

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)No. 02 CR 1050
)
v.)Violations: Title 18,
)United States Code,
NICHOLAS W. CALABRESE,)Sections 2, 371, 894,
JAMES MARCELLO,)1001(a)(2), 1510, 1951, 1955,
JOSEPH LOMBARDO,)and 1962(d)
also known as "The Clown,")
"Lumpy," and "Lumbo,")
FRANK CALABRESE, SR.,)
FRANK SCHWEIHS, also known as)
"The German,")Second Superseding Indictment
PAUL SCHIRO, also known as)
"The Indian,")
MICHAEL MARCELLO, also known as)
"Mickey,")
NICHOLAS FERRIOLA,)
ANTHONY DOYLE, also known as)
"Twan,")
MICHAEL RICCI,)
THOMAS JOHNSON,)
JOSEPH VENEZIA, and)
DENNIS JOHNSON)

COUNT ONE

The SPECIAL AUGUST 2003-2 GRAND JURY charges:

I. THE ENTERPRISE

1. At times material to this indictment there existed a criminal organization which is referred to hereafter as "the Chicago Outfit." The Chicago Outfit was known to its members and associates as "the Outfit" and was also known to the public as "organized crime," the "Chicago Syndicate" and the "Chicago Mob." The Chicago Outfit was an "enterprise" as that term is used in Title 18, United States Code, Section 1961(4), that is, it constituted a group of individuals associated in fact, which

enterprise was engaged in and the activities of which affected interstate commerce. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

2. The Chicago Outfit existed to generate income for its members and associates through illegal activities. The illegal activities of the Chicago Outfit included, but were not limited to: (1) collecting "street tax," that is, extortion payments required as the cost of operating various businesses; (2) the operation of illegal gambling businesses, which included sports bookmaking and the use of video gambling machines; (3) making loans to individuals at usurious rates of interest (hereafter referred to as "juice loans"), which loans constituted "extortionate extensions of credit," as that term is defined in Title 18, United States Code, Section 891(6); (4) "collecting" through "extortionate means" juice loans constituting "extensions of credit," as those terms are defined in Title 18, United States Code, Sections 891(5), (7) and (6), respectively; (5) collecting debts incurred in the Chicago Outfit's illegal gambling businesses; (6) collecting debts incurred in the Chicago Outfit's juice loan business, which debts carried rates of interest at least twice the rate enforceable under Illinois law; (7) using threats, violence and intimidation to collect street tax and juice loan debts; (8) using threats, violence, and intimidation to discipline Chicago Outfit members and associates; (9) using murder of Chicago Outfit members, associates and others to advance the interests of the Chicago Outfit's illegal

activities; (10) obstructing justice and criminal investigations by intimidating, bribing, retaliating against, and murdering witnesses and potential witnesses who could provide information adverse to the enterprise's interests; and (11) traveling in interstate commerce to further the goals of the criminal enterprise.

3. In order to carry out its criminal activities, the Chicago Outfit maintained a structure and chain of command. The criminal activities of the Chicago Outfit were carried out in part by sub-groups, or "crews," which were generally given territories in different geographic locations in the Chicago area. These crews were known by their geographic areas, and included the Elmwood Park crew, the North Side/Rush Street crew, the South Side/26th Street or Chinatown crew, the Grand Avenue crew, the Melrose Park crew, and the Chicago Heights crew. Each crew was run by a crew leader, also known as a street boss or "capo," and these crew bosses reported to an underboss, or "sotto capo," who was second in command of the Chicago Outfit, and therefore referred to at times as "Number Two." The overall leader of the Chicago Outfit was referred to as the Boss or "Number One." The Chicago Outfit also utilized a "consigliere," who provided advice to the Boss.

4. When an individual conducting illegal activities on behalf of the Chicago Outfit proved himself particularly trustworthy and was to be given special status in the enterprise, he was given "made" status. An individual could not normally be "made" unless he was of Italian descent, and had committed at least one murder on behalf of the enterprise. An individual had to be sponsored by his

capo before he could be "made," which occurred at a ceremony in which the person to be "made" swore allegiance to the enterprise. This ceremony was attended by the individual's capo, as well as other ranking members of the Chicago Outfit. Once "made," the individual was accorded greater status and respect in the enterprise. An individual who was "made" or who committed a murder on behalf of the Outfit was obligated to the enterprise for life to perform criminal acts on behalf of the enterprise when called upon.

5. Disputes between members of different crews were to be resolved first by their respective capos, and, if no resolution could be made between the capos, then the Boss would settle the dispute.

6. During the course of the conspiracy, Anthony Accardo, also known as "Big Tuna," and "Joe Batters," Joseph Aiuppa, also known as "Doves," and "Joey O'Brien," Sam Carlisi, also known as "Wings," and John Monteleone, also known as "Johnny Apes," among others, acted as Boss of the Chicago Outfit.

7. During the course of the conspiracy, Joseph Aiuppa, and Jack Cerone, among others, acted as Sotto Capo, or Underboss, of the Chicago Outfit.

8. During the course of the conspiracy, Joseph Ferriola was a "made" member of the Chicago Outfit who reported directly to the Boss. Harry Aleman, William Petrocelli, also known as "Butch," Jerry Scarpelli, and others, were criminal associates who reported at various times to Joseph Ferriola.

9. Defendant JAMES MARCELLO was a member of the Melrose Park crew, was a "made" member of the Chicago Outfit, and committed murder and other criminal activities on its behalf. Defendant JAMES MARCELLO continued to conduct criminal activities on the Outfit's behalf while incarcerated through his brother, defendant MICHAEL MARCELLO, and others.

10. Defendant JOSEPH LOMBARDO, also known as "the Clown," "Lumpy," and "Lumbo," was a member of the Grand Avenue crew, and committed murder and other criminal activities on its behalf.

11. Defendant FRANK CALABRESE, SR., was a member of the South Side/26th Street crew, was a "made" member of the Chicago Outfit, and committed murder and other criminal activities on its behalf. Defendant FRANK CALABRESE, SR., continued to conduct criminal activities on the Outfit's behalf while incarcerated through defendants FERRIOLA, DOYLE, RICCI, and others.

