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ter, however, it is probable that the commission would be more hesitant to exercise a broad discretion in revoking a permit previously issued, and the courts more inclined to interfere with such exercise of discretion, than in the case of an original denial of a permit. A syndicate in Minnesota had issued ten-year installment certificates with a surrender value, from the second to the sixth year, less than the principal amounts paid. Large numbers of purchasers, having failed to meet their payments during this period, suffered losses. The securities commission, empowered to withhold or suspend licenses where plans of business were fraudulent or would work a fraud on purchasers, suspended the syndicate's license. On certiorari the court held that the fact an investment often proves imprudent is no ground for revocation of the permit in the absence of fraud.²⁷

In view of the fact that there has been so little litigation on the extent of the administrative authorities' power under Blue Sky Laws, it is futile to attempt to predict the applicable future rules of judicial decision. It must be remembered that the powers will necessarily vary somewhat under the different types of statutes. Nevertheless, the cases cited do show a marked attitude on the part of the courts to leave the commissions a broad discretion, in keeping with a growing policy in this country of turning over the determination of rights to administrative bodies.

JEROME A. GROSS, '31, and RICHARD W. BROWN, '31.

SOME RECENT METHODS OF HARASSING THE HABITUAL CRIMINAL

INTRODUCTION

The prevalence of organized crime in the larger cities of this country, to a degree unheard of even a decade ago and undreamed of even today in the cities of other civilized nations throughout the world, is familiar to every reader of a metropolitan newspaper. Particularly shocking is the condition which

to, if upon examination into the affairs of the issuer of such security it shall appear that the issuer: (1) is insolvent; or (2) has violated any of the provisions of this act or any order of the [Commissioner] [Commission] of which such issuer has notice; or (3) has been or is engaged or is about to engage in fraudulent transactions; or (4) is in any other way dishonest or has made fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities; or (5) is of bad business repute; or (6) does not conduct its business in accordance with law; or (7) that its affairs are in an unsound condition; or (8) that the enterprise or business of the issuer or the security is not based upon sound business principles."

²⁷In *re Investors' Syndicate* (1920) 147 Minn. 217, 174 N. W. 1001.

has existed and does exist at this time in certain cities where organized gangsters, racketeers, extortionists, and hoodlums of all sorts have ushered in an era of lawlessness and violence without parallel in history. The publicity attendant upon this particular situation, and most recently upon the measures adopted by the local authorities in their attempt to curb the wave of organized crime, has raised some rather interesting questions and debate, not only on the particular method or methods employed in what is, after all, an extreme and unusual situation, but on the methods of metropolitan police in general.

This article is not intended as a criticism of police or police methods in general. It is not intended to condemn or seek to focus attention upon any particular practice of the police or prosecuting officials of any particular municipality, for any particular act or series of acts. Nor, on the other hand, is it to be taken as an attempt to justify in general any irregular or extra-legal measures adopted by police forces anywhere. It is, rather, an attempt to outline briefly some methods, more or less removed from the usual routine of indictment, arrest, and prosecution of offenders, which have been adopted by the prosecuting authorities and police of large cities in their war on organized crime and criminals. To outline a few of these measures, as accurately as possible, and present a portion of the discussion, both critical and in justification, which their use has invoked, is the sole purpose of this note.

The discussion herein will be concerned in the main with the use by prosecuting authorities and the police forces of the larger cities, in their effort to maintain a higher degree of control over the so-called "criminal class," of (1) the statutes and ordinances relating to vagrancy, (2) those which permit arrests on suspicion, (3) the income tax evasion prohibition, and (4) the fixing of maximum bail for criminal offenders. The question of the use of the "third degree" by metropolitan police is not here under discussion; the cases arising under that head have been collected and comment thereon may be found in 43 HARV. L. REV. 617. Nor will any discussion be found herein of the problems raised by the attitude of many prosecuting officials who, despairing of convictions for serious offenses and being cognizant of the expense of such prosecutions, encourage offenders to plead to a lesser offense than that charged in order to secure conviction and at least temporary incarceration of the offender. That matter has been effectively noted in the Reports of the Illinois and Missouri Crime Survey Commissions, and by various textbook authorities.¹

¹ MOLEY, POLITICS AND CRIMINAL PROSECUTION (1929) Ch. VIII, "Justice by Compromise."

