

APPENDIX ONE

**Key Papers Delivered at
Fifth International
Anti-Corruption Conference**

ORGANIZED CRIME AND CORRUPTION

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While bribery by an individual seeking private gain can cause public harm, the effect of widespread corruption by organized criminal organizations is clearly more insidious. It can effect consumer costs, quality of life, and the democratic processes of public and social institutions. It can encourage criminal activity through ineffective law enforcement; and when it is pervasive, it can affect the public's belief in the integrity and legitimacy of government.

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I. PATTERNS OF GOVERNMENTAL CORRUPTION

A. Legislative

The most advantageous way for organized crime to influence governmental action is in the law-making stage. It is more efficient and more effective to prevent unfavorable laws from being passed than to frustrate their enforcement, once passed. Profits can also be increased by having laws passed which favor legitimate businesses, or institutions, in which organized crime has an interest.

The most common form of corrupt influence by organized crime is, of course, the bribe.² The inducement is usually money, although it can take the form of employment, property, or investment opportunities rather than outright payment of cash. Bribes may be used to buy votes, to sponsor private bills, and to influence the outcome of regulatory proceedings.

The use of illegal influence in the legislative process may be particularly difficult to prove for at least three reasons.

* Lobbying is regarded, at least in many circles, as necessary in order to inform legislators of the needs of particular constituencies; campaign donations are encouraged as part of the political process.³ Thus money given with an implicit or even explicit *quid pro quo* frequently is hidden in the hectic give and take of the conferences and compromises which surround a legislative session.

* The United States Constitution provides that "for any Speech or Debate in either House [of Congress], [the Senators and Representatives] shall not be questioned in any other Place."⁴ This provision, referred to as "the Speech or Debate Clause," ensures that ". . . legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions."⁵ Since the clause has been interpreted by the courts to protect virtually all actions related

² "[T]he core of the concept of a bribe is an inducement improperly influencing the performance of a public function meant to be gratuitously exercised." John T. Noonan, Jr., *Bribes*, (New York: Macmillan, 1984) xi.

³ *Id.*, See Chapter entitled "The Donations of Democracy," 621-51.

⁴ U.S. Const., Art. I, §6, cl. 1.

⁵ *Powell v. McCormack*, 395 U.S. 486, 505 (1969).

to the legislative process, it has the practical effect of prohibiting evidence at trial that a legislator, charged with taking a bribe to sponsor a bill, actually introduced the bill.

* No tangible benefit need pass hands for organized crime to exert influence on the elective process. For years, officials who ran for national elective office sought the support of the Teamsters Union, an organization whose leaders were widely known to have ties to organized crime.⁶ Teamster support could deliver sufficient votes to mean the difference between election and defeat. Legislators on the receiving end of such largesse could hardly be objective when called upon to consider labor reform legislation.

B. The Criminal Justice System

Corruption within the criminal justice system may occur at any point, or at many points, within the system. A suspect might bribe the arresting officer to mislay evidence, to testify to facts constituting a technically illegal search⁷ or, even more to the defendant's benefit, to erase all record of the crime. The prosecuting attorney might be bribed to mishandle the case, or never to bring the case at all. The judge could be bribed to find the defendant not guilty or to give the defendant a light sentence. In jury system jurisdictions, court officers may be bribed to reveal the names of jurors, and jurors may be bribed or intimidated to find a defendant not guilty. If convicted, the defendant can seek special privileges in prison through bribes to guards, or even to the prison administration.

Corruption in the criminal justice system is enhanced in the United States where prosecutors and judges⁸ are given broad and generally unreviewable discretionary powers,⁸ and where they often

⁶ See, Dan Moldea, *The Hoffa Wars: Teamsters, Rebels, Politicians and the Mob* (New York: Paddington, 1978) and Steven Brill, *The Teamsters* (New York: Simon and Schuster, 1978).

⁷ The United States Supreme Court has held that evidence which has been illegally seized by police may not be introduced into evidence. *Mapp v. Ohio*, 367 U.S. 643 (1961).

