

**TESTIMONY OF PAUL MACCABEE
BEFORE SUBCOMMITTEE ON TECHNOLOGY AND THE LAW
COMMITTEE ON THE JUDICIARY**

AUGUST 2, 1988

Mr. Chairman and members of the Subcommittee on Technology and the Law; my name is Paul Maccabee. I'm a journalist from St. Paul, Minnesota. I want to thank you for the opportunity to testify on my experiences seeking information on organized crime through the Freedom of Information Act (FOIA).

I'd like to summarize the Justice Department's response to my filing dozens of FOIA requests and appeals during the last seven years. The request for these files under the FOIA was undertaken to provide the public with the first comprehensive history of organized crime in Minnesota.

My first FOIA requests for documents on organized crime figures were filed in 1981. The Justice Department has responded to those requests with deletions of material that should be releasable under the FOIA, very narrow interpretations of fee waiver provisions, and lengthy delays in processing files and administering appeals. In one case, the Justice Department delayed responding to a fee waiver appeal for 1,350 days.

As a result of the Justice Department's actions, I have been unable to obtain most of the documents that would enable me to write a book on syndicate crime that seems to be of tremendous public interest. Most importantly, my readers have been denied the opportunity to learn about the influence that organized crime has had in Minnesota.

Allow me to share my background with you. When I began my research, I was a reporter for the weekly Twin Cities Reader newspaper in Minneapolis - where I received the state's highest award for journalistic excellence, the Society of Professional Journalists-Minnesota Chapter "Page One" Award. I am a member of both the Society of Professional Journalists and Investigative Reporters and Editors. I have published more than 120 articles and columns in local and national daily newspapers, weekly magazines, and monthly publications.

I have been called by the Wall Street Journal "an aggressive young reporter always alert to offbeat angles in his stories." The American Society of Journalists and Authors refers to me as "a reliable, conscientious and experienced journalist who has written extensively on" organized crime topics.

ARBITRARY DENIAL OF FEE WAIVER REQUESTS:

In January 1983, I asked the Federal Bureau of Investigation to issue a complete waiver of what ultimately would become more than \$1,800 in fees for approximately 59 FOIA requests for FBI files on gangsters in Minnesota. Four months later, the FBI denied my fee waiver request, claiming that release of these historic documents "will not...result in primary benefit to the general public."

In response, on March 2, 1984 I filed a fee waiver appeal with the Justice Department's Office of Legal Policy to overturn the FBI's fee waiver denial.

Four years would pass until the Justice Department responded to my appeal - more than 1,300 days after the fee waiver appeal was filed.

In an effort to speed up the Justice Department's decision on my appeal, I supplied the Office of Legal Policy with letters from the nation's leading history, journalism and law enforcement experts urging a complete waiver of fees.

Among the authorities who vouched for the strong public interest in these crime files and urged the Justice Department to grant a 100 percent fee waiver: The Society of Professional Journalists, The Reporters Committee for Freedom of the Press, Chicago Crime Commission, American Society of Journalists and Authors, Minneapolis History Collection, Center for Investigative Reporters, Ramsey County Historical Society, Minnesota Attorney General Hubert H. Humphrey III, Senior Research Fellow Lucile Kane of the Minnesota Historical Society, Community Crime Prevention, Minnesota Public Interest Research Group, Minneapolis Police Chief Anthony Bouza, Minneapolis Mayor Donald Fraser, U.S. Congressmen Bruce Vento and Martin Sabo, Bloomington Citizens Crime Prevention Association, and U.S. Senator David Durenberger.

Minneapolis Police Chief Anthony Bouza wrote the Justice Department: "I

am writing to recommend cooperation with this effort undertaken by Paul Maccabee and, because of its value to the public, to urge a waiver of the fees normally associated with such requests. Fundamentally, the proposal to do a book on organized crime fills a real public need."

Minnesota Attorney General Hubert H. Humphrey III confirmed the public interest in the release of these Justice Department files, arguing that this "research project could be an invaluable tool for other researchers and historians, as well as the citizens of Minnesota who are interested in the topic."

The Executive Director of the Ramsey County Historical Society confirmed: "The book for which (Maccabee) is conducting this research will make a contribution of national importance in understanding a period that left a lasting mark on the American consciousness." Concluded the Center for Investigative Reporting: "Denying Maccabee a fee waiver in the release of these documents would seriously harm the public interest."

