

# THE THREATS POSED BY TRANSNATIONAL CRIMES AND ORGANIZED CRIME GROUPS

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## I. INTRODUCTION

This conference is especially important and timely because in the 1990s, the problems to the world community posed by transnational crimes and organized crime groups have increased significantly and are likely to continue to increase in the near future. There are several principal reasons that account for this unfortunate increase in transnational and organized crime activities.

First, the increased volume of trade among nations, which of course has greatly benefited legitimate business interests, has also generated greater opportunities for criminals to criminally exploit such business and trade.

Second, the decrease in customs and other regulatory barriers to international travel and business has also had the unintended effect of aiding criminals engaged in smuggling of narcotics and other contraband.

Third, similarly, the proliferation of air transportation connections and the easing of immigration, visa and travel restrictions in many countries to promote legitimate interests has also facilitated criminal activity and the movement of criminals across international borders.

Fourth, modern advanced telecommunications and information systems that are used in legitimate

international commercial activity can also be used by criminal networks to improve their own communications and to quickly carry out criminal transactions, especially money laundering.

For example, through the use of computers, international criminals have an unprecedented capability to obtain, process, and protect information and sidestep law enforcement investigations. They can use the interactive capabilities of advanced computers and telecommunications systems to plot marketing strategies for drugs and other illicit commodities, find the most efficient routes and methods for smuggling and moving money, and create false trails for law enforcement or banking security. The use of computers has enabled Colombian drug traffickers in particular to keep more flexible and secure records of transactions and money laundering activities. International criminals take advantage of the speed and magnitude of financial transactions and the fact that there are few safeguards to prevent abuse of the system to move large amounts of money without scrutiny.

Fifth, international criminals are becoming more sophisticated in their operations, using modern business techniques and technology to facilitate their criminal activities and to thwart law enforcement efforts. Such organizations also employ individuals with specific expertise to facilitate their criminal activities, including transportation specialists, computer experts, financial experts to launder their money and manage

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business investments, and attorneys to identify loopholes in laws and regulations that enable criminal networks to launder money and establish front corporations and businesses.

Sixth, unfortunately, consumption of illegal drugs has increased in some countries leading to greater problems posed by trafficking in illegal narcotics.

Seventh, the breakup of the Soviet Union in 1991 and the related break up of the Soviet Bloc has led to the development of many organized crime groups that have recently engaged in substantial criminal activities, especially effecting the European community and the United States.

Eighth, the new governments that have emerged from the former Soviet Bloc are making significant advances, but still have not yet had enough time to develop and implement laws, regulations and business practices to adequately address the problems of crime and public corruption posed by organized crime groups.

In sum, these and other recent developments and trends have contributed to growing transnational criminal activities and the expansion of organized crime groups. The cost to the world community caused by organized crime groups and transnational crimes includes not only loss of billions of dollars, loss of life and physical injuries, but also entails substantial public corruption. The combined effect of these adverse consequences tends to undermine the security and stability of governments themselves. Indeed, the adverse consequences of such criminal activities can not be understated. It is therefore essential that the international community continue to work together closely to address these very serious problems facing us all.

## II. DEFINITIONS

It is important to note that the concepts of transnational crimes and organized crime are different and distinct, even though they are interrelated and overlap.

As I use the term, "transnational crimes" refers to serious crimes that either significantly affect more than one country or are carried out across national borders and thus involve criminal activity in more than one country.

As I use the term "organized crime", I am not referring to a particular offense or crime. Indeed, in the United States there is no criminal offense designated "organized crime"; as in the United States it is not a crime "per se" merely to be a member of an organized crime group. This is so because in the United States criminal offenses are defined by the specific conduct that is made criminal, and not by the nature of the group that is committing the offense. Therefore, it is a crime for anyone to commit conduct that is made criminal regardless of whether the offender is or is not a member of an organized crime group.

Moreover, United States law enforcement does not use any particular rigid definition of "organized crime". Rather, United States law enforcement uses an extended list of criteria or attributes that typically are shared by organized crime groups. Thus, organized crime groups possess certain characteristics which include but are not limited to the following :

- (1) The groups have a hierarchical structure and continue over an extended period of time and are self-perpetuating. That is, the organization continues its illegal affairs even after the death or imprisonment of some of its leaders

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and members.

- (2) Their illegal activities are conspiratorial.
- (3) In at least part of their activities, they commit or threaten to commit acts of violence or other acts which are likely to intimidate.
- (4) They conduct their activities in a methodical, systematic, or highly disciplined and secret fashion.
- (5) They insulate their leadership from direct involvement in illegal activities by their intricate organizational structure.
- (6) They attempt to gain influence in government, politics, and commerce through corruption, graft and legitimate means.
- (7) They have economic gain as their primary goal not only from patently illegal enterprises such as drugs, gambling and loansharking, but also from such activities as laundering illegal money through and investment in legitimate business.

As you can see by this criteria, United States law enforcement uses the term "organized crime" to refer to organized crime groups that reflect these characteristics, and the term does not refer to a particular offense or crime.

I realize that others may define "organized crime" differently and I do not mean to suggest that these criteria are the only criteria for defining or describing organized crime. Rather, I am only stating that these are the criteria that federal law enforcement uses in the United States.

By way of emphasis, the key attributes

of an organized crime group are that the group has a hierarchical structure, continues its illegal activities over an extended period of time, is self-perpetuating, and engages in diversified criminal activities for profit.

It is also noteworthy that while virtually all serious and sophisticated criminal activity involves some degree of "organization", and some degree of joint conspiratorial undertaking, such organization, in my view, does not necessarily make such criminal activity "organized crime". If that were the case, then virtually all serious crimes would be considered "organized crime" because virtually all serious crime involves "organization".

It bears emphasis that, in my view, the terms "transnational crime" and "organized crime" are not synonymous. Although organized crime groups may commit transnational crimes, organized crime groups also often engage in criminal activities that mostly affect the country in which they operate with little direct effect on other countries. Conversely, transnational crimes are not only committed by organized crime groups, but are also committed by offenders who are not members of recognized crime groups.

I hope that the distinctions I am drawing between transnational crimes and organized crime will become clearer as I discuss these concepts in more detail and illustrate my point by specific examples.

With these definitions in mind, I would now like to briefly summarize the principal transnational offenses that in my view affect the United States and many other countries. By no means does the list necessarily contain all transnational crimes, however, I would like to focus on the principal ones in my view. Then, I

would like to briefly describe the principal organized crime groups that are operating in various countries that also have impact on many countries.

### III. TRANSNATIONAL CRIMES

#### A. Drug Trafficking

The worldwide illicit narcotics industry is one of the greatest threats to social stability and welfare in the United States. In addition to the terrible human cost of addiction and associated health concerns—including HIV and AIDS—endured by users of illicit narcotics, drug abuse has a significant impact on the social fabric that affects all Americans. Drug abuse undermines family cohesion and has a terrible daily and often lifelong effect on the lives of children across the country. Drug abuse also promotes antisocial behavior and disrespect for laws and institutions. The drug trade brings with it high levels of street crime and violence by addicts needing to pay for drugs and by drug groups fighting for turf.

The economic costs to United States citizens are high—lost productivity at the work place, medical care, spending for drug rehabilitation and social welfare programs, and in the financial and personnel resources required by federal, state, and local law enforcement agencies and judicial and penal systems to deal with drug-related crimes.

- According to the most recent publicly available survey data, about 13 million Americans—6.1 percent of the total population—used drugs on a casual, monthly, basis in 1996. The survey data indicates that in 1995 there were approximately 3.3 million chronic users of cocaine and some 810,000 heroin addicts in the United States. It is estimated that nearly 5 million Americans have tried

methamphetamine, an illicit drug associated with particularly violent aberrant behavior, in their lifetime. Every day, some 8,600 young try an illegal drug for the first time.

- In 1995, United States citizens spent approximately \$57 billion dollars on drugs—including \$38 billion to purchase cocaine and \$10 billion on heroin from overseas sources. The economic costs to society are even greater; in 1990, the total costs of drug abuse—including health care costs, lost productivity, and the costs of crime—were estimated to be \$67 billion, of which \$46 billion was related to crime and criminal justice.
- Drug use costs United States citizens roughly \$17.5 billion per year in health-related costs, according to a recent estimate. The annual death-related costs of drug abuse account for an additional \$3.2 billion. At least \$6.3 billion of these costs are estimated to be from AIDS transmission driven by drug use.
- Drug use has a significant effect on work place productivity. Drug users are times more likely to be late for work, 10 times as likely to be absent, and five times more likely to file worker's compensation claims. They are responsible for 40 percent of all industrial fatalities and incur medical costs three times as high as their drug-free coworkers.
- There is a strong correlation between drug abuse and crime. In 20 of 23 cities in 1996 in a program sponsored by the National Institute of Justice, more than 60 percent of adult males arrested for crimes tested positive for at least one drug. In 1995, almost 255,000 people were incarcerated in

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state prisons and nearly 52,000 in federal prisons for drug offenses, about 60 percent of federal prison population was there for drug-related crimes.

