RESPONDING TO ORGANIZED CRIMES AGAINST MANUFACTURERS AND RETAILERS

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

OF THE

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RESPONDING TO ORGANIZED CRIMES AGAINST MANUFACTURERS AND RETAILERS

THURSDAY, MARCH 17, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:17 p.m., in Room 2141, Rayburn House Office Building, the Honorable Daniel E. Lungren (acting Chair of the Subcommittee) presiding.

Mr. LUNGREN. All right. The Subcommittee on Crime, Terrorism, and Homeland Security is having a legislative hearing today on crimes against manufacturers and retailers.

We'll also have a markup of the bill H.R. 32, the "Stop Counterfeiting in Manufactured Goods Act," as soon as we have a voting quorum, which will be nine.

My intention is to begin the hearing from our witnesses, and at such time as we have a reporting quorum, to break the hearing here, have the vote on the proposed bill, and then go back into the hearing.

The purpose of today's hearing is to examine the harm caused to consumers, manufacturers, and retailers by counterfeit products and organized retail theft. Because of the suspected involvement of organized crime and connections to terrorism in these activities, Federal law enforcement has undertaken a number of efforts to combat these crimes. Today, we will examine additional options for combating trafficking in counterfeited goods and organized retail theft. Both of these crimes produce staggering losses to businesses and, therefore, jobs across the United States and around the world. The level of organization required for these criminal activities and the established links to terrorism have made this a priority for the Federal Government.

Task forces have been created by the Administration to direct resources to investigate and prosecute these crimes at the Federal level. The proliferation of counterfeit products in recent years creates not only a threat to legitimate businesses but also to the consumer. Many of the products that are falsely labeled are labeled with brand names or trademarks that consumers know and trust. Mislabeling of all often inferior products creates a false sense of security for consumers.

Additionally, and as importantly, some of the counterfeited products, such as prescription or over-the-counter medications, could have serious health consequences if they are used by an unsuspect-

ing consumer. FBI and Customs and Border agents estimate sales of counterfeit goods are lining the pockets of organized crime organizations to the tune of about $500 billion in sales per year. By mid-year of fiscal year 2003 the Department of Homeland Security already reported 3,117 seizures of counterfeit branded goods, including cigarettes, books, apparel, handbags, toys, and electronic games, with an estimated street value of about $38 million.

According to the FBI's Financial Institution Fraud Unit, counterfeit products cheat the U.S. of tax revenues, adds to the national trade deficit, subjects consumers to health and safety risks, and leaves consumers without any legal recourse when they're financially or physically injured by counterfeit products. The FBI has identified counterfeit products not only in pharmaceuticals and automobile parts, but also in such products as airplane parts, baby formulas, and children's toys.

Organized retail theft is another growing problem throughout the United States affecting a wide range of retail establishments, including supermarkets, chain drug stores, independent pharmacies, mass merchandisers, and convenience stores. It has become one of the most pressing security problems confronting retailers and suppliers and now accounts for over $30 billion of losses at store level annually, according to the FBI Interstate Theft Task Force.

Organized retail theft is a separate and distinct crime from petty shoplifting. It involves professional theft rings that move quickly from community to community and across State lines to pilfer large amounts of merchandise that is then repackaged and sold back into the marketplace. Because of the prevalence of this criminal activity, the FBI created a task force to specifically focus on this problem. In addition to prosecutions under State laws, the Federal Government may use RICO laws to prosecute these large theft rings.

In addition to the harm this crime causes for business, consumers are put at risk when these rings steal consumable products, especially over-the-counter medications and infant formula. In many cases, after the merchandise has been stolen, the products are stored under conditions that could threaten the integrity of the product. For example, extreme heat or extreme cold can affect the nutrient content or physical appearance of infant formulas. There is no guarantee that these products have not been stored or kept past the expiration dates. Expiration dates, lot numbers, and labels may have changed—may have been changed to falsely extend the shelf life of the product and to disguise the fact that the merchandise has been stolen.

I find both of these crimes very troubling, not only because of their effect on businesses and our economy and our jobs, but also because of the real threat to consumers who may unknowingly receive these products. I am interested and the Committee is interested in hearing from each of the witnesses here today regarding appropriate efforts to prevent and prosecute these crimes.

Also, I note that Congressman Knollenberg is unable to be in attendance. He is the author of H.R. 32, the "Stop Counterfeiting in Manufactured Goods Act." I thank him for his contribution to this effort and ask for unanimous consent to submit a statement by Congressman Knollenberg in the record in support of his legislation, as well as a statement from Congressman Don Manzullo, and

a letter from the Coalition Against Counterfeiting and Piracy. And without objection, it is so ordered.

[The prepared statement of Mr. Knollenberg follows:]

PREPARED STATEMENT OF THE HONORABLE JOSEPH KNOLLENBERG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to submit testimony for your hearing on "Responding to Organized Crimes Against Manufacturers and Retailers."

The focus of my testimony today is the scourge of counterfeit manufactured goods. As you know, I have introduced the Stop Counterfeiting in Manufactured Goods Act, which you will markup following this hearing. I want to thank the subcommittee and, especially Chairman Coble, for taking up this important issue and considering my bill.

The economy of my congressional district, as you would expect being located just northwest of Detroit, is largely centered around the auto industry, particularly auto suppliers. I represent quite a few large suppliers, such as Delphi and Arvin-Meritor. In fact, my district includes the headquarters of over one-fourth of the 100 largest auto suppliers in North America, as well as a host of small suppliers. To say that the manufacturing sector is important to my district and to the State of Michigan is an understatement. In my district alone, there are more than 1,500 manufacturing entities, and 93% of them have less than 100 employees.

Early last year an association that represents auto parts suppliers came to my office and told me about the serious and growing problem of counterfeit auto parts. I was particularly struck by the impact that counterfeiters were having on the auto supplier industry.

The numbers, in fact, are staggering. In addition to the obvious safety issues, counterfeit automobile parts cost the automotive supplier industry over $12 billion annually. It's estimated that if these losses were eliminated, the auto industry could hire 200,000 additional workers.

It's important to remember those numbers, because counterfeiting is not a victimless crime. In addition to selling bogus products, the counterfeiters are stealing jobs and money away from legitimate companies, destroying brand names, increasing warranty claims, and requiring legal fees and costly investigations.

The fight against counterfeiters is not limited to the automotive industry. The impact of counterfeiters is broad. When it comes to the economy overall, the U.S. Customs Service has estimated that counterfeiting has resulted in the loss of 750,000 jobs and costs the United States around $200 billion annually. The International Chamber of Commerce estimates that seven percent of the world's trade is in counterfeit goods and that the counterfeit market is worth $350 billion.

That's why the Stop Counterfeiting in Manufactured Goods Act not only has united support from the auto industry, but from many, many other industries.

Counterfeiting is a problem that is growing larger every day. We must take a more aggressive stand against it. And one of the ways we are going to do that is to give the government more tools to fight counterfeiters.

My bill has two key provisions that will help stop criminals who use counterfeit trademarks.

The first provision is the most important and gets at the roots of the problem—it requires the mandatory destruction and forfeiture of the equipment and materials used to make the counterfeit goods.

Under current law, a convicted trademark counterfeiter is only required to give up the actual counterfeit goods, not the machinery. What's to stop them from going back to make more?

My bill would require the convicted criminals to give up not just the counterfeit goods, but also the equipment they used to make those goods.

In addition to this provision, my bill also prohibits trafficking in counterfeit labels, patches, and medallions that are not necessarily attached to a particular counterfeit good. This provision will close a loophole that was created through the case of the *United States vs. Giles,* also known as the "Fabulous Fakes" case.

I believe that these simple changes will have a profound impact in combating counterfeit manufactured goods in many different ways.

This bill will send a signal to counterfeiters that the United States is serious about fighting this growing problem. Passing this bill will give prosecutors more tools to go after the criminals here in the U.S. and punish them severely.

This bill is also necessary to address the problem globally. Most of the counterfeit auto parts are coming from other countries, particularly China. Some countries are

better than others at fighting counterfeiting, but we do have ways to prod the stragglers.

However, we can't demand that other countries take steps to combat trademark counterfeiting that we have not taken ourselves. So, by passing my bill and improving our own law, Congress will empower our trade negotiators to press for stronger anti-counterfeiting provisions in other countries.

As the United States is currently engaged in a variety of trade negotiations, it is critical to pass this bill as soon as possible so that it can have the greatest impact abroad.

This bill has broad support, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the Motor and Equipment Manufacturers Association, the National Electrical Manufacturers Association, the IACC, International Trademark Association and a host of major corporations.

For these reasons, Mr. Chairman, I respectfully urge you and your colleagues on the subcommittee to pass H.R. 32, the Stop Counterfeiting in Manufactured Goods Act. As I have outlined, counterfeiting is a very serious worldwide problem that threatens public safety, hurts the U.S. economy and costs Americans thousands of manufacturing jobs. No one supports counterfeiters, and we must do everything we can to eliminate the problem. Passing my bill, the Stop Counterfeiting in Manufactured Goods Act is one important step we need to take. I look forward to working with all of you to advance this cause.

[The letter from Mr. Manzullo follows:]

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
109th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515–6315

March 17, 2005

Dear Chairman Coble:

I am writing to you in support of HR 32, the "Stop Counterfeiting in Manufactured Goods" Act, a critical piece of legislation that I believe to be essential to stem the tide of fake and counterfeit goods harming America's small businesses.

The counterfeiting of manufactured pharmaceuticals, chemicals, auto parts and virtually every major product sector has become an enormous growth industry. Recent data we have seen establishes that the exploding growth of counterfeits and fakes:

- Contributes substantially to the burgeoning trade deficit;
- Harms the public safety with shoddy and ineffective products;
- Stifles the innovation and competitiveness of American small businesses; and
- Serves to finance and support organized crime and, increasingly, terrorist organizations and their supporters.

We urge this Committee to seriously consider HR 32 to address these growing and documented concerns.

As we have noted in previous correspondence, the goal of HR 32 is two-fold.

First, it strengthens the existing tools available to law enforcement against counterfeiters. One recent study concluded that counterfeiting was significantly more profitable, and at much lower risk, than trafficking in heroin. So we have to go after the profitability of this trade at its core.

HR 32 accomplishes this goal by, for the first time, providing law enforcement an entire new approach to address this problem – the ability to destroy, under appropriate due process of law, the means and instrumentalities of counterfeit production. This new remedy is critical to hit the counterfeiters where it hurts – in their pocketbook.

Second, the legislation fixes an anomaly under current US case law by prohibiting the trafficking in counterfeit trademarks (in the form of medallions and patches and the like) that are unattached to specific counterfeit goods. Because of this loophole, counterfeiters are now sending in counterfeit products in unlabeled form and attaching the infringed-upon trademarks in sweat shops across America. We find the recent testimony and findings of New York

Assistant Chief of Police Kevin McGowan to be compelling in this regard. Chief McGowan recently informed us that his department had seen tangible ties for the counterfeit trade with such groups as Hezbollah, the Chinese Triads, the Russian mob, and other unsavory groups.

HR 32 would close this loophole and assist law enforcement in addressing this growing problem.

The US Customs Service has stated publicly that counterfeiting and fakes cost the United States $200 Billion dollars every year. Trafficking in counterfeit goods also swells our growing national trade deficit and imbalances our ability to compete globally.

China alone has become brazen and increasingly sophisticated in its use of counterfeiting techniques of virtually every form of product. Recently, my friend and colleague Congressman Simmons testified about the impact this practice was having on a distinguished American small business in Connecticut that manufactures best-in-class dials and gauges. This American small business has been gravely harmed by Chinese knock offs and counterfeits.

Astonishingly, many in China and elsewhere deny there is even an issue. As the recent article notes, "It may look like it's a China problem, but it's a worldwide problem, just like piracy on the Internet, and it exists in America as well," said Zhang Ping, a law professor at Beijing University, and one of China's leading experts on intellectual property rights. "There are many problems with fake products with low levels of technology. These can't be counted as intellectual property violations. They are just cheap fakes."

These kinds of attitudes cannot stand. We must move swiftly to address these and other loopholes in our international treaties and trade agreements. That is why HR 32 is so critical. Until we fix US law to address these concerns, we cannot push other countries to address these concerns in our free trade agreement negotiations with them. Thus, it is critical to give the Administration and the US Trade Representative the tools they need to fight the worldwide battle on fakes and counterfeiting.

Thank you for your consideration of this request. I intend to work with your Committee in the late spring to hold an oversight hearing on the issue of fakes and counterfeiting and the problems it is causing for our American small businesses.

Sincerely,

Donald A. Manzullo

Chairman

House Small Business Committee

Cc: Congressman Knollenberg

[The letter from the coalition follows:]

American Apparel & Footwear Association
Automotive Aftermarket Industry Association
Gas Appliance Manufacturers Association
Grocery Manufacturers of America
International AntiCounterfeiting Coalition
International Trademark Association
Motor & Equipment Manufacturers Association
National Association of Manufacturers
National Electrical Manufacturers Association
National Marine Manufacturers Association
National Retail Federation
Specialty Equipment Market Association
United States Chamber of Commerce

January 3, 2005

Dear Congressman Knollenberg:

The organizations listed above write in support of your legislation to strengthen the criminal statute against trafficking in counterfeited goods. This bill would amend the U.S. Code, 18 U.S.C. 2320, by closing existing loopholes that can allow counterfeiters to avoid prosecution, maintain control of assets for criminal enterprises, and unjustly profit from their illegal activities. This legislation would grant trademark owners remedies similar to those already provided to copyright and trade secret owners.

Acts of counterfeiting result in significant economic harm in the form of lost profits, diminished reputation among consumers, and decreased tax revenue. The FBI estimates that counterfeiting costs U.S. businesses $200 billion to $250 billion annually and is increasing rapidly. New York City estimates that in 2003 alone, the theft of intellectual property cost the city over $1 billion in lost tax revenue. Another frightening trend relates to the rising occurrence of substandard and dangerous counterfeit goods that present severe public health and safety risks. Numerous deaths and injuries have already been attributed to counterfeit products. Finally, and perhaps most alarmingly, there is strong evidence suggesting that organized criminal groups and terrorist organizations are increasingly involved in criminal counterfeiting schemes.

Existing domestic laws should be bolstered to effectively address this problem. Your bill would strengthen those laws by prohibiting the trafficking in counterfeit labels, patches, stickers, hangtags, or medallions that are unattached to goods. In addition, the bill would make mandatory the forfeiture and destruction of counterfeit goods, as well as the assets used to produce, package, and distribute counterfeit goods, and requires the forfeiture of property and assets derived from counterfeiting.

Internationally, the World Customs Organization and Interpol estimate that the annual global trade in illegitimate goods has increased from $5.5 billion in 1982 to roughly $600 billion today and it continues to grow. Ambassador Zoellick, the U.S. Trade Representative, recently characterized trademark counterfeiting, along with copyright piracy, as a "scourge on the global economy."

Immediate passage of this legislation is necessary to more effectively combat counterfeiting abroad. The Office of the U.S. Trade Representative advises that it will not negotiate criminal anti-counterfeiting standards above the levels found in current U.S. law. With a number of free trade agreements currently being negotiated, it is imperative that the current deficiencies in domestic law are not codified in these international agreements. We should seize the opportunity represented by new trade agreements to obtain stronger enforcement obligations from our trading partners against counterfeiting.

The groups listed above represent thousands of trademark owners whose intellectual property assets are targets of counterfeiters in the U.S. and abroad. We would like to thank you for your excellent leadership on this issue and we commit to working with you to ensure that the U.S. House of Representatives acts quickly to consider and pass this important legislation. If you have any questions, please do not hesitate to contact the interested associations directly, or Tim Trainer (ttrainer@iacc.org) of the International AntiCounterfeiting Coalition, telephone (202) 223-6667.

cc: House Judiciary Committee

Mr. LUNGREN. At this time I would say that normally Congressman Coble would be presiding over this hearing, but Congressman Coble was required to appear to give a eulogy for a close friend of his in his district and otherwise would be in attendance.

When Congressman Bobby Scott appears, I will recognize him for his opening statement. He is still on the floor, having just managed the Congressional Black Caucus amendment to the Budget Act.

Mr. CONYERS. Mr. Chairman?

Mr. LUNGREN. Yes?

Mr. CONYERS. Might I make a brief opening statement in his absence?

Mr. LUNGREN. In his absence, yes, sir. The gentleman is recognized.

Mr. CONYERS. I thank you very much. Always happy to see Dan Lungren sitting in the chair again. He took a leave of absence to be Attorney General in California, and now he is back on the Committee, I think his seniority is restored. And, of course, our good friend Bobby Scott of Virginia is the ranking Subcommittee person here, and he will be here shortly, I am sure.

But this is a timely hearing. There has been, without question, more organized retail theft and trafficking in counterfeit trademarks that cause us to be here today. And we know that the numbers that Chairman Lungren brought to us, the FBI estimates and retail losses, are about where he said they are.

We are here to talk about solutions to these problems, and I wanted to just throw out a couple of common-sense principles that might guide us as we proceed in this discussion.

As we consider strengthening remedies against illicit counterfeiters, we want to be careful not to unnecessarily infringe on legitimate businesses and commercial activities. Many law-abiding companies operate in the parallel importation market which involves the selling and reselling of genuine goods and services, and in turn, they are then provided to customer—to consumers at competitive discount rates. Thus, any limits placed on such companies have a detrimental effect on consumers in search of bargains.

And, finally, we should agree just as a general principle—and I think that this does guide us most times. We don't want to add laws to the criminal code unless they are absolutely necessary. That goes back to the principles of federalism that dictate that we offer solutions only to those problems not left within the domain of the State, and the prosecution of shoplifters at the Federal level may not meet this requirement. And I am hoping that we'll be discussing somewhere along the line, Mr. Chairman, the verification of secondary sourcing.

And with that, I ask that my statement be included in the record and return my time. Thank you very much.

Mr. LUNGREN. It shall be. Thank you.

Our first witness is Assistant Director of the FBI Criminal Investigative Division, Chris Swecker. The Criminal Investigative Division is responsible for coordinating, managing, and directing all criminal investigative programs nationwide. Mr. Swecker entered the FBI in 1982. Prior to being appointed to his current position by Director Mueller on July 7, 2004, he served as the special agent

in charge of the Charlotte, North Carolina, field office. A native of Spain?

Mr. SWECKER. Navy family.

Mr. LUNGREN. Navy family, okay. A native of Spain, he received his early education in Virginia Beach, Virginia, earned a bachelor of science degree in political science and economics from Appalachian State University in North Carolina, and juris doctorate degree from Wake Forest School of Law.

This is a little earlier than we thought we were going to have a vote. We will find out what it is.

Upon graduating from law school, he became Assistant District Attorney for the First District of North Carolina September 1981.

Our next witness is here today on behalf of the Gillette Corporation. Mr. Paul Fox is the Director of External Relations for the Gillette Corporation. Over the last 3 years, he has devoted specific focus to assisting Gillette identify the issues associated with the counterfeiting and theft of its products, developing wide-ranging programs designed to combat the impact of these crimes on Gillette's businesses, and is currently the Chair of the Coalition Against Counterfeiting and Piracy. Mr. Fox was educated in England.

Our third witness, Mr. Chris Nelson, is the Director of Asset Protection for the Target Corporation. Before being appointed to this role, Mr. Nelson held the position of Director of Investigations for the Target Corporation. In this capacity, he led the corporation's investigative strategy and teams, including field investigations, corporate investigations, financial investigations, and intelligence. Prior to joining Target, he served as an officer of the U.S. Army Military Police. Assignments required him to serve all over the world, from South Korea to Washington, D.C., and even led him to command a military police company at Fort Riley, Kansas, and in Mogadishu, Somalia, supporting U.S. and UN operations during the Somalian conflict. He received his B.A. from St. Cloud State University in criminal justice, is a graduate of the military police skills officer basic and advanced course in combined arms and services staff school at Fort Leavenworth, Kansas.

Our final witness, Ms. Lauren Perez, is Vice President on Regulatory Matters and an international trade adviser with Sandler, Travis, and Rosenberg, specializing in global regulatory issues.

Again, I turn to my colleague, the distinguished gentleman from Michigan, to make a few remarks with respect to Ms. Perez.

Mr. CONYERS. We want to welcome Attorney Perez, who has now been promoted within her firm for her good work. And she is an old friend of intellectual property issues and has been before the Committee many times. And she conducts corporate seminars and deals with international protection of international—intellectual property rights and has been very good in working with the Committee on the Judiciary. And I must say that we're always happy to have her come up from Florida to be with us.

Thank you, Mr. Chairman.

Mr. LUNGREN. Thank you, Ranking Member.

It's the practice of the Subcommittee to swear in all witnesses appearing before it, so if you would please stand and raise your right hand.

[Witnesses sworn.]

Mr. LUNGREN. Thank you. Let the record show that each of the witnesses answered in the affirmative, and please be seated. I notice this was probably easier than the hearing they were having just down the hall. Some of you may have realized why you could have seats at this place. Canseco is down the hall.

We have written statements from all the witnesses on this panel, which I will ask unanimous consent to submit into the record in their entirety, and without objection, so ordered.

We have been informed that we have a vote on a motion to rise from the Committee considering the budget bill. The reason why we're surprised is we did not know—this was not scheduled. That is a 15-minute vote, I understand, and we will have to break and go over and vote and come back, and I apologize to our witnesses. We are a half-hour past when we wanted to, but this is what happens when you have hearings while we're also voting on something on the floor, the budget. And we shall adjourn and be back as soon as possible.

[Recess.]

Mr. LUNGREN. All right. We'll reconvene the Subcommittee hearing.

First of all, I want to ask unanimous consent that the statement of Mr. Green be placed in the record. Without objection, so ordered.

I recognize the Ranking Member of the Subcommittee, Congressman Bobby Scott.

Mr. SCOTT. Thank you, Mr. Chairman. I apologize for being delayed. The amendment that was voted on previous to this last vote was an amendment that I had drafted, so I had to be there to answer questions. So although there was plenty of time to get back after people had an opportunity to vote, I felt compelled to stay. So I apologize.

But I'm pleased to join you in convening this hearing on counterfeiting of manufactured goods and organized retail theft. We have Federal laws to address counterfeiting of manufacturing goods. H.R 32, the "Stop Counterfeiting in Manufactured Goods Act," amends existing law in a manner designed to intensify the effort to prevent counterfeiting of goods. Counterfeited goods not only victimize the manufacturer but shortchanges the purchasers with substandard products, exposes us to—all of us to risks of unsafe products, and deprives Americans of jobs and other benefits of commerce of authentic goods.

Yet there is concern that H.R. 32 as drafted may go too far and criminalizes legitimate, time-honored practices of law-abiding merchants who legally purchase manufactured goods and repackage them in various ways to enhance sales of such goods. We have been able—we have able witnesses who may speak to these points, so I look forward to their testimony.

