

106775

U.S. Department of Justice
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National Institute of Justice

*Symposium
Proceedings*

Major Issues in Organized Crime Control

*A compendium of papers prepared
by experts in the field*

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James K. Stewart

Director

U.S. Department of Justice
National Institute of Justice

Major Issues in Organized Crime Control

Symposium Proceedings
Washington, D.C.
September 25-26, 1986

Herbert Edelhertz, Editor
Northwest Policy Studies Center
Bellevue, Washington

September 1987

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This project was supported by Grant Number 85-IJ-CX-0014, awarded to Northwest Policy Studies Center by the National Institute of Justice, Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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PREFACE AND ACKNOWLEDGMENTS

The problem of organized crime in our society is one that has generated much attention over the past decades. Special presidential commissions, the Congress, state legislatures and crime commissions, privately organized crime commissions, the media --- all have turned to this question over the past decades. It was a rare opportunity, therefore, to be able to stand back for a time, identify the critical issues that should be considered in organized crime control, interact with experts in the field, and then conduct a structured dialogue in which the views of enforcement practitioners and researchers could be considered together. To have managed such an effort was a distinct privilege.

Each of the papers in these proceedings represent the distillation of many years of author experience and study. They were the core of the symposium effort, and are the core of these proceedings. As for the rest, the introductory materials, the overview of the symposium papers and deliberations, and the epilogue, they represent my own views and for these I am solely responsible.

The authors of the issue papers had their own styles and forms of organization. Every effort was made, in this work, to adhere to their formats. Some changes had to be made, for production purposes, in the handling of such things as headings, footnotes, and endnotes.

There were many individuals who contributed to this effort. The authors of the papers and the other symposium participants were supportive at every stage, giving freely of their time to advise on every element of the project. Professor Charles H. Rogovin of Temple University School of Law was particularly helpful with respect to identification of issues to be addressed, advice on potential authors to be enlisted in the effort, and guidance as to the conduct of the symposium. William D. Falcon, the symposium rapporteur, prepared the record that was crucial to the development of the symposium overview, Chapter X. James K. Stewart, Director of the National Institute of Justice and Dr. Lawrence A. Bennett, Director of Community Crime Prevention for the National Institute, maintained their support for this effort throughout. They continued that support as participants in the symposium. Finally, and the last should be the first, I express particular appreciation to Lois Felson Mock, who was the National Institute of Justice's project monitor for this effort. Her work here was significant at every level, substantive as well as administrative. She was fully engaged in the effort to identify critical issues in organized crime control, in selecting among them for special attention, in the organization of the symposium itself, and in many and valuable suggestions for the preparation and development of these proceedings. There were many problems that arose, and many difficult decisions to be made. She was often called on to help and never failed to respond.

Herbert Edelhertz
Project Director

CHAPTER I

INTRODUCTION

It is difficult to name one other area in the field of criminal justice that is as difficult to define, describe, operationally deal with, evaluate, and conduct research on, as organized crime. There is no agreement on a definition of organized crime, except that it must relate to groups of people engaged together in criminal enterprises. Law enforcement agencies establish units to focus on organized crime; their definitions naturally reflect their agendas. Federal and state RICO (Racketeering Influenced and Corrupt Organizations) statutes,¹ are aimed at organized crime, but nowhere do they speak of or define organized crime.² Rather, by their titles and their definitions they address "racketeering" in terms so general that in their civil aspects they provide remedies for the most conventional of white-collar crimes. The struggle against organized criminal group behavior therefore goes forward unsupported by any one commonly accepted definition.

Nevertheless, it is now generally recognized that our earlier, limited concepts of what constitutes "organized crime" must be expanded. In the words of the President's Commission on Organized Crime:

It is essential that we broaden our view to include all significant facets of organized crime. There will be little lasting benefit in disabling La Cosa Nostra if other groups successfully claim its abandoned criminal franchise ... Several groups are obviously able and eager to do so ... If we are to make true progress against organized crime we must broaden our perspective to include not just La Cosa Nostra, but its possible successors and the protectors of organized crime.³

Despite the absence of a basic and accepted definition in this field, the need for increased knowledge of the origins, characteristics, and activities of these organizations has long been recognized.⁴ Law enforcement agencies are increasingly aware of the need for research-based knowledge as an aid to the development of policies to assist them in achieving their goals and objectives in this field.

It is often difficult to pursue an objective approach to the study of organized crime because of the sensitivity and politicization of the questions involved. Sensitivity is to be found along at least three dimensions. First, problems are exacerbated by the inherent sensationalism of the subject matter. Second, there is the political dimension, which reflects itself in questions as to the effectiveness with which law enforcement operates in this field, and in corruption of government. Third, the problem has ethnic aspects that combine with economic and social questions in ways that are difficult to disentangle. Much organized crime activity involves the supplying of illicit goods and services desired by a substantial part of our population, with consequent dilution of public support for enforcement. Unlike other criminal activities, of individuals or groups or gangs, activity here tends to be more "businesslike," operating over time against the same general targets. The very existence of the crimes must be shielded and protected against disclosure to law enforcement agencies, a concern that does not arise for the mugger or the burglar. The activity is usually

"repeat business," which creates one of the many paradoxes in this field: the purveyor of goods and services must both market to the public and conceal --- a paradox that can often be reconciled only by political and law enforcement corruption. The study of organized crime presents special problems for the researcher. These include:

- o the variety and scope of organized crime groups and enterprises, which differ widely from each other, making the "subject" too comprehensive to address in any one research effort;
- o the secrecy and complexity of organized criminal groups and their business operations, which makes it difficult to identify the presence of organized crime and isolate organized crime activities for primary data collection and analysis;
- o the privacy of law enforcement investigative and intelligence records, which is a barrier to researcher access to this critical data source; and
- o the unsuitability of much law enforcement data for ready research use, because it is collected for enforcement rather than research purposes, thus making it difficult to utilize;

The National Institute of Justice has long been aware of the need for improved research on organized crime, and particularly for research products that will have practical utility for practitioners. It therefore commissioned the Northwest Policy Studies Center to conduct a symposium on major issues in organized crime control that would help it to design its own program for organized crime research, and to encourage and assist other efforts of the research community in this area.

A. The Symposium Plan

There were two main parts of the symposium plan. The first was to identify the major issues in organized crime control and to identify policy-makers, practitioners, and researchers who could most effectively prepare papers on these issues for the symposium. These papers were to describe the issues, consider the difficulties they pose for law enforcement, consider how they relate to other organized crime issues, and suggest how they could be studied so that the resulting findings would have practical utility for improved prevention and control of organized crime activity. The eight issues selected, and the authors who wrote the papers were:

1. The Nature of Organized Crime and its Operations, by Professor Robert J. Kelly of The City University of New York.
2. Organized Crime as a Business Enterprise, by Professor Mark H. Moore, of the John F. Kennedy School of Government, Harvard University.
3. Drug Enforcement and Organized Crime, by Dr. Mark A.R. Kleiman of the John F. Kennedy School of Government, Harvard University.
4. The Intelligence Function, by Frederick T. Martens, Executive Director of the Pennsylvania Crime Commission, formerly of the New Jersey State Police.

5. Operational Issues in Organized Crime Control, by Ronald Goldstock, Director of the Organized Crime Task Force, State of New York.
6. Strategic Decision Making in Organized Crime Control, by Edwin H. Stier, formerly Director of the New Jersey Division of Criminal Justice, and Peter R. Richards, Supervising Deputy Attorney General, RICO Unit, New Jersey Division of Criminal Justice.
7. Legal Remedies for Attacking Organized Crime, by Rudolph W. Giuliani, United States Attorney for the Southern District of New York.
8. Methodological Problems of Organized Crime Research, by Dr. Peter Reuter of The Rand Corporation, Washington, D.C.

The second part of the plan was to design a symposium that would (1) provide a forum for the presentation of these issue papers, and their consideration by the authors and other invited participants with special expertise in organized crime control --- investigation, prosecution, and research; and (2) conclude with a broad-ranging discussion of the research needs suggested by the issue papers and of potential studies that could address these needs. Discussion of potential research to address these needs was to be considered in light of the most feasible, useful and effective data sources and methodologies that could be made available, and also the relative utility of such research for improving organized crime control policies and operations.

B. Organization of this Report

Each of the papers prepared for the symposium is a separate chapter in these proceedings, Chapters II through IX. Chapter X is an overview of the papers and the discussions that took place at the symposium. Chapter XI deals with the needs for research on organized crime that were identified by the symposium participants. These proceedings conclude with an epilogue, consisting of the observations of the director of the symposium effort, which raises and comments on issues that were not addressed at the symposium or that he believes merit further comment. The proceedings also include an appendix, which is a directory of all symposium authors and participants.

ENDNOTES

1. The parent, federal statute is the Racketeering and Corrupt Organizations Act, 18 U.S.C. 1961 et seq. There are now 27 states that have enacted their own versions, most modeled on the federal statute, and enactments are now under consideration in a number of other states.
2. Blakey, G. Robert, "Definition of Organized Crime in Statutes," paper prepared for the President's Commission on Organized Crime (1985).
3. President's Commission on Organized Crime. The Impact: Organized Crime Today Washington, D.C.: Government Printing Office (1986).
4. Maltz, Michael D. "Toward Defining Organized Crime," in Alexander, Herbert E. and Caiden, Gerald E. (eds.) The Politics and Economics of Organized Crime Lexington MA: Lexington Books (1984).

CHAPTER II

THE NATURE OF ORGANIZED CRIME AND ITS OPERATIONS

BY

ROBERT J. KELLY*

Introduction

This paper considers the nature of organized crime, first exploring the historical perspectives that have developed about organized crime, then examines the significance and reasons for the intense focus on Mafia and La Cosa Nostra. The discussion opens with a look at one of the most nagging problems besetting criminal justice practitioners, scholars, and others: defining organized crime precisely and clearly. There are many traps and snares in making definitions. How they evolve, take shape, what purposes they serve, and how satisfactory definitions are judged to be, constitutes the substance of the discussion in this section. While it is not claimed that the issue of the adequacy of definitions is or can be settled, a working description of organized crime is offered in the form of a definition.

The discussion then moves to various theories as to the nature of organized crime. How it is understood, how organized crime emerges, what factors appear to promote it -- these clearly affect the approaches to its control and containment. Related to theories that describe and that offer explanations of organized crime's origins, patterns of development, and manifestations in varied contexts, the focus turns to new and emerging groups. This section of the paper raises questions concerning the structural characteristics of such new groups, questions about variables affecting their genesis, their illicit (and licit) activities, how they compare with earlier, more traditional criminal organizations, and what the implications are likely to be for law enforcement control strategies. The discussion goes on to direct attention to the changing nature and context of organized crime, and the kinds of opportunities that new wealth and new technologies afford criminal groups. It concludes with observations on policy and research issues.

It is unfortunate that the facts about organized criminality have become so distorted, for the truth is no less interesting than the fictitious beliefs that abound and have gained wide attention in the American public. Organized crime,¹ or syndicate crime, as some specialists have insisted, is an issue of considerable importance to many segments of the law enforcement community -- to government, the social scientific community, the media, and the public at large.

The fact that so many different groups attend to, define, describe, analyze, and contend with, organize crime -- many with their own professional orientations, values and mythologies -- may partially explain why so many misconceptions and problems

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persist. The debate over definitions has been at times heated, acrimonious, and sometimes even ludicrous. For the public there can be no question but that organized crime exists. It is widely believed that it is deeply embedded in state and local politics, in businesses, and trade union groups; that it flourishes with the sufferance, and at times vigorous cooperation of large numbers of respectable people; that it exerts a pernicious and corrosive influence on the quality of life in general, especially on the life-styles and chances of lower socio-economic groups.²

Many middle-class people are oblivious to organized crime or seem titillated by the sensational accounts of it in the press; or they are entertained by films depicting its colorful characters with their Jekyll-and-Hyde personas: magnanimous and sentimentally generous to a fault on the one hand, utterly ruthless and vindictive on the other.

Despite the confusions about organized crime, the media have never hesitated to purport to portray its activities in great detail. Some journalistic descriptions are, of course, more valuable than others. A classic account of the dalliance and connivance of the upper-and underworlds was sketched a half-century ago by Walter Lippmann in prose wrapped in equanimity. The "brokerage" roles of the gangster and syndicate criminal were depicted in a manner that deliberately sought to debunk the hypocrisy of outrage and moral crusading against the underworld. For Lippmann, organized crime was with us and thrived because it had indispensable social functions to carry out in the course of which it performs a range of services for which there was a demand.

Lippmann's view that there were social and economic conditions that encourage the existence of organized crime in American society is a theme that is reiterated in every study since 1931 when his article first appeared. While the ranks of the underworld are filled with goons and thugs marauding and creating mayhem, it is also true that organized criminal groups provide illicit goods and services that the public demands and that it plays a vital role in the workings of the commercial system as a whole. What Lippmann's trenchant analysis illustrated was the contradictory attitudes of the American public; and the extent to which organized crime was deeply intertwined with our social and economic life. Not only was society its willing prey and victim, but the customer and consumer of its services as well.

With few exceptions the conditions charted by Lippmann that generated the "need" for organized crime still persist. Crime is so varied and so entangled with our institutions that many see efforts to eradicate it, or to contain it within manageable margins, as hopelessly naive. To the extent that organized crime is functional in providing goods and services its disapproval will be ambivalent at best. Where toleration starts and ends is problematic. The range of activities in which organized criminal groups have insinuated themselves is as flexible today as ever: at one end of the continuum organized and professional crime are indistinguishable; at the other end, it seems to merge, almost imperceptibly, with ordinary business enterprise in such areas as wholesaling and retailing in liquor, meat and poultry products, in labor management, in the operation of restaurants, discos, nightclubs, casinos and recreational establishments, and in real estate and construction industries.

Consequently, the mixed assortment of activities that are directly criminal, or in which criminal elements have infiltrated and perhaps dominate, inhibits efforts to create a definition of organized crime that is sufficiently precise and acceptable to

all. Many condemn drug-dealing but at the same time condone sports betting and loansharking; others, offended by child pornography, may choose not to perceive their patronage of a fence who sells stolen goods as anything less than expedient and financially justifiable. Thus, generic definitions of organized crime tend to fail because the concept seems too mutable, too diverse to be captured neatly and cleanly in definitions that adequately express its essentials and that will simultaneously satisfy law enforcement officials, scholars, and the public.

Despite the fact that the nature of organized crime is elusive, that it seems to defy exact definition, its social costs are nonetheless formidable. Estimates as to how much money is earned from organized criminal enterprises is a matter of conjecture for the most part, but there is no question that the gross and net profits are substantial. Whether analyses focus on black markets in taxable goods (such as cigarettes, auto-theft, nontraceable securities, alcohol and drugs), illegal revenues from gambling and vice activities, or from the illegal "overhead" incurred by price-fixing conspiracies, these analyses are miscast and theoretically sterile if the data refer solely to members of criminal groups and ignore the roles played by those cooperating in such enterprises from the business, political, and law enforcement communities.

Organized crime depends for its existence on the implicit support of otherwise "respectable" citizens -- those who purchase its goods and services, and those who, perhaps inadvertently, create the conditions that insulate it from investigation and prosecution. It is through the imposition of legal constraints upon personal vice--- alcohol, narcotics, gambling in its myriad forms, and prostitution --- that entrepreneurs in vice and violence emerge to exploit economic opportunities. Corruption is the device that enables syndicates and criminal ventures to achieve a de facto immunity from regulation and investigation, and provides them with the ability to penetrate the legitimate economy. This point of view, widely accepted, that police and political corruption are necessary for organized crime operations has the appeal of simplicity and the elegance of economy, but does it square fully with the facts? Are there, perhaps, other reasons as well which must go into an explanation of organized criminality?

Quite apart from questions concerning the scale and scope of organized crime operations that enter into analyses of their durability and permanence (Reuter, 1983; Edelhertz, et al, 1984), there is good reason to suspect that the law enforcement response to organized crime shapes its character and actions (Schelling, 1967), hence the reference to law enforcement at this point. This is separate and apart from the likelihood that the structure of law enforcement agencies plays a role in inhibiting their ability to detect and deal with such criminal activity. In addition to corruption, the forms and structures of police organization and their reactive and proactive capacities may themselves contribute importantly to the spread and persistence of organized crime.

Leaving aside the question of corruption, a traditional police bureaucracy using standard action/reaction models of response will remain officially ignorant of well-established organized crime activities. As providers of illegal goods and services, vice syndicates create not so much victims as repeat customers who have, under most circumstances, no reason to complain to police. Since their crimes are victimless, organized crime activities may remain officially outside the knowledge of a traditional police department.

This brief excursion into the history of governmental efforts against organized crime is designed to show the need for clear-cut notions of the phenomenon, or those which are workable for the many law enforcement agencies -- both national and local -- concerned with the problem. The lack of consensus and consistent definition of organized crime at the federal level is even more acute at the local state and municipal levels.

Defining Organized Crime: Some Pitfalls and Bewitchments

Law enforcement efforts to control organized crime should begin ideally with an explicit definition of the phenomenon. This may sound fairly straightforward and not especially problematic. However, as the Comptroller-General investigations of Strike Force operations in 1977 and 1981 reveal, no consistent definition of organized crime seemed to be uniformly implemented throughout federal field units. No wonder, since not even the Organized Crime Control Act of 1970 contained a definition. Defining organized crime has ranged from the simplistic, "[Organized Crime consists of] two or more persons conspiring together to commit crimes for profit on a continuing basis," to the more elaborate, such as the State of California's that covers everything from racketeers to terrorists (Abadinsky, *op. cit.*: 3)).

The difficulty is not unique to law enforcement agencies. The academic community is similarly mired in a maze of definitional problems (Maltz, 1985). Albanese observes, somewhat mischievously, "there appear to be as many descriptions of organized crime as there are authors" (1985: 4). While the academic world has astutely avoided the burdens of cumbersome and leaden notions such as the California definition, its metaphysical machinery has churned out a maelstrom of ideas. For some, there is no such thing as organized crime, since the evidence presented for it is not air tight (Hawkins, 1969). Others, such as Ianni (1973) have detected "social system" dimensions in organized criminality -- at least in its Italian-American manifestations -- suggesting that it is woven into our social and economic life. From Ianni's perspective, organized crime is foremost a major social problem firmly rooted in the society as much as racism or poverty. For others who see the social reality of organized crime from the perspective of organizational theory (Cressey, 1969), it is distinct in that it exhibits to varying degrees hierarchies of authority and functional divisions of labor. Those with legal training may be more inclined to look upon it as conspiracy (Blakey, 1967; Blakey, Goldstock & Rogovin, 1978). And some accounts relying upon newspaper articles about organized crime as interchangeable with "mafia" have concluded that is shrouded in a mystique from which we can scarcely extricate ourselves (Smith, 1975).

In two more recent analyses, Hagen (1983) and Maltz (1985) argue that attempts to offer a single, global definition of organized crime are best abandoned in favor of a delineation of its major structural features. Both writers appear to agree that organized crime shares certain definitive characteristics in common. The key descriptive elements are: durability, continuity, hierarchy, multiplicity, violence or the threat of it, and corruption.³ Today, perhaps more than ever, the activities of those engaged in organized crime may confound efforts to identify them as such because, among other things, they cloak themselves in legitimate businesses. Whether their activities are classified as "organized crime" or as "organizational crime" (i.e. deviations from otherwise legitimate business ventures) becomes problematic.

In any case, it seems fairly clear that what is meant by organized crime is not what is meant by syndicate crime --although it includes that; nor should the term be

limited to specific criminal organizations that have been identified in the past. The consensus that seems to be forming within the academic community at least, is that the concept should reflect not a distinctly clear type of crime but a form of criminality that is understandable as criminal behavior on a continuum running from legitimate to illegitimate behavior (Smith, 1980; Albanese, 1982). Thus, we may think of organized crime as "commerce by other means" but not limited to it (McCoy, 1986). Organized crime could well be defined as meaning the vice sector of our large and well-developed economy. It has some permanence; it provides a black market in goods and services. Within this perspective, criminal syndicates -- a manifestation of organized criminality, but not exclusive to it -- are coalitions of those entrepreneurs in vice and violence who are active within the economy.

We may think of organized crime as consisting of ongoing conspiracies that are characterized by hierarchy and a division of labor involving a relatively large number of participants from the legitimate sectors of society and from the criminal segments of it. Moreover, to carry our description of it further, this type of crime has tended to gain partial or total control, in many areas, over numerous illegal activities such as usury, gambling, prostitution, pornography, drug trafficking, extortion, and highjacking. It also controls many legal enterprises, such as restaurants, trucking firms, and entertainment establishments, and has infiltrated into labor unions and businesses that serve as "fronts" to conceal money or to accomplish other criminal purposes. Given these latter trends, researchers have suggested that it may be more useful in terms of control policies to think of organized crime in other ways as well-- in particular, as "business firms" with corporate agendas and strategies not unlike those of legitimate, upperworld enterprises (Moore, this volume).

Historical Perspectives on Organized Crime

To understand its rise, it is necessary to know something of the changes and conditions in the society that facilitated its development. The danger in accounts that trace origins and beginnings is that they may foster the impression that there exists something of a general agreement about organized crime. Such an impression would be utterly mistaken. At the same time it would be hypersensitive and dysfunctional to allow the conflicts and controversies over approaches and perspectives to obscure the fact that many commonalities of view do exist.

Many unsubstantiated accounts and personal memoirs exist by those who allegedly participated in organized crime (Block, 1978; Albanese, 1982). Others have noted that journalistic and government documents have been major sources of information (Galliher & Cain, 1974; Moore, 1974). And these contain all the inherent weaknesses that the need for sensationalism produces. In many historical studies their nonscientific nature is a significant aspect. The 1967 Task Force points out that:

...no reliable research methodology for the study of organized crime -- a phenomenon secret in nature and sophisticated in operation -- has ever been developed. No national-level group has ever been appointed or empowered to undertake a systematic documentation of the extent of organized crime in the United States on a state-by-state and region-by-region basis (Task Force, 1976: 3).

Apart from journalistic and personal accounts, most of the information that has been gathered has come from law enforcement agencies whose purpose is to prosecute law violations rather than to collect data for scientific use. Anderson notes the problem: "Even when they [law enforcement agencies] allow access to their files, which is rare, the data are not likely to be those the researcher would have chosen" (1979: 147). Nevertheless, research has proceeded, chastened sometimes by these realizations of the limitations of the data. However, some of the issues that the 1967 Task Force raised, which have to do with questions that transcend the historic fixation on La Cosa Nostra or mafia, have finally attracted serious attention among scholars and law enforcement groups. The focus turned from an exclusive concentration on such things as the criminal actors themselves, their cultural background, and so on, to their markets, enterprises, and environments.

The 1976 Task Force on Organized Crime, therefore, marked a major shift in policy; it suggested that ad hoc, case-by-case investigations of criminals, along with the fragmented and incoherent approach of government, "tends to guarantee that attacks on crime syndicates or other corruptors will be fragmented, that results will be delayed, and that most reform movements [against organized crime] can be outwaited." (Task Force Report, 1976: 29).

Mafia and La Cosa Nostra: Ideas Fixes of American Law Enforcement

If anything positive may be said of the Special Senate Committee to Investigate Organized Crime in Interstate Commerce, popularly known as the "Kefauver Committee," it is that it awakened and aroused the interest of the public once again to the problem of organized crime on a national scale. Before Kefauver, the Dewey prosecutions in New York were sensational but narrow in scope. It is true that investigative committees do little real investigating, they rather dramatize a particular problem and place the prestige of a congressional body behind the chosen point of view regarding solutions. With the Kefauver Committee, whatever preconceived biases or overstatement its conclusions on gambling and the wire services may have reflected, they were intellectually respectable and based on substantive, if not always convincing, evidence. Such was not true of its conclusions on the mafia.

In many ways we are still saddled with the legacies of the Kefauver Committee findings. The Kefauver Committee found after hearing the testimony of about one thousand witnesses from law enforcement, the press, and the underworld itself -- but not one academic expert -- that:

There is a sinister criminal organization known as the Mafia operating throughout the country with ties in other nations, in the opinion of the committee. The Mafia is a direct descendant of a criminal organization of the same name originating in the island of Sicily.

The Mafia is a loose-knit organization specializing in the sale and distribution of narcotics, the conduct of various gambling enterprises, prostitution, and other rackets based on extortion and violence.

The power of the Mafia is based on a ruthless enforcement of its edicts and its own law of vengeance to which have been credibly

credibly attributed literally hundreds of murders throughout the country. (Kefauver, 1951: 2).

The idea of a national crime syndicate that was alien and conspiratorial brought the committee headlines but left an ugly popular misunderstanding in the country. Moore says that "Because such groups as the press and the academic community failed to point out the weaknesses in the Committee's overblown and unfounded statements, the public accepted them, and the popular myths and misunderstandings grew stronger, buttressed by the 'proofs' of the Kefauver Committee. The Kefauver Committee adopted a view that largely ignored the economic, legal and social conditions giving rise to organized crime, and it implied that it originated outside of American society and was imposed on the public by a group of men bound together by an ethnic conspiracy"(1974:134).

A decade later, Joseph Valachi, self-identified as a "soldier" in the Genovese family, as a "made guy" (an allegedly initiated member of an Italian criminal organization), presented before televised hearings of the McClellan Committee a story concerning the scope and power of what he called "Cosa Nostra." The impact and influence of Valachi's claims cannot be underestimated.

Valachi's testimony before the Senate Committee helped to shape public perceptions of organized crime in the United States as a nationwide syndicate dominated by Italian-American criminal. Much of the information -- that part of it that was true -- was already known to law enforcement agencies, so Valachi's claims neither shocked nor surprised most law enforcement groups. Public fear of a mafia-like national conspiracy that was far-reaching and virtually omnipotent within the underworld of the United States with links to foreign countries, stimulated and reinforced the Kefauver findings that there was a national crime syndicate.

The Kefauver Committee did not produce any new anti-crime legislative proposals directly related to its hearings; the McClellan Committee using Valachi as its principal protagonist in the drama it created before an astounded public, was able to produce a climate of opinion favorable to anti-organized crime legislation. It also, even if it was unintentional, scapegoated Italian-Americans and blemished their reputations as an ethnic group.

Valachi's claims and assertions, replete with details on the internal hierarchical structure of a national confederation of "crime families" were deftly orchestrated by Robert F. Kennedy when he was chief counsel to the McClellan Committee. In a statement published in a mass circulation weekly magazine, Kennedy characterized Valachi's testimony as "the biggest intelligence breakthrough yet in combatting organized crime and racketeering in the United States" (Kennedy, 1963: 20).

Following the McClellan Committee, the 1967 Task Force defined organized crime in terms and ideas cultivated by Kennedy.

A society that seeks to operate outside the control of the American people and their government. It involves thousands of criminals, working within structures as complex as those of any large corporation, subject to laws more rigidly enforced than those of legitimate governments. What organized crime wants is money and power.(Task Force Report, 1967: 1).

The Report went on to say that there were some twenty-four groups operating as cartels in large cities across the nation. These arose in the post-Prohibition period after a struggle with other ethnic criminal groups. It is further asserted that the "core" structure of organized crime in the United States consists of "crime families" composed exclusively of men of Italian descent who are in frequent communication with each other and whose interrelationships are under the stewardship of a body of overseers -- the "Commission" which serves as a judicial/legislative entity -- regulating, monitoring and ruling decisively in disputes between and among "crime families."

Based on data supplied by federal law enforcement agencies and information derived from the work of the 1967 Task Force, Donald Cressey's book, Theft of the Nation (1969), has had an immeasurable impact on public policy ever since its publication. It was not until the 1976 Task Force on Organized Crime issued its report that reservations about the pervasiveness and power of La Cosa Nostra were voiced. Until then, the imagery of organized crime as another name for Mafia, or La Cosa Nostra was challenged by scholars, some journalists, and some local law enforcement officials who either did not or could not muster the evidence supporting Italian domination of American organized crime. Even with qualifications and the exceptions found in official reports and documents since 1967, Smith and Alba could still write some twelve years later that, "Most Americans now take for granted that a secret criminal society of Sicilian origins, variously called the 'Mafia' or 'Cosa Nostra' lies at the heart of American organized crime" (Smith & Alba, 1979: 32).

Such thinking produced an ingenuous and distorted understanding of the social reality of crime. Recent investigations into early urban history in the United States and elsewhere show that mafia-type explanations of organized crime are just too pat, too simple, and must be suspect. What is clear is the determining role of large social and economic forces at work that lay the ground for organized criminality (Block, 1979; Peterson, 1983; Walston, 1986; Iwai, 1986).

In the United States, Europe, and parts of Asia, massive and rapid urbanization at the beginning of the twentieth century created cities capable of maintaining significant commercial activities in prostitution, alcohol, gambling and narcotics. At first most of these enterprises were legal. However, reform movements fueled by strongly-felt religious convictions and nostalgic sentiments for a disappearing rural way of life, led to bans and controls on vice activities. By the 1920s, many Western societies had enacted legislation that restricted marketing in narcotics, alcohol, gambling and prostitution (Linder & Kirby, 1982; Boyer & James, 1983; Kelly, 1983; Winick, 1983; Sagarin & Kelly, 1982).

Reform movements and the social controls they generated did not eliminate these vices but merely forced their transfer from the "upperworld" economy into an evolving and burgeoning "underworld" economy. In effect, two major forces combined to produce the necessary conditions for the growth of organized crime groups: the increasing concentration of population in big, densely settled communities, and the criminalization of what is personal vice.

Organized crime in the United States dates back into the early nineteenth century, but its more familiar forms did not appear until this growth of cities occurred with massive migrations pressing into them later in the century. The alien conspiracy

theory of organized crime draws much of its emotional sustenance and power from the disruptive effects and the fears engendered in the American population by these immigrations.

Theories on the Nature of Organized Crime

(A) Alien Conspiracy. As noted above, this theory rests on the view that organized crime did not emerge out of our culture, economic relations and politics, but rather that it was thrust upon us. The roots of organized crime lay in values antithetical to American life, it argues, and may be identified with the culture of specific groups.

To accept the alien conspiracy theory, to believe that particular ethnic, immigrant groups brought the forms of organized crime with which we are familiar with them into this country requires that we abandon analyses that argue that it is deeply entrenched in the structure and dynamics of vice markets -- indigenous conditions peculiar to the economic and social structure of the United States. Proponents of conspiracy theory, and this means usually, believers in a mafia conspiracy, contend that a secret organization originating in Sicily made its way into the United States during the period of massive Italian immigration. It is (or was) an organization tightly bound together by codes of "honor", and its strength and durability were based on its reputation for violence and ruthlessness. Mafia bred fear in Sicily and southern Italy, and suspicion and mistrust among Italian immigrants.

Numerous more recent studies of the Sicilian mafia all seem to challenge our thinking about mafia or La Cosa Nostra in this country. These studies accept that there are "mafioso" ways of life, mannerisms, psychological postures, impression management techniques; there are within the Sicilian subculture, for a variety of reasons, groups of men, usually related through kinship, who engage in legal and illegal activities. They strongly question, however, the view that there is an overarching country-wide, secretive organization led by a handful of "Dons" who direct and manage criminal groups, and who have extended their reach into the United States (Hess, 1973; Blok, 1974; Servadio, 1978). Arlacchi opens his recent study of mafia activity (a phrase he prefers rather than the singular "mafia" that is suggestive of an organizational entity) with the observation that:

Social research into the question of the mafia has probably now reached the point where we can say that the mafia, as the term is commonly understood, does not exist. The mafia was a form of behavior and a kind of power, not a formal organization: (1986: 3,4).

Scholarly and media accounts of an alleged, newer, "urban mafia" in Sicily as contrasted with a rural-based, traditional one, suggest that a more gangster-type structure is emerging -- one resembling in many respects the American La Cosa Nostra. These urban mafias are anchored in systems of families and clans. Capifamiglia (bosses) are elected and disposed of by a vote of the crime family members -- itself, a new democratic twist in an old cultural form. In the hierarchy of power above the families there exist "commissions" that mediate conflicts and coordinate family activities. At the top there is a "commission of ten," a cupola, which resembles the "Commission" of the American La Cosa Nostra. And like its American counterpart, its functions include settling jurisdictional disputes and handling international activities, mainly in drug trafficking and black marketing, outside Sicily (Arlacchi, 1985; Hess, 1986).

There is a certain psychological convenience in positing the Sicilian Mafia, or its Americanized cousin, La Cosa Nostra, as the center of organized criminal activity. It serves as a diabolus ex machina, an evil force that if purged will mean the end of many difficult problems in controlling crime. It is a bit arrogant and intellectually lazy to "scrub" history in this way, to attribute and blame some foreign power group for our crime problem. Worse, the "mafia-as-the-source-of-crime" theory blinds us to the multi-ethnic dimensions of crime. By equating organized crime and mafia or with its mutation, La Cosa Nostra, we become the victims of wishful thinking.

Is Italian-American crime an instance of mafia transplanted in the United States? In its heyday, mafia had a near monopoly on violence and social control in western Sicily and southern Calabria. The mafioso was not one who survived largely on illicit activities, but was integral to the social system (Hess, 1973; Blok, 1974; Arlacchi, 1983). Since mafiosi played significant economic and political roles in their villages, towns and districts, they were not only a part of the subculture but dominant actors within it. While their social control and power were based on fear, they also rested on a broad consensus that such individuals were indispensable for their communities' well being.

On the other hand, organized crime as we know it in this country depends entirely on fear and potential or actual violence and it often purports to provide protection that is occasionally genuine, but more often a ruse, a fabrication -- protection against itself in fact. The more common type of organized criminal group is the extortion ring that provides neither goods nor services but is based purely on violence or its threat. Enterprise syndicates, the other major type of criminal activity, are imitative of legal businesses providing legal and illegal goods and services. Ordinarily they are not wispy entities but look like commercial firms with divisions of labor, hierarchies of authority, and depend on efficiency rather than force and fear to survive.⁴

While the transformative effects of the American cultural experience may be reckoned with in considering the persistence and durability of mafia influence, it is well to consider to what extent illicit opportunities have slowed the exodus of the very limited number of Italian-Americans who are part of organized crime, out of organized crime; and to what extent these opportunities have become safer, more lucrative and attractive to them. Also, is it possible that many have made some sort of positive identification with a legendary mafia, creating for themselves a cryptic, mythic circle that is psychologically "real" and functions as a reference point for criminal organization? Assuming that it has seeped into some segments of the Italian-American criminal culture, the real test of mafia imagery and culture may now be met as it confronts other ethnic newcomers and competitors. A modus vivendi may be worked out; unbridled gang warfare may erupt. In any case, it would be rash to assume that La Cosa Nostra will roll over at the first challenge or collapse without a fight unless it has other, more secure "brokerage" roles involving fewer risks to retreat into.

Mafia and La Cosa Nostra have been the prevailing crime paradigms since World War II with evidence regularly presented from the Kefauver Committee through the 1963 Valachi testimony to the allegations and claims in the 1980s of James Fratianno. In this connection it is interesting to note that mafia/La Cosa Nostra was not the focus of earlier studies in a period when the Italian immigration was at its height.

Landesco (1929) and Thrasher (1927) wrote of community environments, of the social and economic aspects of big city life as conducive to organized crime. For reasons that have not been fully explored the alien phenomenon thesis reemerged in the late '40s and has remained the paramount emphasis ever since. Martens (1986) suggests that the persistence of the alien conspiracy model equating organized crime with mafia survives because of the tenacious support this view enjoys within law enforcement bureaucracies which thereby favors evidence confirming this perspective. Further, he argues, evidence to support other reasonable explanations is scanty because of the virtual monopoly of information collected and disseminated about La Cosa Nostra.

(B) Ethnic Succession. Other approaches to organized crime describe it not as a foreign import but as an integral part of our social and economic system. The chief exponent of this line of argument has been Francis A.J. Ianni(1973). For Ianni and others -- most notably, Daniel Bell (1964) -- this important issue of origins in the debate has been cast aside and shunted into secondary relevance in the acrimonious atmosphere over whether some twenty-four Italian-American crime families in the United States are dominant in the underworld. While recognizing the presence and power of Italian-American syndicates and crime families, what needs examination is the socio-economic status of ethnic communities in the urban environment as a potential breeding ground for crime.

Ethnic succession refers to the process by which different groups, be they ethnic immigrant, racial or religious, have used, and continue to use organized criminality as a means of social mobility. The questions raised concern the variations in the ethnic and increasingly racial composition of American crime syndicates over the years and what this signals about social and economic stratification and social mobility in American society for such groups -- and about new and emerging groups.

In this century the historical evidence illustrates a sequence of different ethnic participants dominating crime in many cities with control passing from one to another slowly, or rapidly, violently or sometimes relatively peacefully. Ianni's research locates criminal organizations in various stages of development and sophistication as arising out of local circumstances. It sees them, above all, as sensitive to social and economic realities.

Bell has described very vividly how immigrant groups embraced organized forms of crime -- that "queer ladder of social mobility" -- to shake off the squalor of the ghetto and get ahead quickly by avoiding the oppression and discrimination and denied opportunities that so many immigrants lived through. Bell's tone is sharply polemical because he took strong exception to the Kefauver findings that identified organized crime exclusively with mafia. "Organized illegality," Bell writes, "became a stepladder of social ascent" (105, in Ianni & Reuss-Ianni, 1976).

The process of ethnic succession first involving the Irish and the Jews (who preceded the Italian migration into the United States), went through several stages. At first the Irish moved into organized crime in significant numbers as they were stereotyped negatively and subjected to discrimination. But as the Irish ethnic enclaves filled up, as more and more legitimate opportunities began to slowly materialize, advances and employment opportunities with all their advantages opened up alternatives to criminal activities for many.

This is not to say that the Irish, Jews, or Italians, or any minority group were (and are) totally immersed in crime. It is only to indicate that of those limited elements of the populations heavily engaged in it, they found criminal pathways out of the ghettos and slums into the American mainstream more convenient and desirable than, in their view, the ignominious alternatives held out to them.

The Jewish experience in crime is instructive. At the turn of the century in the midst of their massive immigration into the United States, the Jewish underworld expanded, keeping apace with the influx of eastern and southern European Jews. But Jewish crime was a transient phenomenon, destined to disappear as the immigrants became more Americanized, more surefooted in their new homeland. Crime within the Jewish ghetto could be seen in part as a result of the immigrant experience and the economic marginality it engendered, not as a consequence or outcome of some collective social or cultural flaw or defect. As Jews assimilated and acculturated, and were increasingly accepted or able to assert themselves, the underworld that developed and thrived in the ghetto slowly faded. Those Jews who pursued criminal careers tended to do so in enterprises and circumstances divorced from its Jewish context (Joselit, 1983; Stuart, 1985).

According to Ianni, the processes of ethnic succession affected Italians in similar ways, but with some differences. Before Prohibition organized crime tended to be an ethnic and ghetto affair with Irish or Jewish gangsters or Germans preying upon their own, delivering goods and services to their clients and customers in their local neighborhoods. With Prohibition, ghetto crime, small in scale, changed and expanded rapidly beyond the confines of the insulated, subcultural communities.

Not only was Prohibition a stimulant to better, more affluent lifestyles for many who were either deeply immersed in illegal alcohol activities or on the fringes of it, it was also a crucible that dissolved the differences that had previously separated and marked off the various underworlds and gangs. The two year period between the passage of the 18th Amendment and its implementation enabled many criminals to mobilize the capital and create the bootlegging networks they needed. Organized crime in this country would not have developed as it did if not for Prohibition.

More than exponential increases in profits, however, Prohibition provided a patina of respectability and tolerance for crime. Syndicate workplaces -- the saloons, brothels, gambling dens, and speakeasies -- became platforms for launching fortunes, for mingling with all levels of society. At the same time, Prohibition was responsible for a period of bloody warfare in the streets of the big cities. This period, in the decade before World War II, was the one in which Italians started to climb to the top of the criminal worlds in Chicago and New York in particular; it was a time of evolutionary transformations among groups on an unprecedented scale.

The syndicates that emerged to manage illegal alcohol and gambling may be seen as the initial steps in rationalizing crime on a broad scale. Lupsha (1986) suggests that prior to Prohibition, organized crime was petty, parochial, operating from a ghetto/slum base, which then grew as the demand market stretched and blanketed the country. Local neighborhood gangs blossomed into citywide groups and matured a step further into regional organizations. Prohibition gave birth to a criminal structure that reached beyond alcohol and gambling and moved into the legitimate world in a rush: peaking today as a transnational phenomenon, to the point of sophistication where it can employ money laundering on a worldwide basis.

Even in those areas of the country where moral and cultural abstinence restrained or forbade alcohol consumption Prohibition was largely unenforceable, and led to the massive and systematic corruption of law enforcement. And before, gangs had worked in the shadow of local political bosses; now, however, they could and did influence politicians not as weak subordinates but as powerful, lavishly financed interest groups whose will could not be ignored.

As alcohol racketeering grew it needed protection from law enforcement and criminal competitors; transport, drivers, landing sites, warehouses, guards were needed; points of distribution and retailing for bars and clubs and restaurants had to be mapped out. In order to manage the product and its manufacture, its processing and delivery, bribes had to be paid; lawyers had to be on call; dummy corporations had to be established; and accountants and bookkeepers hired to maintain records. Crime became a serious business.

The "business of crime" required the formation of coalitions and confederations, such as the "Big Seven" syndicate composed of Jewish, Irish, German, and Italian criminals.

Critics of ethnic succession point to the fact that Italians remained firmly situated in organized crime long after they acquired the wealth and resources for a straight lifestyle. No doubt for some criminals their departure into the upperworld of law-abidingness and legitimacy failed for several reasons. The proponents of ethnic succession may have been wrong about the timing of groups in and out of crime. It is generally supposed, incorrectly as the theory does not pretend to specify which generation makes the move out of crime, that second or third generation ethnics would choose and prefer the noncriminal world of the professions and legitimate business. This may not be so for several reasons. It will be remembered that in the aftermath of Prohibition the lines between legitimate and illegitimate business became blurred; racketeers who wrested their loot in booze, coolly invested a sizeable portion of it in legitimate businesses in order to protect themselves from government investigations, and against the need to resort to the more risky livelihoods in crime. A criminal career protected in some ways by the appearance of legitimacy made that career more viable. Also, the Prohibition period was an incubator for experimentation with gang structures and formations that resulted in syndicates shaped out of trial and error but that were more immune to law enforcement pressures and the uncertainties of gang life. Stronger, more durable syndicates promoted their longevity and may have delayed or impeded the withdrawal of their members and participants -- Italians among them. With risks of detection and punishment diminished, with more certainty and security of gain and less social stigma attached to life as a gangster is it any wonder that participants might not be especially anxious to get out?

In recent years, Blacks and Hispanics have moved into markets and activities, especially drugs, that have been abandoned for the most part by Italian-American crime families. It may be assumed that the risk/profit ratios in drug trafficking persuaded La Cosa Nostra to leave the street action and retailing to the more adventurous, to those with fewer options for income who are willing to fight for control and less concerned with visibility in activity that is publicly condemned.

Ethnic succession is not a mere historical or sociological curiosity but has implications for control policy. It explains the conditions and likely actors in certain

types of organized criminality with some cogency, even though it provides neither complete nor entirely satisfactory answers.

(C) Anomie Theory. This general theory of deviance attempts to locate the cause of deviance -- or crime -- in society, not in the criminals themselves. It provides some plausible explanations as to why individuals get involved in criminal activities. The theory suggests that society itself, through conflicts and contradictions between its goals and the means to attain them, exerts a pressure on some people to behave in criminal rather than conformist ways. In the words of its major expositor, Robert Merton: "It is only when a system of cultural values extols virtually above all else, certain common success goals, for the population at large, while the social structure restricts or completely closes access to approved modes of reaching these goals for a considerable part of the same population, that deviant behavior ensues on a large scale" (1957: 146, emphasis added).

When the channels of vertical mobility are closed or narrowed in a society that places a high premium on economic affluence and social advancement for all of its members, organized crime seems almost inevitable. This is of central importance in understanding the motives and drives of those situated in the underclass: the poor, the oppressed, the immigrant, and others who feel the pain of exclusion but who have at the same time embraced the cultural values of material success. What Merton tells us is that people at the bottom of the economic ladder may resort to socially disapproved means to succeed if that drive is strong enough and if their sense of frustration is acute enough. The responses to the tensions of stymied goals may be an innovative reaction where the individual seeks out alternative means -- such as crime -- to acquire wealth and the prestige it affords.

Anomie theory sketches the general structural contradictions that may precipitate organized criminal behaviors, yet it leaves open the question why some but not others turn to it as a way of relieving their sense of defeat through methods that circumvent structurally imposed obstacles.

(D) Cultural Transmission Theory. As developed by Edwin Sutherland in a form known as "Differential Association," criminal behavior is not looked on as an impulsive reaction to thwarted opportunities, or a lockstep instinctive response to situations of frustration. Rather, criminal behavior is learned. Sutherland argued a version of the old "bad companion" formula: just as individuals will tend to conform if their socialization emphasizes a respect for prevailing norms, so they will tend to become criminal if their socialization emphasizes a contempt for these norms (Sutherland & Cressey, 1966).

For Sutherland, a criminal orientation was not one merely of imitation but one of learning through association. Put the other way, a criminal orientation was not only learned, it was taught. The theory was laid out in the form of propositions that observe that: criminal behavior is learned and taught through association with others where the individual acquires techniques for committing acts and the proper frame of mind -- the specific attitudes and motives justifying these behaviors. The essence of Sutherland's theory is that a person becomes criminal because of exposure to an excess of definitions favorable to the violation of the law over definitions unfavorable to the violation of the law. In other words, the more one associates with people who are contemptuous of norms and laws, urge that they be violated, and who teach the desirability of such violation to the neophyte, the greater the probability that one

will become criminal. Those who become criminal do so because of their sustaining contact with those already committed to lawbreaking and because of the relative isolation from those who are committed to obeying the law.

Compared with other approaches, Differential Association seems better equipped to explain the extent to which an individual is vulnerable to organized criminal orientations, but not whether he will, in fact, become an activist. Its foremost contribution, however, is the proposition that criminal behavior is learned, that it does not just drop upon us, as if from nowhere.

Abadinsky nicely sums up the relevance of such theories that lead to the emergence of organized crime in some settings rather than others, and why it appears to attract some from certain groups and social strata but not others. He says:

Socioeconomic conditions relegate persons to an environment wherein they experience a sense of strain -- anomie -- as well as differential association. In the environment that has traditionally spawned organized crime, this "strain" is intense. Conditions of severe deprivation, with extremely limited access to ladders of legitimate success, are coupled with readily available success models that are innovative, e.g. racketeers. Thus participation in organized crime requires anomie and differential association. However, learning the techniques of sophisticated criminality also requires the proper environment -- ecological niches where this education is available (1985: 71, emphasis in the original).

Studies of environments that seem to persist over time in producing high levels of criminal activity found that certain patterns of criminality remained fairly constant even when the composition and character of these neighborhoods changed as different ethnic and racial groups had come and gone. How might this be explained?

Shaw, McKay and others contended that certain neighborhoods nurture delinquency and became the breeding grounds for later involvement in organized criminality. Those communities where crime is stabilized and produce some success for participants are likely to serve as training grounds and apprenticeships for the young. The probability that the young will accept the values endorsed by gangsters is undoubtedly increased when conditions of poverty prevail and there seems no legitimate way out. The image of the gangster may be a significant factor in shaping the vocational plans of lower-class youths who perceive few legitimate opportunities outside their communities. Thus, Landesco, writing many years ago about the Chicago slums:

He [the lower-class slum dweller] takes as his pattern the men in the neighborhood who have achieved success. His father, although virtuous in his grime, squalor and thrift, does not present as alluring an example to him as do some of the neighborhood gangsters. The men who frequent the...gambling houses are good-natured, well-dressed ...sophisticated, and above all, they are American in the eyes of the gang boy (1929: 210).

By "American" Landesco meant that the criminal had shed the stigma of his immigrant background and possessed the wealth and power consistent with the promises

of the American Dream. Arguably, contemporary slum and ghetto dwellers are just as cognizant of the wealth and glamorous life-styles of those involved in organized crime as compared with those struggling for a legitimate pittance.

The two types of theory outlined in connection with ethnic succession speak to the emergence of organized crime, why a society will support it, and which elements of its social system are susceptible to its development. As noted above, Prohibition was a significant turning point in the history of organized crime for Italian-American syndicates. As there was no well-established competition to speak of, no other ethnic group monopolizing the market, Italians found that they could do business without waiting upon other groups to relinquish control.

The anomic, Differential Association, and cultural transmission theories -- breakdown theories -- find the source of organized crime in the disruptions and malfunctioning of the system. Many immigrants, including Italians, found the American Dream hollow and distorted and out of this disillusionment and deprivation syndicates arose. Crime became an expedient way to survive and then to prosper, and then to insure the chances and opportunities for their children.

Events of the last two decades seem to support breakdown/deprivation theories involving some kinds of ethnic succession. The ethnic and minority groups who are most alienated -- Blacks, Latinos, and Asians -- appear to be inheriting or seizing syndicates and illicit businesses that helped propel the Irish, Jews, Italians and others into success and power in the past. In skeletal form the major themes of breakdown theories that focus on the features of the culture and society that create the conditions for organized crime are:

- (1) laws that proscribe some goods and services deemed highly desirable by large segments of the society;
- (2) a free enterprise system that makes it lucrative for individuals to supply illicit goods and services to markets of consumers;
- (3) groups of individuals willing to take risks to supply illegal goods and services; and
- (4) the existence of a cultural ethos or motivational factors collectively diffused throughout a group that makes marketing in illicit products and services profitable.

(E) The Corporate Model. Popular accounts of American organized crime typically begin with references to the "crime organization" or "crime families" located throughout the country, overseen loosely by a "Commission" of some dozen "Dons" who usually, but not always, defer to the dominant bosses in New York who control the most "soldiers" and rackets. In several studies, Smith (1978, 1979, 1980) has examined the assumptions, concepts and the evidence that support these views of the crime organization and La Cosa Nostra.

The idea that organized crime is structurally similar to corporations and bureaucracies came out of the 1967 Task Force, which also added some characterizations as to its conspiratorial nature, its secrecy, and its basically alien origins. Hence, the chilling references to mafia, capos, and made men.⁵ However, as the Task Force Report concedes, because of the secrecy in which this organization is cloaked, accounts

of it should not be taken to be mirror images of the organized underworld of La Cosa Nostra.

Here, the formal bureaucratic structure of La Cosa Nostra resembles that of any large-scale corporation. In effect, La Cosa Nostra is virtually interchangeable with IBM or Exxon, replete with a board of directors (the Commission) that makes policy and controls tensions between and among its "companies" (crime families). And like any corporation worthy of the name, La Cosa Nostra survives the death of its principal officers: personnel changes do not drastically affect its operations. As with divisions and subsidiary firms within the orbit of multinational giants, each family is run by a chief executive officer (Capo), who, like any other in a firm within a large conglomerate, has the authority to direct the activities of his subordinates. He is subject only to the authority of the Commission, and even then, that final arbiter may be challenged if a family boss has the power and prestige to do so.

Immediately beneath the boss is the "Underboss" (Sottocapo), an "Executive Vice-President," who superintends the work of middle-level management (Caporegimes), and represents the boss in his absence. The Table of Organization, according to the charts in the Task Force Report, allows a role for "Consigliere" (Counselor) who is not positioned in the command/leadership structure as are other "employees," but who is the equivalent of a corporate legal counsel. Apparently, the consigliere advises the executive cadre on precedents, customs, rules and traditions within La Cosa Nostra.

Middle-level management positions in the crime family -- the caporegimes -- suggest analogies with line supervisors in legitimate firms. Often, capos are not direct supervisors but function as buffers between the "soldiers" and the bosses -- the upper-echelon executives. Thus, the structure presents a picture of an arrangement of roles and statuses in which authority is vertical; tasks are delegated through a division of labor, with a delineated channel of communication; rules and procedures bind the members.

What has been described is a bureaucracy -- a group rationally designed for the purpose of efficiently achieving specific goals. Such a description of a crime organization is not meant to be ironical or cynical. The corporate model does suggest structures that are uncomfortably close to those of legitimate firms. But this model has been questioned as too rigid, and it has not been verified by empirical studies (Albini, 1971; Ianni and Reuss-Ianni, 1973).

Ianni and Reuss-Ianni (1973) reject the image of a highly rational, formal corporate organization. Instead, they describe criminal syndicates of Italian-Americans as more akin to "traditional social systems." They argue that organized crime families are just that: structures that parallel families interconnected by blood, marriage, and affinal ritual.

Conflicting Perspectives on Organized Crime.

One need not accept a corporate model of organized crime to realize that an association of mutually interested parties may evolve to discuss problems common to all. Meeting to review matters of mutual concern does not mean that such a group is a chartered governing body. It may indeed be true that the bloodstained history of unrestrained competition during Prohibition persuaded criminal leaders to join with others in an effort to resolve problems. And those meetings may continue today.

The power and influence of the "Commission" may have been overestimated in Cressey's accounts (Bonanno, 1983). Ianni, however, fails to note the Commission's utility for crime family operations. He simply questions its existence because he sees each family as an autonomous unit that is self-governing and that, therefore, should not feel compelled to obey directives from such an entity. After all, he argues, organized crime families are not franchises in a corporate empire like Carvel ice cream corporation to be commanded by a central office or executive headquarters.

The disagreements between Cressey and Ianni extend to the internal organization of crime families. As we have seen, for Cressey, the crime family is no more than a "deviant" business firm; Ianni rejects this and lists the differences between crime families and corporations -- outlaw or legitimate. Formal organizations are composed of positions not personalities. The duties and rights of a corporate executive, for instance, are clearly delineated so that the organization can swiftly replace an incumbent who dies or resigns. But in crime syndicates, like those studied by Ianni, some members are indispensable because they possess special skills or have established highly personal contacts. The death of a member who acts as a connection (a corrupter) between the legal and illegal realms of a family may significantly disrupt it because no immediate substitute could slip into place easily and take up the deceased's affairs. The indispensability of crime family members contradicts the premises of the theory of formal organization among criminal groups.

Formal organizations are also supposed to be rationally organized with persons rising to leadership because of their demonstrated skill, intelligence, dedication, and expertise -- ideally speaking. But Ianni shows convincingly that family standing and tradition are equally important, maybe more important than the criteria of merit, in determining which family members will assume leadership roles. The power structure Ianni describes has its closest parallels in the Old World extended family where power accrues to an individual not because he is the best fitted but because tradition demands it.

Again, Cressey and Ianni seem to be discussing the same phenomenon from different perspectives. Working from the outside and compiling a list of positions in the structure (many of them gleaned from references in wiretapped conversations), Cressey tries to fit the pieces together and finds the most understandable arrangement to be a criminal bureaucracy with quasi-military overtones. However, his analyses and descriptions fail to consider the ways in which decisions are reached, or the traditional ways in which power is allocated among family relatives.

Italian-American organized crime families may be something of a structural hybrid, superimposing the rational, efficient model of American corporations over a system patterned after the traditional extended family of southern Europe. The synthesis of the Old and New Worlds seems apparent in the recruitment practices of crime families. Cressey and Ianni both find that organization membership is restricted to family members -- either actual or symbolic -- and to those of similar ethnic background (Cressey, 1969: 151-152; Ianni & Reuss-Ianni, 1973: 147-148).

From the successive ranks of blood relatives and those of kindred ethnic background, the syndicate's administrators are drawn. But consistent with the hybrid nature of the crime family, considerable selectivity enters into the process of deciding which of these will take power. Bloodline and tradition may define the parameters

and pool of eligibles from which administrative recruits are considered; but cold, organizational criteria like experience, intelligence and performance in apprenticeships and ruthlessness, slyness and skills in forming alliances determine which candidates will ultimately be tapped for syndicate leadership roles.

The closed, insulated, ethnically bound nature of organized crime families became part of the Government's official position on the nature of crime syndicates operating in the United States. This view, whatever deficiencies it possesses theoretically or empirically, prompted the adoption of a number of control strategies including extensive use of wiretapping. In subsequent works on Blacks, Cuban and Puerto Rican crime networks, Ianni found that these criminal groups, modest by comparison with the vaunted La Cosa Nostra, exhibited different looks from the filial forms discovered among Italian-Americans. Also, the patterns of recruitment and leadership were markedly different (Ianni, 1974).

