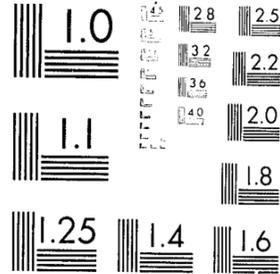


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# Federal Probation

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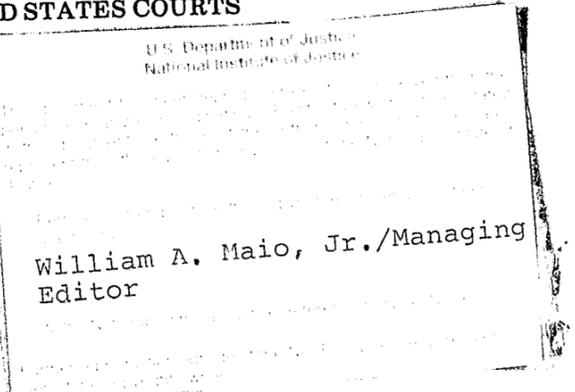
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# Federal Probation

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## This Issue in Brief

*A Revisionist View of Prison Reform.*—According to Professor Hans Toch, the assumption that prisons are here to stay suggests new directions for prison reform. Among these is the amelioration of stress for those inmates who because of special susceptibilities and or placements in prison are disproportionately punished. A classification process that is attuned to inmate coping problems can make a considerable difference, he asserts. In addition, the constructive critic of prison life (as opposed to the nihilistic one) can help prison staff and their administrators run more humane institutions.

*A Positive Self-Image for Corrections.*—The tendency of corrections workers to be apologetic about their work has been a self-defeating characteristic for many years, writes Claude T. Mangrum of the San Bernardino County Probation Department. This tendency, he says, is the result of a poor self-image and it is high time corrections professionals acted to improve this image. The importance of a positive self-concept is discussed in his article.

*Changes in Prison and Parole Policies: How Should the Judge Respond?*—Anthony Partridge of the Federal Judicial Center reminds us that, although sentencing marks the end of a criminal proceeding in the trial court, a sentence of imprisonment is also the beginning of a process presided over by prison and parole authorities. To a substantial extent, the meaning of such a sentence is determined by these authorities. Their policies, therefore, have implications for the performance of the judicial role—both for the duty to select an appropriate sentence and for the duty to ensure procedural fairness.

*Federal Court Intervention in Pretrial Release: The Case for Nontraditional Adminis-*

*tration.*—One of the most unique and comprehensive class action suits involving a major jurisdiction in the United States (Houston, Texas) is the case of *Alberti v. Sheriff*. In December 1975 U. S. District Judge Carl Bue, Jr., issued a sweeping order directed at improving the operation of the pretrial release programs and streamlining other criminal justice procedures to relieve overcrowding and improve conditions of the county jail. This article, by Gerald R. Wheeler, director of Harris County Pretrial Services, describes the pretrial

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# The Process of Elimination: Understanding Organized Crime Violence

BY JUSTIN J. DINTINO AND FREDERICK T. MARTENS\*

FEW RESEARCHERS and law enforcement executives have seriously examined or understood the relationship between organized crime violence and official corruption. In a relatively obscure article written in 1966, the author suggested that an effective "war on organized crime" might conceivably result in increased violence.<sup>1</sup> Essentially, the argument recognized a negative relationship between organized crime violence and the use of corruption to attain monopoly status by criminal organizations. This theme has been addressed by other prominent researchers, who basically argue that one latent consequence of an effective organized crime control program may be unstable illicit markets which may require the "services" of more powerful criminal organizations to stabilize market conditions.<sup>2</sup> Clearly, the hypothesis presented is significant in terms of public policy and deserves a more refined analytical approach if it is to be of any utility in developing organized crime control policies/strategies

In this article we will explore the phenomenon of "organized crime violence" from three varying dimensions. However, before addressing this important public policy issue, it is appropriate that we briefly discuss the concept of organized crime control.

