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HOW STATE AND CITY GOVERNMENTS DEAL WITH RACKETEERING

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Every American more than thirty years of age is familiar with the pattern of the old-fashioned civic "clean-up." A reform wave would sweep the community—usually after an expose by a newspaper or a clergyman. A new police chief would take office or a new prosecutor would be sworn in. The venerable journalistic fiction known as the police "dragnet" would be spread. All known criminals would be locked up. Proprietors of horserooms and street-corner handbooks would also be arrested. They would put up bail and close up the front door—but use the back door. The floating dice games would float no more. And the well patronized establishments on the back streets would put up the shutters and their inmates vanish. The "lid" would be on. The town would be all cleaned up.

Such was the technique and the formula for American municipalities until the 1920's. We can trace back through the years the perennial impulse of communities to rid themselves of corruption. We find the long path toward civic decency strewn with the wreckage of "reform" administrations and the bleached bones of the "reformers." Essentially these reform movements represented the sporadic efforts of society to deal with civic conditions that normally were tolerated. They were concerned with the illegal ventures of unorganized individuals, with personal sin, if you will. And it can scarcely be hoped that society can eradicate sin. That we are told, is original in man since the time of Adam. But in the 1920's something new and sinister rose in American life. Prohibition brought with it the first great organizing of crime—individual crime —into syndicated crime.

It is not my intention to discuss the problems of law enforcement with respect to individual or casual violations of the law. We are concerned today with the organized violation of the law, a phenomenon of the current generation—what has come to be known as racketeering.

Racketeering is essentially a product of our complex industrial society. It is to be found primarily in our large industrialized cities. It has nothing to do with the casual law-breaking which is a problem in every community. This is not always understood. Let me make clear what is really meant by the term "racketeering."

Racketeering is "the organized and systematic extortion of money by means of violence or fear from legitimate business men and workers as well as from illegitimate enterprises."[2]

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[2] Thomas E. Dewey, Racketeering, Encyclopaedia Britannica, Book of the Year, 1938, p. 553.

When prohibition was repealed, the huge bootleg combinations which existed with the passive support or indifferent opposition of the citizenry, sought other fields. But long before prohibition repeal, the criminal underworld had its attention drawn to the possibilities of industry as a field of exploitation. Underworld leaders had been called in by one side or another in industrial disputes to supply strong-arm men.

Having once been invited in, the gangsters saw the lucrative profits in industrial disputes and decided to stay in. Some, in fact, stayed in long enough to take over the industries themselves.

In New York City, for example, in 1935 the Special Prosecutor found fully organized rackets maintained by organized underworld gangs in many of the city's legitimate industries. Restaurants and cafeterias had been fully "organized." The trucking industry in the garment district was likewise "regulated." So was the distribution and sale of flour, live poultry, fruits and vegetables, baked goods, and many other foodstuffs.

Then turning to illegitimate activities, the Special Prosecutor found houses of prostitution organized into a vast syndicate by one mob. Other gangsters had seized the widespread but unorganized lottery called "numbers." Its many small operators had been beaten, kidnapped and coerced until it had become one lucrative racket.

While dealing with the subject of illegitimate enterprises, it is important to realize that you can never wipe out racketeering in a community by conducting anti-vice and anti-gambling drives. These devices are productive of quick results, impressive statistics, headlines, and the approval of the "reform" elements.

But properly they are matters for the police department, not the prosecutor. The failure to stamp out such social evils is the failure of a community's social welfare and police agencies. Yet since laymen and many lawyers confuse rackets with problems in public morals, the prosecutor is under great pressure to intervene.

The prosecutor who attempts to substitute himself and his meager resources for police inadequacies is inviting disaster for himself and providing comfort for the racketeers.

Racketeering can be nipped in the bud if honest law enforcement officials, alert to the introduction of new methods and concepts in crime, are willing to prosecute vigorously and promptly. A racket does not appear full blown in the midst of a city. It takes many months of patient but unlawful work to cultivate one. Hundreds of individual victims must be intimidated. It is obvious that if the groundwork of a racket is analyzed quantitatively, it will be found to consist of large numbers of acts of simple assault, felonious assault, mayhem, malicious destruction of property, arson, kidnapping, coercion, extortion and homicide.

