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## I. THE NATURE OF INTERSTATE ORGANIZED CRIME AND PROBLEMS IN LAW ENFORCEMENT

*William G. Hundley\**

### PART I

Toward the end of his "muckraking days," Mr. Lincoln Steffens was invited to speak before a reform group in the City of Los Angeles. Steffens had just come from San Francisco where he had gathered further materials for another article on crime and corruption in an already famous series of articles dating from "Tweed Days in St. Louis." After making a short speech on the methods and the solutions by which he proposed to eliminate or, at least, to minimize graft and corruption, he invited questions from the floor. It was not until an Episcopal Bishop arose to ask the last question that Mr. Steffens was able to make his point. Here is how Steffens recounts this episode in his autobiography.

The Bishop rose and very kindly, very courteously said, that I was not meeting the minds of my hearers. "What we want to know," he said, "is who founded this system, who started it, not only in San Francisco and Los Angeles in this or the last generation, but back, way back, in the beginning."

"Oh, I think I see, (replied Steffens) you want me to fix the fault at the very start of things. Maybe we can Bishop. Most people, you know, say it was Adam. But Adam you remember, he said that it was Eve, the woman; she did it. And Eve said no, no, it wasn't she; it was the serpent. And that's where you clergy have stuck ever since. You blame the serpent, Satan. Now I come and I am trying to show that it was, it is, the apple."<sup>1</sup>

Now I do not intend to use this quotation for the purpose of engaging in a polemic about the origins of evil. Nor do I want to discuss the moral aspects of gambling, narcotics and prostitution. But I do want to borrow from Steffens' experiences to illustrate one point and to emphasize another.

Too often people look upon the problem of crime — especially organized

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<sup>1</sup> STEFFENS, AUTOBIOGRAPHY, 350 (1931).

crime — as being solely a law enforcement problem. They think that all we would have to do is ferret out the hoodlums engaged in the rackets and the corrupt public officials who work with them and the problem of organized crime would be solved. Yet this necessary approach of vigorous law enforcement against the rackets is not the ultimate solution. A prosecutor must necessarily take the narrow approach of finding out who the corrupt government officials are and who is running the various illegal enterprises in order to do his job. But he should know that what he is doing, no matter how successfully, will not of itself culminate in the eradication of the evils of corrupt government and organized crime, because unfortunately the causes of organized crime and corruption are deeply rooted, like Steffens' apple, in the mores of American society. Until these underlying causes are recognized and removed by society there can be no lasting success in dealing with this problem.

An analysis of the kinds of activities that criminal organizations pursue may be helpful in understanding why the criminal organization has been able to thrive and grow in our society, why it has become a very serious threat to the economic, social and political well-being of the American people, and what are its underlying causes.

The great bulk of the business performed by criminal organizations is not large-scale bank robbery, diamond smuggling, or counterfeiting. One need only look to the nature of the criminal organization to understand why it does not get involved in the sensational, dangerous, short-run job that yields high stakes, but at extremely high risks of failure. Organized crime has been established on a permanent basis for the purpose of bringing not only money, but also prestige and power. Therefore, the criminal organization seeks activities that promise to be lucrative over a longer period with less risks involved. I suppose one could catalogue these activities into six or seven main categories: 1) Gambling; 2) Narcotics; 3) Loan Sharking; 4) Racketeering — exaction of money from businessmen or labor unions by bribery or extortion; 5) Unlawful entry into and control of legitimate businesses; 6) Illegal Liquor Traffic, and 7) Prostitution.<sup>2</sup>

Without making an extended analysis or offering examples of various kinds of activity within each of these categories, I want to single out one characteristic that each has in common. In some way each activity provides a *service* for which there is some kind of public.<sup>3</sup> Now, we are squarely in the area of underlying cause.

