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MEMORANDUM

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Proposed Testimony of Deputy Assistant
Attorney General Keeney on the Issuance
of Union Memberships and Work Placement

The above-referenced testimony is scheduled to be delivered tomorrow before the Senate Committee on Labor and Human Resources. It responds to a request from the committee for comments concerning allegations of unlawful activity by a specific union, the Boilermakers. The testimony begins by noting that the allegations are being investigated and that specific information therefore cannot be provided. The bulk of the testimony reviews bases for prosecution of cases of corrupt payments for union membership, and urges legislative consideration of previously-cleared proposals to make such prosecutions easier. I see no legal objections.

Attachment

THE WHITE HOUSE

WASHINGTON

June 28, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER 
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Proposed Testimony of Deputy Assistant
Attorney General Keeney on the Issuance
of Union Memberships and Work Placement

Counsel's Office has reviewed the above-referenced proposed testimony, and finds no objection to it from a legal perspective.

RAH:JGR:aw 6/28/83

cc: RAHauser
JGRoberts
Subj.
Chron

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) 1 1Name of Correspondent: Greg Jones☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Statement of John C. Kennedy
re: Corruption in the Issuance of Labor Union
Memberships and Work Placement
on June 29, 1982

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Completion Date YY/MM/DD
<u>CU4011</u>	<u>ORIGINATOR</u>	<u>83 06 29</u>		<u>1 1</u>
<u>CU4118</u>	<u>D</u>	<u>83 06 29</u>	<u>S</u>	<u>83 06 29</u>
	Referral Note:			<u>Q.M</u>
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DRAFT

Washington, D.C. 20530

STATEMENT
OF
JOHN C. KEENEY
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON LABOR AND HUMAN RESOURCES
UNITED STATES SENATE

CONCERNING

CORRUPTION IN THE ISSUANCE OF LABOR UNION
MEMBERSHIPS AND WORK PLACEMENT

ON

June 29, 1983

Mr. Chairman, I am here today in response to your request to the Attorney General for the Department of Justice's comments concerning allegations of unlawful activities being conducted by members of the Boilermakers' Union. On April 26, 1983, members of the Committee's staff met with representatives of the Justice Department's Office of Legislative Affairs and the Federal Bureau of Investigation in regard to additional information on this subject which had come to the Committee's attention. Since that time the FBI has interviewed Mr. Gary W. Boring of Indiana, Pennsylvania in the presence of his attorney, Mr. Thomas Crawford, concerning Mr. Boring's allegation of possible unlawful conduct within the Boilermakers' Union.

In accordance with the long-standing policy of the Department of Justice, we are not at liberty to discuss the details of a pending investigation. I want to advise the Committee that the FBI and the United States Attorney's office in Pittsburgh are attempting to determine whether Mr. Boring's allegations can be substantiated. However, I am able to state that the investigation has focused on one of the three subject matter areas in which Mr. Boring has alleged unlawful conduct is occurring. This matter directly involves the activities of persons affiliated with the Boilermakers' Union and possible corrupt practices affecting the issuance of union memberships and/or work placement.

Part of the investigation deals with the alleged practice which was considered in hearings held by this Committee in May 1982. The practice involves the ability of a person who is allegedly not eligible for or who is otherwise unable to secure membership in the jurisdiction of a particular local union, but who in return for payment of a fee is able to obtain a membership in another local union located outside the jurisdiction in which the person desires to work. With such membership in hand, the individual is then able to return to the community where he wants to work and, as a so-called "traveller," is allowed to work on jobs within the local union's jurisdiction in that community under a so-called "work permit" issued by the local union.

Without going into detail concerning this particular investigation, I want to briefly discuss how the Department of Justice has prosecuted cases involving corrupt payments made to union officials by prospective employees in return for union memberships, job classifications, and work placement generally. I'd like to also mention some of our problems in these cases. We have successfully pursued criminal prosecution under the federal statute covering theft of union property (29 U.S.C. 501(c)), the federal mail fraud statute (18 U.S.C. 1341), and the federal statute which proscribes extortion affecting interstate commerce (18 U.S.C. 1951).

Let me note first, however, that all of these prosecutions require a corrupt payment by the prospective member or employee to the union official to which the official is not entitled. In other words, the payment of an otherwise bona fide initiation fee, membership dues, or work permit fee into a union treasury as uniformly required of all union members or job applicants is not an adequate basis for prosecution under these criminal statutes. A demand for and/or the receipt of the corrupt payment by the union official is the essential fact which is required in our view to prove the defendant's criminal intent to misuse union property, defraud the union and its members, or wrongfully obtain the victim's money by extortion. Therefore the primary object of the ongoing investigation is to determine whether corrupt payments have occurred.

Since the United States Court of Appeals, Second Circuit, issued its decision in United States v. Robinson, a case involving the corrupt sale of union forms dealing with job classification in the maritime industry, we have a had a very useful vehicle to prosecute many of these types of cases under the theft of union property statute in the Landrum Griffin Act. The theory of the prosecution is that the union officer steals the property of the union when he issues a union membership card, work permit card, membership

application form and the like in return for a corrupt payment made to him personally. One prosecution involving officials of the Pipefitters' Union in West Virginia used this statute in part to prosecute corrupt payments made by over 100 prospective members which amounted to over \$280,000 paid during a two (2) year period. The problem with this prosecutive vehicle is that in those cases where the union officer only provides information or otherwise does not misuse an item of union property in return for the corrupt payment, the likelihood of successfully using the union theft statute is greatly diminished.

