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DEMON AT THE BACK DOOR: RISE OF THE MEXICAN DRUG CARTELS

BY: OLIVER BEATTY

“I’m a decent man who exports flowers” –Pablo Escobar, Medellin Cartel kingpin

[This] is how bad this is –when a hospital in my county has somebody walking in with two fingers and say, “Is there any way to preserve these fingers so that when we get the hostages back we can sew them back” ·Rep. Bilbray (R-CA)

INTRODUCTION

$7 billion dollars annually and 36,000 dead. Cocaine submarines and headless corpses. A criminal network so sophisticated and culturally entrenched that there are even patron saints dedicated to traffickers. These are the hallmarks of the 21st century Mexican Drug Cartels. The profound level of violence that marks

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these cartels is only matched by the level of efficiency that they exhibit in evading legal prosecution on both sides of the border. The same way that it took ingenuity and dedicated coordination by the FBI and the Department of the Treasury to dismantle Al Capone’s almighty regime in the 1930s, the challenge is upon the United States to tear apart the cartels conviction-by-conviction today. While cynics will lament that the drug war is unwinnable and cartels a new fact of life, such a position promises to garner little support from ranchers in Arizona, factory workers in Juarez, and the countless victims of drug violence and border chaos. The collateral damage of the cartels’ transborder operations are vast, including the citizens living in terror while sociopathic kingpins sit protected in darkened mansions inside Mexico. Today, real life truly supersedes art, Scarface and The Godfather both paling in comparison to the 2011 Mexican Cartels.

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9 Id.

10 While there is no exact cite for this assertion the Congressional testimony throughout this article reveals staggering profits of over $7 billion annually, decapitated bodies dumped in bars, and a plethora of political corruption that supersedes the 1970s and 1990s conception of drug trafficking contained in those films.
While the media is quick to showcase the gore of cartel sponsored violence there has been little attention paid to how U.S. agencies across the nation are attempting to fight back. Recently in 2006 the Tijuana Cartel lost a kingpin, due to a San Diego federal prosecutor, Laura Duffy, who hopped out of a helicopter onto Arellano Felix’s boat and let him know that his time was over. He was convicted and is serving out a life sentence in federal prison. Such rare stories need to be highlighted and agencies assessed if we are to ever make progress beyond NPR talking points and reelection campaign slogans. To illustrate, this article will detail the historical trajectory of cartel-like prosecutions from the mafia takedowns of yesteryear into the challenges and techniques of assaulting the 2011 Mexican cartels. Part I details the Mafia prosecutions of the 1930s and 1980s detailing the decimation of the formerly untouchable regimes of New York’s La Cosa Nostra. Part II explains the rise of the first Latin American trafficking cartels in Peru, Columbia, and the U.S. authorities responses in the 1980s and 1990s including the destruction of Pablo Escobar’s empire. Part III captures the rise of the Mexican cartels and how Mexico became the new distribution point for drugs, guns, and cartel violence spilling across the border. Part IV examines the recent and current agencies striking back at Mexican cartel members and attempts to illuminate the progress and outline for future law enforcement operations. The conclusion of this comment is that through patient, coordinated, and innovative techniques saddled

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12 *Id.*
with transnational cooperation the border need not be a pit of genocide and sadness. The comment does entertain the conclusion that this might not be a winnable war by the means and strategies we have used thus far. While drugs will continue to be consumed and traffickers will continue to exist worldwide there is just cause to find a way and strategy bringing a resounding end to the misery factories that are the modern Mexican drug cartel's.


The analogous ancestors to the Mexican Drug Cartels, La Cosa Nostra, have been disintegrating for twenty years. James B. Jacobs and Lauryn P. Gouldin's article, Cosa Nostra: The Final Chapter (1999) states that with over hundreds of successful prosecutions, huge portions of the five families out of commission, and a dynamic collaboration of U.S. agencies all have decimated even the most notorious Mafia families. The successful prosecution of organized crime has been due to:

- change in the perception of how to fight the mafia, interagency federal commitment to destroying organized crime, increased political support at the highest levels of government, extensive usage of technological surveillance, witness protection, criminal and civil provisions under RICO statute, and long-term coordinated administrative strategies of local and state law enforcement.