For some now—for some time now, we've been hearing about the problem of organized retail theft, or ORT, from business representatives in my congressional district, so I am pleased that we'll be able to report to them that we're giving this issue attention in Congress. Theft of merchandise through shoplifting from retail outlets and through other means is not new and has traditionally been handled by State criminal laws. In Virginia, for example, any theft

in excess of $200 is grand larceny, with a maximum penalty of 20 years. A third offense of petty larceny is by law in Virginia treated the same way as grand larceny. With the diligent enforcement activities, such measures are ordinarily adequate to—ordinary law enforcement activities are usually adequate to keep the problem of merchandising theft sufficiently in check.

However, with organized theft rings deploying numerous individuals operating across State lines, ordinary enforcement approaches may not be adequate. These individuals can shoplift with acceptable risks by maintain—by remaining under the grand larceny threshold for each incident and steal thousands of dollars worth of merchandise for the ring. I expect that our witnesses will describe ORT as a problem of growing dimensions with organized crime, interstate, and international elements.

As with counterfeiting of goods, we already have Federal laws which can be utilized, and I'm pleased to have a representative from the FBI to describe what the Federal Government is doing about it and what is needed for further effectiveness.

So, Mr. Chairman, I look forward to hearing testimony from our witnesses and working with you and Chairman Coble to do what makes sense at the Federal level to curb both problems, including counterfeiting of manufactured goods and organized retail theft.

Thank you.

Mr. LUNGREN. Thank you very much.

Now it becomes my duty to explain to you that even though you have waited here for almost 50 minutes, we're going to ask you to please confine your comments to 5 minutes apiece. The green light goes on to show you there's 5 minutes; the yellow light goes on with 1 minute; and I'll be as lenient as I possibly can, and then we'll have questions and answers. And we very much appreciate you being here. It is just a crazy schedule. And the absence of some Members is no reflection on the quality of your testimony. It is just the craziness of this Congress.

Mr. Swecker, if we could begin with you, please.

TESTIMONY OF CHRIS SWECKER, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Mr. SWECKER. Good afternoon, Mr. Chairman, Members of the Committee. I appreciate the opportunity to be here to talk about the problem posed by criminal enterprises involved in the theft, diversion, repackaging, and ultimate resale of consumer products to include such items as over-the-counter medications, prescription drugs, health and beauty aids, and infant formula.

The problem is significant for the economic loss it brings to retailers and manufacturers, which are then passed on to consumers. Ultimately, the consumer ends up paying significantly higher prices for these products because of this. The problem is particularly acute in the area of organized retail theft by criminal enterprises. It is estimated that the retail industry loses between $15 to $30 billion annually to such theft.

The unsuspecting consumer also faces potential health and safety risks from legitimate products which may have been mishandled by the criminal enterprises who stole them for resale to consumers. In

many cases, stolen infant formula, pharmaceuticals, and other consumables are not stored under proper conditions. When these items are reintroduced into the retail market, they can pose a significant health hazard to the consumer. The potential threat to the health and safety of unsuspecting consumers is most evident in cases in which infant formula is stolen, repackaged, and then resold to both knowing and unknowing wholesalers, who then sell the infant formula to Government food programs and discount stores.

The first phase of the initiative included the formation of a National Retail Federation/FBI Intelligence Network, which is a partnership between the FBI, State and local law enforcement, and corporate security entities, to establish an effective means of sharing intelligence information.

Stolen prescription and over-the-counter medications and health and beauty aids are also sold to illegitimate wholesalers who specialize in repackaging and reintroduction of these products into the retail market, creating the same health and safety concerns. These illegitimate wholesalers also work with other criminal enterprises to facilitate the introduction of counterfeit prescription and over-the-counter medications and health and beauty aids to unsuspecting retailers and consumers. In addition to these concerns, the potential for intentional product tampering prior to the reintroduction of the stolen merchandise into the market is significant.

These significant criminal enterprises can best be dismantled through a coordinated and cooperative effort between local law enforcement, Federal law enforcement, and the manufacturing and retail industry. In December of '03, we established the Organized Retail Theft Initiative to identify and ultimately to disrupt and dismantle the most sophisticated, multi-jurisdictional criminal enterprises, using the Federal statutes, including RICO and money laundering. Increased information sharing and cooperation between law enforcement and the private sector will enable both to gain a better understanding of the full nature and extent of this problem, as well as to identify the best methods for law enforcement and the industry to attack this serious problem.

The FBI's initiative and the formation of the Intelligence Network has received strong support from the retail/food industry. Information obtained through this initiative has been furnished to FBI field offices to initiate investigations and facilitate a more effective, intelligence-driven investigative response to the significant problem.

As part of the Intelligence Network, a Retail Loss Prevention—or, excuse me. As part of the Intelligence Network, the NRF has created a Retail Loss Prevention Intelligence Network Database. This database will provide retail entities and law enforcement with intelligence/information capability. The FBI is serving on the RLP—or on this committee in an advisory capacity.

In addition to this initiative, the FBI is identifying and targeting multi-jurisdictional criminal enterprises utilizing major theft task forces. These task forces combine the resources of State, Federal, and local law enforcement as well as the industry to apply investigative techniques and strategies which the FBI successfully utilize to target traditional organized crime, including the develop-

ment of a solid intelligence base and the use of undercover operations and various electronic surveillance techniques. These task forces increase the effectiveness of the effort.

Currently there are nine FBI-led major theft task forces located in Houston, Memphis, Miami—where there are two—Newark, New York, Philadelphia, San Juan, and the Washington field office. They're responsible for conducting investigations of all major theft violations including retail, cargo, vehicle, jewelry and gem theft. As of this date, the nine FBI-led task forces are staffed by FBI agents and other State, Federal, and local law enforcement.

In FBI field offices that do not have a task force, significant investigations are being conducted by criminal enterprise squads. Many of these investigations are worked in coordination with State and local law enforcement and include assistance from the industry.

In summary, major theft task forces are an extremely effective manner by which to combat organized retail theft enterprises. They "force multiply" the resources available, eliminate redundant investigative efforts, reduce concurrent jurisdictional issues, and encourage that information sharing that is so critical.

The use of the task forces, coupled with a partnership with the industry, is seen as one of the most effective and efficient tools by which to identify, disrupt, and dismantle organized retail theft enterprises impacting the health, safety, and pocketbook of the American consumers.

Thank you.

[The prepared statement of Mr. Swecker follows:]

PREPARED STATEMENT OF CHRIS SWECKER

Good morning Mr. Chairman and members of the Judiciary Committee. On behalf of the Federal Bureau of Investigation, I would like to express my gratitude to the committee for affording me the opportunity to speak with you concerning the FBI's efforts in addressing the nationwide problem posed by criminal enterprises involved in the theft, diversion, repackaging, and ultimate resale of consumer products, to include such items as over-the-counter medications, prescription drugs, health and beauty aids, and infant formula.

This problem is significant for the economic losses it brings to manufacturers and retailers, which are then passed on to consumers. Ultimately, the American consumer ends up paying significantly higher prices for these products. This problem is particularly acute in the area of Organized Retail Theft (ORT) by criminal enterprises. It is estimated that the retail industry loses between $15 to $30 billion annually to such theft.

The unsuspecting consumer also faces potential health and safety risks from legitimate products which may have been mishandled by the criminal enterprises who stole them for resale to consumers. In many cases, stolen infant formula, pharmaceuticals, and other consumables are not stored under proper conditions. When these items are reintroduced into the retail market, they can pose a significant health hazard to the consumer. The potential threat to the health and safety of unsuspecting consumers is most evident in cases in which infant formula is stolen, repackaged and then resold to both knowing and unknowing wholesalers, who then sell the infant formula to government food programs and discount stores.

The first phase of the ORT Initiative included the formation of a National Retail Federation (NRF)/FBI Intelligence Network. This network is a partnership between the FBI, state and local law enforcement, and corporate security entities; to establish an effective means of sharing ORT information/intelligence; to discuss ORT trends as they relate to specific areas of the retail market; and, to identify and target the most significant ORT criminal enterprises, particularly those that may be involved in the funding and/or supporting of terrorist organizations or activities.

Stolen prescription and over-the-counter medications and health and beauty aids are also sold to illegitimate wholesalers who specialize in the repackaging and re-

introduction of these products into the retail market, creating the same health and safety concerns. These illegitimate wholesalers also work with other criminal enterprises to facilitate the introduction of counterfeit prescription and over-the-counter medications and health and beauty aids to unsuspecting retailers and consumers. In addition to these concerns, the potential for intentional product tampering prior to the reintroduction of the stolen merchandise into the retail market is significant.

These sophisticated ORT criminal enterprises can best be dismantled through a coordinated and cooperative effort between law enforcement and the manufacturing and retail industry. In December 2003, the FBI established an ORT Initiative to identify and ultimately to disrupt and dismantle the most sophisticated, multi-jurisdictional ORT criminal enterprises, using the Interstate Transportation of Stolen Property, Money Laundering, and RICO statutes. Increased information sharing and cooperation between law enforcement and the private sector will enable both to gain a better understanding of the full nature and extent of this crime problem, as well as to identify the best methods for law enforcement and the manufacturing and retail industry to attack this serious crime problem.

The FBI's ORT Initiative and the formation of the Intelligence Network has received strong support from the retail/food industry. Information obtained through this initiative has been furnished to appropriate FBI field offices to initiate investigations and to facilitate a more effective, intelligence-driven investigative response to the significant problem of ORT criminal enterprises.

As part of the Intelligence Network, the NRF is creating a Retail Loss Prevention Intelligence Network Database (RLPIN). This database will provide retail entities and law enforcement with an ORT information/intelligence sharing capability. The FBI is serving on the RLPIN committee in an advisory capacity.

In addition to the ORT Initiative, the FBI is identifying and targeting multi-jurisdictional ORT criminal enterprises utilizing joint Major Theft Task Forces. These task forces, which combine the resources of local, state and federal law enforcement, as well as manufacturing or retail security personnel, are applying investigative techniques and strategies which the FBI has successfully utilized to target traditional organized crime, including the development of a solid intelligence base and the use of undercover operations and various electronic surveillance techniques. These task forces increase the effectiveness and productivity of limited personnel and logistical resources, avoid the duplication of investigation resources, and expand the cooperation and communication among federal and state law enforcement agencies.

Currently there are 9 FBI-led Major Theft Task Forces located in the Houston, Memphis, Miami (2 Task Forces), Newark, New York, Philadelphia, San Juan, and Washington DC Field Offices. These task forces are responsible for conducting investigations of all major theft violations to include retail, cargo, vehicle, and jewelry and gem theft. As of this date, the 9 FBI-led Major Theft Task Forces are staffed by FBI Agents and other federal, state and local law enforcement officers.

In FBI Field Offices that do not currently have formal Major Theft Task Forces, significant ORT investigations are being conducted by criminal enterprise squads. Many of these investigations are worked in coordination with state and local law enforcement agencies, and include assistance from manufacturing and retail security entities.

In summary, Major Theft Task Forces are an extremely effective manner by which to combat ORT criminal enterprises. They "force multiply" federal resources, benefit local law enforcement efforts, eliminate redundant investigative efforts, reduce concurrent jurisdictional issues, encourage information sharing and intelligence development, and reduce substantial organized retail theft.

The use of Major Theft Task Forces, coupled with a partnership with the retail industry, is seen by the FBI as one of the most effective and efficient tools by which to identify, disrupt and dismantle organized retail theft criminal enterprises impacting the health, safety and pocketbook of American consumers.

Thank you.

Mr. LUNGREN. Thank you very much.

Mr. Nelson?

TESTIMONY OF CHRIS NELSON, DIRECTOR OF ASSET PROTECTION, TARGET CORPORATION, ON BEHALF OF THE COALITION AGAINST ORGANIZED RETAIL THEFT

Mr. NELSON. Thank you. Mr. Chairman, Members of the Subcommittee, Congressman Goodlatte, my name is Chris Nelson. I'm

the Director of Asset Protection for Target Corporation, which is headquartered in Minneapolis, Minnesota. Thank you for conducting today's hearing on counterfeiting and organized retail theft. My statement today is presented on behalf of the Coalition Against Organized Retail Theft, This group, which has been together for close to 5 years, consists of national manufacturing and retail organizations as well as individual companies from both of these sectors. A listing of all the coalition members can be found at the end of my statement.

Mr. Chairman, organized retail theft, or ORT, is a growing problem throughout the United States affecting many sectors of the retail community from supermarkets and chain drug stores to mass merchandisers and specialty stores. It is clearly the most pressing security problem facing our industry. Organized retail theft now accounts for up to $30 billion in losses at the store level annually, according to the FBI interstate task force.

More importantly and most disturbing is the fact that the type of criminal activity can put consumers' health and safety at risk. For example, consumers are potentially at risk when professional shoplifting rings steal consumable products, such as over-the-counter medications and infant formula. Pilfered products may not be kept under ideal or required storage conditions, and they can threaten the product's integrity. Oftentimes these organized thieves will repackage and change labels of stolen merchandise or products to falsely extend that product's expiration date or to disguise the fact that that merchandise has been stolen.

Additionally, we at Target and several retailers have been victimized by ORT groups involved in other illicit activities, including the distribution of narcotics and money laundering supporting overseas operations.

After working last year in the Fort Worth-Dallas area to close down a very large organized retail theft group stealing and reselling baby formula, we were advised by law enforcement that the group has sent $6 million to the Middle East.

Organized retail theft rings are highly mobile and sophisticated, moving from community to community, and across State lines stealing large amounts of merchandise from retailers. Typical retail security practices are not enough to deter these groups. At Target, we studied the tactics of these groups and responded by fielding a highly trained investigative team throughout the country specifically equipped to deal with these groups. Unfortunately, not all retailers are in a fiscal position to resource such an endeavor. This creates an environment where ORT groups have the advantage and significantly lessens their risk.

ORT groups typically target everyday household products that can easily be sold through fencing operations, flea markets, over the Internet, swap meets, and shady storefront operations. In addition to infant formula and OTC medications, other items that are in high demand by these professional shoplifting rings include razor blades, camera film, batteries, DVDs, CDs, and smoking cessation public sector. These items are attractive because they are commodities which are easy to conceal and easy to sell on the secondhand market. High-end items including designer clothes and electronics are also popular items for theft by these gangs. ORT

groups target the same trend or hot items that honest consumers want.

The coalition wishes to express its gratitude to both the Justice Department and the FBI for their hard work and dedication to the organized retail crime front as well as outstanding efforts of State and local law enforcement. In particular, retailers and manufacturers are very pleased about the recent collaborative efforts between Federal and State law enforcement officials who have broken up a retail theft ring operating in North Carolina and Virginia that was responsible for moving more than $2 million worth of stolen infant formula and OTC products.

The coalition views the apprehension of this theft ring as a very positive development, but more needs to be done because the problem is prevalent throughout the country and these theft rings are becoming increasingly more aggressive and violent in their behavior. Unfortunately, this goal may be elusive, and that's because there is no Federal statute currently on the books that specifically addresses organized retail theft crimes. The Federal statute most frequently utilized in dealing with professional theft rings is the Interstate Transportation of Stolen Property Act, but this law is limited to situations involving transportation of stolen goods. Thus, when professional thieves are apprehended for stealing large quantities of merchandise from a retail store, no Federal statute is readily available. This means the case is likely to be handled under State shoplifting law and usually treats such crimes as petty theft and a misdemeanor. As a result, organized retail theft cases are rarely prosecuted, and when they are, individuals who are convicted usually see limited jail time and are placed on probation if they have no prior arrests. That means they are back out on the street quickly, only to continue their illegal efforts and further injure both businesses and consumers.

Retailers and manufacturers firmly believe that there is an overriding need to make organized retail theft a Federal felony as we believe it would serve as a strong deterrent against the commission of crimes of this nature in the future. The 108th Congress—or in the 108th Congress, our coalition endorsed such a bill, S. 1553, that was introduced by Senator Larry Craig.

In addition to our support for an initiative that would make organized retail theft a Federal felony, the coalition offers the following legislative recommendations for consideration by the Congress:

The establishment of a national database or clearinghouse to collect and track organized retail theft crimes. Such a national database would allow State and local law enforcement officials as well as retail stores to transmit electronically appropriate information into the database. The transmitted information would allow the FBI to quickly identify hot spots throughout the United States where ORT crimes are being committed and to deploy its agents and the resources more effectively in the field.

Second is the authorization of funding for the establishment and maintenance of the national database, and for the purposes of educating and training Federal law enforcement agents for investigating, apprehending, and prosecuting individuals engaged in ORT activities.

Third, the prohibition of the sale of certain products that are regulated by the Food and Drug Administration, such as infant formula and OTC medications, by flea markets and transient vendors unless such vendors have written authorization from the manufacturer to sell their products.

And, finally, to amend Federal law to specifically reference organized retail theft as a Federal offense and to include a working definition of what constitutes organized retail theft so that Federal and State law enforcement agencies can identify these crimes and respond accordingly. In addition, better sentencing guidelines so that ORT crimes are not considered petty theft whereby individuals receive little jail time or probation.

Mr. Chairman, this concludes my statement. Thank you for allowing me on behalf of Target Corporation and the Coalition Against Organized Retail Theft to participate in this important hearing.

[The prepared statement of Mr. Nelson follows:]

PREPARED STATEMENT OF CHRIS NELSON

INTRODUCTION

Mr. Chairman, Members of the Subcommittee, Congressman Goodlatte. My name is Chris Nelson, and I am Director of Asset Protection for Target Corporation, headquartered in Minneapolis, Minnesota. Thank you for conducting today's hearing on counterfeiting and organized retail theft. My statement today is presented on behalf of the Coalition Against Organized Retail Theft. This group, which has been together for close to five years, consists of national manufacturing and retail organizations as well as individual companies from both of these sectors. A listing of all Coalition Members can be found at the end of my statement.

ORGANIZED RETAIL THEFT—A GROWING PROBLEM

Mr. Chairman. Organized Retail Theft is a growing problem throughout the United States affecting many sectors of the retail community from supermarkets, and chain drug stores to mass merchandisers and specialty stores. It is clearly the most pressing security problem facing our industry. Organized Retail Theft now accounts for up to $30 billion in losses at store level annually according to the Federal Bureau of Investigation's (FBI) interstate task force.

More importantly and most disturbing is the fact that this type of criminal activity can put consumer's health and safety at risk. For example, consumers are potentially at risk when professional shoplifting rings steal consumable products, such as over-the-counter medications and infant formula. Pilfered products may not be kept under ideal or required storage conditions which can threaten the product's integrity. And often times these organized thieves will repackage and change the labels of stolen products to falsely extend the product's expiration date or to disguise the fact that the merchandise has been stolen.

Organized retail theft rings are highly mobile, moving from community to community, and across state lines stealing large amounts of merchandise from retail stores. They typically target everyday household products that can be easily sold through fencing operations, flea markets, over the Internet, swap meets and shady storefront operations. In addition to infant formula and OTC medications, other items that are in high demand by these professional shoplifting rings include razor blades, camera film, batteries, DVDs, CDs, and smoking cessation products. High end items including designer clothes and electronics are also popular items for theft by these brazen gangs.

The Coalition wishes to express its gratitude to both the Justice Department (DOJ) and the FBI for their hard work and dedication on the organized retail crime front as well as the outstanding efforts of state and local law enforcement. In particular, retailers and manufacturers are very pleased about the recent collaborative effort between federal and state law enforcement officials who have broken up a retail theft ring operating in North Carolina and Virginia that was responsible for moving more than $2 million dollars worth of stolen infant formula and OTC products.

The Coalition views the apprehension of this theft ring as a very positive development, but more needs to be done because the problem is prevalent throughout the country and these theft rings are becoming more aggressive and violent in their behavior. Unfortunately, this goal may be elusive, and that's because there is no federal statute currently on the books that specifically addresses organized retail theft crimes. The federal statute most frequently utilized in dealing with professional theft rings is the Interstate Transportation of Stolen Property Act, but this law is limited to situations involving the transporting of stolen goods. Thus, when professional thieves are apprehended for stealing large quantities of merchandise from a retail store, no federal statute is readily available. This means the case is likely to be handled under a state shoplifting law that usually treats such crimes as petty theft and a misdemeanor. As a result, rarely are organized retail theft cases prosecuted, and when they are, individuals who are convicted usually see limited jail time or are placed on probation if they have no prior arrests.

COALITION RECOMMENDATIONS

Therefore, retailers and manufacturers firmly believe that there is an overriding need to make Organized Retail Theft a federal felony as we believe it would serve as a strong deterrent against the commission of crimes of this nature in the future. In the 108th Congress, our Coalition endorsed such a bill (S. 1553) that was introduced by Senator Larry Craig (R-ID).

In addition to our support for an initiative that would make Organized Retail Theft a federal felony, the Coalition offers the following legislative recommendations for consideration by the Congress:

1. The establishment of a national data base or clearinghouse to collect and track organized retail theft crimes. Such a national data base would allow state and local law enforcement officials as well as retail stores to transmit electronically appropriate information into the data base. The transmitted information would allow the FBI to quickly identify "hot spots" throughout the United States where ORT crimes are being committed and to deploy its agents and resources more efficiently in the field.
2. The authorization of funding for the establishment and maintenance of the national data base, and for the purposes of education and training of federal law enforcement agents for investigating, apprehending and prosecuting individuals engaged in ORT crimes.
3. The prohibition of the sale of certain products that are regulated by the Food and Drug Administration, such as infant formula and OTC medications, by flea markets and transient vendors unless such vendors have written authorization from the manufacturer to sell their products.
4. Amend federal law to specifically reference organized retail theft as a federal offense and to include a working definition of what constitutes organized retail theft so that federal and state law enforcement agencies can identify these crimes and respond accordingly. In addition, better sentencing guidelines so that ORT crimes are not considered petty theft whereby individuals receive little jail time or probation.

Mr. Chairman, this concludes my statement and thank you for allowing the Coalition Against Organized Retail Theft to participate in this important hearing.

COALITION AGAINST ORGANIZED RETAIL THEFT

Abbott Laboratories
Consumer Healthcare Products Association
Cosmetic, Toiletry and Fragrance Association
CVS/Pharmacy
Duane Reade
Eastman Kodak Company
Eckerd Corporation
Food Marketing Institute
The Gillette Company
GlaxoSmithKline
Grocery Manufacturers of America
International Formula Council
The Kellen Company
National Association of Chain Drug Stores
National Association of Convenience Stores

National Community Pharmacists Association
National Retail Federation
Retail Alliance of Virginia
Retail Industry Leaders Association
Security Industry Association
Wal-Mart Stores, Inc.
Walgreen Co.

Mr. LUNGREN. Thank you, Mr. Nelson.

Mr. Fox?

