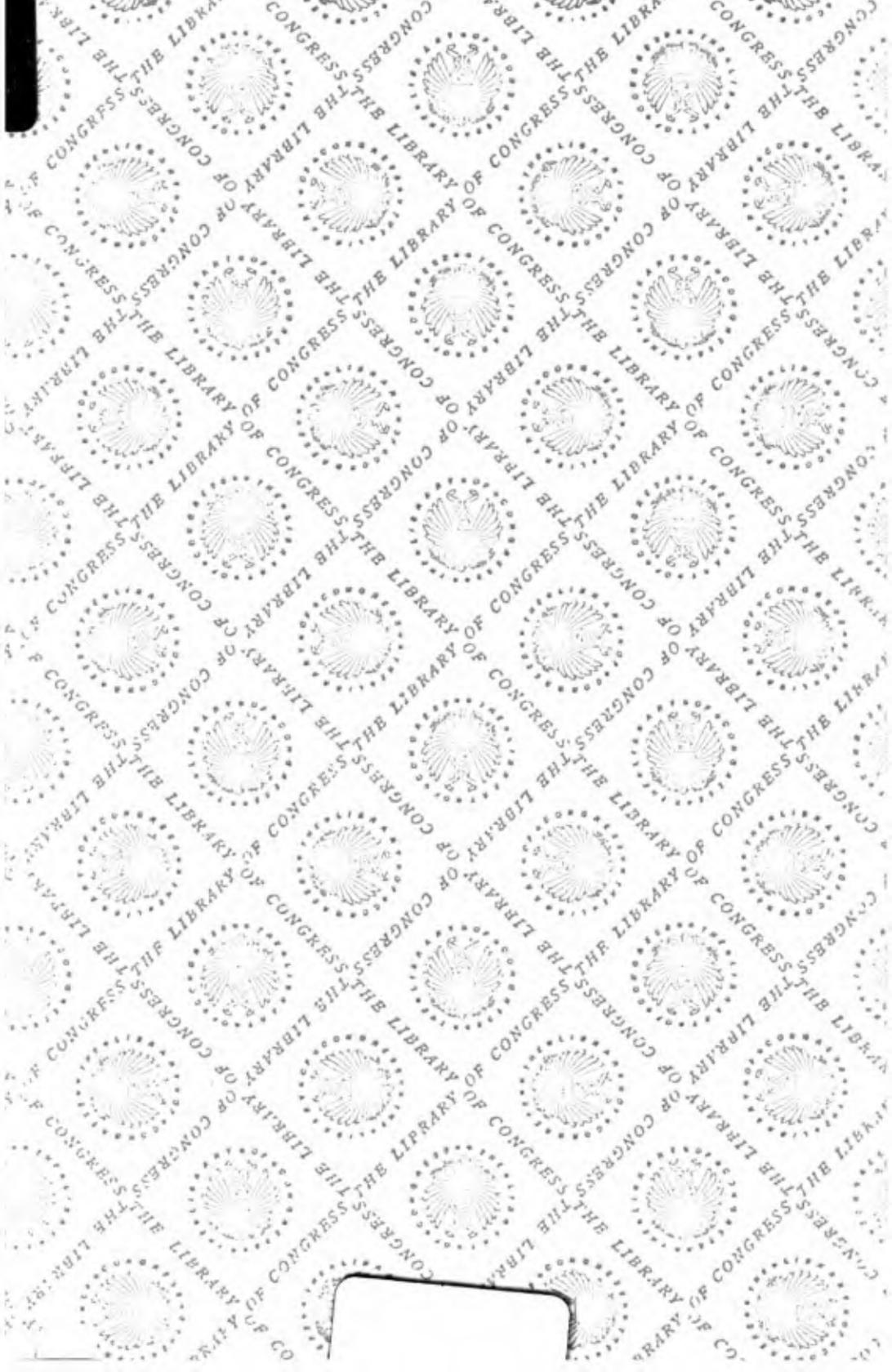
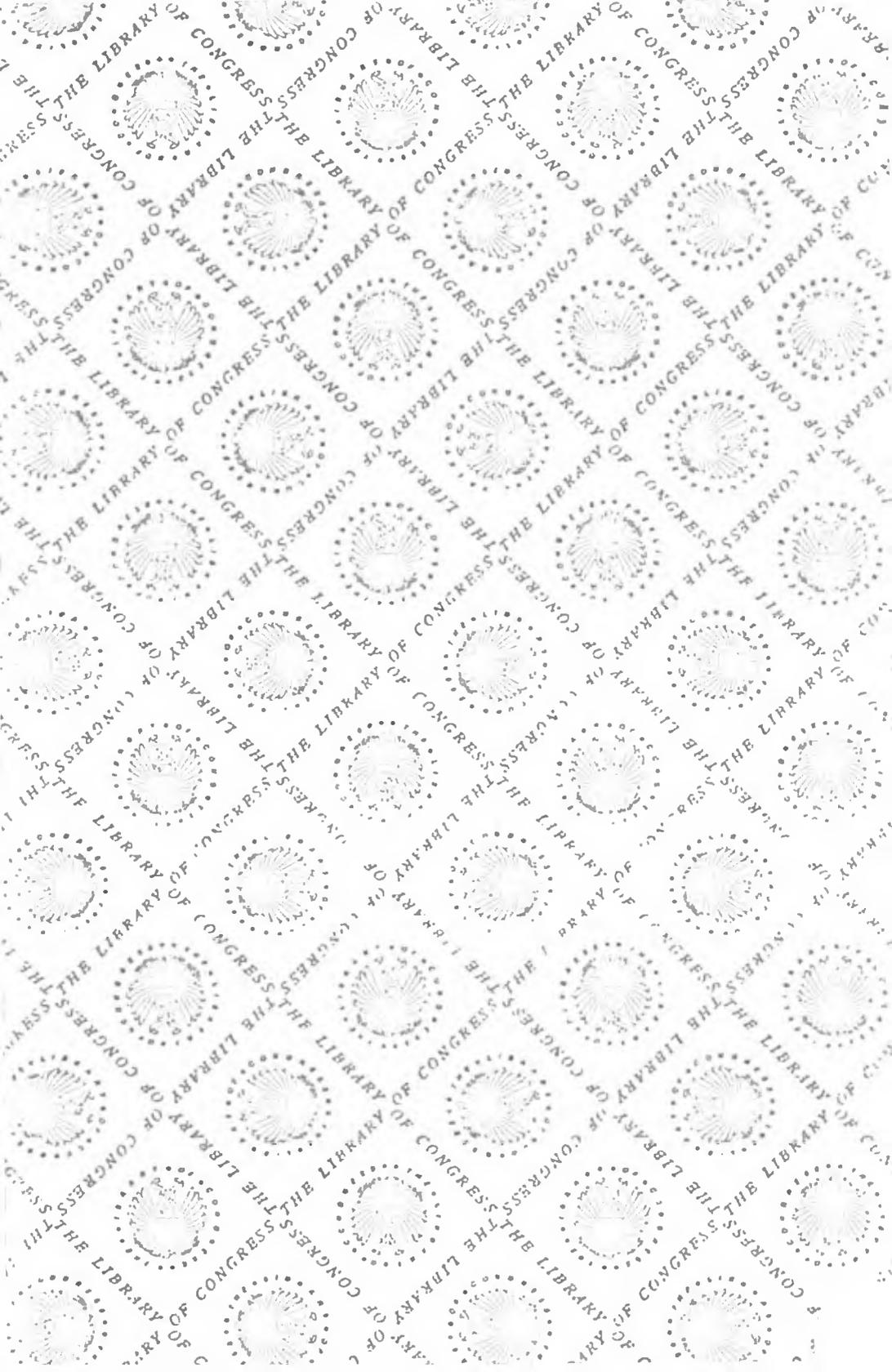


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ANTI-ARSON ACT OF 1982

HEARING
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SEVENTH CONGRESS
SECOND SESSION
ON
H.R. 6377 AND H.R. 6454
ANTI-ARSON ACT OF 1982

MAY 19, 1982

Serial No. 121



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THE ANTI-ARSON ACT OF 1982

WEDNESDAY, MAY 19, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:40 a.m., in room B-352, Rayburn House Office Building, Hon. William J. Hughes (chairman of the subcommittee) presiding.

Present: Representatives Hughes and Sawyer.

Staff present: Hayden W. Gregory, counsel; Eric E. Sterling, assistant counsel; and Deborah K. Owen, associate counsel.

Mr. HUGHES. The Subcommittee on Crime of the House Judiciary Committee will come to order.

The Chair has received a request to cover this hearing in whole or in part by television broadcast, radio broadcast, still photography, or by other similar methods. In accordance with Committee Rule 5(a), permission will be granted unless there is an objection.

Is there objection? Hearing none, such coverage will be permitted.

[The text of H.R. 6377 follows:]

1 (c) Section 844(i) of title 18, United States Code, is
2 amended by inserting "or maliciously substantially damages
3 or destroys, or attempts to substantially damage or destroy,
4 by means of fire," after "an explosive,".

Mr. HUGHES. This morning, the Subcommittee on Crime will examine a proposal to clarify the Federal jurisdiction in arson. Last week, Hal Sawyer, the ranking Republican member of the Subcommittee on Crime, Peter W. Rodino, the chairman of the Judiciary Committee, Congressman Joseph Moakley, from Massachusetts, and I introduced H.R. 6377 in response to the problem facing Federal prosecutors in the prosecution of arson-related offenses. Last month Senator John Glenn, of Ohio, introduced a similar bill, S. 2438.

These bills are necessary because section 844 of title 18, enacted as part of title XI of the Organized Crime Control Act, is limited in its applicability to arson to only those cases that are caused by means of an explosive. Our witnesses will be discussing the implications of that limitation and how the courts have construed the definition of explosive.

The proposal to make the changes set forth in H.R. 6377 and S. 2438 has really been around for some time. Last fall it was highlighted as one of the recommendations of the Attorney General's Task Force on Violent Crime. As early as 1971, the Brown Commission recommended clarification of this particular offense.

The language of H.R. 6377 was first introduced last November 19 as a section of the larger bill, H.R. 5043, which would have transferred the arson, explosive and firearms enforcement functions of the Treasury Department's Bureau of Alcohol, Tobacco, and Firearms to the Department of Justice. At a hearing on H.R. 5043 last December 16, favorable comment on the arson clarification language was received from the Joint Council of National Fire Service Organizations and a number of other witnesses.

Today we are pleased to hear from John Glenn, the senior Senator from Ohio, who has been a leader in the national effort to bring focused attention to the arson problem.

Representing the administration is Robert Powis, the Deputy Assistant Secretary of the Treasury for Enforcement. Enforcement of section 844 of title 18 is within the jurisdiction of the Treasury Department.

Testifying on behalf of the insurance industry is J. C. Mullen, vice president for property claims of the Commercial Union Insurance Cos. headquartered in Boston, Mass.

Our first witness this morning, as I indicated, is Senator John Glenn. The Senator, as the first American astronaut to circle the Earth, really needs little introduction. But I want to add that in addition to his renowned service in the U.S. Marine Corps, the Senator had extensive experience as a business executive before he was elected to the U.S. Senate in 1974. Senator Glenn has been a leading spokesman to alert the Nation to the arson problem since early in his first term.

Senator, we are delighted to have you with us this morning. We have your statement which, without objection, will be made a part of the record in full, and you may proceed as you see fit.

**TESTIMONY OF HON. JOHN GLENN, U.S. SENATOR FROM THE
STATE OF OHIO**

Senator GLENN. Thank you very much, Mr. Chairman. I am pleased to have the opportunity to testify this morning about legislation concerning Federal jurisdiction over arson. I thank you very much for your able leadership and your interest in this particular area.

I also want to thank the chairman for his leadership and interest in the continued existence and viability of the arson enforcement program of BATF—the Bureau of Alcohol, Tobacco and Firearms. BATF has led the Federal enforcement effort against the deadly billion dollar crime of arson. Legislation which will be discussed before the subcommittee today will improve the ability of this and other Federal agencies to investigate and prosecute arson offenses.

Because of my interest in combating the devastating crime of arson, I have introduced anti-arson legislation in the last three Congresses. Arson is our fastest-growing crime. It has quadrupled in the last 10 years. It is estimated that arson costs now at least \$1.5 billion a year and indirect costs of up to \$15 billion per year. It is one of the most hard-to-detect and hard-to-prosecute of any on our crime list.

Last January, I introduced S. 294, the Anti-Arson Act of 1981. Although the bill has had some setbacks in past years, I am hopeful that it will pass this year. And recently there have been indications that the Senate Governmental Affairs Committee may take favorable action on the portion of S. 294 which would require the FBI to permanently classify arson as a part I or major crime for purposes of its UCR, the Uniform Crime Reports.

Let me add that I was surprised when I got into this several years ago to find that there had been no changes made in part I crimes since they were first established some 30 years ago by the FBI. They turned that job over to the National Association of Chiefs of Police, which has kept the same format for crime reporting, without change, up until the time we mandated by legislation that arson be put on as a part I crime. That mandate is temporary now, and we need to make it permanent with this legislation.

With arson as the fastest-growing crime, it is ridiculous that it would still be considered in the same category as public drunkenness and vagrancy and minor crimes like that. You could literally go to New York, torch the World Trade Center, kill a thousand people in the process, and it would not be considered as serious a crime, however, if you went down below, stole a car, went joy-riding around Manhattan awhile, drove over to New Jersey and left the car—that would be a part I crime. Conversely, torching the World Trade Center would not be a “part I” crime.

So, I think we have to classify arson as a part I crime, so that we start gathering the statistics on it, so we know the enormity of the problem, and then, hopefully, we can deal with it. Crimes that are on the part I crime list are the ones that get the most attention, they get the most money advanced for them, they have the most programs set up to deal with them, whether it is at the Federal, State, or local levels. Accordingly, I hope the subcommittee will consider a similar provision in connection with its work here today.

In April, I introduced S. 2438. This bill would amend title 18 of the United States Code, subsection 844 (f) and (i), to add the words "or fire" after the word "explosive" where it appears in those subsections.

Currently, Federal jurisdiction extends over arsons started by an explosion where property used in or affecting interstate or foreign commerce is involved. The bill would allow Federal law enforcement agencies to investigate and prosecute arsons started by fire as well as by explosion.

The bill would not make arson a Federal crime except where it involved property used in or affecting interstate or foreign commerce, or Federal property. Thus, the bill represents only a minimal expansion of current Federal jurisdiction.

If S. 2438 is enacted, it would eliminate problems of proof that often arise when gasoline or other flammable liquids are used to start arson fires. It would also resolve a split of authority among several U.S. circuit courts of appeals wherein the ninth circuit has held that Federal jurisdiction does not exist over arson.

S. 2438 follows the recommendation of the Attorney General's Task Force on Crime. The aim of S. 2438 is also supported by the administration.

I ask that my statement introducing S. 2438, which was reprinted in the April 27 Congressional Record, be included in the record at the conclusion of my remarks.

Mr. HUGHES. Without objection, so ordered.

Senator GLENN. H.R. 6377, which the distinguished chairman recently introduced, is similar to S. 2438. The bill would amend subsections (e), (f), and (h)(1) by adding arson to the offenses set forth in those subsections—offenses which involve explosive materials. The bill would also amend subsection 844(i) to add arson which "maliciously substantially damages or destroys . . ." Subsection 844(i) proscribes the use of explosives to damage or destroy property used in or affecting interstate or foreign commerce.

While I support the thrust of H.R. 6377, I am a little afraid that the wording of section 2(c) may result in inconsistent interpretations by the courts. Specifically, the term "substantially" is somewhat vague, and what might appear "substantial" to one court, or jury, may not appear so to another. Further, it is unclear how jurisdiction would be determined under this standard; that is, whether it would depend on a certain amount of financial loss, a certain percentage of property destruction, or upon some other measure.

I will not go further on this matter, except to point out that the previously mentioned split of authority highlights the potential for confusion in this area. I hope there are other witnesses here today who will be able to shed additional light on this subject.

I thank you very much, Mr. Chairman, for your courtesy in permitting me to testify this morning.

[The attachment to Senator Glenn's statement follows:]



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 97th CONGRESS, SECOND SESSION

April 27, 1982

CONGRESSIONAL RECORD — SENATE

S 4059

FEDERAL JURISDICTION OVER ARSON

Mr. GLENN. Mr. President, the bill that I am introducing today would amend title 18 of the United States Code, SEC. 844 (f) and (j) to add the words "or fire" after the word "explosive" where it appears in those subsections. Currently, Federal jurisdiction extends over arson started by an explosion where property used in or affecting interstate or foreign commerce is involved. The bill would allow Federal law enforcement agencies to investigate and prosecute arsons started by fire as well as by explosion, the bill would not make arson a Federal crime except where it involved interstate or foreign commerce. Thus, the bill represents only a minimal expansion of current Federal jurisdiction.

The bill follows the recommendation of the Attorney General's Task Force on Crime. Recommendation 27 states as follows:

In order to eliminate problems that often emerge when gasoline or other flammable liquids are used in arson, current legislation which gives Federal jurisdiction over arson started by explosion where interstate commerce is involved should be amended to allow Federal law enforcement agencies to investigate and prosecute arson started by fire as well as by explosion.

The administration also supports the aim of this legislation. I ask unanimous consent that the applicable portion of the October 23, 1981 statement by William French Smith on violent crime be placed in the record at the conclusion of my remarks.

For purposes of section 844, "explosive" is broadly defined by subsection 844(j) to include, not only explosives in the generic sense, but incendiary devices and chemical compounds, which when mixed with an oxidizer may cause an explosion. However, whether jurisdiction exists in a particular case often depends upon the use of a substance, such as gasoline, with an oxidizer, in quantities sufficient to cause an explosion.

By eliminating the technical distinction between explosives and fire, the bill will facilitate the investigation and prosecution of arsons, particularly those started by gasoline or similar substances. The elimination of this distinction will obviate the necessity of proving that at the time an arson was committed, such a substance was in an explosive state. Quite often this is an onerous task requiring considerable investigative time and effort and resulting in a number of investigations being dropped where it cannot be established.

Moreover, it is inappropriate to predicate Federal jurisdiction on such a technical distinction. Whether a fire is started by an explosion or gasoline,

the result is the same: A fire damages or destroys property used in or affecting interstate or foreign commerce.

In addition to the aforementioned problems, there is a split of authority among the U.S. Circuit Courts of Appeals over the definition of "explosives" contained in section 844(j). The bill that I am introducing today will resolve this conflict by making it clear that Federal jurisdiction exists over explosions or arsons involving the interstate or foreign commerce.

The Courts of Appeals for the 7th, 8th, 10th, and 11th Circuits have broadly defined the term "explosives" and, in recent decisions, have upheld convictions under section 844(j) which were based on the exercise of Federal jurisdiction over arson involving interstate or foreign commerce. Conversely, the ninth circuit, most notably in *United States v. Gere*, 622 F. 2d 1291 (9th circuit, 1981) and *United States v. Birchfield*, 486 F. Supp. 137 (M.D. Tenn., 1980), has construed the term narrowly and held that Federal jurisdiction should not be broadened to reach arson cases.

