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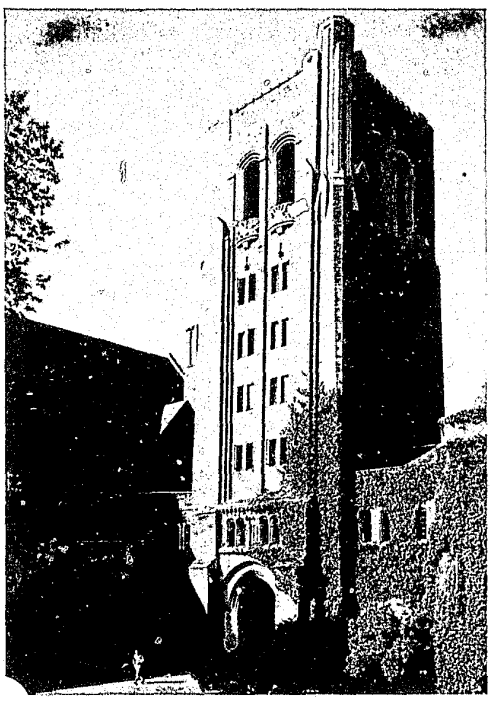

Techniques in the Investigation and Prosecution of Organized Crime

The Rackets Bureau Concept:

General Standards for the Operation of Organized Crime Control Units.

G. ROBERT BLAKEY • RONALD GOLDSTOCK • CHARLES H. ROGOVIN

THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME: THE RACKETS BUREAU CONCEPT

General Standards for the Operation of Organized Crime Control Units

by

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August 1977
Ithaca, New York

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FOREWORD

The investigation and prosecution of organized crime has never been easy, and it is steadily growing harder. Efforts to control organized crime by more sophisticated law enforcement responses have been met by organized crime adopting more sophisticated techniques of operation. Controlling organized crime, therefore, is increasingly becoming more difficult.

Unless knowledge about the most advanced techniques of control is quickly disseminated and what it teaches is widely adopted, the more sophisticated forms of organized crime will have a heightened impact in areas where law enforcement remains wedded to old ideas and worn forms of action.

Dean Roscoe Pound suggested that four factors influence the quality of law enforcement: personnel, administration, procedure, and substantive law. This monograph is about administration. The best people working within the context of fair and effective procedure and substance cannot get the job done if their efforts are poorly organized or not carefully directed by thoughtful strategies. Organization, too, includes cooperation between the various agencies of law enforcement. A central teaching of these standards is not only that prosecutive agencies facing serious organized crime problems must themselves be reorganized and rationally directed toward defined goals, but also that the effort of

reorganization must include elements of the investigative agencies. Prosecutors must rethink their own efforts; their efforts, too, must be more closely integrated with those of the police. Like crime, law enforcement must become organized.

The standards offered in this monograph do not seek to present lofty ideals beyond the grasp of everyday prosecutors. We have attempted to analyze the problems present in the work of organized crime control units and to propose realistic methods of meeting them. Not all of the recommendations of these standards will, of course, command equal support. Some of them are controversial, as the standards themselves indicate. All of them, however, represent an honest effort by knowledgeable and experienced professionals to think through and face up to the tough problems that an organized crime investigative and prosecutive unit must confront. As such, they command serious consideration, if not adherence.

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EVALUATORS

The following participated on a panel to evaluate these standards: Bruce E. Babbitt, Attorney General of Arizona; Garrett Byrne, District Attorney, Suffolk County, Massachusetts; Michael J. Codd, Police Commissioner, New York City; Denis Dillon, District Attorney, Nassau County, New York; William Hyland, Attorney General of New Jersey; Jeremiah B. McKenna, General Counsel, New York State Select Committee on Crime, Its Causes, Control and Effect on Society; Robert M. Morgenthau, District Attorney, New York County; Henry Petersen, former Assistant Attorney General, Criminal Division, U. S. Department of Justice; Alfred J. Scotti, former Chief Assistant and Head of Rackets Bureau, District Attorney's Office, New York County; Herbert J. Stern, United States District Judge, District of New Jersey; and Carl A. Vergari, District Attorney, Westchester County, New York. Except as otherwise noted, the standards themselves and the accompanying commentary are the responsibility of the authors alone.

INTRODUCTION

A. Scope of Standards

America has new folklore: organized crime. Next to Westerns, war, and sex, it is one of the chief sources of material for T.V. plots, books, and newspaper exposés. It is not the purpose of these standards however, to add to that folklore, for more than folklore is involved: organized crime is real, and it is a serious challenge to the criminal justice system. Presidential Commissions, Congressional reports and hearings, as well as public and private studies have repeatedly documented the nature and scope of organized crime in America. It has been shown that organized criminal groups are active in professional gambling-- chiefly bookmaking and numbers--the importation and distribution of narcotics and other illicit drugs, loan sharking, theft and fencing, prostitution and pornography, and the manufacture and distribution of illicit alcohol. These groups have not, moreover, confined their activities to traditional criminal endeavors, but they have increasingly undertaken to subvert legitimate businesses and labor unions. Extortion, bribery, price-fixing, market allocation, securities and other frauds, including tax evasion, have all become common organized crime efforts. Just as important, these groups have in many places established corrupt alliances with the police, the prosecutors, the courts, and members of the executive and legislative branches of government. Enough has been written

about these exploits to make a general knowledge of organized crime part of the common understanding of our culture. These standards, therefore, focus on a relatively unexamined phenomena: those investigative and prosecutive efforts to control organized crime centered in the offices of state and local prosecutors.

B. Background: Prosecutor and Police

Investigative and prosecutive efforts to control organized crime on the state and local levels have seldom proceeded on a continuous or institutional basis. Public interest and demand for action have reached high points sporadically, but usually the heightened response of law enforcement has waned and the application of resources has declined as public interest has turned to other concerns. Usually, as public attention has moved on, the effort to control organized crime has fallen to a few scattered police units and even fewer special prosecution units.

The 20th century has seen more than the development of modern organized crime; it has also seen the development of specialized prosecutive functions. One of the most significant of these has been the rackets bureau, which may be traced to the work of Thomas E. Dewey.[1] From 1935 through 1937, Dewey conducted a special rackets investigation in New York County

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[1] See Task Force Report: Organized Crime, The President's Commission on Law Enforcement and Administration of Justice pp. 12-13 (1967) (hereinafter cited Task Force Report: Organized Crime).

at the direction of Governor Herbert H. Lehman. When Dewey became District Attorney in 1938, he carried into the District Attorney's Office the experience of that special rackets investigation.

Traditionally, the role of the public prosecutor had been to present to the court and jury evidence of criminal activity developed by the police or brought to him by a citizen independent of the actions of his own office. The concept of the rackets bureau as developed in New York County and widely copied elsewhere on the Federal, state and local level was a significant and radical departure from that traditional role.

Dewey found that evidence of organized criminal activity did not walk in off the street in the form of a citizen complaint, the source of the vast majority of law enforcement investigations, nor was it to be had merely for the asking. Victims of underworld terror or exploitation do not volunteer to testify. Documentary proof of extortion or graft is usually carefully concealed in doctored books and records. Dewey found, therefore, that the traditional role of the district attorney--merely that of courtroom accuser--was inadequate if the challenge of organized crime was to be met.

What was needed, he found, was proactive investigative and prosecutive work. Victims had to be sought out. The crimes committed by professional criminals had to be uncovered before they could be solved. Close police-prosecutor cooperation was essential from the beginning of an investigation if maximum and effective use were to be made of the special

investigative tools peculiarly available to the prosecutor: the grand jury subpoena, immunity grants, wiretap orders, search warrants, etc.[2] An integrated approach to each investigation and prosecution had to be undertaken. A careful effort had to be made to use all possible legal resources at every stage: investigation, grand jury presentation, preparation, trial, and appeal. The success of the rackets bureau concept in New York County has been significant, and it underlies much of the work now being accomplished elsewhere by organized crime control investigation and prosecution units.

Nevertheless, the evolution of the investigative and prosecutive function in the area of organized crime was not unique. Similar processes have also occurred in the evolution of other aspects of the prosecutor's office, including efforts to deal with homicide and other major felonies, public corruption, and white collar offenses. Homicide and other major felony prosecutive efforts, however, have tended, and probably will necessarily remain, reactive. Proactive police work in the area of homicide, for example, is seldom feasible, since most homicides are unexpected occurrences between relatives or neighbors. Nevertheless, close police-prosecutor cooperation in the process of investigation is possible, and early involvement of prosecutors for the purpose of securing legal

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[2] See generally id. at 14-19, 80, 83-100; Organized Crime: Report of the Task Force on Organized Crime, National Advisory Committee on Criminal Justice Standards and Goals, pp. 137-60 (1967). (hereinafter cited Organized Crime).

advice in the gathering of evidence is not uncommon in major homicide investigations.

The evolution of the investigative and prosecutive function in the area of public corruption and white collar offenses, on the other hand, has followed a path not dissimilar to that found in the organized crime field. Indeed, many of the same issues faced in an organized crime control unit will be faced in a public corruption or a white collar crime control unit. Significantly, too, the activities of organized criminal groups usually involve corruption: they frequently embrace offenses traditionally associated with white collar crime. Consequently, although the touchstone of the sophisticated organized crime group--the systematic use of violence--will usually be missing in most public corruption or white collar investigations and procesutions, many of the same investigative and prosecutive techniques as well as other legal or administrative problems will be common in each of these three areas. Hard and fast lines, therefore, cannot be drawn between these areas each represents a similar effort of the criminal justice system to respond to certain modern crime control problems.

C. Scope of Monograph

These standards are excerpted from a larger work, "Investigation and Projections of Organized Crime: the Racket Bureau Concept, " which will be published in full in the fall of 1977,

by the National Institute on Law Enforcement and Criminal Justice by the Law Enforcement Assistance Administration of the U.S. Department of Justice.[3] In addition to these standards and commentary, the full study includes a description and analysis of twelve investigative and prosecutive units established on the state and local level. It also includes extensive appendices on topics including: uses of the phrase "organized crime", sentencing racketeers, enjoining illegalities, investigative plans, mission papers, feasibility studies and costs of organized crime control units. Those interested in detailed aspects of the establishment and operation of organized crime control units should consult the comprehensive work.

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[3]A similar study was also recently undertaken of the Federal Strike Forces by the Comptroller General of the United States. Its general conclusions parallel those described in this study. The Federal study found, for example, that the Strike Forces lacked a comprehensive strategy, had no clear definition of their target, failed to set specific goals, had unsatisfactory relations with investigative agencies, were not evaluated systematically, and did not obtain adequate sentences in organized crime cases. War on Organized Crime Faltering: Report by the Comptroller General of the United States. (March 17, 1977).

GENERAL STANDARDS FOR THE OPERATION OF ORGANIZED CRIME CONTROL UNITS

SEC. I. ESTABLISHING AN ORGANIZED CRIME CONTROL UNIT

I.A. Criteria for Establishment: Problem and Resources

An office charged with prosecution should establish an organized crime control unit when it has sufficient resources to justify specialization and when it faces within its jurisdiction significant organized criminal activity. Significant organized criminal activity may be indicated by the existence of one or more of the following factors:

(1) the wholesale distribution of narcotics or other dangerous drugs;

(2) unlawful gambling enterprises;

(3) professional theft and fencing networks;

(4) the lending of money at usurious rates of interest to be collected by force by individuals connected to criminal groups;

(5) racketeering, including bribery, extortion, embezzlement and fraud, in the operation of legitimate unions or businesses;

(6) systematic public corruption, including bribery, extortion or embezzlement; or

(7) the manufacture and distribution of illicit alcohol.

Commentary

The special character of our nation's system of crime control and the complex nature of organized criminal behavior

compels differing approaches to law enforcement by state and local agencies. Differences, too, exist between states in political structure and size. The role that an attorney general from a major industrial state might play in crime control may well differ from that which his counterpart from another, quite different state might play.[1] Similarly, the role of a local district attorney in a major metropolitan area would obviously be other than that which could be played by a district attorney in a smaller area somewhere else in the state. Organized crime control programs must, therefore, be tailored to facts and circumstances as they exist in each place.

All of those offices charged with prosecutive responsibilities must, of course, play the traditional role of courtroom accuser. In light of the growing complexity of the legal limitations on police procedures, it seems evident, moreover, that all offices must also increasingly concern themselves with the legal aspects of such procedures. The decision to establish an organized crime control unit to participate in the investigation and prosecution of organized criminal behavior represents a further commitment to specialization of the prosecutive function and to affirmative involvement in the process of evidence gathering. That commitment need not be made unless the office faces within its jurisdiction significant

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[1]The National Advisory Commission on Criminal Justice Standards and Goals recommends establishing a statewide organized crime prosecutor where needed. Organized Crime, §7.1, p. 142.

organized criminal behavior; it ought not be made unless it has sufficient resources, including personnel and legal tools, to make an impact.