## When Is Organized Crime Controlled?

This rhetorical question certainly takes on different meanings, depending to a large extent upon the individual perceptions of the organized crime control administrator. For instance, to some the notion of "control" may merely refer to decreased public visibility of illicit services which organized criminals engage in—gambling, narcotics, prostitution, etc. To others, "control" may reflect an attempt to dissuade public participation in the

illicit services provided, suggesting at least superficially an ability to negatively impact upon the revenue-producing characteristics of "organized crime." Clearly, both descriptions of "control" represent worthwhile goals and may be attainable through an enforcement strategy. However, within the context of organized crime, neither description conveys the essence of a control strategy.

We should now be sufficiently enlightened to conclude that regardless of law enforcement efforts we will never eliminate the "vices" which often characterize the activities of organized crime. Surely, the desire for these "vices" are found in factors beyond the control of the criminal sanction. If we have learned nothing more from our vice-control efforts, we should be willing to concede the limits of the criminal justice system as an *efficient* method of dissuading public participation. This is not to suggest that the criminal justice processes cannot be used to shape a moral consensus; rather the notion of eliminating the "vices" defies historical evidence.<sup>3</sup>

Our knowledge of organized crime remains in a very rudimentary stage. Alien conspiracy theory transcends any substantive analysis of organized crime, and conventional theories of organized crime have been of little utility in developing cost-efficient strategies.<sup>4</sup> This is not necessarily an indictment of the research or law enforcement communities; rather, it represents the realization that there is little known about controlling organized crime. What strategies are effective, cost-efficient and within the parameters of acceptable governmental intervention remains a serious public policy issue which generally has been avoided by most criminal justice administrators. Similar to the treatments of various diseases, organized crime responds to different "treatments" in undefinable ways and it is certainly a worthwhile goal

for the organized crime control administrator to understand what "treatments" will have a discernible impact on the problem (as defined by the administrator).<sup>5</sup>

Theoretically, the goal of any organized crime control program should be the control of criminal organization and not necessarily the control of vice. It is the concept of criminal organization which must be central to an effective and cost-efficient organized crime control program. For the criminal sanction can inhibit the growth of criminal organizations, but more importantly, can also promote their expansion. Through the irresponsible treatment of the problem—in this case the problem is defined as criminal organization—a market which is relatively unorganized may be organized by the police. This can occur consciously or unconsciously; in the latter case, the police engaging in a program of random or nonselective arrests thereby eliminating competing entrepreneurs, or in the former case, the police being paid to eliminate opposing interests. Therefore, it becomes extremely important to understand not only the illicit market, but equally important, under what conditions or circumstances the criminal sanction is most effective. Former Assistant Attorney General Philip Heymann recently addressed this problem, recommending not only new criminal and civil laws but in addition, new analytical techniques in the "war against organized crime." Heymann clearly recognized that an "organized crime program can only be as good as the perceptions on which it is based" . . . and "we must develop analytical techniques and sufficient data to give us a clearer picture of the harmful effects of organized crime on our society."<sup>6</sup>

When we speak of controlling criminal organization, we are advocating the diminution of (1) geographic domain, (2) market allocation, (3) centralized or unified organizational structure, and (4) exploitive monopoly control. Surely, one might take exception to this concept of organized crime; a concept grounded in classic market analysis. Yet, it is this concept of organized crime which has traditionally avoided serious policy discussion with respect to developing control strategies. For if there is to be any appreciable impact on organized crime, the organized crime control

administrator must be able to effect these organizing processes. And an important factor in these organizing processes is the selective and carefully circumscribed use of fear and violence.

## Understanding Violence in Illicit Markets

The relationship between violence (of an organized nature) and illicit markets provides useful indicators in developing control strategies. To fully appreciate this relationship, it is important that we understand the functional aspects of organized crime violence in the illicit marketplace. Before we address this subject, however, it is only appropriate that we address the problems associated with a study of this phenomenon.

The immediate problem confronting any researcher when studying this phenomenon is the lack of reliable data. Few law enforcement agencies systematically collect or analyze this type of data. Moreover, there is a noticeable lack of concern with respect to organized crime violence. The adage "they're only killing each other" has to a large extent resulted in an apathetic response by the police. This has seriously mitigated any systematic study of the phenomenon, and accordingly, has created a vacuum of knowledge.

