OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-3972) DATE: 4/17/70

FROM : SAC, BUFFALO (92-174)

SUBJECT: FRED G. RANDACCIO
ET AL
AR-HOBBS ACT
(OO: BUFFALO)

Remylet, 12/8/69.

Enclosed are two copies of a Decision and Order, dated 4/10/70, by U.S. District Judge, JOHN O. HENDERSON, Buffalo, New York, denying motions for a new trial on behalf of RANDACCIO and PASQUALE A. NATARELLI.

ENCLOSURE ATTACHED

ENCLOSURE

3 - Bureau
(1-92 PASQUALE A. NATARELLI)
2 - Buffalo
(1-92-296 NATARELLI)

GRM;pmg
(5)

b6
b7C

REC-89 EX-117

92-3972-427

APR 22 1970

[redacted]

70 MAY 12 1970
5010-108-02
Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

ENCLOSURE TO BUREAU

FRED G. RANDACCIO
ET AL
AR-HOBBS ACT
(OO: BUFFALO)
Buffalo 92-174
Bufile 92-3972

Two copies of a Decision and Order.

Letter 4/17/70.

COPIES DESTROYED
28 JUN 1 1972

92-3972-427

ENCLOSURE

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

CR. 1967-115

FREDERICO G. RANDACCIO and
PASQUALE A. NATARELLI

DECISION
and
ORDER

HENDERSON, DISTRICT JUDGE

92 - F. Randaccio

SEARCHED.....INDEXED.....
SERIALIZED.....FILED.....
APR 13 1970
FBI—BUFFALO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs- CR. 1967-115

FREDERICO G. RANDACCIO and
PASQUALE A. NATARELLI

H. Kenneth Schroeder, Jr., Esq., United States Attorney (Donald E. Campbell, Attorney, Department of Justice, Washington, D. C., of Counsel), for the United States.

Lipsitz, Green, Fahringer, Roll, Schuller & James, Buffalo, New York. Frank G. Raichle, Jr., Esq., of Counsel. Attorneys for Defendant Randaccio.

Salten Rodenberg, Esq., Buffalo, New York, Attorney for defendant Natarelli.

The defendants were convicted on December 11, 1967, of conspiring to commit robbery which would affect commerce and conspiring to transport stolen goods in interstate commerce. The convictions were affirmed by the Second Circuit Court of Appeals on July 30, 1968, United States v. Choi, et al., 401 F.2d 664. Thereafter,

an appeal was taken to the United States Supreme Court, and these cases were remanded in Giordano v. United States, 394 U. S. 310 (1969) for a hearing concerning the question of taint under Alderman v. United States; Ivanov v. United States and Butenko v. United States, 394 U. S. 165 (1969), since certain conversations were obtained illegally by the government by electronic surveillance on premises in which defendant Randaccio had a legal interest.[1] A hearing was held on the question of taint, and the defendant Randaccio has now filed a motion for a new trial on the grounds of newly discovered evidence, in the interest of justice, and for the failure to turn over the logs reflecting the electronic surveillance prior to the trial of the case. Defendant Natarelli joins in seeking the relief requested by Randaccio based on the evidence produced at that hearing.

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1. Pursuant to an order of this court, the government turned over to counsel for the defendants copies of all logs of their conversations or conversations which occurred on premises in which a defendant had a legal interest.

The trial commenced on October 26, 1967. Ten days prior thereto, counsel for the defendant Randaccio received copies of logs which had been prepared while monitoring an apartment occupied by a female friend of Randaccio located at 51 Essex Street in the City of Buffalo during February 1965 (the period covered by the indictment). Included in these documents was a surveillance log which showed that the defendant Randaccio had been overheard at that address on February 5, 1965, at 7:50 p.m.

During the trial, proof showed that in furtherance of the conspiracy charged against the defendants a meeting was held at 60 Manchester Place on February 5, 1965, at the home of co-defendant Natarelli. According to the testimony of the government informant, Pascal Calabrese, the meeting was attended by co-defendants Cino and Natarelli, and about 8:30 p.m. defendant Randaccio arrived. This alleged meeting took place the same day as that on which the surveillance logs of the government indicated that Randaccio was overheard at 7:50 p.m. at the Essex address which is approximately one mile from the

Manchester address in the City of Buffalo. The surveillance logs which had been turned over to the defendant prior to trial indicated that, whenever those monitoring 51 Essex Street believed that defendant Randaccio was on the premises, the monitor would indicate that fact in the logs. A deposition of the federal employees, who had conducted the monitoring of February, indicated that it was also the practice to note on the logs whenever those overhearing activity at that address believed that he had left. On the critical date, February 5, the logs indicated that after Randaccio was overheard on the premises at 7:50 p.m., the TV was turned up loud and continuous loud TV was heard until late in the evening. The depositions of the employees who conducted the monitoring, taken on November 9, 1967 while the trial was in progress, established that they had not heard Randaccio leave on that date before midnight, and the log entries do not show that he left. Their testimony established that these men were well practiced and had considerable experience in monitoring that address. The federal

employees were at all times available to the defendant as witnesses on trial, but instead of calling them, defendant Randaccio entered into a stipulation which was read to the jury.[2] The defendant may have done this to avoid having the jury discover the fact that the government was conducting a surveillance upon him, or because the stipulation made it unnecessary that the jury learn that Randaccio was visiting the apartment. Indeed, it may have been because counsel for the defendant felt that the presentation by live witnesses would have been neutralized on cross-examination when it would

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2. The stipulation reads as follows: "The Government and the defendant Frederico G. Randaccio stipulate that on February 5, 1965, a witness, who is not being called to testify, was in a position to overhear but not see certain activities in an apartment in the City of Buffalo. That apartment, occupied by a person who is not a defendant in this case, is located approximately nine tenths of a mile from 60 Manchester Place. At 7:50 p.m. on that evening, Frederico Randaccio was heard arriving at the apartment and talking to the occupant of that apartment. The TV, which had been turned on, was then turned up louder. Continuous loud TV ensued for the balance of the evening, during which no other sound, movement or conversation was heard indicating whether Frederico Randaccio remained on or left the premises."

have been revealed that those monitoring the premises could not be sure one way or another whether Randaccio was in fact there after 7:50 p.m. on February 5. For whatever reasons, the stipulation entered into by counsel and read to the jury focused their attention upon the question of whether or not Randaccio had in fact attended the meeting at 60 Manchester Place on that evening.

The court, after hearing the evidence at the hearing, reviewing the trial transcript and the transcripts of depositions of witnesses taken on November 9, 1967, and after reviewing the logs turned over to the defendants on the remand, makes the following findings of fact and conclusions of law:

1. The evidence contained in the logs, resulting from the surveillance of Frederico G. Randaccio and Pasquale A. Natarelli via electronic eavesdropping, was illegally obtained.

2. Considering the logs of the surveillance, which were taken at times other than during the month of February 1965, the evidence produced establishes

that neither those logs nor the information contained therein were ever used or known to those responsible for the prosecution of these cases.

3. The defendants have not come forward with any specific evidence demonstrating taint, Alderson v. United States; Ivanov v. United States; Butenko v. United States, supra, and the proof establishes that the evidence used at the trial came entirely and completely from an independent source, to wit, the testimony of [redacted] the government informant, and evidence discovered from information supplied by him. Wong Sun v. United States, 371 U. S. 471, 488 (1963); Nardone v. United States, 308 U. S. 338, 341 (1939). Therefore, the evidence discloses no taint and the court so finds.

