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ALASKA

LEGISLATIVE

COMMITTEES

SB 139 -

SB 140

4067

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

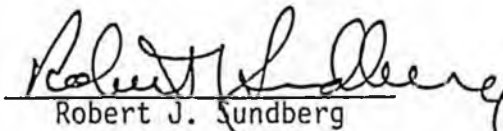
Support

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



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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.¹ 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 of² 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."³

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.⁴

The agreement must be actual, but it may be either explicit or tacit and it need not be formal. There⁵ 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.⁶ 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"⁸ 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.⁹ 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,¹⁰ 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.¹¹

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.¹²

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.¹⁴

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

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

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

³Ibid.

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

⁵Perkins and Boyce, Criminal Law, p. 683.

⁶Ibid., p. 684.

⁷LaFave and Scott, Handbook on Criminal Law, p. 488.

⁸Ibid.

⁹Perkins and Boyce, Criminal Law, p. 686.

¹⁰LaFave and Scott, Handbook on Criminal Law, p. 478.

¹¹Ibid., pp. 482-485.

¹²Ibid., p. 494.

¹³Ibid., 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).

¹⁴Criminal 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						
TOTAL OPERATING		80.7	95.5	98.4	101.3	104.3

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		80.7	95.5	98.4	101.3	104.3
FEDERAL FUNDS						
OTHER						
TOTAL						

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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

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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 5 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



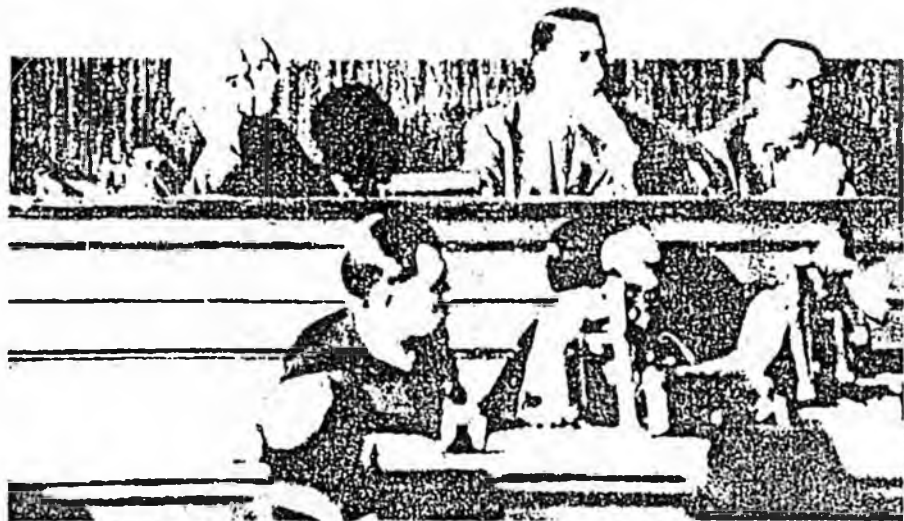
Lawyers may paint investors as racketeers

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).

THE 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.

LABOR 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. His deputy's response to the main witnesses was during our hearings. He 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.

ACCORDING 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.

DESPITE 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."

—Don Martin



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-



New York Post

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.

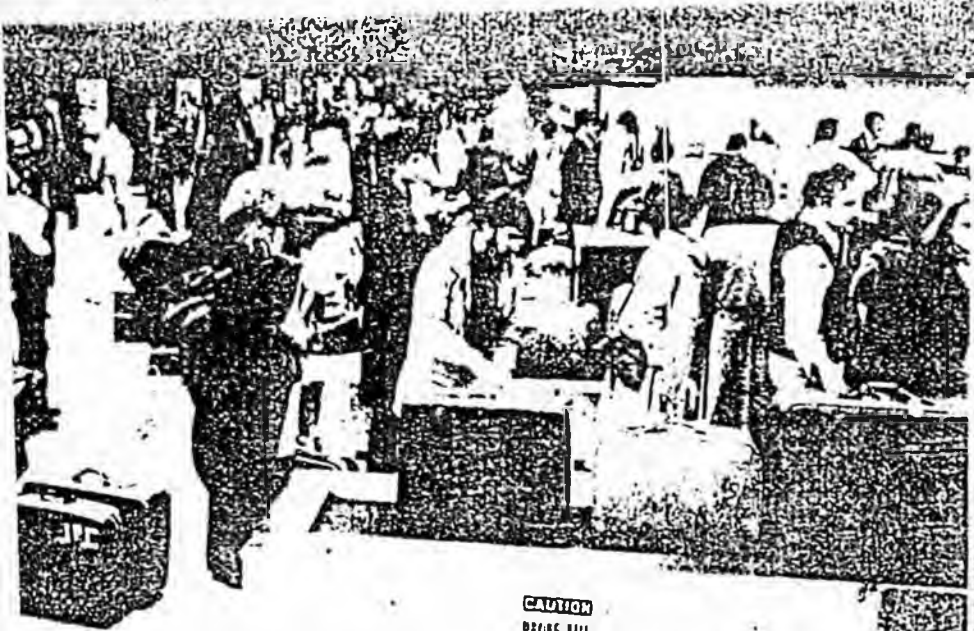
Most of the informants in the program are not innocent bystanders. They tend to be either former hoods who fell out of favor with their gangs or convicted felons who decided to trade information for better treatment. The reward that the authorities offer is a chance at a fresh start, at least for the 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

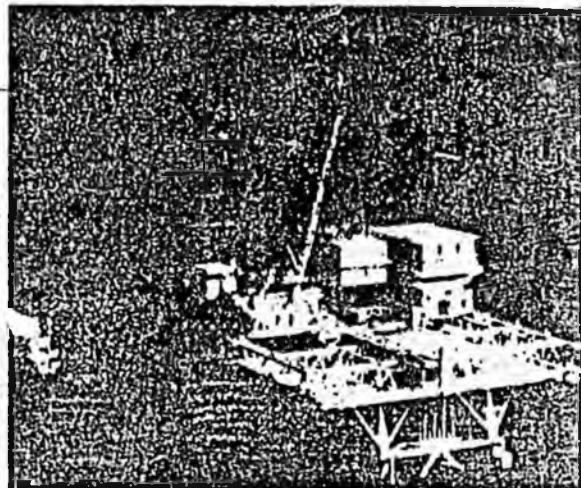
of seven nursing-home owners and three pharmacists to plead guilty and pay fines of \$1 million.

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 a few letters, the government is going to confiscate your property," says prominent Washington defense lawyer William Hundert. 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 alleged 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 must 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 Jeffrey 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 business of organized crime has lived off the nation's thirst for sex, lust, liquor, stolen 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 dismantle, 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.



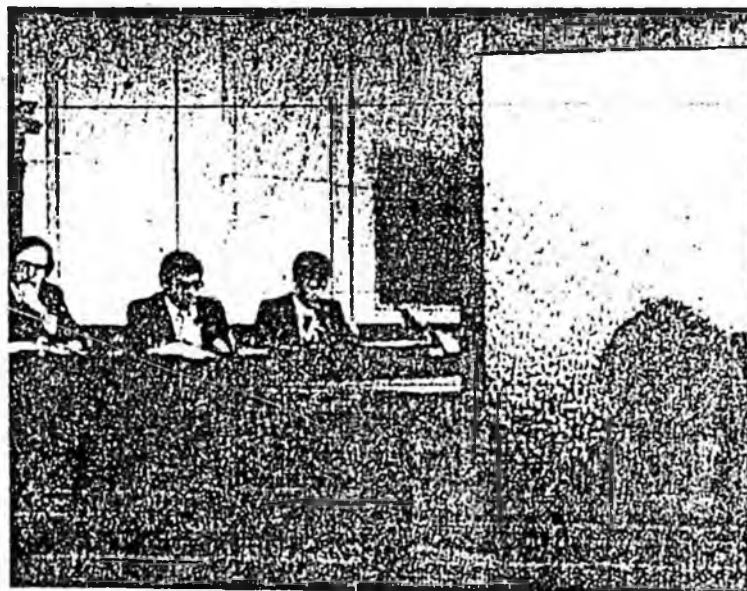
Michael Rizzitello
Los Angeles



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



Convicted

Joe Bonanno
Lucas



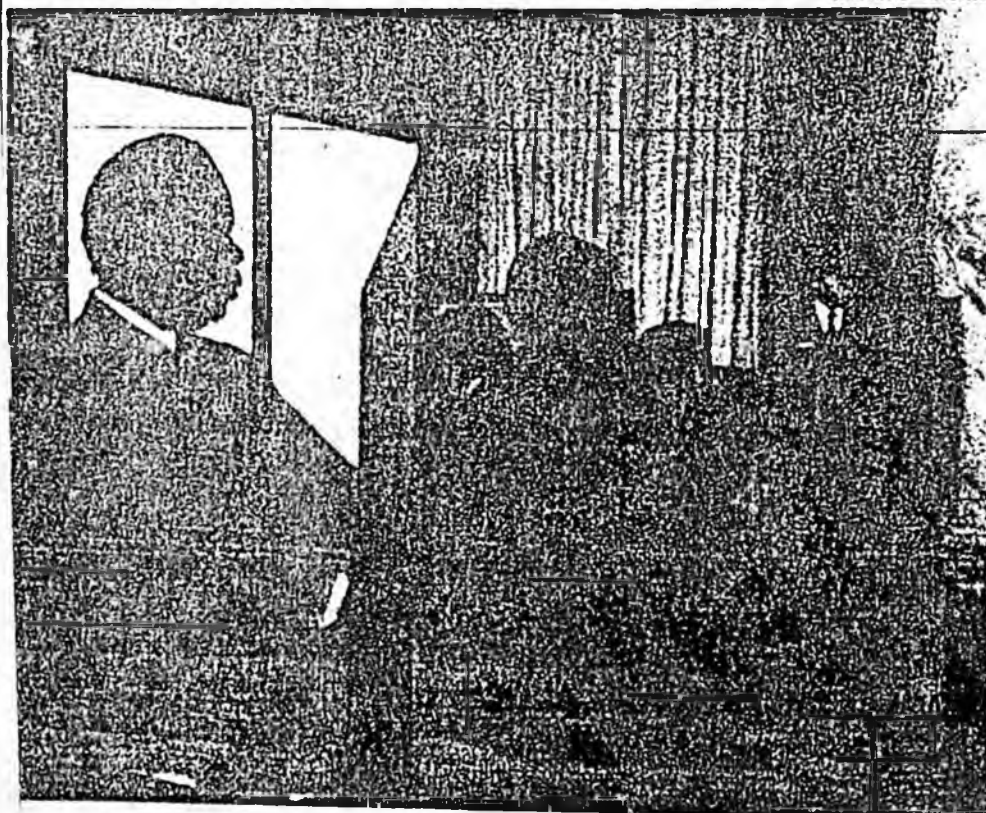
Indicted

Carlos Marcello
New Orleans



Convicted

Louis Tom Dragna
Los Angeles



...pulling hard on one 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 work 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 Tralcante 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 Tompagnano, 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 he cautions about 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.