In the most recent case to decide the issue, the Court of Appeals in *United States v. Ladlad*, — F. 2d — (Nos. 80-2822 and 80-2826, April 14, 1982), distinguished the *Gere* decision on the facts and found the reasoning in the *Birchfield* decision unpersuasive. In *Ladlad*, the court determined that:

The legislative history indicates that Congress intended to define broadly the term "explosive" for purposes of the malicious use of explosives sections of the Organized Crime Control Act. (E.g., 18 U.S.C. 844).

Subsequently, the court held that: Naptho-soaked newspapers strategically spread across the floor of a building for the purpose of directing a fire and igniting a burning newspaper is an "explosive" or "incendiary device" as defined in 18 U.S.C. 844(j) and 18 U.S.C. 2385 for the purpose of prosecution under 18 U.S.C. 844(i).

The *Ladlad* opinion contains an excellent discussion of the case law concerning the definition of "explosives" under section 844(j). I ask unanimous consent that a copy of the decision be printed in the Record at the conclusion of my remarks. I also ask unanimous consent that case summaries of pertinent ninth circuit decisions be printed in the Record. These summaries underscore the need to enhance Federal law enforcement efforts being directed toward the crime of arson.

Mr. President, before I conclude, I want to briefly address the issue of Federal jurisdiction over arson in connection with the Criminal Code Reform bill—S. 1630.

Section 1701 of S. 1630 provides that "a person commits an offense (of arson) if, by fire or explosion, he damages a public facility, building or structure. Under subsection (e)(8), jurisdiction exists where—

The property that is the subject of the offense is used in an activity affecting interstate or foreign commerce, and is damaged by a destructive device.

Section 111 of the proposed reform bill defines "destructive device" to include an "explosive" or an "incendiary material." Section 111 defines the term "explosive" to mean "a chemical compound, a mechanical mixture . . . that may be exploded by operation of fire, friction, concussion . . . or any other means." Section 111 does not define the term "incendiary material." However, the Senate Judiciary Committee addressed the meaning of the term in its report to S. 1630. At footnote 23 of the report at page 844, the committee stated that:

The term "destructive device" is defined in Section 111. It specifically includes, inter alia, an "incendiary material," so as to assure coverage of all kinds of flammable substances that may be used in the course of arson. This definition therefore encompasses explosive liquids such as gasoline and kerosene, which some courts have held are outside the ambit of "explosive" in 18 U.S.C. 844(j).

See Senate Report 97-307. While the committee has attempted to clarify that the term "destructive device" embraces certain arson fires, the language quoted in the footnote lacks the force of law. Moreover, the proposed statutory language is unclear on its face.

Thus, the proposed statutory and report language are susceptible to the same kind of misinterpretation that led to the previously mentioned split of authority among the Circuit Courts of Appeals. In *Ladlad*, the court stated "the legislative history indicates that Congress intended to define broadly the term 'explosive'; in *Birchfield*, the court stated that "the legislative history in no way indicates any congressional intent to extend Federal jurisdiction over arson cases"—the court

refused to exercise jurisdiction "unless Congress conveys its purpose clearly . . ." (followed in *Gere and United States v. Stogner*, — F. 2d — (9th Cir. No. 80-271, March 17, 1931)).

When S. 1830 comes up for consideration by the Senate, I will seek to make it clear that S. 1830 provides for Federal jurisdiction over arson involving property which is used in an activity affecting interstate or foreign commerce. To accomplish this, I may, if necessary, seek to amend S. 1830, that is, to add the language of the bill I am introducing today or to add to section 111 an appropriate definition of the term "incendiary material."

There being no objection, the material was ordered to be printed in the Record, as follows:

FORWOM OF — EN 23, 1931, STARD

Arrued September 14, 1931—Decided April 14, 1932.

Before Bauer, Circuit Judge, Fairchild, Senior Circuit Judge, Baker, District Judge,¹

Baker, District Judge. The defendants, Ana Erika Arrillo-Ladlad and Lawrence J. Fleming, were convicted under 18 U.S.C. § 171 of conspiracy to damage and destroy, and attempting to damage and destroy, by means of an explosive, property used in an activity affecting interstate commerce. They were also convicted of the substantive offenses under 18 U.S.C. § 844(i). A confederate, Jeffrey D. Bennett, was also indicted but pled guilty and became a witness for the government. . . .

On appeal, Arrillo-Ladlad and Fleming contend that 18 U.S.C. § 844(i) is not applicable to the facts of this case and that the defendants were improperly convicted under that statute. We affirm.

entering the premises Popjoy saw almost total destruction, bent pipes, charred and blown out windows, and warped, bent and twisted office equipment. A chandelier on the floor above was almost completely melted.

Inspector Thomas Kerner of the Chicago Bomb and Arson Squad testified for the government. From his observation of the United Latino's premises, Kerner believed that an accelerant had been spread about the premises and that vapors from the accelerant had been contained in the lower portions of the room either by the heat or humidity of the room, and that the vapors had been simultaneously ignited in an "explosive-type fire of rapid oxidation."

¹Thomas Conner, an

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The question that confronts us is whether naphtalene soaked newspapers strategically spread across the floor of a building for the purpose of directing a fire and ignited by a burning newspaper is an "explosive" or "secondary device" as defined in 18 U.S.C. § 844(i) and 18 U.S.C. § 232(b) for the purpose of prosecution under 18 U.S.C. § 844(i).

The government has two theories: first, that the defendants used a "chemical compound, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, . . . that ignition by fire . . . of the compound, mixture or device or any part thereof may cause an explosion,"

Appeal from the United States District Court for the Northern District of Illinois. No. 80 CR 387—Frank J. McCarr, Judge.

¹ Footnote at end of article.

April 27, 1982

CONGRESSIONAL RECORD — SENATE

S 4061

18 U.S.C. § 844(f); second, that naptha soaked newspapers are a device similar to an "incendiary bomb." 18 U.S.C. § 238(b)(C). Agrillo-Ladino and Fleming argue that Congress did not intend the term "explosive" as used in 18 U.S.C. § 844(f) to include devices such as naptha soaked trailers.

The plain meaning of the language of Title XI of the Organized Crime Control Act of 1970, the legislative history of the Act, the testimony at trial of Thomas Conner, and the case law all support the government's position that naptha soaked newspapers constitute an explosive under the terms of the Act. Pub. L. No. 91-482, 84 Stat. 922 (1970). The device used by defendants contained an "oxidizing" unit, the air in United Laid's trailer contained a "combustible" unit, the naptha vapors, trailers of newspapers, and a rolled newspaper. The "quantity" of the oxidizing unit and combustible unit caused an "explosion" when Bennett ignited the device "by fire." The defendants argue, however, that the spreading of naptha on the trailers is not a spreading, mixing or packing as these terms are commonly used.

In determining whether Congress intended to include naptha soaked trailers from the term "explosive," the language used in Title XI of the Organized Crime Control Act of 1970 must be studied. 34 J. Statist. and Statistics and Statistical Construction § 43.05 at 18 (4th ed. 1973). Title XI provides two independent definitions of the term "explosive."

Section 844, subsections (d) through (f) of Title XI created new federal criminal offenses for maliciously using or attempting to use or threatening to use explosives against prohibited targets, including commercial properties. Section 844(f) defines the term "explosive" for purposes of section 844(f) and other sections dealing with malicious use of explosives.

For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section, the term "explosive" means gunpowder, powder used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents, smokeless powder, other explosive or incendiary devices within the meaning of paragraph (b) of section 233 of this Title and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible mixts, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

18 U.S.C. § 844(f).

Section 233(b), which section 844(f) incorporates by reference further defines the term "explosive or incendiary device" as follows:

The term "explosive or incendiary device" means (A) dynamite and all other forms of high explosives, (B) any explosive bomb, grenade, missile, or similar device, and (C) any incendiary bomb or grenade, fire bomb, or similar device, including any device which (i) consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and (ii) can be carried or thrown by one individual acting alone.

18 U.S.C. § 233(b).

Section 841(d) of the Act gives a much narrower definition of the term "explosive" for the purpose of regulating the traffic of explosives:

When the language of a statute is unambiguous, judicial inquiry ordinarily is at an end. *Consumer Product Safety Comm. v. GTE Sylvania*, 447 U.S. 102, 108 (1980). Despite the seeming clarity of section 844(f), the legislative history of the Organized Crime Control Act should be examined to determine whether an extension of federal involvement is warranted. See *United States v. Swanson* 410 U.S. 398, 411 (1973). The hearings held by Subcommittee No. 8 of the House Committee on the Judiciary and the report of the House of Representatives support the government's position that, when used with malicious intent, petroleum distillates mixed with air at normal ambient temperatures have an explosive potential and that the naptha impregnated device used in this case falls within the definition of explosive.

Congress provided two separate definitions for the term explosive "for the purpose of including incendiary devices within the meaning of section 844(f) through (i), and to make the exceptions applicable to the regulatory provisions of this chapter inapplicable to these sections." H.R. Rep. No. 91-1848, 81st Cong., 3d Sess., at 78, reprinted in (1970) U.S. Code Cong. & Ad. News 6097, 6047. During the hearings, members of Congress repeatedly expressed concern with respect to the difficulty in controlling the malicious use of common materials such as gasoline, other flammable liquids, and ammonia on farms, without overburdening fishermen, farmers, and people engaged in legitimate manufacture, transportation, distribution and use of such materials. Two bills were considered. One, Congressman Celler's bill, H.R. 17154, had a broad definition of explosive. The other, an administration bill, H.R. 18873, had a narrower definition of explosive. See, e.g., Hearings on H.R. 17154, H.R. 18873, H.R. 18670, Before Sub-Comm. No. 8 of the Comm. on the Judiciary, House of Rep., 81st Cong., 3d Sess., at 64, 164, 133 (1970).

The bill which emerged from the committee spoke to these concerns. The bill adopted the language of the administration bill in its definition of "explosive" for the regulatory provisions and added certain exceptions. For the provisions relating to the malicious use of explosives, the bill adopted the broad definition of the term "explosive" contained in the Celler bill.

In the hearings Congressmen expressed special concern about the damage to federally owned buildings caused by arson. In testimony explaining the administration bill, Assistant Attorney General Will R. Wilson noted that federal jurisdiction had already covered the area of arson: "Existing law furnishes a basis for Federal investigative and prosecutive action in certain cases of destruction or threats of destruction by arson."

(However, it is inadequate in many important ways." Id. at 28; see also id. at 294. In addition to the Congressman's recognition that Title XI could apply in instances of arson, the legislative history indicates that Congress clearly anticipated an overlap in federal and state jurisdiction. The House Report described the purpose of Title XI as "to assist the States to more effectively regulate the sale, transfer and other disposition of explosives within their borders." H.R. Rep. No. 91-1848, 81st Cong., 3d Sess., at 34, reprinted in (1970) U.S. Code Cong. & Ad. News 6097, 6011. In his statement explaining the administration bill, Assistant Attorney General Wilson addressed this overlap as follows:

We recognize that the provisions of this bill will, to a large extent, cover areas presently covered by State law. We do not intend that the Federal Government substitute for the enforcement activities of State

and local authorities in this area. We have, therefore, included in the bill a previous subsection (h), generally similar to present section 87(f), expressing Congress' intention that this statute not be construed as preempting State law or depriving State or local law enforcement authorities of their responsibilities for investigating and prosecuting crimes involving the use of explosives.

Indeed, it is evident that the Federal investigative and prosecutive authority contained in the bill must be used selectively. The provisions of the bill have been drawn broadly so that prosecutions need not hinge on such essentially artificial lines as whether the explosive were derived across State lines. However, the bill's prohibitions cover many acts of violence of predominant local concern. It is not intended that Federal law enforcement authorities should investigate and prosecute every crime viewed as a Federal offense. We do not have the resources to do so. . . . This flexibility will enable us to achieve maximum protection of effort and to insure that Federal law enforcement assets are not duplicated in the efforts of State and local officials in dealing with crimes involving explosives.

... Now is a substitute for vigorous State action. It is, however, necessary to give us the tools we need to prosecute the terrorist and to urge your prompt and favorable action.

Hearings on H.R. 17154, H.R. 16970, H.R. 18772 Before Subcomm. No. 8 of the Comm. on the Judiciary, House of Rep., 81st Cong., 3d Sess., at 34, 38 (1970) (emphasis added).

The legislative history indicates that Congress intended to define broadly the term "explosive" for purposes of the malicious use of explosives sections of the Organized Crime Control Act, that Congress realized that state and federal jurisdiction would overlap in certain instances, such as arson cases; and that simple devices using common substances could be used to create an explosive within the meaning of the Act. The legislative history supports the plain meaning of the language contained in the Act. Moreover, the legislative history supports the proposition that naptha soaked newspapers when ignited by fire are an explosive for purposes of the malicious use provisions of the Act.

IV

The Eighth Circuit, the Tenth Circuit and the Eleventh Circuit have had occasion in recent decisions to pass upon the validity of prosecutions under section 844(f). In *United States v. Hepp*, 654 F.2d 856 (8th Cir. 1981), a random mixture of air and methane gas was held to be an explosive within the meaning of 18 U.S.C. § 844(f). In *Hepp* the defendant and his friends were gathered in the defendant's gas station drinking and talking turns shooting a useless loading pistol. The defendant Hepp shot a hole in the natural gas (methane) meter in the basement of the station. When one of the drinking party turned the gas off, Hepp directed that it be turned back on and opened a window at the top of the stairs leading to the basement. Hepp then left the filling station on a service call and during his absence the mixture of methane gas and the surrounding air was ignited by a spark of unknown origin resulting in an explosion which destroyed the filling station. In rejecting Hepp's contention that the methane gas air mixture was not an explosive within the meaning of 18 U.S.C. § 844(f), the Eighth Circuit relied both on the uncontroverted opinion of the government's expert witness that methane and oxygen are a mechanical mixture and upon the language of

April 27, 1982

CONGRESSIONAL RECORD — SENATE

Mr. Rosten: Mr. Wilson, I have before me a news article from the New York Times, dated April 26, 1978, which makes reference to some 20 explosions in 4 months in Seattle, Wash. The article goes on to say city officials requested help from the Federal Bureau of Investigation. "The request for assistance from the FBI appeared routine enough at the outset, but that, too, has turned into a controversy that has further confused the picture. The FBI has refused to enter the investigation saying that it has no further jurisdiction. City officials disagree."

I am wondering, first of all, does this bill, H.R. 1844, cover a situation such as that? If it is true that the FBI would not have interceded because they lacked jurisdiction, and the matter couldn't be resolved at the Federal level, will the bill that we have before us counter the situation?

Mr. Wilson: It would expand the basic jurisdiction of the Federal Government, and consequently the FBI to these things.

See also at 69 (Representative Poff):

Mr. Poff: Thank you, Mr. Chairman. I want to record myself as sympathetic with the sentiments the chairman expressed a moment ago with respect to those situations which involve a duality of jurisdiction. . . . In most cases, even if this legislation were passed in its present form, the needed remedy would be subject to the prescription of a specific explosive, arson, or said the status of the State.

See also at 73-75 (Senator, General Counsel, and Mr. Wilson):

Mr. Senator: . . . (Page 4 of H.R. 1844, subparagraph (F) proposes to make a Federal crime of what I earlier in my House crime is just about every jurisdiction of the country that is, the malicious damage and destruction of any business property.

Now, if Federal resources are limited why propose such a broad Federal statute in an area where State criminal law already applies?

Mr. Wilson: . . . (The whole enforcement here would be limited to rather selective situations and we do not have the resources to undertake this across the board, but this would give us the jurisdiction where we need it in a particular situation that we don't have now, and we do feel the need for that.)

"The restrictive language defining 'explosive' in the Michigan Motor Vehicle Code is similar to the language defining 'explosive' in the regulatory provisions of the federal legislation. See *Supra*, note 4.

(The following cases are indicative of why this type of legislation is critically needed to enhance Federal law enforcement efforts being directed toward arson crimes)

UNITED STATES v. CHARLES ERNE STROEMER AND CHARLES W. MILLER; U.S. DISTRICT COURT OF SOUTH CAROLINA, Columbia District
(Criminal Action No. 80-371; Filed: March 17, 1981)

On August 4, 1980, a furniture warehouse in Sumter, South Carolina, was completely destroyed by arson. At the time of the incident, the building was being leased by a moving and storage company. Destroyed in the fire were an estimated 300,000 pounds of personal goods belonging to our military personnel who were overseas. The loss to the building and contents was placed in excess of \$1 million.

An investigation by the Bureau of Alcohol, Tobacco and Firearms revealed that an individual had paid two arsonists a sum of \$500 to torch a competitor's business who had refused to go along with fixed moving rates.

Two persons were subsequently indicted by a Federal Grand Jury on charges of violating 18 U.S.C. § 844(i). A third person, who was one of the torches, confessed to his role in the crime and became a Government witness. During the judicial proceedings, he provided damning evidence against his confederates. In other words, the Government had developed a solid case.

The defendants made a pre-trial motion to dismiss the indictment on grounds that it failed to allege facts that constituted a Federal offense. Thus, the court inquiry nar-

UNITED STATES v. JYRONE LEO BRIDGEMAN AND JOSEPH PAUL GOTTENBERG
(486 F. Supp 137 (M.D. Tenn. 1980))

A second example involves a case out of the Middle District of Tennessee. On October 18, 1978, Rene's New and Used Furniture Store located near Clarksville, Tennessee, was destroyed by arson. Evidence developed by ATF disclosed that the owner of the business had paid an arsonist a sum of \$3000 to torch the furniture store for the purpose of fraudulently collecting insurance proceeds. Evidence disclosed that on the night of the fire, the arsonist and another individual entered the furniture store by chopping a hole in the roof of the building. After pouring gasoline throughout the store and returning to the roof, they ignited the fuel by dropping a flaming piece of paper through a hole in the roof. The owner and torch were subsequently indicted by a Federal Grand Jury on criminal charges including 18 U.S.C. § 844(i).

The defendants argued that using a flaming paper to ignite gasoline poured throughout a building did not constitute the "means of an explosive" contemplated by the statute. The court accepted the defendant's argument and stated that in the absence of clear statutory language or a compelling legislative history it must assume that Congress, in enacting 18 U.S.C. § 844, did not intend to exert Federal jurisdiction over this type of case.

UNITED STATES v. HAROLD GERE
(863 F.2d 1281 (9th Cir. 1981))

The final case perhaps most tragically reflects the importance of this piece of legislation. During May 1978, a fire occurred in a building owned by a Harold Gere, which housed two of his businesses. Although the building's sprinkler system substantially extinguished the fire, there was a "flashover" resulting in the death of a Los Angeles firefighter. Twenty-four other firemen were injured. Damages were placed at \$1.8 million. Gere was subsequently indicted and convicted in district court in connection with the arson of his property.

Gere appealed his conviction to the Ninth Circuit Court of Appeals alleging error in the application of 18 U.S.C. § 844(i), arguing that it was not meant to be a Federal arson statute.