To put it mildly, these costs in money and human suffering from use of, and trafficking in, illegal drugs are deplorable.

There is no doubt that the United States has a serious problem with the degree of illegal drug use. Unfortunately, other countries are also experiencing an increase in illegal drug use. For example, it is estimated that in the Peoples Republic of China the number of registered drug abusers increased between 1990 and 1995 from 70,000 to 520,000. In Pakistan the heroin addict population is estimated to have grown from virtually none in 1980 to two million. Likewise, the use of cocaine and other illicit drugs has substantially increased in Russia and other countries of the former Soviet Bloc since the breakup of the Soviet Union.

This demand for illegal drugs drives the supply. Regarding the supply, Southeast Asia remains the greatest source region for heroin in the world, accounting for 60 percent of the world's production. Burma is the world's largest producer of illegal opium and heroin, accounting for approximately 50 percent of the world's illicit production. Laos is also a large producer of opium and marijuana. Other countries in Asia are transit routes for illicit opium and heroin, including Thailand, Vietnam, Cambodia and the People's Republic of China.

Colombia continues to lead the world in cocaine production. Extensive drug cartels use Mexico and Central America as staging or transshipment areas for United States bound cocaine, which is smuggled into the United States primarily through the

southwestern border and southeastern United States.

Colombian drug organizations are historically familial-based organizations involved in cocaine trafficking and, to a lesser extent, the trafficking of marijuana. Distribution in the United States is directed by sophisticated organized structured groups. Cocaine wholesale-level distribution and money laundering networks comprised of multiple cells function in a number of major metropolitan areas. These organizations are fully equipped with the most up-to-date technology, including personal computers, pagers, and facsimile machines for use in their daily operations. United States operations are coordinated on a daily basis by key figures in Colombia. Primary United States bulk cocaine distribution centers include southern California, southern Florida, southern Texas and New York City.

Recent cases indicate that Colombian drug organizations are increasingly using gangs operating in Mexico to provide drug smuggling services. The terrible violence associated with these drug cartels is well known. The violence and corrupting influence of these drug cartels is so significant that they constitute direct threats to the stability of governments in Central and South American countries where they operate.

Recently, Nigerian organized crime groups have become major suppliers of heroin to regions in the United States. Cases that have been prosecuted indicate that Nigerian drug organizations typically smuggle only small quantities of drugs at a time using thousands of couriers, rather than smuggling large bulk shipments as do other drug trafficking organizations.

Illicit drug trafficking clearly poses formidable problems for the law

enforcement agencies of the United States and other countries. The Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) are the principal federal law enforcement agencies in the United States responsible for combating illegal drug trafficking. Their primary strategy involves the targeting of the largest or major drug trafficking enterprises for investigation and prosecution so that the enterprise itself can be dismantled or disrupted.

In addition to attacking the suppliers of illicit drugs, it is also imperative to reduce the demand for illicit drugs.

The Director of National Drug Control Policy in the United States has implemented a comprehensive five year strategy designed to reduce the demand for illicit drugs which includes: educational and advertising programs to educate children and parents about the harmful effects of drugs, to persuade people to reject illegal drug use; and to increase drug treatment and rehabilitation efforts to help people refrain from using illegal drugs.

### **B. Alien Smuggling**

Sophisticated alien smuggling networks traffick in "human cargo". Alien smuggling is fast becoming a global problem as residents of many countries, particularly Mexico, the Peoples Republic of China, India, Pakistan and other counties seek new homes and economic opportunities in Canada, Japan, the United States, Western Europe and other countries. According to a United Nations Study, in 1994, the profits turned from smuggling illegal aliens across international borders approached \$9.5 billion.

The United States is not alone in experiencing a serious problem with illegal immigration. In the last two years, estimates indicate that more than half a

million illegal immigrants were smuggled into Western Europe. Japan has also experienced an increase in illegal immigration from other Asian countries.

The vast majority of migrants who enter the United States and other countries illegally are motivated by economic reasons - they seek jobs and greater economic opportunity. In some cases, the aliens are fleeing political persecution or are seeking greater political freedom in other countries. Therefore, there are substantial humanitarian concerns and issues related to the global problem of alien smuggling. However, alien smuggling also poses substantial problems for law enforcement in the United States and elsewhere.

According to the Immigration and Naturalization Service of the United States (hereinafter INS), approximately five million illegal aliens reside in the United States. By reside, I mean persons who have remained in the United States for more than 12 months. Therefore, this five million does not include many, perhaps hundreds of thousands, of temporary illegal migrants who may come to the United States to work for several months and then return to their home country, and does not include aliens who stay a short period of time beyond the legal limits of their admission. INS estimates that about 54 percent of these five million illegal aliens are from Mexico.

Although Mexico by far is the largest source of illegal aliens in the United States, other countries such as El Salvador, Guatemala, Honduras and Haiti are also principal sources of illegal migration in the United States. Moreover, Central and South America are increasingly serving as transit zones for aliens from other areas, including Asia and Eastern Europe. Alien smuggling networks and routes have been established throughout Central America to move local migrants, as well as illegal

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aliens from other areas. Tactics used by alien smuggling organizations run the gamut of all available means of transportation including large boatloads of migrants, air travel of a few individuals to large groups of alleged tourists, to commercial buses, trucks and vans.

The smuggling of aliens from the People's Republic of China to the United States has posed particular problems for United States law enforcement. Between 1991 and 1997, the United States Navy and Coast Guard interdicted a total of 43 ships carrying over 4,000 migrants, mostly from the Fujian province in the People's Republic of China. A series of prosecutions in Boston, New York, Honolulu, San Francisco and Hawaii has established that an Asian organized group known as the Fuk Ching gang that operates primarily in New York and California was responsible for much of smuggling of boatloads of aliens from the People's Republic of China.

The dangers involved in such smuggling ventures are highly significant. The prosecutions I mentioned established that in many instances the boats were overcrowded, unsanitary, lacked adequate food and supplies and were unsafe. In one tragic incident in 1993, a ship, the Golden Venture, carrying over 100 aliens from the Peoples Republic of China ran aground off the coast of New York City and 10 aliens died as a result.

In addition, these prosecutions have established that the aliens and their families are exploited if the alien is successfully smuggled into the United States. The smuggling fee of \$20,000 to \$30,000 per alien is clearly beyond the means of a Peoples Republic of China migrant to pay. Consequently, the smugglers have threatened, kidnapped, and assaulted aliens and their family members to collect the smuggling fees and

often force the alien to work illegal gambling or prostitution businesses, or sweatshops in the garment industry until the smuggling fees are paid.

Similar harmful consequences stem from smuggling operations involving migrants from Central and South America. For example, unsafe and overloaded vehicles have contributed to accidents resulting in death and injuries.

The costs to the United States associated with illegal migration is substantial. To address alien smuggling and related matters, the Immigration and Naturalization Service's overall budget has more than doubled within five years from \$1.5 billion in fiscal year 1993 to \$3.1 billion in fiscal year 1997.

A November 1997 report by the United States General Accounting Office indicates that illegal immigrant families receive over one billion dollars in welfare payments and Food Stamps alone. One state, California, alone spends about \$830 million each year to incarcerate illegal aliens who have been jailed for criminal acts. The financial costs associated with United States interdiction and deportation procedures are also high. For example, the costs exceeded \$7 million to deport 158 migrants and 11 crew members seized in a boat carrying migrants from the Peoples Republic of China destined for Hawaii in May, 1995. I would imagine that other countries are experiencing similar problems and costs related to the global problems arising from illegal migration.

To address these problems, the United States has recently nearly doubled the size of INS border patrol agency. United States law enforcement working with the Coast Guard and Navy and other agencies has increased its efforts to interdict boatloads of illegal aliens and to repatriate them.

Criminal penalties for alien smuggling have been increased, a mandatory minimum of three years' imprisonment upon conviction for smuggling an alien for financial gain. For example, in January 1998, the ship's captain and two crew members convicted of smuggling a boatload of over 100 aliens from the People's Republic of China were sentenced in Boston to 12, 10 and 8 years in jail. INS also continues to work with other countries to identify alien smuggling networks and to standardize entry and documentary requirements for international travel to minimize the risks of counterfeit documents.

### **C. Money Laundering**

Money laundering is designed to prevent governments and law enforcement agencies from knowing the source of illegal proceeds and from tracing the money to its sources. The primary motive of professional criminals is to obtain financial profits from their varied criminal activities. Thus the criminal activities that drive the need to launder money are very broad, ranging from laundering illegal proceeds from drug trafficking and racketeering enterprises to white collar crimes such as commercial and bank frauds, bribery and tax evasion.