The subjects of this book are of intense public interest - including bankrobber John Dillinger, kidnapper Alvin "Creepy" Karpis, then-Minneapolis Mayor Hubert H. Humphrey, Kate "Ma" Barker, "Pretty Boy" Floyd, J. Edgar Hoover, and many others. The events covered in the book are also of tremendous public interest - the war by Mayor Hubert H. Humphrey against organized crime, the infamous kidnapping of Edward Hamm by Alvin "Creepy" Karpis and Ma Barker, the Teamsters Union racketeering directed by the Minnesota associates of union boss Jimmy Hoffa, and much more.

The Justice Department responded to my fee waiver appeal by requesting that I provide documentation proving the relevance of these files to the book. In 1985, I prepared 17 pages of single-spaced memoranda showing why these records were crucial to the accuracy of my history book.

I took care to ensure that this series of FOIA requests, although extensive, would not burden the Justice Department. Many of the FOIA requests pertained to a mere handful of documents. For instance, my request for files on Minneapolis gambling king Louis Hecht encompassed 20 pages and my request for files on Irish mobster Jack Keavy involved only five pages.

In January 1983, I significantly narrowed the size of my FOIA requests by thousands of pages so as to make the requests more manageable for the

Justice Department. For instance, I narrowed my request for files on organized crime associate Morris Roisner from 7,494 pages down to a total of 194 pages.

Between January and May 1983, I reduced the number of files I'd requested under the FOIA so dramatically that the fees requested by the Justice Department dropped by almost 50 percent from \$3770.60 to \$1,828.70.

I informed the Justice Department that the FBI and other agencies could further narrow my requests by deleting pages of files that consisted primarily of newspaper clippings.

Throughout 1984, the Justice Department declined to respond to my fee waiver appeal. In July 1985, the Office of Legal Policy sent me a letter which promised that any delays in processing the appeal would take only "several weeks."

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In an effort to prod the Justice Department into responding, I mailed letters to the Office of Legal Policy's Richard Huff requesting information on the delays. The Justice Department received letters from me dated March 17, May 27, July 23, August 4 and September 2, 1984; May 9, June 21, July 13, September 12, September 24, October 3, and November 17, 1985; March 25 and April 14, 1986, and January 9, 1987.

My letters went unanswered, except for receipt of a form letter which failed to address the substance of any appeal. Again, throughout 1987 the Justice Department did not respond to my fee waiver appeal.

In a March 25, 1986 letter to the Justice Department, I pleaded "again and again, I urge your office to immediately obey federal law and issue a fee waiver decision. If your office has no intention of obeying FOIA law, then please notify me of this fact so that my attorneys may proceed with action against you and your office." I did not receive a response from the Justice Department.

In my January 9, 1987 letter to the Office of Legal Policy, I again asked: "As your office's unconscionable delay stretches into its third record-breaking year, I again ask you to comply with federal law and make

an immediate determination in this case...surely, after almost three years of stone-walling, it is time to end these delaying tactics and obey the law."

Again, I did not receive a response from the Justice Department.

On May 3, 1987, I spoke by telephone with Richard Huff of the Office of Legal Policy - requesting information on how long the delays would continue. Mr. Huff promised that his staff would "immediately" call me back.

However, no one from his staff made that return call.

I turned to members of the U.S. Congress and the U.S. Senate for assistance. In July 1987, Congressman Bruce Vento wrote the Justice Department asking them to explain the delays. The Justice Department responded in writing on August 18, 1987, promising the Congressman that the fee waiver appeals would "be adjudicated by the middle of October." Yet the Justice Department did not honor that promise to Congressman Vento - throughout October and November and December, the Justice Department did not respond to my appeals.

On December 7, 1987, U.S. Senator David Durenberger wrote the Office of Legal Policy protesting the Justice Department's continuing delays. His staff then telephoned the Office directly, demanding an explanation for the delays. A week later, Congressman Vento again wrote the Office of Legal Policy asking that the delays cease and a decision on the appeal be rendered at last.

Still, the Justice Department did not respond to the appeals.

Finally on March 10, 1988, Senator Durenberger wrote Stephan Markman about the 45 months of delay, threatening to investigate the option of having the Office of the Special Counsel of the Merit Systems Protection Board pursue disciplinary action against Markman's office. In addition, Senator Durenberger threatened to require Markman to appear before the government operations and information committees of the Senate to explain his reasons for refusing to comply with FOIA law. Once again, Senator Durenberger reiterated his suggestion that the Justice Department issue a 100 percent fee waiver in this case.