On November 12, 1981, the ninth circuit agreed with the defendant's argument that § 844(i) should be narrowly construed. It held that the purpose of the section was to protect buildings against the specific evil of bombings and that there was no indication that it was meant to overlap State arson laws. In effect, this decision limits the application of the statute to incidents involving Molotov cocktails or conventional explosive devices.

Mr. HUGHES. Thank you very much, Senator.

The chair recognizes the gentleman from Michigan.

Mr. SAWYER. I would just like to congratulate you on your bill. As a matter of fact, I think I was the one who initially got the classification of arson changed by putting an amendment on a Justice Department authorization in the full Judiciary Committee.

I agree with you. It was rather strange that much more minor crimes than arson were classified as class I offenses. I can also assure you as a former prosecutor that the classification does make a difference psychologically—much like classifying something as a misdemeanor or a felony. It is pretty hard to get any attention while it's a misdemeanor. It gets plenty when it's a felony.

Senator GLENN. Some years ago we had our first hearing on this: It was interesting in that the International Association of Chiefs of Police were very much against making any changes. We had some of the fire chiefs come in—for example, the fire chief of New York. He then described what a competitive area this is among law enforcement agencies. According to the chiefs, there has apparently been a lot of jealousy back and forth and a lot of competition for funds. His thesis was that the chiefs of police were not about to change the UCR reports because it might reflect a change in allotments of money to them if they elevated or raised arson to major crime status. In other words, would take away from those crimes which the chiefs of police were normally responsible for investigating.

Mr. SAWYER. It's a shame. Sometimes we get that in the law enforcement area, where apparently a big measure of police efficiency is how many felony arrests per manhour they make. That is how they gage how well they are performing. Once you put the emphasis on that—for example, if you made marihuana a felony, you would have the police spending all their time on the college campuses, while ignoring all organized crime, where you get very few felony arrests per manhour. So it is unfortunate that we do get diverted. I never thought of this, but I guess maybe there is some merit to it.

Thank you very much for taking the time to come over.

Mr. HUGHES. Senator, I, too, want to congratulate you on your tremendous leadership in this area. I think you made an excellent point, and I quite agree with you, that we probably ought to be looking at S. 294 also. This committee probably doesn't have jurisdiction. We don't have direct jurisdiction over the FBI, but that is something that I will take a look at.

I think it is ludicrous that we do not classify arson as one of the part I or major crimes for purposes of statistical collection and reporting.

Senator GLENN. Mr. Chairman, it is now, but it is temporary. We don't have it locked in permanently yet.

Mr. HUGHES. There should be no question about it, that it should be included.

Of course, I don't have to tell you, as the economy turns downward and bankruptcy filings increase, the incidence of arson almost seems to track the economic downturn, so arson becomes extremely important in these downturns.

I also have noted your comments relative to the word "substantial." I might just say to you in response that there are a number of areas in the criminal code where we use the term "substantial." It's a word of art. For instance, in the guidelines for the Justice Department we use the term "substantial Federal interest." In the kidnaping statute we use the term "substantial." We use it in aggravated sexual assault, and there is a large number of offenses where we use the term "substantial." It gives the Justice Department some degree of flexibility on the issue. That's what we are talking about. We have noted your constructive suggestions and we are indebted to you.

Senator GLENN. Thank you very much.

Mr. HUGHES. The Subcommittee on Crime is now pleased to welcome Robert Powis, the Deputy Assistant Secretary of the Treasury for Enforcement, who was named to that position in June of 1981, and who is no stranger to this subcommittee.

Mr. Powis previously served in the U.S. Secret Service as a special agent for some 26 years, most recently as the Assistant Director for Investigations. He has, in addition to his positions at the Secret Service Headquarters, served in numerous field positions, including special agent in charge of the Los Angeles field office, SAC of the Baltimore office, and SAC of the Scranton office, and in all of which places I trust life probably wasn't quite as complex as it is today, Mr. Powis.

Mr. POWIS. You're right, Mr. Chairman.

Mr. HUGHES. Well, we are delighted to see you again.

We have your statement which, without objection, will be made a part of the record. You may proceed as you see fit.

TESTIMONY OF ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY; ACCOMPANIED BY ROBERT E. SANDERS, ASSISTANT DIRECTOR FOR CRIMINAL ENFORCEMENT, DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

Mr. POWIS. Mr. Chairman, Mr. Sawyer, I welcome the opportunity to appear before you this morning to discuss H.R. 6377, a bill to amend section 844 of the Organized Crime Control Act of 1970 with respect to the crime of arson.

I am accompanied this morning by Mr. Robert Sanders, the Assistant Director for Criminal Enforcement in the Bureau of Alcohol, Tobacco and Firearms, who has also submitted a statement for the record.

I will attempt to summarize the statement which I have submitted.

Mr. HUGHES. We would appreciate that.

Mr. POWIS. ATF is the arm of Treasury which is actively engaged in the investigation of arson incidents which violate Federal statutes. ATF's participation in the investigation of an arson incident is predicated on the fact that there has been either a violation of the Gun Control Act of 1968 or of the 1970 Organized Crime Control Act.

Title XI of the Organized Crime Control Act of 1970 provides clear sanctions against those individuals charged with the destruc-

tion of certain types of property by the use of "explosives." Incorporated in this legislation is a statutory definition of "explosives" that addresses three basic categories of explosive materials. The last two categories are commonly applied in arson-related charges. The second type described by the statute is classified as "incendiary devices," and molotov cocktail would be included under this section within the meaning of the term "incendiary devices."

The final category of explosives included under the definition is referred to as "mechanical mixtures" that contain the proper ratio of oxidizing units that could cause an explosion. Under this provision, it is necessary to establish that there was a proper fuel-air mixture that, when ignited, might cause an explosion.

The Organized Crime Control Act of 1970 restricts Federal jurisdiction over explosives to arsons directed at property used in interstate or foreign commerce or affecting such commerce. ATF has focused its resources in the arson area on those schemes involving commercial premises affecting interstate or foreign commerce perpetrated by organized crime or members of organized "arson rings" where the problem is beyond the scope of State and local authorities to handle, either because of a lack of jurisdictional authority or sufficient investigative resources. It is submitted that this is the proper role for the Federal Government in arson investigations. The crime of arson is, indeed, basically a State and local problem and must be primarily handled at that level. However, it must also be recognized that arson-for-profit schemes are frequently complex, multijurisdictional and geographically unconfined in nature. State and local authorities often do not have the jurisdictional authority or sufficient investigative resources to deal actively with arson crimes of this magnitude.

There is a problem with the Federal prosecution of arson incidents under subsection 844(i) of the Organized Crime Control Act. The problem is that some courts have construed the term "explosives" appearing in 844(i) very narrowly and have held that this section does not encompass arson cases. The Ninth Circuit Court of Appeals adopted this narrow construction in the case of *U.S. v. Gere*. Other circuits, namely the Seventh, Eighth, Tenth and Eleventh, have upheld convictions under section 844 in this type of case, although in only the Seventh Circuit case was the issue of congressional intent extensively discussed. In recognition of this problem, the Attorney General's task force on violent crime made the following recommendation: In order to eliminate problems that often emerge when gasoline or other flammable liquids are used in arson, current legislation which gives Federal jurisdiction over arson started by explosives where interstate commerce is involved should be amended to allow Federal law enforcement agencies to investigate and prosecute arson started by fire as well as by explosion.

H.R. 6377 would help to solve the problem which exists. This bill would clearly spell out the fact that damage caused by both explosives and arson would fall under the purview of 844(i). We do, however, have some concern with certain language in H.R. 6377. This concern deals with the reference to the term "substantially damages or destroys." Our concern is that the term "substantial" may be ambiguous and may possibly impede prosecution since the

courts may have due process concerns with respect to vagueness. We are concerned that the Federal effort in the fight against arson may eventually again become hampered by a technicality in the statute which allows arsonists to escape prosecution.

It is submitted that a solution to this problem could be accomplished by eliminating the language "substantially damages or destroys," and by simply adding the words "or fire" to subsection 844(i) after the language "by means of an explosive." Such language will eliminate the technical distinction between explosives and fire as H.R. 6377 already does, but it will not raise the issue of vagueness by the employment of the "substantial damage" concept. Such a change will facilitate the investigation and prosecution of arson, particularly those started by gasoline or similar substances. The elimination of this distinction will do away with the necessity of proving that at the time an arson was committed such a substance was in an explosive state. Frequently this is a difficult task requiring much investigation and technical time and effort, and too often resulting in investigations being discontinued where it cannot be established.

A bill which simply adds the words "or fire" to subsection 844(i) will not make every arson a Federal crime. Pursuant to the language which already appears in 844, arson will only be a Federal crime where it involves interstate or foreign commerce. Thus, such a bill will represent only a minimal expansion of current Federal jurisdiction. It will not require additional Federal resources to work in the arson area. ATF will continue its arson program under the same policies and guidelines with which it now operates.

We also endorse the amendment to subsections 844(e), (f), and (h)(1), which would specifically extend protection against "fire" in connection with mail and telephone threats, property owned or used by the United States, and in committing a Federal felony, respectively.

The amendment which we propose will only remove the obstacle to Federal jurisdiction which is now sometimes encountered in proving that damage was caused by what technically constitutes an explosive. This removes a technical obstacle and will make our job of properly doing our arson work easier and will result in the conviction of more persons engaged in major arson-for-profit schemes.

That concludes my statement, Mr. Chairman.

[The statement of Mr. Powis follows:]

PREPARED STATEMENT OF ROBERT E. POWIS, DEPUTY ASSISTANT SECRETARY FOR
ENFORCEMENT, DEPARTMENT OF THE TREASURY

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to appear before you this morning to discuss H.R. 6377, a bill to amend Section 844 of the Organized Crime Control Act of 1970 with respect to the crime of arson.

The Bureau of Alcohol, Tobacco and Firearms (BATF) is the arm of Treasury which is actively engaged in the investigation of arson incidents which violate Federal statutes. BATF's participation in the investigation of an arson incident is predicated on the fact that there has been either a violation of the Gun Control Act of 1968 or of the 1970 Organized

Crime Control Act. Title II of the Gun Control Act of 1968 requires that various "destructive devices" be registered with the Secretary of the Treasury in order to be legally possessed. A Molotov cocktail would fall into the category of such a destructive device. Since such devices are frequently employed by arsonists, BATF has a clear jurisdictional mandate if the need for Federal involvement is identified.

Similarly, Title XI of the Organized Crime Control Act of 1970 provides clear sanctions against those individuals charged with the destruction of certain types of property by the use of "explosives". Incorporated in this legislation is a statutory definition of "explosives" that addresses three basic categories of explosive materials. The first category includes generic explosives such as dynamite, TNT, C-4 or other commercially manufactured explosives. This definition is generally applicable in bomb investigations conducted wherein business property is damaged or destroyed by dynamite or similar explosives. The next two categories, however, are more commonly applied in arson related charges. The second type of explosive described by the statute is classified as "incendiary devices." The Molotov cocktail would also be included under this section within the meaning of the term "incendiary devices." The language of the

statute gives flexibility in the range of devices that can be included in the definition. The final category of explosives included under the definition is referred to as "mechanical mixtures" that contain the proper ratio of oxidizing units that could cause an explosion. Under this provision it is necessary to establish that there was a proper fuel-air mixture that when ignited might cause an explosion.

The Organized Crime Control Act of 1970 restricts Federal jurisdiction over explosives or arsons directed at property used in interstate or foreign commerce or affecting such commerce. The Bureau of Alcohol, Tobacco and Firearms has focused its resources in the arson area on those schemes involving commercial premises affecting interstate or foreign commerce perpetrated by organized crime or members of organized "arson rings" where the problem is beyond the scope of state and local authorities to handle, either because of a lack of jurisdictional authority or sufficient investigative resources. It is submitted that this is the proper role for the Federal government in arson investigations. The crime of arson is indeed basically a state and local problem and must be primarily handled at that level. However, it must

also be recognized that arson-for-profit schemes are frequently complex, multi-jurisdictional and geographically unconfining in nature. State and local authorities often do not have the jurisdictional authority or sufficient investigative resources to deal actively with arson crimes of this magnitude. The presence of organized crime figures and organized arson-for-profit rings further compound the investigative problem thus requiring a concerted effort at all levels of government to impact upon this lucrative crime.

There is a problem with the Federal prosecution of arson incidents under subsection 844(i) of the Organized Crime Control Act of 1970. The problem is that some courts have construed the term "explosives" appearing in subsection 844(i) very narrowly and have held that this section does not encompass arson cases. The 9th Circuit Court of Appeals adopted this narrow construction in the case of U.S. v. Gere, 622 F 2d. 1291 (9th Cir. 1981). Other circuits, namely the 7th, 8th, 10th and 11th, have upheld convictions under Section 844 in this type of case, although in only the 7th Circuit case was the issue of Congressional intent extensively discussed. In recognition of this problem the Attorney General's Task Force on Violent Crime made the following recommendation:

- o In order to eliminate problems that often emerge when gasoline or other flammable liquids are used in arson, current legislation which gives Federal jurisdiction over arson started by explosives where interstate commerce is involved should be amended to allow Federal law enforcement agencies to investigate and prosecute arson started by fire as well as by explosion.

H.R. 6377 would help to solve the problem which exists. This bill would clearly spell out the fact that damage caused by both explosives and arson would fall under the purview of subsection 844(i). We do, however, have some concern with certain language in H.R. 6377. This concern deals with the reference to the term "substantially damages or destroys." Our concern is that the term substantial may be ambiguous and may possibly impede prosecution since the courts may have due process concerns with respect to vagueness. We are concerned that the Federal effort in the fight against arson may eventually again become hampered by a technicality in the statute which allows arsonists to escape prosecution.

It is submitted that a solution to this problem could be accomplished by eliminating the language "substantially damages or destroys", and by simply adding the words "or fire" to subsection 844(i) after the language "by means of

an explosive." Such language will eliminate the technical distinction between explosives and fire as H.R. 6377 already does, but it will not raise the issue of vagueness by the employment of the "substantial damage" concept. Such a change will facilitate the investigation and prosecution of arsons, particularly those started by gasoline or similar substances. The elimination of this distinction will do away with the necessity of proving that at the time an arson was committed such a substance was in an explosive state. Frequently, this is a difficult task requiring much investigation and technical time and effort and too often resulting in investigations being discontinued where it cannot be established.

A bill which simply adds the words "or fire" to subsection 844(i) will not make every arson a Federal crime. Pursuant to the language which already appears in Section 844, arson will only be a Federal crime where it involves interstate or foreign commerce. Thus, such a bill will represent only a minimal expansion of current Federal jurisdiction. Such a bill will not require additional Federal resources to work in the arson area. The BATF will continue its arson program under the same policies and guidelines with

which it now operates. Again this policy simply stated is as follows:

BATF focuses its resources in the arson area on those schemes involving commercial premises affecting interstate or foreign commerce perpetrated by organized crime or members of organized "arson rings" where the problem is beyond the scope of state and local authorities to handle either because of a lack of jurisdictional authority or sufficient investigative resources.

We also endorse the amendment to subsections 844(e), (f) and (h)(1), which would specifically extend protection against "fire" in connection with mail and telephone threats (e), property owned or used by the United States (f) and in committing a Federal felony (h)(1), respectively.

The amendment which we propose will only remove the obstacle to Federal jurisdiction which is now sometimes encountered in proving that damage was caused by what technically constitutes an explosive. This removes a technical obstacle and will make our job of properly doing its arson work easier and will result in the conviction of more persons engaged in major arson-for-profit schemes.

Mr. HUGHES. Thank you very much, Mr. Powis.

Mr. Sanders, the Assistant Director of Criminal Enforcement from the Bureau of Alcohol, Tobacco and Firearms, we have your statement also which, without objection, will be made a part of the record. We hope that you can summarize for us.

Mr. SANDERS. Yes, sir, Mr. Chairman. I, too, welcome the opportunity to appear before this committee to comment on the proposed arson bill, H.R. 6377, and to underscore ATF's role in combating the spreading crime of arson in this country.

In October of 1981, Attorney General William French Smith testified before the Senate Judiciary Committee on President Reagan's crime control program. As to arson control, the Attorney General described the problem of arson in the United States as grave and growing, stating that new tools must be given to Federal law enforcement personnel.

Historically, arson has been considered a non-Federal problem. This premise fails to take into account the fact that State and local authorities often do not have the jurisdictional authority or sufficient investigative resources to deal with a crime of this magnitude.

Arson crimes are complex, multijurisdictional, and geographically unconfined in nature. The presence of organized crime and white-collar criminals further compounds the investigative problem. What is required is a concerted effort at all levels of government to impact on this lucrative crime.

This subcommittee is well aware of ATF's lead Federal role in anti-arson efforts. ATF's statutory authority to investigate arson crimes stems from title II of the Gun Control Act of 1968, and title XI of the 1970 Organized Crime Control Act, commonly referred to as the Explosives Control Act.

To briefly synopsize each act, title II of the Gun Control Act classifies and extends Federal reach to "destructive devices." That category includes such devices as molotov cocktails. It is not uncommon for arsonists to use such devices to destroy buildings and other property by fire.

The Explosives Control Act reaches arson-related explosives crimes. The statute imposes criminal sanctions for those who damage or attempt to damage by means of an explosive any real or personal property used in or affecting interstate or foreign commerce.

In defining the term "explosive," Congress intended to cover every conceivable explosive material, including incendiary devices, and certain chemical compounds and mechanical mixtures which, under certain conditions, could cause an explosion. Included in this definition are flammable liquids—for example, gasoline, paint thinner, cleaning fluids, et cetera.

Generally, the application of title XI to address arson crimes has been accepted in the Federal courts nationwide. Four circuit courts—the 7th, 8th, 10th, and 11th—reviewed and upheld convictions in ATF arson cases, with the interpretation of explosives involving various incendiary devices and chemical compounds. But there have been difficulties in accepting this interpretation. The ninth circuit narrowly construed the scope of the statute to include only conventional explosives.

On November 13, 1981, a restaurant owner was convicted of burning his business to collect insurance by fraud. An appeal was taken to the ninth circuit and the conviction was reversed when the ninth circuit accepted the appellant's argument that Congress never intended to extend the scope of the statute beyond "the specific evil of bombing."

As can be seen, the law in its present state has created some confusion, and this problem area in the statute needs clarification. Although the split in the circuits is four-to-one for, it reflects the judiciary's problem in construing the language of 844(j).

Before ATF may investigate an arson, the presence of an explosive or a device must be established. So, before prosecution can be considered, many investigative and technical scientific man-hours are consumed in determining whether the arson was initiated by an "explosive," as defined in 18 U.S.C. 844(j), or "destructive device" as defined in 26 U.S.C. 5845(f).

All too often, due to the nature of arson crimes and the resulting heat and fire, the evidence of an explosive is virtually destroyed and the technical determinations and classifications are difficult if not impossible.

ATF has developed policy guidelines focusing its arson program towards the investigation of arson-for-profit schemes and other major arson crimes that extend beyond the investigative jurisdiction or resource capabilities of State and local agencies. During fiscal year 1981 ATF initiated 407 investigations of explosives-related arson incidents involving 25 deaths, 109 injuries and \$103.1 million in property damage. Additionally, \$27 million in insurance claims—potential claims were aborted through these investigative activities.