- The amount of funds generated around the world by illegal activities requiring legitimization is on the order of hundreds of billions of dollars annually; most estimates place the amount of money being laundered annually between \$300 billion to \$500 billion.
- In addition to drug trafficking proceeds, substantial amounts of money are transferred abroad to be laundered or otherwise hidden, costing the United States Government tens of billions of dollars annually in tax revenue losses. A

1993 study on transfer pricing concluded that the United States was deprived of at least \$30 billion—and possibly as much as \$100 billion—in tax revenue that year as a result of tax evasion or money laundering through transactions between United States firms and their foreign partners.

The infrastructure for laundering criminal proceeds, all of which must be placed and “legitimized” in the legal economy, is extensive and worldwide. Banks, nonbank financial institutions — which include brokerage houses, commodities dealers, currency exchange services, and casinos — and other legitimate businesses are part of the money laundering network. Investment in legitimate business enterprises provides cover for criminal activities, as well as a plausible source of wealth and income to deny it was obtained illegally. Use of front companies to launder illegal proceeds and to finance illicit transactions are widespread by criminals worldwide.

The international banking and financial system is routinely used by launderers to legitimize and transfer illicit proceeds. Once illicit proceeds are in the international banking system, electronic transfers of funds makes it difficult to track how laundered money flows. Tens of thousands of banks worldwide are connected to electronic funds transfer systems. The flow of illicit money, however, is only a tiny fraction of the trillions of dollars that move daily through the international financial system, more than \$1 trillion moves daily through the United States-based Clearing House Interbank Payments System (CHIPS), which handles nearly all international dollar transfers. In most cases, banking and other financial institutions probably serve more as avenues of opportunity for launderers



rather than willing participants.

Foreign banking systems that offer bank and corporate secrecy, or where there is weak enforcement or an absence of regulations against illicit financial activities, are most appealing to international criminals seeking to launder illicit proceeds or to stockpile funds in secret accounts and shell companies. Criminals also take advantage of corruption in many banking sectors, both to place money into banking systems and the economy, and to hamper any investigation of illicit financial activities.

#### **D. Financial Fraud**

Wide-ranging and complex financial fraud schemes by international criminal organizations are stealing billions of dollars annually from United States citizens, businesses, and government programs. Financial fraud crimes have become more prevalent in recent years as criminal organizations take advantage of the significantly greater amounts of personal and corporate financial information now available and the ability to access that information through computer technology. The Association of Certified Fraud Examiners estimated financial losses from fraud perpetrated by domestic and international criminals in the United States at more than \$200 billion per year. A 1995 survey of personal fraud victimization estimated the annual tangible costs associated with fraud schemes to be \$45 billion.

Credit card fraud is another major financial fraud that crosses international borders. Chinese gangs in the United States particularly have been adept at carrying out a wide variety of credit card fraud, including counterfeit credit cards. Major credit card issuers estimate fraud losses to have been in excess of \$2 billion dollars in 1996, about one-third of which

occurred outside the United States.

The expansion of computer technology throughout the world has also led to increased opportunities for transnational criminals to gain access to confidential information and to use the interactive capabilities of advances in computers and telecommunications systems to facilitate fraudulent schemes and the movement of illicit money other assets.

#### **E. Bank Fraud and Threats to International Banks and Financial Institutions**

The use of banks and other financial institutions by international criminals to launder money, finance illicit transactions, or facilitate fraud schemes can undermine their credibility, with significant repercussions for the international financial system. Financial institutions rely on their credibility in international financial transactions—including loans, investments, large fund transfers, and managing stock and equity funds—and the failure of a large institution can affect global markets. Allegations that a financial institution is involved in criminal activity raises the possibility that its services and business practices are corrupt, scaring away investors and customers.

Efforts by some countries to develop modern banking systems can be greatly inhibited by involvement in their burgeoning financial sectors. In cash-and-credit-scarce countries like Russia, for example, criminal groups can gain influence over banks and access to loans for their enterprises simply by threatening to withdraw their funds from the bank. Criminal organizations that acquire control or significant influence in banks or other financial institutions sometimes use them to make loans to front companies that are not repaid, which can undermine the credibility and solvency of the banks,

sometimes forcing the international financial community to come to the rescue.

The collapse of Latvia's Bank Baltija in August 1995—the largest commercial bank in Latvia at the time of this failure—illustrates the threat posed by criminal control of financial institutions. Criminals used the bank to make loans to their own front companies, which were not repaid, and defrauded accounts of as much as \$40 million. This massive fraud caused the bank to fail, provoking a major financial crisis in Latvia.

#### **F. Counterfeiting**

Counterfeiting of United States currency and the currencies of other nations remains a long standing problem, especially with improvement in copying and production technologies.

#### **G. Transnational Crimes Involving Intellectual Property**

Counterfeiting and other forms of copyright, trademark, and patent infringement and sale of pirated products distort international trade, undermine the legitimate marketplace, and cause extensive losses of revenue to both domestic and foreign industries. The illegal duplication of United States films, compact disks, computer software computer software, pharmaceutical, and clothing trademarks major—sectors of United States export earnings—causes annual to United States companies of up to \$23 billion.

#### **H. Corrupt and Criminal Business Practices**

Companies in the United States and other countries are victimized by the global problem of corrupt business practices, including commercial bribery to obtain lucrative business and government contracts. In a three-year period between May 1994 and April 1997, foreign business

companies were alleged to have offered bribes for 180 contracts valued at \$80 billion.

#### **I. Illegal Arms Trafficking**

International criminal networks that are—or could be—used for illegal arms trafficking and brokering deals and smuggling sensitive materials and technologies related to weapons of mass destruction threaten interests of the United States and many other countries. Although United States prosecutions of such cases have been relatively few in number, they have been significant.

For example, in 1997, a group of individuals connected to employees of state-run arms companies in the People's Republic of China were convicted in California of smuggling 2,000 AK47s and other arms into the United States.

#### **J. International Car Theft Rings**

A relatively recent and significant criminal activity carried out by Russian and Asian organized crime groups involves extensive networks to steal luxury cars by hijacking or through fraud in the United States. The cars are then smuggled out of the United States for sale in foreign countries in Asia and Europe.

#### **K. Prostitution**

Asian and Russian organized crime groups are also significantly involved in obtaining women from Asia and former Soviet Bloc countries to work in the United States as prostitutes. Often the women are brought to the United States through fraudulent visas and passports under false promises of assistance to obtain legitimate employment. However, the women are forced into prostitution until they pay the organized crime figures substantial amounts of money under threats of physical harm and under threats to expose their illegal alien status to the authorities.

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In my view, these are the principal, but by no means all, transnational offenses that adversely affect the United States and other countries, and they pose formidable problems to the global law enforcement communities. I would next like to briefly discuss the principal organized groups operating in the United States and other countries.

#### **IV. ORGANIZED CRIME GROUPS**

##### **A. United States—Based Organized Crime Groups**

As I stated earlier, United States authorities use a multi-faceted criteria to identify a group that constitutes “organized crime”. To briefly repeat, the central factors are whether the group has a hierarchical structure, is self-perpetuating and continues over time and engages in diversified criminal activities for profit.

Under these criteria, La Cosa Nostra, commonly referred to as the LCN, is the most significant organized crime group operating in the United States. The LCN is a nationwide criminal organization divided into approximately 24 families that operate in the major cities in United States. Five families exist in New York City and 19 other LCN families are centered in other large cities in the United States. However, for most part, the LCN’s criminal activities are focused in the United States and to some extent in Canada and have little direct effect on other countries. Of course there are some notable exceptions including, but not limited to, the LCN’s involvement in narcotics trafficking, money laundering and stock frauds which are significant transnational crimes. But, these are exceptions to the general proposition that the LCN’s criminal activities, especially the LCN families outside of New York City, involve matters largely confined to the United States.

The same is true for Asian organized crime groups operating in the United States. Thus far, the evidence indicates that Asian organized crime groups in the United States primarily operate in and are controlled in the United States without substantial ties to foreign organized crime groups. However, there are notable exceptions, such as their involvement in alien smuggling, money laundering, narcotics trafficking and trafficking in stolen cars which are transnational crimes with substantial ties to criminal associates in countries outside the United States. There may be other exceptions as well. Having said that, it remains generally the case that for the most part Asian organized crime groups in the United States consist of relatively small groups of various ethnic Asians that lack the structure, long term continuity and breadth of activities as does the LCN. The evidence thus far indicates that the principal criminal activities of these ethnic Asian organized crime groups in the United States include home invasion robberies and burglaries, robberies and extortion of businesses, other extortions, gambling, credit card and other fraud and related crimes of violence that are focused on the particular communities in the United States where the gang members live or operate.

##### **B. The Boryokudan**

I am sure most of us are familiar with the Boryokudan, which are large organized crime groups operating in Japan. However, thus far the evidence does not indicate that the Boryokudan poses a substantial threat in the United States. Indeed, over the past 15 years there have only been three or four federal prosecutions in the United States involving criminal activities in the United States by the Boryokudan.