Significant organized criminal activity ought to be the touchstone of the decision to establish an organized crime control unit.[2] Obviously, what would be considered significant organized criminal activity might well vary from place to place. The presence of active members of the Mafia or La Cosa Nostra would, of course, usually be an indication that a unit should be established. The concept of organized criminal behavior need not, however, be so limited. Even in the absence of active national syndicated members, the presence of the wholesale distribution of narcotics or other dangerous drugs, unlawful gambling enterprises, including numbers and bookmaking, bootlegging, professional theft and fencing networks, loan sharking by members of criminal groups, racketeering in unions or businesses, or systematic public corruption may all indicate the need for specialized law enforcement response.

A word of caution here, however, is in order. As Attorney General William F. Hyland notes, "The presence of any of [these]. . . activities. . . does not necessarily require the establishment of a specialized organized crime

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[2]For an interesting effort to find imaginative ways to determine the presence of organized crime, see New Effectiveness Measures for Organized Crime Control Efforts: Development and Evaluation (LEAA 1973).

unit." In some instances, for example, traditional law enforcement efforts can adequately cope with forms of organized gambling and the illicit manufacture of liquor. The list in the standard, therefore, represents factors indicating an organized crime problem. The crucial question comes next: is there a need for a specialized law enforcement function? The factors lead to asking the question, they do not by themselves resolve it.

This list of possibly significant organized criminal endeavors is not, moreover, exhaustive. Other areas of significant activity would include cigarette smuggling, organized prostitution, and pornography enterprises. The important point is that as criminal behavior moves beyond its traditional forms of murder, rape, robbery, etc. and begins to organize its activities, it will be necessary for law enforcement to consider whether or not to respond in more than traditional ways.

A special word of caution is also in order in reference to point (6) (systematic public corruption, etc.). A number of those who evaluated or commented on this study misjudged its thrust. Judge Stern, for example, expressed his feeling that a public corruption unit was more important than an organized crime unit, and that corruption cases should not be turned away if they were not "systematic." Far from disagreeing, this study shares those values. But it was not addressed to the issue of the establishment, organization or operation of such units, although much of what is said here of organized

crime units is relevant to public corruption units. Where the volume or sophistication of public corruption cases justifies it, such units should be established. Routine cases may, however, be handled without specialization, as part of the general work of an office. Some special cases may be handled by an ad hoc task force approach. Where there is systematic corruption, but the volume or sophistication does not warrant a separate unit, such cases may be appropriately assigned to the organized crime unit. Such cases, moreover, belong in the organized crime unit, where the source of the corruption is itself organized crime. Nothing in this or the other standards in this study should, in short, be read to deprecate the importance of committing all the resources required to meet the challenge of public corruption, even at the expense of organized crime related prosecutions. The point here is simply that public corruption is not the central focus of this study.

The presence of sophisticated criminal behavior calls for correspondingly sophisticated law enforcement. Nevertheless, realism ought to require policymakers in the criminal justice system to face up to the question of limited resources. All aspects of the criminal justice system are undernourished. Resources expended in one area are resources not expended in other areas. Those resources that are available, therefore, ought to be committed where they will have the greatest impact. An organized crime control unit that is little more than a sign on a door may do as much harm as good; it may lead the

public into thinking that something is being accomplished when, in fact, it is not. Consequently, a careful inventory must not only be taken of the organized crime problem; inventory must also be taken of the resources that can be employed in meeting the problem.

An organized crime control unit might be appropriately established with only two or three attorneys and a small complement of investigative resources, but the decision to establish it should also include a commitment to expand it until it reaches a realistic size, given the nature of the organized crime problem and the other priorities of the office.

Two or three attorneys can only manage a small case load. At best, they may only be able to stir up activities in otherwise dormant outside investigative and prosecutive agencies.

More than personnel issues are involved, too. To be sure, the personnel must be adequately trained and motivated, sufficient in number, and well led and organized. But they must also be adequately equipped with carefully drafted substantive and procedural legislation.[3] Indeed, there are serious differences within law enforcement ranks on this issue, but it is suggested by some thoughtful individuals that unless an organized crime control unit can have access to compulsory process (a grand jury or similar body) and immunity techniques,

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[3] See generally, Organized Crime, pp. 137-60.

it is probably not worth establishing such a unit with operational responsibilities. Others would add that without court ordered electronic surveillance, it is doubtful, too, that much can be accomplished. Unless a minimum of procedural tools is available, therefore, it may well be that legislative reform, and not the establishment of an operational unit, should be the first priority.

Among the evaluators, Henry Peterson sharply disagreed with this last point. He argued that:

> the organization be formed and given operational responsibility so that the predicates for needed legislation can be established and demonstrated. . . . [W]ithout the force and impelling impact of an operational unit, there are few who can be motivated to legislate in a vacuum.

The question is obviously one over which reasonable people can disagree.

I.B. Mission Paper: Problems and Goals

An organized crime control unit should have well-defined priorities. These should be based on a realistic appraisal of its capabilities. An analysis of the organized crime problem the unit faces along with the identification of its specific goals should be expressed in a Mission Paper. The Mission Paper should be periodically revised as additional knowledge is gained or conditions change.

Commentary

The first step in the establishment of an organized crime control unit is determining the problem and setting

realistic goals. There is, however, a question of which comes first. A realistic assessment of goals and priorities may only be possible after a unit has been in place for some time. A blueprint cannot be drafted without some preliminary survey work. Nevertheless, it is extremely helpful to put the resulting action plan, or Mission Paper, in writing, even during the beginnings of a unit's life. Yet the goals must be realistic; they ought also to be concrete and keyed to a reasonable timetable. Eliminating organized crime in any of its current forms within the foreseeable future is, for example, not a realistic goal to try to achieve within a reasonable timetable.

In an important measure, the effectiveness of a unit will be directly proportional to its accountability. Without a definitive set of realistic and concrete goals keyed to a similarly realistic timetable, members of the unit will not know what is expected of them; it will also not be possible to evaluate their work. A word of caution, however, is in order. There is a danger in overemphasizing effectiveness measured by objective standards. All organizations run the danger of goal distortion. When an organization is engaged in working towards an ultimate goal (justice) that cannot be measured, but the organization is evaluated by measuring aspects of its work (convictions), there is a real danger that the organization will begin to lose sight of its goals in an effort to meet the expectations of evaluation. Traditionally, this has been a troublesome problem in organized

crime control. See Task Force Report: Organized Crime, p.15 (energy diverted to meaningless low-level gambling arrests). Nevertheless, a Mission Paper is an important tool for management in achieving general evaluation; it can also serve as a valuable guideline in determining the acceptability of a potential investigation and the worth of intelligence or leads. Despite the difficulties it might raise, a Mission Paper ought to be drafted.

The contents of the Mission Paper of a particular unit should be unique. Each jurisdiction has its own problems. Statewide units have one perspective; county units will have another. New units will face a different set of problems than established units. Units with other agencies operating within their jurisdiction will face still other problems. Here units should cooperate, if feasible, in the setting of goals. The ideal is exchange of information, the mutual use of common facilities, technical assistance, and mutual respect. Joint task forces for particular problems are possibilities. Candor requires the acknowledgment that other units may be politically inspired or staffed by incompetent personnel; corruption, too, may be a problem. Obviously, where a Mission Paper must realistically take into consideration such sensitive factors, a certain measure of lack of concreteness would seem to be prudent.

To determine the more specific character of the organized crime problem it faces, the new unit during its formative stages should consider the following:

- sponsor a conference to be attended by knowledgeable members of enforcement units within its jurisdiction. Such a conference should have the added advantage of establishing relationships that may prove beneficial at a later time.

- review media exposés and accounts of matters relating to organized criminal activity in the jurisdiction. In-depth interviews of key reporters is also advised.

- conduct jailhouse interviews. Indeed, a regular program of debriefing prisoners is advisable once the unit is fully established.[1]

- conduct interviews of citizens who take advantage of the illicit markets provided by the underworld.

- in addition to police department intelligence personnel, conduct in-depth interviews with patrol officers who are aware of conditions in the jurisdiction.

- if feasible, enlist the aid of outside professionals who may be able to assist in measuring or estimating and evaluating the extent and impact of organized crime activities.

Almost every investigation that is completed, no matter what the ultimate purpose or degree of success, will add to the unit's understanding of the structure and operations of the underworld within the unit's jurisdiction. Indeed, as investigators and attorneys add to their experience, they will gain new skills, learn new methods, develop new insights, and

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[1]For a debriefing form, see Basic Elements of Intelligence, pp. 74-78 (LEAA 1976, Rev. ed.).

attract knowledgeable sources of information. As a result, it is crucial that the Mission Paper be periodically reviewed and revised.

This standard and a number of others necessarily envision adequate staff resources. As Carl A. Vergari notes, "Shortage of personnel, high case loads, and the press of operational duties [may] make such 'staff' work an unaffordable luxury." Here, as elsewhere, the standards must be read in light of ever present resource limits.

Indeed, too, there is not universal agreement on the need for a Mission Paper. As Robert M. Morgenthau notes:

> This Office does not share your conviction on the utility of the Mission Paper. We prefer to define our public obligations in the Rackets Bureau in general subject matter terms of official corruption, organized crime and labor racketeering, and assess each potential investigation on an ad hoc basis. We find that concrete goals and time tables suggested generally in such a Mission Paper unrealistic in our circumstances. We prefer careful initial assessment and regular monitoring by the Bureau Chief as a control on the effective utilization of resources and personnel.

I.C. Political Considerations

Political considerations should play no part in the establishment of an Organized Crime Control Unit or its hiring policies.

Commentary

Unfortunately, politics has traditionally played a significant role in the criminal justice system. Attorneys general and District attorneys are, in most cases, elected

officials. Consequently, it is little more than a truism to say that they are creatures of politics. Nevertheless, it is also true to say that politics has been the bane of the criminal justice system.

A unit that is established to attract public attention as a ploy to win votes promises little of law enforcement value. Assistant district attorneys hired because of what they did in the last election or whom they know in a patronage system present problems enough in the general administration of justice.[1] In the area of organized crime control, they threaten the success of the program itself, particularly as it impacts on political corruption.

An organized crime control unit established or operated for purely political reasons will be identified as such by other elements of the criminal justice system and knowledgeable segments of the community in both the legitimate world and underworld. Such a unit will not receive the cooperation it needs to survive and succeed.

A politically partisan organized crime control unit will also be particularly unable to deal effectively with corruption in government. All too often, those who owe their positions to the party in power will not impartially or fairly

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[1]Nonpartisan hiring is the standard of the American Bar Association. The Prosecution Function and the Defense Function, A.B.A. Project on Standards for Criminal Justice, §2.3(c) (1971). It was also recommended by the National Advisory Committee on Criminal Justice Standards and Goals, Organized Crime, §1.3, p. 38.

investigate those in power or the activities of the opposition. Even if they choose to conduct investigations and make an effort at impartiality or fairness, their actions will be viewed as "vengeful," or a "whitewash.". Consequently, the first rule of an organized crime control unit should be to be above politics.

In addition, it may be, as Attorney General William F. Hyland notes, advisable to give thought "to the establishment of mechanisms to prevent political reprisals against members of the agency." "Appointments," he suggests, "for specified periods of time and granting tenure to a small number of talented individuals might be considered."

This standard is addressed to the issue of politics in a narrow sense. In a broader sense, however, politics must play a part in the establishment, organization, and operation of an organized crime control unit. Henry Petersen writes:

> The statement is made that political considerations should play no part in the establishment of an organized crime control unit. Clearly, that is incorrect both as a practical matter and as an ideal. The simple fact is that a part of the political or governmental system cannot rise above the system or change its nature. The exercise of substantial political power as in the operation of a system of justice must, in the final analysis, be subject to the political control of the people. What . . . [the standard] is trying to establish is, I think, that unworthy or corrupt political considerations should be guarded against. * * * Clearly, however, honest and effective law enforcement involves the exercise of legal and social responsibilities about which honest people of good will may differ. Those responsibilities should, therefore, be subject to careful scrutiny by appropriate governmental process to insure that they are properly discharged in accordance with predetermined standards of

fundamental fairness and due process.

I.D. Attorney Assignments

Attorneys assigned to head up and to work in an organized crime control unit should be carefully selected to embody mature judgment and an affirmative personality. They should be required to commit themselves to service in the unit for at least three years. Salaries should be commensurate with ability and the added commitment.

Commentary

It is perhaps trite to characterize the qualities that assistants ought to have who head and work in an organized crime control unit. To say that they should be honest, intelligent, articulate, imaginative, dynamic and self-confident and so on is not very helpful. All prosecutors should possess these qualities. Nevertheless, there are at least two special qualities that ought to be sought for in those who work in the organized crime field: mature judgment and an affirmative personality.

The ability to investigate and prosecute organized crime necessarily involves the innovative use of statutes, case precedent and general legal theory. Because organized crime figures can and do hire the best legal talent available, they are often able to frustrate conventional means of enforcement. The creative use of law by the organized crime prosecutor is the only way this challenge can be met.