⁸ A judge convicted of accepting more than \$47,000 in bribes to aid defendants, including an organized-crime figure convicted of attempted murder and a convicted narcotics dealer, was described by the sentencing court as having been "casually corrupt" and "amiably dishonest" during his more than 15 years on the bench. Leonard Buder, "Brennan Given a 5-Year Sentence and Fined \$209,000 for Bribery," *New York Times*, Final Ed., 4 Feb. 1986: A-1.

owe their positions to politics and political leaders. Moreover, the proactive (or undercover "sting") investigation, so valuable in other contexts, presents peculiar problems when used within the court system.⁹

It is only to be expected that most cases of corruption within the criminal justice system are to be found within the police force. There are more police and they make less money than prosecutors and judges, they have the most direct contact with criminals, are the most frustrated with the flaws and inequities in the system, and have greater opportunities to receive illegal payments in a variety of forms.

Indeed illegal payments are so common and the schemes so well known that a specialized vocabulary has developed to describe the particular type of corrupt relationship that exists between the police in the United States and the organized criminal.¹⁰

The terms "pads" or "steady notes" are used to describe a regular payment of money to police for protection from serious harassment for regular violations of the law. These are typically cooperative ventures that protect continuing illegal enterprises such as gambling establishments. Pads are pooled for distribution, shares being determined on the basis of rank and risks taken.

A "score" or a "shakedown" is a one-time payment that buys a particular benefit, often the freedom of a person subject to arrest. Loansharks and fences may be scored at will; gambling, prostitution, and unlicensed bars may be scored if not protected by a pad. The sale of confidential information to unauthorized persons may be either the result of a pad or a score.

While corrupt policemen may accept bribes from many individuals, bribes from organized crime sources are much more

⁹ See for example, *United States v. Archer*, 486 F.2d 670 (1973) at 677. An undercover federal agent who posed as a career criminal was "arrested" and charged with a felony by cooperating police officers. The undercover thereafter bribed the state court prosecutor in charge of presenting the case to the grand jury to ensure that no indictment would be returned. The prosecutor himself was eventually convicted, but the conviction was reversed by an appellate court which stated that the government's participation in the criminal enterprise was intrusive and "...displayed an arrogant disregard for the sanctity of the state judicial and police processes."

¹⁰ Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures, *Commission Report*, NYC: December 26, 1972.

destructive to the community and to the criminal justice system. Organized crime is frequently involved in operating a pad where a large operation and more money (and larger bribes) are involved. Because of organized crime's political connections, the bribes are apt to penetrate higher levels of the police department.¹¹ Also, even one well placed corrupt policeman who is in league with organized crime presents a much larger problem to the criminal justice system: when information is sold to one organized crime connection, the information may be distributed to a number of individuals and groups.

A classic example of the harm which can be done in such a situation is illustrated by the indictment of a detective assigned to the New York City Police Intelligence Division. He is charged with taking weekly payments from organized crime figures in return for giving up confidential information relating to more than 17 separate mob investigations. The information he allegedly provided included the location of electronic listening devices, the identity of confidential police sources and cooperating witnesses, the timing of prospective indictments,¹² and the names of jurors he ironically was assigned to protect.

¹¹ A fictional exchange between a police officer and mobster in Janwillem van de Wetering's *Hard Rain* makes the point:

P/O ...I will get you ... You have no idea what forces I can call into the field. You'll be smashed before you can get started.

MOB Whatever energy you may think you can apply, you'll have to draw from the State. The State is out of energy these days. The police, like any other corrective office that represents the ailing government now malfunctions ... [As a result of corruption] key officers retire ahead of time, or get transferred to quiet pastures, and are replaced by nincompoops ... How come all that evidence [was intentionally] ... lost?

¹² UPI, 11 Dec 1991.

C. Executive

The executive branch, with its control over administrative appointments, regulatory enforcement, and contract letting, is an inviting target for organized crime. The following two examples of the mob's exploitation of this branch of government are instructive.

The facts of the first case as expounded by the Court are complex;¹³ a simplified version is as follows: James L. Marcus, a man of apparently impeccable social, financial, and political connections, was given a mayoral appointment as New York City's Water Commissioner as a result of his role in the mayor's election campaign.