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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 tured and shaped by American circumstances, not simply as an alien, parasitic force.

After decades of books and movies, the gangster is more than a creature of the mean streets; he is a figure in the American imagination. But his role and symbols, 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

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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-



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

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

Garard C. Berne—Philadelphia Inquirer



of the stores. Weiner, who was later convicted of racketeering, admitted that he had pocketed the profit. He told Weiner that the family controlled stolen goods in New England and that fences would stop handling Weiner's trade unless he paid the family 10 percent of the gross. Weiner agreed, crossing the murky line between rogue retailer and mobster partner. Then fearing for his life, Weiner told his story to the FBI. Fourteen people 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

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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.

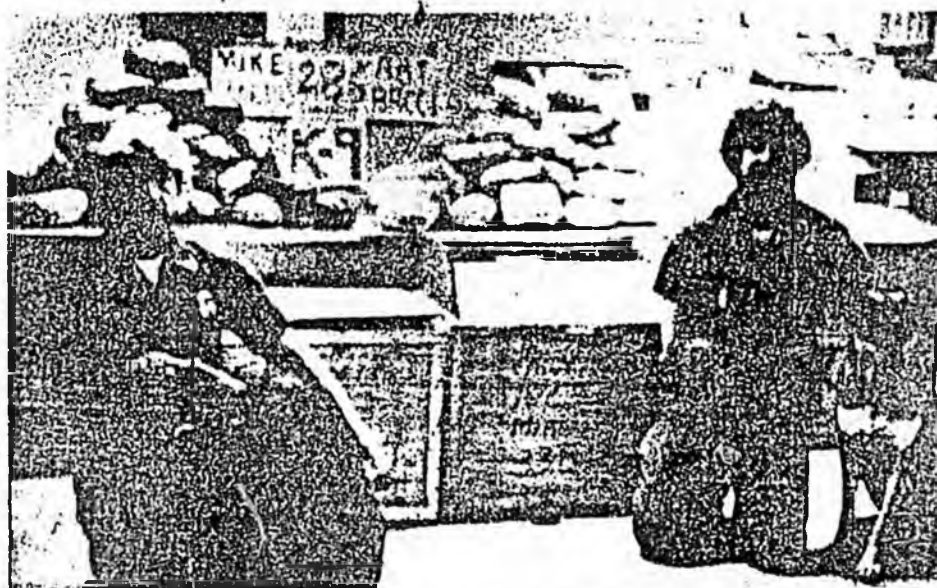
as a bagman for New York gangsters.

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

Unfortunately RICO has promised more than the government has delivered. It has seen a marvelous tool to obtain convictions—prosecutors can enthrall 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 Ficare—Newsweek

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 *omertà*, the code of silence which dictates that a man leaves the organization only when he is dead—at the hands of his colleagues if he reveals their secrets. 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 out-of-court testimonies 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





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subsequently gets returned by 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 serviced, 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.

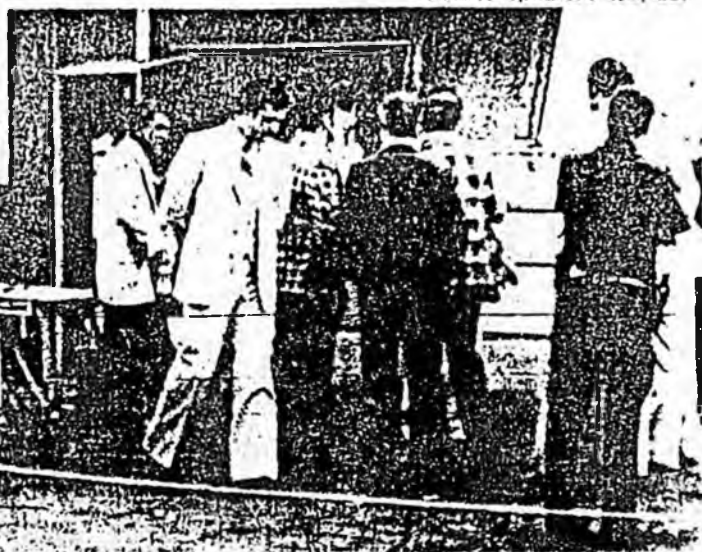
'Code of Silence' In the past year, the Israeli Mafia has channeled its energies into the even more profitable field of narcotics trafficking. "They supply half the cocaine in L.A.," one lawyer says. Some gang members have contacts with known dealers in Israel and West Germany, and a series of murders 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 LAURELLE 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



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

S B

140

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/15	Bill received in Committee -
	back-up received from sponsor
3/20	Request from sponsor - "please calendar."
3/28	Sheila Peterson notified
	Call List
	Sid Heidersdorf 789-9858 ✓
	Dr. Thompson-Bartlett - 586-6640 ✓
	Innocent Hospice Rep (Judy Elton?) ✓

Craig, March 6, 1985

Dear Senator Ellison,

In watching your presentation on legislation to adopt a living will provision in our state statutes, my husband, Bill, and I were very favorably impressed.

Prior to Bill's mother's death this winter in Spokane, she had signed a living will. Cancer had spread from her lungs to her brain and her condition was diagnosed as terminal. She was 82 years old at the time.

Her written directive, made about two years before her death, provided a structure in which her family and her physicians could carry out her wishes in a coordinated effort.

Unlike many patients who relapse into a coma and never regain consciousness, my mother-in-law did regain her faculties shortly before her death and was able to talk to four of her five children, expressing her good-byes and wishes for their well being.

Had the circumstances been different -- no living will, no coming out of the coma -- I know that decision's affecting

her welfare would have been much more difficult to resolve. "Second-guessing" what the dying person might wish done on his/her behalf and cooperatively agreeing to a course of action (family members, physicians) leaves a lingering doubt and the potential for possible suit.

Long before Bill's mother's death, Bill and I had made inquiries about Alaskan law in regard to the "right to die" principle, and we were very disappointed and concerned that no provision exists at this time.

We hope you will be able to gain the needed support for this legislation, and we would like to personally thank you for introducing this bill to the Senate.

Best regards,
Bill and Sunshine Millhous
Box 335
Craig, Alaska 99921

COMMITTEE REPORTS (Senate)(cont'd)

SB 128 (cont'd)

law or regulation."

Effective July 1, 1985.

Labor
Relations
(school boards
& public
employees)

SENATE BILL NO. 129, (see page 216). Reported back to the Senate on March 12 by Labor & Commerce with the committee recommending it do pass. Concurring: Eliason (Vice-Chairman), Bennett and Ray. To HESS.

Rights of
the Terminally
Ill

SENATE BILL NO. 140, (see page 222). Reported back to the Senate on March 15 by Health, Education & Social Services with the committee recommending it be replaced with a HESS CS and as follows: Fahrenkamp (Chmn.) and Sturgulewski signed "do pass"; Paul Fischer and DeVries signed "no recommendation." To Judiciary.

The HFSS CS adds an immediate effective date and clarifies that the bill only applies to persons over the age of 18 (original only said "adult").

Municipal
Code Revision

SENATE BILL NO. 142, (see page 223). Reported back to the Senate on March 15 by Community & Regional Affairs with the committee recommending it be replaced with a C&RA substitute and that it do pass. Concurring: DeVries (Chairman), Sturgulewski, Vic Fischer and Coghill. To Judiciary.

The committee attached the following letter of intent:

It is not the intent of the Legislature through the passage of CSSB 142 to change the taxing provisions for electric and telephone cooperatives as set forth by AS 10.25.540-560; nor is it the intent of the Legislature to change present statute provisions covering public utility access to municipal rights-of-way as set forth by AS 42.05.251.

The bill is a 210-page major rewrite of the Municipal Code. See CSHB 72 (C&RA), page 415. Identical, except CSSB 142(C&RA) includes "Purpose" section in Sec. 1. Outlines the reasons for the municipal code revision. Reads, in part: "... Except as expressly provided, the legislature does not intend by this Act to alter or affect in any way the relationship or balance of authority between the state and home rule or general law municipalities with respect to the timing or manner of resource development ... the legislature does not intend by this Act to increase or reduce the authority of state agencies to carry out their functions under other titles."

State Aid
for School
Construction
(increasing)

SENATE BILL NO. 159, (see page 266). Reported back to the Senate on March 15 by Community & Regional Affairs with the committee recommending as follows: DeVries (Chairman) and Coghill recommended "do pass"; Sturgulewski and Vic Fischer signed "no recommendation." To HESS.