It follows, when a racket is being launched as a new venture, and it becomes necessary to break a victim's head, that if the slugger is promptly

sent to prison, the racket will die aborning. What counts is the certainty of arrest and conviction. Nothing deters the racketeer's henchman except the fear of prosecution every time he commits an act in furtherance of the racket. So it behooves the racket boss to arrange that his men, if caught, be allowed to walk out of the courtroom as free men.

Procuring protection from prosecution is an essential step in the development of a racket. The police department is the first line of defense of the community, the prosecutor's office the second and the judiciary is the third. If any one of the three is corrupt or has rotten spots in it, the city is wide open. Most vital is the prosecutor's office. A racketeer once said to a newspaperman: "Give me the District Attorney and the other guys can have the cops, the politicians and a couple of judges."[3]

Accordingly, the racketeer casts about for a potent political ally.

The alliance between racketeering and corrupt politics is founded on the rock of mutual self-interest. All through the year the racketeer relies upon the friendship of the dominant political machine to secure for him and his henchmen protection from prosecution. When primary day and election day come, the racketeer performs his part of their agreement. In addition to generous cash contributions, he supplies sluggers to terrorize honest men and produce hordes of fraudulent voters to swell the vote totals of his political allies.

The gorillas of the underworld, having been invited to interest themselves in the processes of the franchise, soon learned the value of offensive and defensive alliances with political bosses. The more district leaders the racketeer can control the greater his chance of controlling the machinery of the dominant political party of his community. That means controlling the government of his community.

Few realize that in 1935 the island of Manhattan, which is the County of New York, was politically and criminally divided into two spheres of influence. The County contains 23 political sub-divisions, known as assembly districts. In the area below 14th Street, in which is located the heart of the nation's financial community, Albert Marinelli was a district leader. As the Clerk of New York County he placed the county seal on all official documents. One by one he was upsetting district leaders by encouraging primary fights in his own party. It was commonly conceded that he was the strongest political factor in lower Manhattan Island. He was also the "political ally of thieves, pickpockets, thugs, dope peddlers, and big-shot racketeers."[4] He attended a national political convention with New York's most dreaded gangster who, at the time, was public enemy number 1. This unsavory character was ruler at the time of an underworld syndicate of national proportions.

[3] Rupert Hughes, *Attorney for the People*, Houghton Mifflin, Boston, 1940, at p. 214.

[4] Letter of Thomas E. Dewey, Special Prosecutor, to Herbert H. Lehman, Governor of the State of New York, *re* Albert Marinelli, New York Times, December 12, 1937.

What sort of people did this political leader bring in to aid their fellow townsmen in exercising the rights of franchise? In sworn charges against Marinelli filed with the Governor of the State of New York, Thomas E. Dewey alleged:

"Sixteen persons who have been within the past years members of the County Committee in the Marinelli half of the Second Assembly District, four others who have recently served as inspectors of election therein, and another who has been both a county committeeman and an inspector of election, making a total of twenty-one, are ex-convicts, with one or more convictions for burglary, assault, picking pockets, drug-peddling, and other charges.

"Nine other county committeemen and three inspectors of election, totaling twelve, have been arrested for burglary, homicide, receiving stolen goods, possession of drugs, and other charges, but were not convicted."[5]

And the Deputy Commissioner of Records appointed by Marinelli, at $5,000 a year, was another ex-convict.

That was the condition below Fourteenth Street.

North of Fourteenth Street there was Dutch Schultz. He had prospered in Bronx County running beer during prohibition. Now he sought to extend his criminal empire. He selected James J. Hines, a flourishing political leader, as his ally. Hines was strengthened by Schultz's underworld treasury. His political squads were augmented by the legions of Schultz strong-arm men and terrorists. Hines rapidly became the most influential political factor in the northern part of the County.

There was testimony during the Hines trial that the Dutch Schultz mob made their headquarters in the Hines political clubhouse on Election Day.[6] They floated into the district large numbers of fraudulent voters. This was to assure the election of the gang's candidate for District Attorney.

Hines uptown and Marinelli downtown could influence the nomination of judges and prosecutors. These nominations, because of the dominance of their party machine, usually meant election.