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4. The logs of the illegal electronic surveillance were records kept in the regular course of business by the FBI and as such could not be excluded from evidence on the grounds of hearsay. Their relevancy and materiality to the factual issues, however, are open

to question.

5. Randaccio claims that the logs of the surveillance conducted at times other than during February 1965 at the Essex Street address constitute newly discovered evidence of a custom or habit which sufficiently contradicts the testimony of Pascal Calabrese so as to entitle him to a new trial. The pattern establishing this custom is not overwhelming and assuming arguendo that this evidence of Randaccio's own conduct is "newly discovered," the court is of the opinion that it would not produce an acquittal on re-trial. The hours and duration of customary social visits may be altered where necessary to accommodate criminal planning. These thin claims of custom must be weighed against the lengthy and most credible testimony of Pascal Calabrese during both direct and cross-examination on trial. The argument that Randaccio was elsewhere than as claimed by Calabrese because it was his habit to be elsewhere is rather strained.

6. The logs of the activities of the month of February 1965, particularly February 5 and 6, are

evidence which has not been discovered since the trial and is therefore not newly discovered evidence as recognized in law. United States v. Pelosi, 416 F.2d 573, 576-7 (2d Cir. 1969). The material in the logs taken at times other than February 1965, which was not turned over to the defendant Randaccio prior to trial, is merely cumulative in showing a pattern of conduct of which the defendant was already aware from the material turned over to him concerning February 1965. Moreover, the logs not turned over prior to trial do not contain material information or information that would probably produce a different result.

7. The stipulation entered into by counsel for defendant Randaccio was entered after a tactical decision not to call the witnesses available to him and was a decision that the stipulation would present the facts thought to be exculpatory in a light most favorable to him. Presenting these facts via stipulation enabled the defendant to bring the issue to the jury without disclosing the fact of the eavesdropping or other facts

surrounding the apartment located at 51 Essex Street in the City of Buffalo (Trial Tr. pp. 1911 through 1934). An examination of the trial record indicates that defendant's counsel was at all times aware of the alternatives open to him in presenting evidence which was arguably exculpatory.[3] The fact that the method of presenting these facts, which was selected by counsel, proved unsuccessful, does not require a new trial to allow him to present his case differently.

In the discretion of the court the motions for a new trial are in all respects denied.

It is so ordered.

/s/ John O. Henderson
JOHN O. HENDERSON
United States District Judge

DATED: April 10th 1970.

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3. At least in part, the transcript references to the logs and the issues arising therefrom are on the following pages: 340-342, 348, 988-1003, 1130-1216, 1443-1455, 1567-1573, 1580, 1605-1644, 1692, 1911-1934, 1942-1943, 1951, 1997.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-3972) DATE: 8/21/70

FROM : SAC, BUFFALO (92-174) (P*)

SUBJECT: FRED G. RANDACCIO;
ET AL
AR - HOBBS ACT
(OO BUFFALO)

CR

Remylet, 4/17/70.

Relet furnished the Bureau two copies of a decision and order, dated 4/10/70, by USDC Judge JOHN O. HENDERSON, WDNY, Buffalo, NY, denying a motion for a new trial on behalf of subject and PASQUALE A. NATARELLI.

On 8/21/70, USA H. KENNETH SCHROEDER, JR., Buffalo, advised that RANDACCIO's attorneys contemplated appealing to the Court of Appeals and that briefs in connection with this appeal were due during 9/70. He stated no indication has been received by his office from NATARELLI's attorneys regarding any appeal.

A

3 - Bureau
(1 - 92- , PASQUALE A. NATARELLI)
2 - Buffalo
(1 - 92-296, PASQUALE A. NATARELLI)

GRM: bmp
(5)

~~REC-3~~ 92-3972-428

EX-105 REC-3

4 AUG 24 1970

UNRECORDED COPY FILED IN 92-9993

56 AUG 31 1970

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-01

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-3972) DATE: 1/25/71

FROM : SAC, BUFFALO (92-174)(P*)

SUBJECT: FRED G. RANDACCIO;
ET AL
AR - HOBBS ACT
(OO: BUFFALO)

Remylet, 8/21/70.

On 1/25/71, USA H. KENNETH SCHROEDER, Buffalo, N.Y., advised RANDACCIO's appeal was argued on 1/20/71, before the Second Circuit Court of Appeals and no decision has been rendered to date.

SCHROEDER stated that PASQUALE A. NATARELLI did not make any appeal to the Second Circuit Court of Appeals.

3 - Bureau
(1 - 92- PASQUALE A. NATARELLI)
2 - Buffalo
(1 - 92-296, PASQUALE A. NATARELLI)

GRM;dbl
(5)

REC-56 92-3972-429

17 JAN 27 1971

UNRECORDED COPY FILED IN

F144

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan
5010-108 02

SAC, Buffalo (92-174) April 21, 1971

Director, FBI (92-3972)

FRED G. RANDACCIO
ET AL
AR-HOBBS ACT

Reurlet 1/25/71.

Advise the Bureau as to the status of Randaccio's appeal.

REC-71 92-3972-430

MAILED 22
APR 21 1971
FBI

APR 22 1971

Tolson
Sullivan
Mohr
Bishop
Brennan C D
Callahan
Casper
Conrad
Dalbey
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

CLG:mjf
(4)

62 APR 29 1971

MAIL ROOM ☑ TELETYPE UNIT ☐

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-3972)

DATE: 6/4/71

FROM : SAC, BUFFALO (92-174)(P*)

SUBJECT: FRED G. ORANDACCIO;
ET AL
AR - HOBBS ACT

ReBulet, 4/21/71.

On 6/4/71, USA H. KENNETH SCHROEDER, JR., Buffalo, N.Y., advised that the 2nd Circuit Court of Appeals, had denied a motion for a new trial based upon newly discovered evidence as a result of electronic hearing. He stated this was the last recourse available to the defense.

2 - Bureau
1 - Buffalo

GRM:dbl
(3)

REC 16 92-3972-431

17 JUN 8 1971

6 JUN 16 1971

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-02

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO: DIRECTOR, FBI (93-3972) DATE: 7/29/71

FROM: SAC, BUFFALO (92-174) (P*)

SUBJECT: FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO BUFFALO)

Remylet, 6/4/71.

On 7/22/71, USA H. KENNETH SCHROEDER, JR., WDNY, Buffalo, advised that on 7/2/71, USDJ JOHN O. HENDERSON, Buffalo, denied a motion in behalf of subject for reduction of sentence and early probation under Title 18, Section 4208(a)(2), USC.

2 - Bureau
1 - Buffalo
GRM:bmb
(3)

EX-109

REC-11 92-3972-432

22 AUG 2 1971

60 AUG 11 1971

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-02

AIRTEL

8/9/71

1 - Mr. Adams
1 - Mr. Gale
(C. L. Green - 1537)

TO: SAC, Buffalo (92-174)

FROM: Director, FBI (92-3972) - 433

EX-104 REC-64

FRED G. RANDACCIO, AKA.;
ET AL.
AR - HOBBS ACT
OO: BU

CR

Reurairtel 8/4/71.

Suairtel immediately enclosing LHM which contains pertinent information in reairtel, particularly second, fourth and fifth paragraphs (information in second paragraph should be accurate as to basis for trial, which was not ITAR). LHM should have as enclosures, copies of summons and copy of letter from Buffalo to the law firm of Martoche and Collesano suitable for dissemination. Also, LHM should contain paragraph stating it is understood by the FBI that appropriate action in U. S. District Court, Western District of New York, will be taken by the Organized Crime and Racketeering Section, Criminal Division of the Department of Justice to respond to the summons in order to assure this Bureau will not be involved in the matter.