Moreover, mature judgment is involved, particularly

where the prosecution of public officials is undertaken. Those who would adapt existing legal tools to meet unique and challenging situations must be appreciative of the possible consequences of their efforts. Newly developed theories are certain to be attacked and carefully scrutinized by the judiciary; mistakes will be treated harshly and often with severe repercussions. Since what one office does will affect the potential of others, each carries a substantial burden in making an effort to break new ground.

At the same time, the organized crime prosecutor must have an affirmative personality, that is, a special combination of a constructive imagination coupled with the courage to act. One who is too cautious under the guise of mature judgment will frustrate the efforts of the unit. Particularly in law enforcement, there are always a hundred reasons why some things should not be done. The typical training of an attorney equips him to find those reasons or to invent them. All too often, negativism is an occupational vice of the lawyer trained in the common law. Imagination in determining how something can or should be done consistent with legal restraints is a unique talent. It must be consciously sought out and encouraged in organized crime control personnel. Those who have it must also have the courage to act on it. The "can do" lawyer with mature judgment is, therefore, the sine qua non of the success of the organized crime control unit.

Since the success of the organized crime control unit is dependent on the sustained commitment and accumulated experience of its personnel, those who staff the unit should remain there for a sufficient period of time to make a contribution. Young members of the unit will have to be trained; their usefulness to the unit, therefore, is frankly minimal during the early years of their service. Three years is probably the minimum period of time to make the period of training worthwhile.

Those who have had experience in managing organized crime units differ on an important issue in recruitment. Should young attorneys be brought directly into the specialized unit rather than first allowed some period of maturity in other areas of an office before assignment to a specialized area? One person who commented on the study observed:

> I think it is a great mistake to hire persons without any experience directly from law school. The cases that will be worked on by the organized crime prosecutor are usually always complicated, sophisticated, with many difficult legal and factual issues. . . .[T]he lawyers that. . . [these] prosecutors will face, by definition, are usually the best criminal lawyers in the country. * * * I would, therefore, insist upon a screening process which called for extensive interviews, mandatory prior experience, academic excellence, and required complete financial disclosure of the prosecutor's assets.

Others feel, particularly in the large urban offices, that the experience gained in the first few years in such offices does not equip a young attorney for sophisticated investigations or trial work. Instead, it is too often limited to

plea negotiation or single fact question trials. Given the relatively short total time a lawyer will remain in prosecution, it would be better to give him on-the-job experience in his area of specialization. Here, as elsewhere, there is apparently much to be said for both views.

A commitment of three additional years in prosecutive office should, of course, be reflected in a correspondingly higher salary. Premium pay may be justified by an extra commitment; it is doubtful that the benefit of premium pay otherwise is worth the resentment and feeling of elitism generated in other areas of the prosecutor's office. Obviously, adjustments in the commitment and salary should be made to reflect previous experience or unanticipated personal problems. The three year guide set out here need not be an inflexible rule.

Apart from the question of premium pay, salary levels in an organized crime unit as well as the office generally must be competitive, at least to some degree, with private practice. Where they are not, financial consideration will compel the best assistants, who might otherwise extend their public service, to leave for more lucrative private employment. Where salary levels are not competitive, the economy practiced is false; while new assistants are paid less, their productivity is so drastically curtailed, particularly in sophisticated areas like organized crime control, that more is lost than gained.

I.E. Investigative Resources

An organized crime control unit should have access to an adequate complement of investigators. The complement should include, in addition to those chosen for proficiency in general areas, a number of specialists who have developed expertise in particular areas of organized crime of concern to the unit.

Commentary

An essential premise in the rackets bureau concept as developed in New York County has been the integration of lawyers and investigators in a common effort. Ideally, this is best accomplished if the organized crime control unit has its own complement of investigators. They need not be the direct employees of the prosecutor's office; it is possible to have external units assign personnel to the prosecutor's office. It is also possible, although difficult, to make do with the services of outside agencies on a case-by-case basis. The key point is integrated effort, not integrated personnel, even though the relation between the two is obviously close. Obviously, too, the concrete limitations of time and place will affect the degree to which the ideal may be realized in practice.

To the extent possible, the investigative complement should aim at being self-contained. This increases security, establishes control over priorities, and helps to guarantee resources when required. Thus, while all investigators should

have polished detective skills, some of them should be chosen for other abilities. For example, the unit should have access to recognized experts, able to testify in court, in each of the major organized crime areas that are of concern to the unit--narcotics, gambling, fraud, etc. The complement should also include personnel with the necessary technical skills needed by the unit, including photography and, where lawful, electronic surveillance. Finally, to the extent possible, the investigators should be from diverse ethnic and religious groups, of different sexes, ages, and sizes, and able to speak the languages common to the jurisdiction. More than issues of equality are involved here. Effective law enforcement is made possible when the unit has access to resources flexible enough to take advantage of all types of investigative opportunities as they arise.

I.F. Intelligence Analyst

An organized crime control unit should have assigned to it one or more investigators who are trained and competent intelligence analysts. The intelligence analysts should be specifically and wholly assigned to the compilation, indexing, analysis and dissemination of intelligence relating to organized crime within the unit's jurisdiction.

Commentary

If an organized crime control unit is to develop an appreciation of the problem it faces and to be in a position to evaluate the attainment of goals, it must establish some

systematic method of regularizing the now largely unsystematic approach to gathering, indexing, analyzing, and disseminating intelligence relating to organized crime. At least lip service is given to this fact now in most organized crime units.

Most failures in the use of this approach, however, have been caused by the assignment of a investigator to the "intelligence role" only on a periodic basis, relieving him of those duties, when exigencies required his presence "in the field." Such exigent circumstances, however, tend to occur all too frequently in an organized crime control unit, and the analyst role, therefore, tends to be forgotten. Experience demonstrates that a successful analyst must be full time; his commitment to this specific task must be insured. One practical solution to the temptation to use the analyst in other roles "temporarily" is to choose an individual for the job who is capable, yet, for one or another reason, can no longer be assigned normal investigative duties in the field. An obvious example would be an investigator who, because of injury, now cannot qualify for field duty.

No matter how good the indexing system used by the analyst, or how standardized the system, inevitably much of the intelligence file's usefulness will result from the analyst's personal familiarity with the material it contains and how to use it for maximum benefit. As a result, care should be taken in choosing an individual who would be expected to remain in that capacity for a substantial period of time. Consequently, an investigator who is nearing retirement age

should be avoided.

On the other hand, the ability to analyze, evaluate, and relate raw intelligence requires sophisticaed knowledge of criminal activity. Someone without practical investigative experience or one who is new to the job will probably be largely ineffective. Consequently, a proper balance between youth and age must be achieved. Understandably, therefore, finding a qualified individual may be difficult.

Once the analyst is chosen, he should take advantage of one of a number of excellent training courses available[1], and he should be encouraged to meet other persons with similar positions. Other members of the unit should also be reminded regularly to channel intelligence through the analyst and to avoid the tendency to horde information. In addition, procedures should be developed to insure that raw intelligence is returned to the unit's staff in usable form on a regular basis through intelligence briefings.

It might well be a good idea, too, to secure the services of competent intelligence analysts prior to the establishment of the unit so that they could assist in surveying all available intelligence to determine the extent of the organized crime problem in the particular jurisdiction.[2]

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[1] See, e.g.; Western Regional Training Institute; State of California; Department of Justice; Dade County (Florida) Institute on Organized Crime; Dade County Public Safety Department; Miami; Florida.

[2] The organization and operation of a police intelligence unit is discussed in Basic Elements of Intelligence (LEAA 1976 Rev. Ed.); Organized Crime pp. 121-35.

Finally, one additional comment is in order. Attorney General Bruce E. Babbitt notes:

> [This standard] does not adequately address the relation of intelligence to the investigative and prosecutive functions. The notion, implied in the standard, that one investigator can build and maintain a proper intelligence file is naive. The real question is how to access, coordinate and utilize the vast amounts of intelligence collected every day in all large police agencies.

The Attorney General is, of course, correct. The standard however, only focuses on the prosecutor's office in the context of the organized crime unit. Obviously, the general need for adequate intelligence demands more than one officer. Yet it is remarkable how few organized crime units have even one for their needs.

I.G. Investigative Accountant

An organized crime control unit should have assigned to it one or more accountants experienced in criminal investigations for the examination of books and records.

Commentary

Specialization is the hallmark of an organized crime control unit. One of the most significant areas of specialization is in the "paper chase." Organized crime figures and corrupt public officials have become far more covert and sophisticated in their operations. Today, it is often necessary to trace payoffs and other profit trails through a number of books and records to get back to their source or to follow them to their recipients. Only accountants experienced in

criminal investigations can master the "paper chase." Such accountants are essential, too, in drafting comprehensive subpoenas and presenting complicated financial transactions to juries.

I.H. Training

Attorneys and investigators assigned to an organized crime control unit should, in addition to formal in-house training, take advantage of outside training programs specifically designed for organized crime control work.

Commentary

All too often training in organized crime control work, both for attorneys and investigators, consists of little more than an informal introductory briefing and a somewhat longer, but still too brief period of apprenticeship. More formal efforts must be made to create in-house training capabilities, particularly for attorneys, whose period of service is relatively short compared to investigators.

In-house training, moreover, cannot do the entire job. A number of excellent opportunities now exist to secure training specifically designed for organized crime control work for both attorneys[1] and investigators. Every effort should be made to take full advantage of these opportunities.

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[1] See, e.g., National Association of Attorneys General, Committee on the Office of the Attorney General, Raleigh, N.C.; National College of District Attorneys, College of Law, University of Houston, Texas; The Cornell Institute on Organized Crime, Cornell Law School, Ithaca, N.Y.

Finally, it must be emphasized that training should not be narrowly limited to investigative techniques or law. It should be broadly conceived. The organized crime attorney or investigator must know something about organized crime itself --its social, economic, and political aspects. Management, too, must be included in the subject matter studied. Organized crime investigation and prosecution is more than a policeman's or lawyer's craft; it also involves issues of personal relations, budgeting, resource allocation; planning for the achievement of public policy goals, etc. Given the high turnover of personnel in prosecutive units, it is all the more important that some effort be made to acquire such skills through formal training, since so little time will be available for on-the-job learning through experience.[2]

I.I. Clerical and Secretarial

An organized crime control unit should have assigned to it a sufficient number of clerical and secretarial personnel so that attorneys and investigators are not required to engage in word processing, reproducing, filing, or similar tasks.

Commentary

No organized crime control unit--or, for that matter,

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[2]Training for the organized crime prosecutor is considered in Organized Crime, §9.6, p. 196.

other parts of a prosecutive office, can be called efficient, when its attorneys and investigators do tasks that should performed by persons paid one-half or one-third their salary. Nevertheless, it is not uncommon for attorneys to type, reproduce, and collate legal papers and for investigators to spend innumerable hours typing investigative reports or transcribing recorded conversations. For a unit to operate at maximum productivity, it must have an adequate complement of clerical support personnel.

Similarly, where routine record keeping or record checking is required, clerical workers should be assigned to perform the task. There is obvious room, too, for the imaginative use of para-legals in organized crime control units.

Care should be taken, however, that the use of auxiliary personnel does not result in the loss of investigatory leads or advantages. Sending a clerk to examine a record may result in only specific information being brought back, where a knowledgeable investigator would have recognized other relevant information. Obviously, a question of careful balance is at stake.

I.J. Physical Equipment and Space

An organized crime control unit should have available to it adequate physical equipment and space. Office space sufficient for private work, interviews, interrogations, debriefings, and conferences should be available.

Commentary

Any professional office ought to be adequately equipped and housed. Nevertheless, it is too often not the case. Adequate office equipment should include such items as typewriters, dictating and transcribing machines, all of which are dependable and in good condition. It is doubtful, however, that sophisticated electronic communications equipment is all that necessary. In some units, there seems to be a penchant for James Bond-type gadgetry, facilitated perhaps by the availability of Federal funding; it should be avoided.

Too little thought, moreover, seems to be given to the question of attorney productivity. Housing several lawyers in the same room guarantees endless talk, sometimes about work, but often, too, over current affairs, and perhaps other less worthy subjects. A measure of privacy is required for the preparation of legal documents or for study.

There should also be adequate space for conducting interviews in private. Room must be allotted for storage, for the analysis of subpoenaed books and records, and for listening to recorded conversations. Here, too, it is helpful if room is available for defense counsel to examine exhibits and listen to tapes, without disturbing the routine of the office. If electronic surveillance is lawful and the securing of leased lines is possible, a room for monitoring and recording conversations is ideal. It is helpful also to have a special line not listed to the unit from which cooperating witnesses may make telephone calls that can be recorded.

Finally, the investigators assigned to the unit must have adequate room for the intelligence files, electronic and photographic equipment, etc., and their own special work needs.

I.K. Security Requirements

All personnel assigned to the organized crime unit should be subjected to a rigorous background check. They should be required to make full disclosure of potential conflicts of interest. The housing for the unit should be physically secure, have methods of entrance and exit that permit informants or witnesses to enter, remain, and leave without unauthorized observation.