Another prosecutive vehicle is the federal mail fraud statute which has been successfully used where the union official also devises a scheme to defraud the union and its members of the right to select its members by the criteria established in the union's constitution and bylaws. This type of prosecution may typically involve proof of the criminal defendant's misrepresentation of the prospective member's eligibility for membership. Other fraud schemes have also been prosecuted. Last year the Committee heard testimony about an individual who was convicted of mail fraud in Delaware after he had misrepresented to prospective members the existence of a bona fide local union through which memberships could be obtained. The prosecution of all

of these frauds under federal law, however, depend on proof of the defendant's foreseeable use of mails or interstate wire transmissions which are not present in the case of corrupt transactions conducted by the participants on a face-to-face basis.

Thirty-six years after passage of the Hobbs Act, the federal statute which covers extortion and robbery affecting interstate commerce, a federal appellate court concluded for the first time last year that the robbery of an individual prospective employee, as contrasted with the robbery of a commercial business person, could be prosecuted under this Act where the movement of employées or goods in interstate commerce was affected directly by the robbery or extortion. We think that decision can be of significant assistance in prosecuting cases where a prospective employee is the victim of a union official's extortion of a corrupt payment using the employee's fear of job loss or loss of opportunity to work. However, for that reason, we were disappointed to learn that another federal appellate court decided last year that there is no prosecutive jurisdiction under the federal extortion statute where an individual employee, as opposed to a business person, is the victim of an extortion which only affects interstate commerce indirectly, that is, where the extortion only depletes the victim's ability to purchase goods and services from the channels of commerce. In other

words, prosecution under the Hobbs Act is likely to require proof of interstate travel by the employee victims in these cases.

Therefore, as we have requested in prior communications with the Committee, we would appreciate the Committee's consideration of the kind of legislation which was included in previous Federal Criminal Code Reform bills with respect to the issuance of union memberships or work placement by unions. I refer to labor bribery legislation which would have outlawed corrupt payments by any person to a union official relating to an admission to membership or a referral for employment. The labor bribery provisions of S.1630 which was introduced in the 97th Congress would have eliminated the need to prove elements which may be only incidental to the bribery and underlying abuse in these cases, for example, misuse of union property, use of the mails, and interstate travel.

We will be pleased to assist the Committee in its consideration of that particular type of legislation or any legislative vehicle which the Committee believes may be more appropriate. We would welcome your review of this proposal as a means of dealing with a serious problem.

THE WHITE HOUSE

WASHINGTON

June 30, 1983

MEMORANDUM FOR DIANNA G. HOLLAND

FROM: JOHN G. ROBERTS *JGR*

SUBJECT: Statement of Lawrence Lippe and Herbert Hoffman Re: Government's Investigation and Prosecution in United States v. Hitachi, Ltd., et al. (June 27, 1983)

This matter was handled by telephone, and RAH was so advised at the time.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

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Greg Jones

☐ MI Mail Report

User Codes: (A)

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 Subject: Statement of Lawrence Lippe and Herbert Hoffman
re: Government's Investigation and Prosecution in
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ACTION

DISPOSITION

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CU/H011	ORIGINATOR	83.06.24			1 1
CUAT 18	Referral Note: A/D	83.06.24		S	83.06.26
	Referral Note:				
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	Referral Note:				
	Referral Note:				
	Referral Note:				

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DRAFT

Statement

of

Lawrence Lippe, Chief
General Litigation and Legal Advice Section
Criminal Division

and

Herbert B. Hoffman
Assistant United States Attorney
and
Senior Litigation Counsel
for the
Southern District of California

before the

Committee on Energy and Commerce
Subcommittee on Oversight and Investigations
United States House of Representatives

concerning

THE GOVERNMENT'S INVESTIGATION AND PROSECUTION
IN UNITED STATES V. HITACHI, LTD., ET AL.

June 27, 1983

I am Lawrence Lippe, Chief of the General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice. My Section has oversight responsibility for the enforcement and application of the National Stolen Property Act (18 U.S.C. §§ 2314 and 2315). I am accompanied today by Herbert B. Hoffman, an Assistant United States Attorney for the Southern District of California.

We thank you for the opportunity of appearing here today to assist the Subcommittee in its hearings into the impact of illegal and unfair foreign trade practices in interstate commerce. In particular, we will provide the Subcommittee with information concerning the Government's investigation and criminal prosecution of Hitachi, Ltd. and several of its employees for conspiring to obtain stolen computer trade secrets and technology from IBM Corporation and then transporting that property in interstate and foreign commerce.

In view of the importance and significance of the Hitachi case to the Government's efforts to curb industrial espionage and theft of trade and intellectual secrets, the Department of Justice and the United States Attorney for the Northern District of California, Joseph P. Russoniello, determined that a prosecutor with extensive economic and white collar crime prosecutive experience should be designated as lead prosecutor.

Mr. Hoffman who has also been designated a Senior Litigation Counsel, one of only 33 such designations among Assistant United States Attorneys throughout the country, was selected to fulfill that role. Consequently, he has become fully familiar with all aspects of the investigation and prosecution of Hitachi and its employees. Mr. Hoffman shall discuss the background which led to the investigation and prosecution of Hitachi, et al. He will also summarize for the Subcommittee the legal proceedings in the case which were conducted in San Francisco before the Honorable Spencer Williams, United States District Judge, including the disposition of the case against the defendants who were apprehended and subject to the jurisdiction of the Court.

