ORGANIZED RETAIL THEFT: CONDUIT OF MONEY LAUNDERING

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

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ORGANIZED RETAIL THEFT: CONDUIT OF MONEY LAUNDERING

MONDAY, NOVEMBER 10, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Cypress, TX.

The subcommittee met, pursuant to notice, at 10 a.m., in the Settlement House, Northwest Forest Conference Center, 12715 Tegle Road, Cypress, TX, Hon. Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder and Carter.

Staff present: Elizabeth Meyer, counsel and professional staff member; John Stanton, congressional fellow; and Nicole Garrett, clerk.

Mr. SOUDER. Good morning and thank you all for coming this morning. I also want to take the opportunity to recognize the U.S. Marine Corps on its birthday, 228 years since 1775 to today, so it's very fitting today on Veterans Day.

Today our subcommittee will address the status of investigations, prosecutions and convictions relating to organized retail theft rings in Texas and elsewhere. We'll learn that organized retail theft is much more than petty shoplifting. We'll also address the magnitude of the retail theft problem with particular emphasis on what the retail industry calls high price point products such as baby formula and other consumer items.

A significant problem with organized retail theft is the losses to American businesses which are invariably passed on to the tax payer. This problem is widespread, affecting supermarkets, drug stores, mass merchandisers and convenience stores. In 2001, the Federal Bureau of Investigation's Interstate Theft Task Force quantified the problem as over $30 billion in store level losses annually.

The next significant problem with organized retail theft is the interruption of the product supply chain. Many products must be stored and transported under prescribed conditions to keep the product safe for consumption. The large quantities of stolen high priced point merchandise creates storage challenges for these rings. Climate control storage is not provided and worse, merchandise may spoil or become tainted. You wouldn't want to buy a gallon of milk which had been sitting around in an 80 degree warehouse for a week before it got to the store shelf.

The third significant problem with organized retail theft is the gray market of resale. Stolen products are sold at flea markets, swap meats, shady storefront operations, the trunks of people's cars and worst of all, sometimes unwittingly at Mom and Pop stores. Some of these secondary retailers know they are buying stolen merchandise for retail. Some do not. Invariably, the consumer never knows.

The fourth significant problem is money laundering. Once stolen property is resold to secondary retailers, where do cash proceeds from the chain of illegal activity go? You may be surprised here today to learn that this problem extends far beyond our own borders.

Unfortunately, this problem is not new nor is it limited to the State of Texas. Operation Blackbird and the Pasadena Community Defense Force Task Forces in Texas are premiere examples of cooperation between law enforcement agencies and prosecutors from all levels of government working together with regulatory agencies and businesses to interrupt this crime. These efforts will have to be duplicated across this great country to eliminate these problems. Efforts to discover the international money laundering component of this hearing must be redoubled. Interagency cooperation must be at its best to have any chance of identifying and ultimately convicting all the members of these rings.

This hearing will address all these difficult issues as well as legislative and other potential solutions. We're aware of the lack of the Federal statute that specifically addresses the crime of organized retail theft.

We are pleased to be joined by representatives of several levels of law enforcement community. We also have both State and Federal prosecutors to enlighten us about their roles.

To conclude, we have business representatives who will share their concerns and solutions. I want to take time again to thank everyone for coming, to take their time out of their schedules to join us and I look forward to your testimony.

Now I'd like to yield to our gracious host and very active member of our subcommittee, Judge Carter.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

"Organized Retail Theft: Conduit of Money Laundering"

Subcommittee on Criminal Justice, Drug Policy, and Human Resources
Committee on Government Reform

November 10, 2003
Cypress, Texas

Good morning, and thank you all for coming. Today our Subcommittee will address the status of investigations, prosecutions, and convictions relating to organized retail theft rings in Texas and elsewhere. We will learn that organized retail theft is much more than petty shoplifting. We will also address the magnitude of the retail theft problem with particular emphasis on what the retail industry calls "high-price-point" products, such as baby formula and other consumer items.

A significant problem with organized retail theft is the losses to American businesses, which are invariably passed on to the taxpayer in the form of higher prices. This problem is widespread, affecting supermarkets, drug stores, mass merchandisers, and convenience stores. In 2001, the Federal Bureau of Investigation's Interstate Theft Task Force quantified the problem as over **$30 Billion** in store-level losses annually.

The next significant problem with organized retail theft is the interruption of the product supply chain. Many products must be stored and transported under prescribed conditions to keep the product safe for consumption. The large quantities of stolen high-price-point merchandise create storage challenges for these rings. Climate controlled storage is not provided and worse, merchandise may spoil or become tainted. You wouldn't want to buy a gallon of milk, which had been sitting around an 80-degree warehouse for a week before it got to the store shelf.

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I thank everyone for taking the time to join us this morning, and I look forward to hearing your testimony.

Mr. CARTER. Thank you, Mr. Chairman, and I want to thank everybody for coming here today. For me, this all started when Johnnie Jezierski came to me at a town hall meeting here in the south area of Houston to ask for 5 minutes of time to go back in the back room and talk to me about stealing of baby formula.

I'm an old trial judge. I've been a district judge in Texas for the last 20 years and don't tolerate a whole lot of stealing, so I guess that was the reason they were picking on me. But I was just shocked to understand the level because when I went back, quite frankly, I was thinking about some misdemeanor crime and didn't really understand why we were going to talk about it, but when I found the level of what was going on, just in the Pasadena County area, I immediately became very concerned and wanted this issue brought out and brought before the public and examined by the Congress.

As I said, the chairman was very gracious to hear me out when I got back to Washington and to show great interest in this whole operation that's going on and as a result we were able to get this hearing here in Houston. I wanted to have the chairman come in and hold this hearing and I'm looking forward to hearing from all of the folks in government agencies and the citizens who are here to testify to tell us about just exactly the magnitude of this problem and help us learn what we can do to seek better solutions for the problem.

With that, I'll yield back to you, Mr. Chairman.

Mr. SOUDER. I thank you. Before proceeding, I'd like to take care of a couple of procedural matters. I ask unanimous consent that all Members have 5 legislative days to submit written statements, questions for the hearing record and that any answers to written questions provided by the witnesses also be included in the record. Without objection, it's so ordered.

I also ask unanimous consent that all Members present be permitted to participate in the hearing. That's a technical thing. If any other member would come in who's not a Member of our subcommittee, to cover that.

Now it's been a longstanding congressional protocol rule that government witnesses representing the administration testify first, so our first panel consists of those witnesses and we have on our first panel Detective Merritt of the Pasadena Police Department. As I understand it, he began the investigative effort here on this topic. He'll be followed by Sergeant Jezierski of the Texas Department of Public Safety; and the Associate Special Agent Alonzo Pena of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

Then we'll hear from the Assistant Director, Frank Borden of the Manufactured Food Division of the Texas Department of Health and to conclude this panel, we'll then hear from our prosecutor, witnesses and Assistant Attorney General for the State of Texas, Mr. Clemmer and Mr. James Jacks, First Assistant U.S. Attorney, Northern District of Texas.

We're a congressional oversight committee and it's the standard practice of this committee to ask all of our witnesses to testify under oath. So would you please stand, raise your right hands.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each of the witnesses responded in the affirmative.

When I first got elected to Congress in 1994, this committee became immediately active, starting with the Travel Office Investigations of the White House and we moved to "Who hired Craig Livingston" and the FBI files, the Indian casinos, White Water, Waco, everything. So you're now a distinguished panel of being sworn under oath in the congressional investigations committee.

I very much appreciate your coming and Detective Merritt, we'll start with you.

STATEMENTS OF RANDY MERRITT, DETECTIVE, PASADENA POLICE DEPARTMENT, PASADENA, TX, ACCOMPANIED BY JOHNNIE JEZIERSKI, SERGEANT, TEXAS DEPARTMENT OF PUBLIC SAFETY; ALONZO PENA, ASSOCIATE SPECIAL AGENT IN CHARGE, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY; FRANK BORDEN, ASSISTANT DIRECTOR, MANUFACTURED FOOD DIVISION, TEXAS DEPARTMENT OF HEALTH; DON CLEMMER, ASSISTANT ATTORNEY GENERAL, TEXAS ATTORNEY GENERAL'S OFFICE; AND JAMES JACKS, FIRST ASSISTANT U.S. ATTORNEY, NORTHERN DISTRICT OF TEXAS, U.S. DEPARTMENT OF JUSTICE

Mr. MERRITT. Good morning, Mr. Chairman and distinguished members of the subcommittee. My name is Detective Randy Merritt and I'm assigned to the Pasadena Police Department's Community Defense Unit. I'll refer to it as the CDU. It is a privilege and honor to appear before you to discuss my investigation of the activities of an organization engaged in large scale theft and fencing of consumer products and a wide variety of other crimes in Pasadena, TX, throughout the United States and abroad generating millions, if not billions, in illicit profits.

For background purposes, Pasadena's population is about 150,000. The city is located along the southern bank of the Houston Ship Channel posting 41 chemical refineries out of the 110 in the Houston area. Pasadena is also bordered by NASA's Johnson Space Department. Its police department has about 270 officers and I've been a Pasadena officer for 12 years with about 6 years as Detective, specializing in organized crime and career criminal investigations.

CDU is a task force consisting of eight investigators from local, State and Federal agencies. It was formed in October 2002 to investigate crimes identified as key terrorist financing and facilitation crimes after Pasadena investigations uncovered significant amounts of such activity in Pasadena and the Houston area. The CDU works closely with the FBI's Joint Terrorism Task Force.

The bread and butter of the organization I'm here to discuss is the theft and resale of consumer products. This is not the sole crime of the organization's crimes or legion. A few examples are narcotics trafficking, alien smuggling and other immigration violations, motor vehicles theft and plundering of a variety of government programs. A few examples of targeted products are infant formula, cigarettes and over-the-counter medications.

For simplicity, I have divided the organization into two groups, thieves and fences. Group 1, the thieves are primarily Central American illegal immigrants. They operate in teams stealing consumer merchandise through a variety of methods. There appears to be 600 to 1,000 members of this group operating out of the Houston area committing crimes across the United States. The criminal gang, Mara Salvatrucha, commonly known in the United States as MS–13 appears to play a significant role in the activities of this group. MS–13 operates throughout the United States and Central America. Gang resources characterize MS–13 for its extreme violence and level of sophistication exceeding that of many U.S. criminal street gangs. Members were reported to have executed three Federal agents and shot numerous law enforcement officers across the country.

Group 2, the fences are primarily found to be Middle Eastern immigrants who own a variety of businesses and immigrated from countries such as Egypt, Jordan, Israel, Lebanon and Pakistan. The common convenience store appears to play a key role or play an important role with this group. This group buys and resells the product stolen by the Central American thieves. Evidence collected in our investigation found long-term relationships often existed between the fences and the thieves. Many of the Middle Eastern fences are under investigation by Federal authorities for possibly supporting terrorist organizations.

The incident initiating my investigation was a night time burglary of a Pasadena business in May 2001 where approximately $137,000 in cigarettes were stolen. The burglary investigation identified several burglary teams and a number of shoplifting teams made up of Central American illegal immigrants based in the Houston area. The burglars and shoplifters were found to work with Middle Eastern businessmen who bought the stolen property. In November or December 2001, Pasadena's Direct Action Response Team conducted a surveillance operation over several weeks resulting in the in-progress arrest of eight members of two burglary teams. Detectives videotaped the teams stealing approximately $608,000 in clothing and tools from two Houston businesses. The investigation declared dozens of similar burglaries resulting in millions of dollars in losses in Texas and other States. It was discovered that these burglary teams were part of a large organization working for the Middle Eastern fences since 1997.

In 2003, I was involved in CDU cases where several three-person shoplifting teams in the same organization were arrested and charged for shoplifting infant formula and medications from Pasadena area grocery stores. CDU began pooling resources from several State, local and Federal agencies into an ad hoc informal work group called Operation Blackbird which meets regularly at the Houston FBI Field Office.

The results of Operation Blackbird are 40 suspects, over half illegal aliens, were arrested and charged with Federal and State felony crimes; 14 civil suits were filed by the Texas Attorney General's Office against 21 members of the organization, and approximately $2.7 million is suspected stolen products and assets were seized, of which almost $1 million worth was infant formula. Blackbird has impacted the organization on national level. The FBI and

retailers report a significant decrease of infant formula thefts, however, thefts of other products increased dramatically indicating a shift in operations by the organization.

Blackbird has temporarily wounded this network which has found a gaping hole in the system to operate with virtual impunity. A person caught with $25,000 in cocaine faces years in prison. Another caught with $25,000 in stolen jeans or baby milk may never see the inside of a prison cell. The Pasadena Police Department did not accomplish this alone. It occurred by leveraging resources through nontraditional means between local, State and Federal agencies and unprecedented cooperation and information sharing.

I attribute success more to the efforts of rank and file officers, special agents and prosecutors persevering against institutional inertia than to culture changes in our respective agencies, although significantly improving the old problem of bitter agency rivalry, bureaucracy and poor communications still exists. What is needed to fight this organization is legislative changes, training and tools for all levels of the justice system with more emphasis on interaction between local, State and Federal agencies and the private sector.

In Houston, we found the State laws were more effective against this organization, but it required the tools and resources of Federal agencies to successfully enforce them. Improving cooperation appears to be focused on improvements between Federal agencies. A small fraction of the 700,000 law enforcement officers in the United States are Federal agents. Federal agencies have the tools to fight organized crime. The local agencies, having the bulk of manpower, deal with its effects daily in the front lines, usually flying blind. To manage this insidious threat, we must revolutionize the integration of local, State and Federal resources along with the listing of private section in the fight.

This criminal organization is cellular in structure with membership and methods insulated by cultural barriers. The organization cannot be neatly charted like an Army division or a Fortune 500 corporation. Its business plan is a state of mine, not a formal mission statement. The commonality of crimes, methods and suspects between so many different investigations around the country cannot be coincidental. Suspects and dozens of investigations around the United States have been linked to Blackbird targets. Many suspects in other cases have been charged with supporting terrorism or on watch lists as being terrorist organization members. I believe most organization members are not terrorists in the traditional sense, however, their schemes may cause more damage to our country in the long haul.

I strongly suspect what I have summarized as part of a greater plan executing over a decade ago to attack the United States like a cancer from within. I believe this organization is a national threat at a grassroots level by corrupting our food distribution industry, plundering government programs and encouraging street crime and edging honest businesses out of the marketplace, due to the inability to compete with organizations inherently lowering costs of buying stolen goods while facing additional expense of replacing inventory stolen by the organization's thieves.

I strongly suspect the attacks on the United States by the terror network are part of the same diabolical plan embodied by this orga-

nization, that is, more philosophy than written orders or directives. I am reminded by the words shouted by Nikita Khrushchev at the U.N. to the U.S. Delegation 40 years ago, "we will bury you from within," as he pounded his shoe on the table.

As a student of history, I learned the Soviet Union was the largest sponsor of terrorism before its collapse. The terror network trained and built by the Soviet Union survived. Without Soviet control, it has run amok. It took our government more than 30 years to recognize and admit the existence of the Mafia. We may not have the luxury of decades to address this problem.

I hope my statement is not taken as an attack on any ethnic group or religion. It is intended to expose the nefarious activities of a minute portion of our society.

In conclusion, I would like to thank the distinguished members of the subcommittee for the opportunity to testify before you today. It will be my pleasure and honor to answer any questions.

[The prepared statement of Mr. Merritt follows:]

Statement of

Randy A. Merritt

Detective
Pasadena Police Department
Community Defense Unit
(C.D.U.)
Multi-Agency Task Force
Special Investigations Bureau

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Before the,

Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources
United States House of Representatives

Regarding

National and International Consumer Products Fencing Operation
Suspected of
Providing Support to Terrorist Organizations

Houston, TX

November 10, 2003

VERBAL SUMMARY OF WRITTEN STATEMENT

Introduction

Good morning, Mr. Chairman and distinguished Members of the Subcommittee. It is a privilege to appear before you to discuss Investigations conducted by the Pasadena Police Department's Community Defense Unit which I will refer to using the acronym CDU. I will start by giving you some back ground information.

Pasadena, Texas is a city with a population of approximately 150,000. Pasadena is a suburb of Houston along the southern bank of the Houston Ship Channel and has approximately (41) different major chemical refineries within its city limits. The southern City Limits of Pasadena is bordered by Johnson Space Center.

The Pasadena Police Department has a staff of approximately 350 personnel of which 270 are sworn peace officers. I have been a Pasadena Police Officer for (12) years since the age of 21. My uniformed assignments have been in the patrol division and the community policing division. My assignments as a detective have been in within the special investigations bureau where I have specialized in organized crime, gang, and career criminal investigations.

The CDU is a multi-agency task force consisting of 8 fulltime investigators from 5 different; local, county, state, and federal agencies. It was formed by the Pasadena Police Administration in October 2002 to investigate crimes that have been identified as key terrorist financing and facilitation crimes after Pasadena Police Investigations uncovered such activity within Pasadena and the Greater Houston Area. The CDU works closely with the Houston FBI's Joint Terrorism Task Force that is conducting investigations to determine the destination and use of the funds earned from the criminal activity under investigation.

CDU INVESTIGATIONS

Since May of 2001, I have investigated the activities of a confederation of individuals and businesses based in Pasadena and the Houston Metropolitan Area operating in conjunction with several other individuals and groups throughout Texas, the United States, and overseas. The majority of the suspects in my investigation can be broken down into two basic groups.

THEIVES

The first group of individuals consists mostly of illegal immigrants from Central American countries such as Honduras and El Salvador. These suspects are involved in the theft of large quantities of consumer merchandise through a variety of schemes such as organized shoplifting, armed robbery, large scale business burglaries, cargo theft, high jacking, and price switching schemes.

Some of the products targeted for theft by theses suspects include:

1. Infant Formula
2. Cigarettes and Smokeless Tobacco
3. Health and beauty aids
4. Diabetes Test Strips
5. Over the counter medications
6. Colognes and Perfumes

Information collected in our investigations indicates that the El Salvadorian Criminal Street Gang Mara Salvatrucha or more commonly known in the U.S. as MS-13 are controlling the activities of this group.

According to the National Alliance of Gang Investigators Associations, MS-13 traces its origin back to the Marxist Guerillas that fought a civil war against the U.S. backed El Salvadorian Government. Many of the older MS-13 Gang Members have had extensive military training in guerilla tactics, explosives and booby traps. MS-13 is now a nationwide criminal street gang operating throughout the United States. It activities in the U.S. are characterized by extreme violence and a higher level of sophistication than most U.S. criminal street gangs. MS-13 Gang Members have been responsible for the executions of (3) federal agents and numerous shootings shooting of law enforcement officers across the country.

FENCES

The second group of suspects consists of Immigrants from various Middle Eastern and East Asian countries such as Egypt, Jordan, Israel, Lebanon, and Pakistan who own a variety of businesses such as:

(1) Convenience stores
(2) Grocery stores
(3) Gas stations
(4) Grocery wholesale businesses
(5) Travel agencies
(6) Used car dealerships
(7) Shipping companies
(8) Book keeping firms
and
(9) Topless night clubs.

The majority of these individuals are here legally in the United States; however many have been here illegally for several years. This group purchases the products stolen by the Central American Theft Suspects. Evidence collected in our investigations demonstrates that the Central American Suspects have often developed long term personal and business relationships with the Middle Eastern Fencing Suspects.

The theft and resale of stolen merchandise is the "bread and butter" of this criminal organization but it is by far not the only form of criminal activity they are engaged in. The crimes committed by this organization are legion. Some examples are:

Narcotics trafficking
Prostitution
Extortion
Alien Smuggling
Organized Auto-Theft
Currency Smuggling
Credit Fraud
Bank Fraud
Welfare Fraud

Due to time constraints I will limit my presentation to the consumer products theft and fencing operations.

The incident that initiated our investigation was a burglary of a Pasadena Tobacco Retail Business on May 25, 2001 where approximately 6000 cartons of cigarettes with an estimated retail value of $137,000.00 were stolen from the business at night over a period of several hours. Entry was gained by cutting a hole in the roof after disabling the alarm system by cutting the phone lines.

The subsequent follow-up investigation of this burglary identified several separate interstate burglary teams operating out of the Houston area and numerous shoplifting teams comprised mainly of Honduran and El Salvadorian illegal immigrants and several Houston Area business men of Middle Eastern descent who were purchasing the products that were stolen. In November and December of 2001 Pasadena Detectives video taped and arrested two of the burglary teams after we observed them steal approximately 608,000.00 in clothing and tools from (2) Houston businesses.

Through the informal pooling of resources into an ad-hoc work group of a variety of state, local, and federal law enforcement and civil regulatory agencies, Pasadena CDU Investigations led to the arrest and filing of state felony organized crime charges; federal firearms, conspiracy, theft, and tax charges against (30) suspects; (7) of which were the Middle Eastern Fences (2) of which have been in the U.S. illegally since the early 90's and (23) of the Central American Theft Suspects (21) of which were illegally in the U.S. at the time of their arrest.

Through joint efforts with the Texas Attorney General's office, The Texas Dept. of Health, and several other law enforcement agencies, CDU Investigations have also resulted in the seizure of approximately 2.7 million dollars in suspected stolen products, approximately 1 million of which was infant formula, and assets.

The CDU has provided evidence to FBI-JTTF Investigators that have aided in obtaining federal conspiracy indictments on CDU Suspects and other Middle Eastern Fencing Suspects outside of Texas and identified over 500 suspects and potential suspects operating at some level in the black market. Based on evidence collected in the CDU Investigations and from discussions and the sharing of intelligence with other state, local, and federal Investigators in

- Austin, TX
- Corpus Christi, TX
- San Antonio, TX
- Dallas, TX,
- Florida
- Kentucky
- New York
- Arizona
- California
- Washington D.C.

And

- Oklahoma

The Pasadena Police Department, a mid-size police force, did not accomplish this task alone. It was conducted by leveraging resources from a multitude of agencies through non-traditional methods and un-precedented sharing of information between local, state, and federal agencies. However, I would not attribute these cooperative efforts to a major change in culture within our respective agencies. The old counter productive cultures of inter-agency rivalry and poor communication still exists. The successes should be attributed more too individual rank and file officers and special agents who informally networked and persevered against institutional inertia.

The institutions are changing though and significant strides in the right direction have been made. Currently we now have a permanent base of personnel dedicated to attacking this issue; however we still are lacking considerable resources.
Simple things such as surveillance equipment, analysts, operational funding and training all of the things that are required to tackle a large organization still have to beg, borrowed, and stolen.

CONCLUSION

It has become apparent to me that this black market is actually a confederation of organizations cellular formation working in concert as one single loose knit organization with leadership and guidelines based more on cultural norms and informal agreements and alliances. It leadership and structure can not be outlined in a neat format like an army division or fortune 500 corporation. There is no head to lop off to kill the beast so to speak.

The commonality of crimes, financial activity, suspects, and methods of operation discovered by so many different independent investigations can not be coincidental. Too many suspects in other investigations around the U.S. have been linked to suspects targeted by the CDU. Many of the other investigations' targets have been tied to Islamic Terrorist Organizations, charged with Terrorist Related offences, or have been linked to subjects involved in Terrorist Attacks.

In my personal opinion, I believe that the criminal enterprise I have summarized in this verbal and written statement is the manifestation of a concerted effort by entities who wish to harm the United States. I believe these entities at the higher levels of the organization are working insidiously and methodically behind the scenes using the

freedoms guaranteed by our constitution as shield. I believe that this nefarious plan has been in execution for over a decade and is designed to systematically break down the fabric of our nation like a cancer from within.

I believe that the Homicide Bombings, kid-knap pings, murders and attacks committed by the World Wide Terror Network is just one small facet of this plan. I can not help but think of the hate filed words of Soviet Premier Nikita Kruschev directed to the U.S. Delegation when he pounded his shoe upon the desk at the United Nations; "We will bury you from within".

As a student of history it is my understanding that the Soviet Union was the single largest sponsor of world wide terrorism before its collapse. It is my belief that the Terror Network the Former Soviet Union Helped to build remained intact after it's collapse and has run amuck as demonstrated in the global explosion of organized crime and violent terror attacks, since the end of the cold war.

In conclusion, I would like to thank the distinguished Members of this Subcommittee for the opportunity to testify before you today. It would be my pleasure to answer any questions you may have.

WRITTEN STATEMENT
OF
DETECTIVE RANDY MERRITT

INTRODUCTION

The following paragraphs will relate what has been learned through the investigation of a large confederation of criminal groups operating out of the Houston Metropolitan Area and other locations in Texas in conjunction with groups in other states and overseas involving the theft and resale of bulk consumer items. The organization reduced to its most simplified form is comprised of two parts:

Group I (Thieves)

- Comprised mainly of Central American (El Salvador and Honduras) and Mexican Immigrants (this may differ depending what part of the U.S. they operate out).
- Many are illegal aliens.
- Members of the El Salvadorian criminal street gang Mara Salvatrucha, also known as MS 13, are believed to be involved.

Group II (Fences)

- Most are Middle Eastern immigrants
- Many are naturalized citizens or lawful permanent residents
- Some are under investigation for possible terrorist ties

This summary will be broken down in four parts as follows:

Part one will focus primarily on the organization's day-to-day operation involving the theft and resale of powdered infant formula. The primary method used to acquire the infant formula is shoplifting. The same suspects who steal and fence the infant formula also traffic in a wide variety of other consumer products.

Part two will focus on the large-scale burglary operations used to obtain other products such as but not limited to:

Levi's jeans
Cologne,
Perfume
Health and Beauty aids
Cigarettes
Tools
Electronics
CD's and Cassette Tapes
Over the Counter Medications

Part three will focus on the fencing network.

Part four will address concerns and difficulties encountered by law enforcement when dealing with this issue along with proposed solutions.

PART ONE

INFANT FORMULA SHOPLIFTING AND FENCING

Houston, Texas is home to a large number of shoplifters who operate in Texas and throughout the United States stealing infant formula from retail businesses and grocery stores. Many of the shoplifters operating out of Houston are illegal immigrants from Honduras, El Salvador, and Mexico. Some of the groups have refined their operations to include counter surveillance using radios and cell phones while in the stores. Groups of shoplifters travel out of Texas and acquire lodging and storage facilities before focusing their activity in and around a targeted city.

Methods for shoplifting include:

- The use of large purses to conceal the formula
- Packing the formula into large plastic containers or in boxes that contained a low priced item,
- Stacking many cans in a grocery cart and walking out the store.

Most of the thefts are conducted from retail stores by groups of shoplifters. Suspects usually exit the stores with the formula without making any purchase from the store. After stealing enough formula, the group either ships the formula back to Houston or rents trucks or trailers to return the formula to Houston. Several organizations that are purchasing the stolen formula have been identified in Houston.

The distribution of the stolen formula in Texas and throughout the United States seems to be handled primarily by Middle Eastern fences. Financial and phone links have been established between many of the Middle Eastern participants who are operating in Texas, Oklahoma, Louisiana, Florida, North Carolina, Arizona, Kentucky, Ohio, Michigan, and California.

MONEY

One Texas grocery store chain reported that they lost ten million dollars in one year as a result of the theft of infant formula. A nationwide retail business reported losses of over one million dollars a month from their Houston area stores.

WIC

It is believed that much of Houston's stolen formula is being sold through WIC (Women, Infant, and Children) government food subsidy programs in Texas and California. Because it is a WIC approved item, the 14.3-ounce can of powdered Enfamil with Iron is the primary target of the shoplifters. Shoplifters in Houston sell amounts ranging from several hundred to several thousand cans a month valued at $1000.00 to $10,000.00 per month.

One shoplifter reported she had "worked" stealing formula from Florida to Colorado for over seven years making $3,000.00 dollars per week. In Houston, a stolen can of powdered Enfamil with Iron is sold by a shoplifter for about $5.00 per can to fences who operate out of mini storage facilities. That can is then sold for about $9.00 per can to Middle Eastern distributors. That can sells in the WIC program for between $13.00 and $16.00 per can.

One fence handled about 50,000 cans a month (about $200,000.00 per month profit) from one location in Houston. Information developed that the same fence was also operating at least one other location in Houston and at least one additional location in Nebraska.

OTHER SCHEMES

Several other schemes besides shoplifting are being used to steal formula:

- One scheme uses altered price bar codes to obtain formula at a reduced price.
- Another uses store competitive pricing policies by producing a receipt purporting a purchase of formula at a reduced price from one business to compel another business to match the price. In this scheme a fraudulent receipt is used to begin the scheme but, after the first store agrees to sell at the competitor's alleged price, a legitimate receipt is obtained to continue the scheme.
- Another scheme involves the legitimate purchase of one shopping cart full of formula to obtain a receipt and then using that receipt to walk other carts packed with the same items out the store; if confronted, the receipt produced will match the items in the basket. In a similar scheme two baskets are filled with formula and one person waits to pay while the other person attempts to leave the store; if the person leaving is stopped, the person paying will tell the clerk that he is also paying for the second basket.
- In Texas there have also been burglaries, armed robberies and truck hijackings committed in order to steal formula.

STOLEN OR NOT

Determining that suspected stolen infant formula is actually stolen is a major problem. If contact is made with individuals transporting infant formula they will report several variations of what they are doing. They may report that they received the formula from a church or that they are collecting the formula for a church to be distributed to needy children. Another common story is that the formula was bought at a location to be taken to a flea market and resold. Receipts from purchases may not be produced or, if produced, the receipts may not match the product found.

If caught shoplifting, the suspects usually will not have identification and will use alias names. Females may use a sympathetic ploy by claiming to steal the formula for their hungry children. If the group is caught they will purport not to know each other. Normally the suspects caught shoplifting will only be charged with a misdemeanor offense. This will only constitute a minor inconvenience, as they may be making several thousand dollars a week stealing formula.

When suspects are questioned separately, conflicting stories may develop and in some instances suspects have confessed that the formula was stolen.

Many law enforcement officers do not realize when arresting shoplifting suspects that they may be dealing with a nationwide organized criminal group.

OTHER ACTIVITY OF THE ORGANIZED CRIMINAL GROUP

Although infant formula theft is the most lucrative criminal venture of this organization, other activities include the theft of jeans and other clothing, cigarettes, glucose test strips, Nicorette patches, Rogaine, Mach 3 razor blades, and movie and music CD's. Investigations involving drug trafficking and government loan fraud are also being conducted. Large amounts of money derived by this organization are being sent to the Middle East.

PART TWO

ORGANIZED BURGLARY RINGS

Organized burglary teams conduct burglaries across the country. The burglaries are well planned and executed with roof top entries and destruction of camera surveillance systems. The groups disable alarm systems and then watch for police response before members enter the business and steal truckloads of property including cigarettes, jeans, perfume, tools, and other items.

These burglary teams usually have a team leader who acts as a coordinator / foreman who oversees the planning and execution. The burglary teams are primarily comprised of illegal immigrants from Central America. Pasadena Police apprehended two of these teams in 2001 after videotaping their burglaries. Evidence obtained by Pasadena Police linked several of the Middle Eastern fences to numerous burglaries in Texas and other states since 1996. Those burglaries resulted in losses of over twenty million dollars ($20,000,000.00).

As a result of the Pasadena Investigation a total of eleven (11) suspects have been arrested for State and Federal offenses.

> Three (3) suspects were arrested and charged with 2nd Degree Felony Theft, Engaging in Organized Crime after burglarizing a Houston business on November 25, 2001. Approximately $25,000.00 in stolen property was recovered. The suspects were observed and videotaped by Pasadena Police while committing the burglary.

Four (4) suspects were arrested and charged with 1st Degree Felony Theft, Engaging in Organized Crime after burglarizing a Houston business on December 6, 2001. Approximately $583,000.00 in stolen property was recovered. The suspects were observed and videotaped by Pasadena Police while committing the burglary.

One suspect was arrested and charged with 1st Degree Felony Theft for purchasing stolen property.

One suspect was arrested for immigration violations.

Three (3) suspects were arrested for misdemeanor charges.

After the arrests, Pasadena Police recovered an estimated one and a half million dollars ($1,500,000.00) in suspected stolen property.