The motivation to gamble is deeply ingrained in the culture of the American people. Social bets and casual poker games are an accepted part of the life of most Americans. Since our social system places great emphasis on the pecuniary status of an individual, it is not surprising that we are willing to take our "chances" to achieve monetary gains. The difference between speculating on the stock exchange and playing the numbers is surely a matter of degree; yet

<sup>2</sup> Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. CRIM. L., C. & P. S. 399, 402-6 (1962) [hereinafter cited as Johnson].

<sup>3</sup> U. OF MICH., ORGANIZED CRIME IN AMERICA 58-69, 70-79 (Tyler ed. 1962).

playing the numbers is prohibited by statute in every State in the Union, except Nevada.<sup>4</sup>

In order to exploit the demand for gambling, organized crime, willing and eager to disregard the state prohibitions, has built its largest and most lucrative business. Gross profits from organized crime's illegal gambling operations have been estimated as high as 20 billion dollars.<sup>5</sup> This money is coming from the "respectable people" in our society who more than likely are not violating any law when they place a bet.

Recent investigations into and studies of narcotic addiction reveal that the market for illegal drugs is not solely the product of "evil" men who seduce young adolescent high schoolers with that proverbial first marihuana cigarette. Character disorders and unfavorable environment are being identified as the primary source of the growing demand for narcotic drugs.<sup>6</sup> Although the risks are high — the federal penalties are severe — nevertheless, the high rate of net profits makes the narcotics market still attractive to the organized criminal.

Prostitution has always had an available market. Lenders of money at exorbitant rates of interest find a ready market in those people who cannot or do not try to obtain loans from reputable banks and loan companies.

Consider the "service providing" activity of the "protection business." In a sense it creates a product no one would desire — threats of physical harm to a person or his property. But it caters to a demand for a further product — its promise not to carry out its threat. A businessman, so threatened, readily agrees to pay up in order to avoid destruction. At first, the protection racket was built on "fear" alone. But now it carries with it a promise to keep other competing businessmen out of a "protected" person's territory. The labor racketeers also have been able to sell businessmen their services at a price. A labor union leader who promises to forego a union organizational campaign or to prevent a strike of the employees of a particular company offers such services in exchange for whatever price the employer is willing to pay. "Kickbacks" on highway projects paid by contractors to corrupt government officials are made in exchange for the right to build the highway.

In these main areas then, the criminal organization is providing some kind of service in response to a demand that may or may not have been actively cultivated and nurtured by the organization itself. This characteristic is fundamental to a complete appraisal of the problem of organized crime. Perhaps Walter Lippmann has most precisely stated the distinction and its importance:

The distinction turns upon this fact: that the criminal as such is wholly predatory, whereas the underworld offers something in return to the respectable members of society. Thus, for example, burglars are lawbreakers who, if they could be abolished miraculously, would not be missed; but bootleggers, panderers, fixers, and many racketeers have a social function and perform services for which there is some kind of public demand. In actual life the

4 Bloch, *The Gambling Business: An American Paradox*, 8 *Crime and Delinquency* 355, 357-61 (1962).

5 Johnson, *supra* note 2 at 402 n. 22.

6 *Progress Report of an Ad Hoc Panel on Drug Abuse*, The White House, Washington, D.C. (September 7, 1962).

distinction is blurred; the same man may be a bootlegger and swindler, a thief and a procurer, a yegg and a racketeer. Nevertheless, the theoretical distinction is important, for the underworld presents a problem quite different from mere criminality. . . . Against the mere criminal, whether he acts alone or as one of a gang, there are ranged the opinion and, except in instances of extreme political corruption, the whole force of organized Government. The underworld has a different status. Its activities are in some degree countenanced by the respectable; from among them it draws its revenues; among them it finds many of its patrons; by them it is in various ways protected.<sup>7</sup>

I do not think the fact that the organized criminal occasionally engages in such "predatory" activities as murder, or other crimes of violence detracts from this main point. Such activities are merely incidental to the main function of the organized criminal. The ordinary American has little to fear that he will be murdered by the organized criminal, who usually confines such activities to eliminating problem members within the organization. However, a murder committed by some degenerate or a petty thief or a mentally deficient person creates in most Americans sufficient fear that he could have been the victim, himself. I do not think anyone would argue that such intentional taking of life or property by a thief does not constitute a real threat to society. Although we might disagree what should be done with such people, I think all would agree that he must be prevented from future like acts. Therefore, public opinion and organized governmental law enforcement officials act quickly to try to eliminate these problems.