An investigation, however thorough and detailed, into any one of the above matters must necessarily result in but little specific and accurate data. Case material is practically non-existent, due not only to the fact that the particular developments treated herein are, in the main, rather recent, but also to the very nature of the problems involved. It may be said with some degree of accuracy that those who have occasion to challenge the adoption by the police authorities of any of the above methods of dealing with offenders are rarely in a position to force the issue, and consequently do not. The man adversely affected by any one of the methods invoked is likely to belong to one of three classes: first, he may actually be guilty of the offense charged, if vagrancy, or may later be identified and convicted of a definite offense if arrested as a suspect; secondly, he may be a dangerous criminal, with a record of arrests and convictions in remote jurisdictions as well as locally, in which case, though innocent of the offense charged or suspected, unless desirous of avoiding a pending charge on a major offense, he may be content to be held for a short period and released or even to "take the rap" (to use his dialect) for a minor offense rather than to fight the charge, a procedure which might entail a more minute scrutiny of his past record; thirdly, the party seized may be entirely innocent of any crime but helpless, through lack of finances and legal training or assistance, to challenge the procedure by a suit for false arrest and imprisonment, with the outcome uncertain and damages almost necessarily inconsequential.

Obviously, then, the matter is one not likely to be raised for judicial determination or cognizance, and the opportunity for printed appellate court opinions is practically non-existent. It is only when the issue is raised by some prominent personage, as by Mr. Clarence Darrow in his recent vigorous opposition to the procedure in Chicago under the Illinois vagrancy statute,² or is called to public attention by some rare and particularly shocking abuse of police power that any material is available.

The only other source of information available is local investigation, which is possible only through the cooperation of the public prosecutor's office, the police department, members of the local bar, supplemented by the use of daily newspaper records and editorials in a given locality or localities.³ The authentic material is, then, necessarily limited, and any conclusions based

² Chicago Tribune, Sept. 30, 1930.

³ Note: Appreciation is here expressed for the consideration given the author in his search for material by Prosecuting Attorney Albert Schweitzer of the City of St. Louis, Joseph Gerk, Chief of Police of that city, and members of the staffs of the St. Louis Post-Dispatch and the Chicago Tribune.

upon the use of any but authentic material are of course open to challenge. Consequently the material in this article is presented, not with any view toward generalizations or definite conclusions on the questions presented, but rather in the belief that the matter is one of interest to the average man, and in particular to the members of the legal profession.

I. THE USE OF SUSPECT STATUTES AND ORDINANCES

Probably the most well established and most frequently invoked method of apprehending known criminals against whom no specific charge can be placed is to be found in the power of the metropolitan police to arrest on suspicion. The problems arising under this procedure, vitally necessary to any effective police control of the criminal elements, are rather varied, due in part to the possibility of flagrant abuse of the practice by individual officers, who may seize upon it as a means of revenge or persecution unless their activities are at all times subject to the most minute scrutiny and supervision. Even then a great deal must be left to the judgment of the individual arresting officer, for he alone is in a position to observe the facts in their true light. About the only necessary requisite for officers in such a situation, besides a general knowledge of their powers and limitations, is the possession of a normal amount of common sense and a sense of duty untrammelled by either a zeal for persecution or desire for notoriety on the one hand, or utter lack of initiative on the other.

Arrests under the suspect statutes, which are fairly uniform so far as regards the power of the police, may take one of several forms. They may be arrests of individual suspicious characters observed by particular officers in the course of their rounds on their "beats," under the general power given to metropolitan police "to prevent crimes and arrest offenders"⁴ or under the "power within the city to arrest, on view, any person they see violating or whom they have reason to suspect of having violated any law of the state or ordinance of the city."⁵ The power is also usually given to "arrest and hold, without warrant, for a period of time not exceeding twenty-four hours, persons found within the city charged with having committed felonies in other states, and who are reported to be fugitives from justice."⁶

On the other hand, such arrests on suspicion may be under a so-called police "dragnet," "round-up," or "bag arrest" order, issued in the attempt to secure persons suspected of a recent major crime in the locality, or even under a general police policy

⁴ As in Mo., under R. S. Mo. (1919) sec. 8919.