Three (3) Pasadena business burglaries were cleared by arrest.
One business burglary of a cigarette warehouse in Sherman, Texas was cleared by arrest.

Twenty (20) additional burglaries committed by these groups have been cleared in Houston, Texas and Oklahoma since 1996 and the groups are believed to be involved in dozens more.

The Middle Eastern fences selected businesses to burglarize, provided Internet maps and driving directions to targeted businesses, and actively participated in planning and executing the burglaries.

Businesses the burglary teams prefer are located in strip centers with easy access to the rear of the business. Some examples of business burglarized by these teams are:

Academy Sports & Outdoors Stores
Palais Royal Department Stores
Weiner's Department Stores
Beall's Department Stores
Service Merchandise
Home Depot
Pep Boy Auto Parts
Tobacco warehouses and retail stores
Clothing, perfume and cologne wholesalers
Jewelry stores
Eckerd's Drugs
Walgreen's Drugs
Infant formula retailers and wholesalers

BURGLARY MODUS OPERANDI

- Middle Eastern fences often pick the target businesses and finance the burglary expenses.
- Middle Eastern fences sometimes participate in casing and scouting missions with the burglars. These missions often take place days or months prior to the burglaries. The burglars watch the targeted businesses for days to establish business and police patterns.
- Use of building and alarm diagrams along with maps provided by the fences.
- Cut phone lines and wait one hour for police response.
- Cut hole in roof and wait again for one hour for police response.
- After no police response the merchandise prep team enters and moves merchandise to a back door or loading dock area.
- Constant vigil for police is maintained by lookouts on foot and in vehicles using radios or cell phones for communications
- The cargo trucks are usually staged at businesses such as Wal Mart or apartment complexes close to the target until the property is ready to load.
- When merchandise is ready for pick up, the cargo trucks are moved in.
- Stolen property is delivered to Middle Eastern Buyers soon after the burglary is committed.
- Fences often travel out of state with burglary teams.

The burglary team leaders own large vans and bobtail trucks with lift gates that are registered under alias names or third parties. If additional trucks are needed, the burglars will also rent trucks. For large burglaries the teams will combine their people resulting in as many as ten (10) suspects committing the burglaries.

The stolen products are distributed through the same network of wholesalers and fences as the infant formula and/or shipped overseas to buyers.

Infant formula obtained from shoplifters is the day-to-day operation of the criminal enterprise. The burglaries provide another means of obtaining large amounts of merchandise. Evidence indicates that many of the lower level members of the burglary teams engage in shoplifting between burglaries.
Two burglary teams identified in this investigation are still operating out of Houston, Texas and more teams are suspected to be operating from other cities in the United States.

INSURANCE FRAUD

Some of the businesses victimized by the burglary teams in this investigation are suspected of being involved in insurance fraud. Informants relate that some of the property stolen in the burglaries is sold back to the businesses that were burglarized after the owners received an insurance settlement for the loss.

PART THREE

FENCING AND RESALE NETWORK

Evidence collected in this investigation shows that the Houston area fences ship the stolen merchandise to wholesalers in Texas, other parts of the United States, and overseas. The products are then sold to a vast national network of convenience stores, grocery stores, wholesalers, and retailers and WIC vendors.

FENCING FINANCIAL PATTERNS

Fences receive large wire transfers as payment for stolen merchandise. The money does not stay in their bank account for long before it is withdrawn. The money is usually withdrawn by the fence writing large checks to himself. Sometimes the fence pays the thieves by check. Often the fences have average monthly bank deposits exceeding one million dollars ($1,000,000.00) but the daily average balance rarely is over fifty thousand dollars ($50,000.00).

During a four month period in 2001 one fence arrested and charged with first degree felony Engaging in Organized Crime cashed 314 checks totaling 3.3 million dollars. 1.48 million worth of checks were written to himself and those were listed as cost of sales on his accounting records. The remainder of checks cashed was written to known and suspected thieves and other fencing suspects. This suspect lived moderately and his personal bank account averaged about a $1,000.00 monthly balance. Evidence revealed a pattern of delinquent house notes, utility bills and personal cash shortages. The pattern of banking activity was prevalent with other fences identified in this investigation.

Some suspects maintain a higher standard of living, but not to the point that draws undue attention.

Some accounting and bank records show frequent and obvious structuring (financial transactions in amounts just under $10,000.00 to avoid reporting procedures under banking and tax laws).

Many Middle Eastern fences use the same bookkeeping firm. Other clients of the bookkeeping firm are also suspects under investigation or suspects who have been investigated in the past for criminal activity ranging from federal and state tax violations to narcotics trafficking. Evidence indicates that the bookkeeper has invested in and participated in the illegal activity of the fences.

Many of the fences use the same mosque. Informants relate that the mosques are a meeting place for financing, planning, and coordination of efforts by the fences. A Hispanic burglary team leader reported that he was taken to the mosque for operational planning and financial negotiations prior to major burglaries. The same informants report that the Mosque is specifically used as an operations center due to the reluctance of law enforcement and prosecutors due to the sensitive political issues related to taking investigative action such as execution of a search warrant at a place of worship.

The fences operate wholesale and trading companies out of private storage buildings and small warehouses located in business complexes. Others operated out of convenience stores with much of their business records stored at their residences.

Many of the fences operate together, but their operation is disguised by a layering scheme that make it appear that they are operating separately. For example, company A has invoices and receipts showing that items were purchased from company B, but Company B has no records of the transaction.

Informants report that suspects have been seen together producing false receipts. The receipts are often hand written or generic or show purchases from another company suspected of fencing stolen property. When tracked back, there are no legitimate receipts for goods purchased.

When interviewed by law enforcement the Middle Eastern fences commonly explained that they obtain goods like infant formula and blue jeans by the use of "runners" who go to the stores to buy products on sale or clearance. They claim to be a high volume low profit margin operation. The Fences explain that retailers sell many products below cost as "loss leaders" and after purchasing a large volume of those items at a low price, the items are resold for a small profit.

Another explanation is the formula is obtained at close out or clearance sales. There are not enough business closings or businesses conducted clearance sales of formula to produce the volume of formula being moved by the fences. In 2001, four Middle Eastern fences shipped thousands of cases of infant formula around the country from Houston. No legitimate receipts were found when their homes, businesses, and storage buildings were searched.

WHERE IS THE MONEY?

- Stolen property is suspected of being the commodity traded instead of currency
- Sent to the Middle East via Virgin Islands (British and U.S.)
- Trinidad
- "Charitable Contributions" to the Holy Land Foundation for Relief and Development
- Shipped to foreign ports hidden in shipping containers
- Wired out of the country through private firms such as Western Union under third party names
- Physically transported by couriers throughout the U.S.
- Laundered through the Mosque
- Smuggled out of the country in cashier checks
- Simply sent by private freight and mail services such as FEDEX and UPS out of the country in small packages.

CONVENIENCE STORES

Convenience stores are believed to play a key role for a wide variety of criminal activity involving this criminal organization. The stores act as a grass roots outlet for the fencing of items stolen by this organization in addition to property stolen by shoplifters, residential, business and car burglars in addition to over the counter contraband narcotics sales, motor fuels theft and diversion, and money laundering. It has been found through investigations that often the convenience stores appear on the surface to be owned by one individual or individuals, but are actually owned covertly, through informal agreements, or overtly through complicated scheme of corporations by a third party who actually is the behind the scene owner controlling several different stores in multiple jurisdictions.

Another disturbing pattern found through the investigation of several Pasadena area stores engaging in the criminal activity described in this document, is that the owners of the stores systematically purchase residential properties in the surrounding neighborhood. Some store owners have been found to be the land lords for up to 20 different residences in the surrounding neighborhood allowing the store owners to exert considerable informal and formal power over their surrounding community. Such arrangements open the door to crimes such as tenant extortion, and providing housing and secondary locations for the criminal element that supports the illegal activity such as "crack houses", illegal alien safe houses, and locations where prostitution is conducted. Information collected through law enforcement investigations indicate that many of the store owners are involved in alien smuggling operations.

Through the above described circumstances the convenience store and its owners and operators become the informal community leaders fueling an expanding cycle of crimes such as theft, motor vehicle burglary, narcotics use, and residential and business burglary causing a downward spiral of community decay draining local government resources and reducing property values. This situation further complicates law enforcement efforts to interdict the illegal activity that the store is the central foundation of, because the entire surrounding community becomes the eyes and ears of the store owners and operators.

The people who appear on the surface to operate and own the stores are often immigrants whose immigration is sponsored by the "behind the scene" owner who sets them up in business but actually controls the operation of the store. Due to the cultural boundaries encountered by recent immigrants they are forced into a form of indentured servitude. Failure to comply with the real owner's direction or participation in the above described criminal enterprises would result in termination of funding and support by the real owners.

Several other crimes have been identified as common place involving these same stores such as:

- Wide spread food stamp program fraud; cash for food vouchers and unauthorized purchases merchandise such as cigarettes and beer through food stamp programs.

- Sale of alcohol and cigarettes to minors which can yield significant profits especially if these products are marked up for purchase by minors and a large minor customer base is built up by word of mouth.

- Motor fuels theft and diversion; bribing fuel truck delivery drivers to "skim" their loads and covertly sell "skimmed" fuel to the stores for resale to the public for pennies on the dollar.

- Pasadena Police have conducted multiple investigations involving motor fuels theft where thousands of gallons of fuel were "skimmed" or stolen were sold to convenience stores.

CREDIT CARD PURCHASES

Many of the purchases from legitimate venders are made with credit cards. The pattern with the credit cards used by the fences show an extensive history of "Bust Out Activity" where credit cards are maxed out then abandoned leaving large balances unpaid.

LEGITIMATE BUSINESS ACTIVITY

Not all of the products sold by the fencing suspects are stolen. Some items sold are purchased from Government Auctions and from legitimate sources and shipped overseas or resold in the U.S. By commingling what appears to be legitimate purchases of merchandise with illegally obtained merchandise further complicates law enforcement's efforts to detect black-market operations. The seemingly legitimate purchases obscure the illegitimate ones from scrutiny. Even though these purchases appear legitimate, it is believed that much of the funds used for the purchases are obtained from the illegal operations.

BACKGROUND OF FENCING SUSPECTS

Many of the Middle Eastern fencing suspects are educated, sophisticated, well traveled, and when arrested they use their financial resources to obtain the best defense attorneys available. Through the Pasadena Investigation and parallel investigations conducted by other law enforcement agencies, the Fences have been found to often use the same law firm consistently over a period of several years. This firm, which is widely known through out Texas for representing high profile defendants, appears to be acting as organizational firm for the criminal enterprise Texas operations.

Use of the same law firm by members of the criminal organization creates frequent conflicts of interest for the defending firm and complications for law enforcement when suspects are approached during the investigation in regards becoming cooperating defendants which is a situation that is commonly encountered during organized crime investigations.

This arrangement makes it virtually impossible for law enforcement to approach potential cooperating material witnesses and defendants represented by the organization's attorneys regarding suspect cooperation without risking discovery by the other members of the criminal organization also under investigation who are represented by the same firm.

PART FOUR

CONCERNS and OBSERVATIONS

STRAINED RESOURCES

Due to the fractious nature of American Law Enforcement with over 16,000 state local and federal agencies, the response by law enforcement to this issue has been piece meal and incomplete. The suspects engaging in this criminal enterprise cross jurisdictional boundaries from coast to coast and abroad and they exploit law enforcement's limited capabilities and resources. A tremendous amount of resources and an unprecedented level of information sharing and interagency cooperation is necessary to investigate and prosecute individuals and groups involved in this criminal activity.

Based on conversations with federal and local investigators in Dallas,Texas; Phoenix, Arizona, Tallahassee, Florida; Louisville, Kentucky, Boone County, Kentucky, Cincinnati Ohio and other states, concerted efforts in at all levels of the Criminal Justice System have formerly pooled their resources and funding to specifically support investigations of the criminal activity discussed in this statement.

The law enforcement response in the Houston Metropolitan Area has been piece meal and conducted by an informal, amorphous loose knit confederation of investigators from a variety of local, state, and federal agencies. Currently the Pasadena Police Department has been playing the central role for the last two years approaching this issue for what is, traditional Gangland Style Organized Crime investigation except it appears the primary motive of the criminal organization is to raise funding to be used in terrorist activities directed against the U.S. and its Allies instead of profit motivated. The FBI has been working with the Pasadena Investigators attempting to track the flow profits earned from this criminal organization to determine if it can be proven that the profits are funding terrorist organizations. Some subjects who are investigative targets in the Pasadena investigation are reported by the FBI to be terrorist Organization Members.

From investigators meetings and conversations with other investigators around the nation it appears that the Houston Metropolitan Area is the central distribution hub for this criminal organization.

UNDER THE RADAR SCREEN

Many of the suspects involved in this criminal organization have a history of being involved in organized narcotics trafficking. Some suspects still engage in narcotics trafficking, however most have switched to the reduced risk associated with trafficking in stolen consumer goods. This may also be in part due to the lower priority given by the criminal justice system to property crimes in comparison to drug trafficking.

The widespread theft and fencing of infant formula is a prime example which is consistent with almost all other types of black market consumer products with the exception of cigarettes. It is virtually impossible for law enforcement to prove a can of infant formula is stolen. The major difference and reason why it is believed that infant formula has become a staple black-market item is the virtually assured sale of the formula fueled by the

guaranteed sale by WIC venders participating in the black-market at the premium prices reimbursed by the U.S. Tax dollars that fund WIC

The only successful method has been for law enforcement to make infant formula theft case has been to sell formula to fencing suspects purporting it to be stolen. Such operations require extensive logistics, initial multiple sales in small amounts at first to gain the confidence of the target, and the subsequent acquisition of larger amounts of merchandise that law enforcement requires make the sales in order to get their "foot in the door" finally ending in a sale large enough to secure significant charges that would result in penalties other than a "slap on the wrist". The final amount needed to secure a 1st degree felony theft charge is over $200,000.00 or almost an 18 wheeler full of infant formula.

IMMIGRATION AND NATURALIZATION SERVICE

In many cases the suspects will be deportable due to immigration violations. INS officer's may be able determine the suspect's true identity and the INS may be able to prosecute suspects' for illegal entry into the United States. Because most state and local law enforcement officers are unfamiliar with immigration laws, coordination between the INS and other law enforcement agencies is needed.

LAW ENFORCMENT CULTURE

This entire scheme is designed from the ground up to be a night mare for law enforcement. These investigations are not sexy like working narcotics or catching the guy with the bomb; however it may in the long run cause more damage to our nation than scores of suicide bombers. Investigators who have worked these cases for years suspecting they were terrorist funding operations were commonly chided and made fun of by other investigators. Terms such as diaper cops, or "conspiracy theorist" were bantered around. After September 11, 2001 the jokes weren't so humorous anymore. American Law enforcement has a tendency to stick with what is easy. Narcotics investigations are inherently simpler than these types of cases. The mere possession of narcotics being a crime; not so with a truck load of stolen infant formula or blue jeans.

CONCLUSION

This criminal organization has flourished over the last ten years and appears to be growing. There is a concern related by legitimate retailers and wholesalers that legally operate businesses who cannot compete and will be edged out of the market place by the criminal organizations. A legitimate business cannot compete with one that obtains its products on the black market at prices far below manufacturer's cost.

This criminal organization is having a detrimental impact on communities through the dizzying array of criminal activity occurring at convenience stores, gas stations, and grocery businesses participating in the black market. The potential for corruption of public officials facilitated by the deep pockets of the criminal organization is enormous. Investigations conducted in Texas indirectly as a result of this investigation and in other states have already uncovered evidence of corruption within entities that regulate the WIC Program. Investigators also report that individuals and groups involved in this enterprise exert enormous influence on local governments by their ownership of large blocks of economic sectors in their communities. Investigators have frequently been met with

almost open hostility when attempts to engage in dialogue with some civil agencies at the state and federal level responsible for administering the WIC program. Investigators were seeking advice, input, and direction or soliciting assistance regarding the modification of the WIC program to ensure its integrity and thwart the commerce of the criminal organization. From such conversations, it is believed by investigators that certain governmental groups or individuals administering the WIC program do not want to face any adverse information regarding WIC for fear of having the program terminated. WIC is a valuable program. It just has a loophole that is being seriously exploited at the expense of the U.S. Taxpayer.

I have attached several news articles from similar investigations through out the U.S. In many of them the Terror Links have been established and in many cases the Pasadena Suspects have been linked to or charged with crimes as a result from their involvement with the suspects in the other investigations.

What is happening in Houston, TX is not an exception. It is identical to what is happening in Cincinnati, Dallas / Fort Worth, Phoenix, Tamp, Tallahasse, New York, Austin, San Diego, Denver, etc... I many cases it is not even different groups it is the aunts, uncles, cousins, and brothers such as the case with many of the Pasadena suspects and Florida Suspects. The activity is the same, the products are the same, the method of operation is the same. It as if the organization participants are reading from the same procedure manual or taking orders from the same boss.

If what has been described in this document is the grand scheme being acted out by the World Wide Terror Network to erode the U.S. from within, it has been going on for over a decade and U.S. tax dollars are financing a large portion of it. In other words we may be paying for our own undoing. We are just now trying to address it. hope we are not too late.

Finally and by no means the least significant, emphasis must be placed on fostering positive relationships between the Islamic community and law enforcement. It is necessary to avoid targeting honest Muslim business owners and citizens who comprise a majority of the U.S. Islamic community.

DEBRA W. YANG
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August 9, 2002

FUGITIVE WHO SOLD COUNTERFEIT BABY FORMULA
CONVICTED OF FEDERAL CRIMINAL CHARGES

A man who fled the county and remained a fugitive for six years after realizing he was under investigation has been convicted of four federal charges involving a conspiracy to sell counterfeit Similac baby formula.

Mohamad Mostafa, 43, who at the time of the criminal conduct lived in Orange County, was found guilty yesterday by United States District Judge Alicemarie H. Stotler following a three-day bench trial.

Mostafa, who was arrested in Canada in 2001, was convicted of all four counts in an indictment returned by a federal grand jury in June 2000. Mostafa fled the country in 1995 after his scheme to produce and sell large quantities of Similac was discovered.

Mostafa was the owner and operator of M&M Wholesale, which purported to be a wholesale grocery business with an office in Stanton and a warehouse in Santa Ana. In fact, M&M Wholesale was manufacturing, packaging and distributing counterfeit infant formula throughout California.

The infant formula used by Mostafa came from a wholesale supplier, which provided the formula to Mostafa under the condition that it would be used exclusively for export to the Middle East. Instead, Mostafa caused laborers to package it in cans bearing a counterfeit reproduction of the well known label of Similac Milk-Based Infant Formula with Iron. Mostafa then sold the counterfeit product as Similac to wholesalers, who in turn sold it to retail stores throughout California, including Safeway. Two of the counts in the indictment specifically alleged that Mostafa sold a total of approximately 3,500 cases of the counterfeit Similac to wholesale grocers in El Cajon and Buena Park.

The counterfeiting scheme quickly unraveled when numerous parents, who were familiar with the authentic Similac product, called the lawful manufacturer to complain. It was later determined that thousands of cases of the fake product had been sold throughout California.

The matter was widely publicized in national and local media after the FDA and Similac's manufacturer, Ross Laboratories, issued a warning about the counterfeit product. After the counterfeit product was discussed in the media, Mostafa fled the country and was not seen again until he was arrested in October 2001 in Canada and brought to the United States to stand trial.

Judge Stotler convicted Mostafa of conspiracy, misbranding food shipped in interstate

commerce and two counts of trafficking in counterfeit goods. As a result of the conviction, the maximum penalty that Mostafa can receive is 28 years in federal prison and a fine of $4 million. Mostafa is scheduled to be sentenced by Judge Stotler on November 18.

This case is the product of an investigation by the Food and Drug Administration, Office of Criminal Investigations. Los Angeles Field Office Special Agent In Charge Jud Bohrer stated: "Mostafa was in this country illegally, all the while engaging in this lucrative criminal activity that jeopardized the health and safety of thousands of infants. Infant formula is consumed by a vulnerable population which is unable to complain or reject a substandard product."

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For Immediate Release
Press Release
August 9, 2002

Fugitive Who Sold Counterfeit Baby Formula
Convicted of Federal Criminal Charges

A man who fled the county and remained a fugitive for six years after realizing he was under investigation has been convicted of four federal charges involving a conspiracy to sell counterfeit Similac baby formula.

Mohamad Mostafa, 43, who at the time of the criminal conduct lived in Orange County, was found guilty yesterday by United States District Judge Alicemarie H. Stotler following a three-day bench trial.

Mostafa, who was arrested in Canada in 2001, was convicted of all four counts in an indictment returned by a federal grand jury in June 2000. Mostafa fled the country in 1995 after his scheme to produce and sell large quantities of Similac was discovered.

Mostafa was the owner and operator of M&M Wholesale, which purported to be a wholesale grocery business with an office in Stanton and a warehouse in Santa Ana. In fact, M&M Wholesale was manufacturing, packaging and distributing counterfeit infant formula throughout California.

The infant formula used by Mostafa came from a wholesale supplier, which provided the formula to Mostafa under the condition that it would be used exclusively for export to the Middle East. Instead, Mostafa caused laborers to package it in cans bearing a counterfeit reproduction of the well known label of Similac Milk-Based Infant Formula with Iron. Mostafa then sold the counterfeit product as Similac to wholesalers, who in turn sold it to retail stores throughout California, including Safeway. Two of the counts in the indictment specifically alleged that Mostafa sold a total of approximately 3,500 cases of the counterfeit Similac to wholesale grocers in El Cajon and Buena Park.

The counterfeiting scheme quickly unraveled when numerous parents, who were familiar with the authentic Similac product, called the lawful manufacturer to complain. It was later determined that thousands of cases of the fake product had been sold throughout California.

The matter was widely publicized in national and local media after the FDA and Similac's manufacturer, Ross Laboratories, issued a warning about the counterfeit product. After the counterfeit product was discussed in the media, Mostafa fled the country and was not seen again until he was arrested in October 2001 in Canada and brought to the United States to stand trial.

Judge Stotler convicted Mostafa of conspiracy, misbranding food shipped in interstate commerce and two counts of trafficking in counterfeit goods. As a result of the conviction, the maximum penalty that Mostafa can receive is 28 years in federal prison and a fine of $4 million. Mostafa is scheduled to be sentenced by Judge Stotler on November 18.

This case is the product of an investigation by the Food and Drug Administration, Office of Criminal Investigations. Los Angeles Field Office Special Agent In Charge Jud Bohrer stated: "Mostafa was in this country illegally, all the while engaging in this lucrative criminal activity that jeopardized the health and safety of thousands of infants. Infant formula is consumed by a vulnerable population which is unable to complain or reject a substandard product."

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For Immediate Release

July 18, 2000

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FEDERAL JURY CONVICTS FOUR INDIVIDUALS ON CHARGES OF TRADEMARK COUNTERFEIT, CONSPIRACY FOR RESELLING INFANT FORMULA

United States Attorney Paul E. Coggins announced today that after three hours of deliberation, a federal jury convicted defendants Ibrahim Elsayed Hanafy and Adel Hisham Saadat, both of Fort Worth, Texas, and Mohamed M. Mokbel and Samer Samad Quassas, both of Houston, Texas, on 99 counts of Conspiracy, Interstate Transportation of Stolen Property, Trademark Counterfeiting, Introducing into Interstate Commerce Articles of Food Which Had Been Misbranded with Intent to Defraud, and Money Laundering.

The government presented evidence at trial that between September 1996 and June 1997 the defendants sold infant formula to wholesalers that had been stolen from retailers' shelves by shoplifters or which had been fraudulently obtained under government food assistance programs. The defendants repackaged the baby formula into counterfeit cardboard cases and trays which were made to look identical to the manufacturers' cartons. The defendants even used the manufacturers' registered trademarks, SIMILAC® and ISOMIL® (Ross Products Division of Abbott Laboratories in Columbus, Ohio) and ENFAMIL®, NUTRAMIGEN®, PROSOBEE®, PREGESTIMIL® and LACTOFREE® (Mead Johnson & Co. of Evansville, Indiana).

Originally fourteen defendants were charged in a 154-count indictment that was returned in February 1999. Ten of the defendants pleaded guilty to various charges prior to trial.

Ibrahim Elsayed Hanafy faces a maximum punishment of 623 years imprisonment and a $36.25 million fine; Adel Hisham Saadat faces a maximum punishment of 423 years imprisonment and a $30 million fine; Mohamed M. Mokbel faces a maximum punishment of 303 years imprisonment and a $26.75 million fine; and Samer Samad Quassas faces a maximum punishment of 213 years imprisonment and $23 million fine. They are scheduled to be sentenced by the Honorable United States District Judge Sam A. Lindsay on October 16, 2000.

Yesterday, the federal jury convened for most of the day to determine the extent of the criminal forfeitures to be paid to the U.S. government as a result of the money laundering convictions.

Hanafy was ordered to forfeit $704,650 in cash; Saadat was ordered to forfeit $374,000 in cash; Mokbel was ordered to forfeit $212,850 in cash; and Quassas was ordered to forfeit $73,000 in cash.

"The defendants' greed endangered the health of babies. The guilty verdicts handed down by the jury, and the almost $1.4 million cash ordered to be forfeited by the convicted defendants, further evidences the seriousness of this case," said United States Attorney Coggins.

United States Attorney Coggins acknowledged and praised the efforts of the United States Customs Service, the United States Food and Drug Administration Office of Criminal Investigations, the Internal Revenue Service Criminal Investigation Division, the Texas Rangers and the Fort Worth Police Department. Assistant United States Attorneys Joe Revesz and Irma Ramirez prosecuted the case.

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Request Sample Issue

The New American
THAT FREEDOM SHALL NOT PERISH

Vol. 13, No. 05
March 3, 1997
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More on Terrorism

U.S. Grocery Coupon Fraud Funds Middle Eastern Terrorism

Every year, U.S. manufacturers lose hundreds of millions of dollars through grocery coupon fraud. According to investigators, a substantial portion of those illicit profits is used to underwrite terrorism -- including the World Trade Center bombing.

In 1994, investigators in New York City identified Radwan Ayoub, a Lebanese immigrant, as the head of a coupon fraud ring. New York ***Daily News*** reporter William Kleinknecht explained that "Ayoub set up 'cutting houses' where coupons stolen from manufacturers' plants or newsstands are clipped by the hundreds of pounds and wrinkled to look as if they have gone through stores, investigators say. They are then shipped to clearinghouses, which send redemption checks to the stores."

Former New York City Police Detective Benjamin Jacobson, the chief investigator for the A.C. Nielson Company (which administers the food coupon program for many fortune five hundred companies), has estimated that coupon fraud siphons away some $200 million in corporate funds -- losses that are absorbed by American consumers. In New York City, Ayoub's coupon fraud ring "has put scores of Arab and Dominican immigrants into the grocery business by arranging loans from shady finance companies that are then repaid with the store's share of the fraud," Kleinknecht reported.

In nearly every city in which coupon fraud has been investigated, the networks have been headed by Arab immigrants, some of whom have been connected to terrorist organizations. Eleven years ago, for example, the U.S. Postal Service corralled 70 coupon fraud artists in South Florida who were accused of sending a portion of the take to PLO accounts in the Middle East and Europe. Rick Bowdren, the postal inspector who headed that case, said that the Florida ring was linked to operations in several other cities, including New York. Coupon industry investigators also maintain that four members of the Abu Nidal group

indicted by federal authorities in St. Louis in 1993 were heavily involved in coupon fraud. The four Palestinians were accused of plotting to blow up the Israeli Embassy in Washington, DC.

Reported Kleinknecht: "In his files, Jacobson has copies of dozens of clearinghouse checks that were first endorsed by stores and then signed over to the Sea Crest Trading Company, a firm in Greenwich, Conn. that specializes in loans to bodegas [Dominican grocery stores] at 24½% annual interest." According to the North Jersey ***Herald News***, Jacobson has discovered that "proceeds from coupon fraud paid for the World Trade Center bombing, and that Sea Crest had received redemption checks signed over to it by Middle Eastern and Dominican grocers suspected of participating in such fraud."

According to Justice Department documents obtained by Congressman James Trafficant (D-OH), the Drug Enforcement Administration (DEA) believes that Sea Crest is behind much of the money laundering in New York's Washington Heights area of Manhattan, but that attempts to prosecute the company "have been hampered and legislatively fought by certain interest groups and not a single case has been initiated." Jacobson's inquiry led him to conclude that one of those "interest groups" was the CIA, which, the investigator believes, was using Sea Crest as a front for covert operations, including weapons shipments to *mujahideen* groups in Afghanistan.

Jacobson was not the only investigator to discover Sea Crest's role in the bodega/organized crime/terrorism network. In an affidavit placed in the ***Congressional Record***, New York City police detective Lenny Lemmer testified that he possessed "concrete evidence" concerning Sea Crest's involvement in laundering drug money, and that he provided that information to an FBI agent who promptly "disappeared off the face of the earth."

Lemmer was assigned to investigate a riot in New York's Washington Heights area in 1992 that was a reaction to "civil rights violations" supposedly committed by a NYPD officer. His inquiry led him to Sea Crest and also to the case of former INS agent Joe Occhipinti, who had headed "Project Bodega," a year-long collaborative effort between the Immigration and Naturalization Service and the NYPD that targeted Dominican drug cartels in Washington Heights.

Occhipinti, the most highly decorated federal agent in U.S. history, became the first law enforcement officer ever imprisoned on "civil rights" charges that did not involve violence or corruption. Occhipinti was prosecuted on spurious charges in 1992 at the request of then-New York City Mayor David Dinkins, who was seeking to placate Dominican political interests controlled by drug lords. Detective Lemmer reports that during his investigation, FBI agents and federal prosecutors sought to intimidate him away from leads dealing with Sea Crest or anything that might exculpate Occhipinti.

During his "Project Bodega" investigation, Occhipinti discovered that (in the words of the ***Herald News***) "dozens of bodegas, cash exchange houses and travel agencies were acting as fronts for a mind-boggling array of Dominican mob activities," including "drug dealing, assassination for hire, food stamp and coupon fraud ... illegal weapons trafficking, and cooperative arrangements that funneled money to Middle Eastern terrorists."

The owners of 12 businesses which had been scrutinized as part of "Project Bodega" testified at Occhipinti's trial that the agent had violated their civil rights during "consensual searches" of their establishments. All 12 witnesses had criminal records. Furthermore, as Occhipinti informed THE NEW AMERICAN, "all of them had a documented financial relationship with Sea Crest Trading Company." Occhipinti's investigation apparently riled not only Dominican drug lords and Arab terrorists, but also Sea Crest and its shadowy patrons -- and the feds are determined to keep investigators from following up on Occhipinti's work and the DEA's findings.

Occhipinti recalled that the feds also ignored Benjamin Jacobson's research into coupon fraud, which might have helped prevent the World Trade Center bombing. "Jacobson provided information to the feds about coupon fraud and its links to terrorism more than a year and a half before the bombing," Occhipinti pointed out to THE NEW AMERICAN. "However, it was not until after the bombing that the feds showed any interest in it."

Evidence obtained in Pasadena Police Investigation aid in obtaining indictments on several of the individuals listed below.

Office of the United States Attorney
District of Arizona

PRESS RELEASE

FOR IMMEDIATE RELEASE
July 30, 2003

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14 ARRESTS MADE IN 11 MILLION DOLLAR STOLEN INFANT FORMULA SCHEME

PHOENIX, ARIZONA -- Paul K. Charlton, U.S. Attorney for the District of Arizona, announces today that 14 were arrested as part of a Joint Terrorism Task Force (JTTF) investigation of individuals trafficking in stolen infant formula. This case centers around a fencing operation for stolen or fraudulently obtained infant formula, which generates millions of dollars annually. The indictment alleges the profit from the conspiracy is in aggregate of 11 million dollars. The main target is Samih Jamal, D.O.B. 6/18/69 of Mesa, Arizona who operates Jamal Trading and other businesses in the greater Phoenix area. Samih Jamal employs others to steal or fraudulently obtain infant formula around the country and transport it to Phoenix Arizona and other locations. Additionally, 21 search warrants were executed in the Phoenix area and in Garden Grove, California.