Expedite.

JRA:bls
(5)

MAILED 9
AUG - 9 1971
FBI

Tolson
Felt
Sullivan
Mohr
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Brennan C D
Callahan
Casper
Conrad
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Walters
Sovars
Tele Room
Holmes
Gandy

MAIL ROOM TELETYPE UNIT

5 AUG 16 1971

FD-36 (Rev. 5-22-64)

FBI

Date: 8/4/71

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO BUFFALO)

CR

Enclosed for the Bureau is one Xerox copy of a summons, which is self-explanatory.

On 7/29/71, a summons (Xerox enclosed) was served on the Buffalo Office, as well as on the local Strike Force, by the Law Firm of Martoche & Collesano, 74 Niagara Street, Buffalo, New York. This summons in effect requests information as to the present whereabouts of PASQUALE CALABRESE who was the key witness in the ITAR trial involving subject et al.

For the information of the Bureau, this trial was handled by the Strike Force and the Department of Justice made all arrangements as to the handling of the witness and as far as we are aware, the Department has provided him with a cover identity and location.

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b7C

The matter was discussed with both USA H. KENNETH SCHROEDER, JR., WDNY, Buffalo, and the Departmental Attorney in charge of the local Strike Force, [redacted] both

EX-104 REC-64 92-3972-483

Airtel Buffalo 8-9-71 JRA:blo

2 - Bureau (Enc 1) (AM)
1 - Buffalo
DEH:bmb
(3)

ENCLOSURE

ENCLOSURE ATTACHED

AUG 12 1971

Approved: KLB/Dey Sent _____ M Per _____
Special Agent in Charge

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971—413—135

of whom adivsed this matter was being handled by THOMAS A. KENNELLY, Deputy Chief, Organized Crime and Racketeering Section, Criminal Division, Department of Justice.

Inasmuch as the Bureau was not involved with any dealings with CALABRESE and since we are not aware of his present location, a letter was directed to the law firm advising them of this fact.

For information.

ENCLOSURE TO BUREAU FROM BUFFALO (1)

RE: FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO BUFFALO)

Summons served in Buffalo Office
from Law Firm of Martoche & Collesano

Buffalo 92-174
Bureau 92-3972

By airtel 8/4/71

204 Ku

ENCLOSURE

92-3972-433

STATE OF NEW YORK
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

THOMAS S. LEONHARD

PLAINTIFF

VS.

THOMAS A. KENNELLY, INDIVIDUALLY AND AS THE DEPUTY CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

AND

THE FEDERAL BUREAU OF INVESTIGATION

AND

BUFFALO FIELD OFFICE ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

AND

UNITED STATES DEPARTMENT OF JUSTICE

DEFENDANTS

CIVIL ACTION NO. CIV-1971-359

COMPLAINT FOR MANDAMUS, DECLARATORY JUDGMENT AND INJUNCTION

PLAINTIFF, THOMAS S. LEONHARD, for his Complaint against the DEFENDANTS, THOMAS A. KENNELLY, INDIVIDUALLY AND AS THE DEPUTY CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE; AND THE FEDERAL BUREAU OF INVESTIGATION; AND BUFFALO FIELD OFFICE ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE AND UNITED STATES DEPARTMENT OF JUSTICE alleges:

INTRODUCTION:

FIRST: This is an action at law to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a right, privilege and immunity secured to Plaintiff by Article IV of the United States Constitution and the First, Fifth and Fourteenth amendments to the Constitution. (R.S. 1979, 42 U.S.C. §1983) and arising under the law and

Statutes of the State of New York.

SECOND: The jurisdiction of this Court is invoked under title 28 U.S.C. §§ 1361, 1738, 2201 and under the Federal Rules of Criminal Procedure 57 and 81 (b), this being an action authorized by law to redress the deprivation under color of law, statute, ordinance, regulation, custom and usage of a right, privilege and immunity secured to Plaintiff by Article IV Section of the United States Constitution and the First, Fifth and Fourteenth Amendments to the Constitution.

J U R I S D I C T I O N :

THIRD: At all times hereinafter mentioned in this Complaint, Plaintiff is the natural father of three children, [redacted] b6 b7C LEON [redacted] STEPHAN [redacted] Upon information and belief, Defendants herein aided, arranged and were principally instrumental in the secretion of Plaintiff's said children in a place unknown to him.

FOURTH: Upon information and belief, the Defendants, herein, know the location of Plaintiff's children and have refused to voluntarily divulge this information to Plaintiff thus frustrating the enforcement of said Order of Custody granted by the Supreme Court of the State of New York.

FIFTH: The Defendants, as officers or employees of The United States, owe the Plaintiff a duty to inform him of the present location of his children. Plaintiff has legal custody of his three children. Plaintiff has legal custody under an Order by the Special Term of the Supreme Court, the Hon. Roger T. Cook, presiding issued the 18th day of June, 1971.

F A C T U A L A L L E G A T I O N S

b6 b7C

SIXTH: Plaintiff, [redacted] is a resident of the City of [redacted] County of Erie and State of New York.

Plaintiff is 31 years of age and the father of three children, MICHAEL LEONHARD, KAREN LEONHARD and STEPHAN LEONHARD, said children being the issue of Plaintiff's marriage to ROCHELLE CALABRESE, A/K/A ROCHELLE LEONHARD.

SEVENTH: That on or about the 1st day of December, 1965, Rochelle Calabrese, a/k/a Rochelle Leonhard, then wife of Plaintiff instituted an Action in the Supreme Court of the State of New York in the County of Erie for the prupose of obtaining a judgment of Absolute Divorce. That said divorce was granted on the 27th day of December, 1966, by the Hon. Carlton A. Fisher, Justice.

EIGHTH; That incorporated within said Order of Divorce, were the provisions giving custody of MICHAEL LEONHARD, KAREN LEONHARD and STEPHAN LEONHARD to ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD, and granting visitation rights to Defendant.

NINTH: That upon information and belief, on or before approximately August of 1967, ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD, married PASCAL CALABRESE and is presently the wife of said PASCAL CALABRESE.

TENTH: Upon information and belief, PASCAL CALABRESE, presently the husband of ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD, is reputed to have been a member of organized crime. PASCAL CALABRESE, as an admitted member of organized crime, had offered his testimony and cooperation to Federal Authorities in the prosecution of FREDERICO RANDACCIO, CHARLES CACI, STEPHAN A. CINO, PASQUALE A. NATARELLI and LOUIS SORGI, (U.S. v. Randaccio, et al, Cr.-1967-115, U.S. District Court, W.D.N.Y.), and at that time PASCAL CALABRESE provided essential information ultimately leading to the convictions.

ELEVENTH: That upon information and belief, Defendants, herein, caused PASCAL CALABRESE, ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD, and the Plaintiff's children, MICHAEL

LEONHARD, KAREN LEONHARD and STEPHAN LEONHARD to become secreted in a location unknown to Plaintiff.

TWELFTH: That the Defendant's herein mentioned are jointly and severly responsible for this deprivation of custody and separation of Plaintiff and his children. That Plaintiff was deprived of his children in violation of a Court Order initially entitling Plaintiff to visitation rights and now entitling him to custody and control of said children.

THIRTEENTH: That attorney, THOMAS A. KENNELLY, a member of the U.S. Department of Justice has in the past acted as an intermediary for the exchange of letters between Plaintiff and Plaintiff's former wife, ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD; and that THOMAS A. KENNELLY, does know the present residence of Plaintiff's children who reside with ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD.

