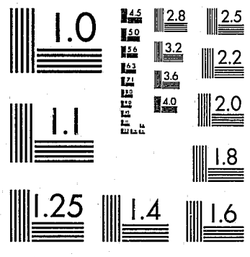

REPORT OF THE
ORGANIZED CRIME TASK FORCE
1978

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* The County Prosecutors Association's Organized Crime Policy Board has studied organized crime in New Jersey and as a result of its findings, requested the formation of the task force that has compiled this report.

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INTRODUCTION

Some ten years ago, New Jersey had a national reputation as a haven for organized crime. Newspapers and magazines bannered the claims that organized crime "owned New Jersey, controlled significant areas of commerce within the State, and had infiltrated major labor organizations. Most notoriety, however, was given to the belief that State as well as local officials were "too close" to organized crime, and that the State's police agencies had been "bought and paid for" by these illicit, organized "businessmen."

New Jersey was challenged to make a decision, that is to continue, wittingly or unwittingly, to be a refuge for organized crime activities or to respond with legitimate, calculated law enforcement measures. While this paper is not intended as a dissertation on the State's response or resulting law enforcement achievements, it is necessary to briefly review the "change" which has taken place in this State in order to place the recommendations contained in this Report in perspective.

Revelations relating the extent of organized crime influence in this State prompted public questioning of the adequacy, capability, and sometimes integrity of State government. Queries and responses consistently pointed to deficiencies in the system. The law enforcement structure in New Jersey in 1968 was not equipped to deal with the sophisticated inter-county investigative problems involved in organized crime prosecutions. The State Attorney General's office had no original criminal jurisdiction. Its functions generally were to handle supersession cases from county prosecutors and to perform a "coordinative" function among those prosecutors. Occasionally, the Attorney General utilized a small criminal investigations section to process cases in local grand juries. The 21 county prosecutor's offices had small, part-time staffs, which were overburdened with routine caseloads and which did not have the time or the resources to handle sophisticated organized crime or political corruption cases. The New Jersey State Police was in a transition period, from what had been general rural police and highway patrol functions to a modern investigative organization. The State Police began to set up units such as an Intelligence Bureau and an Organized Crime Task Force Bureau. At the federal level, the office of the United States Attorney had handled some organized crime cases, but its legal staff was small, and had to handle the large caseload generated by the federal investigative agencies. Federal "Strike Forces" had not yet been created, and the Department of Justice had assigned only one or two attorneys from its Organized Crime and Racketeering Section to work in New Jersey. The federal investigative agencies viewed New Jersey as a step-child in

the corridor between New York and Philadelphia, with major allocations of manpower and enforcement work going to New York and Pennsylvania. During the period through 1968 in New Jersey, enforcement efforts against organized crime and political corruption were sporadic, and law enforcement activities were, candidly, having little impact.

In direct response to the media claims that New Jersey was "comfortable" with organized crime, the State Legislature provided a series of measures which, taken together, have formed the basis for a comprehensive law enforcement effort directed particularly against organized crime activities in this State. Specifically, development of the Criminal Justice Act of 1970, the New Jersey Wiretapping and Electronic Surveillance Control Act, the Statewide Grand Jury Act, immunity statutes dealing with ordinary witnesses and public employees, and the creation of the State Commission of Investigation,[1] provided a combination of prosecutorial and investigatory mechanisms which encouraged enforcement efforts. As a direct result of the promulgation of these measures, prosecution of several significant organized crime figures as well as those public officials corrupted by organized crime were initiated. Organized

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1 N.J.S.A. 52:17B-97 et seq; N.J.S.A. 2A:156A-1 et seq; N.J.S.A. 2A:73A-1 et seq; N.J.S.A. 2A:81-17.3; N.J.S.A. 2A:81-17.2a17 et seq; N.J.S.A. 52:9M-1 et seq; respectively.

crime's hold on police agencies began to loosen. Syndicated networks in gambling and narcotics distribution were disrupted. Most significantly, "business habits" of organized crime activity in this State changed complexion. Management personnel sought insulation. The "risk" of persons engaged in traditional organized crime activity heightened. Illicit networks were disrupted, and occasionally eliminated.

Today, there exists a concerted response to the infiltration of organized crime into government and business.[1a] Of the twenty-one prosecutor's offices throughout New Jersey, all but five are now operated on a full-time basis. Many operate highly specialized and full-time organized crime, corruption and white collar crime units. In addition to these units, the Division of Criminal Justice also operates Civil Remedies and Antitrust enforcement programs focusing on business-related syndicated criminal activity. The advent of specialized units within the various county prosecutor's offices as well as in the Division of Criminal Justice have resulted in a number of significant indictments and prosecutions as well as disruption of the concept that business could be conducted "as usual." In addition, cooperative law enforcement efforts between and among the various county, state and federal agencies have become more formalized; joint investigations and inter-agency liaisons have become increasingly more common. Law enforcement

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1a We note in this regard that New Jersey's Electronic Surveillance Act is to expire this year. The Attorney General and the County Prosecutors Association strongly urge re-enactment of this legislation which constitutes a valuable prosecutorial tool in our efforts to combat organized crime.

within New Jersey has moved in the direction of greater organization, with unified direction and purpose at all levels.

Direction and purpose are perhaps the key words. The continuing "professionalization" of law enforcement throughout New Jersey, and the minimization of dysfunctional intra-agency, and inter-agency jealousy and competitiveness has resulted in law enforcement's increased effectiveness and potency. Indeed, New Jersey, which once had a dubious national reputation of unchecked organized criminal activity and political corruption, now serves as a model for the successful, comprehensive response to such criminality.

While much has been achieved through active enforcement efforts, it is naive to believe that all that can be accomplished in combating organized crime and corruption in New Jersey has, in fact, been accomplished. Law enforcement in this State has no time for enjoying laurels. Rather, the constant process of self-evaluation and honest appraisal among the law enforcement community must be continued, with the hopeful result of improving the process further still. Indeed, organized crime has responded to investigative and enforcement efforts by altering its methods of doing "business." There is no question that principals in these forms of illicit enterprises have become more sophisticated, and therefore likely not to expose

themselves to what now has become traditional law enforcement activity. It will only be through unrelenting and imaginative commitment by the various New Jersey law enforcement agencies, and as well as the continued attention of the executive, legislative and judicial branches, coupled with sustained public awareness and support, that organized crime's impact will be contained. The Report of the Organized Crime Task Force is intended to provide impetus to the reaffirmance of that commitment by all levels of government through cooperative, innovative enforcement methods.

CIVIL REMEDIES: RATIONALE

Certain advantages obtain through utilization of civil process. These advantages bear mention when considering the appropriateness of civil initiatives to organized crime activities.

The hallmarks of civil practice are its flexibility and adaptability, particularly with regard to the fashioning of remedies which can be uniquely molded to any given situation. In contrast, the criminal law generally provides only for the imposition of a fine and imprisonment as sanctions following successful prosecution. Only recently has restitution become a serious consideration in sentencing. However, civil law allows both for compensatory and punitive damages as well as injunctive relief following litigation. Even more significantly, the civil rules provide for the imposition of immediate preventative measures upon initiation of suit. For example, the complainant in a civil suit, whether it be the State or a private person, may ask for emergency injunctive relief pending the final outcome of the action. Then, upon successful completion of the litigation, a permanent injunction may issue, along with a declaration of compensation and, when appropriate, punitive damages.

Moreover, the burden of proof in a civil suit is a lesser burden than that which must be carried in a criminal prosecution. In most civil litigation, only proof by a preponderance of evidence is required. In addition, there arise

situations in which criminal statutes, which are by nature narrowly drawn, do not proscribe particular conduct directly or which cannot encompass the overall undesirable scheme undertaken. Indeed, resort to civil suit may provide the only tenable solution in situations in which the criminal law could not reveal the extent of the wrongdoing.

In this regard, it should further be noted that the prosecutor would not face in a civil action those constitutional protections afforded to a defendant in a criminal case. A person may not refuse to answer a question propounded to him at trial on the basis that his answer might subject him to civil liability.[5] Moreover, a prosecutor would be able to comment on a party's refusal to testify.[6]

Other procedural advantages to a civil suit also exist. The complaint may be amended where an indictment may not. Discovery is generally broader. Further, the government is not barred by the proscription against double jeopardy from appealing an adverse ruling, as it is barred from appealing an acquittal at trial. Thus, the prosecutor is given a flexibility unknown to him in a criminal prosecution.[7]

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5 See Helvering v. Mitchell, 303 U.S. 391, 399 (1938).

6 See Baxter v. Palmigiano, 425 U.S. 308, 318 (1976).

7 A prosecutor should be aware, however, that constitutional protections will be afforded a subject where it appears that a "civil" action is actually criminal in nature. See The Use of Civil Remedies in Organized Crime Control, supra at 7 to 14, for a discussion of this problem. Legislative intent and the type of sanction imposed are factors which have been considered by the court in making this determination. See Trop v. Dulles, 356 U.S. 86, 94 (1958); Kennedy v. MendonzaMartinez, 372 U.S. 144, 168-169 (1963).

A review of the existent civil remedies which might be effectively utilized to hinder the economic profitability of organized crime in New Jersey is warranted, as is an analysis of the limitations of our present laws.

Existing Civil Remedies

As in the majority of the States, the Attorney General in New Jersey is empowered to remedy behavior harmful to the public, not only on the basis of statutory authority, but through traditional common law powers so far as they are applicable and not abridged by constitutional or legislative enactment.[8] As the common law authority of the Attorney General has not been fully explored in our courts, the exact parameters of these powers are not entirely clear. It has been suggested that the type of civil enforcement actions which might fall within this category include injunctions against public nuisance, the imposition of constructive trusts and accounting, rescission and cancellation of public contracts illegally procured, and actions in lieu of prerogative writs.[9]

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8 See Wilentz v. Hendrickson, 133 N.J. Eq. 447, 454-455 (Ch. 1943), aff'd 135 N.J. Eq. 244 (E. & A. 1944).