The indictment alleges that on or about December 17, 1997, up to and including the present the defendants **Samih Fadl Jamal**, DOB 6/18/69 of Mesa, Arizona; **Tamer Fayez Swailem**, DOB 7/2/72 of Tempe, Arizona; **Marwan Fadl Jamal**, DOB 11/20/67 of Hammond, Loisiana; **Abdulrazzak Fadl Jamal**, DOB 12/10/79 of Tempe, Arizona; **Ramy Fadl Jamal**, DOB 9/5/78 of Garden Grove, California; **Mamoun**

(MORE)

Al-Jamal, DOB 3/21/57 of Garden Grove, California. **Walid Fadl Jamal**, DOB 8/8/65 of Germany; **Hani Jamal Sarawan**, DOB 7/20/70 of Phoenix, Arizona; **Saad Toma Yohanan**, DOB 6/29/57 of California ; **Abdul Khaled khader Hamze**, DOB 9/1/79 of Mesa, Arizona; **Ahmad My Alhulaisi**, DOB 3/27/76; **Kahled Ahmad Noaman**, DOB 11/1/82 of Chandler, Arizona; **Ahmed Mohamed Ashry**, DOB 12/12/68; **Mustapha Mohamad Khodr**, DOB 12/19/79 of Tempe, Arizona; **Fadel Hindi**, DOB 77/7/66 of Phoenix, Arizona; **Abdelsalam Mohamad Abdelsalam**, DOB 6/7/62 of Apache Junction, Arizona; **Mohamad Anis Hemdani**, DOB 9/15/76; **Mounir Midani Daly**, DOB 7/19/78; **Rami Mahmoud Awwad,** DOB 12/11/76; **Sharif Kader Hamdan**, DOB 8/27/47 of Phoenix, Arizona; **Kamel Hamid Al-Fadheli**, DOB 4/2/67 of Phoenix, Arizona; **Nidal Mohammad Al-Shendi**, DOB 5/5/70 of Phoenix, Arizona; **Martha Ann Colwell**, DOB 1/31/48 of Peoria , Arizona ; **Sharon Faye King**, DOB 11/10/52 of Peoria, Arizona; **Slimane Hamzaoui**, DOB 9/4/64 of Chandler, Arizona; **Ibrahim Hassan Elrawy**, DOB 3/1/58 of Houston, Texas; **Alaa Ghasoub Obeid**, DOB 12/23/80 of Mesa, Arizona conspired to transport cases of stolen infant formula valued at more than $5,000, in interstate commerce in violation of Title 18 of the United States Code sections 2314 and 2315. A conviction for violating Title 18 of the United States Code, section 2314 and 2315 carries a maximum penalty of 10 years imprisonment, a $250,00 fine or both. Additionally, the indictment alleges that defendants conspired to commit money laundering during the same time period as the Interstate transportation of stolen property conspiracy in violation of Title 18 of the United States Code 1956(h). A conviction of Title 18 of the United States Code section 1956(h) carries a maximum penalty of 20 years imprisonment, a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer whichever is greater. Finally, the indictment further alleges that Samih Jamal made a false statement on three separate U.S. Department of Agriculture, Food Stamp Program for Stores applications in violation of Title 18 of the United States Code section 1001. A conviction of Title 18 of the United States Code section 1001 carries a maximum penalty of five years,

(MORE)

a $250,000 fine or both.

An indictment is simply the method by which a person is charged with criminal activity and raises no inference of guilt. An individual is presumed innocent until competent evidence is presented to a jury that establishes guilt beyond a reasonable doubt.

The investigation preceding the indictment was conducted by the Maricopa County Attorney Rick Romley, the Maricopa County Attorney's Office, Federal Bureau of Investigation, the Joint Terrorism Task Force (JTTF), Phoenix Police Department, Internal Revenue Service, the Bureau of Immigration and Customs Enforcement (BICE), Arizona Department of Public Safety, Mesa Police Department, Scottsdale Police Department, the United States Department of Agriculture (USDA), and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

The prosecution is being handled by Kevin M. Rapp and Michael W. Kemp , Assistant United State Attorneys, District of Arizona, Phoenix, Arizona.

CASE NUMBER: CR-03-261-PHX-FJM
RELEASE NUMBER: 2003-135

# # #

ELRAWY - PPD CASE

Ibrahim Elrawy Indicted With These People.

UnitedAuto Group Arizona
18 Different Makes.

BUSINESS PARTNER OF ELRAWY SAMIH JAMAL

IN SAME CASE AS THIS ARTICLE

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ELRAWY WORKED FOR BILAL, ALI, & HASSAN Abdullah.

Security, rights butting heads

UnitedAuto Group Arizona
18 Different Makes.

Muslim crime suspects in Arizona feel victimized by terror crackdown

Dennis Wagner
The Arizona Republic
Sept. 14, 2003 12:00 AM

In the name of national security, dozens of people in Arizona have been arrested or detained on charges unrelated to terrorism.

The Muslims and Middle Easterners have been rounded up by Arizona's Joint Terrorism Task Force and charged with visa violations, fraud and other offenses that have little to do with national security.

Most recently, 27 mostly Middle Eastern immigrants were arrested in connection with stolen baby formula.

From the perspective of FBI agents and prosecutors, the sometimes iron-fisted campaign has jailed and deported immigrant suspects even when there was no proof to indict them for terrorism.

But, for many Muslims and civil libertarians, the campaign has been an assault on Islam, Arabs and American fundamentals. They say the government, under intense public pressure and lacking real terrorism suspects, has targeted Middle Easterners for ethnic profiling and used lawful coercion as a tool to get cooperation and information.

"We understand the need for a tough hand. But they are specifically looking for something to get these people on because they are Muslims or from the Middle East," said Deedra Abboud, director of the Council on American-Islamic Relations here.

"They're looking for technicalities so they can be more aggressive. It's just fishing so you can find something to hold over their heads."

Abboud and Randall Hamud, a San Diego defense attorney for terrorism suspects, said agents use intimidation to scare Muslims into cooperation.

"We can't be fast and loose with people we don't like, because everybody suffers later," Hamud said.

Ray Churay, assistant special agent in charge of the FBI in Arizona, denies ethnic profiling and shakes off suggestions that agents hound innocent people.

The government targets Middle Easterners who have been linked to terrorism suspects or spouted "jihadic" rhetoric, Churay said, and there is nothing wrong with using any charge available to prosecute those suspects.

"There's no absence of terrorism work here," he emphasized, adding, "We shouldn't have to apologize for doing our jobs. We'll use everything that's legal and within the Constitution to make this country safe and Arizona safe."

Like attack on Capone

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Arizona connections

The war on terrorism in Arizona sometimes resembles a connect-the-dots picture, with Sept. 11, 2001, hijacker Hani Hanjour in the middle. None of Hanjour's suspected associates here were charged with terrorism-related crimes, but many have been jailed or deported for other offenses. Among them:

Lotfi Raissi, 37, an Algerian pilot and immigrant to Arizona, arrested in England and portrayed as flight instructor to al-Qaida. U.S. officials eventually conceded there was no terrorism evidence against him. Raissi was indicted in Arizona for document fraud, but British courts refused extradition. He denied knowing Hanjour and said his life was ruined.

Malek Seif, 38, a French citizen from Djibouti, admitted knowing Hanjour but denied any role in terrorism. Two months before 9/11, authorities say, he practiced piloting commercial airlines on a flight simulator in Phoenix. Seif was indicted and convicted in Phoenix of fraud and using a false identity.

Faisal al-Salmi, 34, a Saudi immigrant, is believed to have been among those using the flight simulator. According to the *New York Daily News*, he also was one of four men

The Cincinnati Post

Theft ring, terrorism linked

By Kimball Perry
Post staff reporter

More than $100 million was generated in a money laundering scheme that used a dozen convenience stores in Cincinnati's poorest neighborhoods to sell stolen goods, say police and prosecutors, who believe the money then might have been used to fund terrorism around the globe.

In the scheme, police say, organizers paid pennies on the dollar for stolen goods -- such as cigarettes and teeth-whitening strips -- and then re-sold them at a profit in Over-the-Rhine, Northside, Westwood, the West End, Fairmount, Winton Place and South Cumminsville.

Police say they can already prove that $37 million went through the bank accounts of the man they believe is the ringleader, but they estimate that was "only a third" of the total, said Cincinnati Police Chief Thomas Streicher.

Much of the money, the chief added, has been sent back to Middle Eastern countries, often in amounts just under the $10,000 limit that requires the transfer to be reported to the U.S. government.

"We can document that money is being sent to the Middle East," Streicher said, adding there is a "strong suspicion" the money is being used to fund terrorism. He acknowledges, though, "there is nothing concrete -- yet."

Omran Saleh, a Canton, Ohio, businessman who also has a Green Township address, is described as the head of the organization.

He was among 23 people arrested in connection with the two-year undercover investigation that resulted in a 105-count Hamilton County indictment.

Saleh, like most of those arrested, is of Palestinian descent, said Hamilton County Prosecutor Mike Allen. Many of the defendants are naturalized Americans.

The major players arrested have been charged with engaging in a pattern of corrupt activity, money laundering and tampering with government records, charges that carry up to 10 years in prison.

Some of those arrested are also accused of charging exorbitant fees to cash checks.

Police say the scheme operated like this:

Store owners would pay others -- "usually drug addicts," one official said -- to steal items they could then resell. Popular items were cigarettes and teeth-whitening strips. The items could be stolen in as small amounts as a few packages or as large as truckloads.

The stolen goods were resold through the markets at prices that were two, three, four or five times higher than normal, said Streicher.

"The base of the operation are all based in very poor neighborhoods -- preying on the poorest people in the city," Streicher said.

At least five of the stores searched Thursday have been padlocked and authorities will try to close them permanently.

The allegations come as little surprise to some who live in the neighborhoods.

"I know they've been buying a lot of stolen merchandise," said a man who frequently purchased cigarettes in two of the shops, Bank Café at 1135 Vine St. and Glossinger's Carryout at 1201 Vine St., in Over-the-Rhine. "I've seen it happen.

"They'd buy about anything. They'd buy your mom if you offered to sell her."

The man, who asked to remain anonymous, said he also wasn't surprised that police suspect profits from re-selling the stolen merchandise were sent overseas to support terrorism.

"The store owners look like they're from the Mideast and sometimes they would ask me what I thought about Americans being in Iraq," said the man. "I was smart enough to say, 'No comment.'"

The man said he sometimes saw people selling radios and stereos to the shop operators.

"They walk in with the stuff and sell it," he said. "It's been going on for about five years, ever since these foreigners took the stores over. It's common knowledge around here.

"They do a lot of business in the stores," he said.

"They sell a lot of liquor and cigarettes and they buy a lot of things," he said.

Store operators sometimes tore open packs of cigarettes and sold individual cigarettes to people who didn't have enough money to buy a pack, the man said.

"It used to be two cigarettes for a quarter," he said. "Then the price went up to one for a quarter."

The investigation evolved out of a 1999 probe in which owners of several other Cincinnati convenience stores in poor neighborhoods bought, relabeled and resold baby formula at high prices.

The Ohio Organized Crime Investigations Commission has been investigating the operation for two years, using undercover officers and surveillance on the stores and the accused.

The dozens of search warrants served in the investigation are allowing law enforcement -- including Ohio Attorney General Jim Petro and the U.S. Department of Agriculture -- to pore over bank accounts as well as financial and telephone records from stores and residences.

About 160 officers from the Hamilton County sheriff's office, Hamilton County prosecutor's office, Cincinnati police, the U.S. Department of Agriculture and the Ohio Department of Safety Investigative Unit participated.

Aug. 4, 2003, 1:20AM

A new formula for terrorism?

By EDWARD HEGSTROM
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As if dirty bombs and box cutters weren't enough to worry about, now some officials are warning of possible new terrorist tools: Similac and Enfamil.

Baby formula might not make a particularly useful weapon, but it is a valuable commodity. And that has raised concerns that gangs in Houston and other cities across America may be stealing and reselling formula to raise millions shipped to the Middle East, possibly to be used by terrorists.

The U.S. Treasury Department has started a program offering rewards for information leading to the breakup of U.S. crime gangs raising money for terrorists. Among the seven "illicit sources" the Treasury Department believes terrorists are using to raise money are these: "Interstate cigarette smuggling" and "theft, adulteration and resale of infant formula."

In greater Houston, Dallas and Arizona, officials have recently broken up Middle Eastern-led operations that they allege were involved in the interstate cigarette smuggling and the theft and resale of infant formula. Sources say millions of dollars were involved in these cases, though officials are careful not to speculate about possible links to terror in most of the cases.

The specter of terrorism has nevertheless come up in a Dallas-Fort Worth case. An affidavit filed in Tarrant County alleges that Saleh Abugarbieh, 37, a Houston resident, boasted to an undercover police officer at a meeting in Fort Worth that his family helped create the Popular Front for the Liberation of Palestine, a terrorist group, according to a published report in the Fort Worth Star-Telegram.

Abugarbieh has been charged with interstate transportation of stolen property.

His Houston attorney, Phillip Herbert Azar Jr., disputes that his client has any link to terrorism. Azar acknowledged that "a lot of Arabs and Egyptians" appear to be involved in the theft of baby formula, but he said there is no evidence that the profits have gone to terror.

Local police sometimes raise the issue of baby formula and terrorism, but then federal officials usually step in to tell them to keep quiet. After police in Montgomery pulled over a van loaded with more than 700 cans of Enfamil last year, the police chief said federal investigators believed there was a terror link. The FBI later denied knowledge of any such link.

In the Houston case, officials have had enough trouble just proving that the baby formula was stolen, according to Sgt. Johnnie Jezierski of the special crimes unit of the Texas Department of Public Safety. Baby formula carries no serial numbers, so if police pull over an 18-wheeler full of Similac, they have trouble proving where it came from and whether it was stolen.

Investigators from the DPS and the Pasadena Police Department spent months investigating the Houston ring until someone got the idea of bringing in the state health department. Improper transport of baby formula is a violation of state health law, and health officials can not only confiscate the loads but also use the evidence to obtain search warrants.

The search warrants uncovered evidence of weapons, according to Jezierski. Some of the alleged ringleaders were caught on weapons charges.

There is evidence the Houston-area ring generated more than $6 million in profits, and there is evidence some of that money went to the Middle East, Jezierski said. But he added: "There is no prosecutable proof that these people are connected to terrorism."

The health concerns are serious. Smugglers expose the baby formula to heat, they alter the expiration date to sell old merchandise and they sometimes even adulterate the content. Some mothers feed their babies formula exclusively, thinking it is highly nutritious. But if they get a can that has been stolen, it might be barely more nutritious than water, causing serious health concerns for the baby, said Kim Ogg of CrimeStoppers.

"The most helpless of victims are being taken advantage of," Ogg said.

The stolen cans, Ogg said, most frequently end up in neighborhood stores that accept government vouchers issued through the Women, Infants and Children Supplemental Nutrition Program.

If the money is indeed going to terrorists, that would mean those organizations are being funded by U.S. taxpayers.

Contact Edward Hegstrom at edward.hegstrom@chron.com

Dr. Neil Frank's 2
HURRICANE
TRACKING C

Top Stories

Deputies make baby formula bust

04/14/2003

From 11 News Staff Reports

A traffic stop by Fort Bend County Sheriff's Department has led to a baby formula bust. Deputies say, last Thursday they pulled over a vehicle and found a massive amount of baby formula and cash inside.

After an investigation, authorities determined these suspects were illegally transporting and storing the formula. Investigators were led to a storage facility with $115,000 worth of baby formula.

The suspects were arrested, but so far only for the traffic violations while authorities investigate.

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updated! Pet of the Week

TOP STORIES

Tuesday, July 29, 2003

Illegitimate retailers selling tampered-with baby formula for profit

7/29/2003 7:01 PM
By: Jennifer Joseph

Police are saying a certain type of baby formula could do more harm than good to an infant.

That's because truckloads of tampered baby formula have been seized by local law enforcement officers in an effort to crackdown on illegitimate retailers.

"It is an industry that produces millions, if not billions, of dollars annually for those criminals involved in this trade and it's something that we, on behalf of the children of Texas, are very concerned about in law enforcement," said Crime Stoppers executive director Kim Ogg.

Officers say the bad baby formula is part of a larger illegal retail operation, and is the single most stolen and fenced product.

Often times the formula is thinned out and is months or even years past its expiration date.

They say these are not typical burglars, but a ring that stretches across Houston and the rest of the country comprised of a number of illegal immigrants.

"The most important point to stress about these burglaries is that it appears to be the work of a typical burglar – the work meaning the method that was used to gain entry, the tools, the vehicles used – when in fact it was the work of a massive criminal network," said Al Garcia with the Pasadena Police Department.

Crime Stoppers officials say more often than not the products coming from the black market are being sold at small corner stores rather than well known grocery store chains.

The products are even found at small stores specifically selling federally funded WIC or Women Infant Children products.

That's because up until now, anyone could apply to the WIC program to sell the products, even suspects arrested in similar crimes.

A new regulation effective September 1 will put into play safety nets to stop the black market sales.

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In the meantime, illegitimate retailers are making astronomical profits while legitimate retailers lose out.

"From a retailers standpoint, we had some retailers that were losing as much as $200,000 a week in product. That's hard to replace," said Gulf Coast Retailers Association president Joe Williams.

WATCH THE VIDEO

Baby formula
Jennifer Joseph tells us how criminals have begun using this unlikely product to make a profit.

PLAY ADD TO CART

Armstrong wins Austrian race

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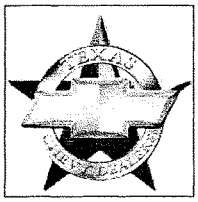

While money is lost and made, children end up the victims.

"This is organized criminal activity that exploits the most basic desire of a parent, and that is to feed its child," said U.S. Attorney Michael Shelby.

What is expected to help a child grow, could in the long run stunt their development.

Crime Stoppers is asking for the public to be aware of unusual activites.

Often times the burglars are found removing large quantities of formula from store shelves and stowing the product in storage units.

Crime Stoppers is offering up to a $5,000 reward for information leading to the arrest and conviction of others involved in the same or similar crimes.

Call Crime Stoppers at 713-222-TIPS if you have any information.

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Tainted baby formula sold in local grocery stores

By: HEATHER L. NICHOLSON, Citizen staff

July 30, 2003

A Pasadena Police bust has led authorities to issue a strong warning about the purchasing of baby formula.

Houston and surrounding areas have been deemed a black market hub for stolen baby formula, causing potential health risks to feeding infants, officials said. "This is organized criminal activity that exploits the most basic desire of a parent...to feed their children," Michael Shelby, U.S. attorney, said. Authorities are sending a strong warning to parents that the formula they're buying from local grocery stores may be tainted. The risky formula is believed to have been bought off the black market, an illegal provider not properly storing or transporting the sensitive product.

Hazardous baby formula was undiscovered until Pasadena Police busted a burglary ring in 2001.

The band of thieves were responsible for millions of dollars in stolen clothing, beauty aids and cigarettes from area homes and businesses. As investigations widened, Pasadena police and the Texas Department of Safety uncovered that the local thieves were part of a national network of criminals working together on the black market.

Local and state investigators now closely monitor the distribution and purchase of baby formula in Texas grocery stores to minimize the risk of grocers buying formula from illegal sources.

Further probing reveals the process in which safe and nutritional infant formula, such as Enfamil and Similac, get into the hands of unsuspecting consumers as dangerous food for babies.

The Texas Health Department and local investigators said that individual thieves, primarily immigrants from Central America, are recruited to shoplift formula from grocery stores. It is easy to overlook the shoplifting incidents since they are low-level misdemeanor crimes.

However, the thieves then sell the stolen baby formula to "fences", who are primarily Middle Eastern immigrants running whole sale supply companies, officials said.

"They exploit parents by stealing this formula and then put it on the black market in a way that may ultimately endanger the very people we are trying to protect," Shelby said.

While the formula is being handled from grocery store to thief to black market, it is "often stored and transported at improper temperatures and in bug infested locations without regard to sanitation," a Crime Stoppers report stated.

This kind of negligent handling "generally results in deterioration of product and loss of potency. Since formula is the sole source of nutrition for infants, this kind of tampering can impact the development of a child," reports stated.

Once "fencers" have the formula, they then sell it back to grocery stores at a discounted price and it is put back on the very shelf it was stolen from.

Grocery stores that have been found to be unknowingly carrying these tainted formulas are those involved in the government WIC program, which is virtually ever major grocery chain in Texas.

The Texas Health Department and the WIC program in Texas are trying to change the way grocers buy their baby products by requiring WIC-participating vendors to purchase a Texas wholesalers license

The health department has also begun an aggressive campaign to investigate unlicensed wholesalers and since April they have managed to seize over $750,000 in stolen infant formula.

"These black market warehouse operations have been brazenly plying their illicit trade with no regard for the law or the health of infants," Greg Abbot, Texas attorney general, said.

The attorney general's office has initiated civil lawsuits against 14 individuals and their companies including, The Jamal Group, Inc., Napoli Wholesale, Unified Group, Express Wholesale and The Trading Co.

Crime Stoppers offers an award up to $5,000 for information about mini storage facilities, truck rentals and shipping companies being utilized to store and transport infant formula illegally.

"Because of the nature of the product, the general public is probably unaware of the risks created by the unregulated distribution of infant formula," Kim Ogg, executive director at Crime Stoppers, said. "Investigators need the public's help."

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EYEWITNESS NEWS

Nationwide theft ring traffics in baby formula

Stacks and stacks of stolen baby formula were recovered by authorities

By Elma Barrera

ABC13 Eyewitness News

(7/29/03 - HOUSTON) — A routine call in Pasadena has led to a major bust of a giant burglary ring, involving everything from home electronics to baby formula.

ABC13 report
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The theft of cigarettes in Pasadena three years ago was small potatoes compared to what authorities later discovered – a huge nationwide network of criminal organizations working together in the black market economy, stealing and selling primarily baby formula.

Stealing baby formula might appear like a petty crime, but this burglary ring operated from coast to coast and was making millions of dollars. They stole easy-to-sell items like jewelry, electronics, perfumes, blue jeans... But their mainstay was baby formula.

"We identified that these groups travel across the country stealing formula," explained Sgt. Johnny Jezierski of the Texas Department of Public Safety. "Teams will go to a city, set up an operation for approximately a week or until they obtained enough formula, and then bring that formula back to the fences in Texas."

Twenty-one suspects, mostly Central American illegal immigrants, have been arrested and charged. The Central Americans allegedly stole the items that were passed on to Middle Eastern men who fenced the products. The middleman reportedly made as much as $2 million annually. But it is what happens to the baby formula that has enraged law enforcement officers.

Joe Williams with the Gulf Coast Retailers Association said, "Our customers, these kids, depend upon that product for their sole source of nutrition. If they're receiving a product that is tampered with they can't tell you that they're not getting all the nutritional value that they should be receiving from that product."

There are 200,000 babies in Texas who use baby formula from WIC, a federal program who gives vouchers to low income women to buy the

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formula. When the women go to mom and pop stores who have purchased the formula from illegal distributors, they have no way of knowing where the formula came from. That is how the illegal distributor makes his money.

Health department officials say their main concern is that the formula is often sold past its expiration date and is stored in hot warehouses, possibly making the baby formula unsafe.

The investigation is not over and the public is urged to report any suspicious activity in relation to the theft or transport of baby formula.
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Click2Houston.com

Stolen Baby Formula Poses Danger To Children

POSTED: 10:51 a.m. CDT July 29, 2003
UPDATED: 3:15 p.m. CDT July 29, 2003

HOUSTON -- Stolen baby formula that is resold and given to babies is a growing health problem, Crime Stoppers announced Tuesday, and officials want the thieves off the streets.

The problem first came to light two years ago in Pasadena, when an investigation uncovered a burglary ring that had stolen millions of dollars in formula, officials said.

Selling baby formula without a license is a violation of the Texas Health and Safety Code.

Officials said that often the baby formula is stored improperly or has expired, which compromises the nutritional benefit of the product without the parents' knowledge.

A multiagency task force recently arrested 21 people in a stolen baby formula ring. Most of them are illegal immigrants from Central America, officials said.

"This is organized criminal activity that exploits the most basic desire of a parent. And that is, to feed its child, to feed their children. And they exploit that desire by stealing this formula and then by putting this formula on the black market in a way that may ultimately endanger the very people that we are trying to take care of," said Michael Shelby, a U.S. attorney.

The majority of the bad baby formula was going to the Women, Infants and Children (WIC) Nutrition Program, which provides help for the underprivileged, and small "mom and pop-type" grocery stores.

A $5,000 reward is being offered for information that leads to arrests and convictions in this type of case.

Anyone with information should call Crime Stoppers at (713) 222-TIPS.

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DALLAS, TEXAS
MAY 21, 2003

INDIVIDUALS ARRESTED IN ORGANIZED RETAIL THEFT INVESTIGATION

United States Attorney Jane J. Boyle announced that a federal complaint charging ten individuals with conspiracy to commit interstate transportation of stolen property was unsealed today. Nine of these defendants were arrested today in a joint enforcement operation led by the Department of Homeland Security, Bureau of Immigration and Customs Enforcement (ICE), Dallas Field Office and the Fort Worth Police Department, and assisted by the Federal Bureau of Investigation; the North Texas Joint Terrorism Task Force; the Food and Drug Administration, and the Internal Revenue Service - Criminal Investigation, Dallas Field Office. Those defendants arrested will make their initial appearance tomorrow afternoon before the Honorable Jeff Kaplan, United States Magistrate Judge.

The Fort Worth Police Department also executed state search warrants and arrest warrants on individuals and businesses allegedly involved in the same operation.

The federal criminal complaint charges that from October 2002 through May 2003, the below-named defendants, led by defendant Mohammed Ghali, operated an organized retail theft organization, based in North Texas, in which they bought stolen medicinal products and infant formula for resale to wholesalers across the country. The affidavit alleges that these products were stolen from major supermarkets in North Texas and sold to local convenience stores. Members of the Mohammed Ghali organization allegedly purchased these items from local convenience stores, transported them to warehouses they owned for repackaging, and then sold the repackaged goods to wholesalers and individuals across the country.

Named in the federal criminal complaint are: Mohammed Ghali, Luai Ghali, Denise Ghali, Stephanie Ghali, Ahmad Herzallah, Seyam Mohdnour, Shaker Rahhal, Riyad Rahhal, Erics Green, and James Gardner. Defendant Riyad Rahhal remains a fugutive.

United States Attorney Boyle praised the outstanding investigative efforts of ICE and the other agencies that participated in this investigation and enforcement action. She noted that although

the investigation is ongoing, at this time, evidence has not linked it to terrorism or terrorist activities.

# # #

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Fort Worth News

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Area money laundering ring cracked

FORT WORTH - Almost two dozen people arrested during raids by federal authorities and Fort Worth police Wednesday are accused of buying and selling stolen merchandise in what officials call one of the area's biggest international money laundering rings.

Detective Scott Campbell of the Fort Worth Police Department's intelligence unit said the alleged operation involved dozens of people and netted several million dollars.

"It worked like a giant business," Campbell said. "They were all in it for the same common goal."

The investigation began after 9-11, when Campbell and Scott Springer, a federal immigration agent, received information from Muslim-Americans and Arab sources that proceeds from a money laundering operation were being sent overseas to possibly support terrorism.

But U.S. Attorney Jane Boyle in Dallas noted Wednesday in a brief statement that "although the investigation is ongoing, at this time, evidence has not linked it to terrorism or terrorism activities."

Law enforcement officials have tracked some of the illegal proceeds to the Middle East, but said they found no evidence that the money was used to fund terrorism.

"We have identified where some money has gone over to the Middle East," Campbell said. "I can't tell you how much money, and once it hits the West Bank, I can't tell you what happens to it. At this time, the Palestinian Authority has not been able to assist."

Federal documents state that some of the illegal proceeds were used to purchase residences and commercial properties in the Middle East.

The U.S. Bureau of Immigration and Customs Enforcement, the FBI, the North Texas Joint Terrorism Task Force, the Food and Drug

Administration and the Internal Revenue Service later joined and assisted in the investigation.

According to search and arrest warrant affidavits obtained Wednesday, the operation ran as follows:

A group of shoplifters and burglars, many of them drug addicts, were recruited to steal large amounts of items, including baby formula, over-the-counter medicine, cigarettes, batteries and razors, from North Texas supermarkets and department stores.

The thieves then took the stolen merchandise to convenience store operators, who paid them 30 percent to 50 percent of the retail price in cash.

The store owners in turn sold the merchandise to the Ghali organization, individuals of mostly Middle Eastern descent and led by Mohammed Ghali. The organization took the merchandise to warehouses and storage locations in Grand Prairie or Arlington for repackaging.

The merchandise was then delivered to FedEx in Irving, where it was shipped to several individuals and wholesalers throughout the United States.

A federal search warrant states that money generated from the sale of the stolen merchandise was wire-transferred to financial institutions in the Middle East, specifically Jordan, Egypt and Palestinian areas.

Other illegal proceeds were smuggled out of the United States on international flights by couriers in the form of cashier's checks and/or bulk currency, which was sometimes concealed in the diapers of infants on the flights, the warrant states.

The federal warrant states that in some cases, members of the Ghali organization provided vehicles to help facilitate the thefts from North Texas stores and even provided bail money if shoplifters or burglars were arrested.

Nine members of the alleged Ghali organization were arrested Wednesday in a joint enforcement operation. They are identified in a federal criminal complaint charging them with conspiracy to commit interstate transportation of stolen property as Mohammed Ghali, Luai Ghali, Denise Ghali, Stephanie Ghali, Ahmad Herzallah, Seyam Mohdnour, Shaker Rahhal, Erics Green and James Gardner.

The nine are scheduled to make an initial appearance today before U.S. Magistrate Judge Jeff Kaplan.

A 10th person charged in the case, identified as Riyad Rahhal, remains a fugitive.

Fort Worth police also arrested several others on state warrants accusing them of engaging in organized criminal activity involving theft over $200,000. They are identified as Raed Saif, 27; Osama "Sam" Musa Hamdan, 19; Zaki Ahmad Habboul, 37; Allen Denny, 48; Teresa E. Brooks, 43; Modesta Rodriguez, 55; Khalid Bogaileh, 34; Ghandi Khalyeh, 37; Mustafa Kader, 35; Mahmoud Ghanim, 21; Mohammed Saleem, 48; Khalid Abdul-Hag, 32; and Ibrahim Abdul-Hag, believed to be in his late 50s.

Arrest warrants were also issued for several people who remained at large Wednesday night, Campbell said.

Fort Worth police and federal authorities also executed search warrants in raids that began before dawn across the Metroplex, including at nine stores in Fort Worth, and residences, storage locations and warehouses in Arlington and Grand Prairie.

Stores raided in Fort Worth included Fast Track Fina Food Store, 1525 E. Berry St.; Sam's Grocery and Grill, 4163 E. Rosedale St.; Star City Fina Store, 5617 McCart Ave.; In & Out Food Store, 4628 E. Lancaster Ave.; Nevine Food Store, 1621 Evans Ave.; Layth Minit Mart, 1631 E. Vickery Blvd.; Mr. Sam's Food Store, 4800 Wichita St.; Y2K Food Store, 4208 Miller Ave.; and Evans Food Mart, 2019 Evans Ave.

Fort Worth police raided residences owned by Ghali family members at 6408 Jersey Lane in Arlington and 2037 Lewis Trail in Grand Prairie.

These locations were searched in Arlington: a residence of a Ghali family member at 2203 Overbrook Drive; a unit at Shurgard Storage, 3216 E. Pioneer Parkway; Sunshine Market, 530 W. Park Row Drive; and a unit at Pioneer Drive In Self Storage, 1102 W. Pioneer Parkway. A warehouse in Grand Prairie at 2100 S. Great Southwest Parkway was also searched.