Commentary

Security in organized crime control work is a double-edged sword. A failure to attain it carries well known consequences; informants and witnesses can get killed. Nevertheless, it is helpful to underline at the outset of a discussion of security that just as often such considerations have been wrongfully used as an excuse for failure to cooperate with other law enforcement agencies or to exclude able people from particular investigations, where they could have made valuable contributions. The result has been duplication, lost leads, and the general failure to achieve important results. Loose tongues, of course, must be avoided, but security must not be made a fetish; in noting the need for security, this standard should not be used to

justify the continuation of harmful and outmoded security practices.

Turning to personnel security, certain basic precautions are important. Organized crime control unit personnel should be given a vigorous background check. Few things are more compromising than the disclosure of embarrassing information about a staff member's past. Similarly, to avoid the appearance of impropriety, all personnel should disclose any potential conflicts of interest, including those which might result from previous employment, relatives, friends, or associates.

Certain other basic precautions would be in order. Papers containing sensitive information should not be left lying around on desks for anyone to see. Attorneys and investigators alike should have a sufficient number of locking file cabinets and drawers; they should develop the habit of using them. An unattended building should be alarmed; phones and conference rooms should be checked periodically for unlawful surveillance devices. Where feasible, dedicated phone cables should be obtained. When a record of persons entering and leaving a building is kept, code names should be used for witnesses and informants.

Since a substantial portion of a unit's work involves the interviewing of confidential witnesses, the debriefing of informants and the grand jury examination of persons not publicly identified, a private entrance to the offices should exist. Where this is impossible, interviews should be conducted

outside the office in alternative location. Even if the unit believes that there is no substantial risk of the identification of informants and witnesses, those persons who seek to hide the fact of their cooperation will more readily appear in a location they believe is secure. A building having an underground parking lot leading to an elevator is, of course, useful; it would also be ideal if the building could be completely taken over by the office.

SEC. II. ORGANIZING AN ORGANIZED CRIME CONTROL UNIT

II.A. Organization of Attorney Work Load

An organized crime control unit should organize its attorney work load so that responsibility for achieving the goals of the Mission Paper is fixed and those responsible can be held accountable. Factors to consider in adopting an organizational framework include when the unit was established, its jurisdiction, and its resources. Any organizational framework adopted should be sufficiently flexible to meet unanticipated situations. It should also guarantee close supervision by experienced personnel of less experienced staff members, easy communication within the unit, and coordination of efforts through comprehensive planning. When necessary, attorney overspecialization should be avoided by utilizing a Task Force approach.

Commentary

Ultimately, the internal organizational framework of an organized crime control unit will depend more upon the personalities and capacities of the head and the staff than any formal organization chart. Nevertheless, it is important to attempt to channel these dynamic relationships and direct them in a rational fashion toward articulated goals. The form of organization that is adopted, too, will depend on a variety of factors--the age of the unit, its jurisdiction (statewide

or county), the scope of its operational mandate (organized crime, organized crime and political corruption, etc.), its size and the size of the office of which it is a part, the source and conditions limiting its funding, etc. Obviously, organizational issues will have to be resolved in a fashion unique to each unit, but generalizations are possible.

The unit's Mission Paper will, of course, set out certain targeted goals. The accomplishment of these goals requires that the unit establish priorities, develop information, efficiently investigate, and competently prosecute. Unless staff members are assigned subject matter or geographical areas of responsibility, those goals are not likely to be achieved. Each assistant will pursue what interests him or what is convenient. He will spend as much time on a project as he believes is necessary without regard to the unit's needs. Cases will be investigated and prosecuted one-by-one, perhaps with a great deal of skill and success. With limited manpower and other resources, however, this is impractical. Each goal must be the responsibility of an individual or group of individuals who must either produce or be required to explain why not. Responsibility must be assigned and there must be accountability.

How that responsibility is assigned is, as noted above, dependent on a number of factors. Alternative possibilities follow:

Ad hoc assignment by unit head: Potential investigations, from whatever source, are routed through the unit head, who determines whether the matter should be pursued. Once he has decided that the case is appropiate for the unit, he assigns it to an assistant. The unit head then coordinates all investigations, determines whether there are areas not being explored, and makes additional assignments when necessary. He must judge the proficiency of the assistant, and he must supervise the allocation of resources to each matter. The system is unwieldly, but useful where there is an experienced and administratively capable unit head, and inexperienced and unsophisticated assistants; it is also probably possible only in small offices. While it is also probably the most common form of organization, it is also most likely the form which contributes least to the achievement of specific goals.

Team approach: Where a number of unit members are sufficiently skilled, the ad hoc system can be refined by creating teams composed of a junior and senior attorney. Supervision of inexperienced staff will be increased and training facilitated. The teams can either be fixed (having the advantages of stability and continuity) or float (an exchange of partners exposed to new techniques and outlooks). As the junior member becomes more able, he can be given primary responsibility in cases of graduated degrees of difficulty. This approach has the added advantage of providing increased manpower when needed to meet deadlines, protection against unavailability due to illness or trial responsibilities,

and continuity when an assistant leaves the office.

Module approach: In situations where there are few experienced attorneys and teams are not feasible, one senior person can supervise a module of three to five less experienced lawyers. The supervisor then becomes "back-up" for each of his assistants, fulfilling the partner role in the team approach. This system is particularly effective in situations where the unit has major areas of responsibility to which each module can be assigned--for example, one module to narcotics, one to official corruption, and one to labor corruption. In effect, the modules become sub-units, whose activities are coordinated by the unit head. The modules need not, however, be given special areas; each can be assigned matters as they are developed on the ad hoc basis. Obviously, if the problems are sufficiently diverse and the manpower is adequate, specialization is the better approach.

Specialization: This is the most sophisticated approach; it is only practical in large bureaus (ten to fifteen attorneys) that are faced with a variety of organized crime problems.

It is premised on the theory that the illicit enterprises controlled by syndicated crime are of sufficient complexity that without detailed knowledge of their operations and structure, even of persons involved, a coherent strategy designed to have a long-term impact on their activity cannot be developed or executed. Expertise is required and must be obtained at the expense of variety. The attorneys and

investigators with whom they work must be as acquainted with the illegal businesses or the illegal aspects of the legitimate businesses, as those who operate them. (It is as if the businesses were a foreign language: the ideal is that they must be able to think in that language without translation.) Clearly, specialization is enhanced if built on natural talents and affinities. Only after they have developed that degree of proficiency can they expect to conduct investigations on a level designed to affect the targeted activity and the underworld figures who direct it. Specialization combined with the team approach, therefore, allows attorneys to have the time to develop expertise, utilize it, and pass it on.

Two final aspects of organization need to be highlighted: communication and flexibility. Any organizational form adopted must guarantee that there will be a maximum degree of communication within the unit. The need to make a concentrated effort to maintain the requisite level of personal interchange varies directly with the size of the unit and its degree of specialization. Too often communication takes place only haphazardly--at lunch, on social occasions, or in other places. To facilitate rational planning and to minimize duplication of effort, each member of the unit should know, at least in general outline and with only rare exceptions, the work and the problems of other members. Membership in an organized crime unit develops unique skills. Seldom can a member of a unit obtain help outside of his unit, and little in his life will have prepared him for his job. It is crucial to the

success of each person's efforts that an active process of legal cross-pollination be cultivated. Periodic meetings should be held to brainstorm common problems, analyze the implications of legal rulings or proposed statutes, and to face together other matters of mutual concern.

Next, the obvious needs to be underlined. Organization is a means to an end; it is not an end in itself. When unusual occasions arise those responsible for the unit must be prepared to let organization slide and get the job done. Organization must, therefore, be kept flexible, but a word of caution is in order: lawyers tend to know little about organization and care less; everything in their professional make-up makes them case-oriented. Flexibility may be a virtue in an organization, but where the organization is staffed by lawyers, it will more likely be a vice.

Finally, another word of caution is in order. As Attorney General William F. Hyland notes, "[A]lthough specialization is the primary benefit to be derived from establishing an organized crime unit, such a course of action presents obvious risks." Specialization may result in insulation, even within the prosecutor's office. Where necessary, therefore, a task force should be adopted in dealing with certain problems. Members of other sections in the prosecutor's office may be assigned, as Attorney General Hyland notes, "to assist in an organized crime investigation or prosecution." "Trial and appellate attorneys," he suggests, "may offer a fresh perspective," when they are not regular members

of the organized crime control unit. Outsiders may also be of assistance in the formulation of "Feasibility Studies" (III.D.) and "Investigative Plans" (III.E.).[1]

II.B. Relationship of Attorneys to Investigators

An organized crime control unit should have a clearly defined relationship between the attorneys and the investigators with whom they work. The relationship may take a number of forms, but the form chosen should give due regard to each person's professional standing, and it should if feasible, place ultimate decision-making authority and responsibility in a single individual.

Commentary

An organized crime control unit can derive its greatest strength from capitalizing on the symbiotic relationship of attorneys and investigators that can be created at every stage of its work. A poor relationship, or one that is dysfunctional, will usually be a guarantor of failure. Few greater issues face a unit, therefore, than the establishment of an institutional structure that insures the mutually advantageous use of each other's necessary talents.[2]

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[1]For a discussion of general management issues in the prosecution of white collar crime, see Prosecution of Economic Crime (LEAA 1976).

[2]One common, but minor source of misunderstanding is ignorance of the structure and policies of differing agencies. Brief orientation lectures would seem to be in order for new people.

In situations where the investigators are police officers, who are not hired by the prosecutor, the crucial problem in developing a workable relationship is line authority. No responsible organizational head can afford to allow subordinates, for whose actions he is ultimately accountable, to be wholly supervised by a person whom he cannot control. This is eminently reasonable. Nevertheless, in an organized crime control unit engaged in a sophisticated investigation of a dynamic organized crime enterprise, communications must often be accomplished quickly (with no time to report to in-line superiors) and investigative determinations made in the absence of a conference setting. Thus, for purely pragmatic reasons, a single person should be given the authority by the prosecutor and head of the investigators to make operational decisions.

That individual may be the attorney in charge (normally designated unit head), a supervising investigator, or a coordinator, who is both an investigator and attorney. While there are advantages and disadvantages for each alternative, crucial factors are the personalities involved, the number of prosecuting or police agencies concerned, and the legal restrictions in the delegation of responsibility. But a decision should be made and adhered to. The person responsible should consult with those who put him in charge whenever necessary and possible, and he should only interfere with normal line authority when circumstances dictate. Finally, he must, of course, be held accountable for his

actions. What is important is that the buck stop somewhere near to the scene of the action, at least for operational purposes.

A more difficult problem arises when the unit works with an outside investigative or other prosecutorial agency on an ad hoc basis. Clearly, line authority will be more rigidly adhered to under these circumstances, and while certain understandings regarding the decision-making process may be entered into, it is unlikely that a single individual will be granted authority to direct the activities of all agencies. These cases are distinguishable, however, from the formation of the unit, since the relationships are transitory, and they will not envision sustained activity in the usual situation.

Obviously, attorneys and investigators engaged in a common effort should be encouraged to deal freely and frankly with one another. To the extent possible, this means that investigators should be able to discuss the case with an attorney when the need arises without previous clearance from his supervisor, while the attorney should be able to speak to an investigator without necessarily going through his superior. In each case, of course, nothing should be hidden from the supervisors, who should routinely be the first

to be briefed. In short, the relationships should be unencumbered, but should be carefully structured so as not to result in embarrassment.[1]

II.C. External Relationships

An organized crime control unit should establish relationships with individuals and institutions capable of assisting in the unit's work. Included in such relationships should be other law enforcement agencies, civil enforcement units, the judiciary, federal and state sources of financing, public utilities, repositories of information, investigative reporters, and business and civic groups.

Commentary

Those responsible for the management of organized crime control units know and understand that the unit has to deal with people on the outside to get certain things done. Unfortunately, these contacts are frequently made on an ad hoc basis; they are often also conducted on an arm's length basis until personal relationships are developed. If these relationships are severed because of personnel turnover, the process must begin again. Obviously, a more sensible method of achieving the necessary cooperation is to identify

[1]For a study on how to set up a multi-agency narcotics unit at the police level, see Multi-Agency Narcotics Unit Manual (LEAA 1976). Setting up a fencing unit is discussed in Strategies for Combatting the Criminal Receiver of Stolen Goods. (LEAA 1976). General issues concerned with managing criminal investigation are discussed in Managing Criminal Investigations (LEAA 1975).

the people and institutions with which the unit must or could profitably associate and establish working relationships with them.

Law enforcement agencies, both criminal and civil, are a prime example. When information or assistance is required by one agency from another, the reaction, in the absence of previous positive experience, is likely to be proper, but curt. And why not? Few agencies can be expected to expend their time and manpower for another without something in return. They cannot always know to what use their aid is going to be put. Where, however, the request is made on the basis of a personal relationship or where an institutional policy in favor of cooperation exists, the reaction is quite different. The phenomenon is well known, and the lesson is clear. Prior to the need for assistance, a relationship would be developed. Some units have succeeded in this area by choosing personnel, who have had personal experience or good contacts in a variety of agencies. The suggestion of sponsoring a meeting between representatives of various agencies is likely to produce a positive result. Attendance at professional-social conferences is a common and effective method. Establishing a policy by which requests by other agencies made to a unit are handled quickly, politely, and helpfully is also advantageous. Finally, the general reputation of a unit in the law enforcement community is a factor worthy of consideration here: if it can be kept high, cooperation can be assured.