TESTIMONY OF PAUL D. FOX, DIRECTOR, GLOBAL EXTERNAL RELATIONS, THE GILLETTE COMPANY, AND CHAIR, COALITION AGAINST COUNTERFEITING AND PIRACY

Mr. FOX. Mr. Chairman, Members of the Subcommittee, my name is Paul Fox. I am Director of Global External Relations for The Gillette Company.

Gillette is a large, publicly held consumer product company based in Boston with world-renowned branches such as MACH3, Venus, Right Guard, Oral-B, Duracell, and Braun.

I am also Chair of the Coalition Against Counterfeiting and Piracy, a cross-industry group created by a joint initiative between the U.S. Chamber of Commerce and the National Association of Manufacturers to act as the interface between U.S. business and the U.S. Government's Strategy Targeting Organized Piracy Program. A list of member organizations to the coalition is attached to my written testimony. That written testimony also includes a copy of the report Gillette commissioned last year on the scale and impact of the illicit market in stolen and counterfeit goods on the fast-moving consumer goods sector.

I am also Chair of the National Association of Manufacturers' Working Group on Counterfeiting.

I am here today on behalf of both Gillette and the coalition to discuss counterfeiting and theft, two issues of intense concern to Gillette and U.S. businesses nationwide.

First and foremost, I want to emphasize that counterfeiting and theft pose a significant threat to the economy of the United States and undermine the welfare, the security, and the safety of its citizens.

Let me begin by focusing on the issue of counterfeiting.

I have two packages of Duracell batteries here, one of which is counterfeit. You should know that I can tell you a lot about the real batteries in my right hand—where they were made, what's in them, how they perform, how much we and the retailer can expect to make on them; and last, but not least, the amount of tax that Federal and State governments make from their sale.

On the other hand, all I can tell you about these fakes is that they will probably last one-tenth as long as the real ones, probably would sell for half as much, and that Gillette, the retailer, and the Government would get nothing from their sale. These counterfeit batteries are part of more than 34 million that we seized during 2004. During that same period, we also seized more than 31 million fake Gillette shaving products and tens of thousands of Oral-B toothbrushes.

When you apply these issues to the entire U.S. business community, the cost is staggering: an estimated $200 billion to the U.S. economy and a loss of 750,000 American jobs.

Counterfeiting is clearly not a small problem, nor is it a victimless crime. We know that counterfeiting is used by organized crime and terrorist groups, including al Qaeda, to help fund their activities. But in addition to the risks from these organizations, our citizens also face direct health and safety dangers. These dangers range from fake, substandard auto and aircraft parts to fake pharmaceuticals that have no therapeutic value and may even cause direct harm.

So what do we do and where do we start? First, we must make sure our law enforcement people have the resources they need to make a real impact, including the ability to seize and destroy the machinery used in making counterfeit products. A recent Gallup survey on consumer attitudes to counterfeiting revealed that more than 70 percent of American consumers wanted to see tougher laws against these criminals. And we urge the Department of Commerce to complete the counterfeiting study for which it earmarked funds 3 years ago, but for which work has not yet begun.

And, second, we use an improved domestic posture to influence international action on counterfeiting, to enact mandatory confiscation and destruction laws, to strengthen criminal penalties, and to enhance global cooperation on this issue.

In the end, this is not a problem we can solve overnight or alone. But as leaders in global commerce, we must take real steps to protect the integrity of U.S. brands and products. Our citizens and our businesses deserve nothing less.

Now let me turn to the question of organized retail theft. Theft within the U.S. retail industry is a $30 billion problem often linked to the same organized crime syndicates that perpetrate the outrages connected with counterfeiting. It is the same shady middlemen who peddle counterfeit goods that also help fence stolen merchandise and put it back into the licit retail chain.

The majority of goods are stolen not for personal use but by organized criminals intent on the resale of the goods or to use them as collateral for other consumables such as drugs.

Increasingly, criminals use violence to enforce their activities and to conduct their crimes. Retail staff face serious physical threats from thieves intent on removing products from store shelves.

Because petty shoplifting is generally a misdemeanor prosecuted only under State statutes, organized crime rings have been using shoplifting to feed large-scale, high-revenue theft. ORT kingpins recruit gangs of shoplifters, giving them lists of low-volume, high-value items to be stolen from retail outlets—items such as razor blades, batteries, over-the-counter drugs, infant formula, and designer clothing.

The individual shoplifter may not seem worth prosecuting by local authorities since the value of the goods stolen from the single store is usually, and purposely, below the dollar value that would make the single act of shoplifting a felony under State law.

However, while each individual instance of theft may itself be relatively small, the combined impact of these gangs can be devastating. During one recent FBI investigation, theft amounting to

more than $10 million over a 5-year period was conducted by one criminal enterprise.

So what can Congress do? First, Congress should establish and provide ongoing funding for a national organized retail crime database that would allow the FBI to quickly deploy resources against these crimes. We have a national database for stolen cars. We need a national database on ORT as well.

Second, we need a focused Federal criminal statute to give Federal prosecutors better tools and more incentive to go after these criminals. Right now, Federal prosecutors spend little time on individual shoplifting crimes even though this may be the most effective way to crack a much larger ORT ring.

In short, the organized criminals are using the low level of attention paid to the crime of shoplifting as a cover for a massive theft effort that costs billions of dollars each year. For our part, American industry stands ready to assist you in any way possible.

This concludes my submission, and I would like to thank you for your time.

[The prepared statement of Mr. Fox follows:]

PREPARED STATEMENT OF PAUL D. FOX

Mr. Chairman, Members of the Sub-Committee. My name is Paul Fox, and I am the Director of Global External Relations for The Gillette Company.

Gillette is a large, publicly held consumer product company based in Boston with world-renowned brands such as MACH3, Venus, Right Guard, Oral-B, Duracell, and Braun.

I am also Chair of the Coalition Against Counterfeiting and Piracy . . . a cross industry group created by a joint initiative between the US Chamber of Commerce and the National Association of Manufacturers to act as the interface between US business and the US Government's Strategy Targeting Organized Piracy Program. A list of member organizations to the Coalition is attached to my written testimony. That written testimony also includes a copy of the report Gillette commissioned last year on the scale and impact of the illicit market in stolen and counterfeit goods on the fast moving consumer goods sector.

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Let me begin by focusing on the issue of counterfeiting.

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You should know that I can tell you a lot about the real batteries in my right hand—

—where they were made,

—what's in them,

—how they perform,

—how much we and the retailer can expect to make on them,

—and last, but not least, the amount of tax that federal and state governments make from their sale.

On the other hand, all I can tell you about these fakes is that they will probably last one-tenth as long as the real ones,

—probably would sell for half as much,

—and that Gillette, the retailer and the government would get nothing from their sale.

These counterfeit batteries are part of more than 34 million that we seized during 2004.

During the same period, we also seized more than 31 million fake Gillette shaving products and tens of thousands of fake Oral-B toothbrushes—

When you apply these issues to the entire US business community, the cost is staggering . . . an estimated $200 Billion to the US economy and a loss of 750,000 American jobs.

COUNTERFEITING IS CLEARLY NOT A SMALL PROBLEM NOR IS IT A VICTIMLESS CRIME—

We know that counterfeiting is used by organized crime and terrorist groups, including Al Queda, to help fund their activities

But in addition to the risks from these organizations, our citizens also face direct health and safety dangers.

These dangers range from fake, substandard auto and aircraft parts——

—to fake pharmaceuticals that have no therapeutic value and may even cause direct harm.

So what do we do and where do we start?

First, we make sure our law enforcement people have the resources they need to have a real impact, including the ability to seize and destroy the machinery used in making counterfeit products,

A recent Gallup survey on consumer attitudes to counterfeiting revealed that more than 70 percent of American consumers wanted to see tougher laws against these criminals.

—and we urge the Department of Commerce to complete the counterfeiting study for which it earmarked funds three years ago, but for which work has not yet begun.

And second, we use an improved domestic posture to influence international action on counterfeiting,

—to enact mandatory confiscation and destruction laws

—to strengthen criminal penalties

—and to enhance global cooperation on the issue.

In the end, this is not a problem we can solve overnight or alone.

But as leaders in global commerce, we must take real steps to protect the integrity of US brands and products.

Our citizens and our businesses deserve nothing less.

Now let me turn to organized retail theft.

Theft within the US retail industry is a $30 billion dollar problem often linked to the same organized crime syndicates that perpetrate the outrages connected with counterfeiting. It is the same shady middlemen who peddle counterfeit goods that also help fence stolen merchandize and put it back into the licit retail chain.

The majority of goods are stolen not for personal use but by organized criminals intent on the resale of the goods or to use them as collateral for other consumables such as drugs.

Increasingly, criminals use violence to enforce their activities and to conduct their crimes. Retail staff face serious physical threats from thieves intent on removing products from store shelves.

Because petty shoplifting is generally a misdemeanor prosecuted only under state statutes, organized crime rings have been using shoplifting to feed large-scale, high-revenue theft.

ORT kingpins recruit gangs of shoplifters, giving them lists of low-volume, high-value items to be stolen from retail outlets—items such as razor blades, batteries, over-the-counter drugs, infant formula, and designer clothing.

The individual shoplifter may not seem worth prosecuting by local authorities, since the value of the goods stolen from the single store is usually, and purposefully, below the dollar value that would make the single act of shoplifting a felony under state law.

However, while each individual instance of theft may itself be relatively small, the combined impact of these gangs can be devastating. During one recent FBI investigation, theft amounting to more than $10 million over a five year period was conducted by one criminal enterprise.

So, what can Congress do?

First, Congress should establish and provide ongoing funding for a national organized retail crime database that would allow the FBI to quickly deploy resources against these crimes.

We have a national database for stolen cars. We need a national database on ORT as well.

Second, we need a focused federal criminal statute to give federal prosecutors better tools and more incentive to go after these criminals. Right now, federal prosecutors spend little time on individual shoplifting crimes even though this may be the most effective way to crack a much larger ORT ring.

In short, the organized criminals are using the low-level of attention paid to the crime of shoplifting as a cover for a massive theft effort that costs billions of dollars each year.

For our part, American industry stands ready to assist you in any way possible.

This concludes my submission and I would like to thank you for your time.

I would be happy to answer any questions.

Coalition Against Counterfeiting and Piracy—Membership

Associations

1. AeA, Advancing the Business of Technology (AeA)
2. Advanced Medical Technology Association (ADVAMED)
3. American Apparel & Footwear Association (AAFA)
4. American Association of Exporters and Importers (AAEI)
5. American Intellectual Property Lawyers Association (AIPLA)
6. American Society of Association Executives (ASAE)
7. The Cosmetic, Toiletry and Fragrance Association (CTFA)
8. Consumer Electronics Association (CEA)
9. Entertainment Software Association (ESA)
10. Food Marketing Institute (FMI)
11. Gas Appliance Manufacturers Association (GAMA)
12. Global Business Leaders Alliance Against Counterfeiting (GBLAAC)
13. Grocery Manufacturers of America (GMA)
14. International Anti-counterfeiting Coalition (IACC)
15. Intellectual Property Owners Association (IPO)
16. International Communications Industries Association (ICIA)
17. International Trademark Association (INTA)
18. Motor & Equipment Manufacturers Association (MEMA)
19. Motion Picture Association of American (MPAA)
20. National Association of Manufacturers (NAM)
21. Recording Industry Association of America (RIAA)
22. Toy Industry Association (TIA)
23. U.S. Chamber of Commerce (USCC)
24. U.S. Council for International Business (USCIB)
25. U.S.-India Business Council
26. Vision Council of America (VCA)
27. U.S.—India Business Council
28. Vision Council of America (VCA)

Corporations

1. Altria Corporate Services, Inc.
2. Amgen Inc.
3. American Standard Inc.
4. Aspen Systems Corporation
5. BellSouth Corporation
6. C&M International, LTD
7. Dayco Products, LLC
8. DuPont Security & Solution
9. Eastman Kodak Company
10. Gillette
11. News Corporation
12. Oakley
13. Pernod Ricard USA
14. Robert Branand International
15. SICPA Securink Corporation
16. Stanwich Group LLC.
17. The Fairfax Group
18. Transpro, INC
19. Underwriters Laboratories, Incorporated
20. Xerox Corporation

Mr. LUNGREN. Thank you very much, Mr. Fox.

Ms. Perez?

TESTIMONY OF LAUREN V. PEREZ, VICE PRESIDENT, REGULATORY MATTERS, SANDLER, TRAVIS & ROSENBERG, P.A., ON BEHALF OF THE AMERICAN FREE TRADE ASSOCIATION

Ms. PEREZ. It's a privilege and honor to appear before the Subcommittee to offer these comments on behalf of the American Free Trade Association. AFTA is a nonprofit trade association of independent American retailers, distributors, importers, and wholesalers, committed to preserving the parallel market in order to assure American consumers cost competition and distribution of genuine and legitimate brand-name merchandise.

To be honest, AFTA is never going to come before you and oppose legislation committed to eliminating organized crime or combating retail theft. AFTA supports any measures that's going to make American businesses and consumers safer and more profitable. AFTA, in fact, supports legislation that criminalizes counterfeiting activity, so long as that legislation does not also prove to the detriment of consumers, relying upon the benefit of a freely competitive marketplace. AFTA supports the intentions of H.R. 32 but has grave concerns about the unintended consequences of its language.

I'm going to spend a couple of minutes talking about and briefly illustrating some of those concerns.

The amendment to the definition of a counterfeit trademark in H.R. 32 is a dramatic amendment, and it's put in the context of a criminal statute. The bill's proposed amended definition of a counterfeit trademark ignores entirely the fact that, under certain necessary, lawful, and desired commercial transactions, parties other than the registered trademark owner need to and should be able to reproduce and refer to registered trademarks on product packaging, labeling, tags, stickers, or labels.

Product retailers and wholesalers in the United States often consolidate and combine legitimate brand-name merchandise into gift sets. We love this, especially around holiday time. You get lipsticks with mirrors or perfumes with hairbrushes. And then what these traders do is they make packaging or labeling to combine these products, and on that packaging and labeling they reproduce or refer to the registered trademarks to accurately identify the genuine brand-name merchandise contained in those gift sets. There's nothing wrong with this. But H.R. 32 would potentially make that packaging counterfeit. It would turn the people who traffick in that packaging into criminals. That's not what legislation intended to stop counterfeiting should also do.

We all love coupons, discount coupons. American consumers and retailers, everyone depends upon the availability of coupons. There are third-party service providers that, quote-unquote, traffic in these promotional vehicles that necessarily contain registered trademarks that accurately refer to the genuine brand-name merchandise being sold at a discount. H.R. 32 would potentially make these coupons counterfeit if they weren't manufactured under the authority of the registered trademark owner. That's not what this legislation should do.

For many, many, many years, trademark owners and product manufacturers have rushed into court charging that parallel marketers and suppliers to the secondary marketplace are counterfeiters, and oftentimes they're just not right. That's just not true.

There's one case I just want to briefly talk about, and it does deal with infant formula. I want to separate the issue of the health and safety of infant formula from the portion of this case that I think is germane to what I'm talking about.

In that case, there was a third-party distributor that had in its possession unadulterated, untampered-with infant formula that was well still within its sell-by date. This infant formula was consolidated and combined, all of one single manufacturer, into a shipping container, a cardboard shipping container. The shipping container, the packaging, was made so that consumers could see that the products had not been tampered with. They could see that the products could still be consumed within the sell-by date and had on it the registered trademark accurately identifying the brand of the infant formula contained on those trays.

The Government argued that the trays were counterfeit. They wanted this third-party distributor held criminally liable for counterfeiting under section 2320 of the Criminal Code. The court fortunately didn't buy it and said that the shipping trays that just actually reproduced the trademarks of the actual products, genuine products contained on the shipping trays were not counterfeit. H.R. 32 would reverse that decision.

AFTA is absolutely convinced and remains convinced and confident that H.R. 32 is intended to stop illicit criminal counterfeit activity and supports that intention. Again, it's the failure of the legislation to distinguish between lawful and unlawful application of registered trademark that needs to be fixed. We need to work together to find an amendment that fixes it.

While there's absolutely no question that all American trade groups and associations need to bind together to make sure that criminal counterfeiting activity stops, it's an inappropriate legislative remedy to stop also normal, desirable, and necessary commercial transactions.

AFTA has submitted in its written testimony proposed amendment language that we ask the Subcommittee and the Committee to consider. This language attempts to preserve criminal penalties for counterfeit packaging, labels, tags, while it also exempts from criminal prosecution the lawful sale and resale of genuine products that merely contain packaging that reproduce the trademarks accurately reflecting those genuine brand-name products and merchandise. AFTA looks forward to working with the proponents and supporters of this legislation to stop retail theft, to stop organized crime, and to ensure that any amendment to H.R. 32 equally protects the rights of intellectual property rights owners with the rights of American consumers to continue to be able to enjoy the benefit of a competitive marketplace which is supported by the members of the American Free Trade Association.

Thank you again for the opportunity to speak before you today.

[The prepared statement of Ms. Perez follows:]

PREPARED STATEMENT OF LAUREN V. PEREZ

It is a privilege and honor to appear before this Subcommittee to offer these comments on behalf of the American Free Trade Association (AFTA). The American Free Trade Association is a not-for-profit trade association of independent American importers, distributors, retailers and wholesalers, dedicated to preservation of the

parallel market to assure competitive pricing and distribution of genuine and legitimate brand-name goods for American consumers.

To be honest, there is no testimony or comments AFTA would ever offer opposing any legislation committed to eliminating organized crime. Summarily, AFTA supports any measures furthered by this subcommittee that makes our borders and our domestic businesses safer and more able to prosper and succeed. Specifically, AFTA supports any legislation that criminalizes counterfeiting activity so long as consumers remain the beneficiaries of a freely competitive marketplace. In that regard, AFTA fully supports the intentions of H.R. 32—although it seeks modification of the bill to ensure that lawful commercial activity will not unintentionally be obstructed by its provisions.

Following is a brief discussion illustrating certain of AFTA's concerns:

1. The amendment to subsection (e)(1) of 18 U.S.C. Section 2320 as proposed in H.R. 32 would dramatically alter the definition of a counterfeit trademark in the context of a criminal statute. The Bill's proposed amended definition of a counterfeit trademark ignores the fact that, under certain necessary and desirable business conditions, applications of registered trademarks to product packages, labels, containers, stickers or wrappers by parties other than the U.S. trademark owner must be protected as lawful business activities.
2. Product retailers in the U.S. often combine different branded products into "gift sets"—particularly around holiday times. Perfumes are often combined with mirrors, or lipsticks may be placed together with hairbrushes. The retailer or wholesaler then affixes trademarks to the repackaged gift sets to identify the ownership of intellectual property rights and to inform consumers, at the point of sale, about the branded products contained in those gift packs. As harmless as this conduct is, and despite the fact that such activities are intended only to facilitate sales of legitimate branded merchandise, H.R. 32 would, nevertheless, create the possibility that such combining or consolidation of genuine brand name merchandise would become a criminal act if the third party consolidator includes packaging or labeling bearing a registered trademark that was not authorized for manufacture by the original trademark owner.
3. Many retailers, wholesalers and other lawful product distributors in this country offer discount coupons to customers. This is not only a normal commercial transaction, but is a practice depended upon by consumers who seek the best bargains on branded goods. H.R. 32 would make this activity illegal, though, because such coupons may be considered counterfeit goods. That is, because the coupons contain a reproduction of a registered trademark to identify the genuine branded merchandise being offered at a discount and because coupons are manufactured by third parties "trafficking" in such promotional vehicles to assist sales of genuine merchandise, a literal interpretation of H.R. 32 criminalizes use of coupons by anyone other than the original trademark owner.
4. It is true that, for many, many years, U.S. trademark owners have attacked lawful parallel traders of genuine merchandise with charges of counterfeiting activity. And, perhaps, one such recent case, *United States Of America versus Ibrahim Elsayed Hanafy, et. al, 302 F.3d 485 (5th Cir. 2002),* in fact gave rise to the type of increased criminal culpabilities sought to be established by passage of H.R. 32. In this case, cans of genuine, unadulterated infant formula were consolidated onto shipping trays or cardboard containers by a third party distributor, in a manner where expiration dates and the manufacturer's registered trademarks were visible. The government argued that the plain language of Section 2320 required a finding that even these truthfully marked shipping trays were counterfeit goods and urged that the distributors be found criminally culpable for such unauthorized activities. Fortunately, the Appellate Court agreed that such third party distributors could not be held criminally liable for consolidating genuine products and selling them on a shipping tray that referenced the registered trademarks used on those same products! However, AFTA members are very concerned that H.R. 32 will broaden the criminal liability statutes to specifically include—even in a narrowly construed interpretation—unauthorized application of a registered trademark on a shipping tray, if that shipping tray that bears the registered trademark was not manufactured under authority of the U.S. trademark owner.

RECOMMENDATION AND CONCLUSION

AFTA is confident that H.R. 32 is not intended to do anything other than strengthen remedies against illicit counterfeiters. To repeat, AFTA's concerns with this legislation is not with its intentions, but with its *unintended* consequences on legitimate businesses and commercial activities. By not distinguishing between lawful and unlawful applications of trademarks by parties other than the registered trademark owner or those authorized by such rights holder, H.R. 32 would criminalize many legitimate, necessary and normal commercial activities. While there is no doubt whatsoever that all commercial traders should unite to defeat unlawful, criminal counterfeiting activities that deceive American purchasers and deprive rights holders from their just rewards, assessing criminal liability against legitimate traders for normal commercial practices that provide such benefits to the American consumer and the competitive marketplace is, respectfully, an inappropriate legislative remedy.

AFTA recommends that the following be substituted as subsection (f) in H.R. 32:

(f) Nothing in this section shall entitle the United States to bring a criminal cause of action alleging criminal trafficking in counterfeit goods against lawful resale or otherwise legal third party sale of genuine, unadulterated goods or services, so long as such sales or resales do not utilize, rely upon or refer to a trademark other than that trademark registered, used or authorized for use by the original manufacturer or offerer of such goods or services, even if reproduced by a party other than the original trademark owner and whether or not in combination with other, third party marks or designations.

This language attempts to preserve criminal penalties for counterfeit packaging, labels, containers, tags and similar accoutrements at the same time it specifically exempts from criminal prosecution at least certain of the lawful activities referred to in this testimony. AFTA continues to look forward to working with the proponents of this legislation to ensure that any amendment to H.R. 32 equally protect the interests of intellectual property rights holders and American consumers who deserve the continuing benefit of the competitive trade made possible through the lawful domestic secondary marketplace.

Thank you again for the opportunity to offer our testimony before you today.

Mr. LUNGREN. Thank you very much for your statement and the statements of all of you.

Let me first ask Mr. Swecker whether or not—with all the focus of the FBI on terrorism, is it reasonable for us to expect that you can give sufficient attention to this problem?