We understand that the Subcommittee has obtained selected portions of the video tapes recorded by the Federal Bureau of Investigation (FBI) during the undercover operation of Hitachi. These tapes were unsealed and made available for public scrutiny by Judge Williams on May 13, 1983. Mr. Hoffman is prepared to assist the Subcommittee in its understanding and evaluation of the selected portions of these tapes.

There are presently two pending criminal cases resulting from the FBI's undercover operation: (1) United States v. Mitsubishi, et al. and (2) United States v. Cadet, et al. In addition, there are nine employees of Hitachi who remain fugitives in Japan in the Hitachi case. In order that the pending cases not be prejudiced, our remarks today will be restricted to matters which now are part of the public record.

The FBI Investigation

In November 1980, based upon complaints from business and law enforcement representatives in Santa Clara County, California, the San Francisco office of the FBI commenced an investigation into the theft and counterfeiting of electronic components, including integrated circuits and technology. The complaints alleged that the stolen property was being illegally transported in both interstate and foreign commerce by traffickers and buyers dealing with the stolen goods.

By mid-December 1980, Special Agent Kenneth C. Thompson, who was assigned to conduct the investigation, concluded that conventional investigative techniques had been unsuccessful in dealing with these crimes. Agent Thompson thus concluded that an undercover investigation would be the best investigative technique to develop prosecutions and began to pursue this objective.

On March 26, 1981, Agent Thompson submitted a proposal for an undercover investigation to FBI headquarters. The proposed investigation required the establishment of employment histories and specialized training for undercover agents. Agent Thompson contacted security officials of IBM's San Jose facility and requested their assistance in the event the investigation was approved. Limited training seminars were conducted at IBM in late May 1981, after Agent Thompson learned that FBI headquarters was giving favorable consideration to the proposal if certain changes could be made to the proposal. In

June 1981, IBM assigned Richard A. Callahan, a representative of IBM's Corporate Security Department in Armonk, New York, to act as IBM's interface with the FBI.

On July 20, 1981, an amended proposal for the undercover investigation was submitted to FBI headquarters. This submission contained a provision which had been suggested by FBI headquarters that an agreement be entered into between the FBI and IBM by which IBM would agree to provide assistance in the investigation concerning training and employment histories.

On July 30, 1981, FBI headquarters approved the undercover investigation after it had been presented to the "Criminal Undercover Operations Review Committee" in accordance with the Attorney General's Guidelines on FBI Undercover Operations. The undercover operation was given the code name of PENGEM, standing for the Penetration of Gray Electronics Market. On August 27, 1981, the cooperation agreement was entered into between the FBI and IBM. It was anticipated that the undercover operation would be ready to commence about November 1981. During this same time period, independent events were taking place which subsequently led to the FBI's investigation of Hitachi.

The IBM Investigation

Hitachi, Ltd., is engaged in the manufacture of computers and computer-related products and competes with IBM in the United States by marketing computers and disk drive storage

devices which are compatible with IBM products. Following the introduction of IBM products, Hitachi must design and manufacture these products in order to compete in the marketplace with IBM. The advantages to Hitachi in acquiring existing, closely-guarded IBM computer technology is that Hitachi could eliminate costly, time-consuming reverse engineering, and thereby shorten the lead time (usually estimated at 18-24 months by Hitachi employees) to bring Hitachi products to the marketplace. In addition, when Hitachi plug-compatible computers enter the marketplace, they can effectively compete with IBM costwise, since Hitachi would not have to spend the substantial sums for research and development.

For some years prior to the investigation, Hitachi had retained the services of Palyn Associates, a data processing system consulting firm in San Jose, California. Palyn and other consultants marshal available public information on IBM products and, utilizing their computer expertise, complete studies and design reviews which assisted Hitachi in the development of their plug-compatible products.

On August 19, 1981, Hitachi employees Kenji Hayashi and Katsumi Takeda had a meeting with two Palyn employees at their San Jose office. During this meeting, Dr. George Rossman of Palyn offered to sell Hitachi a report prepared by Palyn concerning features of IBM's 3081 computer. The most powerful computer processing unit currently sold by IBM is the 3081,

which consists of two integrated central processors sharing the same central data storage and operating under a single control program.

Hayashi briefly looked at the Palyn report and told Dr. Rossman that he would consult with his associates in Japan and notify Palyn of their interest in the report. On August 26, 1981, Dr. Rossman received a telex from Hayashi which stated that "we have already got Adirondack workbook that is similar to your covering. But we have only vol. 1, 3, 4, 8, 9, 18, 11, 12, 15, 22. If you have another vol, let me know. We consider again . . . Pls. keep confidential."

The telex was brought to the attention of Maxwell Paley, president of Palyn Associates and a former employee of IBM. Recognizing that the Adirondack workbooks contained highly confidential architectural design information on the IBM 3081 computer, Paley contacted an IBM Senior Vice President, Bob O. Evans, and reported the incident, without identifying Hitachi.

During September 1981, representatives of IBM, including Richard Callahan, met with Paley to further discuss the matter. As a result, Palyn agreed to assist IBM in its investigation of the possible loss of IBM confidential information. A telex was sent by Paley to Hayashi which stated that he had "made a contact and was told information you requested is under rather strict security control but can be obtained." Paley told Hayashi in the telex that "no further reference should be made by telex in view of sensitive nature" and proposed a meeting in Tokyo.

Max Paley and Robert Domenico, another Palyn employee, met with Hayashi in Tokyo on October 2 and 6, 1981. During these meetings, Hayashi was shown a copy of the index to the Alpine Hardware Design Workbooks which had been supplied to Paley by Callahan (Alpine superseded Adirondack as the code name for the 3081 development program). The index was marked "Do Not Copy" and "IBM Confidential - Restricted." Hayashi returned the index at the second meeting on October 6, 1981, and indicated Hitachi's priorities by placing the letters A (highest priority), B (lesser priority), or C (Hitachi has volume, but perhaps not the latest version).