12. Other members of the South Side/26th Street crew were James Torello, also known as "Turk," Angelo LaPietra, also known as "the Hook," and "the Bull," and James LaPietra, all of whom served as capos of this crew during the course of the conspiracy. Additional members of this crew included John Monteleone, John Fecarotta, Ronald Jarrett, James DiForti, Frank Saladino, Frank Furio, and Frank Santucci.

13. Defendant NICHOLAS CALABRESE is the brother of defendant FRANK CALABRESE, SR., was also a member of the South Side/26th Street crew, was a "made" member of the Chicago Outfit, and committed murder and other criminal activities on its behalf.

14. Defendant FRANK SCHWEIHS, also known as "the German," was an enforcer for the Chicago Outfit, imposing and collecting "street tax" for himself and Outfit members, and making additional collections on behalf of the enterprise through the use of extortionate means. Defendant SCHWEIHS also agreed to commit murder on behalf of the Chicago Outfit.

15. Defendant PAUL SCHIRO, also known as "the Indian," was a criminal associate of defendant SCHWEIHS, "made" member Anthony Spilotro, and Outfit associate Joseph Hansen, who committed murder and other criminal activities on behalf of the Chicago Outfit.

16. Defendant MICHAEL MARCELLO, also known as "Mickey," is the brother of defendant JAMES MARCELLO, and was a member of the Melrose Park crew. Defendant MICHAEL MARCELLO assisted his brother's participation in the activities of the enterprise while defendant JAMES MARCELLO was in jail, by keeping his brother informed of the enterprises' activities, delivering messages to persons associated with the enterprise, and carrying out illegal activities of the Chicago Outfit, including the operation of an illegal video gambling business.

17. Defendant NICHOLAS FERRIOLA is the son of Joseph Ferriola, and was a member of the South Side/26th Street crew who assisted defendant FRANK CALABRESE, SR.'s participation in the activities of the enterprise while defendant FRANK CALABRESE, SR., was in jail, by keeping defendant FRANK CALABRESE, SR., informed of the enterprise's activities, delivering messages to persons associated with the enterprise, collecting monies generated by

extortionate demands of defendant FRANK CALABRESE, SR., and carrying out other illegal activities of the Chicago Outfit, including the operation of an illegal sports bookmaking business.

18. Defendant ANTHONY DOYLE, also known as "Twan," is a retired Chicago Police Department ("CPD") officer, who, at the time he was employed as a CPD officer, assisted defendant FRANK CALABRESE, SR.'s participation in the activities of the enterprise while defendant FRANK CALABRESE, SR., was in jail, by keeping defendant FRANK CALABRESE, SR. informed of a law enforcement investigation into the murder of John Fecarotta, committed by defendants FRANK CALABRESE, SR., NICHOLAS CALABRESE, and others. Defendant DOYLE also agreed to pass messages from defendant FRANK CALABRESE, SR., in jail to other members of the Chicago Outfit, including messages designed to determine whether defendant NICHOLAS CALABRESE or James DiForti, now deceased, was cooperating with law enforcement about the activities of the enterprise.

19. Defendant MICHAEL RICCI is a retired CPD officer, who at the time he was subsequently employed with the Cook County Sheriff's Department, assisted defendant FRANK CALABRESE, SR.'s participation in the activities of the enterprise while defendant FRANK CALABRESE, SR., was in jail, by agreeing to pass messages from defendant FRANK CALABRESE, SR., to other members of the Chicago Outfit, including messages designed to determine whether defendant NICHOLAS W. CALABRESE or James DiForti was cooperating with law enforcement about the activities of the enterprise. Defendant RICCI also agreed to assist defendant FRANK CALABRESE,

SR., in collecting monies generated by extortionate demands of defendant FRANK CALABRESE, SR., and to provide materially false information to special agents of the Federal Bureau of Investigation.

II. THE RACKETEERING CONSPIRACY

20. From approximately the middle of the 1960s through the date of the return of this indictment, the exact dates being unknown to the Grand Jury, in the Northern District of Illinois, Eastern Division, and elsewhere,

NICHOLAS W. CALABRESE,
JAMES MARCELLO,
JOSEPH LOMBARDO, also known as
 "The Clown," "Lumpy," and "Lumbo,"
FRANK CALABRESE, SR.,
FRANK SCHWEIHS, also known as
 "The German,"
PAUL SCHIRO, also known as
 "The Indian,"
MICHAEL MARCELLO, also known as
 "Mickey,"
NICHOLAS FERRIOLA,
ANTHONY DOYLE, also known as
 "Twan," and
MICHAEL RICCI,

defendants herein, being persons employed by and associated with an enterprise, that is, the Chicago Outfit, which enterprise engaged in and the activities of which affected, interstate commerce, did knowingly conspire and agree, with other persons known and unknown to the Grand Jury, to conduct and to participate, directly and indirectly, in the conduct of the affairs of the Chicago Outfit through: (1) a "pattern of racketeering activity," as that term is defined in Title 18, United States Code, Sections 1961(1) and 1961(5), and as further specified in paragraph 48 of this count,

and (2) the "collection of unlawful debt," as that term is defined in Title 18, United States Code, Section 1961(6), and as further specified in paragraph 49 of this count, both in violation of Title 18, United States Code, Section 1962(c).

21. It was part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering in the conduct of the affairs of the enterprise.

22. It was further part of the conspiracy that the defendants, together with other persons known and unknown to the Grand Jury, each agreed to conduct and to participate in the conduct of the Chicago Outfit's affairs through the collection of unlawful debt.

