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THE KEFAUVER INVESTIGATION IN PERSPECTIVE

By

HOWARD NEWCOMB MORSE*

"Quo usque tandem abutere, Catilina, patientia nostra? Quam diu etiam furor iste tuus nos eludet? Quem ad finem sese effrenata iactabit audacia?"\(^1\)

— Cicero

Estes Kefauver might seem to be a Democratic, Southern and federal version of Thomas E. Dewey. They are approximately the same age and both were born in small towns. The same criminal characters of the Dewey investigation in New York City in the mid-thirties are being footlighted in the Kefauver drama, except played by different actors and, it is Kefauver's contention, perhaps on an interstate scale. Whether Kefauver's investigation\(^2\) will score anywhere near as many points as the grand total chalked up by Dewey's investigation remains to be seen—hopefully.

We might ask ourselves why it required an investigation by a U. S. Senate committee in order for certain city and county governments to begin a long-overdue house-cleaning. The facts were there all along and it is hardly conceivable that certain governing authorities did not know of the existence of such facts. Why was not similar action inaugurated on the city and county level prior to the Kefauver investigation? Does it require federal intervention in order for a tie-up between racketeers and certain law-enforcement officers to be broken? Even those of us who are most in favor of so-called states' rights will admit to favoring federal intervention if that is the only way gangsters and corrupt public officials can be punished.

It is more difficult today than ever before for the federal government to gain jurisdiction of the heads of organized crime. Formerly, it was not uncommon for big-time hoodlums to be tripped up by income tax derelictions. Today, however, the crime syndicate bosses are scrupulous in their attention to income tax returns. Years after the convictions of Jack Guzik\(^3\) and Ralph J.\(^4\) and Alphonse,\(^5\) alias Al Brown, Capone were upheld by the United States Circuit Court of Appeals for the Seventh Circuit, Paul DeLucia, alias Ricca, Louis Campagna,


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1 Oratio in Catilinam Prima Habita in Senatu.
2 Established by U.S. Senate Resolution 202, 81st Congress, 2nd session (1950).
3 Guzik v. United States, 54 F.2d 618 (1931).
4 Capone v. United States, 51 F.2d 609 (1931).
Phil D’Andrea and Charles Gioe were convicted in the United States District Court. The federal government gained jurisdiction of DeLucia and his confederates by charging them with conspiracy to violate the Federal Anti-Racketeering Act\(^8\) (interference with commerce by threats or violence) by extorting over a million dollars from certain motion picture producers by means of hoodlum control of a labor union. Their crime was similar to the shakedown of half a million dollars from employers in New York City in 1935 engineered by Louis Buchalter,\(^7\) alias Lepke, Wolfie and Morris Goldis, and Max Silverman\(^8\) through the Flour Truckmen’s Union and was reminiscent of such other labor shakedowns as those of Patrick Commerford,\(^9\) through the International Union of Hoisting and Operating Engineers, and of George Scalise,\(^10\) through the Building Service Employees’ International Union. The real motive behind the manufacturers’ and employers’ appeasement of gangster-goons, ironically enough, was expressed by Buchalter’s own counsel as follows: “I condemn the manufacturers and employers who did not complain to the authorities so that they could put an end to this vicious practice of preying upon labor. But they did not complain—not because they were afraid—because some of them hoped, by yielding to the racketeers of the industry, that they would gain an economic or financial advantage over their competitors.”\(^11\) The Federal Anti-Racketeering Act used by the government to convict DeLucia and his confederates and the Harrison Narcotic Act\(^12\) used to convict Jack Diamond\(^13\) in 1931 are about the best ammunition the government has today with which to combat the chiefs of organized crime. Even so, somehow or other DeLucia, Campagna, D’Andrea and Gioe were granted federal paroles. A congressional subcommittee conducted an investigation from September 25th, 1947 to June 7th, 1948 in an attempt to show that the paroles were brought about by corruption and undue influence and should not have been granted.\(^14\) More ways of obtaining jurisdiction of gangland’s leaders are needed by the United States, and it is hoped that the Kefauver investigation will lead the Congress into the paths of righteousness. More statutes to trap the top hoodlums, like the Federal Anti-Racketeering Act, are in order.

