

Summer 1932

Report of Committee on Mercenary Crime

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Recommended Citation

Ernest D. MacDougall, William D. Knight, George A. Bowman, Report of Committee on Mercenary Crime, 23 *Am. Inst. Crim. L. & Criminology* 94 (1932-1933)

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jails and substitute for them country homes, where persons held for trial, or sentenced for a short term, could live healthful home-like lives and have an opportunity, to earn their support.

Municipal prisons, which are generally iron cages in some big building, where men and women, having committed some minor offense, are held for immediate trial before a city magistrate, should be abolished and in their place there should be erected detention homes, amply secure, but home-like in architecture, appointments and atmosphere.

Finally, in lieu of sending so many young people to an institution I would greatly extend our probation system, placing young and all first offenders under guardianship for a specified period, and requiring all offenders against property to make, in full or in part, restitution to the party offended.

Nothing is so essential to justice, or so reforming to the criminal, as the enforcement of restitution for every wrong committed.

REPORT OF COMMITTEE ON MERCENARY CRIME¹

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Crime statistics are not uniformly available throughout the country. However, it is not necessary to quote statistics to members of the bar to prove that crime exists, and that sometimes crime is punished and sometimes it is not punished.

¹Presented to the Section of Criminal Law and Criminology of the American Bar Association, Sept. 16, 1931.

It may be taken for granted that crime would largely subside if it were always detected and always punished. So long, however, as mercenary crime continues to be and to remain a profitable employment, detection and punishment will, in large measure, fail of their function. Wholesome fear of punishment is, or rather would be, a persuasive deterrent, but a more efficient preventive would be to curb the incentive to the commission of mercenary crime and to remove temptation from the path of the weak and erring. Bankers, employers having large pay-rolls, and men and women of large wealth, by the exercise of good judgment, could do much to reduce the volume of mercenary crime.

Your committee has pondered what might and what might not be its proper field of inquiry. How much of crime does mercenary crime embrace? Of old it has been said that, "The love of money is the root of all evil." Your committee has been advised that mercenary crime covers anywhere from sixty to ninety per cent of all crime. At the outset of our labors we thought of making a catalog of mercenary crimes and of non-mercenary crimes, and weighing the result. But, for example, it cannot be said that gambling must always be classified as a mercenary crime and murder as a non-mercenary crime. It sometimes happens that men gamble for pleasure rather than for profit, and, on the other hand, they sometimes commit murder for profit rather than directly to satisfy passion or to relieve excited emotion; and it quite often happens that both causes contribute to the commission of a criminal offense. It happens thus that crimes against the person, against property rights, or against

the State may be either mercenary or non-mercenary in character, depending upon the motivating cause thereof. A mercenary crime, then, is a crime committed for pecuniary gain. It is not the form but the substance of the crime by which we must define it in this study. Was greed for ill-gotten gain the motivating cause? Then, whatever its name, it is a mercenary crime. Was passion or excited emotion the proximate cause, so to speak? Then, it is a non-mercenary crime. Your committee feels that in the solution of the crime problem the study of motivating causes is of prime importance, and that serious consideration should be given to the existence of mercenary motives, both from the subjective and from the objective aspects of the case.

For the purpose of eliciting expressions of opinion from those who have given much thought to the subject of crime, and for the purpose of clarifying our own thought, we have sent out to hundreds of people in various walks of life the letter following. The replies we received contain many stimulating suggestions, and excerpts from many such replies are herein presented for what they may be worth. Here is the form letter we used:

"Dear Mr. _____:

"At the last session of the American Bar Association, before the Section of Criminal Law and Criminology, John Landesco delivered an interesting address on 'Gang Life and Organized Crime in Chicago.' Discussion followed which resulted in the appointment of a Committee on Mercenary Crime to study that subject (see Reports of American Bar Association, 1930, pp. xx, 29 and 579).

"It is obvious that the motivat-

ing cause of mercenary crime is the desire for ill-gotten gain—to get something for nothing. The cure, some say, is to take the profit out of mercenary crime. That is quite some problem. United States Attorney George E. Q. Johnson, of Chicago, has said that, by whatever legal means possible, mercenary criminals should be hard hit in the pocket-book, and that the sources of their income, chiefly gambling and bootlegging, should be closed to them so far as possible.