23. It was further part of the conspiracy that acts involving murder would be attempted and were committed to further the criminal objectives of the Chicago Outfit and protect the enterprise from law enforcement. Such acts involving murder included the acts committed by the following defendants as set out below:

- a. In or about August, 1970, defendant FRANK CALABRESE, SR., and others committed the murder of Michael Albergo, also known as "Hambone," in Chicago, Illinois;
- b. On or about September 27, 1974, defendants JOSEPH LOMBARDO, FRANK SCHWEIHS and others committed the murder of Daniel Seifert, in Bensenville, Illinois;
- c. On or about June 24, 1976, defendant FRANK CALABRESE, SR., and others committed the murder of Paul Haggerty, in Chicago, Illinois;
- d. On or about March 15, 1977, defendant FRANK CALABRESE, SR., and others committed the murder of Henry Cosentino in Illinois;

- e. On or about January 16, 1978, defendant FRANK CALABRESE, SR., and others committed the murder of John Mendell, in Chicago, Illinois;
- f. On or about January 31, 1978, defendant FRANK CALABRESE, SR., and others committed the murders of Donald Renno and Vincent Moretti, in Cicero, Illinois;
- g. On or about July 2, 1980, defendant FRANK CALABRESE, SR., and others committed the murders of William and Charlotte Dauber, in Will County, Illinois;
- h. On or about December 30, 1980, defendant FRANK CALABRESE, SR., and others committed the murder of William Petrocelli, in Cicero, Illinois;
- i. On or about June 24, 1981, defendant FRANK CALABRESE, SR., and others committed the murder of Michael Cagnoni, in DuPage County, Illinois;
- j. On or about September 13, 1981, defendant JAMES MARCELLO and others committed the murder of Nicholas D'Andrea, in Chicago Heights, Illinois;
- k. On or about April 24, 1982, defendants JAMES MARCELLO, FRANK CALABRESE, SR., and others committed the attempted murder of Individual A, in Lake County, Illinois;
- l. On or about July 23, 1983, defendant FRANK CALABRESE, SR., and others committed the murders of Richard D. Ortiz and Arthur Morawski, in Cicero, Illinois;
- m. On or about June 7, 1986, defendants FRANK SCHWEIHS, PAUL SCHIRO, and others committed the murder of Emil Vaci, in Phoenix, Arizona;
- n. On or about June 14, 1986, defendant JAMES MARCELLO and others committed the murders of Anthony and Michael Spilotro, in DuPage County, Illinois;
- o. On or about September 14, 1986, defendants NICHOLAS CALABRESE, FRANK CALABRESE, SR., and others committed the murder of John Fecarotta, in Chicago, Illinois.

24. It was further part of the conspiracy that at times members of one crew would assist members of other crews in homicides, by conducting surveillances of and luring intended

victims so that the victims would not be alerted that they were targeted for murder.

25. It was further part of the conspiracy that cash payments would be and were extorted from numerous individuals as "street tax" to allow businesses run by those individuals to continue to operate.

26. It was further part of the conspiracy that loans made at usurious rates, or "juice loans," would be and were made to numerous individuals. These loans carried interest rates generally ranging from one percent (1%) to ten percent (10%) per week, which translate into annual rates of 52% to 520%, respectively. In making these juice loans, the conspirators agreed to rely and did rely upon the borrower's understanding at the time the loan was made that delay or failure to repay the loans could result in the use of violence or other criminal means to cause harm to the borrower. The conspirators also understood at the time each juice loan was made that delay or failure to repay the loans could result in the use of violence or other criminal means to cause harm to the particular borrower.

27. It was further part of the conspiracy that "juice loan" payments would be and were collected from numerous juice loan debtors, who borrowed money from conspirators at the rates described in the previous paragraph. The conspirators each understood at the time they collected each juice loan payment that delay or failure to repay the loan could result in the use of violence or other criminal means to cause harm to the particular

debtor. The conspirators used violence, intimidation and threats to collect these debts.

28. It was further part of the conspiracy that collections would be made of debts incurred in connection with the juice loan business described in this Count, which business charged rates of interest at least twice the rate enforceable under Illinois law.

29. It was further part of the conspiracy that members and associates of the Chicago Outfit would and did knowingly conduct, finance, manage, supervise, direct, and own all or part of illegal gambling businesses in violation of the laws of the State of Illinois, including illegal sports bookmaking businesses, and businesses which utilized video gambling machines for illegal wagering.

30. It was further part of the conspiracy that members and associates of the Chicago Outfit agreed to collect and did collect debts incurred in connection with illegal gambling businesses described in this Count.

31. It was further part of the conspiracy that members and associates of the Chicago Outfit used violence, intimidation and threats to: (1) instill discipline within the Chicago Outfit by compelling adherence to the Chicago Outfit's edicts and instructions; and (2) punish conduct by Chicago Outfit members, associates and others, which the hierarchy of the Chicago Outfit believed was adverse to the interests of the Chicago Outfit.

32. It was further part of the conspiracy that members and associates of the Chicago Outfit would and did obstruct the due

administration of justice by: (1) intimidating, harming, and killing witnesses and potential witnesses who could provide information detrimental to the operations of the enterprise; (2) providing false information to law enforcement officers; and (3) paying money to individuals to keep them from cooperating with law enforcement officials.

33. It was further part of the conspiracy that the conspirators would and did use nominees, "fronts," and fictitious names to hide the proceeds of criminal activities.

34. It was further part of the conspiracy that the conspirators would and did use coded language in their discussions and written materials, and utilized coded names for discussing fellow conspirators and victims of their criminal activities.

35. It was further part of the conspiracy that the conspirators would and did collect information from corrupt law enforcement sources to determine and disrupt legitimate law enforcement investigation into the activities of the enterprise.

36. It was further part of the conspiracy that the conspirators would and did steal, store, and utilize "work cars" for use in their criminal activities, including surveillance of murder victims and committing murders.

37. It was further part of the conspiracy that the conspirators would and did use walkie-talkies and citizen band radios to communicate amongst themselves while conducting criminal activities, including murder.

38. It was further part of the conspiracy that the conspirators would and did monitor law enforcement radio frequencies, and acquire radio equipment, monitors, and crystals to do so, in order to detect and avoid law enforcement inquiry into their activities, including murder.

39. It was further part of the conspiracy that the conspirators would and did conduct surveillance to detect the presence of law enforcement while they and coconspirators were committing illegal activities, including murder.