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14 Id.
15 Id. at 158, 181.
once so powerful that it had insulated itself in several U.S. legitimate industries trading judges and politicians like cards there is hope that the seemingly untouchable modern day drug empires may too be reduced to ruins.\textsuperscript{16} The downfall of the Mafia is ripe with details and techniques for the current war against the cartels.\textsuperscript{17}

To begin, prohibition nationalized crime syndicates that originally were local-based and toned to nearby criminal ventures.\textsuperscript{18} Prohibition created millionaires out of local thugs who, by virtue of needing countless organization and staff to transport alcohol, became bootleggers (traffickers of antiquity) and elevated the level of the Mafia’s criminal enterprise.\textsuperscript{19} The original mafia family structure remained intact with a boss, underboss, consigliore, caporegimes and wiseguys but bootlegging allowed the accelerated mafia infiltration of labor unions, importing and exporting industries, and immense political influence over legal agencies who were not so keen on staying dry.\textsuperscript{20} By the start of the 1950s already the mafia had matured into bookmaking, trucking, bail bonds, construction, operating legit casino’s, and domination of a variety of blue collar industries.\textsuperscript{21}

Early senate committees in this 1950s timeframe proved well-intended but produced little results and it was not until J. Edgar Hoover died that the FBI

\textsuperscript{16} Id. at 129.

\textsuperscript{17} Id. at 181.

\textsuperscript{18} Jacobs & Gouldin, supra note 13, at 129, 130.

\textsuperscript{19} Brian Goodwin, Civil vs. Criminal RICO and the “Eradication” of Cosa Nostra, 28 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 279, 288 (2002).

\textsuperscript{20} Id.

\textsuperscript{21} Id.
created the OCRS.\textsuperscript{22} The OCRS’s first attempts at breaking the mob in gambling cases found little tow with juries.\textsuperscript{23} Even Bobby Kennedy’s fire and brimstone war on the mob made rhetorical headway but the first nail in the coffin for the mob emerged with not individualized campaigns but coordinated local, state, and federal agencies working together against a common enemy.\textsuperscript{24}

**A. Law Enforcement Gets Serious: 1970 to 1990 Operations**

The combination of political support from Washington, an enhanced FBI approach, and federal, state, and local law enforcement cooperation dealt a devastating blow to the Mafia from 1970-1990.\textsuperscript{25} The FBI adopted a “major cases” approach in which instead of settling on the first person they caught with incriminating information and prosecuting they opted to amass intelligence on the entire mob’s operations.\textsuperscript{26} The FBI even broke teams up under operation GENUS where entire task forces would follow just one of the five major Cosa Nostra families.\textsuperscript{27} In addition the eavesdropping technology through wiretaps and electronic bugs placed in various mafia hangouts, homes, and secret meeting places reaped a buffet of incriminating information.\textsuperscript{28} These new approaches were matched with the riveting and daring first-ever infiltration into the most inner circle of the mob through Joe Pistone’s six year undercover operation which resulted in the indictments of mafia figures from three states destroying the Bonnano crime

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\textsuperscript{22} Jacobs & Gouldin, *supra* note 13, at 159.
\textsuperscript{23} *Id.*
\textsuperscript{24} *Id.*
\textsuperscript{25} *Id.* at 159-161.
\textsuperscript{26} *Id.* at 162.
\textsuperscript{27} Jacobs & Gouldin, *supra* note 13, at 163.
\textsuperscript{28} *Id.*
family. The FBI's combination of daring undercover agents and technology converged into indictments that, for the first time, inspired mafia figures to break their code of silence and choose witness protection over intimidating prison sentences.

Part of the FBI's success stemmed from interbranch support, including the federal executive branch and state and local law enforcement agencies. Ronald Reagan along with the top brass of the Attorney General and Department of Justice form a Presidential commission charged with the task of detailing a full analysis of organized crime. In tribute to the unsuccessful but well-intentioned early days of RFK and McClellan hearings this newfound aggressive presidential commission held countless public hearings and kept visibility at an all-time high of how the mafia had a target on its back and showcased top-level executive support behind the FBI investigations. Meanwhile state agencies created task forces modeled after the FBI's; including New York's State Organized Crime Task Force (NYSOCTF) which successfully planted bugs, worked with prosecutors, and removed several powerful mafia syndicates from their grips on the garment, transportation, fish markets, waste hauling, and construction industries. For the duration of these years the entire political and law enforcement hierarchy had become impatient with past methods and teemed up in ways that left no one for the mob to pressure, coerce, or bribe.