"I am taking the liberty of writing you in the hope that you will be good enough to contribute to our committee your thought on the subject of mercenary crime. The subject is a very broad one, and our committee will be unable to do more than center its attention upon a few of the high spots. Should we make a special study of mercenary crimes of violence, or should we call attention chiefly to a few characteristic non-violent forms of mercenary crime? What, in your opinion, are the most significant aspects of mercenary crime? What may be done to minimize the evils of this phase of the general crime problem?"

From the replies which we have received we submit short excerpts, classified as follows:

I. *Relation between Violent and Non-Violent Mercenary Crimes.*

Excerpt 1: "I should judge that the committee's work in the field of non-violent forms of mercenary crime would be more productive of real good than the study of mercenary crimes of violence. The non-violent forms are equally important and, having received less attention, seem to be much more difficult to up-root."

Excerpt 2: "Both violent and non-violent mercenary crimes over-

lap and are motivated by the same principle."

Excerpt 3: "Most of our crimes of violence are incidental to non-violent forms of mercenary crime."

Excerpt 4: "I am myself very doubtful that much profit may be had in these days from the study of mercenary crimes of violence apart from the general subject of crime as a business, with violence as only an occasional means of operation."

II. *Crimes of Passion and Mercenary Crimes.*

The time once was that when the lawyer had in hand the defense of a difficult criminal case he turned instinctively to the plea of insanity. Out of the necessities of such cases the profession of psychiatry has grown to large proportions. We recognize the value of psychiatric studies, but we bear in mind also that abnormal personality accounts for very little of mercenary crime.

Excerpt 1: "The crimes committed for profit constitute the only problem of crime we have. Crimes of passion, revenge, and as the result of degeneracy have not, in my judgment, increased beyond the ratio of increase in population."

Excerpt 2: "While we do know that those who are in the least mentally abnormal, and particularly those who are to be classified as abnormal personalities, have tremendously bad careers, yet I doubt if these form any large proportion of those who engage in mercenary crime."

III. *Corruption of Government.*

Excerpt 1: "From the lawyers' standpoint perhaps the most interesting feature of mercenary crime is its corrupting influence on government . . . How would it be

to begin by studying the character and extent of governmental corruption induced by persons who are profiting from either gambling or bootlegging or prostitution or some other organized activity of illegal character?"

Excerpt 2: "The most significant aspect of mercenary crime, it seems to me, is its protection by politics. Whatever brings this out into the open helps to prevent it."

Excerpt 3: "Word has reached me in specific instances of where attorneys representing the government, either State or Federal, were taking money . . . It seems to me that until the 'fix' becomes a thing of the past the other phases of mercenary crime will be hard to handle."

Excerpt 4: "Syndicated gambling and prohibition violations are only possible through official corruption."

IV. *Responsibility of the Legal Profession.*

Excerpt 1: "In my opinion the greatest weakness in dealing with crime is the protection the legal profession gives it."

Excerpt 2: "I have wondered if there was not some pressure that the honorable members of the bar and the honorable politicians of the country could put upon those of the bar and of political life who, to all appearances to the men on the street, seem to be willing to undertake to put across most anything for the money which they get out of it."

Excerpt 3: "If I am not impatient, I would like to suggest that you should include in your investigation the sinister influence of 'mercenary' lawyers who aid in the crimes of non-violence by their sharp practices."

V. *The Attitude of the Public as to Mercenary Crime.*

Excerpt 1: "Personally I am more disturbed by the general lawlessness of the public at large than I am by the lawlessness of the so-called criminal element."

Excerpt 2: "The most serious aspect of mercenary crime, as I view it, is the tolerance of the general public toward it without realizing how its roots and branches are so permeating every aspect of modern life as to rot the whole of it."

Excerpt 3: "I think that your committee would do well to investigate not only mercenary crimes among the lower groups in our society but also in the upper categories. One of the difficulties in studying this problem is that we so often confine it to the bootlegger and the roulette wheel gambler and do not take in some of the men of finance who, through watered stock and other forms of exploitation, are in reality as reprehensible as those in the lower categories."

Excerpt 4: "Another phase which I am sure establishes in the popular mind the belief that mercenary crime is legitimate is the refusal on the part of the wealthy classes to obey the law."

Excerpt 5: "As long as we have such cowardice and selfishness in business and industrial life of course we are going to have this problem of mercenary crime. It is part and parcel of our whole national mores. This means that we must have a tremendous amount of general reformation before we can get rid of racketeering."

Excerpt 6: "I have literally had young gangsters say to me, 'Everybody's getting his; why not I?' Along with this goes the further belief that cops, prison authorities, prosecuting officers, and even judges

have exactly the same standards."

