Fair Justice Act of 2000

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2000
FAIR JUSTICE ACT OF 2000

HEARING

BEFORE THE

SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW

OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON
H.R. 4105

JULY 27, 2000

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C O N T E N T S

HEARING DATE
July 27, 2000

TEXT OF BILL

H.R. 4105

OPENING STATEMENT

Gekas, Hon. George W., a Representative in Congress From the State of Pennsylvania, and chairman, Subcommittee on Commercial and Administrative Law

WITNESSES

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

FAIR JUSTICE ACT OF 2000

THURSDAY, JULY 27, 2000

House of Representatives,

Subcommittee on Commercial
and Administrative Law,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to call, at 10:02 a.m., in Room 2141 Rayburn House Office Building, Hon. George W. Gekas [chairman of the subcommittee] presiding.

Present: Representatives George W. Gekas, Steve Chabot, Jerrold Nadler, and William D. Delahunt.

Staff present: Raymond V. Smietanka, chief counsel; Susan Jensen-Conklin, counsel; Robert N. Tracci, counsel; Brie Harlow, staff assistant; Michone Johnson, minority counsel; and David Lachmann, professional minority staff member.

OPENING STATEMENT OF CHAIRMAN GEKAS

Mr. **GEKAS.** The hour of 10 o'clock having arrived, the House will come to order. The rules of the House and the committee require that at least two members be present for conduct of a hearing, and therefore we must await the arrival of a second member. But let the record indicate that we have fulfilled our self-inflicted duty to open each hearing, each markup, and each session of this committee on time. Most of the time I must confess, I have had to recess to await the arrival of the second member. Such is the case today. We will recess until the call of the Chair at this juncture.

[Recess.]

Mr. **GEKAS.** The time for recess having expired, the committee will come to order only for the purpose of announcing to all those present that perhaps the absence of other members of the committee is due to the fact that there is a question as to whether we have to report to the floor to vote again. The next vote that was scheduled was supposed to be a voice vote and they are in a quandary as to whether there will be a recorded vote now, rather than just a voice vote. That may be the reason that we are not yet prepared to engage in the hearing.

So we will again recess pending the arrival of a second member or a vote on the floor, whichever comes first.

The press will remain in the sector to the side of the committee room and will not approach the witness table.

[Recess.]

Mr. **GEKAS.** The time of this recess having expired, the Chair simply wishes to announce that the decision on the floor apparently is to have one more recorded vote, possibly two.

I would suggest to the people who are expecting to testify or to witness this hearing, if they want to have lunch, that they ought to do it in the next 15 minutes because the Chair intends to work straight through the normal lunch hour. We don't want anyone to starve to death while we are proceeding with the hearing. So if you want to avail yourself of an opportunity to grab a cup of coffee now, knowing that the hearing will continue through to

its conclusion, you should do that now.

In the meantime, we will recess again until we get definitive word from the floor as to whether the votes will indeed be held.

The press will not approach the witness table.

[Recess.]

Mr. **GEKAS.** The committee will come to order.

Let the record indicate that the chairman of the committee is present, as is the gentleman from Massachusetts, Mr. Delahunt, thus constituting a hearing quorum.

Today's hearing is called to accommodate the bill introduced by our colleague from Ohio, Mr. Traficant, in which the thrust is to create a new section or a new agency or a new body, independent of the Justice Department, to have the power and the duty and the responsibility to investigate such matters as otherwise would constitute a conflict as the author of the bill envisions it.

It would create a Director and provide appropriate funding for a 10-year span. And it would have grand jury capabilities, investigator capacity, and all the accoutrements that are granted normally by the Congress to an investigative body. As a matter of fact, the core of the independent counsel statute that we have observed over the last 20 years has had some of the same powers and duties and responsibilities as are envisioned by the author of the bill for this proposed functionary group.

The Justice Department has several inherent bureaus within its structure that normally would apply themselves to the kinds of problems that this new independent agency would officiate, but the author of the bill and the proponents of the bill, believe that the independent flavor of what is to be created by this bill, if it should become law, would better serve to guarantee a process devoid of conflict of interest.

[The prepared statement of Mr. Gekas follows:]

PREPARED STATEMENT OF HON. GEORGE W. GEKAS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA, AND CHAIRMAN, SUBCOMMITTEE ON COMMERCIAL

Today's hearing focuses on H.R. 4105, the ''Fair Justice Act, which is a bill introduced by my colleague from the State of Ohio, Jim Traficant.

H.R. 4104 would establish an independent federal agency to investigate and prosecute allegations of wrongdoing by Justice Department personnel. The bill would authorize the agency to be appropriated $10 million for fiscal year 2001, $15 million for fiscal year 2002, and $20 million for the following fiscal year.

As envisioned by the bill, the agency would be headed by a Director, appointed by the President with the advice and consent of the Senate, for a ten-year term. The bill specifies various administrative aspects of the position, including pay rate, eligibility to receive travel expenses, and grounds for dismissal. The Director's principal duties include the following:

(1) conducting investigations;

(2) conducting proceedings before grand juries;

(3) participating in any litigation (including civil and criminal) that the Director considers necessary;

(4) initiating and conducting prosecutions in any court of competent jurisdiction; and

(5) consulting with the United States Attorney for the district in which any violation of law being investigated or prosecuted by the Director is alleged to have occurred.

The bill empowers the Director to appoint officers and employees as well as to retain the temporary and intermittent services of experts and consultants. In addition, H.R. 4105 permits the Director to prescribe procedural and administrative rules and regulations as necessary or appropriate.

According to Representative Traficant, H.R. 4105 is necessary because ''[n]umerous incidents over the past several years have made it painfully clear that the Justice Department cannot effectively police itself.'' His proposed legislation is necessary, he explains, because allegations of wrongdoing within the Justice Department have been inadequately investigated.

To help us understand the issues presented by his bill, Mr. Traficant has requested the

witnesses who appear on Panel 1–B. We welcome these gentlemen and thank them for their participation at this hearing.

Mr. **GEKAS.** The gentleman from Massachusetts is recognized if there be an opening statement.

Mr. **DELAHUNT.** I don't have an opening statement. I just want to welcome our colleague, the gentleman from Ohio, Mr. Traficant. I look forward to his testimony.

Mr. **GEKAS.** If the gentleman from Ohio wishes, we can proceed subject, of course, to the interruption by the gavel of the Speaker on the floor.

Mr. **TRAFICANT.** I would wish to proceed.

Mr. **GEKAS.** Yes.

Mr. **TRAFICANT.** For the sake of expedience, we have all these high-paid Justice Department personnel here, but I wonder if maybe the members aren't here because this is such a touchy issue. I think the main issue, Mr. Chairman——

Mr. **GEKAS.** I am not ready to attribute their current status to that.

Mr. **TRAFICANT.** I know that. But the main purpose of my bill is I believe that too many Americans fear our government.

Mr. **GEKAS.** At any rate, we want to formally put into the record the resume of the gentleman from Ohio, the chief witness and proponent of this legislation.

Jim Traficant came to the Congress in 1984 and has served ever since. His educational background includes a stint at the University of Pittsburgh, of which I am most aware as a Pennsylvanian, and he has various degrees from Youngstown State.

Mr. **TRAFICANT.** The four-time national champion Division I, AA, Youngstown State University.

Mr. **GEKAS.** Are you sure it was four times?

Mr. **TRAFICANT.** It was four times.

Mr. **GEKAS.** We want to be exact on that.

He has served on relevant committees in the House and has been a voice of reason on many different subjects that have come to the attention of the Congress.

We welcome him to the witness table and yield to him such time as he may consume in support of his written statement, which will become a part of the record, without objection.

But again, now we will have to yield to the gentleman from New York, the ranking minority member, for an opening statement if he has one. And we are interrupted by a vote. But why don't we do the opening statement of the gentleman from New York and then determine where we are.

Mr. **NADLER.** Thank you, Mr. Chairman.

Mr. Chairman, I am pleased that the Majority has finally found a reason to begin to take seriously the rights of criminal defendants, although some of us have long objected to the manner in which this committee has meticulously gutted the rights of people accused of crimes by scaling back the right to bring a habeas corpus petition before a Federal court, by foreclosing the opportunity to offer evidence of actual innocence in capital and other cases, by cutting back the ability of prisoners to have their rights protected in court, by cutting back on legal services for the poor, by underfunding defendants' services, and by sanctioning secret trials where the accused cannot even be told the nature of the charges. All of these things passed through this committee.

We now have the opportunity to focus on the abuse of prosecutorial power and how we might ensure that it not be abused. This is a laudable goal and one that I hope we can address in a serious manner. As Paul Henreid said in the film Casablanca: ''Welcome back to the struggle. This time I know we will win.''

I have great doubts about the proposed legislation and I hope to explore its implications further in this hearing, as well as to have the opportunity to discuss other proposed approaches that I think will be more constructive.

What I hope we don't do is get bogged down in conspiracy theories. We can probably sit here all day and debate the alleged facts of particular cases but that won't answer anything.

So, Mr. Chairman, I welcome our witnesses and I look forward to their testimony, and hopefully to have a serious discussion about how the rights of people accused of crimes can be better protected than they are now.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Nadler follows:]

PREPARED STATEMENT OF HON. JERROLD NADLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Thank you, Mr. Chairman. I am pleased that the majority has now found a reason to take seriously the rights of criminal defendants. Although some of us have long objected to the manner in which this Committee has meticulously gutted the rights of the accused, by scaling back the right to bring a habeas corpus petition before the court, foreclosing the opportunity to offer evidence of innocence in capital cases, cutting back on the rights of prisoners to have their rights protected in court, cutting back on legal services for the poor, under funding defender services, and sanctioning secret trials where the accused cannot even be told the nature of the charges, we now have an opportunity to focus on the abuse of the prosecutorial power and how we might ensure that it is not abused.

This is a laudable goal, and one that I hope we can address in a serious manner. As Paul Henried said in Casablanca, ''Welcome back to the struggle; this time I know we will win.''

I have grave doubts about the proposed legislation, and I hope to explore its implications further in this hearing, as well as have the opportunity to discuss other proposed approaches. I think that would be constructive.

What I hope we don't do is get bogged down in conspiracy theories. We could probably sit here all day and debate the alleged facts of particular cases, but that won't answer anything.

So, Mr. Chairman, I welcome our witnesses, and I look forward to their testimony, and, hopefully, to a serious discussion about protecting the rights of the accused.

Mr. **GEKAS.** Can staff apprise us of what is happening on the floor?

There is no question that there is at least one vote. What I want to do is to determine a

time frame within which we will return to the floor.

Mr. **DELAHUNT.** Mr. Chairman, I would suggest out of courtesy to our friend and colleague that he be allowed to make his statement.

Mr. **GEKAS.** I don't want to interrupt the statement with rushing to the floor. There is a vote on now. The question is that the Chair is going to decide whether we should cut off now and go to the floor to vote so that we can give full uninterrupted time to the chief witness in the case.

We will stand in recess until the completion of the action on the floor of the House of Representatives, and we will recess subject to the call of the Chair.

[Recess.]

Mr. **GEKAS.** The committee having come to order, the record will reflect the attendance and presence of the gentleman from Massachusetts, Mr. Delahunt. He and the chairman are present, constituting a quorum, whereby we are prepared to yield to the gentleman from Ohio.

As stated before, the written statement prepared by the gentleman will be accepted for the record, without objection, and he may take as much time as he sees necessary. But we ask him to keep in mind the 5 minutes that normally are accorded for witnesses.

The gentleman is recognized.

STATEMENT OF HON. JAMES A. TRAFICANT, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. **TRAFICANT.** Mr. Chairman, I also ask unanimous consent that any extraneous materials I have be included in the record and that this record be left open for 5 days for further submissions of affidavits from me and my staff.

Mr. **GEKAS.** Without objection, it is so ordered.

Mr. **TRAFICANT.** I am hoping that the Justice Department would return. In hearing their light footprints on the padded surface, perhaps they are.

I want to start this hearing out with a statement by Jefferson that says: ''beware of the appointment of Federal judges for lifetime terms because they can take the Constitution and mold it like clay in their hands. God bless juries. God save juries.'' That was Jefferson.

Now, let's talk business. If you are a Federal judge appointed to a lifetime term, there is only one way you lose a job: get on the wrong side of Justice Department, get on the wrong side of the Treasury Department, get the IRS after you. If they don't like your decisions, there have been numerous cases where judges have been confined within the umbrella of a very powerful government, so powerful that many Americans fear it.

Now I have come in contact with several cases which I believe lend merit to my efforts. This is not the beginning of my efforts. I tried to expand, and in fact include within the independent counsel statute a special provision that would allow for this mechanism of oversight for the Justice Department.

As you know, the independent counsel statute is expired, and probably for good reasons: Hundreds of millions of dollars; allegations of Chinese Red Army money coming in to influence American politics was never even heard before a grand jury, but tens and scores and millions of dollars were spent on Monica Lewinsky's investigation. I am not here to speak of that investigation.

My final analysis is the President may be in fact a danger to chastity but he is not a danger to liberty. But that is beside the point.

We have yet to have an investigation into what I consider to be the possible compromise of the national security of the United States, and that we have partisan bickering and machinations behind the scene of allegations that the Attorney General would not be reappointed for a second term. In fact, she ventured into that area.

So I am not here, as Mr. Nadler said, on conspiracies. I am here on a need for oversight. And the only constitutional mechanism to create such is this 4105, the Fair Justice Act.

[The bill, H.R. 4105, follows:]

106**TH CONGRESS**
2**D SESSION**
H. R. 4105
To establish the Fair Justice Agency as an independent agency for investigating and

prosecuting alleged misconduct, criminal activity, corruption, or fraud by an officer or employee of the Department of Justice.

IN THE HOUSE OF REPRESENTATIVES
MARCH 28, 2000
Mr. **TRAFICANT** introduced the following bill; which was referred to the Committee on the Judiciary

A BILL
To establish the Fair Justice Agency as an independent agency for investigating and prosecuting alleged misconduct, criminal activity, corruption, or fraud by an officer or employee of the Department of Justice.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Fair Justice Act of 2000''.

SEC. 2. ESTABLISHMENT.

There is established the Fair Justice Agency (in this Act referred to as the ''Agency''), which shall be an independent agency in the executive branch of the Government.

SEC. 3. DIRECTOR.

(a) **IN GENERAL**.—There is at the head of the Agency a Director, who shall be responsible for the exercise of all powers and the discharge of all duties of the Agency.

(b) **APPOINTMENT**.—The Director shall be appointed for a term of ten years by the President, by and with the advice and consent of the Senate, from among persons who, by reason of general background and experience, are specially qualified to manage the full range of responsibilities of the Director.

(c) **PAY**.—

(1) **IN GENERAL**.—The Director shall be paid at the rate payable for level II of the Executive Schedule.

(2) **CONFORMING AMENDMENT**.—Section 5313 of title 5, United States Code, is amended by adding at the end the following item:

''Director, Fair Justice Agency.''.

(d) **TRAVEL EXPENSES**.—The Director and individuals appointed under section 5(a) shall receive travel expenses in accordance with sections 5702 and 5703 of title 5, United States Code.

(e) **DISMISSAL**.—

(1) **IN GENERAL**.—The Director may be dismissed only by the President for inefficiency,

neglect of duty, or malfeasance in office.

(2) **REPORT**.—Within five days after dismissing a Director under this subsection, the President shall submit to the Congress a report containing a detailed statement of the reasons for the dismissal.

SEC. 4. INVESTIGATIVE AND PROSECUTORIAL AUTHORITY.

(a) **IN GENERAL**.—The Director may investigate and prosecute any alleged misconduct, criminal activity, corruption, or fraud by an officer or employee of the Department of Justice.

(b) **SPECIFIC FUNCTIONS AND POWERS**.—The authority of the Director under subsection (a) shall include the following:

(1) Conducting proceedings before grand juries and other investigations.

(2) Participating in court proceedings and engaging in any litigation, including civil and criminal matters, that the Director considers necessary.

(3) Appealing any decision of a court in any case or proceeding in which the Director participates in an official capacity.

(4) Reviewing all documentary evidence available from any source.

(5) Determining whether to contest the assertion of any testimonial privilege.

(6) Receiving appropriate national security clearances and, if necessary, contesting in court (including participating in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security.

(7) Making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and for purposes of this Act exercising the authority of a United States attorney or the Attorney General under sections 6003, 6004, and 6005 of title 18, United States Code.

(8) Inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of this Act exercising the authority vested in a United States attorney or the Attorney General

under section 6103 of the Internal Revenue Code of 1986 and the regulations issued thereunder.

(9) Initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case, in the name of the United States.

(10) Consulting with the United States attorney for the district in which any violation of law being investigated or prosecuted by the Director is alleged to have occurred.

SEC. 5. OFFICERS AND EMPLOYEES

(a) **OFFICERS AND EMPLOYEES**.—The Director may appoint and fix the compensation of such officers and employees, including attorneys, as the Director considers appropriate.

(b) **APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS**.—Such officers and employees

shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(c) **EXPERTS AND CONSULTANTS**.—The Director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals not to exceed the maximum rate payable under the General Schedule.

SEC. 6. ADMINISTRATIVE POWERS.

(a) **RULES**.—The Director may prescribe such procedural and administrative rules and regulations as the Director deems necessary or appropriate to administer and manage the functions now or hereafter vested in the Director.

(b) **REORGANIZATION**.—The Director may establish, alter, consolidate, or discontinue such organizational units or components within the Agency as the Director considers appropriate.

(c) **MAILS**.—The Agency may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(d) **ADMINISTRATIVE SUPPORT SERVICES**.—Upon the request of the Director, the Administrator of General Services shall provide to the Agency, on a reimbursable basis, the administrative support services necessary for the Agency to carry out its responsibilities under this Act.

(e) **CONTRACT AUTHORITY**.— The Director may enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with government and private agencies or persons for supplies and services, to the extent or in the amounts provided in advance in appropriation Acts.

(f) **SEAL OF AGENCY**.—The Director shall cause a seal of office to be made for the Agency of such design as the Director shall approve. Judicial notice shall be taken of such seal.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Director to carry out this Act $10,000,000 for fiscal year 2001, $15,000,000 for fiscal year 2002, and $20,000,000 for fiscal year 2003.

Mr. **TRAFICANT.** You pointed out very well under the Constitution, it must be under the President. The President would appoint, but to a 10-year term that would in fact surpass the term of any President. It must be confirmed by the Senate.

Modest budget. That modest budget ensures they just cannot go after frivolity, but they would have the sole right and power of oversight, of investigatorial activity and prosecutorial activity, with the full power that is available within the context of our

Constitution for any credible evidence of wrongdoing of the Justice Department.

I handled a case many years ago that was most controversial. It hurt me. It hurts me to this day. I have been the target of many national Jewish organizations because of that investigation. I have been labeled an anti-Semite because of that investigation. But I must talk about this investigation because there are witnesses who will come on later that were a part of it. And they were worthless. And they were scared to death. And I learned something in America. The case was Ivan the Terrible, autoworker from Cleveland. Accused, stripped of his citizenship, deported to Israel; stood trial, convicted, was on death row.

Mr. Delahunt, the family came to me last, because they knew the Justice Department hated me with a passion, being the only American in the history of the United States to have defeated them in a RICO case pro se, full term. Bitter enemies, there is no doubt.

But this legislation is strictly business.

When they came to me, no one from Cleveland would look at it. When they heard the term Nazi, the Constitution was waived. The Bill of Rights was set aside. And something that didn't get out in the press I told the family when they came in, because they didn't want to come to me; I said, if your dad is Ivan, I will pull the switch. But when the son said, look, I never have broken a law, my mother has never broken a law; I am a citizen, my dad is a citizen. Isn't there anybody I can talk to?

Sensitive, chairman. Politically dangerous, chairman. Isn't that where the Constitution weighs in? Is that not where the Bill of Rights should stand by our side like the Empire State Building? Really.

So I got these two documents, and listen to what those two documents were. The key to convicting Demjanjuk and to getting him deported was an SS guard by the name of Otto Horn, who should be executed. He was at Treblinka, a million Jews exterminated. John Demjanjuk was accused and convicted of being Ivan Grozny.

Otto Horn later testifies via videotape in the deportation trial, and here is what he said. The two prosecutors from the Justice Department—the prosecutor from the Justice Department, Mr. Moskovitz, and two investigators came to see him in West Berlin. At first they showed him eight photographs. And he testified at the trial that he immediately recognized Demjanjuk, Ivan Grozny.

They then asked him did he have control over the photographs or was he influenced in

any way by the photographs; was there any suggestibility with the photographs? He says, no. Then, he said, they showed me a second set of photographs, older Caucasian males. Were you able to make an identification? Ivan Grozny, an SS guard; said, this is the man who exterminated—one of the most infamous crimes, one of them, in our history.

These are the two documents that came to me.

What the Justice Department never counted on was after they met with Mr. Horn, Mr. Garand, and Mr. Dougherty went to their respective hotel rooms and both of them submitted a signed typewritten report of their investigatory action with Mr. Horn. And here's what it said: We showed him the first set of photographs. He was unable to identify anyone. We then took the eight photographs. We placed the picture of Demjanjuk on top of the stack. We put it catty-corner so he could clearly see Mr. Demjanjuk's picture on top, and then placed the other eight out. At some point Otto Horn said, this man is this man.

I said, I'll investigate.

As an old sheriff, the Justice Department and the government pushed me around with disrespect. I heard more national security implications there than I heard over Red Chinese Army money. But, bingo. There was only one Ukrainian American ever tried for war crimes at Treblinka. His name was Theodore Fedorenko. I submitted a FOIA request. Justice threw it away. INS threw it away. OSI threw it away. The State Department, not knowing the significance, sent me some documents. From those documents I found out the following: Our government had at the time before they even tried him, at the deportation hearing, the evidence that he was not Ivan. They had 17 people at Fedorenko's trial that identified this Ivan the Terrible.

Then, bingo, we even get a picture where one officer was ultimately executed, said the small man on the left is Tatchuk, and the tall man is the man the Jewish prisoners feared the most, Ivan Grozny. He was Ivan Marchenko; much taller, black hair, long scar on neck.

The Sixth Circuit Court in Cincinnati, Ohio said the following; and let me tell you this: A Jewish attorney presented my evidence in the Israeli Supreme Court, and I want it spread across this record. It can teach America a lesson in justice. They immediately contravened the action of his execution. They immediately dispatched to Russia to investigate the documents that I got for their authenticity and correctness. And after their review, the Israeli Supreme Court says, take him home, Congressman, and delivered him to me late at night on an LL flight. Said, take him. I brought him back. Israel, Israel upheld the Constitution of the United States of America.

The bottom line was when Dougherty and Garand were showing those photographs to Otto Horn, Moskovitz, the prosecutor who prosecuted the case in Cleveland, was looking over their shoulder. If this is not a subornation of perjury, I don't know what is.

But the bottom line is as follows: The Sixth Circuit Court, Federal court in Cincinnati, we conclude that the Justice Department did so engage in prosecutorial misconduct that seriously misled our court.

Next quote. ''The Justice Department attorneys acted with reckless disregard for their duty to the court and their discovery obligations in failing to disclose at least three sets of documents in their possession before the proceedings against Demjanjuk ever even reached a trial.''

Number three, ''We hold that the Justice Department attorneys acted with reckless disregard for the truth and for the government's obligation to take those steps that prevent an adversary from preventing his case fully and fairly. This was fraud on the court in the circumstances of this case where, by recklessly assuming Demjanjuk's guilt, they failed to observe their obligation to produce exculpatory materials requested by Demjanjuk.''

Look, I don't know what Demjanjuk did. If he is involved with the murder of one Jew, I support the death penalty for John Demjanjuk. But the point is his family would have lived the terrible burden of their dad being executed as Ivan when he wasn't Ivan.

So where did I go? I went to the Office of Professional Responsibility. Michael Shaheen is here. He is going to testify later. I love him. He is a nice guy. He did nothing. He did damage control. There wasn't a bit of investigation. And evidently the Attorney General can be intimidated to back off an investigation of Chinese Red Army Communist money. How powerful is this other government we have? Who investigates the hen house fox, the other fox in the hen house, chairman?

Now, there are opponents here. They are all going to have other ideas. It is time for the Congress of the United States to make a reform. Now, I have been very outspoken, and I with zeal have been attacking this for 4 years because with zeal I attacked the problem of the IRS reform.

I want to commend you and Republican leaders for including my two provisions in the IRS

reform bill that the Democrats would not hold a hearing on. The two Traficant provisions change the burden of proof in a civil tax case and now require judicial consent before they can seize our property. This isn't self-patronizing. The Democrats said it would ruin our government. These are the statistics the last full year of 1997, the old law, the first new year of the Republican law 1999. The attachment of wages and bank accounts, 3.1 million under the Democratic law; 540,000 under the new Republican law. Property liens 680,000 in 1997. In 1999, chairman, 161,000.

But listen to the big one. Life, liberty and the pursuit of the property. The last change of the Constitution was life, liberty and the pursuit of the happiness. That is how important property was. Property seizures, 10,037 in 1997. In 1999 only 161 homes, farms, businesses were seized when the IRS had an oversight and was required to go to court under due process and it required judicial consent.

The Traficant statement is very clear. I was on trial once 20 years ago. It is in my statement. They used a false confession and suborned perjury and knew it.

If those three agents and prosecutors take a lie detector test, I will resign from Congress. They were able to get away with it. They steamrolled, scared everybody to death. I am just the son of a truck driver, but I have seen the other side of this one-eyed jack.

I have before you several cases. One you will be hearing is a Mr. Joseph Occhipinti that I have tried to help for years. I want you to listen very carefully because I believe the Dominican drug cartel destroyed a good man, an INS official that cleaned up drugs in our country. And if I am not mistaken, former member Mr. Molinari was to come in here today as well and perhaps the record could be left open for his opinion on Mr. Occhipinti and other cases.

But the case I want to talk about and I will be submitting involves an FBI informant by the name of James Kirchum. I am going to ask unanimous consent that the committee subpoena the records on FBI informant James Kirchum, who was an informant, who was supposed to be paid, wasn't paid. His money was stolen by the FBI. I want to subpoena the vouchers for James Kirchum, also known as Cheez one, and on the investigation in the Mahoning Valley of northeast Ohio by the corruption task force of agents Cheez one through Cheez six. I want to know the vouchers and how much money was expended for it.

And finally, one more thing: That he was asked to commit murder by an FBI agent and his life was threatened by an FBI agent and the agent's name is Mike Sismar.

And finally in closing, a man named Lickavoli testified before a Senate subcommittee and said the northeast Ohio mob owned the FBI. Mobsters Joseph Naples and James Prado had on their payroll one Stanley Peterson, FBI agent in charge, in the early eighties—in the seventies. In the eighties they go on to say that he was appointed chief of police of Youngstown at the direction of the mob.

In my trial I asked if they ever investigated the allegations against the FBI agent in charge, Stan Peterson, and they answered there was never an investigation. That was given by Larry Lynch on the stand being cross-examined by me. Now I have allegations that Mr. Lynch was on the payroll and was actually the bag man that picked up the money from Joseph Naples, and that a current agent, Robert Kroner, is still connected with one of the factions.

Now, look, this has nothing to do with my trial, nothing to do with my investigation at all. I had this before the Congress long before the Justice Department is going to take another shot at me, and I am going to be there. But I want you in very serious order to consider my unanimous consent to submit and subpoena the documents on Stanley Peterson and the corruption of the FBI in the Northern District of Ohio and the vouchers and all of the records involving any agent associated with one James Kercham a.k.a. Cheez, C–H–E–E–Z, one and agents Cheez two through six. That is all I ask you to do.

I ask you to give me a fair hearing and I am open for any questions that you have.

[The prepared statement of Mr. Traficant follows:]

PREPARED STATEMENT OF HON. JAMES A. TRAFICANT JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

I want to thank Chairman Gekas and Ranking Member Nadler for agreeing to this hearing on legislation I introduced earlier this year, H.R. 4105, to establish an independent federal agency to investigate allegations of wrongdoing on the part of Justice Department personnel.

Numerous incidents over the past several years have made it painfully clear that the Justice Department cannot effectively police itself. The American people expect the Justice Department—more than any other federal agency—to be beyond reproach when it comes to ethics and responsible behavior. Something is seriously wrong in our democracy if criminal and unethical behavior at the nation's top law enforcement agency goes unpunished.

My bill, the *Fair Justice Act*, establishes a new federal agency responsible for investigating and prosecuting alleged misconduct, criminal activity, corruption, or fraud by Justice Department employees. The director of the Fair Justice Agency (FJA) would be appointed by the President to a ten-year term subject to confirmation by the Senate. The director may be dismissed by the President only for inefficiency, neglect of duty, or malfeasance in office. Should the President dismiss the director, the bill requires the President to submit a report to Congress within five days detailing the reasons for the dismissal.

The bill, H.R. 4105, gives the FJA the same prosecutorial and investigative authority as Justice Department attorneys, agents and investigators. Most important, the bill allows the agency to prosecute cases in federal court. Employees of the new agency would be compensated in the same manner as other Executive Branch employees, and the agency would have the same administrative powers and authorities as other federal agencies. H.R. 4105 authorizes $10 million for the agency in fiscal year 2001, $15 million in 2002 and $20 million in 2003.

As you may know, for the past three Congresses, including this one, I have authored legislation requiring the appointment of an independent counsel any time there is credible evidence of wrongdoing on the part of Justice Department employees. With the expiration last year of the Independent Counsel statute, it is obvious that there is little support or enthusiasm in Congress to revive the independent counsel model.

The establishment of a small, independent agency with a limited budget is the most realistic way of dealing with the problem of the Justice Department investigating itself. Independent counsels do not have a good track record when it comes to being frugal with taxpayer dollars and conducting limited investigations. Because the bill gives the FJA a limited budget, there is no danger that the new agency will engage in an endless series of unwarranted and expensive witch hunts. What will happen is that the most serious and credible allegations of DOJ wrongdoing or criminal behavior will be objectively and appropriately investigated and acted on.

I was prompted to introduce the legislation after years of analyzing cases of Justice Department misconduct that were not properly investigated by the Justice Department. You will hear later this morning from one witness, Joseph Occhipinti, a highly decorated INS agent who was railroaded by the Justice Department. Mr. Occhipinti will discuss his case in some detail, I urge the subcommittee to listen to his chilling testimony. I want to note that from 1993 to the present time I have tried, in vain, to get the Justice Department to reopen the Occhipinti case. I placed into the Congressional Record hundreds of pages of evidence—

including sworn affidavits—confirming that Mr. Occhipinti was framed by the Dominican drug cartel. The evidence also showed that the U.S. Attorney's office did not disclose to Mr. Occhipinti's lawyers during the discovery process exculpatory evidence.

I would also like to highlight another case that I worked on personally, the case of John Demjanjuk. John Demjanjuk was deported from the United States to Israel under the charge that he was the infamous ''Ivan the Terrible'' who ran the gas chambers at the Treblinka death camp. The Israelis tried Demjanjuk, found him guilty of being Ivan and sentenced him to death. To their credit, following the conviction, the Israelis were presented with evidence —some of which I uncovered—that Demjanjuk was not Ivan. The Israelis traveled to the Soviet Union and meticulously investigated the evidence. They did not attempt to ignore or cover up this evidence. The Israelis concluded that Demjanjuk was not Ivan, and they set Mr. Demjanjuk free.

One of the reasons I got involved in this case is that I uncovered clear evidence that Demjanjuk was not Ivan. Most disturbing is the fact that the Justice Department knew of this evidence during the deportation proceedings and withheld this exculpatory evidence from Demjanjuk's attorneys. After Mr. Demjanjuk was set free, two separate judicial inquiries into his case were conducted in the United States. I would like to quote from the November 17, 1993 findings of the U.S. Court of Appeals for the Sixth Circuit on this case:

'' . . . we conclude that OSI did so engage in prosecutorial misconduct that seriously misled the court.''

''The OSI attorneys acted with reckless disregard for their duty to the court and their discovery obligations in failing to disclose at least three sets of documents in their possession before the proceedings against Demjanjuk ever reached trial.''

''We hold that the OSI attorneys acted with reckless disregard for the truth and for the government's obligation to take no steps that prevent an adversary from presenting his case fully and fairly. This was fraud on the court in the circumstances of this case where, by recklessly assuming Demjanjuk's guilt, they failed to observe their obligation to produce exculpatory materials requested by Demjanjuk.''

My main concern in this case was the fact that the government knew that Demjanjuk was not Ivan the Terrible, yet they ignored this evidence, deliberately withheld it from Demjanjuk and deported him to Israel, knowing full well he was facing a possible death sentence.

If the government can trample upon the basic rights of John Demjanjuk simply because

the government believed they were going after a guilty man, what is to prevent the government from railroading any citizen they have targeted? That is the real issue with the Demjanjuk case.

But the most disturbing aspect of this case is the fact that, despite a very clear ruling from the federal bench that OSI attorneys engaged in prosecutorial misconduct, the Justice Department did nothing. No reprimand. No real investigation. No admission of guilt!!

I do want to talk a little bit about my own personal experience. In 1983, while sheriff of Mahoning County, Ohio I went on trial for violating the RICO statute. I am the only American to beat the government in a RICO case pro se. In the course of my trial, evidence was brought forward alleging that the former head of the FBI's Youngstown office was on the payroll of organized crime. This individual later became chief of police in Youngstown. I also proved in my trial that the FBI used a false confession against me, and the suborned perjury. These serious allegations were never investigated by the FBI or U.S. Attorney's Office.

Why?

If the FBI agents involved in my case agree to take a lie detector test, I will immediately resign from office!

In recent months, I have been presented with evidence alleging that FBI agents currently working in Youngstown have been on the payroll of organized crime. I have also been presented with evidence that FBI agents pocketed thousands of dollars in informant payments. I also have been presented with evidence that an FBI agent in Youngstown asked an informant to commit murder. I know for a fact that the U.S. Attorney's office in Cleveland, Ohio has been aware of these allegations for at least two years.

I believe it is a legitimate question to ask whether or not any investigation was conducted by the FBI, DOJ or U.S. Attorney's Office of these serious allegations. I would like, at this time, to enter into the record, the evidence I have collected of FBI corruption in Youngstown.