40. It was further part of the conspiracy that the conspirators would and did acquire explosives, explosive devices, detonators, transmitters, and remote control devices with the intent to murder individuals without needing to be in the immediate vicinity of the intended victim.

41. It was further part of the conspiracy that the conspirators would and did acquire and store firearms to be used to commit murder.

42. It was further part of the conspiracy that the conspirators would and did use pagers and pay phones in an effort to reduce law enforcement's ability to intercept their communications.

43. It was further part of the conspiracy that the conspirators would and did maintain hidden interests in businesses, from which they could receive income not traceable to them.

44. It was further part of the conspiracy that the conspirators would and did maintain hidden control of labor organizations and assets.

45. It was further part of the conspiracy that the conspirators would and did utilize the threat of labor union violence or disruptions to induce payments to the enterprise to keep "union peace."

46. It was further part of the conspiracy that the conspirators would and did maintain written records and ledgers for their loansharking and bookmaking activities.

47. It was further part of the conspiracy that members and associates of the Chicago Outfit misrepresented, concealed and hid, caused to be misrepresented, concealed and hidden, and attempted to misrepresent, conceal and hide the operation of the Chicago Outfit and acts done in furtherance of the enterprise.

III. PATTERN OF RACKETEERING ACTIVITY

(First Alternative Ground of Liability)

48. The pattern of racketeering activity through which the defendants agreed to conduct and to participate in the conduct of the Chicago Outfit's affairs, consisted of multiple violations of the following federal and state laws:

(a) Acts and threats involving murder chargeable under the law of the States of Illinois, Arizona, and Nevada, which are punishable by imprisonment for more than one year; that is, first degree murder (Illinois: Illinois Revised Statutes, Chapter 38, §9-1; Arizona: Arizona Revised Statutes §13-1105), conspiracy to

commit murder (Illinois: Illinois Revised Statutes, Chapter 38, §8-2; Arizona: Arizona Revised Statutes §13-1003; Nevada: Nevada Revised Statutes §199.480), and attempted murder (Illinois: Illinois Revised Statutes, Chapter 38, §8-4);

(b) Making and conspiring to make extortionate extensions of credit, indictable under Title 18, United States Code, Section 892;

(c) Collecting and conspiring to collect extensions of credit by extortionate means, indictable under Title 18, United States Code, Section 894;

(d) Interference with commerce by threats and violence, and conspiring to commit this offense, indictable under Title 18, United States Code, Section 1951;

(e) Acts and threats involving extortion in violation of state law, which are punishable by imprisonment for more than one year; that is, intimidation, in violation of Chapter 38, Illinois Revised Statutes, §12-6 (which later became 720 ILCS 5/12-6 of the Illinois Compiled Statutes) and conspiracy to commit intimidation, in violation of Chapter 38, Illinois Revised Statutes, §8-2 (which later became 720 ILCS 5/8-2 of the Illinois Compiled Statutes);

(f) Operating an illegal gambling business indictable under Title 18, United States Code, Section 1955;

(g) Obstructing the due administration of justice, indictable under Title 18, United States Code, Section 1503;

(h) Obstruction of criminal investigations, indictable under Title 18, United States Code, Section 1510;

(i) Witness tampering, indictable under Title 18, United States Code, Section 1512;

(j) Retaliating against a witness, indictable under Title 18, United States Code, Section 1513;

(k) Interstate travel in aid of racketeering enterprises, indictable under Title 18, United States Code, Section 1952.

IV. COLLECTION OF UNLAWFUL DEBT

(Second Alternative Ground of Liability)

49. The collection of unlawful debt through which the defendants agreed to conduct and to participate in the affairs of the enterprise, consisted of multiple acts of collecting and attempting to collect debt incurred in connection with the Chicago Outfit's operation of illegal gambling businesses and its lending money at usurious rates, which loans were unenforceable under Illinois laws relating to usury, such gambling and loan debts constituting unlawful debt as defined in Title 18, United States Code, Sections 1961(6)(A) and (B).

V. NOTICE OF ENHANCED SENTENCING

50. Each of the murders identified in paragraph 23 above, with the exception of paragraph 23(m), was committed in violation of Illinois Revised Statutes, Chapter 38, §9-1, in that in each such instance the named defendants killed the named victim(s) without lawful justification in performing acts which caused the death of the named victims (s): a) intending to kill and do great bodily harm to the named victim(s), and knowing that such acts would cause death to the named victim(s), and b) knowing that such

acts created a strong probability of death and great bodily harm to the named victim(s).

51. In addition, with respect to each of the murders identified in paragraphs 23(f), (g), (h), (i), (j), (l), (n), and (o), each murder was accompanied by exceptionally brutal and heinous behavior indicative of wanton cruelty, in violation of Illinois Revised Statutes, Chapter 38, §1005-8-1.

52. With respect to the murders identified above in paragraphs 23(f), (h), (j), and (n), each murdered individual was killed by the named defendants in the course of another felony, namely, aggravated kidnaping, in violation of Illinois Revised Statutes, Chapter 38, §10-2, §1005-8-1, and §9-1(b)(6).

53. With respect to the murder of Michael Cagnoni, identified above in paragraph 23(i), defendant FRANK CALABRESE, SR., committed the murder of Michael Cagnoni in the course of another felony, namely, arson, in violation of Illinois Revised Statutes, Chapter 38, §20-1, §1005-8-1, and §9-1(b)(6).

54. With respect to the murder of Emil Vaci, identified above in paragraph 23(m), defendants FRANK SCHWEIHS and PAUL SCHIRO conspired to commit and committed first degree murder in violation of Arizona Revised Statutes §13-1003 and §13-1105, in that FRANK SCHWEIHS and PAUL SCHIRO, with the intent to promote and aid the commission of first degree murder, agreed with each other and others known and unknown, and with premeditation, that at least one person would cause the death of Emil Vaci, and that FRANK SCHWEIHS

and PAUL SCHIRO, knowing that their conduct would cause death, caused the death of Emil Vaci with premeditation.

All of the above in violation of Title 18, United States Code, Sections 1962(d) and 1963.