Staff Writer Toni Heinzl Contributed to This Report.

Deanna Boyd, (817) 390-7655

Mr. SOUDER. Thank you very much and I should have noted in the beginning that written testimony and any additional documents that you believe need to be entered into the record after any questions from us or things that you may think of, you'll have a certain number of days to do that. So we'll put the full statements in. It's a frustrating process for every individual to try to keep it within the 5 minutes. It gives you warning. We'll be a little more lenient this morning. We know you have prepared statements. It's a field hearing. It's a little bit different than in Washington, but if you can put any written statements, you can always add to the record and we'll draw some out in additional questions and that may also lead to some additional questions after the hearing.

Sergeant Jezierski, thank you for being here this morning to give your testimony.

Mr. JEZIERSKI. Good morning, Mr. Chairman, and distinguish member of the subcommittee. It's a privilege to appear before you today. I'm Sergeant Johnnie Jezierski of the Texas Department of Public Safety, Special Crimes Service.

On September 11, 2001, terrorists attacked the United States. I believe attacks on our government and business programs began many years earlier and those largely unnoticed attacks may have been aimed at acquiring assets to be used against the United States.

The State Department has issued a reward poster that states "Stopping Terrorism Starts With Stopping the Money." We've brought a copy of the poster with us today. It's on the left.

One of the illicit sources of funding for terrorism listed on the posted is the theft, adulteration and resale of infant formula. On September 11, 2001, a DPS Trooper stopped a vehicle after a citizen reported that a Middle Eastern male was driving toward Houston in a rental truck. One can assume that the citizen believed the driver of the vehicle may have been involved in the attack on our country and I believe that citizen was correct. The truck was not loaded with explosives. It contained infant formula. The driver of the rental truck told investigators that he was not a terrorist.

Today, the FBI recognizes him as a member of a terrorist organization. The driver was part of a nationwide theft ring operating in the United States who send proceeds from their illegal activities back to the Middle East. Professional theft teams of illegal Honduran and El Salvadorean immigrants from Houston steal infant formula around the country and sell it to the Middle Eastern fences who distribute it through a nationwide network of trading companies.

The organization has been operating largely unnoticed for years and much of the stolen formula is sold to WIC vendors. Infant formula is one of the most prevalent items stolen from retailers around the country, with the most popular formula stolen being the brand and type of formula distributed in the WIC program. In Texas, that would be Enfamil With Iron.

Investigators believe that WIC had something to do with the problem. WIC began as a $10.4 million program in 1974 and has grown to a $6 billion program in 2003 that provides benefits to 47 percent of all babies born in the United States. The USDA funds

the Federal program with additional funding derived from a rebate program.

I contacted the USDA with my concerns and I was told that the Department of Health administered the WIC program in Texas. I contacted the Texas Department of Health and informed them that the WIC program appeared to have left doors open and that criminals and possibly terrorists were exploiting those open doors.

The Texas Department of Health was concerned and an advisory committee was created to identify problems and determine what measures could be taken to correct them. The committee consisted of representatives from government agencies, retail businesses and manufacturers. Mead Johnson's representative indicated that the cooperation and business and government was unprecedented. The committee determined that inadequate policies controlling the WIC program had allowed criminals and some WIC vendors to exploit the program and changes were recommended. WIC vendor contracts were changed that required WIC vendors obtain their formula from licensed Texas wholesalers or the manufacturer.

The Manufactured Food Division of Texas Department of Health began an aggressive inspection campaign targeting the fences and seized over $1 million in product from the fences. The Texas Attorney General sued and obtained injunctions against the fences, and penalties for violations of the Texas Food, Drug and Cosmetic Act were increased. After the changes, Texas retailers reported a significant decrease in theft of infant formula.

Sources in a Federal law enforcement agency also reported that the changes have been the subject of chatter and conversations monitored overseas.

Some members of the USDA voice concerns about negative publicity. The USDA does not appear to be taking any quick action nationally and the market for stolen formula outside of Texas remains available. This criminal organization has a pattern of committing nonviolent property crimes that are taken lightly. When law enforcement encounters infant formula, it is difficult, if not impossible to prove that the formula is stolen, therefore it is necessary to conduct undercover operations in which purported stolen infant formula is sold to the fences and those types of criminal investigations are lengthy, costly and require significant manpower.

Most agencies having limited resources, see the investigations required as being too difficult and too costly. Only a small number of criminal investigations are targeting this activity around the country. One of the investigations in the Houston area involves a small group of local, State and Federal officers operating out of the Pasadena Police Department.

The Pasadena Working Group, confronted with the funding and manpower issues, has significantly impacted the operations of this criminal organization in Pasadena and around Texas.

Federal resources are being expended conducting terrorism investigations attempting to identify terrorist operatives, but the organized criminal infrastructure that is believed to be funding terrorism is being largely ignored. Business records obtained by search warrants show that members of this group report millions in sales while claiming checks written through sales business expenses, having paid no income tax they receive IRS refunds after

claiming the earned income credit. This information has been forwarded to the IRS and should be acted upon.

Realizing that some members of this criminal organization are suspected to be members of or supporters of terrorist organizations, one cannot help but be concerned. Some of the positive steps that I believe could be taken include (1) take the lucrative WIC market for stolen formula that is being exploited by this group away by requiring that WIC vendors in all States purchase their formula from approved sources.

Two, education. One needs to recognize that there is a primarily Middle Eastern organized criminal group that is operating largely unnoticed in the United States.

Three, create law enforcement task forces to combat this criminal organization and provide those task forces with adequate funding.

Stopping terrorism starts with stopping the money. Thank you for the opportunity to testify before you today on this very important issue. I'd be glad to answer any questions you might have.

[The prepared statement of Mr. Jezierski follows:]

Statement of

Johnnie Jezierski, III

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Special Crimes Service
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Before the,

Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources
United States House of Representatives

Regarding

National and International Consumer Products Fencing Operation
Suspected of
Providing Support to Terrorist Organizations

Houston, Texas

November 10, 2003

THE BEGINNING

September 11, 2001, was the beginning, the day that I believe history will recognize as the beginning of the end. But what the ultimate end will be has yet to be determined.

Will that day be recognized as the beginning of the end of radical Muslim extremists who believe that the infidels in the United States are their enemy and should be destroyed?

Or will that day be recognized in the future as the day that was the beginning of the end of the United States?

THE WAR AGAINST THE UNITED STATES

There are those who say the war against the United States began on September 11, 2001, when terrorists attacked the homeland. I believe that the war began on American soil years earlier when supporters of terrorism began an unnoticed attack on our businesses and government programs. In effect, I believe that our attackers are receiving the funds necessary to attack us by us. The attack I speak of has been and continues to be aimed at acquiring assets that would be used in the war, and the United States still needs to aggressively respond to that first, largely unnoticed, attack. In Texas, we have responded, and we believe that others need to recognize and respond in a similar manner to cut the supply lines in this war on terrorism.

STOPPING TERRORISM STARTS WITH STOPPING THE MONEY

As I have previously stated, I believe that a substantial amount of the money funding terrorism is obtained here in the United States; and more specifically from United States businesses and government programs. Are we perhaps funding our own demise and has anyone recognized this?

The State Department has issued a reward poster which states, "Stopping Terrorism Starts with Stopping the Money." One of the illicit sources of funding for terrorism listed on the poster is the theft, adulteration, and resale of infant formula.

Stopping Terrorism Starts With Stopping The Money

International terrorism directed against Americans is financed by money sent to terrorists from sources around the world. The U.S. Government is offering a reward for information leading to the dismantling of any system used to finance a terrorist organization and information leading to the arrest or conviction of those who planned or aided in any act of terrorism against U.S. persons or property.

If you have ***any*** information about individuals or organizations that finance terrorists, please call 1-866-867-8300 in the U.S.; outside the U.S. contact the nearest U.S. embassy or consulate.

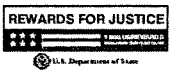
Illicit Sources

Profits from a variety of criminal enterprises benefit terrorist organizations. Some of the more common are:

- Drug manufacturing, smuggling, and distribution
- Identity theft for profit
- Credit-card, insurance, welfare and food-stamp fraud
- Theft, adulteration, and resale of infant formula
- Counterfeit merchandise schemes involving a host of consumer items such as designer clothing, jewelry, fashion accessories, and household products
- Interstate cigarette smuggling
- Alternative remittance systems and unlicensed currency remitters

Suspicious Transactions

- Account transactions that are inconsistent with past deposits or withdrawals (cash, check, wires, etc.).
- Transactions involving a high volume of incoming or outgoing wire transfers, with no logical or apparent purpose, that come from, go to, or transit through locations of concern (i.e., sanctioned countries, non-cooperative nations, sympathizer nations).
- Unexplainable clearing or negotiation of third party checks and their deposits in foreign bank accounts.
- Structuring at multiple branches or the same branch with multiple individuals.
- Corporate layering; that is, transfers between bank accounts of related entities or charities for no apparent reasons.
- Wire transfers by charitable organizations to companies located in countries known to be bank or tax havens.
- Lack of apparent fund-raising activity (i.e., lack of small checks or typical donations) associated with charitable bank deposits.
- Using multiple accounts to collect funds that are then transferred to the same foreign beneficiaries.
- Transactions with no logical economic purpose (i.e., no link between the activity of the organization and other parties involved in the transaction).
- Overlapping corporate officers, bank signatories, or other identifiable similarities associated with addresses, references, and financial activities.
- Cash debiting schemes in which deposits in the United States correlate directly with ATM cash withdrawals in countries of concern. Reverse transactions of this nature are also suspicious.
- Issuing checks, money orders, or other financial instruments, often numbered sequentially, to the same person or business, or to a person or business whose name is spelled similarly.



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TEXAS DEPARTMENT OF PUBLIC SAFETY

The DPS investigation I am involved in began on the night of September 11, 2001, when a DPS Trooper stopped a vehicle in Colorado County, after a citizen reported that a middle-eastern male was driving towards Houston in a rental truck. That citizen, because of a terrorist attack that had occurred earlier that same day, assumed that the driver of the vehicle may have been involved in an attack on our country. I believe that citizen was correct. The vehicle was not loaded with explosives as one can assume the citizen may have expected. The vehicle contained baby formula. The driver of the rental truck told investigators on September 11, 2001, that he was not a terrorist. Today the driver's record indicates that the FBI recognizes him as a member of a terrorist organization.

What the DPS investigation revealed was that the driver of the rental truck, and his associates around the country, had been operating a theft ring for many years in the United States with their proceeds being sent overseas. Their operation had gone largely unnoticed until September 11, 2001.

In the Houston area, it was discovered that mostly illegal Honduran and El Salvadoran immigrants had been stealing infant formula from businesses around the country for as much as ten years prior to September 11, 2001. That stolen formula was being purchased from the thieves by Middle Eastern fences. The formula was being distributed by the fences through a network of "Trading Companies". It was learned that throughout the United States, infant formula was one of the most prevalent items stolen from retailers. The most popular brands of formula stolen were those distributed in the WIC program.

WIC, THE WOMEN, INFANTS, AND CHILDREN SPECIAL SUPPLEMENTAL NUTRITION PROGRAM

After it was determined in our investigation that much of the stolen formula was ultimately being distributed to WIC vendors in Texas and throughout the country, the question I had was, "What does WIC have to do with this?"

To answer that question, one has to understand what WIC is. WIC stands for Women, Infants, and Children and is also called the Special Supplemental Nutrition Program. WIC is a federal program designed to provide food to low-income, pregnant, postpartum, and breastfeeding

women, infants and children until the age of five. The United States Department of Agriculture (USDA) funds the WIC Program.

The following information about WIC was derived from USDA Food and Nutrition Service web site:

:: Women, Infants, and Children

Frequently Asked Questions about WIC

1. Who is eligible?
2. What is "nutritional risk"?
3. How many people does WIC serve?
4. What percent of eligible people does WIC reach?
5. Where is WIC available?
6. What food benefits do WIC participants receive?
7. Who gets first priority for participation?
8. What is the WIC infant formula rebate system?
9. What is the WIC Farmers' Market Nutrition Program?
10. How much does WIC cost?

1. Who is eligible?

Pregnant or postpartum women, infants, and children up to age 5 are eligible. They must meet income guidelines, a State residency requirement, and be individually determined to be at "nutritional risk" by a health professional.

To be eligible on the basis of income, applicants' gross income (i.e. before taxes are withheld) must fall at or below 185 percent of the U.S. Poverty Income Guidelines:

Income Eligibility Guidelines

(effective 7/1/03 - 6/30/04)

	Annually	Monthly	Weekly
Family of 1	$16,613	$1,385	$320
Family of 2	$22,422	$1,869	$432
Family of 3	$28,231	$2,353	$543
Family of 4	$34,040	$2,837	$655
Family of 5	$39,849	$3,321	$767
Family of 6	$45,658	$3,805	$879
Family of 7	$51,467	$4,289	$990
Family of 8	$57,276	$4,773	$1,102
For each add'l family member, add	+5,809	+485	+112

While most States use the maximum guidelines, States may set lower income limit standards. A person or certain family members who participate in other benefits programs such as the Food Stamp Program, Medicaid, or Temporary Assistance for Needy Families automatically meet the income eligibility requirement.

For more details about the income eligibility guidelines for July 1, 2003 - June 30, 2004, including geographic area adjustments, click here

For details about the income eligibility guidelines for July 1, 2002 - June 30, 2003, including geographic area adjustments, click here

How to Apply to Participate in WIC

2. What is "nutritional risk"?

Two major types of nutritional risk are recognized for WIC eligibility:

- Medically-based risks (designated as "high priority") such as anemia, underweight, maternal age, history of pregnancy complications, or poor pregnancy outcomes.

- Diet-based risks such as inadequate dietary pattern.

Nutritional risk is determined by a health professional such as a physician, nutritionist, or nurse, and is based on Federal guidelines. This health screening is free to program applicants.

Beginning April 1, 1999, State agencies use WIC nutrition risk criteria from a list established for use in the WIC Program. WIC nutrition risk criteria were developed by FNS in conjunction with State and local WIC agency experts. WIC State agencies are not required to use all of the nutritional risk criteria on the new list. FNS will update the list of criteria, as necessary, when new scientific evidence shows, after review by FNS and other health and nutrition experts, that the condition can be improved by providing WIC program benefits and services.

3. How many people does WIC serve?

More than 7 million people get WIC benefits each month. Participation has risen steadily since the program began. In 1974, the first year WIC was permanently authorized, 88,000 people participated. By 1980, participation was at 1.9 million; by 1990 it was 4.5 million; and by 2000 it was 7.2 million. Average monthly participation for Fiscal Year 2002 was approximately 7.5 million.

Children have always been the largest category of WIC participants. The average monthly WIC participation for FY 2002 was approximately 7.5 million people - of that number, nearly 3.8 million were children, over 1.9 million were infants, and over 1.8 million were women.

For more data about WIC participation, go to Program Data.

4. What percent of eligible people does WIC reach?

About 47 percent of all babies born in the United States, and it is currently estimated that we have achieved full coverage

of eligible infants. Of all eligible women, infants, and children, the program is estimated to serve about 93 percent.

5. Where is WIC available?

The WIC program is available in each State, the District of Columbia, 33 Indian Tribal Organizations, Puerto Rico, the Virgin Islands, American Samoa, and Guam.

6. What food benefits do WIC participants receive?

In most WIC State agencies, WIC participants receive checks or food instruments to purchase specific foods each month which are designed to supplement their diets. WIC food is high in one or more of the following nutrients: protein, calcium, iron, and vitamins A and C. These are the nutrients frequently lacking in the diets of the program's low-income target population. Different food packages are provided for different categories of participants. A few WIC State agencies distribute WIC foods through warehouses or deliver WIC foods to participants.

WIC foods include iron-fortified infant formula and infant cereal, iron-fortified adult cereal, vitamin C-rich fruit and/or vegetable juice, eggs, milk, cheese, peanut butter, dried beans or peas, tuna fish and carrots. Special infant formulas and certain medical foods may be provided when prescribed by a physician or health professional for a specified medical condition.

7. Who gets first priority for participation?

WIC cannot serve all eligible people, so a system of priorities has been established for filling program openings. Once a local WIC agency has reached its maximum caseload, vacancies are generally filled in the order of the following priority levels:

- Pregnant women, breastfeeding women, and infants determined to be at nutritional risk because of serious medical problems.
- Infants up to 6 months of age whose mothers participated in WIC or could have participated and had serious medical problems.
- Children (up to age 5) at nutritional risk because of serious medical problems.
- Pregnant or breastfeeding women and infants at nutritional risk because of dietary problems (like poor diet).
- Children (up to age 5) at nutritional risk because of dietary problems.
- Non-breastfeeding, postpartum women with any nutritional risk.
- Individuals at nutritional risk only because they are homeless or migrants, and current participants who without WIC foods could continue to have medical and/or dietary problems.

8. What is the WIC infant formula rebate system?

Mothers participating in WIC are encouraged to breastfeed their infants if possible, but State WIC agencies will provide formula to mothers who choose to use it. WIC State agencies are required by law to have competitively-bid infant formula rebate contracts with infant formula manufacturers. This means a WIC State agency agrees to provide one brand of infant formula to its participants and in return receives money back, called a rebate, from the manufacturer for each can of infant formula that is purchased by WIC participants. As a result, WIC pays the lowest possible price for infant formula. The brand of infant formula provided by WIC varies from State agency to State

agency, depending on which company has the rebate contract in a particular State.

The WIC Program gets back over a billion dollars each year from infant formula manufacturers. This is a big savings to the WIC Program which allows many more eligible women, infants, and children to be served. From October 2001 to September 2002, nearly $1.5 billion was given back to WIC State agencies by infant formula manufacturers and this money was used to serve about 2.1 million additional eligible women, infants and children. In general, approximately 1 out of every 4 participants is served with rebate money.

9. What is the WIC Farmers' Market Nutrition Program?

The WIC Farmers' Market Nutrition Program (FMNP), established in 1992, provides additional coupons to WIC participants that they can use to purchase fresh fruits and vegetables at participating farmers' markets. FMNP is funded through a Congressionally mandated set-aside in the WIC appropriation. The program has two goals: To provide fresh, nutritious, unprepared, locally grown fruits and vegetables, from farmers' markets to WIC participants who are at nutritional risk; and to expand consumers' awareness and use of farmers' markets.

This program, operated in conjunction with the regular WIC Program, was offered in 32 States, the District of Columbia, and two Indian tribal organizations in FY 1998. State agencies may define locally grown produce to be that grown only within State borders or may also define it to include areas in neighboring States adjacent to its borders. The amount appropriated for FMNP for Fiscal Year 2003 is $25 million.

By November 15 of each year, each applying or participating State agency must submit to the FNS Regional Office for approval a State plan for the following year as a prerequisite to receiving funds. FMNP State Plan guidance may also be obtained at the FNS Regional Office.

An administering FMNP State agency may be the agriculture department, the health department, or any other agency approved by the chief executive officer of the State or Indian Tribal organization. Click here to go to the FMNP State agency directory.

10. How much does WIC cost?

Congress appropriated $4.696 billion for WIC in FY 2003. The appropriation includes $25 million for the WIC Farmers' Market Nutrition Program.

By comparison, the WIC program cost $10.4 million in 1974; $727.7 million in 1980; $1.5 billion in 1985; and $2.1 billion in 1990.

For more information:
WIC agencies serving participants in your area

How to Apply to Participate in WIC

Contact the USDA Food and Nutrition Service Public Information Staff at 703-305-2286, or by mail at 3101 Park Center Drive, Room 819, Alexandria, Virginia 22302.

(The Food and Nutrition Service was formerly known as the Food and Consumer Service.)

WIC IS A $6 BILLION PROGRAM

Deriving information from the above data, I was surprised that what had begun as a $10.4 million program in 1974, has evolved into a reported $4.696 billion program in 2003 that now benefits 47% of all babies born in the United States. Other data derived concerning the rebate program seems to indicate that the WIC program is actually over a $6 billion Special Supplemental Nutrition Program.

The USDA Food and Nutrition Service website seems to answer the questions raised of why infant formula was being stolen and why only

certain brands of formula were being stolen. WIC is the largest lucrative market for stolen infant formula exploited by the criminal organization.

DENYING THE CRIMINAL EXPLOITATION OF WIC

The complexity of the investigation was beginning to come to light when other agencies around the country revealed the extent of which the organization was involved in the black market distribution of infant formula. I determined that attacking the criminals would not be as effective as taking away the lucrative market for the stolen formula. Any effective attack on the organization would require the assistance of WIC.

TEXAS DEPARTMENT OF HEALTH

I contacted the USDA and informed them of my investigation. I learned that although the USDA funded WIC, in Texas the Department of Health administered the program.

The Texas Department of Health was informed of my investigation and advised they were interested in the integrity of the program. When informed that their program appeared to have left doors open, and that criminals and possibly terrorists were utilizing those open doors to take advantage of the program, I found people willing to take measures to close those doors. One vendor contract change implemented is the requiring of WIC vendors to obtain their formula from licensed Texas wholesalers or the manufacturer.

Another division of the Texas Department of Health, the Manufactured Food Division, began an aggressive inspection campaign ferreting out unlicensed wholesalers in Texas and provided information on those identified to the Texas Attorney General prosecutors who filed civil actions against the unlicensed wholesalers.

The Texas legislature enacted stiffer penalties for violations of the Texas Food Drug and Cosmetic Act.

HAS THERE BEEN AN IMPACT IN TEXAS?

In short, Texas has implemented changes that have had an impact on the criminal organization that took advantage of the WIC program in Texas.

No similar actions have been taken in any other State that I am aware of.

According to sources in a federal law enforcement agency, the changes implemented in Texas have even been the subject of "chatter" in conversations that have been monitored overseas.

Some members of the USDA continue to be concerned with any negative perceptions concerning their WIC program, but the USDA does not appear to be taking any quick action to close any open doors.

Understanding the impact that has been achieved in Texas, I am also aware that without effective action across the country much of the WIC market for stolen infant formula remains available to the criminal organization.

Realizing that some members of the criminal organization may also be providing funds for terrorist organizations or that some of the members of the criminal organization may themselves be members of terrorist organizations, I cannot understand how one would not be concerned with this problem.

Are we to continue to possibly fund our own demise and place our own citizens in danger because we are more concerned about perceptions than we are concerned with correcting flaws in a government program that is being exploited?

LAW ENFORCEMENT PROBLEMS

In cases where law enforcement has been able to intercept suspected thieves moving formula, it is difficult, if not impossible, to prove that the formula is stolen. This makes it necessary in these investigations to conduct undercover operations in which purported stolen infant formula is delivered to fences. These types of investigations require long term and costly investigations using significant manpower and funds. These investigations require significant funding to acquire product to be used in the sting operations. Local law enforcement agencies do not have adequate funding or manpower resources necessary to conduct these operations. As a result,

only a small number of criminal investigations are targeting this criminal activity across the country. In Texas, I am aware of only two groups dedicated to this task. One of those groups in the Houston area involves a small cadre of local, state, and federal officers who confront those same issues of funding and manpower. The group is led by and operates out of the Pasadena Police Department and has significantly impacted the operations of this criminal organization in Pasadena and in the Houston area. Only a small number of officers employed by federal, local, and state law enforcement agencies in Texas are dedicated to criminal investigations targeting this organized criminal activity. Comparatively speaking, it appears to me that an inordinate amount of federal resources have been expended in an attempt to identify individual operatives within the United States while largely ignoring the organized criminal infrastructure that is believed to be providing the funding needed in order to conduct terrorist operations. Investigations have determined that members of this organization do not limit their criminal activity to the theft of infant formula, but participate in a range of criminal activity including burglaries, counterfeiting, drug trafficking, credit card fraud, bank fraud, small business loan fraud, welfare fraud, medicare fraud, student loan fraud, and income tax evasion.

LACK OF INTEREST

This criminal organization has a pattern of committing non-violent property crimes that in the past, law enforcement has taken lightly, focusing more on violent crimes and drug trafficking. Many agencies see the investigations required as being too difficult, time consuming, and costly.

Search warrants revealed that many members of this organization, whose business records indicate millions in sales, are claiming checks written to themselves as business expenses and paying no income tax. Records show that after claiming the earned income credit, they obtain refunds of thousands of dollars from the IRS. This information has been forwarded to the IRS and should be acted upon.

WHAT CAN BE DONE

Some of the positive steps that I believe can be taken to aid in this fight include:

1. First, one needs to recognize that there is a largely unnoticed organized group of criminals of Middle Eastern descent, some of whom possess extremist beliefs, and they are operating in the United States plundering our businesses and government programs.
2. Secondly, the lucrative market for stolen infant formula which is being exploited by the criminal organization needs to be taken away. This can be accomplished by requiring other States' WIC programs to follow the Texas WIC Program's lead, which would require WIC vendors purchase formula from approved sources.
3. Thirdly, the creation of federally funded organized law enforcement units tasked with combating this criminal organization is necessary. These units should be comprised of a mixture of local, state, and federal agents working in concert to combat this criminal organization.

CONCLUSION

Attacking this criminal organization may be presumed by some to be only a small battle in the war on terrorism. I disagree. An important tactic used in battle is attacking your enemies supply lines. I believe that by disrupting the flow of money to terrorists, we affect their ability to conduct terrorist acts. I agree with the State Department reward poster, "Stopping Terrorism Starts with Stopping the Money."

Muslim crime suspects in Arizona feel victimized by terror crackdown

Dennis Wagner
The Arizona Republic
Sept. 14, 2003 12:00 AM

In the name of national security, dozens of people in Arizona have been arrested or detained on charges unrelated to terrorism.

The Muslims and Middle Easterners have been rounded up by Arizona's Joint Terrorism Task Force and charged with visa violations, fraud and other offenses that have little to do with national security.

Most recently, 27 mostly Middle Eastern immigrants were arrested in connection with stolen baby formula.

From the perspective of FBI agents and prosecutors, the sometimes iron-fisted campaign has jailed and deported immigrant suspects even when there was no proof to indict them for terrorism.

But, for many Muslims and civil libertarians, the campaign has been an assault on Islam, Arabs and American fundamentals. They say the government, under intense public pressure and lacking real terrorism suspects, has targeted Middle Easterners for ethnic profiling and used lawful coercion as a tool to get cooperation and information.

"We understand the need for a tough hand. But they are specifically looking for something to get these people on because they are Muslims or from the Middle East," said Deedra Abboud, director of the Council on American-Islamic Relations here.

"They're looking for technicalities so they can be more aggressive. It's just fishing so you can find something to hold over their heads."

Abboud and Randall Hamud, a San Diego defense attorney for terrorism suspects, said agents use intimidation to scare Muslims into cooperation.

"We can't be fast and loose with people we don't like, because everybody suffers later," Hamud said.

Ray Churay, assistant special agent in charge of the FBI in Arizona, denies ethnic profiling and shakes off suggestions that agents hound innocent people.

The government targets Middle Easterners who have been linked to terrorism suspects or spouted "jihadic" rhetoric, Churay said, and there is nothing wrong with using any charge available to prosecute those suspects.

"There's no absence of terrorism work here," he emphasized, adding, "We shouldn't have to apologize for doing our jobs. We'll use everything that's legal and within the Constitution to make this country safe and Arizona safe."

Like attack on Capone

Still, anxiety over national security methods appears to be catching up with concern about terrorists.

Paul Charlton, U.S. attorney for Arizona, has scheduled a public debate on the USA Patriot Act. And President Bush began campaigning last week for even more powers and secrecy in pursuit of terrorists.

Eleanor Eisenberg, director of the American Civil Liberties Union in Arizona, said she hopes Congress and the public won't allow fear to erode freedom.

"It's always at a time of crisis that we most need our civil liberties, and we have to be aware of government abuse," she said. "It's like Franklin Roosevelt said, 'We have nothing to fear but fear itself.' "

Consider Zakaria Soubra, a Lebanese immigrant and former aeronautical student in Prescott.

Arizona connections

The war on terrorism in Arizona sometimes resembles a connect-the-dots picture, with Sept. 11, 2001, hijacker Hani Hanjour in the middle. None of Hanjour's suspected associates here were charged with terrorism-related crimes, but many have been jailed or deported for other offenses. Among them:

Lotfi Raissi, 37, an Algerian pilot and immigrant to Arizona, arrested in England and portrayed as flight instructor to al-Qaida. U.S. officials eventually conceded there was no terrorism evidence against him. Raissi was indicted in Arizona for document fraud, but British courts refused extradition. He denied knowing Hanjour and said his life was ruined.

Malek Seif, 38, a French citizen from Djibouti, admitted knowing Hanjour but denied any role in terrorism. Two months before 9/11, authorities say, he practiced piloting commercial airlines on a flight simulator in Phoenix. Seif was indicted and convicted in Phoenix of fraud and using a false identity.

Faisal al-Salmi, 34, a Saudi immigrant, is believed to have been among those using the flight simulator. According to the *New York Daily News*, he also was one of four men from Phoenix who made a suspicious road trip to Texas during early 2001, driving near President Bush's ranch. Salmi was convicted in Arizona of lying about his ties with Hanjour. The exact nature of those ties has never been disclosed.

Muhammad Al-Gurashi, 28, former leader of the Muslim Students Association at Arizona State University. According to the *Daily News*, Gurashi was with Salmi on the Texas trip. He was arrested this spring and deported for possessing a firearm in violation of his visa.

Samih Jammal, 28, Tempe, a Lebanese-American identified as leader of a nationwide theft ring. A police informant claims Jammal talked of liberating Seif from jail and smuggling him into Mexico. Jammal, who denies wrongdoing, is in custody awaiting trial.

Soubra was an Arizona recruiter for a militant Islamic group, but he also condemned the World Trade Center attack. At least publicly, the government never linked him with al-Qaida. But Soubra was interrogated, arrested and spent a year behind bars based on a visa violation. Then he was deported to his homeland.

"They are trained to suspect Muslims and Arabs," Soubra said recently from Beirut. "That's the issue. My whole life was destroyed. My future. They just destroyed everything."

Churay acknowledges that, lacking proof of terrorism, the government may use unrelated charges to jail or deport suspects. It's a practice that dates to the arrest of Mafia lord Al Capone on tax-evasion charges.

"You see somebody who might be involved with terrorism spit on the sidewalk, get 'em," Churay said.

And intelligence experts point out that it is a win-win situation for law enforcement: At best, the arrest may neutralize a terrorist and prevent catastrophe. At worst, it puts a lawbreaker behind bars.

Reconfiguring life

Since Sept. 11, 2001, Congress has poured billions of dollars into domestic defense.

The government reconfigured America's federal law enforcement system with the Department of Homeland Security. It passed the controversial Patriot Act, which is under political fire from the left and right. It altered the nation's air travel rules.

And it transformed the way counterterrorism is conducted: making disruption and prevention a priority instead of waiting until a crime has been committed to make arrests.

In the weeks after Sept. 11, every FBI agent in Arizona was assigned to combat terror, gutting the bureau's manpower for drugs, white-collar crime and violent offenses.

In Arizona, about half of the FBI's resources are still at it. But most of the hunt is conducted by the Joint Terrorism Task Force.

Arizona's task force, the nation's largest, is a coalition of local and state police, sheriff's deputies and investigators from federal enforcement agencies. Four teams, each with about a dozen members, focus on intelligence, weapons of mass destruction, domestic terrorism and international terrorism.

Churay won't talk about details but says "horrific attacks" have been prevented. Agents here get a dozen new tips weekly from the public, some wacky, some legitimate. They pursue intelligence leads from the CIA and foreign agencies. They conduct interviews, surveillance, wiretaps, financial reviews and background checks.

Part of the job involves checking out leads provided by investigators in Europe and the Middle East after bombings.

"There is hardly a terrorist act overseas where Arizona is not affected in some way," Churay said.

But the toughest work is penetrating the closed world of Islamic terrorism, insulated by language and cultural barriers. Churay said the job is nearly impossible because violent radicals blend in with moderate Muslims, some of whom share a contempt for U.S. foreign policy.