Attorneys in an organized crime control unit have a unique role to play with members of the judiciary. As representatives of one side of an adversarial process, they must avoid even the appearance of unfairness and resist establishing special relationships with judges. Yet, as investigators requring ex parte court approval and supervision for certain legal processes, (e.g.,wiretap orders), as counsel to a grand jury impaneled by the court, and as officers of the court responsible to the court for their behavior in litigation that frequently comes before the court, they must, at least to some degree, engage in conduct that may have the appearance of establishing those very relationships.

Subject to a careful effort to avoid even the appearance of impropriety, the head of the unit should see that every attorney is introduced to those judges with whom he will have to deal on a day-to-day basis. The unit head should also arrange with the appropriate judge or court personnel before the occasion arises the procedures to be followed in such matters as ex parte applications for search warrants or wiretap orders, civil and criminal contempt hearings, motions to quash grand jury subpoenas, and the regulation of the court calendar. Where the unit adopts a policy of vigorously representing the public interest at the time of sentencing, the manner of the presentation of information and argument should be worked out in advance. Policy memoranda on these issues can be profitably shared with the judiciary and also made available to counsel as the occasion arises.

Funding for special projects can come from a number of sources. Usually legislative bodies will be involved but the fine art of Federal and state grantsmanship has aided many units in finding money to support their programs. Likewise, organized crime control units which have failed to make their legitimate needs known to the relevant parties have found themselves in financial trouble. One staff member under the direction of the unit leader should, therefore, be assigned to investigate the availability of funds and to prepare applications for grants. The individual should also be prepared to insure compliance with terms of the grants by drafting required progress reports, extensions, applications, and filling out the other seemingly endless forms. Here is one area where the services of a paralegal might be profitably used.

Investigators know that public utilities, particularly the phone company, have information and records that can legally expedite certain investigative procedures, but that at the whim of a clerk can be unavailable when needed. Fortunately, many detectives are facile at developing contacts in these kinds of companies who then provide required services speedily and efficiently. Nevertheless, there are policy-makers who can affect broad areas of discretion, who have to be dealt with on an institutional level. The unit head should insure that the legitimate needs of the unit are made known to these individuals and should maintain appropriate relationships with them for that purpose. Particularly where the law dealing with law enforcement access to third party records is

in transition, every effort should be made to work out with the legal counsel of the company prior to the occasion the procedure to be followed.

The function of an investigative reporter (publicity) may at times be opposed to that of the organized crime control unit (grand jury secrecy). Each should, therefore, respectfully treat each other at arms length. Nevertheless, there are times when they can work together. The reporter can provide leads and even witnesses to the unit and the unit can, by legitimately publicizing a case, give the reporter a good story. Since the local press and media generally assign the same reporters to cover crime stories, the unit and reporters have no trouble meeting each other. What this standard draws attention to, therefore, is the need to think through and control this relationship, so that it does not work to the disadvantage of the unit.

Nevertheless, an emphatic word of caution is in order. As one who commented on the study observed:

> I would only caution [about] the danger of leaks to newspaper reporters and the harm that prejudicial publicity could do not only to investigations but to the credibility of the organized crime unit as a whole. It might be best to . . . have the prosecutors avoid reporters except in dealings concerning a story. . . .

Business and civic groups are also a potential, but much neglected source of aid to organized crime control units. They can, on one side, channel complaints of terrified citizens and identify business trends demonstrating criminal involvement. They can, on the other side, supply "buy" or

"show" money, "stolen" goods, jobs for witnesses and informants, and "cover stories." Attorneys or investigators in the unit, particularly those who are assigned the responsibility of investigating and prosecuting extortionist activities in commercial settings, should, therefore, communicate with appropriate groups and advise them of the unit's concern, interest, and availability. Whenever possible, the unit should provide speakers to such groups to promote such relationships.

A word of caution, however, is in order. As Attorney General Bruce Babbitt notes, "There are a lot of dangers [in supplying money, etc.] and the suggestion [must carry] . . . red flags on it." Such outside help should always be carefully reviewed at the highest level in any office and every effort made to avoid any impropriety.

II.D. Policy Manuals

An organized crime control unit should, insofar as it is practicable, reduce its general policies to written form. These policies should be periodically updated.

Commentary

Policy decisions, especially in an organized crime control unit, should be carefully thought out; they should be the result of the meticulous weighing of conflicting values. As much of the commentary in this study suggests, these decisions will be subjected to second-guessing, and they are guaranteed to be the subject of criticism by those

who are not benefited by them, particularly public officials and their friends and allies caught in a web of corruption. Nevertheless, policy will withstand such attack, so long as it is reasonable on its face and evenly applied. But any deviation from such policy will be difficult to sustain, especially where the deviation results not from reason, but from ignorance of the policy itself

Policy manuals are particularly important in areas where action is lawful, but there is a wide scope to the exercise of legitimate discretion. Attorney General William F. Hyland, for example, notes:

> I would suggest that guidelines concerning the granting of immunity. . . be prepared. Many states have enacted statutes dealing with immunity. From my experience, such immunity laws have greatly enhanced our fight against public corruption and organized crime. Nevertheless, indiscriminate grants of immunity must be avoided. The testimony of those seeking to curry favor with the state in order to avoid prosecution should be carefully scrutinized.

Other apt areas for policy guidelines would include plea bargaining, as noted in III.K. (Sentencing and Plea Bargaining) and wiretapping.

The point must be underlined: when policy is merely lore, to the extent that there are personnel changes in the bureau, there will be ignorance. Investigative procedures are so complex, sound policy considerations so multi-faceted, and ad hoc agreements so informal, that without clear, precisely written guidelines, young attorneys and investigators cannot be relied upon to maintain unit standards. Moreover,

any assistant or investigator wanting to deviate from policy will feel free to do so, in the absence of written memoranda for which he is held accountable. A paralegal, working as an administrative aide to the unit head, might be the ideal person to draft the initial versions of the manuals.

To avoid the common phenomenon, however, of having written rules regulate the office policy for no other reason than that they are written, periodic evaluation of the rules should be undertaken. Where changes in circumstances allow for modification, appropriate adjustments should be made.

Attorney General Hyland also suggests:

> . . . the development of a form book. . . . Indictment, search warrants, affidavits, immunity applications and other documents should be included. Likewise, the unit may wish to maintain a brief bank and develop other methods of information retrieval. A digest consisting of memoranda concerning recent judicial decisions should also be prepared and maintained.[1]

One last caution is in order. Just as these general standards are meant to be implemented in concrete situations, policy manuals and various guidelines for office procedure must be applied in individual cases. Care must be exercised so that there is, as District Attorney Carl A. Vergari notes, no "infringement on the freedom of the prosecutor to exercise his discretionary power to change existing policy or to make exceptions to them." Consequently, it might be a

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[1]The adoption of policy guidelines is recommended by the American Bar Association. The Prosecution Function and the Defense Function, §2.5 A.B.A. Project on Standards for Criminal Justice (1971).

good idea to include appropriate language ("except as otherwise provided". . . "for good reason") that would always leave room for exceptions and preclude criticism for the exercise of good jugement in concrete cases.

SEC. III. OPERATING AN ORGANIZED CRIME CONTROL UNIT

III.A. Strategy

An organized crime control unit should develop a strategy to implement the goals of its Mission Paper. Such a strategy should be based on an analysis of its organized crime problem, its social, political, and economic implications, an assessment of available manpower and other resources, and an estimate of the probable reaction of the various other components of the criminal justice system. Access to outside sources of expertise in the development of such a strategy, including its analytical assumptions, would be helpful.

Commentary

The single greatest deficiency in virtually every organized crime control unit in the United States on the state and local level has been the conspicuous failure to develop comprehensive strategies to address identifiable problems in the organized crime area. Without the formulation and execution of a coherent strategy, impact on targeted criminal activity can be only haphazard. At best, the incarceration of an underworld figure disrupts an individual enterprise until new leadership is established, but the

disruption is often only minimal, and the effect on the general problem negligible.[1]

To be effective, a general strategy, hoping to impact on more than individuals or individual enterprises, must necessarily take into account the long-range implications of daily operational tactics. Ultimate success, if it can be achieved at all, will be the result of years of eroding the foundations of the targeted criminal activity, rather than a number of spectacular investigations ending primarily in headlines for public consumption. It takes foresight and a strong commitment to adopt such an approach, and it may be an approach that only established units can successfully utilize, since relatively new programs must show immediate successes to demonstrate their "effectiveness." It is, however, seriously worth considering.

Essentially, the technique requires that there be an analysis of the targeted activity, an assessment of the available resources, and an evaluation of the probable effects of differing tactical approaches. The example that follows may or may not be applicable to a particular unit--it seeks only to demonstrate the concept:

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[1] This is obviously true where the targeted activity is a widespread phenomenon, and it is the product of a number of enterprises and ventures (e.g. gambling in New York, narcotics in Arizona, theft and fencing in Colorado). Where, however, a single criminal enterprise constitutes the targeted activity (e.g. the major bookmaking operation in Colorado), a single investigation and successful prosecution can effect the desired result. This, however, is rare.

Assume an organized crime control unit is in a jurisdiction with substantial bookmaking activity. It is decided that one goal of the unit will be to reduce the profits that flow from that unlawful business to organized crime. (Note, this is not necessarily identical to the goal of reducing the total amount of bookmaking activity). A sophisticated economic analysis of the available data, a study of the bookmakers currently in business, and review of the history of enforcement, demonstrate that there exists a large number of independent operations, which, aside from the cost of financing, operate on a 2% profit margin. By and large the bookmakers in the area, in short, earn a good living, but do not accumulate capital. The fact that they do not balance their books on each contest (popular belief here, as elsewhere, to the contrary) means that they win certain weeks and lose others. When they lose heavily, they borrow from organized crime loan sharks at 2%-3% per week. The conclusion reached (simplified for purposes of this example) is that major syndicate figures receive their profits indirectly from bookmaking within the jurisdiction, that the true source of income, though dependent on the existence of bookmakers, is financing at usurious rates of interest. Moreover, the loan sharks also lend to losing bettors at 2%-5% per week, providing additional income to the loan sharks.

A unit in this jurisdiction that seeks to attack the syndicate implications of bookmaking by conducting investigations based on leads, establishing probable cause for a search

warrant, executing the warrant and seizing evidence, and indicting the clerks, who are thereafter fined or given minor sentences, will miss its mark (Note that this is the standard approach taken with variations such as the utilization of electronic surveillance, etc.). To be sure, the raids will, in fact, hurt bookmaking operations. Operations will be hurt economically--bad claims will be submitted by bettors, fines will have to be paid, a day's business will be lost, attorneys fees may be substantial. The result, however, will be that the individual bookmaker will suffer, and he will have less capital to buffer losses: indeed, he will be more likely to require mob money to survive--hence, the headline "20M BET RING SMASHED" may well signify a net gain to organized crime.

Based on this analysis, a strategy designed to produce the goals set forth in the Mission Paper would have to aim at the loan shark, not the bookmaker. While it is beyond the scope of this commentary to produce a comprehensive strategy in this area, certainly the following thoughts might be considered:

1) Investigations into bookmaking operations should be directed at operators who are potential informants and witnesses in ways designed to obtain cooperation;

2) Seized records should be analyzed to identify consistently losing bettors who can be interviewed to determine if they are loan shark victims;

3) Undercover officers should attempt to lose money as bettors and agree to be introduced to loan sharks; and

4) Attempts to put individual bookmaking operations out of business should be reserved primarily for those deeply in debt, forcing organized crime to lose its investment.[1]

It is quite clear that such an analysis and the development of a comprehensive strategy based on a multitude of variables requires a substantial commitment by trained individuals. Larger offices and units should devote the necessary resources on a continuing basis. Where this is not possible, because of budgetary or manpower considerations, the services of outside consultants should be secured.

III.B. Allocation of Investigative and Prosecutive Resources

The head of an organized crime control unit should be given the authority to decline to investigate or otherwise transfer out of the unit matters that are of low priority, potentially unproductive, outside the scope of the Mission Paper, or are, for other reasons, unacceptable. Unless unusual circumstances are present, an organized crime control unit should not commit a disproportionate share of its resources to a single matter. Where such circumstances exist, the unit should be able to obtain additional resources on an ad hoc basis so that its operation does not lose balance.

Commentary

This standard addresses the difficult issue of the

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[1] For another strategy analysis see Strategies for Combatting the Criminal Receiver of Stolen Goods, (LEAA 1976). The legal issues in anti-fencing work are surveyed in G. Blakey and M. Goldsmith, "Criminal Redistribution of Stolen Property: The Need for Law Reform," 74 Mich. Law Rev. 1512 (1976)

allocation of resources. It goes to the heart of the meaning of the Mission Paper. Its conclusion is something that few would argue with in the abstract. But abstractions do not exist in the real world. Prosecutors and heads of organized crime control units must face these issues realistically. The success of their unit will depend on proper resolution. Inevitably, the "test case" will arise, and the classic mistake will be made; it is the assignment to the organized crime control unit of an investigation that, because of its importance, complexity, or other unique characteristic absorbs too much of the unit's manpower and resources. The arguments against such an assignment are so compelling that this standard and commentary ought not be necessary, yet this mistake occurs with such frequency that some attention should be paid to it.