(F) Criminal Networks. Two basic networks were discernible in the data Ianni collected: one, an associational network, was notable because of its emphasis on mutual trust among the members. The bonding pattern depended upon interpersonal ties formed in street life or in prison. Friends in the same youth gangs, or brought together in the inmate prison subculture organize themselves after these modes of interaction (Ianni, 1974: 288-294). Similarly, kinship ties, much like those described among Italian-Americans may eventually form the bond for associational networks.

For Ianni, the "entrepreneurial" model is a more advanced configuration than the associational model because it is based on a collection of individuals bound together in order to earn a profit -- an arrangement very close to that of a small business.

Comparisons of Cressey and Ianni and Reuss-Ianni might be pointless because their results stem partly from data generated at different vantage points. Cressey tends to see the formal, corporate-like features of crime groups that are highlighted in law enforcement reports, grand juries, and legislative investigations. Cressey's perspective is very much from the top of the structure looking down. On the other hand, the orientation of Ianni and Reuss-Ianni emphasizes the informal, clan-like nature of criminal enterprises.

It is well to remember that Cressey and Ianni focused on Italian-American syndicates, and their conclusions reflect that research concentration. Those distinctive qualities that each depicts -- the "family," "Cosa Nostra," etc. -- may be phenomena typical of southern Italians but not of other immigrant ethnic groups.

(G) Patron-Client Relationships: Partito. Another version of the analysis Ianni presents on the internal structure of crime families concerns the nature of the ties binding members together. The idea of a patron and a coterie of dependent clients has been central to ethnographies of traditional Sicilian cosca. Within the interactional system, the structure is looser than hierarchical criminal syndicates. According to Albin(1971), what has been missed in studies is the "partito" quality of relationships linking criminals. Instead of a rigid, static structure of authority within criminal organizations, relationships are more flexible, fluctuating between a central figure and his retainers and the recipients of his favors -- those, in short, dependent upon him for contacts, protection, resources, and so on. In exchange, the subordinate/client offers loyalty and allegiance -- including violence, if necessary.

Furthermore, a bundle of *partito* relationships may be said to constitute a *cosca* -- a circuit of contacts orbiting around and cohering through attachments with a man of influence and power. This arena of conduct and action may produce a consciousness of belongingness, an atmosphere of unity and solidarity. To conclude from this that collusive frameworks makeup a "group" is to misinterpret the customs and culture of interrelationships that give meaning to shared understandings. "Group" implies that which is the opposite of "*partito*:" it suggests instrumental tasks defined by a status that itself is determined by criteria of merit, achievement, and expertise; access to a criminal network is not solely determined by skill and knowledge as it might be, ought to be, in a formal organization. Rather, in criminal networks, allegiance is to persons, not to rules of procedure or job definitions; personal connections, family ties, and kinship relations are stronger and provide opportunities for *entre*.

This does not mean that criminal enterprises do not employ routine business practices: in fact, vice activities demand rational, regulatory methods and rules dividing up tasks into manageable components. Observations of gambling enterprises, drug trafficking and other illegal services suggest the very organizational structures proposed by Cressey; but these are strictly instrumental, contingent upon the specific needs of the criminal network itself. That entity, the network, would seem to transcend the artifacts and specific roles played by individuals in particular enterprises. Albin puts it succinctly:

A criminal syndicate...can...be described as a system of loosely structured patron-client relationships in which the roles, expectations, and benefits of participants are based upon agreement or obligation and whose size and function is basically determined by the activity in which it is involved. It is a system where participants become more important as they initiate or are afforded the means of developing more patrons and clients. One's power and importance within the system is primarily gauged by the extent and types of patrons and clients one develops (1971: 285).

The ramifications for control strategies that these patron/client networks imply are, among other things, that unlike a corporate entity, elimination of the executive leadership does not seriously impair operational viability. But being a somewhat closed system, the criminal organization is vulnerable in other ways.

(H) Social System Analysis. Organized criminal groups have been described in terms of bureaucracies, as enterprises embedded in a special cultural matrix, in a system of poverty, and in terms of market forces operating in a society. Another approach takes the view that organized crime has many similarities with closed political systems and that by adopting this perspective many useful control strategies become available to law enforcement (Ra'anan & Edelhertz, 1983).

Ra'anan and Edelhertz spell out what they refer to as "closed political systems, such as the Soviet Union, and describe their strengths and weaknesses listing the features of these political entities that resemble those of organized crime groups. For example, in the Soviet political system, and in organized crime groups, there is, "the building of internal patron-client linkages or factions based on personal ties and goals; ...redundancy and other safeguards designed to limit the dangers with which delegation of enforcement power and custody of vital resources is fraught" (1983: 4).

Also, there are coalitions and alliances build upon personal bonds that encourage loyalty and allegiance. The similarities with organized crime groups are obvious. It is then noted that personnel selection in this system is likely to produce succession crises that can be exploited by state antagonists in closed political systems, and by law enforcement groups in coping with crime organizations. This perspective offers yet another proactive approach to law enforcement in disrupting the smooth functioning of crime groups: intelligence efforts can focus on cultivating information on rival factions within families, the strength and intensity of competition among "crews" and alliances; how fractures between and among elements within families might be encouraged as well as defections from the ranks.

Both systems are weak because of their setups and show common vulnerabilities, e.g. to succession struggles, usurpation of power by competing factions, and territorial conflicts. With regard to crime groups,

It is up to law enforcement agencies whether they decide to act as covert "peacemakers" in order to avoid a bloody gang war, or to exacerbate suspicions in order to keep the families so busy with one another that criminal "business" decreases. In addition, the agencies can decide whether they prefer to deal with one strong leader (who is a known entity and whose dealings can be monitored with less personnel or with Balkanized crime organizations, rival mini-entities. Given the suspicions and weaknesses described, an outside power with a clear policy could greatly affect the outcome of a specific conflict, e.g., by the ways in which prosecutive policies are exercised and targets selected. (Ra'anan & Edelhertz, 1983: 25).

(I) Enterprise Theory and White-Collar Crime Enforcement Strategies⁶

The recognition that organized crime is tied to legitimate markets at local, national, and international levels did not stimulate research until after the 1967 Task Force Report. There had always been allusions that criminal groups were solidly anchored in a range of legitimate businesses but that, by definition, in general, business and crime were separable, and what few exceptions were apparent constituted aberrations rather than typical instances of these trends.

According to Smith (1982), several assumptions about organized crime and business prevented a clearer understanding of their interrelationships and tangible connections. The principal orientations -- ethnicity, conspiracy, and enterprise -- were treated as explanations of organized criminal behavior rather than as its manifestations. No serious attempt was made to synthesize these three major conceptual approaches as partial, but valuable, leads in developing a more comprehensive theory of organized crime. Alien conspiracy theory, the phenomenology of the mafia and the La Cosa Nostra, fixed attention on the ethnic and organizational structures of Italian-American crime groups. It underplayed or distorted the multi-ethnic and businesslike character of racketeering before World War II. The roles of Jewish and Irish racketeers and gangsters, even in the Prohibition era are, when not omitted from accounts altogether, significantly played down.

For Bell and Ianni, the ethnic dimension figures strongly in American organized crime. And new participants suggest the importance of class and minority status as factors that shape the probability as to which groups are to be found in some types of it-- namely, vice and localized extortion racketeering that preys upon the poor ethnic neighborhood and possibly expands into other illicit activities, and legitimate businesses, as capital is amassed, skills honed, and experience acquired.

A second major assumption about organized crime is that it is more correctly understood as a business activity -- that natural connection between business and crime did not catch on despite the sardonic comments of Al Capone that he was only a businessman catering to the desires of his public. Criminal activity is not legitimate activity and, therefore, can not be considered as "business" in the familiar sense of the term. It was (and is) believed that criminals may make "incursions" into legitimate commercial activities either to mask their illegally earned fortunes, or to undermine through frauds, scams, and extortions, essentially honest and reliable enterprises.

What is even more astonishing is that the corporate model that describes crime organizations did not suggest, apparently, that the analogies be carried some steps further so that the language and concepts of economics and business could be applied more systematically to organized crime. That process is only beginning.⁷

For Smith and others, organized crime is much more than the behaviors of ethnic groups in vice enterprises who occasionally expand their reach or grasp toward more conventional legitimate business endeavors. The Spectrum-based theory of enterprise Smith proposes turns these assumptions on their head. He sees organized crime as the extension of legitimate business practices into illicit areas. The metaphors and assumptions of conventional theory -- alien conspiracy, mafia, corporate organization -- preclude raising questions of this sort. He asks:

Is it reasonable still to assume that loansharking bears no relationship to banking, or that fencing bears no relationship to retailing, or that narcotics importation and the wholesale trade have nothing in common until an "infiltrator" starts to undermine? When a businessman restrains trade, is his behavior really different from that of the mobster who cooperates with others to establish territorial lines for numbers banks? If a businessman and a mobster sign a sweetheart labor contract, is one a "white-collar criminal" and the other a "member of organized crime infiltrating legitimate business," or are symbiotic consumer and supplier, respectively, of an otherwise legal business being conducted, in this instance, in an illegal way? (1982: 29)

Elsewhere Smith (1978) presented the concept of "illicit enterprise" as the "extension of legitimate market activities into areas normally proscribed, for the pursuit of profit and in response to latent illicit demand" (164). How does such a perspective enhance our understanding of organized crime and our ability to cope with it? What are the consequences of enterprise theory? First, it seems to free public policy formulations from their ethnic preoccupations and alien conspiracy plots. It provides instead a model that defines organized crime not as something alien to society and the economy, not as an activity peculiar to particular persons, but as the operation of marketplace dynamics beyond the point of legality. What is or becomes "criminal" depends upon legal constraints imposed on on certain economic activity in goods and services. Such decisions that set up demarcation points between

the "legal" and the illegal" are ultimately political but they do not alter the needs of consumers.

Prohibition is an exemplary case of Smith's argument. By setting conditions on the distribution and consumption of alcohol the Volstead Act did not radically alter demand or the technologies for producing alcohol, but had the effect of creating illegal markets and producing the conditions for the formation of large criminal enterprises. Within the law enforcement community, a shift away from particular groups towards types of crime and particular industries might represent some reorientation in the strategic thinking about organized crime.

Another approach related to illicit enterprise theory, developed by Edelhertz and his associates (1977, 1984), considers that no matter who the participants in criminal enterprises, they "must commit white-collar crimes at least at one of three points: (1) to make money, (2) to conceal or retain illicitly obtained money, or (3) to invest illicitly obtained money" (Edelhertz, et. al., 1984: 19).

The rationale for a white-collar crime containment strategy is based on the theory that organized crime by the nature of its activities is virtually forced into types of white-collar crime. Whether from drugs, gambling, pornography, fencing, stolen stocks, or commercial and small business frauds, or through the illegal manipulation of labor unions, criminal groups must conceal their activities in order to evade detection and prosecution. Tax collectors are avoided not only to evade taxes, but also because compliance would disclose criminal activities. Further, white-collar crime possesses attractive profit opportunities, e.g. owning legitimate businesses provides some protection for the movement of stolen merchandise through mixing it into legally obtained inventories; especially in high cash-flow businesses, participation in "upperworld" enterprises is a convenient way to launder money.

The third and most interesting stratagem in utilizing white-collar crime techniques for combatting and containing organized crime is that it may be, in terms of available resources, and the societal reaction, the most efficient way to detect and prosecute. Its sociology is sensitive to public perceptions: vice and traditional crime activities tend to be victimless, whereas many white-collar crimes such as product fraud, real estate scams, price fixing, directly and adversely affect the public.

Another point. The movement into the legitimate arena ordinarily requires "technicians" such as accountants, lawyers, specialized workers whose involvement in a business is purely instrumental and economically motivated. It is here, then, where organized criminal groups may be vulnerable to penetration, as their "straight" employees associated with them are loyal and committed only insofar as the benefits exceed risks. Moreover, involvement in legitimate businesses entails an openness in the form of records, tax statements, permits, licenses, and financial accounts that make individuals open to investigation.

The white-collar crime approach rests on two insights. First, as the record shows, monies earned illegally and clandestinely eventually must surface, and it is at this point where investigation and prosecution may prove to be an effective supplemental enforcement technique. Secondly, concentration on particular organized criminal groups, such as La Cosa Nostra, with the intention of eliminating it once and for all, may be short-sighted and wasteful of resources if it is the only approach.

If Smith is correct in his assessment that organized crime is better understood as a form of business activity on a broad and changing spectrum of the legal and illegal, then it is to be expected, so long as demand for goods and services (whatever their legal status) exists, that organized crime will remain an integral part of the American economy. This does not mean that it should be openly tolerated, or that deals and negotiations be made with it. It may mean that consideration should be directed at curtailing its rabid manifestations -- child pornography, black markets in infants, certain kinds of drug peddling among the young -- and that efforts against it should not be limited to targeting particular groups. Responses that seek to bring the full weight of the law to bear against organized crime at its most vulnerable moments -- when, for example, its monies and assets are exposed in legitimate enterprises, or when it seeks to infiltrate legitimate businesses -- are likely to be effective.

The white-collar crime approach has the advantage of a control strategy that is not ad-hoc but flexible so that it can be applied broadly against even non-traditional and newly emerging groups. It complements Smith's enterprise approach, and operationalizes it in the enforcement arena.

New and Emerging Groups: The Past Partially Recaptured

Since the end of World War II, many of the emerging groups -- ethnic minorities such as Latinos, and Blacks, and a variety of peoples from the Middle East and Asia -- recapitulate in familiar ways the group experiences of earlier decades. Gangs composed of Italians, Irish, Jews, Poles, and others developed into larger, more powerful syndicates around gambling and the thriving illicit trade in liquor (Goldstock, 1984).

Today, drugs of all kinds from heroin, cocaine to prescription drugs, constitute the basis for growth and expansion among new groups. And some of these new groups are not actually "new." Blacks can scarcely be thought of in the same way as Vietnamese or Pakistanis or Dominicans; they are not struggling to cope with a different and forbidding culture. The major denominator Blacks share with most, but not all new arrivals, is systematic poverty.

(A) Black Organized Crime In testimony before the Senate Judiciary Committee in 1983, the New York City Police Department described Black organized crime in the city as divisible into two main groups -- that of American, native-born Blacks, and Jamaican-based religious cultists, the Rastafarians. Until now, Blacks seemed to have been confined to roles within La Cosa Nostra-dominated rackets in ghetto gambling and drug dealing. Recently, there seems to have been a rupture between Black criminals and their former La Cosa Nostra patrons and employers. Several major narcotics groups, established and operated exclusively by Blacks, appeared in the ghettos, functioning for while, and then they either dissolved or were broken up by drug enforcement task forces or the police. It is believed that gambling profits and those derived from other enterprises such as loansharking and fencing in stolen goods, were the capitalization instruments for their autonomous drug ventures. Eventually the Black drug rings developed their own international sources of supply, importing methods, processing, and distribution outlets. As with their white counterparts, the huge profits earned in narcotics were allegedly funneled into

legitimate businesses in the ghettos and Black communities of the Metropolitan New York region.

It must be noted that not every "legitimate" business is run honestly by Black or white mobsters who own them or are invested in them. Often, these are merely fronts for drug money, or wedges to infiltrate an industry and destroy competitors. Sometimes however, even gangsters can and do operate legally. Nonetheless, in most cases these businesses, retail food stores, bars, restaurants, livery services, and entertainment places serve as contact and distribution sites for drug dealing.

Some of the larger, more powerful drug syndicates, those of Frank Matthews or LeRoy (Nicky) Barnes, or Charles Lucas, spread out beyond the ghetto. The level of sophistication and scope of trafficking varied, of course, but some, such as the Lucas organization showed that it was not hastily thrown together.

In his international smuggling operations, Lucas employed relatives as a hedge against security breaches. He did not restrict this participation to wholesaling but sought control from Indochina to street level sales in American Black ghettos. All the trademarks of astute organization were apparent in the Lucas group: personnel were selected because they were trustworthy not merely because of some sentimental friendship or childhood attachment; a division of labor among personnel was constructed such that one knew only what was necessary to function; state of the art technologies in transport, processing and packaging were used.

In other, densely populated urban areas, such as Chicago and other midwestern cities where Blacks are at the bottom of the economic ladder, organized criminal groups are present. One in Chicago, known as the Royal Family, consisting of former inmates from the Stateville Penitentiary modeled itself deliberately on the fictitious Corleone family in Puzo's novel, The Godfather (Abadinsky, 1985: Ch.10). The Royal Family did not challenge the white Chicago syndicate ("The Outfit") but allied itself with them, working as enforcers.

According to Abadinsky, the largest and probably most powerful Black organized criminal group in the Chicago area is the El Rukns -- a group that openly and contemptuously defied The Outfit.⁸ El Rukns has been accused of narcotics dealing and assorted shakedowns in the Black communities. It evolved out of a street gang, the Blackstone Rangers, that also participated actively in local political campaigns and has subsequently demonstrated enough cunning to petition for status as a nonprofit charity organization while its key leaders are under indictment or imprisoned. It may not be as outrageous as it sounds when a notorious gang of toughened street youths, now adult, engaging in serious crime, also does work within the ghetto and impoverished Black community to help the indigent. Mafiosi do the same thing: they simultaneously exploit and help -- always to their personal advantage.

But why now? Why didn't Blacks organize themselves into criminal groups as others have done when their poverty and oppression were more acute and painful? The criminal organizations that did emerge in numbers, prostitution, drug peddling, were feeble by comparison with today's groups, and were easily overwhelmed by powerful white gangsters (Kobler, 1971; Peterson, 1983).

The rise of Black organized crime groups seems to have paralleled the rise of Black consciousness, with its political and social militancy. The data show that major Black traffickers in drugs surfaced at approximately the same time -- the early

and mid-sixties -- when pressures were mounted by Blacks for jobs, educational reform, fair housing and a greater share of political power. Apparently, a combination of factors coalesced, some with unanticipated consequences, that produced legitimate and illegitimate opportunity structures for Blacks. In the wake of sweeping reforms, Blacks gained greater control over their communities. As Black political strength grew criminal elements were able to take advantage of the correlative declines of white power and influence within the ghetto crime scene. Blacks were able more than at any other time to wrest the ghetto from bondage to white syndicates. They thus became less dependent upon La Cosa Nostra political and police clout; they could independently bargain with whites who were no longer able to operate as freely in the ghettos.

The Civil Rights Movement set in motion Black social and economic mobility and may have inadvertently demystified the power of white crime groups that had dominated black criminals until then. As the ghettos developed their new found strength and accumulated political punch, the political agent, the operator, the machine functionary -- not unfamiliar in white communities -- with connections in the "administration" or City Hall, appeared on the scene. As the Black ghettos became more politically assertive and economically more viable, a host of actors arose -- the minority middlemen, the ghetto power brokers -- those equally comfortable in the official world of government and business, and in the ghetto shadows of opportunism and crime where favors are arranged, deals made, where money properly placed might shield and immunize its possessors from the criminal justice system.

The Black underworld is not a homogeneous, monolithic structure of power and influence wielded only by American Blacks. Since the late sixties in New York City, New Jersey, Baltimore, Washington, D.C., cities in Florida, California, and in Toronto, Canada, the Rastafarians have engaged principally in marijuana and cocaine smuggling on a comparatively large scale (NYPD, 1983). A close-knit group centered around a religious ideology with political overtones that defies Ethiopia's former emperor, Haile Selassie, the "Rastas" have achieved something of a detente with white crime families and other Black criminal groups over territories. The Rastas have gained control of the criminal economy (temporarily, at least) in West Indian and Jamaican communities. Whether they are hierarchically organized with ascending positions from boss downward to the street worker, is not known. It is probable that, as with other ghetto-bound criminal groups, a system of patron/client relations exists which is more appropriate in such a setting.

(B) Hispanic Organized Crime. Los Angeles, San Diego, Miami, Houston, Chicago, Phoenix, many of the cities on the Pacific and Gulf rims of the United States now have joined New York, Boston, Baltimore, and other ethnic metropolises as newer versions of Ellis Island. The international surge of peoples into these cities is propelled by the same "push" factors that drove earlier immigrants out of their countries: poverty, intolerance, ugly politics.

The 1980s are being characterized as the decade when Hispanics are coming into their own politically and culturally. The density and variety of the Hispanic population movement into the United States is no longer a side issue of incidental importance but a pressing reality whose attendant complications have blown through the American criminal justice system (Sagarin & Kelly, 1985).

Spanish-speaking peoples (like other ethnic groups discussed in this paper) do not by any means constitute a single, ethnic-national community. Of the Hispanics, the Mexican-Americans make up some 60% of this population; the next largest group, the Puerto Ricans, about 14%, followed by the Cubans, about 6%. Other Central and South American peoples classified as "Other Spanish" together form 20% of the total Hispanic population (Bureau of Census, 1981).

Along with the influx of immigrants and aliens from the Southern Hemisphere the economies of at least three countries to the south of us -- Colombia, Bolivia, and Jamaica -- have been greatly dependent on the foreign exchange that narco-dollars income provides. At the same time, the demand for and consumption of illicit drugs is creating an underground economy that fuels inflation. In certain regions, such as south Florida, this trade threatens to overwhelm the local economy. Into this stream of people, money and narcotics that cross the borders daily, a multi-ethnic chain of organizations has developed among Spanish-speaking groups whose profits in the United States alone soar into the billions.

(Mexican Crime Organizations Probably the most important Mexican crime organization involved in heroin trafficking is the Herrera "family." It illustrates another organized criminal group prototype. Some sources report that the Herreras may be the largest single heroin supplier for the United States. It operates from the state of Durango in Mexico where the opium is refined, then shipped north to Chicago and its lucrative markets. There is also evidence that the Herreras may be expanding into Boston, New York, San Juan, Miami, Washington, and Los Angeles (Lupsha & Schlegel, 1980).

The organizational structure and depth of personnel within the Herrera Family rivals those of the largest and most powerful Cosa Nostra families in their prime. It is reported that there are more than 2,000 members in the organization, mostly related by blood or through marriage; most of them from the same region and geographic area. According to Revell(1968:7), "These rings are tightly structured in a "compadre system," an alliance of families and extended family members and close associates. Individual roles (from campesino cultivators, to smugglers, distributors, wholesalers and drug retailers) are precisely delineated and deviation is not tolerated."

The wealth they have amassed in the heroin trade has (allegedly) been judiciously invested in Mexican real estate, ranches, dairies, and land development projects throughout North Central and Western Mexico (Lupsha, 1981; Lupsha & Schlegel,1980).

What is unique about the Herrera Family (but with similarities with the Lucas drug operations in the United States) is the absence of middle men -- the Herreras control their product from the poppy fields until it is cut and sold to a "retailer" in Chicago, one step from the street. Thus, most of the profits remain in the family, and in Mexico. Lupsha and Schlegel note that, "[E]fficient organizational management is maintained by some 26 executive level directors, and vast array of 'field representatives' in a number of American cities. This network is held together through the Herrera organization's Chicago 'office' and through constant communications and trips back to the organization's headquarters in Durango"(Lupsha & Schlegel, 1980: 7).

The Herrera Family does not appear to be an appendage of Cosa Nostra groups operating in the Southwest of the United States, or of the Chicago Outfit. It functions very effectively and autonomously within the United States and has proceeded to coopt and corrupt Mexican law enforcement authorities who have not been able to

seize the top echelon, Jaime Herrera and his chief advisers. Working through networks of relatives, the drug organization protects itself against infiltration by law enforcement and its competitors.

(Mexican Mafia and La Neustra Famiglia) Nearly ten years ago law enforcement agencies became aware of a prison-based gang consisting of Mexican-Americans, a self-styled "Mexican Mafia" -- a name presumably chosen to emphasize the nature of its organizational parameters and membership. Made up of Chicanos from the barrios of East Los Angeles, they formed a closed, ethnically-based self-protection group in the California prison system. Members had been participants in street gangs in the barrios. The organization has spread, with chapters in California, Arizona, New Mexico, Utah, and Illinois -- states with substantial Mexican-American populations. Though the "Mexican Mafia" was born and expanded in the prison system, it has recruited in the barrios members without prison records. Ianni (1974) reports that in their formative stages many criminal networks in Harlem were similarly composed of individuals who met in the racial/ethnic apartheid of the prisons.

Admission into the Mexican Mafia is brutally blunt: "Blood in, blood out" -- meaning, induction is dependent on the candidate carrying out a "contract", usually a murder or some act of violence at the behest of the organization. This has its parallels with La Cosa Nostra requirements, a rite of passage of "making one's bones" in which the individual demonstrates his suitability for membership through violence at the command of a "button man" (an initiated member). The other grisly component in the rule of membership, "blood out," excludes the more squeamish among the brothers: no one voluntarily leaves the organization: membership is for life on the organization's terms.

Another crime organization that sprang to life in the California prisons is La Nuestra Famiglia. It too is exclusively made up of Chicanos and developed as a defense group, an inmate protective association. Ironically, the institutions designed to inhibit and deter crime have done much to perpetuate it by permitting desperate conditions to develop for so many inmates that they must resort to extraordinary means in order to protect themselves.

La Nuestra is more formal (and perhaps pretentious) in its organizational scheme with positions for a president (boss), counselors and captains ruling small groups of members. It is modeled on Italian-American crime families, and like the Mexican Mafia it has expanded beyond a protective association of prisoners into extortion in and out of prison by preying on weaker inmates, by putting together drug deals, and by extending into the community operating in vice and assorted rackets that exploit barrio businesses and resident (Lewis, 1981).

(Columbian Groups) Like the Mexico-based Herrera heroin family operating extensively in the United States, Colombian crime organizations are foreign-based and mainly single-product drug suppliers with some involvement in counterfeiting U.S. currency, passports, and other legal documents. Cocaine is their principal source of income. As with the Herreras, Colombians may be described as "crime families" because their organizations are typically directed by blood relatives who entrust positions of responsibility to other relatives (NYPD, 1983).

Another way that Colombians display commonalities with other organized crime groups is their method of drug distribution: they operate vertically, i.e., they handle

-and control cocaine from its processing in Colombia through its distribution to middle-level American-born dealers. In the New York area, many Colombian traffickers conduct legitimate businesses in those sections of the city where Colombian emigres have settled. The same pattern of locating a base of operations in the midst of their ethnic enclave appears to have occurred in other major metropolitan areas in the United States.

Though identified as the major cocaine suppliers in this country, at first Colombia was merely a supply source for marijuana-growing and harvesting controlled by Cubans and others who handled wholesaling and distribution in the United States. However, as the marijuana markets dried up and cocaine rose as the drug of choice among affluent users, the Colombians moved heavily into cocaine trafficking. Cuban middlemen who had financed and engineered major purchases and shipments, were ultimately replaced, sometimes violently (Pileggi, 1983).

By eliminating all competitors and organizing production and distribution around a small group of "drug kingpins" -- powerful crime bosses, influential landowners, and some government officials in the military and interior police administrations -- the Columbians consolidated cocaine operations in the 1970s (Abadinsky, 1985: Ch.10).

In the United States, four major Columbian crime families have been identified that are closely linked to drug overlords in Columbia. These families are tightly knit extended kinship groups that are deeply feared by the Hispanic community because of their reputations for unbridled violence. Drug money is being laundered through offshore banks and invested in communities with large Latin populations.

(Cubans). There was testimony before the President's Commission on Organized Crime that identified an organization known as "The Corporation," a Cuban organized crime syndicate operating illegal sports betting and numbers in New York, New Jersey, and southern Florida that employs more than 2,500 people. This Cuban racketeering enterprise allegedly does not limit itself to illegal gambling among Hispanics but has played some role in illegal foodstamp redemption schemes, thefts, and in arson for real estate interests. But its main source of revenue is illegal gambling (Pienciak, 1985).

The steady Cuban immigration into the United States in the Castro era saw the development of Cuban ethnic enclaves in Miami, New Jersey, and New York. That early exodus from Cuba has been fed periodically over the past twenty-five years with newcomers, many of whom are not political exiles but those from the prisons and mental institutions whose departure -- either coerced or voluntary -- was welcomed by the Castro regime. These, the "Mariels", being the most recent, gravitated into the expanding and prosperous Cuban underworld of drugs, extortion, gambling, and extremist politics.

(C) Oriental Organized Crime

(The Tongs). As much as the Chinese have been victimized by the larger society historically, they have been equally at the mercy of their own. The Tongs, the men who run the banks, the restaurants, the sweatshops, the gambling, the dope traffic, and the prostitution have played a role in the power structure of the "Chinatowns" that are virtually held in thrall by an interlock of family associations dominating the community's social and economic life.

Unlike the secret societies of the Triads operating in the international drug trafficking markets in Europe, Canada, and the United States, the Tongs are aboveground associations, fraternal business organizations that ostensibly function as immigrant aid societies helping the newly-arrived to adjust, find jobs, housing, and to ease their acculturation into a new environment.

According to the New York City Police and reports from California law enforcement agencies, in locales with the largest Chinese populations the Chinese Benevolent Associations exert strong influence as mediators in disputes among businessmen, and function as an unofficial regulatory agency in the community. In New York and San Francisco, the Chinese Consolidated Benevolent Associations (CCBA), are the top of the power pyramid. They are made up of trade associations and clans built around a common ancestor of the same surname. In San Francisco, there are six large associations that by general consensus are empowered to speak and act on behalf of the California Chinese in affairs that affect the majority. In New York, the CCBA has operated in a similar role: as the mediating, representative interest group for the Chinese.

With the CCBA, came the Tongs. They act as semi-secret societies undertaking matters the respectable cannot. As in times past, Tongs engage in racketeering, extortion, gambling, prostitution, blackmail, narcotics and murder. No job is too dirty. The Tongs function as a mafia, and like the mafiosi, they have divided things into spheres of influence (Cardoso, 1977; Bresler, 1980; Goldstock, 1984).

In the New York Chinese Community, two powerful Tongs, Hip Sing and On Leong have been identified. On Leong is also known as the Chinese Merchants Association and controls the gambling houses throughout much of "Chinatown." The Hip Sing assists illegal aliens in getting into this country and is especially strong on the west coast. The Tongs operate legitimately as well as middlemen and contacts for the commercial and real estate interest. They control some of the activities of the numerous and dangerous street gangs in Chinatown (Kelly, 1978).

According to law enforcement sources, one Tong operates a licensed gambling casino in Las Vegas under hidden ownership. It is extremely difficult to obtain inside information on Tong activity because few law enforcement agencies have sufficient numbers of Chinese-speaking members to monitor and conduct surveillance of Tong operations. For decades, Tongs have fostered the image of fraternal orders -- which they are -- but they are also more than Elks Clubs. Membership in a Tong does not mean that a person is guilty of illicit activity. And, of course, Tong officials routinely deny any illegality or impropriety.

(Triads). These secret organizations can be traced back many centuries to a political movement in China that sought the overthrow of the Manchu Dynasty. They were revived in the late 1940s and put aside their political revolutionary goals for criminal activities including heroin trafficking. With bases in Hong Kong, Bangkok, Thailand and Singapore, their tentacles reach into the United States, Canada, Western Europe, and the Middle East (Meow & Gee, 1978).

As with the Herrera organization, the Colombian cocaine families and other ethnic crime groups, the Triads do not stray far from their ethnic communities even though their operations are international. They work out of the Chinese communities

like the Tongs, with whom they may be confused by law enforcement agencies, in order to hide from scrutiny; they may set up legitimate business fronts or through intimidation persuade legitimate Chinese to cover for them. There is no question as to their dangerousness. Unfortunately, little that is reliable is known of their internal organization which may be assumed to possess some division of labor, a leadership structure, and the like. The names of the Triads, such as "14-K" may refer to obscure Chinese mythological symbols or to something as mundane, as in "14-K", to the address of their headquarters in Canton, China. To protect their smuggling operations, Triads employ complex signal and sign identification codes known only to initiated members.

(Yakuza). Until the 1960s, the Yakuza, Japanese organized criminal groups, confined their activities to their homeland and to some tinkering in the Manila prostitution and pornography rackets (McCoy, 1986; Iwai, 1986). California authorities indicate that there is substantial evidence that the Yakuza have expanded their operations into Hawaii, the West coast of the United States, and to our Pacific Trust Territories (California Crime Report, 1982; Lindsey, 1985).

Yakuza groups are large with elaborate organization into "families" that are subdivided into still smaller units. One group, the Yamaguchi-gumi, is thought to have more than 13,000 members; it is one among some 2,450 groups said to have a total membership exceeding 103,000 (Takahashi & Becker, 1985). The Japanese organized crime groups are best known for two ritual practices: tattooing their bodies and self-mutilation practices (cutting off a small finger at the first joint for failing to successfully comply with the instructions of a superior).

Over the past several years, a number of Yakuza members have immigrated into the San Francisco and Los Angeles areas. They operate tour agencies, gift shops and nightclubs. Their criminal activities include extortion of Japanese businesses, prostitution, gun and pornography smuggling, and the harassment of Japanese tourists to this country. Typically, their victims are their own people (California Crime Report, 1982: 13).

(Vietnamese Organized Crime). Like the Yakuza and the Tongs Vietnamese gangsters have limited their criminal activities so far to their own communities on the West Coast of the United States. Their gangs are small, composed mainly of displaced Vietnamese military veterans forced to emigrate at the end of the war in their country. Nevertheless, the perpetuation of these groups is likely to extend beyond the current emigre membership as young people are being recruited from among the refugee population. Organizationally they are similar to the Chinese Tongs in that young men in street gangs are exploited by their elders as enforcers in extortion rackets, real estate frauds, and bogus business trade associations. Along with the Tongs, and Yakuza, the Vietnamese groups are essentially parasitic on their own communities where because of insularity from the larger Anglo world, gangsters can operate, at least now, with relative impunity.

(D) Israelis and Soviet Groups

On both coasts of the United States law enforcement authorities have reported the existence of small, fluid, groups of Israel nationals (NYPD, 1983; California Crime Report, 1982). Numbering no more than 150 members around a few key figures, who are themselves not very well known, their crimes include: insurance frauds, extortion

rackets in the Israeli communities, illegal immigration, and false credit card manufacture. Whether these individuals are connected with the more sophisticated crime syndicates in Israel that smuggle diamonds and currency internationally, or with the Georgian Jewish minority in Israel that is reported to be actively engaged in a wide range of racketeering enterprises, is not known (Amir, 1986).

In the New York City area, which has a large refugee community of Soviets, a group called the "Potato Bag Gang" has been identified. It, like other recent ethnic gangs in their communities, preys upon the Soviet expatriate community. The gang uses the migrant community which it feeds off as a protective shield against effective police investigation. Usually the Soviet gang is engaged in exploitative crimes such as forgery and extortion. Two possible developments seem likely in the immediate future: as the Soviet immigrants assimilate, and as their prospects for advancement improve, the immigrant-based crime that is organized may diminish significantly with some more committed to a criminal way of life becoming more sophisticated and operating in the large, non-Soviet community. Such a trend is also possible within the Vietnamese and Japanese communities as well.

(E) Sicilian Mafia Resurgence

In the 1970s Italian-American crime families were not believed to be deeply involved in heroin trafficking. Since then, however, prosecutors in the Eastern and Southern Districts of New York spotted the reopened "Sicilian Connection" -- a sophisticated courier operation between Palermo and New York that is suspected of shipping multi-kilo loads of heroin into the United States.

In Sicily, there were other indications of a rekindled interest in heroin. It is estimated that many of the murders that occurred in Palermo in 1982 -- some 140 -- were connected to the drug trade. Italian sources believe that high unemployment in southern Italy and in Sicily, some 28%, coupled with the ease of immigration into the United States, attracted mafiosi into drug trafficking once again (Arlacchi & Schneider, 1985). The prosecutions in New York presented evidence against a number of organized crime figures based on the testimony of Tomasso Buscetta. A member of the Sicilian mafia turned informer, Buscetta participated in the smuggling of heroin into this country using pizza restaurants as fronts. In Italy, Buscetta's testimony led to the issuance of arrest warrants for some three hundred mafiosi along with their business and political associates (Saunders & Lombardi, 1985; Arlacchi, 1986).

This new "mafia" activity here and in Italy is of an allegedly different order than the traditional type: it is more of a gangster organization, parasitic, and alienated from the people in which it thrives. The capomafia creates fear and silence not because people desire to protect a benefactor, a man capable of cutting through the red tape and getting favors done. Rather, the silence is a passivity, a cowering before violence. The mafiosi can no longer depend upon the awe of the people. Because of their loss of prestige, there is much impatience with the control and influence mafiosi still exert. Consequently, it is now widely believed that there are fewer advantages in tolerating mafiosi than in opposing them.

(F) Outlaw Motorcycle Gangs

Like Black organized crime groups, outlaw motorcycle gangs did not develop within an immigrant ethnic community. Abadinsky indicates that they originated

after World War II among ex-veterans on the West Coast. The clubs were formed in response to a psychological need: they afforded their members a sense of camaraderie in a society that did not quite welcome them back into its fold (Abadinsky, 1985: Ch. 3).

The best known gang, the Hells Angels, evolved from a recreational group into a disciplined gang with a written charter and specific positions in an ascending hierarchy of authority. Other groups subsequently modeled themselves after the Angels, which is now a national organization in size. Their formal structure includes the position of president and a national headquarters. Regional control is provided for through the offices of vice-Presidents who assist local clubs in resolving problems and offer advice. They are located in at least ten states from California, where they began, to New York, New England, and the southeast. Each local club resembles the national organization with a president, vice-President, secretary-treasurer, sergeant-at-arms, and the "Enforcer" who insures that club rules are respected, and violations punished.

The criminal activity of the Hells Angels has expanded from street-level narcotics distribution to more complex activities in prostitution, dealing in stolen auto parts, illegal gun-running and explosives smuggling. Their sophistication, despite their predilections for brutal violence, is reflected in their investment practices with illegally generated income put into legitimate business opportunities in real estate, hotels, entertainment, apartment houses, auto repair shops and bars. These investments also serve to cover many of their illicit activities and facilitates money laundering.

Their connections with Italian-American crime families who have in the past exploited the Angels' proneness for violence, have apparently been maintained. They have been known to supply the "muscle" for drug deals contracted by traditional organized criminal groups. Their reputation for violence has put them into constant confrontation with law enforcement. The Hells Angels have experienced some changes in their approaches to crime. There is evidence that they are increasingly operating independently of traditional criminal groups, going out on their own, establishing autonomy, and able to manage deals with other groups besides La Cosa Nostra.

Conditions Favoring the Perpetuation and Growth of New Groups

The relationships between organized crime and law enforcement that determine whether a vice industry, for example, could operate successfully, may not be as prevalent among many of the newer groups. In lieu of police protection and corruption, many of the new groups, especially those whose languages and culture place them on the margins of society, rely on their differentness for protection. In this way the ethnic community provides a natural cocoon shielding criminal activities from close police observation. Penetration into Chinese Tongs, for instance, is difficult, more difficult than infiltration through undercover means into Italian-American crime families. Similarly, Vietnamese, Israeli, and Soviet-Russian criminal organizations may be able for a time to operate with minimal intrusion from police for the same reasons -- the linguistic and cultural obstacles posed for law enforcement.

Another factor favoring criminal groups among the recently-arrived ethnics and minorities is the sheer size of the criminal justice system itself. There are more laws, statutes and responsibilities that criminal justice has assumed over the years with no commensurate increases in resources to carry out these myriad missions.

Consequently, law enforcement tends to be somewhat selective and discretionary in its practices and utilization of its manpower, time, and commitment of other assets. Those communities that are the most vocal, most articulate in their demands for police protection will tend to get it at the expense of those, no matter how crime-ridden, who lack the knowledge, experience, and ability to persuade the criminal justice bureaucracy to act on their behalf.

The organized crime operations of Blacks and Orientals is largely confined to their own communities. This circumstance may be only temporary. They, like the Italian-Americans, may "move out" as they become more confident and experienced. Whether organized crime among new groups spreads and grows as the ethnic community acculturates and improves itself economically and socially, or whether it dwindles, as ethnic succession suggests, with the erosion of the ethnic base because of social mobility will depend, it seems, on the extent to which organized criminal elements are able to form alliances with corrupt segments of the political and criminal justice systems. It will also depend on their skill in dominating the economies and politics of their local communities. It remains to be seen whether they will prove to be short-lived, ephemeral, or capable of expansion and endure over time, spreading beyond the confines of their origins.

Organizational Emulation and Imprinting

In order to understand the social world, individuals make use of a variety of knowledge structures that may generally and crudely be described as "schemas" or "stereotypes." Though the evidence is slight, but vivid, it may be that for the newer groups there is something of a conscious attempt to model themselves along the real or imagined lines of Italian-American crime families. Information about the "Mexican Mafia," La Nuestra Familia, and the Royal Family in particular provides the basis for this speculation that they may have chosen to erect their organizations modeled on the "social scripts" of La Cosa Nostra.

For those new groups that are attuned to the culture at large and not locked into their own subcultural worlds, Italian-American crime families may serve as models, as blueprints for an organizational structure to be emulated and grafted on. The mafia imagery may play an extraordinary role in molding the self-definitions of newer groups. Mafia as a concept and as an idea of success may have achieved the status of a psychological totem, a legendary mythic entity in the eyes of admiring newcomers on the crime scene.

Law Enforcement Relations with Local Communities: Control Strategies

Understanding of the nature of organized crime actors and activities in our communities suggest a variety of control activities. In those impoverished communities where organized crime is seen as predatory, especially where drug addiction is rampant, and where the public demands its eradication, it may be well for law enforcement to initiate cooperative programs that go beyond information sessions with residents on how to organize anti-drug campaigns in the schools and neighborhoods. Discussions on how to mobilize the private sector within these communities against extortion rackets may be effective. In those communities where organized criminality is perceived as an integral part of the economy, where basic goods and services, licit goods and services, are available through criminal suppliers, campaigns to expose

such activities, or to define them as intrinsically harmful in the long run to the community, are bound to meet with failure.

Decriminalization of gambling activities -- already well under way but incomplete -- and efforts to provide community development programs where loans and financial aid to marginal people may be obtained, may do much to loosen the grip of the underworld and its exploitation of the poor. Parallels to the political arena are most relevant. It is a staple of political science analysis that city machines began to disintegrate when welfare departments and other federal and state agencies began dispensing jobs and benefits, in place of ward bosses.

The closer law enforcement gets to local residents, the tighter the integration of the law enforcement sector with the community, the more likely that the image of the organized criminal as a folk hero can be deflated.

With regard to the participants in organized crime, it cannot be emphasized enough that recruitment might be reduced sharply if disenfranchised ethnic and racial groups -- those who have traditionally made up the backbone of syndicate leadership -- were more rapidly assimilated into the social and economic system with legitimate jobs and decent incomes available. That would discourage involvement significantly.

Strictly speaking, these last suggestions are not law enforcement issues per se, but political policy matters. Nevertheless, the impact of exclusion, discrimination, and the polarization of racial and ethnic groups from the mainstream directly affects criminal justice activities. Law enforcement should not balk at the chance to place their experiences and knowledge into the public discourse.

Conclusions

If the descriptions of organized crime as a mechanism for social advancement -- albeit a "queer one" -- for the impoverished are only partially valid, and if the public chooses not to dwell on the criminality of the vices organized crime purveys, then its elimination or reasonable containment seems doubtful. The dilemma posed is troubling: an ambivalent public is wooed by vice and at the same time outraged by excessive violence, by the manipulation and corruption of public officials, and by the infiltration of businesses and labor organizations that vice activity promotes. The ties between the two, between illicit vice activities and widescale racketeering, are often blurred and confused; profits from the vice rackets provide the investment capital and entry points into legitimate businesses, and buy the cooperation of the political and criminal justice systems. The mechanisms of corruption stimulate collusions in which all segments of society become tainted by compromises with criminal activity. For a public that becomes complacent and cynical in the face of massive crime of this sort, reform has a hollow, cheap ring. Perhaps only when indiscriminate violence becomes excessive, and sensational scandals rock the highest levels of public office and profoundly threaten the confidence in the integrity of the political and criminal justice systems will pressures for reform be taken seriously.

The bulk of the research on organized crime suggests that: first, in general, organized crime groups emerge out of certain milieu, and in response to social forces that reflect some degree of a malfunctioning social system -- or one that fails to cope with problems at earlier stages, e.g. at the point of immigration. Equal access to desirable opportunities is not afforded all groups and classes in society, and this

produces tensions for some individuals, but not all, that encourages the adoption of expedient survival strategies that are illegal. Second, numerous theories of organized crime share in common a recognition of the influence and impact that the social environment and criminal justice system have on the processes shaping and affecting the structure, size and scope of organized criminal activities. And third, the ways in which organized crime groups operate -- their markets and the publics that they service and victimize -- suggest that they are an integral part of the social system.

The variety of organized crime activity indicate that it is not a homogeneous form of criminal behavior; nor are organized crime groups simply mafia clones. They are flexible and persist no matter how draconian the measures and penalties devised to curb them. One caveat. RICO prosecutions over the past five years may be the kind of leverage law enforcement needs to seriously disrupt some of the traditional organized crime groups. RICO may have forced organized crime groups to lay on a cover of protection they may have mocked in the pre-RICO period. The relentless pursuit of crime leaders may have produced the "mob middleman": an individual without a record or a criminal reputation who operates in the cracks and seams of straight society. But such individuals are grist for the prosecutor's mill: instead of storming the main gates, prosecutors armed with RICO may fix upon these individuals whose minds have not been stamped with the code of silence and whose forbearance can be undermined. Unnerved by the prospect of long prison terms, they are likely to cooperate. Thus, legal tools such as RICO may be changing the sociological character of organized criminal operations to make them more susceptible to control.

But even with legal means as effective as RICO, the historical record indicates that so long as some goods and services deemed desirable by the public are illegal, lucrative rackets are likely to develop around them. Hence the need for serious consideration of decriminalization of some of the vices. Vice racket income, as the historical evidence shows, fuels expansion with profits from it infused into legitimate businesses so that the lines separating the legal and illegal spheres merge hopelessly hampering law enforcement activity.

On a national level, law enforcement agencies might be able to improve control strategies in several ways. Agencies that collect data on organized criminality are in a position to demonstrate that attempts to regulate behavior for which there are no true victims -- the personal vices -- might be discontinued. The regulation of behaviors that reflect personal preferences, tastes, and moralities may be left to the self, the family, or the church. It must be obvious, but has to be reiterated, that it is the demand for illicit goods and services that insures the continuation of organized criminality. Extraordinary numbers of citizens who are otherwise law abiding and honest see little harm in patronizing illegal cigarette vendors, or in buying "hot" merchandise at bargain prices. These and other activities that skirt state regulation, abetted by a collective ethical blind spot in the public morality, create serious enforcement problems. Why not then, re-evaluate regulatory policies?

Research evaluating the effectiveness of control strategies across the spectrum of criminal activities, and the types of business and industry particularly vulnerable to criminal penetration can make clear why organized crime is a special category of illegal behavior. If organized criminal activity reflects contradictory public attitudes, and a lack of consensus on social values, then it may be best understood as a political problem disguised as a law enforcement issue.

Notes

1. In The American Mafia (1971), Albin argues strenuously for the use of the term, "syndicated crime." For Albin, the substitution of terms was a way out of the frustrations posed by the wrangling over the adequacy and utility of definitions of organized crime. Nevertheless, the term "organized crime" has hung on for better or worse. Most current writers in the field feel compelled to tell the reader early on what they mean by the term and how it shall be used throughout their work. One scholar, Mark Haller, suggests the abandonment of the term "organized crime" altogether in favor of "illegal enterprises" because organized crime has developed a history of its own that has nothing to do with the actual references of the term or the ways in which scholars and legislators have defined it. The connotations of alien conspiracy and mafia cling to "organized crime" and distort its descriptive power (Haller, in Block, 1978). If organized crime were thought of as a polymorphous concept in which no one specific form of it suffices to exhaust its meaning, then it would be clear why there can be no general answer to the question, "What is organized crime?" There are widely different sorts of organized crime, any one of which may meet the requirements of the definition.

2. More than the middle-class, working-class people come into contact with organized crime activity and participants almost at every turn -- or so it is thought. Laswell and McKenna noted in their study of organized crime in a poor black ghetto, the Bedford-Stuyvesant section of New York City that, "[T]o community residents he (the numbers runner) is a symbol of 'upward mobility'" (1972: 179).

A study of emerging organized crime activity in Harlem reinforced the Brooklyn ghetto research: "...most of the numbers runners...are people that send their kids to camp, do a lot of good things in the community. They are respectable people" (Ianni, 1974: 128).

3. It is as if one were to examine a race riot in an urban area from several different perspectives. Law enforcement officials may see it primarily as a sum of infractions and crimes, a politician may focus on the status characteristics of the participants --- whether they are part of his constituency, or members of a minority group in conflict with others; a social worker may see the same event as an expression of discontent, as evidence of the callousness of the municipal social service bureaucracies in meeting the needs of the poor.

4. The distinction between power and enterprise syndicates is found in Block's Eastside-Westside (1983). An enterprise syndicate provides goods and services (drugs, prostitution, contraband, etc.) and may possess a division of labor and hierarchy of authority and decision-making because of the nature of its activities. Power Syndicates, on the other hand, are more fluid, more flexible, more malleable. They seek to control or impose a "fee" on a business operation --- legal or illegal --- in order to insure that it may operate free from threats of violence and disruption that the power syndicate could carry out. Power syndicates offer protection from themselves; they guarantee to their prospective victims that they will not take action against them for a price. The distinction may be misunderstood as a description of organized crime enterprises. Emphasizing the differences between power and enterprise syndicates

enables us to appreciate the complexities of organized criminal activity in general. The distinction functions as an analytical aid. The polarities it implies are intended to improve our grasp of the formations that exist in the underworld. Armed with this concept, it is possible to think of an evolutionary process in which syndicates transform themselves from suppliers of illicit goods and services to extortionate power structures, and to see how both types may operate simultaneously within a group of criminals. A mix of power and enterprise may be characteristic of the Italian-American crime families at the height of their influence.

5. The 1967 Task Force Report aroused indignation in the Italian-American community because the Report thinly disguised its major conclusion that organized crime in the United States is Italian-American crime. In 1976, the Report of the Task Force on Organized Crime avoided rekindling the ire of an outraged Italian-American community by conceding that other ethnic groups indeed were active in organized crime throughout the country. There were references to a "Dixie Mafia", outlaw motorcycle gangs, and so on. In its opening pages the 1976 Task Force Report stated that, "Organized crime is not synonymous with the Mafia or La Cosa Nostra, the most experienced, diversified, and possibly best disciplined of the conspiratorial groups." (1976: 8).

6. In the last chapters of one of the sharpest critiques of American business practices to that time, Sutherland (1949, 1983) proposed that white-collar crime be included in the category of organized crime. In his opinion, the facts of corporate crime were such as to warrant their characterization as organized crime. For Sutherland, tax frauds, bribery of public officials, restraint of trade practices, price fixing, product misrepresentation, false advertising, and so on, were persistent practices of many of the top corporations in the United States. They routinely victimized consumers, stockholders, competitors, investors and employees alike. White-collar crimes, in effect, were not discrete or inadvertent or unintentional violations, but were deliberately planned (Geis and Edelhertz, 1973).

7. The Interim Report of the President's Commission on Organized Crime on money laundering (October, 1987), describes, without pausing for qualifications or edifying comment, the operations of a Cosa Nostra racketeer, the Hells Angels, and the corporation Deak-Perara in fraudulent laundering. Here we have a traditional organized crime activist, a new organized criminal group and a well-known currency trading investment firm talked about in the same breath.

The report identifies investigations of corporations and banking institutions for violations of the Bank Secrecy Act's Currency Transaction Report provisions. Vigorous investigations for complicity acknowledge that not only Cosa Nostra members are involved in large-scale criminal conspiracies.

8. Reuter is undoubtedly correct in his estimation that the Mafia may be no more than a "paper tiger" with a fierce reputation. Not everyone is easily intimidated by its daunting name and legend. When some of Frank Matthews drug dealers were threatened by New York crime families he allowed that "Touch one of my people and I'll load my men into cars and we'll drive down to Mulberry Street...and shoot every wop we see." (Messick, 1979; 27, quoted in Abadinsky, 1985). Similarly, in Chicago, the leader of the El Rukns, a Black gang, was summoned before the leadership of The Outfit (the Cosa Nostra family in Chicago) and was warned to confine his drug operations to certain areas or else. Fort, the head of the Black syndicate, was not intimidated and briskly and decisively countered by burning down the very next day

the restaurant where the meeting took place. The Outfit read this act of defiance as a counter-threat to either get out of the South Side of Chicago or be carried out (Abadinsky, 1985: Ch. 10).

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CHAPTER III
ORGANIZED CRIME AS A BUSINESS ENTERPRISE

BY
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I. Introduction

A key assumption in organized crime policy is that behind particular criminal offenses lie criminal organizations - larger than single individuals, and more durable than any particular criminal offense. Indeed, it is precisely this assumption that distinguishes organized crime from other sorts of crime such as street offenses or white collar crimes.¹ It is also this characteristic that is alleged to make organized crime a particularly significant social problem - more important than many other kinds of crime problems. This conclusion is reached via two different arguments.

The most common is that organized criminals are particularly bad (compared with other sorts of offenders) because their organization allows them to commit crimes of a different variety, and on a larger scale than their less organized colleagues.² Thus, for example, criminal organizations may succeed in extorting money from labor unions or in importing tons of cocaine, whereas less organized offenders could do more than rob a convenience store, or sell some legitimate drugs stolen from a pharmacy. In this reckoning, the problem created by organized crime is found in the substantive criminal offenses that are committed, and the special importance of organized crime is derived from the fact that organized criminal groups can do worse crimes, or do the same old crimes on a grander scale, as a result of their scale and durability.

The second argument finds the problem of organized crime not in any special characteristics of the substantive offenses committed, but instead in features of the group itself.³ In this calculus, what is bad about organized crime is that the criminal groups seem resistant to law enforcement measures, that they seem to become rich as a result of their crimes, that they coolly calculate how best to make money without worrying about whether a planned enterprise is illegal and violent, and that they threaten additional criminal activity in the future even if their current conduct is tolerable. In short, it is the stance of the criminal group with respect to the rest of society that makes the organized crime problem particularly pernicious. The policy goal, then, is to weaken and frustrate the enterprises rather than control their criminal offending.

Both arguments justify a special interest in organized criminal activity. The distinction between them is nonetheless important because the second argument would justify a special concern about organized criminal activity regardless of the significance of the substantive criminal offenses committed. The organized crime groups would

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pose a threat to the society even if they were engaged largely in legitimate activities, and even if their criminal activities produced relatively insignificant levels and kinds of victimization.

Increasingly, it seems that organized crime policy is guided by the second argument rather than the first. The significant new legislation directed at organized crime, the Racketeering Influenced and Corrupt Organization law, makes the on-going capacity of a criminal organization the principal target of legislative action rather than specific substantive offenses.⁴ Similarly, the society seems to be very concerned about the involvement of organized crime groups in legitimate businesses, even when it seems that the legitimate activities are drawing off capital and managerial talent that would otherwise be used for illegal activity, and strengthening rather than weakening the financial performance of the legitimate firms.⁵ In effect, society's focus seems to be on the organized criminal offenders rather than their offenses.⁶

This focus has implications for research on organized crime as well as policy, for it moves the question of the on-going capacities of the organized criminal groups to the center of the society's concerns. A potentially useful way of looking at organized crime in these terms is to think of organized crime as a business firm that operates with its own "corporate strategy."⁷ This perspective is a little different than either the "institutional" tradition that viewed organized crime as a relatively static institution with elaborate structures and rituals but no particular purposes that it pursued, and the "economic" tradition that viewed organized crime as an efficient device for exploiting a particular market opportunity.⁸

If researchers think of organized crime groups as business firms pursuing a "corporate strategy," their focus shifts in interesting ways. First, this approach emphasizes the significance of these groups as powerful enterprises quite apart from the specific crimes they commit, since it focuses on their assets and their potential rather than the particular nature of their current activities. Second, it focuses attention on the dynamics of organized criminal enterprises: i.e., how they will respond to pressures and opportunities rather than viewing them in static terms in which shutting down on activity is expected to eliminate the problem. Third, in thinking about these matters, this approach makes available to us much of the descriptive and prescriptive research on how organizational leaders decide on a "corporate strategy." The insights from this literature may allow us to make improved judgments about the basic strategy of the organized criminal groups, their current vulnerabilities, and the ways in which they are likely to respond to new environmental risks and opportunities. In any case, that is the purpose of this paper: to see what can be seen by looking at organized criminal groups from this perspective. Before we turn to that problem, however, a prior issue must be cleared away: namely, the definition of the firm to which the analysis will be applied.