COUNT TWO

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

From in or before 1996 and continuing through the date of this indictment, in the Northern District of Illinois, Eastern Division, and elsewhere,

JAMES MARCELLO,
MICHAEL MARCELLO, also known as
"Mickey,"
THOMAS JOHNSON,
JOSEPH VENEZIA, and
DENNIS JOHNSON,

defendants herein, together with other persons known and unknown to the Grand Jury, knowingly conducted all or part of an illegal gambling business, that is, a business involving the use of video gambling machines and devices in the western Chicago suburbs and surrounding areas, which business was in substantially continuous operation for a period in excess of thirty (30) days, which involved five or more persons who conducted, financed, managed, supervised, directed, and owned all or part of the business, and which was a violation of the following laws of the State of Illinois: Illinois Revised Statutes, Chapter 38, Sections 8-2, 28-1(a)(1), (3), and (5) and 28-3, which later became 720 ILCS 5/8-2, 5/28-1(1), (3), and (5), and 5/28-3;

In violation of Title 18, United States Code, Sections 1955 and 2.

COUNT THREE

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

From in or about 1998 and continuing until at least January 2003, in the Northern District of Illinois and elsewhere,

JAMES J. MARCELLO, and
MICHAEL A. MARCELLO, also known as
"Mickey,"

defendants herein, did willfully endeavor by means of bribery to obstruct, delay, and prevent the communication of information relating to violations of criminal statutes of the United States by a person to a criminal investigator; that is, the defendants paid and caused to be paid a monthly sum of money to and on behalf of Nicholas W. Calabrese in order to maintain his allegiance to the Chicago Outfit and to prevent and discourage his cooperation with law enforcement authorities;

In violation of Title 18, United States Code, Sections 1510 and 2.

COUNT FOUR

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

From sometime in the early 1980s and continuing until approximately November 2002, in the Northern District of Illinois and elsewhere,

FRANK CALABRESE, SR., and
NICHOLAS FERRIOLA,

defendants herein, knowingly committed extortion, as that term is used in Title 18, United States Code, Section 1951(b)(2), which extortion affected interstate commerce as that term is used in Title 18, United States Code, Section 1951(b)(3), in that the defendants would and did obtain money as "street tax" from a restaurant operating in Chicago, with the consent of a representative of the restaurant, induced by the wrongful use of actual and threatened force, violence, and fear;

In violation of Title 18, United States Code, Sections 1951 and 2.

COUNT FIVE

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

From sometime in 1992 and continuing until at least sometime in 2001, in the Northern District of Illinois and elsewhere,

FRANK CALABRESE, SR., and
NICHOLAS FERRIOLA,

defendants herein, together with other persons known and unknown to the Grand Jury, knowingly conducted all or part of an illegal gambling business, that is, a sports bookmaking business, which business was in substantially continuous operation for a period in excess of thirty (30) days, which involved five or more persons who conducted, financed, managed, supervised, directed, and owned all or part of the business, and which was a violation of the following laws of the State of Illinois: Illinois Revised Statutes, Chapter 38, Sections 8-2, 28-1(a)(1), (3), and (5) and 28-3, which later became 720 ILCS 5/8-2, 5/28-1(1), (3), and (5), and 5/28-3;

In violation of Title 18, United States Code, Sections 1955 and 2.

COUNT SIX

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

From sometime in the summer of 2001 and continuing until approximately November 2001, in the Northern District of Illinois and elsewhere,

FRANK SCHWEIHS, also known as
"the German,"

defendant herein, knowingly did attempt to commit extortion, as that term is used in Title 18, United States Code, Section 1951(b) (2), which extortion would have affected interstate commerce as that term is used in Title 18, United States Code, Section 1951(b) (3), in that the defendant would and did attempt to obtain money as "street tax" from an adult entertainment club operating in a suburb of Chicago, with the consent of a representative of the club, induced by the wrongful use of actual and threatened force, violence, and fear;

In violation of Title 18, United States Code, Sections 1951 and 2.

COUNT SEVEN

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

From sometime in October of 2001 and continuing through November 2001, in the Northern District of Illinois and elsewhere,

FRANK SCHWEIHS, also known as
"the German,"

defendant herein, knowingly participated in the use of extortionate means within the meaning of Title 18, United States Code, Section 891(7), to collect and attempt to collect from the former owners of an adult entertainment store operating in Indiana, an extension of credit, within the meaning of Title 18, United States Code, Section 891(1); that is, the defendant did expressly and implicitly threaten the use of violence to cause harm to the former owners of the store in an attempt to obtain a sum of money from them by November 1, 2001;

In violation of Title 18, United States Code, Sections 894 and 2.

COUNT EIGHT

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

On or about February 21, 2003, in the Northern District of Illinois,

MICHAEL RICCI,

defendant herein, did knowingly and willfully make materially false and fraudulent statements in a matter within the jurisdiction of the Federal Bureau of Investigation (FBI), an agency within the executive branch of the Government of the United States, in that the defendant, in response to questions posed to him by special agents of the FBI, stated: 1) that he, Anthony Doyle, and Frank Calabrese, Sr., never discussed the FBI's taking possession of evidence regarding the murder of John Fecarotta; 2) that Frank Calabrese, Sr., never mentioned to him any concern as to whether Nicholas Calabrese was cooperating with law enforcement regarding the murder of John Fecarotta; 3) that Frank Calabrese, Sr., never asked him to pass any messages to anyone about the Fecarotta homicide; 4) that Frank Calabrese, Sr., never asked him to pass messages to anyone concerning gambling, street tax, or any other type of criminal activity; 5) that he did not pass any messages to or from Frank Calabrese, Sr., to or from anyone; 6) that before his previous interview by special agents of the FBI on or about May 4, 1999, he had never heard of James DiForti; and 7) that he had never discussed James DiForti with Frank Calabrese, Sr. In violation of Title 18, United States Code, Section 1001(a)(2).