9 Again, standing may often be at issue in these proceedings. Moreover, it is not at all clear that County Prosecutors would have standing to bring any civil actions, particularly those in equity.

In considering the use of injunctions in combatting organized crime activity it must be noted that where reliance is to be placed on common law powers rather than statutory authority and the action is equitable, the common law requirements for equity jurisdiction prevail. In short, the remedy at law must be inadequate or equitable relief would be barred. Further, an elementary maxim of equity provides that "equity will not enjoin a crime,"[10] the rule being premised on the concept that the criminal law provides an adequate remedy. While the equity courts retain the power to enjoin criminal offenses where they create a widespread nuisance,[11] the limitation of existing equity practice is thus readily discernible.

Theoretically, in those situations in which our criminal sanctions can be demonstrated to be ineffective in controlling intentional, wide-scale violations of the law engaged in by organized crime, injunctive relief could provide a broad and very effective remedy. Injunctions might issue against illegal patterns of activity, i.e. continuous, purposeful violations of the law, as well as against the use of certain property for criminal purposes. In other words, any continuing activity which could not be

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10 See e.g., In re Debs, 158 U.S. 564, 593 (1895).

11 United States v. McIntire, 365 F. Supp 618, 622 (D.N.J. 1973).

remedied solely by criminal prosecution of an individual or individuals and which is plainly injurious to the public welfare, might be terminated through injunctive relief. The "appropriate" circumstances for injunctive relief could be broadened by statute to encourage resort to this device so as to provide for a broader jurisdictional base.

Where public officials have been induced to join in organized crime activity and to use their official position to enter into illegal contracts, other equitable actions are likewise possible. For example, in Driscoll v. Burlington Bristol Bridge Co., 8 N.J. 443, 475 (1952), cert. denied 344 U.S. 838 (1952), the Governor and Attorney General brought an action for rescission of an illegal contract for the public purchase of two bridges. The public officials involved had not exercised their discretion in good faith, nor had they contracted on the basis of fair consideration free from corrupting influences. Injunctive relief was granted. The lower court ordered rescission of the contract declaring it void as against public policy. While the Supreme Court recognized rescission as a possible remedy, the Court concluded that invocation of that remedy would cause injury to innocent parties. Instead, the Court continued the receivers who were appointed below to supervise the operation of the bridges and ordered the Chancery Division to retain jurisdiction and supervise the restitution.

Moreover, constructive trusts with accounting may be imposed where public officials have breached their fiduciary obligations or where those private parties dealing with the public breach their correlative duties. In Jersey City v. Hague, 18 N.J. 584 (1955), the Supreme Court upheld an action by the city against former city officials to recover monies allegedly extorted from city employees and imposed a constructive trust to facilitate recovery.[12] The imposition of such a trust is premised on the theories of a breach of fiduciary duty, prevention of unjust enrichment and the doctrine of restitution. Public officials are considered agents of the government and therefore are compelled to return to the sovereign benefits obtained through improper use of their official position. Again, the limitations of these remedies are apparent since all such causes are premised upon direct dealings with public bodies and breach of duty based upon those dealings.

Actions in lieu of prerogative writs on occasion, might be effectively utilized in counteracting organized crime activity. At common law, the remedy for dissolution of a corporation is information in the nature of quo warranto.[13] It is a remedy designed to try title to a

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12 The imposition of a constructive trust on funds illegally obtained by a public official has also been employed as a remedy in other jurisdictions. See, e.g. Cook v. Bennett, 36 Ill. App. 34d 624, 344 N.E. 2d 540 (1975); City of Boston v. Santosuosso, 298 Mass. 175; 10 N.E. 2d 271 (1937).

13 See Petition of Collins-Doan Co., 3 N.J. 382 (1950). See also N.J.S.A. 2A:66-5 and 6.

corporation or other franchise with the purpose of preventing the exercise of powers not conferred by law. In other words, it is addressed to the suppression of the continued exercise of unlawfully asserted powers. Where a corporation has abused or misused its franchise powers, the attorney general is empowered to seek dissolution of the corporation or to limit its powers.[14] In short, a business which serves as a cover for organized crime activity, uses syndicate money in its operation, or in fact engages in a pattern of illegal activity, is acting in a manner not authorized by law (ultra vires) and therefore its charter may be subject to forfeiture.[15]

Quo warranto actions are likewise maintainable to force the ouster of persons exceeding their authority. In New Jersey, the right to maintain this action resides in the attorney general and has been codified by statute (N.J.S.A. 2A:66-5 et seq.). The statute provides that a proceeding

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See e.g. Attorney General v. Contract Purchase Corp., 327 Mich. 63, 642, 42 N.W. 2d 768, 771 (1950; State ex rel. Landis v. S.H. Kress & Co. 115 Fla. 189, 155 So. 823 (1934).

See also in this regard State v. The Thunder Corp. (Travis Co., Texas, D.C., March 21, 1977); State v. Bahama Cruises Lines, Inc. (Travis Co., Texas, D.D. September 16, 1976).

15
See N.J.S.A. 14A:12-6.

may be instituted against any person who usurps, intrudes, or unlawfully holds or executes any office or franchise in this state, and may be utilized to test title to office in any corporation, public or private. Needless to say, this general power has almost been supplanted by specific statutory provisions (e.g. N.J.S.A. 2A:81-17.2a4 and N.J.S.A. 2A:135-9), and is therefore not frequently utilized.[16]

Other civil prerogatives have, in certain instances, been statutorily created. For example, the Uniform Securities Law, the New Jersey Antitrust Act, and the State's consumer protection statutes[17] can be invoked under certain circumstances. The major difficulty with these statutes is that none of them is specifically directed towards those activities traditionally engaged in by organized crime, and thus is often too narrow in scope or inappropriately focused for use in controlling organized crime.

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See e.g. O'Hanlon v. Calvert, 88 N.J.L. 3 (Sup. Ct. 1915).

Mandamus actions which do not operate to force ouster, but which command a public official to perform his duties in accordance with law, are also available. Such a remedy might be effectively utilized to terminate abuses of either malfeasance or nonfeasance, but are not readily adaptable to organized crime enforcement.

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N.J.S.A. 49:3-47 et seq.; N.J.S.A. 56:9-1 et seq.; N.J.S.A. 56:8-1 et seq, respectively.

The Uniform Securities Law contains broad anti-fraud provisions which might be resorted to where organized crime is involved in stolen securities or securities fraud. It provides that it shall be unlawful for anyone directly or indirectly in connection with the offer, sale or purchase of any security to make express misrepresentations of fact, fail to disclose material facts, or engage in any act or practice which would operate a fraud upon any person. Additionally, the statute requires registration of broker - dealer firms and representatives of broker - dealers with the Bureau of Securities, a State agency. The Agency is empowered to revoke or suspend registration due to misconduct, to seek injunctions against unlawful conduct, to seek monetary penalties, and to place a business into receivership where the business has been used in furtherance of schemes prohibited by statutory law. A private party victimized by a seller of securities is entitled to rescission of the sale, other equitable remedies, or damages.

Our consumer protection statutes prohibit any fraud, deception, misrepresentation or unconscionable behavior which might be practiced in connection with the sale or advertisement of any merchandise in New Jersey. Under the Statute, the Attorney General has investigative and enforcement powers. Both administrative hearings and court action are possible. In administrative hearings, cease and

orders may issue, restoration (restitution) may be ordered, and civil penalties of $2000 for the first offense and $5,000 thereafter may be imposed. Where a violation of a cease and desist order exists, additional penalties of up to $25,000 may be ordered. Where actions are brought in Superior Court,[18] the civil remedies available are even more numerous: injunctions and orders of restoration may issue, civil penalties may be assessed, receivership may be imposed, a corporate charter may be forfeited, orders limiting ownership to a percentage of the business may be issued, or any other necessary actions to prevent further unlawful activities may be taken.[19]

The New Jersey Antitrust Act might also be utilized in some types of organized crime activity. The Attorney General has jurisdiction to bring antitrust actions, and he may direct the county prosecutor to assist him. The Statute prohibits combinations and conspiracies in restraint of trade, or illegal merger and monopolies, and was adopted, at least in part to be utilized against organized crime activity. Certain types of activities, such as price-fixing and market or customer allocation have been held to be "per se" violations of those provisions of antitrust laws which prohibit combinations or conspiracies in restraint of trade. As such, it must

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18 Actions may also be brought in municipal court or county district court, but at that level there exists no statutory authority for restitution.

19 N.J.S.A. 56:8-8.

only be proved that an agreement to engage in those practices exists, and a violation of the law will be found. Additional types of activities, such as kickbacks, exclusive dealing arrangements, or business torts, may be held to violate our antitrust laws, if the purpose is to eliminate competition and there is a substantial effect on commerce. Where such violations exist, the State may seek an injunction and monetary penalties, as well as resort to criminal prosecution. While the State Act was contemplated to be used against organized crime activities, the enactment was not adapted for that purpose. Moreover, historically while antitrust provisions have been enforced at the federal level for some time, prosecutions have not been oriented toward organized crime activities.[20]

The laws governing gambling in New Jersey deserve note for they are somewhat unique in that there exist both civil and criminal remedies for an activity in which organized crime is heavily involved. Under N.J.S.A. 2A:112-4, any corporation convicted of bookmaking or keeping a gambling

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20 N.J.S.A. 56:9-18 requires that the New Jersey Statute be construed in harmony with its federal counterpart.