On October 6, 1981, Hayashi also gave Paley and Domenico copies of volumes 8, 11 and 22 of the Adirondack workbooks, each of which was stamped "Do Not Copy," "IBM Confidential" or "Do Not Reproduce." Following each meeting in Tokyo, Paley and Domenico related the substance of the meetings to Callahan, who had accompanied them to Japan, staying at the same hotel.

Callahan was also provided with the three workbooks given by Hayashi to the consultants. Upon his return to the United States, Callahan verified that the workbooks were confidential IBM documents. After consultation with IBM executives, Callahan notified Agent Thompson of IBM's investigation on October 23, 1981. Agent Thompson concluded that these facts warranted the FBI's involvement and that the suspected violations fit within the objectives of the PENGEM undercover investigation. The actual theft of the workbooks from IBM is

the subject of another pending case, United States v. Cadet, et al.

Between October 26, 1981, and November 6, 1981, arrangements were made to introduce Special Agent Alan J. Garretson to Kenji Hayashi. Agent Garretson had a computer background, having previously worked for IBM before joining the FBI. Agent Garretson assumed the undercover identity of Alan Harrison, president of Glenmar Associates, the undercover company that was created as part of the PENGEM operation. The purpose of the meeting between Agent Garretson and Hayashi was to verify IBM's allegations and determine the extent of any criminal activity in which Hitachi was involved.

The FBI Investigation

On November 6, 1981, in Las Vegas, Nevada, Maxwell Paley introduced Hayashi to Richard A. Callahan. Callahan was identified as "Richard Kerrigan," a retired attorney who used to work for a law firm which represented Palyn Associates and IBM, among other clients. Callahan told Hayashi that he had acquired the index shown to Hayashi in Tokyo from one of his present clients.

Callahan also told Hayashi that his client was making arrangements for a private viewing of the IBM 3380. The 3380 is the most advanced storage control unit used to transfer information from the central processing unit and a disk storage device. While in Japan in October 1981, Hayashi had presented

a request on behalf of Hitachi for an "early look" at IBM's 3380 storage device.

Arrangements were made for Callahan to introduce Hayashi to his client later that day. Agent Garretson was introduced to Hayashi by Callahan that day in Hayashi's hotel room. (The meetings on November 6, 1981, were arranged by the FBI so that Paley and Garretson never met one another.) Hayashi and Garretson met on November 6 and again on November 7. Hayashi told Garretson that Hitachi wanted to obtain early information about certain IBM products. He stated that Hitachi was interested in obtaining maintenance manuals for the IBM 3380 and a viewing of this machine by a senior Hitachi engineer. It was agreed that Garretson would receive \$10,000 if he could obtain the manuals and arrange for the viewing at a company which had received one of the first 3380's shipped by IBM under its early support program.

During the November 6 and 7 meetings, Hayashi also asked for information about IBM's MVS/SP Version 2, which is an IBM control program used to operate large computer systems. He also told Garretson that Hitachi had some of the Alpine design workbooks for the IBM 3081 and wanted to obtain additional workbooks.

Garretson made it clear to Hayashi during these meetings that the obtaining of this confidential IBM information involved considerable risk and that the person inside IBM who obtained the information could get into serious trouble, including being fired and being put into jail for stealing.

Finally, during these meetings, Hayashi explained to Garretson the code names and numerical codes which they would use to refer to the IBM products. This code, based upon the addition of the digits in each product's number, called for the 3081 to be referred to as 12, the 3380 as 14, and MVS/SP as 16. These code numbers would be preceded by the letter "P" if the request involved processor information, the letter "D" if it involved disk information, and "SS" if it concerned software information.

Hayashi also explained that the amount of money that Hitachi would be willing to pay for the satisfaction of each request would be designated by the name of a fictitious person "assigned the task." For example, if the last name of the person began with the letter A (i.e., Anderson), Hitachi would pay \$1,000; if it began with B, \$2,000, and so on. These code designations were utilized by Hayashi throughout most of the undercover investigation.

After listening to the tape recordings of the November 6 and 7 meetings, Agent Thompson concluded that IBM's initial allegations had been substantiated and a continued investigation was desirable. Agent Thompson also decided that the continued use of Callahan in the investigation was desirable because he complemented Garretson well and could interface with IBM personnel regarding needed technical information.

Hitachi manufactures its computers and computer-related products at various works located in Japan. The Kanagawa Works is responsible for development and manufacture of computers, also known as central processing units. The Odawara Works is responsible for the development and manufacture of information storage devices, including disk storage devices. The software works, located in Yokohama, is responsible for the development of programs necessary to operate the computer.

The first undercover transaction took place on November 15, 1982, when Agent Garretson met with Odawara Senior Engineer Jun Naruse in Hartford, Connecticut, for a viewing of the new IBM 3380 machine which was being installed at the nearby Pratt & Whitney facility as part of the early support program.

Garretson and Naruse drove to Pratt & Whitney at 5:00 that morning. In the parking lot, they met a third man, who gave each of them Pratt & Whitney identification badges. Garretson gave the third man an envelope and explained to Naruse that the envelope contained money. Garretson and Naruse and the third man were admitted into the facility and made their way to the computer room. They were unable to open the door and the third man telephoned the security guard. Garretson and Naruse hid in a nearby darkened office until after the guard arrived to open the locked door.