FOURTEENTH: That Plaintiff has not been allowed to see his children, despite repeated entreaties to his former wife, to governmental agencies, and to the Defendants generally.

FIFTEENTH: On the 16th day of June, 1971, Plaintiff caused an action to be filed in the Special Term of Supreme Court of the County of Erie and the State of New York seeking to have custody of his children divested from his former wife, ROCHELLE CALABRESE, a/k/a ROCHELLE LEONHARD, and having custody of the children placed exclusively in his hands.

SIXTEENTH: After service of an Order to Show Cause upon the proper parties and after a hearing pursuant to the Law of the State of New York, the Supreme Court found that custody of the children should be exclusively placed in the Plaintiff. That the Supreme Court issued an Order granting full custody of the said children to Plaintiff (Supreme Court of Erie County, State of New York, Docket No. C94314-1971) A certified copy (pursuant to 28 U.S.C. § 1738) of this Order is appended herein.

CLAIM FOR RELIEF

SEVENTEENTH: Since Defendants, herein, are now frustrating the rights of Plaintiff as declared by the Courts of the State of New York and because Defendants caused the secretion of Plaintiff's children and have consistently refused to divulge the location of Plaintiff's children and because Plaintiff is entitled to the enforcement of the Order of the Courts of New York State entitling him to the custody of his children, this U.S. District Court should compel the disclosure of the location of Plaintiff's children.

EIGHTEENTH: That upon information and belief Plaintiff's children are in an environment dangerous to their health and welfare and they are purposely being taughtto forget their natural father.

NINETEENTH: That because the children are of tender years and because they have been kept from Plaintiff for approximately four years with Defendants aid, it is paramount that relief be granted so no further action can be taken to again remove the children from a reunion with Plaintiff as legal custodian.

TWENTIETH: Plaintiff contends that he has no other remedy at law. That without the knowledge of the location of his children, no legal action on his judgment is possible. That without relief justice will be frustrated.

FACTUAL ALLEGATION -- DENIAL OF FREEDOM OF ASSOCIATION

TWENTY-FIRST: The acts of Defendants alleged in the preceeding paragraphs are a grevious deprivation of Plaintiff's legal rights to freedom of familial association with his children. Defendants' actions were perpetrated in their capacity as officials and employees of government and, therefore, under color of law, in violation of the Constitution of the United States, the First Amendment, the Fifth Amendment and the

Fourteenth Amendment, and title 42 U.S.C. §1983.

FACTUAL ALLEGATION -- ENFORCEMENT OF THE JUDGMENT OF THE STATE OF NEW YORK

TWENTY-SECOND: On the basis of the Order of the Supreme Court of the State of New York (Attached: Appendix "A") Plaintiff is entitled to enforcement of this judgment against Defendants as a measure of full faith and credit under Article IV Section 1 of the Constitution of the United States, and 28 U.S.C. §1738.

FACTUAL ALLEGATION -- DUTY OWED TO PLAINTIFF BY A GOVERNMENT OFFICIAL

TWENTY-THIRD: The preceeding factual allegations demonstrate that Defendants owe a duty to Plaintiff to divulge the whereabouts of his children and to aid Plaintiff in enforcing the judgment of the State of New York and on the basis of the allegations present, this Court may order compliance by title 28 U.S.C. §1361 for the deprivation of the Civil Rights of Plaintiff and for the enforcement of the judgment of New York State in favor of Plaintiff.

WHEREFORE, PLAINTIFF PRAYS FOR JUDGMENT:

A. Ordering that Defendants be restrained from further interference with the Plaintiff's family, specifically any attempts to prevent the uniting of Plaintiff with his children, by aiding in any way the secretion of these children or any and all further efforts to frustrate the uniting of Plaintiff and his children.

B. Ordering, Defendants to divulge the whereabouts of Plaintiff's children so that Plaintiff's rights as determined by the Law and Courts of the State of New York may be realized.

This duty is owed to Plaintiff by Defendants.

C. ORDERING: Defendants, herein, to cease any and all interference with Plaintiff's family by hindering the return of Plaintiff's children to him pursuant to the Order and Determination of the Supreme Court of the State of New York.

D. Any and all such further relief as this Court should find necessary and appropriate to enforce Plaintiff's rights as set forth in this Complaint.

MARTOCHE & COLLESANO
Attorneys for Plaintiff
Office and Post Office Address
74 Niagara Street
Buffalo, New York 14202

Tel. No. 855-0717

At a SPECIAL TERM of the SUPREME COURT held in and for the COUNTY OF ERIE at the ERIE COUNTY HALL, in the CITY OF BUFFALO, NEW YORK on the 16th day of June, 1971.

PRESENT: The Honorable Roger T. Cook, Judge.

ROCHELLE CALABRESE a/k/a/ ROCHELLE LEONHARD, RESPONDENT-Plaintiff; vs. THOMAS S. LEONHARD, PETITIONER-defendant	DOCKET NO. _____ Order Modifying Order Made by Another Court

The above-named PETITIONER - DEFENDANT having filed an ORDER TO SHOW CAUSE in this COURT seeking to modify an ORDER OF DIVORCE, dated the 27th day of September, 1966, which ORDER awarded custody and control of the children of the marriage, MICHAEL LEONHARD, KAREN LEONHARD, and STEPHAN LEONHARD, to the RESPONDENT-PLAINTIFF, ROCHELLE CALABRESE, a/k/a/ ROCHELLE LEONHARD, on the grounds that said children were in jeopardy and said ORDER TO SHOW CAUSE having regularly come on to be heard before the Honorable ROGER T. COOK, at the Erie County Courthouse on the 16th day of June, 1971, and the PETITIONER-DEFENDANT having duly appeared by MARTOCHE & COLLESANO, SALVATORE R. MARTOCHE, of counsel, his attorneys, and the RESPONDENT - PLAINTIFF having failed to appear thereto, and due deliberation having been had therein.

NOW, on motion of SALVATORE R. MARTOCHE, attorney for the PETITIONER-DEFENDANT herein, it is

Sworn to before me this, ...
day of .....19.....

ORDERED, ADJUDGED AND DECREED that the PLAINTIFF-RESPONDENT is relieved of custody and control of the children herein mentioned and that custody and control is hereby awarded to PETITIONER-DEFENDANT, THOMAS S. LEONHARD.

Enter

/s/ ROGER T. COOK, J.S.C.

ROGER T. COOK,
Justice of the Supreme Court

GRANTED
JUN 18 1971
EXPOSURE CLERK

MADELYN WIPPERMAN

STATE OF NEW YORK, COUNTY OF ERIE, ss:
I, ROBERT W. GRIMM, Clerk of said County, and also Clerk of Supreme and County Courts of said County, do hereby certify that I have compared the annexed copy with the original,

ORDER

filed in my office, and that the same is a correct transcript therefrom and of the whole of said original.
WITNESS my hand and seal of said County and Courts on ..... day of JUN 30 1971 19 .....

/s/ Robert W. Grimm
COUNTY CLERK

Sworn to before me this, ... day of ..... 19 .....

Sir: : Take notice of an.....

.....

of which the within is a copy, duly

entered in the within entitled action,

on the.....day of

.....19....., and duly

entered in the office of the Clerk of the

County of.....on the

.....day of.....19.....

Dated.....N. Y.

.....19.....

MARTOCHE & COLLESANO

Attorneys for

Office and Post Office Address

74 Niagara Street

Buffalo, New York 14202

Phone: 855-0717

To

.....

Attorney for.....

Index No. 7-1971-059 Year 19

State of New York

IN THE DISTRICT COURT

IN THE NORTH DISTRICT

County of NASSAU

THOMAS S. LEONARD

PLAINTIFF

vs.