Mr. SWECKER. It is more difficult in the current environment, sir, because we have had to divert resources from major theft operations around the country to terrorism investigations. We have less than half the number of agents working these major theft issues that we did prior to 9/11. We're still at it. We still have the task forces. We had 18 task forces. We are actually down to nine. So it has had its impact.

Mr. LUNGREN. What about the suggestion that current Federal statutes are insufficient for the Federal Government to move when they need to in these cases, that is, that you need something other than RICO and the money-laundering statutes, you would need a specific criminal statute dealing with organized retail theft?

Mr. SWECKER. We're happy to have any tool we can use to take cases into Federal court. RICO has been very easy to use. Predicate acts that are included in RICO have been easy to work with and pretty inclusive. I'm not sure—actually, I couldn't tell you if they included counterfeiting. I don't think it does. Money-laundering statutes do apply because they're—any hiding or changing the nature of criminal proceeds is—constitutes money laundering.

Mr. LUNGREN. No, I wasn't referring to the counterfeiting question. It was concerning the organized retail theft crime that we have heard others discuss.

Mr. SWECKER. The statute, Interstate Transportation of Stolen Property statutes have been adequate to work with, but we do welcome additional tools, as I said.

Mr. LUNGREN. Has RICO been actually utilized in any cases involving organized retail theft?

Mr. SWECKER. I believe it has, but it has been in the larger context of a criminal organization where it was one of the predicate acts included in the RICO, particularly with organized crime.

Mr. LUNGREN. Mr. Nelson, I know that you believe that we need a new statute. My question is this: Given the fact that we have this overwhelming threat on terrorism that we've diverted, and I think properly so, resources of the FBI toward that, we've taken the FBI and made them in more of a counterterrorism operation where they're analyzing intelligence—gathering intelligence, analyzing it, that there probably will be an inadequate dedication of resources to this particular problem.

Is it still your feeling that a new law would be what would be most effective, or would greater attention to multi-level task forces or multi-jurisdictional task forces be perhaps a better answer to the problem?

Mr. NELSON. Mr. Chairman, I think the answer lies in a combination of efforts, including laws, including a law that would be more readily available to be used, including task forces, including the database that we talked about.

If you look back through history, in my days in the military we were fighting the war on drugs, and what happened with the war on drugs is there was a lot of task forces. There was very supportive laws. There was an effort across the board with multiple venues and multiple tools available. And the result was fairly successful. We put many people in jail who were trafficking in narcotics for 5 to 15 years. If you look at the time now, that 5 to 15 years has gone by, and what we're starting to see is people who maybe perpetrated those sort of offenses in the past are now coming over into organized retail theft.

I fully understand the terrorism implications. We've actually had several times where money that was involved in our cases was going overseas, likely to support those type of activities. So I think if I dare say both, there's a piece here that we need to cover both.

Mr. LUNGREN. I just want to be realistic. I want to be—I don't want to be Major League Baseball that promises something and doesn't show it, to use a timely topic these days.

Mr. Fox, the Federal Criminal Code already provides for penalties for counterfeit products. Do you believe that H.R. 32 would further that? Would you support H.R. 32 as something that is essential to the fight against counterfeit products?

Mr. FOX. We would, Mr. Chairman, with absolute certainty. The whole question about intellectual property law, as it stands right now, there are plenty of laws that exist not only in the United States but around the world to protect IP. One of the issues that we do face, of course, is the penalties against those that breach those laws. And one of the areas that we really are—want to focus on is the question of the severity of the penalties for those people caught counterfeiting.

My colleague Mr. Nelson made a reference to the drug-trafficking issue, which is a very good example on perhaps two levels. One is this whole question about legislation enforcement and, if you like, an education program on the dangers of drug trafficking have proved to be an exceptionally useful and powerful argument in that fight against drugs.

But, of course, what we're seeing now is that the rewards from counterfeiting far outweigh the rewards from drug trafficking. To give you an example, a kilo of drugs has a certain level of return for the criminals that undertake that activity. The returns from counterfeiting CDs or DVDs is far higher than that. So—and the risks are much lower. So it's not really surprising that those organized crimes are moving away from drug trafficking and moving toward counterfeiting because the rewards are so much higher for their enterprise, but the risks are so much lower in terms of penalties.

So, no, we would absolutely support H.R. 32.

Mr. LUNGREN. Thank you, Mr. Fox.

Mr. Scott, you're recognized for 5 minutes.

Mr. SCOTT. Thank you.

Mr. Swecker, Mr. Nelson said that with organized retail theft there's no Federal law involved. Aren't there some Federal laws that you can look at?

Mr. SWECKER. The laws that address interstate transportation of stolen property, thefts from interstate shipment, the interstate theft-type laws—I couldn't name each individual statute—are there on the books. We use them. We also use, as I said, RICO. Most of the time we're working these cases, we're working in enterprise, a criminal enterprise.

Mr. SCOTT. And what kind of penalty can be assessed against those who are found guilty?

Mr. SWECKER. I think those statutes range from 5 to 15 years. RICO may go higher. I will say that anything—our ability to penetrate these enterprises is directly proportional to the sentences that these folks are facing when we try to get them to cooperate. So anything that addresses increased penalties increases our chances of getting cooperators and people who will help us penetrate the enterprise. And as I said, we're usually dealing with a criminal enterprise, organized crime of some type, so it would be—as I said, any tool—anything that puts another tool in the toolbox is a good thing for us.

Mr. SCOTT. Well, I think you indicated if you had more funding you could do more investigations.

Mr. SWECKER. I have been told to stay away from budgetary issues, but—— [Laughter.]

Anything that puts agents on the—boots on the ground is a good thing.

Mr. SCOTT. Ms. Perez, you offered new language for the legislation before us. Can you tell us exactly what your language would do that the language on the bill on trademarks does not do?

Ms. PEREZ. Yes. Let me read the language that we've put forward. "Nothing in this section shall entitle the United States to bring"—"Nothing in this section shall entitle the United States to bring a criminal cause of action alleging criminal trafficking in

counterfeit goods against lawful resale or otherwise legal third party sale of genuine, unadulterated goods or services, so long as such sales or resales do not utilize, rely upon or refer to a trademark other than that trademark registered, used or authorized for use by the original manufacturer of offerer of such goods or services, even if reproduced by a party other than the original trademark owner and whether or not in combination with other, third party marks or designations."

What that will do is that will still preserve the ability to go after parties who use counterfeit labels, who use counterfeit packaging, who are peddling counterfeit goods. It will protect from criminal prosecution parallel marketers, suppliers on the secondary marketplace who are supplying genuine merchandise and using packaging or labeling with registered trademarks to identify for the consumer what that brand-name merchandise is.

Mr. SCOTT. Well, what activity is—do they get away with with the language that's in the bill that—well, I guess what language in the bill would be—would capture what you don't want captured?

Ms. PEREZ. Okay. The bill—what the bill does is it amends the definition of a counterfeit trademark, as I said. And it includes language in here that—I'm going to try to find the exact phrase that's of concern. It's a spurious mark used in connection with the trafficking in any goods, services, label, patch that's identical or substantially indistinguishable from a registered trademark, that is applied to or used in connection with the goods or services for which the market is registered so that that label, package, or container is used in connection with genuine goods or is applied to or consists of a label, patch, sticker, wrapper, badge, emblem, medallion, charm, box, container, can, case, hangtag, documentation, or packaging of any type or nature that is capable of being applied to or used in connection with the goods or services. That language absolutely says that even if your packaging is used with genuine goods, it's a problem. And that label and that packaging may not be counterfeit. It may merely be accurately representing to the consumer the branded goods and the genuine goods contained inside.

Mr. SCOTT. Mr. Fox, do you have a problem with that language?

Mr. FOX. Elements of that. I think, you know, one of the issues with my colleague's proposition is that it does allow—certainly not her member organizations, but certainly some of the illicit organizations to take things like stolen goods, repackage those and then put them back into the licit chain. That clearly would be of a major issue to us and law enforcement agencies.

The whole question about the use of trademarks—trademarks and copyright is clearly, you know, the property of the brand owners themselves. Considerable millions of dollars have gone into the development of those brand names, and simply to allow a third party without authority to use those brand names in another way that a company cannot control, it's something that we wouldn't necessarily support.

Mr. SCOTT. I take that to mean that you don't like her language; you like the language in the bill.

Mr. FOX. We do indeed.

Mr. SCOTT. How does the bill language prevent what you just said? Does the bill language prevent someone from doing what you just said, using the label—stolen goods and stuff like that?

Mr. FOX. That's certainly the way that we interpret it.

Mr. SCOTT. Okay. Mr. Swecker, the bill takes away the ability of the judge to exercise judgment in asset confiscation of counterfeit goods. By changing "may" to "shall," it essentially requires the destruction rather than allow the destruction. Why is that a good idea?

Mr. SWECKER. Often we find with these forfeiture statutes that they neglect to provide a way to dispose of the property. There is no legitimate reason to keep the property around other than for evidentiary purposes. So it does give us the ability to dispose of the property when the case is over after there's no use for it as evidence.

Mr. SCOTT. If you get rid of it, are there any proceeds? I mean, can you possibly sell the goods? Or you have to destroy the goods?

Mr. SWECKER. If it's counterfeit goods, I would suspect that the industry would argue that it shouldn't be sold anywhere out on the market anywhere. If it's stolen, that's another story. I think we're talking about two different things.

Mr. SCOTT. I don't have any further questions.

Mr. LUNGREN. Before I recognize the gentleman from Florida, Mr. Keller, Ms. Perez, I just would note that the bill as drafted has the language that you talked about, but it also has "and the use of which is likely to cause confusion, to cause mistake, or deceive." And then there is—the very last part of the bill says, "Nothing in this section shall entitle the United States to bring a criminal cause of action for the repackaging, without deception, of genuine goods or services." I believe the drafters of the legislation believe that meets your concern, and I take it you don't think it does and want it to be more specific.

We will look at what you are talking about, but there was an effort to try and address your concerns with that last part, basically saying that if there's no deception, which would be required to be part of the proof of the prosecution, there could not be a successful prosecution.

Mr. Keller is recognized for 5 minutes.

Mr. KELLER. I thank the Chairman for yielding.

Mr. Swecker, let me ask you a question in the context of counterfeit pharmaceuticals and drugs. It's an issue that we wrestle with, those of us from Florida, Congressman Feeney and myself. We have a lot of seniors. We want them to have drugs as cheap as possible, and we wrestle with whether to allow the reimportation of drugs from Canada and other countries. And in a nutshell, it comes down to this. We would like them to have safe drugs so they could be cheaper, but every time it comes up, we get letters from law enforcement agencies, DEA and FDA, telling us of the mass problems with counterfeit drugs. And when we raise that as an issue, others will say, no, you know, you're just saying that because the pharmaceutical companies made a contribution here or there and it's really not a problem, and they allow fruit in from other countries, why don't you allow these drugs in.

So with that as the background—and I'm open-minded on this issue—in your experience is this problem with altered or counterfeit pharmaceutical drugs from other countries a real or an imaginary problem?

Mr. SWECKER. It actually is a fairly real problem. The problem is that you have a whole network of wholesalers and repackagers of pharmaceuticals. They rarely go directly from the manufacturer to the market. They fall into the hands of wholesalers, packagers, 6,500 or so of them out there that are unregulated. And so we don't know what's being—you know, when you introduce counterfeit or stolen—and stolen can involve drugs that are outdated, expired. There isn't much control over how these drugs are repackaged.

So it is—the short answer is yes, it's a problem.

Mr. KELLER. Do you find a distinction in terms of the problem with drugs coming from Canada versus other countries? Are other countries a big concern and is Canada safer? Or are they all a concern? What do you find there?

Mr. SWECKER. You're actually getting into an area that's out of my area of expertise. I would be guessing.

Mr. KELLER. Okay. I just heard it suggested that there's a problem everywhere but Canada is less of a problem, but I'll explore that with someone else.

Mr. SWECKER. I know drugs are coming up from Mexico. No question about that.

Mr. KELLER. Okay. Beyond stiffening penalties, if we were concerned about this problem with the counterfeit pharmaceuticals coming into our country, let's say, from Canada, do you have some ideas that we should be looking at that would make us more likely to be able to reimport these drugs and make sure that they're safer?

Mr. SWECKER. Actually, I don't. I mean, I do think that the wholesalers—I'm sorry, the repackagers need to be addressed because that's a completely unregulated area, and that's where we find most of our problems. We're working some operations right now that have really highlighted that problem, and there are thousands of them, many in Florida, and we just don't know what's going back in. Once they repackage the drugs, you have no idea what's going into the final packaging.

Mr. KELLER. Do you believe this legislation before us today will help you at all with respect to giving you a tool to go after the repackagers?

Mr. SWECKER. It could be used to address that, yes.

Mr. KELLER. Okay. Thank you.

Mr. Chairman, I'll yield back the rest of my time.

Mr. LUNGREN. Mr. Conyers, do you have questions? Five minutes.

Mr. CONYERS. Thank you, Mr. Chairman.

What I am curious about is how did the American Free Trade Association come into existence in the first place.

Ms. PEREZ. You're way before my time. The American Free Trade Association has been around for well over 20 years, and it's served as amicus curiae on the two leading Supreme Court cases upholding the legality of the parallel market trade. It's served to support numerous lower court decisions. As you noted before, it's worked a

lot with the Judiciary Committee and the Intellectual Property Committee on legislation and trying to work to preserve a competitive marketplace. It's a respected and well-known trade association, and as I said, started way before my professional career did.

Mr. CONYERS. Now, Ms. Perez, what about the unintended consequences of criminal laws and adding laws in this atmosphere that we find ourselves? Because, after all, there is, I think, more activity in these parallel markets than ever before. I suspect that it may be growing.

Ms. PEREZ. I suspect you may be right, and I think a large part of that is frankly out of economic need. As I said before, the members of AFTA in particular—and it is a reputable trade association, and we're not going to favor or be in support of any criminal activity, anything that's going to make possible retail theft or organized crime. Any legislation that will work to cure those problems, we want to work with you on that. Our concern is, as I said before, that legislation not be couched in rhetoric that is going to stop organized crime or impede retail theft or be anti-counterfeiting, when, in fact, what it looks to do is to stop the parallel market trade so that intellectual property owners get much broader rights and remedies that they're legitimately entitled to under U.S. intellectual property laws.

Mr. CONYERS. Now, under the kind of business that many of your folks are in, repackaging with trademarks is standard operating procedure.

Ms. PEREZ. It is. Also, I might add that the members who do the repackaging consult with the law firm I work with often to make sure that they're doing it right.

Mr. CONYERS. Who do they consult with?

Ms. PEREZ. They consult with our law firm.

Mr. CONYERS. Sure.

Ms. PEREZ. With their lawyers, with their counsel, to make sure that the intellectual property they are noting on their packaging is correctly attributed to the rightful owner. They add disclaimers where appropriate to make sure that there's no perceived deception or confusion as to the source of the repackaged product. So we talked about the repackaging deception in here, and our concern with that language is that it just doesn't, frankly, consider all possible commercial activities that need to be protected. I mean, as I said before, is affixing a shrink wrap over a gift set, is that repackaging? Is coming up with a shipping container or a cardboard container, is that repackaging? Is inserting a coupon, two-for-one special, is that repackaging? And while, you know, we love the fact, frankly, that this Committee and the Subcommittee and the drafters of this bill obviously were concerned about legitimate commercial activities, we started to work on this bill a little bit, and we look forward to doing that.

Mr. CONYERS. Well, you seem like a firm that's been recommending and working in this area for quite a while, and I just wanted to ask Mr. Nelson about his understanding that there are activities engaged in by the companies that Attorney Perez represents that are perfectly lawful and support all the crime-fighting activity against trademarks and thefts that has been discussed here today and that it's good for consumers who are looking some-

times for bargains. I know that I am one of those that—I can cite that one place I went to told me that an educated consumer were their best customers, and I perked up immediately when I found out that I was in this very special group.

What do you think about, you know, what they're doing and what they're——

Mr. NELSON. Our primary concern would obviously be for the safety of the consumer so that what goes back into the market is, in fact, safe. Unfortunately, my area of expertise in this case is organized retail theft as opposed to the counterfeiting piece.

Mr. CONYERS. Sure. Well, you would—I know my time is up. I see the tendency that the Chairman has developed across the years to reach for his gavel and put a firmer grip around the handle is a tipoff of what might be happening soon. But you don't have any problem with an organization of this kind, a trade organization that tries to help you keep everybody in line? They're paying a pretty big firm in Florida to keep this thing, this show on the road, in good shape.

Mr. FOX. Yes, and on its face, I wouldn't think they'd have a problem, but it would be unfair for me to comment on that because it's not my area of expertise.

Mr. CONYERS. Okay.

Mr. LUNGREN. The gentleman's time has expired.

Mr. CONYERS. Thanks, Mr. Chairman.

Mr. LUNGREN. Although the gentleman has not expired, so we appreciate that.

[Whereupon, at 2:43 p.m., the Subcommittee proceeded to other business.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA, AND RANKING MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman. I am pleased to join you in convening this hearing on counterfeiting of manufactured goods and organized retail theft. We have federal laws to address counterfeiting of manufactured goods. H.R. 32, the "Stop Counterfeiting in Manufactured Goods Act," amends existing law in a manner designed to intensify the effort to prevent counterfeiting of goods. Counterfeited goods not only victimizes the manufacturer, but short changes purchasers with substandard products, exposes us all to risks from unsafe products and deprives Americans of jobs and other benefits from the commerce of authentic goods.

Yet, there is concern that H.R. 32, as drafted, goes too far and criminalizes currently legitimate, time-honored practices by law-abiding merchants who legally purchase manufactured goods and repackage them in various ways to enhance sales of such goods. We have able witnesses who will speak to these points, so I look forward to their testimony for clarification of issues and concerns with the bill.

For some time now, I have been hearing about the problem of organized retail theft, or ORT, from business representatives in my Congressional District, so I am pleased to be able to report to them that we are giving attention to this issue in the Congress. Theft of merchandise through shoplifting from retail outlets and through other means is not new and has traditionally been handled through state criminal laws. In Virginia, for example, any theft in excess of $200 is grand larceny with a maximum penalty of 20 years. And a third offense of petty larceny is, by law, treated the same as grand larceny. With diligent enforcement activities, such measures are ordinarily adequate to keep the problem of merchandise theft sufficiently in check. However, with organized theft rings deploying numerous individuals operating across state lines, ordinary enforcement approaches are inadequate. These individuals can shoplift with acceptable risks by remaining under the grand larceny threshold for each incident, and steal thousands of dollars worth of merchandise for the ring.

I expect that our witnesses will describe ORT as a problem of growing dimension, with organized crime, interstate and international elements. As with counterfeiting of goods, there are already federal laws which can be utilized to address ORT. I am pleased that we have a representative from the FBI here to describe what the federal government is doing about it and what is needed for greater effectiveness.

So, Mr. Chairman, I look forward to hearing the testimony of our witnesses and to working with you and Chairman Coble to do what makes sense at the federal level to curb both the problem of counterfeiting manufactured goods and organized retail theft. Thank you.

PREPARED STATEMENT OF THE HONORABLE MARK GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

First, I want to thank Chairman Coble for bringing this bill up today. I also want to thank our colleague, Mr. Knollenberg, for his hard work and dedication to this legislation.

From skyrocketing health care costs to excessive taxes, the hurdles U.S. manufacturers face today are larger than ever and that is why we must continue to do everything we can to help American manufacturers stay competitive. One way to do that is by getting tougher laws on the books to punish those who counterfeit our

manufactured goods. By strengthening our laws we are strengthening the hands of our trade representatives to demand tougher penalties on foreign businesses that counterfeit U.S. goods.

It is time we sent a strong message to foreign counterfeiters and the countries that ignore their criminal behavior: if you keep stealing our products, you're going to face harsh consequences. This legislation is an important part of that message and I encourage my colleagues to support it.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Let me begin by thanking Chairman Coble and Ranking Member Scott for convening this important and timely hearing. The recent rise in organized retail theft and the continued growth in trafficking in counterfeit trademarks are issues of great concern.

Some security professionals estimate that the retail industry experiences as much as $15 billion a year in operating losses as a result of such thefts. And, I'm told those numbers continue to grow.

With regard to counterfeit trademarks, the FBI estimates sales of counterfeit goods line the pockets of criminal organizations to the tune of about $500 billion per year.

Today, we're here to talk about possible solutions to these growing problems. At the outset, I'd like to suggest that any such discussion be guided by two commonsense principles.

First, as we consider strengthening remedies against illicit counterfeiters, we must be careful not to unnecessarily infringe upon legitimate businesses and commercial activities.

Many law abiding companies operate in the parallel importation market which involves the selling and reselling of genuine goods and services. These goods and services, in turn, are then provided to consumers at competitive discount prices. Thus, any limits placed on such companies has an equally detrimental effect on consumers in search of bargains.

Second, we should agree to refrain from adding any new laws to the current federal criminal code unless such new laws prove to be absolutely necessary. Principles of federalism dictate that we should only offer solutions to those problems not left within the sole domain of the state. And, the prosecution of organized shoplifters at the federal level simply does not satisfy this requirement.

I would like to thank each of the witnesses for agreeing to appear before us today. I look forward to your testimony.

PREPARED STATEMENT OF THE HONORABLE BOB GOODLATTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Chairman, thank you for holding a hearing on the important issues of organized retail theft and counterfeit products.

There is a growing problem relating to organized retail theft (ORT) rings in America. It is estimated that professional organized retail theft rings are responsible for pilfering up to $30 billion in merchandise from retail stores annually.

Organized retail theft groups typically target everyday household commodities and consumer items that can be easily sold through fencing operations, flea markets, swap meets and shady store-front operations. Items that are routinely stolen include over-the-counter drug products, such as analgesics and cold medications, razor blades, camera film, batteries, videos, DVDs, CDs, smoking cessation products, infant formula and computer software items. Thieves often travel from retail store to retail store, stealing relatively small amounts of goods from each store, but cumulatively stealing significant amounts of goods. Once stolen, these products can be sold back to fencing operations, which can dilute, alter and repackage the goods and then resell them, sometimes back to the same stores from which the products were originally stolen.

When a product does not travel through the authorized channels of distribution, there is an increased potential that the product has been altered, diluted, reproduced and/or repackaged. These so-called "diverted products" pose significant health risks to the public, especially the diverted medications and food products. Diverted products also cause considerable financial losses for legitimate manufacturers and retailers. Ultimately, the consumers bear the brunt of these losses as retail establishments are forced to raise prices to cover the additional costs of security and theft prevention measures.