Once inside the computer room, Naruse took photographs of the 3380 machine after being instructed not to get any background into the pictures so that the location could not be

determined. Garretson also pretended to be taking pictures of the 3380, but actually was photographing Naruse. Later in the day at the hotel, Naruse paid Garretson \$3,000 in cash (in \$100 bills). On November 18, 1981, Garretson met with Naruse at Glenmar's office in Santa Clara. Garretson gave Naruse some volumes of the 3380 maintenance manuals and received an additional \$7,000 in cash.

Thereafter, between November 1981 and June 1982, Hitachi representatives from all three computer works met with Garretson and Callahan to negotiate for additional stolen confidential IBM computer information and technology. These meetings and additional telephone calls were video and audio tape-recorded by the FBI. In addition, substantial letters and telexes were exchanged between Hitachi representatives and the undercover agents involving the same subject matter.

The multitude of communications and contacts with the Hitachi representatives are detailed in the 28-page affidavit of Agent Thompson in support of the complaint in this case and has been made available to the Subcommittee. Copies of the most relevant letters and telexes have been filed in the public record and have likewise been made available to the Subcommittee.

After the initial cash payment by Naruse, Hayashi decided that an indirect method of payment would have to be devised. In January 1982, he explained to Garretson by letter that an "abnormal channel" was being planned. It was later explained

to Garretson that Hitachi would be sending money to its subsidiary trading company, Nissei Electronics, Ltd., who would be represented by Keizo Shirai. Shirai would then transfer the money to Tom Yoshida of NCL Data, Inc., an American company in Santa Clara, who would make all the payments to Glenmar. Shirai and Yoshida were introduced to Garretson by Hayashi on January 18, 1982, at a meeting at Glenmar. Throughout the remainder of the investigation, all payments to Glenmar were handled in this fashion. Both Nissei and NCL Data received commissions on the Glenmar transactions.

The undercover investigation came to a conclusion on June 22, 1982. On that date, Hitachi representatives were to accept delivery of the most guarded IBM computer technology as part of a package deal for \$525,000. The package was to include the remaining workbooks for the 3081, a thermal conduction module backboard, the MVS/SP Version 2 source microcode, and source microcodes for the 3380 and 3880.

Prior to closing the final package deal, the undercover agents insisted upon receiving assurances from top level Hitachi computer representatives at all three works that the stolen IBM information would be treated carefully with limited access, so as to protect the IBM employees who were stealing the information. In response to the above, the undercover agents received a letter dated April 30, 1982, from Dr. Kisaburo Nakazawa, the person in charge of the Kanagawa Works, which assured that the information provided would be

protected in a secure room with limited access. The undercover agents also received a letter dated June 19, 1982, from Sadao Kawano, the deputy manager of the Odawara Works which contained similar assurances.

On June 21, 1982, Kenji Hayashi and Isao Ohnishi arrived at Glenmar to inspect the IBM information. The same day, Tom Yoshida sent a wire transfer for the negotiated sum to a bank in Washington, D.C. which Garretson had selected to avoid paying taxes on the transaction.

On June 22, 1982, Yoshida drove Hayashi and Ohnishi in a van to Glenmar to accept delivery of the IBM property. All three were arrested by FBI agents on complaints issued by a United States Magistrate in San Jose the preceding day. Later that morning, FBI agents also arrested Shirai and Kunimasa Inoue, an employee of Hitachi America, Ltd., in San Francisco. Kunimasa Inoue had previously assisted Agent Garretson in copying four modules of the MVS/SP Version 2 source microcode on March 29 and April 4, 1982.

The Hitachi Prosecution

And Case Disposition

On June 30, 1982, the facts of the undercover operation were presented to a federal grand jury sitting in San Jose, California. The grand jury returned a one-count conspiracy indictment charging 15 defendants with conspiracy to transport stolen property in interstate and foreign commerce, in

violation of 18 U.S.C. §§ 371 and 2314. The limited indictment was dictated by the fact that none of the IBM property sold and delivered to Hitachi was in fact stolen from IBM. Rather, the property was willingly provided by IBM to the undercover agents to assist the investigation.

The 15 defendants included Hitachi, Ltd., 12 Hitachi employees, Keizo Shirai, and Tom Yoshida. Hitachi, Ltd., voluntarily surrendered to the jurisdiction of the Court to defend the criminal indictment. Defendants Kenji Hayashi, Isao Ohnishi, and Kunimasa Inoue were subject to the Court's jurisdiction because of their arrest in the United States, as were Keizo Shirai and Tom Yoshida (not Hitachi employees). Nine Hitachi employees presently in Japan were and are still fugitives in the case and have refused to voluntarily submit to the Court's jurisdiction.

After the indictment was returned, the six defendants before the Court were arraigned and entered not guilty pleas. The case was assigned to the Honorable Spencer Williams, United States District Court Judge. Pursuant to an agreement by the parties, the case was designated as a complex criminal case and the defendants were given until October 1, 1982, to file pretrial motions.

On October 1, 1982, Hitachi and the other five defendants filed voluminous pretrial motions. Among those motions were several asking the Court to dismiss the indictment. It was alleged by the defendants that the Government and the FBI were

guilty of outrageous misconduct and selective prosecution in this case. In short, the defense argued that the predicate for the FBI investigation had been abused because IBM corruptly manipulated the FBI into the investigation to further its private anti-competitive ends, and that IBM, through Callahan, actually was in control of the FBI undercover investigation.