29 Id. at 164.
30 Id. at 161.
31 Id. at 161-162.
32 Id.
33 Jacobs & Gouldin, supra note 13, at 165.
B. Legal Weapons against the Mob: Title III, RICO, and Witness Protection

Three legal tools aided in the destruction of the mob: Title III, the witness security program, and the Racketeer Influenced and Corrupt Organization Act (RICO).34 Title III of the Omnibus Crime Control and Safe Streets Act of 1968 unleashed upon the mafia endless wiretaps, bugs, and electronic surveillance at a level yet to be witnessed.35 This Act allowed electronic eavesdropping by means of a judicial warrant on a showing of probable cause and of necessity due to the absence of alternative means.36 In 1986 Title III was enhanced by allowing roving surveillance essential to track the communications and paths of the mob as the criminal syndicates became more sophisticated.37 As the Jacobs and Gouldin article states few witnesses were usually willing to testify in court so hard surveillance evidence was needed to snatch incriminating conversations in the absence of testimonials from witnesses.38

The forty year reign where victims, witnesses, and mob members faced certain death if they cooperated with authorities came to a halt with the advent of the Witness Security Program created by the Organized Crime Control Act of 1970.39 The idea was that given protection victims and witnesses alike would be more likely to cooperate in a mafia prosecution.40 Despite these ideals the program itself did not produce mob snitches and essential turncoats until the late 1980s when various

34 Id. at 166.
35 Id.
36 Id.
37 Id.
38 Jacobs & Gouldin, supra note 13, at 167.
39 Id.
40 Id.
figures faced staggering prison sentences. 41 Like domino’s, organized criminals flipped across the nation as they gained entry into the witness protection program including: Jimmy “The Weaseal” Fratiano (L.A. crime family boss), and Angelo Lonardo (underboss of Cleveland crime family), Sicilian heavyweights testified against the U.S. mafia in the “pizza connection” case (U.S. v. Badalmenti), Lucchese and Columbo capo’s, Genovese associates, and the grandstanding Sammy “The Bull” Gravano underboss of the Gambino crime family. 42 In a striking turn of the tides not only had it become efficient and smart to cooperate with authorities but many of these mobsters published chronicles of their former exploits that dominated the New York Times bestseller list and inspired legendary films. 43

The nail in the mob’s coffin proved to be the RICO Act. 44 As Jacobs and Gouldin defined it in their article, “RICO makes it a crime to acquire an interest in, to participate in the affairs of, or to invest the profits acquired from, an enterprise through a pattern of racketeering activity”. 45 As the legislature intended the penalties are severe: 20 years for a RICO violation, 25 for conspiracy count proven and sentencing for each predicate offense. 46 The RICO Act also includes mandatory forfeiture of defendant’s property traced to illegal activity as well as an often-used civil provision of RICO by which the government can sue racketeers, obtain restraining orders, and employ a variety of civil litigation tools to root out the mob

41 Id. at 168.
42 Id.
43 This assertion is related to the Sammy the Bull Gravano tell-all book, Wiseguys by Nicolas Pileggi, and various films based on former mafia figures revealing insider stories like Casino and Goodfellas.
44 Jacobs & Gouldin, supra note 13, at 169.
45 Id.
46 Id.
from labor unions and money laundering fronts.\textsuperscript{47} The RICO Act stood quietly unused until its lead drafter and law professor roped the FBI into a conference pointing out how by focusing on crime families instead of cases on individuals they could bring the kingdom of crime down. They listened and from 1980 onward RICO has been central to almost every single mafia prosecution and conviction due to its unique way to pin liability on loosely associated mafia figures to criminal acts.\textsuperscript{48}

C. \textbf{The Fate of the Mafia: La Cosa Nada}

The outcome of RICO, together with almost 40 years of attacks on the mob has reduced it to a shadow of its former stature. Since 1981, 19 bosses, 13 underbosses, 43 capo’s have been convicted by federal authorities.\textsuperscript{49} In just a three year span from 1983 to 1986 there were 2,500 indictments as the investigations attacked the mob from all sides.\textsuperscript{50} Massive defections into witness protection and the political support dwindling across the board has reduced the mafia to a shadowed existence.\textsuperscript{51} Sadly while law enforcement innovation brought a goliath to its knees the illicit demand by the American public continued and awaiting in the jungles of South America a new criminal empire was birthing.