Excerpt 7: "Our fundamental philosophy of life, as it is embodied in our traditions and in our business attitudes, is one of the principal contributing factors in the present situation. James T. Adams has a chapter in his book, 'Our Business Civilization,' treating of our tradition of lawlessness, which I think is highly significant."

Excerpt 8: "So long as the criminal element, with the cooperation and approval of the respectable elements of society, are financed to the extent that they have more money to spend in protection than the law enforcement agencies have for prosecution little progress can be made."

Excerpt 9: "We are in a hopeless state if big business is ready to surrender to crooks. Let the big fellows come clean. Then they can fight in the open. With official and high business approval of race track gambling and prize fight thuggery we are sadly handicapped in creating a healthy moral vigor in the community."

Excerpt 10: "Crime, after all, is in the main commercial. It is the child of avarice. Of course there are crimes of impulse and passion and revenge and jealousy, etc. But crime is largely possible because of commercial ambition on the part of the criminal or on the part of his allies. . . . Of course, there are commercial crimes on the part of those who are 'higher-ups' in our economic system. They practice their robberies in ways the public cannot see."

VI. *The Need for Enlightened Public Opinion.*

Excerpt 1: "The education of every individual should, on the positive side, convince him, in the first

place, that he can make an honest living. In the second place, it should arouse in him the desire to make an honest living. This implies arousing the respect and admiration for people who make an honest living and, contrarywise, contempt for those who make their living in any other way."

Excerpt 2: "Crime is a social problem and any other attempt at a solution must be in a measure superficial and an attack on it at the wrong end; but the social solution must of necessity cover so long a period of time in an evolutionary sense that we must in the meantime use make-shifts to ameliorate up-standing sore spots."

Excerpt 3: "My own feeling is that somewhere down the line you will discover two facts, first, the lack of respect for property rights, and second, a failure to appreciate the fact that compensation for the service rendered is the only thing that one can morally expect as the result of his labors."

Excerpt 4: "However, the awakening of civic minded people and a general educational campaign would help. One thing which crime of all classes hates is light."

VII. *The Prohibition Question.*

We have received a few letters, pro and con, on the subject of prohibition. Your committee does not feel that it is called upon to solve the liquor problem. But we readily admit that both the "wets" and the "drys" have the right to be heard if they feel that they can throw any light on the problem of mercenary crime.

Excerpt 1: "I venture to add that I have been greatly disturbed at one apparent result of the Eighteenth Amendment and the Volstead Act, that is, that it has

put the criminal classes into the realm of high finance. . . . If correct in this view of the result of the attempt to prohibit absolutely the liquor traffic, it is a strong reason for attempting to deal with that great and universal evil in some other way."

Excerpt 2: "As more than 49% of those committed to federal prisons in 1930 were convicted of violations of the prohibition laws, it seems quite evident to many that modification or repeal of said laws offers one of the most immediate remedies of the present crime situation."

Excerpt 3: "I think the fight on crime has been hindered somewhat by the persistent attempts of 'wet' advocates to discredit prohibition by assigning all the crimes in the catalog to prohibition. Of course, intelligent people know that prohibition offers one of many avenues of easy money, such as gambling, racketeering, prostitution, etc. The appeal to anti-prohibition prejudice has a decided tendency to gloss over the vicious character of crime, giving it a quasi-romantic color."

Excerpt 4: "Bootlegging will continue until the forces of law enforcement are backed up by public sentiment. Then, and not until then, will the illicit traffic in liquor be suppressed. . . . To return again to bootlegging. I assume, as I think everyone who has given thought and study to the subject must assume, that the Eighteenth Amendment will not be repealed or modified, and that Congress will not pass any laws, or if it does, the Supreme Court will not permit them to stand, which contravene the letter or spirit of the Amendment. The policy of prohibition is a settled policy for this country, I think,

and it will be enforced in time as to the commercial traffic."

VIII. *Sources of Income of Mercenary Criminals.*

It has been said that the most effective way to stop mercenary crime is to cut off the income of mercenary criminals. That is quite a job. Incomes accrue to criminals from confidence games, from forgery, from robbery, from blackmailing, from fraudulent stock promotions, from commercial bribery, etc., as well as from bootlegging, gambling and prostitution. Attacking the incomes of mercenary criminals is but one means of reducing the volume of mercenary crime; education is another; vigorous prosecution is another; and preventive measures in the matter of making it more difficult to commit such crimes is still another means.