21 See Castellon v. Hudson County, 145 N.J. Super. 134 (App. Div. 1976).

resort shall be automatically dissolved and its corporate franchises become forfeited and void without the requirement of any further proceedings. Further, N.J.S.A. 2A:40-1 et seq., provides that anyone who loses money in an illegal gaming transaction may recover the monies lost, that any contracts which are entered into in which the consideration given was obtained through illegal gaming shall be void, and finally, that there shall be allowed the imposition of a civil penalty of $2,000 against any person who shall "erect, set-up, open, make or draw any lottery" and which may be recovered by any person who shall sue for same.[21]

Finally, under existing statutory law, the public rights of confiscation and forfeiture of property are available but are diffused and so inconsistently employed as to

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21 See Castellon v. Hudson County, 145 N.J. Super. 134 (App. Div. 1976).

impair their ineffectiveness.[22] The proposed New Jersey Penal Code, Chapter 64, would establish a uniform scheme for the confiscation and forfeiture of property, and is therefore a major improvement over existing law.

While several forms of civil remedies exist in this State, none has been developed for utilization against organized crime activities. In most instances, such initiatives would not, perhaps could not, be engaged by the courts to contain or disrupt syndicated crime, particularly with respect to incursion into legitimate areas of commerce. The Organized Crime Task Force has concluded that existing civil remedies on the whole, are inadequate.

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22 See e.g. N.J.S.A. 54:40A-32, Forfeiture of vehicles or vessels utilized for transporting untaxed cigarettes; N.J.S.A. 2A:152-7 et seq., forfeiture of gaming paraphenalia and monies; N.J.S.A. 24:21-35, forfeiture of conveyances or property used in connection with controlled dangerous substances violations; N.J.S.A. 2A:130-4 and N.J.S.A. 2A:130-5, forfeiture of property where common nuisance exists; N.J.S.A. 2A:151-16, forfeiture of firearms; N.J.S.A. 33:1-66 and N.J.S.A.33:2-5, forfeiture of property used in violation of Alcoholic Beverages Control law; general guidelines involving situations not specifically governed by another provision are contained in N.J.S.A. 52:27B-68. Still other provisions detail the circumstances under which property is to be destroyed, see e.g. N.J.S.A. 2A:152-6, N.J.S.A. 24:1-1 et seq., and N.J.S.A. 2A:115-3.7.

PROPOSED LEGISLATIVE APPROACHES

Traditional law enforcement mechanisms have not been fully effective in combatting organized crime activity in New Jersey. In seeking novel approaches to the problem, a civil remedies scheme appears to present an effective supplement to traditional criminal law enforcement. It must be stressed, however, that civil enforcement whether it be implemented through common law equity powers, through existing statutory law, or through the passage of new legislation aimed at organized crime activity, may well involve restructuring of law enforcement resources. The need for cooperation between the various agencies engaged in the detection and control of the organized crime activity will be heightened, since whoever is responsible for institution of civil action will need informational feedback from many sources. Moreover, the hiring of additional personnel knowledgeable in financial and economic transactions will be required.

It is the position of this Task Force that if civil remedies are to be most effectively used, the passage of specific legislation directed toward organized crime activity is mandated. Our present statutes are deficient in providing a full complement of enforcement mechanisms and prohibitions geared toward organized crime activity. New legislation must set forth with particularity standards for intervention, i.e. jurisdictional requirements, those

persons authorized to initiate suit, prohibited activities, and permissible sanctions.

LEGISLATION AIMED AT "RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS" - THE INFILTRATION OF LEGITIMATE BUSINESS

Having decided that initiatives against organized crime must include the use of civil remedies as well as criminal sanctions, we now turn to the creation of a civil prerogative which by statute would create broad authority to prevent the proliferation of organized crime.

In 1970, Congress declared organized crime to be a major economic threat to the well-being of the commerce of the United States. To counteract that threat Congress passed the Organized Crime Control Act of 1970, Title 9 of which is the Racketeer Influenced and Corrupt Organizations Section (R.I.C.O.).[23]

The RICO statute was an attempt to meet, in part, the criticism that the criminal law has been oriented toward the individual too much to be of real use against a crime organization. A proclivity exists in our society to view criminality as an individual matter rather than an organizational matter. The criminal's behavior is usually viewed, both popularly and scientifically, as a problem of individual maladjustment, not as a consequence of his participation in social systems. Consequently, the law enforcement processes have been, by and large, designed for the control of individuals, not for the control of organizations.

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23. 18 U.S.C.A. 1961 et seq.

RICO type statutes and their civil remedies, especially divestiture and dissolution, are directed towards reducing the power of those people in organized crime through restraint of their economic activity. The new civil remedies, however, are not the only advantages prosecutors derive from RICO type statutes. They also eliminate troublesome problems in criminally prosecuting organized crime, such as, the existence of certain constitutional protections and the difficulty of accumulating evidence. The criminal process has suffered from two major limitations as a means of protecting our economic institutions from infiltration by organized crime. The first is that our law, quite properly, has burdened the government in a criminal case with strict procedural handicaps. Civil proceedings as previously indicated provide advantages unavailable in a criminal case; such as, a lesser standard of proof, the right to appeal adverse rulings and the ability to use broad discovery procedures. The second major limitation of the criminal process in combatting organized crime's penetration of legitimate business is the limited scope of criminal "remedies." In short, the incarceration of individuals rarely leads to elimination of an entire "business" organization.

The federal RICO statute is specifically designed to prevent the use of "racketeering" income to acquire or maintain an interest in a business organization, and generally to prevent "racketeering" within a business enterprise.

The specific civil remedies under the act available include divestiture of interest, dissolution, reorganization, prohibition of acceptance of performance bonds, forfeiture, restraining orders, pre-trial relief, private suits, collateral estoppel, civil investigatory prerogatives, contempt, and loss of licensure. In addition, the provision provides limited criminal jurisdiction for racketeering activities.[24]

More specifically, the RICO provision attempts to provide a mechanism to interfere with the infiltration of legitimate business by organized crime by prohibiting: (1) the investing of organized crime funds in legitimate businesses, (2) the taking over of a business by "strong-arm" methods, and (3) the running of the businesses with "strong-arm" methods. Although the phrase "strong-arm" may be somewhat emphatic, it is intended to characterize broadly the methods which have too often been utilized to obtain an interest in business or to thwart competition.[25]

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24. A minority view in Congress has expressed the view that, assuming the traditional criminal law is adequately drafted, there is no real purpose in adding criminal jurisdiction to an otherwise civil scheme. See U.S. Code Congressional and Administrative News, 2nd Session, 1970, Pages 4076-4091.

25. See 18 U.S.C.A. §1062. See also United States v. Cappetto, 502 F.2d 1351 (8 Cir. 1974); United States v. Mandel, 415 F. Supp. 997, (D.Md. 1976); United States v. Castellano, 416 F. Supp. 125, (D. NY 1975).

Equally important is the broad investigative prerogatives vested in the United States Attorney General. The Act permits, under certain circumstances, the Attorney General to propound civil investigative demands and to subpoena records prior to institution of civil or criminal proceedings.[26] The investigative demand may be served on either a person or an enterprise having in their possession custody and control documents or evidence relevant to a racketeering investigation. The Act further provides protective mechanisms to ensure the safeguarding of the information and records so obtained. These provisions are intended to facilitate the Attorney General's investigatory responsibilities under the Act.

Since the federal Statute was enacted six states have passed general legislation providing for various civil initiatives.[27] The statutes in all of these states - Connecticut, Florida, Hawaii, Ohio, Pennsylvania and Rhode Island - codify the common law power of quo warranto, authorize proceedings for forfeiture of corporate charters, and provide for the issuance of injunctions against criminally-operated businesses.

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26. 18 U.S.C.A. 1968.

27. In addition, last year the New Jersey Legislature passed a RICO-type provision limited to investigations involving casino-related activities. See P.L. 1977, c. 110 §§ 125-128. (N.J.S.A. 5:12-125 to 12:128).

The Pennsylvania and Hawaii statutes closely follow the federal RICO statute.[28] Prohibited activity includes investing income derived from criminal activity in any enterprise, or conducting a business through such activity. Unique to the Pennsylvania statute is a rebuttable presumption that investment was made from racketeering income if during the two years preceding the investment more than 50% of defendant's income was derived from racketeering activities. Civil remedies include divestiture and dissolution of corporate charters, revocation of licenses and reasonable restrictions on future conduct.

The Connecticut and Rhode Island statutes,[29] provide that the Attorney General may proceed to forfeit a corporate charter where any controlling person is directly or indirectly connected with organized crime activity. Such an action is also sustainable where the illegal activity is known or should have been known to the president or directors. Injunctions may also be ordered where a persistent course of conduct exists to induce others to engage in criminal conduct.

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28. See, PA. STAT. ANN. Tit. 18, Sec. 3921-3929; HAW. REV. STAT. Ch. 842, Secs. 1-12.

29. CONN. GEN. STAT. ANN. Secs. 3-129a, 3-129b and R.I. GEN. LAWS Secs. 7-14-1 et seq.

The Ohio statute,[30] gives the local prosecutor authority to move for dissolution of any corporation which is organized for or used to further enumerated organized crime activities.

The only state statute ever utilized to date was the Florida statute which was declared unconstitutional[31] in its original form and has since been amended.[32] The present Florida Act is patterned after the federal RICO provision.

Of existing RICO-type statutes of general application, none satisfies the needs of New Jersey.

The main purpose of a RICO-type statute is the making available to proper law enforcement authorities civil remedies to cope with organized crime. An analysis of the cases decided under the federal RICO statute indicates that the statute has never really been used for that purpose. Rather, enforcement activities have concentrated on criminal prosecutions under the Act, and therefore have not fulfilled, in the opinion of the Task Force, the real purpose of the provision, i.e. to battle organized crime on an economic front.

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30. Ohio Rev. Code Ann. Sec. 1701.91(s).