The establishment of an organized crime control unit constitutes a recognition that the existence of sophisticated criminal conduct requires a sophisticated response by law enforcement. Specialization, and therefore expertise, is the hallmark of that sophistication. That expertise is concentrated in a number of areas. First, awareness is acquired of organized crime in general and of its operations in such fields as narcotics, professional gambling, theft and fencing, etc. Mastery is then acquired of the substantive law applicable to these activities. Next, and most important in this context, a mastery will be acquired of the techniques available to law enforcement in the investigation and prosecution

of complex and important cases. Ironically, it is this last area of skill acquisition that is the unit's undoing. For whenever an important and complex matter arises, there is a tendency to assign it to the organized crime control unit. What happens then is that the unit is transformed into a special investigative and prosecutive unit. Day-to-day crises will command its attention. Long-term goals, like the control of organized crime, will be put off only "temporarily," but "temporarily" never ends.

The solution is not complex. A separate unit (or subunit) to handle special matters not involving organized crime should be established. Indeed, establishing it might be more important than establishing the organized crime control unit. As was noted at the outset, the rackets bureau concept was itself the outgrowth of a special investigation to deal with a specific problem. The formation of an organized crime control unit does not obviate the need for a unit to undertake special investigations into other areas (i.e. white collar crime or political corruption) or to aid those investigative agencies that require legal assistance. The existence of a general criminal investigation unit and, where required, other specialized units will, therefore, insure a competent handling of a complicated matter without the interruption of specified strategies designed to have impact on specialized areas.

Where the burdensome case is a legitimate rackets investigation, however, it is important that the organized

crime control unit be given additional manpower on an ad hoc basis so as to be able to continue to function in a rational manner. The additional manpower could come from the criminal investigations unit, or perhaps from another section of the office; it is obvious, too, that the organized crime control unit could lend some of its personnel elsewhere on occasion.

The existence of a general investigations unit has other substantial benefits as well. Investigations that are otherwise not appropriate for the organized crime control unit can be referred there. Citizen complaints involving general conspiratorial activity can be handled. Collateral matters emanating from the organized crime control unit or other specialized units' investigations can be pursued. Moreover, cases that are not at first viewed as suitable for rackets work may be developed by the criminal investigations unit and adopted by the organized crime control unit after maturation.

A special word of caution is in order about "political" cases. Investigative tools that have proven effective against organized crime, because they are directed at divulging the existence of conspiratorial activity, have come under attack when they have been used against those who clothe themselves, legitimately or illegitimately, in the cloak of political or religious dissent. Thus, investigative grand juries, eavesdropping, informants, and conspiracy laws, which can be positively viewed when applied in the organized crime field (or, for that matter, against political corruption or white collar conspiracies), are negatively viewed under other

circumstances. Consequently, the more closely anti-organized crime techniques and efforts are associated with the investigation and prosecution of those who commit "political crimes," the less confidence and less support they will have from the public. Where rackets bureaus have been used to prosecute a Black Panther Party, prison rioters, the Weathermen, a Jewish Defense League, etc., they have become correspondingly less effective against organized crime activity. Apart from the merits of such prosecutions, either generally or in special cases, the tendency to use the organized crime unit or its attorneys to prosecute individuals who engage in illegal activities for the purpose of political ideology or religious dissent, therefore, ought to be firmly resisted.

A special word of caution is also in order about political corruption cases. Organized crime work inevitably involves political corruption. Where such political corruption is brought about by organized crime, those investigations and prosecutions belong in an organized crime unit. No one rightly suggests that the investigation and prosecution of any kind of political corruption, however, is not of prime importance; indeed, it is more likely than not more important than the prosecution of organized crime matters. Nevertheless, the head of the organized crime control unit ought to resist the temptation to be drawn into political corruption investigations, particularly where they will commit a disproportionate share of his resources to matters that may be outside his jurisdiction. In individual cases specialized task forces should be

set up or if the generalized and sophisticated character of the political corruption warrants it, a specialized unit should be established.

The new organized crime control unit head, moreover, ought to be frankly warned that often, contrary to popular conception political corruption investigations and prosecutions are not all glory. They are often "no win" propositions. If a prominent public figure is not investigated, a "cover up" will be charged. If he is investigated, but not indicted, he will claim "witch hunt," and his enemies will say "white wash." If he is indicted and not convicted, he and his friends will remember who brought the prosecution. His enemies, too, will remember who failed "through incompetency" to do what needed to be done. If he is indicted and convicted, his friends will remember who engineered the "frame up" or used "unfair" tactics to secure his conviction.[1]

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[1]The point here was well put by Judge Herbert Stern, when he was the United States Attorney for New Jersey:

> There's very little in [the investigation of political corruption] for a prosecutor. When you indict [leading political figures] . . . you are risking as a prosecutor almost as much as they are as defendants. You won't go to jail if you lose, but you may ruin your career, destroy your credibility. You'll be regarded as a fool, an incompetent, a headline hunter. And if you win, you won't have many friends. No man can be a really good prosecutor if he's worried about his personal future. The only way to do this type (continued)

These observations, of course, do not suggest that anyone ought to avoid an investigation into political corruption, but only that they ought to go into them with a full understanding of the consequences, and they ought not be drawn into them out of a false sense that that is where the glory lies. District Attorney Carl A. Vergari rightly wrote of an earlier version of this commentary:

> I am concerned and very uncomfortable with the rather negative and hyper-cautious attitude toward official corruption cases which the standards and commentary convey. Our statement here should be positive in tone, clearly defining official corruption as a matter of highest priority. It is perhaps appropriate that the commentary point out the pitfalls involved in the prosecution of corruption cases. If so, it should also be made clear that there are risks which the prosecutor must be prepared to take. The commentary should explain that such risks can be minimized by establishing and adhering to policies which reflect absolutely impartial fair and even-handed treatment of all such matters.

It takes a prosecutor's office with a substantial foundation of support to withstand the political attack sometimes associated with these investiations. That support can, in short, be developed through a consistently professional record of competence. Disgruntled and vengeful politicians will find

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[1](continued)

> of a job [in the political corruption area] is to pretend that it's the only job . . . [you will] ever . . . have. Friends--you'll have a few. Enemies--you'll have many.

Quoted in P. Hoffman, Tiger in the Court p. 17 (1973).

difficulty, too, in developing support in their opposition against an office widely perceived to be successful in combating organized crime. Ultimately, therefore, keeping the focus of an organized crime control unit on organized crime may well be a good way of fighting political corruption.

III.C. Political Investigations

An organized crime control unit should undertake no investigation for the purpose of affecting partisan politics. Where political corruption investigations and prosecutions are undertaken, care should be exercised that the investigation and prosecutions do not unfairly affect the political processes.

Commentary

This standard addresses a delicate matter. Indeed, Attorney General Bruce E. Babbitt termed it "a little too scary." A decision to divorce the work of the administration of justice from partisan politics is, of course, necessary. Few quarrel with it as an abstract proposition. Unfortunately, not enough follow it as a working precept. The implementation of that decision, however, may have both affirmative and negative implications.

In the opinion of some, it may, for example, involve a careful weighing of the right of the public to make an informed judgment of the integrity of candidates for public office and a duty to avoid unfair and unanswerable innuendoes resulting from official actions undertaken as part of the

administration of justice. Others argue that such a weighing process would be improper. On the one view, therefore, it may involve the postponement of official acts or the public recording of established facts.

Unfortunately, as with so much that has been discussed in these standards, clear guidelines are not always available to indicate the proper method of proceeding in an individual case. Judgment and conscience ultimately are the determining factors. Below are set out examples of how one office, noted for its professional and nonpartisan character, handled two problems, each of which could have had far-reaching political implications. The propriety of these actions may be argued both ways.

1) In 1962, a hotly contested election for governor was to be determined in large measure by the reputation of the incumbent. Prior to the election, a local district attorney had cause to call the chairman of the State Liquor Authority before a grand jury investigating corruption in that agency. By doing so, the district attorney, who was of a different political party than the Governor, could have caused the Governor great embarrassment, putting him in the untenable position of either supporting a potentially corrupt official, or disavowing his appointee, without any resolution of the issue possible before the election. Instead, the natural tempo was altered, the investigation was not abandoned, and it ultimately resulted in a number of important convictions, including the state chairman of the political party of

the Governor.

2) In 1943 the same district attorney, pursuant to court order, intercepted a conversation between a newly designated candidate for a judgeship and a notorious underworld figure, in which the candidate pledged "his undying loyalty" to the mob chieftain. In this situation, the district attorney lawfully arranged to release the tape and transcript, allowing the candidate to rebut its existence or its implications prior to the election. Despite the wiretap, the candidate was elected.

In fact, as noted above, in each of these cases good arguments could be made for handling the matter in an alternative fashion. The significance of this standard is that the problem is real, and it must be thought through. Ultimately, the standard rests on the generally accepted principle that decisions in this area ought to recognize that the criminal process should not unfairly impact on free elections. On the one hand, the integrity of the investigation must be maintained. On the other, the election should be left free. If possible, an effort ought to be made, therefore, to prevent unresolvable charges from being unfairly levelled against candidates. The criminal process, to the degree practicable, must be operated to preserve First Amendment freedoms. Too often in the heat of battle, politicians want the political ammunition; newspapers, usually champions of the First Amendment, want the story. Investigators and prosecutors must have the courage to stay out of politics.

No standard proposed by this study occasioned, however, as sharp a disagreement as this one when it got down to specific cases. Judge Herbert Stern, for example, wrote:

> The prosecutor should vigorously investigate any credible indication of wrongdoing by any public servant regardless of the person, the party or the presence or absence of a political campaign. The prosecutor has no business "weighing" the public right to know against the candidate's right to run unfettered by an investigation. The assertion that such a judgment is desirable is incredible. There simply is no weighing to be done (Emphasis in the original).

Judge Stern's position--full steam ahead, let the chips fall where they may--has much to recommend it. Nevertheless, it may overstate the issue. Investigations must, of course, be pursued--whatever the consequences. But the real issue is how and when. Judge Stern is not correct, moreover, when he states that there is no weighing to be done. His real point must be that the duty to investigate so far outweighs the need for free elections that the duty to investigate always tips the scale. Put in such absolute terms, he is, of course, correct. But the standard ought not be so read.

As noted above, the issue is not whether--but how or when--where there are choices available. (Where the integrity of the investigation requires that it go forward, and if it goes forward, it will unavoidably result in publicity, there is no choice.) But where the investigation will not be hindered by delay, or where there is an alternative method

of going forward that avoids publicity (and publicity may well be unanswerable and unfair), it is the judgment of some that the prosecutor may well have a paramount duty to leave the electoral process alone. Postponing the issuance of the subpoena in the liquor investigation, therefore, was a proper course of action.

Having presented both specific perspectives on this issue, it should, of course, be added that neither so clearly commands adherence that the other may be said to be wrong. Once again, the purpose of the standard is to cause thoughtful analysis; agreement is not its objective, certainly not on its concrete implementation.

Finally, all concur that where the investigation must go forward, the prosecutor has a duty to counter unfair publicity; he should never contribute to it. As Attorney General Babbitt notes, if a witness must be called before a grand jury, unfair publicity may be counteracted "by reminding the press of the nature of the proceeding and cautioning that in many cases a witness may be called to assist in developing the case." Judge Stern adds:

> When I was United States Attorney, I regularly announced indictments and I invariably reminded the press (including the electronic media), that the indictment I was announcing was only an accusation and that the individual was presumed to be innocent of the charge. This may be viewed by some as good advocacy. It is in any event good law and good morals, and the two need not and do not diverge.

Indeed, the duty to avoid publicity is part of a prosecutor's professional responsibility.[1]

III.D. Feasibility Studies

An organized crime control unit should develop a feasibility study procedure for evaluating matters for investigation in light of the strategy designed to implement the Mission Paper.

Commentary

This standard is a necessary corollary to III.B., (Allocation of Investigative and Prosecutive Resources) supra. Assuming a matter does not fall outside of the Mission Paper it does not follow that it ought to be handled. Given severely limited resources, a strategy can only be made to work by undertaking those matters which offer a legitimate potential of yielding specifically desired results. Since one by-product of most investigations is the development of leads in reference to other matters, a unit that is operating in a problem area will usually be in a position to choose from among many possible new matters, and it must develop the ability to isolate the most promising course of action.