Abboud conceded that agents are under immense pressure to produce but said that Middle Easterners shouldn't become scapegoats to make Americans feel safe.

"I thought our country was supposed to be better than that," Abboud said.

Federal prosecutors here suggest that there is more to it than religion or race. In what amounts to a strategy blueprint for the war on terrorism in Arizona, records show, the key is Hani Hanjour, rather than profiling.

Hanjour, who is believed to have been on the plane that crashed into the Pentagon on Sept. 11, 2001, spent time at a flight training school in Arizona.

Recent case an example

Consider the arrest this summer of Samih Jammal, 34, the Lebanese-born owner of Jammal Trading Co. in Tempe.

Was he plotting chemical attacks or making phone calls to Osama bin Laden? No. Jammal was accused of leading a $22 million crime syndicate that stole infant formula from superstores, then resold the product at marked-up prices in minimarts.

Although U.S. prosecutors trumpeted this case as a success for the Terrorism Task Force, they were quick to point out that no one was charged with a terror-related crime.

Family members of defendants trumpeted their anger: The government smeared 27 people, most of them Muslims, with the "T" word for no reason, they said.

"They're just making him look like some horrible person, like a monster," said Gretchen, Jammal's wife, Gretchen. "They're making a big deal out of it because they want to make themselves look good."

But deep in federal court records, a trail from Jammal leads to a 38-year-old Djibouti immigrant named Malek Seif and a network of Hanjour associates.

Seif, a French citizen, voluntarily returned to Arizona after Sept. 11, 2001, to be questioned about his association with 9/11 terrorists. Upon arrival, he was arrested on charges of fraud and filing false documents.

About the same time, according to a Terrorism Task Force affidavit, Phoenix police developed a confidential source close to Jammal. The informer reported that Jammal was so upset about Seif's arrest that he "discussed a plot to smuggle him out of the U.S. via Mexico."

Over time, agents developed evidence that money from the baby-formula ring was being shipped to the Middle East and that an estimated $8 million had disappeared. They were able to obtain a wiretap and eavesdrop on phone calls involving Jammal and his business partner, Tamer Swailem, under strict guidelines of the Foreign Intelligence Surveillance Act. To get approval, they had to convince a federal judge that their target was a foreign agent engaged in a threat to national security.

Through wives and lawyers, Jammal and Swailem have denied terrorism ties or sympathies.

Maria Swailem said her husband is a naturalized American citizen whose rights have been violated. The FBI seems so desperate to find terrorists, she suggested, that it conjures cases out of thin air.

"They just want him there (in jail) because they have no other information," she said. "This is nothing to do with terrorists, I guarantee you."

More than two dozen people got tangled in the Hanjour web of suspicion. Some were asked to become spies, some went to jail, some were deported. Not one was charged with terrorism.

Still, the FBI's Churay said, agents carried out their duty: enforcing the law and protecting the homeland.

"Is there another Hanjour and (9/11 terrorist Nawaf) al-Hazmi sitting in Arizona waiting for support?" he said. "That's possible."

Reach the reporter at dennis.wagner@arizonarepublic.com or (602) 444-8874.

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A new formula for terrorism?

By EDWARD HEGSTROM

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As if dirty bombs and box cutters weren't enough to worry about, now some officials are warning of possible new terrorist tools: Similac and Enfamil.

Baby formula might not make a particularly useful weapon, but it is a valuable commodity. And that has raised concerns that gangs in Houston and other cities across America may be stealing and reselling formula to raise millions shipped to the Middle East, possibly to be used by terrorists.

The U.S. Treasury Department has started a program offering rewards for information leading to the breakup of U.S. crime gangs raising money for terrorists. Among the seven "illicit sources" the Treasury Department believes terrorists are using to raise money are these: "Interstate cigarette smuggling" and "theft, adulteration and resale of infant formula."

In greater Houston, Dallas and Arizona, officials have recently broken up Middle Eastern-led operations that they allege were involved in the interstate cigarette smuggling and the theft and resale of infant formula. Sources say millions of dollars were involved in these cases, though officials are careful not to speculate about possible links to terror in most of the cases.

The specter of terrorism has nevertheless come up in a Dallas-Fort Worth case. An affidavit filed in Tarrant County alleges that Saleh Abugarbieh, 37, a Houston resident, boasted to an undercover police officer at a meeting in Fort Worth that his family helped create the Popular Front for the Liberation of Palestine, a terrorist group, according to a published report in the Fort Worth Star-Telegram.

Abugarbieh has been charged with interstate transportation of stolen property.

His Houston attorney, Phillip Herbert Azar Jr., disputes that his client has any link to terrorism. Azar acknowledged that "a lot of Arabs and Egyptians" appear to be involved in the theft of baby formula, but he said there is no evidence that the profits have gone to terror.

Local police sometimes raise the issue of baby formula and terrorism, but then federal officials usually step in to tell them to keep quiet. After police in Montgomery pulled over a van loaded with more than 700 cans of Enfamil last year, the police chief said federal investigators believed there was a terror link. The FBI later denied knowledge of any such link.

In the Houston case, officials have had enough trouble just proving that the baby formula was stolen, according to Sgt. Johnnie Jezierski of the special crimes unit of the Texas Department of Public Safety. Baby formula carries no serial numbers, so if police pull over an 18-wheeler full of Similac, they have trouble proving where it came from and whether it was stolen.

Investigators from the DPS and the Pasadena Police Department spent months investigating the Houston ring until someone got the idea of bringing in the state health department. Improper transport of baby formula is a violation of state health law, and health officials can not only confiscate the loads but also use the evidence to obtain search warrants.

The search warrants uncovered evidence of weapons, according to Jezierski. Some of the alleged ringleaders were caught on weapons charges.

There is evidence the Houston-area ring generated more than $6 million in profits, and there is evidence some of that money went to the Middle East, Jezierski said. But he added: "There is no prosecutable proof that these people are connected to terrorism."

The health concerns are serious. Smugglers expose the baby formula to heat, they alter the expiration date to sell old merchandise and they sometimes even adulterate the content. Some mothers feed their babies formula exclusively, thinking it is highly nutritious. But if they get a can that has been stolen, it might be barely more nutritious than water, causing serious health concerns for the baby, said Kim Ogg of CrimeStoppers.

"The most helpless of victims are being taken advantage of," Ogg said.

The stolen cans, Ogg said, most frequently end up in neighborhood stores that accept government vouchers issued through the Women, Infants and Children Supplemental Nutrition Program.

If the money is indeed going to terrorists, that would mean those organizations are being funded by U.S. taxpayers.

Contact Edward Hegstrom at edward.hegstrom@chron.com

Mr. SOUDER. Thank you very much.

Mr. Pena, I believe you're next.

Mr. PENA. Good morning, Mr. Chairman, Mr. Souder, Congressman Carter. It's a privilege to appear before you to discuss the Bureau of Immigration and Customs Enforcement Investigations into organized retail theft and money laundering violations.

For the past 5 years the Special Agents assigned to the Special Agent in Charge, Houston, TX, have conducted investigations into the activities of a loosely joined confederation of individuals involved in the theft, repackaging and resale of consumer goods. These consumer goods primarily consist of infant formula, over-the-counter medical goods, and other health and beauty aids. ICE special agents have also been investigating the money laundering aspects of these criminal activities.

The targets of these investigations are predominantly individuals from Latin America or the Middle East, including Egypt, Jordan and Lebanon. These individuals operate as grocers, dry good wholesalers, buying and selling goods on the gray market or secondary side of the industry. The wholesalers are supported by groups of shoplifters operating around the United States.

ICE investigations have identified approximately 60 groups of organized shoplifters plus a multitude of independent individuals. For the most part, these individuals are residing and operating in the United States in violation of our immigration laws and travel the country stealing merchandise from legitimate retailers and wholesalers.

The shoplifting scheme background. ICE special agents have interviewed a number of shoplifters and identified a method of their operation. The shoplifting group is comprised of five or six women and younger men. An experienced man is established as a team leader and is subsequently responsible for making the travel arrangements, providing transportation, food and lodging for the group.

Once the group is assembled, they travel to a target city, obtain a hotel room, and spend the next 7 to 10 days shoplifting from major stores in the area. Each day the stolen goods are stored in a self-service storage unit that is rented by the team leader. Upon conclusion of the operation, the stolen goods are removed from the storage units, loaded into rental trucks and returned to their home city and sold to buyers. If there is an exceptionally large amount of stolen goods, the teams have occasionally shopped them via legitimate trucking companies back to the buyers.

Most team members are equipped with several false names and dates of birth in the event they are arrested. If a member is a minor, they provide identification purporting them to be an adult in order to avoid State laws requiring parental notification and they can be released on bond.

The buyers. The buyers generally identify themselves as grocery wholesalers in an effort to establish an air of legitimacy. These companies file corporate charters with the Secretary of the State of Texas and obtain a local "doing business as" license. Very few of these individuals operate out of a normal business location. Most operate out of their residence or from a storage unit where the stolen goods are stored. ICE, working in conjunction with the IRS and

the FBI, have shut down large-scale theft operations throughout the United States.

In Lexington, KY, the Shalash Organization was dismantled and three leaders were arrested and subsequently convicted. In Arizona, 12 members of the Jamal Organization were arrested. In Dallas, TX, 23 members of the Ghali Organization were arrested. ICE is currently conducting investigations in Florida, California, North Carolina, South Carolina, Virginia and Kentucky. Here in Houston, the activities of the combined Federal, State and local law enforcement agencies have forced these criminal organizations to change from theft of infant formula to other products to avoid civil and criminal sanctions.

Five years ago, several subjects were repackaging stolen infant formula and placing them in counterfeit cardboard boxes. The purpose of the counterfeit boxes was to deceive the buyers into thinking the formula was from the actual manufacturers. In the words of one subject, "if you are going to sell a Rolex watch it has to be in a Rolex box." The repackaging operations took place in warehouses or storage units. After the goods were repackaged, the cases were placed on pallets, shrink-wrapped and shipped to local or out-of-state buyers. Investigators efforts resulted in dismantling of the company identified as a manufacturer of the counterfeit boxes.

The secondary market. To conceal the origin of the product, false purchase orders are produced alleging that Company A sold the merchandise to Company B who sold it back to Company A or C. Payments for these shipments are usually structured in order to avoid Federal monetary reporting requirements. Several checks are written in amounts less than $10,000 and are addressed to different subjects on different dates, all within the same company. Wire transfers are used when a company sells to a large-scale buyer or to an unsuspecting legitimate buyer. Each company is able to claim and show receipts indicating that it had purchased the product from the other company, without knowledge that the merchandise was stolen. If the stolen goods are over the counter medical goods or health and beauty aids, they are typically sold to "mom and pop" type convenience stores. Frequently, the stolen merchandise is sold in the convenience stores that are actually owned and operated by the organization.

Some criminal organizations are also involved in the large-scale burglary of tobacco, jewelry, and clothing warehouses. Most of the stolen tobacco products are sold in stores owned or operated by these organizations. The loss of taxes on this merchandise has a financial impact on each State. Typically, stolen jewelry, perfume and clothing are mixed with legitimate shipments and exported overseas. Other times, these items are shipped by falsely manifesting the goods.

Investigation has also revealed that some commercial burglaries involving merchandise in excess of hundreds of thousands of dollars have been shipped to the Middle East, where it can be resold for three times the value. The investigation into the money laundering aspect of these proceeds have revealed individuals involved in the exportation of motor vehicles suspected of being purchased with money derived from these illegal activities. The vehicles can

be sold overseas for three times the value. The proceeds of this illegal activity are subsequently returned to the United States.

To prosecute members of these criminal organizations for Interstate Transportation of Stolen Property, the government must show that each can of infant formula or over the counter was stolen or obtained by fraudulent means. This is difficult, as individual items are not marked in a unique way, such as currency, to aid in tracking of these items.

Women, Infant and Children Stores. In addition to the convenience stores, some of thee criminal organizations also own and operate Women, Infant and Children [WIC] stores where they can sell their stolen goods. The WIC program is a federally funded, State operated program to aid lower income citizens. There are many forms of WIC fraud both by the vendor and by the recipient. I will explain a few of them today. By purchasing stolen infant formula for $5 per can and selling it for $10 per can, the WIC store profits are generally greatly increased. Each month, a WIC store submits all the WIC vouchers used to purchase food from the store. Investigations have revealed that some stores are marking the WIC vouchers to indicate that food was sold which was never sold and/or cash was given to the persons instead of food. At this time there is no Federal regulatory requirement that the WIC stores buy the food sold at their stores from controlled sources. The State of Texas has recently enacted requirements that WIC stores buy directly from the manufacturer or from a regulated source.

Following the money. Profits generated by the sale of stolen goods are used for the purchase of additional goods, thus repeating the cycle, and to further the wealth of the criminals involved. Investigations around the country have determined that large amounts of money are being shipped out of the United States to the Middle East. Investigations have revealed that the money is smuggled out of the country by concealment on individual travelers, wire transfers through European banks, express-type mail shipments containing currency or monetary instruments, and unlicensed money remitter services. Many banks in the Middle East do not cooperate with the U.S. law enforcement and the funds cannot be traced.

In conclusion, I would like to thank the chairman, Congressman Carter for your continued support and interest in ICE. It is an honor to serve as a Bureau of Immigration of Customs Enforcement agent. I thank you for the opportunity to appear before you today and to discuss some of our investigative efforts and it would be a pleasure to answer any questions you may have.

[The prepared statement of Mr. Pena follows:]

TESTIMONY
OF
ALONZO R. PENA
ASSOCIATE SPECIAL AGENT IN CHARGE
HOUSTON, TEXAS

BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE
HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES

NOVEMBER 10, 2003

I. Introduction

Good morning, Chairman Souder, Congressman Carter. It is a privilege to appear before you to discuss the Bureau of Immigration and Customs Enforcement (BICE) investigations into organized retail theft and money laundering violations.

For the past five years special agents assigned to the Special Agent in Charge, Houston, Texas have conducted investigations into the activities of a loosely joined confederation of individuals involved in the theft, repackaging, and resale of consumer goods. These consumer goods primarily consist of infant formula, over the counter (OTC) medicinal goods, and other health and beauty aids. ICE special agents have also been investigating the money laundering aspects of these criminal activities.

The targets of these investigations are predominantly individuals from Latin America or the Middle East, including Egypt, Jordan, and Lebanon. These individuals operate as grocery or dry goods wholesalers, buying and selling goods on the gray market or secondary side of the industry. The wholesalers are supported by groups of shoplifters operating around the United States.

BICE investigations have identified approximately 60 groups of organized shoplifters plus a multitude of independent individuals. For the most part, these individuals are residing and operating in the United States in violation of our immigration laws and travel the country stealing merchandise from legitimate retailers and wholesalers.

II. Shoplifting Scheme Background

ICE special agents have interviewed a number of shoplifters and identified a method to their operation. The shoplifting group is comprised of five to six women and younger men. An experienced man is established as a team leader and is subsequently responsible for making the travel arrangements, providing transportation, food, and lodging for the group. Once a group is assembled, they travel to a target city, obtain a hotel room, and spend the next seven to ten days shoplifting from major stores in the area. Each day the stolen goods are stored in a self-service storage unit that is rented by the team leader. Upon conclusion of the operation, the stolen goods are removed from the storage units, loaded into a rental truck and returned to their home city and sold to buyers. If there is an exceptionally large amount of stolen goods, the teams have occasionally shipped them via a legitimate trucking company back to the buyer.

Most team members are equipped with several false names and dates of birth in the event they are arrested. If a member arrested is a minor, they provide identification purporting them to be an adult in order to avoid State laws requiring parent notification and can be released on bond.

III. The Buyers

The buyers generally identify themselves as grocery wholesalers in an effort to establish an air of legitimacy. These companies file corporate charters with the Secretary of State of Texas and obtain local "Doing Business As" licenses. Very few of these individuals operate out of a normal business location; most operate out of their residence or from a storage unit where the stolen goods are stored. BICE, working in conjunction with the IRS and the FBI, have shut

down large-scale theft operations throughout the U.S. In Lexington, Kentucky, the SHALASH ORGANIZATION was dismantled and three leaders were arrested and subsequently convicted. In Arizona, 12 members of the JAMAL ORGANIZATION were arrested. In Dallas, Texas, 23 members of the GHALI ORGANIZATION were arrested. BICE is currently conducting investigations in Florida, California, North Caroline, South Carolina, Virginia and Kentucky. Here in Houston, the activities of the combined federal, state and local law enforcement agencies have forced these criminal organizations to change from theft of infant formula to other products to avoid civil and criminal sanctions.

Five years ago, several subjects were repackaging stolen infant formula and placing them in counterfeit cardboard boxes. The purpose of the counterfeit boxes was to deceive the buyer into thinking the formula was from the actual manufacturer. In the words of one subject, "if you are going to sell a Rolex watch it has to be in a Rolex box." The repackaging operations took place in warehouses or storage units. After the goods were repackaged the cases were placed on pallets, shrink-wrapped, and shipped to local or out-of-state buyers. Investigative efforts resulted in the dismantling of the company identified as the manufacturer of the counterfeit boxes.

IV. The Secondary Market

To conceal the origin of the product, false purchase orders are produced alleging that company "A" sold the merchandise to company "B" who sold it back to company "A" or to company "C". Payments for these shipments are usually structured in order to avoid Federal monetary reporting requirements. Several checks are written in amounts less then $10,000.00 and are addressed to different subjects on different dates, all within the same company. Wire transfers are used when a company sells to a large-scale buyer or to an unsuspecting legitimate buyer. Each company is able to claim and show receipts indicating that it had purchased the product from the other company, without knowledge that the merchandise was stolen. If the stolen goods are over the counter

medicinal goods or health and beauty aids, they are typically sold to smaller "Mom and Pop" type convenience stores. Frequently, the stolen merchandise is sold in convenience stores that are actually owned and operated by the organization.

Some criminal organizations are also involved in the large-scale burglary of tobacco, jewelry, and clothing warehouses. Most of the stolen tobacco products are sold in stores owned or operated by these organizations. The loss of taxes on this merchandise has a financial impact on each State. Typically, stolen jewelry, perfume, and clothing are mixed with legitimate shipments and exported overseas. Other times, these items are shipped by falsely manifesting the goods. Investigation has also revealed that some commercial burglaries involving merchandise in excess of hundreds of thousands of dollars have been shipped to the Middle East, where it can be resold for three times the value. The investigation into the money laundering aspects of these proceeds have revealed individuals involved in exportation of motor vehicles suspected of being purchased with money derived from the illegal activities. The vehicles can also be sold overseas for three times the value. The proceeds of this illegal activity are subsequently returned to the U.S.

To prosecute members of these criminal organizations for Interstate Transportation of Stolen Property, the Government must show that each can of infant formula or over the counter was stolen or obtained by fraudulent means. This is difficult, as individual items are not marked in a unique way, such as currency, to aid in tracking of these items.

V. Women, Infant, and Children Stores

In addition to convenient stores, some of these criminal organizations also own and operate Women, Infant, and Children (WIC) stores where they can sell their stolen goods. The WIC program is a federally funded, state operated program to aid lower income citizens. There are many forms of WIC fraud both by the vender and by the recipient. I will explain a few of them today. By purchasing stolen infant formula for five dollars per can and selling it for ten

dollars per can, the WIC store profits are greatly increased. Each month, a WIC store submits all the WIC vouchers used to purchase food from that store. Investigations have revealed that some stores are marking the WIC vouchers to indicate that food was sold which was never sold and/or cash was given to the person instead of food. At this time there is no federal regulatory requirement that the WIC stores buy the food sold at their stores from controlled sources. The State of Texas has recently enacted requirements that WIC stores buy directly from the manufacture or from a regulated source.

VI. Following the Money

Profits generated by the sale of stolen goods are used for the purchase of additional goods, thus repeating the cycle, and to further the wealth of the criminals involved. Investigations around the country have determined that large amounts of money are being shipped out of the U.S. to the Middle East. Investigations have revealed that money is smuggled out of the country by concealment on individual travelers, wire transfers through European banks, express-type mail shipments containing currency or monetary instruments, and unlicensed money remitter services. Many banks in the Middle East do not cooperate with U.S. law enforcement and the funds cannot be traced.

VII. Conclusion

In conclusion, I would like to thank you Mr. Chairman and Congressman Carter for your continued support and interest in BICE. It is an honor to serve with the Bureau of Immigration and Customs Enforcement and I thank you for the opportunity to appear before you today to discuss some of our investigative efforts. It would be my pleasure to answer any questions you may have.

Mr. SOUDER. Thank you.

I'd now like to recognize Mr. Borden on behalf of the Department of Health, State of Texas.

Mr. BORDEN. Thank you. My name is Frank Borden. I'm the assistant director of the manufactured foods division, Bureau of Food and Drug Safety with the Texas Department of Health [TDH]. TDH is mandated by the Texas Health and Safety Code, Chapter 431, Texas Food, Drug and Cosmetic Act to license and inspect all firms in Texas that are engaged in the manufacture and distribution of foods, drugs, medical devices and cosmetic products. The act provides authority for inspections, detentions, condemnations, record verification, enforcement, which includes civil, criminal and administrative penalties. The Act also allows TDH access to copy and verify all records pertaining to infant formula.

On December 4, 2002, Texas Governor Rick Perry asked the Bureau of Food and Drug Safety, to attend the WIC Advisory Committee meeting concerning theft of powdered infant formula and other high priced consumer products in Texas. The committee is comprised of Federal, State and local law enforcement agencies and industry. The committee attempted for several months to curb the theft and illegal redistribution and repacking of these high priced consumer products such as infant formula, prescription drugs and over the counter drugs and medical devices back into commerce. At the December meeting, the Bureau presented to the committee the authorities granted to TDH by our act and offered our assistance to the WIC Committee. As a result, TDH began coordinating with various local, State, and Federal law enforcement agencies throughout Texas.

Since then, TDH has been working closely with law enforcement on the unlicensed distributors. Our main concern is the possible contamination, adulteration, tampering and misbranding of the stolen infant formula that could affect the safety of Texas children who are enrolled in the WIC program. One child injured is one too many.

Law enforcement develops leads and identifies unlicensed distributors for TDH. TDH staff accompanied by law enforcement officers then inspects these distribution facilities. There are many organized infant formula theft operations. We have found formulas throughout Texas stored in filthy garages, mini storage facilities, vehicles, and bars. Products are repacked and lot numbers are changed or removed. In some cases, the products are contaminated with insects and/or are out of date. To date, over $1 million of adulterated infant formula is now in secure locations under the protection of TDH.

TDH has spent thousands of hours investigating these distributors. Of the firms identified by law enforcement, none were licensed and none could provide product records that would verify the source of the infant formula. Evidence indicates that the distributors were making up to $1 million or more a year. Many of them were enrolled in State welfare programs such as Medicaid and the food stamp program and were declaring incomes to the IRS of less than $10,000 a year. In addition, some had visas that were expired for up to 10 years while collecting government benefits.

As of November 2003, TDH has referred about 40 cases to the Texas Attorney General's Office for civil prosecution. Civil penalties for violations of the act are up to $25,000 a day per violation. The Texas Attorney General, John Abbott, has appointed three special prosecutors to file these cases on behalf of TDH.

In 2003, the 78th Texas Legislative Session increased the criminal penalties for violations of the act from a misdemeanor for the first time conviction to a State jail felony for the second conviction. However, District Attorneys are reluctant to prosecute these violations.

Since TDH started conducting these inspections with law enforcement, we have seen a decrease in the distribution of the stolen infant formula back into commerce in Texas through unlicensed distributors. However, the thefts continue. Thieves are now selling the infant formula, high-priced drugs and device items at flea markets. In 1999, an act, Chapter 35 of the Business and Commerce Code became law. It states that infant formula, drugs which include over the counter and prescription, and contact lenses cannot be distributed at flea markets. Due to the extraordinary number of flea markets throughout the State, TDH does not have the resources to conduct investigations at all flea markets. In addition, TDH is now investigating pawnshops that are buying infant formula and over the counter drugs from thieves and selling the products at flea markets. A more recent development is the discovery of infant formula for sale in the classified sections of local newspapers.

Our investigations have also revealed that stolen infant formula is going to unlicensed distributors who have moved from Texas and set up their operations in other States. In addition, the product is readily available through Internet auction sites. This is a national problem. There is a need for strict consistent legislation concerning the distribution of infant formula, drugs and medical devices in all States.

Thank you.

[The prepared statement of Mr. Borden follows:]

Statement of

Frank Borden

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Before the,

Committee on Government Reform
Subcommittee on Criminal Justice, Drug Policy and Human Resources
United States House of Representatives

Regarding

"Organized Retail Theft: Conduit of Money Laundering"

Violations of Texas Health and Safety Code Chapter 431

Houston, Texas

November 10, 2003

I am Frank Borden, Assistant Director, Manufactured Foods, Division, Bureau of Food and Drug Safety with the Texas Department of Health (TDH). TDH is mandated by Texas Health and Safety Code, Chapter 431, Texas Food, Drug, and Cosmetic Act (Act) to license and inspect of all firms in Texas that are engaged in the manufacture and distribution of foods, drugs, medical devices, and cosmetic products. The Act provides authority for inspections, detentions, condemnation, record verification, enforcement, and criminal, civil, and administrative penalties. The Act also allows TDH access to copy and verify all records pertaining to infant formula.

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Mr. SOUDER. Thank you very much.

I'd like to recognize Mr. Clemmer on behalf of the Texas Attorney General.

Mr. CLEMMER. Thank you, Chairman Souder and Congressman Carter. Again, my name is Don Clemmer, I'm the Associate Deputy Attorney General for Criminal Justice. I work under Attorney General Greg Abbott and it's a pleasure to be here today. We appreciate the invitation.

My role is to supervise the work of our Criminal Justice Divisions which include a number of Assistant Attorneys General, three of whom are with me here today, Kent Richardson, Joe Sherlock and Harry White. They are the attorneys who have been assigned by Attorney General Abbott to handle what we call the infant formula theft cases.

I'd like to confine my remarks just to their work. I think the Pasadena Police Department and DPS representatives summed up what the facts are in these criminal schemes. In October 2002, we met with Pasadena Police Department representatives to discuss what was going on. They brought this to our attention and it was quickly recognized that this was not something that was being handled particularly well in the criminal justice system. But in our discussions we recognize that there was something we could do in working with the Texas Department of Health in dealing with these criminal organizations because they were dealing with adulterated food products and that type of activity was something that the code, the Health and Safety Code, had provisions that we could work with.

Commissioner Borden has described some of those provisions, but basically a person who's involved in selling food, wholesaling food, retailing food, they're required to keep that food in a certain safe and unadulterated manner. If they violate those regulations, they're subject to certain penalties that are set out in the code and so we saw an opportunity there to deal with these organizations on a civil level rather than a criminal level. What we did was we started working with the TDH inspectors who would go in to these different so-called wholesaling operations and look for violations. They would then bring those violations to us and at that point our attorneys would go into court and file for civil injunctions against these operators which is kind of unusual, I think, you'll recognize, to use a civil injunction against a criminal organization, but based on the laws that we have on our books, this looks like the best way to actually substantially impact these organizations.

Part of that was because, as was already mentioned, the criminal penalties for this type of activity, it's Class A misdemeanor to State jail felonies, neither of which is a particularly strong deterrent who's involved in this type of activity. The profits are just too large. This type of penalty doesn't scare them off. However, the civil penalty that's involved, the $25,000 per violation really becomes a penalty that they begin to fear. They begin to take that into account when they're conducting these businesses, so we proceeded with a civil injunction remedy. And I think we've had fairly good results with that. One of the interesting things about the cases themselves though is, as you might imagine, when you're in a civil lawsuit and you're requesting discovery from the other side, typically, you're

dealing with a legitimate business or legitimate defendant and they're going to provide you with discovery, but in these cases almost in every instance, the people we were filing cases against refused to provide any discovery. They took the fifth amendment to all of our discovery for the most part which again tells you what type of people we're dealing with.

Our client in these cases is the Department of Health. We're there to enforce their regulations that are set out in the Health and Safety Code. Again, it's kind of unusual. We're using a regulatory scheme to try to combat what is essentially a criminal organization, but again it's something that we found was more effective than trying to pursue the criminal laws that are currently on the books.

Since beginning this effort, we filed lawsuits against 15 individuals and 11 corporations. Those suits have alleged over 200 individual violations of the code, more than 10,000 cans and 1,000 case of infant formula have been seized. The value of those seizures is put at almost $1 million.

We've also been told and I think you'll hear later that the retailers have reported that there has been a reduction in—actually there's been an increase in the demand for legitimate wholesalers to provide infant formula which indicates that the illegitimate wholesalers are being put out of the picture to some extent.

Again, I'd be happy to answer any questions you might have, but to conclude, I'd just like to state that Attorney General Abbott and his staff are anxious to continue this effort and they appreciate your interest in this and we'd be grateful for any continued support and any support you can give us in any way in dealing with this very serious matter. if there are any questions, I'd be happy to answer them.

[The prepared statement of Mr. Clemmer follows:]

STATEMENT OF DON J. CLEMMER
ASSOCIATE DEPUTY ATTORNEY GENERAL
OFFICE OF THE TEXAS ATTORNEY GENERAL

Subcommittee on Criminal Justice, Drug Policy, and Human Resources
Committee on Government Reform
U.S. House of Representatives

November 10, 2003

Mr. Chairman and Members of the Subcommittee:

My name is Don Clemmer. I am an Assistant Attorney General for the State of Texas and have been appointed by Texas Attorney General Greg Abbott to serve as Associate Deputy Attorney General for Criminal Justice. Acting under the direction of Deputy Attorney General Jay Kimbrough, I help supervise the activities of the Attorney General's five criminal justice divisions. Since October 2002, our Criminal Law Enforcement Division has been handling what have become known as "Infant Formula Theft Cases".

PROBLEM PRESENTED:

Texas, and the Houston area in particular, has experienced an epidemic of organized theft rings stealing or otherwise fraudulently obtaining infant formula from legitimate retailers and then distributing it through WIC (Women, Infant and Children) stores by masquerading as legitimate wholesalers. These theft rings tend to be composed of Latin-American immigrants, who commit the initial thefts, and "fences", who tend to be Middle Eastern immigrants. The concerns raised by this pattern of criminal activity include not only the losses sustained by legitimate retailers, but also homeland security concerns due to the possibility that the profits of this enterprise may be funneled to back to the Middle East to help fund terrorist organizations.

But perhaps the most important concern is that the safety and efficacy of the infant formula provided to children on the WIC program could be compromised. Investigations by state and local law enforcement agents have established that the thieves and fences involved in this scheme have

little interest in insuring that the stolen infant formula is stored in accordance with the standards set out by the Texas Department of Health (TDH) and the manufacturers of the formula. This raises serious questions about the formula's nutritional content, questions about which the ultimate consumer would be completely unaware.

HISTORY OF ENFORCEMENT ACTIONS BY THE TEXAS ATTORNEY GENERAL:

In October 2002, the Pasadena Texas Police Department contacted the Office of the Attorney General (OAG) and requested assistance in dealing with a group of thieves who were burglarizing local retail stores, stealing clothes, hardware, perfume, and other relatively inexpensive merchandise. The Pasadena Police had discovered that these groups also were actively dealing in stolen infant formula. Enforcement by way of criminal prosecutions had not proven to be entirely effective because most of the crimes committed were misdemeanors or low level felonies, the punishment for which provided little real deterrent effect.

Several meetings with OAG staff and Pasadena Police were held to develop an effective strategy to attack these criminal enterprises. Since infant formula was involved, the Texas Department of Health (TDH) was invited to participate. TDH inspectors pointed out that TDH had the authority to perform food safety inspections without a search warrant. Information gained from such an inspection could then be used to attack the theft rings in civil court for not complying with the regulations for food wholesalers. Under Texas law, the Attorney General could file suit on behalf of TDH in district court seeking injunctions, penalties and destruction of the seized product. It was agreed that civil action seemed the most effective way to shut down these organizations quickly and cost effectively.