THE HON. RICHARD KLEINDIENST, INDIVIDUALLY AND IN THE CAPACITY OF ATTORNEY GENERAL OF THE UNITED STATES; JOHN N. MITCHELL, INDIVIDUALLY AND IN THE CAPACITY OF ATTORNEY GENERAL OF THE UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

DEFENDANTS

Copy

COMPLAINT FOR INJUNCTIVE, DECLARATORY RELIEF AND DAMAGES

MARTOCHE & COLLESANO

Attorneys for PLAINTIFF

Office and Post Office Address

74 Niagara Street

Buffalo, New York 14202

Phone: 855-0717

Service of a copy of the within is hereby admitted this day of

, 19

.....

Attorney for

(AFFIDAVIT OF SERVICE BY MAIL)

STATE OF NEW YORK }
COUNTY OF } ss:
OF

.....the attorney for the above named.....being duly sworn, deposes and says that he is

That on the.....day of.....19 he served the within

.....upon the attorney for the above named

.....by depositing a true copy of the same securely

enclosed in a postpaid wrapper in the Post-Office—a Branch Post-Office—a Post-Office Box regularly maintained by the United States Government at .....directed to said attorney for the

in said County of.....at

N. Y., that being the address within the State designated by h for that purpose upon the preceding papers in this action, or the place where he then kept an office between which places there then was and now is a regular communication by mail.

Deponent is over the age of.....years.

Sworn to before me this,.....

day of.....19.....

(CERTIFICATION OF ATTORNEY)

STATE OF NEW YORK }
COUNTY OF }
OF

FD-36 (Rev. 5-22-64)

16

FBI

Date: 8/11/71

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: Director, FBI (92-3972)

FROM: SAC, Buffalo (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO Buffalo)

ReBuairtel 8/9/71 requesting LHM.

Enclosed for the Bureau are the original and three copies of an LHM relative to a summons served on the Buffalo FBI Office by the Law Firm of Martoche & Collesano, 74 Niagara Street, Buffalo, New York.

ENCLOSURE

EX-114

2 - Bureau (Encs. 4)
1 - Buffalo
DEH:bmb
(3)

REC-6

92-3972-134

1cc RAO Civ. Div. by O-6-D
2cc RAO CRIM. DIV. by O-6D
1cc LABOR DESK, TICKLER
8-17-71, JOA/JP

18 AUG 14 1971

9-

61 AUG 23 1971

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971—413—135

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

Buffalo, New York
August 11, 1971

FRED G. RANDACCIO;
ET AL
ANTI-RACKETEERING -
HOBBS ACT

On July 29, 1971, a summons (a copy of which is incorporated hereinafter) was served on the Buffalo Office of the Federal Bureau of Investigation by the Law Firm of Martoche & Collesano, 74 Niagara Street, Buffalo, New York. This summons was also served on the Buffalo Field Office of the Organized Crime and Racketeering Section, Criminal Division, U. S. Department of Justice, and on THOMAS A. KENNELLY, Deputy Chief, Organized Crime and Racketeering Section, Criminal Division, U. S. Department of Justice.

It is noted PASQUALE CALABRESE was a key witness in the trial involving FRED G. RANDACCIO, et al, which resulted in conviction of RANDACCIO in U. S. District Court at Buffalo on November 21, 1967 on two counts of violation of Sections 1951 and 371, Title 18, U. S. Code.

On August 3, 1971, the Buffalo Office of the Federal Bureau of Investigation directed a letter to the Law Firm of Martoche & Collesano (a copy of which is incorporated hereinafter).

On July 30, 1971, this matter was discussed by Special Agent [redacted] of the Buffalo Office of the Federal Bureau of Investigation with both U. S. Attorney H. KENNETH SCHROEDER, JR. and Departmental Attorney in charge of the local Strike Force JAMES RICHARDS, both of whom advised this matter was being handled by THOMAS A. KENNELLY, Deputy Chief, Organized Crime and Racketeering Section, Criminal Division, U. S. Department of Justice. b6 b7C

ENCLOSURE

92-3972-434

FRED G. RANDACCIO;
ET AL
ANTI-RACKETEERING -
HOBBS ACT

By letter, dated August 4, 1971, Assistant U. S. Attorney JAMES W. GRABLE advised the Buffalo Office of the Federal Bureau of Investigation that the U. S. Department of Justice, Organized Crime and Racketeering Section, as well as the Civil Division, had been advised of this pending action.

FRED G. RANDACCIO;
ET AL
ANTI-RACKETEERING -
HOBBS ACT

[illegible] S. Court House
Buffalo, New York 14202

August 3, 1971

Mr. Salvatore R. Martoche
Law Offices of Martoche & Collesano
74 Niagara Street
Buffalo, New York 14202

Dear Mr. Martoche:

In reference to a summons delivered to our office on July 30, 1971 (File Civ. 1971-359) concerning Pasquale Calabrese, I wish to advise you this matter has been handled entirely by the Organized Crime and Racketeering Section of the Criminal Division, United States Department of Justice.

This office has no information as to the current whereabouts of Mr. Calabrese, and I suggest you attempt to settle this matter through contact with Mr. Thomas A. Kennelly, Deputy Chief, Organized Crime and Racketeering Section of the Criminal Division, United States Department of Justice.

Sincerely,

KARL L. BROUSE
Special Agent in Charge

CIV. 1a (8-64)
(Formerly D. C. Form No.45a Rev. (6-43))

FRED G. RANDACCIO;
ET AL
ANTI-RACKETEERING
HOBBS ACT

United States District Court

FOR THE

WESTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. Civ-1971-359

THOMAS S. LEONHARD

Plaintiff

v.

THOMAS A. KENNELLY, INDIVIDUALLY AND AS THE DEPUTY CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE

and

THE FEDERAL BUREAU OF INVESTIGATION

and

BUFFALO FIELD OFFICE

and

ORGANIZED CRIME AND RACKETEERING SECTION, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Defendants

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon SALVATORE R. MARTOCHE plaintiff's attorney , whose address is 74 Niagara Street, Buffalo, New York 14202 an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN K. ADAMS
Clerk of Court.

Deputy Clerk.

Date: July 29, 1971

[Seal of Court]

Note:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

FD-36 (Rev. 5-22-64)

23

FBI

Date: 9/21/71

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO: BUFFALO)

Remyairtel, 8/11/71.

Enclosed for the information of the Bureau is one xerox copy of Departmental letter to U. S. Attorney H. KENNETH SCHROEDER, JR., Buffalo, New York, dated 9/1/71.

On 9/20/71, U. S. Attorney SCHROEDER advised the Government contemplated requesting dismissal of the summons and complaint filed in behalf of THOMAS S. LEONHARD on the ground of sovereign immunity.

The Bureau will be kept advised of further developments.

2 - Bureau (Encls 1) (AM)
1 - Buffalo

ENCLOSURE

GRM;cap
(3)

EX-102 92-3972-435

REC-4

SEP 23 1971

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971—413—135

September 1 1971

WW:TAK:saf
145-12-1586

Mr. H. Kenneth Schroeder, Jr.
United States Attorney
Western District of New York
United States Courthouse
Buffalo, New York

92-8

Re: Thomas S. Leonhard v. Thomas A. Kennelly
Civil 1971-359
HKS:DEF:bg

Dear Mr. Schroeder:

The natural father's desire to be reunited with his children is understandable; but your proposal that the Government arrange a visit in a neutral location at the father's expense is not feasible for a number of reasons.