II. Illegal Industries and Organized Crime Firms

Organized crime research and policy has been hampered by the failure to distinguish between illegal industries and activities (such as gambling, narcotics, prostitution, loansharking, and extortion) on the one hand, and criminal firms (such as the "Gambino Family" or the "Hell's Angels") on the other. In general, we have assumed the industries and the firms were coterminous - with a particular firm

monopolizing not only one but several illegal industries in a given geographic location. Recently, we have come to understand that the illegal industries are not necessarily monopolized.⁹ Moreover, it seems that the internal structure of even the most well-defined criminal groups is relatively fluid. It seems that the members of organized crime groups have broad licenses to engage in certain kinds of illegal activities and to draw on some of the resources of the larger group, but they are not directed or controlled in detail by those at the top of the organized crime groups.¹⁰ These findings complicate our mental images of how an institutional structure is super-imposed on illegal (and legal) industries. To clarify the issue, it is worth setting out some alternative images of the "industrial organization" of illegal activities.

The simplest and most common conception is that illegal industries are controlled by a single criminal firm with a tightly organized command and control system that directs its members efforts to the efficient production of illegal goods and services. The model here is one of a tightly organized criminal monopoly with a fixed, detailed operating strategy master-minded by those at the top, and dutifully carried out by battalions of soldiers whose loyalty is maintained by paying them reasonable shares of the total revenues of the enterprise, and by the promise of advancement to higher ranks where greater economic rewards and security from arrest and attacks by other criminals can be found.

There are many reasons to be suspicious of this conception. As noted above, there is a great deal of evidence indicating that illegal industries are not monopolized by a single firm. But even leaving this point aside, it seems very unlikely that the internal control system of an organized criminal enterprise would be as elaborate and as controlling as the one described above. To have such integrated, tight control over operations would require an enormous flow of information up and down the chain of command. Agreements would have to be struck about specific "business plans," systems for monitoring performance would have to be created, records would have to be kept to insure fairness within the firm, etc.¹¹ Obviously, for an illegal enterprise, this flow of information and records constitutes an enormous hazard since it makes the enterprise much more vulnerable to effective prosecution.

But recent experience with business management suggests that such an organization creates important business liabilities as well.¹² It tends to make the enterprise too dependant on the knowledge and judgment of the top managers, and wastes the knowledge and initiative of subordinate managers who know more about their own capabilities and how they fit into a local environment of risks and opportunities. As many legitimate businesses have discovered, it is often economically valuable to decentralize their operations and push more strategic decisions about new investments and operational changes to lower levels in the organization. This has the advantages of minimizing overhead costs, of exploiting the information available at lower levels of the organization more quickly and reliably, and of encouraging the initiative of ambitious and competent lower level managers.¹³

If decentralization is a virtue in criminal firms for reasons of both security and business, then the wisdom of a second institutional model becomes apparent. This second institutional model would retain the notion that a single firm monopolized the illegal activities, but it would assume a much looser internal structure for the firm. In effect, we could think of a diversified illegal conglomerate. The center of the organization would not be the source of a particular strategy to be implemented through specific business plans imposed on subordinate managers. Instead, it would

be an institutional mechanism for gathering and distributing capital and other specialized resources for the benefit of subordinate units. The subordinate units could then concentrate on formulating and executing specific plans for earning returns for themselves and the center. Such an organizational structure would dramatically reduce the flow of information between the center and the specific operating units, and therefore enhance security against prosecution. Nonetheless, the firm could retain many of the advantages that come from scale and monopoly - namely, the opportunity to develop and efficiently use specialized resources, and to keep prices high by eliminating competition. It would be almost as if the central organized crime group distributed franchises to the lesser members of the group, but depended on these others to figure out the best ways to exploit and develop the local opportunities included within the franchise.¹⁴

A third model of the institutional structure would weaken the control of the center still more. Indeed, it would essentially make the center disappear. The model I have in mind is something like the institutional structure of the real estate development business. The notion is that a great deal of illegal activity within the illegal industries is not routine production and distribution carried on under the auspices of a specific firm, but instead the result of many ad hoc deals and projects. Sometimes the illegal firms organize a poker game. That continues for a while, and then ends. Other times they organize an elaborate fraud scheme that is perpetrated once, but not repeated for a while. Sometimes they organize a series of truck hi-jackings, but then stop - perhaps when an inside source becomes too vulnerable. Sometimes they get together a big drug deal, and maybe do it twice, but then stop to avoid attracting too much attention from other dealers or the police. In short, the firms are not consistently in one business, but intermittently in several. They are not organized as a "production line," but as a "job shop."

Viewed from the outside, the whole industry might produce a great deal of activity that seems organized. If one were to look at the skyline of Boston, for example, one could see that it developed along inexorable lines established by economic opportunities. Similarly, if one were to look at the gambling or narcotics business from the outside, it might look large and organized. If one were to look behind the real estate development, however, one would find no single firm controlling it. Instead, one would find partnerships formed around specific projects. The partnerships would often continue for a while, and occasionally would become integrated firms, but most of the development most of the time would be carried on by relatively small, short term institutional arrangements. Similarly, if one were to look behind the gambling or narcotics or loan-shark business, one might find a diversified institutional structure.

Now, it probably matters that individuals stay in the real estate development business for a while. They develop skills, reputations, and relationships with others in the same business that facilitate the creation of formal arrangements to carry out specific developments. Consequently, over time, they may accumulate a larger share of the total activity. Similarly, it probably matters that specific individuals stay in the gambling, narcotics, and loansharking business for the same reasons. So the point is not that there is no structure or concentration in illegal enterprises. The point is that the real capacity to do business is embedded in individuals rather than in larger institutional structures, and that the larger institutional structures form around specific projects that are limited in time, and are smaller than the industry

as a whole even within one geographic area. In short, it is a world of partnerships rather than productive companies.

A fourth model takes this conception of a decentralized institutional structure based on personal rather than institutional capabilities one step further. This model sees organized crime not as a firm, and not as a series of more or less long-lasting partnerships, but instead as nothing more than a professional association of criminals. In this conception, what is important is that many offenders are part of a general criminal milieu - the underworld. Within this professional association, individuals have reputations for trustworthiness, skill, certain kinds of special competences, even levels of responsibility with which they can be entrusted. And these reputations give a certain structure to illegal enterprises. Some people are more likely to work with one another than with others, and certain kinds of activities will be favored over others. But the point is that there is no structure apart from the individuals.

What is important about these different conceptions of the institutional structure lying behind (or superimposed on) the illegal industries is that they have very different implications both for identifying the "firms" within the industry, and assessing their importance and vulnerability. Essentially a "firm" is defined as some person or institution with the ability to commit a particular set of assets to specific purposes.¹⁵ The control over assets, and the ability to deploy them seems to be crucial to the definition. This is also crucial to our judgment for the character and magnitude of the threat represented by organized criminal groups. The larger the stock of assets they control, and the greater their control over the assets, the greater the threat they represent. The assets are particularly important in this regard for they establish both the capacity of the firm to absorb losses and punishment, and their ability to make trouble on a large scale if they choose to do so. If the significance of an organized crime group is tied to the assets they control, then it should be clear that the more decentralized the illegal industries, the less significant is the difference between organized crime and other kinds of criminal activity, and the less leverage law enforcement can expect to exert by immobilizing any particular firm. In effect, the lower the concentration in the illegal industries, the less formidable and significant the criminal firms that law enforcement confronts. This makes the question of the organization of the illegal industries quite important not only for defining firms for purposes of research and analysis, but also for the design and evaluation of enforcement strategies.

At the outset, it is by no means clear that the centralized models of illegal industries such as gambling, loansharking, and narcotics are the correct ones. On theoretical grounds, it seems unlikely that the highly centralized and monopolistic models will be the correct ones; the relatively decentralized or loosely coupled institutional arrangements seem by far the more likely. What little empirical evidence exists in this area also supports the view that the relatively de-centralized models are the appropriate models.¹⁶

III. The Assets of Illegal Firms

To the extent that concentration occurs in the illegal industries, it is likely to be built around control over particular assets that have natural economies of scale. Three such assets seem particularly important.

The first is a capacity (and reputation) for irresistible violence.¹⁷ A capacity for violence is crucial to the success of an underworld firm for at least three reasons. First, it allows the firm to conduct its business and hold on to its earnings without losing too much to other criminal offenders who would otherwise take advantage of them.¹⁸ Second, it is a crucial instrument of internal discipline and control that guards the firm against effective investigation and prosecution.¹⁹ And it can be used to intimidate and drive out competition. Reuter has also shown that the reputation for violence is even more valuable than the capacity to undertake violence since the reputation produces many of the desired results with few of the bad consequences of really having to use violence.²⁰

It also seems likely that both a real capacity for violence and a reputation for violence possess economies of scale. The reason is that an underworld firm needs a clear perception of a predominant and overwhelming power to exploit its reputation for irresistible violence. If other firms imagine that their capacity for violence approaches that of the dominant firm, they will be tempted to test their capacity against that of the dominant firm. Violent encounters between closely matched competitors result in very bad consequences for both firms. It is in this sense that there are economies of scale in violence and reputation: once a hegemony is created, it tends to frustrate the creation of alternative sources of violence by deterring or attacking its development, and by producing the benefits of certainty and predictability for those who must operate with the constant threat of violence from many competing sources. This does not mean that there will never be competition for the dominant position - only that most of the time the dominant position will be held relatively securely with only intermittent challenges. Probably this is the strongest factor tending toward concentration in illegal industries, and a crucial asset to be created and maintained by organized criminal enterprises.

A second crucial asset that may become concentrated in the hands of a single criminal enterprise is the capacity to corrupt or suborn enforcement personnel (including prosecutors and judges as well as police). It is important to see that the capacity to corrupt enforcement agencies is important for the same reasons that violence is important. After all, the illegal operations of a criminal enterprise are as vulnerable to "violence" and "theft" by the state (called enforcement) as they are to violence and theft by other criminals. And it is exceedingly unlikely that the state's violence can be successfully resisted by violence from the criminal enterprise. In any violent showdown, the state will win by an overwhelming predominance of force. If the criminal firm's continuing capacity to make money is to be protected from the state, then, the only feasible way is through corruption.

Whether there are economies of scale in corrupting enforcement officials (and therefore a centralizing force) will depend a great deal on the organization of the enforcement agencies.²¹ If enforcement powers are concentrated in a single agency; and if there is effective command and control within that agency from the top; and if the head of the agency can be corrupted by a criminal enterprise, then that capacity for corruption will be a powerful centralizing force in the illegal industry. Not only the criminal firm that secures this asset have protection for themselves, they will also be able to use the enforcement agency to assist them in eliminating competition. The enforcement agency will be paid off not only in a share of the revenues from the illegal activity, but also in the appearance of success through arrests and prosecutions of the dominant firm's principal competitors.

If, on the other hand, many different enforcement organizations have jurisdiction over the crimes committed by the illegal firm, or if the individuals who work for the enforcement agencies cannot be effectively controlled from the center (either to guarantee their integrity or their disciplined corruption), then there will be fewer economies of scale in corruption, and control over this asset will be a less centralizing force. The reason is that the crucial factor of production that is the aim of corruption - namely guarantees against the violence of the state - will suddenly be in the hands of many particular individuals, each of whom controls a piece of the State's threat to criminal groups, and none of whom controls an appreciable component of the overall threat from the state. In this situation, many firms may win "local licenses" for limited purposes by corrupting individual officers, but no one will be able to claim an exclusive illegal State franchise for their operation. Consequently, monopoly in the illegal industry is less likely.

A third asset which may produce economies of scale (and therefore lead to higher degrees of concentration in the illegal industries) is control over capital. Large chunks of capital are probably scarce in illegal enterprises for several reasons. First, not everyone with money to spare is willing to invest it in illegal activities even if the promised return is very high. Quite apart from the moral inhibitions, one might reasonably worry about his capacity to collect money from borrowers who possess capacities for substantial violence. Second, because of the limited capacity to enforce contracts and trust one another, it is likely that most transactions will be in cash, and few people accumulate substantial sums of money in cash. If money is held in a bank and turned into cash, it attracts scrutiny from enforcement agencies.²² So, the most likely accumulations of capital will be among those who are already engaged in illegal businesses that produce large amounts of cash. This means that concentrations of the sort of capital that is useful in large scale criminal enterprises will appear only among those who are already engaged in large scale criminal enterprises.

Note that the assets we have discussed so far are fungible across a great many different kinds of illegal businesses. Violence, corruption and cash, are as valuable in gambling operations as in narcotics, or for that matter, as in large scale truck hi-jacking operations. The fourth asset that might encourage some degree of concentration in illegal industries is clearly tied to specific businesses: that is, accumulated operating experience within a particular business. It seems that everything improves with practice, and there is no reason to believe that illegal businesses would be any different in this regard than anything else.²³ The more experience one has in gambling, narcotics, loansharking, extortion, fraud, or large scale thefts, the better a firm is likely to become in terms of its ability to earn revenues and reduce risks from other criminals or enforcement agencies. The better it gets, the stronger its competitive position, and the greater its opportunity to improve its market share. In this respect, one would expect experienced firms to control a larger share of the total illegal activity in an area than less experienced firms - at least until age, fatigue, or complacency catches up with the enterprise.

Thus, control over assets such as a capacity and reputation for effective violence, an illegal license to operate gained through corrupting an enforcement agency, large concentrations of cash, or lengthy operating experience in a particular illegal enterprise will equip criminal firms to operate successfully over a sustained period of time in illegal businesses. In effect, these assets constitute the wealth of illegal firms that

allow them to absorb losses and make plans for the future. And insofar as they can make and carry out plans for the future, they can attract and win the loyalty of the people who make up the firm. Moreover, because some of these assets seem to produce economies of scale in operations, control over these assets may lead to some degree of concentration in illegal industries. The firms that have these assets will be able to dominate the local illegal industries. The value of illegal firms resides in their ability to hold onto, deploy, and increase these assets. This, in turn, depends on their ability to keep increasing (or hold onto a dominant) market share.

IV. The "Strategies" of Illegal Firms

The question of how best to deploy the current assets of a firm so as to maximize the chance that the firm will survive and continue to make money is the question to which the concept of "corporate strategy" is supposed to provide an answer for legitimate businesses. What is essential to this concept of "corporate strategy" is that the managers of the enterprise somehow recognize and integrate in their thinking and plans the following facts. First, that there are some particular things that their organization now does very well that are providing the wherewithal even to think about the future. Second, that the environment may be changing in ways that will increase or decrease the value of their current, particular core operations, and that create new opportunities for the more or less particular assets of the firm. Third, that there are opportunities to change the balance of activities within the firm by dis-investing in current operations, or by investing in new operations. The investments can be internally financed by profits, or cash generated by dis-investing in old activities, or the sale of existing activities. Or, the investments can be externally financed through borrowing or selling equity in the firm. Moreover, the investments can take the form of investments in the hardware of plant and equipment, or the software of people and relationships within the firm. Fourth, a crucial asset of the firm is often the individual and combined capabilities of the people who work for the firm, and that preserving this asset may require rewards in both financial and status terms, both now and in the future. Indeed, it may be that the activities of the firm have to be configured around the people rather than the market opportunities. Fifth, since their judgments about all of these factors are likely to be wrong, and because the environment will change again, there are substantial long run benefits from being able to adjust. This means that fungibility and flexibility are often as valuable as the efficient deployment of assets to accomplish a particular goal as efficiently as possible.

In principle, it might be possible to include all of these concerns in a rigorous calculation. In practice, managers operate by rules of thumb, and an aesthetic sense of how their operation can be fitted into a future that is only dimly perceived. Since those who manage illegal enterprises must solve these same strategic and organizational problems, in thinking about how illegal firms survive and grow it might be valuable to understand those rules of thumb as they apply to illegal enterprises. In effect, we are looking for the basic rules that might guide the strategists of illegal enterprises - assuming they exist at some scale.

Perhaps the most basic rule for all corporate strategists is that they should protect and enhance the assets of the firm. This is slightly different than the notion of maximizing profits. In terms of financial statements, it means one keeps

one's eye on changes in net worth rather than profits and losses within a given year. Changes in net worth may be more important than profits and losses within a given year because it is the wealth of the firm that is most closely related to its long run ability to survive and continue to make money. Moreover, in assessing the assets of the firm, liquid assets are potentially more valuable than less liquid ones. This is particularly true in an environment that is changing rapidly.

The implications of this principle for illegal enterprises are the following. First, they should probably pay close attention to what is happening to their capacity and reputation for disciplined and irresistible violence. That is their most valuable and flexible asset. Its value will be weakened if it weakens in either absolute or relative terms. Preserving and protecting this asset is their key to success. Second, they should also be keeping track of the value of their stock of licenses to operate granted by corrupt agencies. Their aim should be to bring more and more of those who could attack them into a corrupt relationship, and to broaden the licenses to include more diverse kinds of businesses. Again, they should measure performance in this area as both an absolute and relative matter. They should be after broad secure licenses for themselves, and none for their competitors. Third, they should be accumulating cash. These are the crucial liquid assets that allow the enterprise to survive and adapt.

The second basic principle for corporate strategists is that they should exploit the distinctive competences of their firms. This is where the emphasis on performance and certainty is more important than the idea of fungibility and hedging against uncertainty. What this means for illegal firms is that they should continue and expand those activities that they are now performing well. To the extent that they have developed capacities for disciplined and irresistible violence (and gained enough scope to utilize this asset through the successful corruption of enforcement agencies), they can probably find additional targets from which to extort money. To the extent that they have accumulated operating experience with businesses such as gambling and narcotics (and bought room for these operations through corruption), they should expand these operations and take advantages of economies of scale and a dominant market position.

A third basic principle for corporate strategists is that they should disadvantage their competition. One of the important ways that this is now done in the legitimate sector is by using government regulations to disadvantage their competitors relative to themselves.²⁴ Government regulation may threaten all the industries in a firm, but from the point of view of a strategist, the important thing is to make sure that it disadvantages the competition more than one's own enterprise. This has obvious implications for illegal enterprises. An important ploy should always be to focus the attention of the government enforcement efforts on others. This can be accomplished directly by informing on the competition. Or, as we have seen, it may be part of a corrupt arrangement between the enforcement agencies and one illegal firm.

A fourth basic principle for corporate strategists is to minimize their exposure to government taxation. For illegal enterprises, this means minimize exposure to the threat of criminal punishment for their activities. In the legitimate sector, one minimizes tax liabilities by staying out of businesses that are taxed heavily, by managing ones operations to take advantage of tax loopholes, and by disguising taxable items as not taxable. In illicit businesses, a strategist can do the same thing by avoiding substantive crimes that seem to generate a great deal of enforcement

attention; by managing operations to minimize communications, records, and contacts with strangers (which are the principal ways that enforcement agencies develop cases against the illicit firms); and by disguising illicit activity as legitimate activity. Indeed, this last device (covering illicit activities as legitimate activities) seems to be one of the principal reasons that illicit firms choose to have some legitimate activities in their portfolios of activity. Some relationships and transactions that are fundamental to illicit activities can be created and sustained under the "front" of legitimate, constitutionally protected activity.

The fourth principle is to make sure that one knows who the strategically important people in one's operation are, and that one has bound them to the organization by keeping them happy in the present, and guaranteeing them opportunities for greater wealth, status, and independence in the future. A corollary of this principle is that if it seems likely that some of the key people will leave, it is important to be developing their replacements, although that, of course, might increase the likelihood that they will leave. In the legitimate sector, these needs are usually handled by paying people higher salaries, and by establishing personnel systems that promise tempting careers to key employees, and also guarantee some effective internal competition. In the illicit sector, there are problems with respect to current pay, and future opportunities. The central problem with current pay is that it may be hard to consume the benefits of profits earned in the short run without raising questions about the source of the income. This, again, is where a legitimate enterprise comes in handy. If money earned in illicit activities can be forced through an apparently legitimate activity, the money becomes available for short run use in consumption by the offenders. If there are no legitimate businesses to explain why someone has a great deal of money, it cannot be used for consumption. The restriction against consumption helps with respect to the task of accumulating cash capital for additional investments. But it creates a problem in terms of the firm's ability to guarantee the commitment of its principal subordinates, since it cannot provide them with current returns. With respect to guaranteeing the future of one's employees and building up replacements, the problem is that the organizational structures within which people earn their current money and make their careers are probably less firmly established. A reputation for scale and durability in the enterprise can stand as a general proxy for a particular career path, and this might turn out to be another way in which large, durable criminal enterprises have an advantage over smaller, more transient ones. But the point is that illegal firms may have greater difficulties in binding their employees to them than legitimate firms. Indeed, it may be precisely for this reason as well as security that the groups seem to build around ties of kinship and ethnicity as well as economic interdependence.

V. Implications for Enforcement Strategies

If the rules set out above are those that will allow criminal organizations to survive and grow, and if the principal aim of organized crime policy is to weaken these groups because they are bad in themselves, or because the criminal offenses they generate are worse if the firms are large and powerful, then these rules ought to indicate how the groups might be most effectively frustrated and attacked. Four different principles for law enforcement might be derived from this analysis.

The first is that it is crucially important to improve the quality of the intelligence about the institutional structure that lies behind the illegal industries. One must be able to distinguish the industry from the firm, and the firm from the individuals who comprise it. The essential thing to learn is who controls access to and use of the important assets that constitute the firm, and are being relied on to run particular businesses.

My hunch is that we will discover that the crucial assets guarded by those who seem to be at the top or at the center of the organizations are control over violence and corruption, and that those assets will be held personally rather than collectively. It is also possible that the center holds some legitimate front operations useful in disguising illegal activities, and in creating the equivalent of a personnel system to make it possible for key subordinates to spend their money, and to determine their relative status in the illegal enterprise. It seems unlikely to me that the center of the organizations will control any specific skills in particular illegal activities. Their job is to guarantee the future of the others.

It is also likely that there will be some firms engaged in activities that we often think of as organized crime type activities that are smaller and less differentiated - in effect, where the assets are all embedded in a particular individual. There will be independent bookies, narcotics dealers, and loan sharks as well as those who are more or less integrated into an organized criminal firm.

In any case, it will be important to build up images of the institutional background not by looking to see what "offices" people occupy, but instead by trying to determine what functional capabilities they represent, and what partnerships and relations seem to exist among the individuals. It is important to know how assets or functional capabilities are distributed among individuals, and how they are fitted together in partnerships, since that will answer the question of which individuals might be particularly important to immobilize through enforcement. That might or might not be the "top guy" depending on how transferrable the assets he possesses are. It might be that there is somebody who has a specialized competence for violence, corruption or drug deals who is fitted into a variety of different deals, but never in an obvious leadership role, and that person might be more important to attack than anyone else. Indeed, it seems interesting in this respect that many of the most important organized crime cases have been facilitated by "hit men" who might be a crucial and widely used resource.

The second principle follows from the first. The targets of enforcement action should be the people in whom particularly important and hard to replace assets are embedded. My hunch, again, is that these will be the individuals who can deploy disciplined violence and corruption. These are the key resources because they are the ones that are valuable across a wide array of illegal activities, and therefore extremely valuable no matter how dynamic and uncertain the environment.

The third principle is that when an analysis of the industry structure reveals a large scale firm that is operating on the basis of experience in the business without much protection in the form of either violence or corruption, that firm should be an important and easy target. It is important because it is producing a lot of crime, and generating concentrations of capital. It should be an easy mark to both law enforcement and criminals because it has no protection other than its own expertise. One should not expect to find this situation very often, however. The firms that are

large will have protection. The firms that are relying only on expertise will be relatively small and transient.

The fourth principle is that one should be prepared to use smaller scale, more ambitious competitors to attack the dominant firms. The corollary is that one should be particularly careful to be sure that the enforcement agencies are not being used (wittingly or unwittingly) as the agents of the larger firms to bolster their market position. Competitors are terribly important in enforcement efforts seeking to frustrate the growth and development of illegal firms for two different reasons. The first is that they have the incentive and the capability to supply information to enforcement agencies about the operations of the dominant firm. Consequently, they can help enforcement agencies immobilize the larger firms. The second is that they can take some of the illegal industry away from the dominant firm, and thereby weaken them. Obviously, the best of all worlds is one in which there are no illegal firms. But, if there are going to be illegal firms, and if our policy objective is to weaken them as much as possible, it may be better to have several smaller firms than a few large ones. If this reasoning is correct, it follows that it may be important for enforcement agencies to help the smaller firms attack the larger - at least until the smaller firms become threateningly large. I recognize that this creates troubling ethical issues for enforcement agencies that have so far been obscured.

This leads to the last principle. In thinking about the overall objectives of organized crime policy it is probably better to think in terms of dissipating and regulating the illegal firms as they arise and operate rather than eliminating them altogether. The fact of the matter is that there is always money to be made in illegal activities. And there is more money to be made over a longer period of time if an organization can not only learn how to commit crimes without being detected by the police, but also develop sustained capacities for crime through investments in disciplined violence and corruption. These opportunities beckon, and call into existence criminal enterprises no matter what has happened recently to the people who used to be in that business. The great error is in imagining that the assets and capabilities owned by particular criminal enterprises that allowed them to be dominant for a while were unique to the particular people and the particular group, because that would mean that enforcement could rest on its laurels once it had immobilized the groups that were well known. The problem of organized crime can be better or worse, but it will never be entirely absent. And if it were absent for a moment, the moment wouldn't last. We should measure progress by the gradual weakening of the criminal firms we find around us.

FOOTNOTES

1. See Michael D. Maltz, "Toward Defining Organized Crime" in Herbert E. Alexander and Gerald E. Caiden, ed. The Politics and Economics of Organized Crime. (Lexington, Mass.: D.C. Heath and Co., 1985) pp. 27-28.
2. Robert G. Blakey, "Remarks" Delivered at Second National Conference on Organized Crime at the University of Southern California, Nov. 11, 1983.
3. Mark Kleiman, Allocating Federal Drug Enforcement Resources: The Case of Marijuana Unpublished Ph.D. Dissertation, Harvard University, 1985. Ch. 7, pp. 4-10.
4. Robert G. Blakey and Brian Gettings, "Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies," 53 Temple 1009 (1980).
5. One of the common relationships between organized crime and legitimate business firms is that of organized crime "laundering" its money through legitimate businesses. Since this involved putting additional money into the legitimate firm, its financial performance will necessarily improve.
6. This mirrors a shift in our thinking about street crimes from a pre-occupation with offenses to an analysis of the offenders. See Mark H. Moore, et al., Dangerous Offenders: Elusive Target of Justice (Cambridge, Mass.: Harvard University Press, 1984).
7. Kenneth R. Andrews, The Concept of Corporate Strategy (Homewood, Illinois Dav Jones-Irwin, 1971).
8. For an example of the "institutional tradition" see, Donald R. Cressey, Theft of the Nation: The Structure and Operations of Organized Crime in America (New York: Harper and Row, 1969). For examples of the "economic tradition," see Thomas C. Schelling, "Economic Analysis and Organized Crime" in President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Organized Crime (Washington, D.C.: Government Printing Office, 1967) or Peter Reuter, "The Organization of Illegal Markets: A Theoretical Account" Unpublished Mimeo, The Rand Corporation, 1982.
9. Annelise Graebner Anderson, The Business of Organized Crime: A Cosa Nostra Family (Stanford, California: Hoover Institution Press, 1979). Also, Peter Reuter and Jonathan Rubinstein, Illegal Gambling in New York: A Case Study in the Operation, Structure, and Regulation of an Illegal Market (Washington, D.C.: National Institute of Justice, 1982).
10. Anderson, The Business of Crime.

11. For a case indicating the complexity of managing a "strategic planning system," see Richard Vancil "Texas Instruments, Inc. Management Systems: 1972" Harvard Business School Case # 9-172-054 (Cambridge, Mass.: Harvard Business School, 1972).
12. See Thomas J. Peters and Robert H. Waterman, In Search of Excellence (New York: Harper and Row, 1982), Ch. 12.
13. Ibid., Ch. 12.
14. For a further development of these points about organizational structure, see Mark H. Moore, "A Review of The Business of Organized Crime" in
15. Robert N. Anthony and Regina Herzlinger, Management Control in Non Profit Organizations (Homewood, Illinois: Irwin, 1975) Ch. 2.
16. Anderson, The Business of Organized Crime.
17. Peter Reuter, Disorganized Crime (Cambridge, Mass.: MIT Press, 1983).
18. Thomas C. Schelling, "Economic Analysis and Organized Crime."
19. Mark Furstenberg, "Violence and Organized Crime" in Crime of Violence, Staff Report to the National Commission on the Causes and Prevention of Violence, (Washington, D.C.: Government Printing Office, 1969).
20. Peter Reuter, Disorganized Crime.
21. Mark H. Moore, Buy and Bust: The Effective Regulation of an Illicit Market in Heroin (Lexington, Mass.: D.C. Heath, 1977) pp. 30-38.
22. This is the result of recent federal and state laws requiring banks to report currency transactions. For a recent state statute, see California Senate Bill No. 1470, Chapter 1039, "An Act Relating to Financial Transactions."
23. This basic idea is captured in the literature on corporate strategy by the concept of "distinctive competence." For an analysis of how tasks shape enforcement organizations, see James Q. Wilson, The Investigators (New York: Basic Books, 1978).
24. Robert A. Leone, Who Profits: Winners, Losers, and Government Regulation (New York: Basic Books, 1986).

CHAPTER IV

STRATEGIC DECISION MAKING IN ORGANIZED CRIME CONTROL: THE NEED FOR A BROADENED PERSPECTIVE

BY

BY EDWIN H. STIER* and PETER R. RICHARDS**

I. INTRODUCTION

In its most advanced form organized crime is so thoroughly integrated into the economic, political, and social institutions of legitimate society that it may no longer be recognizable as a criminal enterprise. Such integration represents the most serious potential for social harm that can be caused by racketeers. However, the criminal justice system is least effective in dealing with organized crime when it reaches this level of maturity.

Not all organized crime individuals or groups have achieved, and many never will be able to achieve, such an advanced status. However, if permitted to evolve unchecked, many will manage to reach positions of economic and political power, and even social acceptance. Typically, an organized crime group will pass through an evolutionary process, beginning with activities virtually indistinguishable from ordinary street crime -- robbery, extortion, assault, and the like. These activities are early money-makers around which the group forms and on the basis of which it begins to achieve status among other organized crime groups. Because such criminal activities are overtly predatory and are not of a continuing business nature, they do not require the corruption of social institutions for their survival, nor are they capable of achieving societal acceptance.

In the next stage of development, organized crime groups begin to assume a more formal internal hierarchical structure. They turn from random predatory activity to providing, on a continuing business basis, illegal goods and services to the public. Thus, such groups turn to gambling, loansharking, the importation and wholesaling of narcotics, fencing, and other long-term illegal endeavors as their primary sources of income.

These activities, to preserve their economic viability and continuity, require consumer demand and acceptance, as well as protection from both competitors and law enforcement. At this stage the transformation of the organized crime group away from violent street crime to conduct more easily tolerated by society has

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begun. Although the activities engaged in remain clearly criminal, the distinction between society as the victim and society as the willing consumer has begun to blur.

In its final and most insidious form, the organized crime group manages to insinuate itself directly into the fabric of society and to create an environment that accepts, and benefits from, its existence. Its activities become much less clearly and provably criminal, involving such things as highly sophisticated labor racketeering, the infiltration and exploitation of legitimate businesses, and corruption of political institutions. In many cases, results are achieved simply by trading on reputations made by notorious leaders during earlier evolutionary stages, without the necessity of resorting to threats or violence. Appearances of legitimacy become important to the leadership. Some leaders are so successful at creating such an image that they become indistinguishable from the rest of society. Nevertheless, the essential moral precepts and values of organized crime -- the mirror image of those of legitimate society -- do not change.

In its efforts to control organized crime, the criminal justice system, with occasional exceptions, has focused on the first two stages of organized crime development. The objective of strategic planning in law enforcement has been the incapacitation of individuals, or the weakening of organizations. However, in the third stage, where organized crime has integrated itself into society and has created a receptive environment for its activities, these strategies fall far short of what is needed.

The purpose of this paper is to suggest that strategic planning for controlling organized crime in its most advanced form must consider the use of innovative methods, beyond prosecutive activity, to stimulate responses from public and private non-criminal-justice institutions to make the societal environment less hospitable to organized crime.

II. THE FORMS AND EVOLUTION OF ORGANIZED CRIME

In order to analyze the effectiveness of strategic planning by law enforcement against organized crime, it is necessary to understand how organized crime groups change in form and function over time. It is helpful to conceptualize crime groups in biological terms progressing through three stages --- the predatory, the parasitic, and the symbiotic -- in an evolving relationship with the social organism. The injury to society varies from one stage to the next. The effectiveness of prosecution as a means of healing the injury declines as the group advances.

It should be emphasized that organized crime groups do not fit neatly into the suggested categories. The evolutionary process is one of constant change and development over long periods of time. Any group at any given moment may exhibit overlapping characteristics from successive stages of maturation. In addition, some highly significant groups, particularly those engaged in drug distribution, are organized around one form of criminal activity and may not change very much over time. However, where the activities of an organized crime group pass through an evolutionary cycle, the above categories are useful as an analytical tool to improve strategic planning to maximize the success of law enforcement efforts and to understand why law enforcement alone may not be successful in controlling organized crime activity.

A. Organized Crime as Predator

pred-a-to-ry...Of, relating to, or characterized by plundering, pillaging, or marauding...preying on other animals...characterized by a tendency to victimize or destroy others for one's own gain...The American Heritage Dictionary of the English Language (Houghton Mifflin Company 1981).

Observers tend to exaggerate the importance of violence directed toward society as a characteristic of organized crime activity. All organized crime groups, at all the stages of their evolution, use inner-directed violence as a technique to control the behavior of their members and the conduct of their criminal competitors. All organized criminals, at all stages of their careers, probably are capable of acts of violence in extreme circumstances. However, it is generally only at the predatory stage -- the most primitive developmental level -- that organized crime directs its violent acts outward toward society as a victim, committing crimes such as robbery and extortion by threat of physical harm. It is at this stage that the group relies on outer-directed violent crime as its primary source of income.

For example, the Campisi group, a segment of the Genovese family operating in New Jersey, was at its predatory stage in the late 1960's and early 1970's, and was beginning to develop a semi-autonomous identity. It consisted of a core group of about ten members, mostly related by blood. As the group began to strive for an independent existence, it relied heavily on acts of extreme violence for its economic viability. It engaged in carefully planned armed robberies as a major revenue source, and did not hesitate to murder not only victims of the robberies, but also civilian witnesses who posed a threat to members of the group by their potential testimony. Although the group had begun to make some efforts to engage in and control gambling activities in a limited geographical area, it had not achieved that degree of success which would permit it to abandon outer-directed violence. Its internal structure was unsophisticated, with loose control exercised and discipline imposed by the elder members of the blood family.

By contrast, the Bruno family, operating in eastern Pennsylvania and southern New Jersey, was a long-established and mature organization, with a reputation for passivity rather than violence. Its income sources were based upon quasi-legitimate and illegal businesses, ranging from contracting firms to gambling and loansharking enterprises. Nevertheless, when internal problems caused strife and a struggle for control within the family, the result was more than a dozen murders, all inner-directed within the group itself.

Groups such as the Campisis, which at the predatory stage rely on outer-directed violence, assume the highest degree of risk of detection and prosecution. They have not, at that point, managed to infiltrate themselves into the legitimate social structure, and they operate purely as outlaws on the fringes of society. Because they do not satisfy societal demands for goods or services, society has no tolerance for their crimes. The result is a dramatically increased vulnerability to traditional investigative and prosecutive methods. Their activities create true victims who may become ready witnesses. The nature of their crimes makes corruption of the criminal justice system much more difficult to achieve.

In the case of the Campisis, it was a conviction and a lengthy sentence for armed robbery that induced a group member to cooperate with law enforcement, permitting the development of homicide and conspiracy prosecutions against virtually every key member of the organization. The result was the incarceration, albeit not for lengthy terms, of all those prosecuted. At that point the evolutionary progress of the Campisi group essentially ceased. The group as an organization became significantly less powerful, in part because it had minimal ongoing criminal businesses to sustain itself during the incarceration period. Upon their release from custody the remnants of the group reverted to their former activities, but at a reduced level. Although the Campisis still exist as a loosely-knit group, they have not been able to progress beyond their original predatory status.

On the other hand, the violence of the Bruno family control wars had much less effect on the status of the group. Despite prosecutions connected to the homicides, members of the family who were incarcerated apparently continued to manage the group's legitimate and illegitimate enterprises from prison, with no apparent disruption. The inner-directed violence had not created either the vulnerability or the societal abhorrence that could force the group to regress to an earlier developmental stage.

Thus, an organized crime group in its predatory phase is more susceptible to criminal-justice efforts because of its existence outside society and its reliance on activity that society is not prepared to tolerate. The removal or incapacitation of such a group is welcomed by society, and the injury to society is cured simply by lessening the threat of predatory violence. Since the organization has not been a provider of goods and services, legal or illegal, which some legitimate members of society consume, no market remains to be satisfied by a successor group.

B. Organized Crime as Parasite

par-a-site...Any organism that grows, feeds, and is sheltered on or in a different organism while contributing nothing to the survival of its host....A person who habitually takes advantage of the generosity of others without making any useful return.... The American Heritage Dictionary of the English Language (Houghton Mifflin Company 1981)

In its second stage of evolution the emphasis of an organized crime group is twofold. First, in its economic life, it moves away from sporadic and violent predatory activities. It seeks its sustenance from continuing business enterprises mostly designed to provide society with goods and services that society itself on the one hand decries to be illegal and, on the other hand, demands to such an extent that a market is created. Thus, gambling, providing financing at usurious interest rates, marketing narcotics, controlling prostitution, and the like -- all essentially nonviolent businesses -- become paramount. The lines between legal and illegal activities at this stage tend to blur, as, for example, when the racketeer exchanges labor peace for some economic advantage. The opportunity for enlisting the protective assistance of members of society through corruption, and the necessity to do so to protect ongoing businesses, increases -- it is easier to bribe a policeman to ignore a gambler than to overlook an armed robbery. The requirement for protection escalates as the resort to violence diminishes.

Second, the internal control and discipline of the group becomes more sophisticated, often based on reputation carried forward from predatory days, and on skill. The expansion and change of character of the organization's activities necessitates specialization -- an efficient numbers controller may have no talent for the clandestine machinations of narcotics importation. The use of outside services, such as lawyers and accountants, may become necessary to begin to give the group's enterprises the facade of legitimacy. Control from upper management flows down to operational levels through more protective layers of insulation, and is exercised more through established procedures than through actual inner-directed violence.

Unlike predatory groups, parasitic organizations function in a societal marketplace not of their own making, where there is an underlying demand for illicit goods and services. Parasitic groups may provide the goods and services directly, as in a loansharking enterprise where funds are loaned and collected by members of the group itself, or indirectly, as where a gambling business is franchised and protected, but not operated, by organized crime.

Organized crime does not necessarily operate as a monopoly. Where a market is not well organized parasitic groups may compete with independent entrepreneurs for a market share. In a market that is well organized a variety of means may be used to control competition, including corrupt criminal justice institutions. In either case, if a successful effort is made to remove the influence of the parasitic group from the marketplace, the market itself remains and will attract others - not necessarily organized crime groups - to fill the vacuum created by its removal.

For example, Hudson County, New Jersey, historically has been a major market for gambling and loansharking services. For many years, the provision of those services in the county was dominated by an organization headed by Joseph Arthur Zicarelli, who in his very early career had passed through a predatory developmental phase characterized by extreme violence. Zicarelli's group, when it deemphasized violence and began to rely on societal demand for illegal services for its revenue, was able to protect its interests through a corrupt network of public officials. This network included a congressman, mayors, policemen, and assorted judicial and prosecutive officials. A series of prosecutions resulted in the convictions of Zicarelli, several of his top managerial associates, a number of his operational workers, and many corrupt public officials. By attacking simultaneously his organization and its sources of protection, the group was so weakened that it was effectively put out of business. Nevertheless, the prosecutions had no effect on the underlying demand for the services that the group had provided, and independent operators quickly filled the void. Thus, the Zicarelli prosecutions had the effect of removing the corruptive influence of organized crime from the marketplace for illicit services, but the market itself remained in place. The market was on the fringe of society -- its services had been made illegal by a society that at the same time was prepared to tolerate a certain level of crime in the provision of those services. If such a prosecution is deemed successful, its success is not in eliminating the market, but in eliminating the corruption and permitting the level of illegality that society is prepared to tolerate to exist in the hands of independent entrepreneurs. The market itself endures, and perhaps will survive, as long as human nature remains unaltered.

The existence of the illicit market itself is not the most significant danger to society. The most significant danger is the exploitation of the market by parasitic organized crime and the resulting corruption of law enforcement institutions. Therefore,

any law enforcement effort that weakens the domination of the market by organized crime and encourages competition from independent operators tends to drive organized crime away from these safer, more acceptable patterns of criminal conduct back to those that are more risky. Thus, although the illegal market continues to exist and be serviced, its attendant social consequences can be contained at levels that society is prepared to tolerate.

C. Organized Crime as Symbiont

sym-bi-o-sis...The relationship of two or more different organisms in a close association that may be but is not necessarily of benefit to each....The American Heritage Dictionary of the English Language (Houghton Mifflin Company 1981).

In its third phase of evolution, the cliches and stereotypes that many observers use to characterize and identify organized crime groups essentially disappear. The most talented and imaginative group members have been able to make a transition from easily identifiable racketeers to persons who appear to be legitimate, or at least acceptable, members of society.

In terms of economic sustenance, the activities of these individuals turn away from both the outer-directed violence of the predatory stage and the provision of illegal goods and services of the parasitic stage. The emphasis now is on competing in the commercial marketplace with non-organized-crime businesses to provide legal goods and services.

In terms of organized crime group structure, the relationship of any particular member with his original organization tends to become attenuated. If his group has remained at either of the two prior evolutionary stages, his connections with it no longer are necessary to him for success on a day-to-day basis. For such an individual to be effective his special relationship with organized crime must continue, but it is used by him in a subtle manner to achieve his goals. Although such a person's organized crime connections may be generally known, at least in circles where such a reputation is important to him, he has become essentially a benign and non-threatening personality. Nevertheless, based upon his group ties, his perceived ability to utilize the resources and the techniques of organized crime enhances his power.

At this stage the public, as well as some in law enforcement, may conclude that such a person's organized crime history has been overcome, that he has abandoned his antisocial characteristics, that his values have changed to those of the rest of society, and that he no longer poses any threat to the social order.

Although the image of the symbiotic racketeer may have been cleansed publicly, it is at this point that the impact of his conduct, which in fact remains governed by the value system of organized crime, has the greatest debilitating effect on society. Rather than operating according to the normal standards of the business community, the racketeer manages to inject the ethics of organized crime into the public and private institutions with which he is affiliated. These institutions, which satisfy legitimate social demands for legal goods and services, in contrast to the illegal markets exploited by parasitic groups, themselves become corrupted. The excision of the racketeer, by prosecution or otherwise, leaves behind not an unsatisfied illegal market, but a pattern of doing business in which organized crime and the business

community are tied to one another in mutual interdependence. The affected institution has come to depend upon the methods of the racketeer, however subtle, for its success. The void created by the racketeer's departure must be filled by someone possessing his organized crime resources in order for the institution to continue according to its established pattern. Thus, the prosecutive solution is not enough -- the environment that has become dependent upon the racketeer must be changed.

For example, the solid waste disposal industry in New York and New Jersey historically has been dominated by racketeer groups. The result has been the creation of an illegal system for allocating business among the numerous individual companies in that industry. That system, because of the nature of the solid waste industry, has come to depend on organized crime to provide stability and discipline by enforcing an agreement which, in effect, excludes legitimate competition from the marketplace. The solid waste industry in the New York metropolitan area operates on the basis of what is known in the trade as the "property rights" system. Each location from which refuse is collected is allocated to a particular contractor. Other contractors are prohibited from competing for that location. Even if the customer at that location were to change from a "mom and pop" candy store to a skyscraper, the contractor retains his "property right" in that place, and will continue to service whomever is located there. Not only will competitors not solicit that business, but also the customer will find it impossible to replace his contractor, even with the operator who collects refuse next door.

This arrangement is not enforced easily in an industry comprised of many natural competitors. Unlike a territorial allocation system, which may be based on the economics of the geographical location of the business, the "property rights" system is likely to create economic inefficiencies by ignoring logical proximities in favor of artificially created historical rights. Given the number of competitors, the lack of economic logic in the system, and the forces that could be generated if the market were a free one, more than the voluntary consent of industry members is needed to keep the "property rights" system in place.

The industry has come to depend on organized crime to perpetuate the system. Although organized crime members own few of the actual operating businesses, they control trade associations and labor unions, arbitrate disputes, and punish those who breach the arrangement. Enforcement of discipline upon industry members generally is by means of economic pressures, ranging from unfair price competition to the creation of labor problems, and by means of the simple perceived presence and threat of organized crime. Ultimately, of course, these economic pressures being unsuccessful, traditional acts of violence, even murder, may be utilized.

In New Jersey and New York, intensive prosecutive efforts have been directed against organized crime groups operating within the solid waste industry. Many of those efforts have been highly successful. In New Jersey a major segment of the industry was indicted and convicted in a series of criminal antitrust cases that exposed the "property rights" system. Similar efforts have been made in New York. Nevertheless, there appear to have been no fundamental changes in the manner in which the industry operates. The "property rights" system continues, and the role of organized crime remains secure, whether that role is performed by those prosecuted or by their successors. The economic life of this legitimate industry has come to depend on a system that cannot exist without the influence of organized crime. Thus, organized crime has become a symbiont, and that relationship will continue unless

the industry environment is changed fundamentally in such a way that the industry no longer is dependent on racketeers.

This view of the effects of organized crime in its most advanced evolutionary stage is not necessarily generally understood or accepted. For example, a cover story entitled "The Garbage Game" in the October 21, 1985, issue of Forbes magazine accurately described the "property rights" system, pointed up the ineffectiveness of law enforcement in solving the problem, and then went on to this conclusion:

In the end the increasing public exposure of the large public companies is likely to do more than either law enforcement or trustbusters can do to dissipate the muscle tactics and profiteering that have been endemic to the business.....The garbage business is too large, the challenges and opportunities too vast, for the industry not to keep its house in order.

This conclusion is based on a perception that organized crime exists only in its first two evolutionary stages. It assumes that technological changes and the consolidation of smaller companies into large public corporations will force organized crime influence out of the industry. That assumption probably is based on a stereotype of a racketeer as a semi-literate thug who cannot possibly exist in such an environment.

Intelligence information gathered about the industry in the northeast indicates the opposite -- that the organized crime individuals involved are perfectly capable of existing, and prospering, in a sophisticated business milieu. Change will not come merely from alterations in the surface characteristics of the industry itself. Up to this point, according to the intelligence, the existing anti-competitive system has remained in place, and large national companies have been willing to accept it. The place of organized crime in the industry will remain secure as long as the players accept rules established by racketeers.

There are similar examples of the ineffectiveness of law enforcement efforts alone to change the economic environment in legitimate commerce to make it less dependent on organized crime. The historical domination of the activities of the waterfront in at least the northeastern ports, the control of major segments of labor by organized crime members who at times have achieved positions of tremendous power and visibility in unions, and the clear infiltration of smaller segments of commerce such as the garment industry, linen supply, vending machines, and the like, all are well documented.

The corruption of the economy, as has been pointed out above, will not abate until the environment that permits it to exist changes. Its presence conditions society to tolerate the ethics of organized crime, not only on its fringes, but also as a part of itself. The sanctions that can be imposed by the criminal justice system are not sufficient to cause the necessary environmental change. It is this problem that traditional strategic planning has not yet addressed effectively, and that is the next logical step for the focus of law enforcement policy makers.

III. STRATEGIC DECISION MAKING IN ORGANIZED CRIME CONTROL

The idea of "strategic" decision making presupposes that law enforcement is prepared to play more than a purely reactive role. It is a relatively new idea, which has arisen from a recognition that certain social problems that are the responsibility of law enforcement cannot be brought under control by the traditional approach -- responding to a criminal event, conducting an investigation, and prosecuting those responsible. Strategic thinking begins with the realization that despite a determined effort by law enforcement, the problem is getting out of hand.

Strategic planning should be understood in the context of the realities of what will work in the practical world of law enforcement, giving consideration to the three evolutionary stages of organized crime development. Planners should realize that different approaches are required according to the level to which any targeted organized crime group has evolved. Their methods should be tailored specifically to the developmental stage the group has reached, and in dealing with symbiotic groups, to force them to regress from that stage, which is the most difficult to investigate and prosecute.

A. A Working Definition of Strategic Decision Making

The phrase "strategic planning" sometimes is given a precise definition, intended to distinguish it from other law enforcement planning activities. For example, the differences between "strategy" and "tactics" may be used to decide whether an intelligence unit or an operational unit has control over a particular decision or the performance of a particular function.

The definition proposed by this paper is one that cuts across jurisdictional lines within agencies, is designed to be of utility to law enforcement personnel at all levels, and sets the stage for the incorporation of new ideas into the strategic planning process.

In this broad view, any decision-making that looks beyond the immediate objective of arresting and prosecuting a particular individual or group, and which in addition seeks to reduce the level of power and influence of organized crime in society, is a strategic decision.

Such a concept takes into account the two major characteristics of organized crime that distinguish it from other forms of crime -- that it is, by its nature, regenerative, and that it tends to corrupt the social environment in which it exists.

B. The Realities of Law Enforcement Planning

In the real world, strategic planning does not take place among law enforcement administrators sitting at a conference table and drafting a manifesto. A wide gap exists between the formulation of a Napoleonic grand strategy and the practicalities of the possible in the field. There are essentially two reasons why such planning cannot take place as a function separate from field operations.

The first reason is that planning that has any potential to result in successful prosecution cannot take place in the abstract. The range of options available to law

enforcement to carry out the objectives of any strategic plan is circumscribed by the inherent limitations of the criminal justice system. Therefore, for a plan to be successful, it must have the capability of generating sufficient specific lead information to support an investigation that ultimately will lead to prosecution.

The specific information required for initiation of a potentially successful investigation is the most difficult information to generate on a regular basis. The available intelligence, in terms of who the leading racketeers are and what illegal enterprises are sustaining them, may be excellent, but specifics needed to structure an operational investigation may not be available. This leads to a constant tug of war in strategic planning -- there is a recognition that certain problems are extremely important to attack, but the attack continually is diverted from what should be its highest priorities to other areas where lead information is more readily available. If law enforcement action is based on abstract intelligence with insufficient lead information, the resulting investigative activity is likely to be speculative, inefficient and unsuccessful. Therefore, effective strategic planning never can be completely "proactive."

The most effective organized crime cases, despite the manner in which their origins later are described, have resulted from the exploitation of targets of opportunity. A law enforcement agency gets a "break," such as learning of circumstances which will induce a key figure to become an informant or a witness, is sagacious enough to recognize the significance of that event, and uses its resources to exploit the matter to achieve its full potential. The coming of such events cannot be forecast while sitting at the conference table.

The second reason why strategic planning cannot be separated from field operations is that the participation of more than one unit or agency may be necessary for the implementation of the plan. Many well-recognized barriers to open communication exist in law enforcement between agencies and among individual units within the same agency. Free-wheeling, open discussion does not occur in a formal, conference-like environment. Genuine cooperation and coordination generally takes place only in an informal setting, on a case-by-case basis, founded on long-standing personal relationships based on trust created by experience.

C. Strategic Planning as a Process

When viewed according to the broad definition posited above, strategic planning in fact occurs at virtually every level of the law enforcement system, and it goes forward in a continuum on a day-to-day basis. Generally, anyone in law enforcement who is considering factors beyond an immediate prosecutive objective in making decisions relating to organized crime is engaging in strategic planning, whether he knows it or not. These decisions fall into three broad and sometimes overlapping categories.

First, law enforcement policy makers and administrators must consider a diversity of matters, ranging from what legislation to propose or support to the acquisition and allocation of manpower and materiel. For example, it is impossible to execute a plan that involves the use of electronic surveillance unless the legislation that authorizes its use has been passed, the equipment has been purchased, and the technicians who install it and the detectives who monitor it have been assigned and trained.

Second, intelligence officers collect, analyze, and disseminate information that is used as a basis for setting enforcement priorities and initiating investigations. Without the intelligence function, all investigations would be purely reactive. Although the intelligence function is not always performed by a separate component of an agency, the intelligence gatherer continually must decide where to focus his efforts. Those decisions impact greatly on the directions taken by all other parts of the agency.

Third, operational units normally function to construct particular cases. How those cases are constructed -- to what extent particular matters are exploited, who is prosecuted, how the prosecution is structured and presented -- has an impact on the overall organized crime problem beyond the confines of the case itself. An operational unit, be it investigative or prosecutive, which focuses only on the case before it as an end in itself does no strategic planning. However, when choices are made in an attempt to maximize the impact of the case beyond its effect on particular defendants, strategic planning is occurring.

In less effective agencies, decision making occurs in an environment that is fragmented and isolated. This leads to a lack of cohesiveness, and gives the agency no clear direction in which to proceed. However, when carried out properly, strategic planning becomes an integrated process, where information is communicated and flows among the various centers of decision making, enabling each to do its job in the most effective way. As new information and ideas are generated, plans are adjusted to accommodate them and opportunities are exploited fully.

Thus, strategic decision making encompasses virtually all elements of law enforcement, to a greater or lesser degree. Its use is not, and should not be, the exclusive domain of any particular discipline within the profession. When artificial jurisdictional limits are imposed to confine strategic planning to specified units, its effectiveness is seriously impaired.

D. Historical Impediments to the Process

Historically, bureaucratic self-interest often has created barriers to the exchange and flow of information and ideas that have short-circuited any semblance of successful strategy development. To some extent, law enforcement still suffers from these problems.

For example, the policy-maker who allocates resources may do so with no clear understanding of either the organized crime intelligence picture or the practical needs of the operational units. His priorities include areas other than organized crime enforcement. As the vagaries of public and political pressure shift his attention to short-term goals that may be more in keeping with his natural instinct for self-preservation, resources necessary to the organized crime program may be drained away. The constant changing of priorities, to respond to the demands of the day, destroys not only the continuity that is critical to a successful program, but also demoralizes line personnel who may believe that programs are de-emphasized and assignments shifted for reasons extrinsic to the best interests of the criminal justice system. The administrator's desire to build an empire may induce him to justify budget demands by using the numbers game, in which the priorities he passes down the line involve quantity rather than quality.

The intelligence officer who is motivated by a desire to advance his own career by impressing his superiors, and is willing to do so at the expense of the program, may exaggerate the quality of his information to enhance his reputation, or he may exaggerate the magnitude of a problem when he knows he has workable lead information that can contribute to a solution. If he is lazy, or if he does not have an understanding of the needs of the policy-making and operational units that his information should support, he may generate general abstract information that is useful basically as cocktail party gossip, with no operational value. If he is jealous of his "turf," and resentful of the glory potentially to be achieved by operational units using his information, he may fall victim to the theory that the highest and best use of intelligence information is for it to thicken a secret file.

The line operational unit, not wanting to admit the usefulness of intelligence and share credit, may attempt to set its own priorities that are not compatible with the plan. Those detectives who suffer from short attention spans may see their ultimate mission as terminating with the crunch of a door battered open in a raid and be unwilling to tolerate the drudgery of the painstaking fact-gathering involved in complex cases where success is not immediately apparent. Where statistics are used as the measure of success, investigations normally will be aimed in a shotgun fashion at the lowest and most visible manifestations of organized crime, with no regard for, or assessment of, their real impact on the problem.

These problems only are compounded when it is realized that the criminal justice system includes prosecutors, whose offices generally parallel the functions outlined above. The historical animosities and suspicion that have existed between prosecutors and police need not be described in detail. Where prosecutors and investigators have failed to integrate their operations to any significant degree, that failure has led to the "package" theory of case development -- investigators complete their work without consulting the prosecutor and turn the product over to him in a package, and the prosecutor then handles the matter as he sees fit. The result is a lack of the interdisciplinary interaction required for the full exploitation of prosecutive opportunities in a way that takes strategic planning into account.