As I mentioned earlier, there are a number of other cases that make a powerful case for H.R. 4105. These include the shootings of the Weaver family in 1992 in Ruby Ridge, Idaho;

the 1993 El Rukn gang case in Chicago; the 1996 case of Juval Aviv in which a federal judge

ruled that the FBI unfairly prosecuted a private investigator because the investigator had questioned the FBI's findings relative to the December 1988 crash of Pan Am 103 over Lockerbie, Scotland; and, most recently, the refusal of Attorney General Reno to appoint an independent counsel to investigate allegations that China attempted to influence the 1996 federal elections.

Mr. Chairman, the evidence is crystal clear: the Justice Department cannot and will not police itself. My legislation is the only way to ensure that no one person or agency is above the law. I am not a fan of bigger government. But in this one instance, creation of a small independent body is absolutely necessary to ensure that the integrity of our democracy is not compromised by rogue behavior on the part of those charged with upholding our laws.

I'd like to end my testimony by quoting from a ruling made in 1994 by Judge Richard Posner, then a member of the Seventh Circuit Court of Appeals,

''*The Department of Justice wields enormous power over people's lives, much of it beyond the effective judicial or political review. With power comes responsibility, moral if not legal, for its prudent and restrained exercise.*''

I urge the subcommittee to objectively review the merits of this legislative proposal and act favorably upon it.

Mr. **NADLER.** Mr. Chairman, a point of personal privilege.

Mr. **GEKAS.** The gentleman will state his personal privilege request.

Mr. **NADLER.** My personal privilege statement is that the witness stated publicly a little while ago that the reason more members weren't here at the beginning of the committee hearing was that they were intimidated, I think the import of what he said by the Justice Department. I think the record should show that the reason the members weren't here at that point is that there were votes on the floor, and I hope that implication would be withdrawn.

Mr. **GEKAS.** The gentleman should recognize that the Chair noted that statement as being jocular on the part of the gentleman from Ohio and that I inserted in the record as chairman the rationale for the absence of the members and that I cannot recognize an expungement request here.

Mr. **TRAFICANT.** I would ask unanimous consent that my remarks were not made to be

intended as they may have been taken by Mr. Nadler, were not and were more or less a statement in line with the jest of before this hearing started.

Mr. **GEKAS.** I do not think they were part of the record.

Mr. **TRAFICANT.** Is that okay?

Mr. **NADLER.** Okay.

Mr. **GEKAS.** We thank the gentleman for his testimony and we can excuse him.

Mr. **NADLER.** Mr. Chairman, I have some questions.

Mr. **GEKAS.** If the gentleman is willing to answer questions.

Mr. **TRAFICANT.** I will be willing to answer questions.

Mr. **NADLER.** First of all, Mr. Chairman, let me simply say that—and I won't go into the case, but the fact is the Israeli Supreme Court in the Demjanjuk case found there was reasonable doubt that Mr. Demjanjuk was Ivan the Terrible. The reason for that reasonable doubt was evidence that he was in fact a guard at other extermination camps. Hardly good alibis. He may not have been a murderous guard at one camp, but he was a guard at another camp whose main business was murder.

Mr. **TRAFICANT.** May I respond to that, Mr. Chairman?

Mr. **NADLER.** I only have 5 minutes. If you want on your own time you can because I don't think we should be debating the Demjanjuk case.

Mr. **GEKAS.** The Chair yielded to the gentleman from New York for the purpose of asking a question.

Mr. **NADLER.** I will ask a question.

Mr. **GEKAS.** You posed a query of types that the gentleman is entitled to answer. The Chair will extend the time of the gentleman after the gentleman, Mr. Traficant, answers that.

Mr. **TRAFICANT.** Thank you.

I am reading from a document that says as follows: The Israeli prosecutors did not learn of the exculpatory evidence from Russia until after the accused was found guilty and sentenced to do death in the Israeli trial court. They prosecuted the case over many months and obtained a conviction and death sentence. The Israeli prosecutors then learned that there was Russian information suggesting that the charges against the accused may be false. Instead of withholding the information, the Israel prosecutors then traveled to Russia and investigated the matter thoroughly. They marshalled the exculpatory evidence, then brought it to Israel. In the face of extremely strong popular feelings against the accused—and that is why I admire Israel in this—they publically turned it over to the Supreme Court of Israel and basically the Israeli prosecutors confessed error in the face of intense political pressure to get a conviction.

In direct response to your question, sir, I don't know what he did. But he wasn't Ivan the Terrible and I certainly don't condone what he did, and if there is another investigation let it be. But he was convicted and on death row for being the infamous Ivan.

Mr. **NADLER.** What you just said doesn't contradict what I said. The exculpatory evidence of his being Ivan the Terrible was that he wasn't Ivan the Terrible at one extermination camp. The exculpatory evidence, as the court said, was serious credible evidence that he was in fact a guard at two other extermination camps.

Mr. **TRAFICANT.** I disagree with that. They have never charged him. This man has never been charged. If you have a charge or you have evidence of that matter, then turn it over to the Justice Department and charge him.

Mr. **GEKAS.** The gentleman from New York is extended an additional 5 minutes.

Mr. **NADLER.** Thank you. I wanted to ask questions about the bill that is before us. Let's turn to serious questions.

Members from both sides of the aisle, and even the authors of the old independent counsel statute that was permitted to lapse earlier this year, agreed that the independent counsel statute, the one under which Ken Starr and Lawrence Walsh were appointed, should not be reenacted. Former Congressman Drinan even went so far as to tell this committee that its initial enactment was a mistake. Under that act, independent counsels were appointed for specific terms and to investigate specific allegations. Even with those restrictions and with the supervision of the special three-judge court, I think it is the

concensus that independent counsels got out of hand and violated the constitutional rights of many citizens, not just those accused, but many citizens who got involved in the investigation as witnesses or whatever.

Under your bill, the office would be self-initiating and decide for itself the scope and targets of its investigation, and there would be no real oversight over it. Don't you think that we should have learned from our experience with the independent counsel statute that we certainly shouldn't have an even broader independent counsel statute, with broader powers, broader scope and less supervision, that that would pose a threat to the constitutional liberties of many people?

Mr. **TRAFICANT.** I disagree with you.

Mr. **NADLER.** Why?

Mr. **TRAFICANT.** I mean it is now clear that we haven't even had a county grand jury look into the allegations of Communist Chinese Red Army money coming into the Democrat National Committee. With the jeopardy of our national security at stake, not even an investigation.

The Attorney General, according to news reports, was told if such an investigation ensued she would not be reappointed. In the old independent counsel statute, Chairman, the Attorney General plays the role of deciding what is credible and what is not, then presents it to the court for their decision. Under my bill there would be a director appointed of the Fair Justice Agency for a 10-year term that would surpass any President so elected. It would be a minimum judgment of $10 million. We spent $40 million on Monica. You missed my opening statement. I felt that the President was maybe a threat to chastity but not to liberty. No investigation of China, but an investigation of Monica.

With a limited budget they would have to very carefully piecemeal those particular top priority items but we would for the first time, the first time, have somebody who was outside this system with a small budget instead of spending $100 million a year to independent counsel and letting the meter run. I think the Congress could provide more oversight on that agency.

What you have right now is you have the Office of Professional Responsibility inside of the Justice Department investigating peers inside the Justice Department. They say they are not

peers, but I have had firsthand experience with them. I think that there can be improvements and I would welcome the collective intelligence of this committee, number one. But, number two, keep in mind that the Traficant bill is constructed on the constitutionality.

Mr. **NADLER.** Could you be brief so I could ask another question in the 5 minutes, please?.

Mr. **TRAFICANT.** Go right ahead.

Mr. **NADLER.** I have a number of questions I want to ask.

Mr. **TRAFICANT.** Go to it.

Mr. **NADLER.** The bill as it is drafted allows the director to carry on investigations of prosecutors during the pendency of a criminal proceeding or to investigate an employee while a parallel investigation of the same employee is being conducted by the inspector general or by a special prosecutor appointed under the normal statute. This might lead to, or this certainly could set up a situation, in which you could have a potential for either obstruction of justice or at the very least bedlam in an investigation.

Do you believe we should place some limits or require some coordination with other agencies? Do you intend to allow this office, on the allegation of a defendant, to begin the investigation of the prosecutor while the prosecutor is prosecuting that defendant, including subpoenaing prosecution materials to which the defendant is not legally entitled?

Mr. **TRAFICANT.** That is certainly not the intent nor the legislative history.

Mr. **NADLER.** It is certainly what the bill says.

Mr. **TRAFICANT.** Let me answer the question.

It would seem certain to me that before this limited budget entity would involve itself in a case there would have to be some credible evidence of prosecutorial misconduct, and certainly that wouldn't happen during the prosecution. That might be the aftermath of a particular case. But I would not be opposed to any language that would limit the involvement of the agency while there is a pending investgation under way. That is not the purpose of it. The purpose of it would be that you would have a case where there is gross misconduct by the prosecutor, and the case is now adjudicated, and then you have credible evidence that there may have been such misconduct after a conviction. And they would look

at it and say, I believe this merits or warrants an investigation. And you might have a case that may involve DNA or a number of things.

So it is not the intention of the Traficant bill to interfere with pending investigations or to stop the prosecutorial action of the Justice Department. That is their job. What it would be, though, is if there was misconduct after the fact or proven or credible evidence and that director deemed it to be credible enough to pursue an investigation he would have the power to proceed. But I would welcome the language to clarify that. It is a reasonable point.

Mr. **GEKAS.** The time for the gentleman has expired.

Let the record indicate that the gentleman from Ohio, Mr. Chabot, is in attendance. We now yield to him if he wishes to pose any questions or if the gentleman from Ohio wishes to answer.

Mr. **CHABOT.** I have no questions but I look forward to reading over Congressman Traficant's statement here this morning. I apologize for not being here, but as the gentleman knows, we had votes on the floor and I have a markup going at the same time. But I do intend to read this over, and I thank you for your testimony this morning.

Mr. **GEKAS.** The gentleman from Massachusetts is recognized if he wishes to pose any questions.

Mr. **DELAHUNT.** I would simply make an observation, Mr. Chairman. I think that the inference that Mr. Traficant, and he is welcome to disagree with me, wishes to make in terms of the case of Ivan the Terrible, and I put that in quotes, is that the language that the quotes that he extracted from the opinion of the Circuit Court of Appeals has relevance in regard to prosecutorial misconduct. Am I correct?

Mr. **TRAFICANT.** That is true. Which led to him being returned. Which pursued——

Mr. **DELAHUNT.** Whatever happened. I don't want to comment again on the case. But I think that the point is in this particular investigation, and I have not read the opinion, but Mr. Traficant did extract certain quotes that I think are fair to describe as rather scathing of the efforts of the Department of Justice in terms of this particular matter, and I think we should take notice of that. I don't want to comment on the Israeli system because I don't have any knowledge of it.

But I would also suggest, Mr. Traficant, that you and I have held elective office for a number of years and that we know that news reports are not really a very good source. I oftentimes in my prior career as a prosecutor would read the daily paper about a high profile case that my office was prosecuting and wonder if the reporter and I were in the same room. So I would suggest that the question of whether Attorney General Reno was intimidated, was told that she would fail to be reappointed if certain things didn't happen, I would be reluctant to reach such a conclusion based upon the news reports.

Mr. **TRAFICANT.** If I can respond? I have not reached a conclusion. I have stated a news report. But I would like to mention to this committee the most extensive investigation in the power of Washington, DC was Watergate. It did not come from the Justice Department. It came from two news reporters.

There comes a time, Mr. Chairman, when regardless of what the genesis is of a particular matter of crime there ultimately becomes an investigation. I believe it is imperative that the United States of America, with a government that many fear, provide a reasonable check and balance on the Justice Department that has no mechanism to do so, and the mechanism they have is impotent, self-serving and in my opinion afraid of their shadow.

With that, I want to thank you for having me here. I hope I didn't disrupt anything.

Mr. **DELAHUNT.** Mr. Chairman, I yield back the balance of my time unless Mr. Traficant wants to use more.

Mr. **GEKAS.** We hope that the next statement from the gentleman from Ohio is his last.

Mr. **TRAFICANT.** I want to thank you for having me here.

Mr. **GEKAS.** We thank the gentleman for his testimony and we now invite to the witness table Panel 1B, witnesses who are appearing at the request of the gentleman from Ohio, Mr. Traficant. The first of whom is Joseph Occhipinti, a graduate of Brooklyn College. He joined the United States Department of Treasury as a customs patrol officer in 1972. In less than 5 years, Mr. Occhipinto compiled the highest felony arrest and contraband seizure record in Customs Service history. After working undercover for the Justice Department's Organized Crime Strike Force in New York, he was promoted to the Chief of the New York City Anti-Smuggling Unit.

Mr. Occhipinti has been described as one of the most decorated Federal agents in U.S.

History. He has received three Attorney General Awards and 78 commendations for meritorious service and valor. In 1995, he established the National Police Defense Foundation, which has become one of the largest police foundations in the United States.

Joining him at the counsel table is a lifetime Washington resident Matthew Fogg, who graduated with a BS in criminal justice administration from Marshall University in West Virginia. He served in Vietnam before becoming a Maryland State Police Trooper. He then became a Deputy U.S. Marshal in the District of Columbia. And during the last three years, Inspector Matthew Fogg has assisted the DEA, the Washington Metropolitan Area Fugitive Group with the arrest of more than 270 Federal, state and local fugitives.

The last on the panel is John Culbertson, the Director and Founder of the Washington Center for Reform, the Washington-based think tank and advocacy forum. He completed his undergraduate work at Baptist Bible College, where he majored in theology. He was recently appointed Special Agent assigned to the Audit Task Force operating out of Benton County, Arkansas in which he acts as the Washington, D.C. Liaison. Among Mr. Culbertson's professional accomplishments is the Next Generation Housing Project, a technology-driven design and construction program to produce affordable housing.

We say at the outset that the written statements, as compiled by the witnesses, will become part of the record without objection.

We were lenient with Mr. Traficant, who is the author of the bill, and we arrived at some discretion in allowing him to speak as long as he did. We would ask the witnesses to summarize their written statements within the confines of 5 minutes and we will time them for the purpose of that event. Mr. Occhipinti may begin.

STATEMENT OF JOSEPH OCCHIPINTI, EXECUTIVE DIRECTOR, NATIONAL POLICE DEFENSE FOUNDATION, MANALAPAN, NJ

Mr. **OCCHIPINTI.** Thank you, Mr. Chairman.

Mr. **GEKAS.** Would you please turn on the microphone?

Mr. **OCCHIPINTI.** I apologize. This is my first occasion testifying before Congress.

In essence, I come here because of the concern on behalf of the entire law enforcement

community. We are held to a certain standard by the government, and unfortunately injustice occurs not only against criminals and citizens but also law enforcement officers. And yet we find an increase in prosecutorial misconduct and that same standards that apply on police officers unfortunately are not applied on prosecutors.

I am coming here today to testify about an injustice that occurred to me over 10 years ago, an injustice that captured the hearts of a lot of Americans not only within the law enforcement community as well as the civil rights community and the media, because they thoroughly investigated my case and they believe it was a grave injustice.

In 1988 a New York City police officer was murdered in New York City. I was requested to investigate the homicide because of my expertise. I am one of the country's leading experts on international crime syndicates. I was able to solve the homicide, and during the course of the investigation I identified a major Dominican drug cartel that was implicated in the murder of the police officer.

During that investigation, I uncovered serious allegations of alleged misconduct at the U.S. State's Attorneys Office, particularly that the cartel were holding private sex and drugs parties for prosecutors. I immediately brought the case to the attention of the chief of the criminal division as well as my superiors, who I thought were going to support the need for an undercover investigation. I found the informant very credible because she was willing to go undercover and corroborate much of the evidence that she was alleging.

In any event, I was told the investigation would not go forward. I continued my efforts to target the drug cartel who had been implicated in the murder of a police officer. With the cooperation of the State prosecutors including, by the way, John F. Kennedy, Jr., who was assigned to help me in the investigation, I started an operation called ''Operation Bodega,'' because we determined that this cartel were buying up Spanish grocery stores and using them to facilitate drug trafficking and money laundering activity.

Within months, the operation was a home run, a success, getting arrests, defendant convictions. In fact, we had three full-time State prosecutors assigned to us. I know we were getting very close to the cartel because we started to expose more corruption. And what did I do? I went to the FBI and they agreed this was a case that warranted an undercover investigation, and I myself was willing to go undercover because some bribery overtures had been made to me, and that is one of the things that organized crime does: to try to neutralize the officer to see if they can bribe you.

But unfortunately, a week later, the group supervisor of the FBI corruption unit told me

they don't want to do the investigation, the same prosecutors office where the misconduct was alleged. All of the sudden, I find out that the Dominican Federation, which is a proven front for the Dominican cartel, held a press conference alleging that my Operation Bodegas was a Republican conspiracy to sabotage the 1990 Census.

Immediately the Justice Department terminated my investigation despite protests from State prosecutors, and a year later I was the sole defendant in a multicount indictment that alleged I conducted illegal searches. I became the first law enforcement officer in American history to be charged for Federal civil rights violations despite the fact that there was no brutality, no racial bias, no corruption.

This piece of paper here is what they claim. The complainants who testified were Dominican Federation complainants. And despite their signatures which appeared on a government Consent to Search Form in Spanish, of which I speak Spanish fluently, I was indicted.

What we learned, it was a classic railroad job. Everybody who investigated this case, including your colleague, former colleague, Guy Molinari, a Pulitzer winner, Mike McAlary of the New York Post, all realized this was a well-orchestrated conspiracy by international drug lords to set me up.

The TV show ''Inside Edition'' went undercover almost 2 years after my conviction and captured on national TV the same complainants who were portrayed by prosecutors as being law abiding, they have engaged in ongoing criminal activity. In fact, the producer confronted one of the key witnesses who testified against me, and he admitted before the American public that his perjured testimony was responsible for my conviction.

Ladies and gentlemen, I was shackled with leg irons and body chains and placed into the general prison population. My roommate was a convicted Dominican drug dealer. My landmark case has had adverse implications on the entire law enforcement community.

As I speak today, drug interdiction is not in effect in many jurisdictions, because when you do drug interdictions you rely on Consent to Searches. But everybody said, why was this man convicted?

If you take a moment and look at my statement, I have named over 20 high-ranking law enforcement officials, government agents who were on searches with me who came forward to the prosecutor with evidence of the drug cartel conspiracy. For example, a New York city police detective came and admitted that 18 months before my indictment, he

reported to the same prosecutor who prosecuted me, evidence that they overheard the drug cartel setting me up. And you know something? The prosecutor in the sworn statement never denied the fact. He simply said, I don't recall.

A New York City Internal Affairs investigator who I invited in on one of these operations and had the entire conversation monitored on tape went to the prosecutor and said, ''You have made a grave mistake here. Something is wrong. Listen to the tape. The man got permission.'' and I can go on and on and on.

But you know something? When the Staten Island borough president, Guy Molinari, pushed for an independent investigation, when the New Jersey General Assembly and the New York State Senate said this is a grave injustice, let's get an independent prosecutor, the Justice Department said, justice has been served, and they rubber-stamped the court opinion.

And one thing further. When the Justice Department compromised and said we will take a look at the Occhipinti case, did they assign a group of agents outside of the jurisdiction? No. They assigned a local FBI agent that answers to the same prosecutors who did an in-house investigation. And you know what we learned—and it is in the Congressional Record—that this agent went over the line, and I represent Federal agents. He tried to set up Guy Molinari and when Mr. Molinari brought that to the attention of the Justice Department they apologized.

I brought my case to every legal expert and I have here Professor Gershman, one of the leading experts on prosecutorial misconduct, whose consensus was this was the worst case he has ever seen.

But if I violate the civil rights of any person or defendant or citizen, a law enforcement officer is subject to criminal prosecution. Yet, this prosecutor, well-documented evidence of prosecutorial misconduct, is exempt from prosecution. That means people who go to jail, who are falsely convicted, that prosecutor is immune from prosecution. And what I learned is something further.

Mr. **GEKAS.** The time of the gentleman has expired. Can you draw to a close?

Mr. **OCCHIPINTI.** Yes, sir. In the last 10 years, I have learned that the same drug cartel that set me up has been credited for terminating as many as ten other Federal and State

investigations. So the law enforcement community supports this bill. Just like we have Internal Affairs, we believe prosecutors as well should be supervised and made responsible for any illegal acts they do.

Thank you very much.

Mr. **GEKAS.** We thank the gentleman.

[The prepared statement of Mr. Occhipinti follows:]

PREPARED STATEMENT OF JOSEPH OCCHIPINTI, EXECUTIVE DIRECTOR, NATIONAL POLICE DEFENSE FOUNDATION, MANALAPAN, NJ

Dear Mr. Chairman, Committee Members and Invited Guests,

My names is Joseph Occhipinti and I am the Executive Director of the *National Police Defense Foundation* (NPDF), which is a Congressionally recognized and IRS approved 501c (3) non-profit foundation that protects and supports the efforts of the national law enforcement community.

I founded the National Police Defense Foundation in 1995 after it became evident that many dedicated law enforcement officers from around the country were being unjustly victimized by the same criminal justice system they serve.

Today, the NPDF speaks for the interest of thousands of Federal Agents, Police Chiefs, State Troopers, Sheriffs and local law enforcement personnel in the United States and abroad. The NPDF funds two important law enforcement initiatives the Congressionally recognized ''*Safe Cop''* program that post a $10,000 for pubic information leading to the arrest and conviction of any one who shoots a law enforcement officer. The second NPDF initiative is the ''*Operation Kids*'' program that distributes free child fingerprint kits to parents, posts rewards for missing children and arranges for life saving heart operations for critically ill children.

I am a retired federal agent who was the former Chief of the Immigration & Naturalizations Service's Anti-Smuggling Unit at New York City. During my twenty-two years of unblemished federal service with both the Department of Justice and Treasury Department, I became a leading government expert on international crime syndicates and drug cartel operations.

I am one of the most decorated federal agents in United States history having received over 78 official commendations, including three Attorney General Awards. I worked almost five years undercover infiltrating the Dominican drug cartel that resulted in the prosecution of major organized crime figures, as well as one of the largest drug seizures ever recorded in our country.

I come here today to testify in support of the passage of H.R. 4105, the ''Fair Justice Act of 2000'' that will create a new agency to investigate any official misconduct or corruption by Department of Justice personnel. I support this bill for personal reasons that I hope can be effectively described in the foregoing statement.

My problems started on October 18, 1988, when Dominican drug lords in New York's Washington Heights, savagely murdered NYC Police Officer Michael Buczek. The NYPD had arrested the wrong suspect and their Chief of Detectives formally requested my assistance in the homicide task force due to my expertise in Dominican organized crime.

I was instrumental in helping to solve the murder, as well as in identifying the Dominican drug lords responsible for the officer's death. During the course of this homicide investigation, I developed credible evidence that Dominican Drug Lord Freddy Antonio Then was buying up Spanish grocery stores called ''*Bodegas*'' in Washington Heights in order to facilitate his drug trafficking and money laundering activities.

At that time, a registered police informant told me that the Then cartel had on their payroll two Dominican attorneys, one of whom was a former federal prosecutor at the Southern District of New York (SDNY). It was alleged that the cartel was holding private sex and drug parties for some prosecutors in exchange for favorable court dispositions. Unfortunately, despite the credibility of the informant who agreed to wear a wire against the attorneys, the Chief of the Criminal Division (SDNY) refused to authorize ''*Operation Esquire*''

On August of 1989. I contimued my investigation of Mr. Then and started ''*Operation Brdega.*'' within a few months the operation developed into a highly successful multi-agency task force resulting in numerous felony arrests, defendant convictions and contraband seizures. However, due to the lack of cooperation by SDNY federal prosecutors, I went to the Manhattan District Attorney's Office who assigned me three Assistant District Attorneys, one of whom was John F. Kennedy Jr. It was clear that federal prosecutors were unhappy with my actions and continued investigation.

On April 4, 1989, the ''*Dominican Federation*,'' an established front for the Dominican drug cartel according to the NYPD, held a press conference at City Hall calling Operation Bodega a ''*Republican Conspiracy*'' that was sabotaging the 1990 census. Also, they accused the operation of violating the federal civil rights of hard working Dominican merchants.

One year later, I became the sole defendant in a multi-count conspiracy indictment for alleged civil rights and related violations. The SDNY had conducted an unprecedented ''*in-house*'' investigation rather than refer the case to the FBI, as required by law. According to a published report, an unidentified Justice Department source alleged that federal prosecutors were afraid that the FBI would lie for Occhipinti.

A review of the indictment disclosed that the majority of the complainants openly committed perjury before the Grand Jury with respect to their criminal past and continued involvement in organized crime activity. In fact, two years later, the TV show ''Inside Edition'' went undercover into the very same Bodegas and captured the same complainants and their employees involved in ongoing criminal activity. One complainant when confronted by the producer on national TV admitted his perjury helped to convict a federal agent.

In another TV documentary, the jury foreman openly admitted that the trial jury realized the perjury by the complainants, however, they convicted me because they misunderstood the law. The jury was led to believe by the prosecutor that an Immigration Officer had no authority to search for narcotics, which is clearly not the law. Congressman James Traficant immediately brought this matter to the attention of Attorney General Janet Reno who unfortunately refused to overturn the conviction, alleging it is not relevant whether or not the jury understood the law.

It should be noted that my landmark prosecution had adverse implications on the entire law enforcement community, as well as drug interdiction operations. For example, today drug interdiction in the States of New York and New Jersey and other jurisdictions has been terminated since agents utilize consent searches in those operations and are fearful that fabricated allegations could land them in jail.

I became the first law enforcement officer in United States history to be

Prosecuted under federal civil rights laws for an allegation of an unlawful search and seizure. There were no acts of police brutality, corruption or racial bias! It is not uncommon for drug suspects or their defense attorneys to allege that an officer's search, seizure or arrest was unlawful. It is the general practice that these allegations are handled

administratively by the courts or by the agency. Not in my case!

After my indictment, I solicited and received the aide of the Dominican community, as well as some civil rights leaders who knew my commitment to protect the community from drugs. Dr. Angel Nunez, a local Dominican immigration lawyer and Legal Counsel for the National Hispanic Coalition agreed to conduct his own independent investigation into the allegations. Dr. Nunez later executed a lengthy sworn statement that was entered into the Congressional Record that not only confirmed the drug cartel conspiracy, but also documented some outrageous acts of prosecutorial misconduct.

As part of his investigation, Dr. Nunez conducted taped interviews of all of the Bodega owners I investigated, including the Federation complainants. In essence, Dr. Nunez determined that the non-Federation Bodega owners all admitted the consent search were lawful, wherein Federation complainants testified they never gave permission. However, after careful questioning many of the Federation complainants finally admitted on tape they gave permission.

In addition, some members of the Dominican community volunteered to work undercover by making controlled buys of contraband from the Federation complainants in order to prove their involvement in ongoing criminal activity. The goal of this defense undercover operation was to convince the jury of the drug cartel conspiracy. A total of 55 undercover tapes were made, which was later ordered by the court to be turned over to prosecutors for transcription. Unfortunately, the prosecutors intentionally delayed the process, which precluded the defense from presenting those tapes to the jury, which would have impeached the credibility of the Federation witnesses.

In an effort to better understand why I was railroaded into a conviction, it's important to note the many acts of alleged prosecutorial misconduct that was never properly investigated by the Office of Professional Responsibility. For that reason, I have prepared the following brief synopsis of the alleged misconduct and unprofessional behavior that has been well documented in the Congressional Record, the District Court, the Second Circuit of Appeals and to Department of Justice.

1. A defense prosecutor is required to turn over to the defense during the discovery stage any written document or contemporaneous work product memorializing an interview that is considered exculpatory. It is the defenses contention that the following law enforcement agents provided critical exculpatory evidence, which was unlawfully withheld from the Grand Jury and defense.

A. Walter Connery, NYC Asst. District Director of Investigations, INS.

B. William Glinka, Regional Commissioner, INS.

C. Lt. John Brown, NYPD Commanding Officer, 52nd Pct.

D. Rita Kardesman, Congressional Aide, Congressman Charles Rangle Office, NYC.

E. Detective Edmundo Rivera, NYPD, 52nd Pct.

F. Scott Blackman, NYC Deputy District Director, INS.

G. Captain Salvatore Blando, Commanding Officer, NYPD Manhattan North Homicide.

H. William Slattery, Deputy Commissioner, INS

I. John McAllister, Deputy District Director, INS

J. Chief Patrick Harnett, NYPD Chief of the Department.

K. Captain Joseph Reznick, NYPD Commanding Officer, 34Pct.

L. Detective Harold Hilderbrand, NYPD

M. Chief Charles Ferrigno, Organized Crime Drug Task Force, INS

N. Chief ADA Ann Rudman, Manhattan District Attorney's Office

O. Senior Special Agent John Dowd, DEA

P. Lt Kidd, NYPD Internal Affairs Supervisor.

Q. Detective Stefanie Rich, NYPD Internal Affairs Unit.

R. Special Agent Richard Lauria, INS.

S. Special Agent Nicolas Minervini, INS

T. ADA John F Kennedy Jr, Manhattan District Attorney's Office.

U. Special Agent Ronald Nowick, Internal Revenue Service, CID

V. Special Agent Michael Capasso, DEA

W. Special Agent Michael Agrifolio, DEA

X. Supervisory Special Agent Vincent Wincelowitz, FBI Corruption Unit

Y. Detective Ronnie Stripp, NYPD

Z. Assistant United States Attorney Larry Brynes

2. AUSA Jeh Johnson failed to advise the Grand Jury and defense of exculpatory information he received from NYPD Detective Raul Anglada relative to the proposed drug cartel conspiracy.

3. AUSA Jeh Johnson should have recused himself as the prosecutor for conflict of interest since he was intimately involved the Operation Esquire and Freddy Then drug investigations, both of which alleged official corruption at the SDNY.

4. AUSA Jeh Johnson should have recused himself due to his admitted social relationship with the judge and her family. Also, that he was the judge's former law clerk. During the trial it appeared that AUSA Johnson had some ex-parte communications with the judge, without the approval of the defense.

5. It appears that it was extremely convenient that this same judge was selected without being picked out of the ''wheel'', which is the proper procedure in federal courts for designating a trial judge. The prosecutors expressed unprofessional jubilation at the arraignment when the judge was selected. According to an unconfirmed Justice Department source, the judge was pre-selected. I noted my objections on the court record.

6. During the trial, Dr. Angel Nunez volunteered to be co-counsel in light of the nervous breakdown of my attorney. AUSA Johnson conveniently told the court that Dr. Nunez could not be my attorney since he would be called as a government witness. Dr. Nunez was subpoenaed but never called as a witness.

7. During my trial, AUSA Johnson reportedly took full advantage of my attorney's mental state by debriefing him on a daily basis for defense strategies. This is how AUSA Johnson learned about our ''Impeachment'' tapes that recorded the undercover buys from the Federation witnesses. The prosecutors then pressured the court to have them released to their custody under the ruse they wanted to make transcriptions. The prosecution conveniently held the tapes while the Federation complainants testified and returned them once their testimony was completed. The defense was prevented from impeaching the witness's testimony because the tapes were not transcribed and available to the court.

8. During trial, the prosecutors took blatant advantage of my attorneys mental state by often taunting him with insults, pranks and derogatory gestures. For example, they would surreptitiously hide important ''Brady'' material on a cluttered defense table knowing he was disorganized to read the material and prepare for next days cross examination of prosecution witnesses.

The prosecutors learning of the perjury by the Federation complainants made representations to the jury that these witnesses were *not* testifying under any plea-bargain cooperation agreement. Moreover, the prosecutor led the jury to believe these witnesses would be prosecuted for their admitted crimes. No prosecutions ever materialized.

9. The prosecutors told the jurors that INS Special Agent Stafford William, an un-indicted co-conspirator, would *not* be prosecuted for alleged civil rights violations in exchange for his testimony against me. They also told the jury that the plea bargain cooperation agreement did *not* guarantee him his job.

According to testimony entered into the Congressional Record, INS Deputy Commissioner William Slattery stated that prosecutors tried to intimidate the INS in not firing the agent. When that failed, the prosecutors reportedly attempted tried to get the agent another law enforcement position in US Customs.

10. According to Department of Justice regulations, federal prosecutors are obligated to report to all felony violations involving witnesses to the appropriate federal and state law enforcement agencies. Staten Island Borough President Molinari confirmed from the IRS District Director that prosecutors never informed them of the admitted income tax evasion by Federation complainants. Similarly, prosecutors reportedly never notified any other law enforcement agency of their admitted felony crimes.

11. Department of Justice regulations prohibit prosecutors from coercing, intimidating or harassing any defense witness. According to testimony entered into the Congressional Record, my defense witnesses were routinely confronted in the defense witness room by prosecutors who demanded to know their testimony. These defense witnesses, many of who were younger law enforcement officers, felt very intimidated of potential retribution.

12. According to Federal Court procedures, a court-designated interpreter must be unbiased and must properly translate to the court all testimony. In my trial, the prosecutors influenced the judge to use as the ''court interpreter'' the same Spanish interpreter they had used for over a year to debrief the Federation witnesses, both during the grand jury and pre-trial process. Despite using the interpreter in court, they used her as one of their expert witnesses, who openly admitted before the jury her bias towards me. A Hispanic journalist in the court reported to the defense that he overheard the interpreter intentionally rephrasing defense questions and failed to provide correct translations to the court. This action was highly prejudicial to the defense and was reported to the court.

13. On one operation, I was convicted for conducting an illegal consent search solely upon the testimony of an INS agent who I previously disciplined for misconduct. At trial, the prosecutor never called the actual complainant to testify, instead relied solely upon the testimony of the agent.

According to testimony entered into the Congressional Record by John McAlister, the INS Deputy District Director, he reported to prosecutors that the agent committed perjury. The agent had asked him to backup his court testimony that he had reported the alleged misconduct to his supervisor, which never occurred.

In addition, I learned after the trial that this particular operation had been monitored by the NYPD Internal Affairs Unit. I had requested their presence because of allegations of police corruption. According to Lt. Kidd, the NYPD Internal Affairs supervisor, he went to the prosecutor and produced the undercover police tape confirming the legality of the search. This critical evidence was intentionally ignored and never turned over to the defense.