Excerpt 1: "In non-violent mercenary crimes, like bootlegging, gambling and prostitution, a key method is to reduce or eliminate sources of income, in other words, to decommercialize these activities so far as possible."

Excerpt 2: "The gang criminal can never be conquered unless we strike at the sources from which he derives the means to carry on his criminal activities, whether that applies to gambling or violation of the prohibition laws."

Excerpt 3: "It is claimed by many that gambling in Chicago does more to fill the war chest of the gangsters than any other form of mercenary law breaking."

Excerpt 4: "In violent mercenary crime the field of prevention is a great and almost unutilized instrument. One example is the elimination of payroll robberies by payment in checks instead of in cash."

IX. *Impartial Enforcement of the Criminal Law.*

A fair, honest, just, efficient and impartial enforcement of the criminal law would go far in reducing the volume of mercenary crime. It would tend at once to destroy the cynical attitude that has grown up among the people generally; and it would give pause to criminal activities for fear of swift and certain punishment.

Excerpt 1: "A vigorous attack upon vice and crime with honest enforcement of the law by reputable citizens of the community would do more, in my judgment, than to attempt to solve separately the comparatively limited number of mercenary crimes of violence."

Excerpt 2: "The most outstanding mercenary crimes that have come to my attention are in the sale of stocks and bonds, which constitutes the most modern 'stick-up' and 'hold-up' practices without a gun that can be conceived. . . . There have been some prosecutions going on there (in the District of Columbia) by Assistant Attorney General Dodds. Probably with the assistance of aggressive and zealous prosecutors and action by Congress the Capitol City might be cleaned up on that score."

Excerpt 3: "From the standpoint of the administration of our legal machinery I am sure that what is most needed to serve as a deterrent is the certainty and promptness of punishment."

X. *Some Suggested Legislation.*

Lastly, we subjoin at this point excerpts from three letters relative to suggested legislation.

Excerpt 1: "It seems to me that the reason that such crimes persist is that the law does not

provide that one shall not only be fined for his transgression, but that he shall surrender all of his ill-gotten gain."

Excerpt 2: "I feel that we have to proceed not only to reduce, wherever possible, performance of illegal business, which maintains organized crime, but that we ought to develop our pecuniary penalties in such a way as to strip the profits of crime when once we catch it."

Excerpt 3: "If you could see to it that anyone using the telegraph wires for purposes of fraud or exploitation could be prosecuted under a federal act as we now prosecute those who use the mails to defraud, this would be a big step in advance."

Concluding Observations:

From the extensive correspondence which your committee has conducted we judge that interest throughout the nation in the problem of mercenary crime is very great. Many have expressed the hope that we establish an organization, made up of lawyers and laymen, that would act as a clearing house for ideas from every quarter and that would take up the task of correlating the several surveys that have recently been made, especially as to the mercenary aspect of crime. The members of this committee are limited as to the time and money available to them with which to conduct adequate studies. If anything worth while is to be done, we must rely upon the supporting activities of some collaborating agency.

The amazing boldness and audacity of the rapidly increasing number of bandits, of which we read daily in the press, as well as the gigantic embezzlements of recent times, challenge our serious thought. Furthermore, we have found that

very few of the big embezzlements ever reach the ears of the public. Not only does it appear that men in increasing numbers are electing to fight society rather than starve in the face of industrial depression, but also that the people's money, reposed confidently with financial institutions of previously unquestioned soundness, is being stolen by trusted officials and employees without compunction of conscience. The confidence of our people in the integrity of their fellow man is being profoundly shaken. The times cry loudly for leadership of a constructive type. We dare not close our eyes and let things drift. Some means must be found to point the path back toward common honesty. Lawyers, with the help of leading men in other walks of life, can lead the way. This is a challenge to the leadership of the lawyers.

Recommendations of the Committee.

This committee was appointed less than a year ago. The vast volume of our correspondence has opened up a veritable mine of thought-provoking suggestions. It is too early for this committee to make any definite recommendations for legal action. However, an important line of inquiry lies ahead, and this particular problem of mercenary crime ought not to be confused with any other aspect of the general crime problem. By this time next year we should have important recommendations to report.

Meanwhile, we recommend that the committee be continued, that its membership be increased to fifteen, and that the committee cooperate with such other organized agencies as may be designated by resolution of this Section and approved by the American Bar Association.