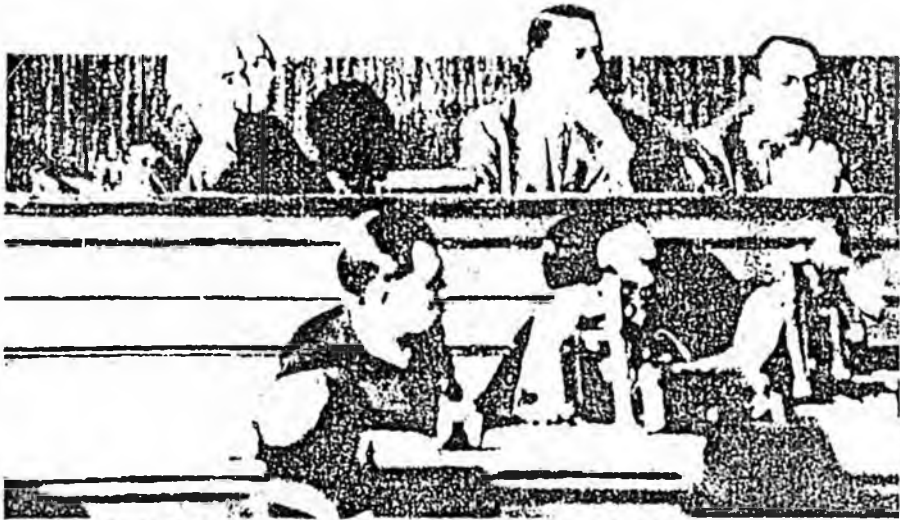
Lawyers may paint investors as racketeers

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 Icahn, 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."

# 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 unanimously 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 instead of a misdemeanor for employers and unions to engage in payoff or kickbacks and for 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

for that investigation, says Nunn, in its 1974 response to the many witnesses who, during our hearings, testified that the Department of Labor [in the past] had failed to act against labor racketeering.

"And we heard from both federal prosecutors and the FBI that the Department of Labor had taken no role in the [government's] fight against criminal corruption on the New York-New Jersey waterfront."

That fight with the International Longshoremen's Association, dating back to the 1950s, 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 cosponsors 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.

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



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

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 immediate 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-

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 instead 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 uncover 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 harass organized labor but provides the extra assistance needed for unions "to finally rid themselves" of corrupt officials. "The unions have labored to rid themselves of these people," the senator says, "but in many cases they have been unable to do so alone. I believe the unions need the help of Congress."

—DET. MARCH



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



## 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 hoods 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 be-



Cantalupo with a friend: A new start for his kids

hind 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 hoods 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 benefits 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 Safir, chief of the marshals' protection operation: "Witnesses should only enter when there is no other alternative."

ARIC PRESS with ELAINE SHANNON in Washington



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 \$447 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 15% 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—4.7% in the first 11 months for the major carriers—came almost totally from deeply discounted prices. Travelers are becoming so accustomed to rock-bottom fares, says Julius Mardutis, 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."

# RICO THE ENFORCER

## JUSTICE

NEWSWEEK

*J. Roy McDermott & Co., a major builder of oil platforms, paid \$508,613 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 \$103,000, but confiscated its \$897,000 in illegal profits from the Tenneco deals.*

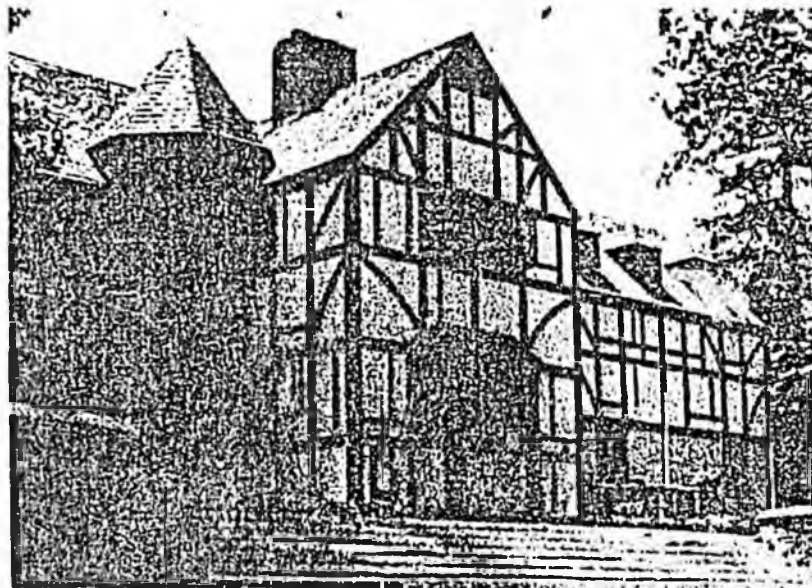
*While serving as mayor of Lansing, Ill., for sixteen years, Jack O. McNary shook down real-estate developers and invested his booty in two private businesses. Convicted last year of extortion, McNary was sen-*