14. According to Patrick Harnett, who retired as the NYPD Chief of the Department, he met with prosecutors and attempted to convince them of my innocence. Chief Harnett confirmed that the genesis of Operation Bodega was the homicide investigation of PO Michael Buczek. He also verified that the NYPD was aware of its operations and fully endorsed it. This was critical since prosecutors misled the jury to believe I invented the operation without a predication for my own personal gain. A copy of Chief Harnett's affirmation was placed in the Congressional Record.

15. According to an official memorandum entered into the Congressional Record, DEA Senior Special Agent John Dowd was reportedly threatened by prosecutors with potential prosecution after he confirmed that one of the searches enumerated in my indictment was lawful. The DEA Agent and IRS Agent was present during the search when permission was given. In any event, the prosecutor ignored the evidence and the fact that the complainant was a major Dominican organized crime figure under investigation by numerous federal and local agencies. Once the agent reported the incident to his supervisor and executed a memorandum memorializing the incident, the prosecutor agreed to dismiss that count in the indictment. The memorandum was never turned over to the defense.

16. After my conviction, many noteworthy journalists and radio personalities began to champion my cause. On one occasion, AUSA Jeh Johnson called up the WABC early morning show to criticize the show host for supporting my cause. On another occasion, SDNY prosecutors put out a formal press release criticizing Pulitzer Prize journalist Mike McAlary who published a series of investigative articles that exposed the drug cartel conspiracy. This type of action by federal prosecutors is unprecedented and *not* sanctioned by the Justice Department.

As you can see, it is virtually impossible for me to outline every documented act of prosecutorial misconduct or to convince you of the drug cartel conspiracy. Instead, let me represent that my landmark prosecution has been closely scrutinized by many, as well as independently investigated by numerous media entities, journalists, elected officials, police officials, legal experts, the New Jersey General Assembly and Civil Rights Groups. It was their general consensus that I was the target of a well-orchestrated drug cartel conspiracy. Moreover, my prosecution was politically motivated and there were many outrageous acts of prosecutorial misconduct.

One case in point, a New York Judge privately brought my case to the attention of Professor Bennett Gershon, a law professor at Pace Law School in New York who wrote a book on prosecutorial misconduct. In essence, Professor Gershon believes my prosecution is one of the worst cases of prosecutorial misconduct he has ever seen during his career.

Professor Gershon was particularly outraged that my attorney of record, who suffered a nervous breakdown prior to trial, was refused permission to be replaced by substitute counsel. The prosecutors believed my attorney was lying about his nervous breakdown, despite the fact we have documented medical evidence reflecting the attorney was hospitalized and tried to commit suicide on two occasions. In addition, a New York State Supreme Court Judge came forward and confirmed that a week earlier he excused my

attorney on a murder trial for what appeared to be severe depression and bizarre behavior. A few years later my lawyer was disbarred for threatening a judge at a side bar.

Finally, former President George Bush showed the courage to go against his own Justice Department by granting me Executive Clemency on January 15, 1993. This is the first time a sitting president reportedly had taken that action.

For almost two years after my release, I filed an application for a new trial based upon newly discovered evidence, which meant if I was convicted again, the clemency would no longer be valid and I could be returned to prison.

For almost two years, I worked closely with distinguished Members of Congress, the United States Senate, New Jersey General Assembly, New York Senate, among others to have Congressional Hearings in my case. In fact, the New Jersey General Assembly, both Republican and Democrat, unanimously passed a resolution calling upon the Justice Department to appoint a Special Prosecutor. In addition, legislative resolutions were put forward in the New York Senate and New York City Council.

Unfortunately, these requested congressional hearings failed to materialize due in part to the resistance of the Justice Department and the fact President George Bush granted me Executive Clemency. Instead, the Justice Department convinced my supporters that an unbiased investigation by the Department of Justice, Office of Professional Responsibility (OPR), as well as the FBI, would be conducted into my case.

As for OPR, it is an extremely small unit with a tremendous backlog of cases that prevented them from conducting a thorough investigation. This investigation, if conducted properly, would have included the interviews of over seventy-five witnesses, as well as the review of volumes of defense investigative files. It is unfortunate that OPR failed to interview critical witnesses and basically rubber-stamped the court of appeals decision that no prosecutorial misconduct occurred.

For example, as previously noted, OPR failed to interview NYPD Detective Raul Anglada who confirmed that one year *prior* to my indictment, AUSA Jeh Johnson ignored critical information of the proposed drug cartel conspiracy. The detective is very credible, he was physically present when the informant told the prosecutor that she overheard the Dominican Attorneys Jorge Guthlein and Andres Aranda conspiring to set me up on fabricated civil rights charges. What is compelling is that AUSA Johnson in a sworn

statement to the court, *did not* deny the allegations of being told, but conveniently said he did not remember the conversation.

As for the FBI investigation, it seems highly unprofessional that the FBI would assign local FBI agents to conduct a misconduct investigation involving federal prosecutors in the same judicial district where the agents work. Normally, the FBI would assign an OPR agent or a team of agents from another district office.

As for the promised ''unbiased'' FBI investigation, the case agent concluded that there was no credible evidence of the drug cartel conspiracy. According to sworn statements entered into the Congressional Record, the FBI Agent allegedly intimidated many witnesses, both civilian and law enforcement.

The following is a brief synopsis of alleged misconduct involving the FBI Case Agent who many believe engaged in an unprofessional and shabby investigation, which ultimately protected the fine image and reputation of the local United States Attorneys Office.

1. The investigative staff of Staten Island Borough President who spearheaded a two-year investigation into my case furnished the FBI with full access to the informants. It was their critical undercover activities that helped to expose the drug cartel conspiracy, as well as the extent of organized crime activity by the Federation and others. Mr. Molinari encouraged the FBI to conduct their own independent undercover investigation, which could have resulted in numerous federal RICO prosecutions, which he refused.

2. When the FBI refused to do the undercover drug buys from the Federation complainants, Borough President Molinari convinced Customs Commissioner Raymond Kelly, the former NYC Police Commissioner to do their own undercover operation. However, on the day of the planned drug buys, the NYPD detectives were reportedly told the operation was terminated at the request of federal authorities.

3. The FBI agreed to interview me during my imprisonment in order to obtain background information regarding the Project Esquire and related corruption investigations. The interview never materialized and instead they interview my brother-in-law and sister who had no idea of the cases I worked as a federal agent.

4. The FBI Case Agent reportedly threatened the entire investigative staff of Borough President Molinari with potential criminal prosecution for fabricating the evidence of the drug cartel conspiracy. The agent even referred the case to the Eastern District of New York for a Grand Jury investigation. No prosecution ever took place and it is believed the action

was intended solely to intimidate Mr. Molinari and his staff from continuing with their investigation.

5. The FBI Case Agent reportedly threatened NYPD Police Sergeant Lenny Lemer who was assigned to the DEA Task Force that was investigating the Dominican Federation for money laundering activity. Sgt. Lemer had come forward with evidence of the drug cartel conspiracy and reported to his superiors. According to his sworn affidavit that was entered into the Congressional Record, Sgt. Lemer was similarly threatened with potential prosecution for attempting to expose the conspiracy.

6. The FBI case agent unlawfully attempted to setup Borough President Molinari on obstruction of justice charges through an informant who reportedly was intimidated by the case agent. When Mr. Molinari learned of this sting operation by the informant, he immediately reported the matter to the Justice Department and OPR. In response, the Justice Department made a written apology for the unprofessional and illegal actions of the case agent.

7. FBI Special Agent Lionel Baron convinced Dr. Angel Nunez and the undercover informants involved in my case that he was willing to help prove the my innocence, as well as develop a criminal case against the Dominican Federation and others. However, the informants must be fully debriefed regarding their undercover activity on my case and be willing to work exclusively for the FBI. After their initial debriefing, the FBI Agent never did any follow-up activity. A FOIA request by New York Post Reporter Al Guart, among others disclosed no written record of any such investigation by the agent.

8. According to William Acosta, a former U.S. Customs and NYPD Internal Affairs officer who dedicated his entire career in exposing corruption, he furnished the Justice Department with critical evidence confirming the drug cartel conspiracy and the fact the Dominican Federation had reported ties to our intelligence community.

Mr. Acosta executed two sworn affidavits that reflected he learned of the drug cartel conspiracy from his joint investigations with Manuel De Dios, a world renown journalist who was exposing the Dominican Federation and other crime syndicates. You may recall that Mr. De Dios was the first American journalist in this country to be assassinated by drug lords.

There are many law enforcement sources who believe that Mr. Dios was conveniently murdered a week after he executed a sworn affidavit wherein he agreed to testify before

Congress regarding the drug cartel conspiracy, as well as Federation witnesses. Both, Mr. De Dios and Mr. Acosta's sworn affidavit was been entered into the Congressional Record. Why didn't the FBI case agent feel it important enough to debrief Mr. Acosta?

It should be evident that the intended goal of this FBI Agent was to intimidate the witnesses, as well as discredit the overwhelming evidence of the conspiracy. The FBI which has jurisdiction to investigate such federal crimes as drug distribution, RICO violations, loan sharking, interstate gambling, etc. failed miserably in their responsibility to investigate and prosecute crimes brought we brought to their attention. The FBI ignored a golden opportunity to effectively use our intelligence, evidence and access to our defense undercover informants to infiltrate and prosecute the Dominican Federation, and others.

It should be noted that everything I said about the Dominican organized crime groups, such as the Federation, was officially corroborated in a 1997 one hundred page Department of Justice intelligence report entitled ''The Dominican Threat, a Strategic Assessment of Dominican Drug Trafficking.

I am sure you recall Jim Fox, the former FBI Special Agent in Charge at NYC who spearheaded the World Trade Center bombing case. We all saw him almost every night on the national news. Well, Mr. Fox proved to be a very courageous FBI official who was not easily intimidated or afraid to tell the truth to the public or the Justice Department. Mr. Fox publicly admitted that the FBI possessed certain evidence of my innocence. It was those public statements that my defense team used in order to support my application for a new trial.

Mr. Fox was unfortunately severely penalized for making those statements. According to published reports, it was alleged that federal prosecutors in my case directed Mr. Fox to prepare an affidavit reflecting that his comments were taken out of context. He reportedly refused and was later suspended one month prior to his scheduled retirement after 30 years of unblemished service with the FBI. A clear message that no matter who you are, or your position, you do not cross the Justice Department.

In conclusion, I can only say that during the past ten years I have noticed a pattern of abuse by the Justice Department involving any organized effort by law enforcement to aggressively target the Dominican drug lords or their crime syndicates. Instead of supporting their efforts, it appears the agents are

pressured to prematurely terminate viable investigations through intimidation and coercion. If the agent is uncooperative, he will find, like myself that they have become the

targets of a Justice Department probe.

There are many sources who believe that these Dominican organized crime investigations are being protected by Special Interest groups for a variety of reasons: pressure from our intelligence community, political intervention, official corruption or perhaps it has simply become politically incorrect for the Justice Department to investigate ethnic organized crime groups. No matter what the reason, dedicated agents should not be made the scapegoats.

Over the past ten years I have obtained personal knowledge that the following criminal investigations involving Dominican organized crime may have been prematurely terminated for some of the reasons noted above. Moreover, many of the case agents involved were reportedly pressured and intimidated to prematurely terminate their investigations. When the agents refuse, they conveniently become potential defendants for alleged civil rights prosecution.

1. A DEA investigation by S/A John Dowd involving the Sea Crest Trading Company.

2. An IRS investigation by S/A Ronald Nowicki involving the Sea Crest Trading Company. In addition, a confidential source confirmed that IRS Agents in Connecticut were similarly being pressured to terminate their investigation.

3. A Manhattan District Attorney investigation by NYPD Detective Ronnie Stripp involving the Sea Crest Trading Company.

4. An U.S. Customs investigation (Case#02AR8NY003) into alleged money laundering by the Dominican Federation.

5. A DEA investigation by Sgt. Lenny Lemer involving the Dominican Federation and the Sea Crest Trading Company.

6. A Manhattan District Attorney's Office criminal prosecution was reportedly terminated against Dominican Attorney Andes Aranda for allegedly conspiring to set up NYPD Police Officer Louis Della Pizzi on fabricated civil rights charges. According to many sources, these two attorneys who were the subject of the ''Project Esquire'' corruption probe have similarly escaped other criminal prosecutions.

7. A DEA investigation involving Dominican Attorney Andres Aranda, who was allegedly implicated in the Jheri Curls drug organization. According to published reports, he was captured on tape accepting drug money from the head of this drug organization, who was

convicted for drug distribution.

8. A NYPD Internal Affairs investigation by former Deputy Commissioner Walter Mack into Sea Crest Trading Company and the Dominican Federation.

9. A Bronx District Attorney's Office investigation by Assistant District Attorney Edward Friedenthal into the reported illicit activities of the Dominican Federation, the Freddy Then drug cartel, Sea Crest Trading Company, Dominican Attorneys Jorge Guthlein and Andres Aranda.

10. A New Jersey State Police investigation by Detective Sergeant Jim Mullholland into the Dominican Federation and Sea Crest Trading Company. This inquiry was predicated upon my testimony before the New Jersey Senate Crime Committee investigating the infiltration of Dominican organized crime operations in the State of New Jersey.

11. A Brooklyn District Attorney's Office investigation authorized by District Attorney Charles Hynes into the Dominican Federation and Sea Crest Trading Company.

12. A FBI investigation that was predicated upon evidence furnished by retired NYPD Detective Ben Jacobsen of the A.C. Nielson Company into organized coupon fraud involving the Sea Crest Trading Company.

13. A NYPD/US Customs money laundering investigation by Lt. R. Rose into the Dominican Federation and Sea Crest Trading Company.

14. An U.S. Postal Inspection investigation by Inspector J.V. Barrett into the Sea Crest Trading Company.

15. A Bergen County (NJ) investigation by Detectives Juan Lopez and Wayne Yahn into the Dominican Federation and Sea Crest Trading Company.

16. The dismantling of DEA Group 33 at NYC who that had the highest arrest and seizure record involving the Dominican cartels. The agents were later reassigned and investigated by SDNY federal prosecutors for alleged civil rights violations. The agents were never prosecuted and later filed a civil suit against the government.

17. The dismantling of an elite NYPD anti-crime unit in Washington Heights who had the

highest arrest and seizure record involving Dominican organized crime. This elite unit was investigated by SDNY federal prosecutors for alleged civil rights violations. One of the officers was prosecuted for alleged perjury since the prosecutors felt he was uncooperative. The conviction is on appeal and Congressman King (NY) has championed his case and has requested an OPR investigation into allegations of prosecutorial misconduct.

18. The dismantling of an elite Pennsylvania State Attorney General's Narcotics Unit that was investigating the distribution of heroin in Philadelphia by Dominican Drug Lords from Washington Heights. The investigation disclosed that million of dollars in suspected drug proceeds were being delivered to a presidential candidate in the Dominican Republic.

When the agents began to make inquiries with the State Department and CIA, they were reportedly pressured to terminate their investigation, as well as reveal the identity of the informant. The agents reported the incident to the Senate Intelligence Committee who commenced a hearing into the allegations. Almost immediately, the agents were relieved of their duties pending a Justice Department and FBI investigation involving alleged civil rights violations. Almost two years later, the agents were cleared of any wrongdoing and the investigation still remains inactive. The agents have filed a civil suit against the PA State Attorney General, the United States Attorney in Philadelphia, the State Department and CIA,which is scheduled for trial this year.

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There has been a lot of controversy surrounding my landmark prosecution and many theories as to why the Justice Department may have gone to great lengths to prosecute a highly decorated federal agent for an alleged consent to search form infraction. There are many that believe the conspiracy was sanctioned by the intelligence community to protect certain CIA operations and assets under the disguise of national security. Wherein, others are convinced there is widespread corruption in the Justice Department and I had to be eliminated due to my increased enforcement efforts that would ultimately expose the drug cartel operations and official corruption.

Or was this simply a case of an over zealous federal prosecutor with a personal agenda who engaged in widespread prosecutorial misconduct to gain a conviction and secure a position in a prestigious law firm. Another case scenario is that there are a few elected officials who have been unwittingly corrupted by crime syndicates, such as the Dominican Federation who reportedly made substantial campaign contributions to certain elected officials, as well as helped to win certain elections through organized election fraud.

I would like to conclude by saying we have lost the war against drugs and we need this important bill to have basic oversight authority over the Justice Department. My colleagues

in law enforcement tell me every day that they are more afraid of being prosecuted and railroaded by the our Justice Department, then by putting their lives in harms way.

The American public and criminal justice system holds the police to a higher standard wherein they are subjected to more civil suits, criminal prosecutions and imprisonment for alleged misconduct than any other profession. Yet, using that same criteria, federal law excludes federal prosecutors and other Justice Department personnel who knowingly violate the civil rights of a defendant to be completely immune from prosecution. Hopefully, your bill will change that dual standard.

I would strongly recommend that the committee consider contacting Staten Island Borough President Guy V. Molinari, as well as Congressman James Traficant who can turn over to the committee volumes of defense case files, undercover tapes and related evidence that establish substantial misconduct on the part of the Justice Department. Moreover, that a dedicated federal agent was betrayed by the very same government he proudly served.

Thank You

Joseph Occhipinti, *Executive Director.*

Attachments:

(1) Congressional Record Exhibit Index
(2) Media Reference Index

Table 1

Table 2

67342d.eps

67342e.eps

67342f.eps

67342g.eps

67342h.eps

67342i.eps

67342j.eps

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Mr. **GEKAS.** Before I begin with Mr. Fogg, the biographical material that we announced to become part of the record was drawn from sources other than your own. If there be any correction you want to make, you can submit that later.

Mr. **FOGG.** Yes, certainly. I have an identical twin brother, so there has been some problem.

Mr. **GEKAS.** Okay. So we will accept later a fulfillment of your biographical statement.

Mr. **FOGG.** I appreciate that.

Mr. **GEKAS.** In the meantime, you may begin your testimony.

STATEMENT OF MATTHEW FOGG, CHIEF DEPUTY U.S. MARSHAL, UNITED STATES MARSHALS, SERVICE, WASHINGTON, DC

Mr. **FOGG.** Good morning, ladies and gentlemen of the Committee on the Judiciary and Subcommittee on Commercial and Administrative Law. First I give honor to my Lord and my Savior by stating, ''May the words of my mouth and the meditations of my heart be accepted in Thy sight. O Lord, you are my strength and my Redeemer. Amen.

I want to thank the Chairman, Mr. Nadler and the members of the subcommittee, for allowing me to testify regarding H.R. 4105, the Fair Justice Act of 2000, designed to bring oversight and accountability upon the U.S. Justice Department. This is the same Federal agency that I have honorably served and literally placed my life on the line on several occasions during my career as a deputy United States marshal.

I will never forget the words spoken to me by one highly publicized escaped prisoner who was serving a life sentence for murder. After I apprehended him, before he could draw his weapon, he said, ''Man, you must have had a lucky horseshoe in your back pocket.'' but ironically and with an awful twist of fate, after all of the dangerous fugitives I was responsible for removing off the streets of America on her ''most wanted'' list, in the end it would be those who worked behind me within the Justice Department that would shoot me down.

In 1978 I began what I thought would be a great career with an organization responsible for the protection of the entire Federal judicial system, known as the United States Marshals Service. We operated under the direct supervision of this Nation's premiere law enforcement agency known as the Department of Justice. Its mandate is to enforce all laws of our great Constitution and lead the change for equal representation, civil rights, and the pursuit of fair justice for all people living on American soil.

In 1985 I filed an Equal Employment Opportunity complaint against a top-level USMS manager whom I believed was targeting African American employees for career destruction. Nearly 20 years from the actual date of my swearing-in ceremony as a deputy U.S. Marshal on April 24, 1978, a Federal jury here in the Nation's Capital would hold the U.S. Attorney General, Janet Reno, the DOJ, and the entire Marshals Office accountable, with a landmark $4 million judgment for the unlawful destruction of my career by race discrimination and retaliation, dated April 28, 1998.

Not only that, but the same jury would find the entire Marshals Office to be a racially hostile environment for all of its African-American law enforcement employees from New York to Los Angeles, California or sea to shining sea, before and after 1991. But it didn't end there, subcommittee members. This unlawful chain of events initiated under the former administration simply transferred to this administration, with the concept of business as usual.

It was docketed on the trial calendar as an individual Title VII case known as Fogg versus Reno, but the actual trial demonstrated the character of a class action complaint that lasted nearly 30 days, with evidence from 50 witnesses dating back to 1985, who were current or former employees; Several senior-level employees and other high-ranking officers, which included a videotape deposition from one Federal judge sitting in Miami today; three current and former USMS directors, several deputy directors, a host of top-level managers, subordinates, financial and medical witnesses.

Two African American deputy marshals testified how the same white chief deputy U.S. Marshal that I filed a complaint about called both employees into his office, threw one individual's transfer papers on the floor, called him a coon, and ordered him to pick up his papers and get out of his office.

The United States Marshal for the District of Columbia, the Honorable Herbert M. Rutherford, III who was in a politically appointed position, stated to the jury, and to the surprise of the judge, that ''if Fogg had been white, this trial would never have happened.'' this statement alone gave direct evidence that race discrimination and retaliation was the only reason my career was destroyed. When the judge, Thomas Penfield Jackson, presiding asked him for clarification stating, ''You are telling me that because Matthew Fogg is an African American, the USMS dug its heels in on processing Fogg's EEO complaints?'' the witness replied, ''Absolutely.''

Stephen Zanowic Jr., a white deputy marshal from the New York office testified and directly rebutted former USMS Director Eduardo Gonzalez's testimony that his case was resolved. Zanowic also testified on the deposition and before the Congressional Black Caucus that he was given a large black rubber rat by his supervisor after he blew the whistle on pervasive racism against his black partner by other white deputy marshals in the New York office.

The Director of the Marshals Service testified there were serious racial problems when he

became the top manager and he tried to fix them.

After I rested my case, Judge Thomas Penfield Jackson, the presiding judge, summoned me and my attorney into his chambers and sought to resolve the case after hearing such compelling testimony, and stated he was shocked at what he had heard by such compelling witnesses. When I indicated I would be willing to work out a consent decree to repair the entire racial hostile environment, Judge Jackson advised both parties to work it out.

The first witness for the government's rebuttal was Louie McKinney, a former USMS division chief, who testified that he chose Matthew Fogg and a white deputy marshal for two available promotions from the top of a, ''best qualified'' list.

What I want to say here, ladies and gentlemen, is this: This thing started in 1985, and here we had a trial where it came down to the point where my position was on trial, suddenly the government decided that they wanted to tell the judge that the key witness in this case could not be located. This witness is named Mr. Ronald Hine.

And I am saying this because of the fact that we need oversight on the Justice Department and I am saying this for this reason. The U.S. Attorneys, three of them, stood in front of Judge Jackson and said we are unable to locate a former—this guy was a retired United States deputy marshal, chief deputy. They said, we could not locate him. The judge said, ''What do you mean that you can't locate him?'' He said, just go where you send his retirement check. They insisted they could not locate this man. Later we find out that at the same time, they have the witness in their office and what the witness had told them was he felt that I had been discriminated against because of the way the agency delayed the cases.

This is just one incident where we look at this whole scenario of what happens here when it comes down to officers within the Justice Department. My case is still going on now, even though a jury awarded me $4 million and said I was subject to the racially hostile environment within the entire United States Marshals Service. We are now at the court of appeals because the agency is still fighting us.

One of the things that I certainly believe is we definitely need oversight. We have needed it in the Justice Department because they cannot, they cannot deal with themselves. I appreciate it. Thank you.

[The prepared statement of Mr. Fogg follows:]

PREPARED STATEMENT OF MATTHEW FOGG, CHIEF DEPUTY U.S. MARSHAL, UNITED STATES

MARSHALS SERVICE, WASHINGTON, DC

Good Morning Members of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law. I first give honor to LORD and SAVIOUR by stating may the words of my mouth and the meditations of my heart be accepted in THY SIGHT, oh LORD you are my strength and my redeemer, Amen.

I want to thank the Chairman, Mr. Nadler and the Members of the Subcommittee for allowing me to testify regarding H.R. 4105, the ''Fair Justice Act of 2000'' designed to bring oversight and accountability upon the U.S. Department of Justice.

This is the same federal agency that I have honorably and literally placed my life in the line of duty on several occasions during my career as a Deputy United States Marshal. I will never forget words spoken to me by one highly publicized escaped prisoner who was serving a life sentence for murder after, I apprehended him before he could draw his gun. He said,''*man you must have had a lucky horse shoe in your back pocket.*'' But, ironically, and with a awful twist of fate, after of all the dangerous fugitives I was responsible for removing off of streets of America and her ''Most Wanted'' list, in the end it would be those who worked behind me within the Justice Department that would ''shoot me down.''

In 1978 I began what I looked forward to be a great career with an organization responsible for the protection of the entire Federal Judicial System known as the U.S. Marshals Service (USMS). We operate under the direct supervision of this Nations premiere law enforcement agency known as the Department of Justice (DOJ). DOJ ''s mandate is to enforce all laws of our great Constitution and lead the charge for equal representation, Civil Rights and the pursuit of fair justice for all people living on American soil.

In 1985, I filed a Equal Employment Opportunity (EEO) complaint against a top level USMS manager whom I believed to be targeting African American employees for career destruction. Nearly 20 years from the actual date of my swearing in ceremony as a Deputy U.S. Marshal on April 24, 1978, a federal jury here in the Nations Capital would hold U.S. Attorney General Janet Reno, the DOJ and the entire Marshals office accountable with a Landmark judgment for the unlawful destruction of my career by race discrimination and retaliation, dated April, 28th, 1998.

Not only that but, that same jury would find the entire Marshals office to be a ''Racially Hostile Environment'' for all of it's African American law enforcement employees from New York to Los Angeles or ''sea to shining sea'' before and after 1991. But it doesn't end there Honorable Members of this Subcommittee, this unlawful chain of events initiated under the

former administration simply transferred to this administration with the concept of ''business as usual''.

It was docketed on the trial calendar as an individual Title VII case known as Fogg Vs Reno 94-2814TPJ but, the actual trial demonstrated the character of a Class Action Complaint and lasted nearly 30 days with evidence from 50 plus witnesses dating back to 1985 who were current or former employees. Several Senior level Employees (SES) and other high ranking officers which included a video tape deposition of one sitting federal judge in Miami Florida, three former and current USMS directors, several deputy directors, a host of top level managers, subordinates, financial and medical witnesses.

Two African American deputy Marshals testified how the same white Chief Deputy U.S. Marshal that I filed a complaint about, called both employees into his office, threw one of the individuals transfer papers on the floor and called him a ''Coon.'' And ordered him to pick up the papers and get out of his office.

The United States Marshal for the District of Columbia the honorable Herbert M. Rutherford III who was in a politically appointed position stated to the jury and to the surprise of the judge that, '' f Fogg had been white this trial would have never happened.'' This statement alone gave direct evidence that race discrimination and retaliation was the only reason my career was destroyed. When the judge Thomas Penfield Jackson presiding, asked him for clarification stating, ''are you telling me that because Matthew Fogg is African American the USMS dug it's heels in on processing Fogg's EEO Complaints?'' The witness replied ''absolutely.''

Stephen Zanowic jr. a white Deputy Marshal from the New York office testified and directly rebutted former USMS director Eduardo Gonzalez's testimony that his case was resolved. Zanowic also testified on deposition and before the Congressional Black Caucus that he was given a large black rubber rat by his supervisor after he blew the whistle on pervasive racism against his black partner by other white deputy Marshals in the New York office. The manager who gave Zanowic the rat was later promoted and placed in charge of the entire USMS Internal Affairs Division.

The director of the Marshals Service testified there were serious racial problems when he became the top manager and tried to fix them. After I rested my case judge Thomas Penfield Jackson presiding, summoned me and my attorney to his chambers and sought to resolve the case after hearing such compelling testimony and stated he was shocked at

what he heard by such compelling witnesses. When I indicated I would be willing to work out a ''Consent Decree'' to repair the entire racial hostile environment judge Jackson advised both parties to utilize the entire day for discussions on a Consent Decree resolution. Later the DOJ would reject the Consent Decree offer and Jackson would order the trial to continue.

The first witness for the governments rebuttal was Louie McKinney a former USMS division chief who testified that he chose Matthew Fogg and a white deputy Marshal for two available promotions from the top of a best qualified list. He stated: The former USMS director Michael K. Moore, now a sitting federal court judge in Miami, Florida pulled Matthew Fogg's name off of the best qualified list and replaced him with a employee friend rated number 14 on the same list and 10 years junior to Fogg in the Marshals office.

Later when the Jury was asked: Was this discriminatory and retaliatory behavior by the former director? The jury found it was along with 14 other specific claims that were clearly in violation of federal law and Title VII of the Civil Rights Act and U.S. Constitution. Now Honorable Members we must understand the significance of this finding because it is the top cop of the USMS and today a sitting federal judge being judge in violation of federal law by a Federal Jury.

When Moore was asked in his video tape deposition why did he replace Fogg on the list with a less qualified white employee, Moore simply replied he believed the Marshals promotion process was ''Skewed'' towards USMS-HQ personnel and he wanted to help a deputy Marshal get promoted who he came to know while working as U.S. Attorney in the South Florida office.

The ironic answer here is that Moore as the director now offers evidence of a bias (''Skewed process'') promotion system under his direct command. He replaces Fogg a current 7 year EEO complainant at that time and a best qualified candidate with a far less qualified candidate because he is a friend. I submit to you Honorable Members, he simply chose to Skew the system more than fix it with the authority and control invested him by virtue of his position as the top manager of the USMS.

But, it doesn't end here for the injustice to Matthew Fogg's outstanding career. In 1993 I went on approved extended leave after it was apparent that USMS officials were turning all guns to bare upon my career even to the point where my white back-up Marshals left their positions in violation of my supervisory orders during our arrest of two heavily armed fugitives in Baltimore. The arrest were featured on the popular television show ''Americas Most Wanted'' and bought great credibility to the USMS. When I complained about the

insubordination and life threatening position these employees placed me and other team members in, I was told by management to let it go and move on.

I began to see a clear pattern that because of my valid EEO activity that not only my career advancement but my life was now in jeopardy by those officials behind me instead of going after those truly responsible for these intolerable crimes working behind a badge of justice.

Later these officials who simply pass the baton of injustice to the next air apparent taking the controls and that is exactly why my case remains an unending open wound today for Attorney General Janet Reno and the Justice Department.

Let me give you another example how other officials inside the DOJ will prefer to skew it more than fix it and clearly why this system of justice needs swift oversight and accountability. During my trial process the U.S. Attorneys representing the government and Marshals office indicated they could not find a witness and retired Chief Deputy U.S. Marshal who they wanted to testify.

They requested the judge to allow them to read his previous deposition into the record. The Judge replied, ''what do you mean you can't find him, just go where you send his retirement check.'' They insisted he could not be found and the judge allowed them to read the witnesses entire deposition in the record. Later it was discovered that this witness had been notified and had presented himself for trial via government travel funds and was interviewed by the same government attorneys now telling a federal judge the witness could not be located.

Apparently they collectively decided to obstruct justice when the witness told them he thought the government did in fact violate Matthew Fogg's Civil Rights when they refused to timely investigate Matthew Fogg's EEO claims. Ironically another DOJ apparatus known as the Office of Professional Responsibility (OPR) tasked with investigating misconduct within the DOJ is now covering up for her brother agency and refuses to do the right thing. In this case the OPR was notified in writing by the Chief Judge of the U.S. District Court for the District of Columbia in 1998 to investigate allegations that attorneys in my case lied to the presiding judge about not finding this witness.

As of March of this year I have correspondence from Assistant Counsel, Paul Colby of the OPR indicating they are still investigating the matter. With my experience of over twenty years of investigations I can say either we have serious case involving a Watergate type corruption and misconduct investigation or another case of passing the baton of injustice from one administration to another inside DOJ.

In closing, the jury was concise and consistent with the overwhelming evidence presented of an environment sweltering with the heat of injustice, by voting yes on 14 out of 15 separate interrogatories on the verdict form for blatant incidents of discrimination and retaliation. The jury also stated that we find that Matthew Fogg should be paid the sum of $4 Million Dollars for his pain and suffering and that he should be promoted to Chief Deputy U.S. Marshal with all and attorneys fees and back pay awarded separately by the government. Now that this case has proceeded to the DC Court of Appeals, the amount of money in legal fee, court cost and the possible judgement will exceed millions of dollars.

On July 1st 1999 Thomas Penfield Jackson, the presiding judge officially wrote in his finding on the jury verdict,

''*The jury obviously inferred from the evidence of the endemic atmosphere of racial disharmony and mistrust within the USMS that all explanations were suspect, and that occult racism was more likely the reason than for any other for Fogg's misadventures with the Marshals Service hierarchy.*''

Today I am in the court of appeals 15 years from the original EEO claims still fighting to obtain true justice in this matter because the DOJ refuses to police itself. And this is exactly why the DOJ needs oversight and accountability via the Fair Justice Act of 2000 no matter which party or Administration is in control.

Police misconduct on the federal, state, and local level is overwhelmingly directed against citizens of color across this country. Evidence suggests that police misconduct involving brutalities, corruption and murder are growing, especially in minority communities where victims make easy targets because the broader society has limited knowledge or interest in the protection of the civil rights. The record reflects that there is a connection between discrimination by law enforcement officials against the public and employment discrimination complaints within the rank and file. There is also a corresponding link between discrimination and corruption. In fact, civil and criminal investigations in this regard have reached the highest levels of law enforcement in America to include federal judges and prosecutors. These investigations reveal that police misconduct festers under commands that refuse to enforce law and regulations. This is a direct challenge to the fundamental tenets of public safety. A clear example of how public safety is jeopardized is racial profiling and targeting. With the number of these cases that involve murder and excessive use of force growing, these concerns are heightened as these discriminatory practices on all levels if unchecked might lead to *genocide* and *ethnic cleansing*.

Examples of Racial Profiling:

New Jersey State Attorney General Peter Verniero stated that New Jersey Troopers targeted minorities and falsified records misrepresenting the race of motorist in an attempt to cover-up discrimination.

In Montgomery County, Maryland, as a result of numerous complaints racial profiling lodged through the local NAACP, County Executive Douglas Duncan was pressed to ask for an investigation and new disciplinary rules, specifically designed to punish police who engage in such practices.