COUNT NINE

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

1. At times material herein, defendant MICHAEL MARCELLO operated a business that involved the placement, maintenance and use of video gambling machines and devices. This business was known as M & M Amusement, Inc. (also known to some of its customers as Buff Amusement, Inc.), with MICHAEL MARCELLO as the sole shareholder and officer. MICHAEL MARCELLO employed defendants JOSEPH VENEZIA and THOMAS JOHNSON, among others, to help him oversee the operation and maintenance of and the collection of proceeds from the video gambling machines and devices. JAMES MARCELLO assisted his brother MICHAEL MARCELLO by directing him and advising him on the operation of the business.

2. Beginning in or about January 1996 and continuing thereafter through at least April 2004, in the Northern District of Illinois, Eastern Division,

JAMES MARCELLO,
MICHAEL MARCELLO, also known as
"Mickey,"
JOSEPH VENEZIA and
THOMAS JOHNSON,

defendants herein, did willfully and knowingly conspire and agree together and with others known and unknown to the grand jury, to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the Department of Treasury, in particular, the Internal Revenue Service (hereafter referred to as "IRS"), in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes.

MANNER AND MEANS

3. It was part of the conspiracy that defendant MICHAEL MARCELLO caused video gambling machines and devices to be obtained for M & M Amusement, Inc., from other companies.

4. It was further a part of the conspiracy that defendants and others then placed and caused the placement of these video gambling machines and devices at various locations, such as taverns, restaurants, and fraternal clubs, primarily in Cicero and Berwyn, Illinois, and that co-conspirator owners, managers, and representatives of the taverns, restaurants, and fraternal clubs accepted placement of these gambling machines and devices in return for a portion of the profits from the machines and devices.

A. To activate these video gambling machines and devices, players at the taverns, restaurants, and fraternal clubs had to insert currency into the money receptacles of the video gambling machines and devices to put credits on the machines and devices.

B. Players earned credits based upon the success of their resultant play. Pay-outs to winning players were based on the total of credits accumulated. These video gambling machines and devices could be adjusted by the defendants either to raise or lower the amount of credits earned by players.

C. These machines and devices used electronic systems that guaranteed that the operator retained a portion (percentage) of the wagers as profits. From a player's standpoint, the operation of the machine and device was essentially random. As

such, players had no real control over what combination of symbols would appear, and no element of skill was involved in the game.

D. The machines and devices electronically accumulated "credits," and players were paid based upon the number of accumulated credits. After a winning player had been paid by a representative of the taverns, restaurants, and fraternal clubs, the video gambling machines and devices had a "knock off" device (normally a button or combination of buttons) that could be pushed to clear the accumulated credits. Also, the video gambling machines and devices had separate electronic counters inside the machines and devices that recorded both the total number of plays on the machine, and the total of winning credits won on and cleared off the machines and devices.

5. It was further a part of the conspiracy that defendants JOSEPH VENEZIA and THOMAS JOHNSON, and others, instructed the owners, managers, and representatives of the taverns, restaurants, and fraternal clubs at which the video gambling machines and devices were placed, on such topics as how to set up the machines and devices; how properly to pay off the winners on the machines and devices; how to "clear" or "knock off" the accumulated credits from the machines and devices after the player had been paid off; and other topics necessary to the conduct of the illegal gambling business.

6. It was further a part of the conspiracy that defendants JOSEPH VENEZIA and THOMAS JOHNSON and others entered into verbal understandings with the owners, managers, and representatives of

the taverns, restaurants, and fraternal clubs, regarding the operation of the video gambling machines and devices. These verbal understandings included, but were not limited to, agreements regarding reimbursement for pay-outs to the players for their earned credits and the distribution and splitting of the proceeds from the video gambling machines and devices.

7. It was further a part of the conspiracy that defendants MICHAEL MARCELLO, JOSEPH VENEZIA and THOMAS JOHNSON and others would and did conduct their business, primarily in cash, with the persons to whom they distributed the video gambling machines and devices, that is, the co-conspirator owners, managers, and representatives of the taverns, restaurants, and fraternal clubs.

8. It was further a part of the conspiracy that defendants JOSEPH VENEZIA and THOMAS JOHNSON and others would and did warn the owners, managers, and representatives of the taverns, restaurants, and fraternal clubs to be careful to whom they paid out money on the video gambling machines and devices because of possible law enforcement investigations. In particular, they warned the owners, managers, and representatives only to pay money to winning customers whom they knew well, and to beware of law enforcement efforts. Those customers who were not known were to be told that the video gambling machines were for amusement only.

9. It was further a part of the conspiracy that defendants JOSEPH VENEZIA and THOMAS JOHNSON and others would and did visit the taverns, restaurants and fraternal clubs, in which the video gambling machines and devices were placed, on a fairly regular

basis, normally at least weekly but at times on a more frequent basis, to collect the cash proceeds from the machines.

10. It was further a part of the conspiracy that during these visits, defendants JOSEPH VENEZIA and THOMAS JOHNSON and others would determine the amount of money played since the last visit on the machines (known as the "ins"), and the amount of money paid to winning customers on the machines (known as the "outs"). Defendants JOSEPH VENEZIA and THOMAS JOHNSON and others would open the machines and devices and read the electronic counters inside the machines that recorded both the total number of plays on the machines and the total number of winning credits won, and clear off the machines since the last collection in order to determine to date the amount of revenue on the machines. Defendants JOSEPH VENEZIA and THOMAS JOHNSON and others would then confer with the representative of each location and review the accounting. If JOSEPH VENEZIA and THOMAS JOHNSON and others visited the location on more than one occasion per week, two written copies of the accounting since the last visit were written on small white sheets of paper, one of which was provided to and retained by the representative of the location and the other of which was retained by JOSEPH VENEZIA and THOMAS JOHNSON and others, often in a small, locked box at the location to which only JOSEPH VENEZIA and THOMAS JOHNSON and others employed by M & M Amusement, Inc., had access. The owners, managers, and representatives of the taverns, restaurants, and fraternal clubs were credited for the amount of money paid to winning customers (the "outs"). Later, on the

weekly settlement date, the small white sheets of paper were then typically destroyed by JOSEPH VENEZIA and THOMAS JOHNSON and others employed by M & M Amusement, Inc, as well as by the representatives of the taverns, restaurants, and fraternal clubs, often by burning them on the premises or by other means of destruction.