The Government's response and opposition to the Hitachi pretrial motions was filed on November 4, 1982, and has been provided for the Subcommittee. We labeled the Hitachi dismissal motions as wholly frivolous and argued that this was a classic case of guilty defendants, caught "red-handed," desperately trying to transfer the blame for their embarrassment to the Government.

The Hitachi pretrial motions were first scheduled to be heard by Judge Williams in December 1982. They were subsequently continued to January 1983, and then February 8, 1983 at Hitachi's request. The trial of the case was scheduled to commence on April 4, 1983.

On February 8, 1983, before the motions were heard, the case was resolved as to five of the six defendants before the Court: Hitachi, Ltd., Kenji Hayashi, and Isao Ohnishi entered guilty pleas to the indictment and received probationary sentences and fines; defendants Keizo Shirai and Kunimasa Inoue were placed on one-year pretrial diversion programs. Formal plea bargain agreements were filed in Court had have been made available to the Subcommittee.

Defendant Tom Yoshida refused to plead guilty, and his case was continued for trial on May 16, 1983. Yoshida adopted all of Hitachi's dismissal motions on February 28, 1983. These motions were denied by Judge Williams in a written order filed on March 11, 1983, without the necessity of an evidentiary hearing.

On May 2, 1983, in preparation for the Yoshida trial, the Government filed a trial memorandum with accompanying trial memorandum exhibits which have been provided to the Subcommittee. In addition, the Government filed with the Court, under seal, a composite tape and transcripts of the audio and video recordings which were intended to be played before the jury at the Yoshida trial. The composite tape was derived from almost 100 hours of audio and video tape recordings made during the investigation. In composite form, the video tape recordings were approximately 12 hours and the audio tape recordings were approximately 6 hours.

A pretrial hearing was scheduled in the Yoshida case for the morning of May 13, 1983 (three days before trial). At the pretrial hearing, Yoshida tendered a nolo contendere plea to the indictment pursuant to Rule 11, Federal Rules of Criminal Procedure. The acceptance or rejection of such a plea is discretionary with the Court. Judge Williams elected to accept the nolo contendere plea by Yoshida over the Government's objection. A transcript of the May 13, 1983, proceedings has been provided to the Subcommittee.

After the nolo contendere plea from Yoshida had been accepted, Judge Williams announced that he was unsealing the composite tapes and transcripts for public inspection. Lawyers for Hitachi and Hayashi unsuccessfully attempted to block the unsealing that afternoon in the United States Court of Appeals for the Ninth Circuit in San Francisco. The composite tapes and transcripts thus have now become public information and the Subcommittee has access to them.

On June 15, 1983, Judge Williams sentenced Yoshida to a fine of \$7,500 and two years' probation with the added condition that his company, NCL Data, devote 250 hours to community service.

file

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 6, 1983

MEMORANDUM FOR RICHARD A. HAUSER

FROM: JOHN G. ROBERTS

SUBJECT: Statement of Larry Orton
Re: Tactical Intelligence

Larry Orton, DEA Special Agent-in-Charge of the El Paso Intelligence Center (EPIC), proposes to deliver the above-referenced testimony tomorrow before the House Subcommittee on Government Information, Justice and Agriculture. The brief testimony reviews the operations of EPIC, the highly-successful intelligence center jointly operated by DEA, INS, Customs, Coast Guard, BATF, FAA, Marshals Service, IRS, and the FBI. It describes how EPIC handles time-sensitive inquiries from law enforcement agencies across the country, notes the increase in inquiries handled by EPIC, and boasts an EPIC success rate -- availability of data in response to an inquiry -- of 33%.

I see no legal objections.

Attachment

*Not sent -- handled
by telephone*

THE WHITE HOUSE

WASHINGTON

July 6, 1983

MEMORANDUM FOR GREGORY JONES
OFFICE OF MANAGEMENT AND BUDGET

FROM: RICHARD A. HAUSER
DEPUTY COUNSEL TO THE PRESIDENT

SUBJECT: Statement of Larry Orton
Re: Tactical Intelligence

Counsel's Office has reviewed the above-referenced proposed testimony, and finds no objection to it from a legal perspective.

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

☐ O - OUTGOING☐ H - INTERNAL☐ I - INCOMINGDate Correspondence
Received (YY/MM/DD) _____Name of Correspondent: Gary Jones☐ MI Mail Report

User Codes: (A) _____ (B) _____ (C) _____

Subject: Statement of Larry Orton re:
Critical Intelligence

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>W Holland</u>	ORIGINATOR	<u>83107105</u>			<u>1 1</u>
<u>WAT 18</u>	Referral Note: <u>D</u>	<u>83107105</u>		<u>S</u>	<u>83107107</u>
	Referral Note:	<u>1 1</u>			<u>1 1</u>
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	Referral Note:	<u>1 1</u>			<u>1 1</u>

ACTION CODES:

A - Appropriate Action
C - Comment/Recommendation
D - Draft Response
F - Furnish Fact Sheet
to be used as Enclosure

I - Info Copy Only/No Action Necessary
R - Direct Reply w/Copy
S - For Signature
X - Interim Reply

DISPOSITION CODES:

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DIVISION 1

STATEMENT

OF

LARRY L. ORTON
SPECIAL AGENT-IN-CHARGE
EL PASO INTELLIGENCE CENTER

DRUG ENFORCEMENT ADMINISTRATION
U. S. DEPARTMENT OF JUSTICE

BEFORE

COMMITTEE ON GOVERNMENT OPERATIONS
SUBCOMMITTEE ON GOVERNMENT INFORMATION,
JUSTICE AND AGRICULTURE
U. S. HOUSE OF REPRESENTATIVES

"TACTICAL INTELLIGENCE"

JULY 7, 1983

CONFIDENTIAL

I AM PLEASED TO APPEAR BEFORE YOU TODAY TO DISCUSS THE ROLE OF THE EL PASO INTELLIGENCE CENTER (EPIC) IN DRUG LAW ENFORCEMENT, AND MORE SPECIFICALLY IN THE DISSEMINATION OF TACTICAL INTELLIGENCE.