The unjustified detention, inhumane treatment and targeting of people of color as drug trafficking ''suspects'' by United States Customs officials. People are being stripped searched, probed internally and x-rayed just because they are African American, Hispanic or Asian. The Customs Employees Against Discrimination Association (C.E.A.D.A) has vehemently spoken out against discrimination of minorities within the agency and the agency's race profiling practices. A September 10, 1998 Miami Times reported that Customs is characterized by employees as ''*modern day slavery*'' where supervisors use the ''N'' word on a regular basis. The US Customs is now faced with a multi-million dollar class action suit brought by African American female travelers for profiling and excessive searches while passing through customs.

Examples of Beatings, Excessive Use of Force and Murder:

An *unarmed* African immigrant was gunned down by law enforcement officers in New York.

A Haitian immigrant, Abna Louima, was mercilessly beaten and *sodomized* with a pole allegedly by law enforcement officers in New York.

Rodney King, an African American, was beaten in California and the law enforcement officers involved were acquitted of wrongdoing because they followed ''appropriate police procedure.'' The police procedure in question is a well-known police technique that was developed from *South African Police tactics utilized during the apartheid regime to brutalize Black South Africans.* The police are trained to surround the victim and beat them with long black sticks until the person stops moving. This is usually when he is unconscious or dead.

A U.S. Marshal shot a young African American child in the *back of the leg* indicating that there was no direct frontal threat. The marshal claimed that he thought that a candy bar in

the child's hand was a gun. Previously this same officer had been terminated for beating African American man while handcuffed behind his back. This same officer was later reinstated.

Other Examples of Misconduct

Seven Chicago prosecutors and sheriff deputies face criminal trial in a plot to convict an innocent man. The charges range from perjury, conspiracy, obstruction of justice, withholding evidence and falsifying evidence. Rolondo Cruz, a Hispanic male, spent 10 years on death row before being exonerated.

Discrimination in the Law Enforcement Workplace

The above examples when compared to examples of discrimination in the law enforcement workplace help the average person understand the connection between discrimination in the rank and file and discrimination directed against the public. The following examples concern discrimination within the U,S. Marshal Service (USMS) but they give an idea of the type of blatant discriminatory acts that minority officers deal with on a daily basis:

A photograph of Dr. Martin Luther King was used for *target practice* on a firing range by White U.S. Marshals;

A few years ago representatives from the Justice Department (ATF, DEA, FBI and USMS) attended the ''Good O'Boys Round Up'' in Tennessee. At the activity and while the participants were on official duty signs were posted stating ''*Nigger Check Point.*'' At this same activity, White participants put on a skit during which a *Black doll was pulled from a watermelon at the end of a hangman's noose and beaten with police batons.* None of the Department of Justice officials present at this activity were punished or reprimanded in any way;

White marshals dressed in *Ku Klux Klan* regalia terrorized an African-American female marshal;

White marshals made *jokes* while passing around a photograph of a corpse of a seven year old African American girl who had been *murdered*; and,

Stephen Zanowic, a White marshal who spoke out against discrimination within USMS was sent *a Black rubber rat as a form of intimidation.*

P.E.R.F and Discrimination in Law Enforcement

One of the primary problems that law enforcement employees are having in rooting out discrimination at their agencies is that officials who are found guilty of discrimination are not sanctioned. As a result, discrimination often becomes more blatant after discrimination has been proven because the law does not require that offending officials be immediately terminated. Therefore, other than monetary damages there is no real change in the hostile work environment that many minority employees work under. The existing discrimination complaint process may be successfully proven from a legal perspective but it is virtually worthless from a practical standpoint. Many of these offending officials go from one agency to the next carrying their discriminatory animus with them.

One of the ways that discriminating officials are able to move so freely between agencies is by law enforcement agencies use of the Police Executive Research Forum (PERF's) executive recruitment services. PERF provides training, technical assistance, executive search services and research to law enforcement agencies. Many of PERF's programs are funded by the federal government through grants from the Department of Justice (i.e., The Office of Community Oriented Policing Services (COPS) and the Bureau of Justice Assistance (BJA)). However, there is no Government accountability or external auditing to ensure the proper use of these funds.

A number of PERF's members are heads of law enforcement agencies where discrimination has been proven during his or her administration. For example, the Commissioner of the Baltimore Police Department, Thomas Fraizer, is the head of an agency where the Equal Employment Opportunity Commission (EEOC) and the Committee on Legislative Investigations of the Baltimore City Council found rampant discrimination and retaliation within the agency. It has also been determined that Commissioner Fraizer's Criminal Intelligence Unit was used as an internal surveillance mechanism to monitor the activities of employees who filed discrimination complaints.

On February 10, 1999, the EEOC found that African American law enforcement officers as a class had been discriminated against by the agency. It also found that in the case of Sargent Louis Hopson the agency failed to ''take immediate and effective action in addressing the Charging Party's complaints and he was disciplined, denied promotion, and discharged as a result. ''Despite major on-going EEO investigations and Class complaints and statistics that established that discrimination complaints have increased at the agency

during Commissioner Fraizer's administration, PERF made Fraizer President of its organization in August of 1998. In this instance, open discrimination against employees appears to have been used as a promotion vehicle rather than a deterrent.

Other members of PERF who have dubious reputations in the area of civil rights include Bill Gates, John Timoney and Howard Safir. Howard Safir was my former supervisor at USMS. On April 28, 1998 a federal jury delivered a landmark verdict in which I was promoted to the position of Chief Deputy U.S. Marshal and awarded 4 Million dollars in damages. The Department of Justice was found guilty on 14 of the 15 counts against it including the following:

A racially hostile environment existed at USMS for all African American marshals nationwide;

USMS managers failed to complete annual performance ratings for the plaintiff;

A far less qualified White USMS employee was promoted over the plaintiff even though the plaintiff was more qualified for the position in question;

Illegal inquiries were made into the plaintiff's EEO case by USMS officials; and

Untimely procedural motions made by USMS on the plaintiff's valid EEO complaints.

The 4 million-dollar verdict was the largest dollar award for an individual Title VII in the history of the Department of Justice. The Justice Department attorneys who handled this case are now under investigation by the Office of Professional Responsibility because allegations have been made that these attorneys lied to a federal judge about hiding a witness that could have verified racial misconduct.

It is also interesting to note that Mr. Safir now is the Chief of Police for New York. This is an example of how PERF members move from agency to agency. There have been a number of allegations of discrimination under Mr. Safir's administration in his new position. In particular, as a result of growing abuses and a hostile work environment a female officer employed at Mr. Safir's agency testified concerning discrimination at Safir's agency during a City Council hearing. She came to the hearing covered from head to toe to protect her identity because the agency had a policy that permission was needed to speak in public regarding anything that concerned the agency. Afraid that she would not be allowed to testify about glaring acts of discrimination, this officer attempted to conceal her identity. Somehow management found out who made the testimony and fired this employee shortly

thereafter. Evidence suggests that 95 percent of police and prosecutorial misconduct can be traced back to practices and procedures in the command structure of law enforcement agencies. The fact that many employees are prohibited from speaking out against these injustices under fear of termination raises concern that officers of color have no viable avenues of redress against discrimination. If this is the case, citizens of color will be fair game for brutality, false imprisonment and even death by these same *bigots with badges.*

Three of PERF's guiding principles state that the organizational objectives include:

The maintenance of the highest standards of ethics and integrity is imperative to the improvement of policing;

The police must, within limits of the law, be responsible and accountable to citizens as the ultimate source of police authority; and

The principles embodies in the Constitution are the foundation of policing.

Despite these principles, individuals who have been found guilty of discrimination are allowed to continue with PERF. Some of these same individuals are given important position in the organization such as the presidency. This irony speaks to the dilemma faced by all minority law enforcement (i.e., file a complaint with the likelihood that nothing will be done to sanction those responsible for the discrimination and risk retaliation; do nothing but suffer in a hostile work environment and risk retaliation; or change jobs and risk retaliation). Filing a complaint is very stressful because retaliation is the norm rather than the exception. I was injured by discrimination. After a stellar career, recipient of the U.S. Attorney Award the Presidents point of life volunteer and other notable awards, I was consumed by the idea that it was the ''Bigots with Badges'' and not the fugitives on the Most Wanted List that I had to fear. In the end, it was not the murderers, rapists, and child molesters that I was trained to go after who gunned me down, it was my law enforcement colleagues that did me irreparable harm.

Recommendations

1. Support the McDade-Murtha Bill recently passed and also known as the ''Citizens Protection Act.'' We must ask for civilian review boards on the federal level that have subpoena power.

2. Push for passage of legislation that would allow government officials to be sued personally for damages arising from the discriminatory environments that these officials create.

3. Pass legislation to cut all federal monies earmarked for PERF as long as any of its members have allegations of misconduct pending against them.

Mr. **GEKAS.** We thank the witness and we turn to Mr. Culbertson.

STATEMENT OF JOHN CULBERTSON, DIRECTOR, CENTER FOR REFORM, WASHINGTON, DC

Mr. **CULBERTSON.** Mr. Chairman, before I begin my statement, I would like unanimous consent that I be allowed to revise and extend my statement. I was added to the panel late yesterday and I would like to be able to insert corroborative material into the record.

Mr. **GEKAS.** I don't quite understand. You did submit a statement?

Mr. **CULBERTSON.** I have a short written statement. I was added late yesterday to the panel so I would like to——

Mr. **GEKAS.** Without objection, the materials the gentleman proposes will be made part of the record.

Mr. **CULBERTSON.** Thank you, Mr. Chairman.

Mr. **GEKAS.** Proceed.

Mr. **CULBERTSON.** Mr. Chairman, Mr. Nadler, members of the subcommittee. I am here in support of the legislation because conditions within the Federal law enforcement community and the Department of Justice have deteriorated to the point where strong medicine is required if we are to continue in the tradition of greatness which has defined America.

Four and a half years ago, I began a pilgrimage which has brought me here today. In the wake of the Oklahoma City bombing, I began an inquiry as a private citizen with respect to a number of questions. Nearly 4 years ago, I began cooperative efforts to answer questions with Representative James Traficant, then the ranking member of the Transportation and Infrastructure Committee, and the Public Buildings Subcommittee.

In that time, we have discovered much to be concerned about and have expanded far beyond the scope of the bombing investigation. Over the years, I authored a report entitled ''Deadly Failures,'' which identified security and law enforcement failures which directly contributed to the Oklahoma City bombing. Representative Traficant sponsored H.R. 809, the Federal Protective Service Reform Act of 1999, that has passed the House and is now under consideration of the Senate.

With the release of the report, I found myself approached by Federal agents and officers who read the report and sought me out. These people contacted me to voice their support and in some cases to seek assistance. They were seeking to get in touch with Members of Congress with respect to problems and corruptions within their various agencies. This trend expanded to include Federal agents and Federal employees from a wide range of Federal agencies with problems.

I will highlight a few of the cases to illustrate why the Justice Department has demonstrated a consistent inability to function properly on behalf of the American people and is unable to police itself currently and in the foreseeable future.

Starting with the bombing case itself, my investigation found evidence that the Department of Justice, along with another Federal agency, tampered with a grand jury witness and attempted to influence and limit the testimony of this witness in an improper and illegal manner.

The investigation revealed that GSA was in violation of Public Law 100–440 on the day of the bombing and was severely understaffed on the Federal Protective Service, leaving the Murrah Building wide open to attack. This was a problem that was known to GSA in 1994 and yet was allowed to continue. FPS had only 40 percent of the officers mandated by the law on the day of the bombing. This willful act of omission should be considered negligent homicide, yet the Justice Department sits on the sidelines in callous disregard for 168 victims and their families who paid the ultimate price for this negligence.

With respect to the statements made by the Department of Justice, there are no photos or videos of the explosions of the Murrah Building. We have discovered that some indeed exist and are known to members of the law enforcement community. We have a short video presentation with a Federal police officer describing a surveillance tape he personally witnessed at a gathering of law enforcement officers and comparing it to similar photos we have obtained in the Oklahoma City investigation, which will be presented after this opening

statement, with your consent Mr. Chairman. It is about 2 minutes long.

Mr. **GEKAS.** What is the request for?

Mr. **CULBERTSON.** When I conclude my testimony.

Mr. **GEKAS.** We will see what time is remaining. We may want to view it separately. You may proceed.

Mr. **CULBERTSON.** Moving on to another cause in Oklahoma City, the Department of Justice, Office of Inspector General, investigated the death of Kenneth Michael Trentadue in the Federal prison transfer facility in August of 1995. The report cites numerous instances of perjury on the part of the BOP personnel and one special agent of the FBI, contains accounts of negligence, destruction of evidence, and the obstruction of justice on the part of Federal officials.

Yet for all the perjury and criminal acts on the part of the Federal officials detailed in the report, the IG still manages to find that Mr. Trentadue committed suicide, a conclusion not supported by the facts or by credible homicide detectives who have investigated this case. The Trentadue case is a perfect example of the Justice Department's institutional machine protecting itself at all costs. At stake for the government is the liability in the unnecessary death of inmate Trentadue.

Additionally, the report details numerous problems with the Oklahoma City FBI field office evidence handling operation, which also involves OKBOMB evidence as well as Trentadue evidence. FBI agents tell me these problems are not exclusive to Oklahoma City but exist all across the country.

In other parts of the country problems are just as bad. EEOC complaints abound within the GSA, FBI, U.S. Marshal's Service and other agencies. All of these complaints are ultimately handled by the Department of Justice, which seeks to limit or in many cases eliminate the case by any means possible. To the Department of Justice the only possible victim is the government. I have worked on numerous cases where the Department of Justice has refused defendants access to evidence in violation of Brady. They have invoked national security or cited other ongoing investigations as reasons for denying defendants access to evidence and information they are entitled to under the Constitution.

Facts are made to fit the case rather than the case developed to discover the facts. The Department of Justice continues to amass considerable power without proper checks and

balances. This is illustrated in a memorandum signed by President Clinton in April of this year designating the Attorney General the lead Federal official responsible for military operations in a domestic emergency effective October 1, 2000.

This is an enormous amount of power concentrated in an agency that has consistently failed to police itself and run roughshod over its employees, who attempt to follow the law.

The Department of Justice has continued to whitewash, stonewall or selectively investigate serious allegations of wrongdoing.

Mr. **GEKAS.** In the interest of having the witness be able to present his full testimony we will stop here and allow you to do the video now. Two minutes, did you say?

Mr. **CULBERTSON.** Approximately 2 minutes.

Mr. **GEKAS.** We will extend the time of the witness by two minutes.

Mr. **NADLER.** Mr. Chairman, reserving the right to object, what is this video?

Mr. **CULBERTSON.** This is a video taken April 13 of this year. It is a Federal police officer describing a surveillance tape from Oklahoma City he personally witnessed and comparing it to other photos we have uncovered.

Mr. **NADLER.** Have you seen it?

Mr. **CULBERTSON.** I actually conducted the interview in Mr. Traficant's office.

Mr. **NADLER.** Have you seen the tape, I asked.

Mr. **CULBERTSON.** The surveillance tape?

Mr. **NADLER.** No. You have not seen the surveillance tape. Do you have it with you today?

Mr. **CULBERTSON.** The videotape?

Mr. **NADLER.** No, the surveillance tape.

Mr. **CULBERTSON.** No.

Mr. **NADLER.** So this is a tape of an officer talking about a different tape that we cannot see?

Mr. **CULBERTSON.** We are attempting to get this tape. This is a tape of a police officer describing what he saw and comparing it to photographs and videotape frames that we have in our possession. There are more than one series of surveillance.

Mr. **NADLER.** And the object of this——

Mr. **CULBERTSON.** The Department of Justice has——

Mr. **NADLER.** Excuse me. The object of this tape is to say that Mr. McVeigh was not guilty?

Mr. **CULBERTSON.** No. I think Mr. McVeigh was guilty as sin.

Mr. **NADLER.** What is the object of the tape?

Mr. **CULBERTSON.** The American people have been told this doesn't exist.

Mr. **GEKAS.** What doesn't exist?

Mr. **CULBERTSON.** Any surveillance of the actual event itself. More clearly, the law enforcement community has access to it.

Mr. **GEKAS.** I think what we will determine to do in the interest of proper conduct of this hearing is that we will direct the staff, our staff, with the cooperation of the minority, to, after this hearing is over, view the tape with Mr. Culbertson present and to have the respective staffs report back to us as to the relevance and to the import of the tape, and together we will make a judgment as to whether we will further inquire. Is that satisfactory?

Mr. **NADLER.** Yes, sir.

Mr. **GEKAS.** With that, then we ask you to draw to a conclusion your testimony, if you will.

Mr. **CULBERTSON.** Very good.

This pattern of selective investigation coverup is precisely the reason why a new oversight agency must be considered. Problems like those exhibited at DOJ will not go away with a new Attorney General, administration or promises to do better in the future. They are institutional in nature, as those who embarked on the pattern of abuses must continue to obfuscate and cover up, protecting themselves at the expense of the innocent.

Although the Founding Fathers had higher hopes, DOJ has become an institution sinking under the weight of its own abuses. The Fair Justice Agency will provide oversight with teeth to keep this agency honest and restore it to serving the American people.

[The prepared statement of Mr. Culbertson follows:]

PREPARED STATEMENT OF JOHN CULBERTSON, DIRECTOR, CENTER FOR REFORM, WASHINGTON, DC

Mr. Chairman, Mr. Nadler and Members of the Subcommittee:

I am here in support of this legislation because conditions within the Federal Law Enforcement Community and the Department of Justice have deteriorated to a point where strong medicine is required if we are to continue in the traditions and greatness, which has defined America.

Four and one half years ago I began a pilgrimage which has brought me here today. In the wake of the Oklahoma City Bombing I began an inquiry as a private citizen with respect to a number of questions. Nearly four years ago I began a cooperative effort to answer these questions with Rep. James Traficant, then the Ranking Member of the Transportation and Infrastructure Committee, Public Buildings Subcommittee.

In that time we have discovered much to be concerned about and have expanded far beyond the original scope of the bombing investigation. Over a year ago I authored a report entitled ''Deadly Failures'' which identified security and law enforcement failures, which directly contributed to the Oklahoma City Bombing. Rep. Traficant sponsored H.R. 809, The Federal Protective Service Reform Act of 1999 that has passed the House and is now under consideration in the Senate.

With the release of the report I found myself approached by Federal Agents and Officers who had read the report and then sought me out. These people contacted me to voice their support and in some cases ask for help in getting in touch with Members of Congress with

respect to problems and corruption within their agency. This trend soon expanded to include Federal Agents and Federal Employees from a wide range of Federal Agencies with problems.

I will highlight just a few of the cases to illustrate why the Department of Justice has demonstrated a consistent inability to function properly on behalf of the American People and is unable to police itself currently and for the foreseeable future.

Starting with the Bombing case itself my investigation found evidence that the Department of Justice along with another Federal Agency tampered with a Grand Jury Witness and attempted to influence and limit the testimony of this witness in an improper and illegal manner. It should be noted that the witness was herself a victim of the attack on the Murrah Federal Building and was injured in the explosions.

The witness, a Postal Service Employee who had witnessed Timothy McVeigh and John Doe Two together in Oklahoma City prior to the attack, was contacted in an improper manner by Counsel for the Postal Service, the Assistant United States Attorney in Oklahoma City and another party known only as Mr. Brown in a conference call prior to appearing before the Oklahoma County Grand Jury.

The purpose of this call was to attempt to control and limit the testimony of a witness before a Grand Jury Proceeding. The Postal Service was kind enough to follow up with a letter to the Local District Attorney outlining what the ''authorized'' scope of the questioning and testimony could be.

The witness knew only of the presence of Timothy McVeigh and John Doe Two in her Post Office in the days preceding the bombing. In fact this witness worked with an FBI sketch artist to produce a highly detailed profile sketch of John Doe Two, the witness has subsequently identified a photo believed to be the person known in this instance as John Doe Two. In the course of the conversation the Assistant United States Attorney along with the other participants told this witness that she could not testify as to the presence of any bomb squad personnel in the early morning hours of April 19, 1995.

The witness had never mentioned, alluded to or as we discovered in the subsequent investigation even witnessed any bomb squad personnel on that morning, yet the Assistant United States Attorneys office took the time and trouble to specifically tell her that she was not authorized to speck of the presence of the bomb squad. It is of particular note that the Department of Justice now says that John Doe Two never existed but was a case of mistaken memory by a witness in Kansas.

In addition to the bomb squad subject matter the Assistant United States Attorney, the Counsel for the United States Postal Service and Mr. Brown also told the witness she could not testify regarding any surveillance cameras at or around the Post Office. The witness had once again never mentioned, alluded to or had any knowledge regarding any surveillance cameras in the area. A subsequent investigation into the issue of surveillance cameras turned up what indeed appeared to be footage of the explosion taken from an angle consistent with camera placement in the area of the Post Office where the witness worked. The witness statement and copy of the Postal Service Letter are contained in this document.

With respect to statements made by the Department of Justice that there are no photos and video of the explosions at the Murrah Building, we have as outlined above discovered that some indeed do exist and are known to members of the law enforcement community. On April 13, 2000 a video recording was made of an interview with a Federal Police Officer conducted in Rep. James A. Traficant's office describing a surveillance tape he personally witnessed at a gathering of law enforcement officers. In the interview the Federal Police Officer was asked to compare photos and video frames recovered as described above and to the video recording identified as the Murrah Building Explosions that he saw in a training seminar.

The Federal Police Officer described two distinct explosions the locations which are consistent with evidence uncovered in the course of investigating the attack on the Murrah Federal Building. The Federal Police Officer also stated that the photos and video frames recovered as described above are consistent with the surveillance video that he witnessed in the training seminar. The Officer's statement as well as photo's obtained in the investigation is contained in this document.

The Department of Justice has deprived the public of this important information as well as the Courts in various jurisdictions charged with trying cases related to the bombing. This act is nothing short of callous and malicious obstruction of justice in what many might consider one of the most important cases of the twentieth century.

The defendants in the OKBOMB case were also denied proper and complete discovery as the legal cases proceeded. In one case which is documented by records kept in meetings at the crime scene and obtained in the course of the investigation, various persons representing a variety of Federal agencies conspired to deny complete access to the crime scene by the defense teams. While I am fully confident that the convictions of Timothy McVeigh and Terry Nichols are correct and just, at the time the meetings were held they were merely charged as defendants. Our legal system has long functioned with the credo

that the defendant is innocent until proven guilty. Sadly in this case, although there was a multitude of inescapable evidence pointing to the guilt of McVeigh and Nichols, the Department of Justice decided they had to cheat. As a citizen I find this very disturbing when my team, the ''Peoples Legal Team'' has to cheat in a capital case, I have some concerns as to what they feel they must hide by this improper and illegal behavior.

The investigation revealed that GSA was in violation of Public Law 100–440 on the day of the bombing and had severely understaffed the Federal Protective Service leaving the Murrah Building wide open to attack. This was a problem that was known to GSA in 1994 and yet was allowed to continue. FPS had only 40% of the officers mandated by the law on the day of the bombing. This willful act of omission should be considered negligent homicide, yet the Justice Department sits on the sidelines in callous disregard for 168 victims and their families who paid the ultimate price for this negligence.

Negligence on the part of GSA and specifically the Federal Protective Service also extends to a lack of intelligence operations with respect to the execution of Richard Wayne Snell. In a letter to Rep. James A. Traficant dated April 13, 1999 Public Building Service Commissioner Robert Peck admits to the fact that FPS was cognizant of this execution. Snell, a member of the Covenant of the Arm and Sword of the Lord (CSA) a white separatist and terrorist group in Arkansas had attempted to bomb the Murrah Federal Building in the 1980's. April 19, 1995 was the ten-year anniversary of the BATF raid on the CSA compound in Arkansas, yet these facts were notr discovered in time to prevent the tragedy because no rudimentary investigation was conducted by FPS. This in spite of the fact that Snell was predicting a bombing on the day of his execution. This is a very clear indication that there may have been sufficient information available to provide sufficient security to the Murrah Building to interdict the attack in its entirety.

Certainly the fact that FPS was ''apprised'' of the execution of Richard Wayne Snell indicates that some federal law enforcement agencies had some degree of concern regarding possible events on April 19, 1995. There is also a growing body of credible evidence including witness statements, photographs and video that indicate that there may have been actions taken based on the knowledge on the part of some agencies of the Federal Government that an event was to take place on the morning of April 19, 1995 in the area of the Murrah Federal Building.

There does exist I believe sufficient evidence to indicate that there were other persons involved with Timothy McVeigh in planning and executing the attack on the Murrah Federal

Building. From possible financiers to additional parties who participated on the ground the evidence indicates that the attack on the Murrah Federal Building was far more sophisticated than two people driving a truck up and parking it. This attack cost the lives of 168 innocent people and forever changed thousands more, it is unacceptable that any person who participated with Timothy McVeigh in this act of violence escape prosecution, yet in all likelihood there are guilty parties walking among the public who may possibly try such a heinous act in the future.

There is clear evidence that there were explosive charges placed within the building as indicated by the statement regarding two distinct explosions by the Federal Police Officer . Certain reports generated by GSA contractors, photos of the crime scene and the failure pattern of the building itself indicate that it is highly probable that charges placed within the structure designed to destroy the floor beams of the second and third floors in the Northeast corner area of the building contributed greatly to the progressive collapse of the building. This lack of security and ability of persons with criminal intent to access the Murrah Building at will is an embarrassment to GSA and presents certain liability issues that the Department of Justice may wish to circumvent by ignoring certain facts that would lead the public and the victims to ask potentially damaging questions. Regardless of the damage to bureaucracies the American People deserve to know all of the facts.

In addition to the questions regarding the attack on the Murrah Building raised thus far, the condition of the building with respect to proper design and construction is another area that could prove to be another liability for the Federal Government and thus another area that the Department of Justice may be withholding the facts.

In the course of examining all of the factors surrounding the attack on the Murrah Federal Building the investigation discovered what appears to be a serious flaw in the design of the second floor center columns. In addition numerous records indicate severe problems with respect to structural issues as the building was constructed, particularly with the use and placement of reinforcing steel in the concrete. Because of the close working relationship that the Department of Justice had with GSA in the wake of the attack, it is reasonable to expect the protective reactions of the Department of Justice shielding these facts from the American People at the expense of the victims out of a misguided fear of liability.

Moving on to another case in Oklahoma City, the Department of Justice, Office of Inspector General investigated the death of Kenneth Michael Trentadue in the Federal Prison Transfer Facility in August of 1995. The report cites numerous instances of perjury on the part of BOP personnel and one Special Agent of the FBI, contains accounts of negligence, destruction of evidence and obstruction of justice on the part of Federal

Officials. Yet for all of the perjury and criminal acts on the part of federal officials detailed in the report the IG still manages to find that Mr. Trentadue committed suicide. A conclusion not supported by the facts or by credible homicide detectives who have investigated this case.

The Trentadue case is a perfect example of the Justice Department institutional machine protecting itself at all costs. At stake for the government is the liability in the unnecessary death of inmate Trentadue. Additionally the report details numerous problems with the Oklahoma City FBI field office evidence handling operation which also involves OKBOMB evidence as well as Trentadue evidence. FBI agents tell me these problems are not exclusive to Oklahoma City but exist across the country.

The Department of Justice has as a result of the Trentadue case a closely held, highly guarded secret that it is keeping from the American People. As a result of the investigation into the death of Kenneth Michael Trentadue, FBI Evidence Program Manager Sussanna Mullally conducted a review of the FBI Oklahoma City Field Office evidence program in April of 1999. According the Department of Justice documents the review found serious deficiencies in the way the FBI Oklahoma City Field Office handled evidence. The report cited items including incorrect or missing chain of custody forms, evidence that had not been processed for years, and various other areas of non-compliance with FBI procedures.

The Department of Justice continues to keep this report deeply hidden from Congress and the American People. The Mullally Report as it has come to be known should be released to Members of Congress and the American People at once in the interest of full and complete disclosure of the problems within the Department of Justice.

In other parts of the country problems are just as bad. EEOC complaints abound within GSA, FBI, the US Marshal's Service and other agencies, all of these complaints are ultimately handled by the Department of Justice which seeks to limit or in many cases eliminate the case by any means possible. To the Department of Justice the only possible victim is the government.

The Wen Ho Lee case involving nuclear secrets at the Los Alamos National Lab has been badly managed, blown out of proportion and is being used to mask larger and far more significant problems. I have uncovered problems of far more significance involving far more significant matters than missing data tapes at Los Alamos. The Department of Justice acting as the clean up and damage control service for other Federal agencies has done the American People a great disservice and possible put the public at risk by not chasing substantive problems but rather chasing headlines in the Wen Ho Lee case in an effort to

appear vigilant.

I have worked on numerous cases where the Department of Justice has refused defendants access to evidence in violation of Brady. They have invoked national security or cited other ongoing investigations as reasons for denying defendants access to evidence and information they are entitled to under the Constitution.

Facts are made to fit the case, rather than the case developed to discover the facts. The Department of Justice continues to amass considerable power without proper checks and balances.

This is illustrated in a memorandum signed by President Clinton in April of this year designating the Attorney General the Lead Federal Official responsible for Military Operations in a domestic emergency effective October 1, 2000. This is an enormous amount of power concentrated in an agency that has consistently failed to police itself and has run roughshod over it's employees who attempt to follow the law.

The Posse Comitatus act exists to make sure that the military and the Department of Justice do not combine into an entity with too much power and too little accountability. The Department of Justice has violated this act many times, and usually with fatal results. The Military is about war, it is about destroying the enemy to protect the American People. The Department of Justice can have no enemies for it must hold the lives of all of the American People in it's hands bound by the protections that we call inalienable rights. There is no room for shortcuts, no room for error and certainly no room for anything but the truth. Regardless of who the Attorney General is, control of the military is an unacceptable risk to the American People.

The Department of Justice has continued to whitewash, stonewall or selectively investigate serious allegations of wrongdoing. This pattern of selective investigation and cover-up is precisely the reason why a new oversight agency must now be considered. Problems like those exhibited at DOJ will not go away with a new Attorney General, Administration or promises to do better in the future. They are institutional as those who embarked on the pattern of abuses must continue to obfuscate and cover-up protecting themselves at the expense of the innocent.

The need for this legislation is perhaps best illustrated by the esteem that my eight-year-old son has in the FBI. Recently I picked up his wallet, every young boy has an old wallet to

carry just like the big people do. The wallet flipped open and I noticed behind the clear plastic panel of the ID holder he had made his own ID card. Upon closer inspection I saw a hand drawn star and the letters FBI. Next to the letters that once stood for Fidelity—Bravery and Integrity he had placed his name on his home made G-man credentials. Sadly the hope, respect and desire of an eight year old boy to be an FBI agent is not matched by the desire and actions of the Department of Justice to be worthy of his admiration. Even more sad is the fact that this once great institution in failing to measure up to his expectations, fails to protect justice itself with the honor and diligence that the Constitution demands for the American People.

Although the founding fathers had higher hopes, DOJ has become an institution sinking under the weight of its own abuses. The Fair Justice Agency will provide oversight with teeth to keep this agency honest and restore it to serving the American people.

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CONVERSATION OF DEBRA NAKANASHI AND JON CULBERTSON

JC: John Culbertson
DN: Debra Nakanashi

JC: Conversation between John Culbertson and Debbie Nakanashi, September 7, 1997 at Approximately 3: 10 PM CST. The first thing I need to ask you is: Do you consent to taping this conversation?

DN: You have my permission.

JC: Okay, please state your name.

DN: My name is Debra I. Nakanashi.

JC: Would you spell that please?

DN: N, as in Nancy, A—K—A—N—A—S—H—I.

JC: Okay, Thank you. Would you please state your current occupation?

DN: I am a window clerk at the Cnter City Post Office in Oklahoma City, Oklahoma.

JC: And you are a witness in the Oklahoma City Bombing Investigation is that correct?

DN: Yes Sir.

JC: Would you please state your occupation in the time period of the bombing on April 19, 1995?

DN: Again, I was a window clerk at the Center City Post Off ice in Oklahoma City Oklahoma and it was catty-corner to the Federal Building.

JC: And that Post Office Building no longer exists, is that correct?

DN: That is correct.

JC: Okay, now the purpose of our conversation is to discuss a conversation and a letter that you received from the Unite States Postal Service is that correct?

DN: Yes Sir.

JC: And that conversation was with whom?

DN: It was with John G. Hollingsworth and another gentleman whose last name was Brown, sorry I don't have the paperwork in front of me as to what the other gentleman's name was. And the district attorney, I'm sorry the United States Attorney: Steve Mullins.

JC: He's the US Attorney in Oklahoma City?

DN: Yes Sir.

JC: Okay, and Mr. Hollingsworth?

DN: Hollingsworth, Yes.

JC: Subsequently sent you a letter is that correct?

DN: Yes he did.

JC: And you'll be faxing a copy of that letter to me, is that correct?

DN: Yes

JC.Okay, would you basically state what transpired in that conversation please?

DN: In the conversation that I had between the Postal attorneys and the US attorney they laid out stipulations to me about how I could testify, what I could testify about and what I could not testify about.

JC: And what were those stipulations?

DN: I am allowed to testify about the meeting that I had between Timothy McVeigh and John Doe #2 on the 17th or 18th of 1995 (APRIL) about asking for directions, I am allowed to discuss the nature of the conversation and what occurred during that time.

JC: And what are you not allowed to talk about?

DN: Anything beyond that.

JC: Did they give you a ''for instance'' or a suggested topic in that conversation as an example of what they did not want you to talk about?

DN: All-right, I did request an example because I wasn't quite clear as to what they wanted Me not to discuss, and one thing that they said was that if there were any questions about how the Post Office worked, where my surveillance cameras were in the Post Office, those types of things that I could not answer those types of questions. They also said that if I had seen like for instance, if there had been, If I had noticed ''bomb dogs'' on the outside of the building as I was coming to work on the day of the bombing. that was something that I could not testify as to that I had seen that. Because it was not in the scope of the letter that , uh, the permission that they gave me to testify under.

JC: And on what did they base that permission, did they have a law that they cited?

DN: Because I am a Federal Employee, Because I am a Federal Employee they had to authorize me to testify, and they had to authorize me into what I could testify about. They said that was for my own protection.

JC: Are you aware of any other Federal Employees that require this authorization?

DN: No I am not.

JC: Okay, lets talk a little bit then about your knowledge with respect to Timothy McVeigh. You are a witness because you met Mr. McVeigh in Oklahoma City?