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

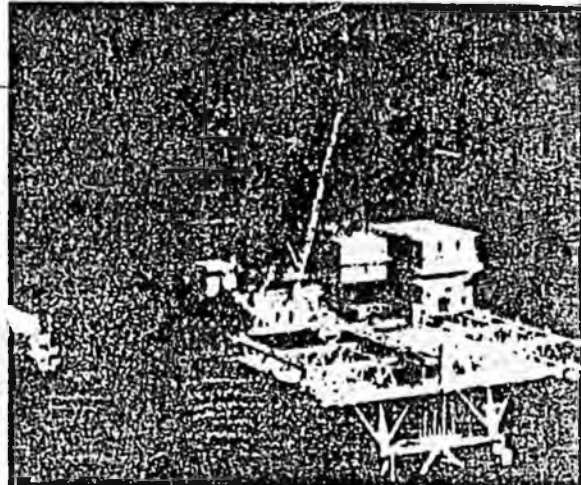
of seven nursing-home owners and three pharmacists to plead guilty and pay fines of \$1 million.

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



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

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 kickoff of the 1980 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 how important each issue was to them.

1984-ISH: 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 take any idiot, parade him around the country for twelve months, and get him elected."

But the ultimate purpose behind this slightly 1984-ish project, say the two professors, is to force politicians out of the business of



Jeff Lowenthal—NEWSWEEK

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

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

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 five 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 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 Hundt. 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.

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

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

NEWS with ELAINE SHANNON in Washington. LA ELIAS SIMONS in Chicago and bureau reports

those differences can be resolved."

Well, those differences are differences in Government structure and philosophy. . . . Common interests have to do with the things of everyday life — 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. Its trafficking causes untold damage to human lives and human health, 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 a neighborhood. The local police were alone in trying to cope with 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 bootleggers, and frequently fought each other as they tried to expand beyond their once limited turf. Nonetheless, ethnic animosities 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 major cities recognized the need for a national body to mediate differences among groups and formulate a 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. Disturbed 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.

Meadow 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 easily 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 1950 did the federal government finally begin to make a systematic inquiry into organized crime. A special Senate committee directed by Estes 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 68 in 1962. Gradually, too, 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 ranks 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 heavily involved in drug trafficking. Indeed, the drug trade is now our nation's number one crime problem — especially when one considers the criminal activities spawned by drug trafficking. 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 eight-point 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 425 cases now under investigation by the Drug 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 Bandidos, La Nuestra Familia, the Mexican Mafia, the Aryan Brotherhood, the Black Guerrilla 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 making an assault on these organizations even as they are developing.

Today, as organized crime is developing new and different forms, it is also experiencing another evolution — from national in focus to international, a change mostly 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 New York and Palermo are strikingly similar to those historically existing between organized criminals in New York and Chicago.

It is essential that we develop these 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 eight-point program against organized crime and drug trafficking, the Commission will study organized crime as it exists today, giving special attention to the emerging drug cartels. The Commission will focus public attention on and further define the nature of the evil that affects us all.

Another part of the President's program calls for strengthening the federal criminal laws that touch organized crime. These include sentencing, bail, forfeiture, and numerous other reforms that would measurably improve our law enforcement ability.

I cannot underestimate the importance of congressional action on the crime bill. Instances abound of cases where current law simply fails to serve the interests of justice. For example, federal sentencing law permits so much judicial discretion that a convicted organized crime figure — facing up to 40 years in prison — was instead sentenced — if you can call it that — to a year in a local community treatment center followed by five years of probation. This criminal must spend only his nights at the treatment center — by day he will be free to do as he pleases. This is the astonishing 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 sentencing 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 career of organized crime is finally brought under our control.