With respect to understanding this phenomenon, we are again hindered by vague and impressionistic definitions of organized crime violence. Since we have been somewhat unable to arrive at a universally accepted definition of organized crime (not that we must, however), we find that the phenomenon itself has escaped the attention of many law enforcement agencies. As such, it is extremely difficult to categorize and classify violence of an organized criminal nature.

Lastly, the problem is further exacerbated when we analyze the relative importance that such violence is given by the media.<sup>7</sup> The killing of an "organized crime leader" is usually immediately treated with considerable fanfare, representing at the very least, a page two or three story in the more prominent newspapers. This has created a somewhat skewed perception of the phenomenon and, more importantly, has erected a barrier to its systematic and methodical study. The police reacting to media sensationalism are often placed in a position of giving superficial attention to the act, doing little more than responding to the immediate concerns of the media and in effect, failing to address the long-term implication of the phenomenon. Thus, any conclusive statements regarding both the prevalence or intensity of organized crime violence must be treated cautiously.

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<sup>1</sup>Gilbert Geis, "Violence and Organized Crime," *The American Academy of Political and Social Science*, 364 (March, 1966), pp. 86-95.

<sup>2</sup>Paul H. Rubin, "The Economic Theory of the Criminal Firm," in *The Economics of Crime and Punishment*, ed. Rottenberg, American Enterprise Institute, 1973, pp. 155-166; Thomas, Schelling, "An Economics Analysis of Organized Crime," *Task Force Report: Organized Crime*, 1967, pp. 122-123; Frederick D. Homer, *Guns and Garlic*, Purdue University Foundation, 1974, pp. 49-50, 111-113, 140-141.

<sup>3</sup>Gilbert Geis, *Not the Law's Business*, N.I.M.H., 1972; Edwin Schur, *Victimless Crimes: Two Sides of a Controversy*, Prentice-Hall, 1974.

<sup>4</sup>Francis A. J. Ianni, *Black Mafia*, New York: Simon and Schuster, 1974, pp. 330-332; Frederick D. Homer, *Guns and Garlic*, 1974.

<sup>5</sup>Mark H. Moore, *Buy & Bust*, Lexington Books, 1977; Thomas Schelling, "What Is the Business of Organized Crime," *Emory Law Journal*, Vol. 20, No. 1, 1971; Peter Reuter and Jonathan Rubinstein, "The Structure and Operation of Illegal Numbers, Bookmaking and Loansharking in Metropolitan New York," L.E.A.A., 1980.

<sup>6</sup>Philip B. Heyman, "Senate Committee Hears Recommendations To Improve Control Over Organized Crime," *Organized Crime Bulletin*, June 1980, p. 3.

<sup>7</sup>Frederic D. Homer, *Guns and Garlic*, Purdue University Foundation, 1974, pp. 27-28.

*The Process of Elimination: Conflict Mediation in the Licit Sector*

The relationship between violence in the illicit economy and law in the licit economy provides an illuminating parallel. Since both law and violence are in effect mechanisms to resolve conflict, understanding their relationship to the licit and illicit economies will certainly provide valuable insights into this phenomenon. Moreover, if incorporated into the decisionmaking process of the law enforcement administrator, strategies can be designed and implemented. Relying upon the research of sociologists, political scientists, and economists, we are in a better position to analyze what has become a vague and often misunderstood phenomenon—conflict mediation in illicit markets.

Economists generally argue that all businesses seek to maximize their profit potential, which can be realized by restricting competition. In the licit sector, this is usually accomplished through licensing or regulatory commissions. As Stigler contends, "every industry or occupation that has the power to utilize the state will control entry." When threats to an industry or occupation are presented, these commissions use the force of law—administrative, civil, or criminal—to resolve the apparent conflict. Often, these regulatory commissions are protective of the industries/occupations interest and as such, tacitly and at times, explicitly minimize or restrict competition.<sup>8</sup>

Sociologists, and political scientists on the other hand, have viewed organizations from still another perspective. Understanding how organizations develop, endure, and ultimately decline is central to the sociology of organizations. These researchers in conducting studies into organizations (primarily in the licit sector), view rationality and bureaucracy as central to the development of well-advanced organizations. Assessing costs and benefits is found universally in all large-scale organizations in a postindustrial economy. When threatened by competing interests, the organization will rely upon the legal system (which is generally supportive of the market economy) to resolve impending conflicts, particularly competitive issues. Thus, the system of jurisprudence becomes critical in the development of market economies, and as such, its control is sought by the larger, more advanced industries.<sup>9</sup>