During the campaign Marcus came to know, and became politically indebted to, a corrupt labor union leader with organized crime connections. After losing money due to speculation in the stock market, Marcus found himself in dire financial straits and, pursuant to the union leader's advice, ultimately sought to borrow money from a mob figure.

Part of the repayment agreement involved Marcus awarding emergency, and therefore, discretionary, construction contracts to a company owned by the mobster's associates; the contractor was to return a percentage of the contract price to be shared by Marcus, the mobster and the mobster's associates. As events unfolded, the mob figure consistently loaned Marcus less than he needed, withheld a portion of the loan as the initial interest payment, and then "due to a misunderstanding," continually reduced the amounts of the illegal payments, all as the vision of larger and more profitable schemes were being proposed.

This factual situation presents an example which might be considered a paradigm of the role and operating methods of organized crime when it seeks to engage in, and profit from, official corruption.

1. By controlling, influencing, or dominating labor unions, organized crime was critically positioned to gain and retain access to the political process.

2. Marcus, although lacking the necessary qualifications, was placed in a high official position, based solely on his role as campaign supporter and fund-raiser.

¹³ *United States v. Corallo*, 413 F.2d 1306 (2d Cir.), cert. denied, 396 U.S. 958 (1969). See also Virgil W. Peterson, *The Mob: 200 Years of Organized Crime in New York*, (Ottawa, Ill.: Glen Hill Publishers, 1983) 349-54.

3. Emergency conditions permitted Marcus discretionary authority to award contracts directly, bypassing the usual bidding procedures and reviews.

4. Organized crime figures used their relationship with Marcus to guide him into a position of dependency upon them.

5. Organized crime's affiliation with contracting businesses permitted a corrupt public official to confer an illicit benefit which had the overt appearance of being routine and legitimate.

6. Marcus' continued dependency on organized crime was assured by their paying him less than the promised amounts and, at the same time, holding out the possibility of further kickbacks.

In this case the mayor had accepted Marcus' credentials without question and was unaware of Marcus' financial situation and the illegal activity. A totally different situation existed at that same time in Newark, New Jersey, during the administration of Newark Mayor Hugh J. Addonizio.¹⁴

From 1962 through 1969, Mayor Addonizio, certain members of Newark city government, and organized crime figures headed by Ruggiero "Tony Boy" Boiardo of Cosa Nostra's Genovese Family, forced every construction company performing city work to return 10% of the contract price to the conspirators. Companies that refused to cooperate did not receive contracts; if an honest contractor made the lowest bid on a project, the job was rebid. If a contractor had an ongoing city contract when approached, and he refused to kick back money, payments for work performed were held up until he capitulated. Violence was threatened if a contractor refused or was unable to make agreed-upon payments. Most of the bribe money -- nearly \$10 million -- was funneled through a plumbing supply company which falsely billed the contractors for materials never provided.

Such wholesale corruption cost more than taxpayer dollars. In a very real sense it resulted in a feeling of public anomie which manifested itself in the lethal Newark racial riots of 1967. Indeed, the Commission established to investigate the cause of those disorders found a major contributing factor to be

...corruption. A former state official, a former city official and an incumbent city official all used the same phrase: "There's a price on everything at City Hall."¹⁵

¹⁴ *United States v. Addonizio*, 451 F.2d 49 (1972).

¹⁵ Governor's Select Commission on Civil Disorder, State of New Jersey, *Report for Action*, February 1968, p. 20.

II. INDUSTRIAL CORRUPTION

The mob has often influenced legitimate industries and unions through corrupt relationships. The shipping industry has been severely affected by the mob's control of the docks where goods are loaded and unloaded.¹⁶ A federal administrator recently announced that a mob-dominated cartel controls deliveries at New York City's Fish Market, where seafood for the entire metropolitan New York area is trucked in and unloaded.¹⁷ Organized crime's control of the International Teamsters Union has significantly affected the trucking industry and the numerous industries which are dependant upon trucked goods, including New York's garment center.¹⁸ Although it is impossible to calculate the precise cost of racketeering and corruption in the New York City construction industry, the racketeering tax which is imposed as a result of the mob's participation is substantial.¹⁹

Calculating the likelihood that a specific union or industry will be the subject of corruption and racketeering activity involves two separate issues: are there characteristics of the subject union or industry that render it particularly susceptible to racketeer manipulation, and, is there sufficient racketeering potential associated with the industry to make control of it desirable to racketeers?