JUSTICE

# How the Mob Really Works

They are the criminals Americans have loved to fear. For 60 years, the nation's organized crime have lived off the nation's thirst for sex, lust, liquor, alien women, gambling, drugs and untouchable cash. At the same time, they have become legends in their own land, typified 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, hafe 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 a convicted insurance agent 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 investi-

gation 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 fingered by the most important informer in two decades, Jimmy (The Weasel) Frattanno, who now wields his memory the way he once used a garrote (page 36). "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 Hrabak case, two FBI agents

*Mafia informants convicted at Senate hearing. (Mobsters) are like cockroaches. You step on them one place and they turn up somewhere else.*



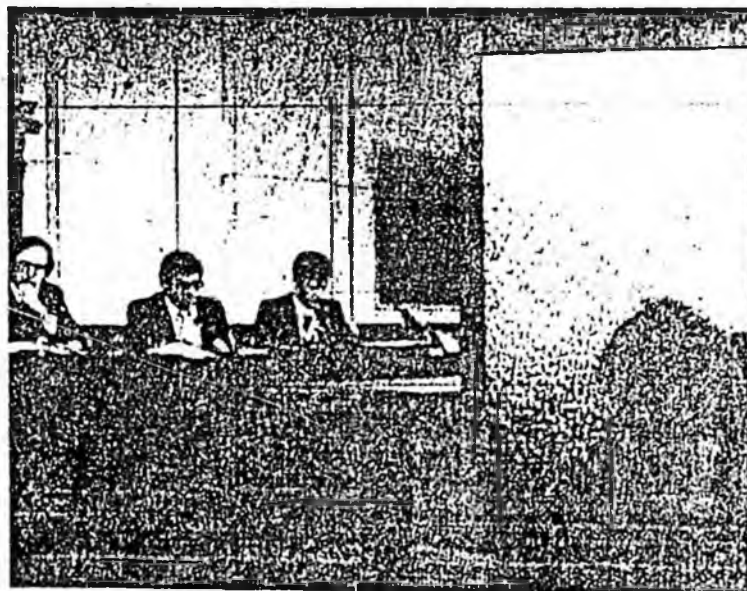
Michael Rizzitello  
Los Angeles



Frank Tieri  
New York



Dominick Branklier  
Los Angeles



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 1980, up one third from all of 1979. 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 Amorosa, chief of the Organized Crime Strike Force in Manhattan, "the amount of loan-sharking on the street has never been higher." Inflation has driven hundreds 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 bookers now sell enough counterfeit albums to shake rock stars 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 several states have passed investigative measures to fight the crime.

The Reagan Justice Department is expected to maintain the new pressure. Attorney General designate William French Smith inherits 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 dirt, 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