DN: I am a witness because I did not actually ever speak with McVeigh, but he was in my Post Office with a John Doe #2 who I did have a conversation with.

JC: Okay, and that was on what day approximately?

DN: It was either the Friday or the Monday or Tuesday prior to the bombing,

JC: Okay and there is an additional Postal employee that saw the two?

DN: Yes, however if you were to speak with him now he has lost his memory, it's not so much that he has lost his memory such as that he does not want to become involved, so he has been real closed mouthed and now if you talk to him he would say (well there was two men matching that general description) and he doesn't go any further than that. It's something that he and I don't discuss, because I have to respect his rights.

JC: Okay, do you know if he has been talked to by any law enforcement agencies?

DN: Yes, he was talked to by law enforcement agencies at one time and the lady that they sent in to help me with or to do the sketch of John Doe #2, she spoke with him for a short period of time the same day that she spoke with me.

JC: So, he would have talked to, she was brought in by the FBI.

DN. Right, she is not an FBI agent but she works with the FBI.

JC: As a consultant?

DN: As a consultant in certain high profile cases.

JC: So, he has talked to the FBI, do you know if he has talked to any State law enforcement?

DN: I do not know.

JC: Lets move on, you have talked to the FBI and the OSBI, is that correct?

DN: Yes Sir.

JC: And you are the person who gave the description that resulted in the sketch for John Doe#2, is that correct?

DN: Right , for the latest sketch they had of him of the side profile.

JC: Okay, tell me how that came about.

DN: I do not know what day it was, but it was fairly soon after the bombing, it was within a weeks' span after the bombing, following the bombing, the FBI came to the Post Office and got permission from the Postal Inspectors to take Me off the floor, at which time they introduced me to a tall blond lady named Jeannie (''Something''), and they, she, I'm sorry, they had me, I drove my car back home and Jeannie came with me in My car, they followed, the FBI agents followed us to my house where they saw that we were settled in and Jeannie dismissed them, she wanted them gone. And they went and took her luggage and got her a room or whatever, and we preceded for about ten hours to discuss the appearance of this John Doe #2 that 1, that I saw. And around 5: 30—6: 00 they came back and picked her up.

JC: Okay, and so she prepared the sketch from your description?

DN: Yes Sir.

JC: How would you describe John Doe #2?

DN: Okay, he was about 57 or 5'8, he was not, he wasn't fat and he wasn't over. muscle-bound, he didn't look like a muscle-man but on the other hand he did look like he did work out some. His muscles were defined, not extremely or overwhelmingly defined but you could tell he did some working out, he walked very upright very straight like he had a military manner, his speech was very short and clipped, he was not extremely dark complected but he did look like he could have been of European or Mexican descent. He had dark brownish hair that was blow dried to where it was straight but I think it probably could have could have been curly if had been allowed to curl naturally, that's the hairdresser

in me, could you tell? He had brown eyes and he had very high cheekbones like an Aztec Indian is what, 1, (unintelligible) that I could give to that.

JC: And, you characterized the speech, I think earlier you told me it was more eastern?

DN: Right, very short and clipped. My fathers'family is from up east, so that speech pattern was a little bit more familiar to me. But, he certainly was not from here, he wasn't from around here where we tend to speak with a drawl to our words.

JC: Okay

DN: He definitely was not from around here, or had not been raised around here.

JC: Okay, now the FBI, how many times did the FBI visit you?

DN: Probably a total of from six to eight times.

JC: Okay, did, and this was all surrounding John Doe #2?

DN: Right

JC: Okay

DN: And McVeigh too, but mostly that, yeah they were centered on John Doe #2.

JC: Because at your first contact with them McVeigh had already been arrested, is that correct?

DN: That's correct.

JC: Okay, now did they want to know, were they looking for anything else or trying to lead the conversation anywhere in any of these visits?

DN: No

JC: Okay, did they ever make a suggestion on what you really saw? or did they simply take down information?

DN: They took down information, they behaved very properly with me, there was never any attempt to, they were very, they seemed to be very excited with what I had to tell them.

JC: Okay

DN: I don't think that at that point in my opinion there was not any cover-up going on, these guys that were investigating this were doing because they wanted to catch John Doe #2, and they thought I had information that would help them to catch him.

JC: Okay, good, okay, now later you later you were visited by the OSBI?

DN: Yes, several months afterward.

JC: And how would you characterize that visit?

DN: That visit was a little bit different than all the ones that I'd had prior, they really didn't seem to be very interested in what I had to say and at one point I even apologized for sounding so mechanical with it, with my story if you will, with what I had to say, but I had just said it so many times that it had become kinda automatic, I mentioned at one point that I thought John Doe #2 had a tattoo because there was at one point in the FBI investigation I was asked if the guy had any tattoos, and I had said at that point no, but on further reflection I believe that the guy did have a tattoo, it was just something that I did not look at very hard because I didn't want to appear rude.

JC: Okay, and you would characterize that tattoo as what?

DN: A snake or a dragon.

JC: Okay

DN: It was colored it was definitely green and there seemed to be some red. But I can't because I didn't get a good look of it, it was, the guy had on short sleeve T-shirt and it was partially concealed by that T-shirt so I didn't get a really good look and again, not wanting to appear rude I didn't stare at it long enough to be able to tell you exactly what it was.

JC: Okay

DN: But definitely there was a tail thing going on there, which would make me think of a

snake or dragon.

JC: Okay, that pretty much covers this, now is there anything else that you want to add to this?

DN: No, not that I can think of at this time.

JC: Okay, at this point we will conclude the interview on tape, and just one other question: We'll type this up into a statement, would you be willing to sign an affidavit as to the reliability of the statement after you've reviewed it?

DN: Definitely

JC: Okay, Thank you.

<Break>

JC: This is a supplemental entry to the statement to be added before the concluding remarks with respect to further testimony from Debbie Nakanashi.

JQ: Okay, you just told me that you were slated to testify before the Grand Jury and that you were physically there to testify, what date was that Debbie?

DN: It was the 11 th of August at nine o'clock.

JC: And for what reason, you did not testify that day for what reason?

DN: I was, the three, I'm sorry, the two other witnesses and myself were told that there had been a motorcycle wreck by one of the jurors, and that he was under morphine and would not be able to listen to testimony that day.

JC: Okay, and about what time of the day was it when they told you?

DN: I believe it was, we were there at nine and I believe it was about ten o'clock.

JC: Okay, tell me what happened after that?

DN: The lady, and I don't even know if I have her name right, but I think it was Sharon Gumm or Sharon Gump, I'm sure it was Gumm, who idcntified hcrscif as an assistant DA wanted to speak with each of us, the witnesses that were there that day and just kinda tell them what to expect and what was going to go on during the Grand Jury Investigation. I was the last one of the witnesses that she spoke to, the gentleman that served my supeona was also there at that time with her, we went into a little office and they taped the conversation while asking permission to do so, and they told me about what would go on during the Grand Jury investigation and they then asked me what my testimony was going to be and what I was going to testify about and I told them.

JC: Okay, were there any Federal Agents in the room or is this all local folks?

DN: There were only the two people there and I do not know in what capacity the gentleman that was sitting behind the desk actually was in, all-right I'm sorry I don't know that. I do know that he was the man that supeoned me.

JC: Served you with the Supeona?

DN: Right

JC: Okay, so any way you basically gave the same testimony you would give before the Grand Jury?

DN: Yes

JC: And, anything in addition to what you have already told us in the statement today that you talked about? Or did you talk about the bomb dogs? Or what other people saw? Or anything of that nature in those conversations?

DN: I'm sorry I honestly can't recall the entire extent of the conversation, I was nervous.

JC: Okay

DN: And, I do know that what ever I told was the truth, you know that that was the one big t hing, that's all I can really tell you for sure is that I didn't tell anything that wasn't the truth.

JC: Okay, now one of the other things that you have told me, and I want to make sure that were very clear on, is during that Grand Jury appearance, the Post Office did not see fit to talk to you, or grant you a clearance to talk to them, or do any of the things that they have

done in the last two or three days, is that correct?

DN: Right, that's absolutely correct. There was none of this you need an authorization letter and telling me what I could and could not and being concerned about my welfare supposedly, and what I was going to testify and leaving myself open for any kind of legal action, no they were not. They had been told in advance that I was going to appear, I gave the copy of the supeona letter to my supervisor when I received it, to lot them know and it was about the 18th, 19th of July when I got the letter so they had ample time if they felt like they needed to give me an authorization letter but nothing was forthcoming, there was no involvement with the postal service at all.

JC: Okay, that being the case, this thing then came out of left field. Are there any other Postal Employees that have been supeoned?

DN: No, not that I'm aware of.

JC: Okay, Did you have any indication from your supervisor that a call would be forthcoming or any other discussions between August 11th and the day you had the conversation with the Postal Service?

DN: Yes, they did, I don't think it was my supervisor but I was contacted by I believe it was Mr. Hollingsworth several days prior saying he wanted to get together with me on a teleconference on Friday at that date, it was two or three days prior to that.

JC: Okay

DN: All of it was just real nice and easy and we're just going to make sure that your taken care of, and that you don't do anything that would jeopardize your. do anything that was incorrect that would cause Me any legal ramifications. That was the impression I was given throughout this entire thing, Howcvcr, now I feel censored, I want to be sure that I get that in there.

JC: Right

DN: I feel like I'm being censored as to what I can say and to what I can't say.

JC: Yeah, it does seem rather strange that they have taken this tact when they had prior

knowledge of your other appearance. Is there anything else that you want to add at this point then?

DN: I don't, I can't think of anything.

JC: Okay, then at this point we'll conclude the interview on tape once again, and we'll get a statement typed up and so forth.

INTERVIEW CONCLUDED

67342U.eps

67342V.eps

TRANSCRIPT OF VIDEO INTERVIEW OF: FEDERAL POLICE OFFICER CHARLES BURNETT

INTERVIEWED BY MR. JOHN CULBERTSON

APRIL 13, 2000—WASHINGTON, DC

OFFICER BURNETT: My name is Charles Burnett and I'm with San Diego, and I'm an FPO, FPS. I'm also the regional Vice President with NFFE, that's the National Federation of Federal Employees. I've been with FPS for ten years and I've seen everything you can think of I suppose that has happened in FPS that's always been wrong.

MR. CULBERTS: Now you were a police officer in Detroit.

OFFICER BURNETT: Yes I was.

MR. CULBERTS: Prior, how long were you in Detroit?

OFFICER BURNETT: Twenty One Years

MR. CULBERTS: Uh, how would you compare the law enforcement management capability of ''

OFFICER TRAFIC: Guys.

MR. CULBERTS: Cut

OFFICER TRAFIC: I gotta go over and vote. How'd it turn out?

MR. CULBERTS: Okay, as a police officer in Detroit prior to coming to FPS how would you rate the managaement capability in law enforcement terms of a major police force like Detroit and FPS, how does FPS stack up?

OFFICER BURNETT: As bad as Detroit is, FPS is one thousand percent worse. We have no police management above the midlevel areas. It's been run by real estate agents for the ten years that I've been with FPS. It has been depleted of funds, depleted of manpower solely by PBS (Public Building Service). PBS takes the money uses it for every purpose except for manpower and the Oklahoma City Bombing can be laid directly at the feet of Public Building Service.

MR. CULBERTS: Now getting to the bombing, we know the building was uncovered. Now, uh, as I understand you've seen some surveillance from Oklahoma City in an anti-terrorism training session?

OFFICER BURNETT: Yes, that's, it was conducted at San Bernadeno County Sheriff's.

MR. CULBERTS: Uh, who conducted the uh, the training session?

OFFICER BURNETT: I can't remember the name of the group. It is ah, I just went blank, I don't, I just don't remember.

MR. CULBERTSON: But they at that meeting, they showed a uh, video, a surveillance video of Oklahoma City of the truck and the building and so forth. Can you tell us what happened in that, the sequence of events that were shown and the angle that it was shown from?

OFFICER BURNETT: It was reportedly a camera that was mounted on a utilities building. I don't know if it was gas or telephone company or whatever, it was a utilities building. And it was a black and white photo and this photo showed two distinct explosions or two flashes, there was no sound so it would be two flashes.

MR. CULBERTSON: What was the interval between flashes?

OFFICER BURNETT: There was seconds, oh, probably 30 seconds maybe, I don't recall the

exact.

MR. CULBERTSON: But at the beginning relating the events in the tape, this actually showed the truck first pulling up to the building?

OFFICER BURNETT: It showed a truck pulling up, it was indestinct because of the, the uh film itself was grainy and black and white, but you could definitely see a bob tailed type truck or a van type truck stop and then.

MR. CULBERTSON: How many individuals? Could you make out, individuals getting out of the truck?

OFFICER BURNETT: No, I could not.

MR. CULBERTSON: And it sat there for about how long?

OFFICER BURNETT: Best I can remember it was there for a matter of a few minutes.

MR. CULBERTSON: Okay

OFFICER BURNETT: I don't, the people that put on the production or the training uh, had the minutes and seemed like it was between three and five, I don't know.

MR. CULBERTSON: And then could you distinguish anybody leaving the area? Uh, could you distinguish any movement on the ground?

OFFICER BURNETT: There was several cars coming and going, it was, the quality of the film was so bad it was difficult to.

MR. CULBERTSON: Now you were looking at it, you were looking at the North face where the truck was and then you saw a flash and was the flash inside the building or outside?

OFFICER BURNETT: The flash, the first one was, uh, inside the building, appeared to be.

MR. CULBERTSON: About the, it was on the left hand side or the right hand side of the building?

OFFICER BURNETT: It would have been the, gosh I don't remember.

MR. CULBERTSON: As you were looking at it, was it close to the truck or?

OFFICER BURNETT: It was fairly close to the truck, it would have been sort of to the rear of the truck which would have made it to the right.

MR. CULBERTSON: Uh, did the flash appear to imminate from the second or third floor or the lower floors of the building?

OFFICER BURNETT: The best I can remember it was on the lower floors.

MR. CULBERTSON: Lower floors?

OFFICER BURNETT: Right.

MR. CULBERTSON: After that could you see anything happening to the building or was there just a flash and then the truck going up?

OFFICER BURNETT: It was a flash and then all you could see was a lot of smoke and a lot of uh, apparently from the explosion that the camera rocked at a different angle because it was shaking all over.

MR. CULBERTSON: Now this was the first flash. Could you still make out the truck in the video?

OFFICER BURNETT: Oh yeah.

MR. CULBERTSON: And then the truck went up in a much larger flash?

OFFICER BURNETT: Right.

MR. CULBERTSON: So to recap you have the flash and then some seconds later the truck, the second explosion?

OFFICER BURNETT: Right and then there was just mostly static or it was just as if the camera was blown off it's the angle or whatever.

MR. CULBERTSON: So that would indicate then that we had some foul play in the building

along with McVeigh, you think?

OFFICER BURNETT: Could be.

MR. CULBERTSON: And the building security was so poor that it was possible to that with nobody challenging?

OFFICER BURNETT: Oh, I'm sure there was one contract gurard for four buildings so you could have practically driven a truck inside without anybody bothering you.

MR. CULBERTSON: To your knowledge do we still have large buildings with uh, high risk tenants uh, that have the same type of security today where they're undercovered and may have security split between buildings?

OFFICER BURNETT: Oh sure, I can, uh the one I work is, they have a lot of security guards, they have a lot of security cameras but basically it's right on the street, it has a , buildings are connected all the way across the street, it has a walkway type, or someone could just drive under it and blow it up or beside it, it would be a very simple.

MR. CULBERTSON: Okay is there anything else you want to add?

OFFICER BURNETT: Well, I want to ask for support for HR 809 number one. I think it's imperative that the Bill is approved. I think FPS will become a security guard operation it it isn't approved.

MR. CULBERTSON: And security guards of course have no law enforcement interest and uh..

OFFICER BURNETT: They have no arrest powers in any state that I know of, they they can't conduct investigations, they don't do motorized patrols, or they're not a deterrent. You can blow up the guards with the building.

MR. CULBERTSON: This is true, which is what happened in Oklahoma City.

OFFICER BURNETT: Absolutely True.

MR. CULBERTSON: Okay.

CAMERA STOPS

CAMERA STARTS

MR. CULBERTSON: Okay, I'm going to uh, I want to show you a photograph, this would be from the opposite of the camera position you spoke about, but could you take a look at that and tell me if that's consistent with what you saw in terms of the truck explosion?

OFFICER BURNETT: Yes, this is much more distinct, the film I saw was of course black and white and you could see the flash and a lot of smoke.

MR. CULBERTSON: Right.

OFFICER BURNETT: In this same general..

MR. CULBERTSON: Could you display that on the, for the camera, let me come up a little bit.

OFFICER BURNETT DISPLAYS PHOTO EXHIBIT ONE.

67342A.eps

Photo Exhibit 1

MR. CULBERTSON: So that is uh, this photo is consistent with uh, the same um, video you saw in terms of size of explosion and location on the building and so forth as the truck going up.

OFFICER BURNETT: Yes it is.

MR. CULBERTSON: Thank you.

OFFICER BURNETT PLACES PHOTO ASIDE

MR. CULBERTSON: This is a series of frames from another video. You can see what appears to be the building in the uh, corner of the first two frames and the explosion. I believe the camera gets rocked.

OFFICER BURNETT: Right

MR. CULBERTSON: Is that also consistent with uh, some of what you saw on the video.

OFFICER BURNETT: Yes it is uh, the video.

MR. CULBERTSON: This from the reverse angle, you know from the other side of the building, but can you display that to the camersa and tell us, uh what the—

OFFCIER BURNETT DISPLAYS PHOTO EXHIBIT TWO

67342B.eps

Photo Exhibit 2

OFFICER BURNETT: Especially the top two (Officer Burnett is pointing to frame 01.jpg and frame 02.jpg) very much consistent.

MR. CULBERTSON: Okay this would be the second explosion that you saw?

OFFICER BURNETT: Right.

MR. CULBERTSON: In that video ''.

CAMERA STOPS

CAMERA STARTS

MR. CULBERTSON: Now what I have handed you is a picture of the building before the bombing, uh, which is from a reverse angle that you saw. Can you indicate on that photo where you saw the first flash.

OFFICER BURNETT IS DISPLAYING PHOTO EXHIBIT THREE

67342X.eps

Photo Exhibit 3

OFFICER BURNETT: This area down here. (Officer Burnett is pointing to an area between the second and third main columns from the far end or North East corner of the building)

MR. CULBERTSON: Okay, and the flash?

OFFICER BURNETT: Would have been approximately in this area. (Officer Burnett is pointing to a location not shown on the screen)

MR. CULBERTSON: Okay, did it come through the glass area at all or uh

OFFICER BURNETT: It was, it would have been the glass area.

MR. CULBERTSON: So right in that, that area.

OFFICER BURNETT: This general area here, like I said the film was of such poor—

VIDEO TAPE ENDS AT THIS POINT

INTERVIEW CONCLUDED BY END OF TAPE

Mr. **GEKAS.** We thank you, gentlemen. The Chair will yield itself 5 minutes for the purpose of some questions to be posed to the witnesses. Mr. Fogg, you stated in your testimony and at the end of the testimony that your case is still under appeal?

Mr. **FOGG.** That is correct.

Mr. **GEKAS.** So there is no final resolution at the moment to which you can testify?

Mr. **FOGG.** No, sir. It is at the appeals level right now.

Mr. **GEKAS.** Do you expect a decision soon?

Mr. **FOGG.** Well——

Mr. **GEKAS.** You don't know. That was a dumb question on my part because we can never tell.

Mr. **FOGG.** It is the District of Columbia Court of Appeals.

Mr. **GEKAS.** That is correct, but the point is we don't have a final resolution to the

complaints you filed.

Mr. **FOGG.** We have a jury verdict that the jury was very clear cut in their finding that 14 out of 15 claims were discriminatory. We have got issues here—for example, like right now the new case opened up with the office, OPR, in reference to the U.S. Attorneys lying to the judge, simply saying we don't have a witness, when they have the witness sitting over there and they board him up in government funding. So what we are saying here, this case, even though it isn't—it is on the Court of Appeals and basically the Court of Appeals is dealing with the issue of $4 million, we are challenging that because the judge actually reduced it, saying that Federal employees are under a $300,000 cap. But we are saying yet that $300,000 should be applicable to each one of the claims that the jury specifically said that occurred with me over—we are talking over a 13-year period. So the retaliation and other things took place after the first claim.

Mr. **GEKAS.** Mr. Occhipinti, is there any case pending now that has arisen out of the turmoil that you suffered?

Mr. **OCCHIPINTI.** No, sir. In January 15, 1993 President George Bush granted me executive clemency. Despite that, I went ahead and applied for a new trial based on newly discovered evidence, which meant I could go back to jail if I was convicted again. That is how strong I felt about the case. And again, my application was denied by the court and OPR said it would do an independent investigation and they came back and said they could not find any credible evidence of any conspiracy or any prosecutorial misconduct. And that is very important because Jim Fox, who was the FBI Director of New York, he publicly stated—this is the man who was on every night news when the bombing of the World Trade Center—he told the media that there was evidence of my innocence. And when we tried to get a new trial based on those statements, he reportedly was told by prosecutors to execute an affidavit saying his statements were taken out of context. They did not like it, and a month before his retirement after 30 years he was suspended.

Mr. **GEKAS.** Is the result of the executive clemency an expungement of your record?

Mr. **OCCHIPINTI.** No, it is not. The conviction still stands.

Mr. **GEKAS.** There is no malicious prosecution/civil case pending of any type?

Mr. **OCCHIPINTI.** No, I was hoping there would be an unbiased investigation based on the evidence, nothing more.

Mr. **GEKAS.** If all of these things had occurred under the current Justice Department structure, do you think there would have been a repeat of what you encountered or would there have been a chance for some different outcome or can't you evaluate that?

Mr. **OCCHIPINTI.** I can't evaluate it. I just know that Justice Department, working over 22 years with the government, their image is very, very important. I don't believe I have ever seen them say I made a mistake, and I think in their heart maybe they went forward for political pressure to bring my prosecution. But after the evidence came forward it had to be clear that it was a setup and that the jurors—that the witnesses perjured themselves because a national TV show interviewed the jury foreman. On national TV he said we knew everybody was lying, we knew everybody had perjured themselves, but we convicted Mr. Occhipinti because we misunderstood the law. We thought immigration officers can't search for drugs, which is not the law.

So when Congressman Traficant brought that to the attention of the Attorney General, the response from DOJ was, it is not relevant what the jury believes or doesn't believe.

So I kind of cut my losses and I moved on, realizing that the government, particularly the prosecutors are going to protect themselves, and I kind of gave up hope until these hearings today.

Mr. **GEKAS.** We thank the witness. The time of the Chair has expired. The gentleman from New York is recognized for 5 minutes.

Mr. **NADLER.** Thank you, Mr. Chairman. I want to read from the sentencing memorandum of the Southern District of New York in Mr. Occhipinti's case, which I will ask to put in the record, and I will ask Mr. Occhipinti a question based upon what I am about to read.

The sentencing memorandum says that

''On June 28, 1991 the Defendant Occhipinti was convicted, after trial by jury, of one count of conspiracy to violate civil rights, ten counts of violation of civil rights, and six counts of making false statements in Immigration and Naturalization Service Reports.

''The evidence at trial showed that in a series of unlawful searches which he organized, Mr. Occhipinti repeatedly and without consent, engaged in warrantless searches, unlawfully seized property, and falsified reports of the searches and seizures to cover up his unlawful

conduct. These searched were conducted with no prior information of illegal activity and none of the searches uncovered any narcotics or cash linked to a drug cartel. Mr. Occhipinti's conduct involved the intimidation of persons in the areas searched and targeted many victims. The victims of Mr. Occhipinti's actions were persons who are particularly vulnerable to civil rights violations—recent immigrants. The evidence further indicates that Mr. Occhipinti repeatedly and deliberately engaged in this conduct, despite his knowledge of the law.

''Mr. Occhipinti's pattern of misconduct is not limited to the present case. During one of the unlawful searches for which he was convicted, Mr. Occhipinti unlawfully seized a handgun from a store and obtained a false confession from the storeowner, Miss Altagracia Crucey. Mr. Occhipinti then prevailed upon the Manhattan District Attorney's Office to charge Altagracia Crucey with illegal possession of the gun, despite the fact that Ms. Crucey's sister Eusabia Crucey, had given Mr. Occhipinti a statement that she owned the gun and that her sister had been unaware of its presence in the store. In a state court hearing, Mr. Occhipinti wilfully failed to disclose Eusabia Crucey's statement that she owned the gun and allowed Altagracia Crucey to be unlawfully convicted. He also perjured himself in the state court hearing by falsely stating that he obtained permission to search the store. After the jury verdict in this case, the Manhattan District Attorney's Office moved to vacate Altagracia's illegal conviction that resulted from Mr. Occhipinti's perjury and unlawful search.

''As the evidence shows, Mr. Occhipinti is not now before the court as the result of one isolated incident. Rather, Mr. Occhipinti is an experienced law enforcement officer who had previously been found to violate the Fourth Amendment in the United States v. Cruz,'' citation, ''and who deliberately, flagrantly, and repeatedly engaged in criminal conduct as shown by the evidence in this case.''

''Since his conviction, Mr. Occhipinti has attempted to persuade the court and public to disregard the jury's finding that he was guilty of serious criminal conduct. This court will not do so. The jury in this case heard more than four weeks of evidence and found, beyond a reasonable doubt, that Mr. Occhipinti engaged in the conduct alleged. Mr. Occhipinti has produced no new evidence since the trial pointing to his innocence, and the jury chose to believe the testimony of numerous witnesses who contradicted Mr. Occhipinti's depiction of the events in this case.''

Now, this was the opinion or the sentencing memorandum in the Southern District of New York by Judge Constance Baker Motley on October 18, 1991. Mr. Occhipinti, is it true that you appealed the decision of the court and that the Second Circuit Court of Appeals

upheld your conviction.

Mr. **OCCHIPINTI.** That is correct. However——

Mr. **NADLER.** The point is the conviction was upheld by the Second Circuit. Is it true that you were released from jail because your sentence was commuted by President Bush? Who requested the President to commute your sentence to time served?

Mr. **OCCHIPINTI.** Staten Island Borough President Guy Molinari, among leaders from the black and Hispanic community and law enforcement agencies.

Mr. **NADLER.** Okay. Mr. Chairman, I would simply submit I don't know why the President decided to commute this sentence and I am not going to criticize that. There may have been good reasons to do so. I don't know. I would submit on the basis of the court record Mr. Occhipinti is a perfect example of the kind of misconduct by people in prosecutorial and law enforcement positions that supposedly we are here to try to figure out how to prevent.

Mr. Occhipinti, according to the finding of the court by various unlawful actions, including perjury, prejudiced the rights of other people, got them illegally convicted, I find him hardly a credible witness as to malpractice against him.

I yield back.

Mr. **GEKAS.** The Chair will indulge in allowing Mr. Occhipinti to answer fully the one contention made by the gentleman from New York.

Mr. **OCCHIPINTI.** First of all, sir, that sentencing memorandum was based upon testimony from Federation witnesses.

Mr. **NADLER.** Federation?

Mr. **OCCHIPINTI.** Federation witnesses. Those bodega owners were members of the Dominican Federation, which were proven by the police officers to be a front for the cartel.

Mr. **NADLER.** The court didn't believe they were fronts for the cartel, did it?

Mr. **OCCHIPINTI.** One of the things of the prosecutorial misconduct, sir, is when I was

indicted, people from the community came forward to help me and we had to prove that their testimony was perjured because they were portrayed as being law abiding. People that were not professional informants went undercover into the bodegas, captured them on tape involved in ongoing criminal activity. And for example, Dr. Angel Nunez, an attorney of the National Hispanic Coalition even interviewed and tape recorded many of those complainants who indicated that in fact their testimony was not credible, that permission had been granted. We attempted at trial to turn in 55 tapes which impeached their credibility that showed their perjury of the tapes. When the government found out about the tapes, they directed that we turn over those impeachment tapes to the government. We were precluded from using the tapes because they told the court, the prosecutors, they were making transcriptions. Well, every Federation witness testified, okay. We could not cross-examine them to impeach their credibility. So, sir, what I am saying that memorandum you read was based upon perjured testimony and the fact that the jury never heard all of the facts in the case.

Mr. **NADLER.** I assume, sir, that all of the contentions you are now making were in your appeal, that you appealed on this basis, among others, to the Second Circuit.

Mr. **OCCHIPINTI.** I would like to remark, sir, if you will allow me with respect to the appeal. Yes, sir, we did file an appeal brief and appendix well in over of a thousand pages. On the day the oral arguments occurred there were a group of Federation people in front of the courthouse protesting. When my attorney and Mr. Molinari was there, took the podium to argue my oral arguments, these Federation members with signs, they came into the courtroom. In fact, they threatened that if the Occhipinti conviction was overturned there would be rioting in Washington Heights.

Mr. **NADLER.** The Second Circuit allowed signs in the courtroom?

Mr. **OCCHIPINTI.** They walked in while oral arguments were being made.

Mr. **NADLER.** Are you saying the Second Circuit allowed them to hold up signs in the courtroom?

Mr. **OCCHIPINTI.** They didn't allow them. They walked in.

Mr. **NADLER.** They walked in. They walked in. What did they do when they got inside? They sat down?

Mr. **OCCHIPINTI.** They sat down.

Mr. **NADLER.** So what is the point?

Mr. **OCCHIPINTI.** The point was they interrupted him when he was making oral argument. It was established fact that they were out there protesting because I was told by U.S. Marshals——

Mr. **NADLER.** It was an established fact that people were protesting outside the courtroom? So what?

Mr. **OCCHIPINTI.** However, it was said that if the conviction was overturned there would be rioting in Washington Heights. What is very unusual from legal experts, sir, is that less than one hour after oral arguments, the Court of Appeals said the conviction was upheld.

Mr. **NADLER.** So your testimony then is that this trial was controversial, that there were elements in the community that were very much supporting you, that there were elements in the community that were very much supporting the allegations against you, that one or both sides demonstrated outside of the courtroom, that some of those people were allowed to come inside, but not demonstrate inside, all of which is perfectly typical of the way things happen in New York, and other places I assume, and that the Second Circuit, having heard the arguments of your attorney, who I presume made the arguments that you made here a few minutes ago, within an hour disposed of this. One can assume since they disposed of this so quickly that they thought there was no substance to it or very little and upheld the appeal? That is what you are telling us, right?

Mr. **OCCHIPINTI.** Absolutely.

Mr. **GEKAS.** That is the time. There is no question that the record discloses in the case of Mr. Occhipinti that in fact the case is closed. It has been appealed and the executive clemency came in. It happened 10 years ago. Mr. Fogg's case is on appeal, still not completed. But what the Chair gathers from the testimony of the witnesses is that if we had what is contemplated by this bill, an independent corps of people to evaluate Justice Department actions, prosecutorial actions, perhaps the outcome in these cases, had this mechanism been in place, might have been different. That is what I gather from the testimony; therefore, it is valuable. So we can see anecdotal evidence of what, if those kinds of things had happened while this proposal would have been in place of an independent agency, the outcome might be different. From that standpoint it is up to the committee to evaluate the relevance of all of that.

Mr. **NADLER.** Mr. Chairman?

Mr. **GEKAS.** Yes.

Mr. **NADLER.** One might also conclude a little differently. I am not commenting on Mr. Fogg or Culbertson. I am casting no aspersions. But this does apply to Mr. Occhipinti. One might conclude that if you took a random sample of convicted felons in any Federal penitentiary in the United States, one could get very heartbreaking tales of the prosecutorial misconduct and how they were railroaded. In justice, it has been said that everybody in jail is innocent. If you listen to them, that is probably true.

Mr. **GEKAS.** We are capable of sifting through all of that.

Mr. **NADLER.** Perhaps. One might also conclude from the balance of this that some of the legislation that this committee in Congress has passed in the last decade or so, cutting down on the rights of appeal, the rights to bring new evidence of innocence for people convicted on various procedural rights, cutting down the writ of habeas corpus, that maybe those weren't such great ideas.

Mr. **GEKAS.** There is opposition——

Mr. **NADLER.** And that maybe if what we are being told about prosecutorial misconduct is true, we ought to give the defendants some greater latitude in court to show that prosecutorial misconduct.

Mr. **GEKAS.** The opposition to those measures by the Minority, mostly could be deemed to be extreme because the interest of justice may not be served by automatically opposing every proposal made by those interested in good law enforcement.

Yes, Mr. Fogg.

Mr. **FOGG.** Yes. I just want to say what we are talking about really is accountability. For example, these three attorneys that basically right out lied to the judge, now OPR has been investigating them for 2 years. How long does it take for an organization to simply find out whether or not the man was actually in their custody or they had—or they knew where he was at? The bottom line we come to again is now, as long as these officers take the position they are in, can you imagine the numbers of people, the lives that they will be affecting because they are liars? They got up and said something they shouldn't have done. This is

how the committee's accountability has to be swift and direct, and hopefully that is what this bill will do.

Mr. **GEKAS.** We understand the theme that is being explained by the witnesses.

The gentleman from Massachusetts is recognized for 5 minutes.

Mr. **DELAHUNT.** I don't think there is any doubt that the system, our legal system, is an imperfect system. I think we all recognize that. I also think that the search for truth should not end with a conviction. I respect your passion. And I think your apparent need to seek vindication, I can respect that. I don't think this is the right forum in terms of debating the merits of the particular case. No one sitting on this particular panel would have either the time or the resources to really examine each of your particular cases. But I make an observation about the obvious fact that our system—which is an adversarial system has failed.

I recently introduced legislation dealing with the administration and implementation of the death penalty in this country. In the course of the past several months, it has become a matter of public knowledge that there were 65 men who were sentenced to death, who were exonerated because of DNA testing, who are no longer incarcerated but are on the street.

There was a recent study conducted by Professor Liebman from Columbia University that established that 7 out of 10 capital cases in this Nation contain serious reversible error. I think that should be a wake-up call, if you will, to all of us, whether we be the victims of this imperfect system, whether we be Members of Congress, whether we be members of the law enforcement community. It is really important that appropriate checks and balances are in place in terms of the administration of justice in this country, because in my opinion, there is no power more awesome in a democracy than the power vested in the prosecutor. In a democracy there is no greater authority than the ability to deprive somebody of their freedom or their reputation, and I think that we forget that too often.