\textsuperscript{47} \textit{Id.}
\textsuperscript{48} \textit{Id.} at 169-176.
\textsuperscript{49} Jacobs & Gouldin, \textit{supra} note 13, at 177.
\textsuperscript{50} \textit{Id.}
\textsuperscript{51} \textit{Id.} at 177, 188.
II. THE COLOMBIAN MEDELLIN CARTEL 1970-1993: FROM COCAINE COWBOYS TO KILLING PABLO ESCOBAR

100% of the cocaine that enters the United States comes from Latin America.\textsuperscript{52} Colombian cartels were responsible for over 80% of this market from 1980-1993 and became the trademark of the new generation of organized vice: the drug cartel.\textsuperscript{53} This marriage of deadly convenience between cocaine and crime cartels has its roots in the leftovers of a legal cocaine industry in South America specifically Peru, Bolivia, and Colombia.\textsuperscript{54} In Peru and Bolivia cocoa farmers harvested the leaves and Colombia is where the processing plants converted it all into cocaine paste and base.\textsuperscript{55} Despite the U.S. importing and using cocaine for a variety of medicinal purposes including curing hay fever, alcoholism, and even depression this came to a screeching halt by the start of the 20\textsuperscript{th} century.\textsuperscript{56} Various outcries emerged from both the medical and general community assessing both opiates (popular at the time) and cocaine as being horrendous medical solutions to such serious afflictions as alcoholism, depression, and allergies.\textsuperscript{57} Despite the U.S. lobbying internationally for other nations to follow suit it would not be until aftermath WWII and political

\begin{thebibliography}{9}
\bibitem{54} Paul Gootenberg, \textit{The “Pre-Colombian” Era of Drug Trafficking in the Americas: Cocaine, 1945-1965}, Vol. 64 Issue 2 \textsc{The Americas} 133, 135 (Oct. 2007).
\bibitem{55} \textit{Id.}
\bibitem{56} Peter N. Stearns, \textit{The Rocky Road to a “Drug Free Tennessee”: A History of the Early Regulation of Cocaine and the Opiates}, 1897-1913, Vol. 29 No. 3 \textsc{Journal of Social History} 547 (Spring 1996):
\bibitem{57} \textit{Id.} at 551-555.
\end{thebibliography}
instability inside South American nations that the legal cocaine industries fell from formal grace and became pregnant for the underworld.\textsuperscript{58}

### A. Birth of the Medellin Cartel

As the U.S. campaigned across the world to enforce their newfound prohibition on cocaine for medicinal purposes thousands of Andean farmers stared at their farms, factories, and family members whose entire lives depended on the export of coca leaves.\textsuperscript{59} The Medellin cartel was born out of this industry whose existence would not be easily stamped out but now required the type of shadowplay that only the underworld would nurture.\textsuperscript{60} The luxury drug of choice in the U.S. had become cocaine and Colombia stabbed into the market at the exact right time as Castro took over in Cuba.\textsuperscript{61} Castro’s expulsion of the Cuban mafia forced them onto U.S. shores and into Miami where they began peddling cocaine through smugglers into various ports, planes, and creative measures. The fragile union of the Cuban Mafia in South Florida and Colombia cocaine dealers provided the foundation for what would become an almighty empire lasting three decades.\textsuperscript{62} The first generation of smugglers and traffickers could barely even be called traffickers since their operations were family-farm based and most only controlled a slight aspect of the trade whether harvesting, producing, or transporting. These individual smugglers were no match for the insidious U.S. demand for cocaine so the formation of cartels