⁵ As in Mo., under R. S. Mo. (1919) sec. 8930.

⁶ *Ibid.*

of systematic police supervision of undesirables. To quote a recent English observer of Chicago police methods,⁷ "they even go to the extreme of arresting hundreds of suspects for the purpose of identification of 'holdup' cases; the arrests and identifications take place three times weekly. The procedure is either to release the suspects after the parade, or to charge them with some light offense, such as vagrancy."⁸

In the power to arrest and hold on suspicion is found, of course, one of the most potent means of detection and prevention of crime open to the law enforcement officials.⁹ Whether seized individually, suspected of a particular offense, or under a police "dagnet," the individual so seized can be held long enough for the police to make a thorough investigation of his case. Victims of recent robberies and other crimes may be asked to view him in the "shadow box" which is a part of every modern police headquarters. His appearance may be noted and measurements checked for purposes of comparison with descriptions of criminals wanted in other jurisdictions. Detectives may mentally "catalogue" him for future reference. He may be questioned at length about his present and past record. The solution to many unsolved crimes is undoubtedly to be found in such a practice.

The method is, of course, subject to abuse, and has at times no doubt been resorted to by officers not actuated solely by a sense of duty, even as it is alleged to have been used by officials in an effort to keep in custody known criminals against whom no definite charge could be brought. The procedure in such cases might consist of a continuous series of arrests on suspicion and temporary incarcerations, broken only by temporary releases and almost immediate re-arrests, or of the placing of a charge of felony so as to insure a more substantial bail than would be required for an arrest on a minor charge of peace disturbance or vagrancy.

Quite naturally, then, the procedure under suspect statutes has come in for criticism, and in some cases, deservedly. But at the same time it must be borne in mind that the power to arrest on suspicion is absolutely necessary to law enforcement under modern metropolitan conditions, and the proper attitude would seem to call for support of the arresting officer, even if

⁷ Fred. J. Crawley, *Observations on American Police Systems*, 20 JOURNAL OF AMERICAN INSTITUTE OF CRIMINAL LAW AND CRIMINOLOGY, 167, 169.

⁸ See II, post.

⁹ FREUND, POLICE POWER (1904) sec. 100, citing REPORT OF THE NEW YORK CITY MAGISTRATES, which contains the following: "Frequently such arrest is the first step in the detection of some crime which is investigated, the proper complainant found, a formal complaint taken, and the prisoner held for trial."

acting under mistake, so long as he is actuated solely by a sense of duty. In the words of the eminent English officer previously quoted,¹⁰ "There are some, however, who feel that the constable is not getting a fair crack of the whip today; it has become the custom in the press to pillory and beat him. He has no super-normal powers—he collects his prisoners when he sees them and when the public brings them to him or points them out. Those in high places who castigate police, have never caught a criminal, know nothing of the difficulties of doing so, nor of preparing evidence. The fact is that police today are helpless unless prisoners are arrested as stated above. . . . Unless such a case is overwhelmingly made out, to determine it is a matter of pure speculation. In the realm of speculation there is a winner and a loser. It is clear that the police cannot always be winners, consequently they must be supported whether they are winners or losers, providing they are found to be actuated by a sense of duty. This sense of duty must be broadly interpreted, for it must be remembered that a constable has no time to consult law books like his castigators; the constable has to act at once or not at all. In short, therefore, if police find that they are not supported when they honestly make a mistake, they may take good care never to risk making a mistake. Should that happen the law enforcement fabric would crumble." While it is unfair, in a sense, to compare British and American criminal statistics, due to widely differing conditions, the observation can be indulged that the remarkable success of law enforcing officers in the United Kingdom is due in large part to just such an attitude of faith in, and support of, the officers by the British public in general. A plea for such an attitude on the part of the American public is to be found in the statement of the President of the United States¹¹ that "what we need is a more widespread public awakening to the failure of some local governments to protect their citizens from murder, racketeering, corruption and other crimes and their rallying in support to the men of these localities that are today making a courageous battle to clean up these places."