E. Historical Improvements in the Process

Since the early 1960's, the criminal justice system has gone through a period of intense effort to understand organized crime and to find methods of diminishing its power and corruptive influence. Steady progress has been made through the establishment of discrete prosecutive and investigative units; the passage of legislation relating to electronic surveillance, witness immunity, RICO, and special grand juries; the provision of financial and logistical support to local agencies, and a continuous process of self-analysis and evaluation. The quality and sophistication of prosecutions occurring today were unheard of in earlier times. Such success is owed in part to the collective experience gained over the years. Two major areas of change have improved the impact of organized crime enforcement.

The first improvement has been the greater integration of the strategic decision making process in general, overcoming years of bureaucratic resistance. The use of modern investigative techniques, such as electronic surveillance and investigative grand juries, has by its nature assisted in breaking down certain patterns of the past. New habits and methods of working together have been created. Over time, the roles of various components of the law enforcement system have become better

defined, with specific responsibilities more generally understood, resulting in less suspicion that one unit or agency will tread on the turf of another.

In particular, the widespread use of court-authorized electronic surveillance has been a catalyst to create new interdisciplinary relationships. It has required input from investigators, prosecutors, and even judges for its effective and lawful utilization, and has produced great volumes of indisputably accurate information, useful not only for immediate prosecutive objectives but also for long-range intelligence analysis.

Thus, operational units now are more likely to understand that a part of their objective is to assist in generating information that is useful to intelligence operations, and intelligence units are more likely to comprehend that one of their major missions is to provide data to guide and support operations. Prosecutors, more freely than ever before, are able to participate without resistance in the early stages of case development. Strike forces and law enforcement coordinating committees have facilitated better working relationships among agencies at different levels of government and with different substantive and geographical jurisdictions. Within individual agencies, units not traditionally committed to organized crime enforcement may be brought into the planning and enforcement process for assistance.

These developments have resulted in more effective integration of the strategic planning process so that opportunities for developing significant prosecutions that have greater impact can be recognized and exploited more easily. In practice this is how strategic planning takes place -- the process is ongoing, involves all the components of the system, and depends for its viability and effectiveness on open communications among them.

The second improvement has been a change in the focus of strategic planning from an emphasis on individuals as targets to a concentration on reducing the influence of organized crime groups. This has resulted from a recognition that the prosecution of high-level racketeers has not been effective in diminishing the injury caused by organized crime to society. That improvement, over the last twenty years, has been marked not only by intensified efforts by practitioners, but also by continued analysis by commentators, some of whom have had practical field experience and who have brought that perspective to enforcement theory.

In its earliest days, organized crime prosecutors and investigators tended to believe that if every person named on a roster of important crime figures could be incarcerated, that alone would cripple organized crime and eliminate its corruptive character. Slowly, however, practitioners and theorists came to understand the regenerative character of organized crime -- that despite the temporary removal of leaders from the street environment, groups would continue to develop and flourish, under new leadership, or under the old leadership transmitting commands and policy decisions from prison. Thus, enforcement efforts began to concentrate on the sources of the power and influence of organizations, and to tailor investigative directions and prosecutive efforts to diminish that power and influence in innovative ways not necessarily directed exclusively toward individuals in positions of group leadership.

The prosecution of individuals obviously was most effective in dealing with predatory organized crime, where the conviction of particular individuals who were directly involved in outer-directed violence removed them from the environment where the commission of such offenses was possible. The change to attacking group

power and influence was intended to combat racketeer organizations at their parasitic developmental stages, where their primary activities are the provision of illegal goods and services to society.

Law enforcement in recent years has become adept at the deep penetration of organized crime groups through the use of long-term undercover investigations and the development of high-level informant/witnesses. These techniques, when fully exploited, tend to subvert the group's infrastructure and diminish its ability to sustain itself, rather than temporarily incapacitating some of its members. Even the public disclosure of information about the innermost workings of a racketeering group may sow seeds of dissension that can lead to its collapse despite the fact that its top leaders never are prosecuted.

Thus, strategic planning has evolved to enhance the impact of law enforcement on racketeering problems. Its next stage should be to recognize the special dangers presented by organized crime in its symbiotic stage, and to search for new methods to combat it.

IV. EXPANDING THE STRATEGIC DECISION MAKING PROCESS BEYOND THE CRIMINAL JUSTICE SYSTEM

It is possible that by refining existing approaches to strategic decision making, the criminal justice system ultimately may achieve a significant level of success in controlling predatory groups and reducing the influence of parasitic groups in the marketplace for illicit goods and services. Those approaches already have produced prosecutions of increasing significance and sophistication. There is no reason to believe that such efforts will diminish, as long as the criminal justice system continues to devote an appropriate level of high-quality resources to its organized crime programs.

However, if society's efforts to solve the problems inherent in the existence of organized crime are to continue to progress, the emphasis in planning for effective enforcement should shift again. In addition to utilizing prosecutive methods against individuals and groups, strategic planners must begin to recognize the limits of law enforcement and consider how to stimulate responses from institutions outside the traditional parameters of the criminal justice system. By so doing, enforcement efforts may begin to precipitate changes in the societal environment in which symbiotic organized crime groups operate. Without altering an environment that has become dependent on symbiotic racketeers for its economic viability, the core societal corruption caused by organized crime will continue. That corruption necessitates the replacement of a racketeer removed by prosecution with another.

Experience demonstrates that when organized crime has become symbiotic, prosecutive action alone has not been able to remove it. For example, the prosecutions previously described in the solid waste industry in New Jersey appear to have been unsuccessful in altering the manner in which business is conducted in that industry. Power has shifted from organized crime groups in which key individuals were convicted to other similar groups that previously had played a lesser role. The new groups were welcomed into an unchanged industry environment and continued to perform the roles of their predecessors.

In anticipation of this some efforts were made by law enforcement to reform the solid waste industry environment. Legislation was proposed and passed establishing license requirements that included integrity as a licensing criterion. Proposals were made to reform the preexisting regulatory scheme that had been exploited by the industry and used, contrary to its intended purpose, as a device to control competition. Regulatory hearings were initiated to revoke the licenses of firms that had been associated with convicted racketeers.

It is apparent that the racketeer groups recognized the danger posed by the non-prosecutive efforts to reform the industry and chose to fight most vigorously on the fronts that had the potential to do the most damage to their long-term interests. Most of those indicted "folded" at that early trial stage by pleading guilty. However, the legislation was lobbied against heavily before its passage. When that campaign failed and the bill passed, the fight continued into the courts, with the result that, at least at the trial court level, it was held to be unconstitutional. The regulatory proceedings are being opposed so strongly that the agency involved was compelled to retain special outside counsel to supplement its own resources. The strategy evidently is based on a belief that the longer the fight is prolonged, the more likely it is that the proceedings will languish and the vitality of the government's effort will be sapped.

A similar condition of deep symbiotic organized crime penetration has existed historically on the waterfront in New Jersey and New York. In recent years prosecutions have removed key racketeers, such as Anthony Scotto and Tino Fiumara, from their positions of influence. However, patterns of doing business that involved roles for organized crime were in no way altered by the prosecutions. No apparent efforts have been made by institutions outside the criminal justice system to alter the waterfront environment and make it less dependent on the existence of roles for racketeers.

Some success in changing conditions that encourage symbiotic organized crime to flourish has been achieved in labor racketeering situations. Perhaps the most noteworthy example involves Local 560 of the International Brotherhood of Teamsters. Tenacious prosecutive efforts incarcerated virtually every racketeer in a position of direct union control. These efforts, however, still failed to change the union environment, which had become dependent on racketeering methods and which permitted the original racketeers, through "fronts" and otherwise, to maintain their power. Fear on the part of rank and file union members is not a sufficient explanation for their failure to vote in favor of untainted leadership. The membership had become inured to organized crime, and was incapable of behaving otherwise. Therefore, an innovative civil lawsuit was brought in federal court to remove the decision-making function from the union and impose a court-appointed trustee to run its affairs, in an effort to use outside non-prosecutive resources to break the cycle of racketeer domination.

These examples demonstrate only modest attempts to reform segments of society that have been corrupted by symbiotic organized crime. They were secondary to efforts which were primarily prosecutive, but they represent the beginning of an awareness of the need for action that is different in kind from prosecution to change environments friendly to and dependent on racketeering groups.

Law enforcement, which has the most detailed overview of organized crime, should, in its strategic planning, attempt to stimulate other institutions of society to reduce the receptivity of social environments to organized crime. Some such efforts should be anticipatory -- for example, in an effort to block the creation of conditions that could be receptive to organized crime influence, the drafters of the New Jersey Casino Control Act included a section that precludes a casino employer from collecting dues on behalf of a union that fails to cleanse itself of racketeers. Others should be reactive, and either parallel or follow a prosecution -- for example, providing information and support to industries that have been subjected to organized crime exploitation, enabling them to find alternatives to carrying on their business activities by paying tribute to racketeers. The fact that corruption exists in an industry does not necessarily mean that all of its members are corrupt. Reformation can occur when those who wish to behave legitimately come to realize that alternatives to economic suicide do exist and that the dominance of racketeer methods is not inevitable.

Clearly, the assumption of such a leadership role by law enforcement is not, and never will be, easy. It is difficult enough for law enforcement to keep its own house in order, and to maintain its own communications and energy level, without taking on burdens to persuade and utilize other institutions outside its control. The dilemma is that it may be only such external institutions - informed and encouraged by law enforcement - which possess the power to truly diminish the influence of symbiotic organized crime.

V. CONCLUSION

Certainly, the strategic decision-making techniques that have proven to be effective against predatory and parasitic organized crime figures and groups should continue and should not be deemphasized. Nonetheless, it must be recognized by law enforcement that success in attacking these forms of racketeering does not necessarily end the matter, and may be only the beginning.

Symbiotic organized crime is its most malevolent form because of its corruptive influence on society. The injury to society that it causes will not correct itself if the only action taken is the excision of individual corruptors by prosecution. Those at all levels of the criminal justice system who participate in the strategic decision making process should begin to look beyond the limits imposed by that system to effectuate changes in the corrupt patterns of behavior which allow symbiotic organized crime to flourish.

CHAPTER V

OPERATIONAL ISSUES IN ORGANIZED CRIME CONTROL

BY

RONALD GOLDSTOCK*

Conventional law enforcement is characterized by the investigation of isolated criminal acts by police agencies followed by the presentation of evidence to a court and jury by an appropriate prosecutorial office. To an ever increasing extent, however, the more sophisticated elements of the law enforcement community have recognized that if they are to succeed in controlling organized crime a far more complicated model must be employed. That model assumes that any particular organized crime investigation must be placed in the context of broader strategic goals which take into account the use of remedies beyond mere prosecution of the criminally culpable. It also recognizes that such an investigation must be formally planned, supervised and carried out by law enforcement officials with a variety of backgrounds and skills. Finally, that model takes account of the environment in which these investigations are conducted, that is, of the legal and political obstacles, and the legal and political opportunities, presented by the multi-jurisdictional and multi-agency structure of federal, state and local law enforcement. This paper describes such a sophisticated approach, one which considers the strategic, tactical, legal and interjurisdictional and interagency issues that arise in employing that model in the investigation and prosecution of organized crime.

I. Strategic Considerations

This paper analyzes "operational" issues that arise in the investigation of organized crime activities. Conventionally, strategic questions are considered to be outside the scope of such an analysis. That very separation of strategy and operations, however, has been a basic failing in most efforts against organized crime. In this paper, therefore, we address "operational issues" primarily, but in the context of strategies that give meaning to operations.

Clearly, control of syndicated crime will not be achieved by the standard practices employed against other types of criminal activity. In dealing with criminal syndicates, it is not sufficient for the police to investigate isolated crimes and to present the results of their investigation to a prosecutor for formal proceedings, and it is not enough for the prosecutor to convict and seek prison sentences for those implicated in those crimes. The concepts of investigation, prosecution and incarceration must be employed as part, and only as a part, of a broader predetermined strategy that considers and adopts any remedy or combination of remedies, (criminal, civil, loss

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preventative, legislative or other) best designed to limit or deter organized crime activity. Without the formulation and execution of a coherent strategy the impact of criminal prosecutions is at best haphazard, and at worst counterproductive. For example, the incarceration of an underworld figure may disrupt an individual enterprise until new leadership is established, but the disruption, if any, is often minimal, and may provide as many new opportunities for organized crime as it blocks. Spectacular investigations that produce headlines but leave these foundations untouched do little more than perpetuate the myth that nothing can be done about organized crime. To have significant results, investigations must be part of a general strategy designed to reach more than individuals and individual enterprises, must be based on an informed understanding of the organized crime problem under attack, and must consider the long range implications of both the particular strategy adopted and the daily operational tactics employed to carry out that strategy.

Perhaps Landesco put it best when he said:

Crusades arouse public sentiment against some existing abuse or disorder but they are so sweeping in character that they are usually only temporarily successful and a reaction sets in against them. One reason for the failure of crusades against crime and vice is they seek to endorse some general policy of law enforcement. They are seldom or never based on a study of the problem. What is needed is a program that will deal with the crime problem in detail and consecutively that is by analyzing the crime situation into its different elements by taking up each crime situation separately and one by one working out a constructive solution.¹

It is important to recognize that what works for one organized crime problem will not necessarily achieve comparable results for another, either because of the nature of the criminal activity or of the surrounding environment. Thus, it would be a mistake to ignore the differences that exist among the various types of illicit activities and the structures and industries in which they operate. Varying types of analyses - economic, historical, and structural - of several areas of organized crime activity and the implications of those analyses on the development and implementation of strategies for long term control, make clear the importance of this observation.²

A. Bookmaking/Loansharking

The operators of most substantial bookmaking businesses are not organized crime figures themselves, but independents who have links to organized crime. These links are important because the business is one in which access to large amounts of cash on short notice is essential. It is, for example, not unusual for gamblers to borrow in excess of \$25,000 at 5% per week from mob loan sharks. A brief look at the economics of bookmaking is necessary to explain this unique business practice.³ A bookmaker accepts bets on sports events, risking \$50 to win \$55. (Baseball works differently, but the rate of return to the bookmaker is not greater). The \$5 difference is the bookmaker's edge or "vigorish." Thus, if he were to maintain an equal dollar amount on each side of a sports event, the bookmaker's gross profit would be 5% of the total volume of bets accepted.

Of that 5%, half is paid to "runners," individuals who handle the "pay and collect" function, and under whose authority the bettors are permitted to place their wagers. Rent, telephones, clerks, figuremen (bookmaking accountants), etc. consume another percent; thus, the bookmaker's net profit is about 1.5%. An operation which handles \$25,000 in bets per day will show a profit of less than \$140,000 per year. From that figure the operator must deduct red figures (runner equity), bad debts, legal expenses, and protection payments.

But bookmakers do not balance their books and accept the "vig." They, like their customers, are gamblers -- that's why most of them got into the business -- and, hence, they purposefully accept and hold bets to provide them the opportunity to win (and the chance of losing) large amounts on individual events. The result is that, despite the long run 5% edge, they are often in need of cash during losing weeks. In order to keep their business, they must pay the winning bettors on time, and that means borrowing at 5% per week interest from mob loan sharks.

Since the losses can, and very often do, amount to \$20-30,000, the interest for a single week may be from \$1,000-1,500. Two consecutive losing weeks requires the bookmaker to borrow twice that amount. With the interest at \$2,000-3,000, he is now virtually working for the loan shark. The mob is thus able to extract bookmaking profits without having to be in the bookmaking business.

Random gambling raids -- the usual policy of many police agencies -- create headlines and cause economic harm to bookmakers. However, given the structure of the bookmaking industry, these raids may signify a net gain to organized crime because it forces independent bookmakers to turn to organized crime loan sharks who have the ability to finance illicit criminal activities.⁴

The implications for law enforcement activities directed against organized crime's control of bookmaking are clear:

1. Any investigative plan ought to have as its major objective the investigation and prosecution of loan sharks and resources should be allocated with that in mind;
2. Solvent independent bookmakers should not be driven to mob loan sharks. If they are to be penalized for violation of the gambling statutes, the penalties imposed should be designed to terminate their businesses, rather than to allow them to continue on borrowed capital;
3. Primary enforcement should be directed against insolvent bookmakers already in debt. Putting such businesses out of operation will cause the mob to lose its investment and may produce witnesses capable of testifying against organized crime loan sharks.

B. Narcotics

As indicated in the bookmaking/loansharking discussion, an economic principle well known to the organized underworld is that large profits can be extracted from an illicit business by the monopolization of any goods or service required to carry on that business. Thus, historically, the entire off-track betting industry of an area was monopolized, not through the cumbersome route of owning every horse parlor

but by the simple expedient of controlling the wire-service and charging monopolistic prices for the race results. Given potential profits, the bombings and shootings which occurred in the quest for that control during the thirties and forties is quite understandable.

This economic principle was not lost on the mob when the United States became a lucrative drug market. The time consuming, risky, and (strangely enough, by underworld standards) immoral, factors of distribution could be avoided if one could monopolize another aspect of the business. For a variety of reasons one such aspect was available to the mob -- importation.

From the thirties until the late sixties, the poppy fields of Turkey provided the world's heroin supply. The opium harvested from these fields and converted into morphine could, with minimal hindrance, be smuggled by the Corsican underworld into Marseilles where the critical morphine-heroin conversion occurred. The drug, destined for the ghettos of North America, could now be purchased and imported by those who had the cupidity, the contacts (for sources, distribution systems and corruption), and the capital necessary for the undertaking.

At that time and place, one group met those requirements. Cupidity was their raison d'être; prohibition provided the contacts and capital. Thus the mob entered the narcotics trade through arranging the financing, the smuggling, and the corruption that was necessary to bring the multi-kilo loads of white powder into the United States. Mob figures (syndicate members) bought kilo amounts and then parcelled out to "quarter-key" or ounce men who arranged for the cutting (dilution), packaging, and sale to distributors. Non-mob figures entered the scene at the 1/4 key level, the point at which the risks substantially increased and the capital requirements were manageable.

The "quarter-key" and ounce men tended to be members of minority groups who were prepared to gain money and power through the sale of heroin in the ghettos they sought to escape. As they worked their trade, the most enterprising, ruthless, and fortunate accumulated considerable supplies of cash and began to put together organizations with distribution, corruption, and enforcement capabilities.

By the late 1960's, the French Connection was broken through a number of spectacular cases, increased enforcement by American and French authorities, and U.S. pressure on Turkey to control poppy production. At the same time, two other sources of heroin were gaining in importance, South America and the Golden Triangle of Southeast Asia. For a number of reasons, criminals in minority ethnic groups were in a position to establish contacts with the heroin exporters of those areas. The Hispanics, in particular, had friends, relatives, and common language in South America. At the same time, the Vietnam War took a great number of American blacks into Southeast Asia, where drugs and dealers were readily accessible.

Thus, by the early seventies, it was the minority group criminal who had the capital, cupidity and contacts to handle the importation, processing and distribution of heroin (and other drugs). These were mainly enterprises without a sophisticated structure. The lack of syndication resulted in raiding and stealing from one another. Informing on competitors was commonplace. Yet, certain groups were developing characteristics of their predecessors in organized crime. The old Cosa Nostra type affinity based on kinship was replaced by gang participation in both neighborhoods

and in prisons. Moreover, there appeared the frightening specter of "successful" crime figures being respected and even cheered by the very people on whom they preyed.

Once the more entrenched organized criminals developed the tightly-structured organization of Cosa Nostra, the basic techniques of undercover agents, wiretapping, and informants were of limited use in controlling their syndicate operations. The upper echelons were effectively insulated and corruption and intimidation were serious obstacles to law enforcement. In the newly emerging groups, this insulation has not fully developed, and the basic methods of law enforcement can still be used effectively.

Today's emerging ethnic crime groups are in many ways reminiscent of the Chicago prohibition era gangs of the 1920's, with drugs replacing liquor as the crucial illicit commodity. It does not require a vivid imagination to foresee what the future holds for the most successful of these groups, especially as other areas of the economic sphere become open to them.

Just as in the 1920's it was easy to identify contenders for power, even though impossible to name the ultimate victor, so too it is possible today to determine who tomorrow's contenders will be and to focus law enforcement activity on them. This strategy, if followed, should have a significant impact on the development of new syndicates and the succession of new ethnic groups in organized crime.⁵ Moreover, since infiltration, eavesdropping, and informants are still viable means of investigation of such groups, entire criminal groups have and can be identified and prosecuted.⁶ Thus, given the need to establish priorities in the investigation and prosecution of the broad scope of narcotics traffickers, the traditional importers are not the only ones deserving of attention. It may make sense to concentrate attention and resources on the developing syndicates, and not the headline getters. The results will not be apparent tomorrow, but the long range implications are significant.

C. Labor Racketeering

Any strategy designed to reduce influence in the union movement should be based on an analysis of the factors which result in certain unions being dominated by the underworld. Knowing what causes particular unions to be controlled by the mob should also be the first step in determining how to re-establish democratic processes within those organizations. The likelihood that a specific union will be the subject of racketeering activity depends on two separate factors: are there characteristics of the subject union that render it particularly susceptible to racketeer manipulation, and, is there sufficient racketeering potential associated with the union to make control of it desirable to racketeers?

1. Union Susceptibility

The development of labor racketeering in the United States suggests a number of historical and structural factors which may account for the ease with which certain unions have been, and continue to be, infiltrated and dominated by underworld elements. Perhaps the most common feature of unions most severely influenced by racketeers is a membership comprised of unskilled or semi-skilled workers. Corruption has also tended to appear among unions with transient or immigrant membership, frequently due to the irregular schedule of work, geographically scattered due to the dispersion of job sites, or in which employment security is weakened by intense

competition for jobs. The effect of these factors is a rank and file which is reluctant, if not unable, to organize against mob or corrupt domination. In contrast a union with relatively few concentrated, stable work places, and a more established and confident membership, has an extremely low susceptibility to organized crime control.

A vulnerable membership may nevertheless be protected by a tradition of idealism in the union leadership, what Dubinsky called a belief that unionism was "a cause, not a business." Historical conditions may, on the other hand, contribute to the the existence of organized crime infiltration. Thus, for example, the reliance on underworld sluggers by certain unions during their formative periods rendered them highly susceptible to later domination.

Another consideration is the internal structure of the union. While not always an effective tool against labor racketeers, democratic processes at least contain the potential for change. The relationship between the central governing body and the locals is also important; the policy of local autonomy of some unions was indispensable to racketeer operations during a time of honest, if indifferent, leadership at the International level. Where the pattern is reversed, corrupt International officers can stifle honesty in the locals through the "trusteeship" device, which places an International representative directly in charge of the local's day-to-day affairs.

A final indicium of susceptibility is the type of work customarily performed by the membership. Where the daily routine involves contact with underworld figures and criminal activity, an expectation or acceptance of racketeering in the union is fostered.

2. Desirability

The susceptibility factor is related primarily to the union and its membership. The desirability factor is in many ways dependent upon the nature and structure of the industry. Is it one in which employers will succumb to strike threats? Is it an industry in which sweetheart deals provide a substantial competitive advantage? Is it an industry which provides opportunities for the enhancement of other criminal activities? Does the union have a substantial benefit fund ripe for looting?

While a strike is unwelcome in any industry, the potential for strike insurance is greatest where delay is unusually costly -- where the racketeers' demands constitute the lesser of two evils. This time element, most characteristic of construction, shipping, and meat processing is aggravated where business units are small and competition intense. There, the union's power vis-a-vis the individual employer is maximized, and the employer's ability to survive a strike in such circumstances may be almost nil.

Since cheap labor is a universal desideratum in a market economy, "sweetheart" deals may appear anywhere. Still, they appear to be concentrated where labor costs are a significant competitive factor. This is most descriptive of the garment trades, where the finished product is now frequently produced by trucking fabric to non-union shops in New Jersey, Pennsylvania, Delaware and Virginia. On the other hand, the prevalence of "sweetheart" arrangements in construction probably owes more to the great difference between union scale and the market rate, than to the relation of labor costs to overall expenses.

Another issue is the difference between unions that operate in a national market with large-scale, highly visible bargaining and unions that operate in local products markets. In such local markets, each business agent deals with a variety of small employers in an insulated bargaining environment; and that is the locus of most union corruption.

The industry variable in fund misuse, in addition to sheer size, is the relative bargaining power of union and employer. Where the union dominates, the employer often relinquishes control of the fund.

The final consideration is applicable only to the professional or syndicate-connected racketeer. For the amateur, desirability is equivalent to the sum of the labor-racketeering potential in the industry, and the susceptibility of the union to his control. On the other hand, the professional must consider the needs of his other licit and illicit enterprises, especially those within the industry. To highlight this distinction, consider a hypothetical Wall Street office workers' union. The value of control would lie not in the standard racketeering activities, but instead, in the way union power could be used to facilitate the theft and manipulation of securities.

What strategy to employ in eliminating or reducing organized crime influence in a union will thus depend on the type and structure of union involved. Success might well be achieved, not merely by prosecution of corrupt union leaders, but by restructuring union welfare funds, promoting union democracy, and regulating union practices susceptible to abuse.⁷

II. Remedies

Strategies, then, must be designed to deal with particular organized crime problems. Similarly, the remedies used to implement these strategies must be tailored to those problems and not be limited to the traditional routine of investigation, prosecution, and criminal punishment. While the use of criminal sanctions are often appropriate, in dealing with complex activity engaged in by sophisticated organizations, a wide variety of remedies need be employed. Prosecution of a corrupt union leader will achieve nothing in the long run if he can continue his activities from his cell, or if he is replaced by someone no less involved in organized crime.⁸ Thus, a strategist ought to have at his or her disposal the use of civil remedies such as forfeiture, dissolution of enterprises, injunctive relief and others which may appropriately be fashioned.⁹ Where government and private institutions are involved, it may be necessary or desirable to change their procedures and functions making them more responsive and less vulnerable to organized crime. Police Departments, for example, beset by corruption, have been able to reduce or control such problems not only by the indictment and conviction of those responsible, but also by holding supervisors accountable, limiting span of control, changing the way internal affairs units operate, limiting opportunities for corruption through selective enforcement, and by creating incentives within the department for better police work.

Legislative and regulatory remedies may also be used to advantage. In many cases, organized crime may be able to maintain its control over an institution through devices which may be declared illegal by the legislature or regulated by an appropriate

commission. Syndicate influence in unions, which was maintained in part by the shapeup device, for example, was reduced when the legislature declared such a system for the arbitrary distribution of work illegal. Institutional, legislative, and regulatory reform may also include the use of opportunity blocking techniques that reduce the vulnerability of operational systems to organized crime influence and control.

Adopting a strategic approach to organized crime investigations has a multi-faceted impact on operational issues. First, it requires that some investigative effort be directed at gathering the intelligence necessary to develop an understanding of the structure and circumstances in which the criminal conduct under investigation exists. Indeed investigative effort is necessary to establish which investigations, among those of opportunity, ought to be pursued or given priority. Second, given the strategic goals adopted, the investigation ought to be directed toward the gathering of evidence necessary to achieve those goals. For example, it may be strategically useful to prosecute corrupt public officials in one case, but to seek their cooperation in another. For forfeiture purposes, it may be important to trace assets and develop evidence of the knowledge of the non-participating third parties who hold them. If forfeiture is not part of the strategy, such information may be largely irrelevant. It may even be appropriate to gather historical information concerning events subject to prosecution solely because that information may be useful at a public hearing or in formulating or attaining remedial legislation. Finally, the formulation and adoption of particular strategies may require the employment of expertise not conventionally associated with law enforcement: economists, labor consultants, loss prevention specialists, engineers, and even historians, may assist in the collection of evidence designed to adopt and achieve practical and intelligent goals.¹⁰

III. Tactical Issues

Special skills are necessary not only because particular organized crime problems require knowledge of the structure of industries and activities outside the rational scope of law enforcement, but also the conduct of criminal investigations has grown so sophisticated that no individual discipline can provide the necessary expertise.

In prosecuting street crime, with complaining victims and single criminal incidents, the traditional division between police and prosecutor worked fairly well. However, in dealing with organized criminal activity, which is often complex and either has no immediate victims or engenders fear in those it has, complainants are rare and the criminal activity is systematic and ongoing. In such cases, proactive investigation is necessary and close cooperation of police and prosecutor required. William Travers Jerome, the crusading New York District Attorney at the turn of the century, was one of the earliest prosecutors to involve himself in the conduct of investigations. Tom Dewey, New York's famous special prosecutor, combined the skills of prosecutors and investigators at every stage of the criminal proceeding. Out of his experience evolved the Rackets Bureau concept, which ultimately led to the development of the Federal Strike Forces.

The need to merge police and prosecutorial functions today is even greater than in the Jerome and Dewey years. Legal rules concerning search and seizure, the right to counsel, electronic surveillance and related issues are now so intricate that police must routinely rely on lawyers to determine what they can and cannot do in any type of complex investigation. Moreover, the Congress and State legislatures have

formally given attorneys control over sophisticated investigative techniques used in organized crime, official corruption, and labor racketeering cases. Statutory law makes the prosecutor counsel to the grand jury and gives him or her legal responsibility for resolving immunity questions. Prosecutors are given the exclusive responsibility for applying for authorization to conduct electronic surveillance, and are required to monitor and control its execution by the police.

There are, of course, differences in the respective roles of police and prosecutors in the investigation and prosecution of organized crime. However, the skills and disciplines of both are vital throughout the course of investigation and prosecution. Increasingly, each has come to respect the other's role in the process, deferring in particular situations as legal or investigative issues indicate.

Theirs are not the only skills necessary. Organized crime involves business activities. Enterprises that deal in the delivery of illicit goods and services need to keep records of their transactions. In addition, the laundering of the proceeds of illegal activities leaves a paper trail throughout legitimate companies and financial institutions. As such, the detection of assets of organized crime figures and families requires the analysis of books and records through sophisticated accounting techniques. Moreover, the kinds of skills which accountants have, including the abilities to analyze, develop, and institute internal control mechanisms, make them equally valuable to the prosecution effort and also permit them to make valuable contributions to the development of remedial strategies.¹¹

Finally, because strategies must be based upon sufficient and reliable information, it is essential to include within the investigative team an expert in the compilation and analysis of intelligence. The need for and use of intelligence in the investigative and prosecutive process is a subject of another paper¹² and therefore will not be considered in depth here. However, it is appropriate in this context to recognize the need for analytic skills. For strategic and tactical purposes, an investigate team must have analysts equipped to do far more than clip articles from newspapers. Strategic analysts must review the entire data base to identify trends within areas of actual or potential criminal activity, evaluate the appropriateness of particular strategies and investigations, and determine the need for the collection of additional information. Tactical analysts collate and analyze the incoming evidence for purposes of the immediate objectives of an investigation. Their function is essential for complex investigations that go on for months and even years, with information constantly flowing in from a wide variety of sources that can include wiretaps, books and records, surveillances and informants. In such cases, the intuitive abilities of experienced attorneys and investigators are no match for link analyses and formal charting.¹³ By employing tactical analysts, investigators can make connections and pursue leads that might otherwise be lost in the mountains of data.

Using the skills of attorney, investigator, accountant, and analyst, a comprehensive strategy can be developed and pursued according to an investigative plan designed to achieve the results necessary to that strategy. Inevitably, such planning must be formal. Most investigations are, at their inception, amorphous in direction. Several approaches are possible and each approach presents a variety of possible outcomes. At the earliest possible moment, a general but realistic idea of what the investigation should produce must be developed, otherwise the initial steps taken may well preclude desirable and otherwise unattainable goals. Putting that general idea in writing creates a constant reminder of the larger objectives of the investigation, thus holding

in check the tendency to pursue tangential leads of short range interest, and prevents a dissolution of the effort and resources necessary to accomplish the primary goal.

Investigative Planning

There are four essential aspects to the technique of investigative planning.

1. Synopsize the evidence or the investigative predicate.

The task of synopsizing the available evidence is straightforward in some cases and requires complex and sophisticated analysis in others. If the investigative predicate consists of no more than informant information or a chance conversation intercepted during electronic surveillance in another case, little more may be required than the gathering of additional background information. On the other hand, accurately summarizing what is known about persons and conduct under investigation may require the mastery of corporate books and records, or the close review of bits and pieces of information obtained from a wide variety of sources. Under such circumstances, it may be necessary to use a trained analyst to extract the relevant information and put it into usable form.

2. Identify the targets and potential targets by name, position or function and set forth the goals of the investigation.

This is a critical aspect of the process. It is very difficult to plan tactics, allocate resources and make legal decisions without a sense of what is to be achieved. As suggested earlier, investigations may be undertaken for a variety of reasons. In addition to furnishing evidence necessary to prosecute individuals for criminal acts, investigations may be used to develop additional leads or informants, to gather information relating to the location of assets subject to forfeiture, or to collect data helpful in designing opportunity blocking techniques. Often the accumulation of that data is possible during the course of an investigation and not attainable thereafter, and thus the failure to identify those needs at the inception of an investigation may prove fatal to the ultimate goal.

3. Review investigative alternatives and determine the potential of each for producing the desired results.

This part of the process requires, more than any other, what Judge Learned Hand described as "the intolerable labor of thought." Using the combined skills of lawyer, investigator, accountant and analyst, all possible means of conducting the investigation should be considered, and a calculation must be made of the probable results of each used alone or in combination with the others.

4. Identify and resolve legal issues associated with each alternative.

No matter what approach is taken and which investigative means are employed, there will always be legal issues confronting the investigative team. While great legal skills are generally not required to spot those problems, they are necessary to resolve such issues in a manner that will permit the investigation to proceed consistent with case and statutory law. Investigative lawyers must have a "can do" attitude,

that is an aggressive personality tempered with good judgement, and an appreciation for the relevant law.

There is a tendency among some within law enforcement to believe that investigations work best when they are free flowing and guided by the intuitive nature of experienced investigators. While some argue that a written investigative plan stifles initiative and limits the scope and, hence, ultimately the success of an investigation, the opposite is true. Planning forces direct consideration of scope and prevents inadvertent blocking of investigative opportunities. Moreover, the investigative plan cannot be cast in stone. It can and should be amended as additional facts are uncovered in the course of the investigation and provide additional areas of opportunity; but such changes ought to be made after the same kind of process that resulted in the creation of the original plan.

An example of investigative planning may best illustrate the technique and its ability to enhance investigative opportunities.

1. The Investigative Predicate

Assume that a synopsis of the predicate facts included the following information. On a Friday a reliable informant tells you that his friend, a defendant in a bookmaking case, has asked him to be a messenger in what is an apparent bribery scheme. According to the informant, the defendant is a wire room clerk (an individual hired by the boss of the operation to accept bets over the telephone and who is paid about \$500.00 per week). The defendant has agreed to pay \$15,000 to the law clerk of the judge before whom the motions to suppress are pending. On Monday, the informant will soon receive from the defendant an envelope containing \$7500 and a deposit slip, and will take it to a particular bank's night depository. On Wednesday night, after the favorable decision is rendered the informant will receive an identical envelope, again to be delivered to the night depository. The bookmaker sought the informant's help because he did not want to have the envelope with him or be seen near the bank. The bookmaker is a convicted felon and under the applicable state statute would receive a mandatory 3 year sentence if convicted of the pending case. Having the informant testify is an available but not desirable option.

2. Targets and goals

The two most obvious targets are the gambler (i.e. the clerk in the gambling operation) and the law clerk. There may, however, be others as well. For example, another possible target is the judge before whom the case is pending. The involvement of the judge is open to conjecture. He may be involved and receiving a bribe, or he may be lazy but not venal, relying on the law clerk to write the decision and merely signing off on what the clerk has written. It is also possible that the judge has already decided the case without improper influence and that the clerk is using his inside position to engage in larceny and not bribery. In any event, the judge is a potential target and ought to be listed as such.

The source of the bribe money is an interesting question. The individual paying the bribe earns about \$500 a week in an occupation that is not known for the thrift of those in it. It may be that he has \$15,000 in cash of his own or that he has

mortgaged his house or borrowed from his relatives. There are other possibilities, however. The money could have come from a loan shark. Obviously a loan shark would not loan the money knowing that the borrower is faced with a prison sentence and would be unable to repay the loan. Therefore, if a loan shark did advance the money, he likely knew its ultimate purpose and therefore would be culpable as an aider and abettor in the scheme. Another possible source for the money is the boss of the gambling operation. There are a great number of incentives for the boss to provide the bribe money. His employee would otherwise be faced with a 3 year sentence and might agree to turn against him in exchange for leniency. The boss might have a contractual obligation with the employee to pay the employee while in prison or to take care of the employee's family. In any event, the boss would have to hire a new clerk, and it might be well worth the \$15,000 investment to keep an employee with whom he is comfortable and whom he presumably trusts.

Finally the question of how the law clerk came to know the gambler and make the corrupt agreement ought to be explored. Did he introduce himself in court, or was there an intermediary who made either the introduction or the arrangements. If the latter, who would the intermediary have been: bail bondsman, lawyer, arresting officer, or courtroom fixer. Although the existence of the intermediary is now only an investigative hypothesis, merely recognizing the possibility has significant implications for the proper conduct of the investigation.

3. Alternative means of proceeding.

There are a number of possible methods of conducting the investigations:

- a. The envelope can simply be taken from the informant and, with the informant's testimony, the gambler may be convicted of bribery as well as gambling charges. The gambler, now faced with multiple terms of imprisonment, may then be willing to cooperate against the clerk.
- b. The steps outlined above may be followed, but with the informant wearing a concealable recorder when he meets with the gambler. In this case, the evidence is much stronger against the gambler, who may thus be more likely to cooperate.
- c. Because the gambler appears to be using a well conceived plan, it may be that this was done on previous occasions and with other defendants. Once the envelope is seized, a deposit slip would disclose the account number. The bank can then be subpoenaed for the records of that account. If there have been similar patterns in the past, that is, a deposit of a large amount of money followed by a break of several days and then a deposit of a similar amount of money, it may be possible to uncover a decision handed down in the intervening days and favorable to the defendant in that case. Defendants thus identified may also have bribed the law clerk. The investigation could then focus in on them and additional evidence could be obtained against the clerk.

Any such methods of conducting the investigation may appear to be appropriate since each is likely to lead to a conviction. However, further analysis must be employed to identify the most efficacious way to proceed.

Indicting the gambler, the step called for in the first two approaches described above, or subpoenaing records and interviewing potential witnesses, may tip off the other targets of the investigation. Accordingly, other means of proceeding should be explored. There are two major pieces of information and potential evidence available: the informant and the envelope.

- The Envelope -

Presumably once the informant brings the envelope to the law enforcement officials conducting the investigation, the envelope can be opened and the money and the deposit slip viewed. Need the officers have a warrant to open the envelope? This question involves both legal and practical considerations. If a warrant is required, who issues it? Can the investigators logically and safely go to a judge of concurrent jurisdiction operating in the same courthouse as the judge under investigation? May they even choose the judge, or is one selected randomly by a court clerk, or must all applications be made to a designated judge sitting in a particular part? If the warrant is executed, must the return be made in open court and filed with the clerk? Can the warrant authorize only a search of the envelope, or must an actual seizure be made and the property returned to the Court as directed by the warrant? Who is to be given the inventory and receipt for the seized goods? Does the Fourth Amendment apply at all? That is to say, does the gambler have a reasonable expectation of privacy in the envelope once he gives it to the informant? Does it make any difference if the envelope is sealed? Such questions must be answered prior to the time the informant arrives with the envelope, and the appropriate practical and legal conclusions must be reached before the envelope is opened.

The envelope, the deposit slip and the money could be analyzed for fingerprints and the serial numbers of the money ought to be recorded. Among the list of potential targets is the source of the money, and fingerprints and serial numbers may provide a clue to the money's origin, and hence, others who might be involved in the bribery scheme.

The number of the account on the deposit slip provides the ability to subpoena records of that account from the bank. Will such a subpoena be honored immediately, and will the bank refrain from notifying the depositor, (in this case presumably the law clerk)? This again, is a legal issue to be explored. There are both legal and practical considerations here as well. May the prosecutor require that the bank delay notification? Need the endorsement of a court be made on the subpoena in order to be effective? Again, as before, what judge can be safely approached? Even with delayed notification required by court order, can the bank be trusted to abide by the restraint? How long will it take the court to respond to the subpoena?

Assuming that the records could be obtained in a reasonable period of time and that the bank can be approached in a way that will be likely to maintain security, the account records may be reviewed. Assuming that they show previous instances in which large deposits were made separated by a few days, and a search of the court file shows that the law clerk was involved in favorable decisions to defendants in the intervening days, ought those defendants now be approached for information

about the law clerk? The answer here would almost certainly be no, since those individuals would have no incentive to admit to bribery and implicate the clerk. More likely, they would warn him of law enforcement's interest and thus derail the investigation.

However, that is not to say that there is no value in the immediate review of such records. If the investigation uncovered a number of individuals who may have done this previously, the common denominator of those individuals may provide a lead to a potential target. Were they represented by the same defense attorney or did they have the same bail bondsman? Do they belong to the same gambling operation? Were they arrested by the same police officer? Such an analysis may prove critical to the identification and gathering of evidence against "the intermediary." The bank accounts may also be examined in order to determine how the money was withdrawn, and whether all or part of the withdrawn amounts went to the judge. This obviously could take more time than the four or five day period between the receipt of the information and the suppression order under suspicion.

- The Informant -

Since the informant may be a witness and subject to attack on credibility, some plans should be effectuated to insure that his receipt of the envelope from the gambler can be verified by law enforcement officials. Depending upon the circumstances underlying this meeting, this could be accomplished by direct observation. An alternative would be to search the informant prior to the time he meets with the gambler, and thus insure that he has no envelope with him. The receipt of the envelope from the informant would then verify his story. Another possibility would be to have the informant wear a concealable recorder or transmitter. Neither is covered by the federal wire tap statute since one of the participants to the conversation will have consented to the recording. Depending on the state in which the conversation will occur, a warrant is probably not necessary. Obviously having the conversation on tape would be of great benefit to the prosecution given the likely attack on the informant's credibility at the subsequent trial. However, as noted before, the option of having the informant testify is hardly desirable. What if the gambler could be convicted without the informant's testimony? Would the existence of the recording placing the identity and cooperation of the informant in jeopardy? Consider the gambler's potential discovery motions, which would very likely request that the gambler be provided with "all written or recorded statements made by the defendant to any law enforcement officer or agent thereof." Under those circumstance must a recording of the conversation be disclosed? If the jurisdiction requires that discovery be made only if the conversation is to be used in a court proceeding, then the prosecution would be able to maintain the secrecy of the recording. On the other hand, if discovery were required regardless of whether the prosecution intended to use the conversation, recording the conversation might not be wise. What if the conversation were transmitted, overheard, but not recorded? Legal research would have to be undertaken to resolve these issues.

In this case, the informant has provided the investigators with the investigative predicate, presumably telling them all he knows about the incident. Informants may vary from those who barely can be trusted, and who provide as little information as possible, to those who are in essence police buffs taking on the role of investigating officers. Whatever his state of mind, however, an informant, at best, will provide only that information he believes is relevant to the case. By prompting a willing

informant, an investigator may not only gain additional information the informant already possesses, but also send him out to gather even more. Of course, in order to have the informant seek out useful information, the investigative team must know what it is looking for. In this case, for example, the source of the money is of prime importance, and the investigator might be able to prompt the informant to ask the gambler what that source was. For example, the informant might say, when he received the envelope, "You must have a terrific boss if he is willing to come up with that amount of money for you." Hopefully the gambler will then reply either, "he wouldn't give me a cent, I had to go to a loan shark," or, "What else could he do; that's part of our agreement."

- The Gambler -

The gambler is another potential source of evidence against the law clerk. Even while awaiting the decision on the motion to suppress, it is quite likely that he is actively engaged in bookmaking activities and therefore can be the target of another investigation. Another search and seizure of the gambler now may produce the last bit of incentive necessary to secure his cooperation not only on the gambling case but on the bribery as well. The police and prosecutor, having already seized his records once before, presumably know his codes and his home address, and can follow him to the gambling location at which he is currently working. Under these circumstances, it would not be difficult to obtain a search warrant for that location and for his person.

However, even the decision to execute a search warrant, and the method by which this is done, must be the subject of investigative planning. If, as here, the purpose is to secure the gambler's cooperation, the warrant must be executed in a manner designed to prevent disclosure of that event to the outside world. Therefore, the door should not be knocked in, the telephones should not be seized and the bettors should not be made aware of the raid. Under these circumstances, it would be better to wait until the gambler left the premises at the end of bookmaking hours before executing the search warrant and then walking him back into the room. If he agreed to cooperate, no one would know of this latest search, nor of his cooperation.

Investigative planning may also permit an intelligent provocation of events. Assume that in this case appropriate investigative steps have been undertaken. The first envelope has been deposited in the night depository on Monday night, credited to the account Wednesday morning. A decision suppressing the evidence comes down thereafter, and the second envelope is then given to the informant. Also assume that the informant turns the second envelope over to the investigators, who then take the same investigative steps with respect to it as they did the first, except that they do not place it in the night depository. Presumably, the law clerk, seeing that no additional amounts have been credited to his account, would confront the intermediary or the gambler. The gambler, of course, would then contact the informant, with the informant's response being totally within the investigative team's control. In this case, it probably would be most helpful if that response were a false claim that he deposited the envelope as instructed and that the law clerk must be trying to rip off the gambler for an additional deposit. Hopefully at this point a confrontation can be worked out between the two, with the informant now face-to-face with the law clerk, each accusing the other of theft. At this point, the informant can be wired and hopefully, with proper coaching, can cause the law clerk to admit or deny the active participation of the judge in the criminal conspiracy. (The informant can

accuse the law clerk of wanting additional payments because the judge took more than his share, to which the law clerk might respond, "No, the judge is an honorable man -- he only kept half.")

It is, of course, impossible to resolve what investigative steps might best be taken without further information on the backgrounds and personalities of the people involved and the resources available. It is clear, nonetheless, from this limited analysis of the case that a systematic evaluation of all of the options is likely not to stifle the investigation or make it more rigid, but instead to expand its scope and permit the investigative team to take advantage of opportunities as they arise.

V. Interjurisdictional and Interagency Issues

In the course of planning and executing complex investigations, the tactical, strategic and legal questions that arise may have to be resolved within the context of an investigative "task force" that includes a variety of agencies operating within one or more different geographical jurisdictions. The interagency and interjurisdictional features of the "task force" both create problems and offer opportunities that can impact significantly on the ultimate goals of the investigation.

Problems arise because complex investigations routinely require cooperation from a variety of investigative agencies, and sometimes from a variety of prosecutorial ones that have overlapping distinct geographical jurisdiction (a federal district, a state, a region, a county), different subject matter jurisdiction (tax, arson, official corruption, labor racketeering), and different sovereigns (state, federal). The existence of these various agencies, and their own internal divisions into units of various geographical and subject matter responsibility, usually makes policy sense as a statement by their legislative and executive creators about priorities and logical divisions of operation. However, when such agencies, or units within these agencies, band together in a joint investigative undertaking, conflicts in mission and direction are inevitable, such conflicts can breed confusion and mistrust, and may result in "turf wars" that jeopardize the best interests of the investigation. Worse, the jealousies and conflicts between agencies can - and too often do -- prevent agencies from even undertaking joint investigations that are otherwise logical and appropriate, and prevent the flow of information possessed by one agency to another for whom it would be obviously useful.

The separate existence of many of these agencies, and of the divisions within these agencies, are entirely justified on policy grounds, and the resulting problems thus must simply be tolerated and dealt with as sensitively and intelligently as possible. "Turf problems" are less palatable, however, when the multiplicity of agencies is not a product of rational policy, but of historical anomalies that current political realities prevent from being changed. In New York, for example, rational and historical forces combine to create an incredible maze of law enforcement agencies. In the New York City metropolitan area, there are two organized crime strike forces, three United States Attorney's offices, two drug task forces, the Internal Revenue Service, the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration & Naturalization Service, the Customs Service, two state prosecutor's offices, more than fifteen District Attorneys, and a variety of state and local police forces, all of whom presumably have jurisdiction to investigate an organized crime

syndicate dealing in drugs. Ironically, even when cooperation is attempted, strenuous efforts to maintain good will among the various participating agencies can be counterproductive. Cooperation can overwhelm strategic goals as the ultimate purpose of a joint undertaking, and a great deal of time and administrative effort is spent on working out agreements among the agencies and ensuring that the agreements are enforced. The end result is no more meaningful than a press conference in which several prosecutors and representatives of a dozen agencies are represented, all of whom comment upon the extraordinary cooperative efforts which made the investigation possible.

There are, however, advantages to having a number of different agencies with different sovereigns, different subject matter jurisdiction and different geographic jurisdictions. Each has a body of knowledge, a collection of resources and personnel, and a substantive point of view to contribute. Strategically, if a serious effort is made to establish common priorities in the investigative planning process, parochial perspectives can be questioned and rejected in favor of broader goals. Tactically, police and prosecutorial agencies will have the specialized knowledge and skills of agencies that have a more particularized focus.

Moreover, although each agency has a variety of substantive and procedural laws and regulations with which it must deal, the "task force" is not bound by any one set of such requirements. Flexibility is enhanced, for example, when search or eavesdropping warrants can be procured in the jurisdiction having the most favorable procedural rules, and when prosecution takes place in the jurisdiction providing the greatest chance of success and scope of punishment.

This latter point is best illustrated by looking at New York, where the contrast between State and federal law is often so dramatic. For example, in recent years the New York Court of Appeals has adopted rules that require suppression of eavesdropping evidence for hypertechnical reasons.¹⁴ Virtually no other state or federal court agrees with the overly rigid interpretation of the New York courts, and thus eavesdropping evidence obtained in New York might better be used in a federal jurisdiction. Similarly, until this year¹⁵ New York's legislature had declined to enact a RICO statute, despite the fact that more than twenty-five other states, including many with organized crime problems far less serious than those in New York, already had done so. In jurisdictions without a RICO statute, evidence of syndicated criminal activity might better be prosecuted in the federal system where the use of RICO allows for consolidated trials, enhanced sentences, civil remedies and criminal forfeiture. On the other hand, the state forum is occasionally preferable. New York, for example, has severe penalties for dealing in drugs, and where cooperation from an investigative target is sought, a New York State indictment on drug charges may be a more persuasive incentive for such cooperation. Similarly, because the State has no prison or jail facilities specifically designed for white collar criminals, the chances for securing the cooperation of such an offender is enhanced when he faces State rather than federal prosecution and incarceration.

Work clearly needs to be done in developing methods of taking advantage of the opportunities and minimizing the disadvantages inherent in the multiplicity of agencies and jurisdictions involved in organized crime cases. In the short run, that is, in the context of a particular investigation, thought must be given in the investigative planning process to involving those agencies with appropriate jurisdiction and expertise, avoiding the pitfalls of such joint efforts, and maximizing - tactically,

legally and strategically - the contribution that each agency can make. Long run work is needed also. The U.S. Department of Justice has created Law Enforcement Coordinating Councils (LECC's) to help alleviate some problems. More and more attorneys and investigators are being cross-designated by agencies of other jurisdictions, thus familiarizing them with the perspectives and procedures of other offices, and allowing for greater flexibility in investigations and prosecutions. The National Organized Crime Planning Council (NOCP) has sought to bring together a variety of agencies, at least on the federal level, to concentrate their resources in the area of organized crime control and to develop common strategies and priorities. Perhaps "ROCP's" (Regional Organized Crime Planning Councils) might be established to do the same on local levels, coordinating federal, state and local prosecutors in the organized crime area. Finally, legislative attention ought to be paid to thinking through the need for, at least on the federal level, the current multiplicity of agencies and overlapping jurisdictions.

VI. Post Action Analyses

Throughout this paper, the importance of investigative planning has been emphasized, for expanding the scope of investigations and insuring that their outcome advances ultimate and useful goals. From the perspective of future cases the need for analysis continues, even after the investigation is over. A careful and detailed review of the method by which the investigation was conducted, both independently and in comparison with the steps called for by the investigative plan, can reveal both flaws in the plan and/or in its execution, and identify those tactics and procedures that worked and those that failed. Such analyses are done more commonly, but less rigorously, over drinks at the conclusion of an investigation. As a learning device, however, these informal post mortems not only lack rigor, but also limit the learning process to only those involved in the discussion. Instead, an institutionalization of techniques and a body of knowledge must be developed that can be passed on to others within law enforcement, so that the wheel need not be invented time and time again. This is routine practice in the military and in private industry, where large amounts of time and resources are devoted to strategic planning and analysis and to the teaching of the results to those who are charged with the execution of similar mandates in the future. Prosecutors do have trial transcripts for use in training programs, and in any case, appellate practice insures that trials, at least those ending in convictions, are reviewed for legal, if not tactical, errors. On the other hand, the histories of investigations are commonly recorded only in popular books that extol the integrity and ingenuity of investigators and/or prosecutors involved in the case -- or at least of those who gave the author the inside information. Nowhere (absent, perhaps, the investigation of formal complaints of illegal or improper practices) are the critical decisions reviewed after the fact to determine whether more could have been accomplished or a disaster avoided.

When post investigative analysis is suggested to law enforcement agencies they generally respond that such a procedure is a luxury their scarce time and resources do not permit. However true that may seem in the short run, there are long term inefficiencies caused by ignorance of an agency's own past, a situation that is tolerated only because law enforcement is financially supported by the public and not the private sector. Imagine if law enforcement were contracted out to private agencies like Pinkerton, Burns or Wakenhut, who had to compete for contracts based upon

their expertise and efficiency. How long would any of them last in competition if they did not undertake this function?

At the present time, no institutional framework exists to permit agencies to benefit from such an analysis. A methodology can and must be developed for choosing investigations to be reviewed in a rigorous and objective fashion, not for the purpose of casting blame or doubt upon the competence of those involved, but solely to institutionalize the wisdom of experience.

VII. Support for a Broader Perspective

This paper has consistently urged the adoption of a broader perspective in the investigation and prosecution of organized crime activity. In order to be effective, both investigators and prosecutors must join together in formal tactical planning and place those plans in the context of broader strategic goals. They must consider and employ a variety of remedies for organized criminal activity, and not limit themselves to conventional criminal sanctions. They must encourage the involvement of agencies within and outside their own jurisdictions, in order to include within their "task force" whatever variety of skills and disciplines is necessary for tactical and strategic planning and execution. Finally, they must overcome the parochial limitations of geographical and subject matter boundaries to achieve goals set by considered policy rather than by the limited mission of any one particular agency.

The difficulties investigators and prosecutors encounter in thus broadening their perspectives are not entirely of their own making and overcoming those difficulties will require broadening the perspectives of many others as well. Too often, superiors, public officials and the press judge success by the numbers of arrests, indictments and convictions. Numbers, of course, are not an appropriate measure of effectiveness in dealing with organized crime,¹⁶ and the pressure to produce quantity rather than quality can badly distort tactical and strategic goals. Moreover, when goals are long term, investigations can be complex and lengthy, and those who monitor such investigations must demonstrate as much patience as those who conduct them. A significant seizure of contraband may come only after months of electronic surveillance. Even then, and despite the temptation to call a press conference in which the seizure is loudly announced, the more productive step may well be to maintain secrecy, permitting the person from whom the contraband was seized to cooperate in achieving the ultimate goals of the investigation.

Both the Congress and state legislatures and the federal and state courts must also adopt broader perspectives. For example, after lengthy and complex wiretap investigations, it makes no sense to require the wholesale suppression of evidence for hypertechnical violations of the eavesdropping law without some showing of bad faith by the investigator or prosecutor or of prejudice to the defendant. Moreover, just as it may make no sense to have two United States attorneys responsible for crimes in different parts of the same city, so it may be illogical to separate the criminal from the civil in the operation of law enforcement agencies. At the very moment prosecutors have come to see the importance of civil forfeiture and injunction relief in controlling organized crime activities, statutes written without the question in mind have increasingly been interpreted to require that a sharp separation of criminal and civil proceedings be maintained.¹⁷ With no clear policy justification, barriers

have been erected discouraging the use of grand jury and eavesdropping evidence in civil proceedings instituted by law enforcement agencies for law enforcement purposes. While there is perhaps a danger that civil or criminal process may be abused in parallel proceedings, that danger is greatly exaggerated. Less drastic remedies for such abuse can and must be designed that leave room for flexibility in responding to organized crime problems.

Finally, executives and legislatures must provide money and funds for the necessary personnel and projects. Accountants, analysts and other experts are not frills, but a necessary part of any effective organized crime unit. Similarly, resources and manpower must be devoted to the analysis of investigative and intelligence information and the post-investigative review of cases.