RELEVANT STATUTORY AUTHORITY:

Section 431.042 of the Texas Health & Safety Code allows the Department of Health, upon presentation of the inspector's credentials to the person in charge of a location that houses food that has or will be introduced into commerce, to enter and conduct an inspection. Section 431.048 of the Code authorizes the TDH inspector to seize food stored in violation of state laws and department

rules. A food carrier is also required by state law to keep records that trace the progress of food through commerce and must allow the inspection of these records at the request of TDH inspectors. The Code allows the inspector to make copies of records belonging to the wholesaler that relate to possible violations of Texas law and department rules.

In conducting an inspection, TDH looks for violations of laws set out in §431.021 Texas Health & Safety Code and rules listed in Chapter 229 of the Texas Administrative Code. These violations range from introducing adulterated food into commerce, to wholesaling food without a license, to not rotating food on a first in, first out basis in a warehouse. If violations are found, the Health & Safety Code allows the State to seek an injunction in district court against persons committing the violation. Suit may be filed either in the county where the violations occurred or in Travis County. The effect of the injunction is to order the defendant to cease violations of the statute. The law also allows civil penalties to be assessed against those found in violation of the statute and/or the rules. Each violation carries a civil penalty of up to $25,000 with each day constituting a separate violation.

The statutes also contemplate criminal prosecutions for violations of the Health and Safety code. Under §431.059, a person who violates the requirements of §431.021 (introducing adulterated food into commerce, wholesaling food without a license, not rotating food on a first in, first out basis in a warehouse) commits a Class A Misdemeanor. In the last regular session of the Texas legislature, the penalty for a second conviction was increased to a State Jail Felony. In Texas, a person convicted of a Class A Misdemeanor faces a fine of up to $4,000 and a county jail term of up to one year. The maximum term of confinement for a State Jail Felony is two years in a state jail. To prove the criminal case, the state is not required to prove a culpable mental state. However, several good faith exceptions or defenses exist.

RESULTS OF ENFORCEMENT ACTIVITIES:

One of the greatest problems faced by law enforcement in combating these types of criminal organizations is the lack of intelligence information about their operations. Groups

such as this keep incomplete records or no records at all. The individuals who participate in the scheme normally have little desire to cooperate with authorities. If a thief is caught, the fence will bail him out almost immediately. And since most cases are handled as shoplifting, the punishment is often light, perhaps as low as a fine of just a few hundred dollars. The local prosecutor has little way of proving that the theft of eighty dollars worth of infant formula is part of a million-dollar criminal enterprise. It is highly unlikely that a thief faced with such a minimal fine will cooperate and give useful information.

Law enforcement agents face a similar problem when dealing with fences of the stolen products. Even though the potential penalty is more substantial, fences rarely if ever will give authorities useful information in part because of the close family ties of the organizations. In most instances, individuals that are members of the fencing organizations either refuse to cooperate or give only partial information that is of minimal use. This prevents law enforcement from getting the inside information they need to obtain criminal search warrants.

The availability of TDH's authority to inspect helps to alleviate the problems caused by a lack of information. However, information obtained through a TDH inspection may not be used in a criminal case against the person who was subjected to the inspection. This safeguard was intended to prevent possible abuses of the warrant requirement in criminal cases. However, there is no limitation on the ability of TDH inspectors to gather information for civil actions to protect the public health. With the information garnered from these inspections, civil suits can be filed to enjoin the commission of violations by those searched.

During the course of such civil suits, defendants have been deposed and discovery requested. As a whole though, the discovery process has not yielded as much information as the inspections did. The defendants are unwilling to answer questions, frequently asserting their Fifth Amendment privilege against self-incrimination. Since these are in fact criminal organizations and not legitimate businesses, it is not at all surprising that they have not cooperated in providing discovery as one would expect a normal business to do.

It is unlikely that the legislature foresaw the Health & Safety Code provisions being used to deal with the dangers of stolen food. The intent of the Code is to address minor problems associated with regulating legitimate businesses, not forcing criminal enterprises to comply with public health regulations. If the legislature had known that criminal organizations would begin threatening the integrity of the food supply, additional penalties, in excess of $25,000 per violation, might have been enacted.

The Attorney General's client-in-fact in the suits for injunctive relief is the Department of Health. For that reason, the primary goal is the protection of the public food supply against an obvious and extremely serious threat. These criminal organizations are motivated solely by profit. They have little interest in the safety of the food supply and the health of the ultimate consumer. To make matters worse, with the majority of the stolen product ending up in WIC stores and with half of all children in Texas on the program, the potential victims are the most vulnerable members of our society.

In practice, using civil remedies to combat infant formula theft has had some success. The lower burden of proof required to prove a civil case has allowed the state to proceed with less evidence than would be required in a criminal prosecution. Suits have been filed against numerous individuals. Some have settled and dropped out the business of fencing infant formula.

Since beginning this effort in October of 2002, the Attorney General has filed lawsuits against 15 individuals and 11 corporations. Those suits have alleged over 200 individual violations of the Health & Safety Code. More than 10,000 cans and 1,000 cases of infant formula have been seized in the Houston area valued at up to $1,000,000.

In March of 2003, several large retail chains in Texas reported losses of $2.5 million due to infant formula theft. By September, that number was down to $1.1 million. It has also been reported that infant formula manufacturer Mead Johnson has experienced a significant increase in orders from their large wholesalers which tends to show that the illegitimate wholesalers that were supplying the small retailers are no longer able to meet the demand.

Over 500 people are suspected of involvement in the infant formula black market in Houston. Thirty of those have been charged with state and federal felonies including organized crime, tax fraud, and federal gun violations. Unfortunately, the use of criminal statutes to pursue fences is problematic. It is hard to show that the infant formula found in a particular warehouse is stolen without knowing the location from where it came. This limits the use of ordinary theft statutes to somewhat rare circumstances.

CONCLUSION

Attorney General Abbott has directed his staff to continue to pursue any and all remedies to disrupt these criminal organizations. However, we fully recognize that the OAG plays but a single role in a much larger group effort. Numerous state and federal agencies all are working on this problem. There is also significant cooperation between the government and private enterprise. Retailers have provided valuable information to law enforcement which has been used to track these criminals. Only by continuing this united effort will we have any real hope of success. To that end, we are grateful for your interest and continued support.

Mr. SOUDER. Mr. Jacks, we're going to let you close the first panel and I appreciate your coming this morning.

Mr. JACKS. Thank you, Mr. Chairman and Congressman Carter, thank you for extending the invitation to our office and I did not have any prepared comments that I've presented, but just let me begin by giving a little bit of background.

As mentioned, my name is Jim Jacks. I'm the first assistant U.S. attorney in the northern district of Texas. Our office has been involved in investigating and prosecuting these types of cases for several years now. One of the first cases that was brought in this area was brought by our office. The case originally involved strictly infant formula and the difference in that particular case or the facts surrounding that particular case concerned the fact that at that time many retailers were using infant formula as a loss leader and basically selling it for quite a discounted price, offered rebates and a great deal of that product in that case was being acquired legitimately or it was not stolen. But at such a price that it could be repackaged and sold for great profit for those people that were obtaining it.

So our case originally involved actually conspiracy to traffick goods with counterfeit marks as Mr. Pena alluded to in his comments. That case was indicted and prosecuted. The defendants were convicted and after the jury's verdict, the Judge granted the Rule 29 motion to set aside the conviction based upon the defendants' motion that the goods were actually—that there was no counterfeit mark. The counterfeit mark which was the subject of that particular indictment was actually, as Mr. Pena alluded to, the defendants were making or having made by a printer new boxes which bore the mark of the manufacturer and the formula containers then were repackaged. The court ruled that because it was legitimate formula, it was not counterfeit formula, that did not fall within the statute. The Department of Justice appealed that case and the Fifth Circuit reached the same conclusion as the court did that while there may be a civil violation for trafficking in a counterfeit mark, the criminal violation of the evidence was not there to support that because, in fact, it was legitimate formula.

Since that time, as has been mentioned by other members of the panel, it appears that persons involved in this crime have shifted their tactics and are now resorting to out and out theft either through shoplifting or burglarizing businesses. We do have another case that has been indicted. It's set for trial and that case is probably going to go to trial some time between now and the end of the year. I can tell you that the Department has focused on these types of activities. There are several investigations going on all around the country. The agents involved in those investigations have met. The prosecutors involved in those investigations have met. They are in touch with one another. They know each other very well and they keep in contact in terms of sharing information and suggestions about how to address the problem. So it's something that the Department of Justice is aware of and the U.S. Attorneys Offices around the country are very actively involved in investigating these types of crimes.

If the committee has any questions, I'll be happy to answer any questions I can.

Mr. SOUDER. I'd first like to deal to Congressman Carter, to open the question.

Mr. CARTER. I'd like to start off by saying thank you to all of you for testifying here today and thank you for the efforts that all of you are putting forward in this, what I consider a very serious situation.

The fact that we're talking about baby formula ought to offend every mother in the United States, as far as I'm concerned, that somebody would be illegally trafficking something that we would give to innocents. I want to particularly commend the Pasadena Police Force and DPS for doing a great job bringing this to light.

A couple of things were mentioned and first, I don't know, maybe Johnnie, you want to answer this. How closely are we able to tie this to Middle East terrorists right now, the FBI, you've been working with the FBI on this also, is my understanding, is that correct?

Mr. JEZIERSKI. Yes. We've been providing information to them, but that would really be something they'd have to answer. I can't say that there's any prosecutable evidence that connects this group to terrorist organizations.

Mr. CARTER. Now Mr. Pena, you mentioned that these 60 some odd groups of shoplifters, most of those people are in violation of immigration laws right now?

Mr. PENA. From my understanding, often many of these individuals are in some type of violation. They either overstayed. They came in as students and they're not students and/or they illegally enter the United States.

Mr. CARTER. What's the general procedures when we catch a group of these people? When we catch a group of these people, because I know we are catching some of these groups, are they being deported?

Mr. PENA. Yes, prosecuted and deported. If we can prosecute them for a criminal violation, if they had been deported previously and then they re-entered, we're going to prosecute them for that violation and try to get additional jail time and then deport them and keep them out of the country.

Mr. CARTER. One of the things that I'm curious about, that I think I understand from the U.S. attorney's unfortunate situation with their first prosecution, but the DA's reluctant to prosecute, State jail felonies. My DA certainly wasn't reluctant to prosecute State felonies. Does anybody want to comment on why people are reluctant to prosecute State jail felonies?

Mr. Clemmer.

Mr. CLEMMER. Congressman Carter, I don't know if it's so much a reluctance to prosecute the case as it is knowing that the potential punishment is so low that it's—I just don't see a lot of local DAs being able to de bono for resources to this type of case versus something that they would view as more serious violation.

The cases certainly can be prosecuted, but from what we're hearing, and again, this is something the local DAs handle, as you know, it's just prosecuting a shoplifting case, it doesn't get as high up on their radar as something else.

Mr. CARTER. It's not as glamorous anyway.

Mr. CLEMMER. Exactly.

Mr. CARTER. But with the knowledge that we're now able to tie this in to activities, both illegal activities internationally and relating to drug laundering, drug money laundering, a 2-year stay in the State jail the way we used to have our probation/parole system in Texas would have been a considerable sentence because you do State jail time day for day. You'll get good time and you don't get parole.

Mr. CLEMMER. Yes sir.

Mr. CARTER. And so I don't rightly understand that thinking, except it's not very glamorous and you don't make the headlines for sending somebody to prison for shoplifting baby formula. Unless we better educate the public as to what this relates to, and the overall scope of what's going on, here in this country because we've already heard from this testimony that we're talking about millions of dollars. And when you start talking about millions of dollars, it's pretty bad.

Does anyone know anything about electronic tagging system that some people are proposing to tag this merchandise so we catch a warehouser and make a bigger case? Has anyone heard anything about—anything like that? You may need to talk to the merchandisers about that.

Mr. JEZIERSKI. I believe Joe Williams probably would be able to give you more information on that in the last panel.

Mr. CARTER. OK, thank you. Thank you, Mr. Chairman.

Mr. SOUDER. I'm missing one basic factor and it would help if somebody could clarify, if I could do that. When they steal, let me actually go off with Jack's last statement. When companies are using it as a loss leader and then they're re-selling it, in other words, they're buying it legitimately and then re-selling because of the profit differential, my basic struggle is where is the market to repurchase this? In other words, if they can buy it in a legitimate store, at that price, is there a distribution network that's missing, Mr. Merritt and Mr. Jezierski?

Mr. MERRITT. Yes, a very intensive distribution network. There's various, I guess you'll call them fly by night export companies or wholesale companies operating out of storage buildings. We've got over 30 of them in Houston. The convenience store, the neighborhood convenience store, is a grass roots outlet for some products. Many of the members of this organization——

Mr. SOUDER. What I'm trying to understand is, is the selling price that they're selling it, higher or lower than what you could get it in the legitimate store?

Mr. MERRITT. It depends on where it's being sold at. The cans cost in the store $10 or $12 a can. They buy it from a shoplifter for $5. If they sell it—then they sell it, they sell it to the WIC store and they are reimbursed from the U.S. Government at a premium price in the rebate program, sometimes up to $10 or more. We see this in California where the rebate program is the highest in the country, they're getting $16 a can. So the cheaper they can get the can, usually it's stolen, the bigger the profit is when they get reimbursed by the U.S. Government.

Mr. SOUDER. In understanding our basic concerns, that we have the health concern about the storage and contamination. We have the theft concern from legitimate retailers. We have theft concern

with the Federal Government. We have what these organizations are doing with their money, but the consumers are not necessarily paying a higher price?

Mr. JEZIERSKI. When you have companies that are losing money, they're going to pass those costs on to the consumer.

Mr. SOUDER. I have a retail background, but as far as the infant formula, that's why there hasn't been a focus on whether somebody who's buying infant formula in the street may not be paying a higher price. That's why you haven't mentioned that as the concern. The taxpayers are paying a higher price. The companies have to cover their losses. But if they are selling it as a loss leader, there are no losses.

Mr. JEZIERSKI. In response to that, we got a call when we aired this publicly in a crime stoppers program here in Houston from a person who said that he took credit for beginning this operation many years ago and said when it began then, it was a legitimate operation. They did acquire their product legally by buying in loss leader prices. He said that this group now has changed every one in it to criminals. They all operate stealing the formula now as opposed to the way they operated years ago.

Mr. SOUDER. There's been allusions to other things. What would be some—do you view baby formula as the biggest part of these kind of theft rings? What other products would they be dealing in? Is baby formula the dominant problem?

Mr. JEZIERSKI. It's dominant, but cigarettes are probably right up there with the same, over the counter medicines. The Health Department, in their program has some pictures of products that have been seized. They include Zantac, Pepcid AC, glucose test strips, and the glucose monitors. Basically they target higher priced items that are available that they can steal easily. And those are the items that we see them marketing.

Baby formula, because of the efforts that we have done in Texas, has slowed down. It hasn't stopped. We've impacted them, but they're still operating, stealing formula. But they've refocused a lot of their attention to the over the counter medicines. Fortunately, the Health Department also regulates those items and we think we'll be able to do something about that problem also.

Mr. SOUDER. Mr. Pena, on the networks that are involved in this, my understanding is that the financial tracking of potential terrorist organizations is over at the FBI. In ICE, do you still track this and what about if it's say a Guatemalan group?

Mr. PENA. We're still heavily involved and committed to financial investigations. It is a top priority of ICE about money laundering, whether it be narcotics, money involved through corruption and there is a big focus in ICE on money laundering investigations. And if I understand your question correctly, Mr. Chairman, the commitment is whether—the FBI is lead agency now, financial terrorism. We will work closely with them. We are looking at the vulnerabilities that exist that offer those opportunities to either terrorists or smugglers or whatever. That's the main focus now, the legacy of Customs and legacy of INS are directed to those areas. They're our cornerstone program which is identify infrastructures whether it be wire remitters, the banking system that could facili-

tate some of these activities to move the money throughout, internationally, you can get the proceeds back to these.

Mr. SOUDER. If you could answer this or Mr. Jackson or Mr. Clemmer, really anyone who could. In trying to distinguish between—let me deal with the Central American groups because that seems to be actually the greatest number according to the statistics that you're dealing with. Do their remittances factor their home countries for the most part? In other words, one of the—I understood from the testimony that the remittances of the Middle Eastern groups often goes back to the Middle East. Is that also true of any of the other groups that you've been able to identify?

Mr. MERRITT. I think most of the Central Americans, the illegal aliens, they're kind of nonentities as far as the government is tracking their money. They don't have bank accounts or if they do send money about—they don't have established financial storage deposits to track it or subpoena it. It's kind of hard to figure out——

Mr. SOUDER. So I think there's another thing that we need to establish. In the testimony there were a number of arrests and people involved in this and the numbers were greater in Central American numbers than South American numbers, but you're saying those cases weren't as organized? In other words, do the Central American or Hispanic groups, do they have false front warehouses with large networks or is it just the Middle Eastern groups that are more organized.

Mr. MERRITT. We know of two different groups in Houston. The vast majority of the fencing level suspects were Middle Eastern. We know a couple of Hispanic subjects that have fencing operations that we were able to look at financially, but the vast majority were Middle Eastern.

Mr. JEZIERSKI. I'd say the higher level of the fences are the Middle Eastern.

Mr. SOUDER. How do you determine, Mr. Pena, when something is basically a group of crooks that need to be shutdown and when they're terrorist suspects? How are ICE and FBI going to make that tradeoff?

Mr. PENA. I think that the distinguishing factor now is that the FBI will have the lead, as it is now, to the Memorandum of Understanding that was signed recently on when we had the Operation Green Quest. They'll have the lead on these investigations and they're to be worked out of the Joint Terrorism Task Force. If we've developed information independently of the FBI, then we will bring it in to the Joint Terrorism Task Force with our agents' participation, full participation, but the leadership will be the FBI's through this Memorandum of Understanding that was signed off on.

Mr. SOUDER. But if it was a Guatemalan fencing group?

Mr. PENA. Regardless of whether it was a Central American, Mexican, Middle Eastern, it's the same protocol.

Mr. SOUDER. Because the FBI would have Financial Crimes and not just terrorism?

Mr. PENA. I stand corrected. If it's tied to terrorism, if the link is terror. If there's not a link to terrorism, then the ICE will be the lead agency, will pursue that investigation independently.

Mr. SOUDER. Like a traditional Customs case?

Mr. PENA. Like a traditional Customs case.

Mr. SOUDER. So if a case is transferred over to the FBI, there's a reasonable doubt as to whether it should be investigated as a terrorist case?

Mr. PENA. If it is transferred over?

Mr. SOUDER. In other words, it's not going to be transferred over the FBI unless there's a possibility that they think there's a terrorist link?

Mr. PENA. Correct and that is what was agreed upon in the Memorandum of Understanding when they dissolved Green Quest, was that only those cases that there was a link to terrorism would be going over to be worked at the Joint Terrorism Task Forces.

Mr. SOUDER. A link is the potential?

Mr. PENA. From my understanding of reading the agreement, it has to be almost conclusive that says this organization is involved in terrorism and at that point that case is going to be controlled by the FBI.

Mr. JACKS. Mr. Chairman, maybe I can shed some light on that. As Mr. Pena pointed out, these Joint Terrorism Task Forces exist in every judicial district now in every FBI region and U.S. Attorney's Office and what generally happens on the ground is that as these names come up in the investigations, Immigration or whoever—they have agents assigned to these task forces and they will contact their representative on that task force and say we've come across this name, does it show up in your indices? So Immigration does have access. The Immigration agent assigned to that Joint Terrorism Task Force has access to these FBI indices and they can run that name and say yes, it does or no, it doesn't or it has a different spelling. It's something like that, so there is that flow of communication back and forth. And just because it doesn't show up the first time the Bureau and the Terrorism Task Force, that is not the end of the discussion at that time.

They continue to monitor, but those agents investigating the infant formula or the organized theft, will continue to proceed. But their information as it comes across, for example, they'll say we found out that this subject we're looking at is sending money to Jordan and it's going this route. If we give you that information, does that change your answer?

So that information continues to flow back and forth. All of us in Federal law enforcement and State law enforcement are always looking for that connection and our antenna are up all the time to see if any of this is related to potential terrorist activity or support for terrorism overseas.

Mr. SOUDER. Mr. Carter.

Mr. CARTER. Just to clarify something. I've misunderstood and I want to make sure—this relationship between the Central American shoplifting team and the Middle East is that almost an employer/employee relationship? The Middle Eastern organizations more or less contract with these guys and they go out and steal for these Middle Eastern operations? Is that the way it works?

Mr. MERRITT. In many cases, yes. In many cases it could be described as a regular vendor they deal with. Like if you were Mr. Smith, this is a guy that he buys his regular stuff from, but we've been able to establish in some cases these people have lived with

Middle Eastern fences from time to time, travel with them. When theft suspects are in prison, we get Middle Eastern fences visiting them in prison, putting money in their commissary, taking care of them.

Mr. CARTER. Do you feel like that they may, in fact, have recruited these illegals to do this work for them?

Mr. JEZIERSKI. I found it interesting that on some loan applications, the Middle Eastern folks were signing off as employers to some of these people for them to get their loans.

Mr. CARTER. So it's an employer/employee relationship that they've developed?

Mr. JEZIERSKI. Yes.

Mr. CARTER. There seems to be a little bit of confusion and so they really wouldn't have a storage operation as much as just taking the stuff to the Middle Eastern store?

Mr. JEZIERSKI. That's correct.

Mr. SOUDER. Mr. Borden, have you seen much response at the Federal level or investigations further up the system? I kind of gathered from your testimony that there's a general awareness, but how much because the numbers that you have here in Texas, once you got into it, were fairly staggering?

Mr. BORDEN. I see quite a bit of response from Customs, FBI. I haven't seen a whole lot from FDA at this point. I may not be aware of everything that they're doing.

Mr. SOUDER. You've not seen any additional things come through the WIC program that suggests that they understand that this problem could exist elsewhere?

Mr. BORDEN. I haven't dealt with WIC people. I've not dealt with the Federal WIC people. I think there's a willingness at the State level for funding for positions to give us just strictly to do WIC stores and we're currently working on that to try to get that position. Those moneys will ultimately come from the Federal source.

Does that answer your question?

Mr. SOUDER. Let me just make a couple of statement that were behind some of my earlier questions. The jurisdiction of this committee is very broad in oversight. The overall jurisdiction is narcotics and we work with narcotics issues very closely. But among other things we have the Department of Justice, Department of HHS, Department of HUD, Department of Education, Commerce Department, basically because when we first looked at narcotics we combined a lot of the different agencies.

In addition to narcotics, I'm also on Homeland Security and the Committee on Homeland Security and part of our dilemma as we tackle these often separate, but potentially inter-related questions is all the jurisdictions of the Federal Government, State government, local government, different agencies, and different initials. It's like once you get in one category of human services, you have a whole number of initials just inside the Department of Health and Human Services and then WIC and food stamps come actually under Ag, but they're interrelated with Human Services side which is just baffling. I have an MBA and I get confused and I've been doing this stuff for years as a staffer and as a Member.

No wonder on the street when actual people are trying to get services for the poor, who are trying to get government services

they can't figure it out because we in government can't figure it out. How in the world can they possibly figure it out?

It leads to opportunities for all kinds of other people through convenience stores and all sorts of distribution networks because we're kind of all cockamamie in the Federal Government as to how we're doing a lot of this stuff and trying to get it organized.

Now in the Homeland Security question, it's ironic here because the ICE is in Homeland Security. FBI is not. FBI is under the Department of Justice. We have, in this committee, subcommittee, jurisdiction over FBI; in any narcotics that's in Homeland Security. And it shows the difficulty even in how Congress is set up to try to figure out the oversight transfer of these different type of programs.

Now we have all the local task forces which has everybody in it, but I have this great fear that we're going to have, if we actually did a flow chart some time with the Federal Government that 60 percent of your little date planner would be meetings and 40 percent would be going out and getting criminals because we have so many different overlapping jurisdictions. We're trying to address that because I think hearings like this are helpful for us as Members of Congress and the general public and you all to see the challenge here.

What looks like a common theft ring, just a bunch of people stealing, could be just a bunch of people stealing. But when, right now if you said what's the biggest challenge, No. 1, or anybody who forgets that jobs is a No. 1 issue won't be a Congressman for very long, unless, of course, there's a terrorist attack and then they go well, why don't you pay attention to terrorist attacks? So those obviously safety in the country and jobs are the two big issues. And this is an example of them convening even if it was just a security and theft issue, we would have to be concerned about, not to mention a health risk to the individuals. We would have to be concerned about it. But we're all watching because as we know, as we get better in the government of shutting down illegitimate ways to launder money, that are above ground, for example, fake foundations, we drive it underground and just like as you close down legitimate opportunities or quasi-legitimate opportunities to take the infant formula at a markup price then move to theft. As they move to theft, and they get hooked up, we don't know what happens. It could be a bunch of people enriching themselves and selling it to a higher market because they have the connections. On the other hand, it is potentially going to be a terrorist nexus. And just like narcotics are, just like trafficking in human beings are, and we have to be increasingly vigilant at the State, local and Federal level to watch for how the criminal organizations are going to work because ultimately they're going to interconnect and it's very interesting for me ever since Judge Carter first raised it, because I hadn't really thought, nor have most American people thought kind of conventional theft/fencing/flea market/convenience store type of ripoffs, feeding into terrorist movements. We don't know that, but the fact is from what I understand from the testimony if the FBI thought there was a potential terrorist connection, they don't have jurisdiction on this case.

Is that correct?

Mr. MERRITT. That's correct.

Mr. SOUDER. It would suggest that at least some of the names were showing up as potential risk people which is very hard since we all know the difficulty of cell groups, until there's an action committed, you don't know for sure whether the person has committed it, but it means some of the suspects had either ties to certain mosques or ties to certain groups that suggested that they were on a watch list. And this is a very controversial question in the United States, but it's one we have in narcotics. We have it in other terrorist groups. If you show up and you're the police department, if somebody has been somehow picked up in three different raids on another subject, whatever it is, stealing cars and you see them around that, you've got them on a watch list and they show up in the fourth one, you're going to assume they might have something to do with the car thefts. Same thing here.

Does anyone else want to add anything? I wanted to try to make a connection because it's been interesting to try to do that and see at our level how we're trying to look at it too, but it's very difficult because as the cross jurisdictions hit, and as we try to figure out how to do this intelligence, there is no clear cut answer for the American people because a terrorist doesn't check in at a border and say I'm part of a terrorist network. We don't know what we basically get, so we have to figure out how to work through the process in between.

Mr. Merritt.

Mr. MERRITT. I've submitted a copy of the same binder with my written statement. I've included articles we've been collecting throughout the United States for different investigations. Many of these articles referencing cases while suspects have been indicted with the people in these articles in other States. One article here, although I'm sure there's any connection in reference to our suspects, but Dr. Al-Arian from Florida, several businesses he owned are Russian-related businesses or stores. They've just indicted most of these businesses owned by him for trafficking in stolen infant formula. He's been identified by the FBI as the leader of the Palestinian Al Jahar group as a key fundraiser by the Secretary of the United States. That's just an example.

Also, we have the Hizbollah cell that was taken down in North Carolina in 1998 that was trafficking in cigarettes and operating identically, we almost have matching photographs of suspects, personal photos of subjects, the name is just different. It's the same exact MOs, it's the cell they had out in North Carolina and that was shown to be a terrorist cell for Hizbollah.

I can tell you from a street officer's perspective what we're seeing in our communities, these stores are connected to the organizations we're investigating. There's a very disturbing pattern. Many of these stores they now own anywhere from 20 to 30 properties, residential properties surrounding their stores. We're seeing street crime increasing dramatically around these stores. They're selling narcotics over the counter. They're bringing the neighborhood around them down. We've got narcotics transactions and we're trying to follow—they're running full-blown pawn shops, buying items stolen from house burglaries, car burglaries and thefts. These stores are running full blown pawn shops in the back, keeping

track of who they're loaning money to, buying stolen property off the street. I've personally recovered stolen property from several of these stores.

Mr. SOUDER. Mr. Clemmer, is there any law holding that pawn shops and flea market owners are themselves accountable?

Mr. CLEMMER. There are laws on the book. I can't give you a real clear answer on how it would apply in this case. We're looking at that, but I'd be happy to look into that and give you an answer on that question.

Mr. JEZIERSKI. I'd like to say if you think of terrorism as a state of mind, a mindset that these people have, many of these suspects have that same mindset that extremists view of America as their enemy. One of the subjects that we had in our office interviewing said that if he was younger, he would blow something up. That's a mindset. Is he a terrorist? He has similar beliefs. Several of the people who got arrested in the Dallas area indicated that same mindset.

In Arizona, there was an article that I submitted that connects Hani Hanjour to some of the suspects in the Arizona case. Does that make them terrorists? They have associations that connected them to a known terrorist who flew into the Pentagon. How do you define a terrorist is the question.

Mr. SOUDER. There are those that define it as those who commit acts of terrorism, and those who harbor them or fund them. It's pretty clear.

Mr. MERRITT. One of the big problems, you get intelligence about these guys and the problem is you sometimes never let that cross into the public sector, so somebody may know something about a guy, but he cannot be on the list of his own and it's just—it's frustrating because once the money gets over there, you can't track where it goes.

Mr. SOUDER. This is not going to be easy, but none of your jobs have ever been easy. You have to be able to prove it and we have to be very careful. We're on a fine line here because most of us, quite frankly, I say this all the time, up in my area we have—because of our proximity to Detroit, I have one rural high school in northeast Indiana that up until a few years ago, the only other foreign language was German because we were mostly German, but now they have teachers of Farsi, 23 languages in the school and there's 800 kids. It is a different challenge, but you know what? Most people like me do not know who the strangers at the mosque are. And the truth is is that we have to be very careful as we profile and make general statements because our best defense right now are the many people of Middle East descent who come in and who can identify those within who are the strangers. I often have heard and I'm sure it's true in Texas too, people come up to me and say there's all these drug problems and I know this person is dealing drugs and the police won't do anything about it and the courts won't do anything about it. That's because you have to have hard evidence, not a suspicion or rumor. It's difficult, it's higher risk here in terrorism and we're all worried about it because weapons of mass destruction, while they aren't killing as many people as narcotics because we have like 20,000 deaths a year because of narcotics and we've had 3,000 over the last 2 years from terrorism di-

rectly on our soil. Never the less, the fear that people have is a bag of anthrax this big can take out 3 million people in Washington, DC, is a different level of fear and we have to be systematic. We have to do the type of thing we're doing today that you all are doing, taking apart their means of financing. Fortunately, we seem to be ahead of them. They've been saying they're going to kill us for 2 years and they haven't executed on our soil. On the other hand, they're aren't looking for short term. This is like a 100 year or 200 year project. So we have time to work with it, but we can't let our guard down at all.

Thank you very much for coming today. If you have additional statements, we'll make sure we get the different articles submitted and your full statement in the record.

The second panel can now come forward. The second panel consists of Joe Williams, Gulf Coast Retailers Association; Darrell Taylor, HEB Grocery Chains; Deborah Brookshire, Texas Department of Health; and Frank Muscato, Investigative Task Force, Wal-Mart Stores.

As you come up, if you can remain standing I'll give you your oath. Please raise your right hands.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each of the witnesses responded in the affirmative.

Let's again, we thank all of you for coming, for being part of our hearing today. We're going to start with Mr. Williams.

STATEMENTS OF JOE WILLIAMS, GULF COAST RETAILERS ASSOCIATION; DARRELL TAYLOR, DIRECTOR OF LOSS PREVENTION, HEB GROCERY CO.; DEBORAH BROOKSHIRE, TEXAS DEPARTMENT OF HEALTH; AND FRANK MUSCATO, INVESTIGATIVE TASK FORCE, WAL-MART STORES, INC.

Mr. WILLIAMS. Thank you, Chairman Souder and members of the subcommittee. My name is Joe Williams. I am president of a retail trade association called Gulf Coast Retailers. I also serve on USDA's National Advisory Council on Maternal, Infant and Fetal Nutrition and I'm a member of the Food Marketing Institutes WIC Task Force.