II. THE USE OF VAGRANCY STATUTES AND ORDINANCES

The method which has served to focus attention upon the problem in general, and which has occasioned the most comment, is the practice of arresting known criminals under existing statutes against vagrancy. This method has been invoked with some degree of success in the Chicago drive against organized crime within the metropolis, the authorities there operating

¹⁰ *Crawley, op. cit.*, 177.

¹¹ *St. Louis Post-Dispatch*, Nov. 25, 1930.

under the vagrancy statute of the State of Illinois,¹² and the same procedure has been recently attempted in St. Louis under both the state statute¹³ and the city ordinance against vagrants.¹⁴ In view of the wide divergence of opinion as to the legality of the practice, the policy involved, and the vigorous comment which its use has recently aroused, an examination of the matter in detail is deemed pertinent here.

Arrests for vagrancy are, of course, nothing new. In ancient days in England a watchman or even a private citizen, under statute, might apprehend a common nightwalker.¹⁵ The Statute of 17 Geo. II authorized such a procedure. The practice was well recognized in this country in colonial times, and was incorporated in the earliest law of most of our states. For example, the Laws of Missouri Territory of 1818, page 24, provide for the apprehension of "all other idle, vagrant and dissolute persons rambling about without any reasonable means of subsistence." A similar provision was incorporated in the first revision of Missouri laws after the admission of the State to the Union,¹⁶ and is to be found in the various revisions down to the present. Their constitutionality has almost universally been sustained,¹⁷ as has that of city vagrancy ordinances.¹⁸ What is true of Missouri is true of most other states as well, although the provisions vary somewhat with the jurisdiction, some being more comprehensive in scope than the local enactments.

The evident purpose of such enactments, viewed in the light of conditions existing at their origin, was to enable the police to arrest and detain the ordinary tramp or hoodlum and the frequenter of bawdy houses and other places of ill repute. In the words of a Missouri decision sustaining a vagrancy conviction,¹⁹ "the law does not prohibit anyone from being without visible means of support, or from being idle, or from loitering around saloons or gambling houses. Neither one of those things in itself and alone can be punished as a crime, but when they all three meet in one person at the same time they constitute a vagrant, who has been appropriately described as 'the chrysalis of every species of criminal.'"

While it is true that specific criminal acts would seem to be required to constitute vagrancy, and that the offense is to be

¹² R. S. Ill. (Cahill, 1929) c. 38 sec. 606.

¹³ R. S. Mo. (1919) sec. 3581.

¹⁴ Rev. Code of St. Louis (1927) c. 24 art. 9 sec. 1527.

¹⁵ Wheelhorse's Case (1627) Poph. 208, 79 Eng. Repr. 1297.

¹⁶ Rev. Laws of Mo. (1825) p. 783.

¹⁷ Ex parte Branch (1911) 234 Mo. 466, 137 S. W. 886.

¹⁸ Roberts v. State (1851) 14 Mo. 138; Kansas City v. Neal (1892) 49 Mo. App. 72.

¹⁹ *Supra*, n. 17.

treated as a crime rather than a status, there is no doubt, to quote one authority,²⁰ "that the comprehensive definition of the offense affords the means of dealing with the criminal elements of the population and keeping them temporarily under restraint in cases of emergency." Such a power of preventive arrest is not unknown in this country, and is recognized in Germany as within the inherent powers of the police.²¹

The authorities of the city of Chicago, casting about for further means of harassing the organized criminal elements which have operated there in an era of lawlessness unparalleled in our history, seized upon the vagrancy statute, rarely invoked, as an available weapon. Taking the list of some twenty-six so-called "public enemies" compiled by the Chicago Crime Commission, a local judge²² issued vagrancy warrants for the entire group, which comprised every important gang leader in the city,²³ and has since issued warrants for other notorious gangsters. Arrests followed and the prisoners were admitted to bail at sums far in excess of those required in ordinary commitments.²⁴ To date several convictions have been secured, noted gangsters have fled the city or are in hiding to prevent apprehension, and the effectiveness of the device as a method of harassing the criminal classes is unquestionably established. The situation there was, of course, in the nature of an emergency; to quote a local member of the judiciary,²⁵ "A bit of extra-legal activity is better than having vigilantes on the lake front."