In sum, we must encourage innovation and intelligence in law enforcement, and give those who investigate and prosecute organized crime both the incentive and the means to plan and carry out strategies designed to achieve broad and well conceived goals.

FOOTNOTES

1. Landesco, Organized Crime in Chicago, (Univ. of Chicago Press, 1929)
2. The analyses which follow are selected for illustrative purposes. Strategies for other cases have been developed. Thus for theft and fencing see Blakey and Goldsmith "Criminal Redistribution of Stolen Property : The Need for Law Reform" 74 Mich Law Rev. 1511 (1977) and Walsh, "Strategies for Combatting the Criminal Receiver of Stolen Goods" (LEAA, 1976)
3. Goldstock, "Letting the Loanshark off the Hook," Newsday, Sept. 9, 1977. See also, Reuter and Rubenstein, Illegal Gambling in New York (NIJ, 1982)
4. See generally, Goldstock and Coenen, "Controlling the Contemporary Loanshark: The Law of Illicit Lending and the Problem of Witness Fear" 65 Cornell Law Review 127, (Jan, 1980)
5. It should be noted however, that a critical difference exists between "Cosa Nostra" families and developing groups engaged in narcotics activity. The former were created by the association of individuals engaged in a wide variety of illegal activities for the purpose of increasing their criminal opportunities. The latter are enterprises which generally deal in a single illicit business. This difference may prove crucial in the evolution of the "new" syndicates' structure and activities.
6. See e.g. United States v. James, 494 F.2d 1007, (D.C. Cir., 1974) cert. denied 419 U.S. 1020 (1975)
7. For a more detailed background of this issue with examples of unions affected by the criteria of susceptibility and desirability see Blakey, Goldstock, and Bradley, Labor Racketeering : Background Materials, (CIO, 1980)
8. Consider for example, the history of the Teamsters, with "successful" prosecutions of its leaders resulting, not in the restoration of union democracy, but in increasing corruption and ties to the mob.
9. See for example, United States v. Local 560, International Brotherhood of Teamsters 581 F. Supp. 279 (1984)
10. Reuter, "Methodological Problems of Organized Crime Research" (Conference on Critical Issues in Organized Crime Control, 1986)
11. Edelhertz, The Investigation of White-Collar Crime (LEAA, 1977)
12. Martens, "The Intelligence Function : A Critical Reflection in the Past and its Utility in the Future." 1986
13. Harris "Basic Elements of Intelligence" (LEAA, 1976) p.123
14. Consider for example, People v. Edelstein, 54 NY2d 306, People v. Gallina, 66 NY2d 52, People v. Basilicato, 64 NY2d 103

15. New York State Organized Crime Control Act; Senate 9601, Assembly 11726
16. See Maltz, "Measuring the Effectiveness of Organized Crime Control Efforts" (Temple Univ. Law School, 1984)
17. e.g. United States v. Sells Engineering, Inc. , 103 S.Ct. 3133 (1983)

CHAPTER VI

LEGAL REMEDIES FOR ATTACKING ORGANIZED CRIME

BY

RUDOLPH W. GIULIANI*

Introduction

Traditional organized crime -- the Mafia -- has been permitted to grow from the street hoodlums of the turn of the century to a national organization capable of infiltrating legitimate businesses, labor organizations and politics. Thomas E. Dewey, Judge Seabury, Senators Kefauver and McClellan, Robert F. Kennedy each in their turn exposed much about this multi-tentacled monster. Much like the mythical Hydra slain by Hercules, however, as they cut off one head it was soon replaced by others. Today comprised of approximately twenty-four "families" or groups in America and a number of other similar families in Italy, the economic power of the Mafia has taken on vast proportions as the criminal activities supporting it have become increasingly sophisticated. At the same time, other organized crime groups have demanded the attention of law enforcement. Some, like the "Westies" -- an Irish gang originating from Manhattan's west side, commonly known as Hell's Kitchen -- have specialized in committing murders on a contract basis for Mafia families. Others, such as the major cocaine importation organizations operating here and in Colombia, South America, actually compete with traditional organized crime groups for a share of the lucrative drug trade.

Dealing with these threats within constitutional limits calls for the creative application of existing legal tools and the courage and imagination to fashion new ones. There are at our disposal many potent legal weapons that merit the attention of anyone concerned with the effectiveness of law enforcement. Here we will examine a few of the legal remedies in the prosecutor's arsenal which have become particularly well-suited to organized crime cases. First we will discuss the federal anti-racketeering statute and its use both in prosecuting entire organized crime groups for diverse criminal activities, and in obtaining long-term civil injunctive measures so that, for example, unions may be rid of Mafia control and influence. We then turn to the organized crime trial and several of the legal issues which arise in connection with gathering evidence pursuant to our treaty with Italy, and measures taken to ensure the integrity of the trial in the face of threats to witnesses and jurors. Finally we will discuss the sentencing process -- an area which will be undergoing dramatic changes as a result of new legislation not as yet in effect -- and examine a long available but hardly used statute which can result in longer prison terms for organized crime defendants.

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Civil and criminal applications of the antiracketeering laws, used in conjunction with the Witness Protection Program and other protective measures, ongoing cooperative efforts between and among federal, state and local law enforcement agencies and a continuing partnership between the United States and Italy, are all important parts of the offensive against organized crime. The legal tools available to prosecutors today afford an historic opportunity to attack patterns of criminal behavior that several years ago were virtually immune. Our commitment to using these tools, and willingness to defend their use against claims that they are unfair, must be sustained over a period of years to have a major effect.

I. The Statutory Framework For Prosecutions

We have a system of justice in which laws defining crimes for the most part focus upon individual behavior and proscribe conduct in the context of isolated criminal episodes. Because guilt is individual, where two or more defendants act together to commit a crime or a series of crimes, rules intended to promote fairness in the sense of individualized consideration of each defendant's case have sometimes hampered the ability of prosecutors to present to the jury all defendants and crimes in a single prosecution.¹ Even the crime of "conspiracy", generically defined as a criminal partnership, requires each member of the conspiracy to join in the same criminal scheme. See Blumenthal v. United States, 332 U.S. 539, 557 (1974). An organized crime case involves a multiplicity of diverse crimes committed by specialists supported by "thousands of criminals working within structures as large as any corporation."² In the past prosecutors have had to approach their task with a narrow and shortsighted focus, convicting organized crime members either one at a time or in single conspiracy groups for specific criminal activity.

The utter futility of this approach is nowhere better illustrated than in the results of the "successful" prosecutions in New York City of the last five heads of the Genovese Crime Family over the last half century. Charles "Lucky" Luciano was convicted in the 1930's of operating a prostitution ring by the Manhattan District Attorney Thomas E. Dewey; Frank Costello, Luciano's successor, was convicted of federal tax evasion and imprisoned in the early 1950's; Vito Genovese, the new leader, was convicted in a federal court in 1962 for participating in a drug conspiracy and received a five-year jail term; Genovese's successor, Frank "Funzi" Tieri, was convicted of racketeering in 1980 in a Manhattan federal court and was sentenced to ten years in prison but died while out on bail pending appeal. Anthony Salerno, the alleged current leader of the Genovese Crime Family was convicted in 1978 after pleading guilty to a combination of gambling and income tax charges and received a six month prison term and a fine. He presently faces two indictments, one for his participation in the alleged "Commission" of organized crime leaders, See United States v. Salerno, SSS 85 Cr. 139 (RO), and the other for his management and control of a crime family. United States v. Salerno, 86 Cr. 245 (MJL). With the exception of the present prosecutions against Salerno, the traditional prosecutorial model of attacking organized crime - the conviction and temporary incapacitation of the heads of a crime family for discrete crimes -- has not greatly diminished the family's power and ability to survive, if not flourish. No doubt, the unenviable record of short term success in prosecuting the leaders while leaving intact the infrastructure of organized crime weighed heavily on the Congress in 1970 as it considered remedial

legislation. The resulting anti-racketeering law has been shaped into the principal prosecutorial weapon against organized crime.

A. The Application Of RICO To Organized Crime
"Family" Enterprises

The Racketeer Influenced and Corrupt Organizations Act - RICO³ - was enacted by Congress on October 15, 1970. Its recent expanded use by the Department of Justice has revolutionized the prosecution of organized crime. The purpose of RICO was to broaden the prosecutor's focus by providing for a single prosecution of an entire multidendant organized crime group for all of its many and diverse criminal activities. The RICO statute criminalizes the pattern of diverse conduct characteristic of organized crime, and authorizes the seizure of the proceeds and profits of illegal enterprises. Sixteen years after RICO's enactments, that purpose is now being fulfilled.

RICO prosecutions provide both a more efficient use of judicial and prosecutorial resources and a more effective weapon against organized crime. As discussed below, one recent example of how the RICO statute can be used to deal with large organized crime groups in a single prosecution is the October, 1984 indictment of the entire leadership of the Colombo Family of La Cosa Nostra on racketeering charges. See United States v. Persico, 84 Cr. 809 (JFK).

1. The "RICO" Crimes

The RICO statute provides for four separate offenses; three are substantive crimes (18 U.S.C. 1961(a), (b), and (c), and the fourth offense involves conspiracy to commit any of the substantive RICO violations (18 U.S.C. 1962(d)). By far the most often used substantive provision of RICO, and the one which we shall examine here, is Section 1962(c), which provides:

"It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt."

The two key elements of this offense, and indeed of all the RICO offenses,⁴ are the enterprise and the pattern of racketeering activity.

An enterprise is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. 1961(4). The United States Supreme Court has ruled that the term "enterprise" comprises both legitimate businesses and wholly criminal organizations and associations. United States v. Turkette, 452 U.S. 576 (1981).

In general, most organized crime prosecutions focus on an "enterprise" that encompasses a group of individuals who are associated in fact for the purpose of advancing wholly criminal activities and goals. See, e.g., United States v. Ruggiero, 726 F.2d 913, 923 (2d Cir.), cert. denied, 105 S.Ct. 118 (1984).

The second key element -- the pattern of racketeering activity -- requires proof of "at least two acts of racketeering activity, one of which occurred after the

effective date of [the RICO statute] and the last of which occurred within ten years ... after the commission of a prior act of racketeering activity." 18 U.S.C. 1961(5). In addition, acts of racketeering are defined in Section 1961(1) and include nine generic state crimes -- murder, kidnaping, gambling, arson, robbery, bribery, extortion, and dealing in obscene matter or narcotics - as well as a wide variety of federal offenses, which encompass, among others, extortion, gambling, obstruction of justice, labor racketeering, securities fraud, narcotics dealing, and unlawful currency transactions. Simply stated, a defendant may be convicted of a Section 1962(c) offense under RICO if (a) he or she works for or is associated with an enterprise, and (b) participates in at least two acts of racketeering in furtherance of that enterprise's activities. See United States v. Elliott, 571 F.2d 880 (5th Cir.), cert. denied, 439 U.S. 953 (1978).

The federal prosecutor derives a variety of benefits from the RICO statute's definitions of enterprise and racketeering activity. For example, it is the only criminal statute that enables the Government to present a jury with the whole picture of how an enterprise, such as an organized crime family, operates. Rather than pursuing the leader or small number of subordinates for a single crime or scheme, the Government is able to indict the entire hierarchy of an organized crime family for the diverse criminal activities in which that "enterprise" engages. Instead of merely proving one criminal act in a defendant's life, it permits proof of a defendant's whole life in crime. RICO is thus designed to combat the entrenched "professional" who is a part of an organization devoted to sophisticated criminal activities.

2. The Colombo Family Indictment

The benefits afforded by RICO can be seen clearly in the recent successful prosecution of the entire upper echelon of the Colombo organized crime family. The indictment in that case charged fourteen defendants who were named as either leaders, members, or associates of the Colombo Family of La Cosa Nostra. In setting forth the "enterprise," the indictment identified the three "Bosses" of the Family and five "Capos" who were all charged with supervising and protecting the criminal activities of the subordinates of the Family. The leadership as well as the lower ranking members were included within the Family "enterprise" as a group of individuals associated in fact. The ongoing nature of the enterprise was demonstrated by the fact that the Family selected an Acting Boss to direct its criminal activities while the Boss was in jail. Reliance entirely upon traditional conspiracy law without RICO would not have enabled the Government to include all of these individuals within a single prosecution or to identify each of their specific roles within the enterprise.

In addition, RICO's requirement of proving a "pattern of racketeering activity" and its broad definition of "racketeering activity" allowed the prosecution in the Colombo case to join in a single indictment the widely diverse state and federal crimes the Colombo Family has engaged in over the past fifteen years. Thus, the indictment included charges that the Family had engaged in extortion, labor racketeering, drug trafficking, gambling, loansharking, and both state and federal bribery violations. The prosecution was also able to include as predicate acts of racketeering the prior federal bribery convictions of three of the defendants.⁵

Moreover, because venue in RICO cases is governed by Title 18, United States Code, Section 3237(a), which permits prosecution of a continuing offense "in any

district in which such offense was begun, continued, or completed," the prosecution in the Colombo case was able to include crimes committed in the Southern and Eastern Districts of New York, as well as in Florida and New Jersey. See United States v. Pepe, 747 F.2d 632, 660 n.44 (11th Cir. 1984).

Finally, because of RICO's broad definition of a pattern of racketeering activity, it was possible for the prosecutors in the Colombo case to include predicate offenses in which the criminal conduct occurred at a time beyond the reach of the general federal five-year statute of limitations. In this regard, all that RICO requires is (i) that one act of racketeering have occurred after the effective date of the statute -- i.e., October 15, 1970 -- and (ii) that the last or most recent predicate act have occurred within ten years of a prior act of racketeering.⁶ Given these provisions, the prosecution was permitted to charge a 1970 heroin transaction as well as extortions that took place as early as 1975.

As significant a step forward as the RICO statute represented, had it solely provided for criminal sanctions for participating in a pattern of criminal conduct it would have permitted the achievement of only limited objectives. It has been an undeniable fact that organized crime groups enjoy hegemony over important segments of our national economy, notwithstanding the occasional successful prosecution of some members. For example, the unbroken winning record against the leadership of the Genovese Family has not greatly diminished its influence over the International Brotherhood of Teamsters. See United States v. 560 Intern. Broth. of Teamsters.⁷ A second major purpose of RICO is to attack the economic infrastructure of organized crime, depriving it of its life blood, by providing for criminal forfeiture and civil injunctive relief.

B. Criminal Forfeiture And Civil Injunctive Relief Under RICO

Criminal forfeiture and civil injunctive relief under RICO have been aptly described by the Supreme Court as "new weapons of unprecedented scope for an assault upon organized crime and its economic roots."⁸ Unfortunately, in the fifteen years since RICO's enactment the Government has not used these weapons to their full potential. RICO's provision for civil remedies in particular have in the past been underutilized.

1. Criminal RICO Forfeiture

a. The Substantive Law

Except for the federal narcotics laws, there is no federal statute providing for civil forfeiture by the Government of property used to facilitate racketeering activity or the proceeds of racketeering activity. Therefore, a criminal conviction is a prerequisite to any forfeiture under the racketeering laws. However, once a defendant has been convicted under RICO, the law provides for extensive forfeitures of the defendant's racketeering proceeds and his interests related to the racketeering enterprise.

Under 18 U.S.C. 1963(a), a convicted defendant shall forfeit to the United States:

"(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any --

- (A) interest in;
- (B) security of;
- (C) claim against; or
- (D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962."

The "interests" of a defendant that are forfeitable upon his conviction include a wide range of property rights. Several courts have forfeited a defendant's stock and other ownership interests in corporations, most notably a one-third interest which Rex Cauble, boss of the widely publicized "Cowboy mafia," held in Cauble Enterprises, a partnership with multi-million dollar holdings.⁹ Ongoing businesses have also been forfeited under RICO, including a market/pharmacy, a nightclub,¹⁰ and a restaurant.¹¹ One court has even forfeited a defendant's union and union welfare fund offices.¹²

In United States v. Russello,¹³ the Supreme Court ruled that the term "interest" in 18 U.S.C. 1963(a) is to be given a broad construction. In Russello the Court held that "interest" in an enterprise included the proceeds of racketeering activity, an interpretation of the law that Congress made explicit when it amended the statute as part of the Comprehensive Crime Control Act of 1984.¹⁴

The 1984 amendment of 18 U.S.C. 1963(a) to include any property "constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity,"¹⁵ should allow the Government to forfeit any property that was purchased with the proceeds of racketeering activity. Moreover, because gross profits are forfeitable under RICO, a defendant cannot reduce the amount of the forfeiture verdict by showing that he incurred operating costs in obtaining the proceeds or paid taxes on his unlawful gains.¹⁶ The only limitation on forfeiture of proceeds should be the constitutional requirement, arising out of the Eighth Amendment, that the punishment be "at least in some rough way proportional to the crime."¹⁷

At least two Courts of Appeals have held that a forfeiture of racketeering proceeds is an in personam judgment against the defendant.¹⁸ An in personam judgment is one which has conclusively determined a litigant's claims and, when reduced to a sum certain, becomes the personal debt of the losing party against whom the judgment is entered. The Government can therefore satisfy its forfeiture judgment against any property of the defendant to the same extent as with any other money judgment, and need not trace the unlawful gains to particular assets of the defendant.

b. Pre-trial Restraints

As enacted in 1970, RICO expressly authorized the issuance of pre-trial restraining orders.¹⁹ A pre-trial restraining order prohibits the dissipation, sale or transfer of property which the Government believes will be forfeited after trial. Because a criminal conviction is a prerequisite to RICO forfeiture, pre-trial restraints are essential to preserve the status quo during the pre-trial and trial phase of a RICO prosecution. However, the 1970 provision was only rarely used because of court decisions which required the Government essentially to prove its entire case on the merits before obtaining pre-trial restraints. Prosecutors almost uniformly chose to forsake pre-trial restraints rather than prejudice their cases and jeopardize the safety of potential witnesses.²⁰

In amending RICO's pre-trial restraints provisions as part of the Comprehensive Crime Control Act of 1984, Congress set forth detailed standards for when the courts should impose such restraints.²¹ Under the new law, if an indictment has already been filed, the Government need only allege that the property with regard to which the order is sought will be subject to forfeiture if the defendant is convicted.²² However, if an indictment has not yet been filed, the statute ordinarily requires notice to all persons appearing to have an interest in the property and a determination by the court that

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.²³

A pre-indictment restraining order is valid for up to 90 days, unless extended for good cause shown or an indictment is filed.²⁴

The new statute provides for ex parte seizure of property by the Government -- i.e., without notice beforehand to the owner of the property -- even before an indictment has been filed, under limited circumstances. Such an order can issue

if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture.²⁵

However, the order must expire after a maximum of ten days unless extended for good cause shown or on consent of the party against whom the order is entered.

Given that Sec. 1963(e) provides for ex parte restraints even before an indictment has been filed, it is implicit in 1963(e) that ex parte restraints are available post-indictment if the provision of notice would jeopardize the seizure. Even before the 1984 amendments, courts frequently allowed the Government in RICO cases and narcotics cases brought against Continuing Criminal Enterprises ("CCE"), 21 U.S.C.

848, to seize property before trial ex parte under exigent circumstances.²⁶ The Supreme Court upheld the Government's right to seize property without notice in the context of a civil forfeiture in Calero-Toledo v. Pearson Yacht Leasing Co.²⁷

The amendments to RICO's provisions for criminal pre-trial restraints leave no doubt that while Congress intended courts to consider the reasonableness of restraints sought by the Government, Congress did not want the Courts to condition such restraints upon the Government's production of evidence regarding the merits of its case.²⁸ In fact, Congress expressly rejected the holding of several cases that to obtain a pre-trial restraint the Government had to meet the standards for issuance of temporary restraining orders under Rule 65 of the Federal Rules of Civil Procedure.²⁹

In light of the language of Sec. 1963(e), its legislative history and the statutory directive to liberally construe RICO's provisions,³⁰ it is anticipated that the Government will expand the use of pre-trial restraints as a means of preserving forfeitable assets. Two district courts, however, have restricted the Government's right to pre-trial restraints under Sec. 1963 as amended, holding that the defendant is entitled to a post-seizure hearing at which the Government must produce evidence on the merits of its forfeiture case.³¹

Although there is much uncertainty about how courts will apply RICO's pre-trial restraint provisions, prosecutors should not hesitate to seek pre-trial restraints, including ex parte restraints, where necessary to preserve forfeitable assets. If challenged, prosecutors then must be able to maintain the restraints either through litigation or negotiation. For example, in two related prosecutions in the Southern District of New York the Government filed indictments under seal and at that time obtained ex parte orders restraining accounts of ten defendants at over twenty banks and other financial institutions.³² The restrained accounts were found to contain almost \$1 million. Although the defendants initially moved to vacate the restraints, the parties resolved the dispute through consent decrees in both cases in which most accounts were unrestrained, but the defendants pledged real property worth almost \$3 million to secure possible forfeiture judgments. In the first of the two cases to be tried, the jury returned forfeiture verdicts totalling \$2 million against three convicted defendants.³³ As a result of the consent decrees, the Government should be able to collect substantial portions of the forfeiture judgments by executing on the real property that was pledged pursuant to the consent decree.³⁴

2. Civil RICO Injunctive Relief

RICO's civil remedies offer a wide range of equitable relief available to the federal district courts in preventing and restraining violations of RICO's substantive provisions through civil actions brought by the Government. Unlike criminal forfeiture orders which penalize the racketeer by stripping him of his ill-gotten gains, RICO's civil remedies, which are generally prospective in nature, focus directly upon the racketeer to eliminate his sources of influence and control.

Section 1964 of the RICO statute provides:

- (a) The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing

reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provisions for the rights of innocent persons.

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

Congress fully intended the enormous reach of this statute, as both the House and Senate Judiciary Committee reports make clear. In discussing Sec. 1964(a), the House Committee report states that:

Subsection (a) contains broad provisions to allow for reform of corrupted organizations. Although certain remedies are set out, the list is not meant to be exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons.³⁵

The Senate Judiciary Committee report described the civil RICO law in even more expansive terms. Noting that existing remedies for combatting organized crime's economic base had proved unsuccessful, the Senate report explained that:

Where an organization is acquired or run by defined racketeering methods, then the parties involved can be legally separated from the organization, either by the criminal law approach . . . or through a civil law approach of equitable relief broad enough to do all that is necessary to free the channels of commerce from all illicit activity.³⁶

At a minimum, Congress intended RICO to have "the full panoply of civil remedies . . . now available in the antitrust area."³⁷ However, legislative history strongly suggests that the limitations of antitrust law should not apply to civil RICO actions brought by the Government.³⁸ Therefore, the Government should not refrain from seeking equitable relief which would prevent RICO violations simply because similar relief has been denied under the antitrust laws.

Racketeering acts that are proved at a defendant's criminal trial cannot be contested by him in a civil RICO action, because Congress expressly so provided in a civil RICO action brought by the Government.³⁹ However, in contrast to criminal RICO forfeiture, a criminal conviction is not a prerequisite for injunctive relief under the civil RICO statute. The applicability of a lesser burden of proof in civil RICO -- one which requires proof by a preponderance of the evidence rather than beyond a reasonable doubt -- is clearly constitutional⁴⁰ and was expressly contemplated by Congress.⁴¹

Given the broad reach of RICO's civil remedies provisions, it is surprising how rarely the Government has used the law in the past. Recently, the Government has obtained significant relief under the civil RICO statute in at least two cases, each of which should serve to stimulate more aggressive use of the statute.

In United States v. Local 560, Intern. Broth. of Teamsters,⁴² the district court granted broad permanent injunctive relief in a lawsuit that applied RICO's civil remedies to union corruption. Based on extensive violations of 18 U.S.C. 1962 by organized crime figures and union officers, aided and abetted by the local union's entire executive board, the district court enjoined two defendants from "any further contact of any kind"⁴³ with the union and removed the union's entire executive board in favor of a trustee whose duty will be to supervise fair elections.⁴⁴ In affirming the district court, the Third Circuit Court of Appeals held that

[c]learly, the district court's injunction in the instant case fell within its broad remedial powers of "divestiture" and "reasonable restrictions" provided for under section 1964.⁴⁵

In United States v. Cappetto,⁴⁶ the Seventh Circuit Court of Appeals affirmed the grant of a preliminary injunction enjoining several defendants from engaging in a gambling business. The court held that the Government did not have to show irreparable injury to obtain a preliminary injunction,⁴⁷ and it adopted a favorable test for when the Government is entitled to equitable relief under Sec. 1964:

Whether equitable relief is appropriate [under Sec. 1964] depends, as it does in other cases in equity, on whether a preponderance of the evidence shows a likelihood that the defendants will commit wrongful acts in the future, a likelihood which is frequently established by inferences drawn from past conduct.⁴⁸

In the Southern District of New York, the Government has recently brought a civil RICO action against several persons who have been convicted of racketeering activity involving numerous bars and restaurants in New York City, and the record owners of two of these establishments.⁴⁹ The Government is seeking, among other things, the appointment of a receiver to clean up the racketeering activity at Umberto's Clam House in New York's Little Italy section, and a permanent injunction barring the two principal defendants from participating in or profiting from the bar and restaurant business.

In 18 U.S.C. 1964, Congress provided an extremely powerful tool for permanently dissolving criminal enterprises and preventing organized crime figures from infiltrating and corrupting legitimate businesses. The use of these remedies has become an important -- indeed crucial -- part of a strategic approach where particular businesses or industries have historically fallen prey to the influences of organized crime. United States Attorneys should be seeking to utilize these tools whenever possible, particularly as a follow-up measure to successful criminal prosecutions. As Congress recognized when it enacted RICO,

The arrest, conviction, and imprisonment of a Mafia lieutenant can curtail operations, but does not put the syndicate out of business. As long as the property of organized crime remains, new leaders will step forward to take the place of those we jail.⁵⁰

Through RICO's civil remedies, the prosecutors have the power to permanently divest organized crime of its corrupt economic base. With a strong commitment to the use of these civil remedies, entire industries and the citizens that they serve

may once again enjoy the benefits of an economy free of the corrosive influence of unrestrained greed.

II. The Organized Crime Trial

The modern-day organized crime trial exacts an enormous toll upon the resources of government. These are ordinarily multi-defendant, lengthy and complex trials in which the prosecutor, through scores of witnesses and a massive array of other evidence, attempts to prove diverse crimes spanning many years, if not decades.⁵¹ Some courts have questioned whether the mammoth proportions of these trials are beyond the capability of trial judges and ordinary jurors.⁵² The actual record of results in these trials suggests that these courts underestimated the power of jurors to sift through mounds of evidence and render discriminating verdicts.⁵³

The outcome of organized crime trials, like any other, is attributable to many factors, obviously far too many for detailed examination here. There are however several features of organized crime trials which distinguish them from the routine multi-defendant complex criminal trial and warrant special consideration. Unlike other "big" trials, those involving traditional organized crime groups frequently require the assistance of foreign governments to obtain the presence of witnesses or defendants. These trials are also dangerous -- dangerous to the prosecutors, to the jurors and, most especially, to the witnesses.

A. Obtaining the Presence of Foreign Witnesses and Defendants

Organized crime operates on an international scale. The United States has entered into treaties with a number of countries for the extradition of foreign defendants and the transportation of foreign witnesses to this country. From the standpoint of the prosecution of organized crime the most significant of these are between Italy and the United States.

Under the extradition treaty each country has agreed to extradite to the other "persons whom the authorities of the Requesting Party have charged with or found guilty of an extraditable offense." Extradition Treaty, Oct. 13, 1983, United States - Italy, Art. I. An extraditable offense is an offense punishable in both countries by at least one year in prison, or a conspiracy to commit such an offense.

To effect extradition to the United States, the American prosecutor first contacts the Department of Justice, Office of International Affairs (OIA) to discuss the request for extradition and submit the appropriate documents. OIA reviews the request and the documents to determine whether the offense is extraditable, whether the evidence is sufficient for extradition, and whether an arrest warrant is valid. If approved by OIA, the request and documents are transmitted to the Department of State. The Department of State makes the final decision on whether to request extradition and is the sole United States authority for making formal extradition requests of foreign sovereigns.

If the Department of State agrees to the request, it translates and certifies the documents, and transmits them through the diplomatic channels to Italy. In cases of

urgency, the Department of Justice may apply directly to the Italian Ministry of Grace and Justice for the provisional arrest of one charged with an extraditable offense. To facilitate this process and because close cooperation with Italy is critical to our attack on organized crime and drugs, the Department of Justice has a representative from OIA stationed in our embassy in Rome.

After reviewing the request, the Italian government notifies the United States of its decision. If Italy rejects the request in whole or in part, the reasons must be given. If Italy grants the request, the two countries then agree on a time and place for surrender of the defendant.

The procedure for obtaining the presence of witnesses located in Italy is governed by the Treaty on Mutual Assistance in Criminal Matters, Nov. 9, 1982, United States - Italy, ("Mutual Assistance Treaty").⁵⁴ The process is fairly simple. The prosecutor submits to the United States Attorney General a request complying with Article 3 of the Treaty; i.e., the request must describe the nature of the prosecution, the type of assistance sought, the purpose of the request, the identity and location of the witness to be served, and the manner of service. The Attorney General then transmits the request directly to the Italian Minister of Grace and Justice.

If the request is proper under the Treaty, the Italian government is obligated to make every effort to fulfill the request. That is, if Italy has no reasonable basis for denying the request, and the witness could be compelled to appear and testify in similar circumstances in Italy, and the United States Attorney General certifies that the witness's testimony is relevant and material, the Italian government is obligated to compel the witness to appear and testify in the United States.⁵⁵ A witness who fails to appear as directed is subject to sanctions under Italian law.

Of course, the Extradition Treaty also works to the benefit of Italian prosecutors seeking to prosecute defendants who are located in America. In fact, the same defendants who are extradited to America may well have also violated Italian law.⁵⁶ Under the Extradition Treaty, the defendants can be extradited back to Italy to face charges of being a member of a "mafia type organization." Using the broadly worded Italian statute, Italian prosecutors may have an easier time than their American counterparts obtaining convictions. Indeed, it may well be that the likelihood of conviction in Italian courts and the prospect of a lengthy prison sentence in an Italian jail has persuaded some organized crime members to cooperate with American and Italian prosecutors.

The ability to compel the appearance of foreign witnesses is a significant improvement over the pre-Treaty system of "letters rogatory," under which a United States court would request assistance from a foreign court and hope that diplomacy and comity would persuade the foreign court to cooperate. With the Mutual Assistance Treaty, the American government has a powerful prosecutorial tool for obtaining live testimony. Such evidence from foreign witnesses may be the only available proof of the global dimensions of organized crime, and may provide the crucial link that shows how seemingly disparate domestic activities are actually part of a larger international scheme.

B. Preserving the Integrity of the Trial

1. The Witness Security Program

The long-term protection of witnesses is essential to the successful prosecution of organized crime cases. Organized criminals had a history of acquittals in the years before the Government began protecting its witnesses that far exceeded acquittal rates for other types of defendants. This was due at least in part to their ability to corrupt, intimidate or hurt witnesses against them. Since the advent of the Witness Security Program, established by Title V of the Organized Crime Control Act of 1970, (the "Program") almost every major racketeering prosecution has depended, at least in part, on the testimony of one or more protected witnesses. There are repeated instances, for example in New York, of witnesses who refused to talk or lied in connection with state prosecutions, because they feared for their lives, and who later testified truthfully when under federal protection. Because of organized crime's demonstrated use of murder and other acts of violence over the years were it not for the Witness Security Program the Government would have few if any witnesses available for its organized crime prosecutions.

The Witness Security Program is administered by the United States Marshals Service. It protects federal and state prisoner and "civilian" witnesses and their families. Before a witness is admitted both he and any family members who may also wish to participate must be personally interviewed by a Deputy Marshal, who explains the rules of the Program and identifies potential problems. Both psychological and vocational testing is performed to aid in successful relocation.

Once a witness is admitted the Marshals Service relocates the witness and family and moves the family's household goods in a manner that prevents the disclosure of the new relocation area. The witness and family are given assistance with documents to establish a new identity for their protection and to enable them to obtain employment or school enrollment in the new community. The local Deputy Marshal also locates and pays for rental housing and pays the witness a monthly sum of money established by geographic region for living expenses. The money is a modest wage amounting to about \$10,000 a year, depending on family size. The Program also undertakes to provide the witness with one employment opportunity.

The rules of the Witness Security Program are stringent. The witness may not choose the relocation area. There can be no disclosure of the relocation area to anyone -- including close family members who do not choose to relocate. This means that letters and other correspondence must be forwarded through the Marshals Service. There can be no visits or telephone calls "home", which is usually classified as a "danger area". Periodic visits with relatives can be arranged, but only at places outside the "danger" area -- at so-called "neutral" sites -- at the expense of the visitors. Any violation of the rules is cause for immediate termination from the Program.

While the Witness Security Program is essential, it is also one of the most highly publicized and criticized of Government programs. Because many witnesses have "gone public" millions of Americans are aware of the program and many are critical of it. A major misperception is that the Government is providing new identities to individuals to protect them from answering for past crimes or enabling them to avoid civil obligations. This is untrue. The criminal, financial and domestic histories

of all witnesses are thoroughly researched before admission and any witness facing criminal or civil litigation is produced by the Marshals Service in a manner consistent with his or her physical safety.

A second criticism is that the new identity gives criminal witnesses clean credentials with which to defraud the unwary public in their new relocation areas. There certainly have been instances of criminal activity on the part of protected witnesses. In fact, witnesses with a criminal record when they enter the program have a recidivism rate of 17-20%. However, this rate is no different than that for similar individuals outside the program. Moreover, it is usually membership in the program which leads to the early detection of crimes involving witnesses because of the Marshal's supervision in their area.

What is also overlooked by the public is that while many protected witnesses are "criminals" -- usually accomplices to the crimes of the defendants they are to testify against -- an equal if not greater number are innocent victims of criminal activity who deserve to be treated fairly and with consideration.

In fact, the Marshal's Service has long realized that its purpose is not solely to protect but is also to help witnesses and their families make the difficult social and economic adjustments to a new place and new life. To this end, the Program also provides social work services, and even psychiatric help when necessary.

If the Service is to continue to provide and to broaden these types of services to an ever expanding witness population additional resources are needed. These additional expenditures are more than justified when you consider that the testimony of protected witnesses has resulted in a 78% conviction rate in significant organized crime cases which would never have been brought at all but for the Program.

2. Withholding The Names and Addresses of Prospective Jurors

Experience has taught that organized crime cases, especially ones involving prominent crime groups, entail risks to the safety of those who participate in the trial. As we have already seen, with few exceptions organized crime trials require the use of witnesses who are in protective custody, usually under the auspices of the Witness Security Program operated by the United States Marshal's Service. In some of these cases it became necessary to take steps to protect the prosecutors and judges as well because of direct threats. While obviously the protective measures afforded by the Witness Security Program -- permanent relocation to a "safe" haven and a new identity -- would be inappropriate for the prosecutor and judge, it has become less uncommon for both to be protected by bodyguards during trial, and sometimes even temporarily relocated to another residence. There have also been instances in which jurors have been approached outside of court with corrupt offers, or have been the target of harassment and threats.⁵⁷

The sordid history of these cases and the available intelligence on the internal workings of these crime groups strongly support the adoption of safety measures for the protection of prospective jurors and to preserve their privacy. One procedure, available apparently only in the Second Circuit, involves the empanelment of an anonymous jury in which the names and addresses of prospective jurors are withheld from all counsel.⁵⁸

Although Rule 24, Fed. R. Crim. P., authorizes federal judges to allow parties to participate directly in the examination of prospective jurors, it is the prevailing federal practice for the trial judge to conduct the examination and the parties to submit proposed questions designed to probe a juror's ability to be fair and impartial. Ordinarily, prospective jurors give their full names and are often permitted or required to give their residence or business addresses and the names of their employers or the employers of immediate family members. When an anonymous jury is empaneled, prospective jurors are ordered to withhold all personal information which would reveal, or from which one can deduce, the identity of the juror, and the juror is instead referred to by number.⁵⁹

The decision to empanel an anonymous jury in Barnes, the first Second Circuit case expressly to approve the procedure, was made by the trial judge on his own without findings of fact, an evidentiary hearing, or even any form of inquiry on the record.⁶⁰ In ordering the anonymous jury in Barnes, the trial judge apparently relied upon the fact that there had been extensive pretrial publicity about the principal defendant's activities, unspecified "allegations of dangerous and unscrupulous conduct", and the generally violent history of major narcotics cases in the district. Based on this factual record, the Second Circuit approved the use of an anonymous jury, even though "no untoward event [threatening the safety of jurors, witnesses or counsel] had occurred up to the opening of the trial." See 604 F.2d at 136-37.

In the relative handful of anonymous jury cases since Barnes, the Government has followed the course of filing a motion for an anonymous jury in advance of trial, thus ensuring that the trial judge's decision to withhold the names and addresses of prospective jurors had ample support in the record and could be defended on appeal.⁶¹ Generally, successful applications for an anonymous jury have been supported by sworn statements providing detailed accounts of (1) the violent nature of the crimes charged; (2) any history of violence associated with the defendant or with the criminal organization to which the defendant belongs; (3) specific instances of threatened or actual violence or corruption by the defendants involving government witnesses or prospective witnesses, prosecutors, judges or jurors; and (4) the extent and nature of pretrial publicity and the extent of media attention that can reasonably be anticipated during trial. See, e.g., United States v. Fisher, *supra*.

An application for an anonymous jury has generally been met with defense objections grounded in two theories: (1) that the failure to disclose the names and addresses of jurors deprives the defense of vital data necessary for the exercise of an intelligent challenge, and (2) that the empanelment of an anonymous jury vitiates the presumption of innocence by impermissibly suggesting that the defendants are dangerous in general, and are likely to resort to violence or corrupt practices directed at the jurors in particular.

In the federal courts, the trial judge has very broad discretion in conducting the examination of prospective jurors, and there is no inherent right of a criminal defendant to a particular line of questioning, such as inquiries about names, addresses, and places of employment of prospective jurors.⁶² There is only a right to questioning that will expose reasons to challenge for cause and elicit sufficient information to allow the intelligent exercise of challenges.⁶³ Moreover, the decision as to the questions to be asked of prospective jurors largely rests upon the informed discretion of the trial judge.⁶⁴ That discretion ordinarily will not be disturbed on appeal

The cases which have considered and rejected the claim that the use of an anonymous jury unduly impairs the exercise of challenges to jurors involved questioning that was otherwise searching. Thus, for example, in United States v. Thomas, supra, which involved the prosecution of a large-scale drug organization that had operated a decade-long murder and narcotics racketeering enterprise, each juror was asked individually about his or her county of residence, marital status, type of employment, spouse's employment, and children's employment. For jurors who resided in one of the more heterogeneous counties within the Southern District of New York, the trial judge required potential jurors to specify the approximate community or portion of the county. The prospective jurors, as a group, were asked the usual questions about prior government employment, dealings with law enforcement, disputes with the government, health, hearing, vision, service in grand or petit juries, involvement with narcotics and related offenses, exposure to publicity about heroin or to the facts of the case, and personal knowledge of the case. They were asked as a group about their attitudes toward, and prior experiences with, persons of other races, creeds and colors,⁶⁵ and whether they would in any way be prevented from deciding the case fairly because it involved narcotics, murder, undercover agents, informants, electronic surveillance, and firearms. Finally, the trial judge, on his own, excused numerous prospective jurors whose circumstances or responses suggested an inability to be fair and impartial.⁶⁶

Of the items of personal information withheld under the anonymous jury procedure, arguably the most significant are the juror's address and place of business, since these, taken together with appearance and demeanor, may provide the only basis for a reasonably accurate socio-economic profile of the juror.⁶⁷ Yet even in the absence of an order protecting juror anonymity, the courts have generally held that the failure to require the disclosure of such information does not constitute error in jury selection.⁶⁸

In rejecting claims that an anonymous jury deprives a defendant of a fair trial because it undercuts the presumption of innocence, the courts have relied heavily on the presumed efficacy of cautionary instructions. These instructions, in substance, explain that the purpose of anonymity is to prevent interference by outsiders with the sworn duty of jurors to consider only the evidence in deciding the case. See United States v. Thomas, supra, 757 F.2d at 1365.⁶⁹

For several reasons, the extent and nature of the harm to a defendant tried before an anonymous jury seems wholly insubstantial. Concerns that a juror will infer from the fact of anonymity that the defendants may take violent action against the juror seems less likely than a similar inference that might be drawn from an order protecting the anonymity of trial witnesses. Yet the courts have consistently upheld such orders in the trial judge's discretion where circumstances demonstrate a legitimate concern for the witnesses' safety. See, e.g., United States v. Cavallaro, 553 F.2d 300, 304 (2d Cir. 1977) (address of witness concealed); United States v. Persico, 425 F.2d 1375, 1383 (2d Cir.), cert. denied, 400 U.S. 869 (1970) (addresses and employment of government witnesses concealed).⁷⁰

In addition, anonymity may well be a safeguard of impartiality where, as in most organized crime cases, the implication of dangerousness may inevitably flow from the charges in the indictment. "If a juror feels that he and his family may be subjected to violence or death at the hands of a defendant or his friends, how can his judgment

In addition, anonymity may well be a safeguard of impartiality where, as in most organized crime cases, the implication of dangerousness may inevitably flow from the charges in the indictment. "If a juror feels that he and his family may be subjected to violence or death at the hands of a defendant or his friends, how can his judgment be as free and impartial as the Constitution requires?" United States v. Barnes, *supra*, 604 F.2d at 140-41.

Finally, any doubt about whether defendants tried before anonymous juries have had the evidence against them evaluated fairly and impartially is dispelled when one considers the results in these trials: in each case tried before an anonymous jury discriminating verdicts were rendered, acquitting some defendants entirely, e.g., United States v. Barnes, *supra*; United States v. Shakur, *supra*, or acquitting defendants on some charges and convicting on others. United States v. Thomas, *supra*. To the extent that these verdicts provide rough empirical data on the fairness and appropriateness of using any anonymous jury, its use should be considered in any major organized crime case.

C. Maximizing Sentences in Organized Crime Cases

There are very few federal crimes which contain mandatory minimum sentences. Most federal statutes defining crimes set forth only the maximum punishment, expressed usually in terms of years of imprisonment and/or a fine. A federal judge has broad discretion to impose any sentence up to the maximum permitted for the offense for which the defendant was convicted, subject only to the constitutional prohibition against a disproportionate sentence amounting to "cruel and unusual punishment." See Solem v. Helen, 463 U.S. 277 (1984); United States v. Ortiz, 742 F.2d 712, 714 (2d Cir. 1984). While there is a high level of certainty in the federal system that a defendant charged with a felony (i.e. a crime punishable by more than one year imprisonment) will be convicted, remarkably the most significant event for the defendant and the prosecutor -- the sentencing -- depends entirely upon the particular sentencing judge. Adding to the uncertainty in the sentencing process, a defendant ordinarily does not know how long he will actually spend in prison, except that it will not be as long as the sentence pronounced in open court. Under current law, a federally sentenced defendant serving a term of imprisonment in excess of one year is ordinarily eligible for release on parole after serving one-third of his sentence. See 18 U.S.C. 4205. Even if denied early release on parole, which is discretionary, a federally sentenced defendant is entitled to a mandatory deduction from his term of imprisonment for good conduct, which can amount to one-third reduction of his sentence. See 18 U.S.C. 4161. Thus, because most defendants will have to serve at most only two-thirds of the sentence imposed, it becomes critically important, especially in an organized crime case, to find ways to expose these defendants to the longest possible prison terms.

Much of the uncertainty and frustration in sentencing proceedings will be removed when the provisions of the Sentencing Reform Act of 1984 (the "Act") take effect in 1986 or 1987. While a detailed analysis of the Act is beyond the scope of the present discussion, the Act contains several noteworthy innovations that are likely to enhance not only the sentences in organized crime cases but also the time actually spent in prison. The Act establishes a Sentencing Commission which has been given the task of promulgating guidelines for each category of offense and type of offender, and recommending a sentencing range. 28 U.S.C. 991. The guidelines are to specify the type of sentence (i.e., incarceration, probation or fine) or

combination of sentences and the severity of the sentence. 28 U.S.C. 994(a)(1). The Sentencing Commission is also authorized to issue policy statements concerning the appropriateness of utilizing alternatives to incarceration, such as fines, forfeitures or probation. 28 U.S.C. 994(a)(2). Under the Act, the sentencing judge is to impose a sentence selected from the applicable range for that category of offense and that type of defendant. 18 U.S.C. 3553(a). The judge may select a sentence outside the range when there are mitigating or aggravating circumstances that have not been adequately considered by the Sentencing Commission when the range was developed. 18 U.S.C. 3553(b). Also, a sentencing court must give reasons for the sentence chosen, 18 U.S.C. 3553(c), and a sentence outside the applicable range is subject to review on appeal. 18 U.S.C. 3742(a), (b). Finally, as part of the package of reform legislation, parole has been eliminated, 18 U.S.C. 4205, repealed effective Nov. 1, 1986, Pub.L.No. 98473, Title II, 218(a)(5), 235, 98 Stat 2027, 2031(1984), and the amount of allowable deduction for good behavior while in prison has been significantly reduced. 18 U.S.C. 4161, repealed effective Nov. 1, 1986, Pub.L. No. 98-473, Title II, 218(a)(4), 235, 98 Stat 2027, 2031 (1984). Under the amended Rule of the Federal Rules of Criminal Procedure, henceforth a defendant can apply to the sentencing court for a reduction of sentence only if he has cooperated with law enforcement authorities. See Fed.R.Crim.P. 35.

The Dangerous Special Offender Statute

A currently available means for enhancing the penalties in organized crime cases and limiting the sentencing judge's discretion is the Dangerous Special Offender Statute, Title 18, United States Code, Section 3575. Enacted as part of Title X of the Organized Crime Control Act of 1970, Public Law 91-452, the statute provides for an enhanced penalty of up to a maximum of 25 years imprisonment for three types of defendants: (1) the recidivist; (2) the professional criminal; (3) the manager or supervisor of a criminal organization. The infrequency with which the statute has been used since its enactment strongly suggests that federal prosecutors have simply failed to acquaint themselves with the statute and the cases interpreting it.⁷¹

The Dangerous Special Offender statute sets forth a two-pronged test for determining whether a defendant should be subject to enhanced punishment. First, the sentencing court must determine whether the defendant is a "special offender" under one of the three categories set forth in subparagraph (e) of Section 3575. If so, the court must then determine whether the defendant is "dangerous" under subparagraph (f) of Section 3575.

The first category of "special offender" is the habitual criminal under Section 3575(e)(i). In order to qualify as a habitual offender the defendant (1) must have been previously convicted of at least two prior felonies (state or federal); (2) for one of those convictions the defendant must have been imprisoned; and (3) the pending felony for which the prosecutor is seeking the dangerous special offender status must have been committed within five years of either the defendant's release from prison or his commission of the last previous felony offense. Ordinarily, convictions can be easily proven by publicly filed court records.

The second category of "special offender" is the skilled entrepreneur who makes his trade by committing crime. To establish special offender status under this category, the defendant must have committed the pending felony as part of a "pattern of criminal conduct", which constituted a substantial source of his income, and which

manifested a special skill or expertise. A "pattern of criminal conduct" is defined broadly as criminal acts having "the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated ... and are not isolated events." A "substantial source of income" is defined as income which exceeds the minimum wage for one year and also exceeds half of the defendant's adjusted gross income as reported on his tax return.⁷² The statute specifically makes proof of unexplained wealth admissible to establish that a substantial source of defendant's income is derived from criminal activity. Finally, under the statute a defendant manifests some special skill or expertise if he has "unusual knowledge, judgment or ability, including manual dexterity facilitating the initiation, organizing, planning, financing, direction, management, supervision, execution or concealment: of criminal conduct, the enlistment of accomplices ... the escape from detention ... or the disposition of the fruits or proceeds of such conduct."

The third category applies to the typical organized crime offender. To establish special offender status under this criteria the underlying felony must consist of a conspiracy involving the defendant and at least three others, the purpose of which is to engage in a pattern of criminal conduct, or a felony committed to further the objectives of such a conspiracy. Additionally, the defendant must occupy or have agreed to occupy a position as supervisor, manager or financier of the conspiracy, or given or received a bribe, or used force or agreed to do so, as part of the conspiracy or the crime furthering the conspiracy.

Section 3575(f) sets forth a technical (albeit circular) definition of "dangerous", the second prong of the test for determining whether the defendant would be subject to enhanced punishment:

A defendant is dangerous for purposes of this section if a period of confinement longer than that provided for [the underlying] felony is required for the protection of the public from further criminal conduct by the defendant.

18 U.S.C. 3575(f). Thus, a special offender is "dangerous" only if the likelihood of his recidivism is so great that he should be imprisoned for a term greater than the maximum term provided by the criminal statute violated.⁷³ See United States v. Williamson, 567 F.2d 610, 616 (4th Cir. 1977) ("Through the enactment of [Section 3575], Congress intended to provide the public with protection from repeat offenders by enhancing the incarceration the offender faced for any one crime.")

The statute requires the prosecutor, at a reasonable time before trial or a guilty plea, to file a notice with the court stating with particularity the reasons supporting the prosecutor's belief that the defendant is a dangerous special offender. In order to insulate the trial judge from the arguably prejudicial material contained in the Section 3575 notice, the statute prohibits disclosure to the presiding judge of the fact of the notice until after a guilty verdict or plea. Therefore, the notice is usually filed under seal with the court and not with the presiding judge. See United States v. Calabrese, 755 F.2d 302 (2d Cir. 1985).

Before sentence can be imposed under the statute, the court must conduct a hearing at which the Government must establish that the defendant is a "special offender" under one or more of the three categories and is "dangerous". At the hearing the defendant is entitled to have the assistance of counsel, can compel

witnesses to attend and can cross-examine adverse witnesses. The standard of proof applied at the sentencing enhancement hearing is preponderance of the evidence, which is much easier to meet than the "beyond a reasonable doubt" standard applied at criminal trials.⁷⁴ Under a preponderance of the evidence standard, the Government need only establish that the facts supporting a finding that the defendant is a special dangerous offender more likely than not exist.⁷⁵

If the court finds the defendant to be a dangerous special offender it is authorized to impose a prison sentence of up to twenty-five years. Viewed from the perspective of the total sentence that can be imposed, the statute does not add much to the maximums available in most major organized crime cases. Thus, for example, a defendant convicted of violating the RICO statute is subject to a maximum sentence of twenty years. Use of the Dangerous statute will at most achieve a five-year enhancement of the sentence.

The most significant feature of the statute is not the total prison sentence that can be imposed, but the restraints it imposes on the sentencing court's discretion to impose a lenient sentence. Under the statute, in determining whether a sentence is consistent with a finding of dangerousness under Section 3575(f), the sentence on each count is separately measured against the statutory maximum, and the possibility of consecutive sentences without enhancement is disregarded. See United States v. DeFrancesco, 658 F.2d 33, 38 n.2 (2d Cir. 1981). This is highly significant, since once there is a finding of dangerousness under the statute, the Government can successfully argue that the sentencing court has no discretion to impose less than the statutory maximum. Moreover, upon a finding that the defendant is a dangerous special offender, any sentence which is not greater than the maximum prison sentence otherwise available is subject to reversal on appeal by the Government. See United States v. Calabrese, *supra*; United States v. DeFrancesco, *supra*.⁷⁶

CONCLUSION

Although enacted in 1970, it took the Government a number of years to develop the intelligence base, the expertise and the commitment to use the RICO statute for the purpose for which it was passed, to dismantle and eliminate organized crime. As prosecutors we sometimes tend to measure success only in terms of convictions. Certainly from that standpoint, given the increased number of convictions of high-ranking members of organized crime, the successes of the past three years have been unmatched in our history. However, it would be naive in the extreme to conclude that the incarceration of the leadership of organized crime eliminates its influence and control. It is well known, for example, that the activities of many Mafia and other organized crime groups have been successfully conducted from within prison. While this raises important questions of public concern about how and why conditions of confinement permit this to happen, it underscores the fact that incarcerated leaders leave well entrenched infrastructures behind. We are cautiously optimistic that the use of civil RICO remedies will provide the much needed permanent follow-up to our criminal convictions and result in the displacement of these infrastructures. There seems to be little dispute that the use of the RICO statute, together with the Witness Security Program and other security measures, and efforts to ensure longer prison sentences will, in the long term, have a meaningful impact on organized crime. However, law enforcement needs better ways to measure the effectiveness of these

remedies, both as an aid to refining our prosecution strategies and to better allocate resources at the investigatory stages. If these remedies are to become widely accepted and used, - as we think they should -- we also must find forceful ways to demonstrate to the public and to the courts that these remedies can be applied within the constitutional limits of fairness.

FOOTNOTES

1. Rule 8(b) of the Federal Rules of Criminal Procedure provides as follows:

"(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count."

2. The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Organized Crime (1967).

3. RICO is Title IX of the Organized Crime Control Act of 1970, codified at 18 U.S.C. 1961-1968.

4. Section 1962(a) makes it unlawful to invest the proceeds of racketeering activities in an enterprise that affects interstate commerce. Section 1962(b) prohibits control of or acquiring an interest in an enterprise affecting interstate commerce through a pattern of racketeering activity.

5. A prior conviction may be proved by introduction of the judgment of conviction pursuant to Fed. R. Evid. 803(22). In addition, even if the defendant has previously been convicted, or acquitted, of a predicate offense in state court, it may nevertheless be charged as a RICO predicate. See United States v. Licavoli, 725 F.2d 1040, 1047 (6th Cir.), cert. denied, 104 S.Ct. 3535 (1984); United States v. Frumento, 563 F.2d 1083, 1086-89 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1978).

6. Courts have reconciled RICO -- which contains no limitations provisions -- with the general five-year statute of limitations by requiring that at least one of the predicate acts have been committed within five years of the date of the filing of an indictment. See United States v. Walsh, 700 F.2d 846, 851 (2d Cir.), cert. denied, 104 S.Ct. 96 (1983); United States v. Bethea 672 F.2d 407, 419 (5th Cir. 1982).

7. 581 F.Supp. 279 (D.N.J. 1984), aff'd, 780 F.2d 267 (3d Cir. 1985).

8. Russello v. United States, 464 U.S. 16, 26 (1983).

9. United States v. Cauble, 706 F.2d 1322 (5th Cir. 1983), cert. denied, 104 S. Ct. 996 (1984). See United States v. L'Hoste, 609 F.2d 796 (5th Cir.), cert. denied, 449 U.S. 83 (1980); United States v. Grande, 620 F.2d 1026 (4th Cir.), cert. denied, 449 U.S. 830 (1980).

10. United States v. Godoy, 678 F.2d 84 (9th Cir. 1982), cert. denied, 104 S.Ct. 396 (1983).

11. United States v. Smaldone, 583 F.2d 1129 (10th Cir. 1978), cert. denied, 439 U.S. 1073 (1979).

12. United States v. Rubin, 559 F.2d 975 (5th Cir. 1977), vacated and remanded, 439 U.S. 810 (1978), reinstated in relevant part, 591 F.2d 278 (5th Cir.), cert. denied, 444 U.S. 864 (1979).
13. 464 U.S. 16 (1983).
14. Pub. L. 98-473, Title II, 302, 2301(a)-(c). 15. 18 U.S.C. 1963(a)(3).
16. United States v. Lizza Industries, 775 F.2d 492, 498-99 (2d Cir. 1985).
17. United States v. Huber, 603 F.2d 387, 397 (2d Cir. 1979), cert. denied, 445 U.S. 92 (1980).
18. United States v. Conner, 752 F.2d 566, 576-77 (11th Cir. 1985); United States v. Ginsburg, 773 F.2d 798, 800-01 (7th Cir. 1985).
19. Pub. L. 91-452, Title IX, 901(a), codified at 18 U.S.C. 1963(b).
20. See Sen. Rep. No. 98-225, 98th Cong., 1st Sess. at 202-03 (1983), and cases cited therein.
21. 18 U.S.C. 1963(e).
22. 18 U.S.C. 1963(e)(1)(A).
23. 18 U.S.C. 1963(e)(1)(B).
24. Id.
25. 18 U.S.C. 1963(e)(2).
26. See, e.g., United States v. Long, 654 F.2d 911 (3d Cir. 1981); United States v. Ray, 731 F.2d 1361 (9th Cir. 1984); United States v. Veliotis, 586 F.Supp. 1512 (S.D.N.Y. 1984); United States v. Bello, 470 F.Supp. 723 (S.D. Cal. 1979).
27. 416 U.S. 663 (1974).
28. See Sen. Rep. No. 98-225 at 202-03.
29. See Sen. Rep. No. 98-225 at 195-96.
30. Pub. L. 91-452, Title IX, 904(a), 84 Stat. 943 (1970).
31. United States v. Perholtz, 622 F.Supp. 1253 (D.C.D.C. 1985); United States v. Rogers, 602 F.Supp. 1332 (D. Colo. 1985).
32. United States v. Matthew Ianniello, et al., 85 Cr. 115 (CBM); United States v. Ianniello, et al., 85 Cr. 116 (EW).
33. United States v. Matthew Ianniello, et al., 85 Cr. 116 (EW).