Corruption and racketeering *susceptibility* reflects the degree to which an industry's structure and organization (1) create incentives for industry participants to engage in racketeering or (2) provide the means and opportunity for racketeers both inside and outside the industry to control or influence critical industry

¹⁶ See *Fourth Report of the New York State Crime Commission (Port of New York Waterfront) to the Governor, the Attorney General and the Legislature of the State of New York* (Albany, N.Y.: Legislative Document No. 70, 1953).

¹⁷ Selwyn Raab, "U.S. Oversight Is Advocated in Fish Market," *New York Times*, 18 December 1991: B-1.

¹⁸ Prosecutors, in a case brought against members of the Gambino Crime Family, estimate that mob control of the trucking industry added 6% to the wholesale cost of transporting clothes. Kim McCoy, "Mob Tax Taking Its Toll," *New York Newsday*, 21 January 1992: 21, 28.

¹⁹ See generally for this and the following analysis, New York State Organized Crime Task Force, *Corruption and Racketeering in the New York City Construction Industry* (New York: New York University Press, 1990)

components.²⁰ With control or influence over an industry's critical components, racketeers can extract payments by (1) providing "services" (e.g., harming competitors, enforcing cartels, insuring labor peace, facilitating avoidance of collective bargaining agreements) or (2) threatening injury (e.g. labor problems, disruption of supplies, property damage, physical injury or loss of employment). Thus, racketeering susceptibility focuses on the vulnerability of an industry to racketeering exploitation.

Corruption and racketeering potential reflects the gain racketeers may obtain from exploitation of an industry's susceptibility. Assessing racketeering potential requires analysis of industry operations to identify such factors as the amount of money that industry participants can generate and make available to racketeers, and the ability to hide corrupt payments from regulatory and law enforcement agencies. The profitability of racketeering, however, cannot be measured by monetary rewards alone. For example, the availability of jobs which provide legitimate status and income to racketeers or to their associates and friends enhances an industry's racketeering potential. Also, the control of a company has a value to racketeers beyond the illicit profits which can be extracted from it. The company can be used to launder dirty money or to generate phony business transactions necessary to disguise illicit payments or tax frauds.

III. A PROPOSED STRATEGY FOR CONTROL

At the 4th International Anti-Corruption Conference in Sydney, Australia, I addressed the issue of "Non-Prosecutorial Strategies in Fighting Corruption,"²¹ arguing that it is important to undertake, in addition to the traditional law enforcement techniques, non-traditional, preventive strategies which can have a broader, long term effect. It is clear, for example, that the problem of organized crime and official corruption could be

²⁰ Components are all discrete inputs of an industry, be they tangible goods or definable services. Critical components are those goods or services which are essential to the industry's functioning, i.e., those which, if disrupted, cause the industry substantial costs and dislocation.

²¹ Attorney-General's Department, *The Fourth International Anti-Corruption Conference*, Australian Government Printing Service, (Canberra: 1990) 71-75.

ameliorated by changes in election campaign laws,²² by eliminating the mob's influence within unions and other entities which influence the political process,²³ by promoting meaningful ethics legislation, and by reform of the contract letting²⁴ and regulatory processes.²⁵

The New York State Organized Crime Task Force is currently employing another non-traditional approach to deal with the problem of organized crime and industrial corruption -- the Certified Investigative Auditing Firm Program. This paper concludes with an analysis of that program.

²² See, for example, New York State Commission on Government Integrity, *Restoring the Public Trust: A Blueprint for Government Integrity*, Vol. I (December, 1988).