Under no circumstances would the mother agree to such an arrangement. She would not accompany the children and would not willingly allow them to be taken for such a visit. They would have to be forcibly removed by Marshals. All indications are that if she and Mr. Calabrese even thought that the Government might be party to such an arrangement, they would flee with the children to another location.

It is not likely that the natural father would be satisfied with one visit. It is noted that he seeks by the instant action to obtain physical custody of the children, not visitation rights. If the Government once agreed to arrange a single visit, it is logical to assume that Mr. Leonhard would be pressing for additional visits and ultimately would point out the financial burden to him and ask that the children be brought to Buffalo, thus increasing the danger to them.

Though there are equities on both sides, the arrangement you propose would not seem to be in the best interest of the children. They have neither seen nor heard from or about Mr. Leonhard for more than four years. To insert this new dimension in their lives could be harmful to them emotionally and psychologically. In

cc: Mr. Karl L. Brouse
Special Agent in Charge
Federal Bureau of Investigation
Buffalo, New York

92-3972-435

ENCLOSURE

addition, there is a possibility that while visiting with Mr. Leonhard they might inadvertantly disclose their place of residence, thus placing them, as well as Mr. and Mrs. Calabrese, in further danger.

In our opinion, for the Government to attempt to solve what is basically an insoluable problem in the manner you suggest would only lead to further and perhaps disastrous complications.

We strongly recommend that the Government move to dismiss the instant action on the ground of sovereign immunity and take no further action to change the status quo.

Sincerely,

WILL WILSON
Assistant Attorney General
Criminal Division

By:
WILLIAM S. LYNCH
Chief, Organized Crime and
Racketeering Section

FD-36 (Rev. 5-22-64)

FBI

Date: 10/19/71

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO : DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO: Buffalo)

CR

Remyairtel, 9/21/71.

USA H. KENNETH SCHROEDER, JR., Buffalo, New York, advised on 10/19/71 that the motion for dismissal of the summons and complaint filed in behalf of THOMAS S. LEONHARD was pending in USDC, Buffalo. He stated that an affidavit in support of the motion for dismissal was filed by THOMAS KENNELLY, formerly with the Department of Justice, on 10/8/71.

The Bureau will be kept advised of any developments in this matter.

2 - Bureau (AM)
1 - Buffalo
GRM:jmb
(3)

ST-106

REC-22 92-3972-1126

OCT 22 '71

60 NOV 1 1971

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

U S GOVERNMENT PRINTING OFFICE 1971-413-135

FD-36 (Rev. 5-22-64)

3

FBI

Date: 12/29/71

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO : DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO: Buffalo)

Remyairtel 10/19/71.

On this date, USA H. KENNETH SCHROEDER, JR., Buffalo, New York, advised this matter has been adjourned in USDC, Buffalo, until 1/17/72.

The Bureau will be kept advised of any developments in this matter.

2 - Bureau (AM)
1 - Buffalo
JGG:jmb
(3)

REC-15 92-3972-437

EX 100

DEC 31 1971

51 JAN 7 1972

Approved: _____ Sent _____ M. Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE: 1971—413-138

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-3972) DATE: 1/20/72

FROM : SAC, BUFFALO (92-174) (P*)

SUBJECT: FRED G. RANDACCIO, aka;
ETAL
AR - HOBBS ACT
(OO: BUFFALO)

Remyairtel, dated 12/29/71.

AUSA DAVID E. FLIERL, Buffalo, New York, advised on 1/17/72 that a hearing in behalf of the complaint of THOMAS S. LEONHARD, scheduled for 1/17/72 in USDC, Buffalo was adjourned until 1/24/72.

The Bureau will be kept advised of development in this matter.

2 - Bureau (AM)
1 - Buffalo

GRM;klp
(3)

EX-115 REC-15 92-3972-438

JAN 24 1972

60 JAN 28 1972

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-02

FD-36 (Rev. 5-22-64)

13

FBI

Date: 3/9/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO: BUFFALO)

Re Buffalo airtel to Bureau, 1/20/72.

On 3/9/72, AUSA DAVID E. FLIERL, Buffalo, N. Y., advised that he filed a motion to dismiss summons in behalf of THOMAS S. LEONHARD on 1/24/72 before Federal Judge JOHN O. HENDERSON. FLIERL advised that he was still awaiting Judge HENDERSON's decision.

The Bureau will be kept advised of developments in this matter.

2 - Bureau (AM)
1 - Buffalo

JGG:cc
(3)

ST-110

REC-19 92-3972-439

12 MAR 13 1972

JKA SIX

56 MAR 22 1972

Approved _____ Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE: 1971—413—135

FD-36 (Rev. 5-22-64)

FBI

Date: 5/8/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
(OO: BUFFALO)

Remyairtel to Bureau, dated 3/9/72.

On 5/2/72, AUSA DAVID E. FLIERL, Buffalo, N. Y., advised that disposition of summons in this matter is awaiting court adjudication.

The Bureau will be kept advised of developments in this matter.

2 - Bureau (AM)
1 - Buffalo
GRM;ph
(3)

ENCLOSURE

1cc LABOR DESK, TICKLER

EX-116

REC-33 92-3972-440

MAY 6 1972

Approved: MAY 15 1972 Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE: 1971—413—135

FD-350 (Rev. 7-16-63)

(Mount Clipping in Space Below)

Father Fails in Court Bid To Locate Calabrese Family

Federal Judge John O. Henderson ruled Wednesday the U.S. Justice Dept. is not required to disclose the whereabouts of a government informer who, along with his wife and her three children by a previous marriage were relocated and given new identities by the Justice Dept.

Thomas S. Leonhard, 32, of Buffalo, father of the children, had sought a court order to require the Justice Dept. to disclose their whereabouts.

Convicted in '66

Leonhard charged in his action filed in U.S. District Court last January that Thomas A. Kennelly, members of the FBI and the Justice Dept. strike force here had relocated his wife, her second husband, Pascal Calabrese, and the children after Calabrese testified for the government in a 1967 trial.

Kennelly at the time was deputy chief of the Organized Crime and Racketeering Section of the Justice Dept. He is now in private law practice in Washington, D.C.

In 1966, Calabrese was convicted of first-degree robbery in the theft of $299,130 from the Buffalo city treasurer's office in 1964. He faced a possible sentence of from 10 to 20 years but was given an indefinite term at the Elmira Reformatory.

Leonhard and his wife were divorced in 1966 and she was given custody of the children, Michael, now 12, Karen, 11, and Stephen, 10.

Key Witness

Calabrese and the former Mrs. Leonhard were married in August, 1967 and that same year he was the key government witness in a trial which led to the conviction of Frederico Randaccio, reputed one-time Mafia underboss, and four other men.

They were convicted of plotting to rob a wealthy guest at the Beverly Hilton Hotel in Los Angeles of her jewels and to rob an armored car messenger of the hotel. All of the men were sentenced to long prison terms. Randaccio was given 20 years.

The Calabreses and the children were relocated to protect him from possible reprisals for his testimony at the trial.

Leonhard charged that Calabrese was an admitted member of an organized crime syndicate and provided essential information leading to the convictions of Randaccio and the others. Leonhard said he had not been allowed to see his children despite repeated entreaties to his former wife and Justice Dept. officials.

In June, 1971, a State Supreme Court justice issued an order granting full custody of the children to Leonhard. Despite this, Leonhard said, Kennelly and other Justice Dept. officials refused to tell him where the children were.

Leonhard said he had not seen the children in four years, was deprived of his court-ordered visitation rights and was now being deprived of his court-ordered right to custody.