On February 29, 1988, the Justice Department acted - denying a full fee waiver and authorizing only a 50 percent waiver of fees. Even while denying a full fee waiver, the Office of Legal Policy admitted that "it is evident that these records pertaining to organized crime figures and organizations in Minnesota reflect the operations or activities of the government and that you have demonstrated an intent and ability to disseminate the requested information to the general public."

As of this morning's hearing, I've agreed to pay for FBI processing of approximately 22 of the smaller FOIA requests (about 625 pages) so as to be able to begin writing my book. I do intend to file suit in U.S. District Court against the Justice Department to overturn the denial of a full fee waiver.

Unfortunately, the Justice Department's long delays and ultimate denial of this fee waiver appeal is not an isolated case.

For instance, it took more than 455 days for the Office of Legal Policy to make a determination on a fee waiver appeal with the Executive Office for U.S. Attorneys pertaining to 1,000 pages of files on deceased gangster Isadore Blumenfeld - the "Godfather of Minnesota."

The original fee waiver denial by the Executive Office for U.S. Attorneys was itself delayed for almost two years before a decision was reached (the fee waiver request was filed in July 1984 and substantially denied in February 1986, authorizing merely a 20 percent reduction in fees).

I had filed an FOIA fee waiver appeal in October 1986 with the Office of Legal Policy, asking that they overturn the Executive Office for U.S. Attorneys' denial of a fee waiver. Months passed, with no response. In June 1987, the Office of Legal Policy promised a response "in several weeks."

First weeks, then months passed, without a response from the Justice Department.

In January 1988, after a delay of more than 14 months, the Office of Legal Policy authorized a 50 percent fee reduction - even though the Office admitted that Blumenfeld's files "reflect the operations or activities of the government and that you have demonstrated an intent and ability to disseminate the requested information to the general public."

An indication of how capricious these fee waiver denials are is reflected in the fact that the original justification by the Executive Office for US Attorneys for the denial was different from the justification for the subsequent denial of a fee waiver appeal by the Office of Legal Policy. The Executive Office claimed that "due to the sensational nature of organized crime and its participants, you stand to gain personal benefit by the publishing of your book."

The Office of Legal Policy, on the other hand, justified a fee waiver denial under the claim that only "half of the releasable information would contribute significantly to public understanding" government operations and activities. I will be suing the Department of Justice in U.S. District Court to overturn its denial of a complete fee waiver.

Similarly, it took the Justice Department 880 days of delay to respond to an appeal of the FBI's denial of a fee waiver for 3,041 pages of files on deceased Minneapolis hitman Jack Apple. After the FBI denied my request for a complete waiver of fees for Apple's files (authorizing a mere 20 percent reduction), I filed an appeal with the Office of Legal Policy on June 19, 1984.

For months, the Office of Legal Policy did not render a decision on the appeal. The Office even refused to respond to letters requesting notification as to why the delays were dragging on. In July 1985, more than a year after the filing of the Jack Apple appeal, the Office warned that additional delays of "at least several weeks" could be expected.

After 29 months of delay, on November 19, 1986 the Office upheld the FBI's denial of a complete waiver of fees. The Office claimed that "much of the releasable information is only partially useful and informative." I will be suing the Office of Legal Policy in U.S. District Court to overturn this denial.

It is worth noting that these denials of fee waivers are inconsistent with the actions of several other federal agencies. The Department of the Treasury, for instance, has waived all search and copy fees "in the public interest" for hundreds of files on Minneapolis gangster Rocky Lupino. In the blunt words of the Department of the Treasury: "You qualify for a fee waiver. A fee can be waived when it is in the public interest."

My experiences have convinced me that the Justice Department's decisions

on fee waiver appeals are being made in an arbitrary manner.

DELAYS IN PROCESSING FILES:

When I've offered to pay the Justice Department fees for its files, the Department has delayed processing of FOIA requests for months, even for years, beyond the deadlines established under the Freedom of Information Act.

For instance, in August 1981, I initiated an FOIA request for all FBI files pertaining to the late organized crime "Godfather of Minnesota," Isadore Blumenfeld. Eleven months passed, until on July 1982, I received a telephone call from the FBI claiming that processing of the files was nearly complete.

In November 1982, the FBI apologized for its delays and promised that processing of Blumenfeld's files was nearing completion with "release of the material to you...anticipated in the near future." Again, months passed. In April 1983, I wrote to the FBI asking for an estimated completion date for this processing.