²³ Certain unions, because of the nature of their membership and the nature of the industries in which they operate, have historically been dominated by organized crime. Goldstock, Blakey and Bradley, *Labor Racketeering: A Simulated Investigation. Teacher's Guide and Background Materials*, (Cornell Institute on Organized Crime, Ithaca: 1979) Prosecution of corrupt, mob-connected leaders has proved of limited, and at best temporary, value. Other approaches to this problem are more successful in removing mob control in these unions. Court-ordered trusteeships under which the union is run by a person or persons named by the court appear to be one of the more successful means of removing racketeer control. See, Kaboolian _____

²⁴ The contractual process generally requires the government to contract with the lowest responsible bidder. Organized crime connected companies that have contracted with a governmental agency should be declared "non-responsible bidders" and, after due process, the contracts cancelled and the companies debarred. A more effective means to achieve this goal is by prequalifying contractors prior to the time bids are submitted.

²⁵ A part of the regulatory process that is particularly susceptible to corruption is the inspectional service. Through denial of permits or refusal to approve completed work, inspectors can easily extort money from contractors and business. Likewise, businessmen seeking approval for shoddy or non-existent work offer bribes to inspectors. To reduce corruption in an area which seems almost created for that purpose requires action at several levels. These may include code reform, improved supervision, privatization of portions of the inspectional force, and other prosecutorial and deterrence strategies. See, Chapter 9, "Attacking Official Corruption," *Corruption and Racketeering in the New York City Construction Industry*, 227-46.

Certified Investigative Auditing Firms (CIAFs), as envisaged by the program, are independent private-sector firms having the investigative, auditing, analytic, loss-prevention, engineering and other skills necessary to serve as "private inspectors general"²⁶ to the corporations that hire them. CIAFs can be utilized to insure compliance with relevant law and regulations, and to deter and expose unethical or illegal conduct. They may also play a critical role in altering the ethical environment in which the business operates.

Under this program, a corporation or other organization found to have engaged in illegal and unethical behavior is compelled to hire a CIAF. The CIAF is then responsible for studying the business practices of the organization and devising changes in its internal controls and practices in order to reduce the opportunity for fraud, corrupt payments and other types of illegal behavior. Although its services are paid for by the organization, the CIAF has dual reporting responsibilities -- to law enforcement as well as the company.

One object of the CIAF plan is to make the contracting process more honest, to establish an environment in which the rules of the game, as established by law and by the contract, are observed. Once the participants in the contractual process realize that they will be both protected from extortionate demands and prevented from violating terms of the contract, realistic contract estimates should become more common and opportunities for bribery diminished.

The CIAF program has been utilized a number of times by OCTF in the environmental, construction, and financial industries. The New York City School Construction Authority has now employed it (with excellent results), and we are currently discussing with other government bodies the advantages inherent in their adopting this practice when entering into substantial contracts or regulating certain licensees. Indeed, an entirely new private sector initiative has sprung up around the concept, and OCTF and the existing CIAFs are meeting regularly to set standards,

²⁶ The inspector general concept at the federal level was institutionalized as a result of The Inspector-General Act of 1978 (PL 95-452), codified in 5 AP USC § 1 et. seq.. See generally, Gates and Knowles, *The Inspector General in the Federal Government: A New Approach to Accountability*, 36 *Alabama L. Rev.* 473 (1985). That Act centralized audit and investigative activities in a single independent office within each of the major federal departments and agencies; it gave to each Inspector General the responsibility of reporting publicly on the magnitude of waste, abuse and fraud within its jurisdiction, proposing remedial action, and deterring future transgressions. The more enterprising Inspectors General added a loss prevention component to their operations.

criteria, and other policies for the continued and expanded use of the program. Major investigative and major accounting firms are now requesting that they be denominated as CIAFs and are agreeing to obtain the additional expertise which would make them eligible for certification.

There is no reason why this mechanism cannot, and should not, be used internationally. To the extent that organized crime engages in patterns of corruption and racketeering in hospitable environments which reward such corrupt activities, ultimate success in control must be dependant upon the ability and will to change the nature of those environments. CIAF's can be a powerful force in effecting that change.