Quite naturally this procedure occasioned a storm of protest and condemnation. One of the first to challenge its legality and use was the famous attorney, Mr. Clarence Darrow, who secured the release of two gangsters on \$10,000 bond in vagrancy charges. Mr. Darrow justified his position in the following words,²⁶ "I broke my resolve to keep out of criminal practice because I feel that this vagrancy campaign is outrageous. If authorities wish to harass the lawless, they should indict them and try them on charges of which they are guilty." Certain of the judges in the local state courts, in reducing bonds of gangsters charged with vagrancy, and sending such cases down to the city police courts for trial, have refused to be a part of the

²⁰ *Supra*, n. 9.

²¹ Meyer Verwaltungsrecht, p. 162.

²² Municipal Judge John H. Lyle.

²³ Chicago Tribune, Sept. 17, 1930.

²⁴ See Bail, IV, post.

²⁵ Chief Justice Harry Olson of Municipal Court, in Chicago Tribune, Oct. 3, 1930.

²⁶ Chicago Tribune, Sept. 7, 1930.

"howling mob" in the drive against crime.²⁷ The position taken by many accords with that of a noted writer of several decades ago,²⁸ in holding that "the whole method of procedure (arresting known criminals under vagrancy statutes) is in direct contradiction of the constitutional provisions that a man shall be convicted before punishment, after proof of the commission of a crime, by direct testimony, sufficient to rebut the presumption of innocence, which the law accords to everyone charged with a violation of its provisions. In trials for vagrancy the whole process is changed, and men are convicted on not much more than suspicion, (on their record, according to a newspaper view²⁹) unless they remove it, to employ the language of statute, by 'giving a good account of themselves.'" Insofar as the police, "over and above the enforcement of the vagrant law, undertake to supervise and control the actions of the criminal classes, except when a specific crime has been committed and the offender is to be arrested therefor, their action is illegal, and a resistance to the control thus exercised must lead to a release and acquittal of the offender."³⁰ As has been indicated herein, however, the person so seized is rarely in a position effectively to resist.

The arguments advanced in justification of the practice are undoubtedly potent. In the words of one of those most active in the attempt to minimize organized crime in Chicago,³¹ "The purpose of the vagrancy act is to apprehend and keep in custody persons other than the unfortunate man who happens to be out of work, has no place to sleep or stay, and is found loitering on the streets. The real purpose of the vagrancy act is clearly, as can be seen from reading it, intended to cover all persons *who live by unlawful means*. That heading certainly is intended to cover habitual criminals with records of convictions and arrests." But the most forceful justification of the procedure is to be found in the editorial columns of the city's leading newspaper,³² which is herein quoted, "The Supreme Court's decision in the Sammons bail case inferentially approves the application of the vagrancy law to the modern type of moneyed hoodlums and

²⁷ Chicago Tribune, Oct. 7, 1930.

²⁸ TIEDEMAN, LIMITATIONS ON POLICE POWER IN U. S. (1886) sec. 47.

²⁹ St. Louis Post-Dispatch, Nov. 24, 1930.

³⁰ TIEDEMAN, *op. cit.* sec. 49.

³¹ Assistant State's Attorney Charles Rathbun, Chicago Tribune, Oct. 7, 1930.