POSITION PAPER

SENATE BILL No. 140

For "An Act relating to the rights of the terminally ill."

The right of a competent individual to decide whether life-sustaining procedures should be used in the face of a terminal illness or injury has received increasing attention in recent years as medical technology has advanced and individual cases have received media attention.

This bill provides a process through which a competent adult can participate in decisions regarding his or her care when afflicted with a terminal condition. "Terminal condition" is an incurable or irreversible condition that, without the administration of life-sustaining procedures, will result in death in a relatively short time. The bill permits a competent adult to execute a declaration directing the withholding or withdrawal of life-sustaining measures. The declaration comes into effect only (1) if a terminal condition is determined to exist and (2) if the affected person is incapable at that time of making treatment decisions.

According to the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, 13 states and the District of Columbia have adopted so-called natural death legislation. The proposed legislation appears to be generally similar to the major provisions in other states.

The Department of Health and Social Services supports intent of this bill. It is assumed the Department of Law is reviewing it for adequacy of legal safeguards for declarants and for health care providers.

Recommended by:

Robert I. Fraser M.D.
Robert I. Fraser, M.D.
Director
Division of Public Health

Date:

2/15/85

Approved by:

John R. Pugh
John R. Pugh
Commissioner
Department of Health &
Social Services

Date:

2/15/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 140
 Title: Rights of terminally ill
 Sponsor: Eliason, et al
 Requestor: _____
 Date of Request: 2/8/85

FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Public Health
 BRU, Program or Subprogram(s) Affected: State Health Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS	0	0	0	0	0	0
800 MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	----------	----------	----------	----------	----------	----------

REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert I. Fraser, M.D.

Division: Public Health

Phone: 465-3090

Date: 2/12/85

Approved by Commissioner: [Signature]

Agency: Dept. of Health & Social Services

Date: 2/15/85 *JCC*

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 8, 1985

SUBJECT: Derivation of Senate Bill 140

TO: Senator Richard I. Eliason

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked me to comment on the derivation of Senate Bill 140, rights of the terminally ill.

The bill is derived from a discussion draft of a Rights of the Terminally Ill Act prepared by a drafting committee appointed by the National Conference of Commissioners on Uniform State Laws. I have furnished you the discussion draft which contains the text and the commentary proposed by the committee.

The NCCUSL is an organization whose purpose is to promote uniformity in state laws in areas where uniformity is desirable and practicable. It is considered a state organization and the major portion of its funds comes from state appropriations.

The National Conference procedure is for the Scope and Program committee to consider proposals for Uniform Laws and recommend to the Executive Committee areas it considers should be addressed. If the Executive Committee agrees it appoints a drafting committee, a review committee and a committee drafting liaison. In this instance the drafting committee and review committee are shown on the proposed draft I have furnished you. I am an associate member of the National Conference and was appointed as drafting committee liaison.

Following appointment the committee prepares a draft which is reviewed by the review committee. This draft is then presented to the committee of the whole of the National Conference for first reading. At this reading the draft is

Senator Richard I. Eliason
February 8, 1985
Page 2

read in full and discussed section by section. This draft was before the committee of the Whole at the annual meeting of the National Conference on August 1, 1984. The chair of the committee made an introductory statement explaining the draft and it was then discussed section by section in some detail. I am enclosing the chair's introductory statement.

Following the discussion at the committee of the Whole the draft is then returned to the drafting committee for further action. A draft incorporating the changes from the committee of the Whole and other changes was prepared and distributed to members of the committee. The committee then met in Hartford, Connecticut in September to discuss the revised draft. Representatives from the organization mentioned by Mr. Hite in his introduction were also present.

Based on this meeting professor Bezanson prepared a revised draft which I examined for technical questions. This draft is the draft I used for preparation of the bill adding in the witness requirements you requested.

The draft will now go to the review committee and the National Conference. It will be considered there at second reading where it may be amended and at third reading where it is subject to approval or rejection on a vote of the states. Following that the proposal will be submitted to the American Bar Association at its annual meeting with a request for concurrence. Assuming concurrence the proposal will be submitted to the states with the recommendation it be adopted as a Uniform Law.

Obviously therefore the draft is not at the stage of an approved proposal recommended for adoption by the National Conference. However, in my opinion this draft is technically superior to any of the models available and any of the laws adopted by other states on the subject.

RGE:ojb
J11/073

Enclosures

ENACTED RIGHT-TO-DIE LEGISLATION

Alabama (1981)

Arkansas (1977)

California (1976)

Delaware (1982)

District of Columbia (1982)

Florida (1984)

Georgia (1984)

Idaho (1977)

Illinois (1984)

Kansas (1979)

Louisiana (1984)

Mississippi (1984)

Nevada (1977)

New Mexico (1977)

North Carolina (1977)

Oregon (1977)

Texas (1983)

Vermont (1982)

Virginia (1983)

Washington (1979)

West Virginia (1984)

Wisconsin (1984)

Wyoming (1984)

OLDER ALASKANS COMMISSION
POSITION PAPER

Senate Bill No. 140

"An Act relating to the rights of the terminally ill"

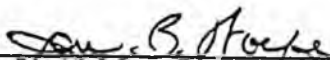
The Older Alaskans Commission urges passage of this legislation to allow terminally ill adults to decline life-sustaining procedures. The legislation would permit an adult to execute a written declaration instructing his physician to withhold or withdraw life-sustaining procedures if he was in a terminal condition and became unable to participate in medical treatment decisions.

In contrast to the acute diseases which were the leading causes of death at the turn of the century, current leading causes of death in this country are heart disease, malignancies, and cerebrovascular diseases. These chronic, progressive diseases often involve lengthy periods of medical treatment and most frequently attack the elderly. The majority of deaths occur in medical institutions where the means exist to prolong life for a substantial period of time, regardless of the irreversibility of the condition or quality of life.

This legislation clearly establishes the means for an adult to decline life prolonging treatment for an irreversible condition; informs his physician on how to proceed should he become unable to participate in medical treatment decisions; authorizes the physician and health care facility to comply with his wishes; and provides immunity to the physician and health care facility from civil or criminal liability for acting in accordance with his wishes.

At least twenty other states have enacted legislation in this area. The language in Senate Bill 140 is based on a discussion draft of a Rights of the Terminally Ill Act prepared by the drafting committee appointed by the National Conference of Commissioners on Uniform State Laws. This draft and Senate Bill 140 appear to be technically superior to any of the models available and any of the laws enacted by other states on this subject.

We ask your support of this bill and in making the health and dignity of our elderly a major state priority.



Jon B. Wolfe, Executive Director
Older Alaskans Commission

March 1, 1985
Date



Commissioner Lisa Rudd
Department of Administration

3/6/85
Date

PATRICK RODEY
SENATOR

ALASKA STATE SENATE

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3793
(907) 475-3754



MEMORANDUM

DATE: March 22, 1985

TO : Senator Dick Eliason

Pat

FROM: Senator Patrick Rodey, Chairman Senate Judiciary

RE : SB 140 - An Act relating to the rights of the
terminally ill

Thanks for your note requesting that the Judiciary Committee schedule SB 140 as soon as possible.

I have not scheduled the bill yet as I have been busy with the Hairdressers legislation. However, don't worry, I will get to it soon.

ALASKA STATE LEGISLATURE - SENATE

SENATOR RICHARD I. ELIASON



LABOR & COMMERCE COMMITTEE, VICE-CHAIRMAN
LEGISLATIVE COUNCIL, VICE-CHAIRMAN
FINANCE COMMITTEE
RESOURCES COMMITTEE

PO BOX 143
SITKA, ALASKA 99835

POUCH V
JUNEAU, ALASKA 99811
(907) 465-4916

MEMORANDUM

TO: Senator Pat Rodey, Chairman
Senate Judiciary Committee

FROM: Senator Dick Eliason *Dick*

RE: SB 140 - "An Act relating to the rights of the terminally ill"

DATE: March 20, 1985

Senate Bill 140 recognizes the rights of a competent adult to refuse life-prolonging procedures if that adult is terminally ill. The intent behind this legislation is to establish and protect each individual's right to a dignified death without unnecessary medical treatment which serves only to prolong dying.

I would appreciate it if you could schedule this bill for a hearing before the Senate Judiciary Committee as soon as possible.

Schedule it - I have done it
Dick Eliason



ALASKA STATE LEGISLATIVE COMMITTEE

CHAIRMAN
Mrs. Jane Windsor
319 E. Bentley Drive
Fairbanks, AK 99701
(907) 456-5035

VICE CHAIRMAN
Mr. John E. Dapcevich
Box 1081
Sitka, AK 99835
(907) 747-8383

SECRETARY
Ms. Lee McAnerney
P.O. Box 406
Seward, AK 99664
(907) 224-3080

March 27, 1985

Chairman Pat Rodey
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

At its meeting in Juneau March 7-8, 1985, the AARP State Legislative Committee voted to endorse the living will legislation, HB 269.

On behalf of our 16,000 members in Alaska, we urge passage of HB 269 this session. We feel it is important that this legislation become part of Alaska's statutes to clarify living will requests and to provide appropriate legal authority for doctors, medical care providers, family members, and the individuals who choose to use a living will.

We would point out that the legislation itself does not require financial support from the state; it basically places in statute appropriate recognition of living wills for those who choose to have them. Where living wills are used, the savings in medical costs can be a significant amount to insurance providers, medical care providers and individuals, as well as to the State of Alaska.

We urge your support of and passage of HB 269 this session.

Sincerely yours,

A handwritten signature in cursive script that reads "Jane Windsor".