At the state level, organized retail theft crimes are normally prosecuted under state shoplifting statutes as mere misdemeanors. As a result, the thieves that participate in organized retail theft rings typically receive the same punishment as common shoplifters. The thieves who are convicted usually see very limited jail time or are placed on probation. I believe that the punishment does not fit the crime in these situations. Mere slaps on the wrists of these criminals has practically no deterrent effect. In addition, criminals who are involved in organized retail theft rings pose greater risks to the public because their intent is for the goods to be resold. Because the routes of these diverted products are extremely difficult to trace, there is a greater risk that these goods will be faulty, outdated and dangerous for consumer use. The punishment for these criminals should be greater than that for common shoplifters.

In December of 2003, the FBI established an Organized Retail Theft initiative to combat this growing problem. While this is a good start, I look forward to hearing the FBI's plans to bolster its efforts to combat these crimes, which are increasing in frequency, posing greater threats to consumers, and resulting in greater losses to businesses. Recent busts have shown how widespread this problem truly is. Federal and state law enforcement broke up an organized retail theft ring in North Carolina and Virginia that was responsible for moving more than $2 million dollars worth of stolen infant formula and over-the-counter products. This arrest shows that these crimes come with huge potential costs and that they affect the most vulnerable among us. We need more arrests like this to effectively combat organized retail theft.

I am pleased that we have witnesses today from the FBI and the private sector to describe this growing problem and what can be done to solve it. Thank you again, Mr. Chairman, for holding this important hearing.

LETTER FROM SANDY KENNEDY, PRESIDENT, RETAIL INDUSTRY LEADERS ASSOCIATION (RILA), TO THE HONORABLE HOWARD COBLE

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March 16, 2005

The Honorable Howard Coble
Chairman
Subcommittee on Crime, Terrorism and Homeland Security
House Committee on the Judiciary
203 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Coble:

On behalf of the Retail Industry Leaders Association (RILA), I would like to submit this letter as our statement for the record in connection with the subcommittee's hearing on "Responding to Organized Crimes Against Manufacturers and Retailers." Organized retail crime (ORC) is an insidious and growing problem for retailers and the public they serve. We applaud you for scheduling this hearing and bringing much needed attention to this important issue.

The Retail Industry Leaders Association (RILA) represents the nation's most successful and innovative retailer and supplier companies -- the leaders of the retail industry. Retail is the second largest industry in the U.S., employing 12 percent of the nation's total workforce and conducting $3.8 trillion in annual sales. RILA's retail and product supplier companies operate 100,000 stores, manufacturing facilities and distribution centers in every congressional district in every state, as well as internationally. They pay billions in federal, state and local taxes and collect and remit billions more in state sales taxes. They are leading corporate citizens with some of the nation's most far-reaching corporate social responsibility initiatives. And, unfortunately, they are the targets of a high and growing percentage of the organized retail crime occurring in the United States.

Scope and Nature of the Problem

It is estimated that ORC costs retailers $34 billion annually.[1] Increasingly, these losses are the result of efforts by groups of well-organized thieves stealing merchandise not for their own personal use, but rather with the intention of reselling it into the stream of commerce. This is what distinguishes organized retail crime from petty thievery, or shoplifting.

ORC involves professional crooks that move through different stores, towns and across state lines. They steal large quantities of merchandise that are sold through "fencing" operations, flea markets, or storefront businesses. These "fencers" often have a number of boosters from whom they purchase stolen property, and will pay anywhere from 20 to 50 cents on the dollar, depending on the merchandise's condition or marketability. The fence then moves that property on to a "middleman," who will separate the near-dated or slightly damaged product from that

[1] *CSO Magazine*, April 2004.

which is in perfect or near perfect condition. This product is then moved from the "middleman" to a repack warehouse, where it is packed in counterfeit boxes and moved through a redistribution warehouse and sold back to retailers. Retailers buying this product generally do not know that they are purchasing property that has been stolen and repacked. Property that is not in perfect condition is generally resold through flea markets or sold to other property fences.

Impact on Retailers and Consumers

Organized retail crime hurts everyone. Retailers lose money though lost profits and additional expenditures needed for security personnel, training and equipment. These costs could be better spent on business expansion, to create jobs, or providing customers with better prices or selection.

State and local governments also lose, since they are denied an important source of tax revenue that should be generated from legitimates sales. It is conservatively estimated that tax revenues are reduced by $1 billion a year through lost sales from stolen goods and the low price competition resulting from the resale of stolen goods.[2]

ORC hurts customers too, since additional security costs and lost revenues are eventually passed on in the form of higher prices. Consumers may also be inconvenienced through limited product selection or products being placed behind lock and key as a preventative measure.

There are also public health risks, since ORC gangs seem to covet such high profit items as infant formula, pharmaceuticals, over the counter medicines, diabetes testing kits and other consumer health care products. Obviously, these products require proper storage and handling. Since ORC crooks have little regard for the proper care these products, one of the greatest risks to the public is the re-entry of spoiled or expired dietary products, drugs or health care items into the marketplace.

Finally, ORC also puts public safety at risk, since violence is a regular feature of ORC operations. The continued presence of organized criminals in retail settings threatens the safety of shoppers and employees alike.

Retailers' Response

Retailers are doing their part to combat this problem. Our members are making major investments to install complex and expensive video surveillance equipment, tracking devices and theft detection systems. They are dedicating financial resources to additional security personnel and training. They are adjusting displays and shelving to help staff adequately monitor stores. They are also limiting the use of displays with high-risk merchandise and, in some cases, reducing on-hand inventory levels – steps that co additional sales. Finally, retailers are working with law enforcement officials to prc : evidence possible to support police activities to apprehend and prosecute ORC

While our industry is responding to the challenges presented by ORC, retailers cannot do it alone. As these ORC groups grow in number and sophistication, retailers find themselves

[2] *"Organized Retail Crime: Describing a Major Problem,"* Read Hayes, PhD, CPP and King Rogers. (Paper presented at RILA conference, Orlando, FL, Nov 2003.)

fighting an uphill battle. These groups are obviously very serious about succeeding in their illegal and corrupt enterprise. There is growing acceptance of the fact that many ORC gangs have connections to international terrorist groups.[3] In fact, last November, FBI Director Robert Mueller acknowledged a direct link between the Middle Eastern terrorist groups Hamas and Hezbollah and organized theft from retail outlets.[4] Retail will continue to do what it can to combat retail theft, but to match these groups, we will need much more help from the federal government.

What Congress Can Do to Help

Currently, no federal law specifically addresses organized retail crime and state laws are inadequate. In two thirds of the states, thefts of up to $500 are defined as misdemeanors. (For all states, the average level for felony theft is $644, and the levels range from $100 in Vermont to $2,500 in Wisconsin.) As a result, boosters can steal hundreds of dollars worth of merchandise from a single store, then move to a different store, and in each case risk little more than a misdemeanor charge and small fine. These weak state laws make ORC a high profit, low risk avenue of crime.

Therefore, RILA members believe that tough new federal measures are needed to help combat ORC. Our specific recommendations include:

- Support for legislation based on S. 1553, "The Organized Retail Theft Act," a bill introduced in the 108th Congress by Senator Larry Craig (R-ID). We urge members of House Judiciary Committee to introduce similar legislation in this session of Congress and to work with House leadership for its quick passage. The bill makes organized retail crime a federal felony and allows claims to be made under the federal RICO act, the same statute used to apprehend organized crime figures in the past. It would also prohibit the sale of baby food, infant formula and food, drugs and medical devices regulated by the Food and Drug Administration (FDA) at flea markets.
- Congress should ensure that federal law enforcement agencies have adequate funding and manpower to fully investigate, identify and apprehend ORC criminals and cases.
- Congress should authorize compensation for retailers and product manufacturers for the cost of merchandise donated for "sting" operations that target ORC perpetrators. Apprehension of these criminals serves all of society, not just retailers and suppliers, and efforts to catch them should be funded through public monies.
- Congress should fully explore the use of innovative technologies to help battle theft and counterfeiting, such as radio frequency identification (RFID). RFID technology uses electronic tags on product packaging that allows manufacturers and retailers to more precisely keep track of merchandise in the supply chain. The FDA is currently conducting a pilot project to determine RFID's usefulness in curbing pharmaceuticals counterfeiting. Similar tests could be conducted on products that are frequently "boosted."

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[3] Liz Martinez, "Combating Organized Retail Theft in 2005," *SecurityInfoWatch.com*: March 1, 2005.

[4] Director Robert S. Mueller, III, Federal Bureau of Investigation, Town Hall Los Angeles, Los Angeles, California, November 15, 2004 (from FBI web site.)

- Finally, RILA endorses the recommendations of the "Coalition Against Organized Retail Theft," including the establishment of a national clearinghouse to collect and track organized retail theft crimes.

Thank you again for scheduling this important hearing. We look forward to working with you and the subcommittee on this serious issue. If you have any questions on this matter, or any other aspect of RILA's government affairs program, please contact Paul T. Kelly, Senior Vice President, Federal and State Government Affairs.

Sincerely,

Sandy Kennedy
President

Prepared Statement of the National Electrical Manufacturers Association (NEMA)

Statement of the National Electrical Manufacturers Association
On H.R. 32
Stop Counterfeiting in Manufactured Goods Act

Oversight Hearing on
"Responding to Organized Crimes Against Manufacturers and Retailers"
March 17, 2005

Before the House Judiciary Committee
Subcommittee on Crime, Terrorism and Homeland Security

March 22, 2005

The National Electrical Manufacturers Association ("NEMA") is the leading trade association in the United States representing the interests of electroindustry manufacturers. Founded in 1926 and headquartered in Rosslyn, Virginia, NEMA's 400 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity, including lighting products. Domestic shipments of electrical products within the NEMA scope exceed $100 billion.

NEMA is pleased to be able to submit this written statement for the record in support of H.R. 32, the Stop Counterfeiting in Manufactured Goods Act. Had NEMA testified at the Subcommittee's hearing on March 17, 2005, its testimony would have contained the remarks reflected in this written statement.

Our national laws condemning trafficking in counterfeit product, by definition, deal only with trafficking in non-genuine product. There is no competitive justification for trafficking in counterfeit product, and our national policy recognizes that. It is a long-engrained part of our national policy to prevent deception about the source and origin of products. H.R. 32 makes some important improvements to that policy, as part of our overall national strategy to promote global deterrence of counterfeiting at home and abroad.

The Interest of NEMA and its Members in H.R. 32

NEMA members have been the targets and victims of trademark counterfeiting by those persons who seek to trade on the goodwill represented by those trademarks, often by persons who have little or no regard for public safety and consumer safety. This means the public is a victim of the counterfeiter as well. Counterfeiting is not a victimless crime.

National Electrical
Manufacturers Association
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The targets of counterfeiters are not only the branded names and trademarks of NEMA members, but the targets also include the certification marks of those testing organizations who evaluate the conformity of NEMA members' products to safety standards to which those products are listed by the testing organizations, such as Underwriters Laboratories, CSA International, and other testing and certification organizations around the world. NEMA members invest significantly in producing quality products that meet the specifications and safety requirements of these testing and certification firms. Counterfeiters, on the other hand, do not make that investment in safety, yet in order to mislead the public into believing they are buying the same quality product the counterfeiter will put the certification mark of the testing organization on its product without authority or conformity. Only last year, two NEMA members discovered conduit fittings installed at a facility in the Middle East bearing not only their trademarks, but also the certification marks of both Underwriters Laboratories and CSA International. The conduit fittings carried the part number for a model intended for use in hazardous locations, and these products were installed in a hazardous location where an explosion could have been catastrophic. The reference to the model number was deceptive; the design of the counterfeit conduit fitting was not appropriate for a hazardous location and did not meet the safety standards.

NEMA is aware of counterfeit extension cords seized by US Customs bearing a member's counterfeit mark and counterfeit certification marks containing inadequate gauge wire that would catch on fire if used as the cord was intended. In 2004, counterfeit circuit breakers were blamed for not preventing fires in Cairo, Egypt. Counterfeit fuses have been found in electrical devices that would not function as a protective device.

NEMA members who manufacture dry cell batteries design their product against explosion or rupture if misinstalled by a consumer in an electronic device. Counterfeit batteries looking virtually identical to the genuine product are not always designed for safety, and under testing simulating typical use for the product can explode causing damage to the electronic device and perhaps the consumer. Counterfeit batteries have been found to contain mercury, notwithstanding the fact that U.S. law prohibits mercury in these types of batteries. Plainly, these product qualities injure the reputation and goodwill of the branded manufacturer.

The Committee can see some examples of the threat posed by some of these products at http://www.ice.gov/graphics/cornerstone/multimedia/iprgallery.htm

It is well known that trademark counterfeiters have exploited the brand names of highly visible consumer products, but the experience of NEMA members illustrates that consumer products are not the only targets of these criminals. Electrical products are sold to consumers, but many electrical products are sold for industrial applications, building construction, and commercial installations through commercial distribution channels. The following is a list of electrical products known to NEMA to have been targeted by counterfeiters: small electric motors, control relays, circuit breakers, fuses, receptacles, switches and lighting controls, ground fault circuit interrupters, dry cell batteries, lamps,

lamp ballasts, extension cords, surge suppressors, communications wire and cable, electrical connectors, and conduit fittings.

Both of the provisions of H.R. 32 that would amend 18 U.S.C. §2320 are important to electrical manufacturers and the public that buys and uses electrical products.

First, Section 2 of H.R. 32 would legislatively overturn the case of *United States v. Giles*, 213 F.3d 1247 (10th Cir. 2000), a case that NEMA believes must be corrected, and which NEMA believes represents bad public policy. As discussed above, the certification marks of testing organizations such as Underwriters Laboratories, CSA International and other organizations are important for both manufacturers and the public who value those marks as a measure of performance, quality and safety to the test requirements to which they relate. The certification mark is, in an important sense, the ultimate product of these organizations' standards and testing services. In some products, the certification mark is molded into the product, but in other cases it is label or tag that is affixed to the product. If a person is knowingly and intentionally engaged in making counterfeit certification labels that are capable of being applied to or used in connection with the goods for which they are registered, they should be primarily liable under this section of the criminal code, regardless of whether the labels or tags have yet to be affixed to a product. H.R. 32 addresses this very real problem.

NEMA is aware that importers of unsafe electrical products have brought unbranded product into the United States and then arranged to have counterfeit certification marks made to attach to those products after they are in the country. This ploy enables the importer to escape US Customs enforcement at the port of entry, and then illegally gives the imported product a reputation it does not deserve. This conduct goes on in other countries as well. One manufacturer of lighting products has advised NEMA that it finds more counterfeit packaging with its trademark and brand names on it than it finds counterfeit product with their name on it. Unbranded look-alike product is shipped separately from the packaging, and then matched with the counterfeit packaging in warehouses in the regions of the world where it is distributed to consumers who are misled about the origin of the product.

Section 2 of H.R. 32 improves the statute's remedial scheme. NEMA has been active in supporting our Government's advocacy to China that their criminal laws and enforcement polices must have a deterrent effect. To combat counterfeiting, the policy must be effective to deter both the supply and demand for spurious products. That policy must be a cornerstone of our statutory scheme as well. In the case of counterfeit products, there must be a "zero tolerance" policy: if the product is not genuine and it bears counterfeit marks, the product and the critical machinery that was used to make the counterfeit product must be removed from the marketplace. This policy is already embraced in our domestic copyright piracy policy. If it is not part of our trademark anticounterfeiting law, we will have an ineffective deterrent policy toward trademark counterfeiting and we will not be able to encourage our trading partners to be equally vigilant. H.R. 32's amendments relating to seizure and forfeiture remedies are important

to an effective anti-counterfeiting policy that the United States and our trading partners should be incorporating in their criminal laws. As Section 1, Subsection 7 of H.R. 32 states: "strong domestic criminal remedies against counterfeiting will permit the United States to seek stronger anticounterfeiting provisions in bilateral and international agreements with trading partners." This is extremely important in view of the global threat that counterfeit products present to genuine brands and the public's welfare and safety.

NEMA supports passage of H.R. 32 for these reasons. For further information about NEMA's interest in effective anti-counterfeiting policy, please visit NEMA's website at http://www.nema.org/gov/anti-counterfeiting/

DOCUMENT ENTITLED "ORGANIZED RETAIL CRIME: DESCRIBING A MAJOR PROBLEM," BY READ HAYES, LOSS PREVENTION RESEARCH COUNCIL AND UNIVERSITY OF FLORIDA

Organized Retail Crime: Describing a Major Problem

Read Hayes, PhD, CPP
Loss Prevention Research Council and
University of Florida

A Loss Prevention Research Council Project

Loss Prevention
Research Council

Abstract

Organized retail crime (ORC) is more than a harmless property crime. US retailers and suppliers must expend tremendous efforts to battle crime and loss- despite ongoing economic and competitive pressures. Current statutes and sentencing guidelines are inadequate. Particularly crippling is the large amount of organized retail crime (ORC includes theft, fraud, and hijacking) taking place across the country. Billions of dollars worth of goods are taken from manufacturers, distribution centers, transport trucks, and stores, converted to store credit, or sold through a combination of websites, street fences, small shops, flea markets, diverters, newspaper ads, and shipped overseas. Stolen or tainted goods are even re-packaged and sold along with first quality goods back to retailers by dishonest wholesalers and diverters endangering the elderly and infirm. Local fences that buy and sell stolen goods serve as crime centers using violence, corrupted police officers, and ill-gotten cash hordes to promote drug abuse, fraud scams, robbery, rampant shoplifting or boosting, and even sending money to terrorist groups. Large-scale retail crime endangers shop workers and shoppers, forces local companies out of business, while eroding brand value, and reducing sales and tax revenues. Research and trade literature was reviewed, while retail and law enforcement investigators, and active "booster," fraud, and fence offenders were interviewed in order to provide insight into the scope, impact and methods of organized retail crime. This paper discusses enhanced individual, collaborative, and legislative ORC protective and sanctioning opportunities.

Keywords: Organized Retail Crime (ORC); supply chain; shoplifting; fences; cargo theft; fraud

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Executive Summary

ORC is not just about pilferage or shoplifting. It is a large, dangerous, and expensive drain on the US economy.

Organized retail crime disrupts innocent people, businesses, and communities across the US. ORC is serious, widespread and multi-faceted- creating $12-35 billion in annual losses. Current statutes, sentencing guidelines and investigative efforts are inadequate to the scope, scale and impact of the problem. The data outlined in this report were derived from interviews of law enforcement and retail investigators, fences and thieves as well as an extensive literature review.

ORC Impact

Ongoing criminal enterprises annually cost victimized businesses and American taxpayers billions of dollars in lost capital, revenues, operating costs- and critical tax revenues. The huge costs generated by ORC raise prices for the average consumer. ORC schemes destroy product and retailer brand credibility, contaminate medications and foodstuffs by dilution, changing expiration dates and contents, movement through unsanitary or infected areas, as well as create violence endangering innocent shop employees, customers and drivers. Manufacturers, retailers and consumers lose when highly stolen items are locked up for protection so they cannot be readily purchased. Legitimate retailers with razor thin profit margins must compete against ORC groups or networks that have stolen their goods and have no cost of goods. Additionally, ORC can injure a business, or so damage its reputation, that the organization will have to lay off employees and otherwise limit operations. Some stores are forced to close due to very heavy theft activity- depriving local residents of safe, close by shopping locations. ORC also funds trafficking of guns, illegal immigration, and terrorist groups, as well as extensive official and police corruption.

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ORC Methods

Organized retail crime is much greater than simple property crime. ORC is diversified and constantly evolving. Dozens of stores are hit daily with sophisticated credit card and check schemes as well as shoplifted from. Cargo is hijacked or stolen, and dishonest employees collude with outsiders to steal from manufacturers, distribution centers and shops. ORC networks and groups, many manned and operated by both locals and illegal aliens, frequently cross state and international borders to sell stolen, counterfeit or diverted goods through combinations of small shops, flea markets, Internet websites and talk groups, local fences, truck stops, newspaper ads, to overseas buyers, and even back to legitimate retailers blended with legitimate goods via dishonest wholesalers. Criminal groups of varying sophistication including boosters (professional shoplifters), fraudsters, and fences steal from, or fraudulently attack retailers, as well as their manufacturer and cargo partners. The ORC problem shows no sign of abating, and indeed with law enforcement agencies turning more resources to domestic security since 9/11, the relative vulnerability of most American retail trade businesses, the inherent violence and contamination dangers, and a steady influx of savvy criminals into the US, ORC takes on a larger priority.

ORC Targets

Selected "hot products" such as medical testing kits, baby formula, pain relievers, premium razor blades, consumer electronics, over the counter medications, recorded video, games and music, film, name brand power tools and logo/brand apparel are the most frequently targeted goods. Likewise, certain stores such as drug, food, and mass merchant stores are heavily targeted for theft due to their carrying hot items, easy access, and low-risk (of apprehension) environments. Licit and illicit products, businesses and other resources are frequently co-mingled by ORC fencing groups.

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ORC Solutions

ORC solutions are both collaborative and individual, and aimed at directly attacking ORC operatives as well as modulating their environment. Businesses need to reduce the supply of goods to black markets: 1. Map and audit their total supplier to consumer supply chains. 2. Identify the prime theft/loss locations, processes and individuals, determine "hot" product, time and location loss clustering patterns, establish the root causes of loss for prioritized items and facilities, 3. Use technology to track and identify hot items, and 4. Apply evidence-based asset protection efforts. Basic daily in-store and distribution center protection processes and technologies need to be properly designed, executed and sustained. 5. Companies also need to implement more sophisticated intelligence and investigation training and process protocols to deal with both basic and complex, evolving criminal networks and schemes.

In order to disrupt illicit markets and criminals, it is critical to update and flesh out antiquated and difficult to use statutes and sentencing guidelines. ORC criminals must realize they WILL be caught and seriously sanctioned. Since ORC methods vary so widely and continue to adapt to evolving opportunities, a vital part of improving anti-ORC operations is updating and strengthening state and federal laws, regulations, and immigration controls.

It is believed that real, sustained impact on ORC groups will be improved once victimized businesses and law enforcement agencies form and permanently fund highly skilled regional teams that attempt to dampen demand for illicit goods by insatiable consumers and commercial businesses, as well as use state of the art software-based intelligence, joint communications, and investigative techniques to attack, disrupt and disable ORC groups (and their ability to convert stolen and fraudulently obtained assets to cash). Organized Retail Crime is a critical federal issue since sophisticated illegal immigration, multi-state, and official corruption

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schemes play key roles in ORC success.