Another factor which makes conviction of the syndicate chieftains difficult is their personal aloofness from actual strong-arm tactics. They have assumed

\(^8\) Capone v. United States, 56 F.2d 927 (1932).
\(^9\) United States v. Commerford, 64 F.2d 28 (1933).
\(^10\) United States v. Commerford, 64 F.2d 28 (1933).
\(^12\) People v. Buchalter, 289 N.Y. 181, 184, 45 N.E. 2d 225 (1942).
\(^14\) United States v. Diamond, 50 F.2d 263 (1931).
the air of the business man and have actually invested much of their intake from illegal operations in legitimate business enterprise. This strategy was used by Charles Lucania, alias Luciano, and was noted by Chief Judge Crane of the Court of Appeals of New York in 1938 as follows: "As the principal and leader of the whole enterprise, Luciano did not take an active party in the daily operations of the business, but that he was the directing head and moving force behind it all, the evidence adduced on the trial leaves no doubt . . . His position as head of this combination did not bring him in direct contact with the victims of this scheme, and he displayed an anxiety that his name be not too openly associated with the bonding enterprise." Nevertheless, this strategy did not prevent Dewey from successfully prosecuting Luciano. Obviously, the way to get at prominent syndicate members who put up a legitimate business front is to cut off the sources of their illegal incomes which furnish them with the funds to invest in legitimate business enterprises.

The nation-wide crime syndicate conducts its operations principally in the states of Illinois, New York, Florida, California, Texas, New Jersey, Louisiana, and Missouri with Chicago as the central clearing house for its vast network of operations. One good thing, perhaps the best in certain ways, about a federal probe such as the Kefauver investigation is that it spurs local authorities on the state, county and municipal level, long dormant, into action. These states would do well to follow New York's example in enacting a so-called joinder indictment law so as to facilitate the successful prosecution of powerful racketeers. The New York joinder indictment, or Dewey Law,16 authorizes the joinder of connected or similar offenses in one single indictment and is essentially the same scheme that has been used in the federal courts for many years. In arguing for this law Dewey said: "Today crime is syndicated and organized. A new type of criminal exists who leaves to his hirelings and front men the actual offenses and rarely commits an overt act himself. The only way in which the major criminal can be punished is by connecting to him those various layers of subordinates and the related but separate crimes on his behalf.

"As the law now stands, there is a procedural straight jacket which prohibits the trial of these offenders together (except in conspiracy, which is a mere misdemeanor), though they all coordinate the acts of the master through his subordinates. Although the organization is conceived and functions to prey upon hundreds of men in the same states, each of its offenses must be tried separately before a separate court and a separate jury."17

Chicago, Los Angeles, Miami, Galveston, New Orleans, Kansas City and Newark would do well to emulate New York City by simplifying indictment forms. American prosecutors have Dewey to thank for the so-called "Dewey indictments." There are more than one hundred of these, drawn to fit many crimes. With the aid of Stanley H. Fuld, of the indictment bureau, Dewey rewrote the old wordy legal forms, which were masterpieces of mumbo jumbo and almost unintelligible periphrasis. Of these streamlined indictment forms, which are now widely used, the Harvard Law Review commented in 1939:

"Although less spectacular than its successful drives against organized crime, the recent revision and simplification of its indictments by the District Attorney's office in New York County promises to be a significant step toward a more rational criminal procedure."¹⁹

Neither the top mobsters nor the corrupt political leaders would be inherently dangerous to society without the other; it is the unholy alliance of the two that poses a grave threat to American institutions. As Judge Finch of the Court of Appeals of New York said in 1940 in regard to the corrupt political alliance of James J. Hines with the New York underworld: "The work of appellant in preventing arrests and obtaining immunity from conviction was most successful. In order not to lengthen unduly this opinion, it may be said that here was a well-organized business, successful in effective corruption of police and magistrate and in the destruction of public confidence in the orderly processes of justice in a democracy."²⁰

At a hearing of the Kefauver committee, Captain Daniel A. Gilbert, at that time Chief Investigator for the Cook County (Chicago), Illinois State's Attorney's office, owned-up rather proudly to his title of "the richest cop in the world." If we go back to the famous so-called "Seabury investigation" conducted by the Hofstadler Legislative Committee investigating the New York City administration with Judge Samuel Seabury as Chief Counsel, in New York in the early thirties we find that Sheriff Thomas M. Farley of New York County amassed $360,660.34 in over six years. Under Sheriff Peter J. Curran of New York County deposited $662,311.11 in a five year period. Assistant Deputy Sheriff Joseph Flaherty of New York County got together $20,000 in four and one-half months. Thomas J. Kelly, Deputy Chief Police Inspector in charge of the Borough of Queens amassed $35,000 in five years. Inspector Thomas W. Mullarkey, who commanded one of Kelly's two Queens districts, banked $27,000 in three years. Plain-clothes Patrolman Dennis Wright of the Bronx accumulated $99,000 in five years. And police officer James J. Quinlivian of New York City, who was

