The Illusion of Success: A Case Study in the Infiltration of Legitimate Business

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Often, in the daily routine of policing we address crime as independent acts, not part of an overall cultural, social, political, or economical pattern. Indeed, our view of crime is one of disparate acts committed by individuals, occurring independent of external forces and perceived as a "perversion" of "the system." Noble and well-intentioned "wars" are mounted, only to be followed by "band-aid surgery" that has little lasting impact. Continuity of criminal network is virtually assured, and new faces appear to be followed by a number of new indictments. Crime is a continuing reality, and organized crime remains an integral part of the American landscape. If we are to effectively control it, we must understand its relationship with other societal institutions. Recognizing organized crime as a continuing criminal enterprise which acquires its strength and nourishment from the very institutions it seeks to subvert allows us to transcend conventional police wisdom and capture the unique nuances of this form of criminality. While it is most convenient to explain away our inability to eliminate organized crime to such things as public apathy, a lack of police wisdom and capture the unique nuances of this form of criminality. While it is most convenient to explain away our inability to eliminate organized crime to such things as public apathy, a lack of protective criminal justice system, this list of never-ending excuses fails to adequately account for the systemic nature of organized crime. This case study seeks to accomplish just that.

Anatomy of a Scam

The relationship of legitimate businesses to organized crime is one of reciprocity—the businessman benefits from the "edge" provided by the organised crime member, and organized crime acquires an outlet for its illegal monies. Thus, the relationship is symbiotic; both feeding upon one another for subsistence and survival. However, this need not always be the case.

Charles Ponzi, a confidence man by the name of Charles Ponzi initiated a financial scheme in which he solicited money from investors, which he invested in legitimate business ventures. However, he kept part of these monies to repay the investors with the "illusion of success," while simultaneously extracting unconscionable profits from the business and ultimately undermining the social fabric of the community. If Ponzi were to function as he did in this study, is a combination of these two classic models. It provides the investor with the "illusion of success," while simultaneously extracting unconscionable profits from the business and ultimately undermining the social fabric of the community. It is a classic example of the exploitative criminal monopoly.

The "scam" takes place in a lower socioeconomic community in Baileyville, New Jersey. Comprised of a 45 percent black population with a per-capita income of $6,498, Baileyville is a traditional northeastern city, the victim of industrial decline and a migration of middle-class whites to the suburbs. As in most lower socioeconomic communities the "bar," "nightclub," or cocktail lounge serves as the center of social activity. The city has two dominant traditional organized crime families operating within its borders, one of which is involved in the black community. To understand how this "scam" functions, it is necessary to explain the dynamics of "pyramid schemes."

The "pyramidal scheme" has its origin in 1919, in Boston, Massachusetts. A confidence man by the name of Charles Ponzi initiated a financial scheme in which he solicited money from investors, which he invested in legitimate business ventures. However, he kept part of these monies to repay the investors at return rates exceeding what he originally promised. This created a false sense of success among the investors, who were willing to provide Ponzi with more money. Ultimately, the return to the investors was reduced and the fraud revealed.

The pyramid scheme is virtually identical to the "Ponzi," except that the investors are required to seek out other "investors." The system is relatively straightforward and, on the surface, appears legitimate. For a fixed sum of money, a person buys into a company, sells the product the company offers, and solicits others to invest. The investors are charged a fee, which they are assured they will recoup...
That meant a severe financial squeeze for the State's counties, as they have to meet the costs of constructing and operating state facilities. The State Legislature accepted the penalty for its size of past neglect of the State's jails. Two hundred fifty million dollars has been allocated under the State's bonding authority for a "one-in-a-kind" jail construction and renovation program. State standards established the way for early county acceptance of the new custodial care standards.

The construction program has been effective in meeting critical jail needs. Of 57 earmarked facilities, 33 have already been completed, 22 are under construction, and 5 are in various planning stages. The Jail Commission drafted and modified standards, and the State Legislature accepted the principle for its size of past neglect of the State's jails. Two hundred fifty million dollars has been allocated under the State's bonding authority for a "one-in-a-kind" jail construction and renovation program. State standards established the way for early county acceptance of the new custodial care standards.

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Jail Construction Program/Design Criteria

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As depicted in the diagram, the various entities are associated with one another, and the "bar" serves as the "hub." The diagram illustrates the "organizational crime" activity directed toward the "bar owner," who ultimately is the "victim" of the scam. Of course, the "hub" and "victim" must be used with caution, as while he is ultimately the victim of this scam, during the initial 12 to 18 months, he appears to be the benefactor of their "good will," a successful entrepreneur who has used the system to his benefit. The "illusion of success," as we have chosen to characterize this "good will," is sufficient to maintain him during the initial period of "building the business" and the "feather of influence" is enough to "crush" them. Let us now examine exactly how the "team" works, who are the benefactors, and what role law enforcement can play in intercepting this systematic form of crime.