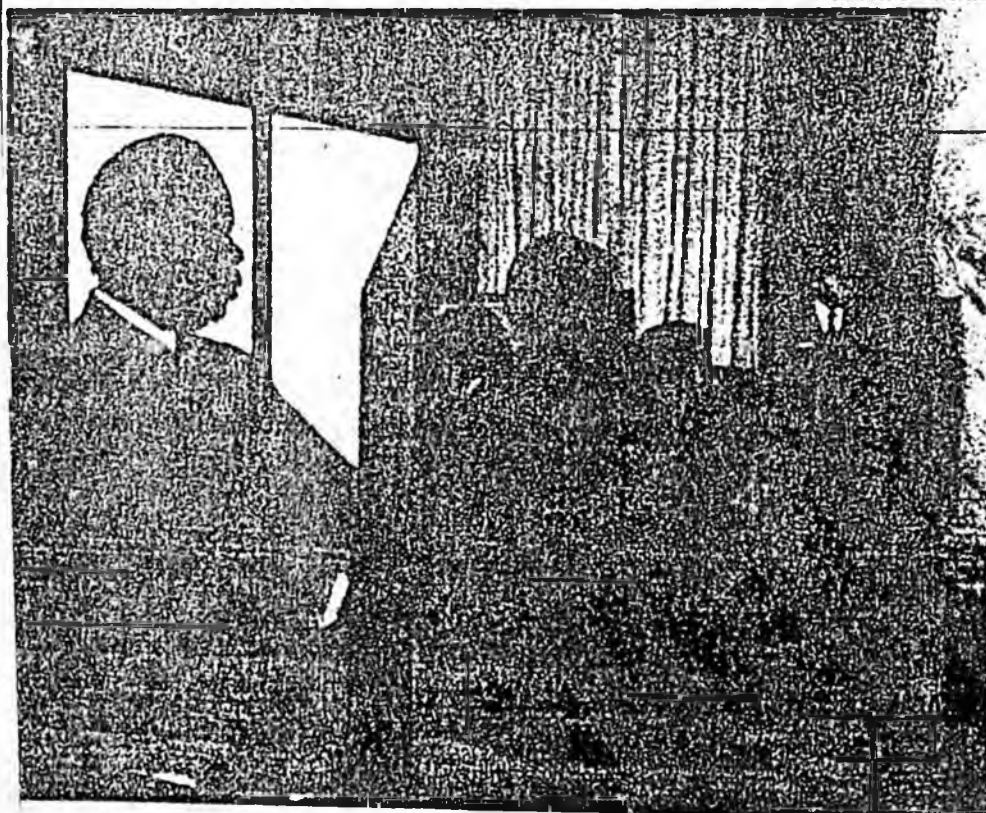
Joe Bonanno  
Tucson



Carlos Marcello  
New Orleans



Louis Tom Dragna  
Los Angeles



...pulling hard on the end of the rope. "What the hell, what can I tell you," he calls. "The guys I killed were killers themselves."

In prison for extortion from 1954 to 1960, he came out finding little honor in his blood brothers. The family refused to turn the money he had left behind from sin sharking and gambling operations, extracted by parole from living in Los Angeles. Fratianno moved to northern California. Continuing the construction side learned from his father, Teamsters contacts and a questionable San Francisco bank 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 hoodlums from state contracts.

**Bosses:** Fratianno, who had transferred his official allegiance to the Chicago family, was asked in the mid '70s by his L.A. colleagues to come back and help run their operations. The following years are the most important to government prosecutors. Fratianno mingled in the often impenetrable realm of crime bosses. He was friendly with Sam Giancana of Chicago. He met Santos Trafficante in Florida. He sat with Genovese family boss Frank Tieri in a back-room session at which the old man pointed thumbs down while saying "hit," giving the order to kill a family debtor. And he helped the Los Angeles family set up Frank Tompagnaro, who was discovered to be an FBI informer.

What the family did not know was that by then Fratianno himself had begun selling information to the Feds, who tempted him with cash when he ended still another prison term in 1973. 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 Fratianno 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 Tarrytown, 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 unrecorded income. One of the theater's stars was Frank Sinatra, who performed several concerts there and is now the subject of a New York Federal grand jury investigation for allegedly re-

ceiving \$50,000 of the skimmed profits.

Now 67 and silver-haired, Fratianno talks to reporters about his past, but avoids talking to his security. In all his own regular court appearances, his credibility is attacked by defense attorneys who point to a well-documented history of lying under oath. Jimmy's response is that in the past he lied because he had to; now, only the truth keeps him alive. There is proof in a book recounting his adventures will be published next month. "Why 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 Fratianno will live by his hit man's wits. In a Salt Lake City hotel room this fall, watched over by two Federal marshals, he bellowed 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 stoically 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."

\*"The Last Mafioso: The Tremendous World of Jimmy Fratianno." By David Dominick. Times Books.

## JUSTICE

its banks with their profits. La Nocera family grew out of four Hispanics with a flat-top organization thrown together in a California prison town about 1930. Members work the West Coast. As sociologists Dwight C. Smith Jr. and Richard D. Alba have written, organized crime must be recognized as a part of American society, not tamed and shaped by American circumstances, but 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 figure 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 unrelenting hood who deserved killing. By 1954, the focus 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 welshing 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 top."

To their surprise, however, police have

## JUSTICE

controlled a pile of union funds that he was willing to deposit, even in low interest accounts. All he wanted in return were personal and mostly 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 Palmert 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, Delphi 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 WATS 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-



Ind. Courtes—Camera 5

*New York's Galante, 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 \$30 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

... of the...  
... declared...  
... through...  
... capital...  
... placed...  
... the...  
... Hal...  
... the...  
... He...  
... controlled...  
... New...  
... England...  
... and...  
... unless...  
... he...  
... percent...  
... Weiner...  
... agreed...  
... between...  
... and...  
... mobster...  
... Then...  
... for...  
... Weiner...  
... to...  
... Fourteen...  
... were...  
... convicted...  
... of...  
... participating...  
... in...  
... the...  
... scam.