##### **C. Triads**

Again as you may know, Triads are relatively large criminal organized crime

groups operating in Hong Kong, the People's Republic of China and Taiwan. However, thus far the evidence indicates that Triads, as such, do not pose a substantial threat to United States law enforcement. Various Triad members have been prosecuted in the United States, mostly for drug trafficking, and there is evidence that Triad members have used their Triad affiliations to facilitate their criminal activities in the United States. However, thus far the evidence does not indicate that Triads are firmly entrenched in the United States and does not indicate that Triads have cells operating on an ongoing basis in the United States. Probably, the greatest threat in the United States posed by Triads involves their drug trafficking activities.

#### **D. Italian Organized Crime Groups**

The principal organized crime groups operating in Italy are the Sicilian Mafia or Sicilian Cosa Nostra, the Camorra based in Naples, the 'Ndrangheta based in Calabria and the United Sacred Crown based in Puglia. Although, these organized crime groups engage in transnational crimes affecting Europe and elsewhere, thus far the evidence does not indicate that these groups engage in significant criminal activities in the United States. In the mid to late 1980's there were several important prosecutions in the United States of Sicilian Mafia members and associates for drug trafficking and money laundering offenses. Since then, there has not been evidence in the public record that Italian organized crime groups have a significant presence in the United States, although there continues to be some drug trafficking and money laundering prosecutions of persons tied to Italian organized crime.

#### **E. South American Drug Cartels**

As I previously stated, South American Drug Cartels, such as the Cali and Medellin drug cartels, continue to have a significant

impact on the United States through their extensive drug distribution and money laundering networks.

#### **F. Russian Organized Crime Groups**

United States law enforcement agencies use the term "Russian Organized Crime" to refer not only to organized crime groups operating in Russia, but rather the term more broadly encompasses two general components: First, Russian organized crime refers to organized crime groups operating in or headquartered in countries in Eastern Europe and Asia that were formerly part of the Soviet Union and the Soviet Bloc, which for example would include Russia, Poland, Hungary, Georgia, Armenia, Kazakhstan, Ukraine and others. And second, Russian organized crime refers to organized crime groups operating in the United States that have a nexus to the countries that formerly comprised the Soviet Bloc.

##### **1. Outside the United States**

I would like to first discuss the Russian organized crime groups operating in or which are centered in the former Soviet Bloc countries. The collapse of the Soviet Union and the Soviet Bloc in 1991 created a vacuum of authority. As new governments began grappling with the awesome problems of developing laws, regulations and business practices to govern emerging private businesses, economic activities and greater political freedom, criminals have exploited both the new economic and political opportunities and the absence of comprehensive legal structures. In particular, Russia's efforts to privatize the economy, that is—the sale of state-owned industries to the private sector, has been fertile ground for criminal exploitation.

In 1993, Russian President, Boris Yeltsin declared that crime was "the number one threat to national security." Figures for 1994 from the Russian Ministry of the

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Interior, commonly referred to as the MVD, indicate that there are over 8,000 criminal groups in Russia with approximately 100,000 members. These criminal groups operate in over 50 countries, they are firmly entrenched in the Former Soviet Union and Soviet Bloc countries, and are expanding to the United States, the Caribbean, South America, Israel and the Middle East.

"Thieves-In-Law" represent the "old-guard" of these Russian organized crime groups. The MVD estimates their membership to be roughly 750 to 800. Thieves-In-Law is a loosely organized group of elite criminal leaders whose roots stem from organized gangs in former Soviet prisons. Thieves-In-Law are selected by their prison peers for membership, observe strict codes of conduct, engage in ritual ceremonies and sport physical markings. In these respects the society of Thieve-In-Law are similar to traditional organized crime groups such as the Sicilian Mafia and the LCN in the United States.

There are at least 20 to 25 major Russian organized crime groups operating in or centered in the former Soviet Bloc countries. These are relatively large organizations, with key membership ranging from several hundred to 1,000 active criminals. They have a hierarchical structure and are divided into brigades or crews of members. These criminal enterprises engage in a wide variety of criminal activities, including murder, extortion, kidnapping, trafficking in drugs and weapons, money laundering, prostitution, fraud, theft and related public corruption.

I would like to briefly discuss a few of these criminal activities. Perhaps the greatest threat to the stability of the Russian Federation and other new governments of the former Soviet Bloc that is linked to Russian organized crime groups

arises from the looting and illegal export of natural resources and other assets, often carried out with the assistance of corrupt government officials.

A recent prosecution in the United States illustrates this. In January 1998, a Russian emigre was convicted in San Francisco, California, on tax charges. The charges arose from an investigation into an elaborate scheme to sell in the United States approximately \$180 million in gems and precious metals obtained from the Russian Federation, with the assistance of corrupt officials in the Russian Federation. The gems were supposed to be processed in the United States, but the conspirators sold the gems and used the money to buy expensive residences, real estate, cars and other assets. Several officials of the Russian Federation have been charged with corruption offenses in Russia.

There are many other examples of corrupt capital flight from former Soviet Bloc countries. In the United States, there have been numerous investigations of highly suspicious wire transfers of substantial sums of money, in some cases in the millions of dollars to hundreds of millions of dollars, from entities in former Soviet Bloc countries to entities in United States where there is no apparent legitimate explanation for these transfers of money. Although some of these cases have led to successful prosecutions, many remain unsolved because of the difficulty to trace the money and to determine the ultimate believed illegal sources of the money in the countries outside the United States.

Other kinds of fraud carried out by Russian organized crime groups also are becoming more prevalent. For example, in 1996, a group in Los Angeles was convicted for a \$4 million fraud against the Government of Kazakhstan on a contract

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to sell Cuban sugar to Kazakhstan. Advance payments were made by the government of Kazakhstan to the conspirators in the United States, but the sugar was never delivered. Indeed, the fraud was quite brazen since it is not lawful for companies in the United States to sell Cuban sugar to anyone. Similar contract fraud schemes have involved false promises in the delivery of meat, alcohol, petroleum and other products.

As previously stated, in the 1990's narcotics consumption increased in Russia and other former Soviet Bloc countries. There is evidence that Russian organized crime groups are responsible for much of the drug trafficking and have formed alliances with South American drug trafficking organizations and Italian organized crime groups to handle distribution of narcotics in the former Soviet Bloc countries.

Russian organized crime groups have been deeply involved in arms trafficking with the assistance of current and former corrupt government and military officials. Several recent prosecutions in the United States, including a pending indictment in Florida of a Russian emigre Ludwig Fainberg, involved efforts sell illegal arms allegedly obtained from Russia.

Some of these cases have also involved offers to sell nuclear grade weapons materials. However, thus far there have been no cases in the United States in which nuclear grade weapons materials have been delivered. But, given the significant dangers inherent in trafficking in nuclear grade weapons materials, the United States will, of course, continue to vigorously investigate possible cases of such trafficking.

### 2. In the United States

Next, I will briefly discuss Russian

organized crime activities in the United States. There are two general categories of Russian organized crime groups operating in the United States. The first category consists of the traditional large organized crime groups based in Russia and other countries of the former Soviet Bloc that I have just discussed. Some of these groups are trying to establish a foothold in the United States, and are carrying out criminal activities in the United States through associates living in the United States.

The Ivankov organization centered in New York City illustrates the first category. Vyacheslav Ivankov operated an illegal organization in New York City involving extortion of an illegal organization in New York City involving extortion and fraud, and the organization had direct ties to Russian organized crime groups outside the United States. In 1996, Ivankov was convicted on extortion charges in the United States and sentenced to nearly to nearly 10 years in jail.

Another case illustrates the first category. In January 1997, Ludwig Fainberg was indicted in Miami, Florida, on federal charges involving drug trafficking efforts to smuggle cocaine from Ecuador to St. Petersburg, Russia and for the interstate transportation of stolen property. The conspirators were also attempting to purchase a Russian diesel submarine to be used to smuggle drugs.

In another drug case, in December 1997, Oleg Kirillov, a Russian organized crime leader based in Russia, was indicted in a federal court in Miami, Florida, for conspiring to export cocaine from the United States to Russia.

The second category of Russian organized crime groups in the United States commonly referred to as

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“fraudsters”, are emigres from the former Soviet Bloc countries living in the United States who engage in various kinds of fraudulent and other criminal activities. Fraudsters are smaller, less centralized and less hierarchical groups of criminals than the first category of more traditional organized crime groups. Moreover, while fraudsters may have some ties to Russian organized crime groups centered outside the United States, for the most part the fraudsters criminal activities are “home grown”, that is, they focus on activities in the United States with little or no direction from groups outside the United States.

United States authorities are still not sure how much of Russian organized crime activity in the United States falls within the first or second category. Russian organized Crime activity in the United States is a recent development, and we still have a lot to learn. Thus far, the evidence indicates that most Russian organized crime criminal activity in the United States falls within the second category, that is fraudsters centered in the United States with little or no direction from Russian organized crime groups outside the United States. But, our assessment may change as we learn more about fraudsters' activities.