In furtherance of our nationwide investigative efforts, ATF has acted as a catalyst in promoting arson task force units throughout the country. These task force operations involve the coordinated efforts of State, local and other Federal agencies working in concert with U.S. attorneys or strike force attorneys in their respective geographical areas. The task force operations, coupled with investigative efforts from nontask force offices within the Bureau, have resulted in substantial accomplishments in the fight against the national arson problem.

ATF's National Response Teams have been highly successful and responsive to requests for assistance from State and local law enforcement authorities. These four specialized investigative units, consisting of highly trained special agents, explosives technology personnel and laboratory analysts, are able to quickly respond to major arsons throughout the country. Since the National Response Teams inception in 1980, the four teams have responded to 31 incidents in 18 States, in which there were 17 deaths and 109 injuries. Property damage in those 31 incidents was in excess of \$51 million. The teams' ratio in successful investigation in these responses is more than 60 percent, a success ratio far exceeding national averages in investigating arson activity. ATF continues to provide training to State and local enforcement agencies relating to the detection and investigation of arson-for-profit schemes and other arson tactics used by organized crime groups and white collar

criminals. ATF has provided training in arson-for-profit to over 1,400 State and local enforcement officers.

Due to the magnitude of the arson problem and the restrictions of the "explosives" definition, it is clear that ATF must be selective in its investigative efforts, and we have been. ATF has focused its resources on these schemes perpetrated by organized crime, white collar criminals, or members of organized arson rings, without regard to whether the case is prosecuted at the State or the Federal level. ATF, because of its excellent relationships with State and local law enforcement agencies, is ideally suited for and has been highly successful in arson investigations.

ATF is now held in high regard in the arson investigative community, rendering aid to State and local authorities through investigative assistance, training, and by other means.

We view H.R. 6377 as a positive move to combat arson in this country. I can speak from extensive personal experience in investigating and assisting in the prosecution of arson cases that this bill, which parallels Senator John Glenn's S. 2438, is the legislation needed to provide Federal assistance to the States, counties, and cities of this Nation plagued with the direct and indirect costs of arson.

The Department of the Treasury has been consistent in recommending amendments to 844(j). I would offer comment on a minor point in the language proposed in H.R. 6377—

Mr. HUGHES. May I just make a suggestion to you? I am persuaded of the wisdom of the recommendations with regard to "substantial," so if you could perhaps just touch on that and move on, we would appreciate it.

Mr. SANDERS. Yes, sir.

Mr. HUGHES. I think the ranking minority member is in accord with my feelings on that.

Mr. SANDERS. Yes, Mr. Chairman.

Putting aside the term "substantial," we strongly support amending 844(i) to include the phrase "or fire" because it clarifies without changing the intent. The amendment would offer relief to investigators and prosecutors in meeting the elements of proof now required to show that the destruction was caused by what technically constitutes an "explosive."

This criminal conduct is of particular Federal interest and can oftentimes only be effectively addressed at the Federal level. As far as Federal jurisdiction is concerned, it should not matter whether the damage or destruction is caused by an explosive or merely by fire. Instead, the Federal interest that ought to be protected by 844(i) is property used in or affecting interstate or foreign commerce.

We also endorse the amendments to 844(e), (f), (h), and (i) extending protection against fire in connection with mail and telephone threats, property owned or used by the United States, and in committing a Federal felony.

Earlier in my testimony I mentioned the decision in the ninth circuit that reversed the ATF conviction in an arson that caused the death of a Los Angeles city firefighter. The Ninth Circuit Court ruled that Congress never intended to extend the scope of the statute relating to explosives to go beyond "the specific evil of bomb-

ing". If the statute had included the words "or fire," then this conviction would not have been overturned by the appellate court and the arsonist could have been sentenced under 844(i).

I can assure the committee that with the removal of the word "substantially" from H.R. 6377 there would not be a flood of ATF arson investigations. It would serve only to provide clear guidelines for Federal participation and assistance to the State and local enforcement agencies in the suppression of arson crimes.

Again, I thank you, Mr. Chairman, for the opportunity to address this committee and the opportunity to assure you of ATF's sincere and successful role in arson investigations.

At this time I would be happy to answer any questions.

[The statement of Mr. Sanders follows:]

PREPARED STATEMENT OF ROBERT E. SANDERS, ASSISTANT DIRECTOR OF CRIMINAL ENFORCEMENT, DEPARTMENT OF THE TREASURY, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

MR. CHAIRMAN, I WELCOME THE OPPORTUNITY TO APPEAR BEFORE THIS SUBCOMMITTEE TODAY TO DISCUSS THE PROPOSED ARSON BILL, H.R. 6377, AND TO UNDERScore ATF'S ROLE IN COMBATTING THE SPREADING ARSON CRIME IN THIS COUNTRY. IN OCTOBER OF 1981, ATTORNEY GENERAL WILLIAM FRENCH SMITH TESTIFIED BEFORE A SENATE JUDICIARY SUBCOMMITTEE ON MAJOR ISSUES OF PRESIDENT REAGAN'S CRIME CONTROL PROGRAM. AS TO ARSON CONTROL, THE ATTORNEY GENERAL DESCRIBED THE PROBLEM OF ARSON IN THE UNITED STATES, AS GRAVE AND GROWING, STATING THAT NEW TOOLS MUST BE GIVEN TO FEDERAL LAW ENFORCEMENT PERSONNEL.

HISTORICALLY, ARSON HAS BEEN DESCRIBED AS A NON-FEDERAL PROBLEM. THIS PREMISE HOWEVER HAS FAILED TO TAKE INTO ACCOUNT THE FACT THAT STATE AND LOCAL AUTHORITIES OFTEN DO NOT HAVE THE JURISDICTIONAL AUTHORITY OR SUFFICIENT INVESTIGATIVE RESOURCES TO DEAL WITH A CRIME OF THIS MAGNITUDE. ARSON CRIMES ARE COMPLEX, MULTIJURISDICTIONAL AND GEOGRAPHICALLY UNCONFINING IN NATURE. THE PRESENCE OF ORGANIZED CRIME AND WHITE-COLLAR CRIMINALS FURTHER COMPOUNDS THE INVESTIGATIVE PROBLEM. WHAT IS REQUIRED IS A CONCERTED EFFORT AT ALL LEVELS OF GOVERNMENT TO IMPACT ON THIS LUCRATIVE CRIME, WHICH HAS REACHED EPIDEMIC LEVELS. THIS SUBCOMMITTEE IS WELL AWARE OF ATF'S PRESENT JURISDICTION IN INVESTIGATING ARSON CRIMES. ATF'S STATUTORY AUTHORITY TO PURSUE ARSON STEMS FROM TITLE II OF THE GUN CONTROL ACT OF 1968 AND TITLE XI OF THE 1970 ORGANIZED CRIME CONTROL ACT, COMMONLY REFERRED TO

AS THE EXPLOSIVES CONTROL ACT. TO BRIEFLY SYNOPSISIZE EACH ACT, T-II OF THE GUN CONTROL ACT REGULATES THE ENFORCEMENT OF "DESTRUCTIVE DEVICES", WHICH INCLUDES SUCH DEVICES AS MOLOTOV COCKTAILS. IT IS NOT UNCOMMON FOR SUCH DEVICES TO BE EMPLOYED BY ARSONISTS TO INITIATE THE DESTRUCTION OF BUILDINGS OR OTHER TARGETS BY FIRE. THE EXPLOSIVES CONTROL ACT REACHES "ARSON RELATED" EXPLOSIVES CRIMES. THE STATUTE IMPOSES CRIMINAL SANCTIONS ON THOSE WHO DAMAGE OR ATTEMPT TO DAMAGE BY MEANS OF AN "EXPLOSIVE" ANY REAL OR PERSONAL PROPERTY USED IN OR AFFECTING INTERSTATE OR FOREIGN COMMERCE. IN DEFINING THE TERM "EXPLOSIVE" IN THIS SPECIFIC STATUTE, CONGRESS INTENDED TO COVER EVERY CONCEIVABLE EXPLOSIVE MATERIAL, INCLUDING INCENDIARY DEVICES, AS WELL AS CERTAIN CHEMICAL COMPOUNDS AND MECHANICAL MIXTURES WHICH, UNDER CERTAIN CONDITIONS, COULD CAUSE AN EXPLOSION. INCLUDED IN THIS DEFINITION WERE FLAMMABLE LIQUIDS (e.g., GASOLINE, PAINT THINNER, CLEANING FLUIDS, etc.).

THE APPLICATION OF TITLE XI TO ARSON CRIMES HAS GENERALLY BEEN ACCEPTED IN THE FEDERAL COURTS NATIONWIDE. IN FOUR CIRCUIT COURT DECISIONS, THE 7TH, 8TH, 10TH, AND 11TH, THE FEDERAL COURTS UPHELD CONVICTIONS IN ATF CASES INVOLVING ARSON AND THE INTERPRETATION OF "EXPLOSIVES" INVOLVING VARIOUS INCENDIARY DEVICES AND CHEMICAL COMPOUNDS. BUT THERE HAVE BEEN DIFFICULTIES IN ACCEPTING THIS INTERPRETATION AND ONE COURT CONSTRUED THE SCOPE OF

THE STATUTE TO INCLUDE ONLY CONVENTIONAL EXPLOSIVES. THIS IS REFLECTED IN A WRITTEN OPINION OF THE NINTH CIRCUIT. ON NOVEMBER 13, 1981, A RESTAURANT OWNER WAS CONVICTED OF BURNING HIS BUSINESS FOR THE PURPOSE OF COLLECTING FRAUDULENT INSURANCE PROCEEDS. AN APPEAL WAS TAKEN TO THE NINTH CIRCUIT AND THEY REVERSED THE CONVICTION HOLDING THAT CONGRESS NEVER INTENDED TO EXTEND THE SCOPE OF THE STATUTE BEYOND "THE SPECIFIC EVIL OF BOMBING."

AS CAN BE SEEN, THE LAW IN ITS PRESENT STATE HAS CREATED SOME DIFFICULTIES AND THIS "PROBLEM" AREA IN THE STATUTE NEEDS CLARIFICATION. ALTHOUGH THE SPLIT IN THE CIRCUITS IS 4-1 FOR, IT IS AN INDICATION OF THE JUDICIARIES PROBLEM IN CONSTRUING THE LANGUAGE OF 844(j). BEFORE ATF CAN BECOME INVOLVED IN AN ARSON INVESTIGATION, THE IDENTIFICATION OF AN "EXPLOSIVE" MUST BE ASCERTAINED IF NO "DEVICE" IS PRESENT.

FIRST, BEFORE PROSECUTION CAN BE CONSIDERED, MANY INVESTIGATIVE AND TECHNICAL/SCIENTIFIC MANHOURS ARE CONSUMED IN DETERMINING WHETHER THE ARSON WAS INITIATED BY AN "EXPLOSIVE" AS DEFINED IN 18 U.S.C. § 844(j) OR A "DESTRUCTIVE DEVICE" AS DEFINED IN 26 U.S.C. § 5845(f). SECONDLY, AND ALL TO OFTEN, DUE TO THE NATURE OF ARSON CRIMES AND THE RESULTING HEAT AND FIRE, THE EVIDENCE OF AN EXPLOSIVE IS VIRTUALLY DESTROYED AND THE TECHNICAL

DETERMINATIONS AND CLASSIFICATIONS ARE DIFFICULT IF NOT IMPOSSIBLE.

ATF HAS STRUCTURED ITS ARSON PROGRAM TOWARDS THE INVESTIGATION OF "ARSON-FOR-PROFIT" SCHEMES AND OTHER MAJOR ARSON CRIMES THAT EXTEND BEYOND THE INVESTIGATIVE JURISDICTION OR RESOURCE CAPABILITY OF STATE AND LOCAL AGENCIES. DURING FISCAL YEAR 1981 ATF INITIATED 407 INVESTIGATIONS OF EXPLOSIVES-RELATED ARSON INCIDENTS INVOLVING 25 DEATHS, 109 INJURIES, \$103.1 MILLION IN PROPERTY DAMAGE AND \$27 MILLION IN INSURANCE CLAIMS (OR POTENTIAL CLAIMS) BEING ABORTED. IN FURTHERANCE OF OUR NATIONWIDE INVESTIGATIVE EFFORTS, ATF HAS ACTED AS A CATALYST IN PROMOTING ARSON TASK FORCE UNITS THROUGHOUT THE COUNTRY. THESE "TASK FORCE" OPERATIONS INVOLVE THE COORDINATED EFFORTS OF STATE/LOCAL AND OTHER FEDERAL AGENCIES, WORKING IN CONJUNCTION WITH UNITED STATES ATTORNEYS OR STRIKE FORCE ATTORNEYS IN THEIR RESPECTIVE GEOGRAPHICAL AREAS. THE "TASK FORCE" OPERATIONS, COUPLED WITH INVESTIGATIVE EFFORTS FROM NONTASK FORCE OFFICES WITHIN THE BUREAU, HAVE RESULTED IN SUBSTANTIAL ACCOMPLISHMENTS IN THE FIGHT AGAINST THE NATIONAL ARSON PROBLEM.

ATF'S NATIONAL RESPONSE TEAMS (NRT'S) HAVE CONTINUED TO BE HIGHLY SUCCESSFUL AND RESPONSIVE TO REQUESTS FOR ASSISTANCE FROM STATE AND LOCAL LAW ENFORCEMENT AUTHORITIES. THESE FOUR SPECIALIZED INVESTIGATIVE UNITS CONSISTING OF

HIGHLY TRAINED SPECIAL AGENTS, EXPLOSIVES TECHNOLOGY PERSONNEL AND LABORATORY ANALYSTS, ARE ABLE TO QUICKLY RESPOND TO MAJOR ARSONS THROUGHOUT THE COUNTRY. SINCE THE NATIONAL RESPONSE TEAMS INCEPTION IN 1980, THE FOUR TEAMS HAVE RESPONDED TO 31 INCIDENTS IN 18 STATES, IN WHICH THERE WERE 17 DEATHS AND 109 INJURIES. PROPERTY DAMAGE IN THESE 31 INCIDENTS WAS IN EXCESS OF \$51,000,000. THE TEAMS RATIO IN SUCCESSFULLY INVESTIGATING THESE RESPONSES IS MORE THAN 60%, A SUCCESS RATIO FAR EXCEEDING NATIONAL AVERAGES IN INVESTIGATING ARSON ACTIVITY. ATF CONTINUES TO PROVIDE TRAINING TO STATE AND LOCAL ENFORCEMENT AGENCIES RELATING TO THE DETECTION AND INVESTIGATION OF ARSON-FOR-PROFIT SCHEMES AND OTHER ARSON "TACTICS" USED BY ORGANIZED CRIME GROUPS AND WHITE COLLAR CRIMINALS. ATF HAS PROVIDED TRAINING IN "ARSON-FOR-PROFIT" TO OVER 1400 STATE AND LOCAL ENFORCEMENT INVESTIGATORS.

DUE TO THE MAGNITUDE OF THE ARSON PROBLEM, AND THE RESTRICTIONS OF THE "EXPLOSIVES" DEFINITION, IT IS OBVIOUS THAT WE MUST BE "SELECTIVE" IN OUR INVESTIGATIVE EFFORTS. WE HAVE FOCUSED OUR RESOURCES ON THOSE SCHEMES PERPETRATED BY ORGANIZED CRIME, "WHITE COLLAR" CRIMINALS OR MEMBERS OF ORGANIZED "ARSON RINGS", WITHOUT REGARD TO WHETHER THE CASE IS ULTIMATELY PROSECUTED AT THE STATE OR THE FEDERAL LEVEL. ATF, BECAUSE OF OUR EXCELLENT RELATIONSHIPS WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES IS IDEALLY

SUITED FOR AND HAS BEEN HIGHLY SUCCESSFUL IN ARSON INVESTIGATIONS. ATF IS HELD IN HIGH REGARD IN THE ARSON INVESTIGATIVE FIELD, SUPPLYING ASSISTANCE TO STATE AND LOCAL AUTHORITIES THROUGH INVESTIGATIVE ASSISTANCE, TRAINING AND OTHER RESOURCES. WE VIEW H.R. 6377 AS A POSITIVE MOVE TO COMBAT ARSON IN THIS COUNTRY. I CAN SPEAK FROM EXTENSIVE PERSONAL EXPERIENCE IN INVESTIGATING AND ASSISTING IN THE PROSECUTION OF ARSON CASES THAT THIS BILL, WHICH PARALLELS SENATOR JOHN GLENN'S S. 2438, IS THE LEGISLATION NEEDED TO PROVIDE FEDERAL ASSISTANCE TO THE STATES, COUNTIES AND CITIES OF THIS NATION PLAGUED WITH THE DIRECT AND INDIRECT COSTS OF ARSON.

THE DEPARTMENT OF THE TREASURY HAS BEEN CONSISTENT IN RECOMMENDING AMENDMENTS TO § 844(i). HOWEVER, OUR RECOMMENDATION DIFFERS FROM THE LANGUAGE PROPOSED IN H.R. 6377 IN THAT THE BILL DEFINES FIRE BY REFERENCE TO "SUBSTANTIAL" DAMAGE. THE TERM "SUBSTANTIAL", MEANS ALL THINGS TO ALL PEOPLE. WHAT IS SUBSTANTIAL IN DAISY, NORTH DAKOTA, MIGHT NOT MEAN THE SAME AS IN THE BRONX. IT COULD IMPEDE PROSECUTION SINCE THE COURT MAY HAVE DUE PROCESS CONCERNS OVER THE VAGUENESS OF SUCH A TERM IN A CRIMINAL STATUTE. WE MAY FIND THE FEDERAL EFFORTS TO FIGHT ARSON CRIME HAMPERED AGAIN BY VAGUE LANGUAGE. THE WORD "SUBSTANTIAL" IS DIFFICULT ENOUGH TO INTERPRET IN THE ACTUAL DESTRUCTION OF PROPERTY, BUT EVEN MORE SO IS IT AMBIGUOUS AND DIFFICULT

TO PROVE WHEN RELATING TO "ATTEMPTS" TO DAMAGE OR DESTROY.
BY WHAT CRITERIA WOULD ONE EVALUATE THE SUBSTANTIALITY
OF AN "ATTEMPT?"

PUTTING ASIDE THE TERM "SUBSTANTIAL", WE SUPPORT AMENDING
§ 844(i) TO INCLUDE THE PHRASE "OR FIRE." SUCH AN AMENDMENT
WOULD REMOVE THE OBSTACLE TO FEDERAL JURISDICTION OCCASION-
ALLY ENCOUNTERED IN PROVING THAT THE DAMAGE WAS CAUSED
BY WHAT TECHNICALLY CONSTITUTES AN "EXPLOSIVE." THESE
ACTIVITIES ARE OF PARTICULAR FEDERAL INTEREST AND CAN
OFTENTIMES ONLY BE EFFECTIVELY ADDRESSED AT THE FEDERAL
LEVEL. AS FAR AS FEDERAL JURISDICTION IS CONCERNED, IT
SHOULD NOT MATTER WHETHER THE DAMAGE OR DESTRUCTION IS
CAUSED BY AN EXPLOSIVE OR MERELY BY FIRE. INSTEAD, THE
FEDERAL INTEREST UNDER § 844(i) IS THE PROTECTION OF
PROPERTY USED IN OR AFFECTING INTERSTATE OR FOREIGN
COMMERCE.