So whatever the merits of your individual cases are, I think all of us on this panel, from whatever side we come from or from whatever perspective, have to recognize it is an imperfect system. But we cannot forget either, that that is the nature of our humanity and that there are mistakes that are going to be made. Sometimes they are painful to others. But unfortunately that is the reality of life. Can we make efforts to improve? Yes, we can. Is this the appropriate vehicle? I have reservations. But in any event, thank you for your testimony.

Mr. **GEKAS.** The Chair thanks the gentleman and we excuse the witnesses with our gratitude.

Mr. Culbertson will remain for the possibility of his demonstrating the video to the staff following the hearing. Very good.

We now would like the next panel to appear before us, which is made up of David Margolis who attended Brown University and received his L.L.B. from Harvard Law School. After graduating law school, he worked as an assistant U.S. States Attorney in Hartford, Connecticut, and then was appointed as a Special Attorney for the Justice Department's Organized Crime Boston and Cleveland Strike Forces. He has also served as Attorney-in-Charge for the Brooklyn Strike Force, Deputy Chief of the Organized Crime Section and Chief of the Organized Crime Racketeering Section of the Criminal Division of the Department of Justice. Mr. Margolis currently serves as an Associate Deputy Attorney General of the United States Department of Justice.

He is joined at the witness table by John Keeney who has served as the Deputy Assistant Attorney General of the Criminal Division of the Department of Justice since 1973. After completing his undergraduate work at the University of Scranton, he received his L.L.B. from the Dickinson School of Law and his LL.M. From the George Washington University. Mr. Keeney served in the United States Air Force as a navigator before joining the Department of Justice. On several occasions, Mr. Keeney has served as Acting Assistant Attorney General.

With them at the table is H. Marshall Jarrett, presently the Counsel of the Office of Professional Responsibility of the Department of Justice. Mr. Jarrett obtained his undergraduate and law degrees from West Virginia University. He has served as Assistant U.S. Attorney in the Southern District of West Virginia. Mr. Jarrett has served as an Assistant Chief and Deputy Chief of the Public Integrity Section of the United States Department of Justice, and is Chief of the Criminal Division for the United States Attorney for the District of Columbia. Before assuming his position with the Office of Professional Responsibility, Mr. Jarrett served as an Associate Deputy Attorney General.

Mr. Howard Sribnick clerked for Judge Phillip Nichols for the United States Court of Appeals for the Federal Circuit. Mr. Sribnick has served as a trial attorney in the Civil Rights Division and is Deputy Director in the Commercial Litigation Branch of the Department of

Justice Civil Division. He has been the General Counsel to the Office of the Inspector General since 1991.

We begin with the oft-stated thesis that the written statement of the witnesses will be considered as part of the record, without objection. We will ask each witness to summarize those statements to the tune of about 5 minutes, which will begin with Mr. Margolis.

STATEMENT OF DAVID MARGOLIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. **MARGOLIS.** Mr. Chairman, thank you. I will be speaking on behalf of the entire panel and then we will all be available to attempt to answer your questions. I will be brief, because as you indicated, you have our prepared testimony.

As set forth in our prepared testimony, the Department objects to the proposed legislation which would in effect create a standing independent counsel for the Department of Justice. Our demonstrated record of success in pursuing allegations of internal misconduct establishes that the proposed legislation is neither necessary nor well advised, and represents a solution in search of a problem.

The system of checks and balances currently in place, I believe, assures the effectiveness of our present system. Just to briefly highlight, we have United States attorneys, we have the criminal division of the Department of Justice, we have the FBI, we have the DEA, we have the Office of Professional Responsibility of those agencies. We have our own overarching Office of Professional Responsibility of the Department of Justice, represented by Mr. Jarrett today, which investigates allegations of misconduct against our attorneys in connection with their activities as litigators, investigators, and giving legal advice. But they also in OPR can, upon assignment from the Deputy Attorney General or Attorney General, they can and do investigate allegations against the FBI.

An example of that that everybody knows about is OPR's investigation of former Director Sessions of the FBI. Our Office of Inspector General which we have had for about 12 years in the Department of Justice has jurisdiction, among other items, to investigate nonlitigative, nonlawyering allegations against attorneys in the Department of Justice. An example of that would be an allegation that somebody, an attorney in the Department of Justice, cheated on their travel vouchers.

But in addition to that, it can—the Inspector General's Office—and does investigate allegations against the FBI. The most obvious recent example of that is the Inspector

General's hard-hitting investigation and report about the FBI laboratory. And nobody would ever say that that was a soft job done there.

Also, the Inspector General has the authority and has at the request of the Deputy Attorney General investigated matters that involved OPR, the lost trust case where a district court found that the Department attorneys acted improperly. OPR did an investigation which was supervised by me, and the district court found that wanting. So we asked the Inspector General to review the original conduct and the conduct of the investigation. The review of that investigation is proceeding. I should add in the interim that the United States Court of Appeals reversed the district court on that.

To insure the integrity and the independence of the Inspector General, we don't investigate the Inspector General. The FBI does not. OPR does not. I do not. The President's Counsel on Integrity and Efficiency would investigate an allegation against the Inspector General to ensure his absolute independence.

Other checks and balances that are in place: Congressional oversight through congressional hearings and through the GAO is obvious. The bar counsel supervises and handles allegations against our attorneys, either on his own or upon referral from my Department. The recently enacted McDade act is a check and balance against prosecutorial excesses, as is the recent Hyde amendment.

I should also add that the creation of the special counsel statute, which the Chairman was a proponent of—the special counsel regulations, that is—is another check and balance and an ability to assure that we do our jobs correctly.

I would like to also talk about some of the initiatives that we have recently taken in the past few years to beef up our response to misconduct allegations. First of all, the Attorney General has basically tripled the size of the Office of Professional Responsibility in the course of the last 7 years. We have also have put in place a system requiring the reporting from the field to OPR of allegations of serious misconduct and of judicial findings of serious misconduct. That is now institutionalized, and it is in our rules and regulations. We have also decided to cause OPR to investigate matters in a more timely fashion by not waiting for appeals to be decided when the government is appealing findings so that we can have timely decisions.

With regard to public summaries, we now have a process in place with due regard to the privacy rights of various individuals which will identify an attorney who is found liable for intentional misconduct in the Department of Justice. That promotes—that system promotes

individual accountability where intentional misconduct is found.

Also, we have in our annual reports of the Office of Professional Responsibility, without the identification of an individual, we tell the facts of cases in which there was misconduct so that the public can see that we are trying to promote institutional accountability. Each of these items, the public reports and the abstract summaries, permit the public to observe misconduct allegations as well as our responses, and our responses being both investigative and adjudicatory.

And I should add in connection with this proposed legislation, while you would have a so-called independent counsel investigating and making allegations against an attorney, we have a personnel system which indicates that that independent counsel won't decide what penalty is imposed. That will be in the first instance decided by supervisors and they can disregard the finding of the independent prosecutor, and then eventually the employee has the opportunity to appeal to the Merit System Protection Board. So we can't think for a minute that this proposed system will mean that there will be penalty applied.

In addition to investigating and punishing misconduct after it occurs, our very important goal is to prevent misconduct before it occurs. For instance, we have recently created a Professional Responsibility Advisory Office to give prospective advice and to promote and provide the soundest ethics training possible. An example of that is that we have Judge Trott of the United States Court of Appeals for the Ninth Circuit lecture to our attorneys on the use of snitches and the dangers that occur when using them. Judge Trott was a former United States attorney, and an Assistant Attorney General before he became a judge.

Our ability to target our training to selected hot ethical areas is enhanced by a part of the OPR report to the Attorney General now which reports on trends that it spots in misconduct. Recently, OPR found that there were a lot of reversals, relatively a large number of reversals, based on errors made during summation, so we can gear our training there.

We also have professional responsibility officers at each office who provide on-the-spot advice and training and they coordinate with the Professional Responsibility Advisory Office here in Washington.

We, as I indicated in our prepared testimony, have serious reservations of the constitutionality of this legislative proposal, primarily because it grants unbridled power and almost unlimited tenure to the individual who is chosen to fulfill the job. Also, I should point

out that under this legislation, if history is any teacher, before long this special prosecutor or independent counsel, whatever he is called, will have charges of misconduct leveled against him. And at that point, I would think that you wouldn't want the Department of Justice investigating the person who is watch-dogging them, so you would have to have perhaps another standing independent counsel to investigate him or an ad hoc special counsel in each case.

I submit that would be a system that would make Rube Goldberg blush. It just would not work.

I think the cases—I don't want to get into individual cases. I think that wouldn't be productive. But I will say most of the cases cited to this point older cases, and in fact we have demonstrated and we are committed to the future in looking forward—forward-looking solutions. I do have to say, though, that based on the record that has been adduced at this hearing today, I would have to say with all due respect that Mr. Occhipinti is a strange poster child for claiming the Department of Justice cannot police its own.

Mr. Chairman, I have taken great pleasure in the last 35 years and great pride in the high ethical standards set and maintained by the vast majority of the men and women who serve as prosecutors and investigators in the Department of Justice, regardless of which administration is in power at any given time. I have never been prouder of those people than I am today. Thank you very much.

[The prepared statement of Mr. Margolis follows:]

PREPARED STATEMENT OF DAVID MARGOLIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, MARSHALL JARRETT, COUNSEL, OFFICE OF PROFESSIONAL RESPONSIBILITY, AND HOWARD SRIBNICK, GENERAL COUNSEL, OFFICE OF THE INSPECTOR GENERAL, U.S. DEPARTMENT OF JUSTICE

Good Morning, Mr. Chairman and Members of the Subcommittee. We are pleased to present the views of the Department of Justice concerning H.R.4105, a bill to establish the ''Fair Justice Agency'' as an independent agency for investigating and prosecuting alleged misconduct, criminal activity, corruption, or fraud by an officer or employee of the Department of Justice. The Department objects to the proposed legislation because it is unsound as a matter of public policy and may be unconstitutional.

Specifically, we oppose H.R.4105 because it purports to address deficiencies in our law enforcement efforts that do not exist, and, if enacted, would do little or nothing to bolster

the confidence of the American people in the fair and vigorous enforcement of federal law. Moreover, the bill could be construed as an attack on the integrity, professionalism, and competence of federal law enforcement officials who execute the criminal laws with respect to all citizens. Finally, we oppose the legislation because it raises serious constitutional concerns by impinging on the constitutional duties assigned to the President under Article II, Section 3 of the Constitution.

Let us begin by discussing how the Department's existing mechanisms already address the concerns that underlie H.R.4105. It is, of course, imperative that the public be confident that professional misconduct, both criminal and non-criminal, is not tolerated among Government officials generally, and in federal law enforcement agencies, in particular. To that end, the Department of Justice devotes substantial resources to the investigation and prosecution of public officials who engage in criminal conduct. In addition, where misconduct falls short of a criminal violation, or where for whatever reason, criminal prosecution cannot be sustained, the Department imposes rigorous discipline for failure to meet required standards of professionalism. Finally, the Department does not wait for misconduct to occur to act: we engage in ongoing Department-wide training in the standards of conduct that must be maintained by attorneys, agents, and other employees.

Our recusal policies work to avoid conflicts of interest in investigations and prosecutions.

Before discussing the various components, let us make clear one overarching principle: persons with an interest in the outcome of a particular investigation are not permitted to participate in that investigation. The Department of Justice employs a variety of means to ensure that allegations against Department employees—whether they be United States Attorneys or other attorney professionals, Special Agents and supervisors of the Federal Bureau of Investigation or Drug Enforcement Administration, officials of the U.S. Marshals Service, INS and Border Patrol officials, or employees of any one of myriad other Department components—are pursued vigorously, fairly, and without either the reality or the potential perception of partiality. To ensure the integrity of investigations of Department officials, the Department of Justice has in place long-established practices that permit, and in some cases, require the recusal of prosecutors and, often, entire offices with original jurisdiction over investigations of Department personnel. Thus, for example, a U.S. Attorney for one district would not ordinarily supervise a criminal investigation into the activities of an Assistant U.S. Attorney in the same district. Likewise, if an investigation of a law enforcement officer presented a conflict for a U.S. Attorney's Office because of a longstanding working relationship with that officer or other reasons, we have long had in place procedures to permit the recusal of that office and substitution of another prosecuting office, including, but not limited to the various components of the Department's

Criminal Division. Nor would an agent with substantial personal or professional ties to another agent or employee under investigation participate in conducting or supervising that investigation. Indeed, as the Subcommittee is probably aware, the Code of Federal Regulations contains provisions governing conflicts of interest involving Department personnel. These recusal procedures effectively ensure that persons with conflicts of interest in particular prosecutions—e.g., one prosecutor supervising an investigation of her longtime co- worker—are walled off from the prosecution, thereby furthering public confidence in the objectivity and regularity of our decision-making.

The Department's various institutional components foster public confidence.

The Department of Justice has in place several components that work independently of each other, but which produce a coordinated response to allegations of professional or criminal misconduct within our ranks. Each has a distinct function, including 1) criminal investigation and prosecution conducted by the Department's Criminal Division and U.S. Attorney's Offices in each federal district in the country; 2) criminal and administrative investigations of Department of Justice employees, including investigations of attorneys when the allegations do not relate to the attorneys' authority to investigate, litigate, or provide legal advice, conducted by the Department's Office of Inspector General; 3) criminal and administrative investigations of attorneys, as well as agents, where the allegation of professional misconduct relates to a Department attorney's exercise of authority to investigate, litigate, or provide legal advice, conducted by the Department's Office of Professional Responsibility; and 4) criminal and administrative investigation of employees of the Federal Bureau of Investigation (FBI) through the FBI's Office of Professional Responsibility, and Drug Enforcement Administration (DEA) through the DEA's Office of Professional Responsibility. Additionally, the Department provides continuing ethics training for employees, in part coordinated by a Department-wide Professional Responsibility Advisory Office, and Professional Responsibility Officers within each litigating unit of the Department.

The Criminal Division and the U.S. Attorney's Offices

One of the primary means by which the Department of Justice fights misconduct by public officials, including its own employees, is by criminal investigation and prosecution carried out by the various components of the Criminal Division at Main Justice and the U.S. Attorney's Offices throughout the country. As the Criminal Division's Public Integrity Section informed Congress in its ''Report to Congress on the Activities and Operations of the Public Integrity Section for 1998,'' submitted pursuant to the Ethics in Government Act of 1978, the Department obtained convictions against more than 8,500 federal officials nationwide

during the two decades from 1979 and 1998. The overwhelming majority of these convictions have been obtained against Executive Branch officials. While we do not maintain statistics specifically on the number of criminal prosecutions of Department employees, a cursory review of the Public Integrity Section's annual reports reveals that in any year, several Department officials suffer criminal prosecution.

Criminal prosecutions against officials and employees of the Department have run the gamut of federal offenses, including bribery, extortion, narcotics offenses, mail and wire fraud, perjury, obstruction of justice, criminal conflict of interest, and others. Indeed, among the several prosecutions of Department of Justice lawyers by other Department of Justice lawyers within the past twenty years was the indictment and conviction on federal drug charges, as well as violations of the federal false statements statute stemming from denials of drug use in an application for a security clearance, of a lawyer who was then employed in the Office of an Attorney General.

The Public Integrity Section's reports to Congress for the years 1995 through 1998 reveal various prosecutions of Department employees, including federal prosecutors and law enforcement agents convicted of serious felony offenses, which belie any notion that we are unable or unwilling to address misconduct by our employees. These reports do not, of course, present a complete picture because the Public Integrity Section summarizes only its own activities in the case descriptions. It does not summarize the cases brought by the U.S. Attorney's Offices, which prosecute the vast majority of public corruption cases nationwide, or other Criminal Division components (though the statistics on the numbers of prosecutions are nationwide statistics). Criminal allegations reach the prosecuting components from a variety of sources, including the Department's investigating components described below, Congress, and the public.

The Office of Inspector General and Office of Professional Responsibility

Keystones of the safeguards to ensure the public trust in the integrity and professionalism of Department of Justice personnel are the Office of Professional Responsibility (OPR) and the Office of Inspector General (OIG). As indicated above, OPR investigates allegations of misconduct by Department of Justice attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice. In addition, OPR has jurisdiction to investigate allegations of misconduct by law enforcement personnel when they are related to allegations of misconduct by attorneys already within OPR's jurisdiction. OIG, on the other hand, handles allegations of misconduct by Department of Justice attorneys that do not relate to their authority to investigate, litigate, or provide legal advice.

Under applicable guidelines, Department of Justice employees are required to report to their supervisors, or directly to OPR, any evidence and non-frivolous allegations of serious misconduct by Department attorneys relating to their authority to investigate, litigate, or provide legal advice. When misconduct is reported, the supervisor must determine whether the alleged misconduct is sufficiently serious to be reported to OPR. Moreover, any judicial finding of attorney misconduct relating to their authority to litigate, investigate, or provide legal advice must be reported to OPR, which is obligated under the Attorney General's guidelines to conduct an expeditious investigation except under extraordinary circumstances, without waiting for further judicial or appellate proceedings. Judicial findings of attorney misconduct not related to an attorney's authority to litigate, investigate, or provide legal advice must be reported to, and are investigated by, OIG.

With respect to judicial findings of attorney misconduct, wholly apart from OPR's investigative mandate, the recently-enacted McDade legislation already subjects Department of Justice attorneys to the rules of state bar associations, and the so-called Hyde Amendment permits defendants who are acquitted to seek damages from the Department to the extent that they can prove that their indictment and prosecution were pursued in bad faith. Thus, even beyond the rigid safeguards within the Department of Justice, professional misconduct by Department of Justice attorneys is also a matter that can be addressed by the courts, as well as by professional licensing authorities.

The Office of Inspector General (OIG) is a statutorily-created independent entity within the Department of Justice, subject to the general supervision of the Attorney General, that conducts and supervises audits, inspections, and investigations relating to the programs and operations of the Department; recommends policies to promote economy, efficiency, and effectiveness and to prevent and detect fraud and abuse in Departmental programs and operations; and keeps the Attorney General and Congress informed about the problems and deficiencies relating to the administration of the Department and the necessity for and progress of corrective action.

In order to carry out its responsibilities, the OIG:

(1) Audits and inspects Department programs and operations as well as non-Department entities contracting with or receiving benefits from the Department;

(2) Investigates allegations of criminal wrongdoing and administrative misconduct on the

part of certain Department employees;

(3) Investigates allegations that individuals and entities outside of the Department have engaged in activity that adversely affects the Department's programs and operations;

(4) Undertakes sensitive investigations of Department operations and/or personnel, often at the request of senior Department officials or Congress.

Department of Justice employees must report evidence and non-frivolous allegations of waste, fraud, or abuse relating to the programs and operations of the Department to the OIG or to a supervisor for referral to OIG. Evidence and non-frivolous allegations of serious misconduct by Department employees (other than employees of the FBI or DEA) outside the jurisdiction of OPR (i.e., allegations not related to misconduct pertaining to an attorney's authority to investigate, litigate, or provide legal advice) must also be reported to OIG. Evidence and non- frivolous allegations against FBI personnel must be reported to FBI OPR; likewise such evidence or allegations against DEA personnel must be reported to DEA OPR.

Generally, the activities of OPR and OIG are not publicly known. Unlike criminal cases, there exists less of a public record of administrative sanctions against Department personnel that may easily be consulted to ensure regularity. This reduced transparency is, of course, due in part to the Privacy Act, which prohibits disclosure of certain kinds of information from government record-keeping systems. That said, OPR submits annual reports to the Attorney General which describe its work and provide information about the nature of specific allegations it has handled. These reports are available to the public. In addition, OIG reports to the Attorney General and Congress on a semi-annual basis a summary of all of its significant audits and investigations completed during the preceding six-month period.

The Attorney General has recognized that transparency with respect to the handling of alleged misconduct on the part of Department employees is important. In December 1993, the Deputy Attorney General announced a new policy governing public disclosure of OPR's findings in certain cases. That policy, the procedures for which were designed by the Office of Legal Counsel to comport with the restrictions of the Privacy Act, calls on the Department to disclose the final disposition, after all available administrative reviews have been completed, of matters in the following categories:

a. A finding of intentional or knowing professional misconduct in the course of litigation or investigation where the Attorney General or Deputy Attorney General finds that the public interest in disclosure outweighs the privacy interest of the attorney and any law

enforcement interests;

b. Any case involving an allegation of serious professional misconduct where there has been a demonstration of public interest, including referrals by a court or bar association, where the Attorney General or Deputy Attorney General finds that the public interest in disclosure outweighs the privacy interest of the attorney and any law enforcement interests;

c. Any case in which the attorney requests disclosure, where law enforcement interests are not compromised by the disclosure.

If a matter appears to meet these criteria, OPR prepares a summary of the matter including the employee's name, sufficient facts to explain the context of the allegation, and the final disposition. This summary is submitted to the Department's Office of Information and Privacy (''OIP''), which determines whether the Privacy Act permits disclosure of the included information and whether revisions should be made to the summary prior to disclosure. If OIP advises that the statement is appropriate for disclosure, the summary is sent to the employee and the appropriate supervisory official, and both are given the opportunity to make written comments and objections to the proposed disclosure on grounds of privacy or law enforcement concerns. Any such objections are reviewed by OIP.

OPR forwards the proposed summary to the Deputy Attorney General with its recommendation regarding release and attaches all comments that were received. The final decision on whether to release a summary is made by the Attorney General. If the Attorney General decides that disclosure is appropriate, the summary is forwarded to the Office of Public Affairs for release.

Even where a particular matter is not deemed suitable for release, disclosure of OPR and OIG investigations occurs in their respective annual or periodic reports. That is, in those significant cases in which an investigation into allegations of misconduct of an individual employee may not describe the employee by name, abstracts of those cases allow public accountability of the Department of Justice as an institution.

Professional Responsibility Advisory Office

On March 30, 1999, the Attorney General created the Professional Responsibility Advisory Office (PRAO), which reports to the Deputy Attorney General. In so doing, the Attorney General established a centralized office with six core functions:

(1) to provide definitive advice to Department attorneys on issues relating to professional

responsibility;

(2) to assemble and to maintain the codes of ethics, including, among other things , all relevant interpretative decisions and bar opinions of the District of Columbia and every state and territory, and other reference materials, and to serve as a central repository for briefs and pleadings as cases arise;

(3) to provide coordination with the litigating components of the Department to defend attorneys in any disciplinary or other hearing where it is alleged that they failed to meet their ethical obligations;

(4) to serve as liaison with the state and federal bar associations in matters related to the implementation and interpretation of 28 U.S.C. §530B (''ethical standards for attorneys for the Government'') and amendments and revisions to the various state ethics codes;

(5) to coordinate with other Department components to conduct training for Department attorneys and client agencies to provide them with the tools to make informed judgments about the circumstances that require their compliance with Section 530B, the Hyde Amendment, or other professional responsibility requirements; and

(6) to perform such other duties and assignments as determined from time to time by the Attorney General or Deputy Attorney General.

Thus, the PRAO serves as yet another resource to ensure that our attorneys conform to appropriate ethical and professional standards in the course of investigation and litigation.

Coordination of efforts to ensure appropriate responses

These various components work cooperatively to ensure that allegations of employee misconduct are investigated by the appropriate entity. Once OPR or OIG—or DEA or FBI OPR—receives a non-frivolous allegation of misconduct, those offices must assess whether the allegation suggests the possible commission of a crime. If so, those offices refer the allegations to an appropriate prosecuting office. Depending on the circumstances—including whether the Office of the United States Attorney in the district in which venue for prosecution would ordinarily lie has a conflict of interest, or whether a Main Justice prosecuting office enjoys original jurisdiction over a particular type of matter—the matter is then reviewed by a U.S. Attorney's office or the Criminal Division at Main Justice. Exercising appropriate prosecutorial discretion and working with law enforcement agents, those offices would then decide whether further investigation or prosecution is warranted. They

decide whether to take a case to indictment and trial, or whether to decline prosecution. If prosecution of an employee is declined, the matter is then referred to OPR or OIG for consideration of administrative action. Those offices then determine what, if any, investigative steps are warranted to resolve the allegations.

The coordinated efforts of these anti-corruption offices throughout the Department demonstrate that our officials and employees can and do vigorously root out misconduct within our ranks. The annual reports of the Public Integrity Section, OIG, and OPR illustrate their serious efforts and paint a portrait of public servants who investigate, prosecute, or otherwise resolve allegations of misconduct because they understand that corrupt or seriously unprofessional colleagues endanger the institutions for which they work and, ultimately, the public that they serve.

Special prosecutor guidelines

Notwithstanding the many procedural safeguards of the integrity of investigations and prosecutions described above, there may be individual cases in which an actual personal, political, or other conflict of interest might require the Attorney General to recuse herself or the entire Department. This possibility underlies the recently-promulgated regulations pursuant to which the Attorney General may determine whether to appoint a special prosecutor to handle particular matters.

With all these procedures and institutional safeguards in place, it is counterintuitive to suggest that Department of Justice is unable or unwilling effectively to investigate and prosecute wrongdoing by Department personnel, including attorneys and agents. Indeed, the current system engenders confidence in the fairness and regularity of such investigations and prosecutions precisely because its procedures guarantee that no preexisting relationship exists between the prosecutor and the prosecuted, or the investigator and the investigated. Moreover, as we have discussed, our institutions and regulations assure the orderly reporting, supervision, and investigation or prosecution of misconduct allegations. In short, existing law and practice already provide for the sort of investigative and prosecutive independence, as well as the coordinated response to possible misconduct, that H.R. 4105 purports to create in the proposed Fair Justice Agency.

Let us now turn to a discussion of why H.R.4105 would be bad public policy, unwise, and possibly unconstitutional:

H.R. 4105 would undermine, rather than promote, public confidence.

This bill would undermine, rather than promote, confidence in the fairness and objectivity of the investigative and prosecutive function. Numerous factors inform the Department's decisions about the merits or deficiencies of particular cases. These factors have been developed over years of experience and involve, in part, an effort to ensure the even-handed enforcement of the laws. Collectively, we benefit from thousands of years of experience and institutional memory on which we may draw in determining whether an investigation or prosecution should proceed. Department officials do not decide whether to investigate or prosecute based on who the subject is; instead, we act based on the nature of the alleged conduct, the quality of the proof, the likelihood of conviction, and a host of other factors that both support and mitigate the need to pursue a prosecution. This analysis, of course, is the essence of prosecutorial discretion.

H.R. 4105 would create a team of permanent prosecutors who would make their living prosecuting a class of persons based in part on their status as Department of Justice officials. Even if it were staffed by an army of former Department prosecutors, the proposed Fair Justice Agency would lack the institutional memory and historical resources that we find so critical to ensuring even-handed and balanced application of the law. Within the Department of Justice are years and years of non-public materials, including prosecution memoranda and internal statements of policy and practice, that would be unavailable to the proposed agency.

Moreover, because H.R.4105 would vest protection against removal in its Director that far exceeds that of any Member of the President's Cabinet or even the Director of the Federal Bureau of Investigation, who serves a ten-year term at the pleasure of the President, the proposed agency would be virtually unaccountable. This proposed agency would not even be obliged to observe Department of Justice policies, practices, and precedents—which govern our current assessment of the prosecutive merits of a case against any other person in the United States—in investigating and prosecuting Department of Justice personnel. Nor would the Director report to the Attorney General, who under the proposed legislation, would have no supervisory role over the new agency. In these respects, the bill would vest in a new agency substantially more unchecked and extraordinary power than that which proved unworkable under the now-lapsed Independent Counsel statute. As is discussed below, this flaw renders the bill not only unwise as a matter of public policy, but also possibly unconstitutional.

H.R.4105 would introduce uncertainty into law enforcement functions.

H.R.4105 would neither confer on the proposed Fair Justice Agency exclusive jurisdiction to investigate and prosecute misconduct by Department of Justice officials nor authorize the Agency to investigate and prosecute persons who are not officers or employees of the Department of Justice. The legislation does not purport to strip jurisdiction to investigate and prosecute Department of Justice employees from the Department itself. As such, the bill gives no guidance as to how the proposed Fair Justice Agency would interact with the Department of Justice in the event of jurisdictional conflict. Likewise, it ignores the reality that allegations of criminal misconduct against Department employees routinely involve allegations against others outside the Department, both as subjects of the allegations and as parties in collateral investigations and prosecutions. A simple example makes clear this critical point. Consider a case involving the payment of bribes to a Department of Justice official by a private person or business entity. In such a foreseeable event, both the Department of Justice and the proposed new agency would be authorized to prosecute at least one side of the bribe. Indeed, the Department of Justice could continue to prosecute both sides of the transaction. This proposed construct permits us to envision a rush to the grand jury by competing prosecuting authorities, as well as litigation over which ''United States'' could prosecute which aspect of a given case. The scope and method of investigation could also have significant impact on other pending investigations and litigation. There is no apparent advantage attendant to the introduction of confusion and inefficiency engendered by the proposed legislation.

While there were jurisdictional disputes with independent counsels under the now-lapsed Independent Counsel statute, those disputes pale in comparison to what would occur under the regime contemplated by H.R.4105. Independent counsels investigated identifiable and known persons. To the extent that they needed to expand their jurisdiction, it was by comparison a simple matter to consult with the Attorney General and allow her to decide whether to grant the requested expansion of jurisdiction. By contrast, because the proposed Fair Justice Agency would exist in perpetuity and have a mandate simply to investigate and prosecute misconduct on the part of literally thousands of persons, it would rarely if ever be known across agency and Departmental lines whether there was duplication of resources or whether two prosecutors were working at cross purposes. Imagine that a U.S. Attorney's Office might be investigating an allegation against a Department employee who is simultaneously being investigated by the proposed agency. This legislation contains no mechanism and no chain of command to resolve such conflicts, which might reasonably be expected to produce plea agreements, grants of immunity, and numerous other common investigative tools in one prosecutor's office that might well conflict with—and even obstruct—the investigation supervised by another prosecutor. Foreseeably, the Department—lacking knowledge of the existence or status of specific allegations—would be deprived of information critical to its own staffing and case

management decisions.

Further, such a convoluted structure would seriously undermine the ability of the Department to appropriately inform judges and defendants in pending matters—as it must do under *Brady* v. *Maryland* and its progeny to ensure the fairness of criminal trials—of allegations of wrongdoing against prosecutors or agents involved in the case. This result would redound to the detriment of all parties in litigation. Criminal defendants would be deprived of information that would otherwise allow them to challenge credibility or biases of law enforcement witnesses. Moreover, the people and their government would suffer because otherwise validly-obtained convictions would be overturned because exculpatory or impeaching material relating to investigations of law enforcement witnesses being conducted by the proposed Fair Justice Agency was not shared with the Department to allow its timely disclosure at trial. Such foreseeable consequences of this bill surely would not promote but, rather, would undermine the efficient and effective administration of justice.

H.R. 4105 raises serious constitutional concerns.

The proposed independence of the agency and the tenure protection afforded the Director would interfere with the President's exercise of the ''executive power'' and his ability to fulfill his duty to ''take Care that the Laws be faithfully executed,'' set forth in Article II, Section 3 of the Constitution. As such, we believe the bill poses a serious threat to the core constitutional values of political accountability and coordinated Executive Branch policy-making. While we would require more time to study these issues before speaking definitively about our tentative view that the legislation would be unconstitutional, we observe here that in *Morrison* v. *Olson*, 487 U.S. 654 (1988), the Supreme Court upheld against constitutional challenge the provision of the Ethics in Government Act limiting removal of an independent counsel to situations in which the removal was for ''good cause.''

As we have already opined, the powers of the proposed Director of the Fair Justice Agency far exceed those of an independent counsel under the Ethics in Government Act. Under H.R. 4105, removal by the President could occur only in the event of ''inefficiency, neglect of duty, or malfeasance.'' Because these limitations on Executive power far exceed those that existed under the Independent Counsel Act, we are far from confident that the limited holding in Morrison v. Olson would permit the usurpation of the presidential authority and prerogatives contemplated in this legislation.

Conclusion

Mr. Chairman, Department of Justice officials should be, and are subject to the same criminal laws as all other Americans. Likewise, we must be, and are, held to account for violations of those laws to the same extent as all other Americans. This flawed bill would not improve the enforcement of the law against Department of Justice officials who violate the law. Instead, it would single out federal law enforcement personnel within the umbrella of the Department of Justice to be prosecuted under unknown standards by an unbridled prosecuting authority. Such a course would be profoundly unwise and would work innumerable harms on the federal law enforcement apparatus. Moreover, the proposal is of dubious constitutionality. Finally, the suggestion that the Department of Justice cannot police the misconduct of its own employees in the ordinary course is simply not supported by the record.

Thank you for the opportunity to appear before you today. We would now be pleased now to answer any questions you may have.

Mr. **GEKAS.** The Chair yields itself 5 minutes for questions.

Mr. Margolis, you said the proposal which would establish this independent panel under the language of the bill is questionable constitutionally. Do you think it is more questionable than those questions that were posed against the independent counsel statute, which apparently at some point in the legislative process was subjected to the same kind of criticism that this is unconstitutional, yet it was found to be constitutional. Is there anything different about the structure of this that would make it less constitutional than the courts found that the independent counsel statute was?

Mr. **MARGOLIS.** As the Chair knows, the Supreme Court in the Morrison case was troubled by the constitutionality——

Mr. **GEKAS.** Was what ?

Mr. **MARGOLIS.** Was troubled by the constitutionality of the independent counsel statute, although it did say it was constitutional. Here I think we have a more problematic situation with this very high standard that would be required for the removal of the independent counsel. And I know Mr. Keeney is an expert on the independent counsel statute and may have something to add to that.

Mr. **GEKAS.** Yes, I would be interested in that.

Mr. **KEENEY.** Mr. Chairman, the Supreme Court upheld the independent counsel statute, in my reading of it, because it read into the statute a residual authority in the Attorney General to have some semblance of control over the independent counsel. This proposed bill does not give anyone in the executive branch any supervisory control or authority over whoever is appointed.

Mr. **GEKAS.** But if it was patterned after the independent counsel statute in those regards, then it would be more constitutionally compatible?

Mr. **KEENEY.** It would, but it would have to give the executive authority, the President, and through the Attorney General the President, some control over the individual. Otherwise the executive power would be given to a nonexecutive authority.

Mr. **GEKAS.** Isn't part of the control the appointment power on the part of the President?

