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## Organized Crime in the Americas and Transnationally

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threat and challenges.

We know that the immediate future is wrought with peril, and the road to peace and recovery for every country is a rocky one. We Colombians are the only ones who can make the tough decisions and do what is right to ensure Colombia the future it deserves.

### XIII. ORGANIZED CRIME IN THE AMERICAS AND TRANSNATIONALLY

*Fletcher N. Baldwin, Jr.\**

This panel will change the focus, as the Ambassador did, and we are going to talk about the other side of the coin, and that is organized crime in the Americas. What I propose to do in my time is to briefly overview organized crime transnationally, as some of us see it today.

Certainly other countries recognized the threat of organized crime much sooner than the United States, even though the United States did begin to respond to its threat with RICO in 1970. Nevertheless anything dealing with banking and organized crime, aside from the Bank Secrecy Act of 1970, which was not criminal in nature, did not occur until after the Comprehensive Crime Control Act of 1984 followed by the Money Laundering Control Act of 1986.

In 1988, the President of the United States convened a conference for a Drug Free America. The conference brought in leaders from throughout the Americas as well as leaders from Europe, and the Pacific Rim. The theme of the conference appeared to be: "let us now stop organized crime, which we have in real terms just discovered exists." The fact is organized crime has existed for what seems to be forever. Saul Froomkin, QC and former Attorney General of the Bahamas points out that the Roman army was paid from Rome to avoid accepting pay backs thus corrupting local government for the benefit of local criminals in various captured regions; so it is been around a while. At the time of the conference, President Reagan gave the keynote address. He said, again I paraphrase, "[t]he big problem today is that organized crime controls \$170 billion worldwide and we now must just say no to organized crime," hence implementing directives that followed, specifically National Security Decision Directive 221. The issue became one of a threat to our nations security not to mention global security as well. In a moment, I will give you recent, though

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nonverified, figures to demonstrate how “very successful” the results of the conference have been.

Indeed, Lord Roskill’s Committee on Fraud Trials in 1986 concluded that the world is ill-equipped to effectively prosecute economic criminal activity. I suggest Lord Roskill’s gloomy conclusions for the UK hold true today, internationally.

In 1989, the physical and psychological wall separating East from West came down and now western nations were faced with an entire new democratically naive diverse constituency ripe for organized criminals, an entirely new playing field, and the new field was the whole of Eastern Europe. Were governments prepared for it? Were they prepared for the free enterprise system?

When I lived in Kiev, one day I had the pleasure of meeting the young man soon to be Attorney General for one of the emerging Eastern European states. The reason I was introduced to the soon to be Attorney General was because he was about to start law school. Organized Crime was better prepared.

At a United Nations Conference in Naples, it was suggested the problem was under control. Was it? One need not stray beyond the European Union, a strong advocate for anti-money laundering programs, for a possible answer. One of the Union member states, Austria at the time of The Naples Conference had, it was alleged, 22 million secret bank accounts. It would seem the Austrians informed the Financial Action Task Force, “that one of the reasons for secret bank accounts was that Germany might invade or the Russians might come, therefore we have to keep certain records a secret.” They assured FATF that the accounts were only for the people in Austria. That means there were about three secret bank accounts for every man, woman, and child living in Austria. Perhaps the matter has been resolved, but I doubt it.

In Luxembourg at the same time there were 359,030 citizens, and they had the pleasure and the privilege of banking at 236 banks, plus an additional 23 German branch banks — all of which kept all bank files completely secret.

“Organized crime,” said the United Nations, “destabilizes the world.” Judge Giovanni Falcone of Italy in 1992 said:

The extremely dangerous prospect of a homogenized mode of criminal organization in which a point is reached where one can no longer distinguish between the methods of Yakuza, Triades-Costa Nostra, etc., would create a kind of global mafia, and I ask myself: How it could possibly be opposed — I can see this global federation taking shape.

A short time after delivering this speech Judge Falcone was assassinated by members of the Mafia.

Before we examine and define organized crime, let me share with you an item that came across my computer yesterday. It was an opinion at sentencing delivered by Mr. Justice Morris of the High Court of New Zealand. In Auckland, Justice Morris was about to sentence several robbers. It seems that the convicted men had robbed a bicycle shop. And the way they went about robbing the shop, unique to be sure, was that they called for a taxi, the taxi picked them up at their home address, they rode the taxi to the shop, went in and robbed it. Unfortunately for the robbers, when they ran out of the shop, no taxi. Defense Counsel argued that the reason the robbers got caught was that they forgot to ask the taxicab driver to wait for them while they robbed the shop. I shall paraphrase Justice Morris' response, "My God, why can't you act like organized criminals do. They go out before they rob a bank and steal a car. You didn't even do that! If you had stolen a car, you wouldn't be here in front of me today. Why didn't you steal a car?" This is perhaps why unorganized crime is giving way to organization. Their answer, "We don't have a driver's license." With that, Justice Morris gave them the maximum five years, where one can only hope that they can learn to drive and then obtain a driver's license in New Zealand.

In 1999, the United Nations Development Council, meeting in Nairobi, produced a program report, which was approved by the United States, among others. The report stated that organized crime has increased at an alarming rate over the past fifteen years. It has outlasted and outstripped all efforts by local, state, national or international communities to fight it. Criminal organizations, it was noted, now exist in the United States, Japan, Russia, China, Nigeria, South Africa, Mexico, Colombia and the list goes on. The borders are porous. We are now a global community and the rules of engagement have changed. Not only economic globalization but also organized criminal enterprise globalization. This is neither the time nor place to examine the paradox of so-called globalization. The fact is there are new challenges of control and emerging International Policing.

The report concluded that the world trade in drugs is controlled by organized crime. That trade, we are told, exceeds the world's trade in iron, steel, motor vehicles, gas, oil, and textiles. It is debilitating to countries such as Mexico, Ukraine, Nigeria, Russia and South Africa which are trying to stabilize.

The report points out that there are over 200 million drug users today. These are very committed drug users, those who need the support of organized crime. We know organized crime goes beyond borders it must

and indeed is helped by porous borders or for that matter no borders. Members of Chinese organized crime, the triads, joined with dignitaries from our new trading partner, China, to venture to Hong Kong when the Union Jack came down, and meet with the Chief of Police and, I assume, welcomed the first world infrastructure of Hong Kong to the ancient world of the triads.

Yakuza (including Sokaiya) for over 300 years has at times controlled and worked closely with the Japanese government, keeping unorganized crime out of Japan.

Professor Barry Rider, Director of the Institute of Advanced Legal Studies, University of London, in his report to the House of Commons, Home Affairs Committee concluded that organized crime with its great resources has become a threat to UK's national security.

A recent published report in UK indicates that crime is down, and it probably is, just as it is down in the United States. What reports do not tell is that crime has soared, as far as organized crime is concerned. The Rider report is as valid today as the day it was prepared.

Other studies indicate that over the past several years organized crime rose at an alarming rate. Representative James Leach of the United States House of Representatives several weeks ago is quoted in *The New York Times* as saying: "Russia is the culture of corruption. Forty percent of all Russian economy is controlled by organized crime. As for the banking system, 40% to 80% is controlled by organized crime." Whether he is correct or not, his figures give one reason to pause. When law enforcement officers from Russia came to New York when the Bank of New York scandal broke and it was demonstrated to them that dollars from Russia, to the tune of now about \$7 to \$14 billion had been laundered through the bank, they left saying, "we do not think the reports about organized crime in our jurisdiction are untrue."

The reason organized crime has reached such epidemic proportions worldwide is, in part, because they are better funded and have the will to succeed. Make no mistake — it is a world wide organization to be sure. For example in 1992, the United Nations monitored an organized crime meeting in Rome, and again in 1994 in Paris, organized crime members met, just like the rest of us meet in an international convention setting. At this late date, no major government disputes the fact that with the globalization of legitimate markets, and the emerging concept of transnational economic stability, that organized crime has taken a prominent position in the new world economic order. Borders have come down, they are in fact for all intent and purposes almost irrelevant as a weapon able to fight organized crime. The economies of the world have to join together in a concerted effort, as they did with the ratification of the Vienna Convention of 1988,

among others, to cease bickering and begin to view this problem as one involving global crime control models. To be sure slow steps are now being taken to accomplish just such a purpose.

If this problem were not enough for emerging states factor into the mix the parallel markets in various countries upon which the globalization of organized crime has settled. These fragile economies may have shared values as far as organized crime is concerned, but can they implement the shared values, that is another question. An article in the *Financial Times* authored by Rowan Bosworth-Davies gives us some rather interesting statistics to mull over. In UK, 7% of the GDP is the result of the so called "black economy," that is some legal, but mostly illegal activities. In the United States it is 9% of the GDP. In Germany 10%, Italy, Greece and Spain, approximately 25%. When the Wall came down, moving east — 50% overall in Eastern Europe.

Saul Froomkin wrote that the problem is really a paradox. First, we have to have great commercial freedom in the marketplace that is a priority for free enterprise. Second, great commercial freedom in the marketplace creates an entrepreneurial business class which must flourish, yet, he notes, who has the entrepreneurial skills in the former communist states to succeed in a free market? Organized crime! Third, a government must move to prevent those engaged in criminal activities, aimed at subverting and undermining the emerging democratic system. Finally, the fact is those governments do not have the financial support or manpower skills not to mention political will to accomplish the task at hand.

What does it amount to? It amounts to, according to the International Monetary Fund 5% of the gross domestic product of the world appears to be controlled by organized crime. Five percent of the GDP laundered worldwide by organized crime, so in real though nonverified terms, how much is at stake? As I said figures are non-verifiable, there have been attempts to verify organized crimes financial numbers. For the moment let me stay with governments and a few think tanks. The United Nations and some think tanks, including the National Criminal Index in London, take the position that upwards to \$1.3 trillion belongs to organized crime. Of that \$1.3 trillion, according to the UN's estimates, about \$750 billion is drug money, \$500 billion of that drug money is probably being laundered in the United States. One hundred billion dollars a year in drug money, over and above the figures I have just given you, enters the marketplace. Several years ago, The *Los Angeles Times* did a study, which concluded that the leading drug dealers in the world, whoever they are, earn \$232,155 per minute.

Speakers this morning were announcing figures and talking about trade with Florida and the Americas reaching in the neighborhood of about \$70

billion in trade. Several years ago a Professor at Tokyo International University, put Triad profits at \$100 to \$200 billion. Triad being, as far as I know, the largest criminal organization in the world. The Yakuza comprising the major Japanese organized crime syndicates, has a "GDP" that probably exceeds Belgium. In fact, they may even have an army that exceeds Belgium.

A few years ago Disney World announced profits of \$10 billion. The Cali cartel's estimated profits were \$10.19 billion, so we see where the people prefer to put their money.

One of the problems is, at least of those problems considered to be solvable given political and executive will, is how to prevent the free flow of illicit money. To begin a discussion on that issue one must take into account two factors. First, in the United States, which is the largest money — laundering nation worldwide, wire-transfers through its banks, mainly the banks in New York, are estimated to exceed \$98 trillion a year. Of that \$98 trillion, it is further estimated that about \$600 billion is illicit. The banks may know it is illicit money, but they cannot do much about it short of facts and/or judicial intervention. A wire transfer, I am told, takes four, five or six seconds. If a transfer takes much longer then fees are lost. On any given work day when on average an estimated half a trillion dollars is going through the banks of New York, it is extremely difficult to monitor legitimacy of the funds.

At this juncture, one must pause and examine in real terms governments and the political will to win this battle. In the State of Michigan, if a person with an otherwise clean record sells drugs, and to pay for college he sells several kilos of drugs to an undercover officer, what is the sentence? He will receive life imprisonment without the possibility of parole. If his daddy, hypothetically, is a welfare-fraudster lawyer, and engages in ripping off the taxpayers and the government through welfare fraud, to the tune of millions, recall the savings and loan scandal, what is he going to get? Certainly not life without parole. In many cases, he will probably be fined and forced to serve time at a minimal security tennis club. That will teach him a lesson especially if he is a golfer. We will not tolerate drive by shooting, or drugs on the streets, nor should we, however seem to tolerate the so called white collar criminal.

Several years ago, it was reported that inmates in our prisons in the United States received more federal funding for computer training than all federal law enforcement officers put together. And the inmates, I am sure, take great advantage of their training, as a young lady in Ohio found out, when an inmate in Texas began to stalk her on the computer from prison.

We do not go after the right people, we tend to ignore the facilitators, including the lawyers. In Philadelphia, a lawyer was found with a trust

account in excess of \$28.8 million that he was laundering. And what will that \$28.8 million will get him? Certainly, not what the Michigan drug dealer got!

Make no mistake in spite of a lapse in political will or understanding, the world is indeed trying. There is, of course, the UN Convention, of 1989, the Basel Principles, G-7, the EC Directive of 1991, and the Financial Action Task Force of which Mexico, Brazil, and Argentina are observers to their work. These are but a few of recent global initiatives. It is enough? Unfortunately, the fact is, governments have failed miserably, and if you can think of how governments can go about doing it better, then they could use the help if they are willing to consider the advice.

With all the fiscally tolerant states out there, what is the success rate of government? What is the success rate of the United States or Mexico or Canada or Brazil in stopping the money, the drugs? Are governments successfully taking the profits from organized crime? The European Union announced its success rate and it is pitiful. The United States as well as the rest of the Americas, and Pacific Rim can boast of not much greater success. So, for every dollar that is used for drugs on the streets, most will go back to organized crime. If that is not enough, enter the Internet and the Republic of Cyber, wherein we have a recipe for anarchy, and that anarchy will pose enormous problems with respect to worldwide childhood pornography, stalking, hackers, taxes, customs and the like. Do governments know how to cope with it? If they do, they are keeping it a damn good secret.

#### XIV. MONEY LAUNDERING AND THE HARMFUL TAX COMPETITION

*Peter D. Maynard\**

First, I want to express my warm congratulations and profound thanks to Dean Jon Mills, the other persons present of the College of Law and UF Community, Governor MacKay, Fletcher and Nancy Baldwin, Mike and Buff Gordon, JoAnn Klein, Linda Baldwin, Fran Morton, all the others who have been responsible for this very valuable, and I hope annual, conference.

I should like to invite you all to a three-day conference in Nassau this year, May 24th-26th, 2001, which would canvass similar issues, trade, ADR, human rights, judicial system reform, financial crimes, legal education. It is called "Forum 2001 and Beyond," organized by the fifteen

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