³² *Hoodlums and the Law*, Chicago Tribune, Oct. 20, 1930. The Sammons case referred to is found in 173 N. E. 8. Sammons, incidentally, was convicted of vagrancy, but returned to the penitentiary to serve out an unexpired term on a murder charge, his parole having been held invalid as granted on a reduced sentence.

quiets such doubts as have been felt in some quarters on this point. We have not shared those doubts and it is reassuring to know that they are not considered valid by our distinguished tribunal. If the framers of the statute did not foresee the dilemma into which the huge profits of prohibition and the resourcefulness of modern criminal organization has thrust the agencies of the law, they made it clear in the sweeping terms of the statute that they intended it to meet all possible extensions of lawless living, hoodlumism, in effect the general conditions we have today. There is nothing better established in our jurisprudence than the duty of reinterpreting the phraseology of laws to conform to changes in conditions. This duty does not justify the distortion of words or intentment, but it does require the interpretation of statutes to prevent the defeat of justice and the underlying intent of the law through a mere change of the form of offenses or the appearance of new offenses in character essentially the same as those which the legislator had concretely in his mind. Such interpretations are a commonplace of our jurisprudence, and the reports are full of ruling cases in which laws have been interpreted with far greater liberality than is required in the case of the statute of vagabonds.”

Then, (after quoting the Illinois statute³³) “If the intention of these words does not reach the modern gangster, gunman or hoodlum, even under the rule of strictest interpretation of criminal statutes, then it is impossible for legislative language to express a clear general intent. The intent in this statute is to bring under the discipline of the law and protect society from ‘idle, dissolute persons,’ who do not ‘lawfully provide for themselves,’ who ‘neglect all lawful business,’ and live the life of what we now call the underworld. The fact that a hoodlum has or can obtain money does not remove him from the category of vagabond. The language is as definitely descriptive as the experience of the time permitted, and its effort to cover the whole field of dissolute and lawless living is as obvious as words can make it. That it does not reach some modern fashions in vagabonds, and especially the more sinister types of lawless livers, men who go abroad armed without lawful excuse with deadly weapons, frequenters of gang hang-outs, racketeers and hoodlums, men who do not ‘lawfully provide for themselves,’ offends not only common sense but in our judgment the strictest principles of judicial interpretation.

“The prosecuting officials and the judges who are making use of this statute in the war on organized and habitual criminality are on sound legal ground, it now seems certain, and have shown

▪ *Supra* n. 12.

a resourcefulness as well justified in legal principle as it is welcome to a community long and sorely afflicted."

Whether the procedure would be possible in a city where there is not the dire emergency that existed in the city of Chicago is perhaps doubtful. The press of other cities, in commenting on the situation in that metropolis, endorsed the policy under the special situation there, though recognizing the dangers of abuse it entailed.³⁴

Following the Chicago precedent the practice is being tried, at this writing, in the city of St. Louis; whether or not it will be effective is yet to be determined. The efforts of the police have the support of the local press,³⁵ in spite of the fact that there is no such emergency or crime wave there as existed in Chicago. The statute under which warrants must issue³⁶ is by no means as inclusive as that found in Illinois; officials differ as to its scope and purpose. The remedy may perhaps be found in proceeding under the municipal ordinance,³⁷ which classes as a vagrant "every person who shall be engaged in any unlawful calling whatsoever." In such cases, however, prosecutions for the particular unlawful act may be insisted upon by the judiciary.³⁸ The factor in that city which may defeat any effective use of the enactments, even under the systematic policy of enforcement inaugurated by the Department of Police,³⁹ is the lack of any acute emergency, other than general unemployment conditions existing in most large cities, to focus public opinion on the efforts of the police and crystallize public sentiment in favor of such a policy.

III. PROSECUTIONS UNDER FEDERAL INCOME TAX PROVISIONS

What is undoubtedly the most decided innovation so far adopted to harass and bring to justice the organized criminals is the prosecution of such characters for evasion of the Federal income tax provisions. This method has been used with some degree of success against certain of those named by the Chicago Crime Commission as "public enemies,"⁴⁰ convictions having resulted and prison sentences having been imposed, and has been suggested as a possible procedure in the case of others against whom felony prosecutions failed.⁴¹

³⁴ St. Louis Post-Dispatch, Nov. 24, 1930.

³⁵ St. Louis Globe-Democrat, Nov. 29, 1930; Post-Dispatch, Nov. 25, 1930.