Our trade association has approximately 600 member companies representing over 1,000 locations and a diverse group of members from furniture retailers to drug stores to supermarkets.

A lot of the background information has been given so I'm going to get to the point. Retail theft results in consumers having to pay higher prices for the products they purchase as retail establishments attempt to cover their losses. From infant formula theft, Texas currently serves over 800,000 households who participate in the Women, Infant and Children WIC Program. This means that approximately 200,000 of that 800,000 householders are babies. Close to 50 percent of the infants born in Texas last year are enrolled in the WIC program.

There is compelling evidence that theft of infant formula and subsequent repackaging, altercation, falsification of labeling to change expiration dates, storage of formula at improper temperatures in trucks and warehouses and finally sale to unsuspecting WIC retailers or laundering of product through storefronts posed as

legitimate WIC retailers, flea markets or over the Internet through sites like eBay poses a health hazard to every infant in Texas and in the Nation who is dependent upon this product for their sole source of nutrition.

A majority of the infant formula products stolen and then illegally distributed back into the marketplace contribute to funding of organized crime rings and in some cases, links to funding terrorist organizations.

Let's talk about the scope of the Texas problem. There are approximately 400,000 infants on infant formula in Texas at any given point in time. Less than 2 percent of that population is breastfed. A baby normally needs 32 ounces of fluid formula a day. One can of infant formula powder will normally sustain one baby for 3 days. This means that on any given day in Texas, Texas infants would consumer 133,000 cans of powdered infant formula assuming this was the only type of infant formula available.

Infant formula is one of the top 10 items targeted and most frequently shoplifted. As a product category, contract infant formula and that's the brand that the State negotiates and contracts for, represents over 75 percent of the brand targeted for theft. In March 2003, and I'm only looking at that 1 month, we estimated the amount of infant formula products shoplifted in Texas at $2.5 million or approximately 120,000 cans of infant formula powder. This is 1 day's complete nutritional needs for approximately 354,000 babies in Texas or nearly a 1-day supply.

In Texas, we organized a task force through our State WIC Advisory Board to address this growing problem. The task force is comprised of local, State and Federal agency personnel, client advocates, local, State and Federal law enforcement, retailers and retailer associations, and manufacturers. We started meeting in December 2002. We came up with a list, a set of recommendations that we wanted to pursue. These were: One, we sought legislation strengthening penalties in the State's Food and Drug Code. It was signed into law, Senate bill 1826, signed by Governor Perry, effective September 1, 2003.

We wanted to develop contract provisions that would require WIC vendor retailers, grocery stores, to only purchase infant formula through State licensed, inspected and regulated wholesalers. The Department of Health WIC program through the blessing of the USDA has now put that in place and that was effective with the contracts signed effective October 1st.

We wanted to work with the national infant formula manufacturers to develop product packaging that will accept security tags. As of this date that's going through the research and development departments.

We were seeking to raise industry, law enforcement and State and Federal legislators of the awareness of the issue and its dangerous health concerns without creating a Tylenol panic. If you remember back to the 1980's, with Tylenol, four bottles of Tylenol were tainted and we're talking about thousands of cans of infant formula.

As part of our efforts we have visited with Under Secretary of Agriculture, Commissioner Bows. We've also visited with the Food and Drug Administration Commissioner, Commissioner McClure.

One of our earliest issues was to work to develop legislation at the State level forbidding the sale of consumable food items, infant formula and baby food, usually consumed by children younger than 2 years of age. This bill actually was House bill 749, was signed into law by then Governor Bush, effective September 1, 1999. As you've heard Frank Borden talk about, they don't have the staff right now to really followup with that legislation. In Texas, we have legislation concerning flea markets, but now we're working to get them an enforcement agency so we can have that in force.

This year, we're also sponsoring and looking for support of Senate bill 1553 sponsored by Senator Larry Craig of Idaho and the title of the legislation is "Organized Retail Theft Act of 2003."

Another point, we were working to seek legislation or regulation of the sale of consumable food items to children 2 years and younger and other items like prescription drugs via the Internet through on-line flea markets like eBay. I'm talking about Federal.

To give you some concrete results that you can look at, we talked to our wholesaler members and we also talked to our retail members. I've got a major wholesaler that operates here in the Houston area, serves over 1,000 supermarkets from independents to multichain operator. When he went and looked at his sales information for March 2003 which was kind of the starting point for us and then re-looked at his sales for September 2003 which was about approximately 6 months down the road, his overall business was up 6 percent across the board through the market.

When he looked at infant formula category, this category itself, the volume there was up 12.5 percent, not related strictly to new business, but the fact that he found that when he visited with his retailers, a lot of the retailers were buying most of their goods and services through his company, except for infant formula. They were buying infant formula through a specialty distributor, if you will, who later was indicted here in our State for being part of organized crime.

To retail that additional 6.5 percent, this wholesaler, that's an additional 2,200 case of product per month or another way to look at that, that's enough infant formula to feed 40,000 babies.

We also looked at a smaller wholesaler that operated in the rural area and much the same thing, specifically, I can tell you we looked at our contract formula, Enfamil Powder, his distribution in sales of March 2003 were 2,763 cases for the month of March. For the month of September, it was 4,201.

If you look at retailers, and I won't go into all of that in the interest of time, let me mention a couple. Company B: infant formula loss in March 2003, $220,000. Infant formula loss in September 2003 after we enacted some of the solutions that had been suggested, $70,000. That's a 68 percent improvement.

Company C lost $375,000 just for the month of March. These are just companies operating in Texas. I mean these are just Texas numbers. Their loss in September after some of the solutions that had been in place, $55,000. This is an 85 percent improvement and that's great and we're thrilled to death with the response from that, but the losses still represent for this particular retailer, enough to feed 8,250 babies.

Based on retailers participating in a market share they enjoy in Texas, we estimate that September 2003 amount of infant formula products shoplifted or stolen in Texas to still be valued at $1.1 million. This is a reduction of 56 percent since March since some of the recommendations by the Task Force were put into place. That $1.1 million is still enough to feed 165,000 babies.

Next steps. We would like to see as WIC goes through the reauthorization process, that USDA requires States, territories and Tribal Councils develop a structure that licenses and inspects all entities involved in the distribution of authorized WIC products, including formula products from the manufacturer to the authorized WIC retailer.

We would like FDA be requested to formally host a series of feedback sessions with retailers, manufacturers of infant formula products, State WIC agencies and security specialists to research all kinds of packaging conducive to source tagging devices or labels like the EPC, electronic product code.

We would like for the Federal Government to require States to mandate that retailers who choose to participate as a WIC retail vendor must meet both WIC and food stamp eligibility qualifications for WIC vendors as recommended by the National WIC Association.

We would like to see legislation developed prohibiting the sale of consumable food products, usually consumed by children 2 years and younger through the Internet, eBay or other similar on-line flea markets.

We are looking for support for Senate bill 1553 as I mentioned, "Organized Retail Theft Act of 2003" sponsored by Senator Larry Craig and my friend Thomas McClure has already agreed that he would look at that and we really appreciate that.

I've enclosed copies of articles from several States that indicate this is much bigger than a Texas problem and photos from several sting operations that we've had here in the area.

Thank you for the opportunity to testify before you today on this very important topic. I appreciate both your involvement and your dedication to us. And I'd be glad to answer any questions that you may have. Thank you.

[The prepared statement of Mr. Williams follows:]

STATEMENT OF

JOE WILLIAMS
PRESIDENT, GULF COAST RETAILERS ASSOCIATION

BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG
POLICY AND HUMAN RESOURCES

FIELD HEARING on ORGANIZED RETAIL THEFT:
CONDUIT OF MONEY LAUNDERING
HOUSTON, TX

NOVEMBER 10, 2003

Dear Chairman Souder and Members of the Subcommittee,

My name is Joe Williams. I am President of a retail trade association called Gulf Coast Retailers Association (GCRA) headquartered here in Houston, Texas. I also serve on USDA's National Advisory Council on Maternal, Infant and Fetal Nutrition and a member of the Food Marketing Institute's (FMI) WIC Task Force.

GCRA has approximately 600 member companies representing over 1,000 locations and a diverse group of members including supermarkets, convenience stores, discount stores, furniture stores, department stores, chain drug stores, specialty retailers, gift stores and suppliers, distributors and manufacturers to several types of the retailers in the membership.

Organized Retail Theft
Organized retail theft (ORT) is a growing problem throughout the United States affecting a wide range of retail establishments including supermarkets, chain drug stores, independent pharmacies, mass merchandisers, and convenience stores. It has become the most pressing security problem confronting retailers and suppliers, and now accounts for over $30 billion in losses at store level annually according to the Federal Bureau of Investigation's (FBI) interstate theft task force (Washington Post- August 4, 2001).

ORT crime is separate and distinct from petty shoplifting in that it involves professional theft rings that move quickly from community to community and across state lines to pilfer large amounts of merchandise that is then repackaged and sold back into the marketplace. Petty shoplifting, as defined, is limited to items stolen for personal use or consumption.

Targeted Products
ORT Rings typically target everyday household commodities and consumer items that can be easily sold through fencing operations, flea markets, over the Internet, swap meets and shady storefront operations. Items that are in high demand by these professional theft rings include over-the-counter (OTC) drug products, such as analgesics and cough and cold medications, razor blades, camera film, batteries, videos, DVDs, CDs, smoking cessation products and infant formula.

Consumer Health and Safety Risks
Consumers are at risk when ORT gangs steal consumable products especially OTC drug items and infant formula. In many cases after the merchandise has been stolen, the products are not kept under ideal or required storage conditions that can threaten the integrity of the product. For example, extreme heat or cold can affect the nutrient content or physical appearance of infant formulas.

When products are near the end of their expiration date, ORT middlemen may change the expiration date, lot numbers and labels to falsely extend the shelf life of the product and to disguise the fact that the merchandise has been stolen. In addition, cough and cold products are popular with ORT Rings because these medications can be sold to clandestine labs for the purpose of manufacturing methamphetamine.

Economic Impact on Consumers
Retail theft results in consumers having to pay higher prices for the products they purchase as retail establishments attempt to cover their losses. Higher prices adversely affect all consumers especially the most needy in America, such as the elderly and families that depend upon Food Stamps and the WIC Program to augment their limited budgets.

Moreover, this type of criminal activity is also inconveniencing consumers. Because theft has become so rampant in certain product categories, for example infant formula, a number of major retail companies are taking the products off the shelves and placing them behind the counter or under lock and key. In some cases, products are simply unavailable due to high pilferage rates.

Infant Formula Theft
Texas currently serves over 800,000 households who participate in the Women, Infant and Children (WIC) Program. The WIC Program serves to safeguard the health of low-income women, infants and children up to age 5 who are at nutritional risk by providing nutritious foods to supplement diets, information on healthy eating, and referrals to health care. Over 50% of the infants born in Texas receive WIC benefits. This means that approximately 200,000 Texas babies receive WIC benefits, which include infant formula and is the babies' only source of nutrition. Approximately 3,500 babies' on the WIC Program are totally breastfed.

There is compelling evidence that theft of infant formula and subsequent repackaging, alteration, falsification of labeling to change expiration dates, storage of formula at improper temperatures in trucks and warehouses and finally sale to unsuspecting WIC retailers or laundering of product through storefronts posing as legitimate WIC retailers, flea markets or over the Internet through sites like E-Bay poses a health hazard to every infant in Texas and in the nation who is dependent upon this product for their sole source of nutrition.

A majority of the infant formula products stolen and then illegally distributed back into the marketplace contribute to funding of Organized Crime Rings and in some cases, links to funding terrorist organizations.

Scope of Texas Problem

There are approximately 400,000 infants on infant formula in Texas at any given point in time. Less than 2% of that population is breastfed. A baby normally needs 32 oz. of fluid formula a day. A baby normally consumes 4 oz. per serving. A 12.9 or 14 oz can of infant formula powder contains approximately 24 servings. One can of infant formula powder will normally sustain one baby for three days. This means that on any given day in Texas, Texas infants would consume 133,333 cans of 12.9 oz. powdered infant formula assuming this type of infant formula was the only one available. Assuming Texas serves 10% of the total WIC population in the nation, you could estimate that there are 4,000,000 babies at a given point in time consuming 1,333,333 cans of infant formula.

Infant formula is one of the top ten items targeted and most frequently shoplifted. As a product category, contract infant formula (state contracted brand preference for WIC Program) represents

over 75% of the brand targeted for theft. In March of 2003, we estimated the amount of infant formula products shoplifted in Texas at $2.5 million or 118,945 cans of infant formula powder as a representation. This is one day's complete nutritional needs for approximately 354,000 babies' in Texas, or nearly a one-day supply for all the babies in Texas.

Texas Infant Formula Task Force

A Task Force was organized through our state WIC Advisory Board to address this growing problem. The Task Force is comprised of local, state and federal agency personnel; client advocates; local, state and federal law enforcement, retailers and retailer associations; and manufacturers met in early December of 2002 to discuss and develop a set of recommendations to combat the growing infant formula theft problem. The group meets on a regular basis, reporting back to the WIC Advisory Board and on progress of the recommended solutions as well as the development of new strategies as needed. Those recommendations included:

- Seeking legislation strengthening penalties in the State's Food and Drug Code that penalized individuals operating as an unlicensed food wholesaler or supplier of food products.
  Note: SB 1826 was signed into law by Gov. Perry, effective Sept. 1, 2003.
- Developing contract provisions that would require WIC vendor/retailers to only purchase infant formula through state licensed/inspected wholesaler/distributors.
  Note: Received USDA/TDH Board approval and effective with contract starting 10/1/03.
- Working with infant formula manufacturers to develop product packaging that would accept security tags.
  Note: Manufacturers say this is under study through R & D departments.
- Looking at short-term solutions of relocating contract infant formula products behind lock and key or moving to a highly visible area.
  Note: Not feasible for most stores and causes confusion/customer service issue and spotlights WIC client customers.
- Seeking to raise industry, law enforcement and state and federal legislators awareness of the issue and its dangerous health concerns without creating a "Tylenol Panic".
  Note: Members of the Task Force have met and made presentations to the National Association of Food Industry Executives; the National Association of State Attorneys General; the National Advisory Council on Maternal, Infant and Fetal Nutrition; the Southern Region of State WIC Directors; FMI's Public Policy Conference; the Texas Storage Building Association and many others.
- Working to develop legislation at the state level forbidding the re-sale of consumable food items (infant formula, baby food) usually consumed by children younger than two years of age.
  Note: HB 749 was signed into law by then Gov. Bush effective Sept. 1,1999. Also support S.1553, sponsored by Sen. Larry Craig, R-Idaho, and "Organized Retail Theft Act of 2003.
- Working to seek legislation or regulation of the sale of consumable food items to children two years and younger and other items like prescription drugs via the Internet through on-line flea markets like E-Bay.

Results Seen at Wholesaler/Distributor Level

It has been reported that wholesalers/distributors in the Houston area have seen a sizable increase in the sale of contract (Enfamil) infant formula from their retail customers in the last few months. In visiting with one large regional wholesaler that services over 1,000 supermarkets (Independents to regional chains) in Texas, they are reporting an overall increase in business of 6% for the time period of March2003 to September 2003. In that same time period the movement on their contract infant formula is up 12.5%. They attribute this to several of their legitimate and licensed retailers, who purchased the bulk of their products from this wholesaler but purchased infant formula products from a specialty distributor who just handled infant formula products and who represented themselves as a legitimate and licensed distributor. This was an unlicensed distributor tied in with Organized Crime Rings operating in the Houston area and in some cases these retailers were buying product back at reduced prices that in some cases had been stolen from their stores originally. No type of store (supermarket, discount, drug, convenience and or neighborhood store) was immune from the theft of infant formula products. This wholesaler has seen the rest of the infant formula (non-contract) category show a slight increase as well over the overall increase of the business in general. The increase in sales for this wholesaler for contract formula is equal to about 2200 cases per week or enough product to feed 40,000 babies for one day.

Another wholesaler who specializes in serving smaller neighborhood and rural stores has reported their sales of contract infant formula products have more than doubled. One example is Enfamil Powder which increased from 2,763 cases in March 2003 to 4,201 cases in September 2003. The Enfamil Concentrate went from 1719 cases in March 2003 to 6,934 cases in September 2003. In checking with them as to customer base, they have had no significant changes in customers or do they show this type of increase in any other category.

Results Seen at Retail Level

Three national chains and one major multi-state regional food retailer participated on the Infant Formula Task Force. Some of the reported results from these participants are discussed below taking into account that sales in the respective companies are generally flat during the time period from March to September 2003:

- Company A
    1. Contract infant formula sales increased 28% from March to September 2003.
    2. Shrink of the infant formula category has dropped from 10% to 6% of sales of this category. Compared to a year ago it has dropped from 18-20% shrink. Normal shrink on a typical product category like infant formula is 3.5% of sales.
- Company B
    1. Infant formula loss in March 2003 $220,000.
    2. Infant formula loss in September 2003 $70,000.

    68.18 % improvement after recommendations were implemented

    $70,000 theft of infant formula in one month is still a major concern. This represents enough contract infant formula to feed 10,522 babies their

recommended 32 ounces a day.

- Company C
  1. Infant Formula loss in March 2003 $375,000
  2. Infant formula loss in September 2003 $55,000

  85.33 % improvement after recommendations were implemented.
  $55,000 represents enough infant formula to feed 8,250 babies for one day.

Based on the retailers participating and the market share they enjoy in Texas, we estimate the September 2003 amount of infant formula products shoplifted/stolen in Texas to be valued at $1.1 million dollars. This indicates a reduction of 56% since March 2003 and since some of the recommended solutions by the Task Force were put into place. But the amount of infant formula products still being shoplifted on a regular basis is still too high and constitutes a potentially life-threatening public health issue. Additionally, we have seen a shift of fencing or laundering the stolen product from our state to other border states or in other methods like flea markets and E-Bay. This current amount ($1.1 million) is enough to feed 165,000 babies for one day. Infant formula theft is a nationwide problem and must be treated as such; it impacts our most vulnerable citizens of our state and nation, who are dependent on these products for 100% of their life sustenance. I applaud this Committee for holding this hearing an attempting to address this problem on a national basis.

Next Steps

- Mandate through the reauthorization process of the WIC program that USDA require states, territories, and tribal councils develop a structure that licenses and inspects all entities involved in the distribution of authorized WIC products including infant formula products from the manufacturer to the authorized WIC retailer. WIC retailers who choose to participate in the WIC Program must purchase their authorized and approved WIC products from an approved, licensed and inspected wholesaler/distributor.
- Request FDA to formally host a series of feedback sessions with retailers, manufacturers of infant formula products, state WIC agencies and sensor tag, tracking specialists to research alternative packaging conducive to source tagging devices or labels like the Electronic Product Code (EPC).
- Require states to mandate that retailers who choose to participate as a WIC retail vendor must meet both WIC and Food Stamp eligibility qualifications for vendors as recommended by the National WIC Association.
- Develop legislation prohibiting the sale of consumable food products usually consumed by children two years or younger through the Internet (E-Bay) and other similar on-line flea markets.
- Support the S. 1553, "Organized Retail Theft Act of 2003" sponsored by Senator Larry Craig, R-Idaho and encourage a House companion bill to be introduced and moved through the legislative process.

Thank you for the opportunity to testify before you today on this very important topic. I would be glad to answer any questions you may have.

Mr. SOUDER. Thank you.

Mr. Taylor.

Mr. TAYLOR. Good morning, Mr. Chairman, and members of the subcommittee. I'm pleased to have this opportunity to discuss the problem of organized retail theft in the supermarket industry. My name is Darrell Taylor and I'm currently the director of loss prevention for HEB Grocery Co.

HEB, just to give you some background, is one of the Nation's largest privately owned grocery chains and has over $10 billion in sales in our fiscal year 2003. HEB was founded in Kerrville, TX in 1905 and will be celebrating our 100-year anniversary in 2005. HEB currently employees approximately 58,000 employees and operates over 300 stores throughout Texas and internationally in Mexico.

We estimate that HEB is losing approximately $8 million annually in merchandise through organized retail theft and obviously this is one of HEB's most pressing security problems. Separate and distinct from petty shoplifting, organized retail theft involves professionals who target specific items for resale and then reintroduce these items into the legitimate marketplace.

As discussed earlier today, they typically target household commodities and consumer items that can be easily sold through fencing operations, flea markets and swap meets. Even the Internet is being used to sell these products now. In fact, a simple search on eBay will list page after page of household commodities "in never-used, mint condition and in unopened packages." These "new" products many times are often significantly below the fair market value.

By analyzing our invoices in our stores, I've discovered that variances exist that suggest that HEB is also being victimized by organized retail theft. Specific products which are being targeted include formula, razor blades, cough and cold medications, batteries, film, cigarettes and cosmetic items. In comparing these with professionals in other industries, we have found that these items are also being targeted throughout the retail industry.

Of particular concern to HEB is the organized retail theft of consumable items such as infant formula. An analysis of our numbers suggests that HEB lost an estimated 314,000 cans of infant formula in our fiscal year 2003. Obviously, this is a significant financial impact to the company.

However, more important to us is the potential health risk that this poses for young babies. We believe that the organized retail theft of 314,000 cans of infant formula last year created 314,000 chances that somewhere in the United States a mother could be feeding her child infant formula which was purchased outside the normal and established distribution chain and which could prove unsafe. This number increases dramatically if you assume that other retailers in Texas and throughout the country are suffering similar losses of infant formula through organized retail theft.

As we talked about earlier, the reason why this occurs is the unsafe storage conditions and temperature controls which are not placed many times which can affect the integrity of the product and the nutritional content and even the physical appearance.

We believe that the organized retail theft rings target infant formula for the same reasons that panel one discussed.

First is the demand, especially in the State of Texas, which has one of the largest growing populations. We have 800,000 Texas families which currently purchase formula through the WIC Program.

The profits which can be sustained through the illegitimate or illegal market of formula. We can get $5 a can based on bringing the formula to a fence.

There's also the risk. The risk to a shoplifter who engages in this type of an act is seldom prosecuted and seldom identified as being part of a larger criminal enterprise.

HEB has long supported efforts to ensure that all of our customers have access to quality food products, whether it is through the use of food stamps, food banks or other nutrition programs. In fact, we provide millions of dollars in financial support and food donations to food banks every year. HEB is proud to partner with State and Federal Governments to ensure that recipients of WIC are able to purchase unadulterated and properly labeled infant formula at our stores. We therefore support the initiatives of the WIC Task Force to combat the organized retail theft problem involving infant formula including the Task Force's proposal that a national law be enacted to regulate the WIC products and make sure that they're exclusively purchased from authorized product suppliers.

At this time, Mr. Chairman, I'd be happy to answer any questions you may have.

[The prepared statement of Mr. Taylor follows:]

Good morning, Mr. Chairman and members of the Subcommittee.

I am pleased to have this opportunity to visit with you today to discuss organized retail theft rings and how it affects the supermarket industry. My name is Darrell Taylor and I am currently the Director of Loss Prevention for HEB Grocery Company. I have 11 years experience in retail security and loss prevention. With me today is Kay Behrens, HEB's Director of Corporate Law.

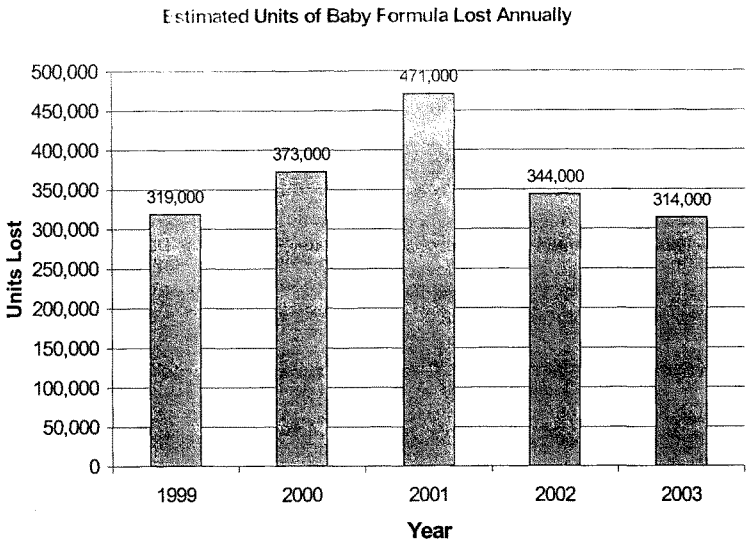
HEB Grocery Company is one of the nation's largest privately owned grocery chains and had over 10 billion dollars in sales in our Fiscal Year 2003. HEB was founded in Kerrville, Texas, in 1905 and will be celebrating our 100-year anniversary in 2005. HEB currently employs approximately 58,000 employees and operates over 300 stores throughout Texas and internationally in Mexico.

HEB is losing an estimated $8 million annually in merchandise through organized retail theft, which has become one of HEB's most pressing security problems. Separate and distinct from petty shoplifting, organized retail theft involves professionals who target specific items for resale, and then reintroduce these items into the legitimate marketplace.

Organized theft rings typically target everyday household commodities and consumer items that can be easily sold through fencing operations, flea markets and swap meets. Even the Internet is being used to sell these stolen products. In fact, a simple search on eBay will list pages of household commodities for sale "in never-used, mint condition and in unopened packages." These "new" products listed on eBay are priced significantly below the fair market value of the item.

By analyzing items invoiced to our stores against our store sales, we have discovered variances that suggest HEB is being victimized by organized retail theft operations due to the types of products and quantities involved. Specific products which are being targeted include: infant formula, razor blades, cough and cold medications, batteries, film, cigarettes and cosmetic items. In comparing our data with data of other security professionals, we have found that these same items are being targeted throughout the retailing industry.

Of particular concern to HEB is the organized retail theft of consumable items such as infant formula. An analysis of our numbers suggests that HEB lost an estimated 314,000 cans of infant formula in our Fiscal Year 2003 (see chart below). Therefore, the financial impact of this theft is significant to our company.



However, more important than the financial impact of this theft to HEB is the potential health risk that this problem poses for young babies. We believe that the organized retail theft of 314,000 cans of infant formula last year created 314,000 chances that somewhere in the United States a mother could be feeding her child infant formula which she purchased outside the normal and established distribution chain and which could prove unsafe. This number increases dramatically if you assume that other retailers in Texas and throughout the country are suffering similar losses of infant formula through organized retail theft.

How does organized retail theft pose a health risk for young babies? In many cases after infant formula has been stolen, the products are not kept under ideal or required storage conditions. These adverse conditions can threaten the integrity of the product. For example, extreme heat or cold can affect the nutrient content or physical appearance of infant formulas. Furthermore, organized retail theft rings may create counterfeit labels for the products or alter the expiration dates of the products. As a result, when these products make their way back into the legitimate distribution chain, mothers may be feeding their babies unsafe or adulterated products.

We believe that organized retail theft rings target infant formula for the following reasons:

1. **Demand**: Infant formula is in high demand, especially in Texas which has one of the largest growing populations of any state. Part of this high demand is subsidized by the State of Texas which assists approximately 800,000 Texas families in purchasing infant formula through its WIC (Women, Infant, Children) program (which is administered by the Texas Department of Health).

2. **Profits**: There is a very high profit margin in selling stolen infant formula, whereas the profit margin is negligible when the sale is made through legitimate distribution channels.

For example, assume that HEB purchases infant formula from a national branded manufacturer at $11.99 per can. Also assume that HEB sells a great percentage of its formula to families assisted by the WIC program. According to the Texas Department of Health's records, approximately 25% of WIC families purchase their infant formula from HEB.

The Texas Department of Health has established a guaranteed redemption allowable for purchases made by WIC customers. If the redemption allowable is $12.00 per can, then HEB will realize a .01 profit on the sale of infant formula to a WIC customer.

However, assume that another retailer purchases infant formula "off the street" for $5.00 per can. This retailer can resell the product to a WIC family and still be guaranteed a redemption fee of $11.99 from the State of Texas. Therefore, a retailer's profit is substantial when purchasing from organized retail theft rings as opposed to purchasing from national manufacturers of infant formula.

3. **Risk**: Currently the risk to a shoplifter of infant formula is minimal. When a shoplifter is caught, his/her exposure to significant prosecution is minimal, as most of these criminal acts (i.e. shoplifting) are currently not identified as part of a larger criminal enterprise. Therefore the risk of participating in organized retail theft of infant formula is far smaller than the potential returns to be made on selling the stolen formula.

The end result of the infant formula theft problem is that some mothers could unknowingly feed their babies potentially unsafe formula due to the theft which exists in this commodity and the ease in which it can be reintroduced into the consumer supply chain. HEB's concern about the theft of infant formula and its potential effect on our youngest customers – our children - has prompted us to join a WIC Task Force headed by the Gulf Coast Retailers Association.

HEB has long supported efforts to ensure that all of our customers have access to quality food products, whether it is through the use of food stamps, food banks or other nutrition programs. In fact, HEB provides millions of dollars in financial support and food donations to food banks. HEB is also proud to partner with state and federal governments to ensure that recipients of WIC are able to purchase unadulterated and properly labeled infant formula at our stores. We therefore support the initiatives of the WIC Task Force to combat the organized retail theft problem involving infant formula, including the Task Force's proposal that a national law be enacted requiring retailers of WIC products to purchase such products exclusively from authorized product suppliers.

This problem must be handled on a national level in order to ensure that the problem does not migrate from one state to another.

We appreciate the opportunity to provide you with our insights into this problem. I would be happy to answer any questions you may have.

Mr. SOUDER. Thank you.

Ms. Brookshire.

Ms. BROOKSHIRE. Good morning, Mr. Chairman, and Member Carter. My name is Debbie Brookshire. I'm the director of the WIC Vendor Operations Division which is housed within the Texas Department of Health.

WIC provides nutrition services and supplemental foods to pregnant and post-partum women and to children under the age of 5. The program is 100 percent funded by a combination of Federal funds and rebates from infant formula and cereal manufacturers. Rebates are dedicated general revenue for the WIC program as required by Federal regulations.

Over 50 percent of the infants born in Texas receive WIC benefits which include infant formula. An average of 117,183 babies each month are provided powdered infant formula through issuance of a voucher which families redeem at authorized grocers. Powdered infant formula represents an average of 60.7 percent of all formula issued to Texas WIC participants each month. As we were mentioning earlier, it's the powdered formula that's particularly in question here and it tends to be stolen from frequently.

Grocers are authorized by the Texas Department of Health Bureau of Nutrition Services under rules in 25 Texas Administrative Code and as required by Federal regulations governing the program.

In 2002, the Texas Department of Public Safety and other local law enforcement officials alerted the TDH program to the widespread problem of theft of infant formula both in Texas and nationwide.

DPS evidence shows formula theft is organized crime, could have ties to money laundering and financing of Middle Eastern terrorism and the black market sale of formula to grocers for resale could constitute a potential health hazard.

Both law enforcement and grocers confirm that the WIC authorized formula under contract for rebate is the formula stolen most often.

Health hazards can include direct tampering with the formula before it is sold to unsuspecting retailers, falsification of labeling to change expiration dates, counterfeiting or cutting formula and storage of the formula at improper temperatures in trucks and warehouses.

The Texas Department of Health, TDH Bureau of Food and Drug Safety Manufactured Foods Division and the Texas WIC program have been working together on several initiatives.

WIC developed new rules that require all grocers authorized by WIC in Texas to purchase formula only from licensed wholesaler distributors, licensed retailers or directly from the manufacturer. These rules were adopted by the Texas Board of Health and became effective October 1, 2003 which coincides with our contract year.

The National WIC Association is using the rule language developed by Texas WIC as a model for other States to adopt for their own use.

SIC has revised its vendors agreement document or contract to require grocers to provide the name and Central File Number of

the licensed wholesale distributor from whom they are purchasing infant formula.

WIC has revised its policies and procedures to include sanctions for WIC-authorized grocers who do not comply with the new rules under the terms of their vendor agreements.