WE ALSO ENDORSE THE AMENDMENTS TO § 844 (e), (f) and (h)
(1), WHICH WOULD SPECIFICALLY EXTEND PROTECTION AGAINST
"FIRE" IN CONNECTION WITH MAIL AND TELEPHONE THREATS (e),
PROPERTY OWNED OR USED BY THE UNITED STATES (f) AND IN
COMMITTING A FEDERAL FELONY (h) (1), RESPECTIVELY.

WE STRONGLY SUPPORT AN AMENDMENT TO § 844 (i) TO
INCLUDE THE PHRASE "OR FIRE" BECAUSE IT MERELY CLARIFIES
AND DOES NOT CHANGE THE ORIGINAL INTENT OF CONGRESS. THE
PROPOSED AMENDMENT WOULD ALSO PROVIDE RELIEF TO INVESTIGATORS

AND PROSECUTORS IN MEETING THE ELEMENTS OF PROOF CURRENTLY REQUIRED IN ORDER TO SHOW THAT THE DESTRUCTION WAS CAUSED BY WHAT TECHNICALLY CONSTITUTES AN "EXPLOSIVE". AS I DISCUSSED EARLIER WHEN ADDRESSING CIRCUIT COURT DECISIONS, I MENTIONED THE DECISION IN THE NINTH CIRCUIT THAT REVERSED THE CONVICTION OBTAINED AS A RESULT OF AN ATF INVESTIGATION INTO AN ARSON THAT RESULTED IN THE DEATH OF A LOS ANGELES CITY FIRE FIGHTER. THE NINTH CIRCUIT RULED THAT CONGRESS NEVER INTENDED TO EXTEND THE SCOPE OF THE STATUTE RELATING TO "EXPLOSIVES" TO GO BEYOND "THE SPECIFIC EVIL OF BOMBING". IF THE STATUTE HAD INCLUDED THE WORDS "OR FIRE", THEN THIS CONVICTION WOULD NOT HAVE BEEN OVERTURNED BY THE APPELLATE COURT.

ATF BELIEVES THAT WITH REMOVAL OF THE WORD "SUBSTANTIALLY", THAT H.R. 6377 OR S. 2438 WILL NOT RESULT IN A FLOOD OF ARSON INVESTIGATIONS, RATHER IT WOULD PROVIDE DEFINITIVE GUIDELINES FOR FEDERAL PARTICIPATION AND ASSISTANCE TO THE STATE AND LOCAL ENFORCEMENT AGENCIES IN THE SUPPRESSION OF ARSON CRIMES.

WE MUST REMAIN SELECTIVE IN OUR ENFORCEMENT, ADHERING TO OUR PRESENT GUIDELINES OF PURSUING ARSON CRIMES AGAINST COMMERCIAL AND INDUSTRIAL PROPERTY PERPETRATED BY ORGANIZED WHITE-COLLAR CRIMINALS OR ARSON RINGS. THE PROPOSED LEGISLATION WILL ONLY ALLOW US TO INVESTIGATE A "FIRE" AFFECTING INTERSTATE COMMERCE, AND WILL REMOVE US FROM

THE COSTLY AND TIME CONSUMING TASK OF PROVING THAT AN "EXPLOSIVE" WAS USED IN THE ARSON.

THE KEY IS CAREFUL AND STRICT MANAGEMENT BY FEDERAL AGENCIES AND A STRICT OVERSIGHT OF THE FEDERAL ARSON INVOLVEMENT BY COMMITTEES SUCH AS THIS ONE MR. CHAIRMAN. I ASSURE YOU MR. CHAIRMAN THAT WE WILL CONTINUE TO RIGOROUSLY MANAGE AND DEPLOY OUR RESOURCES TOWARD THOSE CRIMES THAT ABSOLUTELY REQUIRE THE ASSISTANCE OF THE FEDERAL GOVERNMENT. I STRONGLY BELIEVE THAT THIS CAN BE DONE AND WILL BE DONE.

AGAIN, I THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS COMMITTEE AND THE OPPORTUNITY TO ASSURE YOU OF ATF'S SINCERE AND SUCCESSFUL ROLE IN ARSON INVESTIGATIONS.

Mr. HUGHES. Thank you, Mr. Sanders, for an excellent statement.

I have several questions. You alluded in part of your statement to the fact that quite often the evidence of an explosive device of some type is absent because the fire destroys such evidence.

In what percentage of the fires which you know are by explosives or explosive devices, are you just unable to prove the type of device?

Mr. SANDERS. In the matters that we investigate, Mr. Chairman, our experience is about 30 percent of the cases. But that is not reflective of the universe of arsons. Those are of the cases we investigate.

Mr. HUGHES. I see.

The task force operations have just been extraordinarily successful. I am deeply committed to task force operations anyway. You are able to leverage the expertise of local officials who know the local personalities, you provide training and therefore you are really maximizing your efforts.

What is the present status, given the fiscal constraints under which you're operating, of the task force operations?

Mr. SANDERS. We have at the present time five task forces. They are in Los Angeles, Houston, Philadelphia, Boston and Chicago. There are constraints, Mr. Chairman—

Mr. HUGHES. On how they operate?

Mr. SANDERS. They are operating and operating in a full blown manner. We are attempting to establish additional task forces and have been somewhat hampered by the lack of—

Mr. HUGHES. I see. Where else do you need task force operations right now?

Mr. SANDERS. There are about 17 other cities that we have scheduled to initiate full-blown task forces.

Mr. HUGHES. What are some of the major cities where these task force operations are essential?

Mr. SANDERS. Well, I would say certainly in Hudson County in your State of New Jersey. There is clear evidence recently, very recently, of the need for one there.

In San Francisco, we are beginning—in Seattle, across the country, in Dallas, Cleveland, Detroit.

Mr. HUGHES. I was astounded to learn that in Hudson County there were 28 arson-related deaths; is that right?

Mr. SANDERS. Yes, sir. Being a native of Hoboken, I was particularly interested in that.

Mr. HUGHES. I was astounded. We had a hearing, in fact, in Jersey City on Monday of this week, and I knew we had a number of arson-related deaths, but I didn't realize the problem was so enormous.

Mr. SANDERS. Yes, sir. And we are attempting to establish one these.

Mr. HUGHES. The minority community in particular is very upset because they feel the greatest impact of the arson-related fires and the tragedies.

Mr. POWIS. Mr. Chairman, despite the budget constraints this year, which certainly has been a horrendous situation, we were able to start a task force in Massachusetts, within the last 90 days. That is the one in Boston.

Mr. HUGHES. The Speaker's area?

Mr. POWIS. That is the Speaker's area. There is a serious need. You have to—

Mr. HUGHES. What seems to be good for Boston must be good for Hoboken.

Mr. POWIS. There were the Lynn fires up there and the Lowell, Mass. fires. I think we will have to look at that Hoboken one.

Mr. HUGHES. You got that message, I see. [Laughter.]

The four national response teams, they, too, have had a tremendous record; 60 percent is the figure you cited. And the conviction rate is extremely high.

What is the present status of those operations given the budgetary constraints?

Mr. SANDERS. They have not been hampered, Mr. Chairman. We have given that top priority and, insofar as we're concerned, other than whatever chilling effect the lack of funds may have, they have not been hampered.

Mr. HUGHES. Let me just run through a number of questions real quickly.

Some suggestions have been received that cases that involve fire ought to be limited to those that involve schemes to fraudulently obtain insurance proceeds. What problems would that limitation or limitations present?

Mr. POWIS. Mr. Chairman, I think it would rule out certain motivations we see in arson that are rather significant. For instance, things like revenge, fires set out of revenge or out of intimidation—frequently these are involved in organized crime cases; terrorism, arsonists who set a fire because of a mental illness and get a thrill

out of the fire: these would all be excluded with that type of limitation.

Mr. HUGHES. How frequently does BATF investigate an arson that is ultimately prosecuted in a State jurisdiction?

Mr. POWIS. My understanding is that about 90 percent of ATF's investigations are prosecuted in the federal courts, so it would be roughly 10 percent in the local jurisdictions.

Mr. HUGHES. How frequently does BATF investigate an arson that is never prosecuted by U.S. attorneys?

Mr. POWIS. Although that specific information is not available, as stated previously, our experience shows that approximately 30 percent of the arsons we investigate cannot for various reasons meet the criteria to prosecute under the Federal explosives statutes.

Mr. HUGHES. Could you give the subcommittee an idea of how extensively traditional organized crime networks utilize arson for fraud?

Mr. POWIS. ATF cannot capture that information in hard data. However, their experience in the task force cities indicates that there is traditional organized crime involvement in many of the major arson for fraud cases investigated. The *Mr. Livingroom* case in New Jersey is a good example of this involvement.

I think, in terms of a percentage, that we will also have to look at that and see if we can furnish it for the record. In terms of the types of cases that ATF gets into on insurance fraud and extortion, there is a heavy involvement of organized crime in that type of case, particularly extortion. Almost all of those involve organized crime, and a fairly good percentage in the insurance fraud situation.

Mr. HUGHES. If you could supply whatever specifics you have, we would appreciate it.

Mr. POWIS. Yes, sir.

Mr. HUGHES. Roughly, what percentage of ATF arson investigations reveal or are focused on offenders who are part of an arson ring, usually involving multiple arson offenses?

Mr. POWIS. Although percentage data is not available, the task force cities experience shows us that many of the cases investigated involve rings responsible for multiple arson and related offenses. The individuals involved in the *Mr. Livingroom* case in New Jersey, the Mudarris Organization in Los Angeles, and the successful prosecution of organized arson rings in Chicago are all examples of multiple arson crime activity.

It is also difficult to determine an exact percentage in this area.

I think it is important to note however, that the task forces are almost exclusively zeroed in on arson rings, in the five cities where we have the task forces.

Mr. HUGHES. Given the constraints imposed on you by the ruling of the ninth circuit, which has obviously made you somewhat "gun shy" on the issue, what percentage of arson investigations do you discontinue because you feel you can't meet the present standard?

Mr. POWIS. Well, we believe the figure is approximately 30 percent, based on the lack of ability to prove the explosives.

Mr. HUGHES. Finally—and I realize the local authorities are the best to give me this answer, and we have been talking with the local authorities—in extending jurisdiction to include fire as part

of ATF's jurisdiction, what problems is that going to present to the local communities? Have you had an opportunity to talk to local fire and police officials about the question of jurisdiction?

Mr. POWIS. I would like Mr. Sanders to join in this also, but my impression is, particularly in the places where we are working with them in task forces, they would welcome this, because they realize ATF wouldn't have some of the inhibitions which it presently has because of the technical problem.

Mr. SANDERS I think could add to that.

Mr. SANDERS. In my experience, Mr. Chairman, they would welcome this.

Mr. HUGHES. Thank you.

The gentleman from Michigan.

Mr. SAWYER. Thank you, Mr. Chairman.

As a matter of curiosity, was the fellow acquitted, in effect, by the ninth circuit Court of Appeal's decision? Was he then prosecuted under State law?

Mr. SANDERS. No. The mail fraud statute applied and he was sentenced under the mail fraud statute, sir—as a result of our investigation.

Mr. SAWYER. As a matter of curiosity, the current law, limited to explosives, applies to property used in, or in connection with, interstate commerce?

Mr. POWIS. Yes, sir.

Mr. SAWYER. Would an office building, for example, that is occupied by some firms that are doing interstate business, brokerage houses or something, be covered under the—

Mr. SANDERS. I think we would find little trouble finding the interstate nexus in that kind of building, without knowing the complete facts, but I think there would probably be an interstate nexus there, sir.

Mr. SAWYER. I think that's all I have.

Mr. HUGHES. Thank you.

I just want to say to you that the National District Attorneys Association is in town—in fact, I addressed them yesterday morning in their first plenary session. They had a reception last night, and interestingly, I talked with two of the State prosecutors, each of whom made reference to BATF and their concerns about BATF, and both of whom told me that they have to deal with a lot of Federal agencies, and none of the agencies were as cooperative and as helpful and as outgoing and willing to help as BATF. I thought that was interesting. I was only there for about 15 minutes.

Mr. SAWYER. That's why we're abolishing it.

Mr. HUGHES. Yes, that's right. [Laughter.]

Mr. POWIS. I appreciate your comments, and I think that matches what we have found in dealing with the State and local levels, that there is no organization that—

Mr. HUGHES. I make the observation because of what Mr. Sanders said about local authorities. It is interesting that that just occurred last night.

Thank you. We appreciate your testimony. You have been most helpful to us.

Mr. POWIS. Thank you, Mr. Chairman, and Mr. Sawyer.

Mr. SANDERS. Thank you, sir.

Mr. HUGHES. Our next witness is J. C. Mullen, Jr., vice president for property claims for the Commercial Union Insurance Cos. Mr. Mullen has overall responsibility for Commercial Union's countrywide arson investigations. Any arson case involving insurance fraud is directly supervised by one of his particular departments. He is responsible for training adjustors, supervisors, and managers in the area of arson detection and control. He is chairman of the property claims service of the American Insurance Association. For the past 2 years he has been a panelist on the National Legislative Conference on Arson. He has tremendous credentials and I am not going to take the time to recite them all.

We are just delighted to have you with us this morning. We have your statement which, without objection, will be made a part of the record. You may proceed as you see fit. We hope that you can summarize for us, though.

TESTIMONY OF J. C. MULLEN, JR., VICE PRESIDENT FOR PROPERTY CLAIMS, COMMERCIAL UNION INSURANCE COMPANIES OF BOSTON; APPEARING ON BEHALF OF THE AMERICAN INSURANCE ASSOCIATION

Mr. MULLEN. Yes, sir. It is nice seeing you again, Mr. Chairman. Members of the subcommittee, as mentioned by the Chair, I am J. C. Mullen, claims vice president for Commercial Union Insurance Co., located in Boston, Mass. I might add that BATF came to Boston to help the Boston Celtics out as the reason for being there.

Mr. HUGHES. They need all the help they can get. [Laughter.]

Mr. MULLEN. They do right now, sir.

By way of background, Commercial Union Insurance Companies is the 19th largest insurance company in the United States, writing approximately \$1.5 billion worth of insurance in the property-casualty area.

Before addressing your bill, Mr. Chairman, let me explain our interest in arson. Commercial Union, as well as the rest of the insurance industry, is concerned and alarmed by the escalation of arson fraud schemes. This escalation is apparently due in part to the Nation's weakened economy, for it appears that as our economy worsens, unemployment increases, interest rates refuse to fall, and certain desperate people are tempted to start fires in order to profit from insurance policies. Our policyholders must bear the cost of arson, for arson losses are included in rate calculations for property insurance.

A recent study on the incidence and costs of arson found that arson fires motivated by fraud, or arson-for-profit, resulted in greater property loss than any other type of arson. The results of this study, entitled "Arson Incidence Claims Study," were obtained through a survey of data collected from the fire insurance claim files of participating insurance companies. I am submitting a copy of the study for your information.

As you know, not all arsons are motivated by profit. Arson crimes are committed for other reasons, such as vandalism, revenge, terrorism, pyromania, and the cover-up of another crime. When arson is suspected, both public and private investigations take place to determine whether a fire was incendiary in origin.

Our investigators routinely work closely with local and Federal officials, and the resulting team effort is mutually beneficial to both civil and criminal investigations.

For example, when an insurance carrier suspects that an insured is presenting a fraudulent claim, it will investigate the fire, and if arson is discovered, look for the existence of a motive to commit arson. At the same time, local and Federal law enforcement officials may be investigating and prosecuting the same arson. When information from criminal investigations becomes public, it is helpful to our investigations and ability to successfully defend fraudulent arson claims. And, of course, when the prosecution of an arsonist leads to conviction, we are able to use that conviction to defend the claim.

We have found that arsonists often cross State lines and move their base of operations from one State to another. To help to detect such trends, our industry has sponsored a property insurance loss register. Information from this program can be passed on to Federal and State arson officials to be used in the criminal investigation of arsonists.

Although we are witnessing a spread of arson to the suburban and rural areas, it continues to be a major problem in our Nation's cities. State and local police and fire authorities lack the resources, training, and experience, to control this rising arson tide. Recently enacted State laws limiting the property tax base, such as proposition 2½ in Massachusetts, are having a detrimental effect on the ability of local municipalities to properly investigate arson losses. Nearly every State fire official will admit, and rightfully so, that they are overworked and undermanned.

Thus, there is a vital need for the presence of Federal law enforcement officials in investigating major interstate arsons and providing assistance to local law enforcement authorities.

Arsonists are clever and their detection demands highly skilled and experienced individuals. The Arson Task Force of the Bureau of Alcohol, Tobacco and Firearms has for many years ably performed this vital function and its efforts should not be handicapped by any unnecessary statutory restrictions.

We need to continue to make it tough on the criminal who commits arson. Commercial Union supports H.R. 6377 as it would strengthen the ability of Federal law enforcement officials to detect arson and successfully prosecute arsonists. This bill would amend the Federal explosives law to allow Federal authorities to investigate arson fires of property used in interstate commerce which were started by any means, not just those fires started by an explosive device.

Federal arson jurisdiction presently extends over the damage or destruction of property by means of an explosive. Confusion has risen over the interpretation of "explosive." The problem centers on whether fires, started by means of flammable liquids, such as gasoline or kerosene, which are simply poured out and lighted, meet the definition of explosive.

We believe that the technical distinction between explosives and other incendiary means of starting fires should be eliminated. We support H.R. 6377 because it squarely addresses the problem by extending Federal arson jurisdiction over malicious damage or de-

struction by means of fire rather than by means of an explosive. Our hope is that by eliminating this technical distinction and the accompanying difficult burden of proof, all serious fires of an interstate nature, whatever their origin, may be investigated by Federal authorities.

Whether an arson is committed by pouring gasoline over newspapers or by an explosive is really irrelevant to the issue of which fires warrant Federal jurisdiction. All arsons are violent crimes which cause tragic loss of life and the destruction and damage of property. We believe that with the correction of this technicality, Federal resources can be better allocated to investigating and prosecuting arsons, without spending the considerable time now required in demonstrating whether a fire falls within Federal jurisdiction.

Our only problem with H.R. 6377 is a technical one. We question the use of the word "substantially" in the phrase "maliciously substantially damages or destroys." Our concern is that this term is ambiguous and subject to differing judicial interpretations. If the purpose of the word "substantially" is to restrict Federal authority to serious arsons only, we recommend that this intent be clarified to avoid any future confusion.

Other than this concern, Mr. Chairman, we support the goal of H.R. 6377. We commend you for your fine effort in pursuing this issue and your longstanding interest in the subject of arson. To the extent that Commercial Union may be of assistance to this subcommittee, we are at your service.

Thank you again for the opportunity to testify on this important measure.

Mr. HUGHES. Thank you, Mr. Mullen, for a very fine statement. The gentleman from Michigan.