A few cases illustrate the activities of Russian fraudsters. A series of successful prosecutions in the late 1980s and 1990s, in Los Angeles, New Jersey, New York and Philadelphia established that Russian fraudsters formed an alliance with United States LCN members to defraud state governments of many millions of dollars in diesel fuel excise taxes. The conspirators carried out their scheme through extortion of businessmen and through establishing sham gasoline companies that evaded the payment of the excise fuel taxes.

The most notorious fraud scheme

perpetrated by a Russian organized crime enterprise was the massive medical insurance fraud conducted by the Smushkevich brothers in Southern California in the late 1980's. Michael and David Smushkevich were emigres from Lithuania who together with their spouses and eight associates, embezzled private insurers and the United States government of over one billion dollars. The brothers operated mobile health care diagnostic laboratories. Patients were solicited by telephone to receive supposed “free” examinations at their mobile clinics. The patients were asked to sign forms giving the clinics the rights to their insurance benefits. The bills were then submitted to insurers claiming that doctors had ordered the tests. At its peak, the operation involved 500 companies.

There are numerous other prosecutions and investigations involving Russian fraudsters' carrying out similar health care fraud schemes to defraud state and federal governments. In addition to such fraud, money laundering by Russian fraudsters in the United States is a very significant problem. As I mentioned earlier, there are numerous cases involving suspicious transfers of hundreds of millions of dollars from former Soviet Bloc countries to the United States that are under investigation. As you can see, Russian organized crime is a very recent phenomenon that poses increasing threats to the United States and many other countries.

## V. CONCLUSION

In conclusion, it is clear that transnational crimes and organized crime groups' criminal activities are very comprehensive and pose formidable problems for the global community. Therefore, I am sure that you will agree that it is imperative that we all continue to work closely together to combat these worldwide problems.

# UNITED STATES RESPONSES TO THE THREATS POSED BY TRANSNATIONAL CRIME AND ORGANIZED CRIME GROUPS

*Frank J. Marine\**

## **I. UNITED STATES DOMESTIC LAW ENFORCEMENT RESPONSES**

In my first paper I described the nature of the principal transnational crimes and organized crime groups affecting the United States and other countries, and the substantial threats to the world community arising from these criminal activities. I would now like to discuss some of the investigative techniques and prosecutive tools and strategies that law enforcement has used with some effectiveness in the United States to combat such criminal activities. I hasten to add, however, that while I believe that these tools have been effective in the United States, they may not be transplanted easily into other countries. As we all know, there are differences among the countries of the world regarding their history, size in population and territory, geographical location, political, social and economic systems, cultural values and social structure that greatly influences the appropriate policies and procedures adopted by any particular country to address criminal activities and other problems. Therefore, I do not mean to suggest that the approaches of the United States are the only ways, nor do I mean to suggest they are the best ways. Rather, it is for each country to decide for itself on appropriate course of action to combat criminal activities.

Equally, I do not mean to suggest that law enforcement is capable of completely eliminating transnational crimes and

organized crime activities. Such perfection simply does not exist in the real world. But, I firmly believe that working together we can substantially reduce the threats posed by the adverse consequences of criminal activities.

## **II. INVESTIGATIVE TECHNIQUES**

### **1. Electronic Surveillance**

The single most important law enforcement weapon against organized crime by far is electronic surveillance. Virtually all the major federal United States prosecutions against the leadership and members of the La Cosa Nostra (LCN) over the past 20 years have involved electronic surveillance. Electronic surveillance is likewise becoming an equally important weapon against Asian and Russian organized crime groups.

The reasons are obvious. First, there is nothing as effective as proving the crime through the words of the defendant themselves. There are often credibility problems with co-conspirators as witnesses since they are criminally involved and received some form of a deal or consideration for their testimony. Whereas electronic surveillance evidence provides objective reliable evidence of crimes through the statements of the participants themselves. Moreover, electronic surveillance enables law enforcement to learn of conspirators plans to commit crimes before they are carried out, which enables law enforcement to surveil the activities, such as delivery of contraband and conspiratorial meeting, or to disrupt and abort the criminal activities as

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appropriate. In that regard, electronic surveillance is particularly helpful in preventing crimes of violence from occurring.

Indeed, electronic surveillance is especially helpful in transnational crimes because it enables law enforcement to intercept conspirators in the United States discussing their crimes with their criminal associates in countries outside the United States. Without such electronic surveillance, it would be very difficult for United States law enforcement to obtain evidence of such conspiratorial planning against the co-conspirators operating outside the United States.

Although electronic surveillance is extremely valuable, it is also a very sensitive technique because of legitimate concerns for a person's privacy interests. Accordingly, United States law imposes significant restrictions on electronic surveillance. First, electronic surveillance is authorized to obtain evidence of only some specific serious offenses listed in the governing statute. To obtain electronic surveillance, agents and government attorneys must submit an affidavit to a United States district court judge which contains specific facts establishing probable cause to believe that subjects of the electronic surveillance are committing certain specified offenses and that it is likely that relevant evidence of such crimes will be obtained by the electronic surveillance. Thus, the government must obtain the approval of a neutral independent judge to conduct electronic surveillance.

Moreover, before electronic surveillance is permissible, the government must establish probable cause to believe that investigative techniques other than electronic surveillance have been tried and failed to obtain the sought evidence, or we

must establish why such other investigative techniques appear to be unlikely to succeed if tried, or will be too dangerous to try.

In executing the electronic surveillance, the government must "minimize" the interception of innocent conversations. That is, the government must take reasonable steps to assure that only conversations relevant to the crimes under investigation are intercepted and that innocent conversations are not intercepted. In practice, the monitors must turn off the recording machines when conversations are not discussing matters relevant to the crimes under investigation.

Such court-authorized electronic surveillance is limited to 30 days, the 30-day period may be extended for additional 30-day intervals provided that all the requirements are met every 30 days and approved by the judge.

## **2. Undercover Operations**

When it comes to organized crime control, undercover operations are second only to electronic surveillance; indeed, the two techniques often go hand-in-hand.

In undercover operations, law enforcement agents may portray themselves as criminals such as drug dealers, fences for stolen merchandise, money launderers or even hitmen willing to commit murder for hire. Through such undercover operations, law enforcement agents are able to infiltrate the highest levels of organized crime groups by posing as criminals because other real criminals will discuss their criminal plans with the agents to get their assistance in committing crimes.

The agents also gain the confidence of criminals, who will in turn often reveal their past criminal activities to the agents,

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as well as plot with the agents to engage in additional ongoing criminal activities. Combined with eavesdropping, the undercover approach provides comprehensive coverage of the targets' day-to-day activities. But this technique also carries the potential for problems and requires exceptional preparation. For one thing, there is always the physical safety of the undercover agent to consider. To prevent the premature disclosure of his or her identity, the agent must be provided with a fully substantiated past history (called "backstopping") and careful briefings of the targets' modus operandi. Every conceivable scenario that might make the targets suspicious of or hostile to the agent must be considered in advance. And the undercover agent himself must undergo careful testing (including, if necessary, psychological profiling) to ensure that s/he possesses the intangible qualities whereby they will "fit" comfortably into the new identity.

Another danger in undercover operations involves potential danger — either physical or financial — to the public. Undercover techniques need wide public support to be successful. The quickest way to lose public support for undercover operations is to operate them in a way that victimizes the public. Unlike eavesdropping, which is relatively passive, undercover operations frequently deal with - and sometimes intentionally mislead — the public. For example, suppose there is an undercover business selling products to the public while advertising itself unofficially to criminal as a place where stolen property can be taken. Not only could the government be liable for any defects in the products it sells to the public, it might be indirectly responsible for encouraging thieves to steal property by virtue of supplying them with an outlet.

In order to balance these concerns and

avoid harm to the public, our Department of Justice has set up Undercover Review Committees, comprised of senior prosecutors and investigators, to review, approve, and control all sensitive undercover operations. To be approved, an undercover proposal must:

- i. Be in writing;
- ii. Contain a full factual description of the suspected criminal activity and the participants therein;
- iii. Set out in detail the proposed undercover scenario, the expertise of the undercover team, the duration of the project (not to exceed six months unless extended), and the anticipated legal issues (such as entrapment) ; and
- iv. Evaluate the risk to the agents and the public.

Regarding such dangers, when law enforcement learns of potential crimes of violence, law enforcement authorities are required to take necessary steps to prevent the violence from occurring, which could include warning the potential victim or arresting the subjects who pose a threat or ending the undercover operation.

Undercover operations are especially essential and are very successful in narcotics trafficking cases because traffickers always need customers to sell their contraband. Agents, posing as buyers, can obtain direct and substantial evidence against the drug traffickers by buying their product. Likewise, long term undercover operations are essential to infiltrate organized crime groups that continue their illegal activities over many years. For example, FBI agent Joseph Pistone worked undercover for six years as a jewel thief under the alias Donnie Brasco to infiltrate

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the highest levels of the Bonanno LCN family in New York City. This undercover work led to the convictions of many LCN leaders and members. A recent film - "Donnie Brasco" was made about his highly successful undercover work.