³⁶ R. S. Mo. (1919) sec. 3581.

³⁷ Rev. Code of St. Louis, 1926, c. 24 art. 9 sec. 1527 (4).

³⁸ Provisional Police Judge Stein, St. Louis Post-Dispatch, Dec. 3, 1930.

³⁹ St. Louis Globe-Democrat, Nov. 27, 1930.

⁴⁰ Ralph Capone, Jack Guzik, etc., St. Louis Post-Dispatch, Nov. 20, 1930.

⁴¹ Scorfini case (Ill., 1930).

The use of this method, however, has been quite vigorously criticised by the President of the United States, who vehemently disavowed any intention of proposing the extension of Federal criminal laws to cover racketeering.⁴² The President said, in part, "Every single state has ample laws that cover such criminality. What is needed is the enforcement of those laws, and not more laws. . . . The Federal Government is assisting local authorities to overcome a hideous gangster and corrupt control of some local governments. But I get no satisfaction from the reflection that the only way that this can be done is for the Federal Government to convict men for failing to pay income taxes on the financial products of crime against state laws."

This attitude of the President has been quite laudably received by the press in general, on the basis that the adoption of a policy of expansion of Federal laws to cover violations of state laws would be a usurpation of state police power.⁴³ It is undoubtedly rather a disgraceful reflection upon state law enforcement that gangsters are permitted to make millions on racketeering, bootlegging, and other crimes and to corrupt or intimidate local officials, and then suffer only the penalties that the Federal Government can deal out for failure to make correct income returns.

IV. THE APPLICATION OF MAXIMUM BAIL

A further method to be noted, by no means novel, is to be found in the attitude adopted by some members of the judiciary in fixing bail at a maximum figure for known criminal offenders arrested on any charge whatsoever. In view of the rather uniform constitutional provisions in the various states prohibiting excessive bail, and of the wealth and influence of many of the organized criminals of today, the extent to which this practice may be effective is speculative at most.

Where the offender or suspect can be arrested and charged with a definite major crime or felony, or even as suspected of a felony, the bail required can, of course, be rather substantial; particularly if the man has an imposing criminal record with other charges pending, a substantial bail may serve to insure his incarceration over at least a short period. The purpose of bond being to insure the attendance of the accused at his trial or hearing, a combination of the above elements may result in the fixing of bail at a figure which may be hard for even the organized criminal and racketeer to meet, and yet be no violation of constitutional provisions.

But in some localities officials have not stopped at that. In the case of known police characters, with records of numerous

⁴² Pres. Hoover, St. Louis Post-Dispatch, Nov. 25, 1930.

⁴³ *Mr. Hoover Hits the Nail*, St. Louis Globe-Democrat, Nov. 28, 1930.

arrests and convictions, arrested on a minor charge, the bail has been set much higher than any ordinary conception of the purposes of bond would seem to justify, the practice being resorted to in a deliberate effort to prolong the period of incarceration. In the case of a noted Chicago gangster,⁴⁴ with a thirty-year record of arrests, including convictions for rape, murder (with the death sentence), robbery, conspiracy, and with other felony indictments pending, the bail was set in Municipal Court at \$50,000 on a charge of vagrancy, and others have been held on similar charges with bail of \$5,000 to \$10,000. In the former case, which was taken to the Supreme Court of the State of Illinois by application for a writ of habeas corpus, an authoritative declaration of the problems involved in such a situation is to be found in the opinion of that court, which reduced the bail of the gangster to \$5,000.⁴⁵ In the words of the court, "This record may be taken into consideration in fixing the amount of bail which would be reasonably sufficient to insure his attendance to answer this comparatively minor charge. But bail to answer this charge cannot be fixed with reference to securing his appearance to answer the other crimes with which he is charged, or at an unreasonable amount for this charge, merely to detain and imprison him. . . . The amount of \$50,000 could have no other purpose than to make it impossible for him to give the bail and to detain him in custody, and is unreasonable. The constitutional right to be admitted to reasonable bail cannot be disregarded. The judge has no more right to disregard and violate the constitution than the criminal has to violate the law. . . . A criminal may have forfeited his right to liberty, but neither courts nor any other power have the right to deprive him of it except in accordance with the law of the land. Under the circumstances of this case, in which the extreme penalty is imprisonment at hard labor for six months or a fine of \$100, the action of the court in requiring \$50,000 bail was unreasonable and violated the constitutional right of petitioner to be bailed by sufficient sureties. He may be arrested under the other charges against him and required to give bail to answer those charges, but he cannot be required to give bail sufficient to answer those charges upon the charge for which he is now held."