Like reactions in the service-providing activities of organized crime are not so spontaneous, unified or successful. Those in direct contact with the organization are usually those who desire or who must have the product they have to sell. The deleterious effects of the operations of the organized criminal are subtle and indirect — higher prices on consumer goods caused by fees exacted by racketeers, inadequate protection of the public interest by corrupt elected officials, the loss of tax revenues to both state and federal governments. None of these effects elicit demands from the public to stamp out the organized criminal as do the effects of a rape, or a burglary or a murder.

Nevertheless, our approach to this problem is the same as our approach to the problem of predatory crimes. Our focus has been and continues to be to eliminate the person who is violating the law by means of penalties calculated to put that person out of society and deter others from similar activities. This is of course right and proper and the primary duty of law enforcement officers. But must there not be as great an effort directed towards the elimination or reduction of the demand for the services and products that the organized criminal offers if we are to prevail?

For example, let us examine the federal narcotics laws. Those statutes are directed solely at the seller of narcotics. They prescribe heavy penalties calculated to put the organized criminal in jail and, therefore, out of business. Few will disagree with this. But unless we assume that the market for narcotics is

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<sup>7</sup> ORGANIZED CRIME IN AMERICA, *op. cit. supra* note 3, at 59.

solely the product of the "pusher," no direct effort has been made to reduce the demand for narcotics. Reduction of the market is merely a by-product. Doctors, sociologists and psychologists have made studies of the narcotic addict and have determined that ignorance, character disorders and other environmental factors have contributed to the demand for narcotics. Treatment and careful rehabilitation of narcotic addicts could result in a considerable reduction of the narcotic demand — and also in the profits made by organized criminals. A program designed to educate the American public about drug addiction may serve to eliminate ignorance as one of the factors contributing to the demand for narcotics. Surely a three-pronged attack — one against the criminal organization, one against the creation of the narcotics consumer and one directed to the cure of those addicted — could yield better results.

Offering solutions for the elimination of the "apple" of gambling and of the various other principal activities, however, is not so easy. It is easy to prove that the odds are overwhelmingly against the two-dollar bettor or to show that his two-dollar bet promotes the more sinister activities of the organized criminal. But can the present gambling public be educated so that they will quit gambling once they hear that they are playing a "sucker's game" or when they realize their contribution to organized crime? I doubt it. Could we pass a law that would reach the bettor in addition to the bookmakers? I doubt it. And if we could, we probably could not enforce it any more effectively than we enforced the Prohibition laws.

It is equally difficult to pose programs whereby the demand for "protection" from competition and for labor peace and job security can be completely satisfied by legitimate means of doing business or by honest open collective bargaining. Yet I think that we should seriously examine the problem of organized crime in light of its "demand satisfying" orientation. It cannot be denied that a reduction in the demand for the organized criminal's products will reduce his opportunities for profit and hence, will have a corresponding effect on organized crime.

## PART II

In light of this analysis one can see that the organized criminal has responded to the demands of people for certain products not offered by legitimate businessmen. Since his business is unlawful per se in most cases, the criminal must somehow devise ways of avoiding the penalties for violating the law. Combining and organizing provides several advantages. First, the "owners" and managers can insulate themselves from the daily activity of their businesses. They hire other people to do the day to day illegal operations. Second, their employees are easily replaced. Loss of a "pusher" or a "runner" does not mean death of a large organization's business. Third, a large organization enables the owner elite to run legitimate businesses as "fronts" since they are not required to perform the daily tasks to run their illegal operations.<sup>8</sup>

Because of this tendency to concentrate, several problems have arisen to hinder the effective enforcement of the laws that the organized criminal is violat-

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8 Johnson, *supra* note 2 at 416-18.