### 3. Informants

Another critical law enforcement technique involves the use of confidential informants. I am a big fan of Sherlock Holmes, and as a law enforcement official, would love to think that we could solve organized crime problems using our deductive reasoning powers to sift through intricate clues and arrive at the correct conclusion "who done it", like the famous Sherlock Holmes. Unfortunately, Sherlock Holmes is fiction. In reality, we do not solve organized crime cases the Sherlock Holmes way. Rather, we solve such crimes through electronic surveillance, undercover operations and also through the third most important tool, — the use of confidential informants.

When United States law enforcement uses the term confidential informant, we refer to an individual who is not willing to testify and who provides information or assistance to the authorities under a promise that we will try to keep their identity confidential. We cannot absolutely guarantee such confidentiality because in relatively rare circumstances courts may conclude that due process, or concerns of fundamental fairness, require that a confidential informant's identity be disclosed to a defendant charged with a crime where the informant can provide evidence that could exculpate the defendant. Absent such a rare case, we are able in most cases to keep an informant's identity confidential.

Confidential informants are typically motivated to provide information to the authorities in exchange for money or

lenient treatment regarding charges pending against them or likely to be brought against them. In many cases confidential informants are themselves engaged in criminal activities which enables them to provide valuable direct evidence of criminal activities by their criminal associates. Confidential informants frequently provide the information that enables law enforcement officials to obtain judicial warrants authorizing electronic surveillance. Many successful prosecutions of the LCN leadership have involved information supplied by confidential informants who provided information for many years about the leadership of the LCN; indeed some of the informants have been made members of the LCN. Incriminating evidence by informants who deal directly with the LCN leadership is simply invaluable to break through the layers of insulation that the leadership uses to conceal their activities.

However, there are high risks associated with the use of informants. Sometimes, informants do not fully disclose their own criminal activities, or they falsely implicate their enemies in crimes, or they engage in unauthorized criminal activities. In that latter respect, under United States law, law enforcement may authorize informants to participate in some forms of non-violent criminal behavior that would otherwise be illegal, if they were not acting as informants with authority to engage in the activities. For example, depending on the circumstances, in order to protect an informant's cover and to enable them to be in a position to obtain incriminating evidence against others, informants may be authorized to participate in illegal gambling, trafficking in stolen property, and other non-violent crimes. Therefore, it is important for law enforcement to closely monitor the activities of informants to minimize the danger that the informant would use their association with law

enforcement to shield their own unauthorized criminal activities.

On balance, however, experience teaches us that as a general rule, the benefits from the use of informants greatly outweigh the risks. But, we must be ever vigilant of the risks.

### **III. PROSECUTION TECHNIQUES AND WEAPONS**

#### **1. The RICO Enterprise Theory of Prosecution**

Obviously, the goal in every organized crime case is to convict the highest levels of a crime organization. To do so, prosecutors need the proper tools. First and foremost, prosecutors need an “enterprise” or “racketeering” statute designed specifically for this purpose.

Several countries already have enacted such legislation. Italy, for example, has an anti-Mafia statute; Japan, our host country, recently enacted statutes directed against the Boryokudan. Officials from Russia, Great Britain, and from several countries in Eastern Europe have recently shown interest in “enterprise” legislation. An “enterprise” statute in this context is one that explicitly prohibits participation in a crime group through specified unlawful activity.

In the United States, the most famous of all anti-racketeering laws is called RICO, an acronym for the Racketeer Influenced and Corrupt Organizations Statute. In general, it provides heavy penalties (up to life imprisonment under certain circumstances) when a defendant conducts (or conspires to conduct) the affairs of an enterprise through a pattern of specified acts known as “predicate” crimes. An “enterprise” can include anything from a corporation, to a labor union, to a group of individuals working together to commit

crime such as an LCN family, or an Asian or Russian organized crime group.

In one sense the RICO statute did not actually create a new offense because murder, arson, extortion, and all sorts of business crimes (to name a few of RICO’s 46 predicate offenses) were already made criminal when RICO was enacted in 1970. But RICO was still a dramatic legislative initiative because it permitted many of these generically different crimes to be charged in a single indictment, even, in a single count, so long as those crimes were part of a defendant’s pattern of acts that related to the enterprise.

In addition, there are some features of RICO that are particularly effective in organized crime cases. For example, as long as one of the predicate crimes alleged against a defendant occurred within the last 5 years before the indictment is brought, the next previous crime in the pattern of racketeering need only be within 10 years of the most recent crime. The third most recent crime need only have occurred within 10 years of the second act and so on. The reach-back feature of RICO, therefore, can extend 15 or 20 years or more into the past. (Except for statutes like RICO, indictments in the United States generally cannot allege crimes that occurred more than five years prior to the date of indictment).

RICO’s reach is not only long, it is broad. As noted, the predicate crimes which qualify as RICO predicates run the gamut from several forms of violence, robbery, murder, extortion to fraud, securities offenses, most forms of vice (gambling, extortion, obscenity, prostitution, etc.), and illicit investment in legitimate businesses. Were it not for RICO, most United States judges would prohibit the prosecution of such diverse crimes in a single case, especially if 10 or more defendants were

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charged. Instead, the court would most likely require a series of smaller trials, which is exactly what crime groups hope for, because they understand that the best way to conquer a prosecution is to divide it. In a series of smaller trials no one jury gets to see the entire picture. Organized crime, by contrast, is a picture composed of many crimes, all linked by a single chain-of-command to the same enterprise. Any effective prosecution of a crime family would thus necessitate proof of these many crimes in a single trial. RICO permits this. RICO allows the jury to see the entire pattern of crimes committed by an organized crime group. In bringing a typical RICO prosecution, for example, we may charge six or more racketeers with perhaps a dozen of even more predicate crimes covering a decade. In each alleged predicate crime, some, but usually not all, of the defendants are named. In some cases, RICO indictments have charged numerous defendants with committing more than 50 offenses as part of a pattern of racketeering activity.

As powerful as RICO is, very few RICO prosecutions were actually brought against organized crime until the early 1980s even though RICO was adopted in 1970. Part of the reason was that RICO has always been a very complicated and powerful instrument; it took nearly 15 years for Federal prosecutors to feel comfortable enough-about RICO to make it the centerpiece of mob prosecutions. Another reason was that the investigative techniques necessary to build a suitable RICO case, such as electronic surveillance and undercover operations, were not routinely used against organized crime bosses in the 1970s. To be sure, there were a lot of investigations and prosecutions of racketeers for street crimes, but these cases rarely pierced the insulation behind which big organized crime bosses hid.

In the early 1980s, as already noted, the Federal Government (primarily the FBI) made a determined effort to infiltrate the secret headquarters of LCN bosses, listening to their plans and reconstructing their crimes. In turn, Federal prosecutors agreed to bring more and more complicated RICO charges. As a result, more successful cases against organized crime bosses have been brought in the last 15 years than in the prior 80 years. In fact, prosecutors discovered that RICO worked equally well whether the defendants were mobsters charged with murders and extortions, or public officials charged with taking bribes.

Naturally, due to their sensational revelations, RICO mob cases received extensive media coverage. At this point it is clear that control of organized crime in the United States would be inconceivable without RICO. In addition, RICO was the key charge against panamanian dictator Manuel Noriega and the Philippines' President Ferdinand Marcos. RICO cases have also been brought against hundreds of police officers, judges, and public officials for official misconduct, and against terrorist groups, radical hate groups, street gangs, stock manipulators, and drug cartels.

We are now successfully using RICO to attack newly emerging organized crime groups such as Asian and Russian organized crime groups, just as we did against the LCN.

Like any powerful tool, RICO could be abused. To protect against potential abuses, the Organized Crime and Racketeering Section (OCRS) has a special unit of attorneys who carefully review all proposed RICO indictments for legal and factual sufficiency. The unit also ensures in every case that RICO is necessary; when other, less powerful statutes would do just as well, the use of RICO charges is not

approved.

## **2. Organized Crime Strike Force Units**

As I previously stated, the LCN is the number one organized crime problem in the United States. The LCN is an extensive nationwide criminal organization. Therefore, it was essential to attack the LCN through a closely coordinated nationwide effort. However, law enforcement is very fragmented and decentralized in the United States. The United States Department of Justice at the federal level is divided into 94 different United States Attorneys offices throughout the country that operate with considerable independence of the main Justice Department located in Washington, DC. In addition, there are literally hundreds, perhaps over 1,000 state, county and city prosecutors' offices and police departments that have criminal jurisdictions that are totally independent of the federal Department of Justice. This fragmented prosecutorial authority makes nationwide coordination difficult. These difficulties are made even greater when you factor in the large territorial size of the United States and its relatively large population of over 260 million people.

To improve coordination of federal efforts to attack organized crime, in the late 1960s the Department of Justice created 24 specialized prosecutive units called Organized Crime Strike Forces, located in the cities where the 24 LCN families were most active. These Strike Force Units were staffed by career prosecutors who were experienced in electronic surveillance, undercover operations, and long term proactive investigations. Moreover, these prosecutors are only allowed to work on organized crime matters. To assure that they work only on organized crime matters and to assure that the Strike Force cases are properly coordinated from a national

perspective, supervising prosecutors in Washington, DC are able to maintain the focus of efforts against the LCN and to see to it that relevant information developed by one Strike Force office gets to another office in another part of the country that may need it.