34. A negotiated consent decree releasing certain funds in exchange for pledged assets sufficient to satisfy any forfeiture judgment also sometimes avoids the troublesome issue of pre-trial restraints upon funds needed to pay attorneys fees and the forfeitability of such fees. While a detailed analysis of the forfeitability of attorneys fees under RICO is beyond the scope of this discussion, the few courts that have considered the question have held that RICO does not apply to fees paid to an attorney for legitimate legal services. See United States v. Badalamenti, 614 F.Supp. 194 (S.D.N.Y. 1985); United States v. Rogers, 602 F.Supp. 1332 (D. Colo. 1985). But see, In Re Grand Jury Subpoena Duces Tecum dated January 2, 1985 (Simels), 605 F. Supp. 839, 850 n.14 (S.D.N.Y. 1985) (Court notes, in dicta, that fees paid to attorneys cannot become a safe haven from forfeiture of the profits of illegal enterprise, disagreeing with Rogers) rev'd on other grounds, 776 F.2d 26 (2d Cir. 1985).
35. H.R. Rep. No. 1549, 91st Cong., 2d Sess. at 57 (1970) (emphasis added).
36. S. Rep. No. 617, 91st Cong., 1st Sess. at 79 (1969) (emphasis added).
37. Id. at 81.
38. See Schact v. Brown, 711 F.2d 1343, 1354-58 (7th Cir.), cert. denied, 464 U.S. 1002 (1983), and legislative history cited therein.
39. 18 U.S.C. 1964(d).
40. See Helvering v. Mitchell, 303 U.S. 391, 399 (1938); United States v. \$2,500 in U.S. Currency, 689 F.2d 10, 12 (2d Cir. 1982), cert. denied, 104 S. Ct. 1591 (1984).
41. Sen. Rep. No. 91-617 at 82.
42. 581 F.Supp. 279 (D.N.J. 1984), aff'd, 780 F.2d 267 (3d Cir. 1985).
43. 581 F.Supp. at 337.
44. Id.
45. 780 F.2d at 296.
46. 502 F.2d 1351 (7th Cir. 1974).
47. Id. at 1358-59.
48. Id. at 1358 (emphasis added).
49. United States v. Matthew Ianniello, et al., 86 Civ. 1552 (Haight, J.) (filed Feb. 14, 1986).
50. Sen. Rep. No. 91-617 at 78.
51. In United States v. Salerno, SSS 85 Cr. 139 (RO), involving the alleged "Commission" of leaders of organized crime, the Government has alleged that the racketeering

conspiracy began virtually at the turn of the century and continued thereafter until the filing in 1985 of the indictment.

52. In United States v. Castellano, 84 Cr. 63 (KTD), separate trials were granted to some defendants in a racketeering trial involving a total of 24 defendants accused of committing 78 separate crimes ranging from murder to fraud in the sale of used cars.

53. See United States v. Persico, 84 Cr. 809 (JK), in which, after an eight-month trial, the jury returned verdicts convicting all defendants of racketeering charges but acquitting some of them on other crimes.

54. Mutual assistance treaties have also been entered into with Switzerland, Turkey, Colombia, and the Netherlands.

55. Mutual Assistance Treat , Art 15.

56. Italian Penal Code Art. 416 bis. proscribes membership in "an association of mafia type consisting of three or more persons." A "mafia type association" is described as one whose members avail themselves of the power of intimidation of the membership and of the condition of subjection and conspiracy of silence deriving therefrom for the purpose of committing crimes, in acquiring directly or indirectly the management or control of economic activities, concessions, authorizations, contract works or public services or of obtaining unlawful profits or advantages for themselves or others."

57. See United States v. Gersh, 328 F.2d 460, 464 (2d Cir.), cert. denied, 377 U.S. 992 (1964) (forelady received anonymous telephone calls); United States v. Bentvena, 319 F.2d 916, 929-32 (2d Cir.), cert. denied, 375 U.S. 940 (1963)(defendant "climbed into jury box, walked along the rail ... pushing the jurors in the front row and screaming vilifications at them.").

58. Other measures are sometimes taken to ensure the safety and privacy of jurors. These include sequestration during some part or all of the trial either in combination with or in lieu of anonymity. Some courts have ordered United States Marshals accompany the jurors at the conclusion of each trial day to a central dispersion area some distance from the courthouse from which jurors travel to their homes.

59. See, e.g., United States v. Thomas, 757 F.2d 1359 (2d Cir. 1985), cert. denied, 106 S.Ct. 67 (1985), United States v. Barnes, 604 F.2d 121 (2d Cir. 1979), cert. denied, 446 U.S. 907 (1980).

60. See 604 F.2d at 168, 173 (Meskill, J. dissenting).

61. See, e.g., United States v. Fisher, SS 83 Cr. 150 (S.D.N.Y. 1983), aff'd, 757 F.2d 1359 (2d Cir. 1985); United States v. Shakur, SS 82 Cr. 312 (S.D.N.Y. 1983), aff'd, 758 F.2d 843 (2d Cir.) cert. denied, 106 S.Ct. 592 (1985).

62. See United States v. Barnes, supra, 604 F.2d at 140 (rejecting motion that "jurors must publicly disclose their identities and publicly take responsibility for the decision they are to make").

63. United States v. Taylor, 562 F.2d 1345, 1355 (2d Cir.), cert. denied, 432 U.S. 909, 434 U.S. 853 (1977).

64. See Aldridge v. United States, 283 U.S. 308, 310 (1931); Rosales-Lopez v. United States, 451 U.S. 182, 189 (1981); United States v. Delay, 500 F.2d 1360, 1366 (8th Cir. 1974).

65. The trial judge in Thomas declined to ask individual jurors questions about racial prejudice. The cases that have considered this question have held that the asking of questions regarding racial prejudice, whether to individual jurors or the panel as a whole, is not required. See Rosales-Lopez v. United States, *supra*, 451 U.S. at 190; Ristaino v. Ross, 424 U.S. 589, 597 (1976).

66. See also, United States v. Barnes, *supra*, 604 F.2d at 136 (in sum, the court conducted a voir dire which resulted in the selection of a panel whose background was fully explored).

67. This is especially so in major metropolitan areas such as New York City, where socio-economic differences occur within the county from which the jury panel is selected.

68. See United States v. Gibbons, 602 F.2d 1044, 1050-51 (2d Cir.), *cert. denied*, 444 U.S. 950 (1979); Johnson v. United States, 270 F.2d 721, 724 (9th Cir. 1959), *cert. denied*, 362 U.S. 937 (1960); Wagner v. United States, 264 F.2d 524, 527 (9th Cir.), *cert. denied*, 360 U.S. 936 (1959).

69. For example, the trial judge in United States v. Thomas, instructed the jury as follows:

Now, this should be a very interesting case. Undoubtedly, it could receive considerable publicity, newspaper, radio and television. The media and the public may be curious concerning the identity of the participants, the witnesses, the lawyers and the jurors. That curiosity and its resultant comments might come to the attention of the jury selected here and possibly impair its impartiality by viewpoints expressed, comments made, opinions, inquiries and so forth. Now, such outside influences could tend to distort what goes on in court, the evidence, and be distracting and divert the attention of the jury, and it might result in people prying into personal affairs of the participants, including those selected as jurors, who are selected only to judge the evidence in the case that can legally come before you, and thus to distort and distract attention from the case.

Consequently, taking into consideration all the circumstances, I have decided that in selecting those who will serve as the jury your name, your address and your place of employment will remain anonymous during the trial of this case, and that's the reason why you have been given numbers.

Id. at 1365 n.1. Although the instructions focus on only some of the reasons for an anonymous jury, they avoid creating an inference that would be prejudicial to any of the defendants.

70. See also United States v. Varella, 692 F.2d 1352, 1355 (11th Cir. 1982) cert. denied, 103 S.Ct.3542 (1983) (upholding Government's objections to testimony disclosing names, addresses and occupations of two government witnesses); United States v. Contreras, 602 F.2d 1237, 1239 (5th Cir.), cert. denied, 444 U.S. 971 (1979) (prior and present addresses of testifying DEA agent concealed); United States v. Baker, 419 F.2d 83, 87 (2d Cir. 1969), cert. denied, 397 U.S. 971, 976 (1970) (upholding Government objection to testimony disclosing name and address of employer).

71. According to a 1977 survey conducted by the Criminal Division of the United States Department of Justice, the statute had been used in only seven organized crime cases seven narcotics cases, and two fraud cases. The survey's respondents expressed a number of concerns about the statute, including that the requirement of having to file a pretrial notice specifying the basis for the contention that the defendant is a dangerous special offender is unduly burdensome and may be difficult to fulfill given the short period for filing the notice. Despite numerous cases clarifying the statute's terms and endorsing its procedures, in the seven years since the Justice Department survey the statute has not been much used. See McKeon, An Overview, The Dangerous Special Offender, U.S. Department of Justice, Criminal Division, June 1984.

72. No substantial organized crime case should be prepared for trial without obtaining the tax returns of the defendants. Copies of tax returns can be obtained by ex parte application to a district judge pursuant to 26 U.S.C. 6103(i)(1)(B)(1), 6103 (i)(1)(B)(2), upon a showing that there is reasonable cause to believe a crime has been committed and that the requested tax returns and return information may be relevant to matters relating to the commission of that crime. This standard is easily met in most organized crime cases. Often, returns and return information, when coupled with evidence of cash purchases, are relevant to show that a defendant had no legitimate source of the cash. See, e.g., United States v. Saint Prix, 672 F.2d 1077, 1084 (2d Cir. 1982); United States v. Barnes, supra; United States v. Viserto, 596 F.2d 531 (2d Cir.), cert. denied, 444 U.S. 841 (1979). The failure to file returns is probative for the same reasons. United States v. Saint Prix, supra.

73. Ordinarily, a separate sentence is imposed on each count when a defendant has been found guilty of more than one offense, and these sentences can be ordered served concurrently with one another, or consecutively to one another. Obviously, by imposing consecutive sentences on several different counts, the sentencing judge may be enhancing the maximum sentence that can be imposed on any single count. For example, were the court to impose three-year consecutive terms of imprisonment on two counts which are punishable by a maximum five-year sentence, the defendant would receive a total sentence of six years, one year more than the maximum on any one count.

74. See United States v. Schell, 692 F.2d 672 (10th Cir. 1982); United States v. Inendiro, 604 F.2d 458 (7th Cir.), cert. denied, 444 U.S. 932 (1979); United States v. Williamson, 567 F.2d 610 (4th Cir. 1977).

75. See United States v. Fatico, 458 F.Supp. 388 (E.D.N.Y. 1978), aff'd, 603 F.2d 1053 (2d Cir. 1979), cert. denied, 444 U.S. 1073 (1980).

76. The statute permits either party to appeal the sentence. The Court of Appeals can determine whether the sentencing procedure was lawful, whether the court's

findings were clearly erroneous, or whether the court abused its discretion. On review, the appeals court may affirm the sentence, impose or direct the imposition of any sentence which the sentencing court could originally have imposed, or remand the issue to the sentencing court for further proceeding and the imposition of a new sentence. The sentence can be increased by the Court of Appeals only if the Government were to take the appeal, and only after a hearing.

CHAPTER VII

THE INTELLIGENCE FUNCTION

BY

FREDERICK T. MARTENS*#

INTRODUCTION

Not quite twenty years have passed since the Commission on Law Enforcement and Administration of Justice (hereafter, President's Crime Commission), devoted an entire volume to the report of its Task Force on Organized Crime (hereafter, T.F.R.). That report contained an analysis of organized crime and law enforcement's response to it. In that work, academics, prosecutors, and one former New York City police detective made possible a far-reaching and visionary understanding of why law enforcement was ineffective in its approach to organized crime. One outgrowth of the President's Crime Commission's work was the creation of the Law Enforcement Assistance Administration (LEAA) -- a resource organization for local and state law enforcement and criminal justice agencies. Police departments throughout the country availed themselves of funds allocated for organized crime control, and intelligence units proliferated. This infusion of monies sparked the interest of progressive law enforcement executives determined to initiate new approaches and strategies in the "war against organized crime."

Considerable time has elapsed since the demise of LEAA, and law enforcement again finds itself struggling to understand what is a rapidly-changing organized crime subculture. Many intelligence programs have been abandoned and nearly all that remain have failed to realize their potential. New ethnic groups are encroaching on or taking over the business and territorial domains of the Mafia, and law enforcement again finds itself ill-prepared to address the new technologies, cultural mores, and values these new groups bring to the illicit marketplace. Containing organized crime -- including the elimination of monopoly control that has been achieved in certain criminal markets -- will require the operation of sophisticated intelligence programs. To that end law enforcement executives must not only provide adequate physical and financial resources, but perhaps of greater importance, intellectual rigor and managerial commitment. Only if this combination occurs will there be rationally designed and effectively implemented new policies in the organized crime field.

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#Special note should be made of the most valuable editorial contributions made by Prof. Charles H. Rogovin of the Temple University School of Law.

THE INTELLIGENCE PROCESS

In their classic text, Basic Elements of Intelligence, Godfrey and Harris (1971) provide a comprehensive description of the intelligence process and explain how, if effectively implemented, it can be used in the containment of organized crime. The process, as they point out, is not only physical but perhaps more importantly, an intellectual exercise -- a phrase that essentially defines the essence of the process. By describing intelligence activity as an "intellectual" endeavor, Godfrey and Harris have, in effect, removed the intelligence process from the realm of traditional police activity, and added yet another dimension to the investigative process; a dimension that encourages proactive as opposed to reactive responses. Since a common understanding of the intelligence process is critical to the discussion of what follows, it is useful to briefly discuss the components of the process.

The intelligence process involves five steps or phases, the end product of which is the transformation of raw data into what is commonly called finished intelligence. First, among these steps is the collection of raw information. It is this collection activity that initiates the process; turning what is the often merely reactive response to organized crime into one that is proactive. By clearly delineating the data that must be acquired to explore a particular question or issue, an intelligence officer or agent is provided with a "roadmap" for the collection of data. This "collection plan", which is usually the combined work product of management personnel, intelligence officers, and analysts assigned to a project, provides a rational and pre-planned design for collecting raw data.

The intelligence officer(s) is provided with a hypothesis -- some definition of what it is that is sought to be proved, disproved, or explored. For example, one may wish to know the role of loansharking in the control of illegal gambling. A hypothesis might be developed that postulates that the control of illegal gambling is affected by the lending of monies to bookmakers who are unable to cover their "action" (Goldstock, 1977). This hypothesis suggests that the more insolvent a bookmaker is, the more likely he is to patronize the services of a loanshark. Thus, an enforcement policy that creates financial insolvency among bookmakers may unintentionally organize the gambling market by forcing insolvent bookmakers to patronize loansharks. This then becomes the working hypothesis -- a statement that eventually guides the intelligence officer in the collection of data.

Data collection should be a focused and well-defined activity. The collection effort channels the intelligence officers' energies and resources toward a specific goal rather than permitting or encouraging the random collection of what is often irrelevant and nonessential information. By creating this working hypothesis, intelligence officers take a proactive posture, seeking an answer to an issue that will ultimately impact on enforcement policy. Thus, rather than merely wait for inquiries from operational units, the intelligence unit is anticipating and ultimately directing the strategies to be employed.

As information is collected from a variety of sources, including informants, electronic surveillances, investigative journalists, concerned citizens, other police officers, and persons arrested for bookmaking and other offenses, that data is evaluated as to its validity. In evaluating it the collator -- the person who receives the data -- will assess how a particular piece of information corresponds with other data, whether there is conflicting data that contradicts what has been found by another

intelligence officer(s), and assess the origin of the data (e.g., whether the source of information has been reliable in the past). In many respects this evaluation process is crucial in the subsequent steps that must be taken to refine the data into a finished product. Indeed, it is the responsibility of the collator to act as a "quality control officer" ensuring that the information collected by the intelligence officer is not only consistent with the mission of the intelligence unit, but is also valid and reliable. This requires the collator to evaluate the data against what exists within the system, and when conflicting information is found, inquire of the submitting officer(s). The intelligence officer(s) is then tasked with making further inquiry of the source(s) in order to clarify and/or validate the data.

Following initial evaluation, the data is then organized, perhaps around specific categories (e.g. crime "families" or networks, criminal specialties such as "loansharking," narcotics, gambling, etc.; modus operandi; or geographic territories). Through this categorization of data, patterns and trends may become more obvious. Indeed, as seemingly discrete and unrelated data is collected by intelligence officers in the field, and placed in one of the enumerated categories, it is not unusual to find a "pattern" emerge that, for example, may suggest that a criminal network is acquiring a greater share in loansharking activities in a particular locale. The "pattern" may be sufficient to stimulate a more intensive data collection effort directed at a specific criminal network or criminal activity that may raise a new set of questions that deserve further investigation.

Once the data is organized, the analytical component within the intelligence unit is tasked to interpret the data, in terms of either an immediate enforcement response (e.g., tactical intelligence) or a long-term organizational strategy (e.g., strategic intelligence). The analyst(s) tend to operate from the perspective of specific disciplines (e.g., applying sociological, economic concepts) in interpreting data. Once the data has been analyzed, it is then packaged into what is referred to as an "intelligence assessment," a detailed written report that includes graphs, charts, and diagrams. It is then transmitted to an operational unit for enforcement action, or to the agency chief for use in redirecting enforcement priorities. Unfortunately, the analytical phase of the intelligence process is the least understood and utilized. When an analytical component does exist (frequently in name only), it often does little analysis, and is more related to routine clerical tasks.

While the above process description is addressed primarily to what may be termed "strategic" intelligence, it should not be perceived as distinct from "tactical" intelligence. The data used to address a strategic intelligence issue emanates from sources that are primarily tactical in nature: criminal informants, electronic surveillances, arrested bookmakers, etc. Thus the tactical and strategic aspects of the intelligence process are not distinct, but rather, interrelated and interdependent (Dintino, 1983, p. 114).

Essentially, then, the intelligence process is no different from basic research: define the problem, collect the data, assess the data, collate or organize that data, analyze the data, and disseminate the data to the appropriate persons. Yet, despite the logic of this management tool, the role of intelligence in the "war against organized crime" has been and continues to be ambiguous, sporadic, and inconsistent. While public pronouncements and law enforcement rhetoric have championed the need for and the utility of intelligence, few law enforcement agencies have effectively engaged this process in their efforts to contain organized crime. Its value for the containment

of illicit markets and/or the criminal organizations that control these markets has never been fully understood. As a result, there is unfortunately much support to be found for the oft-repeated charge that intelligence is seldom more than an accumulation of often irrelevant data that serves only marginally-useful purposes. Obviously, merely collecting names of persons involved in criminal activity does not suffice as intelligence. The process of intelligence -- involving a continuing series of questions and answers -- must take relevant data and interpret it so that it has some meaningful value. Assembling networks through a technique known as "link analysis" serves to define what may have heretofore been unknown networks. Or, taking data that relate to the concept of a "criminal monopoly" and developing an enforcement strategy that divests this monopoly, is the essence of what the intelligence process is all about.

The irony is that almost twenty years ago the Organized Crime Task Force of the President's Crime Commission (1967) correctly noted the need for intelligence in the "war against organized crime." It declared, "Police departments in every major city should have a special intelligence unit solely to ferret out organized criminal activity . . . Relevant disciplines, such as economics, political science, sociology and operations research (must) begin to study organized crime intensively" (p. 15). Harris and Godfrey (1971), in their classic text on police criminal intelligence, argued that law enforcement agencies, through intelligence, can "detect and anticipate criminal trends" that will put law enforcement in the position of initiating long term action, rather than merely reacting to criminal behavior. Again, in 1967, the National Advisory Committee on Criminal Justice Standards and Goals, stated:

The unique characteristic of the criminal intelligence function, then, is that, when properly carried out, it can effectively pinpoint and predict organized criminal activities so that they can be prevented or neutralized. Through intelligence, law enforcement agencies can gauge the magnitude, scope and potential threat of organized crime elements in their jurisdictions. This knowledge helps them plan the most effective countermeasures against organized crime (p. 122).

Notwithstanding this well-intentioned advice, a 1977 Government Accounting Office report on the Federal Strike Force program, found that "existing data collection was directed more toward evidence gathering than toward intelligence information . . . data analysis is extremely limited . . . and analysts assigned to the strike forces are not intelligence analysts but are merely computer input specialists" (G.A.O., p. 32). Similarly, a government-financed study in 1978 found that the "state of the intelligence art within most (law enforcement agencies) is essentially reflective of the pedestrian quality of intelligence work . . . Put simply, intelligence activities continue essentially as a collection effort, with little effective analytical work achieved." (Blakey, et al, p. 13).

This dismal evaluation of the state of the art certainly pinpoints the problems encountered in implementing the intelligence concept -- a concept that remains alien to most law enforcement agencies. Indeed, what we find is a "war against organized crime" that lacks a defined direction; a campaign where progress is assessed by the use of inappropriate measures of effectiveness. The reasons for this can be found in both the nature of the police environment and the contradictions in the intelligence process.

THE LAW ENFORCEMENT MILIEU

Perhaps the primary reason for the failure of law enforcement to integrate the intelligence process with the operations of investigation unit is the lack of commitment to the fundamentals of organized crime research. By "research," reference is to a process that differs substantially from conventional investigation. In fact, the case-by-case approach to investigating organized crime frequently undermines the intelligence process. To maximize the value of the intelligence process there must be a commitment beyond "making cases." Understanding the criminal environment requires the collection of critical information -- the methods of territorial allocation, financial flows and the economics of markets, allegiances and loyalties among participants in criminal networks, and the cultural mores that govern these interpersonal relationships -- necessitate an acknowledgment that information gathered can be used not only for "making cases," but also for policy development. For example, random arrests of bookmakers or narcotics traffickers, while certainly necessary, is not synonymous with containing organized crime. In fact, experience and research suggest that such an enforcement policy may in fact organize rather than disorganize criminal markets (Rottenberg, pp. 165-166). Thus, if we are to appreciate and measure the value of enforcement efforts on disorganizing illicit markets, intelligence units must concentrate less on developing evidence for criminal prosecutions and focus more on the types of data that bring clarity and understanding to the scope and dimensions of the problem. This, of course, has the effect of reducing support from enforcement personnel, since investigators and prosecutors are in the business of "making cases," irrespective of their impact on the market.

Within this context, we find that when intelligence is perceived as a "research" effort, as opposed to an enforcement adjunct, it is generally afforded low status and receives little recognition from law enforcement administrators. The political milieu within which law enforcement administrators operate is such that symbolic arrests often dictate priorities and "truth" is grounded in mythology. Police, it is believed both within and outside the institution, are in the business of making arrests; activities that detract from this goal are generally afforded low priority. Unfortunately, goals and objectives are often confused. Illustratively, a goal of enforcement may be the containment of organized crime; an objective in terms of that end may be an arrest, if necessary, to effect this containment. Succinctly stated, however, to many persons in law enforcement whatever does not result in an immediate arrest is seen as nonproductive and of only marginal utility. When an organized crime unit's effectiveness is measured solely by the volume of arrests, without assessment of the quality or impact of these arrests, there are few incentives for the selective and judicious allocation of intelligence resources. The intelligence function is thus invariably among the first victims of this prevailing enforcement reality.

In order to position the intelligence process as a credible candidate in the contest for allocation of resources, it is imperative that collection of information tasks be well-defined and clearly focused. A poorly-designed collection effort does not only jeopardize the intelligence process, it is also a waste of valuable resources. Unfortunately and far too often, we find that the collection of information is isolated from the analytical function. Indeed, as noted above, the collection of information is often a random, non-focused activity that bears little relationship to the requirements of subsequent data analysis. To establish a well-defined collection effort, the analytical function must guide the data collection. In a well-ordered scheme, this is usually accomplished by developing a working hypothesis and then an appropriate collection

plan that serves as the vehicle to focus the collection of information. This allows for the collection of data that is both goal oriented and clearly relevant to the criminal activity/network being examined.

To a large extent, the random ad-hoc nature of data collection is an outgrowth of the traditional investigation process found in law enforcement agencies. In this investigative process a crime occurs, it is reported to the police, and an investigation is initiated. In essence, investigation is usually a reaction to an external stimulus. Seldom do we find intelligence units undertaking detailed assessments of criminal markets or organizations and transmitting these assessments to operational units for investigative action. Rather, the intelligence process is subservient to the investigative process. In effect, the "tail is wagging the dog;" investigations guide the intelligence process. For sound policy to emerge, it is essential that the intelligence process be used as a mechanism to develop well-reasoned assessments, which are ultimately transformed into investigative plans implemented by operational units.

To some extent this problem can be attributed to the lack of training of both police administrators and intelligence officers. Police executives are seriously deficient in the ability to use intelligence products in their decision-making. At the same time, intelligence officers frequently lack the necessary skills to discriminate between what is relevant or irrelevant information. Conditioned to think in terms of collecting "evidence," collecting "information" that will describe the reciprocal relationships between operatives in a criminal organization, or equally important, the financial flows of revenues in a criminal market, is often an alien concept that few intelligence officers understand. Thus, what is often labeled "intelligence" is nothing more than a collection of evidential facts that tells little about a criminal market or organization.

For example, we find that most intelligence officers place great value on collecting the names of persons involved in criminal activity. This collection activity is aimed at relating a specific person to a specific crime. Determining the stature of the individual in the context of a criminal network, or relating what are seemingly unrelated or innocuous data (e.g., the cost of narcotics, its purity) tells us something valuable about the nature of the market and those networks that seek monopoly control. It serves little useful purpose, however, merely to catalogue names in the indices of files, without understanding the relationship such persons have to others, and to any pattern of criminal activity that a network is seeking to encourage or implement. The essence of a collection process must be directed toward understanding organization -- both market and network. Lacking this fundamental quality, data collected serves as nothing more than the basis of an index system on "suspected offenders" -- a nebulous category, especially in a democratic society. The collection of information should be perceived as a unique specialty. It requires that intelligence officers be fully cognizant of the information needed to assess a particular criminal market and/or the organizations that control or operate within these markets.

There is available to intelligence officers a broad array of informational sources that offer a variety of data. For example, the data extracted from an electronic surveillance, while certainly useful in a criminal prosecution, can often tell a great deal about the allegiances, loyalties, and reciprocal relationships that exist within a criminal network. For enforcement purposes this data can be used to focus on those persons most vulnerable to "turning" -- becoming witnesses against their colleagues. Moreover, it can also suggest enforcement activities that could cause conflict within or bring pressure upon competing organized crime networks or factions.

Other sources of information, such as scholarly studies and intelligence assessment from other agencies, criminal and noncriminal informants, and of course, those offenders arrested and convicted, offer intelligence officers a smorgasbord of informational sources. Of course the quality of this data, as well as the motives of the sources (e.g. informants, offenders, reporters, academicians), must be constantly and critically evaluated.

Given the foregoing assessment of the past and current utilization of the intelligence process in law enforcement, it is important to understand why it is that intelligence as a function has not achieved the influence necessary in the effort to contain organized crime. It cannot be attributed solely to apathy, ignorance, or indifference on the part of law enforcement executives. Rather, there are a number of structural dilemmas in the intelligence process that complicate the problem.

Notwithstanding the more obvious reasons (Dintino, 1983, pp. 18-21) the intelligence process in and of itself has a number of inherent contradictions that has affected its usefulness in the "war against organized crime." To the extent that intelligence is to serve as a management tool, its product must be both relevant and timely. This mandate is perhaps the most important factor in ensuring that intelligence is useful. "Timing is everything," as the phrase goes, and this is most appropriate when we speak of intelligence. It is most important that the intelligence product be consistent with the policy agenda of the moment. If it is not, more than likely the product will be ignored. For example, it would have been inappropriate to argue in the mid-1970's that narcotic enforcement efforts should be directed toward the "little guy," the street-level retailers, for the mood of the times placed more value on "wholesalers." Today, there is a growing body of literature that supports a return to street level enforcement (Moore, 1977; Rand, 1984; Kleiman, 1985). Thus, we find that unless the intelligence product is relevant to the policy concerns of the times, it will usually receive little official recognition.

This of course suggests an inherent contradiction in the process. Is intelligence solely to be used to support the administrator's perception of contemporary organized crime control policy, or should it be more daring and challenge existing policy and practices? Without doubt, intelligence must be bold, critical, and visionary. Yet when it is, it risks its credibility, for few law enforcement executives are willing to take positions that are untried, untested, or politically precarious. Such reluctance is certainly not unexpected or unnatural. It merely represents the reality of the political world. Clearly, if an intelligence unit supervisor seeks to pursue a course of action, argues for a change in policy, or represents a questioning of existing practices in favor of those that are innovative, which challenges conventional wisdom, he must be prepared for the political consequences. Given this inherent contradiction, it is little wonder that most police executives will opt for the status quo, continuing a policy or practice that is of questionable or marginal utility. Illustrative of this point is the existing policy toward gambling.

Historically, most law enforcement officials have contended that illegal gambling was the "lifeblood of organized crime" (T.F.R., 1967, p. 2). The two, gambling and organized crime were (and are) regarded as inseparable. In 1982, Reuter and Rubenstein challenged this belief with the first empirically-based study of gambling in New York (Reuter, 1982). Unfortunately, their study has been ignored or cavalierly dismissed by many in law enforcement as a piece of academic discourse that failed to uncover the subtle but pervasive influences that allow "organized crime" to control policy in

New York City. This is not to suggest, of course, that an intelligence officer or analyst should accept carte blanche the findings of others who may not have access to the "real world of organized crime," nor should policy toward gambling be changed merely on the basis of one study. Rather, what is suggested is that an intelligence unit administrator must have the courage to challenge the conventional wisdom. If and when it is found erroneous, he must possess the political courage and acumen to seek a change in existing policy. This, unfortunately, presents still another problem for the intelligence unit commander and one that represents still another contradiction in the process.

If intelligence is used to successfully challenge and then change an outdated policy or belief, we must recognize that subsequent events may fail to confirm the wisdom or validity of the new approach. For example, if the findings of the Reuter/Rubenstein study were to be accepted, and law enforcement executives decided that enforcement of gambling laws in New York City have little to do with undermining the financial base of organized crime, how can they be certain (a political imperative) that a policy of non-enforcement would continue this market condition, when it may have been this enforcement posture that "deregulated" the market in the first place? The answer is, of course, they cannot. The fact of the matter is, intelligence as a management tool must be sensitive to and understand the difference between intelligence and its use in making policy.

Notwithstanding the symbolic reasons for continuing gambling enforcement, there still remains a real obstacle to changing a policy when the ideal market conditions are attained -- in this case, an open, competitive gambling market. In short, to withdraw resources from a particular problem once the goal has been achieved, presupposes that the condition will not reappear once those resources are withdrawn. Yet there is little incentive to continue a policy that has achieved its goal, for then the question arises: are resources being allocated wisely, efficiently, and effectively? Furthermore, if through the commitment of resources to a particular problem, the market structure is altered and organized crime is prevented from gaining entree or control, it could be argued quite persuasively that the commitment of such resources was unnecessary for the problem never manifested itself. Thus, if an enforcement policy is successful at initially preventing entree into an illegal market, more than likely the warning, if repeated, will be ignored because the initial experience indicated it did not occur as predicted. Anderson (1979) makes this very point, when she states, "it is questionable whether the current level of resources devoted to fighting organized crime is warranted", given her findings about the Benguerra family (p. 141). It may very well be that the commitment of federal resources was responsible for the apparent decline of this family, although we will never have a conclusive answer to this question. Moreover, we cannot know what might have been the situation had these Federal resources not been applied.

It is quite clear that successfully integrating the intelligence process within an organized crime containment or control program requires police executives who are sensitive to these contradictions, and understand the environment in which intelligence must operate if it is to be an effective management tool. For an intelligence unit to attain its maximum level of effectiveness and efficiency, it must seek to minimize the bureaucratic, operation, and authoritarian constraints that are prevalent in other phases of policing. Absent this, the intelligence unit will be hard-pressed to achieve its real purpose -- the acquisition of knowledge that is accurate, timely, and relevant to the goals of the agency.

STATE OF RESEARCH

The nature of the intelligence function (e.g., its covert and unobtrusive character) has limited the ability of researchers to investigate it. Indeed, most of what can be found on intelligence activities is confined to the military and foreign policy sectors and what does exist on the subject of domestic intelligence tends to address subversive intelligence activities commonly referred to as "Red Squads." While a number of researchers have referred to the need for law enforcement agencies to engage in a more rigorous study of organized crime and illicit criminal markets, the fact of the matter is, few have heeded these suggestions. In what is perhaps the only study ever undertaken of domestic organized crime intelligence units, the authors (Blakey, et al 1978) concluded, "if an organized crime control unit is to develop an appreciation of the problem it faces . . . it must establish some systematic method of regularizing the now largely unsystematic approach to gathering, indexing, analyzing and disseminating intelligence related to organized crime units" (p.33). Edelhertz (1981) in his study of Arizona's response to the threat of organized crime found a similar situation, arguing for a more effective intelligence system that would "orient to users of intelligence to actively convey their needs to intelligence units . . . (and) intelligence personnel must explore ways to deliver their "product" in a form which will be useful . . ."

Despite the paucity of research into the nature and functions of units, there are a number of useful guides to what could be accomplished by them. Ianni, skilled in anthropological research techniques, was able to bring a new insight into Italian-American, Black, and Hispanic organized crime (Ianni, 1972, 1974). Ianni (1974) provided a methodology for the analysis of new and emerging criminal networks that could be replicated by intelligence units (pp. 335-349). Notwithstanding the bureaucratic inertia that often infects intelligence units, "organizational intelligence analysis (rather than individual case development) could dramatically improve the ability of the criminal justice system to address the social, cultural, and economic factors that allow organized crime to survive and thrive." (Ianni, 1974, p. 331).

Reuter, one of the more ardent supporters of the use of sophisticated intelligence capabilities, contends that the failure of law enforcement to come to terms with the need for intelligence is a direct reflection of the inadequacies of the police environment, which generally excludes "civilians from positions of authority" (Reuter, 1983, p. 186). Nonetheless, Reuter calls for a more disciplined and rigorous approach to the analysis of organized criminal activities by law enforcement so that we can put to rest the myths and misinformation that cloud our understanding.

Wilson in his analysis of organized crime intelligence activities made a similar observation, finding, "the dominant ethos of (DEA), created and sustained by the central tasks of street-level investigators, does not provide a bureaucratic environment that nurtures, rewards, or pays heed to . . . intelligence analysts" (Wilson, 1978, p. 155). This was elaborated on by Moore (1977) who provides perhaps the most prophetic summary of the fundamental problem confronting organized crime intelligence units.

There is a basic hostility toward intelligence functions in enforcement organizations. Although the exact reasons for this hostility remain somewhat obscure, one can point to a few major

features of the situation. The functions of an intelligence analyst are almost wholly included in the functions of an investigator. No investigator would be happy to admit that he had not mined the files of his organization for every nugget of relevant information. Consequently, investigators think they should be doing what the intelligence analysts are doing, and also believe that they can perform this function more effectively and less expensively than analysts. A corollary of this contempt is the fear that the analysts will discover things the agent did not notice or suggest things that agents would never take seriously, or steal credit for cases than analysts helped to make. The possibility that intelligence analysts could embarrass, propose to guide, or steal credit from agents is particularly galling to agents because the intelligence analysts face no risks. They do not know how hard it is to debrief a defendant or crash a door. They sit secure in their offices to embarrass and guide street agents who risk their neck and work long and irregular hours. These bureaucratic factors may have prevented enforcement organizations from investing in intelligence systems even though their productivity could have been increased by such investments. The problem is not resources; it is a managerial problem of changing the style of an organization (pp. 168-169).

Clearly, Moore, Wilson, Reuter, et al are convinced that without a more pronounced and enlightened approach to intelligence there will be no real success in the "war against organized crime." This is not to suggest, of course, that success, however this ambiguous and rhetorical term is defined, will be achieved through intelligence alone; only that we will have a clearer understanding of what it is we are seeking to contain or control.

Contemporary Knowledge

While we often hear about integrating other relevant academic or intellectual disciplines into the intelligence function, those in law enforcement are often at a loss to appreciate how such disciplines can directly and immediately improve their intelligence capabilities. It is this lack of understanding that has inhibited the adoption of sophisticated collection and analytical techniques.

As previously discussed, the collection of information is the initial phase of this process. Its value should not be underestimated. The adage, "garbage in, garbage out" is most appropriate in discussing what types of data should be collected. Confronted with a multitude of information sources, a skillful intelligence officer should avail himself of the data that provides an understanding of (1) the illicit market, and (2) the networks that service this market. These collection requirements may, for example, seek data that address such issues as:

- o Territorial Control. The data that is most useful in addressing this collection requirement is identified by examining who is providing the illicit service/product in a particular locale; whether or not "tribute" -- a form of extortion -- is paid to anyone; who is being arrested and equally important, who is not; what occurs when an "independent," or someone alien to the locale, seeks to deliver the

service/product; and, have there been or are there any indications that violence (or the threat thereof) or corruption has been used to enforce territorial rights?

- o Product/Service/Superiority/Exclusivity. Data of this character can be extremely important in determining market control by a particular criminal network. Essentially, the intelligence officer is searching for data that demonstrates that a particular product or service is provided at terms that are more advantageous than those of other criminal networks. For example, the quality of the cocaine being marketed may be much higher; or the technology of one criminal network may be further advanced than that of another. Perhaps a loanshark is willing to lend monies at rates that are not as exorbitant as that of other "shys," or he need only to rely on his reputation in collecting outstanding loans, to give him a monopoly on the market.
- o Violence/Corruption Indicators. Consistent with most theories of criminal market control is the belief that, at times, violence is necessary. Moreover, because the market is regulated by the "fittest," those who have a monopoly on violence or are able to use police or prosecutorial authorities to enforce territorial domains, they are likely to control a market in a particular area. "Policy" -- a form of illegal gambling -- was once (and may still be) subject to this sort of monopoly control. Data on violence, and equally as important, on corruption are indices for determining market control.
- o Ethnic/Basic Composition of the Network. Data of this character are consistent with our knowledge about criminal organizations and the solidarity they offer to the members. It also permits an understanding of the cultural mores and norms of a particular network, which can be critical if one seeks to assess their proclivity towards violence; their interaction with and among other criminal networks, the police, or other authorities; and the symbols, values, and norms that encourage or promote their solidarity.
- o Recruitment and Career Mobility Practices. While seemingly esoteric data, this can be very important in targeting network members as prospective sources of information. Similar to those in legitimate organizations who are passed over for promotion, or who are not allowed entree into the "family circle," criminal networks also have dissidents who are vulnerable to the "right offer." By collecting data that is indicative of favoritism, prejudice, and bias in recruitment or promotional practices, intelligence units may become aware of potential targets of vulnerability.
- o Competitor/Complementary Criminal Networks. A critical piece of data that might allow for a more comprehensive understanding of the market milieu is one that provides information about competing or complementary criminal networks in a particular locale. Organized crime in its most basic sense, is in the business of expanding as well as maintaining control of territory. Criminal networks that compete with one another have a distinct interest in eliminating other criminal networks; while not necessarily aggressively interested in expanding territorial markets, they are generally willing to assume additional territory. Indeed, a fundamental, driving tenet of such business is expansion at the least expense. Thus, an effective enforcement action against one competitor group may (and usually will) open up the opportunity for territorial expansion to another criminal network (providing demand remains constant or increases).

- o Personality of the Boss/Leader. While data on such a subject may appear innocuous, it may provide insight into the management philosophy prevailing within a criminal network. A violent, impulsive, or vengeful leader is likely to relate to and attract those with similar personality traits. Conversely, a passive, docile, and non-aggressive leader, will seek to instill such attitudes and demeanor in his subordinates. Such data may make it possible for intelligence personnel to more accurately understand the organizational psyche and develop and modify strategies appropriately.

If collection efforts to secure such data are precisely defined, the analytical component of an intelligence unit will be better equipped to translate what is often perceived as discrete and seemingly unrelated data into meaningful usable intelligence. Depending upon the analyst's particular discipline and expertise, a variety of social science methods and techniques are available.

Sociological and Anthropological Methods

One formal application of sociological methods to the analysis of organized crime can be found in Cressey's (1969) research. In describing the hierarchical and authority relationships in the Mafia, Cressey relied upon a corporate/bureaucratic model. This suggested a rather rigid, formalized structure, that recently has come under sharp criticism. Nonetheless, it remains the model against which other newer groups are often compared. Chambliss on the other hand, using what are referred to as ethnographic research methods, studies the environment that an organized criminal group was "forced" to operate within (Taylor, pp. 167-179). While Chambliss' conclusions were significantly different from Cressey's, his research technique (ethnography) can be of great value if we want to understand the interactive group processes at work within the organized criminal subculture.

The essence of the sociological approach to intelligence analysis is its utility for classifying networks and bringing clarity to interactive group processes. Social network analysis is an analytical technique that permits an intelligence analyst to define what are commonly referred to as "clique interests" -- the attitudes, behaviors, loyalties, and reciprocal arrangements between criminal coconspirators. Through a technique known as link analysis, individuals are linked together, and networks emerge that provide a picture -- a clearer definition -- of these criminal organizations. While this methodology is a valuable analytical tool, other equally effective methodologies are available for use in organized crime intelligence.

Anthropological research techniques have been applied to organized crime data and are available to the intelligence analyst. Ianni (1972, 1974) was one of the first to employ this discipline in the study of organized crime as an institution. By studying the basic structures of institutions and comparing these structures against one another, models begin to emerge that avoid the traditional, monolithic model as represented by the Mafia. Ianni's research combined network charting techniques with ethnographic research, to allow the development of a variety of organized crime networks.

Economic Analysis

Not until very recently have economists come to the study of organized crime with any degree of seriousness. Notwithstanding Schelling's (1967) most valuable contributions to the literature, there have been few economists who have ventured into this ambiguous terrain. Nonetheless, Schelling's insights into organized crime provide organized crime intelligence analysts with an array of working hypotheses applicable to the study of organized crime (T.F.R., p. 114-126). For example, Schelling's concept of violence in the illicit marketplace provides a powerful analytical tool for assessing the level of organization -- that is, how well organized a particular marketplace may be. As Schelling argues, one benefit of crime being organized is a decline in indiscriminate violence, with perhaps, however, an increase in systemic corruption (T.F.R., 1967, pp. 122-123). Moreover, because the concept of organization is central not only to defining organized crime, but equally important, in measuring enforcement impact or success, its significance can not be underestimated. As Rubin correctly points out, "less organized crime is not the same as less crime" (Rottenberg, p. 159). Essentially, Rubin, Schelling, and other economists and social scientists are in agreement that measuring the impact of an enforcement action through arrests alone is irrelevant. The real issue is whether monopoly control has been altered and how.

Reuter (1983), one of the few economists who has sought to test these economic theories against the real-world marketplace, concluded that the organization of bookmaking (in New York City) was not a result of Mafia control, and the revenues generated from illegal bookmaking were not as significant as portrayed by law enforcement officials. Indeed, Reuter's findings have critically challenged the traditional orthodoxy, and his research methodology provides a model for economic analysis of the criminal marketplace and the respective organizations that are alleged to control these markets.

Anderson's (1979) study of the Benguerra family provides still another example of how economic principles can be used to study an organized crime network and its activities. Anderson, in studying this particular family, used confidential federal reports and employed criminal and noncriminal sources in the collection of data. Her findings, while in contravention of traditional organized crime wisdom, demonstrate the level of refinement that can be attained in developing an enforcement strategy. Assuming that her findings were accurate, that is, that they represent an accurate portrayal of an organized crime family and its activities, several policy implications follow.

First, Anderson concludes that this family's involvement in legitimate business was of a non-predatory or violent nature; that little violence was employed in the "loansharking" business, and that corruption of police to protect gambling operations was extensive (pp. 140-141). The strategies that could emerge from these findings could be contradictory and clearly demonstrate the level of analysis needed to address the organized crime problem. For example, should enforcement resources be directed toward the legitimate businesses in which this family had invested to "launder" its illicitly-acquired monies? Or would it be more rational to allocate resources toward the corruption that appeared to be systemic and pervasive?

Second, because it was obvious that this family had a monopoly on illegal gambling in the city, what would the effects be if divestiture were attained. As

Buchanan maintains, "freedom of entry (into a critical market), the hallmark of competitiveness, is to be discouraged rather than encouraged" (Rottenberg, pp. 130-131). Divestiture of monopoly control may reduce corruption, but will more than likely increase violence (since competition encourages violence in the illicit market).

Last, if investigative resources are directed toward the legitimate enterprises in which this family had invested, might not a consequence of such a strategy be the dislocation of these individuals to more pernicious criminal activities? Would this not create a more serious criminal problem? On the other hand, does not investment in legitimate business generate or enhance the ability to exercise political power corruptly, thus making an enforcement strategy that seeks to expose this shallow veil of legitimacy more beneficial in the long term? It is this sort of analysis and dialogue that must be undertaken if police resources are to be used wisely.

Of course, the answers to these issues may not be politic in the police or the political culture. Nonetheless, these questions and the accompanying dialogue are appropriate in establishing priorities and anticipating the impacts of possible or proposed enforcement actions.

Psychological/Linguistic Methods

The use of psychological research is to understand the personalities of those who are involved in organized crime. It is a method that has yet to be fully explored. While psychological profiling of foreign leaders is a norm in military and other government intelligence organizations, law enforcement has yet to develop a codified body of knowledge that brings a clear methodology to this technique.

An unpublished study of certain participants in the Federal Witness Protection Program has examined personality characteristics of organized crime members and their associates (Davis, 1984).

A research effort on psychological profiling is currently underway at Syracuse University. Miron (1984) has developed a technique commonly referred to as psycholinguistics -- the combination of psychology and linguistics (pp. 5-9). This technique relies upon the analysis of language -- sentence structure, syllables, words, pauses, inflections of the voice, etc. -- to psychologically profile or "undress" the speaker (the "target" of an investigation). It has proven to be a rather effective technique in assessing potential terrorist threats, but its application to organized crime control can be equally revealing. For example, the use of electronic surveillance is a control tactic that has been repeatedly demonstrated to be one of the most effective tools in the investigation of organized crime. The conversations that are recorded in the course of such investigations not only lead to criminal prosecutions, but equally important, can allow law enforcement to understand more clearly the nature and personalities of the persons involved in criminal activity. Combining both linguistic analysis with psychological principles could provide law enforcement with a powerful analytical tool (also see Shuy, 1981, 1984).

Political Science

Political scientists were among the early pioneers in organized crime research. Gardiner's classic study of politics in Wincanton gave us a graphic description of how organized crime and government officials conspired (Gardiner, 1967, 1970). This

type of analysis is extremely useful to the organized crime analyst, and provides a rich and often persuasive accounting of how organized crime seeks to undermine government structures. Homer (1974) has devoted several chapters to analyzing the politics of criminal organizations by applying a number of organizational principles. He studied how force is used within a criminal organization to effect control; how the dispensing of favors leads to organizational unity; how loyalty inhibits growth and expansion in an organization; how secrecy both maintains dominance and breeds hostility in criminal organizations; and how respect and position are not synonymous in a criminal organization. Homer provides crime analysts with a different way of analyzing criminal organizations, examining the matrices of criminal activity(ies) rather than analyzing the criminal organization as a society. This, Homer argues, avoids the traditional Italian-dominated view of organized crime and broadens our understanding of what it is law enforcement is seeking to control (Homer, 1974, pp. 108-138).

Historical Analysis

The discipline of history is a natural foundation for the organized crime analyst. That is, historians are continuously searching out facts that were heretofore unknown or hidden from the public. They organize and distill data that have always been available but not fully analyzed. In a sense, this discipline is most appropriate to the study of organized crime. It can serve to guide the crime analyst in the analysis of organized crime and identify parallel patterns to understand contemporary criminal activity.

Humbert Nelli, one of the early pioneers of the history of the Mafia, using basic document research, provided a graphic description of the evolution of the Mafia in urban centers throughout America. If Nelli is correct when he argues, "official pressures, advancing age of syndicate leaders, and this inability to attract new local talent combined with increasing competition from Blacks and Latins mark the beginning of the decline of Italian-American syndicates," it is quite apparent that new criminal organizations will emerge to supply the continuous demand for illicit goods and services (Nelli, 1976, p. 264). What Nelli does is use history to understand the past, in order to forecast trends in the future. Given the primary value of intelligence, prediction and thus prevention, this analytical tool can be very valuable.

Block, along different lines, uses historical data to recreate the early days of organized crime's evolution in New York City. While Block offers a non-traditional view of the role of organized crime in American politics, he concludes that "the most efficient 'organized criminal' were the most individualistic, the least committed to particular structure..." (Block, 1980, p. 265). This concept can be very useful to an intelligence analyst seeking to identify the "rising stars" within a criminal network. With such identifications, law enforcement might decide to allocate its finite resources towards those criminal entrepreneurs believed most likely to attain control of a criminal network rather than current leaders.

Operations Research

Conventional organization theory, or what is referred to as operations research, offers us yet another analytical discipline that can be applied to the analysis of criminal organizations. Smith (1978) has brought such an analytical technique to his research on "illicit enterprises." He defines this term as "the extension of legitimate

market activities into areas normally proscribed, for the pursuit of profit in response to latent illicit demand" (p. 164). Smith proposes a series of theorems that allow the "illicit enterprise analyst" to bring a different evaluation to criminal roles. For example, Smith suggests that rather than organize criminal activities around "a mutually-shared "family" relationship, each role must be considered on its own terms as an entrepreneurial extension of the larger spectrum of legitimacy" (Smith, p. 171). This permits the analyst to order his/her data along "a spectrum of illicit enterprise" allowing for a "broader understanding of how to reduce the domain of the illicit power broker or enforcer" (Smith, p. 175). It is the introduction of new analytical techniques, such as those proposed by Smith and others, that will expand and maximize the capacities of intelligence units in the containment of organized crime.

In as yet an unpublished study, Maltz postulates the inadequacies of existing measures of effectiveness for anti-organized crime activity, and articulates some alternative measures that might be employed. Utilizing these new measures, analysts could probe intelligence data bases to make for more accurate assessments of claimed "successes" in the "war against organized crime." In addition, arguments for or against the maintenance of an existing strategy could be buttressed with legitimate impact analysis.

THE NEED FOR MANAGERIAL INITIATIVES

No statement is more precise and revealing than that of Harris and Godfrey (1971) who correctly stated, "the intelligence process is sometimes physical but always intellectual (p.2). Collecting and analyzing intelligence data is a unique specialty and requires a genuine commitment to rigorous intellectual skills. Tying together existing research with organized crime intelligence analysis is a task that requires at the very least, skilled collectors and analysts who have been schooled in the nuances of organized crime theory, research methodology, and policy analysis. Further, law enforcement executives must be sensitive to the dynamics of the process, know the correct questions to ask, and acquire a sensitivity and appreciation for the need to base enforcement policy and practice on empirically-supported assessments/studies. Organized crime control must be perceived as a unique discipline, distinct from other forms of crime control. It requires a cadre of specialists who have devoted a large part of their careers to mastering and furthering the state of the art. To attain this, attitudinal as well as structural change must occur.

The current ethos prevailing among most law enforcement executives is that any police officer can do any police task. The professionalism of the criminal intelligence function demands a rejection of this philosophy. Specialists are an inevitable by-product of advancing knowledge, and as our knowledge of organized crime grows it is imperative that there be a cadre of intelligence specialists that remains knowledgeable. Without this, organized crime control planning and execution will be perceived as nothing more than basic criminal investigation, with no real appreciation for the concept of strategy that is central to the decision-making process.

Training of mid-level supervisors in the art of organized crime control is the next logical step in developing this cadre of intelligence specialists. Currently, there are no training programs available that address such issues as strategy development in organized crime control, understanding market conditions and what shapes such conditions in the underground economy, and resource deployment and impact assessments, to name just a few. Rather the notion prevails and is re-enforced by

management, that an arrest of one organized crime member or associate (no matter how distantly related) is as valuable as the next. Hence we find that "vice" enforcement is often synonymous with "organized crime" enforcement. Until police executives and mid-level supervisors are conditioned to think in terms of organized crime concepts, we are unlikely to experience a change in current practices.

With respect to intelligence officers and analysts, the state of the art is quite advanced, but the practice leaves much to be desired. Few programs exist to train intelligence officers to collect data. Information is the essence of intelligence work and yet it is ironic that some of the best intelligence work has come from those with the least access to intelligence data contained in law enforcement files. Studies that have been cited in this paper were conducted by researchers and students who generally had only limited access to intelligence files. And those researchers who did have access to such files were better equipped to analyze the data than those regularly employed within intelligence units. This raises clearly questions as to the role researchers should play in the analysis of intelligence data, and whether it might not be appropriate to develop mutually-desirable liaisons with researchers, subject to appropriate restraints to protect the security of data. Researchers have expertise and skill to bring to the analysis of data, capabilities that could be transferred to the law enforcement sector. Intelligence officers have the information that is often inaccessible to the researcher. An exchange of knowledge and information would undoubtedly benefit both the academic community and law enforcement.

Training intelligence officers in what to collect, and intelligence analysts in how to analyze data is critical to the success of the intelligence process. However, much of this training will have to occur outside of the traditional police environment. Police training on the whole is limited to technical knowledge, with little time devoted to developing conceptual frameworks for decision-making. If the intelligence field is to acquire the types of personnel it needs to perform these tasks properly and efficiently, recruitment of personnel with college degrees and graduate training is a must. It is essential that police executives recognize that the academic disciplines bring with them rich and powerful analytical tools that are central to the analysis of intelligence data. The lack of such trained professionals in law enforcement has undoubtedly retarded the development of organized crime containment policies and practices.

The importance of educating operational personnel to the utility of the intelligence process and its limitations should not be underestimated. Far too often investigators perceive the intelligence function as a mere service activity (e.g., obtaining telephone or name look-ups) or as a panacea for "making his case." It is neither. Operational personnel must be educated to view intelligence as a guide by which the investigator is provided with a "roadmap" of criminal networks. Assigning operational personnel to intelligence units for no less than two year periods, may help to overcome the prejudices and misconceptions that have developed over the years.

Nothing is more valuable for "selling" the intelligence concept than the finished project, the assessment. It is the assessment that transfers acquired knowledge in written form to management and operational units. It should save the investigator valuable time by providing the "blueprint" of where he/she should be going in an investigation. By identifying and defining with precision, the targets of vulnerability, an investigator is spared the drudgery of preliminary investigative work. The assessment, rather than being perceived as a piece of "creative writing" or a novel

having no relationship to the "real world," is a working document that directs and guides investigation.

The success of the intelligence function is dependent upon a strong managerial commitment and the availability of a skilled cadre of intelligence officers/analysts. It must be perceived as a management tool, not a luxury or the waste of valuable resources. Above all, police executives must be committed to rigorous and sound methodological standards that bring credibility to its findings.

WHERE DO WE GO FROM HERE

There is ample reason to question whether law enforcement executives will appreciate or enhance the potential of the intelligence process. Absent a cataclysmic crisis or scandal, it is certainly a highly tenuous proposition that intelligence will ever receive the stature and allocation of resources that are necessary in developing and implementing an organized crime policy (ies). Notwithstanding the waves of indictments of Mafia "families" throughout the country, the history of organized crime enforcement is indicative of the abysmal performance intelligence has played in this so-called "war." Rather than being perceived as a vital element in the development and promulgation of enforcement strategy, intelligence is viewed as a luxury that is of marginal utility. Moreover, policy-makers, the ultimate consumers of intelligence assessments, often rely on their political instincts, first, subjugating intelligence to an inferior role. Few agencies have integrated the intelligence concept into the operations of their narcotics and organized crime units, and even fewer have made intelligence a part of their decision-making processes. Until there is continuity and a genuine commitment to this concept, the efforts of organized crime control units will never be fully realized or recognized.