Seen Peril

In his decision, Henderson said Justice Dept. officials contended that only Kennelly knew the whereabouts of the Calabreses and the children. Kennelly had stated he would not disclose their whereabouts unless the Calabreses consented and that they had told him if he did they would immediately move to another location and tell no one where they were.

The government moved to dismiss Leonhards action on the grounds of lack of jurisdiction of the federal court and on the grounds of sovereign immunity.

The government claimed Leonhard's action was one against the federal government without consent of legislative authority.

'Without Authority'

Henderson said that in Kennelly's judgment to disclose the whereabouts of the children

Mr. Tolson
Mr. Felt
Mr. Campbell
Mr. Rosen
Mr. Mohr
Mr. Bishop
Mr. Miller, E.S.
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Bates
Mr. Waikart
Mr. Walters
Mr. Sovars
Tele. Room
Miss Holmes
Miss Gandy

(Indicate page, name of newspaper, city and state.)

19

COURIER EXPRESS
Buffalo, New York

Date: 5/25/72
Edition: Four Star
Author:
Editor:
Title: FREDERICO G. RANDACCIO ET AL
Character: AR
or
Classification: 92-174
Submitting Office: Buffalo

☐ Being Investigated

92-3972-A
NOT RECORDED
184 JUL 20 1972

58 JUL 25 1972

would seriously jeopardize their safety.

"When a clear cut duty is imposed by law, a District Court may pursuant to its mandamus jurisdiction compel any officer or employe of the United States to perform that duty," Henderson said.

"However," he added, "when the duty is not clearly prescribed but rather involves the exercise of a judgment or discretion in a particular way, a District Court is without authority to direct the exercise of such judgment or discretion one way or another."

The judge said there was nothing to indicate the government's refusal to disclose the children's whereabouts was motivated by anything but the attempt to live up to its promises to the Calabreses before Calabrese testified.

"One further motivation which cannot be ignored by this court is the protection of certain witnesses and their families who testify against persons allegedly to have participated in major criminal activity," Henderson said.

He said the court did not have the jurisdiction to grant the relief Leonhard sought, namely ordering Kennelly or Justice Dept. officials to disclose to Leonhard the whereabouts of his children.

FD-36 (Rev. 5-22-64)

FBI

Date: 7/24/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____ AIR MAIL _____
(Priority)

TO: ACTING DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka;
ET AL
AR - HOBBS ACT
OO: BUFFALO

Remyairtel, 5/3/72.

Enclosed are the original and five copies of LHM, captioned "THOMAS S. LEONHARD vs THOMAS A. KENNELLY; AND OTHER, USDC, WDNY, Civil Number CIV 1971-359."

Buffalo will follow and report results of appeal.

ENCLOSURE

2 - Bureau (Encs. 6) (AM)
1 - Buffalo
GRM:amh
(3)

2cc ROM CRIM. DIV., by O-6D
1cc LABOR DESK, TICKLER
7/27/72 JRKee

REC-2 92-3972-441

14 JUL 27 1972

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

57 AUG 3 1972

U. S. GOVERNMENT PRINTING OFFICE: 1971—413—135

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

400 U. S. Court House
Buffalo, New York 14202
July 24, 1972

THOMAS S. LEONHARD vs,
THOMAS A. KENNELLY;
AND OTHERS
United States District Court
Western District of New York
Civil Number CIV-1971-359

On September 20, 1971, United States Attorney H. KENNETH SCHROEDER, JR., Buffalo, New York, advised the Government contemplated requesting dismissal of the summons and complaint filed in behalf of THOMAS S. LEONHARD on grounds of sovereign immunity.

On October 19, 1971, Mr. SCHRODER, related that the motion for dismissal had been filed and that an affidavit in support of the motion for dismissal was filed by THOMAS A. KENNELLY, formerly with the United States Department of Justice, on October 8, 1971.

On July 24, 1972, Assistant United States Attorney DAVID E. FLIERL, Buffalo, New York, advised that United States District Judge JOHN O. HENDERSON, dismissed the summons and complaint on grounds of lack of jurisdiction of the Federal Court and on grounds of sovereign immunity.

On May 25, 1972, an appeal was filed on behalf of LEONHARD by his attorney.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ENCLOSURE 92-3972-441

FD-36 (Rev. 5-22-64)

3/12

FBI

Date: 3/9/73

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

U

TO: ACTING DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (P*)

FRED G. RANDACCIO, aka
ET AL
AR - HOBBS ACT
(OO: Buffalo)

Remyairtel dated 7/24/73.

Enclosed are the original and five (5) copies of LHM, captioned "THOMAS S. LEONHARD vs. THOMAS A. KENNELLY; AND OTHERS, USDC, WDNY, Civil Number CIV 1971-359."

Buffalo will follow with the USA's Office, Buffalo, any additional action contemplated by the defendant's attorney with regards to appeal to the U. S. Supreme Court.

2 - Bureau (Encs. 6) ENCLOSURE (AM)
1 - Buffalo

GRM:dam
(3)

2cc ROM CRIM. DIV., by O-6D
1cc LABOR DESK, TICKLER

REC-103 92-3972-442

3/13/73 PMC/cce

23 MAR 12 1973

7101

59 MAR 19 1973

Approved: RHA/DJ Sent _____ M Per _____
Special Agent in Charge

☆U.S.Government Printing Office: 1972 — 455-574

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
400 U. S. Court House
Buffalo, New York 14202
March 9, 1973

In Reply, Please Refer to File No.

THOMAS S. LEONHARD vs,
THOMAS A. KENNELLY;
AND OTHERS
United States District Court
Western District of New York
Civil Number CIV-1971-359

On March 9, 1973, Assistant United States Attorney DAVID E. FLIERL, Buffalo, New York, advised that the case was argued on January 4, 1973, before the Second Circuit Court of Appeals at New York City, and that on February 7, 1973, the Second Circuit Court of Appeals rendered a decision affirming United States District Judge JOHN O. HENDERSON's dismissal of the complaint.

Assistant United States FLIERL stated that no information has been received from the defendant's attorneys as to their course of action as of March 9, 1973.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

ENCLOSURE
92-3972-442

ST-102

SAC, Buffalo (92-174) 8/3/73

REC-63

Director, FBI (92-3972) 448

1 - Mr. Adams

FRED G. RANDACCIO, aka
ET AL.
AR - HOBBS ACT

Reurairtel 7/30/73.

Sulet advising whether all Federal appeals have been exhausted regarding each of four subjects convicted for Hobbs Act violations and, if so, furnish dates and brief details. If any such appeals are pending, administrative devices should be utilized by your office to follow progress of such appeals. in order that Bureau will be advised as to final outcome of this landmark case, Of course, any appeals before U. S. Supreme Court would have to be followed by Washington Field and your office should furnish any necessary information to Washington Field. In any event this case may be retained in closed status.

JRA:djc
(4)

MAILED 24
AUG 3 - 1973
FBI

Assoc. Dir.
Asst. Dir.:
Admin.
Comp. Syst.
Files & Com.
Gen. Inv.
Ident.
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Spec. Inv.
Training
Legal Coun.
Cong. Serv.
Corr. & Crm. Research
Press Off.
Telephone Rm.
Director Sec'y

F69
38 AUG 13 1973

MAIL ROOM ☐ TELETYPE UNIT ☐

FD-36 (Rev. 5-22-64)

FBI

Date: 7/30/73

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (92-3972)

FROM: SAC, BUFFALO (92-174) (C)

FRED G. RANDACCIO, aka
ET AL
AR - HOBBS ACT
(OO: Buffalo)

Enclosed are the original and five (5) copies of an LHM, captioned "THOMAS S. LEONHARD vs. THOMAS A. KENNELLY; AND OTHERS, USDC, WDNY, Civil Number CIV 1971-359."