Moreover, because the supervisors in Washington, DC, are aware of all LCN investigations and prosecutions in the United States, they are able to reduce duplication of efforts and coordinate investigations and prosecutions conducted by more than one office.

The creation of these Strike Force Units proved to be invaluable. Over the past 25 years, the vast majority of all the major convictions of LCN bosses and members were obtained by these Strike Force Units. Although the LCN remains strong in the metropolitan New York City area where roughly 80% of the LCN members operate, the LCN has been substantially weakened in other parts of the United States - particularly in San Francisco, Los Angeles, Kansas City, Milwaukee, St. Louis, and other cities.

Although the Strike Force Units were initially created to combat the LCN, their mission was expanded in 1990 to combat Asian and Russian organized crime groups. In 1990, the Attorney General of the United States adopted a national strategy to coordinate the federal attack against then newly emerging organized crime groups operating in the United States. The Strike Force approach became the centerpiece of that national strategy since it had been so successful against the LCN. The Strike Force Units were well equipped to handle the new challenges because of their experience, and also because the Strike Force Units were already located in the cities where the Russian and Asian organized crime groups were most active.

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Not surprisingly, the Russian and Asian organized crime groups are active in the same large cities as the LCN.

To implement this national strategy, the Attorney General created the Attorney General's Organized Crime Council, the members of which are the heads of the Federal Bureau of Investigation, the Drug Enforcement Administration (DEA), the Division of Enforcement of the Securities and Exchange Commission, the Secret Service, the Marshals Service, the Customs Service, the Postal Inspectors, and the Internal Revenue Service. The Council meets as necessary, and at least once annually, to set the official priorities of the Federal Government's organized crime program, which currently are LCN, Asian, and Russian organized crime. In order to set these priorities, each agency and the country's 94 top Federal prosecutors (called United States Attorneys) are required each year to file written plans assessing the problems posed by organized crime groups in their districts and for attacking organized crime groups in their districts. The Department of Justice's Organized Crime and Racketeering Section then reports its analyses of these plans to the Council. The most important feature of this system is control. It obligates the regional prosecutors and agents to keep constant pressure on La Cosa Nostra and Asian and Russian crime groups, and prevents them from succumbing to periodic temptations to assign prosecutors and agents to non-organized crime cases.

Implementing this national strategy has enabled the Federal Government to coordinate its nationwide efforts against organized crime groups and to keep the pressure on them to prevent them from expanding their corrupt influences on society.

### **3. Witness Security**

Another valuable asset of the prosecutor's arsenal has been the federal witness security program. Because of the violent nature of organized crime, witness intimidation is a significant problem. To address that program, in 1970 the Department of Justice created the federal witness security program. Witnesses are admitted to the program when they are able to supply significant evidence in important cases and there is a perceived threat to their security. Once in the program, the witness and his or her family are given new identities, relocated to another part of the United States where the danger to their security is lessened, and are given financial assistance until the witness is able to secure employment.

Since the beginning of the witness security program, 6,816 witnesses have been admitted into the program along with 8,882 family members for a total of 15,698 persons in the program. The average cost is \$75,000 per witness per year and \$125,000 per family per year.

As you can see, the program is very costly, but the results have made it worth the cost. Since 1970, over 10,000 defendants have been convicted through the testimony of witnesses in the program. Last year, 208 convictions were obtained and 2 million dollars was seized.

The vast majority of protected witnesses, about 97 percent, have criminal records. However, the recidivist rate for witnesses in the program is 21 percent, which is half the rate of those released from prison.

### **4. Forfeiture**

It cannot be overstated that making money is the primary goal of organized crime and transnational criminal activities. Therefore, it is imperative to take the profit out of crime. Strong forfeiture laws do just

that. Forfeiture is a criminal penalty for many offenses in the United States. Generally speaking, upon conviction for an offense that carries forfeiture as a penalty, a defendant may be ordered to forfeit all profits or proceeds derived from the criminal activity, any property, real or personal, involved in the offense, or property traceable to the offense such as property acquired with proceeds of criminal activity. For example, if a defendant uses a residence or car to distribute drugs, that property is subject to forfeiture. Thus, a convicted defendant may be ordered to forfeit all proceeds of the criminal activity including money and other forms of property.

In addition to criminal forfeiture, civil forfeiture laws also allow the government to obtain property used in criminal activities. The principal difference between criminal and civil forfeiture is that criminal forfeiture is limited to a convicted defendant's personal interest in property subject to forfeiture, whereas civil forfeiture focuses on the property itself.

For example, suppose a defendant repeatedly used a house to sell drugs, but s/he did not have an ownership interest in the house. If convicted of drug dealing, that house is not subject to criminal forfeiture because the defendant did not own the house. However, a civil forfeiture law suit could be brought against the house as a defendant, even if the owner of the house was not engaged in criminal activity. The house, nonetheless, is subject to civil forfeiture because it was repeatedly used to facilitate criminal activities, and the owner did not take adequate steps to prevent their house from being used for criminal activities.

There are various defenses to such civil forfeiture, such as the "innocent owner defense", but I do not want to digress into

the complexity of United States forfeiture law. To some extent I have generalized and oversimplified United States forfeiture law which is complex, so as not to detract our attention from the main point I am trying to make. That is, that criminal and civil forfeiture laws are powerful weapons in the prosecutors' arsenal to take the profit out of crime.

### **5. Money Laundering**

Strong money laundering laws go hand-in-hand with forfeiture laws to be powerful weapons against criminal activities. Under United States money laundering laws, it is a crime to knowingly conduct a financial transaction with the proceeds of certain specified unlawful activity set forth in the statute, with either the intent to promote the specified unlawful activity or with the intent to conceal the specified unlawful activity. The term transaction is broadly defined to include "a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition" and "with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safe deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected."

As you can see, the money laundering statute covers nearly every imaginable type of transaction. Moreover, the penalties for money laundering include forfeiture which greatly enhances law enforcement's efforts to take the profit out of crime.

For example, in one recent case in Boston, defendants were convicted of laundering \$136 million in drug proceeds for Colombian drug traffickers. The defendants received the cash drug proceeds, and used it to buy money orders



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cashiers checks, or gold to conceal the illegal source of the cash; this constituted money laundering. The defendants argued that they should only be required to forfeit the 5% laundering fee (or roughly \$7 million) that they charged the drug traffickers since the \$136 million belonged to the drug traffickers. The court rejected this argument and held that the defendants were liable for forfeiture of the entire \$136 million that they laundered.

Other examples of money laundering illustrate the breadth of the statute. For example, proceeds of fraud that are deposited in bank accounts or other financial institutions which is commingled with legitimate money in accounts under the names of nominees constitutes money laundering subjecting, under some circumstances, the entire amounts in the accounts to forfeiture, including the money obtained legally as well as the crime proceeds.

In many cases, not just organized crime cases, money laundering violations coupled with forfeiture have proven to be powerful weapons to take the profit out of crime.

## **6. Sentences**

Finally, I would like to briefly discuss United States sentencing laws. Fair punishment upon convictions of crimes to protect society is obviously the ultimate goal of all prosecutions. Perhaps most important is the protection afforded by incapacitating the convicted criminal through incarceration. To be sure, imprisonment substantially reduces, but does not totally eliminate, opportunities for criminals to continue their their illegal activities.

In 1987, the United States Federal Government adopted a comprehensive change in its sentencing laws to make punishment more definite and more

uniform throughout the federal system. First, federal parole was abolished. Therefore, a sentence of 10 years in jail means a defendant will not be paroled at a shorter time and the defendant will actually serve 10 years in jail, with some modest reduction for good behavior while in jail. Other changes involved substantial restrictions on the discretion of judges in imposing sentences. Pursuant to the changes, sentences are now determined by application of a complex numerical weighing system. Under the formula, specific numbers are assigned to relevant factors such as the type of offense, the nature of the underlying circumstances, the defendant's role in the offense and the defendant's criminal history. The numbers are added up and the defendant is generally sentenced to a guideline range according to the resulting number. Again, I am oversimplifying complex legal provisions.

The end result of these reforms has been that more defendants have been sentenced to prison for longer terms. According to data from the Department of Justice's Bureau of Justice Assistance, the state and federal prison population in the United States rose 50 percent from 1990 to 1997, and has been increasing 6.5 percent annually. The state and federal prison population in the United States is now 1.7 million prisoners. During the last 25 years, the federal and state inmate population has increased six fold from 200,000 in 1972.