Mrs. Jane Windsor, Chairman

*Sen. Proctor:
These are my thoughts
about SB 140. If you have
any questions I can be reached at
789-9858. Sid Heidersdorf*

ALASKANS FOR LIFE
Incorporated
P. O. Box 2186
Juneau, Alaska 99803
March 25, 1985

Testimony prepared for presentation by Sidney D. Heidersdorf, Alaskans For Life, Inc. to the Alaska Legislature on SB. 140 and HB 269, acts relating to the right of the terminally ill.

Senate Bill 140 and House Bill 269 gives legal recognition to a declaration signed by a patient that he/she wants life sustaining procedures withheld or withdrawn during an illness judged to be terminal. This is "living will" legislation similar to "death with dignity" and "natural death acts" which have been introduced into State legislatures across the country.

On the surface the living will looks harmless. However, we believe there are serious problems with the concept of this legislation and, therefore, we oppose it.

We do not argue with the implied or stated goals of living will legislation. We support the right of a terminally ill patient to refuse the use of extra-ordinary means to prolong life when death is imminent. Our opposition is based primarily on the method used to obtain its goals. Our reasons for objecting to the concept of the living will are as follows:

1. Living will legislation is unnecessary. Patients already have their rights respected regarding rejection of treatment to avoid the abusive use of technology when terminally ill. At the very best, this is special legislation for a few hard cases and, as such, is bad law. Those who are concerned about being unable to express their wishes due to serious injury or illness are free to do so by writing a personal note. This could be given to a family member, doctor, clergyman, attorney or friend; but the State should be kept out of the transaction.
2. The living will opens the door for potential abuse of the elderly. Subtle coercion to sign the living will could easily be used. The living will could be used as a method of eliminating care for the elderly by those who view them as a burden to society. The Society for the Right to Die is a principal promoter nationwide of the living will, This organization, before it changed its name, was the

Euthanasia Society of America.

Disclaimers that living wills do not condone euthanasia are meaningless if acts, otherwise unacceptable, are legalized and protected by provisions found elsewhere in the law. To give just one example; In both SB 140 and HB 269 the term "life/sustaining procedure" is defined as "a medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process." Under that definition antibiotics or other routine medication could be considered as a life sustaining medical intervention and, therefore, denied one who is "terminally ill". That is a long way from what has usually been considered required routine medical care.

3. Living will legislation encourages patients to sign a declaration to have their rights to refuse unusual medical life-sustaining procedures respected. It leads to the misconception that the living will confers the right on the patient rather than recognizes it. This is a dangerous precedent. This right is not given to us by the State. Once the right to refuse treatment is construed as conferred by the State the implication is that the State can control this decision relating to death and at some time in the future can make the decision as to when the patient should die.
4. The majority of the people will not sign a living will. They will have their rights undermined by this law. Physicians may feel compelled to overtreat the non-signer since this could be interpreted as saying that the patient wants all efforts made to prolong life. This might be done in spite of the families knowledge of the real wishes of the patient. If this legislation gives something to those who sign, it will necessarily undercut the rights of those who do not sign, regardless of disclaimers made to the contrary.
5. Signing a living will is an uninformed decision and the State should not condone it. A patient cannot make an informed decision regarding the circumstances of his death 5, 10, or 50 years in the future. No one knows in advance the conditions or circumstances that will exist when the declaration is to be implemented. Medical technology changes rapidly. The patient almost certainly will not know how the physician will interpret the phrase "life sustaining procedure". The unknowns are endless, including the risks and problems with interpretation of definitions.

Presumably living will legislation seeks to protect the rights of either the patient or the physician or both. This could be accomplished by legislation acknowledging the fundamental rights of patients to make decisions affecting their care. This legislation could restate the principle that extra-ordinary life sustaining measures may be refused by the patient or withdrawn by the attending physician when done under the usual and customary standards of medical practice following approval of the patient and/or the family. Those who wished to sign a personal declaration could do so, but without the involvement of government.

This approach would avoid the difficulty of definitions. There would be no problem for those who do not sign. Also, there would be no pitfalls or potential for serious abuse that exists in living will legislation.

In conclusion, we believe that legislation in any form which gives legal status to a written declaration in the form of a living will is not in the best interest of our society. Therefore, we ask everyone to think about this issue and request our legislators to reject living will legislation. This is necessary to protect the rights of everyone.



Sidney D. Heidersdorf
Alaskans For Life, Inc.

Changes: p. 1, line 12
p. 4, line 10
p. 6, line 23

Introduced: 2/7/85
Referred: Health, Education and
Social Services and
Judiciary

BY ELIASON, ZIEGLER,
V. FISCHER, SACKETT,
ABOOD AND STURGULEWSKI

1 IN THE SENATE

2

CS SENATE BILL NO. 140 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the rights of the terminally
7 ill."

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

9 * Section 1. AS 18 is amended by adding a new chapter to read:

10

CHAPTER 12. RIGHTS OF TERMINALLY ILL.

11

Sec. 18.12.010. DECLARATION RELATING TO USE OF LIFE-SUSTAINING

12

PROCEDURES. (a) Any competent ^{person, 18 years or older,} [adult] may execute a declaration at any
13 time directing that life-sustaining procedures be withheld or with-
14 drawn from that adult; but the declaration is given operative effect
15 only if the declarant's condition is determined to be terminal and the
16 declarant is not able to make treatment decisions. The declaration
17 must be signed by the declarant, or another at the declarant's direc-
18 tion, and in either case must be witnessed by two persons. The wit-
19 nesses must be at least 18 years old and may not be related to the
20 declarant by blood or marriage. A physician or health care provider
21 may presume, in the absence of actual notice to the contrary, that the
22 declaration complies with this Act and is valid.

23

(b) It is the responsibility of the declarant to notify the
24 declarant's physician of the declaration. A physician or other health
25 care provider who is provided a copy of the declaration shall make it
26 a part of the declarant's medical records.

27

(c) A declaration may, but need not, be in the following form:

28

DECLARATION

29

If I should have an incurable or irreversible condition that will

1 cause my death within a relatively short time, it is my desire that my
2 life not be prolonged by administration of life-sustaining procedures.
3 If my condition is terminal and I am unable to participate in de-
4 cisions regarding my medical treatment, I direct my attending phy-
5 sician to withhold or withdraw procedures that merely prolong the
6 dying process and are not necessary to my comfort or to alleviate
7 pain.

8 Signed this _____ day of _____, _____.

9 Signature _____

10 City, County and State of Residence _____

11 The declarant is known to me and voluntarily signed this document
12 in my presence.

13 Witness _____

14 Address _____

15 Witness _____

16 Address _____

17 Sec. 18.12.020. REVOCATION OF DECLARATION. (a) A declaration
18 may be revoked at any time and in any manner by which the declarant is
19 able to communicate an intent to revoke, without regard to mental or
20 physical condition. A revocation is only effective as to the attend-
21 ing physician or any health care provider acting under the guidance of
22 that physician upon communication to the physician or health care
23 provider by the declarant or by another to whom the revocation was
24 communicated.

25 (b) The attending physician or health care provider shall make
26 the revocation a part of the declarant's medical record.

27 Sec. 18.12.030. RECORDING DETERMINATION OF TERMINAL CONDITION
28 AND CONTENTS OF DECLARATION. When an attending physician who has been
29 notified of the existence and contents of a declaration determines

1 that the declarant is in a terminal condition, the physician must
2 record that determination and the contents of the declaration in the
3 declarant's medical record.

4 Sec. 18.12.040. TREATMENT OF QUALIFIED PATIENTS. (a) A qual-
5 ified patient has the right to make decisions regarding use of life-
6 sustaining procedures as long as the patient is able to do so. If a
7 qualified patient is not able to make these decisions, the declaration
8 governs decisions regarding use of life-sustaining procedures.

9 (b) This chapter does not prohibit the application of any med-
10 ical procedure or intervention, including the provision of nutrition
11 and hydration, considered necessary to provide comfort, care, or
12 alleviation of pain.

13 (c) Unless the declaration provides otherwise, the declaration
14 of a qualified patient known to the attending physician to be pregnant
15 is given no effect as long as it is probable that the fetus could
16 develop to the point of live birth with continued application of
17 life-sustaining procedures.

18 Sec. 18.12.050. TRANSFER OF PATIENTS. (a) An attending physi-
19 cian who is unwilling to comply with the requirements of AS 18.12.030
20 or who is unwilling to comply with the declaration of a qualified
21 patient under AS 18.12.040 shall take all reasonable steps to effect
22 the transfer of the declarant to another physician.

23 (b) If the policies of a health care facility preclude compli-
24 ance with the declaration of a qualified patient under this chapter,
25 that facility shall take all reasonable steps to effect the transfer
26 of the patient to a facility in which the provisions of this chapter
27 can be carried out.

28 Sec. 18.12.060. IMMUNITIES. (a) In the absence of actual
29 notice of the revocation of a declaration, the following, while acting

1 in accordance with the requirements of this chapter, are not subject
2 to civil or criminal liability or guilty of unprofessional conduct:

3 (1) a physician who causes the withholding or withdrawal of
4 life-sustaining procedures from a qualified patient;

5 (2) a person who participates in the withholding or with-
6 drawal of life-sustaining procedures under the direction or with the
7 authorization of a physician;

8 (3) the health care facility in which the withholding or
9 withdrawal occurs.

10 (b) A physician, ^{health care professional, or health care facility} is not subject to civil or criminal liability
11 for actions under this chapter that are in accord with reasonable
12 medical standards.

13 Sec. 18.12.070. PENALTIES. (a) A physician who wilfully fails
14 to transfer in accordance with AS 18.12.050 is guilty of a class A
15 misdemeanor.

16 (b) A physician who wilfully fails to record the determination
17 of terminal condition in accordance with AS 18.12.030 is guilty of a
18 class A misdemeanor.