Mr. **KEENEY.** That is part of it, but that is not enough. There has to be some regulatory control in order that the executive authority is not given outside of the executive branch.

Mr. **GEKAS.** Mr. Margolis, we understand that the Justice Department has 100,000 or more employees; is that correct, as far as you know?

Mr. **MARGOLIS.** It has often been said—people say how many people work at Justice? I say about 60 percent. More than 100,000.

Mr. **GEKAS.** That is correct. The question occurs to me with respect to the investigations by the Department of people within the department, and this happens in every agency, I suppose. Doesn't there have to be a whole bunch of recusals occurring all the time? That is, aren't the agencies, the bureaus, so interwoven that if one bureau was to investigate someone or another, that they are in such close working relationship that there has to be recusal upon recusal upon recusal?

Mr. **MARGOLIS.** Mr. Chairman, in the last 7 years, I handled a lot of recusals, especially at the United States attorneys' offices. I think I have had more than 1,000 in the last 7 years, either individual recusals or office recusals, and we are well equipped to handle that.

If the United States Attorney's Office in the Southern District of New York has to recuse itself from a matter because of conflict of interest, the Criminal Division can take over if it has a criminal case, the United States attorney across the river in Brooklyn can take over,

the Civil Division can take over if it has a civil case. We do have recusals, and we don't have any problems handling that.

Mr. **GEKAS.** You have a mechanism for that?

Mr. **MARGOLIS.** We have a mechanism in place.

Mr. **GEKAS.** One other question. If someone within a district court jurisdiction in any State files a complaint with the U.S. Attorney in that district about an Assistant United States Attorney, that comes to Washington, does it not?

Mr. **MARGOLIS.** If there is an allegation of serious misconduct, the Attorney General has ordered that it be shipped to the Office of Professional Responsibility immediately.

Mr. **GEKAS.** There is one follow-up question on that, and I want to talk to you or someone else within your bailiwick about a particular case. Is there a time frame within which the Office of Professional Responsibility has to finalize a decision on that; or if there isn't, should there be?

Mr. **MARGOLIS.** There isn't, Mr. Chairman. The Attorney General has increased the resources, and one of the reasons for that is to make it possible for OPR to do their work more timely than it would be if they didn't have enough people. But I don't know how you can set an official deadline. We don't do that.

Mr. **GEKAS.** The only thing I worry about is, let's say there is an accusation of criminal conduct and the Office of Professional Responsibility doesn't answer for 3 or 5 years. What happens to the statute of limitations, et cetera, on an original allegation, don't you see? That is what I am concerned about.

Mr. **MARGOLIS.** Criminal allegations take precedence. We don't have a statute of limitation problem if the allegations are brought forth in a timely fashion. I should add, though, that in most cases if it has a criminal allegation, OPR will refer it to the United States Attorney or to the Criminal Division rather than handling it itself in the great majority of cases.

Mr. **GEKAS.** But I say if the criminal activity is alleged to have happened within the U.S. Attorney's Office, then according to what you have told me, that comes to Washington, the

Office of Professional Responsibility, does it not?

Mr. **MARGOLIS.** If it is professional misconduct in lawyering. If it is actually a crime, as opposed to what I call misconduct, then it would go to the public integrity section of the Criminal Division most likely, and pursued criminally that way.

Mr. **GEKAS.** Then a quicker response, you say, would be forthcoming?

Mr. **MARGOLIS.** It depends. It will be done as timely as it can be done.

Mr. **GEKAS.** I will outline all of this in a specific letter to you later.

The gentleman from New York is recognized.

Mr. **NADLER.** Thank you. Mr. Margolis, under this bill the appointment of a special prosecutor or independent counsel, or whatever, would investigate allegations against all personnel at the Department of Justice including secretaries, maintenance staff, cleaning personnel. Is there any rationale for this whatsoever?

Mr. **MARGOLIS.** Not that I can think of, sir. I should also add that they could be investigating one of those people, the secretary, a clerk, a guard, at the same time we are, because this statute does not vest exclusive jurisdiction in the new independent counsel, and you can have people tripping all over each other. It will be a nightmare.

Mr. **NADLER.** Aside from its constitutional questions and its overbroadth here in applying to clerical personnel, cleaning personnel and so forth, and aside from the fact you think it is unnecessary, what other criticisms do you have of the bill?

Mr. **MARGOLIS.** It is not necessary, it may be unconstitutional. It is overbroad, and I think it sends the wrong signal to the public that says we are going to create another bureaucratic layer here to obfuscate the functions of the Department of Justice.

Mr. **NADLER.** Now, I assume you wouldn't take the position that there is never a problem with Federal prosecutors but simply that the Department can deal with it and the current criminal justice system can deal with it?

Mr. **MARGOLIS.** Absolutely right.

Mr. **NADLER.** Let me ask you another question. A number of other suggestions have been

made for our problems in the criminal justice system. The 1999 National Institute of Justice Report, ''Eyewitness Evidence: a guide for Law Enforcement,'' made a number of suggestions. For example, that interrogations should all be videotaped to avoid the risk of false confessions; screening committees should be used to review jailhouse informants' testimony before it is used at trial because of the notorious unreliability of testimony; crime labs should be made independent from police agencies; whistle-blower protection should be provided for crime lab workers; victim service experts should be assigned to assist victims whose mistaken identification resulted in a conviction of an innocent defendant; no-fault compensation be available to provide relief to those who can prove they were wrongly convicted by clear and convincing evidence. Do you think some of these approaches are warranted, and if so, do you think they are a better approach than this bill?

Mr. **MARGOLIS.** They are certainly a better approach than this bill, Mr. Nadler. I would also say that some of them are probably worth very close consideration. In terms of dealing with jailhouse informants or any other informants, we make an effort not only in terms of fairness, but in terms of efficiency, of making sure our people realize the pitfalls of dealing with them; because in addition to the fact that we don't want to put an innocent person on trial based on some person with an ulterior motive's incorrect word, we don't want to make our investigative and prosecutive lives more difficult.

Mr. **NADLER.** Do you think that Congress has made it too difficult for convicted defendants to raise new evidence of innocence that comes to light later?

Mr. **MARGOLIS.** Representative Nadler, that is way beyond my pay scale.

Mr. **NADLER.** It is way beyond what?

Mr. **MARGOLIS.** My pay scale. I haven't been involved in that. I haven't given it much thought. I am a prosecutor.

Mr. **NADLER.** Well, prosecutors are often in the position of opposing the introduction of new evidence in the interest of finality. And yet, in fact, we have seen in State after State, New York and one other State, Illinois, being the notable exceptions, that when you have convicted people in jail for long sentences for serious crimes, and new technology such as DNA technology, or other new evidence comes along and an application is made to the court to reopen the case so that the court can consider the DNA evidence which could prove innocence, prosecutors very often oppose those motions to allow the introduction of that new evidence. I have always been mystified, because either the evidence proves something or it doesn't. If it doesn't, there is no harm in letting a court look at it. And if it

does, you may find out you have an innocent person in jail.

In Florida you only have 21 days post-conviction, and if the DNA test is developed 5 or 10 years later, too bad. You said it is above your pay scale, but why is it not in the interest of justice to allow a court to look at new evidence that allegedly proves that a mistake was made, even years ago?

Mr. **MARGOLIS.** I don't know any prosecutor, sir, worth his or her salt that doesn't want to make sure that only the guilty are punished, and they will do whatever is necessary.

Mr. **NADLER.** Wait a minute. Routinely, we see this all the time, including in many cases where the DNA evidence finally is admitted after years of court battle. I don't have them with me, but I remember cases where it took 7 years of court battles over the issue of whether to allow the evidence to be introduced. When the evidence was introduced, it proved the fellow innocent, but meanwhile he served an extra 7, 8, 9 years in jail.

Routinely, the prosecutors do everything they can to prevent the case from being reopened.

Mr. **GEKAS.** Does the gentleman request additional time?

Mr. **NADLER.** I request 1 additional minute.

Mr. **GEKAS.** Granted, without objection.

Mr. **NADLER.** Why would prosecutors routinely oppose a court even looking at new evidence?

Mr. **MARGOLIS.** I don't know that is true. But the first thing that would happen is that the prosecutor and his investigators would look at the new evidence and make their own judgment. And if they determined—let's say it is DNA evidence, showed that the person was not the person responsible, then they would have an obligation to do something about it.

Mr. **NADLER.** In the book that I have just finished reading by Barry Scheck and Peter Neufeld and Jim Dwyer, the first two of whom head Project Innocence, which has used DNA evidence to free something like 60 or 70 people from long jail sentences where they proved innocence, in almost every single case the prosecutors opposed the introduction of that

absolutely innocence-proving evidence. Almost every case. They rarely assent. You have to beat them in court to get the evidence admitted.

Mr. **KEENEY.** Mr. Nadler, just to follow through on what Mr. Margolis said. I think any responsible prosecutor faced with a reasonable showing that DNA evidence may exculpate the individual should take appropriate action.

Mr. **NADLER.** Again, that being the case, why, in almost every case that we know of, did the court have to overrule the prosecutor in order to let that DNA evidence come in?

Mr. **KEENEY.** I can't answer that.

Mr. **MARGOLIS.** I don't know those cases. I don't know that book. Are those Federal cases?

Mr. **NADLER.** Some Federal, some State.

Mr. **MARGOLIS.** I think when you are talking about DNA, the great bulk of the cases are going to be State cases.

Mr. **NADLER.** Are you saying State prosecutors, unlike Federal prosecutors, are not interested in——

Mr. **MARGOLIS.** No, I am saying I don't know what they are doing. I don't have any responsibility or inside knowledge there.

Mr. **NADLER.** Well, okay. Thank you very much.

Mr. **GEKAS.** Time for the gentleman has expired.

The gentleman from Massachusetts is recognized for 5 minutes.

Mr. **DELAHUNT.** I have to agree with your statement, Mr. Margolis. I think that prosecutors worth their salt would do the right thing; but we are not concerned about good prosecutors. Having been a former prosecutor myself, I recognize that the vast majority of prosecutors in this country are good and decent people who understand that they have a larger role than simply securing a conviction. But again, I know you have heard my observation earlier about the awesome power that is delegated to the prosecutor in this country. So that those who fail erode public confidence in the entire system.

And earlier you mentioned the Hyde amendment. You referred also to the McDade amendment as providing for checks and balances, although I understand that the Department of Justice—or maybe you can correct me—is seeking to repeal the McDade amendment?

Mr. **MARGOLIS.** I should say it is somewhat like a visit to the proctologist. Sometimes it is good for you, but you certainly don't always want it.

Mr. **DELAHUNT.** Right.

Mr. **MARGOLIS.** I think it is a check and balance, to answer your question directly. I also think that on balance it causes a great number of problems.

Mr. **DELAHUNT.** I understand, but I just want to be clear. The Department of Justice is seeking to repeal the so-called Citizen Protection Act?

Mr. **MARGOLIS.** I cannot state that with any degree of certainty. I can't say that is wrong either. I just am not part of any such process. I can find that out.

Mr. **DELAHUNT.** Well, it is not being done at your pay grade. I understand that, too.

But again I think the overwhelming vote—and this is what I would suggest to all of you—the passage of McDade by 300 plus, almost 350 votes, and the Hyde amendment by a similar margin—as well as the legislation that this committee considered regarding civil asset forfeiture, indicates that there is an unease and a concern about prosecutorial accountability. And I think we have got to really understand that and recognize it and deal with it.

I welcome the steps that have been made regarding the Office of Professional Responsibility, but I think we need more transparency. I think we need more resources. Because in a democracy, if there is an erosion of confidence in the system, we have a serious problem. And gentlemen, we have a problem. You may or may not see it in terms of your reality, but clearly in this institution there is a concern.

You saw what happened in terms of the demise of the independent counsel statute. The gentleman from Ohio talked about Lewinski. I think every single Member, both Republican

and Democrat, was absolutely offended by the comments of the independent counsel, Mr. Smaltz, who said an indictment is as good as a conviction. I am paraphrasing here. That maybe it sends a message, and serves as a deterrent. We don't want that.

Mr. **MARGOLIS.** He does not speak for the United States Department of Justice when he says that.

Mr. **DELAHUNT.** I understand that and I don't mean to imply that. But what I am suggesting is there are prosecutors like that out there. There are too many Smaltzes.

And I understand you have beefed up the Office of Professional Responsibility, but there are too many citizens who file complaints that don't receive any kind of response whatsoever from the Office of Professional Responsibility. You know, somehow that has got to be dealt with, Mr. Jarrett. That has got to be dealt with. Everybody deserves an answer in this country. And I know how difficult the role of prosecutor is. I can empathize. I have been there, I have done that. I did it for 20 years. And the great dread that I had was to convict someone who was innocent. I made mistakes. I charged some people who were innocent—with serious, serious crimes. Thank God we caught it. But it is incumbent upon us as prosecutors to always recognize that.

But I am concerned about what I sense is a growing erosion of confidence in the administration of criminal justice in this country. And there are abuses out there. We all know them. Coming from Boston, we have a serious situation right now regarding a former FBI agent and the use of informants.

I yield back.

Mr. **GEKAS.** Thank you, gentlemen.

The purpose and responsibility of the panel has been discharged, so we dismiss the witnesses with our thanks. Whatever follow-up there might be, I assume you might be prepared to respond to us.

Mr. **MARGOLIS.** Yes. Thank you, Mr. Chairman.

Mr. **GEKAS.** We dismiss you.

Mr. **KEENEY.** Thank you, Mr. Chairman.

Mr. **GEKAS.** We now call the final panel.

Michael Shaheen currently serves as Senior Counsel to the Commissioner of the Internal Revenue Service. After completing his undergraduate work at Yale University, he obtained his law degree at Vanderbilt University. Mr. Shaheen has served as Chief Counsel and Deputy Executive Director of the Commission on the Advancement of Federal Law Enforcement, and as Director of the Justice Department's Office of Professional Responsibility. Prior to joining the Department of Justice, Mr. Shaheen was in private law practice in Memphis, Tennessee.

Professor Bennett Gershman currently teaches at the Pace University School of Law. After receiving his B.A. from Princeton, he obtained his law degree from New York University. Professor Gershman has served as Chief of the Appeals Bureau in the Office of the New York State Anti-Corruption Prosecutor. He also was an Assistant District Attorney at the New York County's District Attorney's Office. He has been a visiting professor at University College in London, the Syracuse College of Law, and Cornell Law School. Professor Gershman was awarded the 2000 Professor of the Year Award by Pace University School of Law.

We begin with the contrite statement of the fact that your written statements will become part of the record automatically, without objection, and that we ask you to limit your testimony to a summary, within 5 minutes, of that written statement. We will begin with Mr. Shaheen.

STATEMENT OF MICHAEL SHAHEEN, SENIOR COUNSELOR, COMMISSIONER OF INTERNAL REVENUE SERVICE, WASHINGTON, DC

Mr. **SHAHEEN.** Mr. Chairman, I'll be briefer than the summary.

I think most every objection to the proposed legislation has been made and articulately made. I think we should take great care that the exceptions—and I agree with the members of the panel that there have been abuses, but we need to be careful that the exceptions, when they aren't dealt with appropriately—and I think those instances are rare—but exceptions do occur, that the exceptions are not allowed to swallow the rule. And that is what would happen if this legislation as it presently stands would pass into the law.

It would institutionalize more defects than there were in the independent counsel act. But

it would carry with it the additional baggage of violating, in my view, article II, section 3 of the Constitution because of its failure of accountability. You would have a separate Justice Department investigating the Justice Department. And then over time it has been my experience that people will become dissatisfied with the product of this new agency were it to become law.

And then there would come a time when someone will appear before the Judiciary Committee, be it the House or the Senate, and propose yet another oversight body. That has been the history in my experience since 1975. In 1975 there was no one in charge of internal investigations in the Department of Justice. Then there were four people. Then that went up to 20. Now in OPR, it has over 30. We have an Inspector General. We have the various internal affairs units scattered throughout the 1811 agencies in the Department of Justice—those are the law enforcement agencies.

Then we have the Inspector General and now we have the proposal in this legislation to have a separate, what I'll call separate, Department of Justice investigating the constitutionally based Justice Department. So I respectfully would urge the committee to vote against the adoption that is proposed.

I will be happy to respond to any of your questions.

[The prepared statement of Mr. Shaheen follows:]

PREPARED STATEMENT OF MICHAEL SHAHEEN, SENIOR COUNSELOR, COMMISSIONER OF INTERNAL REVENUE SERVICE, WASHINGTON, DC

Mr. Chairman, and Members of the Subcommittee, I am pleased to be here with you today to discuss the proposed legislation pending before you called the ''Fair Justice Act of 2000.'' The bill would create a new agency, to be named the Fair Justice Agency, that, independently of the Department of Justice, would investigate and prosecute alleged crimes and misconduct by officers and employees of the Department of Justice. I have reviewed the proposed legislation carefully, and I strongly counsel you not to adopt it.

Before detailing my reasons for giving this advice, allow me to describe briefly the office within the Department of Justice that I led for twenty-two years. In 1975, as one of the responses to the revelations of ethical abuses and misconduct by Department of Justice officials in the Watergate scandal, Attorney General Edward H. Levi asked me to head a new office, the Office of Professional Responsibility, that was created to ensure that Department employees perform their duties in accord with the professional standards expected of the

nation's principal law enforcement agency. OPR was charged with receiving and investigating complaints against Department employees, and, as an entity separate from the litigating divisions and offices of the Department, reported directly to the Attorney General.

Over time, OPR established itself as an effective watchdog within the Department, rooting out serious misconduct and detailing why other allegations were unfounded and without merit. As Counsel for OPR, I continually told the attorneys working for me to ''call cases as they saw them,'' and not to be concerned about the consequences to the Department if they found that an attorney had committed misconduct in a particular matter. OPR followed this approach consistently over the years under each Attorney General. Despite handling the most sensitive and controversial investigations in the Department, OPR earned the respect of others within and outside the Department with its independent and fair handling of allegations of misconduct. By the time I retired from the Department at the end of 1997, OPR had effectively and efficiently resolved thousands of complaints against Department personnel.

Based on my experience as Counsel for OPR and on my work with other offices within the Department such as the Offices of Professional Responsibility at the FBI and DEA, I can confidently report to you that the Department of Justice is already doing the job of investigating and prosecuting alleged crimes and misconduct by its employees. Another layer within the Executive branch that would be charged with pursuing the same matters would be redundant, unnecessary and, in some instances, obstructive.

Moreover, another layer of review would create conflicts that could cripple the system already in place. Too many of the functions of the proposed Fair Justice Agency would overlap the powers of the Department offices charged with investigating the same allegations. For example, under the proposed legislation the Fair Justice Agency would have the authority to conduct grand jury investigations and to immunize witnesses to obtain testimony. Yet Department offices already have such authority in these same matters. If parallel investigations were conducted but were not coordinated within a single agency, as they are now within the Department of Justice, countless problems could arise, dooming each agency's investigation. One investigative office could seek to immunize a witness that another believes should be prosecuted. One agency could execute a search warrant or obtain the issuance of a subpoena, thereby alerting a target before the other agency could initiate an even broader probe into possible criminal activity. If each agency sought to indict a particular target, there would be a race to the courthouse to charge and try the individual, with the Double Jeopardy clause of the Constitution barring any second chance to pursue the same wrongdoing.

If the hope is that the Fair Justice Agency and offices within the Department of Justice would cooperate easily and coordinate their efforts, that hope is unlikely to be realized. Each agency would be confined by the requirements of the rules of grand jury secrecy in their communications about their ongoing investigations, raising questions about attempts to coordinate their efforts. Moreover, attempts at coordination would run counter to the thrust of the proposed legislation, which is that the Fair Justice Agency would be an independent entity within the Executive branch, not reporting to the Attorney General.

If the hope instead is that the Fair Justice Agency would replace OPR and the other offices within the Department of Justice currently charged with investigating alleged crimes and misconduct by Department officials and employees, the proposal could effectively cripple the Department of Justice. Despite the claims of some Department critics, most allegations of criminal wrongdoing and misconduct by Department officials and employees are unfounded, and the vast majority of the individuals who work for the Department do their jobs honestly and uphold the high standards of public service that are set for them. Additionally, such a prosecutor would soon cost much more than the $10 million to $20 million appropriated annually under the proposed legislation.

Mr. Chairman, and Members of the Subcommittee, the Department of Justice is already doing an effective job of policing its own workforce, and there are checks within the system, such as the courts and the various Congressional oversight committees, to ensure that it continues to do so. Creating another Executive branch agency to do the job would be at best a waste of resources and most likely would have much more harmful consequences.

Mr. **VITTER.** [presiding] I will go to Professor Gershman.

STATEMENT OF BENNETT GERSHMAN, PROFESSOR, PACE UNIVERSITY SCHOOL OF LAW, NEW YORK

Mr. **GERSHMAN.** Thank you, Members of the committee.

I support the concept of H.R. 4105. We could quibble on some of the details and some of the language, but I think the concept is important; and I think this subcommittee should vote it out. In a widely cited article I wrote in 1992 entitled, ''The New Prosecutors,'' I discussed three unmistakable trends in American prosecution. One was that the prosecutors today wield vastly more power than ever before. Second, prosecutors are increasingly insulated from judicial control over their conduct. And third and most importantly for this hearing, prosecutors are increasingly immune to ethical restraints.

What I said in 1992 has even greater force today. From the judicial opinions, from the mainstream commentary, I think one of the clearest, most recurring themes in American criminal justice is the prevalence of flagrant and pervasive misconduct by prosecutors. I read it every day of the week when I read the advance sheets. And the failure of the courts or professional disciplinary bodies to provide meaningful discipline are a threat of credible meaningful discipline to prosecutors who engage in misconduct. Prosecutors increasingly strike foul blows, the Supreme Court said in Berger against the United States 65 years ago. But they're usually not held to account for it.

This Congress should be commended for passing two important pieces of legislation dealing with prosecutorial abuses: the Citizen Protection Act, which requires Federal prosecutors to comply with State ethics rules. The Hyde amendment, which imposes costs against prosecutors for bad faith conduct. The Justice Department significantly watered down the Hyde amendment. It is not as effective as it could have been. The Citizens Protection Act, I believe they're seeking to repeal it. I think that this present legislation would help to enforce both of those other pieces of important legislation.

Courts and commentators in easily, abundantly documented cases repeatedly condemn misconduct by Federal prosecutors and investigators. Abuses range from outrageous conduct that instigates crime and entraps persons into criminal conduct, misuse of informants, accomplices and so-called snitches by huge and unsavory rewards, circumventing constitutional rights such as the right to counsel, forfeiture abuses, grand jury abuses, selective and vindictive charging practices, misuse of the media and an endless array of violations of the rights of an accused, including but not limited to suborning perjury, suppressing exculpatory evidence, lying to the court and the jury and deliberately offering evidence known by the prosecutor to be false and inadmissible. As I say, the decisions are replete with this type of conduct.

I think that most Federal prosecutors—I agree with Congressman Delahunt completely—are honorable, decent, fair-minded people. But there is a significant amount of prosecutors who engage in misconduct and are not held to account for it. I think that is the problem. It erodes public confidence in the capacity of our system of justice to be able to act responsibly.

The available remedies to check misconduct are largely meaningless. Courts do not impose discipline. Criminal prosecution is theoretically possible, but hardly ever happens. Civil damage actions cannot happen because of the doctrine of prosecutorial immunity. And I think the record of the Office of Professional Responsibility, the Justice Department, for a

number of years has, in my opinion, has been disappointing. The OPR has indeed improved its staff and improved its procedures over the last 8 years since a scathing report by the General Accounting Office in 1992.

But investigations of misconduct and particularly ethical misconduct are relatively infrequent. Discipline is even more infrequent. It has to be so. Even though there are 12 cases of confirmed misconduct in 1998, the last annual report from OPR, there are far, far more cases that you can just read in the advance sheets that are not covered by OPR. Although there is a cursory sketch, a summary sketch of the kind of cases that were investigated, you know that so many of these cases of flagrant misconduct are not effectively investigated. And you know there is no meaningful response by OPR to these cases.

An independent investigating agency as proposed by this bill would provide a meaningful and credible deterrent to misconduct and other forms of corrupt behavior by Federal law enforcement officials.

Unlike the Independent Counsel Act, there is a limited budget. We would not be dealing with prosecutions of the janitor and secretary. With a limited budget you would only be taking the most extreme, the most serious cases; and you will not be finding somebody first and then finding crimes later as with the Independent Counsel Act. Matters would be reported to this agency and there would be an investigation. And as I say, only the most serious cases I think would be the ones that would be investigated. I think Federal judges would be more likely to refer matters that are involving misconduct by prosecutors before them to this agency than they would be to the OPR, knowing the record of OPR in not effectively and vigorously bringing prosecutors to account.

I think this agency could also refer matters under the Citizen Protection Act to State and local disciplinary bodies for ethical infractions that this agency feels it is inappropriate to investigate. And at least that would put some teeth into the Citizens Protection Act where Federal prosecutors violate State and local ethics rules.

So in sum, given, I think, the very poor record of OPR, this agency would provide a necessary and, I think, appropriately proportioned means of addressing a serious and ongoing problem in American criminal justice.

Thank you.

Mr. **VITTER.** Thank you very much, Professor.

[The prepared statement of Mr. Gershman follows:]

PREPARED STATEMENT OF BENNETT GERSHMAN, PROFESSOR, PACE UNIVERSITY SCHOOL OF LAW, NY

I strongly support H.R. 4105, the Fair Justice Act of 2000, which creates the Fair Justice Agency as an independent agency to investigate and prosecute misconduct, criminal acts, corruption, and fraud by offficers and employees of the Department of Justice. Since my expertise mostly embraces prosecutorial conduct and ethics, I would like to focus my remarks on that topic.

In an article in the Pittsburgh Law Review in 1992 entitled ''The New Prosecutors,'' (52 U. Pitts. L. Rev. 393), I discussed what I perceived as a striking change in the role and power of the American prosecutor, with significant emphasis on federal prosecutors. I noted three unmistakable trends: first, prosecutors wield vastly more power than ever before; second, prosecutors are more insulated from judicial control over their conduct; and third, prosecutors are increasingly immune to ethical restraints.

What I said in 1992 has even greater force today. From the judicial opinions and other legal and mainstream commentary on criminal justice issues, particularly as it relates to prosecutors and their agents, one of the clearest, most recurring themes is the prevalence of flagrant and pervasive misconduct by prosecutors, and the failure of courts, or professional disciplinary bodies, to provide meaningful discipline, or a credible threat of meaningful discipline. The absence of disciplinary remedies, in my judgment, accounts for why so many prosecutors, in the words of the famous Supreme Court opinion in *Berger* v. *United States*, ''strike foul blows''—blows for which they should be called to account but usually are not.

Initially, the Congress should be commended for passing two important laws recently that address the problem of prosecutorial abuse of power. The Citizens Protection Act of 1999 requires federal prosecutors to comply with state ethics rules; the Hyde Amendment authorizes judges to impose monetary sanctions against federal prosecutors for bad faith conduct. The Fair Justice Act, as it applies to misconduct and corruption by prosecutors, would add significant enforcement powers to these two important initiatives, and a credible and meaningful deterrent to misconduct by federal prosecutors and investigators.

Courts and commentators, in easily and abundantly documented cases, repeatedly condemn misconduct by federal prosecutors and investigators. Abuses range from outrageous conduct that instigates crime and entraps persons into criminal conduct; misuse of informants, accomplices, and so-called ''snitches'' by huge, and unsavory rewards; circumventing constitutional rights such as the right to counsel; forfeiture abuses; grand jury abuses; selective and vindictive crime-charging practices; misuse of the media; and an endless array of violations of the rights of an accused, including but certainly not limited to suborning perjury, suppressing exculpatory evidence, lying to the court and jury, and deliberately offering evidence known by the prosecutor to be false and inadmissible.

The available remedies to check, deter, and punish misconduct by prosecutors and their agents are either nonexistent or functionally meaningless. Courts do not impose discipline on prosecutors even when the misconduct is clear. Criminal prosecution is theoretically possible in some cases, such as subornation of perjury or tampering with evidence, but it hardly ever happens. Civil damage actions are virtually impossible because of the doctrine of prosecutorial immunity.

And it has been disappointingly clear for many years that prosecutors and other law enforcement officials do not discipline themselves effectively. The record of the Justice Department's Office of Professional Responsibility, which is charged with overseeing conduct by federal prosecutors and other employees of the Department, is disappointing. Investigations of misconduct are relatively infrequent, and discipline even more so. According to the OPR's 1998 annual report, 80 complaints were investigated, and 12 were found to constitute professional misconduct. For the 12 cases of misconduct, there are no identifying details, only summaries. I find the numbers troubling. I routinely read, year after year, hundreds of decisions by federal appellate and district courts alluding to very serious misconduct by federal prosecutors. Courts routinely describe this conduct as ''egregious,'' ''flagrant,'' ''foul,'' and ''condemned.'' Additionally, many other instances of misconduct do not even get officially reported.

An independent investigating and prosecuting agency, as proposed by HR 4105, would provide a meaningful and credible deterrent to misconduct, corruption, fraud, and criminal behavior by federal law enforcement officials, as well as a process by which they could be held accountable when their misconduct otherwise escapes detection. Unlike the Independent Counsel Act, the power of the Fair Justice Agency to investigate and prosecute would be confined by a limited budget that would help to insure the setting of effective investigative priorities without pre-selected targets. The Fair Justice Agency would provide federal judges with a credible disciplinary forum when a referral for prosecutorial misconduct is called for; the Agency could also refer matters to other agencies, such as a

state disciplinary body, for investigation of ethical violations under the Citizens Protection Act.

In sum, The Fair Justice Act of 2000 is a necessary and appropriately proportioned means of addressing a serious and ongoing problem in federal criminal justice.

Mr. **VITTER.** I will begin with some questions for Mr. Shaheen.

When you headed OPR, did you think that the agency had sufficient resources? Do you think they do now, and what would be the consequences of insufficient resources?

Mr. **SHAHEEN.** The consequences of insufficient resources is always that you never get everything done you want done or one wants done. I always sought additional resources, and the Attorneys General I worked for were prodigal in providing them. I think that Professor Gershman engages in a bit of hyperbole when he refers to eight cases cited in the annual report.

The Office of Professional Responsibility, when I was there, investigated thousands of matters. The annual report is only what it purports to be, and that is a rendition of a random sampling or examples of cases that were investigated, not just the eight mentioned or cited or not the 10 in each category. We literally investigated over a thousand.

But I think in a time of limited resources, to answer your question, you will never have enough resources to handle all the problems, but I would remind the members of the committee and Professor Gershman that the courts themselves have the absolute initial inherent authority to on the spot cite a prosecutor for misconduct and pursue an investigation right then and there if they are serious about it.

And I will tell you that in over 20 instances—I am making certain of the count—in over 20 instances when they were written, when prosecutors' conduct were the subject of a written opinion, when we showed up, and we traveled in pairs, when the attorneys showed up to examine the judges who wrote the opinions, they were shocked that their written comments inspired an OPR investigation.

I said, what do you think would happen? The judges said that we had no idea that what we wrote would result in an investigation of this Assistant United States Attorney. And I said, ''well, it has and it will and there will be a record of it.'' I said, ''what did you intend when you

wrote about them so critically in your opinions?'' It was our way—so many Federal judges have previously been either U.S. Attorneys or prosecutors of some sort at the State or Federal level, it was our way of engaging in sensitivity training.

But I remind you, the first line of investigative responsibility of attorneys is the inherent right and authority, power and jurisdiction of the district court to engage in an inquiry of the subject right then and there. To listen to Professor Gershman speak, you would think we were in Uganda or Russia, that we are a lawless society, and that is just not the case. The overwhelming majority of people who exercise the awesome prosecutorial authority in this country at the Federal level are honest, diligent, conscientious, and sensitive people.

Mr. **VITTER.** Do you have any specific recommendations about improvement at OPR that would go directly to the concerns of the sponsors of the legislation?

Mr. **SHAHEEN.** Yes, sir. I am not sure it will satisfy the sponsors of the legislation, but it goes to your first question, and that is that one can never have too many resources in that business, that is, in self-investigation or an investigation of one's own personnel.

Mr. **VITTER.** Apart from just pure resources, do you have any specific recommendations about the structure of OPR or management practices or anything else, just apart from resources?

Mr. **SHAHEEN.** Go ahead, I am sorry.

Mr. **VITTER.** For instance, anything that would perhaps further make it independent from the leadership of the Justice Department or encourage sort of an independent review that the sponsors of this bill are obviously interested in?

Mr. **SHAHEEN.** No, I made it clear to every Attorney General I served that it was independent of the Attorney General and the Deputy Attorney General to whom we reported. I know with one Attorney General we forced him to return a $50,000 severance pay he got. It cost him several hundred thousand dollars because we ruled it illegal, some tax shelters that the Department disallowed because they were not permitting ordinary tax payers to buy them. We charged him $11,217 for his wife's misuse of a vehicle because he claimed she needed it for security purposes, and I later went up and told him I am not some priest crying out in the wilderness against the departmental pope.

But it is my job to tell you no, when no is the right answer to be given. And the Attorney General who first recognized that, in addition to Edward Levi, who established the office,

was Griffin Bell. All other Attorneys General have learned that it is OPR's job to tell Attorneys General, Deputy Attorneys General that no is the answer or this is what you've got to do or, as I testified when I first got the job, I would report to the House and Senate Judiciary Committees and to the White House counsel that I was resigning and I would call a press conference and I would explain why.

Mr. **VITTER.** Professor Gershman, I have just one question. Are you not concerned that the solution you advocate and which is broadly advocated by the bill would create another level of bureaucracy and duplication of efforts that are already being made elsewhere?

Mr. **GERSHMAN.** If I thought that, I would be opposed to the bill. If I thought it was simply duplicating efforts that were already being effectively pursued, I would feel differently. I do not think the efforts by OPR are effective. I do not think that OPR provides a meaningful and credible investigative response. And to hear Mr. Shaheen's—I mean, Federal judges engaging in sensitivity training when they say that prosecutors engage in flagrant egregious misconduct and they reverse a conviction for that, I am shocked to hear that.

I do not think OPR in the last annual report there were 80 complaints. Now we are not talking about thousands of complaints. We are talking about 80 complaints were investigated. Twelve were found to constitute professional misconduct. That is not enough. That is not nearly enough. There is a lot more, a lot more professional misconduct out there than 12 findings of professional misconduct. They are not doing a good enough job. Maybe they are doing a better job than they were in the past, but they are not doing a good enough job.