ing. Generally, the state, county and city governments have the primary responsibility of enforcing these laws. Three fundamental reasons have been given to explain the state's inability to solve this problem: 1) Corruption of the police forces, prosecutors, judges and legislators; 2) fractionalization of the authority and responsibility of the state law enforcement effort; and 3) the ignorance and apathy of the public.<sup>9</sup>

But are these three reasons really explanations why the state and local governments have failed to stop the organized criminal? Or are they not symptoms of the more deleterious effects that organized crime is having on our society? It does not make much sense to say that organized crime flourishes partly because those elected and appointed officials, who are supposed to enforce the laws, are being bought off with money or votes by the organized criminal without examining further why the organization has been able to corrupt. We are no closer to a solution of effective law enforcement when we point out that a hoodlum can operate an illegal gambling establishment in State A and remain immune from prosecution for this violation by living in State B without asking ourselves why he is protected by a state line. Nor do I get much comfort to rationalize that law enforcement has been ineffective because most people do not know or do not care whether organized crime exists, without examining why they are ignorant or indifferent. Only if these basic questions are squarely confronted will any government, state, city or federal, be able to offset the tremendous gains that have been made by the organized criminal the past few years.

### 1. *Corruption*

Let us first examine the problem of corruption. Several techniques are employed in order to influence public officials on several different levels. Money may be paid directly to a police chief or sheriff in exchange for the privilege to operate an illegal business "unnoticed." Votes and campaign contributions may be given to a district attorney or mayor in exchange for immunity from prosecution. Unfortunately some judges and legislators are likewise bought with the favors offered by the criminal organization. The organized criminal does not hesitate to use blackmail if he cannot buy an official. The prospect of blackmail and physical harm also keeps many officials in the criminal's camp for their full tenure of office. So long as the organized criminal has been able to deliver money and votes, he has been successful in corrupting someone in the hierarchy of law enforcement. The fact that he usually has a monopoly, has a close-knit and powerful organization, and is making good money enables him to back up his demands.

His demands are that he be granted the privilege to operate certain illegal businesses without regard to the wishes and expectations of the majority of people. Since the kinds of activities that he wishes to engage in are not such that they incur the wrath of public opinion, e.g., gambling, the organized criminal has been successful at one time or another of securing the desired privileges in almost all of the cities in the United States.

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<sup>9</sup> Johnson, *supra* note 2 at 418-25.

In the great majority of states the organized criminal finds himself in a most advantageous position in launching his program of corruption. In most states the responsibility of enforcing the state criminal laws has been given to the city and county officials. The county and city prosecutors, the mayor, the police chief, the sheriff and the county judge are more often than not elected by the local population (or appointed by a person elected in such a manner) and owe responsibility to no one but themselves for the enforcement of state criminal laws.<sup>10</sup> Some states have made halfhearted attempts to make one or more of these local officials answerable to state-wide elected officials. But few states have attempted to make uniform the enforcement of their criminal law by centralizing the authority and responsibility in the Governor or the State Attorney General.

The organized criminal has taken advantage of this law enforcement structure. He is able to concentrate in a small area within a state which he has determined to be most receptive to his business, without fear of interference from authorities outside of this area. It takes less money to buy off a local police chief than it might to buy off a state police commissioner responsible to all of the people in the state. Less votes are needed to elect a mayor than are needed by a Governor. The business interests that may benefit from the organized criminal's activities are more acutely felt by the county and city official than by a state official. Depressed areas and overcrowded areas may be invaded by the organized racketeer because he has a product that those people are willing to buy. Without centralized authority to enforce the criminal laws, the state is unable to move in on these local enclaves of the organized criminal.

What I want to demonstrate is that the organized criminal is the strongest threat to honest and efficient government where the law enforcement officer is the least free to deny him the privilege to operate. It seems to me that the local mayor or sheriff or county prosecutor is less able to deny that privilege than is a Governor or State Attorney General. I do not mean that a state official cannot be bought. But why give the criminal organization the advantage of being able to secure his privileges from the officials most vulnerable to his offers of money and votes and his threats of physical violence? If a state official was given the authority to enforce the state laws when a local enforcement officer has failed, the organized criminal's immunity from prosecution could not be secured as easily where the state official has no such authority.