One method of making this choice is a feasibility study: an examination of the proposed investigation by considering the probable consequences of alternative methods of

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[1] The Prosecution Function and the Defense Function, §1.3 A.B.A. Project on Standards for Criminal Justice (1971).

investigation. If the investigative methods available are not feasible, or the probable consequences not productive, the proposal should be abandoned, or at least shelved until there is a favorable change of circumstances. For example, a study might be undertaken to determine if for purposes of the bookmaking-loan sharking illustration, supra III.A., (Strategy), an undercover officer could attempt to borrow money by pretending to be a handbook at a local bar. Backgrounds of bar owners or bartenders could be examined for the purpose of selecting one who would be likely to cooperate. Surveillance in several locations could be instituted and attempts to execute search warrants made to obtain and to analyze records disclosing the size of wagers accepted by handbooks in the area. The results might well demonstrate that a suitable location could not be found or that a local handbook could not convincingly claim to have lost enough money to require a large loan. In either case, the plan would not be likely to succeed, and an alternative proposal should be considered.

Clearly, such an elaborate feasibility study need not be undertaken for every proposal. Most can be evaluated by skillful and "street-wise" attorneys and investigators. Appropriate recommendations can then be made. Nevertheless, the feasibility study concept is a valuable method of conserving resources on what might otherwise be an unprofitable, purely speculative venture.

There are occasions when the organized crime control

unit might well consider undertaking investigations that would not tend to advance a specific strategy. Newer units might well decide to "make cases" that are likely to receive substantial publicity to demonstrate their "effectiveness" and to provide a basis for refunding. Certain matters, too, may have an important symbolic value, and they should be considered for that purpose. Indeed, one strategy to be employed might well be symbolic impact, particularly where current and likely resources preclude any realistic hope of having a real impact. Still another reason for undertaking a nonessential matter might be to cooperate with an agency to provide a basis for future mutual aid.

The existence of a criminal investigations unit, see supra III.B., Allocation of Investigative and Prosecutive Resources, would be of value in allowing the organized crime control unit to concentrate its efforts in pursuing its more specific interests. Collateral matters, not directly relevant to rackets work, would be transferred from the organized crime control unit to the investigations unit (e.g., perjury committed by a non-target, a minor fencing operation discovered in the course of a narcotic investigation, etc.). Thus, the tendency of organized crime control unit assistants to personalize cases, to seek to prosecute an individual because he "deserves it" and not because it would further the unit's work, could be overcome. Justice could still be done, but

the specific areas of responsibility kept in perspective.[1]

III.E. Investigative Plan

An organized crime control unit should not proceed with the investigation of a matter in the absence of a formal investigative plan jointly developed by the attorneys and investigators assigned to the matter. The plan should propose alternative modes of investigation, evaluate their relative merits, and identify and resolve potential legal and other problems associated with them.

Commentary

Previous standards have noted the need to develop and pursue a comprehensive strategy, undertaking only selected matters that would advance that strategy. Similarly, an investigative plan should be formulated to direct an appropriate investigation so that it provides results consistent with that strategy.

Most potential investigations are, at the beginning, amorphous, offering several possible approaches and a variety of possible outcomes. Unless there is, at the inception, a general, but realistic idea of what the investigation should produce, the initial steps taken may well preclude desirable and otherwise attainable goals. Moreover, without a written

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[1] For an example of a study of a general criminal justice problem that would come close to being the beginnings of a paper that would lead to the drawing up of feasibility study, see Combatting Cigarette Smuggling (LEAA 1976).

plan as a constant reminder of the objectives, the tendency to pursue tangential leads of short-range interest will not be held in check, and it will result in a dilution of effort and resources that should be directed toward accomplishing the primary goal.

Assume, as in III.A.(Strategy) and III.D. (Feasibility Studies), that it was practical to use an undercover police officer posing as a handbook in a bar to borrow money from a loan shark. A purposeful default on a small loan by the undercover agent to determine if the loan shark would use threats of injury would preclude him from proposing the loan of a much larger sum to meet the loan shark's "money man." Similarly, if the undercover officer noticed that liquor from the bar was being diverted to an "afterhours club," an investigation into alcoholic beverage control violations would drain needed manpower and result in a less successful loan sharking case. It would be better to leave the "spin-off" matter for another day or refer it to another agency for investigation. If, however, the spin-off investigation involved corruption in the state agency regulating the liquor industry, the decision to pursue that matter at the expense of the loan sharking case would probably be in order.

The investigative plan need not be inflexible. Changes should be made in it, in conformity with the overall strategy, as increased knowledge of the matter presents new opportunities. Neither should the plan be too specific. It is enough if it notes the potential targets, alternative modes of conducting

the investigation, the consequences and relative merits of each, and an analysis of legal and other difficulties that could be expected to be encountered.

The development of an investigative plan is especially important in situations where electronic surveillance is a potential source of evidence. The requirements that all conventional means of investigation be considered before electronic surveillance be employed [(18U.S.C. §2518(3)(c)] and that surveillance not be authorized for a period of time longer than that necessary "to achieve the objective" of the investigation [18 U.S.C. §2518(5)] clearly envision the careful and critical evaluation of alternative methods of investigations and the formulation of an investigative "objective," even if they do not require the preparation of a written investigative plan. A properly prepared investigative plan, therefore, can serve as the basis for identifying the objectives of the investigation and its subjects and for demonstrating the need to use such an extraordinary means of evidence gathering for whatever length of time is necessary.

Concern was expressed by some of the evaluators and those who commented on the study that the discovery of an investigative plan by a criminal defense attorney might, in Jeremiah McKenna's words, "provide grist . . . for cross-examination." Judge Stern observed: "The existence of the plan, if discoverable may give rise to unjustifiable inferences; that there has been a deviation from the norm for some nefarious purpose." These concerns seem unreal. Whether or

not the "plan" is written or carefully thought out, it will have to be formulated; testimony can always be taken from the lawyers and investigators who conducted the investigation. No one suggests that they not tell the truth. If anything, the written plan will establish the motivation that guided the investigation by a contemporaneous document; it will not be necessary to reconstruct it from possible faulty memory. The honest prosecutor, therefore, has nothing to hide; he should not unreasonably fear criminal discovery here anymore than elsewhere.

III.F. Implementing the Investigative Plan

In the operation of an organized crime control unit, primary responsibility for the implementation of an investigative plan should be assigned to investigators. At every stage in the implementation of the plan, attorneys in the unit should be in a position to assess the legal implications resulting from a choice of tactics and to influence the investigative decision-making process on that basis.

Commentary

To say the "cops investigate and the lawyers practice law" does little to resolve the problems inherent in the complex decision-making process required to implement an agreed-upon investigative plan. At the extremes, that maxim is probably true. The number of cars to be used in a surveillance is essentially a matter that a trained investigator

is more competent to decide and a question to which a lawyer has little to offer. On the other hand, whether there is sufficient probable cause to support an application for a search warrant is generally a decision for a lawyer to make. Yet, even in those examples, situations can be envisioned in which a joint analysis would be beneficial to the ultimate investigation.

All questions, however, do not admit of ready solution. Does it make more sense for a lawyer or investigator to choose the proper time to confront a potential witness in an organized crime case? Who decides how he should be confronted? Who decides what he should be told? These questions are without theoretical answers, and it helps little to classify such issues as legal or investigative to reach a correct conclusion. Each is a tactical decision with legal and investigative aspects, and they exist in a form unsuited to abstract analysis.

This problem is not unique to police-prosecutor relationships. Two investigators working together may disagree on tactics, and two attorneys on the same case certainly would disagree. But the problem is exacerbated in this situation because of the different training, objectives, areas of competence, and particular viewpoints associated with these two professions. Police traditionally wish to solve crimes and make arrests; prosecutors seek the greatest amount of legally competent evidence available and convictions. Police deal with a substantially greater case load than prosecutors,

and they have to adjust to doing the minimally acceptable amount of work on each in order to do something on all. Prosecutors who read suppression ruling after suppression ruling tend to be cautious and conservative, adopting an "it can't be done unless it's been done before" attitude. Additionally, unless each "speaks the other's language" and learns to ask the right questions, a failure to communicate in a meaningful fashion results.

The standard here adopted suggests the minimum degree of cooperation necessary. It talks in terms of "influencing the decision-making process." In fact, that is probably the most that can be hoped for in most situations, especially if the investigators are not the employees of a common head. What is required then is a healthy respect for each other's abilities and points of view and a commitment to accommodate each other's professional needs.

III.G. Utilization of Methods of Investigation

In the operation of an organized crime control unit, the investigators would be prepared to utilize all lawful and practical methods of investigation. Procedures should be established to insure the availability of the necessary manpower and other resources. A manual addressing the technical and other problems inherent in each method and setting forth standard operating procedure should be developed and periodically updated.

Commentary

The great advantage of the organized crime control unit is its ability to have attorneys and investigators interact in appropriate circumstances, utilize all legally sanctioned investigative techniques immediately and surely, while methodically, yet expeditiously, carrying out a thoughtfully conceived investigative plan. To do this, it is essential that the unit have experts in every field of criminal activity that it plans to pursue. Where this is not the case, important leads will be lost because of the inability of the unit to recognize significant bits of information and to capitalize on investigative situations.

The units should, for example, be prepared to have agents assume undercover roles on short notice. That means that all officers cannot be 6 feet, 190 pounds, with short dark hair. I also means that officers suitable for undercover work (often single, with back-up stories, etc.) should be segregated from normal police activity such as search and seizure, arrest, testifying, etc. where their names and faces may become known. Of course, having their previous exploits and pictures appear in local newspapers or other media outlets should be avoided.

All too often the advantages of an organized crime control unit are not realized, not because of the concept itself, but because of errors in implementation. Jurisdictions that are the loudest in citing the need for court-ordered electronic surveillance and consensual recording often fail

to realize their full potential because of shoddy, outdated, overworn, and ill-repaired equipment which, for all intents and purposes, is unusable. The results are often broken or inaudible tapes that cast doubt on the integrity of the recording process, instead of giving incontrovertible proof of the crimes under investigation.

While this commentary cannot be an investigator's handbook relating the techniques that ought to be employed, the unit should have for its own use clearly written guidelines dealing with its own internal procedures, as noted above in II.D. (Policy Manuals). This is especially true in situations that, because of their very nature, are likely to be scrutinized in the future. Informant control and the periodic or special payment of money for information is one example. Inventory of property and chain of custody of evidence are still other examples. Any procedure that may become the subject of court hearings--wiretaps, immunity grants, etc. should be routinized with standard operating procedure memoranda written, distributed, read, and referred to by those who are charged with its implementation.

III.H. Prudential Limitations on Methods of Investigation

In the operation of an organized crime control unit, no investigative tactic should be used, notwithstanding its lawfulness, if the consequences would gravely damage the unit's reputation and seriously impair its ability to operate, or probably result in the enactment of undesirable law.

Commentary

This standard is a necessary corollary to III.G. (Utilization of Methods of Investigation). To be sure, an organized crime control unit should use all lawful methods of investigation. No legal quarter ought to be given to organized crime. Nevertheless, everything that is constitutional or lawful is not wise. One of the finest aspects of the art of the management of appellate litigation is the ability to choose to present an issue to an appellate body only where it will be seen in the context of compelling factual circumstances. Similarly, it is wise to avoid pressing a legally sound position in an appellate or a legislative context, where the appellate court or legislature might well view it as an attack, not on organized crime or political corruption, but on the prerogatives of the court or legislature itself.

Two issues come to mind to illustrate the point: the simulated case as a technique for investigating corruption, and one-party consent recording. Apart from the merits of legitimate controversy over the propriety of the use of these two techniques of investigation, it has been suggested, not without some ring of plausibility, that their use against judicial and legislative corruption has been a factor in some of the judicial criticism and restrictive legislation

that has resulted.[1] The merits of these two issues are not what is in point here. The purpose of the standard is to draw the attention of those in organized crime control work to the need for prudence. Consequently, where it can be reasonably foreseen that the use of a lawful technique will injure the unit more than it advances the investigation, it ought to be avoided, or not pressed to the limits of its rationale at least in that instance.

Having argued that there might well be prudential limitations on the use of lawful tactics, an additional word is in order. To the degree that this limitation stems from public misconception, the organized crime unit ought to do its part in helping to educate the public. Relationships should, for other reasons, (see supra II.C., External Relationships) be established with business and other civic groups. Speeches at dinner and other meetings could well be used to make clear the circumstances when certain techniques are lawful and when they are not, so that a technique will not be unthinkingly condemned in a blanket fashion.

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[1]See United States v. Archer, 486 F 2d 670 (2nd Cir. 1974); Nigrone v. Murtagh, 46 A.D. 2d 343, 362 N.Y.S. 2d 513 (2nd Div. 1974). (The issue is considered in Organized Crime §1.10, pp. 52-53); testimony of J. Thompson before the National Commission for the review of Federal and State Laws Relating to Wiretapping and Electronic Surveillance, 2 Comm'n. Hearings pp. 965, 966-68 (1976). (Ill. General Assembly passed restrictive legislation after members placed under surveillance and indicted); testimony of W. Phillips, id. at 973-74, 982 (1976) (Legislature passed restrictive legislation after special corruption prosecutor was appointed).