Mr. SAWYER. I have enjoyed the presentation, Mr. Chairman, and I don't have any questions.

Mr. HUGHES. Thank you.

I want to tell you that BATF needs some assistance. There are some people who are still trying to scuttle it, so I just hope, since you obviously support their mission and their work, that you are doing what you can. I am sure you are.

Mr. MULLEN. We agree with you, sir. We are doing everything we can possible. That's why we are down here today.

Mr. HUGHES. Thank you very much, Mr. Mullen.

That concludes the hearing. We are going to go into markup, provided we can get a quorum. So the hearing part of today's activities are concluded and we stand recessed for 5 minutes.

[The statement of Mr. Mullen follows:]

PREPARED STATEMENT OF J. C. MULLEN, JR., ON BEHALF OF COMMERCIAL UNION
INSURANCE COMPANIES

Mr. Chairman and Members of the Subcommittee, my name is Jay Mullen and I am Claims Vice President for Commercial Union Insurance Companies of Boston, Massachusetts. I appreciate the opportunity to appear before this Subcommittee to testify on the serious problems posed to our Nation by arson, and on H.R. 6377 in particular.

By way of background, Commercial Union is a major, multi-line insurance carrier. We are the 19th largest property-casualty insurer in the United States, with premiums totalling approximately \$1 billion.

Before addressing your bill, Mr. Chairman, let me explain our interest in arson. Commercial Union, as well as the rest of the insurance industry, is concerned and alarmed by the escalation in arson fraud schemes. This escalation is apparently due in part to

the Nation's weakened economy, for it appears that as our economy worsens, unemployment increases, and interest rates refuse to fall, certain desperate people are tempted to start fires in order to profit from insurance policies. Our policy holders must bear the costs of arson, for arson losses are included in rate calculations for property insurance.

A recent study on the incidence and costs of arson found that arson fires motivated by fraud, or arson-for-profit, resulted in greater property loss than other types of arsons. The results of this study, entitled Arson Incidence Claims Study, were obtained through a survey of data collected from the fire insurance claim files of participating insurance companies. I am submitting a copy of the study for your information. This study also reports the median dollar loss caused by arson. Of course, these figures do not reflect the injury to human life or other social costs of arson, such as the loss of one's home.

As you know, not all arsons are motivated by profit. Arson crimes are committed for other reasons such as vandalism, revenge, terrorism, pyromania, and the cover-up of another crime. When arson is suspected, both public and private investigations may take place to determine whether a fire was incendiary in origin. Our investigators routinely work closely with local and Federal officials and the resulting team effort is mutually beneficial to both the civil and criminal investigations.

For example, where an insurance carrier suspects that an insured is presenting a fraudulent claim, it will investigate the

fire and, if arson is discovered, look for the existence of a motive to commit arson. At the same time, local and Federal law enforcement officials may be investigating and prosecuting the same arson. When information from criminal investigations becomes public, it is helpful to our own investigations and ability to successfully defend fraudulent arson claims. And of course, when the prosecution of an arsonist leads to conviction, we are able to use that conviction to defend the claim.

We have found that arsonists often cross state lines and move their base of operations from one state to another. To help detect such trends, our industry has sponsored a Property Insurance Loss Register. Information from this program can be passed on to Federal and state arson officials to be used in the criminal investigations of arsonists.

Although we are witnessing the spread of arson to the suburban and rural areas, it continues to be a major problem in our Nation's cities. State and local police and fire authorities lack the resources, training, and expertise to control this rising arson tide. Recently enacted state laws limiting the property tax base, such as Proposition 2 1/2 in Massachusetts, are having a detrimental effect on the ability of local municipalities to properly investigate arson losses. Nearly every state fire official will admit, and rightfully so, that they are overworked and undermanned.

Thus, there is a vital need for the presence of Federal law enforcement officials in investigating major, interstate arsons

and providing assistance to local law enforcement authorities. Arsonists are clever and their detection demands highly skilled and experienced individuals. The Arson Task Force of the Bureau of Alcohol, Tobacco and Firearms has for many years ably performed this vital function and its efforts should not be handicapped by any unnecessary statutory restrictions.

We need to continue to make it tough on the criminal who commits arson. Commercial Union supports H.R. 6377 as it would strengthen the ability of Federal law enforcement officials to detect arson and successfully prosecute arsonists. This bill would amend the Federal Explosives law to allow Federal authorities to investigate arson fires of property used in interstate commerce which were started by any means, not just those fires started by an explosive device. Federal arson jurisdiction presently extends over the damage or destruction of property by means of an explosive. Confusion has arisen over the interpretation of explosive. The problem centers on whether fires started by means of flammable liquids, such as gasoline or kerosene, which are simply poured out and lighted meet the definition of explosive.

This confusion over the technical meaning of explosive has resulted in two particular problems. First, it is difficult to prove in court that gasoline or another flammable liquid could give off sufficient vapors to cause an explosion when ignited, and valuable resources are spent trying to meet this cumbersome burden. Second, the courts are split on whether to extend

Federal explosives jurisdiction over fires started by gasoline. Certain circuits have refused to recognize the broader interpretation of explosive and have dismissed counts charging violations by means of poured gasoline.

We believe that the technical distinction between explosives and other incendiary means of starting fires should be eliminated. We support H.R. 6377 because it squarely addresses the problem by extending Federal arson jurisdiction over malicious damage or destruction by means of fire rather than by means of an explosive. Our hope is that by eliminating this technical distinction and the accompanying difficult burden by proof, all serious fires of an interstate nature, whatever their origin, may be investigated by Federal authorities.

Whether an arson is committed by pouring gasoline over newspapers or by an explosive is really irrelevant to the issue of which fires warrant Federal jurisdiction. All arsons are violent crimes which cause tragic loss of life and the destruction and damage of property. We believe that with the correction of this technicality, Federal resources can be better allocated to investigating and prosecuting arsons, without spending the considerable time now required in demonstrating whether a fire falls within Federal jurisdiction.

Our only problem with H.R. 6377 is a technical one. We question the use of the word "substantially" in the phrase "maliciously substantially damages or destroys." Our concern is

that this term is ambiguous and subject to differing judicial interpretations. If the purpose of the word "substantially" is to restrict Federal authority to serious arsons only, we recommend that this intent be clarified to avoid any future confusion.

Other than this concern, Mr. Chairman, we support the goal of H.R. 6377. We commend you for your fine effort in pursuing this issue and your longstanding interest in the subject of arson. To the extent that Commercial Union may be of assistance to this Subcommittee, we are at your service. Thank you again for the opportunity to testify on this important measure.

Arson Incidence Claim Study

**March 1982
Research Report P82-1**

AIRAC

All-Industry Research Advisory Council

Single copies of this report, *Arson Incidence Claim Study*, are available without charge from the All-Industry Research Advisory Council, 7315 Wisconsin Avenue, Suite 231-W, Bethesda, Maryland 20814. A listing of other AIRAC publications is provided at the end of this publication.

ACKNOWLEDGMENTS

This survey was conducted by the Arson Incidence Study Subcommittee of the AIRAC Arson Committee. The Committee extends special thanks to Mark Brissman of State Farm Mutual Automobile Insurance Company, Roger Kenney of the Alliance of American Insurers, and Terrie Troxel of the National Association of Independent Insurers for their tabulation of results as well as the overview of the findings.

Ralph J. Jackson, Chairman

AIRAC Arson Committee

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 L. Bruce Bogart, American Insurance Association
 Mark Brissman, State Farm Insurance Companies
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Arson Incidence Study Subcommittee

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AIRAC

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Overview of Study Findings

This study reports the results obtained through a survey of insurance companies designed to determine the incidence of suspected arson. Results of the survey, based upon a sample of 13,418 claim files, are reported for residential and commercial insurance written in the voluntary market and through FAIR Plans.

The incidence of suspected arson (in terms of both the number and dollar percentages of all losses) was higher in FAIR Plans than the voluntary insurance market. For residential coverage involving losses over \$1,000, arson was suspected in 30% of all fires covered by FAIR Plans (28% of the total dollar losses) while only 11% of the voluntary market fires (14% of the dollar losses) was affected. For commercial coverage involving losses over \$5,000, arson was suspected in 40% of the FAIR Plan fires (52% of dollar losses) as compared to only 27% of voluntary market fires (37% of dollar losses).

Each suspected arson fire was classified according to the six motive categories: arson fraud, vandalism, revenge, concealment of another crime, pyromania, or other motive. Vandalism was the most common motive, indicated in over 50% of *all* arson fires in the voluntary market. Arson fraud, in the voluntary market, was the second most common motive (excluding the "other motive" category), and was involved with at least 12% of all arson fires. The FAIR Plans were remarkably consistent in the proportion of claims reported to be arson. However, with regard to arson motive their breakdowns ranged from extremely high in one FAIR Plan to zero in others. Because averages developed from such figures would be without meaning, no FAIR Plan motive averages are presented.

Based upon median loss values for the claim files studied, arson fires with a fraud motive were the most costly, followed by arson with nonfraud motives, and then nonarson fires. The residential voluntary market exhibited the largest differences, with the median costs being \$25,000 for fraud arson fires, \$12,865 for nonfraud arson fires, and \$4,209 for nonarson fires.

Several other observations resulted from the study.

- 1) Individual ownership of an insured property exhibited the lowest percentage of arson fires.
- 2) Ownership by trust or multiple owners led to a higher arson incidence.
- 3) In the commercial business area, wholesale businesses (voluntary market) and retail stores (FAIR Plan) experienced the highest arson incidence.
- 4) For residential business, appurtenant structures were most likely to be associated with arson.
- 5) With regard to both residential and commercial business, arson was least likely when the insured (owner) occupied the property.

Introduction

The primary objective of this AIRAC study is to classify fire insurance claims — based on data collected from a large number of insurance claim files — into two groups. One group identifies those fires where arson was suspected and the other group where arson was not suspected. Throughout this report, the term “arson fire” means arson was suspected and “nonarson fire” means arson was not suspected.

While this study offers reasonably accurate statistical reporting, it should be noted that several problems are encountered in attempting to obtain totally accurate data on the subject of arson. Differences in definition, data gathering and storage procedures make it difficult to obtain a precise measure of arson incidence from the many companies which contributed to this report.

The National Academy of Sciences indicated in its report “Incendiarism — An Overview and an Appraisal” that these problems are not confined to the insurance industry. Their assessment of national data gathering agencies’ capabilities to supply arson related information was that: “. . . we are by contrast almost illiterate regarding most important facets of incendiarism, . . .” Later in the report, there was the following comment regarding local fire records, “. . . a vast number of fires go listed as ‘undetermined origin’ or worse yet, ‘unknown’.” In their consensus findings, NAS pinpointed several especially serious problems:

- Terminology is not uniform
- Collection forms and practice are not coordinated
- Collation is rudimentary
- Interpretation is subject to question
- Dissemination is unstructured

Information currently being gathered by officials and insurance companies promises more reliable fraud arson statistics in the future. However, it will be some time before the figures approach 100% credibility.

The findings in this report are based on fires which were reported to insurance carriers and selected for review as outlined in the design section which follows. As a general rule, the claim files were termed as “arson fire” if *any one* of the following conditions were met:

- 1) The investigation resulted in a criminal indictment or conviction by the prosecutor’s office.
- 2) A judgment was entered in favor of the insurance carrier in a civil suit.
- 3) A compromise settlement was made based on facts within the claim investigations sufficient to indicate incendiary origin, but insufficient for criminal indictment or civil suit defense.
- 4) Incendiary origin and motive were determined or there was strong indication of vandalism, revenge, concealment, pyromania.
- 5) The claim file contained other sufficient evidence to convince a reasonably prudent person the fire was incendiary.

Identity of the individual(s) responsible for the fire was not established as a criterion.

Some fires that properly should have been considered arson related may not have been designated as such by the claims people participating in the study. This was due to Federal, state and local laws and ordinances that — in addition to judicial constraints ranging from privacy acts to discovery procedures — discourage such labeling in the absence of substantial evidence. The estimates of arson incidence derived from the claim survey are understated to the extent that these forces caused misclassification of arson fires. Although there were problems associated with collecting and interpreting data on arson, the findings of this study give a reasonable indication of the relationship between arson and nonarson fires for the time period studied and in the states selected for observation.

Design of the Survey

The survey was based on information about fires of suspicious origin collected from the claim records of insurance companies agreeing to take part in this study.

The companies invited to participate in the survey and the claim records selected for review were chosen in a systematic fashion designed to collect substantial amounts of information without unreasonably burdening contributing insurers. Initially, the 10 insurers writing the largest proportion of homeowners insurance (residential coverage) and the 10 companies writing the largest share of commercial multiple peril insurance (commercial coverage) in each of 12 states during 1979 were identified as participants.

In a few states, several insurers not affiliated with AIRAC either directly or through a trade association were included in the initial group. These companies were deleted from the list and the next AIRAC affiliated insurer with the largest market share was added.

The end result was a group of 49 residential insurers and 24 commercial insurers. Because several large insurers are leading writers of both residential and commercial coverage, the number of participating companies (57) reflects elimination of any double counting. The market share of business written by the leading 10 AIRAC affiliated insurers varied between 46 and 72 percent in the 12 survey states.

Each company's market share was used as a basis for determining the number of claim records it was asked to review. Some companies with substantial market penetration in both residential and commercial fire insurance were asked to supply claims information for both areas of coverage. The largest number of records requested from a single company was 3,922 (residential and commercial) and the smallest request was for 38 records (residential).

A data information form for the number of claims assigned was requested from each participating insurer. Copies of the residential and commercial data information forms appear in the Appendix of this study.

In some states the insurance industry participates in programs called Fair Access to Insurance Requirements (FAIR) Plans, whereby property insurance is made available to people who otherwise would have difficulty obtaining coverage. Claim records were examined for voluntary business written directly by insurers in 12 states and for business written through FAIR Plans in eight of these sample states.

Selection of states to be included in the survey was based on the relative size of the state's insurance market as well as a desire to have all regions of the country represented in the survey. The 12 voluntary market states and the eight FAIR Plan states included in the survey are listed in Table 1. These states represent 49.5 percent and 57.6 percent respectively of the residential and commercial voluntary fire insurance markets and 66.4 percent of the FAIR Plan business throughout the country. The market share of the 10 largest AIRAC affiliated insurers in each of the survey states is shown in Table 2.

Only claims closed during 1980 were eligible for the survey. In order to increase the likelihood that sufficient information would be available, the only residential fires considered were those that were reserved for, or resulted in a payment of more than \$1,000. Commercial fires involving more than \$5,000 were eligible for review. Companies were asked to access their closed claim records sequentially without regard to suspected cause of loss, date of the fire or any characteristics other than the minimum size restriction and year of closing. FAIR Plans in each of the eight participating states were asked to provide information from an equal number of residential and commercial claim files.

Information on a total of 13,418 (\$594 million)* fire insurance claims was received. These responses were spread among the four market and coverage combinations as follows: 7,845 (\$130 million)* voluntary residential claims; 2,785 (\$398 million)** voluntary commercial claims; 1,590 (\$23 million)* FAIR Plan residential claims; and 1,198 (\$43 million)* FAIR Plan commercial claims. Because of uneven response rates among the participating companies in the states surveyed, results based on aggregated data are weighted according to the distribution of claim files shown in Table 3.

In the language of statistical inference, the survey was based on a judgment or subjective sample rather than on a random sample. This type of sampling is felt to be appropriate when the purpose of the investigation is to develop a base of much needed information. Judgment samples generally have the advantage of being more economical and easier to conduct than surveys based on random sampling. However, samples have an undesirable characteristic in that standard statistical techniques cannot be applied to evaluate the accuracy and reliability of estimates based on sample data. Therefore, an evaluation of the "goodness" of estimates derived from judgment sample data is also a matter of personal judgment. Relationships disclosed in the survey data are considered to exemplify typical claims experience among leading insurers in the sample states during 1980.

*Gross loss and damage.

**An extremely large suspicious loss of \$262 million has been omitted from these figures and the analysis.

Table 1

Fire Insurance Markets
In Survey States

Name of State	State's Share of Countrywide Premiums Written		FAIR Plan \$(000)	Written Premium** % of Countrywide
	Residential*	Commercial*		
Arizona	1.1%	1.3%	N/A	N/A
California	11.6	14.3	\$28,595	13.1%
Florida	4.0	4.3	N/A	N/A
Georgia	2.2	1.7	1,283	0.6
Illinois	5.0	5.8	18,760	8.6
Maryland	1.5	1.6	N/A	N/A
Michigan	4.4	5.1	28,379	13.0
Missouri	2.1	1.9	7,389	3.4
New Jersey	3.5	4.4	19,946	9.1
New York	7.5	10.6	33,371	15.2
Ohio	4.8	4.6	6,645	3.0
Washington	1.8	2.0	N/A	N/A

*Based on direct premiums written for homeowners and commercial multiple peril insurance in 1979.

Source: Best's Executive Data Service

**Based on *FAIR Plan Report of Operations* issued by the Property Insurance Plans Service Office, September 1980. Data are for the 12 months ending November or December, 1979.

Table 2
 Market Share of
 Participating Insurers in
 Survey States

Name of State	Largest 10 AIRAC Affiliated Companies' Mkt Share	
	Residential*	Commercial*
Arizona	71.84%	60.67%
California	63.12	51.86
Florida	52.08	49.37
Georgia	54.71	48.71
Illinois	53.79	46.70
Maryland	59.20	56.79
Michigan	58.78	45.79
Missouri	63.57	45.59
New Jersey	53.00	50.03
New York	52.36	51.18
Ohio	56.49	49.89
Washington	64.58	54.85

*Based on direct premiums written for homeowners and commercial multiple peril insurance in 1979.

Source: Best's Executive Data Service

Table 3
 Distribution of Claim Files
 By State, Coverage and Market

State	Voluntary Market						FAIR Plans					
	Residential		Commercial		Residential		Commercial		Residential		Commercial	
	#	%	#	%	#	%	#	%	#	%	#	%
Arizona	385	4.91	93	3.34	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
California	658	8.39	487	17.49	257	16.16	248	20.70	257	16.16	248	20.70
Florida	694	8.85	173	8.21	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Georgia	689	8.78	178	6.32	47	2.98	22	1.84	47	2.98	22	1.84
Illinois	734	9.36	348	12.50	250	15.72	245	20.45	250	15.72	245	20.45
Maryland	710	9.05	109	3.91	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Michigan	848	10.81	262	0.33	143	8.99	42	3.51	143	8.99	42	3.51
Missouri	639	8.15	157	5.84	240	15.09	69	5.78	240	15.09	69	5.78
New Jersey	727	9.27	181	6.50	250	15.72	245	20.45	250	15.72	245	20.45
New York	628	8.01	430	15.44	252	15.85	231	19.28	252	15.85	231	19.28
Ohio	681	8.68	253	9.08	145	9.12	84	7.01	145	9.12	84	7.01
Washington	447	5.70	113	4.06	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Unknown	5	0.08	3	0.11	6	0.38	12	1.00	6	0.38	12	1.00
Totals	7,845	100.02	2,785	100.01	1,590	99.99	1,198	100.00	1,590	99.99	1,198	100.00

Detailed Findings of the Study

Incidence of Arson

The incidence of arson is measured in this study in two ways. One, the prevalence of arson is indicated by the arson number percentage. The number percentage is equal to the number of suspected arson fires divided by the total number of fires, multiplied by 100. Two, the cost of arson is demonstrated by the arson dollar percentage. The dollar percentage is equal to the total gross loss and damage of suspected arson fires divided by the total gross loss and damage for all fires, multiplied by 100.