11. It was part of the conspiracy that on an agreed upon recurring settlement day of the week, defendants JOSEPH VENEZIA and THOMAS JOHNSON, and others, under the direction of MICHAEL MARCELLO, issued weekly M & M Amusement, Inc. collection reports, yellow in color, to the owners, managers, and representatives of taverns, restaurants, and fraternal clubs when they collected M & M Amusement, Inc.'s share of the weekly receipts of the video gambling machines and devices placed in such taverns, restaurants and fraternal clubs. The information recorded on the collection reports purported to represent the following: the name of the establishment, its address, the date of collection, the total gross receipts from the machines for that week, which was listed on the receipts as the "Net Amount to Divide," and the fifty percent share of the gross receipts for the establishment, which was listed on the collection reports as the "Merchant's Share" and the fifty percent share of the gross receipts for M & M Amusement, Inc., which was listed on the collection reports as the "Balance Due Operator."

12. It was further part of the conspiracy that the collection reports issued weekly by defendants JOSEPH VENEZIA and THOMAS

JOHNSON, and others, under the direction of MICHAEL MARCELLO, were false, in that the collection reports substantially understated the entire gross receipts generated by the video gambling machines, and substantially understated the amounts of money reflecting the taverns,' restaurants' and fraternal clubs' share of the gross receipts as well as M & M Amusement, Inc.'s share of the gross receipts.

13. It was further a part of the conspiracy that defendants MICHAEL MARCELLO, JOSEPH VENEZIA and THOMAS JOHNSON, and others, kept and maintained, and caused to be kept and maintained for the records of M & M Amusement, Inc., copies of the false collection reports provided to the taverns, restaurants and fraternal clubs.

14. It was further a part of the conspiracy that defendants MICHAEL MARCELLO, JOSEPH VENEZIA and THOMAS JOHNSON, and others, created, kept and maintained, and caused to be created, kept and maintained handwritten summary sheets of the weekly collection reports of M & M Amusement, Inc., reflecting the amounts on the false collection reports provided to the taverns, restaurants and fraternal clubs, which summary sheets thus substantially understated the amounts of money reflecting the taverns,' restaurants' and fraternal clubs' share of the gross receipts as well as M & M Amusement, Inc.'s share of the gross receipts.

15. It was further a part of the conspiracy that defendants MICHAEL MARCELLO, JOSEPH VENEZIA and THOMAS JOHNSON, and others, failed to keep permanent records of the actual gross revenues earned as the result of the gambling operation.

16. It was further a part of the conspiracy that defendant MICHAEL MARCELLO delivered to his accountant and tax preparer handwritten summary sheets of the weekly collection reports, which reflected the false and inaccurate income information. Defendant MICHAEL MARCELLO knew that the amounts listed on these handwritten summary sheets ensured that an incorrect accounting of the gross receipts and profits collected from the video gambling machines and amusement machines would be reported to his accountant, and that his accountant would rely on these false summary sheets to prepare quarterly financial reports and tax returns.

17. It was further a part of the conspiracy that defendant MICHAEL MARCELLO verbally advised this accountant each quarter that he was providing the accountant the entirety of the gross revenues for that quarter when in fact the figures he was providing the accountant did not reflect the moneys paid to bettors nor did the figures reflect the true amount of the profits to M & M Amusement, Inc., and to the taverns, restaurants and fraternal clubs, collected from the video gambling machines.

18. It was further part of the conspiracy that defendants thus caused the preparation of false S Corporation income tax returns (IRS Forms 1120S) for M & M Amusement, Inc. for the years 1996 through 2003, by creating and providing the false documents as described above which were used by M & M Amusement, Inc.'s accountant in the preparation of the S Corporation income tax returns.

19. It was further part of the conspiracy that defendant MICHAEL MARCELLO then signed and caused to be filed these false S Corporation income tax returns with the Internal Revenue Service, knowing that these S Corporation income tax returns had been prepared using false information and that they therefore understated M & M Amusement, Inc.'s gross receipts and profits.

20. It was further part of the conspiracy that defendant MICHAEL MARCELLO thus caused the preparation of false individual income tax returns (IRS Forms 1040) for himself for the years 1996 through 2003, by creating and providing the false documents as described above which were used by his accountant in the preparation of the individual income tax returns as well as the S Corporation income tax returns.

21. It was further part of the conspiracy that defendant MICHAEL MARCELLO then signed and caused to be filed these false individual income tax returns with the Internal Revenue Service, knowing that these individual income tax returns had been prepared using false information and that they therefore understated his total income.

22. It was further part of the conspiracy that defendants caused the preparation and delivery of numerous false IRS Forms 1099 to the owners of the taverns, restaurants and fraternal clubs, as the figures reported on the IRS Forms 1099 did not reflect the true amount of the profits to the taverns, restaurants and fraternal clubs, collected from the video gambling machines. The owners of the taverns, restaurants and fraternal clubs then

knowingly provided these false IRS Forms 1099 to their accountants and thereafter caused false individual and corporate income tax returns to be filed with the Internal Revenue Service.

23. It was further part of the conspiracy that defendants caused to conceal from the Internal Revenue Service a substantial portion of the income received from the operation of the gambling operation for the tax years 1996 through 2003, inclusive.

24. It was further part of the conspiracy that defendants JAMES MARCELLO and MICHAEL MARCELLO caused money generated from the under-reporting of gross receipts from operation of the gambling business to be used for their own benefit.

25. It was further part of the conspiracy that defendants JAMES MARCELLO and MICHAEL MARCELLO would discuss at the Federal Correctional Center at Milan, Michigan, the operation of M & M Amusement, Inc., as it related to the relationship with the owners, managers, and representatives of taverns, restaurants, and fraternal clubs. This included discussions involving the then current Internal Revenue Service's criminal investigation of the operation of video gambling machines and devices in taverns, restaurants, and fraternal clubs in the Cicero and Berwyn, Illinois area.

26. It was further a part of the conspiracy that defendant MICHAEL MARCELLO failed to deposit all the weekly business receipts to M & M Amusement, Inc.'s bank account, knowing that its tax accountant determined income based upon the bank deposit method.

27. It was further part of the conspiracy that the defendants would and did misrepresent, conceal and hide, and cause to be misrepresented, concealed and hidden the purposes of, and acts done in furtherance of, the conspiracy.

OVERT ACTS

28. In furtherance of the conspiracy and to effect the objects thereof, in the Northern District of Illinois and elsewhere, the following overt acts, among others, were committed by the named defendants and others:

A. On or about the following dates, defendant MICHAEL MARCELLO signed and caused to be filed false individual and S Corporation income tax returns, with the Internal Revenue Service, knowing that these income tax returns had been prepared using false information regarding the gross receipts and profits for his business, M & M Amusement, Inc.:

(1) On or about July 23, 1997, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 1996 S Corporation income tax return.

(2) On or about April 23, 1998, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 1997 S Corporation income tax return.

(3) On or about July 16, 1999, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 1998 S Corporation income tax return.

(4) On or about October 15, 1999, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 1998 individual income tax return.

(5) On or about September 15, 2000, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 1999 S Corporation income tax return.

(6) On or about, September 15, 2000, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 1999 individual income tax return.

(7) On or about July 11, 2001, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2000 S Corporation income tax return.

(8) On or about July 11, 2001, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2000 individual income tax return.

(9) On or about July 30, 2002, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2001 S Corporation income tax return.

(10) On or about September 10, 2002, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2001 individual income tax return.

(11) On or about March 27, 2003, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2002 S Corporation income tax return.

(12) On or about April 25, 2003, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2002 individual income tax return.

(13) On or about February 27, 2004, defendant MICHAEL MARCELLO knowingly signed and caused to be filed a false 2003 S Corporation income tax return.

(14) On or about April 14, 2004, defendant MICHAEL MARCELLO knowingly caused to be electronically filed a false 2003 individual income tax return.

B. On or about the following dates, defendants MICHAEL MARCELLO and JAMES MARCELLO had conversations at the Federal Correctional Center at Milan, Michigan:

- (1) December 20, 2002.
- (2) January 9, 2003.
- (3) January 30, 2003.
- (4) April 24, 2003.
- (5) May 15, 2003.

C. On a weekly basis from January 1996 through November 2003, defendants JOSEPH VENEZIA and THOMAS JOHNSON, and at times others, delivered numerous false collection reports purporting to represent the proceeds from the video gambling machines and devices to representatives of numerous taverns, restaurants, and fraternal clubs in the Berwyn and Cicero area of Illinois, each such delivery constituting a separate overt act.

D. On a weekly basis from January 1996 through November 2003, defendant MICHAEL MARCELLO deposited cash into M &

M Amusement, Inc.'s bank account, knowing that such cash was not all of the weekly business receipts of M & M Amusement, Inc., and that M & M Amusement, Inc.'s tax accountant determined income based upon the bank deposit method, each such deposit constituting a separate overt act.

All in violation of Title 18, United States Code, Section 371.

FORFEITURE ALLEGATION

The SPECIAL AUGUST 2003-2 GRAND JURY further charges:

1. The allegations contained in Count One of the indictment are realleged and incorporated by reference for the purposes of alleging forfeiture pursuant to Title 18, United States Code, Section 1963.

2. As a result of the violation of Title 18, United States Code, Section 1962(d), as alleged in the foregoing indictment

NICHOLAS W. CALABRESE,
JAMES MARCELLO,
JOSEPH LOMBARDO, also known as
 "The Clown," "Lumpy," and "Lumbo,"
FRANK CALABRESE, SR.,
FRANK SCHWEIHS, also known as
 "The German,"
PAUL SCHIRO, also known as
 "The Indian,"
MICHAEL MARCELLO, also known as
 "Mickey,"
NICHOLAS FERRIOLA,
ANTHONY DOYLE, also known as
 "Twan," and
MICHAEL RICCI,

defendants herein:

(a) have acquired and maintained interests in violation of Title 18, United States Code, Section 1962, which interests are subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1);

(b) have interests in, securities of, claims against, and property and contractual rights affording sources of influence over the enterprise described in Count One which defendants established, operated, controlled, conducted, and participated in the conduct of, and conspired to do so, in violation of Title 18, United States

Code, Section 1962, thereby making all such interests, securities, claims, and property and contractual rights subject to forfeiture to the United States of America pursuant to Title 18, United States Code, Section 1963(a)(2);

(c) have property constituting and derived from proceeds which obtained, directly and indirectly, from racketeering activity in violation of Title 18, United States Code, Section 1963 (a)(3).

3. The interests of the defendants, jointly and severally subject to forfeiture to the United States pursuant to Title 18, United States Code, Section 1963(a)(1), (a)(2), and (a)(3) include but are not limited to:

(a) \$10,000,000;

(b) As to defendants JAMES MARCELLO and MICHAEL MARCELLO only:

Real property at 5533 West 25th Street, Cicero, Illinois, being more particularly described as:

Lot 78 in E. A. Cummings and Company's 25th Street and Central Avenue Addition, being a subdivision of the Southwest 1/4 of the Southwest 1/4 of the Northwest 1/4 of Section 28, Township 39 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

4. To the extent that the proceeds and property described above as being subject to forfeiture pursuant to Title 18, United States Code, Section 1963, as a result of any acts or omission by any defendant:

(1) cannot be located upon the exercise of due diligence;

(2) have been transferred or sold to, or deposited with, a third party;

- (3) have been placed beyond the jurisdiction of the Court;
- (4) have been substantially diminished in value, or;
- (5) have been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States of America, pursuant to Title 18, United States Code, Section 1963(m) to seek forfeiture of any other property of the defendants up to the value of the proceeds and property described above as being subject to forfeiture;

All pursuant to Title 18, United States Code, Section 1963.

A TRUE BILL:

F O R E P E R S O N

UNITED STATES ATTORNEY