Had Marinelli remained in office and his political power been allowed to grow; had Hines retained his influence and continued as the political arm for the Schultz mob, the underworld through its two political allies, would have been able to dictate the selection of public officials of the wealthiest county in the nation.

The ordinary citizen is apt to ask: "Why don't the police do something about racketeers?"

The answer is that, faced with politico-criminal alliances such as these, the ordinary police officer is helpless. He is helpless not because of any fear of physical retribution. He fears punishment by his own superiors. Not protected by civil service, he could be discharged. Where he is protected by civil service, he can be given unpleasant assignments, sent to posts far removed from his home, and subjected to bureaucratic intimidation.

[5] *Ibid.*

[6] *People* v. *Hines* (1st Dept. 1940), 258 App. Div. 466, aff'd October 8, 1940, N. Y. (Record on Appeal, fols. 4484-9, 4960-9, 4971-2).

As a result, many police officers facing a well-connected racketeer, find it expedient to look the other way. A clear demonstration of the whole vicious system of "breaking" policemen for doing their duty was given from the witness stand in the Hines case.[7] Several plainclothes policemen persisted in raiding Schultz's policy banks. These raids were very costly to the gangster. He became enraged and was determined to "take care" of these officers. Their names and shield numbers were passed on to Hines. The county chairman of the dominant political party testified that it was a regular part of his duties as such chairman to receive requests for the transfer of police officers and to pass them on to the Police Commissioner. From time to time he received such requests from Hines. He stated that requests so passed on by him were "invariably granted." Before long the offending police officers were walking a beat in uniform.

Just as the blitzkrieg of modern warfare cannot be combatted by traditional military methods, so the attack upon society by the rackets cannot be smashed by the stereotyped formulas of prosecution.

Racketeers are not nice people. Fighting rackets is not a powder-puff business.

Racket organization has many of the characteristics of a pyramid. The base consists of a large number of petty criminals. The next layer above consists of a smaller group of specialists and experts such as bomb makers, acid throwers, saboteurs, arsonists and killers. Atop them is a still smaller group of lieutenants—those with some but limited discretion and authority. Above are the trusted aides, the fixers, advisers and renegade attorneys. Somewhere in the upper darkness is the head of the combine, aloof and inconspicuous as possible.

The problem of proof is to place responsibility on the boss for the criminal acts of the petty criminals at the base of the structure. In the huge rackets, most underlings have never seen the boss, and are unable to recognize him by sight or by voice. He lives on a country estate or in a penthouse apartment. Those few trusted retainer who actually are in contact with him transmit his commands. In one metropolitan racket a suggestion dropped by a first rank subordinate to one of the killers that "The boss doesn't like so-and-so" became "so-and-so's" death warrant.

Accordingly the prosecutor of rackets has the long, unspectacular task of working from the bottom. The smaller fry are arrested, charged with whatever crimes they have committed. They are made to realize that punishment, swift and inexorable, is ahead. They must be convinced that there is no hope that arrangements for their release can be made with corrupt law enforcement officials. They must then realize that cooperation with the district attorney may win them some consideration at the time of sentence.

[7] Ibid. (Record on Appeal, fols. 2496-2510, 2565, 2645-52, 2658, 3902-10, 4061-7, 4079, 4166-73, 4213-6, 4263, 4270-81, 4349, 4948-9, 5735, 5745-6, 6062-5.

Usually one of the small fry breaks down and agrees to turn state's evidence. The prosecutor's next objective is to get other defendants in the same category to do likewise. The criminals in the bottom layer then implicate those on the next level. This process must be repeated in each stratum until evidence is obtained that will reach to the top and convict the boss.

This layer-by-layer penetration of a racket is in most state courts complicated by corroboration statutes. Unlike the Federal rule, many state codes including New York,[8] require that the testimony of accomplices be corroborated.

The state prosecutor's most difficult problem in preparation of racket trials is obtaining such corroboration. There is no easy solution or magic technique. Patient and repeated examinations of accomplices are necessary. Careful analysis and painstaking investigation of their statements must follow. If intelligently directed, the persistence of the attorney will bring out the necessary corroboration if it exists.