Either measurement must be qualified, since the data used for this study are subjective samples. They represent only the relative frequency of arson in the claim files of selected insurers (at least 45% market share) in 12 chosen (not random) states. Also, the claims searched were restricted to fires where the gross loss was greater than \$1,000 for residential fires or \$5,000 for commercial fires. These restrictions were placed for two reasons. First, small losses generally have limited information available in the claim files. Second, it was thought that arson fires tend to involve higher costs than nonarson fires, as supported by the data. As a result, the inclusion of a large number of small dollar losses would distort the number percentage more than the dollar percentage. Because the sample was not random and because it was restricted as mentioned, no statistical confidence limits can be determined for the results. The number and dollar percentages of arson are given in Table 4 by insurance coverage (residential, commercial) and market (voluntary, FAIR Plan).

Table 4
Arson Number and Dollar Percentages

Coverage	Market	Sample Size	Actual		
			Dollars (Millions)	Number (%)	Dollar (%)
Residential	Voluntary	7,845	\$130	11	14
	FAIR Plan	1,590	23	30	28
Commercial	Voluntary	2,785	398*	27	37*
	FAIR Plan	1,198	43	40	52

*The effect of one extremely large suspicious loss of \$262,000,000 has been removed. With inclusion, this figure would be 62%.

Table 3

Claim Files
Market

FAIR Plans		Commercial	%
		N/A	N/A
		248	20.70
		N/A	N/A
		1,84	1.84
		20.45	20.45
		N/A	N/A
			51

Notes

dollars of fire losses, arson incidence was greater for Plan market, arson fires could indicate ("dollar %"

large arson or non- Therefore, the with any unust raised the r asures f re eff u

of arson and occurring with percentage u. of a loss distribution is the dollar amount. es have higher loss amounts and 50% have lowe, presents the median loss amounts for nonarson and arson and market.

Table 5
Median Gross Loss and Damage

Coverage	Market	Nonarson	Arson
Residential	Voluntary	\$ 4,209	\$15,000
	FAIR Plan	9,291	11,490
Commercial	Voluntary	12,008	23,355
	FAIR Plan	14,250	16,088

Based on the median loss value, arson losses were more costly than nonarson losses. In the voluntary market, arson in residential coverage was 256% more costly than nonarson; in commercial coverage it was 94% more costly. For FAIR Plans, the differences were calculated at 25% for residential coverage and 13% for commercial coverage. These considerable differences between the voluntary market and FAIR Plans may, in part, be explained by the underwriting and geographic restrictions of the FAIR Plans. As noted previously, a direct comparison between residential and commercial coverage is not appropriate.

*This may be due to the minimum loss limits placed upon surveyed claim files (\$1,000-residential, \$5,000-commercial). Direct comparison between residential and commercial data is inappropriate.

Tables 6 through 8 show the type of business, residential coverage, percentages of partnership, percentages. Gr the commenship in the percentages a

Table 9 indicates that arson was the most prevalent motive for the property. Vacant and unoccupied

Single-family residential losses (Table 8). The highest arson incidence

Table 9 indicates that arson was the most prevalent motive for the property. Vacant and unoccupied

Figures 1, 2 and 3 present the incidence of arson by month.

Arson Motive

Of particular interest to insurers are the motives for arson fires. Table 10 shows the arson number and dollar percentages, by motive, for the voluntary residential market, vandalism was the most common motive of both the number and dollars of arson. However, vandalism may have been a catchall category regarding those arson losses for which another motive is not readily determinable.

Arson fraud, or arson-for-profit, was the second most prevalent motive. It was associated with 14% of the number of arson fires and 22% of the dollars of arson losses. Arson fraud is the most difficult motive to ascertain or prove. Consequently, fraudulent arson fires may have been wrongly categorized as vandalism or by some other motive. The data for the voluntary commercial market were similar, but the fraud incidence was less pronounced.

The FAIR Plans were remarkably consistent in the proportion of claims reported to be arson. However, with regard to arson motive their breakdowns ranged from extremely high in one FAIR Plan to zero in others. Because averages developed from such figures would be without meaning, no FAIR Plan motive averages are presented.

The cost of fraud arson was higher than nonfraud arson. Table 5A expands Table 5 to include the median gross loss and damage for suspected arson by "fraud" motive and "other" motive.

	Dollar	
	(%)	(%)
	42	55
	38	46
	29	31
	46	69
	92	34
	21	48
	27	37*
	40	52

from these figures.

indicated in Table 2 for this coverage and market. Certain claim files could versus nonarson.

Table 4 indicates that, in terms of both the number and dollars of fire losses, arson incidence was greater for the FAIR Plan segment. Also, incidence was greater for commercial businesses.* Excepting the residential FAIR Plan market, arson fires cost disproportionately more than their prevalence would indicate ("dollar %" versus "number %").

It was recognized that selecting and surveying a few very large arson or nonarson losses at random could greatly affect dollar measurements. Therefore, the survey data was screened to remove any undue weight associated with any unusually large losses. Specifically, one \$262 million arson loss significantly raised the arson dollar percentage as exhibited in Table 4. Thus, percentage measures for dollar loss amounts must be used with caution. To be conservative, the effect of the \$262 million arson loss is not included in the percentage measures used in this report.

The median value is a measure of the relative costs of arson and nonarson fires which avoids the large-loss data distortions occurring with percentage or average value measures. The "median" value of a loss distribution is the dollar amount compared to which 50% of the fires have higher loss amounts and 50% have lower loss amounts. Table 5 presents the median loss amounts for nonarson and arson fires by coverage and market.

Table 5
Median Gross Loss and Damage

Coverage	Market	Nonarson	Arson
Residential	Voluntary	\$ 4,209	\$15,000
	FAIR Plan	9,291	11,490
Commercial	Voluntary	12,008	23,355
	FAIR Plan	14,250	16,088

Based on the median loss value, arson losses were more costly than nonarson losses. In the voluntary market, arson in residential coverage was 256% more costly than nonarson; in commercial coverage it was 94% more costly. For FAIR Plans, the differences were calculated at 25% for residential coverage and 13% for commercial coverage. These considerable differences between the voluntary market and FAIR Plans may, in part, be explained by the underwriting and geographic restrictions of the FAIR Plans. As noted previously, a direct comparison between residential and commercial coverage is not appropriate.

*This may be due to the minimum loss limits placed upon surveyed claim files (\$1,000-residential, \$5,000-commercial). Direct comparison between residential and commercial data is inappropriate.

Tables 6 through 9 present the results from Table 4 as subdivided by ownership, type of business (commercial), type of property (residential), and occupancy. For residential coverage, individual ownership had the lowest number and dollar percentages of arson loss (excluding the "other" category). Ownership by trust, partnership, or private corporation (FAIR Plans only) had the highest arson percentages. Generally, there was little variation in arson incidence, by ownership, in the commercial coverage percentages. It is noteworthy that for individual ownership in the commercial voluntary market, the dollars of damage for arson (dollar percentage) was lower than the prevalence of arson (number percentage). This indicates a lower-than-average loss amount for arson fires in that category.

Table 7 indicates that wholesale business had the largest incidence of arson in the voluntary commercial market and that the average loss size was not disproportionate. ("Number %" roughly equals "dollar %.") On the other hand, service, financial and commercial property-rental business did exhibit disproportionately high dollar losses versus the number of arson fires. For FAIR Plans, retail stores had the highest arson experience while private residence rentals had the lowest.

Single-family residences and personal property had the lowest incidence of arson losses (Table 8). Appurtenant structures (detached garages, outbuildings) had the highest arson incidence.

Table 9 indicates that arson was less likely when the insured was an occupant of the property. Vacant and unoccupied structures were most prone to arson.

Figures 1, 2 and 3 present the incidence of arson by time of day, day of week, and month.

Arson Motive

Of particular interest to insurers are the motives for arson fires. Table 10 presents the arson number and dollar percentages, by motive, for the voluntary market. In the voluntary residential market, vandalism was the most common motive in terms of both the number and dollars of arson. However, vandalism may have been a catchall category regarding those arson losses for which another motive is not readily determinable.

Arson fraud, or arson-for-profit, was the second most prevalent motive. It was associated with 14% of the number of arson fires and 22% of the dollars of arson losses. Arson fraud is the most difficult motive to ascertain or prove. Consequently, fraudulent arson fires may have been wrongly categorized as vandalism or by some other motive. The data for the voluntary commercial market were similar, but the fraud incidence was less pronounced.

The FAIR Plans were remarkably consistent in the proportion of claims reported to be arson. However, with regard to arson motive their breakdowns ranged from extremely high in one FAIR Plan to zero in others. Because averages developed from such figures would be without meaning, no FAIR Plan motive averages are presented.

The cost of fraud arson was higher than nonfraud arson. Table 5A expands Table 5 to include the median gross loss and damage for suspected arson by "fraud" motive and "other" motive.

Table 5A
Median Gross Loss and Damage

Coverage	Market	Nonarson	Arson (All Motives)	Arson (Fraud Motive)	Arson (Other Motives)
Residential	Voluntary	\$ 4,209	\$15,000	\$25,000	\$12,865
	FAIR Plan	9,219	11,490	.	.
Commercial	Voluntary	12,008	23,335	37,000	21,698
	FAIR Plan	14,250	18,088	18,457	15,971

Table 5A indicates that, based upon median values, fraud arson was significantly more costly than suspected arson based upon other motives. In the residential voluntary market, it is nearly twice as costly and six times more costly than fires that were not arson.

*The FAIR Plans were remarkably consistent in the proportion of claims reported to be arson. However, with regard to arson motive their breakdowns ranged from extremely high in one FAIR Plan to zero in others. Because averages developed from such figures would be without meaning, no FAIR Plan motive averages are presented.

Table 6
 Arson by Type of Ownership
 Arson Number and Dollar Percentage Within Type

Coverage: Market:	Residential			Commercial		
	Voluntary	FAIR Plan	Voluntary	FAIR Plan	Voluntary	FAIR Plan
Type of Ownership:	Sample Size	Number (%)	Dollar (%)	Sample Size	Number (%)	Dollar (%)
Individual	7,561	11	14	1,402	29	27
Private Corporation	66	15	14	52	40	46
Public Corporation	7	14	33	13	31	26
Trust	20	45	40	38	37	54
Partnership	38	31	35	45	36	46
Other	74	14	23	6	67	52
Overall	**	11	14	**	30	28
				**	27	37*
					40	52

*The effect of one \$262 million suspected arson fire has been removed from these figures.

**The overall sample size may be less than the sample size indicated in Table 2 for this coverage and market. Certain claim files could not be identified as to type of ownership and/or arson versus nonarson.

Table 7
 Arson by Type of Commercial Business
 Arson Number and Dollar Percentage Within Type

Market: Type of Business	Voluntary			FAIR Plan		
	Sample Size	Number (%)	Dollar (%)	Sample Size	Number (%)	Dollar (%)
Retail	604	31	35	200	55	70
Service	410	29	80	161	41	40
Financial	26	19	57	—	—	—
Manufacturing	203	22	18*	49	35	44
Wholesale	67	42	44	5	40	26
Rental (Private Residence)	310	23	19	188	31	26
Rental (Commercial Property)	617	24	42	524	38	56
Other	521	27	18	69	45	53
Overall	**	27	37*	**	40	52

*The effect of one \$262 million suspected arson fire has been removed from these figures.

**The overall sample size may be less than the sample size indicated in Table 2 for this coverage and market. Certain claim files could not be identified as to type of business and/or arson versus nonarson.

Table 8
 Arson by Type of Residential Property
 Arson Number and Dollar Percentage Within Type

Market:	Voluntary				FAIR Plan			
	Sample Size	Number (%)	Dollar (%)	Sample Size	Number (%)	Dollar (%)		
Type of Property								
Single-Family Residence	8,601	9	14	875	29	26		
Apartment	203	17	22	108	38	41		
Condominium	28	12	15	1	0	0		
Other Multi-Family	258	18	18	540	29	31		
Detached Garage	183	34	28	20	75	74		
Outbuildings	149	28	13	12	50	28		
Personal Property	303	10	12	15	7	3		
Other	92	22	21	1	0	0		
Overall	*	11	14	*	30	28		

*The overall sample size may be less than the sample size indicated in Table 2 for this coverage and market. Certain claim files could not be identified as to type of property and/or arson versus nonarson.

Table 9
 Arson by Type of Occupancy
 Arson Number and Dollar Percentage Within Type

Coverage: Market:	Residential						Commercial					
	Voluntary			FAIR Plan			Voluntary			FAIR Plan		
Type of Occupancy:	Sample Size	Number (%)	Dollar (%)	Sample Size	Number (%)	Dollar (%)	Sample Size	Number (%)	Dollar (%)	Sample Size	Number (%)	Dollar (%)
Insured	6,393	8	11	488	17	11	1,382	25	27	239	47	51
Tenant	873	15	16	743	32	37	1,040	24	35	771	37	52
Insured & Tenant	128	14	15	179	17	16	153	28	46*	131	31	38
Vacant	147	61	82	114	83	85	63	67	71	31	77	81
Unoccupied	271	40	44	44	61	56	119	52	70	21	81	75
Overall	**	11	14	**	30	28	**	27	37*	**	40	52

*The effect of one \$262 million suspected arson fire has been removed from these figures.

**The overall sample size may be less than the sample size indicated in Table 2 for this coverage and market. Certain claim files could not be identified as to type of occupancy and/or arson versus nonarson.

Table 10
Arson Fire Motive
Voluntary Market*

Coverage:	Residential		Commercial	
	Number (%)	Dollar (%)	Number (%)	Dollar (%)
Arson Fraud	14	22	12	8
Vandalism	53	40	49	61
Revenge	12	12	11	6
Concealment	6	8	8	6
Pyromania	3	3	3	5
Other	13	15	16	15
	100	100	100	100
Sample Size	853		766	

*The FAIR Plans were remarkably consistent in the proportion of claims reported to be arson. However, with regard to arson motive their breakdowns ranged from extremely high in one FAIR Plan to zero in others. Because averages developed from such figures would be without meaning, no FAIR Plan motive averages are presented.

Appendix

Residential Arson Survey

Data Information Form

Check Applicable Blocks

1. Cause of Fire

(check only one)

- 1) Arson suspected
 2) Arson not suspected (Go to Question 3)

2. Motive for suspected arson (Answer only if (1) is marked above).

(check only one)

- 1) Arson fraud
 2) Vandalism
 3) Revenge
 4) Concealment of another crime
 5) Pyromania
 6) Other Motive: _____

(Describe)

3. Type of Property

Check major item of insured loss involved (check only one).

- 1) Single family residence
 2) Apartment
 3) Condominium association
 4) Other multi-family residence
 5) Detached garage
 6) Outbuildings
 7) Personal property
 8) Other

4. Occupancy at Time of Loss

(check only one)

- 1) Insured
 2) Tenant
 3) Insured and tenant
 4) Vacant
 5) Unoccupied

5. Type of Ownership

- () 1) Individually owned
 () 2) Private corporation
 () 3) Public corporation
 () 4) Trust
 () 5) Partnership
 () 6) Other

6. Geographical Area

a. Zip Code _____

7. Date and Time of Loss

a. Date _____
 Month (#) Date Year (last 2 digits)

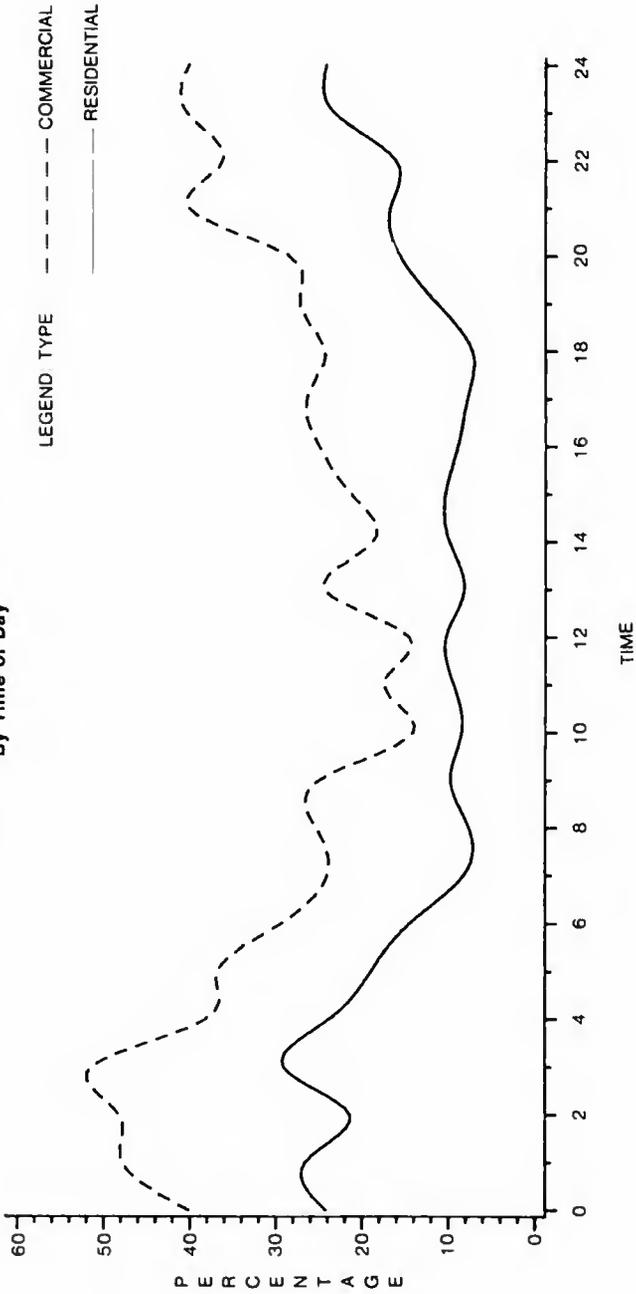
b. Time _____ : _____ () AM () PM

8. Insurance, Reserve, Loss and Damage and Payment on Building and Personal Property (include other applicable insurance separately).

	Amount of Insurance	Maximum Reserve	*Gross Loss and Damage	Payment
a. Building	\$ _____	\$ _____	\$ _____	\$ _____
b. Personal Property	\$ _____	\$ _____	\$ _____	\$ _____
c. Insurance with other carriers	\$ _____	\$ _____	\$ _____	\$ _____

*Gross loss and damage means the total estimated amount of direct loss caused by the fire to the insured property, regardless of the adequacy of coverage, compromised payment, reinsurance, salvage or other ameliorating items.