In 1952 the American Bar Association made similar observations.<sup>11</sup> Its Committee, after extensive study, recommended that states centralize the ultimate responsibility and authority to enforce the laws in an official who is responsible to the entire state. This does not mean that local officials would be stripped of their responsibilities and power. But it would mean that a local official could be bypassed if he failed to do his work. By centralizing prosecutive responsibility in state hands, the organized criminal will have a much more difficult time in securing his privileges to operate. Corruption will not disappear, but at least the state will present its strongest front to deny the desires of organ-

10 ABA, ORGANIZED CRIME AND LAW ENFORCEMENT 270, 276-80 (Plowscowe ed. 1952).

11 *Id.* at 303-08.



ized crime. We, in the federal government, of course, would welcome an opportunity to work with one central body in a state.

## 2. *Fractionalization*

Decentralization of the responsibility for the enforcement of state criminal laws contributes, in addition, to the second problem that states have in combatting interstate organized crime. Since each state will have several enforcement bodies each of which is given the basic responsibility to enforce certain laws within a certain geographic area, combined efforts by any number of these agencies remain solely on a voluntary basis. Hence, cooperation among several units will at best be sporadic unless some person is designated as the ultimate one responsible for the enforcement of the criminal laws. Most of the time these efforts will be intensive only when a criminal situation has become so intolerable that people demand that something be done.

A criminal organization that has been established on a permanent basis and that has extensive operations in several areas within a state or among several states cannot be adequately combatted without permanent cooperative efforts of investigation and prosecution. The organized criminal who operates within several jurisdictions may escape prosecution simply because a law enforcement official has no authority to make his arrest in the area in which he lives and works or because the information concerning that person's illegal activities has been gathered and filed by separate investigative agencies. Artificial jurisdictional boundaries that divide state from state, county from county, and city from city also provide local law enforcement officials with an easy excuse not to pursue a criminal whose operations are conducted within his jurisdiction but who remains outside of it. Yet these artificial divisions of geography and authority need not hinder the effective enforcement of a state's criminal laws. Its legislature could simply eliminate these limitations.

Interstate organized crime creates a more difficult problem because of the limitations placed upon a state official's authority by state lines. Again there is nothing inherent in the federal system of government that prevents states from cooperating with each other for the purpose of combatting criminal organizations that do business across state lines. Indeed, in 1955 the Council of State Governments published a handbook dealing with the problem of interstate crime control. In the foreword of this handbook the director noted that the Council is primarily interested in eliminating the "no-man's land" of crime control that lies in between the jurisdiction of a single state and that of the Federal Government. This handbook lists four significant Uniform Acts that have been passed by substantially all of the States of the Union.

I think that two of these acts deserve special consideration here. The Uniform Extradition Act contains provisions that make it a duty on the governor of one state to deliver to another state, upon the request of its governor, a person who is a fugitive from justice in the demanding state. In addition to these provisions, however, there is a provision that directly relates to one of the most vexing problems raised by interstate organized crime, that is, the operation of illegal activities in one state by a person who lives and works in another state.

It has been argued that there is need for federal legislation here because a person who lives beyond a state's boundaries is not subject to that state's jurisdiction when he is not a fugitive from justice. Yet this Uniform Act contains the following provision:

The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state . . . with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand . . . and the provisions of this act . . . shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.<sup>12</sup>

Although the language is merely permissive regarding the duty of the governor in the state in which the desired person is present, nevertheless the provision illustrates that the states can work together in coping with the interstate aspect of organized crime insofar as no person will be able to secure immunity from prosecution solely because he never enters a state where his illegal activities are being carried on. The 1955 handbook that I referred to above stated that this was the purpose of this provision:

The importance of this provision is easily understood, when thought is given to the vast conspiracies of organized criminals, which may, and often do, involve operations across borders of several states. Unless the demanding state . . . the one in which the criminal injury occurs . . . can have the cooperation of other states in securing the accused person for trial, he is largely immune from prosecution and punishment.<sup>13</sup>

Supplementing this act is the Out-of-State Witnesses Act which has been passed by forty-four of the fifty states. The purpose of this Act is to secure the attendance of witnesses who are found in one state, but are desired as witnesses in a criminal proceeding in another state. The statute enables compulsory appearance of witnesses for both the prosecution and the defense in all criminal proceedings, including grand jury proceedings.

I think that both of these Acts illustrate that state boundaries are not as formidable a barrier to effective law enforcement against interstate criminal organizations as one might think. Yet I think it equally a big mistake to rate the efficacy of these statutes without examining them in light of two basic phenomena with which I have previously dealt: 1) Corruption of the law enforcement officials by criminal organizations; and 2) decentralized authority and responsibility of law enforcement.

It is obvious that these statutes will not be of much effect when the person responsible for using them is being paid by the organized criminal to ignore his illegal operations. Moreover, both statutes place cooperation in the hands of the governors of both states. Yet as I have already demonstrated, the basic responsibility for the enforcement of state criminal laws remains in the hands of county and city officials. It may be that these officials are not aware of these statutes or do not want to take the time and effort to comply with the provisions.

12 COUNCIL OF STATE GOVERNMENTS, INTERSTATE CRIME CONTROL 12 (1955).

13 *Id.* at 11.

Even a more basic observation must be made in rating the efficacy of this kind of legislation. These statutes are products of a cooperative effort that goes only to the jurisdictional difficulties that arise after a state has acquired sufficient evidence upon which to base a prosecution. There has been no effective program devised to cooperate on compilations of necessary intelligence data or to coordinate state investigations of certain people. This has been left up to each individual prosecutor or police officer. Yet these kinds of activities are very important if effective law enforcement is to be forthcoming.

These statutes then do not solve the state's problems in coping with the interstate aspect of organized crime. But they do illustrate that the problem of "fractionalization" of a state's law enforcement agencies is not one that can be solved only by the intervention of the federal government. On the contrary, artificial jurisdictional limitations within a state and among states hinder a state's prosecutive efforts so long as the states allow them to do so. The above two statutes are examples of the tools available to the state if it wants to overcome some of these problems.

### 3. *Ignorance and Apathy of the Public*

In a very recent article that appeared in the *Journal of Criminal Law, Criminology and Police Science*, one of the attorneys in the Organized Crime and Racketeering Section had this to say: "The bedrock of organized crime's success is public indifference and lack of knowledge concerning the evils of organized crime and the means of dealing with it."<sup>14</sup> I agree with this statement.

I have previously indicated that the ordinary citizen could easily strike a blow at organized crime by simply refusing to patronize the services offered by the criminal syndicate. Attorney General Kennedy has repeatedly pointed out that the two-dollar bet and the twenty-five-cent bet make up the bulk of the organized criminal's profits. Yet people refuse to perform even the easiest task. Is it not because they do not realize the inimical effects of the organized criminal's operations? Is it not that most American people have not reached a level of sophistication whereby they can examine criminal activities not solely in terms of whether or not they are moral or immoral? The kind of activities in which the organized criminal is involved, the ability of these criminals to insulate themselves from the public eye, and the difficulty of discerning the inimical effects that organized crime has on our society contribute to the ignorance and apathy of the American public.

As I indicated earlier we intend to do our job. We will keep the pressure on and ultimately prosecute the interstate racketeer where federal law has been violated. We will assist local law enforcement to apprehend others. But just so long as any substantial segment of the American public is willing to purchase its wares, organized crime will produce new leaders to replace those we put in jail. Basically the American public will get done in this field what they demand. Public officials are still responsive to the will of the people where that will is made manifest. When the people decide that they don't want the bookie pro-

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14 Johnson, *supra* note 2, at 422.