The same decision, however, has been acclaimed by others as an acceptance of and desire on the part of the distinguished tribunal to sustain the procedure invoked by authorities in their war on organized crime. In the editorial columns of a leading

⁴⁴ James ("Fur") Sammons.

⁴⁵ *People ex rel. Sammons v. Snow* (Ill. 1930) 173 N. E. 8.

American daily newspaper the following recently appeared:⁴⁶ "The fixing of the bail of the gangster Sammons at \$5,000 by the highest court of the state, although it was a reduction of the sum fixed by the lower court, will hearten the citizens now engaged in a pitched battle with organized crime. While the Supreme Court refused on constitutional grounds to approve prohibitive bail, it fixed by its own high authority a sum much larger than would in other circumstances be required for the charge of vagrancy in common form.

"The learned justices therefore recognized the special situation with which this and other communities in the United States have found themselves and the special dangers and difficulties with which society is now compelled to deal. The modern vagabond or gangster is no longer a lone individual. He is a wolf of the pack—an habitual evildoer, organized with others, and especially since the coming of prohibition, provided with funds greater than his own and sufficient to make available to him every resource of the law and without the law. The sufficiency of bail in his case must be determined by these notorious conditions, which the Supreme Court, it would seem, has refused to ignore. As the available means, extensive if subterranean influence, and organized resources of the modern gangster are far beyond those of the old-time criminal or ne'er-do-well, the test of bail, unless it is to insure the defeat of justice, must take these conditions into account. Vagrancy in the common sense is not that of the gangster vagabond, which involves potentialities more serious to society.

"The Supreme Court has therefore not only assisted properly in the effort of law-abiding citizens to deal with organized criminality in its present form, but it has shown a conception of the responsibilities of judicial interpretation which strengthens the law and public confidence in our courts as practical agencies of the public weal."

CONCLUSION

Whether or not the use of the various methods of law enforcement outlined herein, or any one of them, is to be commended or condemned is a matter of opinion. But the question is worthy of the consideration of every member of the legal profession, and of every citizen as well. The matter of the enforcement of law and prevention of crime, particularly as applied to the situation of organized gangsters and racketeers, whose exploits of lawlessness and violence are of almost daily occurrence, is one of the greatest problems facing this nation. The gravity of the situation is indicated in part by the fact that not only the states, but

⁴⁶ Chicago Tribune, Oct. 24, 1930.

Federal authorities as well, have been compelled to take cognizance of the conditions that exist in certain municipalities and local areas. The possibilities involved in the situation are well illustrated by a recent suggestion of a prominent legal educator,⁴⁷ and the comment occasioned thereby,⁴⁸ advocating the establishment of a commission with certain safeguards having power to convict individuals as public enemies and fix the terms of their removal from society, without the necessity of a conviction for a specific offense as common law and statutes require, and a policy of requiring suspected individuals to give bond and report daily to authorities. So radical a change in our legal machinery would probably be advocated by few today. But it is obvious that the answer to the question of law enforcement and organized crime must be determined in a way that will strengthen the agencies of law enforcement and restore a waning public confidence in the agencies of enforcement, even though it entail the use of so-called extra-legal agencies and devices, or the substitution for present agencies of some system more adaptable to twentieth century conditions.

CARL V. EIMBECK, '31.

⁴⁷ Wiley B. Rutledge, Acting Dean, Washington University School of Law, St. Louis, Mo.

⁴⁸ St. Louis Post-Dispatch, Dec. 3, 1930.