19 (c) A person who wilfully conceals, cancels, defaces, or oblit-
20 erates the declaration of another without the declarant's consent or
21 who falsifies or forges a revocation of the declaration of another is
22 guilty of a class A misdemeanor.

23 (d) A person who falsifies or forges the declaration of another,
24 or wilfully conceals or withholds personal knowledge of a revocation
25 as provided in AS 18.12.020, with the intent to cause a withholding or
26 withdrawal of life-sustaining procedures, is guilty of a class A
27 misdemeanor.

28 Sec. 18.12.080. GENERAL PROVISIONS. (a) Death resulting from
29 the withholding or withdrawal of life-sustaining procedures under a

1 1 a declaration and in accordance with this chapter does not, for any
2 purpose, constitute a suicide or homicide.

3 (b) The making of a declaration under AS 18.12.020 does not
4 affect in any manner the sale, procurement, or issuance of a policy of
5 life insurance, nor does it modify the terms of an existing policy of
6 life insurance. A policy of life insurance is not legally impaired or
7 invalidated in any manner by the withholding or withdrawal of life-
8 sustaining procedures from an insured qualified patient, notwithstand-
9 ing any term of the policy to the contrary.

10 (c) A physician, health care facility, or other health care
11 provider, and a health care service plan, insurer issuing disability
12 insurance, self-insured employee welfare benefit plan, or nonprofit
13 hospital plan, may not require a person to execute a declaration as a
14 condition for being insured for, or receiving, health care services.

15 (d) This chapter creates no presumption concerning the intention
16 of an individual who has not executed a declaration with respect to
17 the use, withholding, or withdrawal of life-sustaining procedures in
18 the event of a terminal condition.

19 (e) Nothing in this chapter increases or decreases the right of
20 a patient to make decisions regarding use of life-sustaining proce-
21 dures as long as the patient is able to do so, nor impairs or super-
22 cedes any right or responsibility that a person has to effect the
23 withholding or withdrawal of medical care in a lawful manner. In that
24 respect, the provisions of this chapter are cumulative.

25 (f) This chapter does not condone, authorize, or approve mercy
26 killing or euthanasia.

27 Sec. 18.12.090. RECOGNITION OF DECLARATIONS EXECUTED IN OTHER
28 STATES. A declaration executed in another state in compliance with
29 the law of that state is effective for purposes of this chapter.

1 Sec. 18.12.100. DEFINITIONS. In this chapter

2 (1) "attending physician" means the physician selected by,
3 or assigned to, the patient who has primary responsibility for the
4 treatment and care of the patient;

5 (2) "declaration" means a document executed in accordance
6 with the requirements of AS 18.12.010;

7 (3) "health care provider" means a person who is licensed,
8 certified, or otherwise authorized by the law of this state to admin-
9 ister health care in the ordinary course of business or practice of a
10 profession;

11 (4) "life-sustaining procedure" means a medical procedure
12 or intervention that, when administered to a qualified patient, will
13 serve only to prolong the dying process;

14 (5) "physician" means a person licensed to practice medi-
15 cine in this state;

16 (6) "qualified patient" means a patient who has executed a
17 declaration in accordance with this chapter and who has been deter-
18 mined by the attending physician to be in a terminal condition;

19 (7) "terminal condition" means an incurable or irreversible
20 condition that, without the administration of life-sustaining proce-
21 dures, will, in the opinion of the attending physician, result in
22 death within a relatively short time.

(23)

Section 2. Immediate effective date.

SB 63, Special appropriation for remodeling and construction of an addition to the Wrangell General Hospital.

SB 63 would appropriate \$6,000,000 for a payment to the City of Wrangell to correct functional and physical deficiencies in the existing Wrangell General Hospital facility. Much of the proposed remodeling is needed to meet fire, safety and sanitation regulations. In 1981, the project was granted a Certificate of Need permitting an expenditure of \$6.9 million. Last year the State granted \$400,000 for the design phase of the project, all of which is presently encumbered. The Alaska State Hospital Association has indentified the Wrangell project as the priority for FY 86.

The Wrangell General Hospital serves approximately 3,000 people in the Wrangell area.

Senator Zharoff has proposed an amendment (attached) to SB 63 which would appropriate \$2,114,000 to the Kodiak Island Borough for architecture and engineering costs of either remodeling or reconstructing the Kodiak Island Borough Hospital.

SB 140, Rights of the terminally ill.

Under the authority granted in SB 140, a competent adult would be allowed to execute a declaration that life-sustaining procedures be withheld or withdrawn from that adult. The bill specifies that the declaration would take effect only if the adult's condition is terminal and the adult is unable to make treatment decisions. A declaration would be revocable at any time.

The bill requires witnessing of the signing of the declaration and proper recording of the decision on the patient's chart. It provides for immunity from liability for honoring a declaration and penalties for disregarding one.

According to the Society for the Right to Die, similar legislation has been enacted in 20 other states and the District of Columbia.

Senate HESS committee memo
3/1/85

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate Committee on Health, Education and Social Services

MINUTES

March 5, 1985
1:37 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Armstrong - De Vries
Senator Paul Fischer
Senator Josephson
Senator Sturgulewski

CALENDAR

SB 45, Hospital inspections and investigations by the Department of Health and Social Services.

SB 140, Rights of the terminally ill.

SB 45

Dennis Dewitt, President, Alaska State Hospital Association, spoke in support of proposed CSSB 45 which would allow the Department of Health and Social Services to accept accreditation inspections by the Joint Commission of the Accreditation of Hospitals in lieu of its own inspections. He stated that this action could result in significant cost savings to both hospitals and the state.

Bob Ogden, Assistant Director, Division of Medical Assistance, Department of Health and Social Services, spoke in support of the proposed committee substitute as it would allow the department flexibility in scheduling hospital inspections. He answered questions on when inspections of smaller facilities would be conducted.

Senator Faiks, sponsor, spoke in support of the proposed committee substitute and of including additional language that would ensure annual inspections of smaller hospitals.

SB 140

Senator Eliason, sponsor, explained that under SB 140, a competent adult would be allowed to execute a declaration that life-sustaining procedures be withheld or withdrawn if that adult develops a terminal condition and is unable to make treatment decisions.

Mary Tonsmeire, Clinical Coordinator, Hospice of Juneau, spoke in support of SB 140, and offered specific comments from the Hospice of Anchorage, and the comments of a visiting lecturer, Dr. James Speer, Lawyer and Doctor of Medical Ethics, on earlier "living will" legislation in other states.

Dr. Robert Fraser, Director, Division of Public Health, Department of Health and Social Services, spoke in support of the bill, explaining that currently these decisions are made by the physician and the patient's family. This bill offers the individual the ability to make this decision.

Dennis Dewitt, President, Alaska State Hospital Association, spoke in support of SB 140 and offered an amendment that would expand the immunities section to include health facilities.

Sid Heidersdorf, Alaskans for Life, Juneau, spoke in opposition to SB 140, indicating that patients already have this right. He felt the bill would not promote good medical care.

Mary Rikken-Ver, Older Alaskans Commission, Department of Administration, spoke in support of SB 140.

The meeting adjourned at 3:23 pm.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ARLISS STURGULEWSKI, Vice Chairman
JOE JOSEPHSON
PAUL FISCHER
EDNA ARMSTRONG-DE VRIES



POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3534
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Senate Committee on Health, Education and Social Services

MINUTES

March 14, 1985
1:35 pm

Beltz Room
Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Armstrong - De Vries
Senator Paul Fischer
Senator Sturgulewski

CALENDAR

SB 117, Alzheimer's disease and related disorders.

SB 140, Rights of the terminally ill.

SB 128, Relating to the use of longevity bonus payments in determining adult public assistance.

SCR 10, Requesting the State Board of Education to require the study of Alaska history and government in the schools of the state.

SB 117

Senator Fahrenkamp indicated that the committee was working on establishing priorities for funding those services proposed in the bill.

SB 140

Sandra Schubert, Senate HESS Committee Aide, reviewed the changes in the proposed committee substitute that would clarify that 1) any competent person 18 years or older may execute a declaration, 2) expand the immunity section to include health care professionals and facilities, and 3) provide for an immediate effective date.

Senator Sturgulewski moved to adopt CS SB 140 (HESS) and move it from committee with individual recommendations. There was no objection.

SB 128

Sandra Schubert, Senate HESS Committee Aide, explained that the proposed committee substitute was drafted at the request of the sponsor.

Rod Betit, Director, Division of Medical Assistance, Department of Health and Social Services, spoke in support of the proposed committee substitute for SB 128, which would require the state to make up for federal SSI payments lost due to receipt of the longevity bonus and place recipients who have lost Medicaid eligibility under the state's General Relief Medical program. He proposed an amendment that would exempt nursing home residents from eligibility for the bonus. and urged that the committee define "public assistance". Betit reviewed the costs involved in enacting different "hold harmless" options.

Senator Halford, Sponsor, spoke in support of the bill and the proposed amendment, discussed the cost figures supplied by the Department, and recommended the committee pass the bill to the Senate Finance Committee so it could be considered in conjunction with other pending longevity bonus legislation.

Deborah Vogt, Assistant Attorney General, discussed the constitutionality of exempting nursing home residents from eligibility for the longevity bonus.

Debra Neidermeyer, Aide to Representative Koponen, reviewed the committee substitute passed by the House HESS Committee that would require the state to make up for benefits lost from any federal needs-based program.

Senator Sturgulewski moved to adopt the nursing home exemption amendment and to move CS SB 128 with the amendment from committee with individual recommendations. There was no objection.

SCR 10

Steve Hole, Special Assistant to the Commissioner, Department of Education, testified that the Board of Education agrees that each school district should offer courses in Alaska history and government, and explained that the Board encourages school districts to provide this instruction through its Model Curriculum. Hole stated that decisions on specific course requirements of school districts are best made by locally elected school officials.