To meet this challenge intelligence units must provide products (not just information) to law enforcement executives that address critical issues in organized crime control. These intelligence products must be both relevant and timely, and provide a coherent understanding of criminal organizations and networks and the milieu in which they operate. The intelligence product must be empirically-based, not grounded in opinion, tradition, or folklore. If we examine, for instance, narcotic enforcement control strategies (which are not synonymous with organized crime control strategies), Kleiman's research (Kleiman, 1985) coupled with that of Rand's recent study (Rand, 1984), gives support to retail-level drug enforcement as opposed to wholesale and import-level drug enforcement. Moreover, Moore's (1977) research provides law enforcement executives with an understanding of how heroin enforcement affects demand. A study of the effects of enforcement on market structures is the type of empirically-based intelligence product that law enforcement executives should have at their disposal when developing and assessing strategies.

The impact that organized criminal activities have on the social fabric of the community provides for a rich understanding of the milieu in which organized criminals function. Clearly, Lasswell's (1972) research on the narcotics and gambling rackets in Brooklyn's Bedford-Stuyvesant sections, "by 1970, organized crime was grossing more revenues from narcotics and its illegal policy operations...than the Federal government was collecting in income taxes from the same areas," and Reuss-Ianni's (1973) subsequent study of the Harlem rackets, "organized crime reputedly is the chief supplier of illegal goods and services to the Harlem community," are indicative of the kinds of research that can be undertaken by intelligence units.

Studies into new, ethnically-organized criminal syndicates, Mexicans, Blacks, Colombians, Vietnamese, have emerged in the last decade. Lewis (1980), provides an analysis of La Nuestra Familia; Davidson (1974) examined the "Mexican Mafia;" Ianni (1974) explored the emergence of Black and Hispanic criminal organizations; and Lupsha/Schlegel (1980) provided illuminating insights with their research on the "Herrera Family." These studies serve as a foundation for understanding of new and emerging criminal syndicates.

Market analysis has become a popular method of assessing organized criminal activity. Reuter's (1984) examination of dispute mediation in the organized crime subculture adds to the existing research on this topic (Smith, 1978; Furstenburg, 1979; Dintino/Martens, 1981; and Chambliss, 1975). Seidl's (1968) often quoted study of "loansharking" rackets provides provocative and exciting questions into the pivotal role that moneylending plays in other illicit and licit activities.

Clearly, the range and number of research projects that could be undertaken by organized intelligence units are endless. Much needs to be done to understand the mechanics of organized crime, and yet so little has been accomplished over the past two decades. Intelligence units have access to data from which most researchers have been excluded. Access to and the informed use of information could result in a more lucid and detailed understanding of organized crime and how it functions.

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CHAPTER VIII

ORGANIZED CRIME AND DRUG ABUSE CONTROL

BY

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Organized crime research is both a search for knowledge and a contribution to an ongoing policymaking process. As searchers for knowledge, we want to know what organized crime is, what it does, how it changes over time. We also want to know how it influences, and is influenced by, conditions in the industries, both licit and illicit, where its presence is felt, and what enforcement techniques are used against organized crime with what results. As policy analysts, we want to know the consequences of government actions, actual and potential, in order to be able to evaluate current strategies and recommend alternatives.

Organized crime and drug trafficking are linked, both as phenomena and as policy problems. Each is complicated, in description and in action, by the presence of the other. The objective of drug enforcement is to keep drugs away from consumers. The objective of organized crime enforcement is to contain the wealth and power of major criminal organizations and to frustrate their goal of being able to defy the law without paying its price. These two objectives interact where the drug trade affects organized crime or where organized crime affects the drug problem. The illicit drug business can be a major source of power or revenue to organized crime groups. It can also make them unusually vulnerable to enforcement. The capabilities of organized crime groups may make drugs more available to consumers than they would otherwise be.

I will answer, or recommend research that will help answer, four questions:

1. What effects does organized crime have on drug trafficking and enforcement?
2. What effects do drug trafficking and enforcement have on organized crime?
3. How should federal agencies engaged in organized crime enforcement adjust their policies to contribute to the objectives of drug policy?
4. How should federal agencies engaged in drug enforcement adjust their policies to contribute to the objective of organized crime control?

In the next section, I will lay out what we now know about the topic, and to identify the key analytic points. I will discuss prospects for further research analysis in the following section.

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I. CURRENT KNOWLEDGE

A. Defining "Organized Crime"

The term "organized crime" can be defined in at least three distinct ways:

1.) Sometimes it is used merely as an ethnically neutral euphemism for "the Mafia" or "La Cosa Nostra." In this sense, "organized crime" is rather well-defined; Federal organized-crime enforcement officials believe that they can name not only its constituent groups but all of their leaders and most of their individual members.

2.) It may describe a class of criminal organizations whose characteristics make them particularly worthy of law enforcement attention: size, wealth, political power, participation in a variety of criminal activities, and continuity over time have all been suggested as the defining characteristics. [See Maltz, 1984; Kleiman, 1984, pp. 74-75; Kleiman, 1985, pp. 161-173.] Enforcement officials sometimes refer to such non-Mafia groups with Mafia-like characteristics as "emerging" (as opposed to "traditional") organized crime.

While the first approach made the specification of organized crime clear-cut (aside from the problem of "associates"), this second approach makes the borders hazier; surely the Hell's Angels qualify, but the Aryan Brotherhood or the Blackstone Rangers pose more difficult issues. But one can make a fixed list of organized crime groups, both traditional and emerging, and then have an unambiguous referent for questions such as, "To what extent is organized crime involved in the drug business?"

3.) The third approach is to define a set of organized-crime characteristics and then note to what extent a broad range of criminal organizations will share them.

Defining organized crime in terms of its characteristics complicates the analysis, because it treats the set of "organized crime" groups as variable rather than fixed, and logically implies a many-valued rather than two-valued classification. Rather than being defined simply as organized crime or non-organized crime (i.e., on the list or off it), criminal groups will fall along a spectrum of being more or less organized-crime-like. This suggests the possibility that drug enforcement activity can increase or decrease the number of drug-dealing organizations with many organized crime characteristics, and make existing organized-crime-like drug dealers more or less organized-crime-like and give such groups a greater or lesser share of the drug market.

B. Organized Crime and the Drug Markets

Organized crime, however defined, can touch the illicit market for any given illicit product or service in one or both of two ways. Organized crime groups may be dealers in that market or suppliers of intermediate goods and services to such dealers (or dealers and service firms in that market may be more or less organized-crime-like). Alternatively, organized crime groups may act as extortionists preying on dealers, or attempt to organize dealers into a cartel, restricting entry and fixing prices. We can call these two alternative forms of participation "productive" and "parasitic," respectively. "Productive" organized-crime involvement will tend to increase the supply of illicit products and thus decrease price and increase the quantity consumed. "Parasitic" involvement, in illicit as in licit trades, will tend to increase prices and decrease the quantity consumed. Since the products and services

in question are presumed to be "bads" rather than "goods," productive roles would be undesirable, and parasitic ones desirable from a public-policy perspective that examines drug-consumption effects alone rather than taking organized crime as an independent problem category [Schelling 1967, 1971].

In each case, we need to ask what characteristics of the market make it amenable to organized-crime participation, whether this means participation by organized-crime groups arising outside the market in question or the development of organized-crime characteristics by market participants. For example, a reputation for being willing to deliver on threats of violence if debts are not repaid might be of use in the business of financing drug transactions because it would reduce the costs of collection. However, this advantage would be relevant only if drug dealers frequently needed to borrow money and if there were no other arrangements, such as supplier financing, that could offer dealers similar interest rates and less personal risk.

C. Organized Crime as a Drug Supply Problem

"Traditional" organized crime -- La Cosa Nostra -- does not now contribute substantially to the drug problem, with the exception of the major role widely, but not universally, believed to be played in heroin importation by various New York Mafiosi. This is not to say that LCN members and associates do not participate in drug dealing on many levels, but only that heroin importation into the New York area is their only distinctive contribution to the supply of illicit drugs. Nor should this be surprising; much as LCN families might like a share of the \$25 billion or so spent at retail on controlled substances, they have no obvious advantages as drug suppliers, aside from their established skill at smuggling heroin from the Mediterranean, and the substantial enforcement attention directed at LCN groups may in fact impose substantial competitive disadvantages on them.

As a consequence, as long as organized crime enforcement institutions continue their concentration on "traditional" organized crime groups, they have relatively little to contribute to solving the problem of illicit drug supply. But the concentration on the LCN has been so successful, both in terms of successful cases and in terms of creating and maintaining productive, high-morale enforcement and prosecution institutions, that it seems both unlikely (as a matter of prediction) to be changed and unwise (as a matter of policy analysis) to consider changing.

It may be the case that some "emerging" organized crime groups make distinctive contributions to various parts of the drug supply, so that their disruption would make a special contribution to drug supply control over and above the general effect of enforcement in raising prices by raising the costs and risks of drug trafficking. Motorcycle gangs, the Hell's Angels in the West, the Outlaws in the Mid-Atlantic region, may be "least-cost suppliers" in the distribution of cocaine, amphetamines, and phencyclidine (PCP). Similarly, some ethnic-based organizations may be significant contributors to the heroin supply, as the Herrera organization certainly was at least until the recent arrests. By contrast, neither the importation nor the distribution of marijuana appears to offer the economies of organization that would make breaking up particular trafficking groups a major marijuana enforcement objective; the marijuana trade may be at its most efficient as a decentralized set of independent buyers and sellers.

Developing a set of institutions that can appropriately address the role of emerging organized crime groups in the drug markets will require devising organizational incentives and career patterns that support extremely long-term investigations and investments in intelligence (broadly defined) while maintaining a supply-control orientation among agents and prosecutors. This will not be an easy task; there may be lessons to be learned from the Federal Bureau of Narcotics in its approach to LCN heroin dealing. [Cf. Kleiman, 1985, Ch. 8.]

Evidence about parasitic activities by LCN groups in the drug markets is fragmentary. The Angiulo tapes in Boston reflect that organization's attempts to collect "street tax" from the marijuana trade, but the significance or success of that attempt has not yet come out.

D. The Drug Markets as an Organized-Crime Problem

The illicit drug traffic contributes to the organized crime problem because of the enormous amounts of money at stake. These potential revenues will both attract, and help to sustain, existing organized-crime groups and call into existence new groups with organized-crime characteristics.

LCN families, other ethnically-based organizations long in existence, and outlaw motorcycle gangs may engage in drug dealing as a way to support themselves financially and to take advantage of their organizational abilities in illicit transactions. The opportunities in the drug trade may also allow the development of organizations whose origin is in drug dealing, and which may remain specialized in drug dealing, while taking on organized-crime characteristics: in particular, organizational continuity and organizational investments in the abilities to use violence and corruption to resist enforcement efforts while remaining prominent in illicit markets.

Drug trafficking is almost certainly the largest source of illegally-earned income in the United States, far outstripping the market for illegal gambling or prostitution. [Carlson, 1983; Simon and Witte, 1982.] Estimates of total revenues from drug sales vary widely [Carlson, 1983; NNICC, 1984; Kleiman, 1985; Reuter and Kleiman, 1981] and are highly unreliable [Reuter, 1984; Singer, 1971.] It seems unlikely that total annual revenues are much less than \$25-30 billion.

Virtually all of this represents rewards for lawbreaking; the payments for licit goods and services, lawyers' fees and the rental or purchase of vehicles and buildings, are negligible. On the other hand, relatively little of it represents revenue to large criminal organizations, because so much of the final retail price of illegal drugs consists of the markups of retail dealers and low-level wholesalers. For heroin and cocaine, less than one-tenth of the final retail price is collected by the dealer who sells kilogram units. Marijuana, by contrast, with much less vigorous enforcement at lower levels, undergoes only about a four-to-one price markup between first domestic distribution and final retail sale.

Each of these three markets has a total value on the order of \$10 billion per year, yet more than \$2 billion of the marijuana market represents the revenues of high-level organizations, while the heroin and cocaine markets at that level represent about \$1 billion each. On the other hand, the tighter distribution channels for heroin and cocaine make it possible for large and highly disciplined organizations to exist at the wholesale-retail level, so that organizations with many of the

characteristics of organized crime may exist at lower levels of those trades (e.g., the Barnes organization in the Harlem heroin market).

E. Consequences of Enforcement Pressure

Whether organized-crime characteristics produce a competitive advantage or disadvantage in a given drug market will depend in part on the amount of enforcement pressure on that market. One characteristic of organized crime is enforcement-resistance: a set of organizational routines and capabilities, including the development of a reputation for using violence against potential witnesses and informants, to reduce the group's vulnerability to investigation and prosecution. It is precisely because organized-crime groups are enforcement-resistant that the FBI and the Strike Forces have learned to make such heavy and long-term investments of manpower in order to make LCN cases.

From the perspective of drug-dealing, enforcement resistance has costs: customers, suppliers, and employees will all tend to shy away from organizations known to be quick on the trigger. If the level of enforcement losses incident to working in a given drug market is relatively low, the disadvantages of heavily-armored organizations in terms of day-to-day dealings will outweigh their advantages in terms of keeping out of the clutches of the law. On the other hand, as the level of enforcement pressure rises, the losses incurred by more loosely organized competitors will make higher and higher levels of investment in enforcement resistance seem worthwhile. Tightened general drug enforcement, as opposed to drug enforcement targeted at organized crime, will tend to give organized crime groups and organized crime-like groups relative competitive advantage, because their capacity for violence and corruption helps protect them against ordinary enforcement actions. [This is argued at length in Kleiman, 1985, Chaps. 6-7., and Kleiman, 1984.] This encouragement of the acquisition of organized crime characteristics by drug dealing organizations must be counted among the costs of increased drug enforcement activity.

The level of drug enforcement activity has another set of effects on the organized crime problem. Assuming that increased enforcement succeeds in raising the costs of drug dealing and, consequently, the price of the drugs at retail, consumption will tend to decrease. Consumption falling as prices rise will cause the total money at stake in the market to rise or fall depending on whether consumption falls faster or slower, in percentage terms, than prices rise.

Tighter enforcement can increase the money to be made in any black market if it succeeds in raising the price of the commodity involved and if consumption decreases less, in percentage terms, than prices rise. (A 50% price increase that causes only a 20% decrease in volume will create a new market with total revenues $1.5 \times 0.8 = 1.2$ times as large as the revenues in the old market, and thus increase the money to be made by 0.2 or 20%.) Thus the sensitivity of consumer demand to retail price, what economists call the price-elasticity of demand, becomes an essential number to know.

If the price-elasticity of demand is, in absolute value, greater than one (if a given percentage increase in price will cause a larger percentage decrease in volume) then price increases will decrease total revenues. Such goods are said to be "relatively elastically demanded." On the other hand, if the price-elasticity of demand is, in absolute value, less than one (if a given percentage change in price will cause a smaller percentage change in volume, as in the example above) then price increases

will increase total revenues. Such goods are said to be "relatively inelastically demanded."

In markets where demand is relatively elastic, where consumers will respond to price increases by sharply cutting back consumption, increased enforcement will reduce the money at stake and thus tend to make the markets less lucrative for organized crime. Increasing enforcement where demand is inelastic will increase the money at stake and make the markets more able to support organized crime. Much of the empirical work recommended below centers on measuring the price-elasticity of demand for various drugs.

Unfortunately, the demand for marijuana and cocaine appears to be relatively inelastic. [Reuter and Kleiman, 1986]. (The argument with respect to marijuana is on much firmer ground than the argument with respect to cocaine.) If this is so, the drift of federal drug enforcement policy over the last five years to increase total federal drug enforcement combined with a shift in relative emphasis away from heroin and toward marijuana and cocaine has not been a desirable one from the perspective of organized crime control, though it may have helped limit drug consumption. This is the central tension in organized crime/drug enforcement policy: good drug enforcement may be bad organized-crime control.

On the other hand, there is reason to believe that retail-level drug enforcement, particularly retail-level heroin enforcement, will have most of its effects on the number and aggressiveness of retail dealers, and thus on the time and risk for the user involved in making a purchase, rather than on price [Moore, 1973; Spence, 1977; Kleiman, Holland, and Hayes, 1984, Kleiman, 1986]. If that is true, then retail-level enforcement will unambiguously decrease the total revenues of drug dealers, and thus make the drug markets less lucrative for organized crime.

II. PROSPECTS FOR RESEARCH

The above analysis carries us about as far as the current data sources will support us; some would say, much further. As a dedicated armchair theorist, I cannot be accused of peddling my own wares in saying that progress on these issues will rely far more on data-gathering than on speculation.

We need data on three topics: the drug markets; drug enforcement; and the role of organized crime.

A. The Drug Markets

From the perspective of organized crime, the drug markets are important principally because of the sums of money involved. Consequently, knowing how large those sums are and how they are allocated among various roles is essential.

Total revenue in any market depends on the prices paid and the quantities purchased. Neither has yet been accurately measured for any of the major drug markets [Polich *et al.*, 1984; Carlson *et al.*, 1983; National Narcotics Intelligence Consumers Committee 1983; Reuter and Kleiman 1986]. Estimates of these numbers can be derived either from the knowledge accumulated in the course of enforcement activity or from surveys of drug purchasers (and drug sellers in the limited cases

where this is practicable). Survey results are likely to be more useful, particularly in regard to retail prices and quantities consumed. Enforcement-generated "price chain" data can be very informative about market structure and the division of illicit incomes among participants.

The problem with enforcement-derived estimates of drug quantities is that the relationship between enforcement results (drug seizures, for example) and the overall volumes in the drug markets is unknown and may vary from time to time. Lost in the organizational history of the Federal Bureau of Narcotics is the unsung hero who first proposed the rule of thumb that enforcement agencies capture about 10% of the drug supply on its way to market. That rule of thumb allows, once the problems with the seizure data are straightened away, a simple calculation of the physical size of the drug markets: take seizures and add a zero. More of the official drug market estimation than anyone would like to admit is still done using some variant of that methodology.

There are two problems with such calculations. First, there was never a period when we had a good measure of the total market to validate 10%, or any other number, as the seizure rate. Second, the seizure rate varies from drug to drug and changes over time; increased enforcement pressure will tend to raise it, but adaptation by traffickers will tend to lower it. In fact, if the change in enforcement is great enough to cause shifts in basic smuggling patterns, the result may be a lower overall seizure rate despite a higher level of enforcement. This seems to have been the case for the South Florida Task Force, which succeeded both in driving drug smugglers away from its territory and in causing many of them to switch from large vessels to smaller, faster vessels.

The same is true of using other enforcement measures as estimates of market size. The enforcement success count depends on the size of the market, the vigor and tactics of enforcement, and the countermeasures of traffickers. Without an independent basis for estimating the effect of countermeasures, the success count tells us little even about trends in the size of the market.

Surveys have a different set of problems. First, the survey population may be unrepresentative of the general population in a way that leads to underestimation of the total quantity consumed. Second, respondents may systematically misrepresent their behavior, either to deceive or because for psychological reasons they actually believe that they use cocaine less frequently than they actually do. Third, the population of very heavy users, who account for a large fraction of the total consumption of any drug, may be sufficiently rare so that even a large sample contains too few of them to make accurate measurements.

Finally, the current surveys (of high-school seniors by the Institute for Social Research at the University of Michigan and of the general household population by George Washington University) don't ask directly about some of the topics most relevant to policy-making: purchase habits, personal inventories, drug sharing, quantities purchased, prices paid, how much prices vary over time and what effects those variations have on consumption, whether there are shortages of particular drugs and how users respond to them.

But all of these problems are surmountable, at least in principle, by changing the current surveys or beginning new ones. We could ask directly about prices and

about quantities purchased and consumed; we could work hard on sample representativeness by including the non-household (institutional and homeless) population; we could do validation studies on self-report data; and we could attempt to oversample among populations likely to contain large proportions of heavy users. We could do studies of local markets to determine the extent of geographic variation and local variation over time. In addition, we could supplement one-shot sample surveys with panel studies. These steps would involve various levels of difficulty and expense, but none of them is impossible and any of them would improve on our current ignorance.

From the enforcement world, we could do more systematic collation of case and informant reports into price chains, and create a serious program of retail-level buys to determine prices and drug characteristics (identity, potency, purity).

The combination of data from frequent local surveys and local retail-buy data might allow the contemporaneous measurement of the effects of increased enforcement or changed enforcement tactics on, for example, the marijuana market in Eastern Massachusetts. Until we know something about that, any attempt to model the effects of such enforcement changes on organized crime is largely futile.

B. Drug Enforcement

Our ignorance about the drug markets is attributable largely to the difficulty of observing illegal activity. Our ignorance about drug enforcement is less excusable; it reflects a failure to collate data already in government hands.

Three classes of data are of interest here: enforcement inputs, activities, and targets; enforcement outputs; and enforcement effects.

(1) Inputs, Activities, and Targets. What resources are spent on drug enforcement (measured in dollars, agent-hours, prosecutor-hours, cell-years, ship-days, and wiretap orders under Title III), and how are those resources divided among agencies geographically, by target drug, by enforcement technique, and by the trafficking activity (high-seas smuggling, port smuggling, first domestic distribution, wholesaling and middleman activity, retail dealing, money laundering) under investigation?

At the Federal level alone, something as relatively simple as a unified dollar budget broken out by agency and by drug (e.g., Customs Service expenditures on cocaine cases) is not available. An earlier attempt of mine to estimate the share of marijuana in total Federal enforcement illustrates both the limits of current data sources and the conclusions that can be drawn in spite of those limitation [Kleiman 1985, Ch. 3].

Assembling meaningful information about inputs in non-monetary forms (e.g., work-hours) would be a tedious process requiring both access to internal agency reporting systems and an understanding of how those systems represent or misrepresent reality. However, assuming that something resembling the DEA's annual statistical report [Drug Enforcement Administration, 1984] is available from the Coast Guard, Customs Service, IRS, and FBI, it might be possible to assemble a fair picture of Federal enforcement activity.

Federal prosecution agencies do not now have the ability to generate statistical profiles of their work that would be useful here. The case-management software system, PROMIS, being installed in the U.S. Attorneys' offices may be able to produce estimates of prosecutive work-hours by case type, though the system may not code enough of the case data (e.g., G-DEP rank of case and defendants) to allow useful analysis.

The Administrative Office of U.S. Courts can produce cases-pending counts by offense. This, though, overestimates drug cases as a proportion of total cases to the extent that drug defendants are more likely than others to default on bail and thus remain as active cases for long periods of time; no estimates are published of the use of judge-days or grand jury days for various kinds of cases. Moreover, since the statute names and numbers attached to a given drug charge (manufacture, distribution, conspiracy, continuing criminal enterprise, etc.) do not vary with drug involved, it is almost impossible to separate the conviction data by drug. From the court data, it is possible to make very crude estimates of federal prison-cell utilization by convicted drug dealers. The attempt to work directly from DEA data [Kleiman 1985 pp. 78-80] is frustrated by the fact that the DEA statistical report lists total convictions rather than convictions in federal courts. The lack of a unified set of file numbers for the federal criminal-justice agencies, or a set of links from one file system to the next (what is called an "Offender-Based Tracking System," or OBTS) makes it nearly impossible to trace a sample of DEA defendants through prosecution and incarceration.

Below the federal level, the situation is much worse; there are simply no published figures on drug enforcement spending or activities by state and local police agencies, most of which do not have separate drug enforcement units.

The current paucity of enforcement-input data would frustrate any attempt to study the effects of changes in enforcement resources on the drug markets, even if adequate price and quantity data were in hand. However, unless the agencies involved have their own reasons for collecting the data, it will be difficult either for "outsiders," even from within the government, to do the job or to persuade the agencies to do it themselves. The situation is similar for state and local enforcement. In the absence of any convenient ways of getting nationwide data, a few studies of individual cities and states might be useful, and the availability of federal research money might be an adequate inducement to local authorities to make the data available.

More sensitive, but even more important from the perspective of organized crime and drugs, is information about how enforcement agencies choose their targets. It was suggested above that the general tendency of increased drug enforcement would be to confer competitive advantage on more organized-crime-like drug dealing organizations, because such organizations will tend to be more enforcement-resistant than their competitors. This might not be true if enforcement-agency operating procedures were designed to discriminate against enforcement-resistant organizations. How does a reputation for violence compare with a large volume in making a drug-dealing group a target for federal investigation? What incentives exist within enforcement agencies to encourage the long-term investigative techniques that have proven essential in LCN cases?

(2) Outputs. How do those inputs translate into enforcement actions felt by traffickers (arrests, convictions, sentences, time actually served in prison, drug

seizures, and asset seizures)? How are those outputs distributed geographically, by drug, by level of the traffic?

These figures are less nebulous than resource and workload data; a man-hour is such stuff as dreams are made of, but an arrest actually happens. Nonetheless, although DEA reports its arrests broken down by almost every possible variable [DEA 1984, pp. 339-93] there is no government-wide collation of all arrest reports. Convictions and prison time, as noted above, are simply not available in useful formats.

Even drug seizure data are complicated by the multiplicity of agencies involved; simply adding together agency totals runs the risk of double-counting. [General Accounting Office, 1983.] The annual reports of the Organized Crime Drug Trafficking Task Force program attempt to provide government-wide estimates [U.S. Department of Justice 1984, p. 29].

Data on asset seizures are complicated both by interagency (and federal/state/local) cooperation and by the complexity of seizure cases; the appraised value of an asset may be a large multiple of its realized value less the lienholders' equity. The lags in forfeiture actions against seized items, plus the growth in the overall level of seizures, make it difficult to compute seizure-to-forfeiture ratios, because 1984 forfeitures do not correspond to 1984 seizures. Some central responsibility for this area was assigned to the U.S. Marshal Service and the Asset Forfeiture Office of the Criminal Division of the Justice Department; those agencies may now be in a position to provide unified statistics.

Arrests, convictions, seizures, and prison time are basic measures of risk imposed on the illicit drug industry, and it is very hard to plan or evaluate policy in their absence. Unlike most of the input numbers, good output measures can be assembled with only minimal cooperation from the agencies themselves, if someone with authority insists on it.

Below the federal level, the situation is more dismal. Other than the uninformative counts of total drug arrests in the Uniform Crime Reports, no national data are available. It has been almost ten years since the last national study of state prisoners by offense category, and even that study combined all drug offenses into one category. Here again, the best that can be hoped for is a few well-done local studies.

(3) Effects. Enforcement actions impose costs and risks on illicit entrepreneurs and thus tend to increase prices and perhaps to make supplies less reliable. To some extent, the cost-imposition value of a given enforcement action -- the imprisonment of a major marijuana importer for an effective term of six years, the seizure of one kilogram of 90% pure heroin from a New York City wholesaler -- can be calculated. The sum of those imposed costs is then an estimate of the effects of enforcement on the market [Polich et al. 1983, Kleiman 1985, pp. 96-101, and Reuter and Kleiman 1986]. These calculations can be useful in policy analysis and evaluation. However, to make them accurately one needs the right kind of tabulation of enforcement outputs.

The value of any illicit drug grows enormously as it moves down the distribution chain toward the final consumer. A kilogram of heroin that sells for \$200,000 is the raw material for street bags of heroin worth more than \$2 million. Adding together

physical volumes seized at different stages of the traffic is adding apples and oranges; each seizure should be evaluated at its value where and as seized, and then the values added together. The "street value" calculations so beloved of reporters resemble calculations of the value of stolen cattle based on the price of a steak dinner in a restaurant. Given estimates of the "price chains" (of which more below), simple rules of thumb based on quantity and location will give reasonable estimate of the cost imposed on the illicit market by drug seizures.

A similar point applies to imprisonment data. The higher in the trade a trafficker is, the more dollars he would spend to avoid a year in prison, both because he has more dollars and because any given period in prison costs him more in lost earnings.

That willingness-to-pay per prison-year avoided times the number of years spent in prison (deterrence measured in dollars) represents the cost imposition effect of imprisonment. In any case, calculating it will require somewhat arbitrary guesses about the willingness-to-pay of traffickers at different levels. But unless the data on imprisonment are collected by drug and G-DEP violator class, there are no figures to calculate with.

C. Organized Crime Participation

What are the drug markets like? We would like to know about the size and durability of the organizations involved, their use of violence in "business" and in resisting enforcement, their involvement with other criminal activities, the barriers to entry by new firms, and so on. These questions, and others relating to the mechanics of drug dealing, will not be answered by the retail-market data or by the enforcement statistics.

There are only two types of people in the world who know much about these topics: drug dealers, active and retired, and drug enforcement agents. Asking questions of dealers (in the nature of things, this will usually mean dealers in prison) involves enormous difficulty, but the rewards for success might be equally substantial. The Rand Corporation is now doing a pilot test of a program of questioning incarcerated dealers. Other than that, we have to rely on the knowledge built up by enforcement agents in the course of their work. Unfortunately, the agencies' own attempts to compile this data into a coherent picture of the drug market have been neither systematic nor, when made available, particularly persuasive.

Something about market structure might be inferred from price-chain data if it was reliable and frequently updated. Most of it could only be studied by reviewing the information in case files and agents' minds, information available only to the agencies themselves. But drug enforcement agencies are not in business to collect data or do analysis; they are in business to put drug dealers in jail and seize their drugs. Like other agencies, they tend to collect and publish data that will help them do their job better, will persuade someone else to help them do their job better, or will make them look good. Most of the information that would be useful in understanding the effects of drug enforcement on organized crime meets none of those criteria.

This indifference to research and its results, amounting to a conviction that the research activity has no contribution to make to the enforcement mission, is a

long-enduring feature of American drug enforcement activity. With exceptions, it is shared by prosecutors as well as investigators. Its consequences for research are far-reaching; in addition to limiting the extent to which research results are used, it frequently means that the research itself cannot be done. The unavailability of qualitative enforcement data forces us back on measuring the markets and the observable enforcement actions.

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CHAPTER IX

METHODOLOGICAL AND INSTITUTIONAL PROBLEMS IN ORGANIZED CRIME RESEARCH

BY

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INTRODUCTION

There is perhaps no research topic, within the general field of crime, quite as unsatisfactory as organized crime. The research literature is thin in quantity and thinner in quality. A small number of respectable empirical studies have appeared but none has led to the development of a consistent line of cumulative research. Even the better quality research has done little more than provide some interesting description. No research paradigms have been established as particularly successful with respect to the study of organized crime.

This paper has three related purposes. The first is to justify the above assertion about the weakness of the existing literature, by providing a brief summary of the major works in that literature and an appraisal of what has been accomplished overall. The second purpose is to explore the problems of data collection that have been, at least in my opinion, the major source of weakness in the research. A brief review of one researcher's adventures in this field serves as a prelude to an analysis of the systemic problems of collecting organized crime data.

The paper's third purpose is to review future prospects for organized crime research. For this the paper examines possible research agenda options and offers some gloomy comments about the likelihood of it being implemented without a major commitment from investigative agencies.

I. THE ACCOMPLISHMENTS OF ORGANIZED CRIME RESEARCH

The empirical research literature on organized crime has a very short history.¹ Prior to the work sponsored by the 1967 President's Commission on Law Enforcement and the Administration of Justice there were only two works of any significance. Landesco (1929), using a variety of investigative files, newspaper reporters (better informed then than now about the criminal world as it relates to politics) and his own connections from a youth spent in the tougher parts of the city, produced a study of the operations of organized crime in Chicago in the first quarter of this century. He focused particularly on the relations among criminal gangs and the relationships of the gangs to the political life of the city.

*The Rand Corporation

Much praised in the last fifteen years, this work was essentially unknown from its initial publication in 1929 until its reissue in 1968. Better known was the classic participant-observation study of Whyte (1943), carried out in an Italian neighborhood in Boston in the late 1930's. This was concerned with the role of organized crime in that neighborhood, the workings of individual operations and the lower level connections between police and gang activities. However, the book is cited more for its methodological qualities than for its description of organized crime.

The 1967 Commission published a number of consultant papers, which became widely cited and resulted in two books, Cressey (1969) and Gardiner (1970). Cressey provided a sociological interpretation for the descriptive material provided to him by federal agents, focusing exclusively on the Mafia. He apparently took the factual assertions of the agencies at face value. Gardiner carried out a narrower study of the operation of an organized crime gang in Reading Pennsylvania, focusing on the relationships between the gang and other elements of society.

These works began a continuing, if thin, line of research that has produced five original book-length studies. Ianni (1972) provides a detailed description of the relationships within an Italian organized crime family (whose connections with the Mafia he claims to be a matter of dispute) in New York. Chambliss (1978) carried out fieldwork in Seattle to develop a description of a complex set of relationships between politicians, businessmen, officials and criminals; he believes that the nature of their organization and powers makes appropriate the use of the label "organized crime" for this collection of participants in criminal activities, mostly vice and extortion. Anderson (1979) used federal agency files to develop a description of Mafia enterprises in Philadelphia; the nature of the available materials made this a rather limited picture.

Block (1983) provides a history of organized crime in New York City from 1920 to 1950, based on an unusually rich set of investigative agency files. Reuter (1983) used police files, informants and materials seized from police raids on gambling operations to analyze three illegal markets in New York City and the relationship of organized crime, particularly the Mafia, to those markets.

One common feature that all these works is their emphasis on description. The quality of the description may vary and some works emphasize operational details while others are more concerned with relationships. But none sets its sights significantly higher than an accurate description of some facet of organized crime.

What is notably lacking, and is critical in the development of a research tradition, is any theoretical framework for the formation and testing of hypotheses. There is a very slight theoretical literature dealing with organized crime. The most important formal contribution is that of Schelling (1967), who introduced the notion that organized crime might be thought of in economic terms, as an entity that served particular functions in illegal markets and that its power over those markets might vary according to some characteristics of the market. Some economists have idled away a few weekends with some trivial formalizations (e.g., Backhaus, 1979 and Buchanan, 1973). But none of their work has noticeably influenced the empirical literature.

Kelly (1986), in his review of the organized crime literature prepared for this volume, cites nine "Theories on the Nature of Organized Crime." (p. 13 et seq.). These constitute a set of hypotheses about various aspects of organized crime. Some are concerned with the sources of criminal groups as we have observed them in this country (alien conspiracy, ethnic succession), some with who joins gangs (anomie, cultural transmission) and yet others with the forms that the gangs take (corporate model, networks transmission). Taken jointly they may constitute a theory of organized crime, in the sense of a set of hypotheses about why it occurs in certain forms at certain times and in certain places. But that synthesis has not yet occurred.

More importantly, whatever the state of existing theory, it has had little influence on the empirical work. The studies cited earlier can scarcely be seen as tests of the different theories. Nor has there been much interaction the other way; the empirical research has had little impact on theory. It is difficult to identify any recent theoretical contribution which draws heavily on these empirical studies.

It is not surprising then that data collection is guided, at the macro level at least, by simple availability. This is perhaps appropriate at a very early stage in the development of a field; biologists were preceded by naturalists, whose observational work provided the raw material for the theoretical speculations of biologists. However, there is little sign that the field of organized crime research is making any progress toward this second stage of scientific development.

The converse can also be argued i.e. that the failure of the field to develop a theoretical framework is the result of the poverty of the descriptive materials. The study of crime, like sociology generally, has been characterized by a rather low level of theoretical sophistication. Theorists, of the middlebrow variety needed here, require a certain richness of data to inform their speculations. What is available by way of description with respect to organized crime is too narrow and inconsistent to encourage development of a theoretical framework.

My own view, as one who has made some modest ventures in the theoretical side, is that even now a little theory is necessary for the development of the field, simply as a matter of the sociology of the research community. It is difficult to attract contemporary social scientists into purely descriptive endeavors. Such endeavors have very low academic status and will not find ready acceptance in more highly regarded journals. This serves as a justification for Section III of this paper, which does provide some theoretical speculations, oriented toward the formation of an empirical research agenda.

II. PROBLEMS OF DATA COLLECTION

It should be clear from the above summary that data collection has been a major problem for organized crime research. Most of the major studies discussed arose out of an opportunity for gaining access to a particular source of data. E.g., Cressey was invited in to see FBI files and meet investigators, as a result of the work of the President's Commission on Law Enforcement and the Administration of Justice. Ianni, with perhaps more initiative on his part, found himself in contact

with leading members of a Mafia family and took advantage of the opportunity that this presented.

Such opportunities do not a research agenda make. This section discusses the nature of the data collection problems faced in organized crime research.

AN AUTOBIOGRAPHIC INTRODUCTION

Let me describe some of my own efforts at collecting data on organized crime activities. This hopefully will fill a dual purpose, first to show that I have some credentials for my conclusions and second to illustrate the varieties of barriers that a researcher can encounter in this arena.

My initial work dealt with illegal markets in New York, specifically bookmaking, loansharking and numbers gambling. Working with an ethnographer (Jonathan Rubinstein), we obtained a variety of official records, met a few street informants, and a larger number of police officers whose careers had been spent mostly in the areas of vice or organized crime control. Rubinstein's ingenuity and persistence, augmented by the efforts of Jeremiah McKenna, the staff director of a helpful state legislative committee, the New York State Joint Legislative Committee on Crime, ensured that we managed to obtain access to a rather surprising amount of official materials, including a small amount of wiretap material. Indeed, at one stage I had the odd experience of being asked by a District Attorney's office to help figure out the configuration of a bookmaking organization which was the subject of a wiretap investigation.

Official records were always less enlightening than they promised to be. Intelligence reports turned out to be very formulaic and undetailed: they record the bare essentials of a conversation or observation. The ones we saw were obsessed with details of hierarchy; they never provided the kind of contextual and operating detail that enabled one to make sense of the claimed relationships. From time to time, we were told that there were additional intelligence reports held by other parts of the New York Police Department, that contained the real gold. If so, it is certainly true that we were never able to get hold of them. My own inclination is to doubt their existence, since the Department seemed to have little demand for such information.

Even wiretap transcripts were quite disappointing because so little of what was overheard was transcribed. For gambling, which provided the major focus of wiretaps at that time, the bulk of the transcripts covered only the individual transactions and were aimed not at intelligence but at providing the basis of a gambling prosecution.

This latter is a generic problem. The data are gathered for a particular purpose, generally an indictment. Researchers want to use them for quite another purpose. The two uses are complementary; certainly the researcher's use does not conflict with the agency's. But the agency is understandably little concerned with these potential other uses of their information. Indeed, even intelligence officers tend to complain about how narrow is the vision of investigators in collecting and, more acutely, recording information from surveillances and informants.

Seasoned police officers were extremely helpful. Narratives of their own experiences provided a great deal of information. We came to adopt someone else's aphorism; the plural of anecdote is data. These officers' interpretations of their own experiences were often less rewarding, for they tended to fit them into pre-existing ideology rather than use them to test that ideology.

The limitations of this source were twofold. First, officers knew only about the kinds of activities that their department was interested in. This was not too much of a problem for us since we were studying gambling, which the police (generically) had, at that time, taken more seriously than any other organized crime activity. Second, many of the most qualified officers were of course quite mistrustful of two researchers mucking around in their field. Given that we obviously were rather sceptical of their most cherished beliefs, it was surprising that we got cooperation from as many as we did, though these were certainly a minority of the experienced officers we approached.

It should be noted that there was some justification for their skepticism about the fruitfulness of cooperating with researchers. Tales of being "burned" by such cooperation were quite common. Whether or not they were accurate, in the sense that any researcher betrayed confidences or presented officers and agencies in an unnecessarily bad light, it is certainly true that research tended to point to deficiencies rather than achievements.

Informants, all of them low level participants in the activities we were studying, provided a lot of detail that police had no reason to record (though three police officers who had worked undercover for some time did have this kind of detail as well). The problem here was that the informants were untrustworthy and much that they said was unverifiable. That presumably is a fairly universal statement about informants. I believe that, by the end of the research project, I knew enough about how to interview them that I could at least pull out the most arrant lies; whether I could convince anyone else about that is an open matter.

This first project was conducted with the official cooperation of a not very powerful legislative committee, which itself possessed little information and few investigative resources. The New York Police Department was not committed to cooperation and provided assistance on a rather spotty basis. So when I began my second project with the explicit cooperation of the New Jersey Division of Criminal Justice, I was confident that my data collection was going to be a great deal easier.

Edwin Stier, then Director of the Division of Criminal Justice, agreed to provide access, within the limits allowed by law, to the materials of a large investigation of the garbage collection industry. The investigation was concerned with organized crime influence in that industry and resulted, in 1980, in the indictment of 56 individuals and firms in the northern half of the state, on charges of allocating customers. Clearly, I could not have access to the fruits of the grand jury that was impaneled late in the investigation; New Jersey law was very restrictive and my status as a National Institute of Justice grantee did not give me any privilege in terms of access to those materials.

As it turned out, the access to these investigative materials was only moderately helpful, for three reasons. First, some of the personnel involved in the investigation

were quite suspicious and found reasons for denying me access to particular materials. Second, and more importantly, the investigation did not, until very late, acquire a worthwhile informant. Lots of data were collected but the context of those data, particularly their relationship to any organized crime activity, was very obscure. Even if I had had access to everything in the investigation prior to the contact with the informant, I would have still had only limited insight into organized crime.

The third reason for my limited success was that the informant, a protected federal witness, became the total focus of the investigation. I could not have access to him because he was a protected witness; meetings required elaborate arrangements. Once court proceedings began, his information became readily available, but by then my grant had run out and I had moved on to other matters.

In the course of this project, I made my first serious effort at federal files, with the assistance of Ronald Goldstock, then Acting Inspector General of the Department of Labor. I sought to obtain Department of Labor materials on the incidence of particular types of labor racketeering across unions and industries. The legal tangles encountered in a one year chase for access to closed investigative files is described in Reuter, 1981 (Appendix A). Skipping through the painful intermediate steps, the denouement was the discovery that, unbeknownst to the many lawyers and investigators involved in the effort, those files contained grand jury material. Since such material could not be removed without enormous effort by someone with the right to see it, we abandoned the whole enterprise. Note that in this case I was making the effort under the most favorable possible condition, since Goldstock was nominally the relevant agency head.

The grand jury problem has become even more serious since 1980. Justice Department interpretation of Rule 6e, which governs the access to federal grand jury materials, has become more stringent. For example, until recently non-lawyers working for the Office of Policy Management and Analysis in the Criminal Division could have access to such materials if it were necessary in their work. Two recent court rulings have largely closed off that access.

This has a broader effect than might appear at first. Investigative files do not distinguish among grand jury and other materials. For example, a prosecutive memorandum may make reference to grand jury exhibits. That memorandum could not be shown to anyone who was not included in the Rule 6e list. Moreover, there is sometimes considerable ambiguity about whether something is a grand jury exhibit, as has been shown in negotiations between Congressional committees and the Department of Justice with respect to materials in the E.F. Hutton case.

In effect, researchers cannot gain access to most federal investigative files. That is certainly the case when the researcher is working under a grant, which has been almost the only contractual arrangement available so far. Whether a researcher working under a contract, rather than a grant, could have such access, being deemed an agent of the government, is another matter.

My more recent research efforts, one dealing with drug markets, the other with racketeering in the garbage collection industry on Long Island, have reinforced the impressions from my earlier work. Federal files have been firmly closed to a National Institute of Justice grantee. Cooperation from the head of a state agency, the ubiquitous Ronald Goldstock, has provided access to a broad range of unusually rich investigative materials. That access has come entirely from the fact that Goldstock

has, as articulated elsewhere (Goldstock, 1986), a distinctive view of what can be accomplished through prosecution. His emphasis on the need for structural reforms to remove the incentives and opportunities for racketeering have led him to see research as a useful adjunct to investigation. There is little reason to believe that this view will become widely prevalent; arguments for that belief are presented in Section IV.

OTHER CAREERS, OTHER APPROACHES

Other researchers could no doubt tell other tales of their frustrations and successes. Chambliss (1975) has written a persuasive appeal to researchers to go out and look for the data on their own, without relying on official intermediaries. His study (1978) certainly reflects just such an effort. This subsection reviews the three major alternative data collection methods and their limitations, both inherent and institutional.

Observational Studies

Chambliss argues for collecting data from participants. This is something beyond participant-observation or ethnographic work. Apart from the initial approach to the subworld that he was studying in Seattle, he made little effort to disguise his own identity and purpose in dealing with participants involved in gambling, extortion, and corruption. He simply asked them to tell their story, while assuring them of sympathy and confidentiality. Enough of them were willing to provide detailed accounts that Chambliss was able to describe a rather elaborate and durable conspiracy involving a variety of businessmen, politicians and criminal entrepreneurs.

Ianni used a slightly less overt approach in obtaining his data. For a period of time he acted simply as a family friend, only gradually revealing to various participants his research interests in their activities.

Others who have used observation to varying degrees are Reuter and Rubinstein (1982), Thompson (1966) and Whyte (1943). Only Whyte can be said to have carried out a classic participant-observation study.

The strengths and weaknesses of this approach are fairly obvious. It enables the researcher to describe the settings and details of illegal activities and relationships with a verisimilitude that is simply not otherwise available. Ianni's description of internal power relationships within his (pseudonymous) Lupollo family cannot be matched for its subtlety and richness. Whyte's observations of how gambling operators interact with police is similarly rich and informative.

The limitation is that one can observe only in a very narrow setting. Ianni could study the Lupollo family and a closely related one but that was as far as his connections could carry him. Whyte observed in one neighborhood and could not reach further up in the organizations to which his subjects belonged without transforming his own role.

Ianni's study points to another limitation of these observational studies. He learned a great deal about the licit and less opprobrious illicit activities of the Lupollo family. However, he has very little to say about their more serious illegal activities. It is implausible that the family had no involvement in heroin distribution

or the use of violence for discipline and competition. It is understandable that, in dealing with a respectable observer such as Ianni, these activities get little mention. The result is that we must be concerned that our portrait of the Lupollo family activities and style is very partial.

If there were many such studies, then these limitations would be less disturbing. After a few hundred observational studies of family relationships in pre-literate societies, there is a data base that enables systematic interpretation of any new study. But when there are very few, each study seems to be sui generis and its scientific value is quite limited. There is no way of telling which features of the description are general and which are specific to that organization.

Historical Studies

It may seem odd that a phenomenon as secretive as organized crime should be amenable to research by historians. Yet some of the most interesting studies of both structure and operation of organized crime have been written from historical records. Block (1983) and Haller (1974, 1979) have produced important works using archival material.

One reason is that time sanitizes records, though not very rapidly. There is a great deal less official sensitivity to research on records concerning persons deceased and events made almost respectable by age. Haller reports (personal communication) that he was able at one stage to review the personal IRS record of Al Capone, though this access was later withdrawn as a result of increased sensitivity about IRS records generally.

But the limitations of historical materials are very clear. One can analyze only the relatively distant past, which may be importantly different from the present. If the field were one in which hypothesis testing and theory development were important, this would still mean that historical studies had a major role. However, in the natural history stage, so to speak, there is limited interest in analyses of phenomena that are often seen as quite distinct from those with which contemporary organized crime studies are concerned.

Moreover, historical studies are largely dependent on agency files, albeit aged ones. Some private investigative groups, such as the Kahala, a Jewish social organization active in New York in the early part of this century, or the Chicago Crime Commission, a citizens' group, provide other materials. However, there are only a few of these organizations and their interests were fairly idiosyncratic.

Newspaper files are another source. As already mentioned, big city reporters in earlier eras were probably a good deal more intimate with the major criminal organizations than their contemporaries are, reporting now having become an almost respectable occupation. Both printed stories and newspaper files will add a certain amount of useful material to that available from official sources. But again the yield is likely to be rather spotty.

Agency Files

Criminologists have long been skeptical of the research value of information contained in agency files. Reiss and Biderman (1981) provide a particularly illuminating

critique of such sources with respect to white collar crime, perhaps the closest analogy to the activities labelled as organized crime. The critique points to the selectivity of agency targeting and the inaccuracy of much that is actually recorded. Such critiques are responsible for the growing emphasis in criminology on self-report data (e.g. Chaiken and Chaiken, 1982) despite the well-known limitations of such data (Hindelang, Hirshi and Weis, 1981).

The usual critiques of official police files (using the term police generically) apply with even more force to files dealing with organized crime. At the local level certainly, and arguably even at the federal level, organized crime activity is more politically sensitive than other kinds of criminal activity. Correspondingly, the files are more selective in terms of who is observed and what is recorded from those observations.

I have argued elsewhere (Reuter, 1983, Chapter 8) that prior beliefs shape the intelligence process with respect to organized crime and further reinforce those beliefs. The police belief that gambling was the lifeline of organized crime ensured that intelligence activities were focused on the gambling activities of members of organized crime groups. This led to more being known about their involvement in gambling and reinforced the belief that it was what mattered in these persons' criminal careers.

Similarly, prior beliefs about what gangs are important are likely to be reflected in intelligence activities and files. Police are asked to collect information about certain gangs and not about others. If the targeted gangs are not observed to be very active, it is likely that this will be interpreted as evidence of the quality of their cover rather than their lack of importance. As with conspiracy theories in history, lack of evidence may be quite as convincing as evidence itself, at least to the true believer.

Studies that rely on official files are then subject to the same biases. They can deal only with the gangs that agencies deem significant² and with the activities of those gangs that are believed to be of particular importance to these gangs.

These would be relatively unimportant biases if the agencies were adaptive and re-evaluated the significance of gangs and activities on a reasonably regular basis. In general, it seems fair to suggest that police are highly conservative in these matters and respond very slowly to changes in the criminal environment with which they deal (Reuter, 1983, Chapter 8). If this is correct, then the bias is likely to be highly significant for research purposes.

This conservatism may help explain the paucity of recent studies of organized crime groups other than the Mafia. The symbiotic relationship between the media and police agencies exacerbates the problem. The media highlight the activities of those gangs about which the police can inform them. Prosecutors and police officials are not insensitive to the numbers of column inches yielded by particular investigations and are likely to emphasize those gangs and individuals that already have large reputations. Gangs whose powers are confined to particular ethnic communities, particularly newer ones, are not likely to be attractive targets for this, among other reasons.³

INCENTIVES FOR AGENCY COOPERATION

Despite all the weaknesses of official agency materials, even including the unrecorded experiences of agents, it seems unlikely that major advances will occur in the research literature without improved research access to these materials. This is by no means a new conclusion. Cressey (1967) argued for the necessity of using materials from official agencies. He asserted that "[organized crime] must be studied by methods not ordinarily utilized by social scientists." (p. 102). This conclusion "also makes it essential that one quickly acknowledge that any conclusions one draws are probably erroneous and that the evidence which one uses has been screened by the perceptions of informants and observers." (p. 103). Cressey also noted that the legal system's (then) orientation towards the prosecution of individuals also made it difficult to collect systematic information on organizations from agency files and personnel.

The need to rely on official agencies constitutes a very pessimistic conclusion, because the major agencies dealing with organized crime have little incentive for cooperating with researchers. The legal barriers to access to files and personnel are certainly real; the Privacy Act is a serious hurdle. But it seems plausible that the major investigative and prosecutive agencies are glad to retreat behind it because they stand to gain little from providing outsiders with the kind of expertise that might permit informed evaluations. The following paragraphs present the arguments for non-cooperation as the rational choice of these agencies.

The organized crime effort has come to be dominated by federal agencies. They have been highly successful in recent years.⁴ Most major Mafia figures have either been indicted or convicted; the conviction rate following indictment has been very high indeed and (impressionistically, court data not being available) the sentences impressively long. If one includes the Teamsters leadership as part of the Mafia enterprise, then the success has been even more striking; three of the last five Teamsters presidents have been convicted, while the current president is under indictment.

The Organized Crime and Racketeering Section has experienced substantial growth, as have the relevant parts of the major investigative agencies. We might believe that their resources could be managed more efficiently or that they have defined their mission too narrowly but by the standards of modern law enforcement they have much to boast about.

These are not circumstances under which agencies are likely to welcome outside researchers. It is hard to criticize the programs from without, precisely because so little is known about what they might do. The creation of an external expert community can only make the lives of these agencies more difficult. Moreover, it is unlikely that the agencies perceive any needs that researchers might be able to meet for them, and little organized crime research has been aimed at topics that would indeed improve agency performance. It is striking just how little research has been sponsored by the major agencies involved in the organized crime effort, but it is also interesting to note that there has been little pressure from Congress, or any other external group, for such work.

III. THEORY: AN ALTERNATIVE

Let me now sketch the outline of a theory of organized crime. Only the outline exists. Its purpose is to suggest the possibility of a research program, both conceptual and empirical, for the study of organized crime. As such, it is intended to have operational content and permit testing.

First I should state what it is a theory of. It attempts to explain under what circumstances some gangs acquire the defining characteristic of organized crime, namely broad and durable reputation, and to determine the consequences of the existence of such gangs. As such, it could attempt to be completely general in time and space. Realistically, given that it is based only on a knowledge of the literature concerning the phenomenon in twentieth century urban America, it should be assumed to have at least those limitations.

We begin with the notion that the adult gang is an efficient method for executing certain kinds of criminal transactions. Such gangs are assumed to differ from juvenile gangs in that the basic motivation for their formation is not expressive, i.e. non-utilitarian, intended to meet psycho-social needs of their participants (Cohen, 1955). Juvenile gangs may commit many crimes for profit but that is not their prime purpose. The adult gang is seen as predominantly instrumental, a means to better one's economic situation, and only secondarily expressive. A gang is efficient for some transactions (e.g., extortion) and not for others (e.g., mugging).

We further assume that, in large American cities, there always exist adult criminal gangs. Whether they acquire the distinctive capabilities of organized crime is determined by both demand and supply conditions, so to speak. By demand conditions we mean the extent of a demand for the kinds of services that only organized crime can offer, such as dispute settlement and mediation with hostile dominant political authority. By supply conditions, we mean those factors that facilitate the acquisition of the distinctive capabilities. The distinction is not always clear; we shall illustrate the problem after consideration of some candidate explanatory variables.

The first issue is to develop an operational measure for the existence and extent of organized crime. The defining characteristics, durability, and reputation, suggest the possibility of measurement. Durability might be determined by identification of a generational change in leadership without loss of continuity. This is a fairly stringent test; if the American Mafia can be said to have originated with the gangs of Prohibition, many of the individual gangs had the same leadership for thirty or even forty years. For example, Frank Costello was a prominent figure by the late 1920s and was still active into the 1960s, though not actually the leader of his family at the end. But some indicator of durability can be developed, using newspaper and/or police reports; in this area they are often the same documents.

Reputation is an extrinsic variable. It is a knowledge of the existence, and a belief in the powers, of the gang held by others. Newspaper reports are certainly one possible measure; e.g., one could use the frequency with which a newspaper reports certain kinds of criminal acts by the gang. One might even consider using the number of times that the District Attorney announces each year the beginning of the end for the gang.

Community is, of course, not co-terminous with media market. A more direct measure of reputation is a survey of residents of the relevant community, also to determine knowledge and perceptions about the gang. Names of the gang leaders as well, as the gang itself, might be presented for recognition and for ascription of powers. Gardiner (1970) was able to describe community knowledge of the workings of the "Stern" Syndicate in Reading through such a survey.

These are clearly very rough measures of reputation. Defining the relevant community is not a simple matter. In a city as large and heterogeneous as Los Angeles, for example, we might allow that reputation could be specific to a particular population within it. There might well be durable, powerful gangs whose reputations are confined to the more than 1 million Hispanics and unknown by any of the other major population groups. It would be of interest in fact to learn what gangs and gang leaders are known in different parts of the city.

Now let us turn to identification of the factors that affect the extent of organized crime. We begin by listing some sets of potential variables, together with a brief discussion of how they impact on organized crime. The description of each variable is intentionally discursive, since many subvariables are potential candidates.

(1) **Illegal market opportunities.** Illegal markets, such as gambling, narcotics distribution, and loansharking require the existence of enterprises, coordinated ongoing groups of individuals involved in frequent interactions with each other. Such groups will require, and may themselves generate, gangs that can provide certain services that facilitate commerce in the absence of state-protected contracts and property rights.

The enterprises themselves are not necessarily organized crime. Durability and reputation may provide no advantage to a bookmaker, though it eases debt collection somewhat. A bookmaker may find it more efficient to purchase debt collection services in the market rather than to invest in development of these resources himself. But the demand from illegal markets for various kinds of services most efficiently provided by organized crime is likely to be a major factor in the development of organized crime.

Illegal markets differ in the extent of their demand for these services. The frequency of interactions among the enterprises in the market may be highly significant. Bookmakers have frequent dealings with each other; that may generate a demand for dispute settlement services. Heroin dealers, concerned about revelation of their participation in the market, may deal with only a very small number of other dealers, thus having little need for organized crime services. It may be necessary to break down illegal market activities into some broad groups, according to such characteristics.