Research Results

The Scope of ORC Crime and Losses

While not an entirely new phenomenon (Geocities, 2000; Rogers, 2001; Weiner and Harris, 1989), the negative impact of ORC is especially large and appears to be growing. The FBI and other experts estimate ORC costs retailers and manufacturers between $12-35 billion annually in stolen goods and collateral effects such as injuries, lost sales, and lost product replacement costs (Cho, 2001; USDOJ, 1999; Rogers, 2001). Experienced retail and law enforcement investigators approximate tax revenues are reduced by at least a billion more dollars by lost sales from stolen goods (and competition with illicit goods). ORC criminal activities require more public law enforcement, prosecution and incarceration expenditures while reducing critical tax revenues. No retail, manufacturer, or shipping company is immune, with small, medium and large businesses being victimized, and even destroyed by organized retail crime schemes (Burke, 2003; Rogers, 2001; Weiner and Harris 1989).

ORC Dynamics

ORC is pervasive and occurs across the US (Rogers, 2001). All regions of the country report organized retail crime problems- with particular problems reported in Florida, Texas, Georgia, California, and New York (Rogers, 2001; USDOJ, 1999). But, Lexington, Kentucky, the Carolinas, Pittsburgh and other urban, and even rural areas, across the nation have suffered huge multi-million dollar theft and fraud rings (Associated Press, 2002; Delahoyde, 2000; Kimberland, 2002; Woodin, 2000). Florida has experienced a series of wholesalers distributing diluted or counterfeit prescription drugs to retailers (Kunnerth, 2003;

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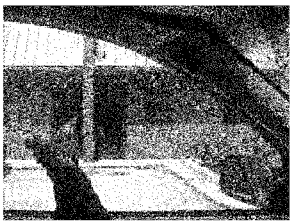
LaMendola, 2004).

Shoplifters (boosters), hijackers, fraudsters, and fences move to targets of opportunity ignoring state or other jurisdictional lines. According to study participants and the literature, the flow of stolen merchandise, and resulting



illegal funds, tend to cross state lines (Associated Press, 2002), with most large operations crossing into several states, and indeed into other countries (Rogers, 2001). Illegal immigration is in great part driven and funded by ORC operations (Brooks, 2000; Burke, 2003). At least four large federal ORC cases involved Middle Eastern subjects, with implications that some illegal goods and monies are leaving the country to partially support drug and terror operations in some cases (Associated Press, 2002; Rogers, 2001). Canadian law enforcement groups report ORC is a large part of Asian and Eastern European organized crime operations in that country (Criminal Intelligence Service of Canada, 1997, 1999). Local storefront fences are truly nexuses of crime where stolen goods are bought and sold, weapons, drugs and other contraband are traded, fraud schemes are designed, illegal immigration services are established, and local police are compromised and used to protect and support further ORC activities.

Police Corruption

Law enforcement officers are compromised and then paid off with favors by slowly providing them with free drinks, cigarettes, food, then progressing to getting them to check local and national crime information computer systems to see whether individuals or weapons might be wanted or stolen. Later, large screen TVs and other luxury items, along with cash, are provided for protection

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and police items such as ticket books, bulletproof vests and police scanners or radios.

Collateral Damage

Organized retail crime creates more than just economic losses. Violence is a regular feature of ORC operations. The continued presence of organized criminals working and stealing in shops threatens the safety of shoppers and employees alike. Shoplifting and hijacking frequently involves violence, fear and even death (Lockridge, 2003; Longoria, 2002; Oliver, 2001; Zeman et al, 2001). ORC members use their paid "muscle" to beat competitors with baseball bats, run them off the road, shoot into their houses, and kidnap their family members in the US and overseas. They also regularly threaten, cut and shoot each other as members skim, steal from, rob each other, and try to buy stolen goods from the "best" boosters. High-level wholesalers, local fences and booster crews frequently beat, wound and kill suspected competitors and informants.

ORC counterfeiting, re-packaging, expiration date changing, handling in unsanitary and infected areas, and product adulteration and dilution operations often results in contamination, health and safety concerns, as well as eroding manufacturer and retailer brand credibility, and sales, from negative publicity (Cho, 2001; Safetyalerts/FDA, 2000). ORC also creates expensive liability, and can injure a supplier or retailer company's revenue and operations to the point that it will have to lay off employees and otherwise limit operations.

ORC Networks and Groups

Most ORC organizations are made up of combinations of thieves, fraudsters, and fences (see Figure 1). The characteristics of criminal groups that prey on retail and supplier companies vary in several ways as can be seen in the case studies provided later. Fences, middlemen, initial wholesalers, and large semi-licit

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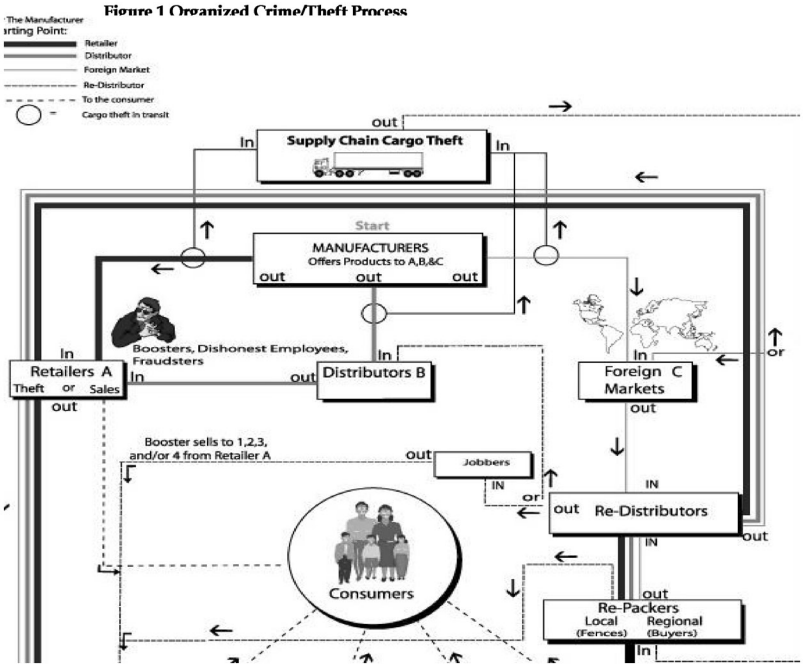
wholesalers and diverters are very competitive. Their dominance and financial success is a function of their extensive national and global contacts, ongoing access to large amounts of cash, group adaptability t changing opportunities and threats, their ability to use violence and corrupt officials, and the volume and types of goods they can deliver. Large cash resources allow operations to be able to acquire huge amounts of goods as they become available, never allowing another fence to get those goods or work with their sources if possible. Cash also allows a group to sit on inventory and negotiate the best prices, while being able to simultaneously buy still more product without stressing their ready cash resources.

Figure 1 Organized Crime/Theft Process



ORC members at all levels of these coalitions constantly jockey (and kill) for source and territorial exclusivity. They also continuously break their exclusivity agreements (called "stealing"), skim from each level up the amount of paid for versus actually delivered product volume, and try to go around perceived middlemen to up their profit margins. They also rob each other's locations and recruit or threaten a competitor's talented workers. Another fascinating aspect of ORC is that higher-level fences, wholesalers and diverters annually meet and work out deals at small business conventions in Las Vegas. Finally, unlike most legitimate businesses (which these groups compete with and help destroy), setting up an ORC operation can be very cheap and easy, making the process very tempting.

Illegal Immigration Tactics

Many ORC operators are Caucasian Americans, but many, and in many locations, are not. Loosely or tightly organized groups of shoplifters and fences of all races, street gangs, transnational organized criminals (i.e. Eastern European, Armenian, Senegalese, and Russian), ethnic, Israeli, Middle Eastern, Jewish, Hispanic, and Asian (Chinese, Taiwanese, Korean) gangs, Nigerian criminal enterprises, Irish travelers, and traditional mobsters such as La Costra Nostra are all involved in ORC.

Many ORC groups include or are exclusively composed of recent immigrants. Immigrants are able to move onto the US in several ways. Informants for this study indicated the only difference in getting people into the US to work for them after the terrorist attacks of September 11th is that the cost has doubled or tripled. Legal residents and naturalized citizens by the hundreds send their social security and "green cards," stripped out visas, or passports to their former countries where individuals that

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have paid thousands of dollars await for one with a photo that very closely matches their physical features and age. Specialists in the country may also carefully shave off the top thin layer of a passport photo and attach the razor thin image of the buyer over it to retain the embossed stamp. Blank British and other passports are readily available from dishonest embassy employees in different countries as well. Pakistani immigrants reported paying at least $8000 to attend intensive courses that teach them to use American slang, to where American clothes, learn all about the US, and provide them with worn in American style wallets with appropriate credit cards, used sporting event tickets, mass transit and check cashing cards. These individuals fly to America from less suspect countries such as Greenland, Sweden and Norway.

Extremely dangerous Chinese or Taiwanese “snakeheads” or "shetou” smuggle thousands of Asian immigrants into the US via Canada, providing manpower for ORC warehouses- as well as acting as “muscle” for Asian ORC wholesalers.

ORC Group and Network Sophistication

The sophistication and mode of the group’s planning and theft or fraud methods fluctuate, as well as their size, the formality and rigidity of their command and operations structure (hierarchy), their ability to communicate, and the teams’ agility, and flexibility. Some groups adapt their schemes and recruit members according to evolving threats and opportunities, while others do not. Boosters and fences are routinely recruited and trained while ”using” in drug houses or “cribs,” or while in jail, juvenile or drug rehab centers by different types of ORC groups. Training of members also ranges in sophistication and duration- with some shoplifting gangs actually setting up store mockups and using field demonstrations in stores

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to refine tactics and skills. Planning by groups extends from virtually no planning to careful, thoughtful preparation- and even pre-strike rehearsals.

ORC Counter-investigative Efforts

ORC groups are very sensitive to being surveilled and penetrated by law enforcement investigators or competitors. ORC managers and other members attempt to insulate themselves from other members, particularly boosters that might be arrested and turned into informants. Some ORC members are careful not to cross others they deal with since individuals that feel they have been cheated or disrespected are the most likely to cooperate with police when apprehended. Oftentimes newspapers and bail bond operators are tracked to determine if ORC members have been arrested. Cover stories are also used, the

destination of stolen goods is lied about, and code words are used on phones or in conversations with possible "bugged" informants. Documents are double or cross-shredded. Disposable or stolen cell phones as well as illegally obtained voice scramblers have been used, as well as anti-bug sweeps, to thwart wiretaps and other eavesdropping. Lookouts with radios and guns are posted near fencing storefronts. Additionally some criminal groups take precautions to vet prospective members to make sure they're not undercover operatives or competitors, use police and cell phone scanners, and even pay off employees and officials to detect or frustrate investigation and prosecution efforts.

Cases in at several locations have involved police corruption in the form of protection for payoffs (i.e. Georgia, Massachusetts and North Carolina). Corrupt police officers have provided fences with NCIC checks of stolen guns, helped process stolen goods, given advanced warning of impending raids, threatened and arrested a fence's competitors, and provided police cars with radar guns, or

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even personal blue lights, raid jackets, and traffic ticket books to offenders so the fence can establish their dominance in an operating area. Informants for this study reported corruption extends to state and federal driver's license, immigration, law enforcement, embassy (passport and visa control), and even congressional employees.

ORC Travel and Impact

The scale of a group's operations and their financial impact also differ widely. The level of planning, and the complexity and success of their illicit methods can drive membership, territorial and financial impact size. Also important is the group's geographical range and mobility. Some groups work small or regional areas within a single urban locale or state, while others sporadically cross state lines to sell stolen or counterfeited goods. Still others are intentionally set up to move illicit goods and funds across state and international borders.

Finally the permanency or persistence of ORC groups varies widely dictated by opportunities and successes, and as leaders and group members are converted to informants, imprisoned, killed by rivals, deported, or move on to other ventures.

ORC Crime Methods

Organized Shoplifting

ORC is NOT just about shoplifting, but large-scale theft from stores is a major component of it. ORC theft networks typically use drug abusers or others to shoplift specific products from stores. These boosters sometimes steal items as solo operators, but more commonly work in teams of two or more- with at least

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one of the individuals scouting for asset protection efforts such as employees, plainclothes security, cameras, and electronic detection tags. These scouts may also occupy employees or create a diversion to reduce the risk of detection and apprehension. Most boosters are able to avoid or counter protective efforts by concealing items in store areas they believe are not covered by cameras or direct employee observation. Retailers report some boosters move items around to delay theft detection of goods by putting other items on emptied shelves or peg hooks. Offenders seem to respect electronic detection tags, but frequently remove them, press them flat, cut them, melt them, cover them with foil, place them in foil-lined bags, purses or pockets, or try to lift the tagged items over the exit door antennas to avoid alarm activations.

Many offenders report they are not particularly concerned about alarm activations, or other theft detection however, since employees often seem apathetic or reluctant to approach or detain them. Some offenders simply run to waiting vehicles or into surrounding neighborhoods if they are approached. Still others explain that apprehension by store employees is not a problem since this is a rare event, they can readily bond out of jail if actually arrested, and detention rarely results in prosecution, or serious punishment, since boosters will steal just enough goods to fall below state felony crime thresholds.

Depending on item access, small or large quantities may be taken during each store visit, with shelf sweeps of large quantities a preferred method. Drug addict boosters with $300-$1000 per day habits must steal at least $4000 per day in goods. Captured boosters report stealing as much as $12,000 per day, and in

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some cases personally netting over $120, 000 per year tax-free. The pool of hard-core booster/addicts is somewhat limited, and should be identified and tracked in order to affect local theft levels.

Large quantities of product are placed in garbage or foil-lined "magic" bags and into special pants and elastic girdles. This practice is not critical to obtain large quantities however since so many retailers that carry desirable products are clustered in certain readily accessible areas, or near mass transit stops or road intersections allowing boosters to collect profitable quantities through small hits in a relatively short time. Boosters move from store to store looking for targeted items with low perceived protection levels- sometimes traveling to rural or more affluent areas where stores seem less secure or naive.

Some booster crews conduct stay behind burglaries, hiding in stores and waiting until owners lock up and leave before taking large volumes (in one case almost an entire GNC store's contents) out through emergency exits. Others create diversions such as yelling, stripping, starting fires or feigning illness while another group member enters the safe or cash area to steal cash and checks. Still others ram stolen trucks or vans through store walls or window fronts after hours, fill them up and drive away. Armed robbery is sometimes used, while employees or customers that interfere with boosting efforts may be beaten, stabbed or run over. Some boosters reported having store work shirts, vests and name tags that enabled them to go into stock rooms or move about the sales floor removing large quantities of product. Many of these items are available on the "street" or online.

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Fences or group leaders often fund their boosters, providing them with rental car, hotel and food money, while boosters ship stolen goods back to the fence from the road trip. Fencing is a cash-intensive business requiring fence operators to always have large amounts of cash on hand (and local "muscle" and police protection). Fences are careful to retain and reward their best boosters by always buying what they bring in, and by providing them with "insurance" plans whereby the fence will bond their crews out before police can positively identify them (boosters tend to use 3-5 fake names with police and others). They also provide "wake up," "fix," "coffee" or "gas" money to their junkie boosters first thing in the morning so they can get some heroin or crack before starting out on their shoplifting activities. Fences tend to pay a booster just enough to get by, but always hold enough back so the boosters keep brining them merchandise due to their need for money.

ORC Supply Chain and Cargo Crimes

Store theft appears to be more common, but manufacturer, retailer and contractor semi truck and train car theft and hijacking by organized groups, including traditional organized crime families, frequently occurs. Although shoplifting is generally very low risk for thieves, since trucks and trains often travel in remote areas with large concentrations of desirable products, and usually just one employee, their theft can sometimes present relatively more reward with less immediate risk than boosting. A single truck or train car full of electronics, cigarettes, designer label apparel, OTC medications or premium razor blades can be worth millions of dollars. Organized truckload theft ranges from colluding dishonest drivers, to drivers losing trucks or loads when prostitutes or other decoys distract or drug them, to armed

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hijacking in truck stops, remote, or urban areas. Groups also use other dishonest employees such as loaders, dispatchers or guards, and contracted loaders or drivers to assist (with information) or to steal quantities of product from distribution centers, warehouses, trailer drop-off points, slow moving trains in urban areas, and staged or parked trucks. Cooperating truck drivers and thieves use three primary theft methods. Full load theft is clearly a visible crime whereby an entire trailer and its contents are taken. Two other common theft methods are less visible and make it difficult who stole the missing goods. "Leakage" occurs when a trailer's back lock and uniquely numbered security seal are compromised, and contents are removed through the back door without breaking the seal. Leakage methods include carefully sawing and restoring the lock's hasp, or removing and restoring the locking mechanism's swivel pin. Pilferage involves a driver or other individual unsealing boxes and removing contents, then carefully re-sealing the boxes.

Organized Employee Collusion

Some ORC store theft involves current or former employees working to directly steal and remove product from the front and backend or receiving areas of stores. Dishonest staff members work with non-employees to enable their theft by disabling door alarms or leaving doors unlocked, by providing information on alarm codes, computer passwords, combinations, keys, camera locations, management and security schedules and times of day when certain stores are most vulnerable. Dishonest employees also help steal or provide access to high-risk items and storage areas. Truck drivers may be drug abusers that steal parts of their loads, or those of fellow drivers, telling their dealers about opportunities,

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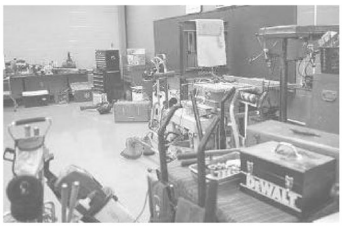
that in turn notify fences. Other dishonest staff will relax protective procedures as was observed in Chicago and Los Angeles when street gang member employees worked with fellow non-employee gang members to steal from stores and distributions centers, as well as to provide cash refunds for both stolen and purchased goods. The cash refunds in this case also served to launder money the gang received from drug and weapons sales.

ORC Item Targeting

American retailers carry a rich assortment of goods, but a relatively few items are most often targeted for theft. As is partially explained by the acronym **CRAVED** that stands for **C**oncealable, **R**emovable, **A**vailable, **V**aluable, **E**njoyable and **D**isposable concealable, these items are also more readily removed from retailer sites, and converted to cash or other valuables than average products (Clarke, 1999). Examples of current "hot products" include tobacco products, premium razor blades and face creams, analgesics, smoking cessation products, designer, logo, and leather apparel and shoes (particularly athletic), name brand power tools, vacuum cleaners, printer ink cartridges, steaks, film, coffee, consumer electronics (e.g. DVD players and GPS units), fragrances, infant formula, batteries, music and game DVDs, and OTC medications and test kits.

The desirability "lifecycle" of hot products might be persistent such as cigarettes and alcoholic beverages, it can be based on the popularity duration of new product releases such as movie, PC game or music titles, or wax and wane due to item utility for drug activities such as eye clear and hemorrhoid medications,



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ephedrine-based items, and lithium batteries. Another key point about hot products- theft popularity for items can be very specific and highly brand dependant. Only certain brands and models of printer cartridges, razor blades, cigarettes, and designer shirts are highly stolen, while other very similar items are virtually ignored. As an example, only one of four types of a pricey, popular face cream brand is considered high risk. There may also be a lag time component to a product's "hotness" since items may become popular in a community, but they must have a sufficient demand level before larger wholesalers and fences will pay for large quantities of the item. Retailers maintain ongoing efforts to determine current hot products, and the reason for their popularity.

ORC Store Targeting

Criminals tend to target certain types of retailers, brands names, and even specific locations more than others. A primary criterion is whether a type or brand of retailer carries the hot products the organization needs most to fill a demand, and to make a healthy profit. Food stores are often viewed as having less, or less sophisticated, protection, are usually conveniently located, have high shelves that shield boosting, and carry a wide selection of hot products. Location and accessibility are also key for boosters and fraudsters, since they often prefer to minimize travel time, and to consolidate their retail crime activities in close, convenient activity or behavioral spaces- often near their homes, and work, hangout and recreation sites (but not too near since they may need to legitimately shop close to home). Stores near mass transit (bus or rail) stops and other intersections are often selected. Drug stores are particularly popular targets since they also carry many hot items, are

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increasingly numerous and accessible, tend to have low staffing levels (with mostly female employees by exits "trapped" behind long counters), and appear to have few or often unused protective measures.

Large mass merchants chains may have (but often don't aggressively use) several asset protection technologies such as cameras and electronic tags, but can be popular theft locations when certain stores in the chain are viewed as being very

busy, disorganized, and are perceived to have few or apathetic employees. Mass merchants and other specialty stores also have very high display fixtures that provide abundant concealment opportunities (many offenders will turn their backs to, or lower their hands from, the view of any camera domes in these areas). Offenders also like to hit locations they used to work in, have friends in, are very familiar with, have had prior success in, are small local stores with no known security, or appear in general disarray. Electronics stores were often cited as being difficult theft and fraud locations since they have lower displays, are well patrolled by active employees, and frequently have alert entrance/exit monitors.

Converting Stolen Goods to Cash

Like legitimate retailing, ORC operators use a variety of selling channels to convert stolen and counterfeit goods to cash, or other items of value such as drugs or weapons. Illicit sales and supply chain processes may be ad hoc, or carefully planned, to accommodate emerging opportunities. Sometimes ORC members steal a large quantity of available product and look for buyers, other times buyer demand drives the

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organization's activities thus creating situational push or pull (suction) supply chains as needed. Legitimate businesses and resources including storefronts (particularly gas stations and local convenience or recorded music stores), websites, warehouses, private residences, gathering places such as beauty shops, bars and gyms, as well as vehicles may be co-mingled or used with illegitimate ones.

An ORC scheme may be as simple as systematically returning stolen items to store service desks for cash refunds or store credit. Some ORC operations sell stolen goods, along with licit items, at their own pawnshops, warehouses,

websites, or other types of stores. Or boosters and fences will consolidate stolen property and move it through other fences. Businesses like bars and beauty shops have been found dealing in stolen property. Some stolen goods are sold to select small local shops or Bodegas (several interviewed active offenders referred to some of these fencing locations as "Habib" or "Arab" stores), or at certain flea markets or swap meets. Stolen items are moved at truck stops, and stolen power tools are sold at construction sites. Even "low tech" fencing methods such as running ongoing ads in the classified sections of newspapers are being used to move stolen goods. Numerous investigations have revealed that stolen merchandise is frequently shipped to other countries, sometimes then coming back into the US through diverters (repackaged or otherwise). Dishonest wholesalers have been observed using Ronsonol lighter fluid and Rainex windshield fluid to remove retailer stickers and writing as well as having access to competent packaging counterfeiters. Some fences have even worked with chemists and engineers to devise methods of defeating protective efforts.

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The Web

The Internet poses huge challenges as a global marketplace for stolen and counterfeit goods. Some goods are sold and otherwise traded or moved through dedicated websites, closed-end email chains or talk groups. Counterfeit and stolen items and store credit type cards can be listed on unregulated Internet auction and second or alternative source websites. Investigations by US retailers have revealed theft teams that pre-sell items on auction sites then steal to fulfill orders.