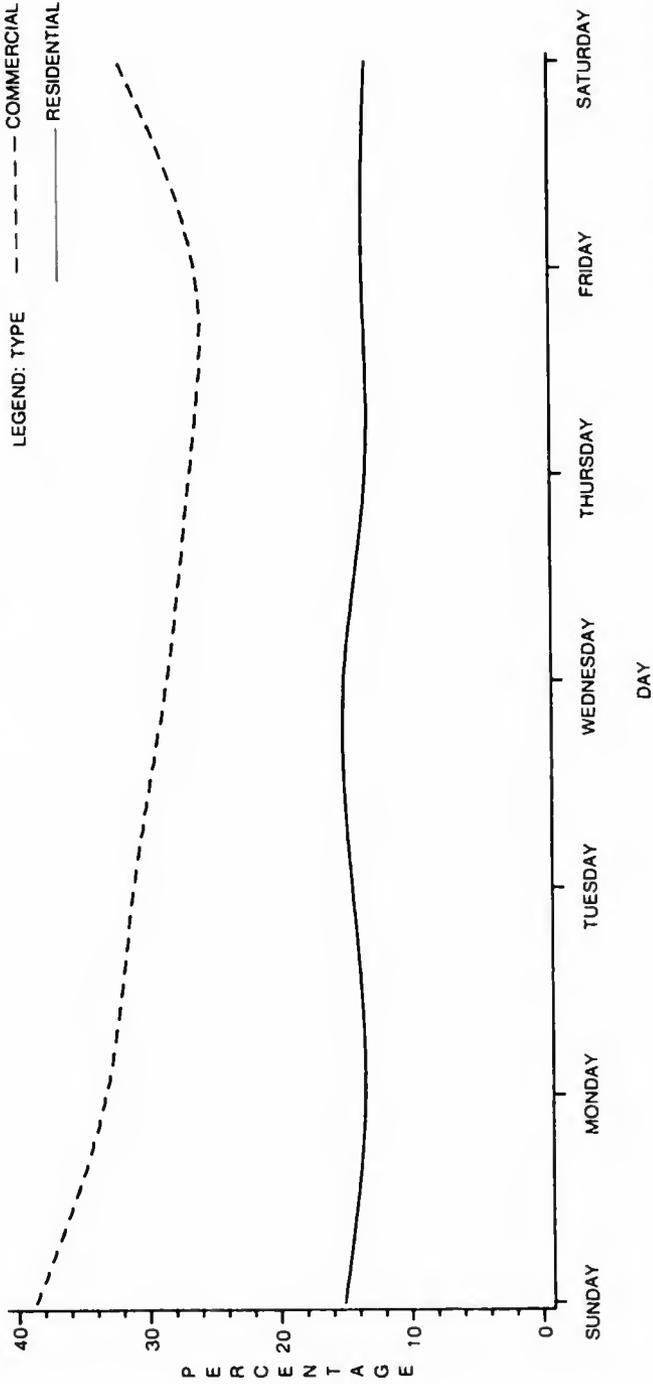
Figure 1
ARSON NUMBER PERCENTAGE*
By Time of Day



0 hour or 24 hour = 12 am TO 1 am 6 = 6 am TO 7 am
 12 = 12 pm TO 1 pm 18 = 6 pm TO 7 pm

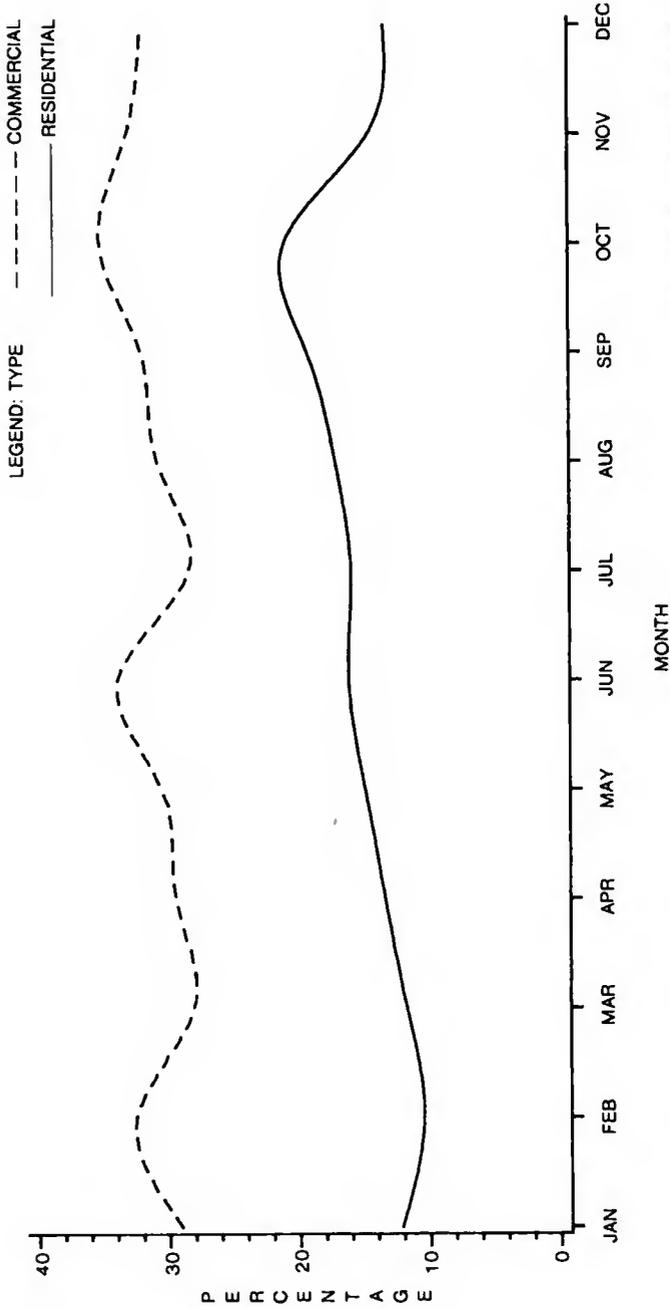
*Includes both voluntary market and FAIR Plan data

Figure 2
ARSON NUMBER PERCENTAGE*
By Day of Week



*Includes both voluntary market and FAIR Plan data

Figure 3
ARSON NUMBER PERCENTAGE*
By Month



*Includes both voluntary market and FAIR Plan data

LIST OF AIRAC PUBLICATIONS

Automobile Insurance

Automobile Injury Compensation

Examines the compensation systems used in the United States. Includes a survey of 42,204 injury-producing accidents involving 53,164 paid claims; a survey of 420 claims of serious injuries valued at \$100,000 or more each; and a consumer panel survey of auto injuries for 60,000 U.S. households.

Volume I: Automobile Injuries and their Compensation in the United States. AIRAC. A79-1, March 1979; xii, 254 pages.

Volume II: Automobile Injuries and their Compensation in the United States. AIRAC. Statistical tables supportive of the three surveys covered in Volume I. A79-1, March 1979; vi, 409 pages.

Both volumes are available at a cost of \$15.00 per set from the Research Department of the Alliance of American Insurers, 20 North Wacker Drive, Chicago, Illinois 60606, which agreed to distribute it on behalf of AIRAC. Please make checks payable to All-Industry Research Advisory Council.

Magnetic data tapes containing the data from the insurer study of closed claims and the consumer survey may be purchased by writing to the Research Department of the Alliance.

• • •

The following research reports are available at no cost from the All-Industry Research Advisory Council, 7315 Wisconsin Avenue, Suite 231-W, Bethesda, Maryland 20814. Each research report is an extension of findings from the two volume study **Automobile Injuries and their Compensation in the United States**.

Subrogation of PIP Claims by Ann Durand. A80-1, July 1980; ii, 12 pages. Free.

Attorney Representation by Lawrence W. Soular. A80-82, June 1980; ii, 8 pages. Free.

Extent of Auto and Health Insurance by Ann Durand. A80-3, July 1980; ii, 7 pages. Free.

An Analysis of Accident Location in Relation to Area of Residence by Ann Durand. A80-4, July 1980; ii, 5 pages. Free.

• • •

This publication is an update of the open PIP serious injury claims Survey in **Automobile Injuries and Their Compensation in the United States**. This new report monitors progress of the injured and updates expected costs.

Insurer Study of PIP Serious Injury Claims — 1980 Follow-up Survey. AIRAC. A80-6, December 1980; vi, 22 pages. Free.

Auto Theft

A compendium of statistics on automobile theft in the United States. **Auto Theft in the United States.** AIRAC. A81-3, December 1981, v, 22 pages. Free.

Characteristics of Uninsured Motorists

The research report examines the characteristics of uninsured motorists and the vehicles they drive. Based on data from official accident reports filed with motor vehicle departments in seven states.

A Study of Uninsured Motorists Involved In Reported Automobile Accidents by Ann Durand. A80-5, August 1980; ii, 27 pages. Free.

Cost of Auto Insurance

The research for this publication draws on data from 3.8 million auto insurance policies insuring nearly 5.8 million vehicles, and defines premiums paid.

The Cost of Auto Insurance: How Consumer Choices and Characteristics Affect the Premiums People Pay. AIRAC. A80-7, December 1980; viii, 52 pages. \$3.50 postpaid.

Public Attitudes and Expectations

A survey of public attitudes and knowledge of auto insurance.

Public Attitude Monitor, 1980. AIRAC. A81-1, March 1981; vi, 26 pages. Free.

Public Attitude Monitor, 1981. AIRAC. A81-4. December 1981; vi, 27 pages. Free.

A follow-up study of public attitudes regarding auto cost and choice of new cars, cost of auto insurance, auto safety, homeowners/renters insurance, and claim fraud.

Driver Performance Records

Documents massive underreporting of serious accidents and motor vehicle violations in state motor vehicle record systems.

State Motor Vehicle Records as a Source of Driver Performance Information. AIRAC. A81-2, March 1981; v, 15 pages. Free.

Property Insurance

Urban Home Insurance

A survey that measures experience and attitudes of homeowners on the availability and affordability of home insurance in the cities of Chicago, Cleveland, Atlanta, Philadelphia, Los Angeles and the borough of Brooklyn in New York City.

The Availability of Homeowners Insurance In Six Major Cities: Consumer Experience and Attitudes. AIRAC. P81-1, May 1981; vi, 40 pages. \$2.50 postpaid. Discounts for large orders.

A report that investigates the attitudes, awareness and experiences of FAIR Plan policyholders in 12 Major American cities

Attitudes of AIR Plan Home Insurance Policyholders in 12 Major American Cities. AIRAC. P81-2, October 1981; vi, 52 pages. \$2.50 postpaid. Discounts for large orders.

Arson Incidence Claim Study. AIRAC, P82-1, March 1982; v, 29 pages. Free.

Liability Insurance

Municipal Liability

Two questionnaire surveys were carried out to identify and measure trends in liability of municipalities as to the availability of coverage, the cost of coverage, and actions needed to control rising liability. Survey responses were received from 83 insurance companies and 853 municipalities.

Municipal Liability Insurance: Survey of Municipalities and Insurance Companies. AIRAC. L80-1, May 1980; xi, 71 pages plus 284 pages of tables in appendices. \$11.50 postpaid.

Municipal Liability Insurance: Survey of Municipalities and Insurance Companies. AIRAC. Summary. L80-2, May 1980; vi, 9 pages plus 8 pages of tables. \$1.50

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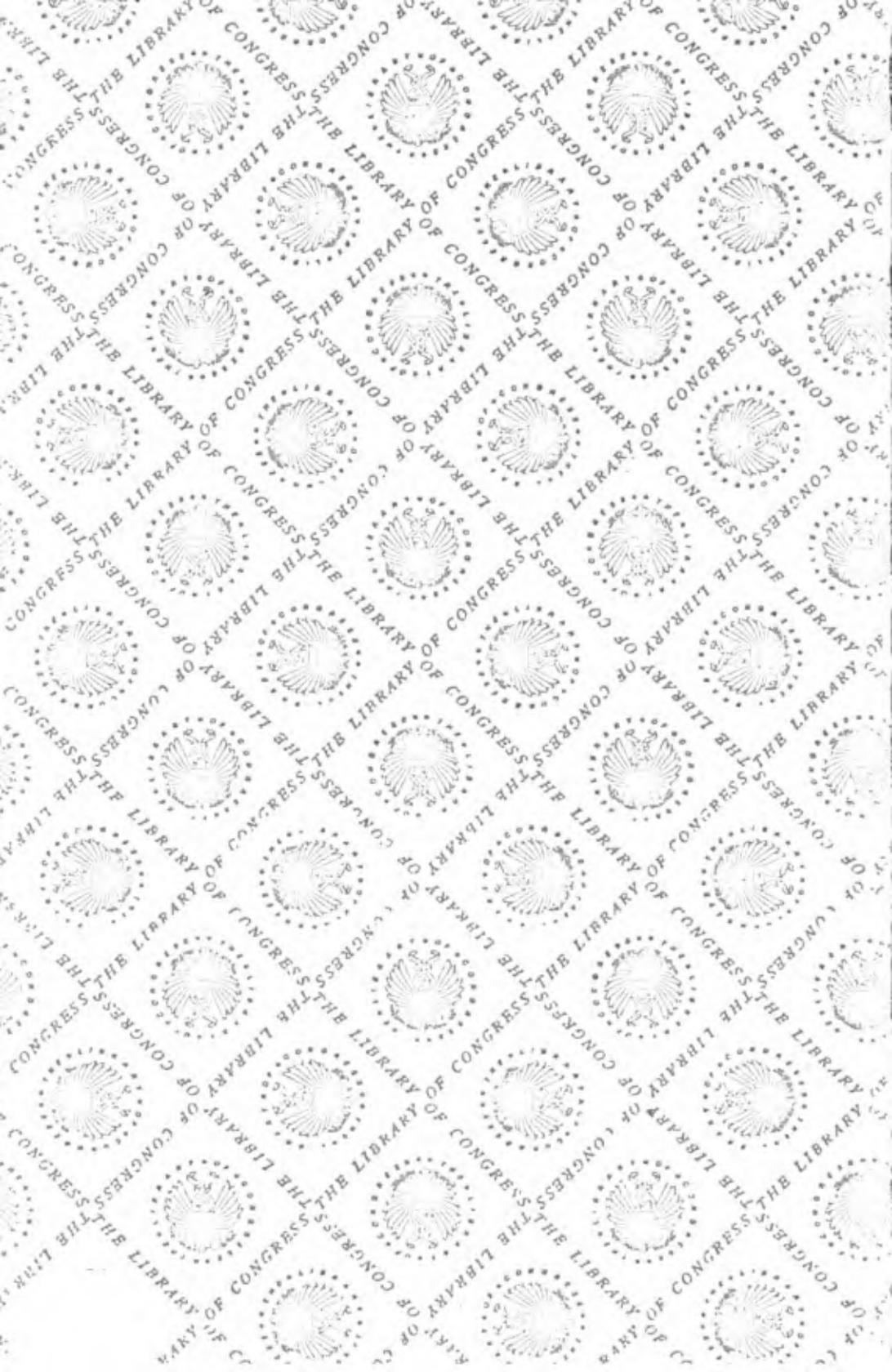
A third study summarizes premium and loss experience of the municipalities surveyed in the foregoing report.

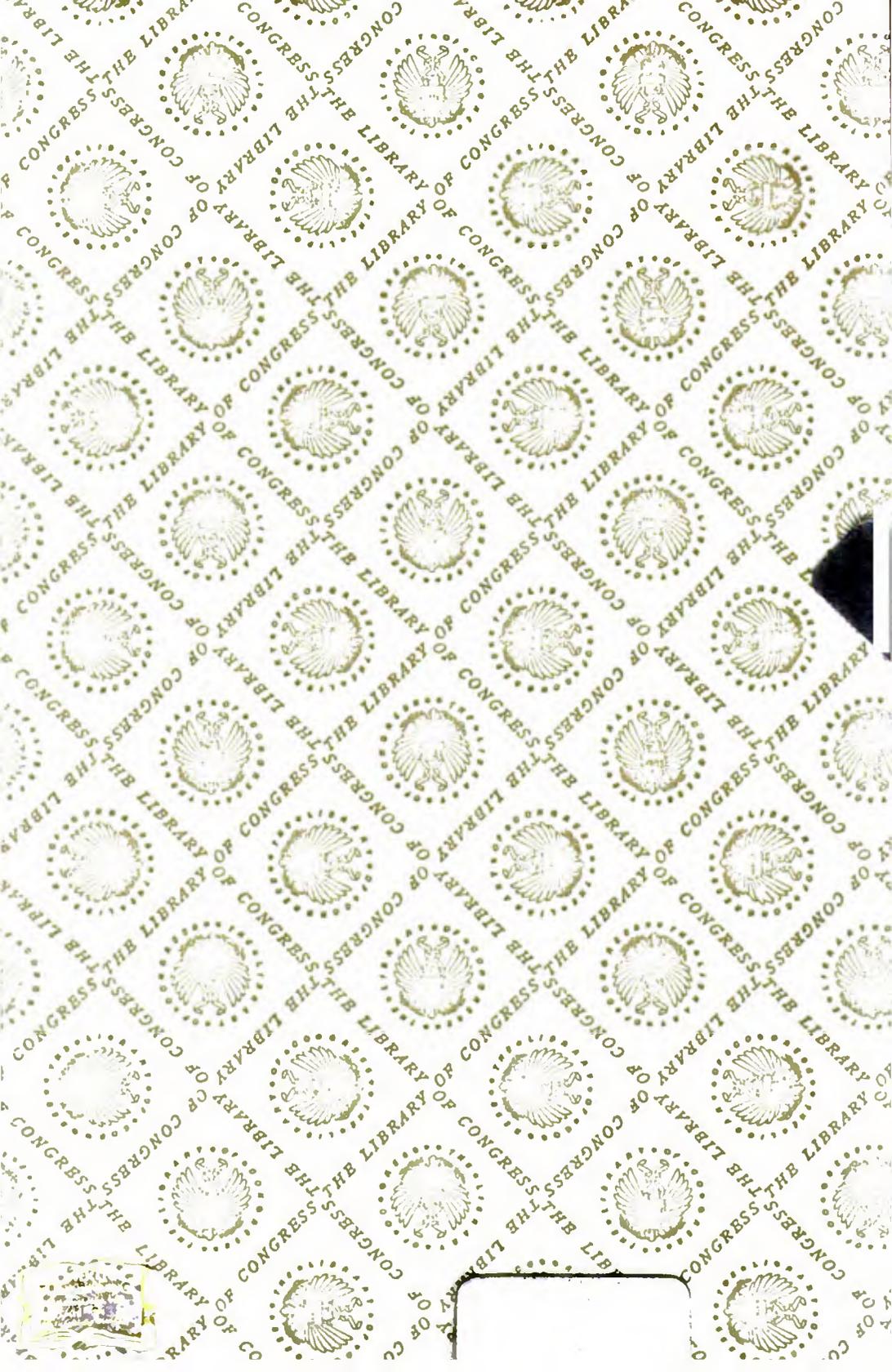
Municipal Liability Insurance: Underwriting Results. AIRAC. L80-3, December 1980; viii, 80 pages. \$3.50 postpaid.

[Whereupon, at 10:33 a.m., the subcommittee proceeded to other business.]

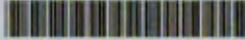








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