Finally, in October and December 1984 - almost three full years after I'd filed the initial FOIA request - the FBI released more than 1,400 heavily-censored pages of files on Blumenfeld.

Similarly, it took the FBI 18 months to process 83 pages of files on slain Minneapolis journalist Arthur Kasherman - a year and a half between the day I notified the FBI of my willingness to pay fees for Kasherman's files and the day they actually mailed this handful of documents.

It's been my experience that processing of files by the FBI is very slow even when the number of pages to be processed is relatively small. For example, I agreed in July 1986 to pay fees so that the FBI would process 63 pages of files on the Irish syndicate figure Tommy Banks. Almost two years later, in May 1988, the FBI released the files on Banks to me - rendered virtually unreadable by wholesale deletions. The Bureau had taken 682 days to process 63 pages of FBI files - an average of more than 10 days of delay for every single page released.

The FBI is not the only Justice Department agency which responds slowly in processing FOIA files. In July 1982, I filed an FOIA request for Criminal

Division files on gangster Isadore Blumenfeld. By February 1983, the Criminal Division had identified 14 files under Blumenfeld's name but said that "a heavy work load would delay processing" of my request. The Division promised that the Blumenfeld files would be processed "as rapidly as possible."

More than two years of delay followed until in January 1985, the Criminal Division finally released its pages on Blumenfeld.

These delays of two to four years in processing files under the Freedom of Information Act handcuff journalists who need to use the FOIA for newspaper stories that cannot wait 48 months for completion. As a result of these delays, publication of my book has been delayed by several years - and the public has been prevented from reading about a subject of great interest to them.

I believe that such processing delays by the Justice Department are not necessary. For example, on April 14, 1986, I requested a fee waiver and release of 300 pages of Bureau of Alcohol, Tobacco and Firearms files on bankrobber Salvatore Lupino. Just one week later, on April 23, 1986, the Treasury Department released the files on Lupino at no charge and with virtually no deletions.

ARBITRARY AND CAPRICIOUS DELETIONS:

In February 1987, I received 1,651 pages of FBI files on the Bureau's "Top Hoodlum Program" of surveillance of major organized crime figures.

The FBI withheld 1,300 pages of Minneapolis Top Hoodlum Files in their entirety - historic files pertaining to long-dead gangsters. The majority of the 1,651 pages of Top Hoodlum files released to me were heavily-censored. Most often, only the file numbers and administrative markings remained - with 80 to 90 percent of the material on gangsters deleted.

Much of the deleted Top Hoodlum material appears to discuss links between law enforcement officers or public officials and organized crime figures - a subject of overwhelming public interest. For instance, the FBI deleted every word of a 1962 memo in the Top Hoodlum files outlining "Political Tie-Ups With Organized Crime."

Similarly, in May 1988 the FBI released 50 pages of Bureau files on deceased bootlegger Leon Gleckman after delays totalling 22 months. Most of the Gleckman files were rendered unreadable due to wholesale deletions.

Again, the FBI invoked the FOIA's privacy exemption to withhold information in Gleckman's file linking corrupt law enforcement officials with gangsters. For example, when processing the Gleckman files, the FBI deleted the names of police officers who acted on behalf of organized crime as "moles" within the St. Paul Police force. The Bureau also deleted the names of public officials tied to the Barker/Karpis gang, the names of politicians known "to be on the take" with the mob, the names of police who "tipped off" gangsters to impending raids, information on the purchase through bribery of "two City Councilmen" and the identity of a U.S. Attorney with close links to mob figures. The result, of course, is that the readers of my book will be denied access to this important information on the relationship between public officials and organized crime.

Finally, when the FBI released in 1984 about 62 pages of files on deceased Irish syndicate leader Edward Morgan, it rendered the file almost unreadable by wholesale deletions. Again, the deletions appeared to revolve around the activities of public officials with links to organized crime.

In my 1986 appeal of the FBI's Ed Morgan file deletions, I noted that the FBI had deleted from the files details of corrupt activities by Minneapolis police controlled by Morgan. In addition, the FBI had deleted most of a 1934 memo discussing contacts between gangsters and police departments, details of payoffs to police officers made by Morgan's syndicate, the names of 16 public officials who actually received payoffs from organized crime, the names of public officials who "furnished protection to Ed Morgan," and the details of corrupt deals between Morgan and the Minneapolis County Attorney.