Bureau of Food and Drug Safety staff investigates individuals who are suspected of violating Chapter 431 of the Texas Health and Safety Code entitled the Texas Food, Drug and Cosmetic Act.

The same division staff has the ability to use the following enforcement tools: detention authority, civil and criminal penalty authority, the ability to order or move detained articles to a secure location, and the ability to request condemnation of a product by court order. When infant formula is confiscated, WIC helps fund the temperature-controlled warehouses used to store the formula under appropriate conditions pending outcome of the case.

For the 2004 Federal fiscal year, WIC did not renew vendor agreements for specific grocers whose cases have been referred to the Texas Attorney General's Office.

Updates regarding activities related to infant formula theft are provided to WIC's Federal funding agency, the U.S. Department of Agriculture on an ongoing basis.

Some of the retailer and formula manufacturer solutions. At a December 2002 meeting of the Texas WIC Advisory Committee, staff from the Texas Department of Health and the U.S. Department of Agriculture, retailers, formula manufacturers, committee members and law enforcement representatives endorsed various measures to reduce incidents of infant formula theft.

In addition to the rule mentioned previously and eventually adopted by the Board of Health, the group also developed these recommendations for retailer and formula manufacturer action: retailers should consider locking up formula and/or placing it in a more visible part of the store to deter thieves; formula manufacturers should meet and find solutions to packaging of formula that will allow for security tagging. Current packaging does not allow for sensors.

Some of our conclusions. There is compelling evidence that theft of infant formula poses a health hazard to the most vulnerable citizens of the State, contributes to funding organized crime activities and funds terrorist organizations.

Texas WIC has taken swift, appropriate and effective measures to assist investigators and law enforcement officials in their efforts to deter the theft of infant formula and to help ensure that there is no market for stolen infant formula. Current reports indicate that stolen infant formula is being shipped out of Texas for resale since Texas has become too "hot" for this business.

Infant formula is not the only item being stolen. Staff report that over the counter medications, razors and other consumer commodities are being stolen, warehoused and resold by some of the same individuals.

Texas WIC is proud of what they've done to take steps to deter this theft and resale of infant formula. At this point we look to investigators, law enforcement officials and legislators across the country to work jointly to eliminate this problem.

If you have any questions, I'd be happy to answer them.

[The prepared statement of Ms. Brookshire follows:]

ProtectTexas™
Texas Department of Health

Texas Special Supplemental Nutrition Program for Women, Infants and Children (WIC)
United States Congressional Hearing
"Organized Retail Theft: Conduit of Money Laundering"
November 10, 2003

Background

- The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) provides nutrition services and supplemental foods to pregnant and postpartum women and to children under age five. The program is 100% funded by a combination of federal funds and rebates from infant formula and cereal manufacturers. Rebates are dedicated general revenue for the WIC Program as required by federal regulations.
- Over 50% of the infants born in Texas receive WIC benefits which include infant formula. An average of 117,183 babies each month are provided powdered infant formula through issuance of a voucher which families redeem at authorized grocers. Powdered infant formula represents an average of 60.7% of all formula issued to Texas WIC participants each month.
- Grocers are authorized by the Texas Department of Health (TDH) Bureau of Nutrition Services under rules in 25 Texas Administrative Code and as required by federal regulations governing the program.
- In 2002, the Texas Department of Public Safety (DPS) and other local law enforcement officials alerted the TDH program to the widespread problem of theft of infant formula both in Texas and nationwide.
    - DPS evidence shows formula theft is organized crime, could have ties to money laundering and financing of Middle Eastern terrorism, and the black market sale of formula to grocers for resale could constitute a potential health hazard.
    - The Texas retailer community confirms that infant formula is the number one product stolen from their stores. Large grocery chains report losses as high as $200,000 a week.
    - Both law enforcement and grocers confirm that the WIC authorized formula under contract for rebate is the formula stolen most often.
- Health hazards can include direct tampering with the formula before it is sold to unsuspecting retailers, falsification of labeling to change expiration dates, counterfeiting, or cutting formula, and storage of the formula at improper temperatures in trucks and warehouses.

Texas Department of Health Solutions

- The TDH Bureau of Food and Drug Safety (BFDS), Manufactured Foods Division, and the Texas WIC program have been working together on several initiatives:

- WIC developed new rules that require all grocers authorized by WIC in Texas to purchase formula only from licensed wholesaler distributors, licensed retailers or directly from the manufacturer. These rules were adopted by the Texas Board of Health and became effective October 1, 2003.
- The National WIC Association is using the rule language developed by Texas WIC as a model for other states to adopt for their own use.
- WIC has revised its vendor agreement document (contract) to require grocers to provide the name and Central File Number (CFN) of the licensed wholesale distributor from whom they are purchasing infant formula.
- WIC has revised its policies and procedures to include sanctions for WIC-authorized grocers who do not comply with the new rules under the terms of their vendor agreements.
- BFDS staff investigates individuals who are suspected of violating Chapter 431 of the Texas Health and Safety Code entitled the Texas Food, Drug and Cosmetic Act. [1]
- The BFDS, Manufactured Foods Division has the ability to use the following enforcement tools: 1) detention authority, 2) civil and criminal penalty authority, 3) the ability to order or move detained articles to a secure location, and 4) the ability to request condemnation of a product by court order. When infant formula is confiscated, WIC helps fund the temperature-controlled warehouses used to store the formula under appropriate conditions pending outcome of the case.
- For the 2004 federal fiscal year, WIC did not renew vendor agreements for specific grocers whose cases have been referred to the Texas Attorney General's Office by BFDS staff.
- Updates regarding activities related to infant formula theft are provided to WIC's federal funding agency, the United States Department of Agriculture (USDA), on an ongoing basis.

Retailer and Formula Manufacturer Solutions

At a December 2002 meeting of the Texas WIC Advisory Committee, staff from TDH and USDA, retailers, formula manufacturers, committee members, and law enforcement representatives endorsed various measures to reduce incidents of infant formula theft. In addition to the rule mentioned previously and eventually adopted by the Board of Health, the group also developed these recommendations for retailer and formula manufacturer action:

- Retailers should consider locking up formula and/or placing it in a more visible part of the store (near the front of the store) to deter thieves.
- Formula manufacturers should meet and find solutions to packaging of formula that will allow for security tagging. Current packaging does not allow for "beeper" sensors.

[1] See http://www.capitol.state.tx.us/statutes/he/he0043100toc.html for provisions of the Texas Food, Drug and Cosmetic Act.

Conclusions

- There is compelling evidence that theft of infant formula poses a health hazard to the most vulnerable citizens of the state, contributes to funding organized crime activities, and funds terrorist organizations.
- Texas WIC has taken swift, appropriate and effective measures to assist investigators and law enforcement officials in their efforts to deter the theft of infant formula and to help ensure that there is no market for stolen infant formula. Current reports indicate that stolen infant formula is being shipped out of Texas for re-sale since Texas has become too "hot" for this business.
- Infant formula is not the only item being stolen. BFDS staff report that over the counter (OTC) medications, razors, and other consumer commodities are being stolen, warehoused and re-sold by some of the same individuals.

Next Steps

TDH has taken appropriate steps to help deter the theft and re-sale of infant formula as outlined above, and will continue to assist as needed. From this point, investigators, law enforcement officials and legislators across the country need to work jointly to eliminate this problem.

Mr. SOUDER. Thank you.

Mr. Muscato.

Mr. MUSCATO. Good morning, Mr. Chairman, members of the committee. My name is Frank Muscato and I am an investigator for Wal-Mart Stores, Inc. A measurable part of my duties is working organized crime as it relates to retail theft. I live in Bloomington, IN and I work out of Bloomington. I believe to the Wal-Mart Investigative Task Force [ITF]. It was formed in 1992 out of a growing concern over organized crime in retail theft. We're made up of investigators who have been long-time with Wal-Mart and law enforcement. In fact, I'm a retired police officer out of Dallas, TX. We live in different parts of the country.

With that $30 billion a year that the FBI estimates is lost in retail theft, it comes out to about 4 cents on a dollar. For every dollar we spend as consumers, 4 cents goes to cover theft. The thefts are major, internal and external and cargo theft.

On the external theft, it breaks down into two categories, what we call in our business shoplifters are people who steal products for personal use, whether it be a tube of lipstick or some food or cosmetics. They steal it for their own use or somebody in the family versus what we call professional thieves or boosters. They steal property to move that property on to make money. They move this property of course to property fences, fences are those that knowingly buy stolen property.

They're sophisticated, they're professionals. They travel city to city, State to State, committing these thefts and then at the back of my testimony there's a little flow chart that indicates the path of stolen merchandise. This is not theory. These are cases we worked over and over, whether it be baby formula, inkjet cartridges, over the counter medications, these cases we worked all over the country involving this.

External theft in the retail industry appears to be growing at an alarming rate. Through our apprehensions, we substantiate retailers are experiencing an exorbitant amount of theft by organized retail groups. In my testimony, I've listed several of the cases we have going right now. This is just the tip of the iceberg of the cases that we work throughout the country.

Because State laws are soft on retail theft and retail crime, because there are very few Federal laws addressing the issue, retail theft is a high profit/low risk type of crime. Felony levels throughout the country vary in different States from theft over $100 in Vermont is a felony up to the highest in the country which is Wisconsin, theft under $2,500 in Wisconsin is a misdemeanor. A person can't carry that much out of a store. He'd have to make three or four trips before it would become a felony. We're talking two or three computers, four or five televisions before it becomes a felony.

Here in Texas, theft under $1,500 is a misdemeanor. Theft over $1,500 becomes a State jail felony. In Texas, theft under $200, an officer can just write a ticket, like a speeding ticket for theft. So it's not looked at as any kind of a serious crime and that's why these professionals are in this. It's a high profit/low risk type crime.

Retails spend millions of dollars on systems, camera systems, trying to stop this. We can control shoplifting. That's easy to con-

trol. And retailers control the shoplifting. What is so hard to control is the professional boosters. They come up with ways to defeat the systems we put in. We've put in the detection systems, the AES systems and the bad guys figure out ways to defeat those. In fact, we worked bills around the country trying to get laws to protect us against the things they do to beat us. For instance, an EAS system, an alarm is set up when you walk out of a store if you didn't pay for the product. They figured out that if they put that inside of aluminum, it defeats the alarm, so they'll get a bag and line it with aluminum or a purchase, line it with aluminum and they'll just that up and out the store they go. So we're working laws that target that, that if you use these specific devices to defeat these systems it's a law in itself.

Joe Williams and Johnny Jezierski, on this task force they formed back in December is proof that if we work together and bring these things together and attack this problem, it works. They have solved a huge portion of the baby formula theft in Texas. It's unbelievable. It's unheard of in law enforcement to do what they did.

Now, of course, I'm not taking this away from the Department of Health and if it wasn't for Dennis, it wouldn't have been done, but Johnnie and Joe started this and it actually works. If we can move this further and with this bill 1553 in Congress, if we can get that bill through, that would give us a tremendous tool for law enforcement, for retailers to put a crunch on this and save millions of dollars to the consumers.

Thank you, and I'd be happy to answer any questions.

[The prepared statement of Mr. Muscato follows:]

STATEMENT OF FRANK MUSCATO
INVESTIGATIONS COORDINATOR, INVESTIGATIVE TASK FORCE
WAL-MART STORES, INC.
BEFORE THE
FIELD HEARING ON ORGANIZED RETAIL THEFT:
CONDUIT OF MONEY LAUNDERING
COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES

November 10, 2003

Good morning, Mr. Chairman and members of the Committee. My name is Frank Muscato and I am an investigator for Wal-Mart Stores, Inc. (Wal-Mart) on the company's Investigative Task Force (ITF). One of my duties is investigating organized crime as it pertains to retail theft. I currently work for Wal-Mart based out of Bloomington, Indiana. Wal-Mart is located in Bentonville, Arkansas. Wal-Mart is the nation and world's largest retailer, with facilities in all 50 States and 10 countries. Wal-Mart operates more than 2,900 discount stores, Supercenters, Neighborhood Markets and more than 530 SAM'S CLUBS in the United States. Internationally, the Company operates in Argentina, Brazil, Canada, China, Germany, Korea, Mexico, Puerto Rico and the United Kingdom. Wal-Mart also owns a 31% interest in Seiyu in Japan with options to purchase up to 66.7% of that company. Wal-Mart currently employs more than 1 million associates in the United States and more than 300,000 internationally.

Wal-Mart's ITF was formed in 1992 as a result of a growing trend of thefts that appeared to be for something other than personal use. The ITF is comprised of investigators possessing extensive loss prevention and/or law enforcement experience. The ITF investigators live in different parts of the country and conduct investigations involving multi-jurisdictional areas. The ITF works a variety of cases but most of their caseload involves organized crime as it pertains to retail theft.

According to a recent FBI study, retail representatives conservatively estimate that grocery, drug and discount chains lose approximately 4% of earnings from gross sales due to theft. Retail businesses experience losses greater than $30 billion annually due to theft. These thefts include internal and external theft, and cargo theft. External thefts are those thefts committed by shoplifters (individuals who steal property for their personal use) and boosters (individuals who steal property with the intent to sell that property). The stolen property is then sold to a property fence (someone who knowingly buys stolen property).

Professional thieves (referred to as boosters) involved in retail theft offenses are sophisticated and usually are well-organized "professionals" who travel city-to-city and state-to-state committing these offenses. The attached flow chart will show boosters move the property through the first level property fence, also referred to as a street fence. Street fences will have a number of boosters from whom they purchase stolen property. The going rate for the first level of fenced property is 20-30 cents on the dollar. A street fence can be a small business, pawnshop, swap shop, residence, or in many cases a person or persons who meet the boosters in specified areas to purchase the stolen property. The street fence then moves that property on to a "middleman". The "middleman's" responsibility is to take the property and separate out the near-dated or slightly damaged product. The product that is in perfect condition is moved from the "middleman" to a repack warehouse. The property that is not in perfect condition is generally moved through a flea market or sold to other property fences. At the repack warehouse, the property is packed in counterfeit boxes and moved from the repack warehouse through a redistribution warehouse and sold back to retailers. Retailers buying this product generally do not know that they are purchasing property that has been stolen and repacked.

External theft in the retail industry appears to be growing at an alarming rate. Investigations and apprehensions substantiate that retailers experience an exorbitant amount of theft by organized retail boosters. Through recent organized retail theft

investigations involving local, state and federal authorities, we have identified a number of organized groups that target specific products. Following is a brief description of some of these ongoing organized retail theft investigations.

There are organized groups targeting inkjet cartridges. Through investigations, we have determined that members of these groups have entered our country illegally from South America. These groups have boosted millions of dollars in inkjet cartridges from retailers throughout the United States. Our investigations also indicate that some of the cartridges are being sent to South America, sold on auction sites such as E-bay, and repackaged and sold to retailers.

Several crime groups are identified with the theft, repacking, and redistribution of infant formula throughout the country. In addition to the illegal aspect of these thefts, there are numerous safety concerns with the integrity of infant formula. These groups have very little concern with the controls needed for this product. During a recent Texas investigation, a warehouse infested with insects and rodents was discovered where stolen infant formula was stored.

Investigations are continuing with groups stealing, repacking and redistributing DVD's. Some of the cases that we have tracked involve DVD's being resold at flea markets. This is a very hot item among boosters because property fences pay 20-30 cents on the dollar for most stolen property but up to 50 cents on the dollar for DVD's.

Other organized groups travel throughout the nation stealing diabetic test kits. These test kits sell for $70 to $100 each in retail establishments and are small and easily concealed. These test kits are very profitable to boosters and are desirable to fencing operations where the product is moved into the repack cycle.

There are large organized groups stealing over-the-counter medications, such as Tylenol, Advil, Sudafed, etc. While traveling, many of these groups use various shipping or mail services to ship the stolen retail property to their property fences. The property fences separate the merchandise, segregating product that is in perfect condition and shipping that product to repack warehouses. The ITF has worked cases on property fences and repack warehouses where the property has been shipped from North Carolina to New York City, South Carolina to Maryland, Florida to Ohio, Florida to Texas, Texas to California, Texas to Ohio, Texas to New York, Arizona to California, Arizona to Massachusetts, and Arizona to New York and New Jersey.

There are ongoing investigations of stolen property discovered at flea markets throughout the country. Although there may be very few vendors in a flea market who sell stolen property, these vendors have the ability to move an enormous amount of stolen property through these markets. This is not to say that flea markets are involved with stolen property. It is just a few vendors in some flea markets.

The above briefly summarizes some of the many diversified organized retail theft groups that travel throughout the country. Many other targeted products such as computers, sewing machines, sporting goods, health and beauty aids, electronics, and others, are not mentioned above.

Because state laws are often soft and there is a lack of federal laws addressing the issue, retail theft has become a high profit-low risk avenue of crime.

The types of retail theft techniques used by professional boosters are extremely diverse and there are a variety of methods used to boost product without detection. As retailers move forward by installing complex and expensive video equipment, tracking devices and theft detection systems, boosters develop new ways to defeat them. Retailers

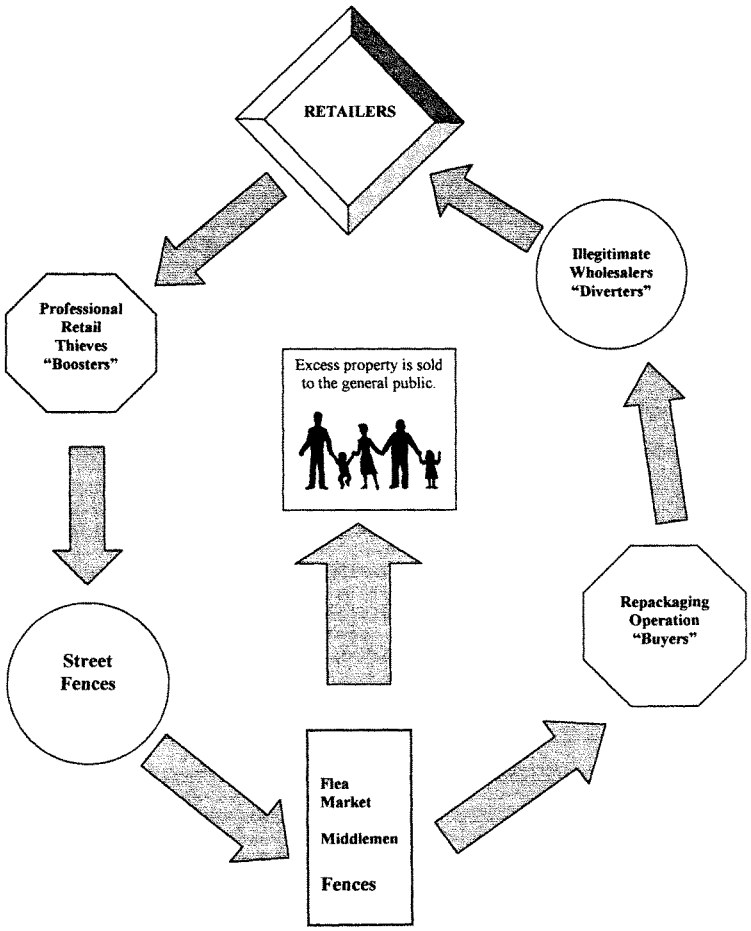
continuously provide training to loss prevention/security personnel to address methods used by professional boosters. Retailers also work with federal and state associations and law enforcement across the country to better laws that affect retail theft.

A recent Texas investigation involved a Task Force organized through the State WIC Advisory Board. This Task Force consists of local, state and federal WIC Agency personnel; local, state and federal law enforcement; retailers and retail associations; and manufacturers. The investigation carried out between the months of March and July 2003 resulted in indictments and subsequent arrests of numerous individuals. The scheme involved the theft-for-resale of infant formula. As a result of what has been accomplished in the State of Texas to impact fencing operations and repack operations, research indicates a 40% reduction in our infant formula losses in Texas since March 2003. In the scope of retail theft, this is an exceptional number. It validates that this system works.

Senate Bill 1553, the Federal Organized Retail Theft (ORT) bill, specifically targets the types of retail theft explained above. The ORT bill targets organized groups of boosters and those who knowingly buy, move and sell stolen property. State laws are often soft and jurisdictional issues cause problems, which do not adequately deal with sophisticated organized retail theft. This bill is good for retailers and good for consumers. It would have a positive impact on organized retail theft investigations and save millions of dollars for consumers.

Attachment: Flow Chart showing flow of stolen merchandise

THE PATH OF STOLEN GOODS FROM RETAIL CHAINS



Mr. SOUDER. Thank you. Hopefully, this didn't just give a big boost to the aluminum purse market. They also don't have to worry in Bloomington about all the celebrations after football wins very often, people going on a rampage unfortunately.

Mr. Carter.

Mr. CARTER. Ms. Brookshire, you talked about what WIC is doing here in Texas.

Ms. BROOKSHIRE. Yes sir.

Mr. CARTER. What about the rest of the country?

Ms. BROOKSHIRE. Well, we do know that—we do have a representative on our subcommittee on infant formula theft from the U.S. Department of Agriculture and Federal Funding Southwest Region. So he's out of Dallas. I know he communicates with his boss who communicates with D.C. about all these issues.

Right now, they're looking at the National WIC Association which is not actually a Federal agency, as you know, it's a private association, is looking at adopting the language that we wrote for our rules across the country. So they're looking, they're sharing that information with other States and hoping that they will adopt some of the same language to help deter the theft of infant formula as well.

Mr. CARTER. California is the Mecca for every kind of—we just heard $16 a can for WIC formula. If you got $5 in the theft, it wouldn't be tough to rent a truck and haul it to California, if California will take anything they can get, that's a pretty good profit.

Ms. BROOKSHIRE. Yes.

Mr. CARTER. Is this something you think we need to do at a Federal level? Have Federal laws to regulate this?

Ms. BROOKSHIRE. I think if you're going to deter the theft of infant formula across the country, it has to be concerted Federal effort, yes. Where that language would go or what laws would be enacted, I can't speak to that because I'm not really sure what would be appropriate, but I do know that just by strengthening the rules in Texas, we've really, it's been helpful and the fact that we have an entity within the Health Department that licenses the wholesale distributors and keeps a data base on them is really helpful for us because we require that now on their applications. So unless they put that on their application, we don't approve one. I know that's sort of a rinky-dink kind of thing compared to the country as a whole, but sometimes just doing those little steps helps a lot.

Mr. CARTER. Mr. Taylor, I told you nobody shops at HEB more than I do and I know you move things around a lot because I can't find them. But I will tell you that baby food is always way off in the corner some place.

Mr. TAYLOR. Yes sir.

Mr. CARTER. I've raised lots of babies. And we've heard some comments about moving things up to the front and I'll address this to both Wal-Mart and HEB. Is that what you're doing internally to put this close to where people can watch this stuff?

Mr. TAYLOR. Yes sir, we actually have gone through—it's a case of recognition and response. Once you recognize these problems, we now are re-merchandising our baby formula categories and even changing the types of fixtures we use. You can't take 15 or 20 cans in one sweep. You would have to take one at a time and we're put-

ting them up near the front of the registers where there's more traffic.

Mr. CARTER. Is Wal-Mart the same way?

Mr. MUSCATO. Yes sir. We have a lot of controls. I've never worked inside of a Wal-Mart store, but we have continuous controls, continuous counts on the product to see what's happening to it.

Mr. CARTER. Mr. Williams, do you think your bill 1553 is going to fix the nationwide, or at least address the nationwide problem?

Mr. WILLIAMS. I think it's a great start.

Mr. CARTER. Are you able to get that to us so we can look at it?

Mr. WILLIAMS. Yes sir. I think it's a great start. I just want to comment a little bit. Certainly that was one of the areas that we looked at at relocating, but retailers are also on the other side that those are clients coming into the store and we do not want to spotlight or discriminate against those clients and so if you do like with infant formula like you do with cigarettes that you lock them up and put them behind lock and key, if I'm a mother and I'm on the program and I've got to go to the front, I may not even be on the WIC program. I may just be doing Enfamil because that's what my doctor recommended and I've got to go to the front and ask a clerk to go across the store to unlock it to get my infant formula, that's not really customer-friendly and we have found that in a lot of cases.

Certainly, where the losses in the store document that we need to take some kind of drastic action, we can do that and we have done that on a short-term basis. That's not a long-term fix though.

Mr. CARTER. As a group, do you feel like the law enforcement agencies are prosecuting as effectively on this as they should be?

Mr. WILLIAMS. I think, Congressman, I have never been involved with a more team effort working toward a common goal than with this group, whether it was an Office of Inspector General with USDA or with Comptroller's Office or with DPS or Customs. The agencies, both private and public sector, came together and we all left our egos at the door to put together a complete task force to say OK, we know that there's not one quick fix out there, but what are some solutions that we can start working on and then continue to come back together to work together and we've changed since day one. There's different areas that we're looking at, ways that we can kind of all work together to move it forward. I'll tell you, that's been the best part of it.

Our concern is even though we've had a substantial impact on it, it's still $1.1 million in September and unfortunately what we've seen, we've shut a lot of the fences and the places that they laundered here, but it's moved over into Louisiana. We know that they've opened storefronts in Arkansas, for example. So we're still being—they're still stealing it here. We've just cutoff most of the storefronts. We've cutoff a lot of the laundering. We haven't prevented all of the theft yet, but we're working toward that and we're going to continue.

Mr. SOUDER. I'm still trying to understand a couple of basics. Mr. Taylor, your hypothetical example of $11.99 and you get rebated from $12, the $12 is a fixed dollar?

Mr. TAYLOR. Correct.

Mr. SOUDER. The $11.99 isn't necessarily what you pay, it isn't necessarily what you purchase it for?

Mr. TAYLOR. With the WIC program, there's a guaranteed amount that if you were stealing it off the street, you would get $5 as a booster to come and sell it off. In the WIC program, they have a guaranteed max of the $12.99 establishing that profit margin. I don't know if that helps.

Mr. SOUDER. So is the level of profit, knowing there's some very—I'm still trying to figure out the lost leader thing from earlier.

Mr. WILLIAMS. Can I explain that because it's hard to understand. You have to realize that across the board generally the wholesale cost or the price of that product, let's take a hypothetical. Let's say it's $12. And under the WIC program—the WIC program, their retail price is the same price if you and I went and bought the product. Our retail on that product may be $12.10 and we pay $12 for it. OK? A small retailer has to buy generally from a wholesaler. He can't go out——

Mr. SOUDER. Like going to Sam's Club?

Mr. WILLIAMS. Yes, like going to Sam's Club. He may actually pay $12.10 and sell it for $12.10.

Mr. SOUDER. He's trying to get traffic in the store.

Mr. WILLIAMS. Trying to get traffic in the store.

Mr. SOUDER. So there's really no profit?

Mr. WILLIAMS. Correct. Now a large retailer potentially will buy from the manufacturer direct. He still may pay $12 for it, but he's selling it for $12.10.

Mr. SOUDER. So at some point if it isn't addressed, the bottom line is that you as a retailer, if I understand this, you're basically going to be reluctant to give up front space which is your highest profit margin, presumably, people coming in and out, impulse items. That's where you want your highest profit items, not your lowest profit items.

Mr. WILLIAMS. Right.

Mr. SOUDER. You don't particularly want to have to use the labor cost which is one of your other major things to lock up something. In addition, it's nice to talk about discouraging customers, but that's another element. You don't want to discourage them from coming in and actually may encourage another market. Things that put the pressure on retail could eventually have the retailer decide between the theft, the cost of labor and where I have to put it, why should I carry it?

Mr. WILLIAMS. And we have some retailers that have dropped out.

Mr. SOUDER. Which limits access to low income people. In other words, it's potentially access.

Let me ask another question. Is there any legitimate business that sells infant formula over the Internet? In other words, do you have retailers that would sell this over the Internet?

Mr. WILLIAMS. Not that I'm aware of.

Mr. SOUDER. Is there any kind of a wholesale market from the manufacturers that if they have an overabundance of supply that they cut the cost? Are there times when you get a bargain at the rate of infant formula if somebody has overestimated market and

you can get that and that there could be other places other than theft that people could buy low income baby formula?

Mr. WILLIAMS. No. If I'm Wal-Mart and I'm buying from Lee Johnson which is the contract—manufacturer for the State of Texas, certainly I'm going to get a better price than if I'm at Joe's neighborhood grocery store, just because of pure volume. But those are the only discounts. In most cases, those manufacturers, that's a specialty product and they don't have runs on it that they then volume discount for one market to another.

We've even seen those manufacturers run extremely short with some of their contracted formula in some States and will issue notes out. We had that happen to us in Louisiana 2 or 3 months ago, 4 months ago. I don't quite remember, but they were running short on the formula, so we had to put a note out to the WIC clients or to our WIC retailers, actually, stating that formula was short and short throughout the State. Visit with customers when they come, allow them to purchase, they can purchase Enfamil instead of Simulax. Simulax is the rebated formula, in that particular case.

Mr. SOUDER. Ms. Brookshire, there's an assumption there's a health risk. Do you have actual cases of somebody who that get sick from this?

Ms. BROOKSHIRE. I don't. I don't know that there have been any to date. We're looking at this as a preventive, we're taking preventive measures because we uphold the public trust and we don't want anything to happen. But at this point I don't know of any cases where a child has been hurt or harmed by infant formula——

Mr. SOUDER. Is there any history of this? In other words, there's a presumption that it needs to be cooler for what reasons? What are the risks?

Ms. BROOKSHIRE. For powdered formula and that's what we're primarily talking about because that's what's primarily stolen, the formula itself has to be kept at a certain temperature in order to uphold the integrity of the ingredients in that formula.

Mr. SOUDER. In other words, it may not work? Or is it a health risk?

Ms. BROOKSHIRE. I think it eventually becomes a health risk, but basically the nutritional content is decreased.

Mr. SOUDER. So basically it would just be wasting the money, taxpayers would be wasting money and an individual would think that a child could have long-term subtle health damages, but not necessarily immediate. They're not going to drop over dead. They're not going to have to go to the emergency room.

Ms. BROOKSHIRE. Correct. That's my understanding. And actually it's below, the cooler temperatures that are more of the problem than the high temperatures, interestingly enough.

Mr. SOUDER. It's really interesting the concept of like what we did with drug paraphernalia laws for shoplifting or methods of distribution. When we did that law in the paraphernalia laws and trying to address some of that kind of thing, the presumption is if there is a legitimate use for a certain distribution network, collection network, that may be actually another way to crackdown on some of the cases. If somebody is coming in with something that's going to come in line with shoplifting because it is hard for some-

body who has worked in retailing, if you're working against an organized ring, it is just about impossible. It is very frustrating to try to do that. It's kind of the cost of doing business and since business, I can make an ideologic statement, businesses don't pay taxes, businesses are not an entity, they just pass it through. So you either pay your people less, you reduce the quality of your goods or you charge people more because there's no entity there with which to absorb shoplifting losses, taxes or other things. It's a pass through. The business is a pass through institution. So if we don't address that, you're going to have to deal with it one way or another. Do you have any additional questions?

Mr. CARTER. Just one. There's a special rebate for WIC, is that right?

Ms. BROOKSHIRE. That's correct. We negotiate a contract every few years with both formula companies and cereal, infant cereal companies. And we can serve almost twice as many participants because of the rebate contracts.

Mr. CARTER. How exactly does that work? You take a retail price and you add something on top of it?

Ms. BROOKSHIRE. No. Actually, frankly, it's complicated and I'm not sure I understand it completely either, but basically for every can of formula that we redeem in Texas on the WIC program, the manufacturer pays a rebate back to the WIC program.

Mr. CARTER. To the big WIC program or does that go down to the WIC merchant?

Ms. BROOKSHIRE. No, it goes back to the State of Texas WIC program so that we can serve more participants.

Mr. CARTER. Thank you. Thank you, Mr. Chairman.

Mr. SOUDER. Anything else any of you want to add? We thank you very much for this input. It's been an interesting mix of law enforcement, terrorism and the very infrequently heard problems that retailers face. And I appreciate your coming today and taking the time to testify.

With that, the subcommittee hearing stands adjourned.

[Whereupon, at 12 noon, the hearing was adjourned.]

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