31. See Aztec Motel v. State ex rel Faircloth, 251 So. 2d 849, 854 (Fla. 1971).

32. See 1977 Fla. Laws Ch. 77-334.

Apart from the direction of enforcement being unnecessarily narrow, at the state level additional problems have disrupted the "good intentions" of RICO-type statutes. A survey of the six states which have enacted such provisions indicates that the primary reasons for non-enforcement or non-use of the statutes are lack of a unified law enforcement network, a paucity of investigative expertise and want of financial resources.

Two issues therefore remain. The threshold question centers on whether an effective provision permitting civil initiatives against organized crime activity can be developed which avoids the pitfalls described. The Task Force has concluded that such a provision can be drafted which, adapted to New Jersey, can provide a meaningful, intense mechanism to subvert the "business of organized crime."

The second issue is whether this State is in a position to enforce such a provision, for to be effective the statute must be utilized. On this score, New Jersey is perhaps in an advantageous position in comparison to other states, having a unified law enforcement system with several sophisticated units oriented toward business-type investigations already in place. Certainly, staff may have to be expanded. Perhaps a reassessment of priorities will

be required. Most assuredly, greater cooperation among the law enforcement community will result since each segment will be called upon to contribute its expertise. In the view of the Task Force, organized crime can be best contained through organized law enforcement, unified in objective and possessed of the authority to accomplish its task. A civil remedies statute specifically geared to deal with organized crime activities would facilitate that end.

Most existing RICO-type provisions are unnecessarily broad in scope, and therefore offer little guidance to enforcement authorities in terms of direction and priorities. The civil remedies legislation which should be considered in New Jersey should declare publicly sensitive segments of "commerce" which justify extraordinary attention, and which are susceptible to a "civil remedies" approach to vindicate the public interest. In short, at this stage of experimentation, the wideranging authority should be limited to prevent, disrupt or eliminate the infiltration of organized crime into legitimate business. It is recommended that legislation be considered that would specifically deal with: (1) areas of legitimate commerce in which organized crime typically has an interest; (2) areas of legitimate commerce which are infiltrated or funded by monies gathered through illegal activities; and (3) areas of legitimate commerce in which licensing is required by the State.

The provision contemplated should establish authority to investigate through civil procedures, create causes of action geared to disrupt the business habits of organized crime, and provide for a broad range of remedies including dissolution of business entities, prohibitions on future business activities, injunctive relief as well as compensatory and punitive damages. The statute should also assist in preventing the infiltration of legitimate sensitive businesses by organized crime by providing the power to investigate and review licensure qualification. While recognizing that such a provision will create broad powers the Task Force is painfully aware of the strong economic threat posed by organized crime. In this regard, the State has the right to set minimum standards of conduct in sensitive business affairs and see to it that such standards are enforced. In the view of the Task Force, a civil initiative as outlined herein is likely to be the most efficient method of ensuring that objective.

The civil remedies statute should also include a section similar to that contained in the Pennsylvania statute which creates a presumption under certain circumstances;[33] if more than half of an individual's income is derived from illicit activities and such an individual has invested in or purchased a business, it is presumed that those funds are used in that business. Such a presumption is desirable in anticipation of the defense that an individual used the illegally gained money to live on and legitimate funds for investment purposes. The primary

33. PA. STAT. ANN. Tit. 18, Sec. 3921 et seq.

advantage of such a presumption is the resulting shift of the burden of persuasion, requiring some affirmative proof from "investors" that they meet the minimum standards necessary for conducting business.

As indicated earlier in this Report, the significant reasons resulting in ineffective enforcement of similar civil initiatives are the lack of a unified law enforcement system and a paucity of investigative expertise. In New Jersey, the Criminal Justice Act of 1970[34] establishes a unified, coordinated approach for law enforcement. Through the theme established in the Criminal Justice Act and the cooperation of the county prosecutors, various sophisticated investigative units have been established. Still other such units are in formitive stages.

In short, the basic law enforcement network necessary to successful utilization of civil initiatives against organized crime is in place in New Jersey. Inasmuch as both the authority which would be reposited in law enforcement through the initiative and the resources for proper utilization are substantial, it is necessary that the provision be administered in conjunction with the coordinated approach to enforcement envisioned by the Criminal Justice Act. In that regard, it is recommended that the

34. N.J.S.A. 52:17B-97 et seq.

authority of the Act be invoked only upon the finding that the particular investigation or prosecution under the Act is in the public interest, based upon the standards outlined previously. While the Attorney General should be responsible for the administration of the Act, he should have the ability to delegate the investigatory and litigation responsibility to the county prosecutors under certain circumstances.

While civil initiatives as described will promote existing efforts to contain organized crime's steady incursion into legitimate business, the approach should not be regarded as a panacea. The recommendation should be considered in the context of others contained in this Report and, most importantly, in the backdrop of the traditional criminal justice proscriptions which act as the stalwart against those who would pervert the free enterprise system to sanction organized crime's "investment" in America.

CIVIL INITIATIVES DIRECTED TOWARD ILLICIT ENTERPRISE

In the foregoing section, this Report has recommended that legislation be created empowering the Attorney General to invoke civil investigatory powers and to initiate civil litigation to disrupt the infiltration of organized crime into legitimate, commercial enterprise. The Task Force considers that certain, more limited civil remedies would be adaptable as well to some of the more traditional, illicit activities of syndicated crime.

THEFT AND FENCING

Although violent crime, "crime in the streets" as it is often termed, has occupied the attention of the news media and the public in recent years, the widespread existence and pervasive impact of theft, a basically non-violent criminal activity, constitutes one of the most significant threats to modern society. While all can understand the dramatic effects that losses by theft may have upon individual victims, it is somewhat less easy to comprehend the cumulative danger to the public welfare resulting from large-scale organized theft activities.

Theft, given its most limited definition, involves the taking or conversion of another's property to one's own use with the intention to permanently deprive the true owner of that property. However, in a broader sense, theft may include all criminal acts aimed at unlawfully obtaining value from the property of another. In this context, theft may encompass such diverse offenses as shoplifting, larceny, burglary, employee pilfering, embezzlement, hijacking, robbery, frauds of various types and arson.

While no definitive estimate of how widespread theft activity is in New Jersey is possible, the available information provides cause for concern. The Uniform Crime Reports for New Jersey compiled by the New Jersey State Police uses an index comprised of several carefully selected

serious offenses to paint an overall picture of crime in this state.[35] The index is based upon criminal offenses reported to the various police agencies. In 1976, slightly less than 400,000 index offenses were reported. Approximately 93% of those offenses were constituted by breaking and entering, larceny-theft and motor vehicle theft. In addition, the most statistically significant violent crime included in the index, robbery, accounted for 3.7% of the total index offenses. Thus, almost 97% of the 1976 index of serious crimes involved theft-type behavior. A look at comparative statistics provides no encouragement. From 1972 to 1976, the number of theft-type offenses have increased every year. The 1976 figures show a 6% increase over those of 1975, and a whopping 44% increase over those of 1972. These statistics are sobering, especially since these figures include only reported crime. How many theft losses are never reported to the police remain a matter of speculation. Clearly, though, this brief statistical outline demonstrates the existence of a large volume of theft activity in New Jersey.

The immediate economic harm caused by theft activity in this state is staggering. In 1976 over $165 million of property was reported stolen. In 1975, less than

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35. The index crimes are murder, forcible rape, robbery, atrocious assault, breaking and entering, larceny-theft and motor vehicle theft. The statistical information relied upon in this Report has been extracted from that source.

$150 million of stolen property was similarly reported, and in 1974, the figure was $136 million. While the dollar amount of theft losses is increasing annually, the rate of recovering stolen property is declining markedly. According to available reports, approximately 34% of the property stolen in 1974 was recovered by law enforcement agencies. In 1975, 32% of such property was recovered, and, in 1976, only 30.8% was recovered. Thus, these figures, dealing only with reported losses, provide some idea as to the massive impact of theft upon individual victims.

The overall economic effects of theft are far more difficult to quantify. How many businesses have been bankrupted by theft losses? How much money is being expended by the public for the higher insurance rates required to compensate for greater theft losses? How much of the high cost of goods in the marketplace is attributable to theft losses? It is these ripple effects of theft activity which ultimately touch every citizen of New Jersey, even those fortunate enough not to have become a victim of theft crime.

There can be little question, then, that theft is a serious problem in New Jersey. Often overlooked, however, in considering the theft problem is the thief's desire to market his "wares," and therefore his dependence upon "fencing" activities. The thief produces illegal goods; the fence provides the redistribution system for those

goods which enables the thief to profit. Obviously, there are exceptions. If a thief steals for his own use or consumption, no fence or redistribution system will be required. However, if a thief steals property for which he has no personal need, he must be able to convert it into cash in order to profit from his crime. For this, he generally needs a fence.

Fences exist at almost all levels of theft activity. The local or neighborhood thief, who steals whatever is available, frequently will seek out a neighborhood fence who will handle that merchandise. The neighborhood fence will too often be a local businessman who deals in stolen property as a sideline. The more sophisticated thief, who steals larger amounts or more specialized types of property, will need to deal with a professional fence. A professional fence will have the ability to handle a larger volume of merchandise or will have developed contacts enabling him to dispose of particular types of stolen property. He may also double as a legitimate businessman. Finally, the large-scale thief, who, for example, hijacks truckloads of goods, will require the services of a "master fence." Such a fence may never physically possess the stolen property, but may act merely as a broker in arranging its redistribution. Often the master fence will have ties to members of organized crime who may supply him with financing, warehousing or transportation. Viewed in this fashion,

except at the level of personal consumption theft, the thief and the fence may be seen as coordinating elements of a total criminal economic system and not merely as participants in isolated criminal events. Without the thief, there would be no stolen property to fence. Without the fence, there would be no profit to thefts of merchandise.