III.I. Uses of the Products of Investigations

An organized crime control unit should, consistent with legal constraints, make all practical use of the information it obtains in the course of investigations. Where appropriate, such information should be made available to grand juries for grand jury reports, legislative bodies for hearings and legislative proposals, and to researchers for research and public education. Civil use should also be made of the information, either by the unit or others within the prosecutors office, or other agencies with the appropriate civil jurisdiction.

Commentary

While an organized crime control unit is essentially an arm of a prosecuting agency, which should be primarily concerned with criminal prosecutions, there are a number of important and legitimate roles that it can play outside of the grand jury or courtroom. Grand jury reports, where lawful, can be, for example, a significant device to draw public attention to crime conditions existing in the community, maladministration in public agencies, and defects in legislation. Legislative bodies, too, have need of the specialized information and expertise of organized crime units in setting policy and otherwise enacting legislation. Finally, unless that specialized information and expertise is to remain the exclusive property of public agencies, there is a need, subject to carefully framed privacy and other

restraints, to make it available for research by competent social scientists operating in the context of colleges and universities.

It would be a mistake, too, if the organized crime unit failed to make use itself of all available civil remedies applicable to organized crime control. Organized crime control units that are in an attorney general's office with civil jurisdiction should be, for example, singularly able to utilize civil remedies that might facilitate the enforcement of particular rulings against designated offenders. They generally can enforce regulatory statutes, instigate license revocation proceedings, enjoin the operation of illegal businesses, etc. Moreover, given their jurisdiction, and the power to operate criminally or civilly, any strategy that they employ can be designed to take advantage of this ability. In units solely having criminal jurisdiction, information that is developed that would aid agencies in pursuing civil enforcement techniques should, of course, be routinely made available to the appropriate bodies.

III.J. Trial Assignments

An organized crime control unit should, where investigating attorneys try their own cases, make trial assignments to insure the capable prosecution of the case and its related hearings, while minimizing the impact of court proceeding on ongoing investigations. Where such attorneys

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do not try their own cases, provision should be made for the investigating attorney to influence the trial decision-making process. The trial of routine matters should not be permitted to interfere with the work of the unit.

Commentary

One of the most vexing problems involved in the management of an organized crime control unit is the administration of the indictments that result from its investigations. The basic dilemma occurs because the work of the unit is ongoing, and the expenditure of the time necessary to prosecute a case properly requires a corresponding reduction in the allocation of resources to investigations then in progress. Many of those who evaluated or commented on this study termed it: "irresolvable".

The advantage of having the investigating attorney prosecute is, however, great. He is in the best position to evaluate evidence and witnesses, recognize potential problems with either, minimize the impact of surprises and changing tactics by the defense, and with his command and knowledge of the facts of the case, to cross-examine adverse witnesses in the best possible fashion. Moreover, because it is "his case" he is more likely to devote that "added effort," which a trial assistant cannot do for every trial.

Nevertheless, these advantages must be weighed in the balance with other considerations. The investigating attorney may be a potential witness in either the trial or

pretrial hearings: he could thereby be disqualified. He may, moreover, have become so involved in the case that although not a witness, his credibility is necessarily in issue. His knowledge of the case may also make him blind to problems with the presentation of the direct case and less than objective in the handling of the entire prosecution. As noted before, he is probably also involved in other investigations, which will suffer if he devotes the necessary time to preparation, motions, hearings, and trial of another matter. Here, too, there are no easy solutions or no "right ways". On the other hand, some system must be developed for allowing investigating attorneys to try at least some cases, for their development as attorneys. The ability of a lawyer to evaluate evidence for use at trial is dependent in important ways on having had experience in presenting evidence at trial.

Part I of this prescriptive package shows that different approaches have been tried to resolve this issue:

1) assistants try cases they "make"
2) the organized crime control unit is divided into investigating and prosecuting sections, and
3) cases made in the unit are transferred into a trial unit.

Subject to the caveat that investigating attorneys must have and keep up-to-date a measure of trial experience, nothing in the experience of existing units indicates that any one of these methods is markedly superior. Consequently, the choice

made in the particular unit should depend on other factors including the unit's internal structure, the available manpower, the caseload, and the existence of other individuals in trial units in the office competent to handle indictments involving organized crime.

As a general rule, the unit should retain and try, when this option is open to it, only those cases in which it has a special interest, either because of the legal theory, the particular defendant, or the complexity of the evidence. Other, more routine matters, to the extent possible, should be given to trial units to be handled as normal indictments, so as to limit the loss of manpower for routine unit work.

Where the internal structure of the unit is arranged in terms of teams or modules [see II.A. (Organization of Attorney Workload), supra] then those matters retained by the unit for trial can be handled by a knowledgeable, yet not intimately involved assistant, who can be backed up in his investigatory duties.

One final caveat must be made. It is possible to separate the investigative and prosecutive function within one office. The difficulties that are engendered by the separation can be overcome, mainly because one office can have a common head and esprit de corps. Nothing that is said here should be understood as approving the practice of separating the investigative and trial functions between different offices. While it can and has been accomplished,

the difficulties it poses are generally not worth whatever advantages might be gained by that kind of specialization. The unique promise of the organized crime control unit is that it integrates functions. Efforts to separate them, therefore, should be resisted. Only where constitutional or legal restraints exist that cannot be overcome should such separation be tolerated; it certainly should not be pointed to with pride.

III.K. Sentencing and Plea Bargaining

An organized crime control unit should make an effort to secure appropriate penal dispositions in prosecutions that it brings. Use should be made of all special sentencing procedures applicable to organized crime control work. Strict plea bargaining guidelines should also be adopted and adhered to.

Commentary

Next to lack of strategy, the most common single failure in organized crime control units is a failure to pursue sentence as vigorously as they pursue evidence.[1] Ironically, the rackets bureau concept originated because of the recognition that there was a need to create a legal outreach capacity within the process of investigation to secure evidence; yet organized crime units have been singularly unimaginative in creating a similar outreach capacity in securing appropriate penal dispositions in prosecutions where they achieve convictions. Because of the importance of this issue, Appendix B, infra, contains a detailed legal memorandum covering the general legal principles applicable to sentencing. It shows that there is considerable room for the organized crime control unit

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[1] On the role of the prosecutor at sentencing, compare The Prosecution Function and the Defense Function §6.1, A.B.A. Project on Minimum Standards for Criminal Justice (1971) (Severity not general index of effectiveness), with Organized Crime pp. 163-80 (major organized crime offenders to maximum sanctions).

lawfully to bring to the attention of the sentencing court those considerations that might result in longer terms of imprisonment, higher fines, or the imposition of other appropriate conditions of probation that might have a positive effect on organized crime control.

Sentencing also raises the question of plea bargaining.[2] Advancement of the unit's general strategy will be of paramount concern in the determination of guidelines for the disposition of indictments. In addition, the number of indictments and ability to try cases must be considered. Thus, the decision to indict may well depend upon the policy established by the unit regarding the decision to engage in plea bargaining and what general policy guidelines the unit should follow.

At best, plea bargaining issues are difficult to resolve. The general controversy in the literature was reflected in the comments of the evaluators. Judge Herbert Stern, for example, was generally opposed to it, while District Attorney Carl A. Vergari and Attorney General Bruce Babbitt had less rigid views. Nevertheless, some

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[2]See generally, Task Force: The Courts, President's Commission on Law Enforcement and Administration of Justice, pp. 10-11 (1976); Pleas of Guilty, §3.1(a), A.B.A. Project on Minimum Standards for Criminal Justice (1968). Particularly useful, too, is the comprehensive and sensitive discussion of the plea policy followed by the Watergate Special Prosecution Force: Report pp. 41-49 (1975). Not all authorities agree that plea negotiations are wise. See National Advisory Commission on Criminal Justice Standards and Goals: Courts §3.1 (1973) (abolish by 1978).

generalizations can be offered. Newly formed units, for example, should probably agree to more liberal pleas than a well-established unit. The new unit can ill afford to spend a disproportionate amount of time on trial. Assistants will probably be relatively inexperienced: there will be a great deal of novel motion practice; and because of the media interest, failures or acquittals will be magnified. Here, as elsewhere, there is more than one school of thought. Attorney General Babbitt observes:

> I . . . disagree with the notion that newer units should do more plea bargaining. The reverse is probably true. New units need credibility with the criminal defense bar and they get it by going to the wall and winning. Better advice would be, "New units should be especially careful to prepare cases that are winners."

On the other hand, as a unit gains in experience and viability, it will be in a position to strengthen its position and insist on a particular plea in the absence of cooperation by the defendant. By maintaining a consistent plea policy, the unit will be viewed as a totally professional operation that usually secures convictions when indictments are returned. In that sense, the plea policy is self-effectuating when a defense bar understands that a plea to the court required is the rule, not the exception. In order for this type of program to work, however, the decision to abide by the guidelines must be firm, and hence, the decision to require a specific plea must be made prior to the indictment. If extenuating circumstances are present--circumstances that would warrant a

plea to a lesser count--then that decision should be made before formal charges are laid. Thus, a formal indictment memo should be prepared in all cases, analyzing the charges, legal and factual problems, and trial issues. Where serious questions as to ultimate success exist, consideration should be given to a negotiated settlement before indictment.

Where, however, the indictment is of importance, and because of public scrutiny and potential impact on the public's faith in the system a plea to a lesser count should not be offered, the unit must be prepared to litigate and lose a case. This may also be true in situations where an otherwise indicated plea would do nothing to advance the unit's strategy, while a conviction of a serious crime might.

III.L Parole

An organized crime control unit should establish a system for determining the dates that a convicted defendant is to be interviewed for parole and should routinely prepare carefully documented position papers on parole that detail the defendant's history, his role in the commission of the crime for which he was convicted, and his relationship to the organized crime problem.

Commentary

Just as it is important that proper sentences be imposed in organized crime cases, it is important that they be carried out. Just as courts can find organized crime control unit input helpful at time of sentence, parole bodies can find

such input helpful at time of parole. This, too, has been an area where units have generally not followed through on investigative and trial work. It need not continue.

III.M. Outside Evaluation

An organized crime control unit should undergo not only internal evaluation on a continuous basis, but also periodic outside evaluation.

Commentary

Evaluation of organized crime control work is at best difficult.[1] Objective measures of impact do not exist in the criminal justice system generally. It is difficult if not impossible to attribute any changes in patterns of criminal behavior to modifications of parts of the criminal justice system. Too many other factors potentially play too significant roles. Nevertheless, it is possible to assess the efficiency of individual criminal justice units; if impact cannot be measured, at least the relation between input to output can be determined. Some practices are obviously counter-productive, and they should be discontinued. Modest goals can be set for parts of the system, and efforts can be made to assess how well the unit is working to achieve such goals. Organized crime control units, therefore, should be

[1]In recognition of this difficulty, the National Advisory Committee on Criminal Justice Standards and Goals recommended a series of annual public reports by prosecutors in the organized crime area. Organized Crime §2.5, p. 71.

continuously under review internally. Mission Papers should be reconsidered. Strategies should be reformulated. The overall operation of the unit should also be evaluated periodically by knowledgeable outsiders; those in charge of the unit should not be placed in the position of having to be a judge in their own cause.

How often that process ought to be undergone, however, is not clear. Everything cannot always be held in suspension. Sometimes things must be tried long enough to see if they will work. A constant rearranging of programs bespeaks of lack of planning and courage. An outside review that takes place every two years, but takes into consideration long-term projects and goals would seem to be in order.

The recommendation that an outside review be undertaken also has its difficulties. Jeremiah McKenna writes:

> [I]t raises real questions about access to confidential data and to whom is the evaluation report rendered. The question is even more pertinent where the prosecutor is an elected official answerable only to the electorate. There is a delicate balance to be struck between confidentiality and the right to privacy of the subjects of an investigation versus the need for an appraisal of the prosecutor's execution of his responsibilities.

District Attorney Carl A. Vergari adds:

> No standard for outside evaluation should be adopted without also establishing very strict standards with respect to what individuals or agencies conduct them. The bare statement . . . without limitation . . . would make it most difficult for prosecutors, with credibility, to resist attempts to "evaluate" . . . by [the] inimical and politically motivated . . .

> seeking to get some improper handle on the prosecutor's office. The commentary might cite as an example of a suitable evaluating agency the National District Attorneys Association, which does provide "technical assistance teams" composed of qualified prosecutors.

There is no ultimately satisfying way to resolve these difficulties. Nevertheless, their recognition is the first step, and in concrete cases, some appropriate compromises can be worked out.

THE CORNELL INSTITUTE ON ORGANIZED CRIME

Established in 1975, the Cornell Institute on Organized Crime is a joint program of the Cornell Law School and the Law Enforcement Assistance Administration. Its objective is to enhance the quality of the nation's response, particularly on the state and local levels, to the challenge of organized crime by:

- establishing training seminars on the investigation and the prosecution of organized crime and on the development of innovative techniques and strategies for its control,
- preparing, updating, and disseminating manuals on the law and procedure relating to the investigation and the prosecution of organized crime,
- sponsoring scholarly and empirical research on organized crime and the techniques of its social control through law, and publishing and disseminating such research,
- developing an organized crime library collection and a legal research bank and creating a comprehensive bibliography and index.

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