**The Finance Company**

The finance company is the principal lending institution in the lower socioeconomic community. Because banks have traditionally avoided making risky investments, the finance company has served as a mechanism for lending to interest-loss in minority communities. Moreover, because of the risk associated with lending money to a prospective "bar owner" (e.g., a license is required and can be suspended for regulatory infractions), the finance company serves as the only "legitimate" source of funding. In this particular case study, the finance company was the principal source of funding for a significant number of "bars" in Baileysville. Of significant advantage was the fact that this company's origin can be traced to the "loan shark" racket in a major urban area. Its only relationship with members of a "marginalized" community was its willingness to sell unsecured consumer loans to "bar owners" to acquire exclusive distribution rights. This is often the result of the bar owner not being able to pay his monthly statement. The wholesaler may extend the owner credit beyond the allowable timeframe, with the equal share being the right to distribution. At time of sale, of course, the liquor inventory is considered part of the outstanding debts, and must be paid by the buyer.

**The Liquor Wholesaler**

While not permissible under the regulations of the Alcoholic Beverage Commission, it is not unusual to find a liquor wholesaler lending money to "bar owners" to acquire exclusive distribution rights. It is often the result of the bar owner not being able to pay his monthly statement. The wholesaler may extend the owner credit beyond the allowable timeframe, with the equal share being the right to distribution. At time of sale, of course, the liquor inventory is considered part of the outstanding debts, and must be paid by the buyer.

**The Professionals**

The scheme is dependent upon the use of a lawyer who represents the interests of the seller, but also serves as a "hub." The lawyer usually has a marginal practice, thereby making such an unethical arrangement more desirable. The lawyer essentially negotiates the terms of the loan, establishes the contract for the buyer (this is designed to limit the buyer's personal liability but more importantly, the lawyer's legal liability), and usually takes a 2 percent interest in the business, as his legal fee. This "controlling interest" is crucial for the continuation of this scam, for it is responsible for the "bar" operation, for which two parties are responsible, each having a 49 percent (49/98) share in the company, the 2 percent person is sufficient to control the remaining 49 percent in the event there is a dispute among the partners. As part of the contract, the lawyer permits the prospective buyer to examine the books of the "bar" and even recommends an accountant he can use. The "books" naturally demonstrate a profit, which is a generally false representation of the true economic picture. This protects the lawyer at a later date, in the event there is a question raised as to the moral ethicality of the sale. This essentially establishes the participants in the scheme.

**The Vending Industry**

An industry that has its origins in "the racketeers," the demography of the vending industry has changed significantly. A source of deprecatory investment for the "hub" activity today now attracts a new clientele who has no relationship with organized crime. Nonetheless, the scenario at the core of this particular case study, this corporation has definitive alliances with the "organized crime family" that is also associated with the finance company.

Similar to some aspects of the sanitation industry in which "property rights" prevail, the vending industry in this city also subscribes to a system of "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights." When a business that maintains a vending machine is sold, the contract includes the "property rights."
insurance frauds may be initiated. In the end, the finance company has repossed the property and all the money from the loan is gone. But the real profit comes from the property and is in a position to engineer the "scam" once again. The lending company derived gains from the interest on the loan, paying 100 percent profit from its machines and a continuous "income" of property rights. The liquor wholesaler has maintained his ex-middle monopoly over the distribution rights for that particular establishment. And the owner, in a sense, benefited, from the short-lived prestige and status he acquired and the moment he lived by diverting profit to taxes. The question then becomes: who is the victim of the "white-collar crime," and the answer is not recognized at first, and usually requires an intensive investigation to ascertain the facts.

Public Policy Implications

One of the difficulties in the investigation of "white collar crime" is establishing victimization; who were victimized and how? As researchers have pointed out, the victim is usually unconscious of his victimization or too embarrassed to report it.1 This creates a serious enforcement problem, in that "crime" goes undetected for long periods of time and the "victims" are seldom willing to admit to their ignorance or in some cases, confessing complicity. This is clearly the case in this case study.

The necessity and capacity of local and even state law enforcement to investigate this type of crime is seriously constrained by either the ignorance, question about, or moral complicity of the "buyer" to recoup his investment. Indeed, it may even be argued that this form of "criminality" at least offers hope that the "buyer" has legitimate objectives. For the opportunities provided may result in the "American dream" if the entrepreneur is smart enough to take advantage of the opportunities. Unfortunately, this explanation ignores the social consequence of this sort of crime.

Preying upon the ignorance and misfortune of minorities is perhaps the most damaging consequence of this crime. As with most white-collar crimes, the answer is not recognized at first, and usually requires an intensive investigation to ascertain the facts.

Success. They are able to exact unconscionable profit from the community, providing nothing in return except, again, false promises of hope. This represents a classic case of "pyramiding," with the convergence of organized crime and business maintaining exclusive property rights. The return to the entrepreneur, but more importantly, to the community can be measured in high rates of bankruptcy, no investment in real growth in the community, and an unhealthy cynicism toward "the system," which only serves to enhance alienation.