Don McKinnon, Alaska Council of School Administrators, supported the concept that Alaska history and government be taught in the schools, but recommended amending the resolution to request the

Board to "encourage", rather than "require" local school districts to offer such courses.

Gayle Pierce, President, National Education Association-Alaska, spoke in support of retaining the language that would "require" local school districts to offer courses. She also recommended specifying that Alaska Native Land Claims Settlement instruction be included.

Senator Paul Fischer questioned the availability of curriculum materials as referenced in lines 15-20.

The meeting adjourned at 2:45 pm.

POSITION PAPER

SENATE BILL No. 147

For "An Act relating to the rights of the terminally ill."

The right of a competent individual to decide whether life-sustaining procedures should be used in the face of a terminal illness or injury has received increasing attention in recent years as medical technology has advanced and individual cases have received media attention.

This bill provides a process through which a competent adult can participate in decisions regarding his or her care when afflicted with a terminal condition. "Terminal condition" is an incurable or irreversible condition that, without the administration of life-sustaining procedures, will result in death in a relatively short time. The bill permits a competent adult to execute a declaration directing the withholding or withdrawal of life-sustaining measures. The declaration comes into effect only (1) if a terminal condition is determined to exist and (2) if the affected person is incapable at that time of making treatment decisions.

According to the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, 13 states and the District of Columbia have adopted so-called natural death legislation. The proposed legislation appears to be generally similar to the major provisions in other states.

The Department of Health and Social Services supports intent of this bill. It is assumed the Department of Law is reviewing it for adequacy of legal safeguards for declarants and for health care providers.

Recommended by:

Robert J. Fraser MD

Robert I. Fraser, M.D.
Director
Division of Public Health

Date:

2/15/85

Approved by:

John R. Pugh

John R. Pugh
Commissioner
Department of Health &
Social Services

Date:

2/15/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 140
 Title: Rights of terminally ill
 Sponsor: Eliason, et al
 Requestor: _____
 Date of Request: 2/8/85

FISCAL DETAIL

Agency Affected: Health & Social Services
 Program Category Affected: Public Health
 BRU, Program or Subprogram(s) Affected: State Health Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 SUPPLIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS	0	0	0	0	0	0
800 MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Prepared By: Robert I. Fraser, M.D.
 Division: Public Health

Phone: 465-3090
 Date: 2/12/85

Approved by Commissioner: [Signature]
 Agency: Dept. of Health & Social Services

Date: 2/15/85 JCC

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
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 Impacted Agency(ies)

7/1/84

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 8, 1985

SUBJECT: Derivation of Senate Bill 140
TO: Senator Richard I. Eliason
FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked me to comment on the derivation of Senate Bill 140, rights of the terminally ill.

The bill is derived from a discussion draft of a Rights of the Terminally Ill Act prepared by a drafting committee appointed by the National Conference of Commissioners on Uniform State Laws. I have furnished you the discussion draft which contains the text and the commentary proposed by the committee.

The NCCUSL is an organization whose purpose is to promote uniformity in state laws in areas where uniformity is desirable and practicable. It is considered a state organization and the major portion of its funds comes from state appropriations.

The National Conference procedure is for the Scope and Program committee to consider proposals for Uniform Laws and recommend to the Executive Committee areas it considers should be addressed. If the Executive Committee agrees it appoints a drafting committee, a review committee and a committee drafting liason. In this instance the drafting committee and review committee are shown on the proposed draft I have furnished you. I am an associate member of the National Conference and was appointed as drafting committee liason.

Following appointment the committee prepares a draft which is reviewed by the review committee. This draft is then presented to the committee of the whole of the National Conference for first reading. At this reading the draft is

Senator Richard I. Eliason
February 8, 1985
Page 2

read in full and discussed section by section. This draft was before the committee of the Whole at the annual meeting of the National Conference on August 1, 1984. The chair of the committee made an introductory statement explaining the draft and it was then discussed section by section in some detail. I am enclosing the chair's introductory statement.

Following the discussion at the committee of the Whole the draft is then returned to the drafting committee for further action. A draft incorporating the changes from the committee of the Whole and other changes was prepared and distributed to members of the committee. The committee then met in Hartford, Connecticut in September to discuss the revised draft. Representatives from the organization mentioned by Mr. Hite in his introduction were also present.

Based on this meeting professor Bezanson prepared a revised draft which I examined for technical questions. This draft is the draft I used for preparation of the bill adding in the witness requirements you requested.

The draft will now go to the review committee and the National Conference. It will be considered there at second reading where it may be amended and at third reading where it is subject to approval or rejection on a vote of the states. Following that the proposal will be submitted to the American Bar Association at its annual meeting with a request for concurrence. Assuming concurrence the proposal will be submitted to the states with the recommendation it be adopted as a Uniform Law.

Obviously therefore the draft is not at the stage of an approved proposal recommended for adoption by the National Conference. However, in my opinion this draft is technically superior to any of the models available and any of the laws adopted by other states on the subject.

EGB:ojb
J11/073

Enclosures

alaska
state
hospital
association

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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Association
Maxine Robertson
Trustee, Ketchikan
General Hospital

Physician Member of
the Board
Morris Horning, M.D.
Anchorage

President
Dennis L. DeWitt
Juneau

February 25, 1985

Senator Richard Eliason
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Eliason:

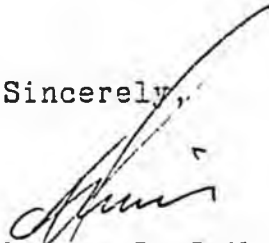
Subject: SB 140

I appreciate the help your staff has given on responding to our initial questions on SB 140.

We believe that Section 18.12.060(b) ought to be amended to include health care facilities and other persons participating in actions under this chapter. We are concerned that the exemption, if limited to physicians, implies that facilities and other personnel could be held to a higher standard than the physician who directs the activity. Because of the greater amounts of liability insurance carried by hospitals and nursing homes, we believe that such an implied difference in immunity protection would significantly increase the probability that litigants would file claims against the hospital. We believe this immunity is necessary but should be broadened to include other probable targets of litigation.

Thank you for your consideration.

Sincerely,


Dennis L. DeWitt
President

DLD/agk

cc: Steve Berkshire

Society For The Right To Die

NEWSLETTER

SPRING 1984

HOSPITAL SURVEY: AN INTERIM REPORT

The grass roots survey initiated by the Society last year, in which members were asked to write their hospitals to inquire about their policies toward the Living Will, is proving so effective that it is being continued through 1984.

Hospitals in 49 states have responded so far, with lengthy and thoughtful letters—often formulated with legal counsel—indicating great sensitivity to their patients' concerns. Significantly, there is evidence that a number of hospitals have been stimulated to action by these Society-generated inquiries.

"We are in the process of developing a formal policy and procedure because we have had so many letters like yours," wrote Freehold (N.J.) Area Hospital. "We have even gone so far as to develop a short form of our own to be utilized in the event that the patient has not had the foresight or opportunity to prepare a Living Will in advance such as you have."

Discuss with Physician

Hospitals in states both with and without laws giving legal recognition to these advance directives emphasize the importance of discussing your Living Will with your physician. Letter after letter states that hospitals do not initiate services but produce them on doctors' orders.

This excerpt from a letter from The Fairfax Hospital in Virginia is representative of letters from hospitals in states with laws: "The Fairfax Hospital, of course, fully complies with the provisions of [the Virginia Natural Death Act] . . . a declaration such as the one that you attached to your letter can be of great assistance . . . If it is properly executed and presented to us at the time of treatment, it would document your directions/instructions as required by State law."

In states without laws, hospitals have written that they consider the Living Will

(continued on page 8)

LEGISLATION IN NEW SURGE: LAWS NOW TOTAL 21

Legislators who have long been committed to the cause of "living will" legislation, and have for years fought an uphill battle, are experiencing a change in the weather. Increasing acceptance by much of the medical profession and a groundswell of public support have sharpened the national perception that such laws are indeed necessary.

Concerted efforts by organizations devoted to the welfare of the elderly—AARP, Gray Panthers, Senior Citizens, and the like—have lent heightened visibility to the issue. Typical of their no-nonsense stand is the recent statement by Maggie Kuhn, Gray Panthers founder, as quoted in the *Litchfield (CT) County Times*: "It's on ethical and moral grounds that we take this position. When you're hooked up to a machine, it's an affront. Most people in their right minds would want to die quietly."

The enactment of five laws in approximately one month—in Georgia, Mississippi, West Virginia, Wisconsin, Wyoming—and a statute in Illinois, which passed last year and took effect January 1, demonstrates the momentum which right-to-die legislation is currently enjoying, and brings the number of jurisdictions with "living will" laws up to 21, including the District of Columbia.

Legislation in the Midwest got a significant boost with the passage of Illinois' Living Will Act. It is particularly fitting that it should finally have been passed in the home state of Luis Kutner, the Chicago attorney who originated the concept of the

(continued on page 3)



Sidney H. Wanzer, M.D.,
Primary Author



Daniel D. Federman, M.D.,
Conference Chairman

New England Journal of Medicine Publishes Physician Guidelines

Ten of the nation's most distinguished physicians, representing various medical disciplines, and brought together by the Society for the Right to Die to clarify the physician's responsibility toward hopelessly ill patients (Spring '83 Newsletter, page 2), have published their conclusions in a Special Article in the April 12 issue of *The New England Journal of Medicine*.

Headlined by the *Washington Post* as a "Bill of Rights for Terminal Patients," the article spells out in detail the medical care the physicians consider ethically correct.

(continued on page 2)

GRAND JURY CALLS FOR NY HOSPITAL GUIDELINES

A call for the New York State Legislature and the Commissioner of Health to establish formal procedures to govern the withholding of emergency resuscitation from terminally ill patients was made by a special grand jury, which found what it called "shocking procedural abuses" during its year-long investigation of "Do Not Resuscitate" procedures at a Queens

County (N.Y.) hospital.