Flea Markets

With between 3000 and 5000 locations, flea markets provide widespread opportunities to sell illicit items alongside licit products across North America.

According to offender informants, Flea markets play a particularly important role in selling stolen goods in three ways: 1. Low-level fences use them to learn about fencing and to sell all types of stolen or counterfeit goods, 2. Boosters visit the markets to find new or more profitable fences for their theft labors, and 3. Larger fences look for and recruit sources of stolen products to feed their wholesale and repackaging operations. Dishonest wholesalers have been observed taking stolen products where packaging is damaged to flea markets while consolidating more pristine products for sale up the "licit" wholesale supply chain.

Illicit Diversion Schemes

Several investigations have revealed that shoplifted goods are "cleaned" of

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security tags, store applied embossed logos and tamper-resistant stickers, re-packaged, and sold by dishonest wholesalers to legitimate retailers (even the original victimized retailer). Some of this illicit merchandise is sold to retailers "on the wire" as "gray market " or "second source" goods (sold by wholesalers, diverters or other retailers rather than direct from manufacturers). Dishonest wholesalers or diverters sometimes sell stolen goods to licit retailers mixed in with other legitimate, lower quality, diluted, and counterfeit product.

ORC Fraud Crimes

Theft is not the only tool of ORC groups. They also use fraud to attack US retail businesses. Fraud methods vary widely with new schemes or versions of old ones changing rapidly and continually. ORC members may think of a new scam, or hear about opportunities through loose networks, or on the Internet. Some ORC members used to shoplift, but have moved full or part time (some still using boosting as needed) to fraud since it can result in larger hauls with lower risks of immediate detention.

High-value items, or product packaging, may be fully or partially counterfeited (which also involves logo copyright and product patent infringements)- and off through earlier described illicit and quasi-illicit sales channels and supply chains passed (often blended with legitimate and gray market goods). Some illicit products are not counterfeited or conventionally stolen, but rather legitimate domestic and overseas manufacturing sites will intentionally produce more goods than ordered, or end up with overruns, and sell these "authentic" items illegally. Likewise, authentic

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packaging may be diverted for use with older, out of date, overseas, counterfeit, diluted, or stolen goods- and passed off as first quality.

Stolen or counterfeit checks and credit cards, and credit card numbers, are still widely used in stores, or for catalog and Internet purchases. Increasingly retailers

report organized groups working scams with store gift/value cards, or cards used to spend store credits. Goods are often stolen and returned to create usable cards, or employees collude with others to create functional cards- frequently using auction websites to market them. Others report ORC efforts to fraudulently acquire company credit cards for short-term use using legitimate names and social security numbers they obtain from websites or from current or former company insiders (identity fraud).

One popular ORC tactic is to find "golden bodies" or immigrants with excellent credit that are permanently returning to their original countries. Fences will pay

the individuals $10, 000 in cash- which is in turn given to a money changer that arranges for that amount of cash in the foreign currency to be waiting for you when you arrive home. The individual then opens store credit card accounts at home improvement, electronics, department stores and mass and other specialty chains, as well as 2-3 checking accounts. The fence dispatches the "body" out to buy as much as $160, 000 in merchandise from stores- just prior to boarding the plane for their country.

ORC members also obtain multiple drivers licenses per name (each with a new

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unique number) for use in refund fraud, and to make credit card or website purchases. Retailer websites are also subjected to orchestrated attacks and fraud efforts. Dishonest employees also work with outsiders in various ways across state and international lines. Merchandise source locaters, buyers, consolidators and shippers collude with outside groups to divert purchased product, or to co-ship illicit goods such as drugs and weapons with legal shipments in the same containers.

Recent cases in the US reveal schemes to acquire legitimate credit card numbers include using dishonest employees to using potato chip cylinders as directional antennas to receive wireless transmitted data from store point of sale transactions.

ORC Case Summaries

The media and study participants related dozens of ORC cases of all varieties. In order to provide more descriptive data on ORC, some of these cases are briefly described below.

Boston, MA, 1989-90: Operation PharmRob might well have been the first large-scale federal anti-ORC case, involving corrupt Revere, MA police officers providing protection for fences involved in selling large quantities of boosted merchandise through pawnshops and local stores. Phone toll records indicated extensive product movement throughout New England states

Pittsburg, PA, 1992: FBI agents and Pittsburg police investigators, as part of Operation Fence Fry, identified at least five fencing operations selling large quantities of shoplifted goods across state lines at a flea market in rural Ohio. The case grew quickly due to the use of wiretaps and undercover agents,

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indicating ORC members were moving stolen goods into West Virginia, New York and New Jersey. After executing search warrants on these three repackaging operations, it was determined that the stolen goods from the repackaging operations were being sold to a number of large wholesale companies in New York and Ohio. These same wholesalers had been the subjects of numerous civil complaints by pharmaceutical manufacturers for diverting goods destined for overseas sales for sales domestically.

North and South Carolina, 1990-95: Data from earlier operations led to Operation Blue Sale in the Carolinas. Prior investigations of fencing operations in the Greenville, SC resident agency and Raleigh, NC resident agency led to this undercover operation. This large case had similar characteristics as earlier operations including using local fences and selling some of the shoplifted goods through flea markets. Goods were being brought in to South Carolina from Tennessee, West Virginia, Virginia, Kentucky and Georgia. The bulk of the goods were being transported in trucks to repackaging operations in Brooklyn, NY and Cleveland, Ohio. Fifty nine individuals were indicted for at least $25 million in illicit products. The shutdown of operations in South Carolina seemed to help boost the volume of illegal ORC activity on North Carolina by 1993. Shoplifted goods (over $25 million) from across the south were being shipped in and repackaged before being shipped up to wholesalers in New York and Maryland that repacked and sold the stolen goods on to legitimate retailers. The shoplifting was so intense that regional retailers shut stores and reduced operations in the area. One company filed for Chapter 11. Eleven individuals went to trial with just five finally convicted. The FBI reported certain members of the North Carolina State Police provided protection for the fencing operations. Despite this large case, local North Carolina police later arrested 23 people from an ORC group for with $6 million in merchandise recovered in 1998.

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Wichita, KS, 1997: Two ORC groups were broken up for boosting and re-selling hundreds of thousands of dollars worth of stolen goods. One group boosted tools (at least $250, 000) from local hardware stores, selling them to pawnshops, street fences, and overseas buyers. The other ORC case involved large scale shoplifting of over 600 cigarette cartons or $8000 per month from shops for later sale through local stores.

Utica, NY, 1999: Twenty five members of an ORC shoplifting group were indicted in New York for stealing from numerous national retail chains. At least 20 stores were hit per day across over 20 counties with boosters taking many items including brand name videos, razor blades, batteries, CDs, games and game disks, OTC medications, film and cameras.

New York, NY, 1999: Fifty-six individuals and eight corporations were indicted for organized theft of computers, perfume, designer clothing and sunglasses for sale through local retailers in Manhattan, Staten Island and Brooklyn.

North Carolina, 1999: After pipe bombs exploded in two separate Lowe's Home Improvement stores, their corporate office received two letters demanding $250, 000 or else "I will keep bombing your 500 stores." Lowe's then received instructions to wire the $250, 000 to Riga, Latvia.

Nationwide, 1999: Law enforcement agencies working with the FBI instituted Operation Sudden Stop to combat organized cargo/supply chain theft resulting in over 300 indictments nationwide- leading to hundreds more arrests from spin-off investigations that continue.

Atlanta, GA, 1999-2002: Twenty nine ORC members in Georgia, New York, Maryland were indicted for stealing over $10 million from stores over five years

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and re-selling (and even re-packaging) the goods back to legitimate retailers as part of Operation American Dream I. Cigarettes, razor blades, pain relievers, medical test strips, smoking cessation products and electronic goods were some of the most frequently targeted items. The majority of the Atlanta-based organization's leadership were Middle Eastern employing over a hundred illegal Pakistani and Indian immigrants and local boosters, while the wholesalers they shipped to in Maryland and New York were Chinese, Korean and Israeli, Orthodox or Hasidic Jewish. The fences sold mixes of legitimate and stolen or counterfeit goods to their customers, and met at small business tradeshow conventions in Las Vegas to work out pricing and shipping requirements. Teams of professional shoplifters (almost all heroin addicts) would take as much as $50, 000 worth of stolen goods to storefront locations for payment. The goods were then sent to "factory" locations where some items moved on, some were cleaned of electronic security tags and other store markings, and others were re-packaged. The cleaned goods were shipped via UPS to New York and Maryland locations that were part of a money laundering operation. The product then moved on to legitimate and illegitimate buyers. Stolen film and disposable cameras are supplied to Pakistani stores throughout tourist areas in Florida. Local Atlanta "muscle" was employed to beat competitors with baseball bats, and in at least two occasions members of one fencing group shot members of a rival group for buying stolen goods from their boosters. Forty one individuals (including an Atlanta police officer) were arrested on federal warrants (with informants identifying 12 more APD officers they were paying for protection as part of the operation). Later in American Dream II, 48 more subjects were arrested (and over $3 million in shoplifted goods recovered) in Florida and Georgia as the anti-ORC operations continue.

Ft. Worth, TX, 2000: Fourteen people, all but one from the Middle East, were arrested for operating an ORC group that stole and re-packaged baby formula

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for distribution across the US. Often the formula was put into counterfeited packaging indicating a more expensive brand.

Hampton Roads, VA, 2000: An ORC group that had operated for at least three years was rounded up for shoplifting products from Virginia retailers for sale through an otherwise legitimate liquidation warehouse operation.

Charlotte, NC 2000: An FBI Joint Terrorism Task Force (JTTF) assisted by local and Canadian officials dismantled a terrorist financial support cell operated by a group of Lebanese individuals. These individuals were involved in a racketeering enterprise, involving the sale of stolen and contraband cigarettes. Five of the indicted individuals reside internationally and are considered fugitives. Some of the profits were sent to Hizballah, a designated terrorist organization that is second only to Al Quaeda in the number of Americans killed by its members. Proceeds from the ORC venture were earmarked for terror operations, and the group's members were also under orders to obtain night vision, GPS, and surveying devices. During the course of the investigation, 26 individuals in North Carolina, Michigan and New York were charged with various crimes including racketeering, money laundering, immigration fraud, credit card fraud, marriage fraud, visa fraud, bribery, and providing material support to a terrorist organization. The arrests came after a three-year investigation called "Operation Smokescreen."

Lexington, KY, 2002: In addition to shoplifting, truck hijacking, and collusive employee warehouse theft, the Shalash family and their Unity or Lexington Wholesale and United Trading Company businesses provided large quantities of stolen goods including diapers, cereal, and baby formula for sale through family owned convenience stores in Kentucky, Tennessee and Ohio. The stolen and re-packaged goods flowed through supply chains along with legitimate and "gray

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market" or diverted trade goods.

California, 2002: Two individuals were apprehended in California for running an operation that shoplifted and used counterfeit UPC codes to pay lower prices, then sold the goods by placing ads in the classified sections of large city newspapers. The group was made up of Irish immigrants that traveled by Winnebago and committed ORC across at least 24 states. The FBI seized over $800,000 in cash from multiple bank accounts in Ireland, Canada and the US.

New York, 2002: FBI Internet Task Force members working with retailers and eBay security arrested a former Home Depot employee that was running a theft and fraud ring that was counterfeiting and selling store credit and gift cards from at least 11 retail companies, as well as bank credit cards and checks.

Boston, MA, 2003: A group was indicted for stealing large shipments of Gillette Mach 3 razor blades from warehouse and transportation assets for sale overseas.

Madison, WI, 2003: Groups from Illinois were shoplifting vacuum cleaners and Nicorette across Illinois and Wisconsin and returning the goods to stores across Wisconsin for store credit that is then put on store gift cards. The gift cards were used to buy household, food, and OTC medical items.

Charlotte, NC, 2003: Four Law enforcement officers were arrested for providing support and protection for ORC groups transporting millions of cigarettes, and supplying the group with a firearm.

Atlanta, GA, 2003: ORC groups are stealing quantities of popular power tools, top-selling tape measures, paint sprayers, high-end faucets, leaf blowers and returning them for gift (store credit) cards, selling them on eBay, and at large

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construction sites. This ORC operation is ongoing.

Nationwide, 2003: After 9/11 the US Customs Service set up Operation Greenquest to target the financiers of Al Qaeda and other international terrorist groups. Federal authorities arrested nine individuals in North Texas in late May of 2003 on suspicion of selling stolen retail goods such as baby formula and sending the proceeds to Jordan, Egypt and Palestinian areas near Israel. According to interviews and a federal complaint unsealed Wednesday, the network of at least 18 individuals was led by families of Middle Eastern origin who bought and sold infant formula and items such as razor blades, Viagra and nicotine patches that had been stolen from major supermarkets in North Texas between October and May. Some of the illegal profits were transferred by wire to Middle Eastern banks or transported in baby diapers worn by infants on international flights, the complaint stated. Other amounts were laundered through automobile export businesses. Through confidential informants and "undercover activities," authorities learned that most of the suspects own and operate convenience stores in the Fort Worth area. They would buy stolen retail goods from a "loosely knit group of repetitive thieves and shoplifters, many of which are narcotics addicts," repackage the goods and resell them to wholesalers or to other Middle Easterners who operate stores approved for the federal Women, Infant and Children program for needy families, the complaint said. The thieves stole $100 to $2,000 worth of products a day and sold the property to their convenience store contacts at discounts of up to 50 percent The FBI's North Texas Joint Terrorism Task Force continued to investigate whether the group had ties to Middle Eastern terrorism groups.

Los Angeles, 2003- The Los Angeles County Sheriff's "Forgery Fraud Unit" and a retailer's National Task Force arrested several suspects for committing at least $1.26 Million in fraudulent cash refunds over the past 7 years throughout the

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United States and Puerto Rico. These individuals were shoplifting high dollar items and returning the items for cash or credit refunds. Multiple homes and individuals were searched and the following was seized and recovered: In excess of 900 fraudulent/altered receipts totaling more than $270,000, over 600 store price tickets with a value of $ 120,000, 2 Printer/Scanner/Copiers used to reproduce receipts. (One copier still had a receipt in the unit ready to be copied), store listings and maps throughout the country with stores highlighted and marked, multiple rolls of special cash register journal tapes from two retail chains, and one roll of special price tickets and stolen merchandise with unique department/category listings.

Florida, 2003- A Florida grand jury indicted 19 people on charges of selling fake or diluted cancer and HIV medications to retail pharmacies, hospitals and other outlets. Dozens of over 1400 prescription drug wholesalers selling in the state were still under investigation for distributing bogus or weakened drugs putting lives at risk.

Florida, 2003- Six members of a suburban Chicago theft ring have pleaded guilty to grand-theft charges for a crime spree across Florida that had netted roughly $52,000 in six heists. Authorities said they are members of an Eastern European theft ring based in the northern suburbs of Chicago. Their schemes involve having a group go into a store where some distract employees and others take money from safes, offices or cash registers, according to authorities.

Nationwide, 2004- Several large scale operations are underway- stay tuned… On U.S. Army posts across the US, eleven pharmacy techs were indicted in a $2 million scheme to steal insulin and glucose test strips from Army pharmacies to sell on the black market. About 40, 000 vials of insulin were stolen. In Detroit,

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Proposed Solutions

Stealing and taking advantage of others is a problem as ancient as mankind- so there will never be total solutions. Illicit or "black" markets have emerged in every place and time where need, greed, and opportunity converge. Eager consumers and retail outlets seem to crave certain goods, and good deals, creating huge demand for stolen and counterfeit items. And ad hoc supply chains fed by thieves and fraudsters quickly move to supply this insatiable demand. Expanding illicit supply chains also provide profitable incentives for thieves and fraudsters to prey on vulnerable businesses and location. But according to the experts interviewed in this study, there are several opportunities for improving the prevention and sanctioning of ORC activity. A current dynamic noted by the expert panel is the ongoing after effects of the 9/11 terrorists attacks. Law enforcement agencies at all levels are often reluctant to assign precious resources to problems like ORC due to heavy national and local security priorities. Although some agencies are aware of ORC and violence, terrorist and organized crime links, most do not have the needed resources or see the problem as a priority. This situation makes some of the below prevention and investigative and legislative proposals even more critical in order to close any real or perceived gaps left by post 9/11 protective initiatives.

An Action Model

ORC is really just a combination of strong and pervasive consumer and commercial ***demand*** for certain items, a steady ***supply*** of those items from vulnerable stores and supply chains, and the ***plumbing*** that connects and profits from the two (thieves, fences and wholesalers). Prolific organized retail crime is in many ways similar to insidious diseases like cancer. Medical prevention and treatment processes are instructive for building anti-ORC strategies. Cancer

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treatments include two primary strategies: cytotoxic, where tumors are directly attacked with radiation and chemicals, and cytostatic, where a tumor's environment is modulated (such as limiting blood or other communication flows) to further weaken tumors, and enhance cytotoxic agents. In other words, it is recommended that anti-ORC strategies can be aligned similarly. There are things individual organizations and groups can do to directly attack the plumbing (cytotoxic), and activities that make it difficult or unprofitable for ORC elements to function (cytostatic).

Individual Business Efforts

ORC is possible because of a proliferation of vulnerable businesses carrying highly desirable items and cash. Black markets need willing buyers and a steady supply of easy victims. Individual businesses can take several measures to prevent and address the supply side of the issue. 1. The first step any company can take is to conduct a total supply chain risk evaluation. Retail supply chains include manufacturing, packaging and distribution sites, transportation, retail company distribution centers (DCs), transit, stores and product returns, transfers, and damages. The complete supply chain including stores can be mapped with risks measured and relatively ranked. 2. The next step is to define the location and nature of crime and loss. Hot products and hot spots and processes, along with causal analyses, can also be determined through internal data analysis (including loss, adjustments, returns, cycle count, and sales data, surveys and interviews, video footage review, and tip lines). This process will provide for more precise crime and loss control solutions. 3. Loss risks and problems should be identified and prioritized (based on loss rates and relative cumulative impact) for asset protection action. 4. Protection measures should be applied for maximum effect- after rigorous testing supports their real-world efficacy and financial value.

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A culture of honesty should be fostered in at-risk organizations. Leaders must lead on this issue. Employee screening and awareness should be rigorous and ongoing, and employees need to be trained and incentivized to provide aggressive customer service in their assigned areas of the store, DC or transit route, while reporting all possible theft or fraud situations. Asset protection procedures and systems must be designed so average staff and managers use and follow up on them properly over the long-term. Facility design (spatial solutions) can enhance asset protection and productivity simultaneously by making theft more obvious and risky for thieves, and enabling more consistent, active customer service. Cash and high-risk product handling, refund, store credit and gift card policies and protection should be also be tightened to reduce organized theft incentives.

Pattern Recognition and Precision Targeting

Secondly businesses need to establish or enhance proprietary, ongoing pattern recognition capabilities. Sophistication may vary, but at a minimum should include 1. Early warning, and 2. Characteristics compilation for chronic/high-impact offenders (ORC boosters, middle men, fences, and financiers and wholesalers should all be tracked and prosecuted), high-loss items, and high-loss facilities, locations, travel routes and times. 3. Flea markets, small shops and eBay should be systematically surveilled for illicit goods. There are commercial and company software developers working to provide systems that help collect and search large data sets for meaningful patterns. 4. Use of new radio frequency (RFID) tags, bar coding, or unique isotopes can help track and identify products throughout licit and alternative supply chains. This practice can also raise risks for ORC operatives.

Also of great importance is establishing the ability to systematically attack or disrupt ORC groups and activities. While most sound investigations are difficult,

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ORC investigations can be very complex, expensive and lengthy. A recommended ORC investigative process includes the following steps: 1. Problem Recognition/Detection- detect ORC activity by detained shoplifter interviews, public or employee tip-offs, intelligence provided by fellow retailers or law enforcement officers; 2. Problem Analysis- data collection through surveillance, authorized eavesdropping, undercover and informant operations, company data analyses, and interviews; 3. Criminal Network/Group Description- rate the group's membership size, travel/territory, type and sophistication of crime methods, form an organizational chart, diagram illicit merchandise and cash flow dynamics; 4. Identify weak points and opportunities- likely informants, sting points; locations for search warrants; 5. Develop and Execute Enforcement Plan- objectives, methods, involved organizations, responsible individuals, timeline, budgeting, communication and resources.

Legislative Solutions

According to the literature and participating experts, current statutes and guidelines are not adequate due to a diverse, complex and evolving ORC problem. There are several opportunities to improve federal (e.g. Title 18 USC) and state laws as well as sentencing guidelines (attached is some sample language and more discussion on legislative and sentencing guidelines issues). Investigators and prosecutors require up to date statutes that: 1. Proscribe evolving criminal activities, 2. Readily allow for comprehensive investigations, and 3. Provide for applying racketeering and civil forfeiture and sanctions. Some of the highlights the experts listed include:

- Outdated language (in some cases carriages are referenced while newer methods of interstate and international commerce such as the Internet are not);
- Flea market/swap meet legislation (bill of sale required for all displayed

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non-household goods such as bulk OTC medications and recorded media; increase in penalty for displaying or providing false receipts);

- Current array of ORC methods not mentioned (or not adequately);
- Need a fencing clause (since ORC directly affects interstate commerce);
- Counterfeiting (all or part of logos, packaging, products; possession of counterfeiting technologies such as special inks, materials, logos, parts, holograms, machinery, etc.)
- Diluting, contaminating, altering or falsely labeling medications or other products;
- Add an explicit racketeering (RICO) clause in the statute;
- Make Internet based auction sites adhere to the same ethical standards, and fully document trader identities, as non-electronic auction houses;
- Misrepresenting stolen, unlawfully diverted or counterfeited goods as first quality or not stolen- as well as commingling illicit and licit products;
- Use of false identification in stores, in warehouses or online to obtain goods, store credit, exchanges or refunds;
- Use of technologies to evade detection or apprehension such as phone scramblers, police scanners, etc.;
- Use of special theft devices to defeat product marking, anti-counterfeit, asset protection technologies (like electronic or chemical tagging);
- Strengthened criminal sanctions (ORC is a very serious crime that devastates businesses and individuals- and should be treated as such in statutory language);
- Civil sanctions clause (revised statutory language should provide victimized businesses the ability to take civil action against criminal groups and individuals to re-coup loss and investigative costs);
- Forfeiture clause (explicit statutory language should make all properties used in ORC crimes vulnerable for civil forfeiture);
- Illegal and fraudulent immigration regulations and enforcement should

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be addressed since large numbers of illegal immigrants are involved in ORC.

Sentencing Guidelines

It is vital to enhance current state and federal theft and fencing laws to adequately address ORC. But just as important are the overhaul of sentencing guidelines used by judges to determine appropriate sentences for convicted ORC members (experts point out that bank robbers stealing $1200 without a weapon may receive 12-15 year sentences while ORC members that are convicted of stealing or defrauding a retailer of $10 million may only receive a three year sentence).