<sup>8</sup>James Q. Wilson, *The Politics of Regulation*, New York: Basic Books, 1980.  
<sup>9</sup>Richard Quinney, "Crime Control in Capitalist Society: A Critical Philosophy of Legal Order" in *Critical Criminology*, London: Routledge & Kegan Paul, 1975, pp. 181-202.  
<sup>10</sup>Thomas Schelling, "An Economic Analysis of Organized Crime," *Task Force Report: Organized Crime*, 1967, p. 122.

Beyond the mediation role, the legal system through its decisions, sets forth parameters of "acceptable" and "less acceptable" corporate behavior, and in so doing, provides a basis or standard for future decisionmaking. This standard or "legal consensus" is both educational and preventive; educational in the respect that it sets forth a logic which business should adhere to, and preventive in that it cautions business on what it should *not* do. Thus, in the licit economy, we "rationally" prevent and mediate conflict using the power of the state to exact sanctions.

In the illicit economy, a similar mechanism may exist, depending again upon the level of advancement of criminal organizations. In fact, the most compelling reason to organize is to minimize external (e.g., police and other criminal organizations) and internal (e.g., informants and dissidents) risks. Schelling articulated this notion quite adequately, stating, "if society has no means of policing some kinds of crimes . . . maybe what society does is to let the underworld itself provide some of the necessary discipline; that may require the existence of organizations strong enough to impose discipline"<sup>10</sup> Hence, conflict mediation is a compelling feature of any advanced criminal organization and similar to the licit organization, an illicit organization will seek to minimize unnecessary risks. Pragmatically, the decision to eliminate a competitor physically must always be weighed against the probability of internecine violence ensuing and whether such a risk outweighs the continued participation of the prospective "victim" in the illicit economy.

The decision to eliminate a competitor also may be based upon factors unique to the market-economy and/or the organization (or industry). For instance, the decision by the three American automakers not to compete in the fuel-efficient vehicle class may have been more a result of misreading the public's desires, or what some have come to perceive as a "cavalier" attitude on the part of the "Big Three." Operating from preconceived or stereotypical notions about the wants of its customers, the "Big Three" were apparently misled into believing that their "instinctual managerial qualities" (conceived through many years of experience) surpassed those of the analysts who were predicting increasing market domination by foreign-car manufacturers. Surely, managerial philosophy will shape how an organization grows (and conversely, declines). It becomes quite clear that the "Big Three" were content with their control of the auto market, until they realized the significant decline in prof-

its. The government was then "asked" to intervene, placing restrictions on foreign car manufacturers (and subsidizing Chrysler). Again, an example of how the power of the state, through political action, attempts to control or eliminate competition.<sup>11</sup>

The skills necessary to enter a particular market will also determine who competes and who doesn't. For example in a regulated market, minimum basic skills are often mandated whereas in the nonregulated market, such requirements are nonexistent or very limited, allowing independent entrepreneurs to compete. Moreover, we find that the decision to enter a particular market is predicated to a large extent upon opportunity and one's proclivity towards the tasks necessary to perform in the market. The task environment of a market is a contributing (if not critical) factor in who is permitted entry and who is not.<sup>12</sup>

One may be wondering where this will lead us in the study of organized crime violence. The answer is two-fold. First, if we are to understand violence in the illicit market, we must understand both the dynamics of the licit and the illicit market. Secondly, before we can appreciate the complexity in analyzing such violence, we must understand the dynamics of organizations—licit and illicit. From these perspectives, we may then develop a concept of organized crime violence which will enable us to develop a sound, coherent, and rational organized crime control policy.

*Conceptual Models for Analyzing Organized Crime Violence*

If we assume that in order for organized crime to exist, three conditions must be present, namely, political corruption, a system of fear, and a viable illicit marketplace (*customers* desiring services), it is only logical to conclude that any effort directed at any or all of these elements would in some way, restructure the character of the illicit marketplace. That is, there is no doubt that violence or the fear thereof provides organized crime with a means by which to enforce to some extent, territorial disputes, contractual agreements or any other conflicts which may arise between parties. Since organized crime often lacks a legal method to resolve such conflict, it must rely upon this

"extra-legal" technique to address organizational "problems."