MR. CHAIRMAN, I KNOW THAT YOU AND THE OTHER MEMBERS OF THE COMMITTEE JOIN ME IN BEING ENCOURAGED BY RECENT EVIDENCE THAT CERTAIN ELEMENTS OF DRUG ABUSE IN THE UNITED STATES HAVE ABATED SOMEWHAT: MARIHUANA USE AMONG TEENAGERS APPEARS TO BE DOWN SLIGHTLY, THE SHARP INCREASE IN PCP ABUSE EXPERIENCED DURING THE PAST DECADE IS TAPERING OFF, AND WE HAVE SEEN A SIGNIFICANT REDUCTION IN ABUSE OF METHAQUALONE IN THE PAST YEAR. HOWEVER, OUR OPTIMISM OVER THESE SPECIFIC POSITIVE TRENDS MUST BE TEMPERED BY THE REALIZATION THAT THE SERIOUSNESS OF THE DRUG ABUSE PROBLEM OVERALL REMAINS WITH US AND DRUG ABUSE LEVELS REMAIN UNACCEPTABLY HIGH.

NATIONAL TRENDS PROJECT THAT MAJOR DRUGS OF ABUSE WILL CONTINUE TO BE ABUNDANT AT LEAST THROUGH 1985, AND OUR DRUG ABUSE PROBLEMS WILL REMAIN AS LONG AS THERE IS A WORLD GLUT IN NARCOTICS AND DANGEROUS DRUGS.

CONFIDENTIAL

TIMELY AND RELIABLE EXCHANGE OF INTELLIGENCE IS THE KEY TO EFFICIENT AND EFFECTIVE UTILIZATION OF LAW ENFORCEMENT RESOURCES. THE EL PASO INTELLIGENCE CENTER (EPIC), WAS ESTABLISHED AT EL PASO, TEXAS, IN 1974 TO FACILITATE THE EXCHANGE OF INTELLIGENCE. EPIC PLAYS AN INTEGRAL ROLE IN THE OVERALL NARCOTIC INTELLIGENCE PROCESS. THIS UNIQUE, COOPERATIVE EFFORT, DESIGNED TO COLLECT, PROCESS AND DISSEMINATE INFORMATION CONCERNING ILLICIT DRUG TRAFFICKING, PROVIDES TACTICAL INTELLIGENCE TO FEDERAL AND STATE LAW ENFORCEMENT AGENCIES AROUND THE COUNTRY. DURING 1982, THE INTERNAL REVENUE SERVICE AND THE FBI BECAME THE EIGHTH AND NINTH PERMANENT FEDERAL AGENCIES REPRESENTED AT EPIC. THEY JOINED PERSONNEL FROM SEVEN OTHER PARTICIPATING FEDERAL AGENCIES: DRUG ENFORCEMENT ADMINISTRATION, IMMIGRATION AND NATURALIZATION SERVICE, U.S. CUSTOMS SERVICE, U.S. COAST GUARD, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, FEDERAL AVIATION ADMINISTRATION, AND U.S. MARSHALS SERVICE. IN ADDITION TO THESE ACTIVELY PARTICIPATING AGENCIES, A NUMBER OF OTHER AGENCIES WORK CLOSELY WITH THE CENTER. AMONG THESE ARE THE DEPARTMENT OF DEFENSE, DEPARTMENT OF STATE, AND VARIOUS STATE AND LOCAL LAW ENFORCEMENT AGENCIES. TWO U.S. TERRITORIES AND 46 LAW ENFORCEMENT AGENCIES WITH JURISDICTION OVER ILLICIT DRUG TRAFFICKING ARE ALSO AFFILIATED WITH EPIC. EACH STATE MUST SELECT AN AGENCY WHICH CAN SERVE AS A FOCAL POINT FOR INFORMATION EXCHANGE TO INTERESTED DEPARTMENTS IN THAT STATE. THIS AGENCY THEN BECOMES THE EPIC AFFILIATE AND EPIC DEALS PRIMARILY THROUGH THEM.

EPIC'S MAJOR FUNCTIONS ARE: (1) TO DISRUPT THE FLOW OF ILLICIT DRUGS AT THE HIGHEST TRAFFICKING LEVEL, THROUGH THE EXCHANGE OF TIME-SENSITIVE INFORMATION DEALING PRINCIPALLY WITH DRUG MOVEMENT AND (2) TO SUPPORT, THROUGH THE INTELLIGENCE PROCESS, OTHER PROGRAMS OF INTEREST TO

EPIC'S PARTICIPATING AGENCIES; SUCH AS ALIEN SMUGGLING AND WEAPONS
TRAFFICKING.