Retail and manufacturing associations, law enforcement agencies and individual businesses should update sample or model federal and state statutory and sentencing guidelines text to present to appropriate parties.

Ongoing Collaborative Solutions

The first counter-ORC principle involves forming sustained, high impact, and collaborative efforts by affected parties. Manufacturers, shippers and retailers are the victims of ORC, and they need to continue their efforts to form joint information and action groups regionally and nationally. These ORC teams must include law enforcement investigators and prosecutors as well. Several US retailers now have teams of investigators that work exclusively on ORC, sometimes working with other retailers, sometimes with manufacturers (who supply samples of hot products for "stings"), and often working with law enforcement agencies on sting operations (Pennell, 1979). However, most retailers are victimized by ORC but are not working the issue. The majority of individual retailers do not have the resources to set up, train and deploy special investigators. The proposal here is that the anti-ORC process be more formalized

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with a national base, and with regional sites. Communication is vital. Joint operations will require retailers, law enforcement agents and informants be able to communicate in real-time in order to locate and quickly address threats, offenders, transactions, and vulnerabilities. Another collaborative anti-ORC initiative involves producing and testing programs that might reduce some of the demand for illicit goods. Public education about the costs and impact of supporting the black market, as well as how to recognize and report it via toll-free or Internet websites can be trialed to determine best methods. Likewise, small and large retailers and other businesses that enthusiastically seek and encourage suspiciously low cost merchandise should be educated and audited.

Leveraging Knowledge and Skills

Several FBI, INS and IRS agents and Assistant US Attorneys have expertise in ORC, and have successfully attacked these criminal groups. Likewise there have been numerous local and state successes. National organizations such as the Food Marketing Institute, the National Retail Federation, International Mass Retailers Association, and National Association of Chain Drug Stores have provided varying levels of information on the topic and lobbying support to their members. And state-level retail and manufacturer associations abound, with some acting on this topic. At this point it may be important to hold a special conference to bring these groups (law enforcement executives and investigators, retail associations, university researchers) together with retailers, manufacturers and shipping companies to organize a national/regional anti-ORC network. Anti-ORC efforts often do not appear to be nearly as organized as some ORC efforts at this point.

Primary efforts by a national ORC network might include: 1. Providing ORC intelligence gathering and sophisticated investigations training; 2. Collecting intelligence, offender, theft and fraud methods, and incident data from

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participating organizations; 3. Providing ORC threat detection, tracking and data sharing services (including specialists capable of assimilating and analyzing intelligence and evidentiary data for coordinated investigations); 4. Archiving ORC group and individual characteristics and methods data; 5. Helping to coordinate joint investigations and controlled stings (careful not to create additional crime, as mentioned in Felson, 1998)- including facilitating secure radio and phone communications between business and public investigators, as well as the ability to use NCIC and state and local criminal records data for bonafide investigations; and 6. Providing expertise for legislative efforts. This proposed network should be set up, staffed (full or part time), and permanently supported by its members to provide effective ORC support over the long-term. FBI, IRS and INS must all be involved due to the pervasiveness of illegal immigration, official corruption, sophisticated cash flow schemes, and international terrorism connections.

Joint Development of Innovative Protection Solutions

Another joint anti-ORC recommendation involves coordinating the development of enhanced protective procedures and technologies. Many companies around the world are creating new anti-theft, anti-counterfeiting methods, but this activity can be more collectively driven by victimized businesses. A collaborative manufacturer-retailer-law enforcement team can provide incentives, performance objectives, and robust field-testing forums for evolving radio frequency identification (RFID) tags/readers, unique inks, dyes, isotopes, holographics, biocodes, also enhanced GPS/cell-satellite tracking, pattern recognition and ORC investigative software, and intelligent CCTV and locking/seal systems to name a few.

Joint ORC intelligence, investigation, and R&D efforts can be nested in existing retail, university, retail association, or law enforcement facility or facilities.

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Participating organizations would ideally endow the effort to ensure ongoing operations. The FBI and US Attorney's offices need to fund and staff regional task force support for these efforts as well.

Summary

Organized retail crime is serious, widespread and multi-faceted; creating between $12-35 billion in annual losses. Criminal groups of varying sophistication including boosters (professional shoplifters), fraudsters, and fences steal from or fraudulently attack retailers- as well as their manufacturer and cargo partners. The ORC problem shows no sign of abating, and indeed with law enforcement agencies turning more resources to domestic security since 9/11, the relative vulnerability of most American shops, the inherent violence and contamination dangers, and a steady influx of savvy criminals into the US, ORC takes on a larger priority.

Often ORC groups cross state and international borders to sell stolen, counterfeit or diverted goods through combinations of small shops, flea markets, Internet websites and talk groups, local fences, overseas and even back to legitimate retailers via dishonest wholesalers. These ongoing criminal enterprises annually cost victimized businesses and American taxpayers billions of dollars in lost investments, revenues, operating costs- and critical tax revenues. ORC schemes can also destroy product and retailer brand credibility, contaminate medications and foodstuffs, as well as create violence endangering innocent shop employees, customers and drivers.

ORC solutions are both collaborative and individual. Both supply and demand for illicit goods must be impacted. Businesses need to reduce their vulnerability

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by mapping and auditing their own organizations and identify their prime theft/loss problems.

Sustained impact on ORC groups will be improved once victimized businesses and law enforcement agencies form highly skilled regional teams that use state of the art software-based intelligence and investigative techniques to attack, disrupt and disable ORC groups (and their ability to convert stolen and fraudulently obtained assets to cash and other valuables). ORC victims also should strongly consider attacking the demand for stolen goods with education and enforcement programs for both consumer and commercial buyers.

Since ORC methods vary so widely and continue to adapt to evolving opportunities, a vital part of improving anti-ORC operations is updating and strengthening state and federal laws and sentencing guidelines.

Appendix I - ORC Introduction and Background

Retail crime involves theft or fraud throughout the supply chain from supplier through to the consumer. The retail supply chain includes product manufacturers and their manufacturing plants, packaging centers, distribution centers, and cargo operations to and from facilities, wholesalers and retailers. Retailer distribution centers, warehouses and stores, as well as their transportation assets are the final link for merchandise movement. Organized retail crime is the commission of fraud and theft on this supply chain by organized criminal groups. ORC is not just about pilferage or shoplifting. It is a large, dangerous, and expensive drain on the US economy.

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Cargo and Supply Chain Crimes

Merchants exist to serve their customers by providing products to consumers. Sophisticated supply chains are put together by retail-supplier-shipper partnerships to profitably serve their consumers. In addition to theft from stores, merchandise is often stolen from supply chain components such as manufacturer and retailer production facilities, pack centers, warehouses, import/export storage sites, loading docks, and trucks moving to and from these facilities (Hayes, 1991; Possamai, 2002). Cargo crimes include stealing cargo loads from trucks or trailers, hijacking trucks, transporting stolen or counterfeit products, and transporting and/or smuggling contraband such as weapons, drugs or other illicit products instead of, or commingled with legitimate goods (Possamai, 2002).

Professional Shoplifting or Boosting

American retailers and their manufacturer and shipping partners lose billions worth of merchandise annually due to errors and theft (Hollinger and Davis, 2003). While employees, burglars, and others carry off billions in merchandise, shoplifting is estimated to account for at least $13 billion of this loss each year (Hollinger and Davis, 2003); with much of the problem coming from organized groups of thieves working with fences to convert the stolen goods to cash or other items of value such as weapons and drugs (Rogers, 2001).

Shoplifting is a centuries old practice that first reached significant levels in the late 1800s and early 1900s when merchandise moved from behind counters to the open store concept used today (Farrell and Ferrara 1985; Hayes 1993; Klemke 1992; Segrave 2001). The crime has been popular ever since. The 2001 Uniform Crime Report included over 600,000 known cases of theft by shoplifting (at approximately $180 per arrest); about 14 percent of all larcenies reported in the U.S. (FBI, 2001). This number is staggering in and of itself, but many experts estimate that less than five percent of all shoplifters are actually caught by

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authorities (Farrell and Ferrara 1985; Klemke 1992), and not all incidents detected by store personnel are reported to police (Klemke 1992). This means that millions of cases of shoplifting happen in the United States each day. The cumulative costs of these incidents are tremendous (for initial item purchase and replacement, medical attention, event detection, processing, and evidence handling- as well as courtroom testimony).

The consequences of shoplifting losses are profound for retailers, manufacturers, consumers and the government. Shoplifting costs retailers about 2 to 3 percent of their gross annual sales each year (Bamfield and Hollinger, 1996; Cox et al. 1990; Hayes 1991). Shoppers frequently switch stores if their preferred items aren't available due to theft or they're locked up. Manufacturers also financially suffer if their merchandise is unavailable – customers may choose to buy other brands, depleting sales for a given company.

Consumers also suffer when higher prices are passed on to them to cover the costs of theft. Increased prices may result in upwards of $150 per family each year (Cox et al. 1990). And, perhaps less obviously, these honest consumers (and the government and citizenry at large) suffer when more tax revenues are required to manage the overburdened criminal justice system and when the sales taxes from stolen items are not amassed (Hayes 1993b).

Shoplifters can be classified based on their motivations for stealing. Skills and abilities are not the key element, but rather the ultimate goal of the theft. "Professional" shoplifters are those who steal for income – they make their living or sustain other basic needs and addictions as shoplifters.

Unlike amateurs, professional shoplifters steal for profit – it is, in essence, their "job." They strive to convert stolen items into cash, or other items of value such

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as drugs. Professional shoplifters are significantly fewer in number than amateurs, but account for greater monetary loss (Hayes 1991; Sennewald and Christman 1992).

Communication networks that link professional shoplifters are also common. This communication between professional boosters in drug "cribs," prisons and drug rehab centers allows access to information about techniques for spotting security, stores that are easy targets, and new ways for stealing merchandise and converting it to cash (Hayes 1991).

Employee Theft and Collusion

Customers are not the only people stealing from retail stores. Industry estimates indicate company employees account for approximately 48% of inventory losses (Hollinger and Davis, 2003). Company employees are in a unique position to learn about the location and security level of different items and store locations. They also know when alert store managers or others work. Employees in every job and at all levels of a business have been found stealing or facilitating the theft of goods and other assets from their companies (Hayes, 1993a). Employees steal merchandise with former or non-employees occurs at cash registers, on the sales floor, and through loading bays or other back doors (Hayes, 1993). Senior level employees such as executives, accountants, merchandise buyers, supply chain managers, and store operations managers have all been apprehended stealing from or fraudulently manipulating the supply chain (Hayes, 1993a).

Fences

Given the volume of stolen merchandise that must be resold, it stands to reason that fences are critical to organized retail crime groups. The fence, or theft demand center (TDC), in conjunction with greedy consumers, "furnishes the incentive" or creates the "suction" for the crime of theft (Hayes, 1993; Wash 1977)

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by organizing and facilitating the market. Thieves must convert stolen goods into cash (Pennell 1979; Trainum et al. 1991), and in many cases fences are key to that endeavor. The "middle man," the fence is the "essential link in the chain" between thieves and their payoff (Pesta 1982:173) and thieves' stolen merchandise and the buying public (Steffensmeirer 1986).

Most fences operate legitimate businesses in conjunction with illegitimate fencing (Trainum et al. 1991). Walsh (1977) found that 74% of fences she studied ran legitimate businesses, and 64% were owners of those businesses. These businesses often serve as a cover or front for illegal dealings in stolen goods (Steffensmeirer 1986). Often times, the business may have started out as a completely legitimate operation, but evolved over time into fencing activity in order to increase profits (Trainum et al. 1991).

Most fences favor legitimate businesses that allow for high cash flow, like coin, gold, and gem stores, repair shops, music shops, second-hand stores, gas stations, corner convenience stores, "Bodegas," milk bars (in Australia), auction houses, and restaurants, and/or those that have flexible operating hours, like salvage yards and bail bonds (Steffensmeirer 1986). "Junk and scrap yards, warehouses, pawnbrokers, and secondhand and antique stores are some of the most common sources for fencing enterprises" (Trainum 1991:7). The Washington, D.C. police department agreed, saying, "…pawnshops are just legalized fences…" (Weiner and Harris1989: 106). Flea markets, swap meets, jewelers' rows, and boot sales in the U.K., are also a big part of the network for distributing stolen goods (Sutton 1995; Weiner and Harris 1989). Fences "rarely" get caught or apprehended (Stevenson et al. 2001), although full-time fences are at higher risk of being identified and arrested than part-time fences (Weiner and Harris 1989).

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There is ample evidence that fences, boosters and others are working together in criminal groups across the US to steal select products from manufacturers and retailers in order to convert them into cash (Rogers, 2001). While there is some mention of organized retail crime in the trade literature and media reports, no systematic study describing the issue was found.

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Appendix II - Research Method

The Organized Retail Crime Study was designed to build upon the existing but limited pool of knowledge about US-based organized retail theft and fraud groups. The study was designed to inform retailers, manufacturers, law enforcement agencies as well as federal and state legislators. The Study had four main goals: 1. To develop profile data on ORC group dynamics such as size, flexibility, sophistication, territoriality, structure, and impact. 2. To describe current ORC theft, fraud and fencing methods including shoplifting, cargo theft, employee collusion, and various fraud schemes, as well as item and store targeting criteria. 3. To describe the negative impact of ORC on the safety, operations, and profitability of victimized individuals, businesses and communities. 4. The fourth goal was to examine and propose individual and joint protective and investigative actions for retailers, manufacturers, law enforcement and legislators.

Trade, general and academic literature was extensively reviewed, and several experienced ORC investigators from retailers and federal, state and local law enforcement agencies were systematically interviewed. Also interviewed were recently active booster and fence offenders. A purposeful sample of experts experienced in investigating ORC, as well as recent or active offenders, was made to secure data on the issue. An eight question instrument was emailed to 15 retail investigators and five federal and state investigators and prosecutors experienced in investigating organized retail theft groups. The questions on the instrument included: Please describe how the (typical) ORC group is organized and recruits; Describe what and why certain items are stolen; Describe what and why certain stores (types, brands, etc.) are targeted; Describe (typical) ORC theft and fraud methods; Describe how and where ORC stolen goods flow; Describe ORC cash flow and estimate annual revenues; Describe the best ways to protect stores and items and why; Describe needed legislation.

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Completed questionnaires were emailed or faxed back by 12 experts. Brief follow up interviews were conducted with the experts. Thirty five recent or active booster and fence offenders were also personally interviewed using the same questionnaire. All offender interviews were voluntary. Two of the offenders have since been arrested, two appeared at the interviews armed, and two claim to have "contracts" out on them for serving as an informants. The survey data were synthesized with trade, academic and media reports and articles to provide a written description of organized retail crime.

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RESPONSE TO POST-HEARING QUESTIONS FROM CHRIS SWECKER, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION

Responses of the Federal Bureau of Investigation Based Upon the March 17, 2005 Hearing Before the House Committee on the Judiciary Subcommittee on Crime, Terrorism, and Homeland Security Regarding Crimes Against Manufacturers and Retailers

Questions Posed by Congressman Goodlatte

1. Do you believe that the current level of communication and coordination between the FBI and state and local law enforcement regarding ORT is adequate to effectively combat the problem? What improvements can be made to facilitate better coordination?

Response:

Nationally, specific communication and coordination between the FBI and state/local law enforcement agencies regarding organized retail theft (ORT) has decreased in the aftermath of the 09/11/01 attacks, when some investigative and intelligence resources were reassigned to counterterrorism matters. Like most of the FBI's investigative programs, the FBI's Major Theft program, which includes ORT matters, relies on this liaison. Critical liaison has, however, continued through the following activities.

- The FBI's National Infant Formula Fencing Initiative (NIFFI), a counter-ORT tactic, uses the National Joint Terrorism Task Force and other terrorism task forces to conduct continuing liaison with state/local law enforcement agencies.
- The FBI's nine Major Theft task forces, established through a Safe Streets Violent Crime Initiative operating since the mid-1990s, continue communication and coordination of ORT issues between the FBI and state/local law enforcement agencies in eight major cities.
- In December 2003, the FBI established a national ORT initiative, the first phase of which included a joint venture with the National Retail Federation (NRF).

Currently, nine FBI-led Major Theft task forces located in the Houston, Memphis, Miami (with 2 task forces), Newark, New York, Philadelphia, San Juan, and Washington, D.C. Divisions serve as force multipliers, increasing the effectiveness of efforts to counter ORT by improving the coordination of Major Theft investigations. Because ORT cases are predominately state crimes, and

ORT criminal enterprise investigations are consequently most often initiated by local law enforcement and retail industry personnel, the implementation of Safe Streets Major Theft Task Forces in all 56 FBI field offices would significantly improve communication and coordination between the FBI and state/local law enforcement agencies countering ORT. The FBI also relies heavily on liaison with both state/local law enforcement and retail industry personnel to identify and advance ORT cases because the initiation of a Federal investigation must be premised on the theft of property valued at over $5,000 and transported interstate (18 U.S.C. § 2314). Even cases warranting Federal investigation are most often prosecuted at the state/local level, because United States Attorneys' offices often require minimum stolen property values of $50,000 or more.

2. Because Organized Retail Theft is such a significant problem, has the FBI thought of convening a national summit with retailers and manufacturers and their national organizations as well as state law enforcement officials to explore ways to partner together to more effectively address Organized Retail Theft?

Response:

The FBI attends annual conferences sponsored by the Food Marketing Institute and the NRF, both of which are designed to address ORT matters. Additionally, the FBI sponsored a NIFFI coordination meeting in 2004 and an ORT regional coordination meeting in 2005, both of which were attended by federal, state, and local law enforcement officials.

The NRF/FBI Intelligence Network, an NRF ad hoc committee, was formed to determine the scope and significance of ORT and to create a database in which ORT information can be shared by law enforcement and corporate security entities. Both the formation of the NRF/FBI Intelligence Network and this ORT initiative received strong support from the retail food industry. As part of the Intelligence Network, the NRF is creating a Retail Loss Prevention Intelligence Network Database (RLPIN), which will provide retail entities and law enforcement with the ability to share ORT information and intelligence. The RLPIN should also provide a one-stop, customized common access point for theft information and investigative data, facilitating detailed analysis and permitting retail loss prevention and law enforcement personnel to identify organized theft trends.

3. The media recently ran a news segment indicating that gangs involved in the sale of counterfeit merchandise had links to the Middle East and the money generated from counterfeit sales is being sent to fund Terrorists groups. Is it possible that same link may also exist between Organized Retail Theft rings and Terrorist groups?

Response:

ORT is an extensive crime problem that affects a wide range of retail corporations, to include supermarkets, drug stores, independent pharmacies, mass merchandisers, and discount operations. Often, ORT enterprises include the sale of stolen goods to illegitimate wholesalers, who in turn reintroduce the items into the stream of commerce, resulting in significantly higher prices for American consumers. The NIFFI was created for the purpose of fully investigating the possible link between ORT and terrorist groups based on information indicating that some ORT criminal enterprises may be using the organized theft of infant formula to obtain illegal proceeds that are funneled overseas to fund terrorism.

In addition to the potential terrorism implications and economic damage related to ORT, substantial food safety issues must also be addressed, since stolen food products, pharmaceuticals, and other consumables that are not maintained under proper conditions may lose potency or otherwise deteriorate rapidly.

4. Would the FBI welcome additional funding for the training and education of law enforcement agents about organized retail theft crimes, and for the purpose of investigating, apprehending and prosecuting individuals who are engaged in organized retail crimes?

Response:

The FBI's realignment of resources in accordance with its priorities, the first of which is to protect the United States from terrorist attack, has affected the resources available to focus on ORT criminal enterprises and other traditional law enforcement activities. Additional resources for ORT crimes would enable the FBI to fund additional investigators, establish Safe Streets Task Forces targeting Major Theft matters, establish training seminars nationwide, and fund sophisticated investigative efforts, including undercover activities. However, recognizing the scarcity of additional resources, they should be allocated based upon national priorities.

5. In your opinion, does the FBI have adequate resources to conduct investigations pertaining to these theft rings? What additional resources would help?

Response:

See answer to question 4.

RESPONSE TO POST-HEARING QUESTIONS FROM CHRIS NELSON, DIRECTOR OF ASSET PROTECTION, TARGET CORPORATION, ON BEHALF OF THE COALITION AGAINST ORGANIZED RETAIL THEFT

RESPONSES TO QUESTIONS FOR THE RECORD BY CHRIS NELSON TARGET CORPORATION

I understand that your company has one of the best "Asset Protection" programs in retailing. Could you tell the Subcommittee briefly how the Target Corporation works with law enforcement on the problem of Organized Retail Theft?

#1 Target Corporation operates with two key premises to address Organized Retail Theft:

1- A healthy community environment is a healthy business environment. Therefore, if we can impact the community beyond our own four walls, everyone wins.
2- We must be proactive in dealing with criminal elements that victimize our stores. ORT groups traditionally have the advantage of hitting retailers and only being vulnerable while they are in a store. We take that away by deploying mobile teams and solid intelligence to track these groups wherever they may travel.

We partner with law enforcement by sharing information, technology and expertise. In some instances, we build a detailed case on a group and partner with law enforcement to get indictments and criminal action. In other situations, we assist law enforcement with existing cases they have developed. We often provide information, forensic services, retail expertise and investigative support.

Note: I will send a short DVD that more fully illustrates the partnerships we have with law enforcement.

What plans do retail establishments have for using technology, such as Radio Frequency Identification (RFID), to combat the organized retail theft problem? Are these technologies feasible at this time?

#2 RFID offers some potential for combating ORT, but currently is cost prohibitive. For RFID to be useful the majority of products would have to be "tagged" and retailers would need to have the monitoring hardware (antennas) infrastructure throughout their supply chain and retail locations. Long term, the convergence of multiple technologies like RFID, Point of Sale systems and CCTV offers great potential in identifying ORT groups.

RESPONSES TO QUESTIONS FOR THE RECORD BY CHRIS NELSON
TARGET CORPORATION

However, identification is not the only challenge we face. Adequate consequences that deter crime remain a critical element.

Generally speaking, is your company satisfied with how federal law enforcement responds when you seek their help in an investigation? What suggestions do you have for improving the response of law enforcement?

#3 Target is thankful for the outstanding federal law enforcement efforts to combat ORT. Our experience shows that federal agencies are dedicated to assisting in ORT operations. The challenge is simply one of limited resources.

When resources are limited, leaders are forced to make decisions on what to work.

In your opinion, does the FBI have adequate resources to conduct investigations pertaining to these theft rings?

#4 We believe that FBI resources are, at times, taxed to the limits. When this occurs, they understandably have to prioritize and cannot work every case.

○