Of course, the impact goes further and deeper. When communities are ravaged by insurance-related scams, or by the vice-related activities that ultimately threaten the social fabric of the community, it is no wonder that there is little community support for the police and little faith in any statement of "the system." When the incentives for committing this form of crime far outweigh the risks, is it no wonder that the community is willing to tolerate and accept organized crime? And when the community is willing to accept organized crime, is it not long before predatory crime is viewed as just another reaction to an unjust and crooked system? Unless the police are in a position to arrest this sort of crime—the exploitation of community interests—they can expect little community support in their "battle against organized crime."

A related consequence of permitting this crime to continue unabated, is the ability of organized crime to create, maintain, and, when appropriate, exploit a viable market. It is generally recognized that law enforcemen system whereby organized crime is able to recruit minority-group members to perform the more visible and, of course, valuable tasks that make money for "the mob." And when they are no longer needed, or become a real threat to the exclusive control exercised by "the mob," their services are terminated through arrest. Again, this does little to instill a sense of confidence in the police, for they are also perceived as part of this "exploitative system."

The state, as a whole, has taken little interest in regulating the practices of finance institutions. Because they usually affect the more vulnerable (and risky) elements of society. There are few protections afforded the "borrower." In a very real sense, a finance company that makes alliances with organized crime is able to stake out its territory and maintain an exclusive monopoly over the money supply in a community, unencumbered by regulations. This only serves to enhance the stature of organized crime in the community, and simultaneously denigrate the role of the state in protecting those who are most affected by this sinister alliance of interests.

Given the investigative constraints and complexity of the "scam," law enforcement must transcend traditional law enforcement strategies if they are to be successful in interdicting this system. It is the term "system" that makes it most amenable to a sustained investigation, using electronic surveillance and "sting" techniques, for the criminality is ongoing, not opportunistic or a reaction to a situation. A pattern of racketeering" is quite evident, making it most vulnerable to the RICO statute.2 And because RICO is not limited to only organized crime, but extends beyond, the concept of RICO provides that investigative strategy must applicable to this scam. Moreover, in the event the levels of proof for a criminal prosecution are not attained, the state has the option of employing a civil remedy, which is often underutilized in organized crime enforcement, but equally as effective (and perhaps more efficient).3

The concept of "pattern" is most appropriate in investigating this scam, for the pattern demonstrated in this case study appears to be consistent with sporadically assembled data in other instances. Essentially, the "pattern of racketeering" when examining the infiltration of legitimate business requires more than one "racketeering activity" and the threat of continuing activity, which has been interpreted by the courts to mean, a connection between the acts by a common scheme. The consequence, of course, is the maintenance of exclusive monopolies by the various entities, to the benefit of organized crime.

The second requirement, that of enterprise is most conveniently demonstrated by the legal incorporation of a "conspiracy" that will lure the vendor, company, and the professional (who usually takes in the interest of the buyer's corporation, making him a part of the conspiracy, when another buyer is ultimately sought). The "organized crime family" that derives profit from this continuing pattern of racketeering would meet the requirements of an illegal enterprise under RICO.

Two acts of "racketeering" must be proved. In this case, the government has set out a prescribed number of crimes that encompass a RICO violation. The threat or fear of violence by a "collective" would comprise an enumerated act, as would the acts of "professional" (e.g., mail or wire fraud, bankruptcy fraud), and of the wholesaler, vending, or finance company (interference with commerce, extortionate credit transactions). Collecting this type of evidence will often entail electronic surveillance and witness testimony, as the documents maintained by the various participants will not reflect criminality. In fact, efforts are made to convey an impression of complete legality and knowledge of the "buyer" when he signs the documents.

Providing the state has successfully defended its RICO charge, the penalties are most appropriate for this sort of "scam." For example, the properties acquired through racketeering can be seized by the bar, and treble damages may be awarded. This sort of remedy would usually create an economic renaissance in these lower socioeconomic communities, and minimize the extent of economic devastation.

Conclusion

If law enforcement is to effectively investigate this crime it must develop a greater appreciation for its systemic relationship to the community and its institutions. Reacting to individual criminal transgressions fails to adequately address the systemic permanence of organized crime, and its capacity to withstand successful but ultimately marginally effective prosecutions. The threat of law enforcement efforts must be directed toward the financiers—those who derive the real profit from their minimal investments. Only then can we affect the revenue-producing capability of organized crime.

Of course, we must also recognize that the enforcement of the "pattern of racketeering" only serves to enhance the stature of organized crime, certain types of conduct, while perhaps morally abhorrent, do not receive the criminal stigma they may rightfully deserve. This case study represents a classic example of how criminal sanctions may be ill-suited for investigating organized and white-collar crimes. It is within these narrow parameters that law enforcement must innovate a strategy that effectively diverts criminal enterprises from their control over legitimate and illegitimate businesses in the lower socioeconomic communities of our urban centers.