**Waste:** Some analysts see 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

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

Garard C. Benone—Philadelphia Inquirer



## 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 Frattissimo 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 "bank" 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 Unirac, 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, Unirac 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

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

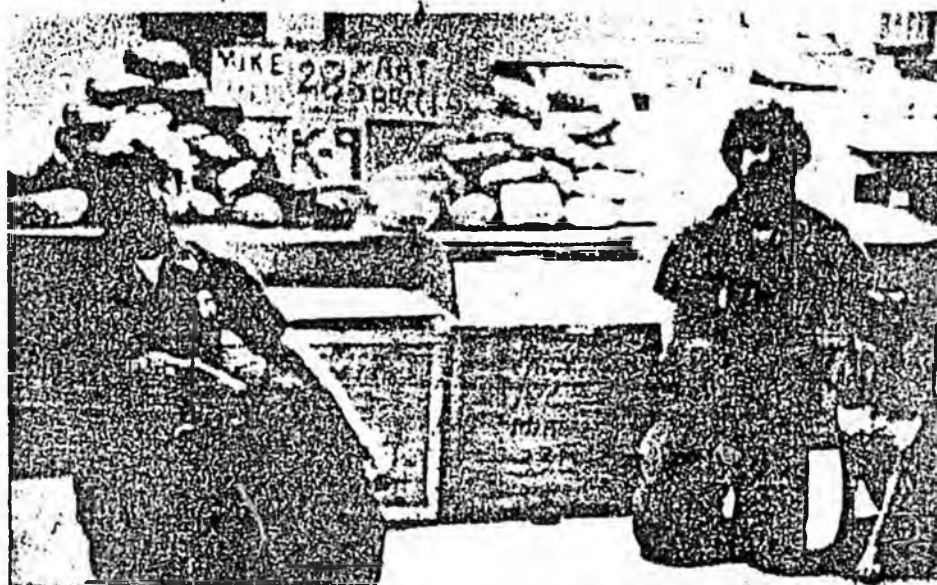
as a bagman for New York gangsters.

Unirac was unusual because it relied not just on undercover agents but on electronic surveillance devices. The bugging evidence often was sensational: one bug planted in Scotto's bleached bull desk recorded him complaining that the payoffs weren't coming in on schedule. Then, on tape, Scotto conceded his error: "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-



Ann Hogan—Camera 5

*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



John Ficare—Newsweek

1947  
**JUSTICE**

he assets... and get rid of the incentive."

Unfortunately RICO has promised more than the government has delivered. It has been a marvelous tool to obtain convictions—prosecutors can enthrall jurors with criminal 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 R. 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 lie 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 Tieri, 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 Locicero 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



Don Carl Steffen



John F. 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 become 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 Fratianno the most informative and reliable witness they have ever dealt with (over the past three months)

NEWSWEEK'S Ron Lathrop spent hours with Fratianno, following him down to court listening to his testimony in court and his bluster in private. Lathrop's report

Jimmy Fratianno remembers the pleasant 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 Fratianno did not know. Fratianno did understand *omerta*, 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. Fratianno'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 Fratianno 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. Fratianno's testi-

mony has helped convict a Teamster leader in San Francisco and Mafia bosses in Los Angeles and New York and his own of exact testimony have provided invaluable intelligence on the trade.

Fratianno 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 dye 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," Fratianno says. "You grow into it because of your environment."

Charmer: Fratianno 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 Fratianno and sponsored him for membership in the L.A. family.

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



Fratianno: A life inside the mob

ter, Jimmy dropped by the mobster's Hollywood clothing store, then signaled to gun-toting colleagues that Cohen was inside and vulnerable. The setup ended in failure when the target fortuitously went to the bathroom. But Fratianno eventually made his first hit—on a friend, Frank Nicol. Nicol was a Cohen hit man, a loyalist who scorned the pleas of the Italians to defect. Not knowing that Fratianno and his friends were the ones trying to kill his boss, Nicol visited Fratianno'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": Fratianno also helped dispatch Los Angeles family member Frank Borgia. "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 Fratianno more than a year to track down Louis (Russian Louie) Strauss on a contract from a Las Vegas casino owner. Finally Fratianno 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

ultimately gets returned to a bank.