21 Authorized by a joint resolution of the New York State Legislature on March 23, 1931.
assigned to the vice squad, had an annual income of $80,000.22 Along with
these crooked law enforcement officers certain corrupt politicians were also
exposed by Judge Samuel Seabury’s investigation. Michael J. Cruise, City Clerk of
the City of New York deposited $217,246.91 in six years. James J. McCormick,
Deputy City Clerk for the City of New York, also accumulated a large fortune
which he could not explain away.23

The manner in which a number of Chicago police captains testified before
the Kefauver committee is reminiscent of the type of testimony received from the
above-named New York City law enforcement officers in the Seabury investi-
gation. “It was typical of all the stories these people told explaining the acquisition
of their money. One thread, however, ran through all their stories. Whenever
the transaction was a legitimate one, no matter when it happened and no matter
how unusual it may have been, these people always produced every bit of docu-
mentary evidence. All their other transactions were wrapped in a dense cloud
of obscurity and mysteriousness and always incomprehensible and unintelligible.”24

Two of the best police commissioners in the history of our country were
George V. McLaughlin and Joseph A. Warren of New York City, both appointees
of Mayor James Walker and both lawyers. Recently Mayor Vincent Impellitteri
of New York City appointed as Police Commissioner Thomas Murphy, a lawyer.
Murphy is remembered for his brilliant prosecution of the perjurer Alger Hiss.
Commissioner Murphy has already done much to justify the high esteem he is held
in by many. Already he has done much to increase the honesty and efficiency
of the New York City police department. Perhaps the appointment of lawyers
as police commissioners in the nation’s larger cities is a good idea which should
be adopted by other great municipalities.

The New York City Charter provides that the Sheriff of New York County
shall be fined $500 for every time he fails to enforce the gambling laws. This
could not be carried out in other counties by the inclusion of a similar provision
in city charters as New York County is the only county in the United States
wholly within city limits. But a stipulation similar to this could be adopted pro-
fitably by other states in the form of statutes.

Jose Enrique, alias Henry, Miro made the amazing total of $1,251,556.29 out
of the policy or numbers racket in Harlem. Miro was exposed as a result of the
Seabury investigation in the early thirties. Like Guzik and Capone, Miro’s convic-
tion was in a federal rather than a state court and was for income tax evasion. The
case in the federal court resulting in his conviction was an exceptionally inter-
esting one25 in that Thomas E. Dewey was one of the Assistant United States

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22 United States v. Quinlivian, 55 F.2d 1085 (1932).
24 Northrop, William B. and John B., THE INSOLENCE OF OFFICE, G. P. Putnam's Sons, N.Y., 1932,
p. 165.
25 United States v. Miro, 60 F.2d 58 (1932).
Attorneys who prosecuted him, Miro's attorney was J. Richard Davis (whom Dewey when six years later as Special Rackets Prosecutor convicted) and the writer of the appellate court's opinion affirming the conviction was Senior Judge Martin T. Manton, of the United States Circuit Court of Appeals for the Second Circuit, (whose own conviction for conspiring to obstruct the administration of justice and to defraud the United States was, six years later, upheld by the same court). The lawyer J. Richard Davis and his tactics in the words of Judge Clark of the District Court of the United States for the District of New Jersey "... sets, in this court's humble opinion, a new low-water mark in the administration of criminal justice in the United States." Two of the three attorneys associated with Davis in representing the defendant before Judge Clark were subsequently exonerated of Judge Clark's castigation by Judge Buffington of the United States Circuit Court of Appeals for the Third Circuit in the following statement: "... the court filed an opinion of which counsel complain that it wrongfully, unjustly, and without warrant reflected on their professional integrity and conduct and irreparably injured their reputation locally and generally. ... So regarding, the appeal of the deceased (Arthur Flegenheimer, alias Dutch Schultz) is dismissed, but the opinion of the court below is ordered to be stricken from the record of this court." Nevertheless, Judge Clark's designation of Davis' modus operandus is descriptive of the conduct of those lawyers who are associated with crime syndicate bosses with familiarity not required of the lawyer-client relationship.

26 United States v. Manton, 107 F.2d 834 (1938).