Essentially, organized crime violence must be perceived as controlled violence.<sup>13</sup> It is rational and calculated and is designed to establish a standard or norm of acceptable behavior. Hence, organized crime violence, from merely a functional point of view provides a mechanism, although illegal and morally abhorrent, to address apparent threats or conflicts in the so-called "underworld."

For instance, an analysis of "organized crime homicides" may indicate the degree of organization in an illicit market. That is, if a marketplace is "well-organized," such as gambling was in the pre-seventies in certain geographic sectors of New Jersey, the incidence of violence may be rather selective and limited. By "well-organized," we are referring to the ability of organized crime to effectively negate any enforcement action through either police, judicial, or political intervention. An example of such a situation was the operations of the "Zicarelli organized crime network" which functioned in Hudson County, New Jersey. This particular gambling/loansharking network demonstrated little proclivity toward violence. It's primary means of gaining and maintaining control was through political corruption. If there was an individual and/or group who was operating without the expressed permission of Zicarelli and/or the dominant political structure which *controlled* Zicarelli, the police served as the mediating force—the dissident would be arrested and possibly jailed for disobeying the established norm. The obvious implication of this example is that the political structure served as a means through which to avoid violent confrontation—eliminating the dissident through nonphysical means. Hence, we may be able to deduce from this the following proposition: Where there is an inordinate amount of violence associated with syndicated crime, there is little political corruption (i.e., police, judiciary, politicians). Conversely, where there is little violence associated with syndicated crime, there may be an inordinate amount of corruption. Again, this is merely one *indicator* and must be treated cautiously, recognizing the effects of other economic and social variables on competition.

The type of leadership a particular organization possesses also may be displayed in its resort to violence. That is, a particular "organized crime network" may seek out individuals who adhere to similar values. This, once again, is not too far removed from the so-called "legitimate world,"

<sup>11</sup>Robert Simison, "Ford Fires Economist," *The Wall Street Journal*, July 30, 1980.  
<sup>12</sup>Dwight C. Smith, Jr., "Paragons, Pariahs, and Pirates: A Spectrum-Based Theory of Enterprise," *Crime and Delinquency*, New Jersey: National Council of Crime and Delinquency, pp. 358-386.  
<sup>13</sup>Frederick T. Martens, "A Study of Organized Crime Violence Among Syndicated Organized Crime Groups in the State of New Jersey: 1960-1973," John Jay College of Criminal Justice, 1974 (unpublished master's thesis).

where there is a proclivity to seek out individuals who think or act much like the leader. Consequently, we may witness an inordinate amount of violence among certain "organized crime networks," which may be to some extent, indicative of the "leadership style" which characterizes the network. For example, in New Jersey we witnessed a series of murders associated with the notorious "Campisi Organized Crime Network." This particular network, which was (with the exception of two) all family related, demonstrated an excessive proclivity towards violence even when it was possible to use corrupt officials to mediate conflicts or disputes. In this case, the data seem to suggest that the degree of social integration into the dominant or accepted societal structure of society may influence the incidence of organized crime violence. That is, we tend to find predatory violence a characteristic of lower socioeconomic groups in our society—groups which have been rejected by the dominant structure and, consequently, have rejected the accepted means for resolving conflict, namely, nonviolent negotiation and compromise. Hence, we can deduce that the greater the degree of social integration into the dominant societal value structure, the less adherence there is to the value of violence. Conversely, the greater the degree of violence, the more distant or alienated this group is from the dominant or accepted societal value structure.

Lastly, the degree of stability in the particular marketplace may influence the incidence of violence associated with that particular activity. For instance, in a study of organized crime violence in New Jersey, we found that 27.2 percent of those persons murdered between 1960 and 1973 were engaged in the *trafficking* of narcotics, whereas, only 15.2 percent were engaged in gambling activity.<sup>14</sup> If we incorporate these data with those of a recent gambling study, we find that 9.4 percent of those arrested for bookmaking and/or lottery have been arrested for violent crimes, whereas 60.5 percent of those *identified* as major narcotics traffickers have been arrested for violent crimes.<sup>15</sup> This, in effect, indicates something about the stability of the particular marketplace and equally important, the type of individuals the marketplace may attract. Hence, we might deduce that stable marketplaces enjoy less violence and tend to attract individuals who employ "conventional," "accepted" methods to resolve con-

flict. Conversely, an unstable marketplace relies to a greater extent upon violence as a means of resolving conflict, and consequently attracts those who are most likely to resort to physical sanctions. Given these propositions, then, how might we more effectively develop an organized crime control strategy—the primary function of an organized crime control administrator.

