Symposium Prosecuting Transnational Crimes: Cross-Cultural Insights for the Former Soviet Union

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would testify against major crime groups. These protections provided by the state at considerable expense to the citizenry, both in financial costs and potential risk, have proved invaluable in producing convictions. Yet, they have produced victimization problems not foreseen by the Organized Crime Act of 1970. The increasing transnational nature of organized crime means that in the future, the conviction of serious organized criminals will depend on the resources of the most affluent countries with the most effective and honest law enforcement. The Witness Protection Program of the United States will remain an important tool, not only to secure convictions against domestic organized crime groups, but also against international groups which operate within our border. When I say operate within our border, it is not just those who are physically present, but those who send wire transfers through our banks. Because this and virtual reality are now much more part of our organized crime. Thank you.

COMMENTARY BY PROFESSOR JAMES DIEHM

I have the honor and privilege of commenting on Professor Shelley's address, and not surprisingly to me, having long been an admirer of her and her work, I find myself in agreement with the comments that she made.

As she mentioned, our history here in the United States, has been less than admirable. Having been involved in prosecutions since the early 1970's, I recall situations where the court system, and specifically the prosecutors, did not let the victim know what was taking place, did not discuss the pending disposition with the victim, and tragically in many cases, did not even advise the victim of the disposition. Calls came in from victims asking what happened to the case, and they were told that that, perhaps several weeks before, the matter had been disposed of without consulting them. Horrible situations developed, particularly with regard to crimes against women. I recall one situation involving an appalling crime. A number of individuals entered a house occupied by women, took control of the house for the entire evening, and committed a number of rapes and other despicable crimes. The individuals were apprehended, and when questioned they confessed, to the best of my recollection, to six such incidents. The other five had not been reported, largely, I believe, because of the concerns of the women who had been assaulted that they would be twice victimized.

Fortunately for us, as Professor Shelley mentioned, we have come a long way in dealing with these issues. There continue to be problems, but hopefully we are addressing them with some of the programs and approaches that Professor Shelley has discussed. I think we all welcome those changes. I found her comments with regard to the approach in Russia and Ukraine coming from the top down, as opposed to our approach going from the bottom up, to be particularly interesting. Change is coming here in the United States. When I served as a United States Attorney in the 1980’s, we had a staff member who was designated to address these matters, and it certainly improved the situation.

Russia and Ukraine, following European tradition, appear to have provided greater protection for the victim, including the possibility of representation at court hearings. This speaks well of the system. There are some concerns that should be considered, including the fact that representatives are not lawyers, not educated as to court procedures, and may be prone to outbursts during the proceedings. I found that I am in agreement also with Professor Shelley’s comments on the witness protection program. It is a fascinating area. I worked in an organized crime section of a prosecutor’s office for a number of years, and we had situations arise where this possibility was open to us. As Professor Shelley mentioned, the program is very expensive, and the cost is certainly something that must be considered. Also, problems do arise. As she mentioned, many of these people have a criminal history. While their recidivism rate is lower, these individuals sometimes do return to their old ways. There are situations where a witness with a criminal record, perhaps from the East Coast, is relocated to a small town, perhaps in Iowa, and is responsible for a crime wave in his or her new hometown. These are issues that must be addressed.

Professor Shelley’s comments concerning the assumption of jurisdiction here in the United States were very interesting. There must, of course, be a sensitivity to the interests, expectations, and desires of the other countries involved. When I was with the Justice Department, some of these situations did give rise to problems. However, the possibility of assuming jurisdiction here in the United States should be considered in appropriate cases.

I think I speak for all of us in thanking Professor Shelley for her fine address.