EPIC ACCEPTS QUERIES FROM ANY PARTICIPATING OR AFFILIATED FEDERAL
OR STATE AGENCY ON A 24-HOUR BASIS. IF FILE INFORMATION IS LOCATED OR
THE RESPONSE IS NEGATIVE, EPIC RESPONDS DIRECTLY TO THE REQUESTOR. IF
AN ACTIVE INVESTIGATION IS BEING CONDUCTED BY A PARTICIPATING OR AFFILIATED
AGENCY, EPIC ADVISES THE REQUESTOR TO CONTACT THE APPROPRIATE FIELD
OFFICE OF THAT AGENCY. STATES NOT AFFILIATED WITH EPIC HAVE ACCESS TO
EPIC INFORMATION THROUGH THEIR LOCAL DEA FIELD OFFICE. THE CENTER
RESPONDS TO ANY NON-AFFILIATED FEDERAL, STATE OR LOCAL LAW ENFORCEMENT
AGENCY IN AN EMERGENCY. ALL OF THIS IS, OF COURSE, IN ADDITION TO THE
INFORMATION AND LEADS THAT DEA FIELD AGENTS ROUTINELY PASS TO THEIR
COUNTERPARTS IN OTHER LAW ENFORCEMENT AGENCIES. WHILE EPIC CERTAINLY
SERVES A CRITICAL ROLE IN DISSEMINATION AND EXCHANGE OF INTELLIGENCE, IT
DOES NOT SERVE AS A SUBSTITUTE FOR THE DAILY EXCHANGE OF INFORMATION
THAT OCCURS BETWEEN LAW ENFORCEMENT OFFICERS ACROSS THE NATION.

EPIC ACCESS TO A VARIETY OF AUTOMATED DATA BASES FROM PARTICIPATING
AGENCIES ASSURES COMPREHENSIVE AND UP-TO-DATE INTELLIGENCE FOR MEMBER
AGENCIES. EPIC ALSO MAINTAINS ITS OWN DATA RETRIEVAL INTELLIGENCE
TERMINAL SYSTEM TO FACILITATE RAPID ACCESS TO OPERATIONS AND ANALYSIS
FILES. ADDITIONALLY, MICROGRAPHIC AND HARD-COPY REFERENCE FILES ARE
AVAILABLE FROM PARTICIPATING AGENCIES UPON REQUEST. DURING FY-82,
VARIOUS AGENCIES INCREASED REPORTING TO EPIC, THUS ENSURING THE CONTINUED

EXPANSION OF THE EPIC DATA BASE.

EPIC ACTIVITY HAS INCREASED TENFOLD SINCE 1975. DURING FY-82, EPIC HANDLED 189,692 SEPARATE WATCH TRANSACTIONS, INCLUDING ALL TYPES OF INQUIRIES AND LOOKOUTS. THE MONTHLY AVERAGE WAS 15,807 TRANSACTIONS. FOR THE FIRST EIGHT MONTHS OF FY-83, THE MONTHLY AVERAGE HAS BEEN 17,095 TRANSACTIONS, DUE IN LARGE PART TO AN INCREASE IN COAST GUARD ACTIVITY. EPIC'S AVERAGE HIT RATE WAS OVER 33% AND WAS CONSIDERABLY HIGHER IN CERTAIN PROGRAMS, SUCH AS PRIVATE AIRCRAFT AND VESSEL MONITORING. IN OTHER WORDS, OVER 33% OF THE INQUIRIES RELATED TO INFORMATION ALREADY MAINTAINED IN EPIC'S DATA BASES.

EPIC ACTIVITY FLUCTUATES WITH THE ADDITION OF NEW PROGRAMS AND THE ELIMINATION OF OTHERS THAT HAVE EITHER NOT YIELDED SIGNIFICANT INTELLIGENCE OR ARE NO LONGER TIMELY. OVERALL, HOWEVER, CRIMINAL INQUIRIES FROM PARTICIPATING AGENCIES HAVE STEADILY INCREASED AND CONTINUED INCREASES ARE ANTICIPATED. THE TOP FIVE USERS OF EPIC SERVICES DURING FY-82 WERE DEA, U.S. COAST GUARD, IMMIGRATION AND NATURALIZATION SERVICE/BORDER PATROL, STATE AND LOCAL LAW ENFORCEMENT AGENCIES, AND U.S. CUSTOMS SERVICE.

THE U.S. COAST GUARD CONDUCTED OVER 44,000 INQUIRIES, REPRESENTING 25% OF THE TOTAL TRANSACTIONS AT EPIC. EPIC ALSO PLACED 883 COAST GUARD VESSEL LOOKOUTS, WHICH CONTRIBUTED TO THE SEIZURES MADE BY U.S. COAST GUARD UNITS.

DURING THE PAST YEAR, EPIC FURNISHED EXTENSIVE SUPPORT TO THE VICE PRESIDENT'S TASK FORCE IN MIAMI, ESPECIALLY IN THE AIR AND MARITIME ENVIRONMENT. SUPPORT WAS ALSO PROVIDED TO AIR AND MARITIME OPERATIONS IN THE CARIBBEAN - CENTRAL AMERICA - SOUTH AMERICA AREA, AND EPIC SERVED AS THE PRIMARY CLEARINGHOUSE FOR INTELLIGENCE.

EPIC'S ROLE IN THE EXCHANGE OF DRUG INTELLIGENCE HAS NOT REMAINED STATIC, BUT HAS BROADENED OVER THE YEARS. THE RECENT FEDERAL INITIATIVES HAVE CAUSED EPIC TO EXPAND FURTHER, ESPECIALLY IN TERMS OF THE AMOUNT OF SUPPORT PROVIDED. I AM CONFIDENT THAT WITH YOUR SUPPORT AND WITH THE CONTINUED SUPPORT OF THE VARIOUS FEDERAL AND STATE AGENCIES, EPIC WILL CONTINUE TO BE RESPONSIVE TO THE NEEDS OF THE LAW ENFORCEMENT COMMUNITY.