The investigation arose out of the death in 1981 of a 78-year-old woman who went into cardiac and respiratory arrest after her respirator was unaccountably disconnected. No alarm calling for resuscitation was sounded.

Although it handed down no indictment, the grand jury found that DNR de-

isions were made at the hospital without properly documenting them on the patient's chart and without consulting the patient's family. According to testimony, a purple dot affixed to the patient's nursing card was used to indicate "no code," and when the patient died, the card was thrown away—all in order, the grand jury report stated, "to avoid legal responsibility." This "purple dot" system, it went on to say, "eliminated professional accountability, invited clerical error and discouraged physicians from obtaining informed consent."

Specific Recommendations

Acknowledging that it may be appropriate to withhold resuscitation when it would only prolong the dying process and cause needless suffering, the grand jury made specific recommendations for officially recognized "no code" procedures, as well as safeguards against abuse. These included verification that the patient's condition was irreversible, with death "imminent and inevitable"; consultation with patient and family; joint agreement not to resuscitate; and proper recording of the decision on the patient's chart. "Responsible physicians should not have to ignore their own best medical judgments or the wishes of their suffering and terminally ill patients out of an unjustified fear of legal consequences," the jury's report stated.

A spokesman for State Health Commissioner Dr. David Axelrod said that Governor Mario Cuomo had ordered a review of issues involving medical ethics, including DNR orders.

The New York State Medical Society, the New York State Hospital Association, and the Greater New York Hospital Association all testified before the grand jury in support of express DNR guidelines, including a strict ban on verbal orders. There is a growing awareness throughout the country of the need for such regulations. (SRD Newsletter, Spring '83, page 3.)

VA Offers New DNR Option

The grand jury's recommendations resemble new guidelines adopted by the Veterans Administration for its 172 hospitals, which, in a major reversal of policy, afford a DNR option to terminally ill patients who do not wish to be kept alive when there is no hope of recovery.

The VA guidelines, prepared by physicians, nurses and attorneys, took a year and a half to write, and replace an earlier policy which prohibited doctors from denying resuscitation to hopeless patients.

New England Journal of Medicine (continued from page 1)

permissible and desirable in various stages of illness, for both competent and incompetent patients. These range from emergency resuscitation and intensive care to the administering of comfort measures solely, and specifically include the withholding or withdrawing of artificial feeding when that would only perpetuate nonmeaningful life. (see page 4.)

Society Sponsorship

Society sponsorship of the meeting was undertaken in recognition of the need for such guidelines at a time when the technological capacity to sustain life indefinitely has led to widespread uncertainty on the part of physicians as to how best to discharge their responsibility toward the dying patient and his or her family.

Two major precepts are basic to the guidelines: The role of the patient in making treatment decisions is primary; and a decrease in aggressive treatment is advisable if continuing it would only prolong the process of dying. "Senseless perpetuation of the status quo is decision by default," the authors state.

The dying patient's prior attitude is crucial to such decision-making, because pain, drugs, or other influences on mental states may render even the competent patient incapable of directing his or her treatment. In such cases, the authors point out, a Living Will or a proxy appointment in advance "can be helpful in indicating the patient's preference with respect to terminal treatment."

Physician's Role

Clear communication between doctor and patient is essential. The authors stress the physician's role as a source of comfort to patients and their families, especially when the decision has been made to withhold life-sustaining treatment.

In recommending how, and how much, to tell the patient who is faced with a life-threatening illness, the authors in general advocate honesty, saying: "A decision not to tell the patient the truth because of fear of his or her emotional inability to handle it is rarely, if ever, justified. . . . The anxiety of dealing with the unknown can be far more upsetting than the grief of dealing with a known, albeit tragic, truth."

Influences on physicians that may prevent them from accepting the idea that often "less" can be "more" are cited frankly: training and tradition that emphasize aggressive treatment; the temptation to use today's sophisticated medical technology; fear of legal liability; personal values and unconscious motivations; equating a patient's death with professional failure; and unreasonable insistence on impossibly absolute prognostic certainty.

Medical professionals who have commented on the article have observed that the prestige of the authors and *The New England Journal* will have considerable influence, and will free physicians in many cases to do what in the past they might have hesitated to do.

Media Response

The response of the media to publication of the article has been gratifying. *Good Morning, America*, the *CBS Morning News*, the *Freeman Report* on Cable Network News, and a number of radio interviewers have made it a subject for discussion, and syndicated stories by the Associated Press and the *Washington Post* have appeared nationwide. Other media articles are in progress—a clear indication that the subject is of overriding interest to the public as well as the medical community.

Reprints of the *NEJM* article, "The Physician's Responsibility Toward Hopelessly Ill Patients," by Sidney H. Wanzer, M.D., et al., are available for \$1.00 each from the Society.



John D. Rockefeller IV,
Governor of West Virginia.

MS Victim Forms Living Will Society

Sarah Caldwell, of Epsom, N.H., 37, has joined the six-year battle of State Representative Eugene S. Daniell to enact "living will" legislation in that state.

A wheelchair victim of multiple sclerosis, Miss Caldwell offers vivid testimony to the urgent need for legislation. She fears that she will lapse into a coma, and in the absence of a law, will have no protection against the life-sustaining treatment she does not want.

Although muscular control comes at great cost, she has embarked on a series of speaking engagements to law centers and other groups throughout the state.

In October 1983 Caldwell formed a Living Will Society, which by now has garnered more than 3,000 signatures in support of Representative Daniell's bill. Her determination to secure its enactment goes beyond her concern for her own welfare. The time she has spent in hospitals has let her view at first hand the anguish that families suffer when the life of someone they love is artificially prolonged.

Representative Daniell, now approaching the age of 80, remains undaunted by the New Hampshire governor's veto in 1983 of his legislation. With so many state residents now energized by the newly formed Living Will Society, he is hopeful of passage in the 1985 session. Commenting that since 1976 the bill has passed the House three times and the Senate twice, and has been vetoed twice—once by a Democratic governor and once by a Republican—he adds: "I only hope I'm successful in time to do me some good!"

New Living Will Laws *(continued from page 1)*

Living Will. The act, initiated by the Greater Springfield Interfaith Association, and introduced by Representative Michael Curran, is the successor to bills introduced in that state starting in 1976.

Georgia's Living Will Law, effective July 1, became the nation's seventeenth, culminating efforts which began in 1976. Abigail Van Buren ("Dear Abby"), who has recommended the Living Will to her readers (see page 5), visited the State Capitol at the request of Senator Richard L. Greene. The legislation had already passed both houses, but lacked Governor Joe Frank Harris's signature. The governor had not indicated whether or not he would sign it, but he did so directly after meeting with "Abby."

West Virginia's Natural Death Act, which in the first week of March passed the House by 100 to 0 and the Senate with only four dissenting votes, will become effective June 4. Senator Stephen L. Cook, its sponsor, received support from the state Nurses Association, as part of their legislative program.

In Mississippi, "An Act to Allow Persons to Authorize the Withdrawal of Life-Sustaining Mechanisms . . ." sponsored by Senator Bob Usey, was enacted in April, to take effect July 1. It was supported by the Council on Aging and various church groups, including one of the state's two Catholic dioceses. Mississippi is the first state to require the filing of a "living will" declaration (and any subsequent revocation) with a government agency, in this case, the Bureau of Vital Statistics of the State Board of Health.

Wisconsin's "living will" law was signed by the governor in April. Introduced by Representative Walter J. Kunicki and 19 co-sponsors, it was backed by the state medical society, the state hospital association, the AARP, and the Wisconsin Retired Teachers Association.

In Wyoming, a "living will" law, which passed and was signed in March, becomes effective July 1. Senator Russell W. Zimmer, the prime sponsor, introduced the bill on behalf of the Commission on the Aging. He received bipartisan support in the legislature as well as strong backing from Governor Ed Herchler. The Silver-Haired Legislature and the Wyoming Medical Association were also active in the bill's passage. The law contains a provision for a proxy appointment.

The Society will provide residents with appropriate declaration forms on request.

In addition to the five states that have enacted "living will" laws in 1984, 19 legislatures had such bills under consideration: Alaska, Arizona, Colorado, Connecticut, Florida, Hawaii, Indiana, Iowa, Maine, Maryland, Massachusetts, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, and Utah.



Sarah Caldwell

RAPID GAINS FOR BAY STATE BILL

After ten years of struggle, "living will" legislation in 1983 achieved the necessary support for passage in the Massachusetts legislature, only to fail when the "special rules" requiring unanimous consent which govern the close of the Senate session were invoked.

Encouraged by the remarkable progress made in the 1983 session, the bill's supporters, led by Representative Richard A. Voke, have re-introduced it. It was reported favorably by the Judiciary Committee after only one day of consideration, and moved rapidly to the third "reading" in the House. At this writing, all legislation has been deferred until debate on the budget is concluded.

The bill is actively supported by the Massachusetts Committee for the Living Will and the Massachusetts Council of Churches.

ARTIFICIAL FEEDING BECOMES PIVOTAL ISSUE

The first case in the country in which a state's highest court will specifically address the issue of terminating artificial feeding of an incompetent patient will be decided in New Jersey. The state Supreme Court has heard arguments in the case of Claire C. Conroy, a semi-comatose 84-year-old nursing home patient who had been fed through a nasogastric tube.

In ruling on a suit to discontinue feeding, brought by Conroy's nephew, Superior Court Judge Reginald Stanton had held in a 1983 opinion that feeding could be terminated, saying, "The patient is functioning at a virtually zero intellectual level" and "when a person has been permanently reduced to a very primitive intellectual level or is . . . suffering from unbearable and unrelievable pain, there is no valid human purpose to be served by employing active treatment designed to prolong life."