Modern developments in organized crime have made necessary a modernizing of state penal laws and procedural codes. There was for instance a statute in New York which made it mandatory for the court clerk to endorse upon the indictment the names and addresses of all the people's witnesses before the grand jury.[9] What better aid to the friends and associates of the racketeer? The legislature repealed the statute in 1936.[10]

Also in 1936 the New York Code of Criminal Procedure was amended to try defendants at one time for crimes committed by them which were connected together and formed part of a common scheme or plan.[11] The earlier rule requiring separate trials was a particular boon to the racketeer since it was then virtually impossible to show to a jury the ramifications of the racket and the crimes perpetrated as part of the scheme. The New York rule now follows the practice that has been employed in the federal courts for more than 70 years.[12]

The city demanding racket elimination must be prepared to see racketeers on trial assailed by the testimony of their own accomplices. The public must be prepared to accept such testimony. For important racketeers commit no overt acts directly. They only scheme and give suitable orders. No respectable testimony ordinarily is available. The public must be prepared for scorn and ridicule heaped by defense counsel upon the prosecutor. State witnesses will be villified and abused. You will hear a clamor that if men are to go to prison, it must be on the testimony of honest men and not scoundrels. The defense would reject the testimony of other criminals, even though fully corroborated by non-accomplice testimony. The public must take such criticism with a grain of salt.

[8] N. Y. Code Crim. Proc., §399.

[9] N. Y. Code Crim. Proc., §271, repealed; see fn. 9.

[10] N. Y. Laws; 1936, ch. 22, in effect Feb. 24, 1936.

[11] N. Y. Code Crim. Proc., §279; N. Y. Laws, 1936, ch. 328, §1, in effect April, 1936.

[12] 18 U. S. C. A., §557.

Underworld conspiracies are not entered into by honorable citizens. Crooks and racketeers associate and deal only with persons of their own ilk.

Unless co-conspirator testimony is offered, underworld combines must be allowed to continue—at least until bishops and bankers are able to give competent and material testimony at criminal trials.

It is important that not only the public but the underworld itself have respect for the prosecutor and his integrity. Criminals know that if a prosecutor is unapproachable, all stand on parity and they abandon efforts to make connections or bribe officials.

It is no less important that the prosecutor never tolerate third degree methods. Morally and legally this rule requires no amplification.

The prosecutor must never, with some very minor exceptions, promise immunity to the defendant who wishes to turn state's evidence. If it is done generally, then no criminal wants to testify unless he is given immunity. The technique which many prosecutors employ is to tell the criminal that when his services to the state have been completed, the prosecutor will inform the court about them and their value and ask that they be given full consideration in determining the sentence.

The criminal who has become a witness for the people must likewise have absolute confidence that he will be protected from underworld reprisal. If he is to go free, the prosecutor must cooperate by furnishing protection, if he wishes, or by sending him to remote portions of the country, and where he does not testify, by never making public his indentity.

These may be called merely a few tools of the trade. They illustrate, however, that there is something more to the technique of racket prosecution than is portrayed in the cinema. Little is ever accomplished by the sirens, gas bombs, machine guns, axe-squad raids or other dramatic episodes.

The prosecutor must have the full public support and sympathy of the community he seeks to serve. If the sentiment of the community is opposed to the elimination of rackets the chances of a successful job are almost nil. The prosecutor must first prove that he is entitled to public confidence. When he has that confidence, he can go ahead.

Experience has shown that the most effective work is done quietly and under cover. The prosecutor must avoid announcing what and whom he is going to prosecute. The names of witnesses, sessions of the grand jury and subject matters of the investigation should be kept secret until indictments have been filed and the defendants are safely under arrest. Then the community is entitled to know the nature of the charges, but the details of evidence should be saved for the court room.

The racket prosecutor must distinguish sharply between actual racketeering and popular misconceptions of what constitutes a racket. As soon as he takes office, it is safe to assume that every labor dispute in the community will be immediately presented to him by one side or another. One group describes the demands of a union as extortion. The use of pickets is termed

a racket by employers and tremendous pressure is brought to bear on the prosecutor to intervene.