As part of a criminal economic system, fencing has certain definable requisites. First, any significant fencing operation must be continuous and regular, conducted like a legitimate business. Thieves must be able to find the fence, and the fence, in turn, must be able to dispose of the goods proffered to him by the thieves. Second, since receiving stolen property is an illegal enterprise, any significant fence must structure his operation to avoid detection, apprehension, prosecution and conviction. Third, every significant fence recognizes that just like his counterparts in legitimate business, his only purpose is to make a profit. If he cannot do so, he will likely find some other field of endeavor.

For years, law enforcement has attempted to limit theft primarily by detecting and prosecuting the thief. The statistics reviewed earlier seem to illustrate the futility of singlemindedly following that approach. If sufficient pressure could be brought to bear upon the profitability of fencing, the amount of activity might

be reduced. Since theft and fencing are so clearly mutually dependent, limiting and controlling fencing activities might well provide the most effective means of limiting and controlling theft activities as well.

It is highly doubtful that the criminal law alone can provide the basis for throttling fencing activities. For example, the elements of the crime itself are difficult to prove in the context of modern fencing operations. N.J.S.A. 2A:139-1 makes it illegal in New Jersey to receive or to buy stolen property.[36] However, a sophisticated

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36. N.J.S.A. 2A:139-1 provides:

> Any person who receives or buys any goods or chattels, or choses in action, or other thing of value stolen from any other person or taken from him by robbery or otherwise unlawfully or fraudulently obtained, or converted contrary to law, whether the stealing or robbery was committed either in or out of this state, and whether the property was received or bought from the thief, or robber, or from another person, or who receives, harbors or conceals any thief or robber knowing him to be so, is guilty of a high misdemeanor.
>
> Possession of such property within 1 year from the date of such stealing, robbery or unlawful or fraudulent obtaining, shall be deemed sufficient evidence to authorize conviction, unless the accused show to the satisfaction of the jury either:
>
> a. That the property, considering the relations of the parties thereto and the circumstances thereof, was a gift to him and not received by him from a minor under the age of 16 years; or

fence may never have physical possession of the illegal goods or take part in the transfer of funds. Rather, he may act only as a broker between the thief and a buyer, receiving a commission for his efforts. A jury may be hard to convince that such a person received or bought anything.[37] Moreover, in order to sustain a conviction, the statute requires proof that the property received or bought was stolen. Although this requirement seems entirely logical, it causes immense practical problems. Many manufacturers do not put serial numbers on their products. Often owners of property

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> b. That the amount paid by him for the property represented its fair and reasonable value and that it was not received by him from a minor under the age of 16 years; or
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> c. That when he bought the property he knew or made inquiries sufficient to satisfy a reasonable man, that the seller was in a regular and established business for dealing in property of the description of the property purchased; or
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> d. That when he received or bought the property, he simultaneously with or before the receipt or sale, reported the transaction to the police authorities of the municipality in which he resided at the time of such receiving or buying and that the property was not received by him from a minor under the age of 16 years; or
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> e. That before he received or bought the property from a minor under the age of 16 years, he first communicated with the police authorities of the municipality in which he resided and obtained their approval for the purchase, barter, exchange or receipt of possession thereof.

37. The Model Theft and Fencing Act attempts to deal with the problem of overly restrictive elements by broadening the definition of the prohibited behavior itself.

Sec. 4 Dealing in Stolen Property

do not record serial numbers if they exist and fail to place identifying marks on property without such numbers. When serial numbers or markings are present, they may be altered or removed by the thief or the fence. Thus, even after a carefully conducted investigation leads to a suspected fence, it may not be possible to establish that particular items of merchandise possessed by him are actually stolen.[38] In addition, New Jersey follows the prevailing rule that a piece of property originally stolen but subsequently recovered by the police loses its character as stolen property.

(a) A person is guilty of dealing in stolen property if he:

(1) traffics in, or endeavors to traffic in; or

(2) initiates, organizes, plans, finances, directs, manages or supervises the theft of and trafficking in, or endeavors to traffic in, the property of another that has been stolen.

38. The Model Theft and Fencing Act proposes the creation of a separate criminal offense to minimize the practical problems involved in the identification of stolen property.

Sec. 3 Possession of Altered Property

(a) A person is guilty of possession of altered property if he is a dealer in property and he possesses property the identifying features of which, including serial numbers or labels, have been removed, or in any fashion altered, without the consent of the manufacturer of the property.

As a result, even if the police are able to get an undercover agent to sell a recovered piece of stolen property to a fence, a conviction for receiving stolen property is impermissible.[39] Furthermore, the statute has been interpreted by the New Jersey courts to require proof that the alleged receiver of stolen property actually knew it was stolen at the time of its receipt.[40] Articulating this state of mind requirement to a jury can at times prove to be an almost impossible task. In the case of a professional fence who may sell stolen property commingled with that of a seemingly legitimate business, proving the requisite state of mind may be hopeless.[41]

Obtaining the evidence necessary to convict is very difficult when dealing with the professional fence. Fencing at these levels is a sophisticated and organized venture, with conscious attempts made to conceal the identity of the stolen goods and to disguise the true nature of the illegal operation. In order to obtain the degree of proof required to convict, expensive, lengthy and complex

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39. State v. Tropiano, 154 N.J. Super. 452 (Law Div. 1977).

40. State v. DiRienzo, 53 N.J. 360 (1969), and State v. Rowe, 57 N.J. 293 (1970).

41. Sec. 5 of the Model Theft and Fencing Act would permit a jury to convict a possessor, buyer or seller of stolen property on the basis of an inference that he "was aware of the risk that it had been stolen."

investigations involving the most advanced tools available to law enforcement, including electronic surveillance and witness immunity, are often necessary.

Moreover, the very nature of the criminal process itself, as the sole available remedy, provides limitations in seeking to control fencing. The alleged fence has the benefits of the constitutional protections guaranteed to all citizens. While such guarantees are entirely appropriate, their practical effects may hinder the gathering of evidence, prevent a full showing of evidence at trial or provide technical defenses. Even if the evidence can be successfully obtained and presented in full at trial, a jury still must find guilt beyond a reasonable doubt. This is a heavy burden in all cases, but especially when the defendant is a professional fence who has disguised his activities to appear like legitimate business ventures.

Although use of the criminal process to restrain fencing activities is subject to those difficulties, New Jersey's statutes and court decisions provide some necessary flexibility. For example, while N.J.S.A. 2A:139-1 requires that a fence must receive or buy stolen property, our courts have interpreted that language broadly enough that constructive possession by a master fence would support

a conviction.[42] In addition, both statutory inferences[43] and circumstantial evidence[44] are admissible to prove that the fence knew the property was stolen. In New Jersey, unlike some other states, the testimony of a thief alone, if believed by the jury, will support the conviction of a fence.[45] An attempt to receive stolen property is a viable criminal charge as well.[46] Yet, strangely being in the "business" of fencing is not an offense; a person must be proved to be either the thief or the receiver of stolen property. While it can be argued that a conspiracy charge could be used to demonstrate the "business" concept, the fact remains there is no substantive offense which is really description of the conduct involved.

The criminal law has had disappointing results in dealing with fencing. Dramatic increases in the dollar amount of property stolen are indicated annually. Unfortunately, the percentage of stolen property recovered

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42. See, State v. Lisena, 129 N.J.L. 569, aff'd, 131 N.J.L. 39 (1943), and State v. DiRienzo, supra.

43. N.J.S.A. 2A:139-1 (See Footnote 36).

44. State v. Rowe, supra.

45. State v. Rachman, 68 N.J.L. 120 (1903), State v. Rom, 77 N.J.L. 248 (1909), and State v. Gaddis, 131 N.J.L. 44 (1943).

46. State v. Tropiano, supra.

is steadily declining. And, while reports of theft crimes have increased, there has been a 7.5% decline in number of persons arrested for stolen property offenses from 1975 to 1976. The increasing volume of theft activities and the difficulty in obtaining convictions for receiving stolen property make clear that the criminal law, by itself, will not significantly deter or control fencing activities. Most significant, perhaps is the nature of the criminal process itself. Under existing law, each article (or transaction) must be the subject of a separate criminal charge. While oftentimes several charges can be grouped together for prosecution, each must be considered separately by the fact finder thereby detracting from the "real crime," that is being in the fencing business.

The realization that the criminal law cannot control fencing activities does not mean that no solutions exist. In fact, that very realization makes it possible to consider alternative or supplemental civil remedies which may provide a greater likelihood of achieving the desired goal.

Fencing is an economic crime, committed for profit. That being so, the best weapon to combat it may well be economic as well. When a theft occurs, a monetary injury has been inflicted; someone has suffered a compensable loss. At the moment of the theft, the owner of the stolen property

is the obvious victim. If, however, his property is insured, the insurance company becomes a victim to the extent that it compensates the original owner for the loss. In more indirect ways, such as higher insurance costs, higher prices and disruptions of the economic environment, the public suffers a loss from nearly every theft. Each of those losses may provide a basis for applying some type of civil remedy. More importantly, however, is the fact that the "business" can be attacked for what it is, an ongoing economic activity geared to make profit from theft.

There are clear advantages to using civil remedies as well as criminal penalties in dealing with fencing. The outline of flexibility afforded by the civil process need not be detailed again here. It is sufficient only to conclude that the advantageous of the civil process could be put to good use as part of the State's policy against dealing in stolen property.

The issue is what types of civil remedies, then, can be effectively applied to theft and fencing activities. One of the most flexible civil remedies is the injunction. Following appropriate application to the court and any necessary evidentiary hearings, a fence could be ordered permanently to cease his illegal activities. Failure to abide by the injunction could be punished in a summary contempt proceeding instead of a lengthy criminal trial.

Temporary restraining orders could be obtained almost immediately and in an ex parte manner. Final dispositions of such actions would generally be obtained faster than any other remedy. The evidentiary hearings could be held without a jury, speeding the entire process of litigation and lessening the risk of smokescreen defenses. Finally, enabling legislation might provide for the State to intervene in an action brought by an aggrieved private party or to initiate such action itself if necessary.[47]

Although the injunction may provide a strong, stunning blow, the civil suit may constitute the knockout punch for a fence. A civil judgment for compensatory or punitive damages or penalties has the potential to affect fencing activities at its most vital spot its profitability. The fencing operation offers almost a perfect target for civil action, since the stolen property, if identifiable, always represents a compensable loss to someone. Legislation

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47. Sec. 9 of the Model Theft and Fencing Act provides:

> (a) In addition to what is otherwise authorized by law, the (court) shall have jurisdiction to prevent and restrain conduct constituting an offense in violation of this Act. The (court) may issue appropriate orders, including:
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> (1) Ordering any person to divest himself of any interest in any organization;
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> (2) Imposing reasonable restraints on the future conduct of any person, including making investments or prohibiting any person from engaging in the same type of organization involved in the offense; or
>
> (3) Ordering the dissolution or reorganization of any organization, making due provision for the rights of innocent persons.

would have to provide the right to sue to the original victim of the theft, his insurer and to the state to vindicate the public's interest. In addition, the legislature could provide for treble damage awards as deterrence.[48] In this fashion, fencing might be made an unattractive alternative to legitimate business.

One additional civil remedy specifically applicable to fencing should be considered. When an individual is arrested for "receiving stolen property," it is not unusual to find a significant amount of property which is suspected of being stolen, but which cannot be so identified. In these circumstances, rather than simply returning the unidentified property to the fence, legislation should provide a means whereby a fence would be required to account for the lawful genesis of property in his possession. If he could not do so, then his property rights should be subject to some form of default or forfeiture. The fence should not be permitted to profit because insufficient proof exists to prosecute a criminal charge. Such a remedy would provide a powerful weapon against the professional fence.[49]

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48. Secs. 10 and 11 of the Model Theft and Fencing Act so provide.

49. No such provision has been included in the Model Theft and Fencing Act.

Any new legislation in this area must be aimed at creating a unified system of societal responses, which includes both criminal penalties and civil remedies. Such a format is used in the Model Theft and Fencing Act which includes sections dealing with both types of control mechanisms. Thus, the Model Theft and Fencing Act provides a rational starting point for the careful analysis and study necessary to insure that New Jersey has comprehensive, modern and flexible methods for combatting theft and fencing.

GAMBLING

As reported earlier, the laws in New Jersey governing gambling are somewhat unique in that both civil and criminal remedies are provided. In the view of the Task Force, several existing civil initiatives should be expanded while still other civil approaches directed toward illegal gambling activity should be created.

Much of the discussion pertaining to the potential of civil initiatives in organized crime situations included in the previous sections is equally applicable to gambling. Suffice it to say that in any illicit operation which is ongoing in nature and which is based upon the repetitious interaction of participants, injunctive relief is most appropriate. Of equal significance is the summary enforcement mechanism available for breach of the restraints imposed.[50]

In addition, it is recommended that the present civil remedies scheme (N.J.S.A. 2A:40-1 et seq) be amended, with particular emphasis to broadening the scope of the civil penalty provisions of N.J.S.A. 2A:40-8. The provisions should be extended to include all forms of gambling activities allowing the imposition of penalties for all levels of participation and providing a broad range of money penalties, including a maximum suitable for application to "managerial" personnel.

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50 Violations of court orders are prosecutable in a summary fashion pursuant to R. 1:10 or in a criminal action as a common law crime. The summary procedure does not require indictment or trial by jury, and is usually much more expediously resolved than are criminal prosecutions.

Again, the Task Force does not envision replacement of criminal sanctions with civil remedies. Rather, each should be utilized as a complement to the other. Through civil-criminal enforcement initiatives envisioned, authorities will have greater flexibility in dealing with offenders and with the justice system itself.[51]

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51 Civil initiatives of a similar fashion can likely be developed in other areas in which organized crime has an economic interest, such as drug trafficking, prostitution and loansharking. This Report does not contain specific civil recommendations with respect to these offenses since their operation differs markedly from that of "fencing" and gambling activities, and because we would choose to await enforcement experiences with those civil initiatives sponsored in this Report prior to attempting to fashion new civil causes in these complex areas.

FORFEITURE

The myriad of statutory provisions governing forfeiture of property utilized to further illegal activity should be consolidated so as to facilitate efficient and uniform procedures terminating property rights.

As indicated earlier, the proposed Penal Code moves admirably in this direction.[52] In situations involving "prima facie contraband," articles by nature dangerous to public health or per se illegal, automatic forfeiture would result merely by applying ex parte to the court. If on the other hand, the property involved may have been possessed or utilized in a legal manner but for the alleged illegal possession or use, an in rem proceeding is to be commenced upon notice to persons known to have a property interest in the article and in accordance with Rules of Court.

Other mechanisms can be invoked to facilitate forfeiture under appropriate circumstances. As a matter of course, upon the return of an indictment, a notice of intention for forfeiture specifying the property should be filed, naming all known interest holders. Interest holders should have the obligation of registering their claim

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52. Proposed Penal Code, Sec. 2c:64-1 et seq.

promptly, demonstrating their legitimate interest in all or a portion of the property involved. Since many types of properties involve multiple financial interests, the proceeding should be in rem and in personam to facilitate protection of individual rights of ownership.

Various alternative procedures should then be available which would permit moving ahead with the forfeiture proceeding or staying the hearing pending disposition of the criminal charges. In the case of personalty, any person with a property interest in the seized property other than a defendant in the underlying criminal cause should be permitted to secure release of the property pending forfeiture by posting a bond in the market value of the property.[53] In the alternative, the State should be entitled to immediately proceed with proceedings to effect forfeiture, except for good cause shown by the notified parties. Even assuming a stay of proceedings, the State should be entitled to obtain immediate "forfeiture" of property subject to return, replacement or compensation as to reasonable value, merely by posting a bond or guaranteeing payment of the value of the property in the event that forfeiture is refused or

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53. Proposed Penal Code, Sec. 2c:64-3(f).

or only partial extinguishment of property rights results.[54] Often times interminable delays will affect the value of the property or cause the State additional expense in order to protect it until final disposition.[55]

In those situations in which forfeiture is forestalled pending disposition of underlying criminal charges, a resulting conviction as to an interest holder in the property, assuming the property is subject to forfeiture based upon the State's proofs, should result in termination of the defendant's interest in summary fashion through the criminal court's pendente jurisdiction. In the event the criminal charges are terminated without conviction, the State should have the option of returning the property or seeking forfeiture.[56]

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54. As stated by the Court in Farley v. $168,400.97, 55 N.J. 31, 40 (1969):

> ...when a statute provides for a forfeiture, the forfeiture takes place upon the occurrence of the forbidden act or omission unless the statute provides otherwise, and the sovereign's title is in no sense inchoate because procedural due process requires an opportunity to dispute the claim of forfeiture in a judicial proceeding.

55. Cf. State v. One(1) Ford Van Econoline, etc. et al, 154 N.J. Super. 326(App. Div. 1977), pet. certif. pending.

56. See State v. Rodriquez, 138 N.J. Super. 575, (App. Div. 1976), wherein such procedure is permitted but sets forth the standard of proofs required by the State as well as the obligation of the defendant when seized property is sought to be returned and a dismissal of all criminal charges resulted.

While real property subject to forfeiture presents more difficulties because of its historical uniqueness, the principles and procedures outlined in the foregoing should likewise obtain, albeit perhaps with greater practical difficulty in preserving the value of the property involved. In such instances, especially those situations in which the value of the real property involved is great, the court should have the authority to empower a trustee to protect the interest of all involved.

Disposition of forfeited items or proceeds emanating from resulting sales are issues which require resolution. The original theory underlying disposition of forfeited items or resulting proceeds rested upon the theory that these should be distributed to the agency seizing the property and obtaining forfeiture. Obviously, the rationale for such disposition is to encourage properly brought proceedings by creating a stake for the prosecuting agency. At present, the various State laws arbitrarily declare forfeiture in favor of the State or County governments, as the case may be, without regard to the prosecuting authority or the agency responsible for funding the enforcement effort. In the view of the Task Force, a better approach would be to direct that forfeited property or any proceeds resulting from forfeiture become the property of the entity funding the particular prosecuting agency involved.

Through utilization of a uniform, efficient mechanism to effect forfeiture, such a procedure could well become more significant in adding to the risk of those engaged in syndicated crime.

CRIMINAL JUSTICE INITIATIVES

As indicated earlier in this Report, existing criminal law rarely creates any express distinction between "managerial" and low-level participants in terms of culpability and potential punishment. In the view of the Task Force such lines of demarcation are necessary.

Under appropriate circumstances, enhanced penalty provisions should be available for "organizers" of drug trafficking networks,[57] for those in the business of loansharking[58], for those in the business of dealing in stolen property[59], as well as those in "management" positions in other "businesses" traditionally associated with syndicated crime, such as gambling. From a public policy standpoint, it should be clear that the criminal law differentiates between a mere participant and a "manager," both in terms of offense as well as in scope of punishment.

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57. See. e.g., 21 U.S.C. §846.

58. See, e.g., N.J.S.A. 2A:119A-3.

59. See, e.g., Sec. 4 of the Model Theft and Fencing Act.

The proposed New Jersey Penal Code certainly moves in this direction, particularly with respect to the proposed amendment offered jointly by the Prosecutors Association and the Attorney General as to sentencing of "professional criminals.[60] As part of a comprehensive organized crime initiative, it is further recommended, however, that substantive offenses directed toward management personnel be created in the principal lines of "commerce" of organized crime. In this manner, those organizing an illicit enterprise are put on notice that the State of New Jersey considers them "special," and reserves for them the most severe of sanctions. It is not anticipated that statutes oriented toward management personnel will be utilized frequently, since such provisions should be invoked only in those situations in which an "organizer" of organized crime is brought to the bar of justice. In the view of the Task Force, such initiatives are entirely consistent with the direction of proposed Penal Code since they seek to differentiate further among offenses and offenders and to premise criminal responsibility where it belongs - at the top.

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60. See the proposed New Jersey Code of Criminal Justice, Section 2c:44-3(b) and the proposed report on "Amendments to the Proposed New Jersey Code of Criminal Justice" prepared by the Office of the Attorney General and the Prosecutors Association.

Insofar as penalties are concerned, it is anticipated that the recently enacted enhanced fines provision[61] will be continued, and, hopefully, expanded to increase proportionately fines available for other criminal offenses. It is essential that if an economic penalty is to be imposed, as it should be in syndicated crime activity, that the range of fines be commensurate with the profit to be derived from such activity. After all, the cost of engaging in illegal enterprise should outweigh any anticipated gains. In this regard, the proposed Penal Code would allow imposition of a fine upon an individual in an amount equal to twice the economic gain to be derived from the criminal endeavor,[62] and in the case of a corporation, three times the fine authorized for an individual.[63]

In areas of crime where the profit motivation is high, the State should respond by creating substantial financial disincentives as well as significant exposure to incarceration. In the area of loansharking, for example, apart from voiding the underlying transaction (debt) as a matter of policy, three times the amount of interest which was to have been collected or $100,000, whichever is higher, would probably be an appropriate price to deter this form of

61. N.J.S.A. 2A:85-6 (L. 1977, c.214).

62. Proposed Penal Code, Sec. 2c:43-3.

63. Proposed Penal Code, Sec. 2c:43-4.

illicit enterprise from a financial standpoint. The custodial term, currently providing ranges depending upon conduct, from a misdemeanor to a maximum term of 25 years, are adequate.[64]

Mandatory fines should be considered in areas of economic-type crimes. The mandatory fines provisions, which should include the concept of relating penalty to potential gain, should be substantial to avoid resulting in an "accepted" cost of doing business. It is anticipated that the State will experience some difficulty in collecting substantial fines since the syndicate businessman is quickly becoming adept at hiding income through elaborate financial machinations. In short, particularly in those situations considered in this Report, the courts would be ill-advised to rely on the income statements offered by the defendant as the sole justification for determining the amount of a fine. It is further recommended that any fine imposed through criminal proceedings be docketed as judgments in the Superior Court to better assure collectability.

64. Since the advent of casino gambling, it is especially important to assure that loansharking activity is adequately punished. The Task Force has determined that organized crime is utilizing the current "corporate exemption" to circumvent existing prohibitions on interest rates properly chargeable to individuals. See N.J.S.A. 2A:119A-1. This circumstance should be precluded by amendatory legislation prohibiting such a subterfuge. Moreover, in light of the severity of the all too frequent consequences resulting from the inability to pay exorbitant interest rates, even the unique penalty provisions under prevailing law should be enhanced from a financial standpoint. After all, the current provisions were adopted at a time when misdemeanors and high misdemeanors were generally punishable by a $1,000 and a $2,000 fine, respectively. N.J.S.A. 2A:119-3 currently provides for a fine assessment up to $10,000 and is declared a high misdemeanor with a custodial exposure of up to 25 years. N.J.S.A. 2A:119A-4, declared a misdemeanor, provides for a potential fine of up to $25,000.

TAX VIOLATIONS

More and more, organized crime enterprises are delving into economically lucrative areas based upon their ability to "compete" in areas in which the State taxes commerce. By willfully failing to abide by tax assessments, syndicated groups are able to undercut legitimate businessmen who are obliged, both legally and morally, to follow the law. The State should do all in its power to interfere with those who choose to "compete" on this basis, for tax fraud not only deprives the legitimate businessman of business which rightfully should be his, but invades the pockets of all the public in lost tax dollars. Involved are millions of dollars of lost revenue to the State from such taxable items as sales tax, motor fuels tax, corporate and individual income tax and cigarette tax.

As a general proposition, the investigative capability of the State's Bureau of Taxation should be expanded. Emphasis should be placed upon expanded civil and criminal enforcement. Cooperative investigations among tax investigators and traditional law enforcement agencies should be encouraged. In the view of the Task Force, those who are placed in an advantageous market position because they have no intention of paying their fair share of taxation undermines the entire competitive structure of the State's economy.

Particular attention must be given to cigarette tax violations, for those have been historically proven to be within the ambit of organized crime activity. At a hearing on March 8, 1978 before the House Judiciary Committee's Subcommittee on Crime, Chairman John Conyers, D. Mich., revealed that smuggling cigarettes into States that impose a substantial cigarette tax has become so profitable, that one truck-and-trailer load can bring a profit of $126,000. In releasing the results of a 22-State survey of existing cigarette bootlegging laws, Chairman Conyers' Subcommittee concluded that the survey "points toward weak enforcement of those laws," and, further, that "States must make their violations much more serious." The survey revealed that cigarette bootlegging is costing New Jersey in excess of $20 million a year in uncollected taxes, and that this is due, in part, to the imposition of mere "wrist-slapping" penalties on those bootleggers who are apprehended.

While the Legislature, through an act adopted on August 24, 1977,[65] established a meaningful mechanism for distinguishing between those individuals purchasing

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65. N.J.S.A. 54:40A-28 provides:

> "Any person who sells cigarettes without the stamp or stamps requird by this act being affixed thereto shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned for not more than 1 year, or both, at the discretion of the court. ....

untaxed cigarettes for their own use and those who would traffic in untaxed cigarettes, the penalty provisions of the act are wholly inadequate. Under the present scheme, no offense involving trafficking in untaxed cigarettes could be greater than a misdemeanor punishable by one year imprisonment or $1,000 fine, or both.[66] Clearly, when one trailer-load can reap in excess of $125,000, can the present statutory scheme be considered a deterrence to intentional avoidance of the State's tax provisions.

The custodial exposure for a conviction of a provision of this Act should be, at minimum, made commensurate with penal code provisions and contemporary fine assessments. In short, the maximum fines which can be imposed for either

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Any person, other than a licensee permitted under this act to possess any unstamped cigarettes, who possess 2,000 but less than 20,000 cigarettes without the stamp or stamps required by this act being affixed thereto shall be a disorderly person, and upon conviction thereof, shall be fined not more than $500.00 or imprisoned for not more than 6 months, or both, at the discretion of the court; and any such person who possesses 20,000 or more cigarettes without the stamp or stamps required by this act being affixed thereto shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than $1,000.00 or imprisoned for not more than 1 year, or both, at the discretion of the court."

66. The only provision within the Cigarette Tax Act, a violation of which is a high misdemeanor, is forging or counterfeiting revenue stamps, or being in possession of a device which can forge or counterfeit such stamps (N.J.S. 54:40A-29), and even this provision provides only for imprisonment for up to two years, or a fine of up to $2,000 or both.

a criminal conviction or through a penalty action should accurately reflect the substantial profits which are being accrued by the forces of organized crime from cigarette bootlegging. Therefore, insofar as maximum fines and penalties are concerned, some thought should be given to establishing a minimum fine or penalty based upon the tax or a multiple of the tax sought to be evaded.

Furthermore, a provision should be adopted clarifying the penalty which can be imposed for a conviction of attempting, aiding and abetting, or conspiracy to commit a violation of the Cigarette Tax law. The provision should enable a judge to impose a sentence up to the maximum penalty prescribed for the underlying substantive offense. Such a provision would also be consistent with the provisions of the proposed Penal Code.[67]

In summary, it is thus recommended that the penalty provisions of criminal violations of the Cigarette Tax Act be "upgraded" to the level of other serious crimes. Civil penalty provisions should be stiffened, and if possible utilized more frequently. While the Task Force recognizes that much of the convenience jurisdiction of the municipal courts would be lost through such initiatives,[68] it is necessary that

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67. Proposed Penal Code, Sec. 2c:5-4.

68. See, N.J.S.A. 2A:8-22.

major cigarette bootleggers and those who would become major cigarette bootleggers are put on notice that the risks of such activity in and through the State of New Jersey outweigh the potential profits involved.

ADMINISTRATIVE INITIATIVES

Organized crime infiltration into legitimate business activity is an area of prime concern to law enforcement agencies. For the past thirty years, statistics have indicated that syndicated crime is increasing its efforts to legitimatize its activities by investing in and infiltrating on areas of legitimate business. For law enforcement to be successful in its effort to retard and eliminate this organized crime incursion into the area of legitimate commerce, high priority must be the identification of undesirable participation in legitimate business and the extent of that participation. The first step of identification of such participation in sensitive areas of commerce can be greatly facilitated by a comprehensive utilization of screening and licensing procedures that pertain to regulated industries.

The inherent power of the State to regulate certain industries through licensing has great potential for combating organized crime infiltration into sensitive industry. State administrative agencies have the power to investigate applicants for licensure and to require the furnishing of information as a condition to the issuance of the requisite authority to engage in the particular line of commerce involved. In conjunction with this power, the

the licensing agency can impose the sanction of denial for failure to supply the requested information. Illustrative of this potential, the Task Force has examined the recent activities of the Alcoholic Beverage Control Task Force[69] created to investigate liquor licenses in the City of Atlantic City. Operating within the regulatory framework of the Alcoholic Beverage Law,[70] the cooperative effort has resulted in ferreting out convicted criminals and other disqualified persons who have infiltrated the retail liquor industry in the City of Atlantic City. The operation has also been successful in the identification and prosecution of various licensed premises that have been operating as fronts for other, undisclosed individuals. In addition, it should be noted that by utilization of the licensing process as it pertains to the liquor industry, these investigatory efforts have been successful in the denial of two liquor licenses to individuals who had connections with organized crime.

While the work of the Atlantic City cooperative operation is illustrative of what can be done, it is all

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69. The ABC Task Force is comprised of representatives of the Atlantic County Prosecutor's Office and of the various Divisions of the Department of Law and Public Safety.

70. N.J.S.A. 33:1-1, et seq.

too apparent that other regulated industries, including the liquor industry operating outside the City of Atlantic City, are not being sufficiently scrutinized by the appropriate regulatory or licensing agencies.

The genesis of the problem can be traced to four problem areas: 1) insufficient license application forms; 2) lack of investigative personnel and resources; 3) lack of coherent system of retrieval of information once received, and 4) inadequate statutory and regulatory provisions pertaining to qualification for licensure.

1. The Application Form:

A comprehensive application form, properly utilized by the licensing agency, is a potent vehicle to identify real parties in interest in regulated industries. Except for the applications pertaining to casino and casino related industries, the Task Force has generally found that license applications do not require sufficient data to permit licensing investigators to conduct efficiently a comprehensive investigation of the applicants.[71] It is recommended, where appropraite, that all license applications be reviewed and revised to include the following information:

a. Sufficient background information, including full name,

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71. Since beginning this endeavor the Division of Alcoholic Beverage Control has substantially revised its application form to comport with the recommendations contained in this Report.

address, date of birth, place of birth, and social security number (in accordance with and pursuant to the guidelines of the Federal Privacy Act, 5 U.S.C. 552 A7) of all individual applicants as well as a listing of all corporate officers, members of the board of directors and substantial stockholders of a corporate applicant. Such information will assist investigators in conducting the proper background investigation including a criminal history check of all applicants;

b. the implementation, where appropriate, of a fingerprinting procedure of all individual applicants as well as partners, corporate officers, and substantial corporate stockholders.

c. the requirement that all investors of the corporation or individual proprietors that seek to be licensed, identify in detail their sources of financing. Such a requirement would facilitate investigators in conducting a reasonably complete financial background investigation of applicants to determine the existence of the real parties in interest;

d. the revelation of any potentially disqualifying information, including relevant criminal history data; and

e. the requirement that all information supplied in the application be under oath. Such a requirement would permit agencies to disqualify on the basis of false information supplied or to utilize criminal sanctions in prosecution of an applicant who knowingly provides false information in the application.

2. Investigative Personnel and Resources

A survey conducted by the Task Force has revealed that licensing agencies generally do not have a sufficient number of qualified investigators to screen adequately license applications. For licensure to be an acceptable vehicle for the identification and detection of organized crime or other undesirable infiltration into legitimate business, it is necessary for licensing agencies to have sufficient investigative personnel and to be in a position to seek the resources of other investigatory agencies in order to conduct the necessary investigations of applicants.[72]

3. Retrieval of Information

In order for the licensing procedure to be a viable method for the detection of organized crime involvement in legitimate business, it is imperative that licensing agencies

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72. In this regard, it is entirely reasonable to insist that applicants for licensure bear the expense of requisite qualification investigation. In order to best accomplish this objective, the costs incurred by other agencies conducting record checks should be included in application fees, and in the instance of criminal history checks, the fees being deposited into a dedicated fund to ensure that such services are available to appropriate public agencies.

have a coherent system of retrieval of the confluence of information generated by the license application. A survey conducted by the Task Force has revealed that many licensing agencies do not have such a comprehensive system of retrieval of data collected. It is recommended that each licensing agency review its filing and information collection systems, and in those instances where retrieval is found to be inadequate, to revise the process. To facilitate the retrieval process, it is recommended that each licensing agency maintain a general repository of information in a central location. It is also recommended that this repository of information be cross referenced in a system by licensee name, by corporate officers and major stockholders, and by trade name. It is also recommended that the licensing agency explore the possiblity of computerization of the cross referencing system.[73] The availability of retrievable information will facilitate the administration agency responsiblity of industry supervision and the law enforcement function of prosecuting those individuals who, through disqualified, engage in regulated commerce.

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73. In this regard, the Division of Alcoholic Beverage Control is in the process of implementing a computerized filing system geared to accumulate and to cross reference information contained in the recently revised application forms.

4. Statutory and Regulatory Provisions

It would be impossible within the limited confines of this Report to canvass all of the statutory and regulatory provisions of the various state and local licensing agencies concerning regulated industries, and to assess the adequacy of existing licensing criteria. Such a process is necessary, however, in order to assure that antiquated, vague and sometimes non-existent "standards" are replaced by definite provisions setting forth screening criteria appropriate to the agency's function.

The Office of the Attorney General is presently in the process of evaluating the adequacy of statutory and regulatory provisions relating to administrative agency use of criminal history data for licensing and qualification purposes. While this review is ongoing and intended to assist State agencies in securing information necessary to their respective functions, current results indicate that many agencies do not have adequate standards for review of qualification of applicants.

Recently, the State Commission of Investigation reported on two regulated industries, the cigarette vending and the retail liquor industries, and determined that substantial inadequacies existed in existing standards in the areas of licensure qualification, licensure investigation and licensure revocation.[74] In sum, the S.C.I. recommended that

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74. "Report and Recommendations of the State Commission of Investigation on the Incursion of Organized Crime into Certain Legitimate Businesses in Atlantic City," December 1977.

statutory and regulatory standards be modernized to reflect current business practices and contemporary standards of qualification. In recommending reform, the S.C.I. relied, in the main, on the recently enacted standards pertaining to qualification and disqualification contained within the Casino Control Act.[75]

In the view of the Task Force, each agency responsible for administering a regulated industry should, at minimum, review both procedural and substantive standards relating to licensure qualification, investigation and revocation with a view toward an objective determination of their adequacy, particularly in effecting the public interest involved. Lest there be a misunderstanding, this Task Force does not necesarily, for example, sponsor total exclusion from the opportunity for licensure of every person previously convicted of any criminal offense. Rather, the balance to be struck between removing obstacles for rehabilitated offenders and the importance of disqualification in particular instances is the responsibility of the State Legislature and the particular agency involved. It may be for example, that not every offense is relevant as a disqualification criteria for particular agencies. Others may

75. N.J.S.A. 5:12-87.

well insist upon expungement of particular records, consider only particular classes of offenses, or may limit "relevance" to those convictions occurring during a set period of time prior to application. The point supported in this Report is not necessarily to detail what disqualification standards should be, but to urge that meaningful criteria be created and they are enforced consistently, fairly and uniformly.

5. Local Efforts

Efforts to combat infiltration of organized crime need not be confined to State agencies. Certainly actions by State agencies such as the initiative of the Division of Alcoholic Beverage Control to revamp and to coordinate licensing procedures into a coherent system, will do much to advance the goals of retarding the growth or opportunity for development of organized crime in legitimate industry. However, a very adaptable, alternative mechanism may be through local initiatives in the nature of ordinances and regulations governing the conduct of business and business activity within the community.

Municipalities have, of course, no powers other than those delegated to them statutorily. However, the general powers of a municipality are considerable in the area of business licensing. These statutory grants of authority are

enumerated in N.J.S.A. 40:52-1 and 2. In addition to these delegated powers, the municipalities by virtue of N.J.S.A. 40:48-2 enjoy an express grant of broad general police powers to effect legislation necessary and proper for the ensurance of the community's health, safety and welfare, insofar as these powers are not preempted by or inconsistent with the laws of the State and federal government.

Mercantile licensing codes, building and fire safety codes, weights and measures authority and prequalification for public contract work are all examples of power wielded by local licensing authorities which can be utilized to set proper standards for the conduct of business within the local community. Such an approach, in the view of the Task Force, has been underutilized in the State of New Jersey.

CONCLUSION

New Jersey has embarked upon an ambitious program to combat the unpleasant realities of organized crime. The need for such a coordinated effort has become more pronounced with the increasing sophistication and mobility of organized crime. No longer is organized crime confined to municipal, county or even state boundaries. Syndicated crime is carried on cautiously and furtively and in as many different ways and by as many conceivable methods as human ingenuity can devise. Correspondingly, these complexities demand a coordinated effort on the part of all law enforcement agencies to provide public protection against syndicated criminal activity.

As we have noted throughout this Report, our attack upon organized crime has been forceful and responsive to the demands of the citizenry. The steps we have taken have been geared to revitalize confidence in the ability of the criminal justice system to prevent, detect and prosecute organized crime. However, much needs to be done.

The proposals presented in this Report seek to cure problems presently extant in our fight against syndicated crime. These proposals are designed to cleanse the State of organized criminal elements. Detection of criminal behavior is plainly not enough. Our system of laws must seek to deter

and prevent organized criminal activity, not merely to rectify a wrong already done. In short, we have a dual role in combatting organized crime. We must discourage those who might otherwise be inclined to embark upon a course of misconduct and we must punish those who disobey our laws. Several of the proposals presented here seek to separate the offender from his ill begotten gains. To the extent that organized crime is motivated by greed, the expanded use of civil remedies will serve to discourage those inclined to a course of criminal conduct. By employing traditional theories for the recovery of damages and by establishing new remedies as well, the public can recover from the culprit everything he gained from his misconduct. Criminal penalties must also be vigorously applied. Those who derive their income from organized criminal endeavors must be appropriately and swiftly punished. Individuals in managerial positions with regard to syndicated crime should be the subject of particularly severe criminal penalties. Further, the authority of licensing boards to properly investigate applicants for mercantile licenses should be augmented. So too, investigative resources should be increased in this regard.

As we noted at the outset, what is required is an unrelenting and imaginative commitment on the part of all of

our citizens and public agencies that organized crime's impact will be contained. This Report is intended to provide impetus to the reaffirmance of that commitment by all law enforcement agencies through cooperative, innovative enforcement.