• Selling packages complete with faced driver's licenses and matching checks waiting to be forged.

• Running custom auto repair shops that install stereo equipment and burglar alarms. While the car is being adjusted, 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 mob does, underworld in crime remains a mystery. Official guesses usually begin at \$120 billion—about dou-

ble the Federal Reserve's annual sales with national accounting by about one-third of the revenue. These figures are dubious at best; gangsters don't keep careful ledgers and cops have been known to pyramid the figures. The FBI's Webster admits he doesn't know how much money the underworld takes in. "I do know," he says drily, "it's 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. "They've been in business almost since the turn of the cen-

tury," says Ed Lee, special agent in charge of the FBI's Los Angeles field office. "We didn't address the problem until the early '60s. They've got a big head start."

Some of the problems can be blamed on the government. For decades FBI director J. Edgar Hoover denied that organized crime existed. Federal statutes don't adequately address the special complexities of underworld crime. Law enforcement agencies jealously guarded their turf, refusing to share information—a condition that still occasionally prevails. Finally, in the '60s, Sen. Estes Kefauver turned his investigating committee's spotlight on the national gambling syndicate. Six years later, Robert Kennedy, chief counsel to Sen. John F. McClellan's labor-racketeering investiga-

## And Now, the 'Israeli Mafia'

Not long ago some men dropped by a store owned by a Jewish merchant on Fairfax 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 Bat Yam, 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 in proving fraud.

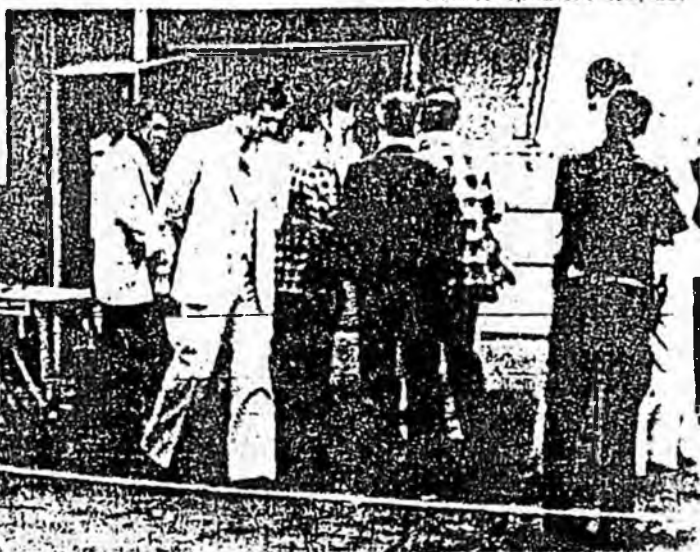
**'Code of Silence'** In the past year, the Israeli Mafia has channeled its energies into the even more profitable field of narcotics trafficking. "They supply half the cocaine in L.A.," one lawyer says. Some gang members have contacts with known dealers in Israel and West Germany, and a series of murders has led authorities to tie 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, rummaging 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 Ruven and of her husband, Ehahu. Charged with their murder are three men, Joseph Zakaria, Jehuda Avital and Ehahu Komerichero, whom police link to the Israeli Mafia. Officials speculate that the Ruvens 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 hacked to bits with meat cleavers and knives and stuffed into bags and suitcases.

The savagery, savvy and cross-continental 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 looking into 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 DENISE A. WILLIAMS with ROS LAURELLO in Los Angeles

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



CHAMBER = H  
DATE = 050284  
TIME = 0800  
YEAR = 84  
MEETING ID

HOUSE FINANCE COMMITTEE  
May 2, 1984  
8:00 a.m.

CALL TO ORDER

Chairman Adams called the meeting of the House Finance Committee to order at 8:00 a.m. and informed members they would be considering HB 626, HB 512, SB 129, and SB 331.

PRESENT

All members of the committee were present. ALSO PRESENT: Representative Liska; Jay Hogan, Director, Budget Review, Office of Management and Budget; and Gayle Horetski, Assistant Attorney General, Criminal Division, Department of Law.