On labor's side the prosecutor is urged to jail employers for hiring strike breakers and for various other grievances rising out of the friction of the dispute. There is a difference between a series of crimes committed by organized criminals masking behind the front of a respectable labor organization and the affirmative tactics employed by a labor union which are legitimate, however unpopular they may be with some elements in the community. This difference the prosecutor must constantly bear in mind.

The prosecutor faces one of his major problems in dealing with the police department of his city, county, or state. What is the department's attitude toward him? What will his attitude be toward the department?

These questions are of paramount importance, since the mishandling of the police can jeopardize an entire investigation. Of course if the police force and its administration are friendly to the prosecutor, progress is relatively smooth. It is where they are either hostile or neutral, that difficulty is encountered. In some instances, the difficulty is due quite naturally to political control of the police force. In many cities and counties police are not protected by civil service, or if they are, their top rank commanders are not.

Even if the local administration and the leaders of the police department are friendly, the rank and file of the police department have the power in their hands to hamper such an investigation if they believe the prosecutor wants only to use them to search for errors of brother members of the force.

In short, when a new prosecutor is set up, this is the question which comes to the minds of the policemen: "Is he going to pick on the cops, or is he going after the big shots?"

This attitude is understandable. It derives from the days when policemen were the first and usually the only permanent victims of "clean-ups" and reform waves.

Maintenance of a friendly relationship with the police is therefore a major objective. There is no substitute for the policeman. He knows people of his neighborhood or beat—knows their daily lives and is in a position to be of great help to the prosecutor. No private investigator or agent, no matter how well trained, no matter how adept in scientific methods, can in any reasonable amount of time acquire the same detailed information which a police officer of experience possesses about his neighborhood. The problem of the prosecutor is to make that vast and often unorganized knowledge available to him and his assistants.

At a time when the world is confronted with international lawlessness on a scale never before witnessed, discussion of the racket problem may seem untimely. When the capitals of Europe are being bombed to shambles, when whole empires are tottering and the fate of civilization itself is at stake, it may to some seem strange that we should concern ourselves with organized lawlessness in our own cities.

Should we stop to worry about dealing with the thug who is organizing

the push-cart peddlers, when our minds are so concerned with the problem of organizing our whole nation to meet the threat of international gangsterism? But the two things are not as unconnected as they may at first seem.

Where the racketeer enjoys apparent immunity, the public loses faith in the democratic process. In the face of the menace of the racketeer, law-enforcement under a democratic system seems unable to move quickly.

The exasperated and unhappy victim of the racketeer too often blames his circumstances upon the inadequacies of the democratic form of government. His impulse is to say: "If we had a Hitler or a Mussolini in this country they'd clean out those racketeers right away."

The very fact that racketeers can flourish in our great cities in corrupt alliance with political machines increases this cynical attitude. Not merely the victims of the rackets, but other citizens tend to feel that such civic diseases are inherent in democracy. Nor are the dictator countries backward in using this idea in their propaganda. The United States is consistently painted by them as a nation of lawless elements in which gunmen, extortionists and thugs swagger about the streets while a decadent form of government shows itself helpless to deal with the problem.

The fearless and efficient stamping out of racketeering can be a potent force in restoring faith in the soundness of democratic government. So long as gangsters can be free to enter into great combinations to terrorize and prey upon honest citizens, so long as political machines in alliance with such gangsters are able to continue in office, just so long will the morale of the community suffer from the discouragement of its citizens. In the world crisis confronting us today, public morale is one of the most important elements of national safety. The prosecutor who demonstrates by deeds that the corrupting elements can be rooted out has made a lasting contribution toward maintaining the morale of democracy.

The Theory of Deterrence, Retaliation and Education:

"The deterrent theory, which is especially favored by jurists and statesmen (among philosophers by Schöpenhauer), stands in an interesting relation to the theory of retaliation and the theory of education. . . .

"But the theory of education and the deterrent theory are both directed to the end which must necessarily be aimed at in relation to transgressors of the law. Both must be united in a perfect theory of punishment. The punishment will then at once be effective in changing the character of him who is punished and be an example of the fact that the rules of law must not be broken. The individual who is punished will thus appear at once as end and as means . . . *the decisive standard for the perfection or imperfection of the essence of punishment will yet be obtained from the degree in which success has been reached in combining education and determent.*"—Harald Höffding: "The State's Authority to Punish Crime."