And my feeling is some responsible agency needs to be created that would impose some serious credible, meaningful discipline on prosecutors. Right now it is not happening, and the public sees that and prosecutors see that. And you are just going to see more of this same type of foul conduct by prosecutors when they realize that the OPR is a paper tiger.

Mr. **VITTER.** Okay. Thank you. Mr. Nadler.

Mr. **NADLER.** Thank you. Professor Gershman, you say in your testimony that there are the unmistakable trends. I want to ask you about two of them. You say prosecutors wield vastly more power than ever before and prosecutors are more insulated from judicial control over their conduct. Why are those statements true? Why do prosecutors wield vastly more power, and why are they more insulated from judicial control?

Mr. **GERSHMAN.** Well, thanks to this Congress, prosecutors have far more weapons to fight crime than they ever have had in the past. If you want to look at forfeiture, you want to look at Rico. You can look at dozens and dozens—in fact one of the criticisms is there is an over-federalization of State and local criminal law. Prosecutors have more power. That is a fact.

Mr. **NADLER.** Because of laws we have passed?

Mr. **GERSHMAN.** Yes. As well as a very, very deferential Supreme Court over the last 30 years.

Mr. **NADLER.** Why are prosecutors less subject to judicial control?

Mr. **GERSHMAN.** They are because judges are more deferential today. There used to be when the courts exercised what is known as a supervisory power over prosecutors and other Federal law enforcement officials to improve the administration of justice. Courts do not do that anymore. In fact, the Supreme Court says it is probably not even a proper exercise of inherent power by the courts. So the decline of supervisory power is one indication of, I think, the movement by courts away from a closer discipline process.

Mr. **NADLER.** Could you supply the committee with a list of the statutes that we have passed that you think have exacerbated this power?

Mr. **GERSHMAN.** The 1992 article.

Mr. **NADLER.** We'll enter that into the record. If you give it to us, we will enter that into the record.

I ask that be entered into the record when it is applied.

Mr. **VITTER.** Without objection, so ordered.

[The *Law Review* article referred to can be found at 53 U. Pitt L. Rev. 393.]

Mr. **GERSHMAN.** There are several articles written in the last few years.

Mr. **NADLER.** We would like to see them all.

So Congress has passed statutes giving prosecutors more power and the courts have gotten more deferential?

Mr. **GERSHMAN.** Yes, clearly.

Mr. **NADLER.** Is it also because defendants have less rights or more rights in the system at present than they used to have?

Mr. **GERSHMAN.** My sense is they probably have less rights. Certainly if you look at the antiterrorism act, if you look at the increased breadth of the harmless error rule, if you look at the——

Mr. **NADLER.** The increased breadth of the harmless error rule? That is as a result of a judicial determination?

Mr. **GERSHMAN.** Yes.

Mr. **NADLER.** Would it be constitutional for us to limit the breadth of the harmless error rule?

Mr. **GERSHMAN.** Sure. Absolutely, absolutely.

Mr. **NADLER.** We have a vote. I must tell you, Professor Gershman, I certainly agree with you about the problem. I am not sure that this bill is the solution. I think a lot of it has been created by Congress, and I think a lot of it has been created by the courts over the years.

Let me ask you one question that I asked Mr. Margolis before. He said that no prosecutor would attempt to keep out of court evidence of a person in jail's actual innocence out of court. Is that your experience?

Mr. **GERSHMAN.** Congressman Nadler, I was featured in a short interview on the Front Line program on PBS several months ago on that precise problem. And on that program several prosecutors were interviewed who resisted coming forth with——

Mr. **NADLER.** Resisted allowing DNA evidence or new evidence to come into court? What were the reasons they did that? What were the reasons they cited?

Mr. **GERSHMAN.** They said the case is over. Finality. That there has been a jury verdict and that is final, and the defendant did not pursue his remedies earlier on.

A lot of it was irrational. And I just sense——

Mr. **NADLER.** I really must say we hear those arguments in this committee room very often. So you do not regard it as true that if evidence comes forward that someone who has previously been convicted is indisputably innocent—do our laws make it easy to get such evidence before a court?

Mr. **GERSHMAN.** No. I think the Innocence Protection Act, Congressman Delahunt, I believe Senator Leahy's bill would do that. Right now there are no laws that would.

Mr. **NADLER.** The Leahy bill deals specifically with DNA evidence, specifically. What about other types of evidence?

Mr. **GERSHMAN.** No. You cannot get it forth if it has not been produced. Florida is 21 days. Texas is 30 days. If you do not have it, you are out of luck.

Mr. **NADLER.** No matter how clear the evidence is?

Mr. **GERSHMAN.** No matter how clear the evidence is.

Mr. **NADLER.** Even a capital case?

Mr. **GERSHMAN.** Yes. In New York you can do it forever. There was an article in the New York Times yesterday about a horrible Texas case about a young man who was convicted of rape. And it has clear he didn't do it. But the Texas authorities have resisted.

Mr. **NADLER.** I have one further question very quickly. With respect to this question, how has what Congress did with respect to habeas corpus affected it?

Mr. **GERSHMAN.** I think that Federal courts do not have the ability to review cases today that they could have reviewed 15 or 20 years ago where there is a clear claim of a violation of constitutional rights, a strong claim of innocence.

Mr. **NADLER.** Because of what we did to habeas corpus?

Mr. **GERSHMAN.** Yes, yes.

Mr. **VITTER.** If I can interrupt, a vote has been called; and we have about 12 minutes to go.

Mr. **DELAHUNT.** I would be about 5 minutes, Mr. Chairman. I think this is the last panel and we can conclude.

I want to thank both gentleman, and I want to acknowledge, Professor, that I agree with much of what you have said here today. Again, what concerns me as a former prosecutor and someone who took that role rather seriously is the erosion in the confidence of the American people in the integrity of the system.

And Mr. Shaheen, we cannot put this on the judges. You indicate that the judge can do it on the spot. I mean, that just is not reality. The court does not have the resources and the time to really do the kind of investigative work that is necessary to determine whether there is or has been prosecutorial misconduct or whether there are serious problems with the testimony of informants. These are the kind of concerns that really require us to take a look at an appropriate mechanism at OPR, because until we get some transparency, until every single complaint receives an answer, we will have this problem of confidence.

Mr. **SHAHEEN.** Congressman, I agree with you; and I was not attempting to suggest that the courts ought to exercise their supervisory authority. I am saying it could start there, that they are part of the overall picture. I agree with you that there ought to be transparency; but the courts, the courts are doing that right now in Boston in the case you alluded to.

Mr. **DELAHUNT.** And I understand that, but the genesis of that case happened 11 years ago.

Mr. **SHAHEEN.** But I am suggesting that starting with the courts there are a whole series, the State bar, the OPR.

Mr. **DELAHUNT.** I understand that. But what I am saying is that by the time these other mechanisms are effected, it is too late. There has been irreparable damage, and it is the responsibility of the Department of Justice to be monitoring these situations.

Mr. **SHAHEEN.** I agree with you. I was merely citing that as the first step in the process, that the court can either do something or cite them and refer them to OPR.

Mr. **DELAHUNT.** The problem is that in too many cases like DSA, the court has no idea as to the existence of misconduct. I thing that is the point of the professor.

Mr. **SHAHEEN.** That is correct.

Mr. **DELAHUNT.** The vast majority of the cases. Again, that is all indicative and is reflected in what you are hearing here and in the overwhelming votes in favor of the McDade Act and the civil asset forfeiture bill that was sponsored by the chairman of the Full Committee, Mr. Hyde, as well as the so-called Hyde amendment. And it is going to continue. It is going to continue. I know there are efforts to repeal the McDade bill, and there is dissatisfaction with some other suggestions out there; but it is time for the Department of Justice to understand that it is in the best interest, not just of the American people, but the Department itself as an institution not to be blinded, not, as the ranking member says, to adopt a bunker mentality, if you will. We all know of those prosecutors who would insist that DNA testing not be done. We know that mood. We know that mind-set.

Mr. **SHAHEEN.** We know it is wrong.

Mr. **DELAHUNT.** And we know it is wrong. Let's do something about it. And I think the place to start is the OPR, and I have had conversations in the past about the issue of transparency, but I know cases where the Attorney General of Massachusetts sent a letter years ago seeking some answers regarding a situation and did not receive any response. And it is not unrelated to the case that is now pending in the Federal district court against a former agent of the FBI. And that was wrong.

Mr. **VITTER.** Thank you, Mr. Delahunt.

Mr. Nadler, you are recognized for a unanimous consent request.

First, we are going to dismiss the panel and thank both Mr. Shaheen and Professor Gershman. Thank you very much for your testimony. We appreciate it.

Thank you, Mr. Nadler.

Mr. **NADLER.** Thank you, Mr. Chairman. I ask for unanimous consent that all members have 5 legislative days to revise and extend their remarks and place materials in the record.

Mr. **VITTER.** Without objection, it is so ordered.

Mr. **NADLER.** Thank you, Mr. Chairman.

I have an additional request. A number of named individuals were accused publicly in testimony before this committee of various forms of misconduct and in fact of crimes. I ask that the committee send each person so accused the relevant pages of the transcript and a letter soliciting their response for the record.

I further ask that each agency accused in these hearings be afforded the opportunity to respond for the record if they wish.

Mr. **VITTER.** Mr. Nadler, I think the subcommittee would like to take that under advisement pending advice from our parliamentarian about any precedent set, so we will be happy to work with you about that.

Mr. **NADLER.** Mr. Chairman, with all due respect, I do not think that is efficient. People were accused, named individuals who were not here, who were not told they were going to be the subject of a congressional hearing. They were accused on television in public by various witnesses of various improprieties and even crimes. I think it certainly behooves this committee, unless we want to act as Mr. Traficant thinks the Justice Department acts in derogation of the rights of individual American citizens, to send those individuals a few pages of the transcript to tell them that their names were mentioned in the hearing, and give them 2 weeks or whatever appropriate time to place their response in the record if they wish. I cannot see how we can have any question about that, and I ask for unanimous consent now.

Mr. **VITTER.** Mr. Nadler, I certainly understand the thinking behind it. I think there is some concern about the precedent it sets in terms of our thinking that we have the responsibility to do this whenever a statement is made even passing in any committee hearing. We just wanted to look into it.

Mr. **NADLER.** Mr. Chairman, these statements were not made in passing. These were made as serious accusations of misconduct and crimes against named individuals, and I think it would be outrageous if unanimous consent for them to respond is not granted. It would look terrible for this committee frankly, and it would be terrible, and it would be a derogation of rights for those individuals. That is what happened in the McCarthy era. We should not allow it to happen again. I am not saying they are right or wrong, but we should

give them the notice. We should give them an opportunity to respond for the record. I am not asking them to be called as witnesses, but they should have the right to respond for the record.

Mr. **VITTER.** With the statement that this in no way is going to set a precedent for the committee or the subcommittee that we are obliged to do this on every occasion, without objection it is so ordered.

Mr. **NADLER.**Thank you.

Mr. **VITTER.** This hearing is adjourned. Thank you.

[Whereupon, at 2:16 p.m., the subcommittee was adjourned.]

A P P E N D I X

Material Submitted for the Hearing Record

Congress of the United States,

House of Representatives,

Washington, DC, October 24, 2000.

MR. JOSEPH OCCHIPINTI, *Executive Director.*
National Police Defense Foundation,
Manalapan, New Jersey.

DEAR MR. OCCHIPINTI: On July 27, 2000, the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary held a legislative hearing on H.R. 4105, the Fair Justice Act of 2000. Upon the unanimous consent request of Ranking Member Jerrold Nadler, it was agreed that individuals and agencies who were accused of misconduct or criminal wrongdoing during the course of this hearing be supplied with a copy of the relevant pages of the hearing transcript and be given an opportunity to respond to such statements.

Pursuant to the unanimous consent request, I enclose with this letter pages 67 and 68 of the hearing transcript, a copy of which is enclosed. A written response, if any, for inclusion

in the hearing record must be typewritten (doubled spaced) as well as prepared in electronic format (a diskette in any standard word processing format). These submissions must be received *not later than November 9, 2000.*

Please note that the version of the hearing transcript included with this letter is unofficial and unedited. Under no circumstances may it be quoted, duplicated, or used for any purpose other than stated in this letter.

Should you have any questions or require additional information, please do not hesitate to contact Susan Jensen-Conklin, Subcommittee Counsel, at (202) 225–2825.

Very truly yours,

George W. Gekas,
Chairman.

Enclosure

CC:

Jerrold Nadler, Ranking Member

STATEMENT BY JOESPH OCCHIPINTI, OCTOBER 25, 2000

CONGRESSIONAL STATEMENT

Dear Chairman George W. Gekas:

Thank you for giving me an opportunity to respond to certain derogatory statements made against me by Congressman Jerold Nadler on July 27, 2000 during my testimony in the above referenced hearing.

In essence, Congressman Nadler attempted to discredit my entire testimony citing I was not a credible witness in light of my landmark prosecution and conviction that occurred almost ten years ago. It should be noted the subject of your hearings was to investigate alleged official misconduct by Justice Department officials and I was asked to testify in light of my alleged injustice.

It's unfortunate Congressman Nadler's attempted character assassination was both unprofessional and has offended the tens of thousands of members and supporters I serve as the Executive Director of the National Police Defense Foundation, the Order Sons of Italy in America where I serve as an elected lodge president and the New Jersey Democratic Club where I serve as a Committeeman.

Congressman Nadler erroneously discredits the drug cartel conspiracy or existence of any prosecutorial misconduct by simply alleging the court didn't believe it and therefore it never existed. Yet, in his own testimony before your committee, Congressman Nadler recognized that many innocent defendants have been railroaded into convictions because of prosecutorial misconduct and the fact courts have ignored exculpatory evidence.

In addition, during the hearing, Congressman Nadler found the testimony of Professor Bennett Gershman of Pace University School of Law to be highly credible and even praised him for his efforts in exposing prosecutorial misconduct. Unfortunately, Congressman Nadler failed to interview Professor Gershman about the Occhipinti case, wherein he and his law students thoroughly reviewed and found outrageous acts of prosecutorial misconduct.

In any event, Congressman Nadler appeared somewhat perplexed why former President George Bush saw fit to grant me Executive Clemency on January 15, 1993. Perhaps, if the Congressman examined the volumes of reference material enumerated in my Congressional Statement, as well as other evidence entered into the Congressional Record by Congressman James Traficant, Jr., he may have a better understanding why President Bush granted me Executive Clemency.

It is for these reasons why numerous elected officials, legislative bodies, legal experts, law enforcement sources and media entities were outraged by my prosecution and called for a Special Prosecutor and Congressional Hearings. It should be noted that even President and former Governor Bill Clinton recommended an independent review of my prosecution. It's important to note, I was the first law enforcement officer in United States history ever to be prosecuted under federal civil rights law for an allegation of an unlawful search and seizure. There were no acts of police brutality, racial bias or corruption and many credible Black and Hispanic civil rights groups supported my cause believing that foreign drug lords successfully manipulated important civil rights laws to their advantage.

As for my overall credibility, let me say that my record of accomplishments noted below should convince the other members of your committee that I am a highly credible witness with impeccable credentials.

I am the most decorated federal agent in the United States who has received over 78 official commendations, including three Attorney General awards, many of which were in recognition of my undercover work infiltrating and prosecuting international crime syndicates. During my 22 years of federal service, I had an unblemished record without any record of abuses or misconduct.

I am a nationally renown expert on international crime syndicates and have testified, post conviction, before legislative bodies, appeared on national TV news shows and participated in many speaking engagements at credible teaching institutions and police academies.

I am the Executive Director of one of the larger police foundations in the United States that has been recognized by numerous elected officials, including Members of Congress and the United States Senate, as well as official legislative bodies, foreign governments, presiding Governors and even a foreign President.

I am a nationally renowned Italian American civil rights leader who has successfully exposed much discrimination against Italian Americans in the United States. In 1994, I was selected as the Grand Marshal for the Columbus Day Parade at New York and received several noteworthy awards from the Order Sons of Italy in America and other credible Italian American organizations.

I serve on the Executive Board of other credible law enforcement, civil rights and fraternal associations. In addition, post conviction, I have been honored by some of the following organizations many of whom were outraged by my prosecution and called for congressional hearings that never materialized. They are the American Legion, Fraternal Order of Police, National Association of Police Organizations, National Troopers Coalition, Law Enforcement Alliance of America, Ministers of Harlem, USA, Order Sons of Italy in America, National Italian American Foundation, Congress of Italian American Organizations, Jewish Action Alliance, Congress of Racial Equality, Columbia Association, National Hispanic Coalition, Somos Unos Hispanic Association, Law Enforcement Alliance of America, New York-New Jersey Detectives Crime Clinic, New York City PBA, New Jersey State PBA, New York Police Chiefs Benevolent Association, among others.

Finally, I have been recognized by key Members of Congress and the United States Senate for my volunteer work in administering the ''Operation Kids'' program, a law enforcement

initiative that funds a national child finger printing program and posts rewards for missing and kidnapped children. More recent, the program has been expanded to provide life saving heart operations for critically ill children from around the world. This year alone the program has saved the life of three South American babies and I will be traveling to Ecuador in November 2000 to bring back another critically ill baby.

I suppose using Congressman Nadler's criteria, it was simply easier to try to discredit me rather than expose the real issue at hand that documents the proliferation of foreign drug cartels in the United States, as well as their unique ability to often influence, manipulate and corrupt our political, executive and judicial systems.

I am sure that Congressman Nadler is not naive enough to believe what most Americans already know to be true, that we have lost the war against drugs and powerful foreign drug lords operating in the United States have the political and financial abilities to manipulate the criminal justice system and misuse important civil rights laws to their advantage.

Again, I will call upon the committee to review the volumes of enumerated exhibits referenced in my official statement, as well as contact your former colleague, Staten Island Borough President Guy V. Molinari who can provide the committee with first hand testimony regarding the alleged drug cartel conspiracy and Justice Department misconduct that victimized me and the entire law enforcement community almost ten years ago.

Congress of the United States,

House of Representatives,

Washington, DC, October 24, 2000.

Mr. **WILLIAM R. RATCHFORD,** *Associate Administrator,*
Office of Congressional and Intergovernment Affairs,
General Servces Administration, Washington, DC.

DEAR MR. RATCHFORD: On July 27, 2000, the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary held a legislative hearing on H.R. 4105, the Fair Justice Act of 2000. Upon the unanimous consent request of Ranking Member

Jerrold Nadler, it was agreed that individuals and agencies who were accused of misconduct or criminal wrongdoing during the course of this hearing be supplied with a copy of the relevant pages of the hearing transcript and be given an opportunity to respond to such statements.

Pursuant to the unanimous consent request, Mr. Nadler has submitted to me a list of individuals and agencies with references to the hearing transcript. We have been advised by David Lachmann, Minority Professional Staff Member, to direct this letter to your attention concerning statements made regarding your agency that appear on pages 51 through 60 of the hearing transcript, a copy of which is enclosed.

A written response, if any, for inclusion in the hearing record must be typewritten (doubled spaced) as well as prepared in electronic format (a diskette in any standard word processing format). These submissions must be received *not later than November 9, 2000.*

Please note that the version of the hearing transcript included with this letter is unofficial and unedited. Under no circumstances may it be quoted, duplicated, or used for any purpose other than stated in this letter.

Should you have any questions or require additional information, please do not hesitate to contact Susan Jensen-Conklin, Subcommittee Counsel, at (202) 225–2825.

Very truly yours,

George W. Gekas,
Chairman.

Enclosure

cc:

Jerrold Nadler, Ranking Member

U.S. General Service Administration,

Washington, DC, November 15, 2000.

Hon. **GEORGE W. GEKAS,** *Chairman,*
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary,
House of Representatives, Washington, DC

DEAR MR. CHAIRMAN: Thank you for the opportunity to respond to GSA-related testimony given during the July 27, 2000, hearing on H.R. 4150, the Fair Justice Act of 2000, before your Subcommittee on Commercial and Administrative Law. Our responses for inclusion in the hearing record are enclosed in both hard copy and electronic format, as requested.

If you require additional information, please have a member of your staff contact Mr. Paul Chistolini, deputy commissioner, Public Buildings Service.

Sincerely,

Robert A. Peck,
commissioner.

Enclosures:

THE GENERAL SERVICES ADMINISTRATION (GSA) OFFERS THE FOLLOWING RESPONSE TO STATEMENTS MADE BY MR. CULBERTSON AT THE SUBJECT HEARING.

It is GSA's assessment that the It is GSA's assessment that the overwhelming majority of Mr. Culbertson's testimony seems to simply reflects his personal opinion. It appears much It appears much of his testimony is based solely on unsubstantiated facts, data, or assumptions that we can not address. However, there are statements Mr. Culbertson makes for which there are five statements Mr. Culbertson makes for which we can offer the following comments:

Statement 1. On page 52, lines 1132 through 1135: ''Over the years, I authored a report entitled

''Deadly Failures,'' which identified security and law enforcement failures which directly contributed to the Oklahoma City bombing.''

Response. We are aware of Mr. Culbertson's report ''Deadly Failures.'' We would like to point out that this is but one of many reports written since after the Oklahoma City tragedy that allegedly contains vast amounts of ''information and data'' pertaining to security and law enforcement failures that purportedly contributed to the tragedy. Although we are aware of these various reports, we can not comment on the accuracy of Mr. Culbertson's report, or the accuracy of any other such reports not issued by the agencies officially in charge of investigating the Murrah bombing.

Statement 2. On page 53, lines 1157 through 1163: ''The investigation revealed that GSA was in violation of Public Law 100–440 on the day of the bombing and was severely understaffed on the Federal Protective Service, leaving the Murrah Building wide open to attack. This was a problem that was known to GSA in 1994 and yet was allowed to continue. FPS had only 40 percent of the officers mandated by the law on the day of the bombing.''

Response. We have acknowledged GSA's was in violation of section 10 of Public Law 100–440, Public Law 100–440 Treasury, Postal Service and General Government Appropriations Act of 1989, on the day of the Oklahoma City bombing. We have testified to that fact on several occasions, including testimony before our congressional committees. As part of our that testimony explaining our violation of Public Law 100–440, we stated the following three important facts concerning GSA's Federal Protective Service (FPS) service actions in Oklahoma City in April 1995.

At the time of the Oklahoma City bombing, FPS was operating under a ''core and satellite city'' operational concept. In 1995, GSA had 11 core cities and 11 satellite cities. The establishment of this city concept was based on the number of Federal buildings located in a city and, thus, determined the number of Federal Police Officers (FPO's) assigned to a city. Only the core and satellite cities had FPS Federal Police Officers FPO's assigned on a permanent basis. Oklahoma City was not one of these cities and, therefore, did not have FPS Federal Police Officer FPO presence.

Prior to the Oklahoma City bombing, FPS utilized used a process called Risk Assessment Management (RAM) to determine the physical security features employed at a building. The RAM conducted on the Murrah Building in 1994 did not require the use of contract guard service for the building. However, FPS management decided to overrule this determination and arranged for the deployment of one contract security guard during all duty hours. [WHY?]

It was not until after the bombing and the publication of the Department of Justice report, ''Vulnerability Assessment of Federal Facilities'' on June 28, 1995, that Federal buildings were categorized into levels with recommended minimum security standards for each level. Therefore, the Department of Justice's recommended minimum standards never applied to the Murrah Building.

Additionally, it should be noted that section 406 of Public Law 105–61, Treasury, Postal Service and General Government Appropriations Act of 1998Public Law 105–61 , repealed section 10 of GSA General Provisions, Public Law 100–440.

Statement 3. On page 53, lines 1168 through 1170: ''With respect to the statements made by the Department of Justice, there are no photos or videos of the explosions of the Murrah Building.''

Response. We do not know whether or notify this statement is accurate. The agencies responsible for the overall investigation of the bombing would have to address the its accuracy of this statement.

Statements 4 and 5. On page 57, lines 1242 through 1245: ''This is a video taken April 13 of this year. It is a Federal police officer describing a surveillance tape from Oklahoma City [that] he personally witnessed and comparing it to other photos we have uncovered.''

Response. We are unaware of the existence of any type of surveillance tape referenced by Mr. Culbertson, nor neither do we know the identity of the Federal police officer, nor what agency the referenced police officer represents. The agencies responsible for the overall investigation of the bombing would have to address this to confirm whether or not such a tape exists. This comment also applies to the statement Mr. Culbertson makes on pages 58 and 59, lines 1273 through 1275, regarding an alleged surveillance of the bombing.

Congress of the United States,

House of Representatives,

Washington, DC, October 24, 2000.

Mr. **ROBERT RABIN,** *Esquire,*
Assistant Attorney General,
Office of Legislative Affairs,
United States Department of Justice, Washington DC.

DEAR MR. RABIN: On July 27, 2000, the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary held a legislative hearing on H.R. 4105, the Fair Justice Act of 2000. Upon the unanimous consent request of Ranking Member Jerrold Nadler, it was agreed that individuals and agencies accused of misconduct or criminal wrongdoing during the course of this hearing be supplied with a copy of the relevant pages of the hearing transcript and be given an opportunity to respond to such statements.

Pursuant to the unanimous consent request, Mr. Nadler has submitted to me a list of individuals and agencies with references to the hearing transcript. We have been advised by David Lachmann, Minority Professional Staff Member, that the Department prefers that the Subcommittee direct this letter to your attention with respect to those individuals who are present or former employees of the Department of Justice. The names of these employees, their agency affiliations (as stated in the hearing transcript), and page references to the hearing transcript follow:

Robert Kroner, Federal Bureau of Investigation: page 22.

Larry Lynch, Federal Bureau of Investigation: pages 14 through 34.

Mr. Moskovitz, United States Department of Justice: pages 14 through 34.

Stanley Peterson, Federal Bureau of Investigation: pages 14 through 34.

Michael Sismar, Federal Bureau of Investigation: pages 14 through 34.

In addition, the Honorable Janet Reno, Attorney General of the United States, and the Department of Justice may wish to respond to statements appearing in the hearing transcript, a copy of which is enclosed.

Written responses, if any, for inclusion in the hearing record must be typewritten (doubled spaced) as well as prepared in electronic format (a diskette in any standard word

processing format). These submissions must be received not later than November 9, 2000.

Please note that the version of the hearing transcript included with this letter is unofficial and unedited. Under no circumstances may it be quoted, duplicated, or used for any purpose other than stated in this letter.

Should you have any questions or require additional information, please do not hesitate to contact Susan Jensen-Conklin, Subcommittee Counsel, at (202) 225–2825.

Very truly yours,

George W. Gekas,
Chairman.

Enclosure
cc:

Jerrold Nadler, Ranking Member

U.S. Department of Justice,

Office of Legislative Affairs,

Washington, DC, November 15, 2000.

Hon. **GEORGE W. GEKAS,** *Chairman,*
Subcommittee on Commercial and Administrative Law
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of October 24, 2000, which provided individuals and agencies with the opportunity to respond to allegations that were made during the Subcommittee's hearing on July 27, 2000.

The FBI has contacted three of the four current and former FBI agents identified in your

letter. I am advised that the Bureau has no current contact information for Mr. Stanley Peterson, who retired from the FBI about twenty-five years ago. On behalf of the three agents who were contacted, the FBI requests that the hearing record reflect that the allegations in the transcript had been received and referred to the Offices of Professional Responsibility at Main Justice and at the FBI prior to the Subcommittee's hearing.

Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

Robert Raben, *Assistant Attorney General.*

cc:

The Honorable Jerrold Nadler
Ranking Minority Member

NOTE: THE FOLLOWING MATERIALS SUBMITTED BY CONGRESSMAN JAMES A. TRAFICANT, JR.ARE ON FILE WITH THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATION LAW OF THE COMMITTEE ON THE JUDICIARY:

1. Mike McAlary, ''The Framing of a Cop,'' *New York Post* (Oct. 9, 1991).

2. Mike McAlary, ''Dominican Cartel's Calling Card: 2 Bodies in the Grass,'' *New York Post* (Oct. 10, 1991).

3. Mike McAlary, ''Cartel Used System to Bring Down Innocent Agent,'' *New York Post* (Oct. 11, 1991).

4. Statement of John J. Dowd (Apr. 16, 1991).

5. Affidavit of Angel Nunez, Esq. (Jan. 14, 1992).

6. Affidavit of Ramon Rodriquez (Apr. 21, 1992).

7. Affidavit of Ramon Rodriquez (June 1, 1992).

8. Affidavit of Marino Reyes (Feb. 1993).

9. Letter to Thomas McLarty, White House Chief of Staff, The White House from Congresswoman Susan Molinari et al. (Aug. 6, 1993).

10. Letter to U.S. Attorney General Janet Reno from Congresswoman Susan Molinari et al. (Aug. 6, 1993).

11. Letter to President William J. Clinton from Congresswoman Susan Molinari et al. (Aug. 6, 1993).

12. Affidavit of Ramon Antonio Grullon (Aug. 19, 1993).

13. Affidavit of Ramon Antonio Grullon (Aug. 25, 1993).

14. Letter to Chairman Jack Brooks, Committee on the Judiciary, U.S. House of Representatives from Congressman James A. Traficant, Jr. (Sept. 15, 1993).

15. Letter to Congressman James A. Traficant, Jr. from Sheila Anthony, Asst. Attorney General, U.S. Dept. of Justice, (Oct. 28, 1993).

16. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Nov. 4, 1993).

17. Letter to Congressman James A. Traficant, Jr. from Sheila Anthony, Asst. Attorney General, U.S. Dept. of Justice, (Dec. 29, 1993).

18. Letter to Rudolph Giuliani, Mayor of New York City, from Congressman James A. Traficant, Jr., (Jan. 7, 1994).

19. Letter to Sgt. William Matusiak, Records Access Officer, New York Police Dept., from Congressman James A. Traficant, Jr. (Jan. 7, 1994).

20. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Jan. 10, 1994).

21. Affidavit of Jeh C. Johnson (Jan. 13, 1994).

22. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Feb. 14, 1994).

23. Letter to Congressman James A. Traficant, Jr. from Anthony P. Coles, Deputy Counsel to the Mayor of New York City, (Feb. 16, 1994).

24. Letter to President William J. Clinton, from Congressman James A. Traficant, Jr., (Feb. 16, 1994).

25. Letter to Congressman Charles Schumer, Chairman, Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, House of Representatives, from Congressman James A. Traficant, Jr., (Mar. 1, 1994).

26. Affidavit of Harry Hildebrandt (Mar. 12, 1994).

27. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Apr. 7, 1994).

28. Letter to the William Bratton, Commissioner, New York Police Dept. from Congressman James A. Traficant, Jr., (Apr. 26, 1994).

29. Letter to Congressman Charles Schumer, Chairman, Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, House of Representatives, from Congressman James A. Traficant, Jr., (May 18, 1994).

30. Letter to Congressman Charles Schumer, Chairman, Subcommittee on Crime and Criminal Justice, Committee on the Judiciary, House of Representatives, from Congressman James A. Traficant, Jr., (July 11, 1994).

31. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (July 28, 1994).

32. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Sept. 8, 1994).

33. Letter to Congressman James A. Traficant, Jr., from U.S. Attorney General Janet Reno (Sept. 14, 1994).

34. Memorandum from Robert Rogers, Chief, Freedom of Information Section, Drug Enforcement Agency, U.S. Dept. of Justice, (Nov. 2, 1994).

35. Letter to Sheila Anthony, Assistant Attorney General, U.S. Dept. of Justice, from Congressman James A. Traficant, Jr., (Nov. 3, 1994).

36. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Nov. 8, 1994).

37. Affirmation of Alan E. Wolin (Nov. 29, 1994).

38. Letter to U.S. Attorney General Janet Reno from Congressman James A. Traficant, Jr., (Dec. 5, 1994).

39. Letter to Congressman James A. Traficant, Jr., from Sheila Anthony, Assistant Attorney General, U.S. Dept. of Justice, (Dec. 23, 1994).

40. Letter to Congressman Henry Hyde, Chairman, Committee on the Judiciary, U.S. House of Representatives, from Congressman James A. Traficant, Jr., and Congresswoman Susan Molinari (Jan. 24, 1995).

41. Affidavit of Ramon Antonio Grullon, (Jan. 26, 1995).

42. Letter to Congressman James A. Traficant, Jr.,, from Michael Shaheen, Counsel, Office of Professional Responsibility, U.S. Dept. of Justice, (Oct. 27, 1995).

43. Letter to Michael Shaheen, Counsel, Office of Professional Responsibility, U.S. Dept. of Justice from Congressman James A. Traficant, Jr., (Jan. 31, 1996).

44. Letter to Congressman Bill McCollum, Chairman, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives from Congressman James A. Traficant, Jr., (Feb. 20, 1996).

45. Letter to Congressman James A. Traficant, Jr., from Michael Shaheen, Counsel, Office of Professional Responsibility, (Feb. 21, 1996).

46. Letter to Sen. Orrin Hatch, Chairman, Committee on the Judiciary, U.S. Senate, from Congressman James A. Traficant, Jr., (Mar. 28, 1996).

47. Letter to Congressman Bill McCollum, Chairman, Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives from Congressman James A. Traficant, Jr., (July 29, 1996).

48. Letter to Congressman James A. Traficant, Jr., from Congressman Bill McCollum, (Sept. 4, 1996).

49. Affidavit of Isabelle Callard (July 19, 2000).

50. Statement by George and John Krill (July 27, 2000).

51. Letter to Congressman George W. Gekas, Chairman, Subcommittee on Commercial and Administrative Law, Committee on the Judiciary, U.S. House of Representatives, from Congressman James A. Traficant, Jr. (July 31, 2000).

52. Affidavit of James A. Kerchum (Aug. 1, 2000).

53. Letter to Congressman James A. Traficant, Jr., from David M. Lemon (Aug. 9, 2000).

54. Affidavit of Frederick V. Hudach, August 14, 2000.

55. Letter to Lt. Gen. Michael W. Ackerman, Inspector General (SAIG) from Congressman James A. Traficant, Jr., (Aug. 16, 2000).

56. Letter to Emily Sweeney, U.S. Attorney, Cleveland, Ohio, from Congressman James A. Traficant, Jr., (Aug. 28, 2000).