SUMMARY INFO

HB 512 An Act establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad, and providing for an effective date.

Finance Committee Substitute reported out of committee with a fiscal note in the amount of \$37,090 and "no recommendation".  
HB 626 An Act relating to the crime of conspiracy. Bill reported out of committee with a fiscal note in the amount of \$67.4 and "do pass" recommendation.  
SB 129 An Act relating to cardiopulmonary resuscitation (CPR) and early cancer detection instruction in the public schools. Committee RESCINDED PREVIOUS ACTION in reporting out of committee HCS CS SB 129 (RIs) on May 1, 1984. HCS CSSB 129 (Hess) reported out of committee with a zero fiscal note and "do pass" recommendation.  
SB 331 An Act relating to the preparation of the executive budget; and providing for an effective date. House Judiciary CS reported out of committee with a zero fiscal note and "do pass" recommendation.

TEXT

SB 129  
SB 129 - An Act relating to cardiopulmonary resuscitation (CPR) and early cancer detection instruction in the public schools. Chairman Adams stated the committee reported out HCS SB 129 (RIs) on May 1, 1984. He said there was a HESS version to SB 129 and noted

Judiciary version. Mr. Hogan said the version of the budget, essentially as prepared by the previous out-going or holdover administration, would be the one released on December 15. He said if a new governor was coming into office he or she might make an entirely revised budget which would be presented to the Legislature in January or February. Representative Duncan asked the deadline for submission of budget amendments. Mr. Hogan said it is the 60th legislative day and the 30th legislative day for supplemental requests. Representative Bettisworth MOVED to report out of committee CS SB 331 (Judiciary) with a zero fiscal note. There being NO OBJECTION, it was so ordered and CS SB 331 (Judiciary) was reported out of committee with a zero fiscal note and "do pass" recommendation.  
HB 626  
HB 626 - An Act relating to the crime of conspiracy.

*How many said who*

GAYLE HORETSKI, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW, said the bill would create a law against conspiring to commit a crime. She said although most other states and the federal system have conspiracy laws the state of Alaska does not. She said there is a law against attempting to commit a crime and against soliciting

someone to commit a crime. Ms. Horetski said the statute would require that a person act with the intent to commit a specific crime, agrees with one or more persons to cause the performance of the activity of the crime and the offender or other person performs an "overt" act in furtherance of a crime. She said the penalty level for various crimes is contained in page 2 of the bill. Ms. Horetski said the structure of the bill was taken from the penal code adopted in 1978 and which took effect in 1980.

*get the all fiscal note & compare by body limitations*

(Representative Hurlbert arrived at this time.) Representative Martin referred to the fiscal note saying it seems each time a bill is enacted the Department adds new attorneys to cover cases. Ms. Horetski said the bill was prepared by the criminal division. She said there are 60 prosecutors in the criminal division statewide. She said the requested funding is to pay for cases and attorney time they anticipate in the regular course of business under the bill. She said their district attorneys in the criminal division are currently working at full capacity. She said in large cases often outside counsel is hired to assist the Department. There was discussion concerning examples of cases which would meet the conspiracy definition.

(Tape Change, 85-55, Side 1)  
REPRESENTATIVE LISKA, PRIME SPONSOR OF THE BILL, said he is a member of the Public Safety member of the House for the 16 Western States. He said he was requested by the Alaska Peace Officers Association to see if there was a law against conspiracy. He said Alaska is one of the few states which does not have a law addressing conspiracy. Representative Lindauer MOVED AND ASKED UNANIMOUS CONSENT that HB 626 be reported out of committee with the fiscal note dated 3/29/84 in the amount of \$67.4. There being NO OBJECTION, it was so ordered and HB 626 was reported out of committee with a fiscal note in the amount of \$67.4 and "do pass" recommendation.  
HB 512

HB 512 - An Act establishing the Alaska Railroad Corporation to manage and operate the Alaska Railroad; and providing for an effective date.  
Subcommittee chairman Bettisworth provided members with a handout listing the differences between the Finance Committee Substitute drafts dated 4/28/84 and 5/1/84 detailing the changes made (see attachment 1).  
Representative Ward questioned the transfer from Department of