The increases in the length of jail sentences and the number of defendants imprisoned has been one important factor contributing to the reduction of serious crime in the United States. According to the FBI's Uniform Crime Reports released in 1997, between 1992 and 1996, overall crime in the United States dropped 10.3 percent, violent crime dropped 16.3 percent, murder dropped 20.4 percent, robbery

dropped 23.2 percent, aggravated assault dropped 12.1 percent and property crime dropped 9.3 percent.

I recognize that this drop in crime is due to a number of factors and not just putting more people in jail for longer periods of times. But career criminals do not just commit the one crime they are convicted for, rather they commit many crimes each year. Therefore, it seems to me that putting more career criminals in jail for longer periods of time will prevent them from committing those crimes which significantly contributes to a reduction in crime.

I would now like to turn my discussion from the principal aspects of the United States domestic responses to transnational crimes and organized crime to what we are doing together with other countries in the international arena to combat such criminal activities.

#### **IV. UNITED STATES RESPONSES IN THE INTERNATIONAL ARENA**

##### **1. Extradition**

It is imperative that international criminals be denied a safe haven. International extradition treaties remain the most effective legal mechanism to obtain the return of international fugitives. In 1990, the United States sought the extradition of 1,672 accused or convicted criminals. By 1996, that number had jumped to more than 2,894, including numerous fugitives wanted for murder, major drug trafficking offenses, money laundering, multi-million dollar financial scams, and other serious crimes committed against the United States.

The United States is currently party to over 104 such extradition treaties. The United States Departments of State and Justice, with appropriate input from other

law enforcement agencies, are involved in an active program to negotiate modern treaties in order to replace old, outdated instruments, to create extradition treaties where none previously existed, and to ensure that new crimes are covered by extradition treaties.

In the past five years the United States has entered into new extradition treaties with Spain (1993), the Bahamas (1994), Jordan (1995), Malaysia, Bolivia (1996), Philippines (1996), Hungary (1997), Switzerland (1997) and Hong Kong (1997). United States extradition treaties with the following countries are pending approval of the United States Senate: Antigua and Barbuda, Barbados, Cyprus, Dominica, France, Grenada, Luxembourg, Poland, St. Kitts and Nevis, St. Vincent and the Grenadines, Spain, and Trinidad and Tobago.

The United States is also pursuing efforts to secure extradition without a treaty. We encourage the international community to work together to deny safe havens to international criminals through procedures consistent with domestic and international law.

##### **2. Mutual Legal Assistance Treaties (MLATS)**

In light of the international nature of transnational and organized crime activities, it is also essential to be able to timely obtain the testimony of witnesses, bank records, other financial records and other evidence from foreign countries, and in some cases from several different countries, and for the United States to give similar assistance to other countries. Therefore, Mutual Legal Assistance Treaties have become important tools to address international criminal activities.

Barely 20 years ago, the United States entered into its first MLAT. Today, there

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are 19 MLATs in force that extend to 23 countries. In the 104th Congress, the Senate gave its consent to five additional MLATs with Austria, Hungary, Korea, the Philippines, and the United Kingdom. The number of United States made approximately 928 requests for mutual legal assistance in criminal matters. In 1996, that number had increased to approximately 1,644 requests.

The United States Department of State and Justice have worked together in negotiating 14 additional MLATs that will require ratification by the Senate, including agreements with Australia, Hong Kong, and Poland. The United States also has signed a multilateral MLAT with the Organization of American States (OAS), which potentially could create MLAT relations between the United States and the 33 other member states of OAS.

Where there is no MLAT in force, the United States is hopeful that law enforcement agencies will be able to exchange information and provide mutual assistance in ways that are fully consistent with the laws of the countries involved. Such joint cooperation is essential to effectively combat the international criminal activities of sophisticated criminals who seek to exploit the difficulties inherent in international investigations.

**3. Expanding the Presence of United States Law Enforcement Agents Abroad**

Tough United States laws that protect United States citizens and interests abroad will be of little value if the United States does not establish an investigative and law enforcement infrastructure to pursue violations of these laws. United States law enforcement officials stationed abroad work shoulder to shoulder with their foreign counterparts to investigate crimes

against United States nationals committed overseas. Where offenders are identified, these officials also work to locate, apprehend, and return the perpetrators of such crimes through extradition, expulsion or other lawful means. They also facilitate the arrest and extradition of international fugitives located in the United States and wanted abroad.

The need for a major United States law enforcement presence abroad is well documented. For example, in 1996 and 1997, foreign offices of the United States Customs Service handled over 3,850 cases. Moreover, there is often a direct tie between the work of these overseas offices and domestic criminal investigations. For example, over 80 percent of the 7,068 cases pending in FBI Legal Attache offices overseas at the end of 1996 originated from United States FBI field offices. Also, the number of cases worked by FBI agents in the new Moscow Legal Attache office grew from 20 in July 1994, to 289 through July 1997 — a fifteen-fold increase. In their first year, the new Customs Service offices in Moscow and in Pretoria, South Africa, handled over 50 and 30 cases, respectively. A substantial number of these cases involve fugitives from United States courts, crimes committed abroad against United States nationals, and other serious violations of United States criminal laws.

The United States would like to expand its law enforcement presence in other countries to work with the host countries to respond to this growing need. For example, the FBI hopes to establish new FBI offices in 24 foreign nations and to expand existing offices in an additional 23 countries. Similarly, the Customs Service hopes to open 11 new offices in Europe, Asia, Australia, and the Americas, complementing 26 existing offices. The DEA hopes to augment its already sizeable presence with further expansion into the

Newly Independent States from the former Soviet Bloc, Latin America and other current and emerging centers of drug trade. These expansions will bolster United States law enforcement abilities to arrest and punish fugitives who have committed crimes against the United States, to dismantle international organized crime rings, and to strengthen law enforcement and judicial systems around the globe.

To complement the increasing number of United States law enforcement personnel overseas, it would be helpful to expand the Department of Justice's cadre of overseas attorneys. Their role includes facilitating requests for extradition and mutual legal assistance, providing substantive legal guidance on international law enforcement and treaty matters, and increasing cooperation between United States and foreign prosecutors. In 1990, the United States handled approximately 2,208 extradition and 1,784 mutual legal assistance requests both to and from the United States. By 1996, those numbers had nearly doubled, jumping to 3,963 extraditions and 3,407 mutual legal assistance requests. Furthermore, approximately 25 percent of all extradition requests and 9 percent of all mutual legal assistance requests were in support of state and local prosecutors. This increasing caseload requires United States attorneys in other countries to respond to requests for information, and to facilitate the transfer of fugitives and evidence to and from the United States. Currently, the Department of Justice has prosecutors in Brussels, Mexico City, Paris, and Rome. The planned expansion includes additional attorneys in Manila, Brasilia, Athens, and Asia.

#### **4. International Training**

In 1995, the United States working with Russia, Hungary and other countries in Eastern Europe established the

International Law Enforcement Academy (ILEA) in Budapest, Hungary. This academy offers law enforcement officers from Eastern and Central Europe an eight-week personal and professional development program modeled after the FBI's National Academy in Quantico, Virginia near Washington, DC. The United States is working with other countries to establish a similar training academy in Asia.

In addition, United States law enforcement officials participate in a wide variety of other training and technical assistance with other countries concerning, among other matters, fraudulent document detection, alien smuggling, border control enforcement, narcotics trafficking, organized crime, money laundering and asset forfeiture. Such training is mutually beneficial to the United States and other participating countries because we are able to learn about each others' problems and develop strategies and techniques to address these problems. It affords a valuable opportunity to work together to address common law enforcement problems and issues of mutual concern. The United States is also working with the Ukraine and other countries to develop prosecutors' units modeled after the United States Organized Crime Strike Force Units.

#### **5. Coordination with International and Multilateral Organizations**

- (1) The United States is currently working together with the G8 nations and the United Nations in the initial stages of developing an international crime convention addressing transnational and organized crime activities.
- (2) The G7/P8 Senior Experts' Group on transnational organized crime has produced 40 recommendations to combat transnational organized crime,

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inventories of international conventions and institutions relating to transnational crime and inventories of member countries' relevant domestic criminal laws.

analysis, we have no other choice but to cooperate, or else sophisticated international criminals who do not recognize international boundaries will triumph.

- (3) The United Nations International Drug Control program (UNDCP) is currently developing a global program on money laundering that includes a model money laundering statute and legal and technical assistance and training for Southeast and Southwest Asia. Similarly, the United States, Japan, and other countries created the Financial Action Task Force (FATF) to address international money laundering.
- (4) The United States also continues to work with many countries on bilateral efforts to combat transnational and international organized crime criminal activities.
- (5) Finally, the United States and over 170 other countries have long worked with the International Criminal Police Organization (INTERPOL) which facilitates a broad range of bilateral and multilateral police-to-police cooperation.

## V. CONCLUSION

There is no doubt that the world community shares substantial common problems posed by transnational criminals and organized crime groups. Therefore, we must continue to work closely together to develop new techniques, as well as to implement approaches that have proven to be successful, in our common fight against such international criminal activities. We must share information and cooperate to identify, investigate and prosecute the most significant international criminals and organized crime groups. In the final