Paul Armstrong, Karen Quinlan's attorney, called Judge Stanton's ruling the "logical extension" of the same court's 1976 decision that his comatose client could be disconnected from her respirator.

Disagreement on Condition

Although Conroy died during a stay of this ruling, her court-appointed guardian *ad litem*, John J. DeLaney, Jr., appealed. The Appellate Division sharply disagreed with the lower court's interpretation of the patient's condition, and with its decision, stating that the withdrawal of feeding, even on a person who lacked intellectual capacity, "authorized euthanasia [and] would have frightening implications." The court held that the testimony in the Conroy case drew a very different picture from that in *Quinlan*. The *Quinlan* ruling, Judge Herman P. Michels said, "applies only to noncognitive, vegetative patients," whereas Conroy was "awake, but confused."

The New Jersey Hospital Association, in its *amicus curiae* brief, argues that any difference between withdrawing a respirator and a feeding tube is an "artificial distinction," and that Judge Stanton's decision should be upheld. Briefs have also been submitted by the American Geriatric Association, the New Jersey Catholic Conference, individual members of the President's Commission for the Study of Ethical Problems in Medicine, and others.

In October 1983, the California Court of Appeals dismissed murder and conspiracy charges against surgeon Robert J. Nejdil and internist Neil L. Barber (SRD Newsletter, Spring '83, page 4), stating that to

withdraw artificially administered food and water is no different, legally, from withdrawing respirator support.

While the California case involved criminal charges, the Conroy case is the first civil action in which the withholding of nourishment has been at issue. As such, observers on both sides await with particular interest the New Jersey Supreme Court's decision.

Physicians' and Ethicists' Views

While lawyers and the courts continue to debate, physicians and ethicists have expressed their views in recent articles. The ten physicians who co-authored the *New England Journal of Medicine* article (see page 1) concluded that for patients in a persistent vegetative state "it is morally justifiable to withhold antibiotics and artificial nutrition and hydration, as well as other forms of life-sustaining treatment. In the case of severely and irreversibly demented patients, if food and water are rejected by mouth, it is ethically permissible to withhold artificial nutrition and hydration by vein or gastric tube."

Joanné Lynn and James F. Childress.

writing in the October 1983 issue of *The Hastings Center Report*, state: "Medical nutrition and hydration do not appear to be distinguishable in any morally relevant way from other life-sustaining medical treatments that may on occasion be withheld or withdrawn." Dr. Lynn, Professor at George Washington University, Division of Geriatrics, was Assistant Director of the President's Commission. Dr. Childress is Professor of Religion at the University of Virginia.

In the October 1983 issue of *Law, Medicine and Health Care*, Dr. Anne Fletcher, director of the intensive care nursery at Children's Hospital in Washington, D.C., and John J. Paris, a Jesuit priest who teaches ethics at Holy Cross University, co-authored an article in which they noted that in certain limited circumstances artificially administered nourishment may be futile treatment.

Now that termination of respirator support has been permitted by many courts, it appears that the moral dilemma caused by the decision to withhold or withdraw artificial feeding is destined to become the issue of the '80s.

Ruling Awaited on Florida Court Role

Florida's Supreme Court will shortly rule on whether court approval must be obtained before life-support systems can be withheld or withdrawn from a terminally ill comatose patient who has executed a Living Will. The case under review, *JFK Memorial Hospital v. Bludworth*, concerns Francis Landy, 79, who had signed a Living Will in 1975 and died at the Lake Worth hospital in 1981.

When Landy's condition was deemed irreversible, his wife asked the hospital to honor his Living Will and disconnect his respirator. The hospital petitioned the circuit court for permission to act on her request, and, although Landy died before the first decision was handed down, the hospital pursued the matter in the courts, hoping for guidance in the treatment of other comatose patients.

Court Approval Needed

Acknowledging the value of the Living Will as evidence of a patient's intent, County Circuit Judge Timothy Poulton ruled nevertheless that court approval was necessary before life support systems could be terminated. The Fourth District Court of Appeals upheld that decision, but asked the Florida Supreme Court to

review the case because of the importance of the issue.

A brief filed in the Supreme Court by the Florida Hospital Association argued that the requirement for court approval places hospitals in an untenable position: it hampers implementation of difficult choices as to allocations of limited medical equipment such as respirators, "removes the sensitive decision from physician and family members" and will be expensive and time-consuming.

Earlier Patient's Wish Granted

The only other right-to-die case to reach the Florida Supreme Court involved a competent patient, Abraham Perlmutter, whose request to be disconnected from his respirator was approved by the Fourth District Court of Appeals and upheld unanimously by the Supreme Court 15 months after Perlmutter's death in 1977. Although the Court emphasized that its decision was limited to the case of a competent, terminally ill adult with no minor dependents, whose family was in full agreement with his request, it did clearly address the need for legislative guidelines, stating that the issue was more suited to the legislative forum than to the courts.

SRD HONORS "DEAR ABBY"

Abigail Van Buren, who writes the widely syndicated "Dear Abby" column, was honored by the Society for the Right to Die at a luncheon held on November 11, 1983, to thank her formally for continuing to emphasize the need for Living Wills. Two columns last year resulted in a flood of nearly 100,000 requests to the Society for these documents—impressive testimony to the influence she has on her readers and to the public's ever-increasing interest in the subject.

"Abby" was presented with a Living Will plaque by Sidney D. Rosoff, past president and currently chairman of the SRD Board. In responding to the presentation, she said, "Every time the Living Will is mentioned in my column the response from readers is overwhelming. My mail triples from 10,000 letters a week to 30,000! In fact, this is by far the most popular issue in my column to date and keeps gathering momentum. . . . The Living Will is simply a document that a person signs saying that he or she does not want to be kept alive by artificial means after all hope for recovery is gone. It is not a way of 'getting rid' of a relative (but) an expression of what one wants for himself! I have signed one, and I can only wish that every citizen in the U.S. had the peace of mind it has given me."



Abigail Van Buren and Sidney D. Rosoff

California, Oregon Strengthen Rights

California and Oregon, which were among the earliest states to adopt right-to-die laws, have recently enacted legislation aimed at overcoming a major restriction imposed by both statutes. California legislators have accomplished this indirectly, by amending the state's Uniform Durable Power of Attorney statute. Oregon has amended the Natural Death Act itself.

As enacted in 1976 and 1977 respectively, both Natural Death acts stipulated that to be binding, a person's Directive to Physicians must be executed, or reexecuted, 14 or more days after confirmed diagnosis of a terminal condition—frequently impossible for a critically ill or injured patient.

In California, the expansion of the Uniform Durable Power of Attorney statute to cover health care gives state residents a means of appointing a proxy (attorney-in-fact) to make medical decisions in case of lack of capacity, whether temporary or permanent, including the decision to discontinue life-sustaining treatment.

This device is a potentially useful supplement to the Directive to Physicians. Used in conjunction with the Directive, the Durable Power provides the advantage of having a decision maker who is familiar with the patient's wishes and can select from treatment options on the basis of specific information about the patient's condition.

Oregon amended its 1977 law last year to remove the same difficult 14-day requirement contained in the California statute, and to eliminate the five-year limit on the Directive's term of effectiveness.

MS SUFFERER ALLOWED TO DIE

A Hartford, Connecticut Superior Court judge ruled in March that Sandra Z. Foody, 42, a comatose terminally ill victim of multiple sclerosis who had been cared for at home for 24 years before being hospitalized, could, because of "narrow and extreme circumstances," be disconnected from her respirator "without undermining the state's interest in the preservation of life."

Foody's parents filed the lawsuit to insure that there would be no civil or criminal reprisals against any person or institutions if their daughter's life support system were disconnected.

During the years of home care the Foodys had spoon-fed, cleaned and dressed Sandra—tasks she was unable to do for herself. Mr. Foody was quoted in the *Hartford Courant* as saying, "In all the years we weren't out of the house ten times" except to go to church on Sundays. The decision to hospitalize Sandra

was made only when complete paralysis made home care no longer possible.

Judge Mary R. Hennessey, in a thoughtful and humane opinion, found that "withdrawal of treatment should be ethically permissible where it no longer offers hope of benefit to the patient." She listed conditions that should be met in future cases: permanent and irreversible illness and no reasonable probability that the patient will ever return to a cognitive state; agreement of the attending physician and at least two others; and the good-faith wish of the family to exercise through substitute decision-making the patient's right to discontinue artificial life support systems.

No Appeal Sought

Although Connecticut attorney general Joseph I. Lieberman felt that the state had an interest in arguing for Sandra Foody's life, he decided not to appeal, saying, "I do not want to extend any further the suffering of the Foody family or delay what now appears to be inevitable."

In a 1981 case, Angela Garvais had petitioned the same court on behalf of her 23-year-old sister, Melanie Bacchiochi, who went into a coma after suffering cardiac and respiratory arrest while having her wisdom teeth removed. Although she was diagnosed as brain dead, it took more than a month before the court ruled that respirator support could be stopped.

Isn't It Enough?

In commenting on the Foodys' sad victory, Garvais deplored the public airing of situations that should remain private. "What happened to my sister was a horrible thing. I hoped the next person wouldn't have to go through this. Isn't it enough already?"

Proxy Provision Added To SRD Model Bill

Provision for the optional appointment of a proxy to make treatment decisions on behalf of an incapacitated individual has been added to the Society's Model Bill. Although "personalized instructions" were permitted in the bill as originally drafted, the Society believes that spelling out the right to designate a proxy strengthens the bill and enhances the patient's potential right of self-determination. The appointment of a proxy is entirely discretionary, and failure to make such an appointment in no way affects the authority of the Declaration.