The FBI claimed the "privacy" exemption to justify withholding information on public officials from the citizens whom they served. When the FBI reprocessed its files on Morgan, it was revealed that originally the FBI had deleted such confidential information as the names of the Mayors of Minneapolis and St. Paul.

In May 1987, the Office of Legal Policy denied my FOIA appeal of the FBI's

deletions of this material. I intend to sue the Justice Department in U.S. District Court to compel release of this material to the public.

Again, when the FBI processed files on Minneapolis journalist Arthur Kasherman, it deleted 90 percent of the material from a 1944 memo headlined "Political Tie-Ups With Organized Crime" and virtually every single word of the section headed "Police Tie-Ups with Organized Crime."

From my experience, it appears that the Justice Department has used FOIA exemptions to justify withholding evidence of corruption from the public. I appealed the FBI's deletions from Morgan's file in May 1988. My appeal mentioned the fact that the public's interest in understanding the ties between elected officials and gangsters vastly outweighed the deceased public official's alleged privacy interests in hiding his corruption from the public.

Minnesota's most notorious gangster was the late Isadore Blumenfeld, a man referred to as "The Godfather of Minnesota." Under the FOIA, the FBI released to me in 1984 some 1,477 pages of files on Blumenfeld - most rendered worthless for historic scholarship due to massive deletions. Another 640 pages of material was withheld in its entirety.

Given the tremendous public interest in Blumenfeld and the fact that virtually all of his criminal associates are long-dead, the extent of the Justice Department's withholding surprised me. Moreover, the FBI's deletions of Blumenfeld's files was inconsistent with the full disclosure of Blumenfeld's files by other federal agencies. For example, the Immigration and Naturalization Service quickly released 250 pages of investigative files on Blumenfeld - with almost no deletions whatever.

Similarly, the U.S. Department of Labor quickly released its file on Blumenfeld - again, with almost no deletions. And the U.S. Bureau of Prisons released its entire prison and medical file on Blumenfeld with barely a single deletion.

In contrast to that cooperation with reporters, the FBI deleted material from their file on Blumenfeld pertaining to corrupt behavior committed by federal law enforcement personnel - material that referred to "irregularities on the part of Internal Revenue Service personnel." In August 1987, the Office of Legal Policy denied my appeal of these deletions and upheld the FBI's withholding. I intend to sue the Justice

Department in U.S. District Court to overturn its denial of my appeal.

Finally, the Justice Department also inflicted significant deletions to the FBI files it processed for me on the late Arthur Stillman of Minneapolis - a public official who was allegedly a suspect in the most famous kidnapping in Midwest history, the Virginia Piper kidnapping case.

In September 1982, I initiated an FOIA request for FBI files on Stillman. Two months later, the FBI announced that it would withhold 128 pages of Stillman's files in their entirety - pages with material of tremendous historic importance and public interest. The 64 remaining pages from Stillman's file that were released were severely edited. (I appealed the FBI's deletions and, in July 1983, the Office of Legal Policy denied my appeal.)

Among the material deleted by the FBI was an allegation that Stillman may have been deeply involved in criminal activity. For example, the FBI appears to have deleted information that suggests that Stillman, a member of the Minnesota Parole Board, may have used his position as an official to violate the public trust by obtaining early release for selected murderers. The FBI also deleted material that suggests that Stillman may have actually received ransom money from the Piper Kidnapping which was "used by Stillman to purchase narcotics." Furthermore, the FBI deleted information that suggested that this former Minnesota Parole Board official may have intended to have an associate murdered before he could tell the police about Stillman's involvement in the Piper kidnapping.

This is precisely the kind of historic information on public figures that gives citizens a better understanding of how organized crime affects their local government. I believe that in resisting the release of these files to the public, the Justice Department is denying citizens the right to become informed about the history and workings of their government.

CONCLUSION:

After seven years as a requestor under the Freedom of Information Act, my experience has suggested that the Justice Department is not complying adequately with the law. Its compliance with fee waiver provisions has been slow and inconsistent. Its processing of files requested under the FOIA has been subject to delays of up to two or three years and has been subject to excessive deletions. Its responsiveness not only to my

requests, but to legislators requesting information on the status of my requests or appeals, has been spotty at best.

The Justice Department has used the Freedom of Information Act as a shield to hide public corruption rather than as the tool for public disclosure for which it was enacted.

The end result is that my readers - the ultimate beneficiaries of this book on organized crime - have been denied the opportunity to learn about this portion of their own history in a timely manner.

Thank you, Mr. Chairman, for this opportunity to testify. I will, of course, respond to questions.