#### Strategy Analysis

Assuming that our intelligence capabilities are sophisticated and precise to discriminate between these variations, it may be possible to allocate our resources in such a manner so as to realize maximum gain with minimum investment. Once again, we must assume that there is no reality in developing policy which establishes as its goals the elimination of organized crime.

Hopefully, we can develop a policy which will use our resources more effectively, thus *minimizing* the "social harm" of organized crime to the community. We must, then, decide what we mean by "minimizing the 'social harm' to the community." Thus, we are once again forced to incorporate into our policy the values and mores which we as individuals in a collective arrangement perceive as "least threatening." It is quite obvious that given these intelligence indicators, we may wish to develop and implement a strategy which promotes criminal organization, stability of marketplaces, and an adherence to the accepted or dominant social norms. This would, in effect, diminish the incidence of violence associated with syndicated criminal activities. If, in fact, our goal is to minimize the "social harm" which is manifested in the violent acts committed by organized criminals, we would have achieved our goal. However, we may also have created an environment more conducive to "monopolistic exploitation" by a limited number of criminal syndicates. Said differently, by promoting criminal organization, market stability, and adherence to societal values, we may also have permitted a monopoly over illicit activities to emerge. This in and of itself may not be harmful, providing the monopoly does not engage in practices which are exploitive of the indigent community's interest. Moreover, this particular strategy obviously implies *conscious* interaction between the so-called "legitimate" and "illegitimate" world, which from a societal perspective may be more detrimental than the activity—violence—which is the focus of control. A dilemma in policy arises and the alternatives provided are few.

On the other hand, we may want to develop a strategy which in fact permits greater competition among illicit syndicates, yet minimizes the amount of internecine violence that occurs. That is, if we assume that an increase in competition reduces the ultimate price to the consumer (free enterprise system vs. monopoly), hence diminishing the incidence of predatory crimes in the community (e.g., narcotic addict who steals to fund a habit), we may wish to increase enforcement activity against those networks which are engaged in corrupt and/or violent activities to obtain dominance or control over a domain or market. Essentially, implicit in this strategy is a policy of administrative discretion.<sup>16</sup> Prioritizing criminal networks which display a proclivity toward violence and/or corruption would result in the allocation of resources toward those networks which are attempting to attain exclusive monopoly status. Hence those criminal networks which

are "servicing customers" irrespective of violence or corruption would be afforded a lesser priority enabling administrators to address the more serious problem.

There is, we believe a credible rationale for adopting this type of strategy, given the limitations and constraints of the criminal justice system.<sup>17</sup> The notion that we can eliminate the vices has outlived its usefulness as a viable enforcement strategy. Lacking societal support, an element which has historically been absent in our response to organized crime, we can hope to achieve nothing more than limited victories. Organized crime control policies must no longer be restricted to the rudimentary forms of analysis which have permeated past failures. We must look toward developing new methods and techniques of analysis, which permit us to gauge *with greater precision*, the manifest and latent consequences of our policies. The analysis of "gangland murders" can provide, if properly interpreted, law enforcement administrators with a valuable indicator in developing and assessing their organized crime control efforts.

<sup>16</sup>Kenneth Colp Davis, *Discretionary Justice: A Preliminary Inquiry*, Baton Rouge, Louisiana State University, 1969.  
<sup>17</sup>Justin J. Dintino and Frederick T. Martens, "Doing More With Less: Organized Crime Control in the Eighties," *Police Chief*, August 1980.

<sup>14</sup>*Ibid.*, p. 81.  
<sup>15</sup>Commission on the Review of the National Policy Toward Gambling, "An Analysis of the Characteristics of Arrested Gamblers in the State of New Jersey," Appendix I, October 1976, pp. 650-678.

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