Since captioned subject is incarcerated and no investigation is outstanding, this case is being closed at this time.

ENCLOSURE

2 - Bureau (Encs. 6) (AM)
1 - Buffalo

MJS:dms
(3)

ST-102

REC-63 92-3972-443

cc's destroyed

1cc ROM CRIM. DIV., by O-6D
1cc " CIVIL DIV DC O-6-D
1cc LABOR DESK, TICKLER

14 AUG 1 1973

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

U.S.Government Printing Office: 1972 — 455-574

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

400 U.S. Court House
Buffalo, New York 14202
July 30, 1973

THOMAS S. LEONHARD vs.
THOMAS A. KENNELLY;
AND OTHERS
United States District Court
Western District of New York
Civil Number CIV-1971-359

On July 30, 1973, Assistant United States Attorney DAVID E. FLIERL, Western District of New York, Buffalo, New York, advised that a writ of certiorari was submitted to the United States Supreme Court, and on June 18, 1973 the United States Supreme Court denied the writ.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

92-3972-443

ENCLOSURE

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (92-3972) DATE: 8/8/73

FROM : SAC, BUFFALO (92-174) (C)

SUBJECT: FRED G. RANDACCIO, aka
ET AL
AR - HOBBS ACT

ReBulet, 8/3/73.

All Federal appeals have been exhausted regarding all subjects.

On 3/24/69, the USSC in separate order denied certiorari for [redacted] and [redacted] b6 b7C

On 3/24/69, certiorari was granted to FREDERICO G. RANDACCIO and PASQUALEA NATARELLI. The judgment of the 2nd Circuit Court of Appeals was vacated and cases were remanded to the USDC, WDNY, for a hearing on the effect of an electronic surveillance.

On 4/10/70, U. S. District Judge JOHN O. HENDERSON, WDNY, denied motions for a new trial on behalf of RANDACCIO and NATARELLI.

On 1/25/71, RANDACCIO's appeal was argued at the 2nd Circuit Court of Appeals. NATARELLI did not make any appeal.

On 6/4/71, USA H. KENNETH SCHROEDER advised that the 2nd Circuit Court of Appeals had denied a motion for a new trial. He stated that this was the last recourse available to the defense.

REC-2 92-3972-444

2 - Bureau
1 - Buffalo

MJS;lmk
(3)

ST-102

10 AUG 10 1973

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-02

1 - Mr. Adams
1 - Mr. Thompson
1 - FOF (Buffalo)

August 28, 1973

PASCAL A. CALABRESE
FBI #146323 F

Enclosed is a copy of H. R. 10031, 93rd Congress, 1st Session, introduced by Representative Jack Kemp of New York on August 3, 1973, which was referred to the Committee on the Judiciary. The purpose of this bill is stated as for the relief of Thomas S. Leonhard. It provided, among other things, that the Attorney General is authorized and directed to transmit to the Supreme Court of New York for Erie County, New York, any information which the Department of Justice may have concerning the present whereabouts of Rochelle Calabrese, the former wife of Leonhard and the present wife of Pascal A. Calabrese.

Reference is made to the memorandum from the Criminal Division of the Department dated August 5, 1968, bearing the above caption in which it was stated Pascal Calabrese had been relocated to a new locality with a new identity. It was requested that the FBI should not furnish any information relating to Pascal Calabrese in the event inquiry concerning him would be received by this Bureau.

The foregoing is for your information and no further action is to be taken regarding this matter by this Bureau.

Enclosure

MAILED 23
AUG 28 1973
FBI

REC-15

1 - Buffalo (93-174) by O-7, for info, same date.
92-3972
1 - 92-9993

SEP 5 1973

NOTE: Original and copy sent to Criminal Division by (O-6-D).

JRA:dat
(8)

ENCLOSURE

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

57 SEP 10 1973

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Ident.
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Director Sec'y

UNREC COPY AND COPY OF ENCL FILED IN

93D CONGRESS
1ST SESSION

H. R. 10031

IN THE HOUSE OF REPRESENTATIVES

AUGUST 3, 1973

Mr. KEMP introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

For the relief of Thomas S. Leonhard.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) the Attorney General of the United States is
4 authorized and directed to transmit to the Supreme Court
5 of New York for Erie County, New York, any information
6 which the Department of Justice may have concerning, or
7 which may be helpful in determining, the present where-
8 abouts of Rochelle Calabrese, the former wife of Thomas S.
9 Leonhard, of Tonawanda, New York, and the three children
10 of the said Rochelle Calabrese and the said Thomas S.
11 Leonhard.

III

ENCLOSURE

92-3772-445

1 (b) The Secretary of the Treasury is authorized and
2 directed to pay, out of any money in the Treasury not
3 otherwise appropriated, to the said Thomas S. Leonhard, the
4 sum of $1,000,000. Such payment shall be in full settle-
5 ment of all the claims of the said Thomas S. Leonhard
6 against the United States resulting from actions taken by
7 the Department of Justice to relocate and provide new
8 identities to the said Rochelle Calabrese and the three
9 children of the said Rochelle Calabrese and the said Thomas
10 S. Leonhard, in exchange for assistance given to the De-
11 partment of Justice by Pascal Calabrese, the present husband
12 of the said Rochelle Calabrese, and in derogation of visita-
13 tion rights and custody rights of the said Thomas S. Leonhard.
14 SEC. 2. No amount in excess of 10 per centum of the
15 sum appropriated in subsection (b) of the first section of this
16 Act shall be paid to or received by any agent or attorney
17 for services rendered in connection with this claim. Any
18 person violating the provisions of this section shall be fined
19 not more than $1,000.

93D CONGRESS
1ST SESSION

H. R. 10031

A BILL

For the relief of Thomas S. Leonhard.

By Mr. KEMP

AUGUST 3, 1973

Referred to the Committee on the Judiciary

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI DATE: 8/12/75

FROM : SAC, BUFFALO

SUBJECT: FRED RANDACCIO
AR
(Buffalo file 92-174)

LA COSA NOSTRA
MEMBERSHIP INDEX
AR
(Buffalo file 92-337A)

Enclosed for the Bureau is a current photograph of the subject.

The Bureau is requested to revise subject's LCN card to include current photograph.

2 - Bureau (Enc. 1) (RM)
2 - Buffalo
LSS:kms
(4)

ENCLOSURE

EX-110

REC-49 92-3972-446

detached Rm 3068 JEH

AUG 14 1975

UNRECORDED COPY FILED IN 92-6054

XEROX

SEP 11 1975

58 SEP 24 1975

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-02

UNITED STATES GOVERNMENT

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Memorandum

TO : ADIC (NY 92-1840 DATE: 10/29/78

FROM : SAC FOLEY, DIV. II

SUBJECT: FILE DESTRUCTION Fred O Randaccio

Per SAC II, instant file is being retained for the following reason:

1) This file contains valuable intelligence information which is or may be utilized in connection with NYO Organized Crime investigations.

2) This file is pending litigation.

3) This file contains information as of 10/31/73.

These guidelines are being set forth so that the NYO can maintain much needed intelligence information to assist on-going or future Organized Crime investigations.

MAINTAIN AS TOP SERIAL.

MAINTAIN AS

TOP SERIAL

92-3972-

Div. 4

NOT RECORDED
14 NOV 30 1978

1 - OSM
1 - Bureau (92-3972)

1978

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan