

ORGANIZED CRIME CONTROL PLANNING AND EVALUATION: IMPLICATIONS FOR

PUBLIC POLICY

BY

NEW JERSEY STATE POLICE INTELLIGENCE BUREAU

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## PREFACE

Traditionally, law enforcement's and the criminal justice network's response to crime has been predicated on a passive reactive investigatory model--a model designed to seek out the offender(s) subsequent to the alleged criminal transgression. Needless to say, this particular model is ill-suited for the investigation of what is commonly referred to as "syndicated organized crime," since often the so-called "victim" is either an accomplice to the criminal act (though not necessarily in violation of the criminal law) or a "consensual victim." Consequently, the "crime" generally is neither reported nor is there an overwhelming desire on the part of the criminal justice network to seek out the offender(s). Moreover, the ambiguity of the alleged criminal transgression (e.g., whether in fact the act was injurious to the victim) tends to mask any criminal intent, thus the criminal justice authorities are likely to respond rather indifferently. Hence, it is necessary to rely upon a more aggressive proactive model -- a model that seeks to discover the crime and identify the offender(s). This latter model is wholly dependent upon the capabilities of an intelligence process--a process that involves a series of interrelated functions or activities: collection, evaluation, collation, analysis, and dissemination (Harris, 1977, p. 4).

In this project we have attempted to provide criminal justice administrators with the highest and most useful form of intelligence--strategic intelligence. As numerous crime commission reports have correctly noted, there has been a reluctance on the part of criminal justice practitioners to systematically and

routinely examine the efforts of crime control agencies in attaining their objectives or fulfilling their specific responsibilities (see Harris, 1971, p. 3). We believe that this project represents a bold and innovative attempt to provide criminal justice practitioners with meaningful data whereby the effectiveness of past and current enforcement strategies could be more accurately assessed and a more definitive strategy developed in the future (see Harris, 1977, p. 7). Drawing upon the expertise of the academic community and the resources of the New Jersey State Police, we believe that this project has successfully integrated intelligence theory with intelligence practice. Such an attempt at self-evaluation and appraisal could only have occurred in an atmosphere where a genuine concern for developing a "just", "rational", and "equitable" public policy with regards to organized crime was present. To this end, we would like to acknowledge the encouragement and resources we were provided by the New Jersey State Police and in particular, we are indebted to Colonel Clinton L. Pagano for inspiring this type of evaluative research and self-appraisal. Had it not been for this support and confidence, this study could not have been accomplished.

When we initially undertook this project, we agreed that we should avoid establishing any definitive public policies but would rather provide general parameters around which public policy could be formulated. In arriving at this policy judgement, we argued that the formulation of public policy remains within the purview of criminal justice practitioners, since the implementation and administration of the policy ultimately resides within the legal responsibility of criminal justice administrators. Given the wide discretionary powers

afforded criminal justice administrators, we believe that regardless of legislative mandate, there is sufficient authority vested in criminal justice administrators to effectively design, shape and implement public policies that are efficient, effective, and more importantly, "just" and "rational." This project was undertaken with this goal in mind.

In the latter part of 1976, we were approached by Peter Reuter, research director for the National Gambling Commission. Peter requested that we assist his staff in their efforts to understand the dynamics of the illicit gambling marketplace and more importantly, the effects of enforcement methods on this particular marketplace. Since New Jersey had apparently developed a national reputation for its "stringent" gambling enforcement practices, Peter believed that the data generated from such a study might be useful to other jurisdictions who were contemplating new strategies to control illegal gambling. After having gathered and analyzed the data, it became apparent that the subsequent questions that emerged were rather intriguing. Although we agreed that the data represented in this study was far from conclusive, we also believed that it was far better than any existing data. Contrary to the opinions of our critics, we firmly believe that integrating our study with the findings of other studies has provided some meaningful insights into enforcement strategies and their effects but more importantly, has provided a public forum for intense and provocative dialogue.

When undertaking a study of this scope, it is necessary to rely upon the expertise and judgements of numerous colleagues and associates. In particular, we felt that there was an urgent necessity to draw upon the resources of the academic community since often public policy is developed without their wisdom or insights. Having lacked the necessary economic resources to engage the services of consultants, we relied upon personal friendships to assist us in developing these public policy issues. As we earlier noted Peter Reuter, currently a Research Fellow at the Policy Sciences Center (New York) provided us with the impetus, continual guidance and inspiration to pursue this level of strategic intelligence. Moreover, his extended support to develop these findings into some meaningful policy issues undoubtedly enhanced the quality of this project.

In translating research findings into public policy, it is extremely important that the social consequences (both manifest and latent) of a particular crime control strategy be identified and carefully articulated. To this end we were fortunate to have the academic expertise of Margaret Beare, Professor of Criminology and Criminal Justice at Orange County College (New York). Professor Beare was responsible for developing the conceptual theme of this project and provided us with invaluable insights into the social implications of the research findings.

Inasmuch as any credible research project that focuses on evaluation and policy implications of crime control strategies must also face the rigors of critical evaluation, we are indebted to Dwight Smith, Director of

Institutional Research, State University of New York (Albany) and author of the Mafia Mystique. Dwight reviewed the findings of our research and critically commented upon the conclusions drawn. His critique played a significant role in reshaping portions of this project.

In addition to relying upon the academic community, we would also like to recognize the contributions of the numerous individuals who contributed to this project, and in particular those from the Criminal Investigation Section and those from the Division of Criminal Justice. Their criticisms served to illuminate the more pragmatic issues that are encountered when formulating gambling enforcement strategies.

And lastly, we would like to take this opportunity to publicly acknowledge the tireless efforts of Anne Mazalewski who unselfishly gave of her time to prepare the initial manuscript and final draft for publication.

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Intelligence Bureau  
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## 1.0 INTRODUCTION

During the past several years, the Federal government in response to the President's Commission on Organized Crime (1967) has allocated considerable economic resources to State and local governments to implement programs designed to "identify, prevent, control and/or eradicate" what Robert Kennedy once referred to as "the most sinister kind of crime in America." <sup>1</sup> Through the Omnibus Safe Streets Acts of 1968 and 1970, the Federal government has allocated in excess of eight million dollars to the State of New Jersey, specifically focusing on designing and implementing crime control programs that might effectively impact on the State's "organized crime problem." <sup>2</sup> Yet in this haste to respond to what was perceived as a "national threat," little if any substantive effort has been dedicated towards undertaking meaningful evaluations of such programs.

Recently, the General Accounting Office leveled a blistering criticism of the Federal organized crime strike force program instituted by former Attorney General Ramsey Clark. The report argued,

Because agencies participating on the strike forces can not uniformly agree on the definitive scope of the term "organized crime," the crime problem can not be adequately defined nor can progress towards a solution be measured... Furthermore, there is no central direction of the strike force program, including established goals and priorities (G.A.O. Report, pp. 12, 13).



Obviously, the lack of clearly defined and quantified goals, coupled with the absence of related, quantified objectives--two essential components in any planning and evaluation process--precludes a legitimate or valid assessment of the program's effectiveness. Moreover, assuming the primary goal of the criminal justice system is the "delivery of justice" in addition to "crime control," it is quite apparent that the evaluation model or paradigm must incorporate in its measurement criteria "indicators" that not only reflect the "effectiveness" of the particular crime control strategy but also assess the effects of the crime control strategy on the social relationships in a given society. Thus, one could argue that in addition to measuring the effectiveness of the program or crime control strategy in achieving its intended goal--the identification, prevention, control, or eradication of organized crime--the evaluation model must also attempt to reconcile the particular crime control strategy with our basic concepts of "individual freedom" and "human rights." <sup>3</sup> Accordingly, the organized crime control model must weigh the benefits of such methods and techniques as electronic surveillance, investigative grand juries, compelled testimony through writs of immunity, formally structured domestic intelligence systems, and covert police operations, against the loss of or intrusion upon civil liberties and individual freedom in a liberal, democratic society.

It is not the intent of this paper to engage in a protracted dialogue regarding the philosophic or moral issues surrounding the use of such methods and techniques in a liberal, democratic society. However, we do wish to emphatically stress that a society that fails to address these issues through effective regulation and continuous monitoring, particularly as these

methods and techniques are used against those who are perceived as threats to the existing economic and/or political order, will unquestionably evolve into a totalitarian and repressive society--in essence, yet another variation of organized crime. Moreover, although the writers recognize that such methods and techniques have been and will be used to suppress and stifle legitimate dissent, we would also argue that such methods and techniques have been and will be used to expose repression and corruption of power by governmental authorities.<sup>5</sup> Consequently, we contend that total prohibition is an unrealistic and simplistic solution to a complex problem, given the technological and legalistic sophistication of American society. A comprehensive and stringent evaluation process--that is, an evaluation process subject to public scrutiny (via the mass media) that examines both the effectiveness of the particular crime control strategy in relation to the immediate criminal justice implications and the impact of such policies and practices on the social relationships in a society--creates a regulatory and monitoring scheme that will guard against official misuse while simultaneously providing an index whereby the benefits and liabilities of the strategy can be more accurately assessed.

## 2.0 THE INHERENT DIFFICULTIES IN PLANNING AND EVALUATING ORGANIZED CRIME CONTROL PROGRAMS

The primary purpose of evaluation is to determine the extent to which the resources committed to a particular organized crime control program have attained the intended results. In order to determine whether the program has

or is performing effectively, it is extremely important that evaluation criteria be formulated and incorporated into the initial program design. Thus, planning and evaluation are inseparable processes. Furthermore, as Glaser points out, "if the evaluation is to be credible, it must be expressed in percentage, rate, correlation, or other statistical conclusion, although this type of formulation does not in itself guarantee the evaluation is correct." (Glaser, 1973, p. 49). Consequently, in order to increase the accuracy of the evaluation process, the crime control and/or social indicators incorporated into the program design should also be quantified. Thus, the relationship between the goal and objectives of the program should be expressed systematically, logically, and numerically.

Generally, the design of most organized crime control programs are plagued with the following methodological and conceptual deficiencies:

- (1) Failure to operationalize the term "organized crime".
- (2) Failure to articulate a theoretical rationale.
- (3) Failure to establish a goal and related objectives that are consistent with a "non-interventionist" philosophy.
- (4) Failure to quantify goal and objectives.
- (5) Failure to depict the scope and dimensions of the "problem".
- (6) Failure to recognize the conflicting alternative policy considerations that must be addressed.

## 2.1 FAILURE TO OPERATIONALIZE THE TERM "ORGANIZED CRIME"

When designing a well-developed and comprehensive organized crime control program, it is extremely important that this vague criminological phenomenon known as "organized crime" be adequately operationalized. The G.A.O. Report points out that the failure of justice to arrive at a uniform

agreement on what organized crime is (and conversely, what it is not) "has resulted in problems of prosecutorial jurisdiction and, more importantly, in not applying consistent criteria nationwide for selecting targets of strike forces" (p.9). Inasmuch as this criticism is valid to the extent that prosecutorial jurisdiction is vague, it is questionable whether the lack of a uniform definition has caused this problem, or whether conflicting political allegiances and loyalties between the various components of the Strike Forces and the United States Attorneys Office was in reality, the root cause of the so-called "faltering effort." Moreover, in developing and applying consistent criteria in selecting targets, it is only speculative whether or not a "consistent" policy will result in a more effective organized crime control strategy than the present strategy, which we assume is obviously based on "inconsistent criteria." The question, we believe, lies not in developing consistent criteria or universal definitions, as the G.A.O. Report implies, but rather in developing a broader perception (and theoretical conception) of "organized crime." Obviously, the criticisms cited by the G.A.O. could conceivably apply to any crime control effort, since crime control strategies are inherently related to the unique character of the political economy, which in effect creates the "reality" of crime.

In developing this broader perception of organized crime, it is readily apparent that the terms "Mafia" and "La Cosa Nostra" have dominated both law enforcement's and the mass media's perception of "organized crime." <sup>6</sup>

Unfortunately this preoccupation by both law enforcement and the mass media has created a "reality" of "organized crime" that is shallow, somewhat erroneous, self-serving, and more importantly, fails to address the substantive issues surrounding "organized crime." We need not reiterate the various definitional responses to the term "organized crime," since most have been adequately reviewed, analyzed, and critiqued by a number of scholars.<sup>7</sup> However, we might suggest that whatever definitions have been established by social control agencies, it appears that the enforcement of such definitions has generally resulted in the imposition of criminal sanctions against those who are politically impotent to resist such impositions.<sup>8</sup> The reluctance of legislative bodies to prescribe rational and consistent standards of behavior that are "just" and the apparent reluctance of social control agencies to apply such definitions to the "politically powerful" has not only subverted the legitimacy of most organized crime control efforts, but more importantly has brought to the forefront the contradictions in American criminal justice.<sup>9</sup>

Accordingly, the writers suggest that there are two theoretical models available when developing organized crime control programs. The first model assumes that "organized crime" functions "outside" of or is in conflict with the accepted norms and mores of the larger society. "Organized criminals" are basically perceived as "different" from the other members of society, consequently, society must socialize these "different people" into the accepted or dominant norms and mores structure. Those that favor this position generally perceive

the resolution of the "problem" -- being different, thus deviant -- in a socialization process that expands legitimate opportunity structures, hence diminishes the "negative" affects transmitted by economic, cultural, a political deprivation. <sup>10</sup>

The second model assumes that "organized criminals" are merely reflecting the norms and mores of the larger society, and contrary to the former approach, are in conformity with the so-called "legitimate" behavior patterns found in the larger society. Quite obviously, this latter perception is more threatening to the "social consciousness" of the larger society, consequently it (and those who support it) are usually dismissed as "subversive" to the existing political and economic order. Moreover, the latter model poses some serious and threatening questions about the society and the administration of "justice" and creates certain policy alternatives that are perceived as a threat to the political economy. This latter approach seeks to explain the "normality" of organized crime and expose the contradictions in the society that nurtured its growth. <sup>11</sup> May we suggest, that given the recent revelations regarding corporate criminality, official corruption, and the so-called "crimes of the powerful" this latter model deserves serious attention. Consequently in operationalizing the latter model, the parameters of the definition (and the subsequent enforcement apparatus) must include any conspiratorial practices entered into by "legitimate quasi-corporate or corporate entities" that seek to increase economic or political domination over a particular

sphere of activity (economic or political), through such methods as price-fixing, collusive bidding practices, monopolization and/or cartelization of economic and/or political activities through "coercive" means.

## 2.2 FAILURE TO ARTICULATE A THEORETICAL RATIONALE

Consistent with the previous methodological consideration is the necessity to develop a theoretical rationale or a series of theoretical rationales upon which to base the program's strategy. This process is indeed tied directly into how one defines the particular problem and quite obviously relies upon the two theoretical approaches cited in section 2.1. Assuming that "organized crime" is perceived merely as "syndicated criminal activities" (e.g., narcotics, bookmaking and lottery, prostitution) as is the case in the evaluation model discussed in section 8.0, it is quite apparent that one theoretical rationale that must be entertained is to what extent should such behavior patterns be criminalized via the political processes. The non-criminalization or decriminalization of certain forms of deviant behavior (thus removing it from the purview of the criminal justice processes) may have a negative effect upon the revenue producing capabilities of those organized crime control syndicates that provide such services. This particular approach, that relies upon the basic economic principles of supply and demand and upon the concept of "rationality" (i.e., that man seeks pleasure and avoids pain) is designed to eliminate the illicit marketplace created through the criminalization of those types of behavior that do not enjoy a consensus among society for such

prohibition. This approach in no way pre-supposes the reduction of such behavior patterns nor does this approach pre-suppose the elimination of "organized crime." Rather, it seeks only to eliminate the illicit marketplace but does very little to enhance the equitable administration of society's resources (to include justice) -- the root cause of "organized crime."

More specifically, there are several viable theoretical rationales that can be applied to organized crime control programs that lie within the discretionary powers of the criminal justice apparatus and provide criminal justice practitioners with some pragmatic policy alternatives. In a well-researched study of the illicit narcotics marketplace in New York City, Mark Moore provides an illustrative insight to the theoretical strategies available to law enforcement. According to Moore,

... Basically, there are three, broad strategies for reducing the adverse effects of narcotics-enforcement policies on the behavior and conditions of current users. First, one can design the narcotics enforcement policy to create two different effective prices--a very high, effective price for experimental users and a moderate, effective price for current users. Second, one can make available a wide variety of treatment programs to soften the indirect, adverse effects of narcotic-enforcement efforts, and to respond to the "voluntary" demand of users who can no longer stand the hassle created by indirect effects. Third, one can soften the direct effects of narcotic enforcement efforts by establishing diversion systems that keep arrested users out of jail (Moore, p. 259).

Moore then proceeds to develop these strategies more fully and provide "optimal strategies and tactics for achieving the operational objectives."



Pratter and Fowler argue that,

There are a number of possible goals toward which police gambling enforcement strategies might aim, in addition to their statutory duty to enforce the laws. These might include fighting organized crime, maintaining a favorable image of the police department, keeping undesirable persons or activities out of the city, and maintaining public order (Appendix I, p. 463)

Inasmuch as these two abstracts merely represent a cursory insight into the limited scope of "organized crime control theory" that must yet be pursued, there are other theoretical considerations that must be briefly discussed.

Schelling and Geis in their analysis of the illicit marketplace posed an interesting question which seems to have a direct impact upon public policy considerations and must not be dismissed lightly. In questioning the benefits of "organized crime" over "unorganized crime" both Schelling and Geis point out that the monopolization of the illicit marketplace may diminish the need for physical violence in that discipline is subject to both internal negotiation and external negotiation (with the dominant political structure). Thus, through organization and monopolization of the illicit marketplace, society derives certain benefits: stability of the marketplace and the diminution of physical violence. <sup>12</sup> Conversely, one could legitimately argue that the monopolization of the illicit marketplace by a particular organized crime syndicate or the cartelization of the illicit marketplace by groups of organized criminal syndicates will stifle free competition resulting in an increase in costs to the consumer but more importantly, threaten the legitimacy of the criminal justice process. This

final argument is based on the notion that in order to monopolize a particular illicit industry (since there are no formal or legislatively mandated rules or regulations enforceable in a court of law) one must rely upon physical or political superiority. Intimidation through threats of bodily harm or actual bodily harm and/or the use of the legitimate social control agents to intervene in disputes affecting competitive interests appear to be the only two methods available to permit any one group to monopolize a particular illicit industry. Consequently, if the criminal justice processes are unable to effectively investigate and prosecute those who engage in their activity, their legitimacy as a government institution is seriously challenged. Moreover, accepting Geis' argument that the amounts of violence in the organized criminal subculture may be indicative of official corruption or the lack thereof, it is quite apparent that focusing on these particular behavior patterns--corruption and/or violence--may result in seemingly contradictory consequences.<sup>13</sup> Thus, it is quite apparent that these theoretical considerations must be incorporated into the organized crime control strategy.

### 2.3 FAILURE TO ESTABLISH A GOAL AND RELATED OBJECTIVES THAT ARE CONSISTENT WITH A NON-INTERVENTIONIST PHILOSOPHY

In analyzing most organized crime control programs, it is readily apparent that the goal (s) and related objectives (which are often unrelated) lack any analytical insight into the effects of a particular enforcement strategy on the illicit marketplace. Moreover, these organized crime control programs

can be characterized as "interventionist oriented" with little or no effort devoted towards developing policies based upon a non-interventionist philosophy.<sup>14</sup> This point was addressed by the Drug Abuse Council in their analysis of "get tough drug laws." According to this study, while tough drug control legislation (and subsequent enforcement) might "tend to decrease crime by removing drug-using criminals from society, they could at the same time cause more crime to be committed by the remaining drug users" since such laws and stringent enforcement would ultimately increase the price of the illicit product (narcotics) to the consumer (Drug Abuse Council, p. 3). Moreover, the Report argues that "proposals for stiffer penalties do nothing to help identify higher-ups in the drug distribution network" and may in fact only reduce competition for the more sophisticated, organized criminal entrepreneur (p. 9). Little if any effort has been expended in studying the effects of enforcement intervention on the illicit marketplace and virtually no empirical data exists that demonstrates the effects of a non-interventionist strategy on the illicit marketplace. Consequently, we are currently witnessing the proliferation of organized crime control programs that are universally based upon an interventionist strategy--that is, a philosophy founded upon the imposition of civil and criminal sanctions. This has resulted in the emergence of the self-generating prophecy: as agents of social control are allocated more resources to examine and intervene in these criminal behavior patterns, the scope and dimensions of the "problem" became magnified which in turn requires more resources to cope

with the "emerging threat." <sup>15</sup> At some point in time, the critical question that emerges is: to what extent are the policies and practices of social control agencies determined by pressures to satisfy internal needs (such as self-perpetuation) rather than external considerations, such as the reduction or stabilization of the particular criminal activity? There is an inexplicable need to study the effects of a criminal justice policy that permits the illicit marketplace to function void of governmental intervention or "exploitive monopolistic" control, if there is to be any appreciable impact on the so-called "organized crime problem."

#### 2.4 FAILURE TO QUANTIFY THE GOAL AND OBJECTIVES

Once having established the parameters of the concept known as "organized crime," formulating the theoretical rationales, and operationalizing the goal and related objectives, the task of quantifying the data for project monitoring and subsequent evaluation must be undertaken. Consistently, organized crime control programs have been reluctant to engage in this process, primarily for three reasons:

- (1) It requires a conscious articulation of law enforcement values and priorities. That is, what is perceived as "important" or crucial to the success of the program must be placed into writing, thus ensuring subsequent accountability.
- (2) Generally, there is a lack of empirical data that reflects the extent or dimensions of the "problem" (as will be discussed in section 2.5).

- (3) Criminal justice agencies traditionally have avoided weighting statistical data, consequently index categories representing these "value judgements" have never been collected.

As Harris correctly noted,

... an organized crime operation can not be harmed significantly unless upper layers of leadership can be rolled up at the same time as arrests are made on the street. Thus, any evaluation of the effectiveness of an organized crime unit must focus on its ability to develop substantial cases against the leadership of organized crime groups. This puts the emphasis on the QUALITY of arrests rather than QUANTITY. This becomes the basic standard to judge the effectiveness of an organized crime unit (Organized Crime Bulletin, p. 8).

## 2.5 FAILURE TO DEPICT THE SCOPE AND DIMENSIONS OF THE PROBLEM

Basic to any effective crime control effort is recognizing and understanding the scope and dimensions of the "problem" that is to be the subject of official intervention (or non-intervention, whichever is more appropriate). Lacking this basic empirical data, it is inconceivable that an evaluation or even a subjective assessment (as witnessed by the G.A.O. Report) of an organized crime control strategy can be undertaken. Although the G.A.O. Report made an attempt to evaluate the effectiveness of the federal strike forces, it too is subject to its own criticism, for it failed to establish any consistent criteria in which to arrive at the conclusion that the federal strike forces were "faltering in their war against organized crime!" What criteria did the General Accounting Office use to arrive at this assessment? Does the General Accounting Office evaluation distinguish between which strike forces were performing successfully and which were not?

Unfortunately, ten years after the publication of the President's Commission on The Challenge of Crime in a Free Society (1967), there is still a reluctance on the part of law enforcement administrators to develop this fundamental empirical data. The Report argued,

... this tactical focus has not been accompanied by the full development of the full potential for strategic intelligence. This failure accounts for gaps in knowledge... concerning the ways in which criminal cartels organize and operate a business... Comprehensive strategic planning ... will not be possible until relevant disciplines, such as economics, political science, sociology, and operations research begin to study organized crime intensively (p. 199).

One acceptable research technique that has been employed in assessing the "unknown" incidence of crime, particularly index crimes, is "victimization" surveys. According to Biderman, the survey method "guarantees anonymity, relative absence of sanctions for providing information, and the general absence of consequences in giving information to avoid some conditions that give rise to nonreporting to police and other formal agencies (Biderman, 1967, p. 14). The National Gambling Commission undertook such a procedure in assessing the extent to which legal and illegal gambling permeate American society. However, we must recognize that such a procedure is extremely costly, but when measured against the expenditure of resources devoted to crime control, the expenses incurred may appear very reasonable.

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Consistent with this planning and evaluation deficiency is the failure to control for the dislocation of the syndicated-type criminal activity to other geographic areas; the re-allocation of resources to other spheres of criminal

activity; and/or the increases in the revenue-producing capabilities of one organized criminal syndicate at the expense of another. In other words, the goal of a particular organized crime program may be the reduction of revenues from illicit bookmaking and lottery activities to organized criminal syndicates, however by focusing on gambling, law enforcement may have dislocated the criminal activity to another geographic (i. e., political) environment where enforcement action is less rigorous or the particular organized criminal group may have reallocated its resources to other profit-making illicit activities. Or, more importantly, the interdiction of the activities of one syndicated criminal group may in fact result in the strengthening or monopolization of these particular illicit activities by a stronger more "sophisticated" criminal group. A superficial evaluation may indicate that the program was successfully (e.g., attained its goal) since the original program design failed to control for these variables. However, had such variables been incorporated into the original program design, the findings of an evaluation may conceivably have indicated the creation of other "problems" that may have had a greater deleterious affect on society.

2.6 FAILURE TO RECOGNIZE THE CONFLICTING POLICY ALTERNATIVES THAT MUST BE ADDRESSED

To further complicate the planning of an organized crime control program is the recognition that when articulating a particular goal, competing interests may emerge. For instance, is the goal of an organized crime control

program to (1) reduce the incidence of the "targeted" criminal activity, (2) disorganize a specific criminal syndicate, (3) decrease the incidence of violence associated with organized criminal activities, or (4) control the incidence of corruption related to the enforcement of laws regulating the targeted criminal behavior? Assuming that alternative #3 is accepted as the goal of the program -- reducing the incidence of violence associated with organized criminal activities -- it is conceivable that there will be an increase in the levels of corruption, given the structural relationship of organized crime to the political, economic and social system. Additionally, if the goal of the particular organized crime control program is the disorganization of a particular crime syndicate through high quality arrests -- alternative #2 -- it is conceivable that there will be an increase in the levels of violence associated with this particular criminal syndicate, since it is generally recognized that the greater one's status in the criminal hierarchy, the greater his/her ability to stabilize the "marketplace." Lastly, if the goal of the program is alternative #1 -- reducing net profits to organized crime syndicates -- a vigorous enforcement action may in effect, increase, solidify or strengthen group solidarity and internal cohesion, given the notion that group cohesiveness is not only solidified via positive valences within the criminal culture, but from negative valences applied by those social control agents external to the criminal subculture.

The inherent deficiencies cited in this section are compounded by



inconsistencies in demographic and ecological conditions, social and economic variables that are in a constant state of fluctuation and differences in political and legal policies from jurisdiction to jurisdiction, which quite obviously will affect differential enforcement policies. Consequently, comparative evaluation of success and failure of organized crime control efforts must be carefully studied with particular emphasis placed upon controlling for these "unknown" variables.

### 3.0 DEFINING THE PARAMETERS OF THE EVALUATION

The immediate issue that we were initially confronted with in undertaking this evaluation was determining the scope of the study and just "what" was to be evaluated. Obviously, for the want of more resources, we could not attempt to evaluate the effectiveness of all "organized crime control programs" in the State of New Jersey. Moreover, given the inadequacy of the available empirical data, any attempt to arrive at a reasonably precise assessment would be fraught with serious methodological deficiencies. Consequently, we agreed to limit the scope of this assessment to the most prevalent form of illicit activity that (1) provided sufficient empirical data from which to draw inferences and/or conclusions and (2) is equated with traditional "organized crime." Because illicit gambling, particularly bookmaking and lottery, has been traditionally perceived as the "very heartbeat of organized crime" toward which "organized criminal syndicates" most readily gravitate, it was decided that this assessment would be restricted to gambling enforcement

in New Jersey. The alleged relationship between illicit gambling activities and organized crime has been born out in voluminous reports and commission hearings, and as noted by the National Gambling Commission, "most gambling enforcement officers and chiefs of police... rated 'fighting organized crime' as the most important reason for enforcing gambling laws" (Gambling Report, p. 92).<sup>17</sup>

Having arrived at this decision, it became readily apparent that the empirical data which was available through public sources failed to provide sufficient or conclusive evidence either supporting or opposing a particular public policy. Consequently, any conclusions derived from the data would merely be "subjective guesstimates" supported with "flimsy" empirical data. However, although we readily acknowledge the dangers associated with proceeding in this manner, we also believe that further delay until "all the evidence is in" would result in an endlessly prolonged assessment. Since it is common knowledge that criminal justice and public policy are often based on evidence less conclusive than that available to the writers, any contribution that this assessment might make to a more "enlightened" public and criminal justice policy would be a small but relatively significant step in the "right" direction.

Throughout the ensuing discussions, the writers will explore and analyze examine the substantive issues relating to gambling enforcement, particularly as these issues relate to the broader subject of "organized crime."

Rather than arrive at specific policy recommendations, we have chosen to "crystalize" what we believe to be the dominant or most prevalent themes based on the available empirical data. Hopefully, this will provide criminal justice administrators and public officials with a theoretical paradigm in which a rational and "just" public policy can be attained. As the National Commission quite correctly noted, "criminal justice officials have a responsibility to make their views known to legislative bodies, and their responsibility must be met in the area of gambling enforcement policy" (Gambling Report, p. 117). We would add that such views must reflect a thorough understanding of the issues, if in fact a just and equitable public policy is to be formulated.

#### 4.0 PUBLIC POLICY CONSIDERATIONS AND THE ENFORCEMENT OF GAMBLING LAWS

In reviewing the research material and literature on illicit gambling and the consequences of its prohibition, four prevalent themes consistently emerge. Specifically, (1) the issue of official corruption, (2) the creation of an illicit marketplace, (3) perceptions of discriminatory enforcement, and (4) the "production of deviance" appear to weigh heavily in those arguments supporting decriminalization and/or legalization.

The National Gambling Commission, in attempting to grapple with the first issue--corruption--found that "for some police administrators, the basic task has been largely that of achieving a balance between efficiency and

integrity in gambling enforcement. The level of success has not generally been high for either objective" (Gambling Report, p. 98). The environment or operational milieu that breeds corrupt practices on the part of law enforcement agents, other personnel in the criminal justice network and public officials is in part supported by "societal ambiguity" regarding the importance of gambling laws. As the National Commission pointed out in their survey of American citizens,

There is a widespread community feeling that enforcement of gambling laws is less important than enforcement of laws against crimes of violence and property crimes. Only 20% of those citizens surveyed think gambling enforcement is more important than enforcement against other vice offenses. The survey found that a majority of citizens nonetheless believe that gambling offenders should be arrested (Appendix I, pp. 240-44).

Consequently, law enforcement officials have been placed in the irreconcilable dilemma of "meeting the quota" -- that is, making gambling arrests irrespective of their impact on the illicit marketplace. "Meeting the quota has become often more important than the quality of the gambling enforcement effort," the Commission contends. And "when this occurs, the attitudes of officers towards gambling enforcement combines with their perception... of the department's view of gambling enforcement as a low priority effort designed only to produce a series of what might be called symbolic gambling arrests" (Gambling Report, p. 95).

However, in examining and analyzing both the response of the public and the perception of law enforcement, one significant characteristic emerges that simply cannot be dismissed. Both the public and law enforcement officials perceive the imposition of criminal sanctions as an obligation on the part of law enforcement to enforce the laws impartially, regardless of individual moral predilections. To perform below this standard would be perceived as abdicating this obligation and consequently, subject law enforcement to charges of prejudicial or discriminatory enforcement practices. Thus, it can be argued rather persuasively, that if the public believes that the police should enforce gambling laws, in order for the police to retain (or regain) their legitimacy in the community, the police must engage in an aggressive gambling enforcement effort, or publicly acknowledge its reluctance to commit its limited resources to enforce those laws which the public does not believe are "important." To this extent then, criminal justice administrators and public officials must ultimately confront the question: Is the propensity towards corruption (i. e., non-enforcement as a form of corruption) by those relegated the task of enforcing gambling laws, a greater threat to the legitimacy of the economic, political, and social system than the "deleterious effects" of the behavior subject to official intervention?<sup>18</sup>

The second significant issue cited relates to the emergence of illicit marketplaces to supply those services that the "legitimate" governmental structure refuses to contract in. Smith, in his examination of the illicit

marketplace, argues that the "illicit enterprize is the extension of legitimate market activities into areas normally prescribed for the pursuit of profit and in response to latent illicit demand" (Smith, p. 335). Thus, the criminalization of certain forms of behavior in which a significant minority (or for that matter, a "silent majority") of the society desires to engage in creates a system of blackmarket activities. "Regardless of what we think we are trying to do," Packer asserts, "when we make it illegal to traffic in commodities for which there is an inelastic demand, the actual effect is to secure a kind of monopoly profit to the entrepreneur who is willing to break the law" (Packer, p. 279). Criminalization, which raises the risks associated with illicit traffic, and to some extent limits supply, encourages price increases and hence higher illicit profits, which in effect strengthen black market activities (Schur, p. 20).

Apparently, the data collected by the National Gambling Commission more than suggests that a significant minority of the populace does or has engaged in some form of illegal gambling. According to the Commission's findings, in 1974, two out of three adult Americans made some kind of gambling bet and more than 5.1 billion dollars annually were wagered illegally. It is quite obvious that the universally accepted moral standard underlying the prohibition of gambling has apparently been replaced with a more permissive attitude--an attitude that not only removes the negative stigma attached to gambling but also encourages and promotes gambling through elaborate advertising methods and techniques. Consequently, the third issue that emerges is the so-called hypocrisy of anti-gambling laws and a perception of discriminatory enforcement practices.

This latter issue deserves special attention in that a major principle on which the entire system of criminal justice is founded is the notion of equal protection under the law--that the law is applied equally to all, regardless of social, political or economic status in the society. In other words, laws that are legislated and enforced that may cause unwarranted hardships on the "poor and the powerless" -- those who are unable to resist the imposition of the State's intervention -- are perceived as "unjust"; subversive to our basic notions of equality and justice in a liberal, democratic society. As was pointed out by Rawls, "justice" refers to the "elimination of arbitrary distinctions and the establishment of a proper balance between competing claims" (Lessnoff, p. 319). Hence, if the act of wagering is "immoral" and the legal code is based upon notions of "immorality," it is only appropriate that laws prohibiting gambling on the stock market should also be enacted, if we are to retain those laws prohibiting wagering on "numbers" or sporting events<sup>19</sup>! The fact that those who wager on the stock-market have a standing in legislative bodies should, theoretically, not impinge on the enactment of law that is inconsistent with our concepts of "morality." For when it does, and this contradiction is perceived, disrespect in our institutions of government and in the criminal justice processes will undoubtedly result among alienated populace -- a populace that no longer believes in the government and the equal administration of justice.<sup>20</sup> As Schur quite correctly noted,

... victimless crime laws encourage a general cynicism toward the law that may influence public conceptions of the entire system of criminal justice. In the first place, many will feel there is a strong element of hypocrisy involved in maintaining on the lawbooks provisions that are so blatantly unenforceable. This reaction is likely to be reinforced when large numbers of people view a particular ban as being unnecessary or undesirable, quite apart from whether or not it could be enforced.

The patterns of selective enforcement and police corruption invariably found in victimless crime situations further undermine respect for the law... where the law seeks to curb widely desired consensual exchanges such uniform application becomes virtually impossible. We have seen, furthermore, that the uneven impact of actual enforcement measures tends to mirror and reinforce more general patterns of discrimination (along socio-economic, racial, ethnic, sexual, and perhaps generational lines) within the society.

As a consequence, such enforcement (ineffective as it may be in producing conformity) almost certainly reinforces feelings of alienation already prevalent within major segments of the population (Schur, p. 36).

A review of the empirical data assembled by the National Commission tends to support the conclusion that "blacks are arrested for gambling at rates substantially higher than are whites." As this study pointed out, "blacks account for only 11 percent of the population of the United States" however, "they accounted for 72.8 percent of all gambling arrests in 1974" (Gambling Report, p. 90).



In New Jersey a similar parallel exists. The findings of the New Jersey study indicates that blacks accounted for 66.2 percent of all local and county gambling arrests (e. g. , bookmaking and/or lottery offenses) and 41.9 of State enforcement arrests. Given a population of 14% black, proportionately these arrest rates give rise to the perception of questionable enforcement practices. <sup>21</sup>

Although the data represented in these two studies does not support the conclusion that the law is either discriminatory or that it is being applied in a discriminatory manner, it does provide some critical concern for public policy. In particular, "the branding of large segments of the population as 'criminal' ... is not just a symbolic act. It has very real consequences for the individuals involved, many of whom even in the absence of such criminalization would be likely to have strong grievances against the society in which they live" (Schur, 1974, p. 37). According to Geis, "the extent that a society thrusts from its core non-conformists and then takes harsh measures to repress them, it will create a resistant force in its midst" (Geis, 1970, pp. 260-61). And Duke amplifies this point, arguing that when there is a "lack of correspondence between the ideology and the actual social conditions" the more likely the government is to be challenged through revolution (Duke, p. 251). <sup>22</sup>

And lastly, the notion of "deviance creation and amplification" must be incorporated into determining public policy. Tonnies, Clinard, Radzinowicz

and other sociologists have correctly noted that one apparent latent consequence of industrialization and urbanization is the reliance upon formal mechanisms of social control.<sup>23</sup> Laws tend to replace informal mechanisms which had previously inhibited individuals from engaging in those particular types of behavior that were perceived as "deviant." And as a society becomes more inter-dependent economically and technologically, there is an increased tendency to resort to the legal mechanisms to enforce the so-called "social contract."

A contemporary notion that has emerged among criminologists refers to this process as "deviancy creation." In other words, the greater the number of laws a society enacts, the greater number of criminals it will CREATE. Becker adequately summarizes the central theme of this notion when he stated,

Social groups create deviance by making the rules whose infraction constitutes deviance, and by applying these rules to particular people and labeling them as outsiders. From this point of view, deviance is not a quality of the act the person commits, but rather it is a consequence of the application by others of rules and sanctions to an "offender". The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label (Becker, p. 9).

This theme is particularly crucial in the developing of public policy for as the New Jersey study indicates (see Appendix I, pp. 650-678), those gambling offenders who were first arrested when they were over forty years of age appear to be predominantly arrested for gambling offenses. This is not to say that prior to the age of forty these individuals had not engaged in any illicit activities;

it only indicates that they were never apprehended. And as Schur suggests, "whatever else they do, official statistics accurately depict organizational outcomes... and from the labeling perspective, an extremely significant aspect of the production of deviance" (Schur, p. 32). Therefore, even if we were to acknowledge the involvement of these individuals in illicit activities prior to the age of forty, the issue is moot; what is significant, though, is the fact that these individuals have been "criminalized" or "deviantized" for violating gambling laws ONLY.<sup>24</sup> Moreover, the data quite convincingly demonstrates that those first arrested for violations of the lottery and bookmaking laws of the State at the age of forty and over have significantly low arrest rates for violent or property crimes (see page 654, Appendix 1) and the probability of an offender over the age of forty committing a violent or property crime following a gambling arrest is only five percent. Thus, we believe that it is reasonably accurate to conclude that a significant segment of the population who are ordinarily law-abiding citizens (or at least, who do not demonstrate a propensity towards violent or property-type crimes) are being "deviantized" unnecessarily, and the legislative process are in fact operating counter to the goals of the criminal justice processes in that perceptions of crime are being produced rather than reduced.

## 5.0 CRIMINAL JUSTICE POLICY CONSIDERATIONS

The public articulation of criminal justice policy in regards to gambling enforcement provides a legitimate exercise of discretionary authority. Courts have long recognized the discretionary authority vested in the police by the

legislature and have declared "while not controlling upon the court, administrator's interpretations do constitute a body of experience and informed judgement to which the court and litigants may properly resort to guidance." <sup>25</sup> Full enforcement of the law, although theoretically mandated, and by some standards desirable, is obviously impractical and impossible given the limited resources. After acknowledging this wide range of discretionary authority available in the enforcement of gambling laws, it becomes not only advantageous to formulate the parameters of enforcement policy, but also necessary to articulate the policy in order to provide the citizenry with a clear understanding of the law. Based upon the findings of both the Reidel/Thornberry and the Reuter/Intelligence Bureau studies, several tentative criminal justice policy implications may be drawn. Although we admit to the limitations of these implications, the data does provide law enforcement and criminal justice administrators with some indicators whereby an assessment of past and current enforcement effectiveness can be measured.

#### 5.1 ORGANIZED CRIMINALS AND GAMBLING OFFENDERS

The data contained in the statewide gambling analysis indicates rather conclusively, that those arrested for bookmaking and/or lottery offenses post 1970 differed in criminal history profiles from those arrested prior to 1970. The gambling intensification program, initiated in the late sixties, did not achieve its apex of enforcement potential until 1971 and 1972 as indicated by the arrest statistics (see New Jersey Uniform Crime Reports). The data presented

in the statewide gambling offender analysis indicates that those arrested post - 1970 were generally 40 years of age or older and had no prior criminal arrests as opposed to those arrested pre - 1970, who were generally younger (thirty years of age, average) and had more arrests for violent and property crimes (See Appendix I Table VII, p. 665).

Donald Cressey, in his research for the President's Task Force on Organized Crime (see Task Force Report: Organized Crime) stated:

It also seems reasonable to expect that more vigorous prosecution of individual organized criminals will stimulate more vigorous illegal evasive actions on the part of Cosa Nostra. Cosa Nostra bosses who are immune (because of corruption or their ability to remain insulated from the actual criminal transactions) from arrest are not afraid of police crackdowns. On the contrary, being immune, they welcome any official action which will eliminate competitors who are not immune (Cressey, p. 292).

The fundamental implication of Cressey's research coupled with the findings of the New Jersey data poses a serious question: Who is being arrested, the professional syndicated gambler or the low-level employee? In order to provide some insight into this question, it is necessary to adequately define the term "professional syndicated gambler."

In attempting to arrive at a universally accepted definition of organized crime, which has been attempted by a number of researchers, several elements consistently emerge. First and foremost is the notion that organized crime

differs from unorganized crime in that there is organization which explicitly implies:

- (1) some form of structure entailing a division of labor, power and communication;
- (2) some form of leadership and central control;
- (3) interaction oriented towards the attainment of specific and general goals;
- (4) some means of recruiting new personnel and provisions for the transfer and removal of members (Albini, p. 37).

Assuming that gambling is a form of syndicated crime, the question, that emerges is: ARE ALL FORMS OF GAMBLING ORGANIZED? One could reasonably argue in the affirmative, assuming that two or more people are engaged in a gambling activity, given a general and broad-based notion of organized crime. However, given the previously defined elements of "organization", the answer would be in the negative: not all forms of gambling are "organized."<sup>26</sup>

From this juncture, we now must examine the different forms of gambling. Since the statewide statistical data is limited to bookmaking and/or lottery arrests, the question emerges: Are all bookmaking and/or lottery activities organized (as per definition of organization?) One could reasonably argue that in order to engage in bookmaking and/or lottery, there must be some form of hierarchy, i. e., sitter, runner, controller, clerk, banker, etc. Based

on this description (that most bookmaking and/or lottery activities are dependent on hierarchy) one can legitimately conclude that anyone arrested for a bookmaking and/or lottery violation is (more often than not) part of a larger organization; thus all those arrested are "organized criminals". However, rather than analyze this type of activity in terms of organizational structure, it may be more enlightening to examine the criminal characteristics of those who partake in so called "organized crime." In this respect, other research data must be examined.

As noted in the Reuter/Intelligence Bureau study (p. 660), Lasswell and McKenna in their research found that of 800 persons identified as "organized criminals" in the State of New York (by at least three law enforcement agencies), 600 had at least one arrest. The average number of arrests for the entire group was 3.6 arrests. Based on the entire sample of 800, the average number of arrests declined to 2.7 arrests.

Furthermore if we examine the data representing those identified either as loansharks or major narcotics traffickers solely by intelligence sources, both state and federal, we find that the loanshark's average age at the time of his/her first criminal arrest is 24.4 and the mean number of arrests are 6.8, with 60.5 percent for crimes of violence and 53.5 percent for property-type crimes. Italians comprised the largest ethnic group of loansharks, 75.4%, however it must be recognized that the sample selected was not random, which may in reality only depict a certain bias in the data collection methods used to identify loansharks. The data also indicates that 33.3 percent have arrests for

bookmaking and 38.6 percent have arrests for lottery. From this data, it would at least appear that this group represents what is generally perceived as the "traditional organized criminals" (e.g., Italian-American organized criminals).

Examining those that were identified as major narcotics traffickers as per intelligence sources (as opposed to arrest statistics), the data indicates that the average age of first arrest is 23.5 years of age, with an average arrest record of 6.6 arrests. The data also indicates that Blacks comprise the largest block of major narcotics traffickers (48.6%), followed by Italians (37.5%), and lastly by Hispanics (11.1%). Once again, it can be argued that this group represents only what has been traditionally referred to as "organized crime" in that their criminal history profiles support earlier research efforts delineating the progression from careers in traditional crime to careers organized crime.

It is apparent, at least from this data, that those who were subjected to criminal sanctions in the post 1970 era differed significantly from the pre 1970 data, the major narcotic and loanshark data, and the Lasswell-McKenna data. In essence, one could arrive at several possible conclusions:

- (1) That prior to 1970, law enforcement lacked the enforcement "tools" to effectively impact on "organized crime" and those being arrested were the so-called "unfortunates," "losers" or "misfits" of the society. This obviously, assumes that law enforcement only arrests the "low level criminal" and that arrests statistics in effect, only represent the misfortunes of these individuals and not the competence of law enforcement.



- (2) That those arrested in the post 1970 era were in reality, the "professional career criminals" who were able to avoid the traditional investigative methods and techniques used by law enforcement. Once law enforcement was provided with the "tools," the "professional career criminal," in this case, the individual capable of evading law enforcement for some forty years, was now subject to the criminal sanction.
- (3) That the stringent gambling enforcement policy deterred the "professional career criminal" from engaging in illicit book-making and lottery activities, which resulted in the so-called "amateur criminal entrepreneur" providing the service.
- (4) That the "professional career criminal," irregardless of what methods and techniques are available to law enforcement, is capable of insulating himself/herself from law enforcement intervention.
- (5) That given the necessary investigative "tools," law enforcement was not able to proceed much beyond the visible manifestation level of "organized crime."
- (6) That to proceed beyond the "lowest levels" of "organized crime," significant resources must be committed by law enforcement with a minimal rate of return.

Given these six rather ambiguous and conflicting interpretations of the data, it is quite obvious that it is virtually impossible to arrive at any accurate assessment of law enforcement's effectiveness. The lack of "quantified or weighted" arrest data quite obviously retards any systematic or precise analyses. However, the questions posed by this data are, to some

extent, moot in terms of criminal justice policy. What, in fact, we believe should be the focus of concern is what type of criminal -- the gambler (as represented in the post 1970 arrest data) -- the major narcotic trafficker or the loanshark ( as represented in the accompanying data) pose the greatest threat to society? Obviously, the criminal career patterns of those that engage in the particular criminal activity must weigh heavily in arriving at this decision.

## 5.2 GAMBLING ENFORCEMENT PRACTICES IN NEW JERSEY

The fundamental precept upon which New Jersey's gambling enforcement practices are based (and for that matter, most every "organized crime control program") can be traced to the rationale developed by the "classical school of criminology." The classicists, particularly Bentham and Beccaria argued that "all men, criminals included, act rationally and deliberately avoid pain and encounter pleasure" (Vold, pp. 16-18). Although this theoretical rationale has been relegated an inferior status among contemporary sociologists/criminologists, the so-called "economic criminologists" currently are making a noble attempt to resurrect this hypothesis. In essence, the economic criminologists argue that "crime is like any other enterprise: the potential criminal evaluates all possibilities within the limits of all information which he (or she) possesses and chooses that activity which maximizes his (or her) utility ( Cobb, p. 19). Relying upon the concept of "rationality" (e.g., that man seeks pleasure and avoids pain), economists argue, rather crudely, that the criminal entrepreneur like the

legitimate businessman, makes choices that take into account expected gains and expected losses and if the costs (sanctions) exceed the gain (rewards), the criminal entrepreneur, like the legitimate businessman will avoid or be deterred from the particular course of action. Punishment, according to the economic criminologist, is a deterrent however, its value has been diminished only because of the manner in which the punishment is administered (i. e., delayed/sporadically and inconsistently). Consequently, the crucial question that emerges is not simply whether negative sanctions deter, but rather under what conditions are negative sanctions likely to be effective" (Tittle, p. 411).

Needless to say, this over-reliance by the economists on a universal notion of "rationality," which apparently assumes that all men (and women) reason in a similar manner, and the belief that all crime is merely committed for economic reasons, fails to adequately confront the multifaceted realities of crime. However, given the sophisticated methods of analysis provided by other academic disciplines, it is quite likely that the economic criminologists will be able to provide the discipline of criminology with a long-neglected analytical evaluation model -- cost-benefit analysis in crime control. This will undoubtedly have a significant impact on crime control strategies in years to come.

However, we would caution those who want to rely solely on the findings of statistical studies. As Andenaes argues, the formulation of public policy

"means to apply a set of value judgements to a set of factual assumptions about the effects of alternative policies. Rarely is scientific research able to give clear answers in quantitative terms about the consequences of our choices" (Swedish Council, p. 44). Consequently, we believe that the data contained in the two studies examined must be cautiously analyzed to avoid broad generalizations. Nevertheless, we also believe that it is important that the findings of these studies be critically examined, which may hopefully create a forum from whence a more "enlightened" public policy may emerge.

Undoubtedly, the two most significant studies that were undertaken by the National Gambling Commission examine gambling enforcement practices in New Jersey. These two studies, the Reidel/Thornberry and Reuter/Intelligence Bureau studies attempt to examine the effects of a "stringent gambling enforcement policy." However, before we analyze these findings we believe it is necessary to provide some statistical data describing the gambling enforcement policy in New Jersey.

An examination of the statistical data amassed by the National Gambling Commission indicates that the notion that New Jersey's gambling enforcement policy was "excessively stringent" is somewhat erroneous and misleading. Comparatively speaking, New Jersey ranked only 14th in gambling arrests (per 100,000) and when further analyzed, we find that 42% of these arrests occurred in one city -- Newark, New Jersey -- which accounts for only

five percent of State's population. \* Moreover, although eighty-four percent of these arrests resulted in a conviction, 98 percent of those convicted only received fines (40% of the fines were \$25; 20% were \$50; and three-quarters of the fines were \$40 or less) averaging \$38.19 (Appendix I, p. 523). Furthermore, it is quite interesting to note that the arrest rates for gambling and the percent of gambling arrests in relationship to other crimes within the City of Newark remained consistent over a five year period (1969 - 1973).

COMPARATIVE GAMBLING ARRESTS \*

Newark, New Jersey

State of New Jersey

YEAR	# OF ARRESTS	% OF ALL ARRESTS	# OF ARRESTS	% OF ALL ARRESTS
1969	1,161	5.3 %	3,217	1.4 %
1970	1,279	5.3	3,600	1.4
1971	1,437	5.8	3,944	1.5
1972	1,349	5.5	3,208	1.1
1973	1,356	5.4	3,198	1.1
1974	-	-	3,452	1.0
1975	-	-	2,459	0.7

\* Source: Appendix I, p. 740 and Uniform Crime Reports: 1969-1975

\* We would also like to point out that Newark, New Jersey consistently ranked among the top four major cities in the Nation in the number of gambling arrests (1969 - 1973).

Although we believe that it would be highly speculative to draw any steadfast conclusions from this rather meager data, we suggest that these enforcement statistics (1) may reflect enforcement practices based on a "quota" system,<sup>27</sup> (2) are primarily representative of an enforcement policy designed to maintain the "public order", and (3) have little, if any relationship, to the illicit syndicated gambling marketplace in the City of Newark. Apparently, the "high risk of detection" and the "high probability of conviction" did not result in a decrease in the number or percentage of gambling arrests. In essence, we seriously question whether Newark's enforcement policy, as demonstrated through these statistics (which as was stated represents 42% of all gambling arrests in the State) had any significant impact on the "revenue-producing capabilities of organized crime." We believe that at least in the City of Newark, contrary to the testimony presented by the majority of respondents requested to testify before the National Gambling Commission and contrary to the findings of a national police survey (See Appendix I, p. 465) the enforcement of gambling laws is not designed to "fight organized crime" but rather, is designed to prevent gambling from becoming "widespread and visible" and to "prevent fights, shootings, etc., that occur in card games, dice games, etc.

In order to fully appreciate the gambling enforcement practices in New Jersey, it is necessary to examine the remaining 58% of gambling arrests effected in the State. Two of the most comprehensive studies undertaken to date that sought to measure the effectiveness of law enforcement's strategies

relating to gambling enforcement are the Reidel/Thornberry study and the Reuter/Intelligence Bureau Study. Both studies were undertaken for the National Gambling Commission and both were designed to elicit some quantitative data reflecting the effects of New Jersey's stringent gambling enforcement practices. Although we believe that both studies fail to arrive at any concise conclusions regarding whether or not New Jersey achieved its goal (which, although never formally articulated, we believe to be "reducing the revenue-producing capabilities of organized crime"), we contend that the data elicited from both studies is valuable in formulating gambling enforcement policies at a local and State level.

The first study that we wish to examine was undertaken by two criminologists from the University of Pennsylvania, Marc Reidel and Terrence Thornberry. Reidel and Thornberry were interested in determining whether gambling laws were enforceable and whether the enforcement of such laws had any effect upon the administration of the criminal justice processes. The researchers were concerned about the effects of a judicial directive issued by the late Chief Justice Joseph Weintraub that in essence required sentencing of gambling offenders to be assigned to one judge in each of the State's twenty-one counties and when it was demonstrated that the offender was part of a larger conspiracy, the imposition of a jail sentence would be applied consistently throughout the State. <sup>28</sup>

A summation of the Reidel/Thornberry study indicates that:

- (1) There is a much greater attrition rate of cases for the Philadelphia sample as opposed to the Newark sample. Not only are there a significantly larger proportion of cases being given verdicts in Newark as compared to Philadelphia, but a larger proportion of cases are being found guilty in Newark as compared to Philadelphia. Conversely, a significantly larger proportion of cases are being dismissed or discharged in Philadelphia as compared to the Newark sample. These results suggest that gambling offenses are more consistently and intensively prosecuted in Newark.
- (2) Of the 45 arrests for common gambling in Philadelphia, 3 were found guilty at a preliminary hearing and 2 failed to appear. In Newark, 172, or 84 percent were found guilty, 25, or 12 percent were found not guilty, and 7, or 3 percent were dismissed. The data indicates that there is a much higher proportion of arrests found guilty and a much lower proportion of offenses dismissed in Newark as compared to Philadelphia.
- (3) Of the 97 Philadelphia offenders with one or more prior offenses, 7, or 7 percent were found guilty; of the 126 Newark offenders with one or more prior offenses, 101, or 80 percent were found guilty. Sixty-seven, or 69 percent of the Philadelphia offenders with one or more prior offenses were dismissed, but only 5, or 4 percent of the Newark offenders were dismissed.
- (4) Of the 51 white offenders arrested for gambling in Philadelphia, 3, or 6 percent, were found guilty; among the 47 white offenders arrested in Newark, 34, or 72 percent were found guilty. Ten percent of the white gambling offenders in Philadelphia were found not guilty, and 15 percent of the white gambling offenders in Newark were found not guilty.



- (5) Of the 143 nonwhite offenders arrested in Philadelphia, 72 percent were dismissed; among the 187 nonwhite gambling offenders in Newark, only 6, or 3 percent were dismissed.
- (6) "An analysis of the attrition of a sample of gambling cases in Philadelphia and Newark," Reidel and Thornberry conclude, "indicates that gambling laws are enforced more stringently in Newark as compared to Philadelphia. Eight out of ten arrests are found guilty in Newark, but only 2 out of 10 in Philadelphia. Almost three-fourths of the cases are dismissed. Finally, approximately the same proportion of offenders are found not guilty in Philadelphia and Newark."

The second major phase of this study sought to compare gambling arrests in Newark and Washington, D. C. that were ultimately prosecuted by the county prosecutor's office (in the case of Newark) and the U.S. Attorney's Office (in the Washington analyses). The findings of this study indicate (see Appendix I, pp. 524-549):

- (1) Forty four percent of those arrested for a gambling violation (that was forwarded to the County Prosecutor's Office for indictment and trial) in Newark pled guilty as compared to 42% in Washington, D. C.
- (2) Twenty percent of those arrested for a gambling violation in Newark that were prosecuted by County authorities were found guilty, as opposed to only four percent in Washington.
- (3) Nine percent of the individuals arrested in Newark and three percent of those arrested in Washington were found "not guilty."

- (4) Only 21% of the cases in Newark were dismissed whereas in Washington, 51% of the cases were dismissed.
- (5) When combined (found guilty and pled guilty), 64% in Newark had guilty dispositions whereas in Washington, only 46% had guilty dispositions.
- (6) In Newark, 94.2% of those arrested for gambling offenses in Newark were released on cash bail, whereas in Washington, 56.6% were released on their own recognizance.
- (7) Gambling cases in Newark take four and one half times as long to move from arrest to final disposition, as do comparable cases in Washington.
- (8) Eighty eight percent of those convicted of a gambling offense in Newark were sentenced to prison whereas in Washington, only 4.6% received a prison sentence (49.2% fined and 43.9% suspended sentences).

The researchers concluded that gambling laws were enforceable and the "argument that favors decriminalization of gambling laws because they are unenforceable is wrong" (Appendix I, p. 549).

Although the findings of this study suggests that a "stringent enforcement policy" is attainable, given the universal commitment of the various components of the criminal justice network, the methodological design and assumptions accepted are questionable and somewhat erroneous.

In particular, the researchers made the implicit assumption that if the judicial authorities react to gambling offenses more severely, the police will enforce the gambling laws more "stringently." They assume that a judicial directive by the Chief Justice of the New Jersey Supreme Court resulted in this so-called "increased enforcement effort" on the part of law enforcement and the judicial authorities. Then, by analyzing the various phases of judicial processing and comparing these results to those obtained from the Philadelphia police files (where there was a lack of this judicial mandate), they concluded that the judicial directive in New Jersey resulted in a more "stringent" enforcement policy. We fail to see any casual relationship!<sup>29</sup>

Secondly, the data used for the Philadelphia study was taken from a study conducted in 1967 whereas the data in the Newark study was obtained from police records in 1971. We believe the difference of four years, although not considered important by the researchers, impugns the findings of the research. It could be argued that the lack of historical familiarity with the changing political climate in Newark is at the crux of this serious methodological error. We believe that if one examines the history of Newark in the post - 1967 era, the Newark "disorders" followed by official criticism of Newark's deplorable gambling enforcement policies, the indictment and conviction of the incumbent mayor for extortion and bribery, and the change in the administration (which was quite sensitive to these findings) may have resulted in a more "stringent" enforcement policy.

Third, we believe that the researchers failed to control for the differences in State laws and legal policies. In Newark, common gambling is within the jurisdiction of municipal authorities and is generally adjudicated on a municipal level. Moreover, such offenses usually involve "on-sight arrests," thus making the case "prima-facie." Lottery violations are considered more serious cases in New Jersey and thus are tried on the county level. Furthermore, conviction for such violations usually require extensive investigative methods to include electronic surveillance.

In Philadelphia, on the other hand, the prepondarence of cases processed by the police were "lottery" violations, which as we noted earlier require more intensive investigations in New Jersey in order to net a conviction. Moreover, the lack of an electronic surveillance law (permitting legal forms of eavesdropping) in Pennsylvania would obviously affect the substantive proofs available upon prosecution, consequently the number of dismissals and findings of not guilty may increase. Although the researchers believe that using Philadelphia for a control city was acceptable, we feel that such a choice was a serious misjudgement.

Fourth, the study fails to measure the enforcement level of the Newark Police Department in the pre- 1971 and post - 1971 years. These two tests are of significant value if we are to believe the conclusions expressed by the researchers. The researchers operationalized the term "more stringent

gambling enforcement and prosecution" to mean: cases dismissed, cases resulting in guilty findings, cases resulting in trial dispositions, extended time in processing cases, amounts of bail, and severity of sentence.

Unfortunately, these operationalized terms do not take into consideration whether the police enforced the law more stringently. One can only conclude from these findings that the cases presented to the municipal court in Newark were of a "higher evidential quality" than those presented in Philadelphia. And this could be a result of the difference in the types of cases presented -- common gambling in Newark versus lottery in Philadelphia. In fact, the researchers point out the disparity between the arrest rates in Newark and Jersey City, which we believe to be prima-facie evidence that the judicial directive had little effect on gambling enforcement levels.

And lastly, it appears that the researchers did not control for a critical confounding variable -- the rates of repetitive arrests. It is unknown, at least from the project design, whether or not the cases examined included persons arrested more than once for the crime of "common gambling." Had this been controlled for, they may have found that the same individuals were being re-arrested for gambling offenses.

Inasmuch as the data suggests that an aggressive gambling enforcement policy is attainable given a commitment by the various components of the criminal justice network, it does not indicate whether:

- (1) illicit gambling in Newark or Essex County is any less prevalent than in Philadelphia, Washington or any other sector of the State or country.
- (2) this "stringent enforcement policy" had any deterrence value or effectively reduced illicit gambling.
- (3) such a policy increased the cost for "official protection."
- (4) those "controlling" the illicit gambling marketplace re-located to jurisdictions where a more lenient enforcement policy was adopted.
- (5) those "controlling" the illicit gambling marketplace re-allocated their resources to other forms of illicit or licit activities during this particular period of intensification.
- (6) a more stringent gambling sentencing policy does in fact increase the level of gambling enforcement.

We contend that the data presented in this study, when analyzed in its totality (see Appendix I, p. 740), fails to support the notion that Weintraub's judicial directive increased gambling enforcement by the Newark Police Department. We find that Newark when compared with Philadelphia only ranked higher in rates of gambling arrests in 1971 (by .4 of a percent) whereas for 1969 and 1970, Philadelphia ranked higher in gambling arrest rates than did Newark. Moreover, if in fact the Weintraub directive was successful in making the police react "more stringently" how does one reconcile the fact that Jersey City's gambling arrest rates were lower than Philadelphia's in 1969, 1970 and 1971, and lower than Washington's in 1973? We believe that the Weintraub doctrine provides

a partial explanation for this "more stringent enforcement" posture.

Numerous other factors, to include an electronic surveillance law, a change in national and state administrations resulting in a change in those who administer the criminal justice process, the creation of a Division of Criminal Justice and State Commission of Investigation, and an expanded investigative capability by the New Jersey State Police, in essence played a significant role in this "stringent effort." Succinctly stated, our criticism centers on the ahistorical environment in which this study was conducted.

In examining the findings of the Reuter/Intelligence Bureau study, we find some data that provides us with a limited, however illuminating insight, into a possible consequence of the "stringent enforcement policy". As is pointed out, this study was merely concerned with examining the enforcement of bookmaking and/or lottery offenders arrested between 1970 and 1975. When initially designed, it was believed that these two offenses were more susceptible to "criminal organization" since such activities required several distinct divisions of labor. The findings of this study are summarized on page 650 of Appendix I of the National Gambling Commission's final report . However, it is important to examine what we believe to be one extremely significant piece of data that provides us with a limited indicator bearing on the question of effectiveness. The study suggests "that the intensification program did lead to the apprehension of a new class of gambling offender" (Appendix, I, p. 664). Moreover, as the findings quite succinctly point out, the criminal profile of the pre - 1970 offender differed significantly from the post 1970 offender. That is, when arrests for

violent and property offenses were compared, we find the post 1970 arrestees had an average arrest rate for violent crime of 25% whereas the pre - 1970 rate was 40%; for property crimes the pre- 1970 group reflects an arrest rate average of 56% as compared to 10% for the post - 1970 group. Moreover, there was a substantial increase in the number of females arrested post 1970 (i. e. , 8% prior to 1970 and 31% post 1970).

We believe that this data lends credence to Cressey's hypothesis: that is, "more vigorous prosecution of individual organized criminals will stimulate more vigorous illegal evasive actions on the part of Cosa Nostra" (Cressey, p. 292).<sup>30</sup> This apparent radical change in demographic characteristics of arrestees represents, we believe, evasive actions on the part of the more sophisticated professional career criminal. As the data suggests, those arrested for bookmaking and lottery offenses post - 1970 demonstrate a strictly different criminal profile than those in the pre - 1970 era.<sup>31</sup> Although one might conclude that what in fact occurred was that law enforcement after "obtaining the necessary investigative tools" was capable of detecting, apprehending and convicting those who have a "history" of involvement in gambling yet were not subject to the criminal sanction because of a lack of investigative resources, we submit that it is extremely unlikely that the post - 1970 offenders could have been involved in an "organized criminal subculture" for forty-some years (since the average age of the post - 1970 arrestee was 40, ten years higher than the pre- 1970 group) and not have been arrested for some crime (violent, property or complaintless) during this



period of time.\* Assuming that conventional "organized crime theory" is adopted--that is, a measure of one's stature within the "organized criminal subculture" is through "earning one's bones": committing crimes and when apprehended, "doing the time" -- we would conclude that those arrested were afforded entry into the "fringes" of the "organized criminal subculture" in a very "unconventional manner", which in essence impugnes the dominant mythology surrounding organized crime theory.

Once again, we would point to the Lasswell/McKenna study to support this conclusion, however might we also suggest that attempts should be made to update the Lasswell/McKenna study which may provide a tentative validation of our conclusion. Although we believe that the findings of an "updated version" would be similar to the Lasswell/McKenna study, in the event there were significant disparities, it might indicate the changing character of the so-called "organized criminal subculture."<sup>32</sup>

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\* We acknowledge that not all of those in the post - 1970 offender group were able to avoid the criminal sanction, however the disparity in criminal profiles indicates that those arrested for violent/property crimes are statistically insignificant.

Another implication of this indicator (although one not supported with empirical data) is that the disparity between the post - 1970 and pre - 1970 arrestees in essence, represents an alteration in the political character of the State. That is, if we assume that one's ability to avoid the imposition of the criminal sanction is related to his/her ability to "corrupt" the institutions of government (i. e., the criminal justice system), or that the criminal justice sanction is merely imposed upon those who lack the ability to resist such impositions--the politically impotent--we may perhaps infer that those subjected to the criminal sanction pre - 1970 were in fact the "politically impotent" and the post - 1970 group, in reality represents the "richer and more powerful" (relatively speaking) elements of "organized crime." Thus, we might conclude that the post - 1970 era could be perceived as representing an era in which those who were traditionally exempt from the official criminal justice sanction for whatever reason (s), were now subjected to government intervention. Although such an inference is highly speculative and lacks any statistical verification, it would be of significant interest to undertake an extensive ethnographic study of the arrestees sampled in this study, particularly as such an inference relates to those arrestees identified as Italian-Americans which maintained a consistent 17% arrest rate in the pre - 1970 and post - 1970 groups. <sup>33</sup>

Another interesting policy implication and one that underlies conventional organized crime thought focuses on the criminal profiles of those engaged in narcotics trafficking, loansharking and gambling. It is generally assumed that

there is considerable interaction between these activities--that is, monies generated from illegal gambling are used for loansharking activities and to fund narcotics. This notion, although not supported by extensive empirical data, provides a theoretical rationale upon which organized crime control policies are often based. In essence, the proposition argues if law enforcement focuses its resources on illicit gambling, it may be capable of "drying up" the economic resources that contribute to these other criminal activities. By eliminating this source of revenue the other forms of criminal activity--narcotics and loansharking -- will eventually succumb to "economic deprivation." 34

In examining the criminal profiles of this diverse groups -- gamblers, narcotic traffickers and loansharks -- we find that there are few similarities between those arrested for gambling and those identified as loansharks and/or major narcotics traffickers.


COMPARATIVE ANALYSIS

CATEGORY	GAMBLERS	LOANSHARKS	NARCOTIC TRAFFICKERS
Mean Age of 1st Criminal Arrest	37	24.4	23.5
Mean No. of Arrests	2.67	6.8	6.6
Violent Arrests	9.4 %	60.5 %	
Property Arrests	6.8 %	53.5 %	
Narcotics Arrests	3.7 %	11.4 %	
Gambling Arrests	49.2 %	98.2 %	26 %

The data seems to suggest that there is a positive relationship between the illicit loansharking marketplace and the illicit gambling marketplace, however there appears to be a negative relationship between the narcotics and loansharking marketplace. Moreover, the loansharking and narcotics marketplace appear to attract the more violent and/or predatory type of person, which may provide some insight into questions of stability between the various illicit marketplaces. Nonetheless, to respond to the initial query, it would appear that those who engage in

loansharking have also engaged in gambling. This may suggest a "inter-flow" of revenues between the gambling and loansharking marketplaces. However, there appears to be very little justification to arrive at a similar assumption regarding narcotic traffickers and gamblers, for there appears to be little similarity in criminal career profiles. As represented in this table, the relationship between narcotic traffickers who engage in gambling and gamblers who engaged in narcotics trafficking is apparently negative, and tentatively suggests that various illicit marketplaces may attract different personality types. Again, lacking any intensive analysis of revenue distributions, there is little more that can be concluded.

As we noted in the earlier portion of this sub-section, these two studies in essence represent a more intensive analysis of gambling enforcement policy than is currently available through the traditional data reporting systems, and we believe the first step in refining data collection and analysis for public policy decisionmaking. In concluding this sub-section we believe it is important to provide a generalized overview of gambling enforcement practices throughout the State. However, we would like to point out that the data represented in these statistics fail to adequately discriminate between gambling arrests of an "organized crime nature" (i. e., bookmaking and lottery) and those of an "unorganized crime nature" (i. e., social gambling, dice, cards, etc.).



The data represented in the Uniform Crime Reports (New Jersey: 1971-1973) appears consistent with the findings of the Reidel/Thornberry, Reuter/Intelligence Bureau and national statistics regarding "who" is being arrested. In New Jersey, blacks represented the largest number of persons arrested for gambling offenses, with a consistent increase from 51% in 1971 to 56% in 1974. Simultaneously, whites were consistently decreasing in rates of arrests, from a high of 48% (in 1971) to 41% (in 1974). Regardless of the issue of "perceptions of discriminatory enforcement" (previously discussed) a more critical public concern emerges. Roebuck, in comparing the demographic and social characteristics of blacks arrested for gambling and blacks arrested for non-gambling offenses found that those blacks arrested for gambling offenses were more educated, had more stable family lives, and came from middle-class families (Roebuck, chapter 8). Thus, he suggests that current gambling enforcement practices may remove valuably talented people from the black community -- people whom present the best prospect for individual and community development.

Disposition rates for gambling offenses between 1972 and 1974 indicates that 60.4% of all gambling offenders are found guilty or plead guilty; 24.4% of the cases are dismissed; and 15.2% are found "not guilty". Following conviction, we find that 63.4% of those found guilty received a suspended sentence, probation, fine and/or other penalty. Of those sentenced to prison, 20.8% received a sentence of one year or more; the remaining 79.2% received a jail sentence of less than one year (Appendix I, p. 721).

Obviously, this data may indicate that the imposition of a prison term (one year or more) is judiciously applied to only those who are perceived as part of an "organized crime conspiracy" (see State vs. Ivan, 1960, p. 197). We would suggest that an analysis of the criminal career patterns of those sentenced to state prison would provide an illuminating insight into how this sentencing policy was actually applied. 35

Inasmuch as any final judgement regarding the "effectiveness" of enforcement practices rests solely with the reader, we believe that it is reasonable to conclude that a co-operatively formulated gambling enforcement policy can provide credibility to gambling laws that are consistently characterized as "antiquated, hit and miss, or generally inadequate" (King, p. 11). To echo the sentiments of the National Gambling Commission,

While State legislators bear most of the responsibility for the current lack of consistent gambling policies, criminal justice agencies must assume their share of the blame. Police, prosecutors, judges alike have been ostrichlike in their failure to communicate with each other or with State legislatures concerning the problems of enforcing gambling prohibitions. The prevailing attitude seems to be that each criminal justice agency can perform its function while remaining oblivious to what occurs in the rest of the system, and that it is inappropriate to interfere in the legislative process. The policy decisions of criminal justice agencies that affect gambling enforcement must be made cooperatively (Gambling Report, p. 117).

6.0 REDEFINING THE GOALS AND OBJECTIVES OF CRIMINAL JUSTICE POLICY

Consistent with the previously discussed criminal justice policy considerations it is essential in developing official policy to identify and articulate precisely what in effect the agency attempts to accomplish through the enforcement of gambling laws. The National Gambling Commission in response to establishing a realistic goal concluded,

... that the major enforcement effort be directed at large-scale organized gambling, and that enforcement against less serious forms of gambling offenses -- such as social gambling in public and public activity by low-level employees of gambling organizations -- be aimed at accomplishing the above objectives (Gambling Report, p. 119).

Obviously, the Commission is arguing that the enforcement of gambling laws against low-level operatives to be used solely as a means to an end rather than the end in itself. The goal, therefore, is not to eliminate illicit gambling through enforcement -- an unrealistic consideration according to the Commission -- but rather to eliminate or break-up the monopolistic practices of illicit gambling syndicates.

Analyzing this argument further, one must determine what elements permit or encourage an illicit gambling syndicate to maintain monopolistic control over an illicit industry, such as gambling in a particular locale. Two such means available in the illicit marketplace are violence and corruption. Dwight Smith confronts this problem in his analysis of illicit enterprise stating,



Conventional organized crime control strategists, directed at suppressing criminal organizations, attempt to attack those organizations directly by destroying their leadership cadres. It has not been a very successful strategy for many reasons. Might it be possible, however, to obtain greater results by trying to modify the task environment, rather than the organization to be presumed to be at its center, in ways that restrict possibilities for stability in the illicit enterprise?

It seems clear that illicit enterprises tend to be more amenable to consolidation, or conglomeration, than legitimate enterprises. Under conventional theories... the explanation for that tendency rests on faith in the reality of a conspiratorial organization of crime that survives on bribes and muscle. From the perspective of illicit enterprise, however, it is apparent that what we have observed and conventionally called "organized crime" is really illicit aspects of two widespread entrepreneurial technologies in American life: the mediating technology of power brokering and the service technology of security and enforcement. (Smith, pp. 340-343).

In effect, Smith argues that the environment in which the illicit marketplace has functioned and thrived must be altered if government is to have a significant impact on "organized crime." Thus violence and corruption, both of which are indispensable to the effective and monopolistic efforts of organized crime syndicates, might well be given greater priority than the illicit marketplace -- gambling. However, this imposes yet another dilemma in developing criminal justice policy.

Gilbert Geis, in his analysis of violence and organized crime, proposes an interesting theoretical proposition. Essentially, Geis argues that one measure of law enforcement's success at combatting "organized crime" may be determined by examining the levels of violence associated with organized crime. In other words, Geis suggests, that an analysis of law enforcement's success may indicate a rise in the rates of violence, and conversely, if unsuccessful, low rates of violence may be exhibited. Obviously, the stability of the particular marketplace being examined, such as narcotics, gambling, loansharking, prostitution, etc., may affect the rate of violence as suggested in sub-section 5.2.<sup>36</sup> One may even go as far as to suggest that as organized crime violence increases, corruption associated with organized criminal activities decreases and vice-versa. Thus, if law enforcement and the criminal justice processes were capable of achieving "success", it may be faced with the alternative -- high rates of violence. Moreover, one can argue that if no "legitimate" institution of government emerges to fill the void created by the dissolution of "organized crime", resortion to an even more deleterious means of attaining social, political, or economic parity may emerge.<sup>37</sup>

The dichotomy posed in this analysis places criminal justice administrators in a dilemma. If one argues that the dissolution of gambling monopolies should be the primary goal of the criminal justice system, thus returning the monopolized illicit marketplace to a free-enterprize status -- a position not far removed from the enforcement rationale in the "legitimate"

marketplace -- it then concedes that it (law enforcement) will never eliminate the illicit marketplace. However, such a concession may rid law enforcement of an unattainable goal, and more importantly, law enforcement and the criminal justice processes may hopefully regain (or gain) the support of the community it is designed to serve. Obviously, there is little (if any) "reality" in a criminal justice policy that attempts to rid a society of this so-called "hedonistic desire," nor is there any consistency, logical rationale or "justice" supporting such a public policy. There is, we believe, a logical rationale, given the political economy of our society, to develop an enforcement policy that seeks to undermine "exploitive monopolistic" practices of any economic enterprise, whether it be in the legitimate (e.g., sanctioned by the laws of the state) or the illegitimate marketplace. Under the past (and present) enforcement strategy, the focus of governmental interdiction was (and is) largely based on the theoretical presumption that an excessive number of arrests would "underscore revenues to organized crime" through an increase in operating costs. We believe that such a strategy discounts the "elasticity of the illicit marketplace" -- that costs are merely passed on to the desirous consumer or that the illicit marketplace merely relocates to areas where there is "cheaper", thus more expendable labor force. Consequently, any appreciable impact is only temporary. <sup>38</sup>

Conversely, it is conceivable that an increase in enforcement activity will inflate the cost to the consumer, which as Moore argues, may deter a

sufficient number of "would-be consumers" from (economically) supporting the illicit marketplace. Consequently, the price of the product remains excessively high, yet the number of persons patronizing the industry is maintained at a "tolerable minimum." Thus, if a policy is developed that permits the illicit marketplace to compete in a free-market economy, theoretically the cost to the consumer should indicate an appreciably decrease (which will, according to Moore, result in marketing practices resulting in a larger number of consumers). However, we would point out that this latter approach has been employed in New Jersey in both the area of gambling enforcement and the enforcement of the marijuana laws (as evidenced by the number of arrests and the ability of the "independent entrepreneur" to function), yet there are no indications that "would be consumers" have been deterred from patronizing the illicit marketplace. In essence, we would argue that this latter strategy fails to fully appreciate the role of the illicit marketplace as both an "economic stabilizer" and "resource equalizer". 39

Beyond this theoretical rationale and of greater pragmatic utility to criminal justice administrators, is the legitimation of the institution of criminal justice. As we noted earlier, as a society becomes more interdependent, the reliance upon official mechanisms of social control takes on added importance. The notion that a society, which is comprised of numerous social control institutions (i. e., the family, education, religion, criminal justice, etc.) must maintain its legitimacy and relevancy to the larger community, is a well-established political and sociological "fact." If the criminal justice apparatus is to fulfill its function, it must enjoy the respect

of its constituency. Although we recognize that the criminal justice apparatus is coercive by definition, we also believe that respect (and not fear) can be founded on "shared systems of belief" that results in "voluntary compliance." In essence, Duke's notion that if "the masses come to believe that their interests are being served by their political, social, and economic leaders, and they believe the distribution of power and economic goods to be just and fair," then the masses will accept that the existing power structure as "acceptable and legitimate" is the basis for this belief (Duke, pp. 68-69).

Drawing from the voluminous data amassed by the National Gambling Commission, we believe that it is erroneous (at least in the northeastern \* sector of the country) to conclude that gambling prohibition enjoys a "social consensus." The "fact," as we interpret the data, indicate that "many citizens say they want gambling laws enforced" while a "sizable majority of citizens would not actively help police in their gambling enforcement efforts" (Appendix I, pp. 241-43). Moreover, the results of this study indicated that "when asked about relative priorities... the majority of citizens feel that gambling has a very low priority in comparison to other crimes (Appendix I, p. 242). Admittedly, there may very well be a positive correlation between "street crime" and illicit gambling, however society apparently has not perceived such a relationship.

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\* It should be noted that 20% of all adults living in the Northeast said they had bet on at least one of the four illegal games asked about.

In fact, if Ianni's research is in any way indicative of public perceptions of organized crime in the lower socio-economic community (which is most affected by "organized crime"), we find that residents of Bedford Stuyvesant and Harlem

... did not perceive organized crime as a close-knit, clandestine activity operating on the fringes of society, supplying the illicit desires of a greedy American public. Rather, the great majority of respondents identified organized crime as some manifestation of the white establishment exploiting black and Puerto Rican neighborhoods.

We submit that society (in general) perceives the "ominous presence and power" of "organized crime" but only demands governmental intervention when this power represents an "exploitive monopolization" by certain interest groups, which is inimical to the interests of the community. In essence, we believe that whether it be in the "legitimate" or "illegitimate" marketplace, the focus of criminal justice interdiction (public policy) should be restricted to those activities that represent the greatest threat to the community's best interest, <sup>40</sup> as defined by the individual community. This policy consideration was publically articulated by Justin Dintino in testimony before the Pennsylvania legislature when he stated,

... law enforcement in New Jersey, which I would generally characterize as honest, was provided the necessary tools to re-legitimate the institutions of government to the people. You notice I said re-legitimate the institutions as opposed to eradicating organized crime. I personally believe that the only enlightened approach to "controlling" organized crime is making the institutions of government legitimate to the people. I do not believe that enforcement alone will eradicate the illicit activities that organized crime engages in... But we can legitimate the institutions of government to the people--that is, make the institutions of government free of corruption, the very corruption that threatens the foundations of democracy and the free-enterprize system.

7.0 TOWARDS A RE-DEFINITION OF THE "PROBLEM": IMPLICATIONS FOR PUBLIC POLICY

In examining the limited research available on evaluation of criminal justice programs, one factor consistently re-appears: there is relatively little substantive thought or effort devoted towards developing evaluation models that assess the impact of a particular organized crime control strategy on the illicit syndicated marketplace (e.g., narcotics, gambling, loansharking, prostitution, pornography, etc.). Apparently, criminal justice practitioners and criminologists have been either unable or unwilling to develop evaluation models that can be utilized to test the effectiveness of crime control strategies, particularly as these strategies relate to "syndicated crime." We believe this reluctance stems from the inability of researchers to "get a handle" on the relative scope and dimensions of crimes involving "consensual victims." Consequently, any efforts to develop meaningful evaluation models is hampered by the lack of hard (statistical) data. Undoubtedly, this has resulted in what the G.A.O. has referred to as a "faltering effort" -- the lack of a consensus regarding the definitive scope of the term "organized crime" and the absence of a "national strategy for combatting organized crime" (G.A.O. Report, p. 12). It is interesting to note that a similar criticism emerged in 1967 when the President's Commission concluded that "the investigation and prosecution of organized criminal groups in the 20th century has seldom proceeded on a continuous institutionalized basis" (President's Commission, p. 196).

At that time, the Commission and other scholars attributed this "faltering effort" to five significant factors:

- (1) Organized crime activities, particularly those involving syndicated-type-crimes-gambling, narcotics, prostitution, loansharking, etc. - usually lack a complaining witness. Since these type of criminal activities are predominantly "consensual" in nature, the concept of victimization is diminished. Moreover, the fact that such laws prohibiting this type of "deviant" behavior are not universally accepted, the effectiveness of law enforcement in the control of such behavior is lessened.
- (2) The fact that such laws are not universally accepted as criminal conduct provides the impetus for corruptive exploitation. Since law enforcement must establish a system of priorities, syndicated-type crime enforcement is often relegated a low priority rating. Thus, the decision to invoke the criminal sanction is often an exercise of arbitrary and discriminatory discretion, based upon economic considerations.
- (3) Unlike common "predatory - mercenary" crime, organized crime lacks any uniform system of reporting, thereby reducing the ability of law enforcement to adequately and efficiently allocate resources.
- (4) A traditional characteristic of most organized criminal groups has been the utilization of fear and/or violence. This fear can either be physical or economic and is directed against suspected or actual informants, witnesses, and competitors.



- (5) The imposition of the criminal justice sanction directed against those engaged in the "visible" criminal activity does not result in the reduction or eradication of organized crime groups. Ianni illustrated this point quite adequately when he stated (Ianni, p. 331):

Strategies developed to combat street crime are unsuccessful in organized crime because they are oriented towards criminal acts rather than the transactive group processes. There is now abundant evidence that organizational intelligence and analysis (rather than individual case development) could dramatically improve the ability of the criminal justice system to identify the social, cultural, political, and economic factors that allow organized crime to develop and prosper.

In an effort to compensate for the unique character of "organized crime," numerous proposals and recommendations have been offered which are primarily directed at attacking these "visible manifestations" of organized crime. One such proposal called for the implementation of intelligence systems in every major police department throughout the nation which would be utilized solely "to ferret out organized crime activity and to collect information regarding the possible entry of criminal cartels into area's of criminal operation (President's Commission, p. 204). Moreover, the Commission suggested that law enforcement increase its strategic intelligence capability, utilizing concepts developed in the social sciences, economics, political science, and operations research (President's Commission, p. 199). The Commission stated: (President's Commission, p. 199):

At present, most law enforcement agencies gather organized crime intelligence information with prosecution as the immediate objective. This tactical focus has not been accompanied by the development of the full potential strategic intelligence. Prosecution based merely upon individual violations that come to the attention of law enforcement may result in someone's incarceration, but the criminal organization simply places someone else in the vacated position.

This observation was reiterated by Ianni, who while conducting research into the dynamics of organized crime, concluded:

There is now a beginning appreciation in the criminal justice system that interdiction and apprehension of individual organized crime figures is a necessary but insufficient method of organized crime control. Yet both research and intelligence operations related to organized crime remain unchanged and there is also an overemphasis on the guillotine approach: if we knock off the head, the rest of the organization will fall apart. We have been knocking off some heads with some frequency recently but... organized crime not only survives but seems to be thriving (Ianni, 1974, p. 331).

Private and governmental research efforts have focused on the "problem" of organized crime and generally, have recommended substantive changes in legislation and/or improvements of the criminal justice apparatus.

Among some of the more significant proposals were:

- (1) The need to develop constitutional legislation making it illegal to belong to an organization where an allegiance is taken that assumes disloyalty to the country (Cressey, p. 308).
- (2) Training strategic organized crime intelligence specialists that are capable of developing and innovating new techniques to control organized crime (Cressey, p. 298).

- (3) Developing adequate legislation on a state and federal level to control gambling, narcotics, loansharking, etc. (Plowscoe, Annals, 1963, p. 81).
- (4) Increase law enforcement's capabilities in the areas of electronic surveillance, witness immunity, and search and seizure (Plowscoe, Annals, 1963, p. 81).
- (5) Co-ordinating investigative efforts between local, state and federal law enforcement agencies (Lumbard, Annals, 1963, pp. 86-90).
- (6) Increase the custodial sentences and monetary fines levied against persons convicted of syndicated crimes (Lumbard, Annals, 1963, pp. 86 - 90).
- (7) Understand organized crime as an organizational entity that is symbolically rather than parasitically associated with American society (Ianni, 1974, p. 332).
- (8) Employ tactical actions calculated to breed internal dissention, to capitalize upon existing dissention or to create distrust and suspicion. Any legal means that can be used to undermine the criminal code and the internal relationships of members and associates (Salerno, p. 334).
- (9) Improving the quality of local law enforcement and the elimination of corrupt practices in dealing with organized crime (Plowscoe, Annals, 1963, p. 76).

In addition to these changes, Homer suggests that when developing an organized crime control strategy, five basic issues must be examined:

- (1) What is the chance of success? In this case, success is equated with arrest and conviction. In other words, the planner/analyst/evaluator may assign a high value to those cases wherein an arrest and conviction is likely and a low value to those cases where an arrest and conviction is unlikely.
- (2) To what extent do the crimes being committed affect the personal safety of the so-called victims? Obviously, in this particular rationale, the planner/analyst/evaluator is concerned with the crimes that take the greatest human toll as individual acts. In other words, crimes against people are afforded a greater priority than crimes against property.
- (3) How much illicit revenues do the crimes being committed yield to the organized crime syndicate? The planner/analyst/evaluator assigns a relative value to those revenue producing ventures that yield the greatest incomes; the assumption being that if incomes are substantially reduced, the syndicate is unable to maintain its strength or pursue other activities that require such financing.
- (4) Are the crimes being committed of the type that the criminal justice processes are least likely to detect employing traditional investigative-response techniques? In other words, do they "crimes" lack a complaining witness (i. e. , gambling, loansharking, narcotic, etc.)? Obviously, the rationale underlying this consideration is that such crimes are insulated from the normal purview of the criminal justice processes and therefore require distinct investigative techniques.

- (5) To what extent do the crimes being committed result in corrupt practices? In this particular question, the underlying rationale assumes that official corruption is necessary if organized crime is to survive and that such corrupt practices have a deleterious effect upon our basic governmental institutions, and more particularly, the criminal justice network.

Essentially, these basic considerations cited by Homer are wholly dependent upon the capacity of domestic intelligence systems to project both long range goals (strategic intelligence) and short-term objectives (tactical intelligence). The absence of a sophisticated intelligence apparatus -- that is, one that is capable of transforming raw and seemingly unrelated pieces of intelligence data into meaningful and comprehensive intelligence assessments while simultaneously protecting the civil rights and liberties of American citizens -- will obviously impair one's ability to arrive at the "valuative judgements" which Homer proposes. Moreover, these "valuative judgements" are precisely dependent upon the perception (s) of the policy-makers, and it is highly questionable whether having arrived at a consensus (among policy-makers) regarding these five issues, a more effective public policy could be formulated.

We might suggest that when attempting to formulate and implement a particular crime control policy, attempts must be made to predict not only the manifest effects of such policies, but also to assess the latent consequences of an enforcement policy. <sup>41</sup> Management data as currently collected and analyzed fails to provide criminal justice administrators with usable findings -- findings

that can be translated into public policy. The proof of this lies in the various studies that were conducted in New Jersey (and the other material amassed by the National Gambling Commission) which failed to determine the impact of any one policy on the illicit gambling marketplace. In examining the volumes of literature and research gathered by this Commission, there is virtually no way of determining whether a "stringent" gambling enforcement policy was more effective than a laissez-faire policy; we do not know whether violence or corruption increases or decreases given the various alternative policies that may be implemented; nor are we capable of determining whether a "non-interventionist" philosophy may be more beneficial to "community interests" than an "interventionist" philosophy.

In essence, we believe that if a particular crime control policy or strategy is to be effective, it must have the support of the community it is designed to protect. As was noted by the Ianni's in their study, there was an obvious inconsistency between what the official agents of social control perceived as the most damaging aspects of "organized crime" and what those within the community perceived as having a deleterious effect upon the community. Given the pluralistic nature of American society, we believe criminal justice policy (made possible through the "proper" use of discretion) must be developed at a community level. Although we admit that such an approach to the channeling of police discretion will undoubtedly result in "inconsistent enforcement policies" among and between various communities, we also believe that inconsistent

enforcement policies need not necessarily result in "injustices".<sup>42</sup> If democracy is to represent the widest diversity of human behavior, criminal justice policies must reflect the ability to adapt constantly to the changing mores and norms within the society.

As we pointed out earlier, perceiving "organized crime" from a societal perspective -- a perspective that seeks to identify and single out criminal societies that merit official intervention -- makes it all the more difficult to perceive "organized crime" as a manifestation of American society (Homer, p. 177). Given the recommendations as set forth by the various governmental commissions, we are still confronted with the eternal question, "why does organized crime continue to survive and thrive in American society"? The answer, we believe, lies in the political economy -- an economy that affords those who have accumulated large amounts of wealth a comparable standing in the social and political processes.<sup>43</sup> The elimination of "organized crime," which we point out may not be practical nor desirable, lies in bringing about needed reform in our institutions of government. It is readily apparent that the institution of "organized crime" provides the society (or a significant portion thereof) with a vital if not necessary need that apparently has been neglected by the so-called "legitimate" institutions of government. If "organized crime" did not perform this necessary role, we question whether "organized crime" would have survived and thrived over such an extended period of time. In other words, if the "legitimate" institutions of government are capable of satisfying the relative

needs of a society (e.g., the equitable administration of "justice", equal opportunities and relative political, social and economic parity which in our society is based on the notion of "meritocracy"), the need for "organized crime" would be effectively neutralized. This point was well-illustrated in Whyte's analysis of organized crime and political organizations and Merton's analysis of the functional necessity of the political machine during the latter part of the nineteenth century. As Merton so aptly concluded,

44

... inevitably, unless the reform also involved a "re-forming" of the social and political structure such that existing needs are satisfied by alternative structures or unless it involves a change which eliminates these needs altogether, the political machine (and organized crime) will return to its integral place in the social scheme of things. To seek social change without due recognition of the manifest and latent functions performed by the social organization undergoing change, is to engage in social ritual rather than social engineering (Merton, p. 135).

#### 8.0 ROUTINIZING EVALUATION: AN EVALUATION MODEL APPLICABLE TO GAMBLING ENFORCEMENT PROGRAMS.

In developing an evaluation model applicable to measuring the impact or effectiveness of a particular "organized crime control program," primary focus must be directed towards selecting specific indicators, or to coin Glaser's term "evaluation criterion," that can be quantitatively weighted. 45



Essentially this encompasses the selection of indicators that are both relevant to and logically consistent with the explicit theoretical rationale upon which the program is based. We have tentatively formulated what we believe to be a comprehensive data collection plan that will elicit on a routine basis more accurate data about the illicit gambling marketplace and corresponding enforcement practices. Although this particular collection plan has been designed to meet the needs of an effective gambling enforcement program, given certain revisions, this collection plan could be adapted to most any "organized crime control program" that focuses on what is commonly referred to as "victimless syndicated crimes" (e.g., narcotics, prostitution, loansharking, etc.).

In essence, this particular data collection plan assumes that changes in enforcement strategies and practices will alter the structural relationships within the illicit marketplace, since maximum productivity in the illicit marketplace depends largely upon maintaining the stability of the marketplace. Smith makes a similar assumption when he states that it might be possible "to obtain greater results by trying to modify the task environment, rather than the organization presumed to be at its center, in ways that restrict possibilities for stability in the illicit enterprise" (Smith, p. 340). Thus, we contend that through the conscious manipulation of the so-called "task environment" it is possible to alter the social, political, and economic relationships of the illicit marketplace, and hopefully affect the stability of the illicit marketplace which consequently will diminish profits.

However, in performing this act of so-called "social engineering" and modifying behavior patterns might we also point out that there may be some serious questions regarding the employment of such techniques in a liberal, democratic society that must be confronted. We need not reiterate the numerous revelations of "behavior experimentation" engaged in by agents of social control, for there is sufficient data available to demonstrate the dangers associated with such practices. In applying Cancean's notion that "social - structural (economic and political) change may result in the disappearance of an undesirable state 'G' but may result in the appearance of another state 'G' that is also undesirable" (Mayer, p. 125), we believe that the undesirable condition of an illicit activity may be replaced with the undesirable condition of an oppressive society.<sup>46</sup> Therefore, we strongly suggest that if agencies of social control, since they not only possess the exclusive legal right to exercise certain coercive prerogatives over members of society but also inherit corresponding responsibilities to ensure that these rights do not transgress our relative notions of "human rights," engage in such practices, definitive guidelines must be adopted that clearly and precisely define the parameters of acceptable (both legally and morally) behavior.<sup>47</sup>

Essentially, we have attempted to develop a collection plan that will provide criminal justice administrators with more meaningful data that hopefully may be translated into public policy. As we have noted time and time again, the lack of meaningful data--data that can be translated into public policy--has been

and is a critical failing of law enforcement. Consequently, to avoid this particular problem in the future, we have extricated what we believe to be the basic indicators necessary to formulate criminal justice strategies. The data has been categorized according to its functional utility. Moreover, these indicators are fundamentally related to the various theoretical rationales cited in the earlier sections of this study.

In finalizing and routinizing the collection process, we have developed what we have labelled a "Gambling Inventory Data Sheet" which is compatible to computerization. Although we acknowledge that such a form in the endless array of bureaucratic mailaise just places another burden upon the "operational" components of the criminal justice system, we suggest that the responsibility for collecting, maintaining, and analyzing this data be functionally assigned to the analytical component of an intelligence unit. <sup>48</sup> We base this judgement on the fact that crime control planning is the primary responsibility of an intelligence unit, and this data collection form is merely another "analytical tool" which prescribes data sets (demographic, investigative, electronic surveillance, and intelligence) necessary for the planning and evaluation process. Moreover, since this "analytical tool" is designed to elicit more meaningful data whereby public policy decisions -- strategic intelligence -- can be more rationally and "justly" derived, it seems appropriate that ultimate responsibility for collection, maintenance and analysis reside within the domain of an intelligence unit. <sup>49</sup>

## 8.1 THEORETICAL FRAMEWORK FOR EVALUATION

In developing this "Gambling Inventory Data Sheet" we have generated a series of theoretical propositions (far from being all inclusive) that will provide us with both general and specific parameters for evaluation. Succinctly stated, these propositions are:

- . An increase in the quantity of gambling \* arrests will result in a decrease in the quality of gambling arrests. Conversely, an increase in the quality of gambling arrests will result in a decrease in the quantity of gambling arrests.
- . An increase in the quality of gambling arrests will result in a decrease in net profits realized by gambling syndicates.
- . An increase in the frequency of corruption arrests directly associated with illicit gambling will result in an increase in the amounts of violence associated with illicit gambling.
- . An increase in the quality and quantity of gambling arrests will result in an increase in the frequency of violence directly associated with illicit gambling.
- . An increase in the quality of gambling arrests will result in a decrease in the rates of conviction for illicit gambling. An increase in the quality of arrests followed by convictions will result in an increase in the severity of sentence.
- . An increase in the amounts of monies gambled legally will result in a decrease in the amounts of monies seized and/or the estimated "daily play" in illicit gambling.

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\* Gambling arrests shall refer to bookmaking and/or lottery violations and not to social forms of gambling such as dice, craps, etc.

- . An increase in the frequency and quality of arrests for gambling will result in the proliferation of decentralized and/or new organized gambling syndicates.
- . An increase in the quantity and quality of gambling arrests will result in an increase in the revenue-producing capabilities of one criminal organization at the expense of another.
- . An increase in the quality and quantity of gambling arrests will result in greater solidification and insulation of those functioning in managerial positions in gambling organizations.
- . An increase in the intensity of gambling enforcement will result in a re-allocation of resources to other criminal activities.

8.2 PROCEDURAL GUIDELINES FOR COLLECTING DATA FOR THE "GAMBLING INVENTORY DATA SHEET"

For purposes of clarity and simplicity, we have reduced the "Gambling Inventory Data Sheet" into four distinct sub-categories. Subsection 1 provides the demographic characteristics of the individual arrested for a gambling offense; subsection 2 provides the investigative circumstances of the arrest; subsection #3 provides basic descriptive data relative to the investigative technique (s) employed; and subsection 4 provides the necessary intelligence relating to the scope and dimensions of the particular illicit gambling operation. The following explanation will serve as a guide for completing this form:

CASE # \_\_\_\_\_  
 X-REF TO: \_\_\_\_\_  
 C.I.S.# \_\_\_\_\_  
 ELECTR. SURV. \_\_\_\_\_  
 INDICT.# \_\_\_\_\_

NEW JERSEY STATE POLICE  
INTELLIGENCE BUREAU

GAMBLING INVENTORY DATA SHEET

DEMOGRAPHIC DATA

SBI#	FBI#	DOB	AGE	POB	RACE/ETHNICITY	SEX	MARITAL STATUS
EDUCATIONAL LEVEL		NO. OF CHILDREN		EMPLOYMENT STATUS		AGE OF FIRST ADULT GAMBLING ARREST	
AGE OF FIRST CRIMINAL ARREST		NO. OF PRIOR ARRESTS		TYPE OF ARRESTS (LIST CHRONOLOGICALLY)			
NUMBER OF MONTHS SERVED IN PRISON				1	5		
				2	6		
				3	7		
				4	8		

INVESTIGATIVE DATA

DATE OF ARREST	TIME OF ARREST	DAY OF ARREST	CRIMINAL CHARGE	ARREST WITH WEAPON	ARREST WITH NARCOTICS
MUNICIPALITY OF ARREST	COUNTY OF ARREST	ARRESTING AGENCY	LOCATION OF ARREST	CIRCUMSTANCES OF ARREST	
STATE RESIDENT	AMOUNT OF PROPERTY SEIZED	AMOUNT OF MONIES SEIZED	AMOUNT OF BAIL		
ORIGIN OF ARREST	AJUDICATION	SENTENCE	EST. HRS. OF INVEST.	EST. COST OF INVEST.	

ELECTRONIC SURVEILLANCE/WITNESS IMMUNITY DATA

NO. OF CONVERSATIONS INTERCEPTED	NO. OF INCRIMINATING CONVERSATIONS INTERCEPTED	NO. OF PERSONS INTERCEPTED	NO. OF DAYS IN OPERATION		
AGENCY INITIATING ELECTRONIC SURV.	NO. OF HRS. ALLOCATED TO INVESTIGATION	EST. COST OF ELEC. SURVEILLANCE	IMMUNITY OFFERED	ON-BODY RECORDER	

INTELLIGENCE DATA

CRIMINAL ORGANIZATION	FUNCTIONAL ROLE	EST. DAILY PLAY	EST. WEEKLY SALARY
EST. NO. OF PERSONS INVOLVED IN OPERATIONS	INDICATIONS OF CORRUPTION		INDICATIONS OF VIOLENCE
INDICATIONS OF INVOLVEMENT SUBSEQUENT TO ARREST	LEGITIMATE BUSINESSES OWNED BY OFFENDER	TYPES OF VEHICLES OWNED BY OFFENDER	
INDICATIONS THAT MONEY WAS BEING USED IN OTHER ILLEGAL VENTURES	INDICATIONS THAT OFFENDER WAS LAYING OFF TO OTHER BANKS	INDICATIONS THAT OPERATION WAS REPLACED BY ANOTHER ORGANIZATION	
INDICATIONS THAT OPERATION MOVED TO ANOTHER POLITICAL JURISDICTION	INDICATIONS THAT OFFENDER IS ENGAGING IN OTHER ILLEGAL ACTIVITIES	MONIES GAMBLED ON RACE TRACKS	
MONIES GAMBLED IN CASINOS	MONIES GAMBLED ON LEGAL LOTTERY		

Demographic Data

- (a) SBI & FBI #: These numbers represent the identifiers found on both the Federal and State Criminal history reports (which can be obtained from the State Bureau of Identification).
- (b) Date of birth, age, and place of birth:  
This data is obtained from the State criminal history reports. Compute the age closest to the previous or next birth date.
- (c) Race/Ethnicity: the following code will be used to identify race/ethnicity of the offender:

01 = Hispanic	07 = Jewish
02 = Italian	08 = Polish
03 = Black	09 = Oriental
04 = Irish	10 = Arab
05 = German	11 = All others/Unknown
06 = Greek	

- (d) Sex: Code as follows (see fingerprint cards):

01 = Male  
02 = Female

- (e) Marital Status: Code as follows (see fingerprint cards)

01 = Single  
02 = Married (common-law included)  
03 = Separated  
04 = Divorced  
05 = Widow/Widower

- (f) Educational Level: Code as follows:

01 = completed grades 1 - 7  
02 = completed grammar school  
03 = completed grades 9 - 11  
04 = completed high school  
05 = completed grades 13 - 15  
06 = completed college  
07 = completed technical school  
08 = post-graduate education

This data may be obtained from the arrest report or other official documents such as job applications, employer records, etc.

(g) Number of Children: cite the number of children in the family. This data may be obtained through employer records, tax returns, etc.

(h) Employment status: cite as per code,

- 01 = self-employed
- 02 = unemployed
- 03 = employed

This data may be obtained from arrest report, tax returns, or drivers license application.

(i) Age of First Gambling Arrest: cite the age at time of first gambling arrest and compute closest to previous or last birthdate.

(j) Age of First Criminal Arrest: Indicate numerical age at time of first criminal arrest as per previous computation.

(k) Number of prior criminal arrests: cite the number of prior criminal arrests (to be obtained from criminal history record).

(l) Types of arrests: insert the proper code as per following:

- |                          |                |
|--------------------------|----------------|
| 01 = Violent Crime       | 04 = Extortion |
| 02 = Property Crime      | 05 = Narcotics |
| 03 = Complaintless Crime | 06 = Gambling  |

After each code, indicate in parenthesis the number of months between each successive arrest.

(m) Number of months served in prison: since the actual number of months served in prison will be extremely difficult to obtain, indicate this figure by dividing the maximum number of months by one third.

### Investigative Data

(a) Date of arrest: cite date of arrest as per numerical month, date, year.

(b) Time of arrest: cite time in accordance with military code (e.g., 0100, 0200, 0300, etc.)



(c) Day of arrest: indicate day of arrest as per code,

01 = Monday	04 = Thursday
02 = Tuesday	05 = Friday
03 = Wednesday	06 = Saturday
	07 = Sunday

(d) Criminal Charge: indicate the statute (s) charged with.

(e) Arrested with weapon/narcotics:

01 = Yes  
02 = No

(f) Municipality of Arrest: code as per Uniform Crime Reporting System pages 2-8, Addendum #8.

(g) County of Arrest: Code as per Uniform Crime Reporting System, pages 2-8, Addendum #8.

(h) Location of arrest: Code as per Uniform Crime Reporting System pages 1-2, Addendum #6.

(i) Circumstances of Arrest: code as per

01 = Search warrant  
02 = On-sight arrest  
03 = Grand Jury Indictment (resulting from no previous search warrant issued).

(j) State Resident: Code as per

01 = Yes  
02 = No

(k) Amount of property seized: cite actual dollar amount of property seized as per property report.

(l) Amount of monies seized: cite actual amount of monies seized as per property report (round off to nearest dollar).

(m) Amount of bail: compute bail as per 10% of the bail set by the judge (only when a bailbondsmen posted same).

(n) Origin of Arrest: cite as per code,

- 01 = State
- 02 = County
- 03 = Local
- 04 = Federal

If arrested through an indictment, cite origin of indictment as per above code.

(o) Adjudication: cite as per code,

- 01 = Not Guilty
- 02 = Guilty
- 03 = Nolle - Pros
- 04 = Pending
- 05 = Mistrial

(ind cate in pencil and change when trial terminated)

(p) Sentence: cite as per code,

- 01 = Incarceration, less than 1 year
- 02 = Incarceration, more than 1 year
- 03 = Probation/Suspended Sentence
- 04 = Probation/Fine
- 05 = Probation
- 06 = Fine
- 07 = Other

(q) Estimated Hours of Investigation: cite the aggregate number of hours of the investigation. This data can be obtained from the weekly activities report (refer to C.I.S. case number).

(r) Estimated Cost of Investigation: compute by multiplying the aggregate number of hours times the salaries of the various individuals assigned to the investigation.

Example: 14 Troopers/Police Officers assigned to Investigation for a total of 1424 man hours; five sergeants assigned to Investigation for a total of 510 man hours; one lieutenant assigned to Investigation for a total of 92 man hours. Average yearly salaries: Trooper 16,435, Sergeant 19,231, Lieutenant 22,482

- (1)  $1424 \div 14 = 102$  man hours per Trooper
- (2)  $510 \div 5 = 102$  man hours per Sergeant
- (3)  $92 \div 1 = 92$  man hours per Lieutenant
- (4) Average Trooper salary per week based on 48 week year = \$342.00
- (5) Average Sergeant salary per week based on 47 week year = \$409.00
- (6) Average Lieutenant salary per week based on 46 week year = \$489.00
- (7)  $102$  (man hrs. per Trooper)  $\div$   $40$  (hr. work week) =  $2.5$
- (8)  $102$  (man hrs. per Sergeant)  $\div$   $40$  (hr. work week) =  $2.5$
- (9)  $92$  (man hrs. per Lieutenant)  $\div$   $40$  (hr. work week) =  $2.3$
- (10)  $2.5 \times \$342.00 \times 14 = \$11,970$
- (11)  $2.5 \times \$409.00 \times 5 = \$ 5,113$
- (12)  $2.3 \times \$489.00 \times 1 = \$ 1,125$
- (13) Total = \$18,208 salaries spent on investigation

Electronic Surveillance/Witness Immunity Data

- (a) Number of Conversations Intercepted; Number of Incriminating Conversations Intercepted; Number of Persons Intercepted; Number of Days in Operation: This data can be obtained from the final electronic surveillance report.
- (b) Agency Initiating Surveillance: cite as per code,
  - 01 = Division of State Police
  - 02 = Division of Criminal Justice
  - 03 = State Commission of Investigation
  - 04 = Division of Gaming Enforcement
  - 05 = County Police
  - 06 = Local Police

- (c) Estimated Cost of Electronic Surveillance:  
Compute as per above-stated formula and include costs of installation.
- (d) Number of Hours Allocated Investigation:  
Can be obtained from final electronic surveillance report.
- (e) Immunity Offered: cite as per code,
  - 01 = Yes
  - 02 = No
- (f) On-Body Recorder: cite as per code,
  - 01 = Yes
  - 02 = No

Intelligence Data

- (a) Criminal Organization: Indicate the criminal organization that the offender was part of. If unknown, indicate by code 01; if individual was not part of a larger criminal conspiracy, indicate by code 02.
- (b) Functional Role: cite as per code,
  - 01 = Runner
  - 02 = Sitter
  - 03 = Writer
  - 04 = Comptroller
  - 05 = Banker
  - 06 = Overseer
  - 07 = Edge-Off Personnel
- (c) Estimated Daily Play: cite estimated daily play using the formula developed by the Policy Sciences Center, Incorporated.
- (d) Estimated Weekly Salary: cite estimated weekly salary of the offender which either can be based upon the Policy Sciences Center formula or other reliable data.
- (e) Estimated Number of Persons Involved: Indicate the number of persons involved in the gambling operation as per reliable tactical analysis.

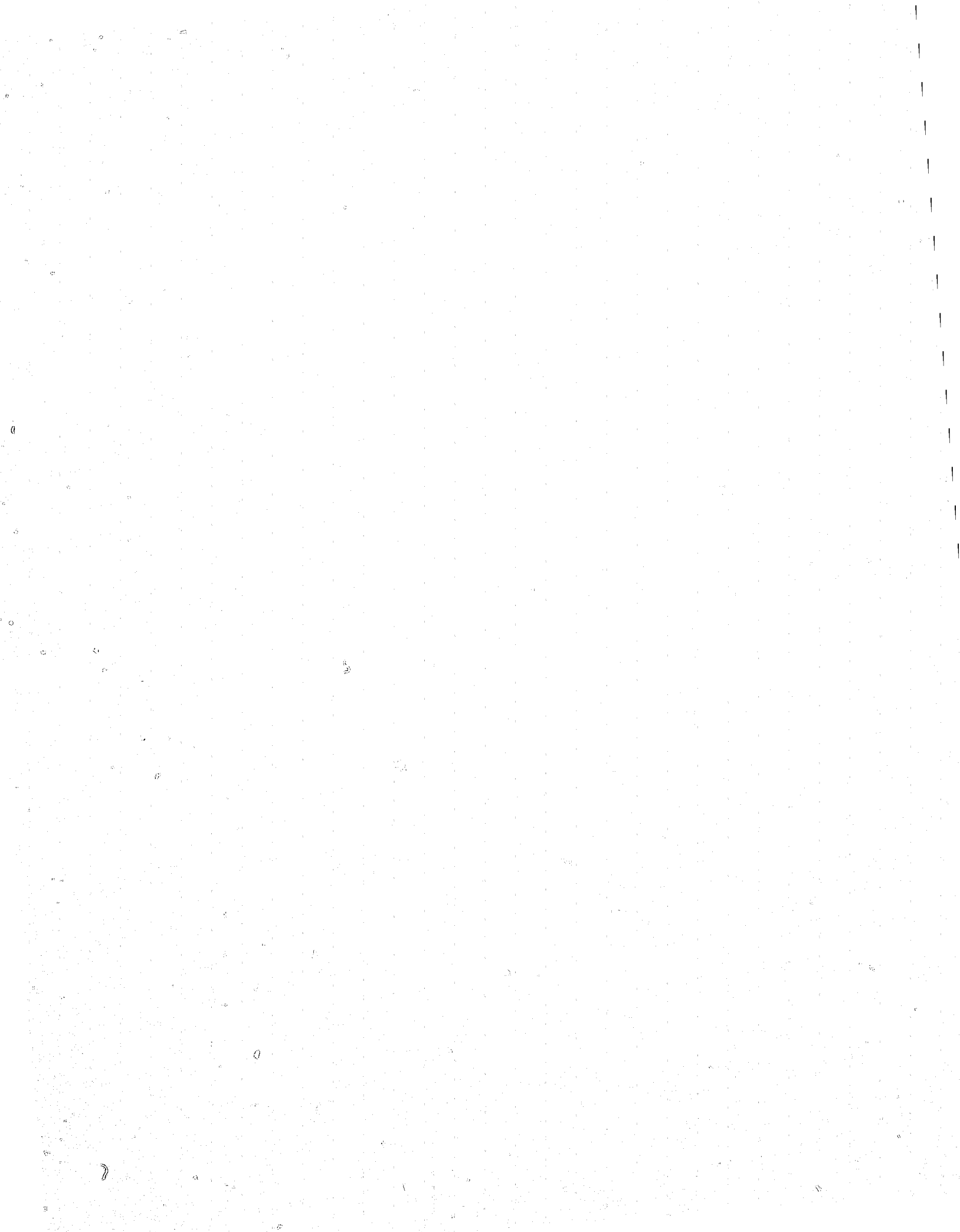
(f) Indications of Corruption: if there was reliable information available to indicate the operation was afforded official protection, cite as per code 01; if there was reliable information available indicating public officials did not afford gambling offenses a high priority, cite as per code 02; if there was reliable information that there were indications of neither, cite as per code 03.

(g) Indications of Violence: if there was reliable data available indicating that the offender used coercive methods such as physical threats and/or actual acts of violence to ensure the stability of his/her gambling domain cite as per code 01; if there was reliable evidence available indicating that someone other than the offender used or engaged in coercive methods such as physical threats and/or actual acts of violence to ensure the stability of the offender's gambling operation, cite as per code 02; if there was reliable evidence available indicating that the offender and/or others have entered into amicable, non-coercive agreement (with the exception of official protection) to ensure the stability of the offender's gambling operation, cite as per code 03; if there was no reliable data to indicate any of these alternatives, cite as per code 04.

(h) Indications of Involvement Subsequent to Arrest: in order to determine the deterrence effect of the punitive sanctions, it is necessary to maintain data on whether the individual returned to the illegal gambling activity subsequent to the arrest. Refinement of this data to include the number of months subsequent to arrest is desirable, therefore the following codes have been established:

- 01 = Return to illegal gambling within 90 days of arrest
- 02 = Return to illegal gambling activity within 180 days of arrest
- 03 = Return to illegal gambling activity within one (1) year of arrest
- 04 = Unknown

(i) Legitimate businesses owned by Offender: indicate the number of legitimate businesses the offender either owns or has an economic interest in. This may require more extensive intelligence data on those arrested.



**CONTINUED**

**1 OF 2**

- (j) Types of vehicles owned by the offender: an indicator of success (when assessed in combination with the other data) is the types of vehicles owned or registered to the offender and/or his immediate spouse. Indicate type of vehicles as per code,

01 = Luxury vehicles (Mercedes Benz, Cadillac, Chrysler Lincoln Continental, Thunderbird, etc.)

02 = Moderately Priced vehicle (Chevrolet, Plymouth, Ford, Dodge, etc.)

03 = Other

- (k) Indications that money was being used for other illegal/legal activities: if there was reliable data to indicate that the monies being amassed through illicit gambling was being used to finance

- (1) legitimate business ventures cite as per code 01;
- (2) narcotics and/or dangerous drug activities, cite as per code 02;
- (3) loansharking or usurious loans, cite as per code 03; if unknown, cite as per code 04.

- (l) Indications that offender was "laying-off" to other banks: if there was reliable data to indicate that the offender was

- (1) "laying-off" gambling action to other "banks" in the same county cite as per code 01;
- (2) "laying-off" to other "banks" outside of the county, cite as per code 02;
- (3) "laying-off" to other "banks" outside of the State, cite as per code 03; if unknown, cite as per code 04.

- (m) Indications that Offender's Operation was replaced by another organization: if there is reliable data available to indicate that the offender's gambling operation has been replaced by another gambling operation, cite as per code 01; if unknown, cite as per code 02.

- (n) Indications that operation moved to another political jurisdiction: if there was reliable data available to indicate whether the gambling operation was relocated in another political jurisdiction, cite as per code 01; if unknown, cite as per code 02.



- (o) Indications That The Offender Is Engaging In Other Illegal Activities: if there is reliable data available that indicates that the offender is engaging in other illegal activities subsequent to arrest, cite as per code 01; if unknown, cite as per code 02.

## 9.0 CONCLUSION

In the preceding pages we have attempted to codify and integrate a series of theoretical concepts into what we believe to be a comprehensive organized crime control planning and evaluation model as it relates to gambling enforcement practices. When we initiated this project, we were committed to confronting what we believed to be the more invidious consequences of gambling prohibitions, recognizing fully the hazards inherent in this course of action (see Glaser, 1973, pp. 171-172). Nonetheless, we agreed that if the intelligence process was to attain its intended goal and gain a "modicum of respectability and legitimacy" both within the criminal justice community and more importantly within the larger society, policy implications emanating from this research must avoid any occupational commitments. We believe the quality of the findings in this study support this self-imposed mandate.

In arriving at what we believe to be acceptable parameters for public policy considerations, we placed an extraordinarily large emphasis on developing "objective" or hard-data -- that is, data that could be addressed quantitatively.

Obviously, this type of "intensive evaluation," a term that implies "rigorous data collection and analysis procedures" (see Weidman, p. 4), fails to capture the dynamic qualities of the social, political and economic milieu in which the illicit marketplace and law enforcement function. This is not meant to infer that there is no need for this analytical typology but rather, there is an equally compelling need to rely upon ethnographic methods and techniques that might provide yet another perspective of the illicit marketplace. We strongly suggest that both analytical typologies be employed when attempting to evaluate measures of effectiveness.

In concluding, we believe that there are several significant public policy implications we might draw from the data generated in this study and from our "impressionistic" analysis of the illicit gambling marketplace, as we perceive it in the State of New Jersey.

First, the gambling intensification program, we believe, resulted in what Cressey once termed "evasive actions" on the part of the more sophisticated "career criminal" (or what society perceives as the "organized criminal"), thereby permitting an entirely new "reserve labor force" to enter this particular marketplace. This new "reserve labor force" (as supported by the empirical data in this study) is comprised of blacks, women, and although not sufficiently documented by our findings, Hispanics.

Secondly, we believe that the data clearly supports the notion that the gambling intensification program resulted in the apprehension of a new class of gambling offender who by societal standards are not perceived as a serious threat to the community. To say this differently, the evidence as documented in this study clearly indicates that 43.9% of those arrested for bookmaking and/or lottery offenses had no prior criminal arrests and 17.2% had only one prior criminal arrest. Moreover, the data further indicates that only 9.4% of those arrested for bookmaking and/or lottery had prior arrests for violent crimes. This hardly supports the perception that bookmaking and/or lottery offenders are a serious threat to the community.

Of course, it is often argued (and we might add, that there is sufficient evidence to support this contention), that the monies generated from illicit gambling often are diverted to other illicit activities such as narcotics, loan-sharking, and official corruption. However, we also believe that any gambling enforcement policy that proceeds under the implicit assumption that reducing the revenue-producing capabilities of illicit gambling will reduce the revenue producing capabilities of loansharking and/or narcotics or reduce the prevalence of official corruption fails to confront the multi-dimensional characteristics of the illicit marketplace known as "organized crime." To say this differently, there is no evidence available that supports the notion that eliminating the revenue-producing capabilities of illicit gambling syndicates will result in the elimination of narcotics, loansharking or official corruption. In fact, it is

our contention that a gambling enforcement program that proceeds along this theoretical premise may even prove to be counterproductive. That is, we believe that because only some forms of gambling have been defined as illegal, the prevalence of official corruption is inevitable and an intensified gambling enforcement program may even serve to increase the costs of official protection.<sup>50</sup> Moreover, as Goldstock so astutely pointed out,

... a well planned and well executed gambling raid will signify a net gain to organized crime... For bookies whose business has been disrupted need more cash than ever; mob loan sharks therefore make more money... Thus, the policy (or non-policy) of random gambling seizures... is not only ineffective, it is more counterproductive... Any investigation plan ought to have as its main objective the investigation and prosecution of the loanshark, and resources allocated with this in mind.

However, given the relatively scarce research available detailing the flow of monies between both licit and illicit marketplaces (and until such an economic model emerges) little more than personalized, impressionistic arguments can be presented.

Thirdly, we believe that the change in the character of the illicit gambling marketplace, brought about through an intensified "organized crime control effort",\* presumably has disrupted the stability of the traditional syndicated criminal groups that at one time maintained a distinct "exploitive monopoly" over geographic areas.<sup>51</sup>

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\* We might point out that other variables such as an increased investigatory focus on official corruption, contempt citations levied by the State Commission of Investigation, the decline of the urban political machine, migration and upward mobility of minority groups resulting in a new reserve labor force, and the emergence of a social consciousness relative to the plight of American minorities, must all be computed into the equation.

And lastly, although it would be somewhat spurious to conclude that illegal gambling and the revenues generated therefrom were significantly reduced, we believe that when viewed in its totality, there is evidence to suggest that the illegal gambling marketplace was at least temporarily disrupted which resulted in an imbalance or disequilibrium in "exchange relationships." To say this somewhat differently, the established or dominant criminal structures were disrupted resulting in what we believe to be a regeneration of competitive interests.<sup>52</sup>

It is this latter point that is extremely important to understand when developing control strategies. For we believe it is not important to become engulfed in the quagmire of definitional responses to the term "organized crime." Rather, the focus of analytical inquiry must be re-directed to include not merely the "actors in the drama" but more importantly the effects of particular activities and practices on the community. No enforcement strategy that seeks to rid our society of this so-called "hedonistic desire" to gamble (and to participate in those activities that are in reality openly condoned and to some extent, perceived as "cherished freedoms of individual expression" in our society) will ever be successful, if in its formulation there has been a complete disregard for the values and mores of the community.

In developing what we believe to be a basic, yet complex paradigm for "organized crime control analysis," the term "exploitive monopolization" has emerged as our central guiding concept. It is this so-called "threshold determinant" -- exploitive monopolization -- that we believe must be established by criminal justice agencies if in fact there is to be any appreciable impact on what is commonly referred to as "organized crime."

Obviously, when attempting to operationalize this term (as is the case with operationalizing most social concepts) we are once again confronted with the task of distinguishing between what activities represent "exploitive monopolization" and what activities provide a "mutually utilitarian" value to the community. And this, of course, depends almost entirely upon who is doing the defining. As we stated earlier, community interests must be incorporated into the decision-making process, for obviously what may be perceived as "exploitive monopolization" by the social control agents may be perceived as "mutually utilitarian" by the community, and vice-versa. Moreover, it is apparent that the two concepts possess an inherent ideological commitment.

That is, if we are to understand or define what represents an "exploitive monopolization" and what represents "mutually utilitarian" value, we must understand and relate these concepts to the political economy. Obviously, if one subscribes to the assumption that the macro-system -- capitalism -- is "exploitive", then any micro-system -- "organized crime" -- must also be exploitive (especially if one perceives as we do, organized crime as an integral part of the larger society). To say this differently, all exchange relationships in a capitalist society may be exploitive, given the initial assumption that capitalism is inherently exploitive. However, we submit that such an argument fails to address the multi-dimensional characteristics in social relations!

Essentially, the theoretical construct we have arrived at proceeds along a similar path as that of Homans and Blau. Although Peter Blau specifically has restricted his "exchange and power" model to legitimate power structures and acknowledges the deficiencies in applying his model to the illegitimate power structure in a society, we would argue that such a qualification is unnecessary, since all relationships, whether it be in the "legitimate" or "illegitimate" marketplace can be characterized by coercion, of an economic, political, social or physical nature. Moreover, we believe that exchange relationships in the illegitimate marketplace may be perceived as "legitimate" by those who are engaging in these exchanges. Consequently, Blau's and Homan's exchange theory and Duke's integration with conflict theory tend to provide a viable analytical model in which to arrive at this determination.

According to Blau, "social exchange... refers to voluntary actions that are motivated by the returns they are expected to bring and typically do in fact bring to others." Exchange theory, as does conflict theory, begins with the same basic assumption: "that man is inherently egoistic and hedonistic and that he typically pursues his own interests at the expense of others. People are seen by both theories as self-interested and likely to seek pleasure and avoid pain as they define these (Duke, p. 217). Blau, in his analysis of power relationships, places great emphasis on collective values and norms and argues that these "common values and norms provide the symbolic media for indirect systems of exchange. They provide the standard for judging rewards and what constitutes a fair exchange" (Timasheff, p. 348).

Exchange relationships are inherently based on the principle of reciprocity similar to the classical economic principle. However, the important distinction is that modern exchange theory allows for the appreciation or assessment of both material and non-material exchanges. Therefore, what we are suggesting is that a measure of our term "exploitive monopolization" should be obtained from an "objective" assessment of the positive or negative material effects of certain particular organized crime activities upon the community coupled with the non-material interpretation or tolerance of the community itself to the activity. Whether a community -- defined in terms of both territorial and shared value systems -- perceives a particular practice as "exploitive monopolization" or "mutually utilitarian" depends upon the value structure that has been internalized.



Thus, if criminal justice agencies are to develop an effective organized crime control strategy, it is important that the strategy conform with the dominant value structure of the community.

We have formulated the following paradigm of organized crime control which we believe could serve as a means of explicating these two concepts.

A PARADIGM FOR ORGANIZED CRIME CONTROL ANALYSIS \*

- I. IDENTIFY THE PARTIES
  - A. WHO IS CONTROLLING THE ACTIVITY?
  - B. WHO IS DELIVERING THE SERVICES?
  - C. WHO ARE THE CLIENTELE?
  
- II. IDENTIFY THE INTERESTS OF THE PARTIES TO THE SITUATION
  - A. WHO IS RECEIVING WHAT (e.g., ECONOMICALLY, POLITICALLY AND SOCIALLY)?
  
- III. IDENTIFY THE METHODS USED TO PURSUE THESE INTERESTS
  - A. IS VIOLENCE (EITHER IMPLICIT OR EXPLICIT) BEING EMPLOYED AND IF SO, BY WHAT PARTIES?
  - B. IS ECONOMIC OR POLITICAL EXTORTION BEING EMPLOYED AND IF SO, BY WHAT PARTIES?
  - C. TO WHAT EXTENT HAVE THESE METHODS FACILITATED THE ATTAINMENT OF THE INTERESTS?
  - D. WHAT CONCESSIONS HAVE BEEN MADE AND BY WHAT PARTIES?

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\* This paradigm is a re-modification of Duke's paradigm for a conflict analysis.

- IV. IDENTIFY THE POTENTIAL POWER STATUS AND RESOURCES OF THE PARTIES.
  - A. ARE THOSE INVOLVED PERCEIVED AS LEGITIMATE BY THE COMMUNITY? BY THE NEGOTIATING PARTIES?
  - B. WHAT POLITICAL, ECONOMIC, OR SOCIAL RESOURCES DO THE PARTIES POSSESS IN ORDER TO ACHIEVE THEIR INTERESTS?
- V. IDENTIFY THE EFFECT ON THE COMMUNITY.
  - A. HAS PREDATORY CRIME INCREASED?
  - B. HAS THE ECONOMY OF THE COMMUNITY DECREASED?
  - C. WHO IS RESPONSIBLE FOR POLITICAL DECISIONS?

Although we admit that arriving at any consensus will be extremely difficult, particularly given the inadequacy of most police intelligence systems, we do believe that this paradigm represents a necessary component for developing an effective organized crime control strategy. Only when there is clear and convincing evidence that a state of "exploitive monopolization" (e.g., where the data demonstrates that more has been extracted from the community than has been returned) is occurring or has occurred, should the State intervene. In essence, we strongly believe and highly recommend that the reliance on governmental interdiction be used sparingly and cautiously and only when it has been adequately demonstrated that such illicit practices are inimical to the community's interests. Perhaps when arriving at this determination, a more "rational", "just", and "effective" organized crime control strategy will emerge.

## FOOTNOTES

- 1 Robert F. Kennedy, former U.S. Attorney General became convinced that if we did not, on a national scale, attack organized criminals with weapons and techniques as effective as their own, they would destroy us (Cressey, p. 7).
- 2 The perception of a social phenomenon as a "problem" (to paraphrase Howard Becker) depends on how other people and institutions react to it. Thus whether "organized crime" is perceived as a "problem" or not depends "in part on the nature of the activity... and in part what other people do about it" (Becker, p. 14).
- 3 It should be pointed out that we recognize the relative (and not absolute) qualities of the term "human rights". However, it is also important to recognize that the "security of individual rights is ... of universal concern" to each and everyone of us if we are to remain a free and democratic society. For an excellent discussion of how the competing claims of individual privacy and the right of the State to protect its citizens was accommodated as it relates to electronic surveillance see The Criminal Justice Quarterly, Vol. 5, No. 3, Summer, 1977, by former New Jersey Attorney General William Hyland.
- 4 In this context, we might point out as did the German criminologist Henner Hess, that an existing political structure may in fact be perceived as "organized crime." In a liberal, democratic society, "the State derives its strength and assurances from the status-quo and it will conclude compromises from the local powers from which it has risen." However, in a totalitarian form of government, the new ruling stratum will tend to seize the institutions of government (i.e., the mass media, educational and religious institutions, etc.) and use these "instruments to eliminate and often rival local society" (see Hess, Mafia and Mafiosi: The Structure of Power, London: Saxon House, 1970, p. 176). Consequently, we believe that "organized crime" can either be manifested in State control, such as that found in a Facist society, or in individual control, such as that found in a democratic, capitalist society.

- 5 The use of such methods and techniques (e.g., witness immunity, Rico Statute, electronic surveillance, etc.) has apparently resulted in the conviction of more public officials (i.e., Agnew, Mandel, Kerner, Addonizzio, Gallagher, etc.) than "organized criminals," which once again brings to the forefront the question of "what is organized crime?"
- 6 See Dwight Smith, The Mafia Mystique and Frederic Homer's, Guns & Garlic. It is of interest to note that Griffin Bell recently announced a new strategy for "combatting" organized crime that will be founded on a "targetted" industry (as opposed to a "targetted" individual) approach.
- 7 See Kelton, et.al "The Characteristics of Organized Criminal Groups" in Canadian Journal of Criminology and Corrections, 13 (1), p. 68-78, 1971; Smith, "Some Things That May Be More Important To Understand About Organized Crime Than Cosa Nostra" in University of Florida Law Review, 24 (1), Fall 1971; Bell, "The Myth of The Cosa Nostra" in The New Leader, 12/23/63 pp. 12-15; Hawkins, "God and The Mafia" in The Public Interest, 14, Winter, 1969; Ianni, "The Mafia and The Web of Kinship" in The Public Interest, Vol. 22, Winter, 1971; and Salerno & Thompkins, The Crime Confederation, Doubleday, 1969.
- 8 As Stuart Hills points out, it appears that "certain types of groups are more likely to be labeled deviant than others: groups that do not have political power and therefore cannot put pressure on the officials for not enforcing the law, groups which are seen to threaten those in power, and groups which have low social status" (see Stuart L. Hills, Crime, Power and Morality Scranton: Chandler, 1971, pp. 19-21). According to Chambliss, the most obvious conclusion from studying crime in Nigeria and Seattle, Washington, was that "law enforcement systems are not organized to reduce crime or to enforce the public morality. They are rather organized to manage crime by cooperating with most criminal groups and enforcing laws against those whose crimes are a minimal threat to the society" (see Critical Criminology, p. 177).

- 9 See Austin Turk, Criminality and The Legal Order; Richard Quinney, Critique of the Legal Order; AFSC, Struggle For Justice, and the works of Taylor, Walton and Young The New Criminology and Critical Criminology. It is of interest to note that Soviet Premier Leonid Brezhnev in his response to the "human rights" issue stated "What real rights and freedoms are guaranteed to the masses in present-day imperialist society? ... Or else the 'right' of ethnic minorities to humiliating discrimination in employment and education, in politics and everyday life? Or is it the 'right' to live in perpetual fear of the omnipotent underworld of organized crime..." (see The New York Times, Wednesday, October 5, 1977, p. 3).
- 10 See Cloward & Ohlin, Delinquency & Opportunity, New York: The Free Press, 1971).
- 11 Smith discusses this issue, arguing that the illicit marketplace must be analyzed as an extension of the licit marketplace. Smith asks, "what effect would society have on that domain (of the illicit marketplace) if alternative, legitimate agencies were able to satisfy legitimate demands more effectively? When the activities of government are provided fairly, justly, and effectively, alternative or illegal channels for securing or protecting legitimate claims have slight appeal" (Smith, p. 346).
- 12 See Task Force Report: Organized Crime, 1967, "An Economic Analysis of Organized Crime" by Thomas C. Schelling, pp. 114-126; and Gilbert Geis, "Violence and Organized Crime," The American Academy of Social and Political Science, March, 1966, pp. 86-95.
- 13 Ibid. Geis, pp. 86-95.
- 14 The notion of developing non-interventionist programs in the field of organized crime control flows from Schur's notions of "radical non-intervention." As Schur points out, this "radical non-interventionist" notion "implies policies that accommodate society to the widest possible diversity of behaviors and attitudes, rather than forcing as many individuals as possible to 'adjust' to supposedly common societal standards." (Schur, 1973, p. 154). We might add, that a non-interventionist philosophy relating to "organized crime control" strategies would seek to permit those "organized crime interests" that are not exploitive of community interests to function void of governmental intervention.

- 15 See Jock Young, "The Police as Amplifiers of Deviance" in Perception In Criminology (Henschel & Silverman, pp. 356-377). As the mass media exploits the existence of "organized crime" the public reacts which in turn results in the expenditure of more resources to criminal justice agencies. As the police become more engulfed in their role as "organized crime combatants," they find the extent of "organized crime" is greater than was originally expected. The media, having access to the data depicting the extent of the problem, exploit the fears and moral indignation of the public.
- 16 See Appendix 2, "Survey of American Gambling Attitudes and Behavior" published by the Commission on the Review of the National Policy Towards Gambling.
- 17 In reviewing the testimony of public officials (see Appendix III of Gambling Commission Report), those interviewed consistently equated gambling with "organized crime." It appears, at least from examining the testimony cited, that there is an excessive preoccupation by criminal justice officials in developing organized crime control strategies that are primarily focused at illegal gambling.
- 18 We might point out that the "appearance" of corruption can be as devastating to the effectiveness of criminal justice agencies gaining public support. We might also point out that the preponderance of corruption scandals in law enforcement tend to focus around illegal gambling activities (see Knapp Commission Report, 1970, and An Empirical Typology of Police Corruption).
- 19 Although there are those who fail to perceive gambling on the stock-market as a form of "betting" -- primarily because of social conditioning processes in our society has defined this form of gambling as investments -- we would point out that the elements found in illegal gambling are identical to those found in "betting" at the stock-market. The "options market" currently under investigation by the S. E. C. enables a "gambler" (investor) to "bet that the prices of the stock will not rise above his option level, thus enabling him to sell at a profit" (The New York Times, "Options Market Under Attack," October 23, 1977, p. 1, Section III). Moreover, as this article points out, there is manipulation and collusion between "controllers" (brokers) and "gamblers" (investors), which may result in tax evasion.

- 20 We believe the Newark disorders of 1967 and the subsequent investigation wherein the "Lilly Commission" concluded there was a "pervasive feeling of corruption" in Newark, New Jersey seems to support this notion (see Governor's Select Committee on Civil Disorders, Report For Action, 1968).
- 21 According to Cloward & Ohlin, blacks "have charged that the police are systematically discriminating against them in raiding Harlem policy operations by arresting a greater proportion of independent Negro 'bankers' than of Italian and Jewish syndicate 'bankers' and by harassing the lower echelon Negro functionaries in syndicated operations dominated by Italian and Jews. The clear implication is that the police are acting in behalf of the Italian and Jewish syndicate" (Cloward & Ohlin, p. 200). The data as reflected in the National Gambling Commissions findings indicated that New Jersey was below the national average (56% of all gambling arrests were blacks) in arrests of blacks for gambling violations, however, New Jersey ranked tenth among those states reporting (see Appendix I, pp. 680-739).
- 22 Newman, in an excellent critique of social conflict, makes a distinction between two types of conflict: consensus - projecting and consensus - bounded. According to Newman, consensus - projecting conflicts are those forms of conflict that "transcend the routine channels for conflict in a society." The Newark "disorders" might be characterized as "consensus - projecting conflict" in that there was a successful attempt to "reach a new, changed social consensus" (Newman, pp. 118-121). Thus, Newman postulates that "the greater the degree to which a social group occupies a position of reward deprivation, the greater the likelihood that conflicts initiated will be of the consensus -projecting type (Newman, p. 142). Consequently, as Merton argues, groups deprived of both social rewards and institutional access are forced to devise innovative alternative means to reach these social goals (see Robert Merton, "Social Structure Anomie") and "organized crime" represents such an alternative.
- 23 See Ferdinand Tonnies, Community and Society (New York: Harper & Row, 1957); Sir Leon Radzinowicz and Joan King, The Growth of Crime (New York: Basic Books, 1977; and Marshall Clinard, Crime in Developing Countries.

- 24 A similar parallel exists in California. According to data submitted to the National Gambling Commission, in 1973, 16.5% of those arrested for book-making had no prior criminal record; 45.5% had a minor criminal record; 33.8% had a major criminal record (defined as 1 or more convictions of 90 days or more or probation of two years or more/Prison: one or more prison commitments; and on 4.1% had a prior prison commitment (see Appendix I, p. 686).
- 25 See Kenneth Culp Davis, Police Discretion and Herman Goldstein, "Police Policy Formulation: Proposal for Improving Police Performance" in Michigan Law Review, 65 (April, 1967 , pp. 1123 - 1146) and Police Discretion, "The Ideal vs. The Real" in Public Administration Review, 23, (Sept. 1963).
- 26 An extensive hierarchy and division of labor is not a necessary element in the more common forms of gambling such as craps, dice, cards, etc.
- 27 It seems highly unlikely that a ratio of gambling arrests could remain so stable over a five-year period without some form of conscious manipulation of gambling enforcement practices. Moreover, we find it difficult to believe that the arrests effected in Newark have seriously impeded the revenue-producing capabilities of organized crime syndicates, particularly in light of the relatively minimal fines and/or jail sentences imposed. Furthermore, it is quite clear that gambling enforcement is receiving less priority in the State of New Jersey.
- 28 Weintraub's directive stated that "The Supreme Court is of that view that it is essential for the fair and effective administration of criminal justice that judges in imposing sentence adhere to the same general policy in cases which may involve syndicated crime... Accordingly the Supreme Court considers it necessary to require that the Assignment Judge in each county either personally handle all sentencing in gambling cases or designate a particular judge to impose sentence in all such cases, even though the case may have been tried or the plea taken before another judge (see State vs. De Stasio, 1967: 253).



- 29 The only casual relationship that we can possibly arrive at is that the Weintraub directive resulted in "harsher" imposed penalties for gamblers (bookmakers and/or lottery operatives). Conviction rates for gambling offenses in New Jersey were the highest in 1974 (56%), however we might point out that Louisiana, (84%) Massachusetts (73%) and Wisconsin (66%) had higher conviction rates and were not subject to a Weintraub mandate. There is little doubt that New Jersey did have the most "harshesht" penalty for gambling offenses in that 36.6% of those found guilty received a prison term (20.8% State Prison and 79.2% county institution) and fine (Appendix I, p. 721).
- 30 This data may also indicate that (1) law enforcement, in order to inflate arrest statistics, focused on those most susceptible to the criminal sanction: the less sophisticated gambling entrepreneur and/or (2) the passage of an electronic surveillance law permitted those who were able to avoid the criminal sanction up to this time, were now the focus of investigatory actions. Although there is evidence to suggest some of the more sophisticated criminal entrepreneurs have never had a criminal arrest, we believe that this to be the exception and not the rule. The former explanation seems plausible given the fact that New Jersey was second to New York in electronic surveillance applications requested (1,760 vs. 951) between 1968 - 1974, and approximately 83% of these surveillances were for gambling. Nationally, 54% of all electronic surveillances reported were for gambling (72% Federal and 49% State). From a management perspective, it appears that an inordinate amount of resources has been devoted to gambling enforcement as a method for "eradicating organized crime".
- 31 Traditionally, the accepted perception was that anyone involved in bookmaking and/or lottery operations was a "member" of "organized crime." This data may suggest that those who are "members" of "organized crime" need not progress through a criminal career path, as was the dominant theme in the past.
- 32 It is suggested that we may be witnessing a significant change in the illicit gambling marketplace -- a change that is indicative of more autonomous gambling ventures given to limited control by the traditional "organized criminal" syndicates.

- 33 If we assume that bookmaking and/or lottery operations were primarily controlled by Italian-American crime syndicates -- an assumption that appears to have been the accepted perception among law enforcement -- it might be of significant value to examine this consistent 17% arrest rate to see if there were any changes in who was being arrested.
- 34 Based upon the amount of resources that have been devoted to gambling enforcement programs under the guise of "organized crime control programs," such a proposition appears plausible, yet in reality is somewhat erroneous.
- 35 Once again, it may prove valuable in understanding how the Weintraub directive actually effected illegal gamblers by examining who was being sentenced to prison.
- 36 We believe that there is a positive correlation between the stability of a particular illicit marketplace and the types of individuals -- it may attract. It may be that an organized illicit marketplace attracts those who rely least on physical coercion. Conversely, the less organized a particular illicit marketplace is, the greater reliance upon those who demonstrate a proclivity towards violent coercive methods.
- 37 This obviously assumes that "organized crime" provides a positive functional role in any society that prohibits entry of minorities into legitimate endeavors. It is of interest to note that some interesting socio-historical parallels are beginning to emerge in our study of organized crime, all of which quite definitively provide substantive evidence that the American version of "organized crime" has provided some minority groups with social, political, and economic parity. For a more extensive discussion of this functional role, see David Bell, "Crime as an American Way of Life"; Francis A. J. Ianni, A Family Business, Black Mafia, and A Community Self-Study of Organized Crime (New York Criminal Justice Coordinating Council, 1973)

- 38 Unfortunately Moore, as do other economic determinists, merely perceive organized crime as an economic phenomenon and fail to adequately address the role that "organized crime" plays as a "mechanism of advocacy" between the legitimate political structure and the disenfranchised minorities; nor does Moore address the social status that is afforded the "organized criminal" in our society. If in fact "organized crime" only provided the economic incentives as Moore and the like would have us believe, it is highly unlikely that government could not compete economically with this "illicit enterprise." To some extent, this preoccupation with the "economy" of "organized crime" has resulted in the ineffective control strategies that law enforcement traditionally has labored under.
- 39 We believe that this notion is substantiated in the Ianni's research, for as they point out, "while gambling, loansharking, prostitution and drug peddling are defined as criminal activities by authorities, people in the ghetto make a finer distinction. Not only are gambling and loansharking relatively immune from public censure, they are valued positively because they provide services which cannot be obtained elsewhere and are considered legitimate and even necessary part of social and economic life" (Ianni, 1973, p. 372).
- 40 The "problem" that often emerges when an attempt is made to translate research findings into public policy is that administrators, regardless of whether they are on the public or private sector, develop policies that reflect their particular values and norms, which are often incompatible with or inimical to the best interests of the community. To avoid this particular failing, the Ianni's suggest that community-based programs -- remediation programs drawing upon community resources -- might better impact on the "organized crime problem" (Ianni, 1973, p. 372).
- 41 Merton suggests that the "distinctive intellectual contributions of the sociologist are found primarily in the study of unintended consequences (latent) of social (e.g., criminal justice) practices, as well as in the study of anticipated consequences" (manifest) (Merton, p. 120). We might add that those relegated the task of developing criminal justice policies -- social policies -- also recognize these latent consequences and hopefully avoid those that do not contribute to goal attainment.

42 Assuming that laws and/or the enforcement thereof should reflect the values, norms and mores of the community, particularly if law is to be perceived as a legitimate agent of social control, it is conceivable that community interests -- defined in terms of both territorial boundaries and shared value systems -- will differ, consequently the laws and/or the enforcement thereof will also differ. Thus, inconsistent policies -- that is, policies that differ from community to community -- offers a possible alternative to consistent criminal justice policies that generally are invoked by powerful interest groups. Our review of the findings of the National Gambling Commission, found that a similar policy consideration was endorsed when the Commission stated "that States should have the primary responsibility for determining what forms of gambling may legally take place within their borders... that the only role of the Federal government should be to prevent interference by one State with the gambling policies of another and to protect identifiable national interests with regard to gambling issues" (Gambling Report, p. 3). We would obviously argue that enforcement practices should reflect community interests.

43 See Lasswell, Harold, Who Gets What, When & How (New York: The World Publishing Comp., 1958); Lukes, Steven, Power (London: MacMillan Press, Ltd., 1976); Taylor, Walton & Young, Critical Criminology (London: Routledge & Kegan Paul, 1975); and Quinney, Richard, Class, State & Crime (New York: Foundation Press, 1977).

44 See William Whyte, Street Corner Society, The Social Structure of an Italian Slum (Chicago: University of Chicago Press, 1943).

45 See Daniel Glaser, Routinizing Evaluation: Getting Feedback on Effectiveness of Crime & Delinquency Programs and Strategic Criminal Justice Planning, and Quantitative Tools For Criminal Justice Planning (U.S. Dept. of Justice, 1975)

- 46 See Henner Hess in Mafia & Mafiosi: The Structure of Power (London: Saxon House, 1970). pp. 175-176.
- 47 For instance see New Jersey State Police Intelligence Bureau Manual (1975) and Central Security Unit Manual (1976) and New Jersey State Police Informant Guidelines (1976).
- 48 As Harris & Drexel note in the r guidelines for intelligence units, if the agency head is himself preoccupied with the tactical details of enforcement activities, then he will only receive from his subordinates instead of the broad interpretative material that can give him a perspective on the major planning moves he must make. (The) effective use of the analytical method (will open) the door to adopting a new and hopefully more realistic policy (Harris, pp. 3-4).
- 49 To echo the sentiments of Rubinstein, "there are no departmental requirements that oblige commanders to make critical evaluations of their men... Whether this is due to simple administrative incompetence on the part of police administrators, or is a consequence of how police view their role in gambling enforcement is an open question" Appendix I, p. 617). We suggest that this inventory data form will provide criminal justice administrators with qualitative data in which to arrive at public policy.
- 50 We might note that the Knapp Commission proposed that the "criminal laws against gambling should be repealed... such regulation should be by civil rather than criminal process" (Knapp, p. 18). There appears to be sufficient evidence available which supports the contention that prohibition increases the cost to the consumer, which is a result of the costs for such proprietary rights as official corruption, increased risks, negative social stigma, etc. See Gilbert Geis, Not The Law's Business (Maryland: NIMH, 1972, pp. 222-250) and Fred J. Cook, in The New York Times, March 3, 1971, p. 7); Edwin Schur and Adam Bedou, Victimless Crimes: Two Sides of a Controversy (Englewood Cliffs: Prentice-Hall, 1974), pp. 19-25); Herbert L. Packer, "The Crime Tariff", in The American Scholar, 33 (1964), pp. 551-557).

51

There is sufficient evidence available which quite clearly describes territorial boundaries and domination by various organized crime interests in New Jersey. See The Mafia Talks by Joseph Volz and Peter J. Bridge (1969); Sam The Plumber (1970) and The Jersey Mob (1970) by Henry A. Ziegler.

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A researchable question that emerges from this finding is whether or not violence associated with this regeneration of competitive interests increased during this period of instability. Although a precise conclusion can not be drawn from the data available, the suspected motive for organized crime slayings in New Jersey between 1960 and 1973 indicated that gambling activity rated third (15.2%) behind cooperation with law enforcement officials (16.3%) and narcotics activity (27.2%) (see A Study of Organized Crime Homicides Among Syndicated Organized Crime Groups in New Jersey : 1960 - 1973, by the New Jersey State Police Intelligence Bureau).

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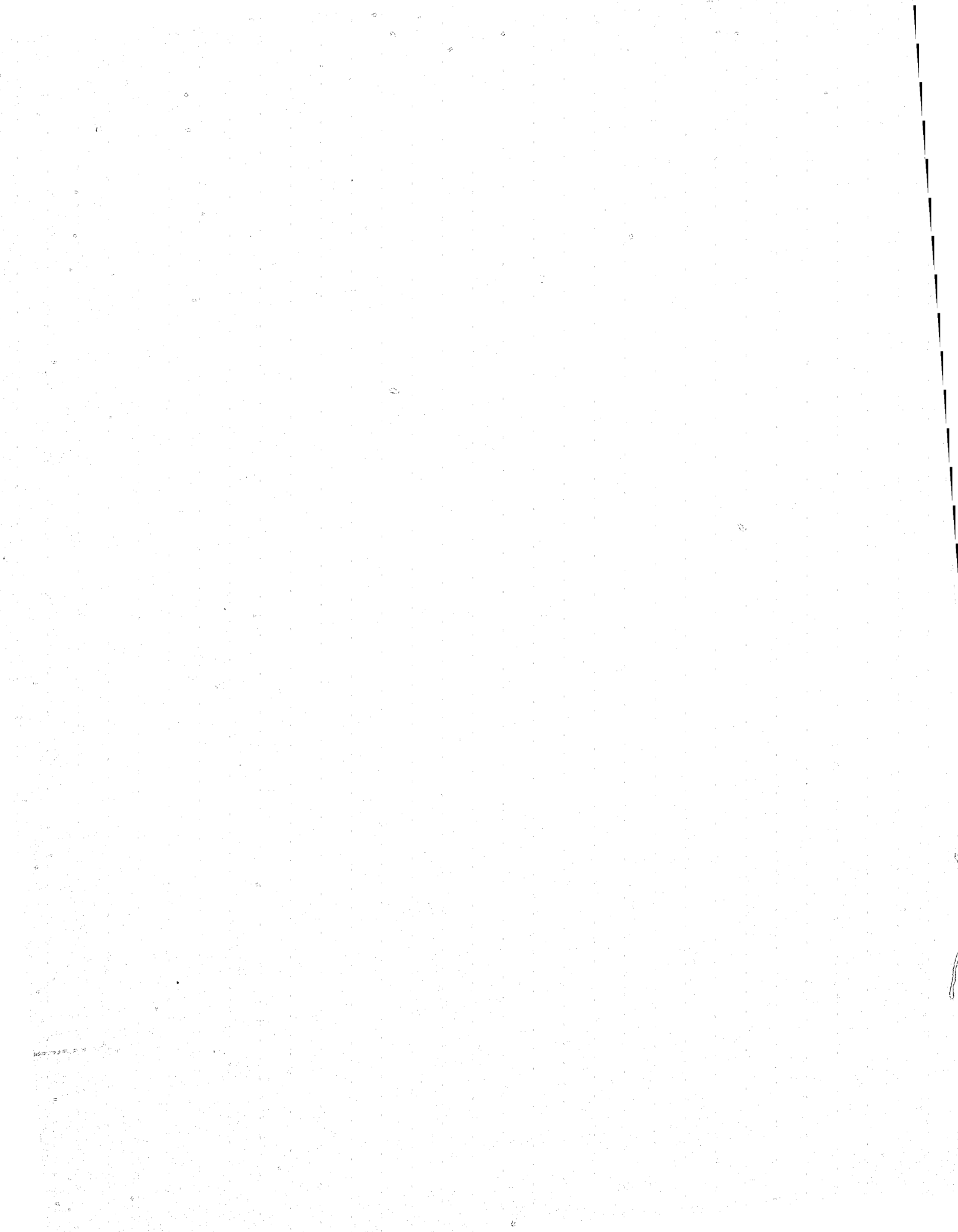
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