It is a difficult task to provide a measure of the size of individual illegal markets within a community. For gambling and certain drugs in wide use, there are some crude measures available through household surveys.⁵ For other activities, such as loansharking and the fencing of stolen goods, a survey is not likely to provide even a crude measure, simply because such a small percentage of the general population participate. Reliance on police knowledge in these matters is often a questionable practice.

(2) **The extent of recent migration of important ethnic groups within the community.** The historical record strongly suggests, as does casual theorizing, that

newer ethnic groups with weak ties to the dominant political culture of the city, provide the base for organized crime (Ianni, 1972, Chapter 3; Haller, 1974). There are at least two senses in which this statement appears to be true. First, young males are often likely to find other avenues of economic progress blocked in such communities. Gangs have a broader base of recruitment as a result, including some individuals of talent. Second, the community is more likely to be supportive of at least some gang activities. The historical record points to organized crime providing critical links to the political system in at least some of these ethnic communities. E.g., Haller (1979) suggests that during the period 1880 to 1905 "gambling syndicates were the local political organization" (p. 88).

Recent migration is important since there is a history of upward mobility in ethnic communities. The constant flow of young males from poorer regions of Italy has certainly been critical in providing a continuing base for Mafia recruitment, since so much of the second and third generation Italian migrant community has moved out of the concentrated urban ghettos, such as Little Italy in New York and the North End in Boston, over the last quarter century. The diminution of such flows from Eastern Europe after 1950 may be important in accounting for the decline of the Jewish gangs in New York and Chicago.⁶

(3) The strength and corruptness of local political authority. A uniquely powerful instrument for organized crime is availability of powerful, corrupt political authority at the local (occasionally state) level. Chicago's dismal record with respect to organized crime (Haller, 1974) corresponds also to a long history of machine control of the city. The repetitive scandals revealing relationships between senior gangsters and major party figures are the direct indicators of the source of the problem.

The focus on local political authority is arguable. There are some aspects of organized crime power that clearly go to national politics, most notably labor racketeering. The power of the Mafia over the leadership of the Teamsters Union, as well as the Laborers and Restaurant Workers' unions, is the most obvious and important expression of this. But it can be argued that this is simply the agglomeration of local gang powers. The cities from which the leadership of the Teamsters has come is indicative of this; Detroit (Hoffa and Fitzsimmons), Chicago (Williams), and Cleveland (Presser). It is the capacity of local gangs, member groups of the Mafia, to control the locals in those cities that provides the basis for the power of the set of gangs collectively over the national union (see Brill, 1978).

It may also be argued that the growth of recent groups, such as the prison gangs in California and the motorcycle gangs in the Southwest points to the lack of need for corrupt political authority for the acquisition of durable power. Though these gangs may have acquired some political power in small communities, this is clearly not the basis for their power in general. But it should be noted here that we are not identifying the necessary conditions for the existence of organized crime, merely the conditions that promote its growth.

There are undoubtedly many other variables which may have some influence. If economic opportunity is important, then time and location indicators of employment should obviously be included. But I am inclined to stress long-term characteristics of community; cyclical fluctuations, the Depression to one side, are unlikely to make a great difference to the recruitment or criminal opportunity patterns of gangs, or at least not one that we can measure. There may be physical characteristics of a

community which also play a role; density of resident and foot traffic provide for a different kind of contact, probably fostering gang associations and secretive behavior (though one could argue for the opposite effect with respect to the latter) missing in more spread-out and motorized poor communities. The fact that organized crime is apparently a large city phenomenon may be accounted for by such effects.

The three major sets of variables we have identified are not independent of each other. Political authority is affected, in many dimensions, by the flow of new immigrants into the community. The same can be said for the scale of illegal markets; new immigrants often bring their own peculiar vices (such as distinctive forms of gambling) with them (Light, 1977). Nor is it clear that these variables are unaffected by organized crime. It could be argued that the power of organized crime affects the scale of illegal markets, the level of new immigration of the same ethnic groups and the extent of corruption and centralization of political power. However, I believe that the links in those directions are very weak relative to those going in the other direction.

This discussion has focused on the conditions that bring about organized crime. We have so far said nothing about how organized crime uses its powers. What will members of organized crime do as a consequence of their membership that they would not do as members of some other gang? Presumably, they will make use of the unique capacity that membership provides for extortion and intimidation.

In legal markets, that turns out to be a powerful hypothesis. The capacity to intimidate provides an important asset for the organization of cartels involving large numbers of firms. Reuter (1984) illustrates this using material concerning the solid waste collection market in New York City. He argues that the power to make credible threats of continuing violence, supported by a historically corrupt union, permits members of organized crime to organize a customer allocation agreement with over 300 member firms. Defection from the cartel rule is minimized by the threat of physical retaliation, thus solving the problem traditionally faced by large number cartels (Fog, 1956). This seems also to be the role that organized crime played in a variety of industries during the Depression (Block, 1980, Chapter 7).

Cartel organization is by no means the only method for using reputation, even in legal industries. Any bar can be closed by the stimulation of a few fights within it, leading to license authority sanction. Small stores generally may be willing to make modest payments to ensure that there is no physical damage to their premises. Certainly, police officers routinely comment on the fact that otherwise law-abiding store owners make such payments rather than bring complaints because they doubt the credibility of police promises to ensure that no damage is inflicted. We may treat this as generalized extortion, separate from the more widely reported extortion related to corrupt control of a union.

In illegal markets, we have already mentioned Schelling's hypothesis that organized crime serves to tax (extort) entrepreneurs providing goods and services. But it can also be argued that organized crime provides services as well; dispute settlement is the most obvious, or at least best explored, of these services. The stability of organized crime groups may also enable them to accumulate capital, though it is unlikely that much capital is ever jointly owned; these are highly individualistic organizations. The gang probably serves as a network too; one may go to organized

crime members when looking for a specialist capable of performing particular services, knowing that most underworld figures come into contact with organized crime.

Finding a method for estimating the importance of these hypothesized effects is obviously exceedingly difficult. There are apparently countervailing effects of increased organized crime activity, for example, on the price of bookmaking. If organized crime extorts bookmakers, then we would expect to find a higher price, cet. par. for bookmaking services in cities with stronger organized crime. However, if organized crime sell services, such as dispute settlement and debt collection, which reduce uncertainty for bookmakers, then its existence may lower the price. Indeed, there could be both elements in the same market, with ambiguous net effect on the price.

Implicit in these speculations is the hypothesis that organized crime performs the same functions in different settings, except as there are differences in the set of opportunities, exogenously determined. That is not obviously true. The vision and talent of the gang leader can lead to important differences in the gang's scope and performance. For example, Teresa (1973) comments on perceived differences among Mafia families. While the Detroit family is "a very solid close group and very dedicated to old man Joe Zerilli," he observes that "Chicago is an eat-'em-up-alive outfit . . . they don't give a damn who gets it in the back" (p. 351). The sources and consequences of these differences remain to be explored.

As stated in the beginning of this section, this is merely the sketch of a theory, intended to suggest a program of conceptual and empirical research. It will be successful not to the extent that any of the hypotheses or suggested measurements turn out to be correct, but inasmuch as it persuades readers of the need (and possibility) to move beyond descriptive studies of actual organizations and imbed empirical research in a broader theoretical framework.

IV. CONCLUSION

The accomplishments of organized crime research to date have been meager. Few have ventured into the field, fewer have persisted, and little useful knowledge has been accumulated. Is there any reason to think that the situation will improve?

This paper has already argued that progress requires better data and that agency cooperation is the most plausible source for such data but that incentives for agency cooperation are unlikely to increase in the near future. The concentration of the organized crime control effort in powerful federal agencies will, if anything, make access even more difficult.

Public data sources are being enriched by the current spate of Mafia trials. As this paper is being written, in November 1985, there are five trials involving major Mafia leaders (three in New York and one each in Boston and Kansas City). All of these trials have led to the disclosure of rich surveillance material, along with statements from leading participants who are serving as witnesses for the prosecution. More similar trials are apparently scheduled for next year, one including all leaders of the five New York Mafia families. These should provide materials to permit researchers to substantially enrich our understanding of the workings of the Mafia,

though it is worth noting that researchers have not in the past shown much diligence in using trial proceedings.

But we should not exaggerate the breadth of these materials. An authoritative description of the structure and operations of the Mafia may well be possible, but there is nothing here that promises insight into other elements of organized crime. The Mafia is certainly the most prominent and important set of organized crime gangs but if we are interested in the phenomenon more generally, then we must accept that the new materials will leave us still quite ignorant about non-Mafia forms of organized crime.

Thus even after analysis of these new materials we will still be left with a stunted field. Until there is a research tradition which goes beyond description and makes use of modern social science techniques to develop and test hypotheses about the causes and consequences of organized crime, it is unlikely that good researchers will find this a rewarding field. Similarly, it is unlikely that agencies will find it attractive to cooperate with researchers, who, to date, have had little to offer in exchange for access to data.

Let me conclude with some suggestions for improving the quality of the field. If my pessimism is correct, there are only two possibilities. One is the publication of some seminal piece of research that of itself creates a research paradigm of sufficient promise to attract other researchers into the field. Such an event is not unprecedented. For example, the study of the economics of crime begins quite clearly with the publication by Becker (1968) of an article which showed how the application of formal economics could provide a much richer framework for empirical and theoretical studies of deterrence than was otherwise available. Becker never wrote another word on the subject, passing on to the creation of yet other sub-fields of applied microeconomics, but he began what has certainly become a major component of empirical criminology.⁷

To depend on events like that is to rely on the whims of the small set of researchers capable of producing seminal works. There is a second, more purposive possibility, namely the creation of a research program which takes as its objective the development of tools and data bases that would serve to attract good quality scholars to the field. And it is worth reminding ourselves at this stage that scholars are not insensitive to the economic attractions of different areas of study. Organized crime is not a field for which there has been a steady supply of grant opportunities.

The problem we face here is not unique. There are other fields of social enquiry which have also stagnated for long periods and which have been invigorated as the result of strategic decisions by research funders. Rand, the organization for which I work, is itself a product of just such a decision (Smith, 1966, Chapters II and III). The Air Force wished to attract scholars into the study of major strategic issues and created a stable multi-disciplinary research program for just that purpose. Whether it should have done that, and whether it was accomplished efficiently, is perhaps a matter of argument. But there is little doubt that the Air Force did succeed in creating a scholarly tradition of research on defense issues, outside of the government itself.

Note that in this case it was an agency that created the research capability. It would be equivalent to the Department of Justice, or some combination of the

investigative agencies and the Criminal Division, setting up a research institution to aid its mission. This is far different from funding by a research unit, isolated from the operating agency. The funder must provide not just funds but also access to data that are not publicly available and to the personnel and institutions involved in the problems with which the research deals. These agency researcher relationships are fraught with tension, for the agency must always want more control than the researchers are willing to yield. But I believe that the history of Rand and its successor institutes (e.g., the Institute for Defense Analyses and Center for Naval Analyses) provides some cause for optimism about the working out of these tensions in a reasonably satisfactory manner.

It is important to emphasize again that the research program which should be developed within the framework of such a setting involves both long and short term projects. The researchers must be willing to provide analysis that deals with the immediate problems of the agencies; in exchange for that, they will acquire the freedom to develop the tools that are necessary to give the field a more disciplined form. And by building relationships of trust with the agencies they can acquire the more sensitive data that will permit the use of those new tools for empirical testing.

The above views were heavily criticized when presented at a conference attended by agency personnel as well as researchers. The criticisms focused on the known paucity of the intelligence files of the agencies, consistent with my own experiences as described in Section II. There is a recursive element to the problem. Agency data take the forms they do in part because the agencies see little need for more sophisticated analysis; that analysis would generate a demand for less individualistic collection and more systematic collation. Lack of interest in such analysis has also been the major reason that agencies have little interest in cooperating with researchers.

The kind of long-term relationship that is suggested here will have as one of its products the generation of just such a demand. The military services now collect very different kinds of data than they used to, at least in part because of their own learning from affiliated research organizations. Without denying the command structure's ambivalent attitude towards the kind of results that come out of the work of Rand or the Center for Naval Analyses, it is also true that the military leadership has come to appreciate that they cannot make informed decisions without some such analysis. In return, social scientists have received access to information that has enabled a vastly better understanding of such issues as battlefield performance of individuals, the role of incentives for information flow in intelligence organizations, and a myriad other topics.

In the long-run one might reasonably hope for similar results from a sustained institutional research program in support of the organized crime effort. Measures of evaluation, notably lacking in this field at the moment, might well be the issue around which the relationship is focused. For at the moment the agencies, while pointing to an impressive yield of prominent gangsters, lack any serious measure of success in reducing a well defined problem. Developing such a measure will require that the agencies create analytic capabilities well beyond those they currently have. Moreover, they will undoubtedly find that these measures of effectiveness cannot simply be created out of their existing intelligence systems but that they must reorient their entire intelligence process. And in that lies the opportunity for truly significant research.

Moreover, as with research on many national security issues, one must question the efficacy of doing the work without the powers of investigative agencies. Some approaches suggested above are not dependent on data about criminal acts themselves, but they have limited scope. In the main we need to know about precisely those kinds of criminal activities which are least likely to generate reports; that is suggested clearly enough by the term "consensual crimes" which covers so much organized crime activity. Perhaps researchers can gather information about such matters, but they are likely to do so very expensively, if not somewhat dangerously.

Recommendations for this kind of agency-based research building were a commonplace of the 1960s and 1970s. The National Academy of Sciences (1978), in a large-scale study of social research and development, concluded that there was a need for federal agency investment in long-term research programs in areas where policy addressed matters arising from behavioral patterns that were not well researched. As an example, they cited the Department of Transportation's funding of research on why people drive unsafely, a necessary preliminary for the development of policy on such matters as passive restraints and lowering of speed limits. Organized crime is a narrower, if apparently messier, problem than that of safe driving but the same stricture is appropriate.

None of this implies that it is not worth taking advantage of research opportunities as they arise. Analysis of the new materials from the Mafia trials, if put in the kind of framework for example suggested by Moore in his paper in this volume, could generate a much clearer understanding of the role of organizations as opposed to that of individuals within the organization. If the notions suggested in Section III as measures of the extent of organized crime seem sensible, then surveys to establish its breadth and depth across communities might be worth undertaking. A modest theoretical program, aimed at developing testable hypotheses that might guide empirical work, should be encouraged.

We are not likely to see major breakthroughs, but hopefully enough useful knowledge can be accumulated this way that agencies might see some utility in cooperating with researchers. A field as mired down in description and as distant from contemporary social science as is the study of organized crime requires a significant external stimulus if it is to grow into a program which will attract long-term investment by scholars and provide a real understanding of the phenomenon and policy issues with which it purports to deal. That stimulus must come from those governmental institutes that have been created to deal with organized crime.

ENDNOTES

1. There is a large secondary literature, including descriptions of legislative hearings (e.g. Moore, 1974) and "autobiographies" of gangsters (e.g. Bonnano, 1983). These provide the material for research rather than the research itself.
2. If the researcher focuses on activities (e.g. gambling or heroin wholesaling) rather than on gangs, then this bias can be somewhat reduced inasmuch as the files contain materials about other groups involved in these activities. However, it is likely that the files on activities are biased by police beliefs about which gangs and hence individuals are important. Moreover, the researcher must have other sources of information to enable him to move from observations of individuals to statements about groups.
3. It is often difficult for the police to acquire much information about gangs of newly arrived ethnic groups. These communities are likely to regard the police as representatives of alien authority, not capable of providing effective protection for cooperating members of that community. Moreover, language can be a major barrier; the New York City Police Department had very few Chinese-speaking members until the mid-1970s and these members may have been reluctant to serve primarily as enforcers against their fellow ethnics.
4. A 1986 list purporting to contain the fifty most significant Mafia figures showed 17 in prison and another 7 indicted. (Fortune, November 10, 1986; p. 24)
5. Even for these goods and services, the quality of the resulting estimates has been a matter of considerable controversy. See Carlson et al. (1984).
6. Migration from Eastern Europe (Russia and satellites) accounted for only about 8 percent of European migration from 1950 to 1970, less than 200,000 persons.
7. Edelhertz (personal communication) correctly notes that Schelling's classic 1967 article provided the basis for just such a breakthrough in the study of organized crime, a framework for systematic data analysis and data collection. Yet it spawned no subsequent empirical research. Perhaps the institutional barriers were too substantial.

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CHAPTER X

OVERVIEW OF SYMPOSIUM ISSUE PAPERS AND DELIBERATIONS

The greater part of this report of proceedings consists of the issue papers prepared for the symposium (Chapters II-IX). This chapter is an overview of what took place at the symposium, covering symposium consideration of major issues in organized crime control and the need for practitioner and research action in response to these issues. Although the contents of the issue papers are described in general terms in this overview, no attempt is made here to reflect their content in any detail. The papers should speak for themselves.

These papers address a range of historical, sociological, legal, operational, and research issues. They are broadly focused. Authors took the subject matter of other symposium issue papers into account. For example, the importance of intelligence in combatting organized crime and the need for placing enforcement operations in the context of an overall strategy are addressed in almost all of the papers --- even though there are issue papers specifically covering these subjects. Similarly, the need for measures of agency effectiveness is emphasized in many of the position papers, particularly as a basis for policy planning and changes or corrections in agency policies.

The discussants recognized that for researchers to contribute to the meeting of these needs it is vital to promote studies that are empirically based, within a strong theoretical framework, as well as descriptive studies. This in turn requires access to agency data, a need that in and of itself poses problems that at times appear to be intractable.

Presentations and comments of the symposium participants who were experienced law enforcement practitioners clearly recognized the importance of researcher contributions. In his opening remarks, James K. Stewart, Director of the National Institute of Justice, stressed the need for encouraging research that would have clear utility for law enforcement, helping agencies to find ways to actually impair organized crime operations rather than hit them on a case-by-case basis. David Margolis, Chief of the Organized Crime and Racketeering Section, Criminal Division, U.S. Department of Justice, made the point that researchers had helped enforcement agencies to "see the forest rather than the trees." He went on to credit the academic community, in part, for the current (successful) use of the RICO statutes because they pressed the utility of this legislation over the many years between enactment and application.

For this overview of the symposium proceedings, the papers and discussions are considered under these rubrics: (A) Organized Criminal Groups, (B) Enforcement Policies, (C) Enforcement Action, and (D) Doing Research on Organized Crime. It should be kept in mind that these sections are not mutually exclusive. Within each section issues are raised that could easily fall within another.

A. Organized Criminal Groups

A number of the symposium papers deal with the characteristics of organized criminal groups, their evolution, the activities in which they are or have been engaged, their potential vulnerabilities, and the implications of these descriptions and analyses for law enforcement. Kelly, in Chapter II describes the many different groups that are generally considered to be "organized crime", not limiting himself to traditional LCN. He examines their origins, the kinds of criminal operations undertaken by them, how they have been considered by researchers representing different disciplines, and criminologic theories developed to explain their origins and behaviors. Moore, in Chapter III, views these organizations as business-type entities, or firms. Kleiman, in Chapter VIII, examines drug trafficking organizations as part of his analysis of research issues critical to the relationship between drug enforcement and organized crime.

1. What is Organized Crime?

Each of the papers addresses the nature of organized criminal groups, and either explicitly or implicitly make definitional assumptions. Stier and Richards, for example, argue in Chapter IV that organized criminal groups generally, but not always, evolve by stages: first predatory (obtaining money or property by force or the threat of force), then parasitic (providing illicit goods and services to the public), and finally symbiotic (involvement in the core fabric of society and its institutions through such activities as labor racketeering, infiltration of legitimate business, and corruption of government).

The symposium's consideration of the nature and character of organized criminal groups led, inevitably, to a discussion about how "organized crime" should be defined. The participants generally agreed on the danger of simply defining organized crime by describing LCN. They felt that the relatively new narcotics marketing organizations, prison gangs, motorcycle gangs, and the rising ethnic (Asians, Latins, etc.) organizations bulk ever larger in the organized crime picture and have their own singular characteristics. It was stressed that many such organizations are no longer "emerging", but have been on the crime scene in a major way for a very long time; the size and pervasiveness of their operations are only now beginning to be grasped. The transnational character of the organized crime problem was raised, when it was observed that Hong Kong syndicates, in anticipation of the Crown Colony's absorption into Mainland China at the end of this century, are already appearing in Hawaii and on our West Coast. None of this was intended to detract from the importance of LCN or the necessity of marshalling law enforcement resources against it. LCN, it was pointed out, has the capacity to cause major harm: it is well-developed, controls major pools of resources, and has the demonstrated capacity (and experience) to corrupt government.

Some impatience was expressed with the search for definitions, or for one single definition --- that such a search "misses the mark." It was noted that for jurisdictional purposes an investigative or prosecutive agency would want the broadest possible definitions of organized crime; any agency would wish to adopt a definition that fit its particular goals and objectives; still other definitions would be sought by researchers representing different disciplines. For these reasons, it was argued, it would be far better to discuss organized crime in terms of the attributes of the

groups involved, rather than to waste time trying to reach the ever receding goal of a definition that would satisfy everyone.

2. Characteristics of Organized Criminal Groups

The symposium participants agreed that the willingness, and the capability to use violence is a necessary characteristic of such groups at all stages, whether they use it or not. Even when organized crime enterprises operate in what appears to be a normal business manner, for example in the case of firms that collect and dispose of solid waste, allocations of customers along territorial or other lines is made possible only by the implied threat of force against those who would contest such monopolistic market regulation.

The symposium discussions made it clear that there is still much to learn about the operations and activities of even the best known organized criminal groups, notwithstanding the extensive literature in the field and the many investigative commissions that have explored this terrain. While this was seen as understandable in the case of new and emerging (or emerged) groups, it was noted that additional aspects of LCN activities have come to light only as a result of very recent investigations and prosecutions.

There are many lenses through which the structure of organized criminal groups can be examined for analysis. Several were suggested. Parallels to feudal society were noted, and also different entrepreneurial models. One was that organized criminal groups could be thought of as assemblages of entrepreneurs, who receive approvals from their superiors to engage in particular criminal activities and have the use of ancillary services (protection, capital financing, corruption services, enforcement services) from their umbrella organizations. Money earned from enterprises was seen to flow upward, as in a business franchise operation, to the central organization that regulates franchisees and enforces its standards.

3. Organized Crime as Business Enterprise

Moore, in Chapter III, suggests both the relevance and the value to law enforcement operations of examining organized criminal groups as if they were business firms. He notes the current recourse to RICO civil and criminal remedies,¹ with their emphasis on destroying or at least impairing the on-going capability of such firms. This gives special utility to his perspective --- with its focus on the material, organizational, and managerial assets that make it possible for these organizations to maintain their extraordinary staying power. Identification of these assets and how they are distributed internally and externally (e.g. to corrupt enforcement agencies), he argues, will assist the development of overall enforcement strategy as well as tactical selection of enforcement targets.

Moore asks us to look beyond the activities (or crimes) in which an organization is engaged and beyond the hierarchical tables and titles of the actors involved. Instead, he suggests, it is important to determine what assets and functions are crucial to the continuance of its operations and their profitability, and hence its survivability. Moore characterizes these as "defining assets," i.e. the tangible and intangible assets that make these organizations "organized crime," as distinguished from other criminal organizations. He suggests that this approach can shift our focus from individual criminal activities or the lower level operational divisions of

these conglomerate firms to overall organizations and assets, very much in line with and supportive of RICO enforcement perspectives. This would therefore serve the policy planning and targeting activities of enforcement agencies.

The approach suggested by Moore raised a number of questions. None of the symposium participants doubted the importance or necessity of pursuing the assets of organized criminal groups by invoking seizure and forfeiture remedies. Differences were on a conceptual level. For example, it was pointed out that market discipline (the consequences of failure in the market) is weaker in illegal than in legal markets -- "Organized crime is not exactly on the leading edge of the management field." Despite some conceptual reservations, however, the sense of the symposium discussion was that this approach had clear utility and was worthy of continued attention from both researchers and practitioners.

4. Organized Crime and the Drug Trade

The relationship of organized crime to the drug trade is obviously an important one, but difficult to assess and describe. Clearly, LCN and other groups that are generally considered part of organized crime play considerable roles in narcotics dealing. LCN has engaged in the heroin trade on a major basis, but does not appear to have substantially participated in cocaine or marijuana trafficking. Motorcycle gangs, on the other hand, have had considerable trafficking involvement across a wide range of drugs. There is good reason to believe that aside from heroin trafficking, most drug trafficking organizations tend to concentrate their efforts in the drug trade alone. They do not appear to have taken on the conglomerate character of LCN organizations, for which the drug trade is only one of several lines of business when they engage in it. But the trade is highly sophisticated at upper levels in the chain of distribution, is conducted in a businesslike manner, is highly proficient in its handling of operating capital and profits, operates like LCN in its ultimate reliance on force or the threat of force, and like LCN strives to further and protect its operations through corruption of government.

Kleiman, in Chapter VIII, describes the drug trafficking arena in which these organizations operate. His struggle with definitional issues and with other aspects of the drug trade lead him to raise two questions. The first is whether organized crime is directly involved in the narcotics trade, which he answers with reservations --- if one is talking about LCN and about heroin importation and high level distribution, yes. --- if one is talking about other organizations in the trade the answer may depend on how "organized crime" is defined. His second question addresses the relationships between organized crime enforcement, drug enforcement, organized crime, and that part of the drug trade that is not run by organized crime. One aspect of his answer to this second question makes helpful distinctions between organized crime and other criminal organizations in the drug trade; he suggests that heightened drug enforcement will give organized crime a relative advantage over competition because its characteristics, such as its capacities for violence and corruption, may make it more enforcement-resistant and likely to survive than its competition.²

B. Enforcement Policies

One consistent theme in the papers and the symposium discussions is the for improved enforcement policies, and planning to implement these policies. All the

symposium participants agreed that the major objective of organized crime enforcement should be to destroy or impair the ability of organized crime groups to operate, rather than simply to convict and imprison their members, no matter how high these members might sit in their organizations' hierarchies. The history of organized crime prosecutions was seen (by them) to clearly demonstrate that successful prosecution of such individuals has not severely hampered continued operations of their organizations. Convicted leaders have been known to run their organizations from prison.

The symposium participants strongly urged law enforcement agency use of such policy-driven enforcement programs even though they recognized that this would come up against the hard realities of agency operations, particularly finite resources of dollars and shortages of trained, specialized staff. Doubts were expressed about the ability of agencies to pursue proactive policies because they are not in a position to determine what cases will come before them, what complaints they will receive, and what evidence they will be able to gather. Policy might dictate the identity of a major target, but it would be difficult to ignore immediate and pressing business coming in the door in order to pursue only the possibility of making a case that would substantially impact on an important target. Enforcement agencies cannot turn away complaints and evidence of crimes.

Policy-oriented strategies were seen to pose other dilemmas. One example offered was that of a mature, well-run organized criminal group, avoiding violence and more objectionable activities such as narcotics trafficking and prostitution. What if the leadership of such an organization is threatened by "Young Turks", trying to take over? What should the position of a law enforcement agency be? Would the public be better or worse off if current leadership were dethroned? Depending on the answer, should law enforcement agencies adopt investigative and prosecutive policies that would concentrate enforcement efforts against on one side or the other in order to affect the outcome of the struggle for control, or to encourage conflict that might harm innocent bystanders? Assuming an agency sees a clear public benefit from taking a position in such a struggle, is it proper for a law enforcement agency to refrain from vigorously enforcing laws against one side, in order to influence the outcome of the struggle? Assuming that an agency decided to intervene, how could it do so effectively, since many federal, state and local agencies with overlapping jurisdiction would have to agree in order to implement any such policy? In any one urban area there would be federal, state, county and municipal enforcement agencies as well as specialized agencies dealing with such matters as gambling, narcotics trafficking, licensing, and a host of other substantive criminal and regulatory matters. And, to say the least, any such decisions would have sensitive political implications.

Stier and Richards, in Chapter IV, directly address the issue of agency decision-making, but most of the other papers and a very substantial part of the symposium discussions also deal with strategic questions. Moore, in Chapter III, outlines his view of organized criminal groups as "firms," and argues that this perspective would further the development of strategies to cripple their capacity to operate effectively and to survive. Goldstock, in Chapter V, discusses the development and construction of criminal cases in terms of implementing strategy. Giuliani, in Chapter VI, focuses on legal remedies that support the strategic objective of affecting the survival of enterprises that are targeted by prosecutions. Martens, in Chapter VII, stresses the potential of intelligence units as contributors to the achievement of strategic goals. Kleiman, in Chapter VIII, emphasizes the difficulties of making judgments about the relationships between organized crime and the drug trade in the absence of better

data than we now possess. His paper therefore focuses most strongly on the ways that such data might be obtained, and how they might be used.

Every participant in the symposium strongly supported efforts by practitioners and researchers to develop policy-driven enforcement programs directed against organized crime, despite their full appreciation of the persistent and powerful conditions of the law enforcement environment that would inevitably tend to erode these efforts. Implicit in their writings and statements was the position that strategic planning is too important to organized crime enforcement to be ignored. They felt that strategic plans should guide agency decisions on (1) allocating discretionary resources, (2) selecting among targets of opportunity, (3) utilizing intelligence units to enhance the likelihood that information on strategic targets will be recognized and acted on, (4) supporting the search for agency resources, (5) fostering the development of common ground for interagency cooperation and allocation of target criminal activities, and (6) guiding the development of better enforcement methods and legislation.

The symposium discussion of enforcement agency policy-making ranged widely. Among the policy points made were the following:

1. It is important to exploit victories, to reform the environment in which organized criminal groups flourish. Convictions should be starting points for efforts, not ending points.
2. Organized criminal groups are skillful in adapting to new environments and conditions. This should be taken into account in development of enforcement policy.
3. Agencies cannot separate strategy from field operations because planning must take the activities of other agencies into account.
4. Enforcement agencies should give special priority to preventing new and emerging groups from developing to the level of LCN. The LCN lesson is that once entrenched, organized crime groups will be much harder to root out.
5. It is important to communicate with and educate legislatures as to the rationale for and justification of enforcement policies. They can be most helpful, providing resources and support for necessary legislation.
6. Law enforcement agencies should share information and goals with other agencies, e.g. tax and securities agencies, so that early and consistent support can be provided.
7. The private (business) sector has a role to play in organized crime enforcement. Those developing policies should consider ways to enlist the private sector.

C. Enforcement Action

Three of the issue papers prepared for the symposium bear directly on the actual investigation and prosecution of organized crime. It is recognized that there is no clear dividing line between the legal and operational aspects of organized crime

enforcement, but this somewhat artificial division does serve to ensure a special perspective or emphasis in each of these papers. These papers give major attention to agency policy-making questions whether or not their particular subjects are called legal or operational.

The federal prosecutive program in the Southern District of New York has already completed a notable series of successful prosecutions, skillfully employing the federal RICO statute. Its United States Attorney wrote the symposium issue paper on legal strategies for organized crime control, Chapter VI. The Director of the New York Organized Crime Task Force, with a noteworthy background as a prosecutor and trainer of prosecutors, and in applied research, wrote the paper on operational issues in organized crime enforcement, Chapter V. Frederick T. Martens, Director of the Pennsylvania Crime Commission, wrote the symposium paper on the intelligence function, Chapter VII. This subject, involving the gathering, analysis, and use of organized crime intelligence, was frequently addressed in the symposium papers and discussions.

1. Enforcement Operations

Goldstock's overall approach to enforcement operations in Chapter V though simple in outline, calls for great sophistication, knowledge, flexibility, and sensitivity in implementation. He starts with the premise that operations must be based on sound strategy, which must be supported by a strong intelligence capability. This fits in with one of his central theses, that good policy and good implementation depend in the last analysis on knowing one's adversary ---the organized criminal group.

To Goldstock, knowing one's adversary means more than understanding the organized crime hierarchy and the relationship among the dramatis personae. It means something so simple, and so complicated as knowing how the business of organized crime is actually run. This reinforces the points made by Moore in Chapter III, who argues that intimate knowledge of the workings of illicit businesses can help to target the actual rather than nominal operators --- a business can be truly "owned" through fronts, and by those who siphon off the profits by selling goods and services to it.

Goldstock argues that RICO is more than a prosecutive tool, it is an investigative tool that increases the importance of planning and the need to conduct investigations with carefully tailored work plans. He also stresses the need for post-action analyses that will make it possible to put to use what is learned from both success and failure. The termination of an investigation or case, by any method of disposition, may be the beginning of a prosecutive effort and not its end. An agency institutional memory, active and frequently used, is a major operational asset.

Substantial attention is given to interagency cooperation by Goldstock, who stresses the importance of early, close, and sensitive cooperation between investigators and prosecutors, whether they are in the same or different agencies. This leads him to address the "turf" problem. The agency that investigates or prosecutes a case should be the one that has the best resources to do it --- resources such as adequate staff, specialized staff, special technical capabilities, laws that will facilitate investigative techniques such as electronic surveillance and searches and seizures, and laws that will provide the greatest range of remedies to serve the objective of impairing or destroying the targeted organizations. Cases need not be totally

surrendered under such circumstances; interagency cooperation can be continued and there can even be cross-assignments of personnel between agencies.

It was noted by practitioners from enforcement arenas very different from Goldstock's, that his points were just as pertinent to their jurisdictions as to New York.

2. Legal Remedies

In contrasting earlier prosecutions with his current series of RICO prosecutions, United States Attorney Giuliani in Chapter VI on legal issues in organized crime control, stresses the importance of innovative prosecutive approaches. He points to a number of so-called "major successes" in the past, commenting:

...With the exception of the present prosecutions against Salerno, the traditional prosecutorial model of attacking organized crime -- the conviction and temporary incapacitation of the heads of a crime family for discrete crimes --- has not greatly diminished the family's power and ability to survive, if not flourish....

Giuliani carefully takes the reader through a short course on RICO, including its criminal and civil remedies, showing how it provides a path through the pitfalls of the tension between prosecuting individual criminals and reaching the organizations of which they are a part. He shows the potential of RICO, only now beginning to be realized, for achieving the goal of this legislation as visualized by the Supreme Court of the United States in 1983: "new weapons of unprecedented scope for an assault upon organized crime and its economic roots."³

Giuliani's survey of RICO examines its provisions for criminal forfeitures, civil injunctive relief, and pre-trial restraints. These remedies strike directly at the ownership and control of organized crime assets and enterprises. Multi-million dollar corporate holdings have been forfeited. In one labor racketeering case, for example, union officers were removed from office and enjoined from any further contact with their union and a court-appointed trustee was placed in charge.

Pursuing his survey of innovative methods and remedies, Giuliani cites moves to enhance international cooperation by treaties and mutual helpfulness between agencies here and abroad, the federal witness security program designed to encourage and protect cooperating witnesses, the use of anonymous juries, and new legislation that makes substantial prison sentences for major offenders more likely.

3. Organized Crime Intelligence

In Chapters V and VI Goldstock and Giuliani focus on the investigation that contemplates a specific prosecution, and on the prosecution, sentencing, and application of remedies to make the process more meaningful and of lasting effect. Martens, in Chapter VII, considers the role of the intelligence unit in making possible the development and implementation of policies that could increase the likelihood of success of the overall enforcement process. The importance of intelligence has been recognized by numerous organized crime commissions. Moore, Stier and Richards, Goldstock, and Kleiman in their issue papers (Chapters III, IV, V, and VIII respectively) stress the importance of the intelligence function, without considering how little intelligence support is actually provided and, where provided, how little it is used.

In his issue paper Martens speaks some brutal truths. He reiterates much of what has been said about the potential value of the intelligence function to organized crime control, but points out how little is done in practice. With a few exceptions, intelligence units have little status, are separated from the operating units of their agencies by a wide gulf, make little input to policy, are used largely to gather evidence rather than to generate cases or support policy planning, and have few resources and little training.

There appear to be many reasons for the failure to adequately support and properly use organized crime intelligence. Agency supervisors and staffs, and to some extent intelligence agents, have little understanding of how intelligence can be gathered and used. There is tension between investigators who face the hard, grubbing work of gathering evidence in streets, and desk-bound intelligence units. Investigative and prosecutive agencies tend to focus on near-term demands for information that will support pending investigations and prosecutions, rather than fact-gathering and analyses that will enable them to strike, perhaps far in the future, against major organized crime enterprises. Since little policy planning is done, the potential of intelligence for this purpose is hardly likely to be exploited. Intelligence, as a discipline has been imprecise and expensive. There is not yet a tradition in intelligence. Finally, intelligence is obviously most useful to agencies that are proactive, but most law enforcement agencies are reactive --- by necessity or choice.

D. The Special Case of Narcotics Trafficking

It is generally recognized that there is a relationship between narcotics trafficking and traditional organized crime, but its scope and character is not at all clear. To some extent this depends on our definition of organized crime. LCN has had a recognized role in heroin distribution over the years, but its involvement in the marketing of cocaine and marijuana is problematic. Other organized narcotics marketing groups, operating in the United States and abroad, are well organized, use sophisticated methods and technologies, and take on at least some of the characteristics of traditional organized crime.

It is therefore not surprising that the paper commissioned for the symposium on the subject of drug enforcement and organized crime resulted not in an exposition of that relationship, but rather in a systematic schema for research to provide a rational basis for the development of policies to guide enforcement policies in the narcotics trafficking area --- including but not limited to the organized crime role.

Kleiman's paper, Chapter VIII, directs our attention to the tension that exists between organized crime enforcement and drug enforcement:

...The objective of drug enforcement is to keep drugs away from consumers. The objective of organized crime enforcement is to contain the wealth and power of major criminal organizations and to frustrate their goal of being able to defy the law without paying its price. These two objectives interact where the drug trade affects organized crime or where organized crime affects the drug problem....

His analysis of the market forces called into play by these contending enforcement objectives suggests the likelihood that enforcement that is not informed and guided

by good data may have the effect of either enhancing the opportunities and hence the role of organized crime in the drug trafficking arena, or increasing the opportunities of others in the drug trade and hence the supply available to consumers. His analysis assumes that "organized crime" is LCN, or other groups that take on many of the characteristics of LCN.

Kleiman argues that law enforcement cannot develop policies to enable it to thread its way through this maze without good data on drug markets. He points out good data simply does not exist at this time and is not being collected, and second, that such data as is available reflects neither the realities of the drug trade nor of drug enforcement. Kleiman therefore goes on to suggest that research concentrate on gathering more realistic and informative data and proposes, in considerable detail, a program of research to collect data on the drug markets (the size of the market in different drugs, the value added at each stage of the distribution chain, the price elasticity of different drugs), on drug enforcement (resources devoted to enforcement, by what agencies, against what targets, and with what effect), and on the criminal organizations engaged in narcotics trafficking.

The symposium participants concurred in the need for the reliable data called for by Kleiman, and for the ways he proposed that this data be used to inform and guide enforcement policies. There was strong feeling about the need to cope with the demand side as the most promising direction for dealing with the drug trade, particularly with respect to the looming threat of designer or mutant drugs, but how the research/policy schema suggested by Kleiman could contribute to research directed at the demand side was not addressed.

E. Doing Research on Organized Crime

This symposium placed major stress on identification and clarification of major issues in organized crime control. However, it was recognized in all of the discussions among the participants that, even after these issues were identified, the task of framing the necessary questions for research inquiry would still remain. Researchers would still have to decide what questions are amenable to research efforts, ask whether the needed data will be available, and consider the utility of potential research outcomes. To assist the symposium to focus on these issues, which might be characterized as research program implementation, Reuter was asked to consider them in his issue paper, Chapter IX.

Reuter argues that there are a number of major barriers that stand in the way of successful research on organized crime, including:

- o the lack of a theoretical framework for the formation and testing of hypotheses;
- o problems of access to data; and
- o problems with the character of data, even if access is obtained.

The symposium participants did not address the first problem, some because they did not share Reuter's view that the existing literature in the field was as thin as he regarded it, others because they did not believe that this was necessarily a

barrier to good, useful research. Still others felt that this view was belied by what Reuter has managed to accomplish in his own work.

Agency files were seen as the obvious and most likely source of data for research on organized crime. It was observed that these data are not organized or maintained for research use and for this reason are often of only limited value to researchers. They are biased by agency needs and perspectives, access is hindered by agency confidentiality considerations that are mandated by law or by very practical policy considerations --- and more subtly by concerns about the potentially troublesome aspects of agency interactions with researchers or other outsiders.

In the symposium the point was made repeatedly that the key to unlocking agency data files (unless, like grand jury proceedings, secrecy is mandated by law), and to influencing the character of data gathered by agencies, is to demonstrate the value of one's research for enforcement purposes. This was regarded as especially important in light of the degree, often not taken into account, to which cooperation with researchers consumes agency resources.

There was substantial consensus on the importance and research value of public record data, and on the kinds of public record data that are available, which include:

- o data obtainable under the Freedom of Information Act.
- o motion papers.
- o wiretap affidavits.
- o wiretaps and raw tapes used at trials.
- o materials developed in civil litigation.

Civil proceedings, particularly those that are based on federal and state RICO statutes, were seen as representing the most valuable, non-confidential resources for researchers.

Data issues tended to dominate symposium consideration of the conduct of research, but Reuter's concern for a research paradigm that would enhance the likelihood of research merits separate and special attention. In his paper he describes a candidate paradigm that is consistent with the overall sense of the symposium discussions, focusing on the circumstances under which gangs acquire the defining characteristics of organized crime, such as a broad and durable reputation, and on the consequences of the existence of such gangs.

ENDNOTES

1. The parent, federal statute is the Racketeering and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.* There are now 27 states that have enacted their own versions, most modeled on the federal statute, and enactments are now under consideration in a number of other states.

2. Kleiman, in Chapter VIII, emphasizes the difficulties of making judgments about the relationships between organized crime and the drug trade in the absence of better data than we now have. His paper therefore focuses most strongly on the ways that such data might be obtained, and how they might be used.

3. Russello v. United States, 464 U.S. 16, 26 (1983)

CHAPTER XI

RESEARCH NEEDS

The objective of the symposium was to identify and consider major issues in organized crime control as a basis for determining what would be relevant and useful research on the subject. In this chapter we first report the broad general conclusions of the participants as to major policy and operational needs of the enforcement community in this field to which research should respond, and then briefly outline their suggestions on what questions should be high priority candidates for research inquiry.

A. Policy and Operational Needs in the Field of Organized Crime Control

The symposium papers and discussions pointed to a number of policy and operational needs. These are:

1. The need for a strategic approach to organized crime control, aimed at permanent rather than transitory impairment of organized criminal group capabilities.
2. The need to reconcile the inherent tension between the pursuit of individual criminals and crimes, and the permanent disablement of their organizations.
3. The need to determine what parts of government and the business sector, and what individuals are most vulnerable to victimization by organized crime, through extortion, corruption, or infiltration, in order to (a) enable them to better protect themselves, and (b) enlist their cooperation in organized crime control efforts.
4. The need to better understand the structure and operations of organized criminal groups in order to better identify and exploit their vulnerabilities.
5. The need to adopt a multi-disciplinary approach to plan and implement organized crime control operations, which bring together investigators, accountants and other financial experts, intelligence analysts, and prosecutors.
6. The need for inter-agency coordination in planning and in implementing organized crime control operations. This cooperation should cross jurisdictional (federal-state-local) and functional boundaries (enforcement-regulatory-administrative).
7. The need to increase agency understanding of the importance of intelligence in organized crime control and to improve agency capabilities in collecting and using it.
8. The need for nationwide dissemination to law enforcement agencies of detailed information on (a) effective strategies developed by federal and state agencies with successful programs, and (b) on the use of innovative

remedies such as RICO, which is particularly important if organized criminal groups are to be deprived of the assets they require to operate on a continuing basis.

9. The need to find ways to affect the demand side of the supply/demand equation in the all-important area of marketing of illicit goods and services.

The discussants recognized that for researchers to contribute to the meeting of these needs, it is vital to promote studies that are empirically based, within a strong theoretical framework, as well as descriptive studies. This in turn was seen to require access to enforcement agency data, a need that in and of itself poses problems that at times appear to be intractable. This latter concern led to special attention to the potential value of public record data such as indictments, complaints in civil (RICO) proceedings, and other litigation data.

B. Policy and Operational Research Recommendations

Policy research was a major subject of discussion. This flowed logically from the concern that organized crime enforcement be effective in destroying or impairing the operations of organized crime groups and in protecting the public from harm, rather than only obtaining convictions of individual defendants. The symposium participants did not see policy research as separate from more conventional criminologic research. They pointed out, over and over again, that agency policy planning must rest, in the last analysis, on accurate and comprehensive data. Support of policy development was seen in recommendations to answer such research questions as:

- o What criteria should govern the transfer of enforcement agency attention, in whole or in part, from traditional organized crime to new and emerging groups? How can resources be allocated among these targets? What should determine the timing of such shifts?
- o What are the vulnerabilities of organized crime groups that can be exploited by law enforcement? At what stages of their evolution are they most vulnerable? What activities make them most vulnerable? What is there in the nature of their internal relationships and control structures that suggest opportunities for law enforcement interventions? What is the role of white-collar crime law enforcement in combatting organized crime?
- o What can be done to affect the environments in which organized crime flourishes? What can law enforcement do to affect these environments? What are the roles of other elements in the community, including the business sector?
- o As new, emerging ethnic groups progress from victimization of their own communities to victimizing the general community, to what extent will knowledge about how they operate in their own communities be useful in predicting how they will try to exploit the community at large?
- o What are the indicators of organized crime activity in the community, in industry? In government? How does the legitimate market behave when

organized crime becomes involved, either as a supplier of licit or illicit goods and services or as infiltrator of legitimate business?

- o What are the public and private sector areas of vulnerability that encourage organized crime operations? Why have some trades and industries been major arenas for organized crime activity and others not so affected?

The key candidates for research on operational issues that emerged from the symposium discussions involved improvement in gathering and using intelligence, technology transfer, and training. A number of those present asked these questions, in one form or another: How can the thinking and experience of those acknowledged to be on the leading edge of the fight on organized crime be captured and disseminated? How can research contribute to tactical planning? Are the lessons learned from enforcement against traditional organized crime applicable to newer criminal organizations? How can staff in needed specialty areas such as financial analysis and computer use be recruited and trained?

The key candidates for research on operational issues that emerged from the symposium discussions involved studies that would lead to improvement in the gathering and use of intelligence, technology transfer, and training. Major research efforts were felt to be needed to answer such questions as:

- o What are the elements of effective inter-agency cooperation in the area of organized crime enforcement and how have they been implemented?
- o How is intelligence gathered and used in organized crime control, and how can existing expert knowledge be effectively disseminated?
- o How can staff in needed specialty areas such as financial analysis and computer use be recruited, trained, and integrated into enforcement team operations?
- o How can the thinking and experience of those acknowledged to be on the leading edge of the fight on organized crime be captured and disseminated? What can be learned from strike force operations that could be adapted for broader use on the state and local level?
- o Are the lessons learned from enforcement efforts against traditional organized crime (LCN) applicable to newer criminal organizations?
- o How do drug markets actually operate, in terms of the size and character of the transactions involved, price structure and price elasticity of different drugs? What is the character of the law enforcement response to this market in terms of resources devoted to enforcement (a) by individual agencies, and (b) against trafficking in specific drugs. What has been the effect of such efforts?

C. Methodological and Evaluation Research

1. Measures of Effectiveness

A major concern in all symposium discussions of policy was the need to develop ways to measure the effectiveness of agency action, both as a guide to policy development and as a steering mechanism adjusting for policy implementation (actual enforcement operations). It was pointed out that such measures would have to go well beyond reliance on conventional statistics covering numbers of investigations, prosecutions, convictions, and asset seizures. Such an approach would tell little about whether organized crime operations were actually being impaired or eliminated by enforcement action. For example, Giuliani says, in Chapter VI, that better ways to measure success than incarceration are needed. Stier and Richards observe in Chapter IV that if statistics are the measure of enforcement performance, agencies will tend to pursue the lowest level and most visible organized crime manifestations, without regard for more serious organized crime impacts.

Appropriate measures would have to consider economic and social harms inflicted by organized crime. They would also have to take into account whether the effect of enforcement actions would be to curtail organized crime activity over the long term, or whether they just produce a pause before the targeted activity begins to flourish again. Such measures should be designed to tell us the degree to which enforcement activities that curtail the operations of targeted groups open the way for others to take over the same illicit markets?

2. Access to Data

It is part of the commonly accepted wisdom that research on organized crime is beset by the problem of getting access to agency data. The symposium participants recognized that this is a major problem, not only for researchers, but also for practitioners who should be able to look to the research community for support. Organized crime research that rests on and can demonstrate new approaches to this challenge should merit special attention.

Elements of research projects that would be particularly valuable would be those that demonstrate:

- o methods for improved communication between researchers and practitioners.
- o organization of data and findings in ways that are of clear use to agencies that provide data and other research assistance.
- o emphasis on data collection that will be minimally onerous to agency operations, e.g. use of public record data.

EPILOGUE

In the preceding chapters the issue papers and the views of the symposium participants were reviewed. Obviously much was omitted in the interest of brevity. It is clear that a number of issues that flow from the papers and discussions merit further discussion, but should not necessarily be attributed to the authors of the papers or the other symposium participants. Some of these issues may justify discrete research attention, others are suggested because their consideration may add an extra dimension to the value of other research.

A. The Research Arena

The common assumption is that research is conducted by scholars in research organizations and universities. However, a truly significant part of our research is conducted within agencies, for their own purposes.¹ Those who conduct such research, whether they are in law enforcement agencies or in specialized bodies such as tax collection or regulatory agencies, should be regarded as major contributors to research as well as research users. They can also be "brokers" between their agencies and researchers, and are well-suited to intercede and to justify requests for data in terms relevant to agency operations.

The intelligence function received much attention at the symposium. There was a consensus on the potential value of intelligence units in organized crime enforcement and of the need for research on the intelligence function. What is clear from the discussion of the role of intelligence in Martens' paper, Chapter VII, is that intelligence units can be classic examples of research organizations. When not engaged in direct tactical support of an investigation they should be developing hypotheses about the activities of criminal organizations, crime trends, economic and social harm, and other matters that may drive agency policy. They should, as pointed out by Martens, develop plans for the collection of data to test these hypotheses, and proceed to their analyses. Like in-house agency research units, referred to in the preceding paragraph, intelligence units that can free themselves even in part from narrow tactical functions should be regarded as a valuable part of the research community.

B. Displacement

Displacement can be substantive, offender-specific, or geographic. If an enforcement effort is successful, the offending organization may turn to other lines of crime --- a substantive displacement. The offending organization may drop out of the line of crime that brought it law enforcement attention and trouble, to be replaced by another organization --- an offender displacement. Law enforcement pressure may be so great within a geographic area that the same or other offender organization transfers its operations elsewhere --- a geographic displacement. In light of the unanimity of symposium opinion for strategic policy making and the need for developing measures of agency effectiveness, serious consideration should be given in research projects to the appropriateness of addressing these displacement issues.

C. Continuity

Policy planning for organized crime enforcement cannot be characterized as strategic and will have very little utility, unless it is designed for the long term. Investigations and prosecutions are lengthy and complex. The current Mafia trials were long in preparation and voracious consumers of resources. They appear successful now, but the question is whether the current efforts can survive success, as they have to dig below top leadership and strike at less newsworthy targets. As pointed out by Moore in Chapter III, those who are essential to the continued, profitable existence of organized crime firms do not necessarily carry comparable organizational titles. Researchers, especially those engaged in policy planning and measurements of organizational effectiveness, should consider the staying power of enforcement agencies just as they consider the staying power of criminal organizations.

D. Agency Responsibilities

Goldstock, in Chapter V, provides good guidelines for agency interaction, calling on agencies to take on or give up roles in specific investigations or areas, based on which can do the job best and which has the most appropriate laws and resources for the purpose at hand. Yet there is another, related problem --- that of organized criminal activity outside the major geographic concentrations of enforcement agencies that specialize in organized crime enforcement. Federal efforts are concentrated, correctly, in those areas where major organized crime activity is historically present or where it is anticipated. This is somewhat akin to a zone defense, but far more of this country lies in the spaces between the zones and must be covered by state and local action. Research, therefore, should address organized crime issues in these outlying areas, and also examine relationships between organized crime groups that operate both in the zones of concentration and in the outlying areas. This issue is related to those of policy planning, displacement, and the design of measurement of agency effectiveness.

E. Indicators of Organized Crime

Much of the symposium discussion involved the characteristics of organized crime, the potential of organized crime to inflict economic and social harm, and the vulnerabilities of our general and business communities to organized crime activity. The results of research in any of these areas could enrich our preventive and detection capabilities by analyses aimed at developing early indicators, or "red flags", of the presence of organized crime activity. At several points symposium discussions addressed the need for early law enforcement attention to nascent organized crime groups. Such attention would more likely be focused if informed by the availability of such indicators.

F. Environmental Conditions

The organized crime "environment" was discussed at the symposium in two contexts. The first involved "root causes", in the sense of social and economic conditions that create a perceived "need" for such organizations and encourage enlistment in their ranks. The second involves the character and conditions of the arena in which organized crime conducts its business.

Law enforcement agencies are already spread quite thin. There are limits to what they can be expected to do in pursuit of strategic objectives. "Root causes" would appear to be better left to research addressing broader community interests. Good organized crime policy-making, on the other hand, must recognize the immediate relevance of the conditions or rules of that part of the arena in which organized crime operates its legitimate and illicit businesses. As noted by Stier and Richards, in Chapter IV, moves to regulate and reform the solid waste industry in New Jersey, the waterfront in the New York port area, and to regulate who may control labor unions and their assets, represent major hopes for constructive change.

In a recent two-day period there were two most instructive examples of law enforcement awareness of the importance of pursuing such policies, involving two symposium contributors. These demonstrated what might be done to exploit law enforcement outcomes to alter the business environment. Goldstock, as Director of the New York State Organized Crime Task Force, recommended permanent government oversight of the New York City construction industry to deal with endemic corrupt practices.² U.S. Attorney Giuliani, having just successfully completed a lengthy trial involving corruption in the New York City Transportation Department, met with the new leadership of that department to discuss what he had learned about its operations and to advise on what steps might be taken to prevent future problems.³

Research in this policy area, stressing options and alternatives and the documentation of such enforcement and regulatory efforts (including legislative proposals) should have high priority.

G. Civil Remedies

It is now accepted wisdom that civil remedies are crucial to an effective, broadly-based organized crime enforcement program. The reverse is also true. "Vigorous criminal prosecutions drive civil recoveries."⁴ Attorney General Meese has instructed all United States Attorneys to immediately evaluate all fraud and corruption allegations for possible civil action, and to design grand jury investigations in such a way as to reduce the problem of agency and civil action to the fruits of civil investigation.⁵ Research inquiries to shed light on the coordination of criminal, civil, regulatory, and administrative proceedings would have much utility for law enforcement. It should also be recognized that the more there is a shift to the use of non-criminal remedies, the greater is the likelihood that more comprehensive data will become available for research.

H. The Quest for Resources

Organized crime enforcement is an expensive, time consuming process. Research that can provide finely delineated data on social and economic harm would make it possible to prepare improved budget justifications. Policy studies, improved measures of the effectiveness of enforcement agencies, and analyses developed by intelligence units following the guidelines laid down by Martens and others in the symposium, could combine to make substantial contributions in this area.

I. Interstate and Transnational Issues

Organized crime groups have far-flung interests, crossing state and national lines. There is heightened awareness of this as a result of current interest in money laundering, but other aspects merit attention, such as investment of the proceeds of crime in illicit or licit enterprises far from a criminal organization's home turf. This issue is highly relevant to research on the impact of organized crime, relationships between enforcement agencies, and the displacement issue referred to above.

ENDNOTES

1. An example is a recently completed study, Undertaking Hazardous Waste Crime: A Multistate Examination of Offense and Offender Characteristics in the Northeast (June, 1986), prepared by Dr. Donald Rebovich of the Research and Evaluation Section of the New Jersey Division of Criminal Justice for the Northeast Hazardous Waste Project, on behalf of the attorneys general of New Jersey, Maine, Maryland, and Pennsylvania.
2. N.Y. Times National Ed., Jan. 6, 1986, p.1.
3. N.Y. Times National Ed., Jan. 7, 1986, p.15
4. Address by U.S. Deputy Attorney General Arnold I. Burns to the Executive Development Workshop of the President's Council on Integrity and Efficiency (November 24, 1986).
5. Id.

APPENDIX

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