\textsuperscript{58} Id.
\textsuperscript{59} Gootenberg, supra note 53, at 137-144.
\textsuperscript{60} Id. at 146.
\textsuperscript{61} Stearns, supra note 55, at 547; Kallenbach, supra note 52, at 180.
\textsuperscript{62} Kallenbach, supra note 52, at 180.
or sophisticated business networks for smuggling became a necessity.\textsuperscript{63} Carlos Lehder Rivas once a Detroit car thief conceived of a privatized cocaine smuggling operation that used all of the separated tools of the cartel (boats, planes, factories, coca farmers) into a synthesized powerhouse of black market capitalism.\textsuperscript{64} Despite it took the kidnapping of Jorge Ochoa’s daughter, a notorious kingpin to urge their formation.\textsuperscript{65} The top traffickers met up and realized that with their profit margins they were prime targets for kidnappings and thieves so they unified as an org called “Death to Kidnappers” but in reality it became simply, the Medellin cartel.\textsuperscript{66} Out of this newfound bond of strength through unity the cartel spawned the one and only, Pablo Escobar Gaviria who became the face of Colombia’s drug empire.\textsuperscript{67} The empire had crystallized as now they had the manpower, distribution networks, and resources to dominate the cocaine game.

B. The Blueprint of the Cocaine Gods

The qualities that set the Medellin cartel apart from so many drug cartels are organization structure, economic and political clout, not to mention a savage wrath.  

1. The J.P. Morgan of Coke Dealing

The vertical integration of the Medellin cartel is formidable and would give the Fortune 500 a run for their money in efficiency in trafficking cocaine. At the starting point farms are financed in the Andean mountain region where peasant

\textsuperscript{63} Id.  
\textsuperscript{64} Id. at 180-181.  
\textsuperscript{65} Wilson, supra note 53, at 1169.  
\textsuperscript{66} Id.  
\textsuperscript{67} Id.
coca farmers in Peru, Bolivia, and portions of Colombia farm coca leaves converting it into base.\footnote{Kallenbach, supra note 52, at 183.} This base is flown to Colombian factories and processing plants mixing the coca leaves with ether and acetone producing pure cocaine.\footnote{Id.} So far almost everything is handled exclusively within South America, let alone within the same exact region minimizing costs and political risks. The next step is to smuggle the pure cocaine by ship, boat, or private airplane into the U.S., usually in huge shipments of 300 kilo’s or more to justify the hauling costs.\footnote{Id.} Once in stash houses or with large-scale dealers in the U.S. the pure cocaine is “cut” by mixing it with various substances to double or triple their original kilo.\footnote{Id.} These cut kilos are then sold at double the original price to mid-level dealers and street dealers.\footnote{Id.} This organizational structure and distribution model creates a retail system of trafficking cocaine that had yet to be seen anywhere in the western world.\footnote{Kallenbach, supra note 52, at 183. (denoting that Pablo Escobar and Jorge Ochoa made the Forbes 1988 list of 125 non-United States billionaires).}

2. Immense Wealth & Political Insulation

The combination of staggering profit margins and political influence lends cartels a near invincible existence. The profits, alone, reaped from the Medellin cartel operations ranged from 2 to 4 billion dollars each year propelling kingpins like Pablo Escobar and Jorge Ochoa to the Forbes list of the world’s richest men.\footnote{Id.} Meanwhile, the Medellin cartel keeps coca farmers alive, creating a plethora of jobs
in the distribution network, and even pumping funds into social welfare programs.\textsuperscript{75} At one point in 1983 the cartel had over $12 billion dollars in U.S. assets creating a surprisingly diverse financial portfolio.\textsuperscript{76} Every institution that could possibly fight or dissent from the cartel is influenced and financed by it including military, leftist guerrillas, banks, the Catholic Church, courts, and police.\textsuperscript{77} Anyone wanting to step out against the cartel faced the risk of death and ostracization from their own peers ingrained with cartel politics.

It is exactly this black market venture capitalism that helped create a political structure and social culture that not only protects but admires these traffickers.\textsuperscript{78} Keep in perspective that many in 1980 were old enough or were only a generation way from a timeframe where cocaine was a legal export used worldwide by pharmacists and doctors thus making the demonized late 20\textsuperscript{th} century view of cocaine strange if not morally ambiguous.\textsuperscript{79} Additionally, prior to the surge in political and economic power of the cartel the old landed elites had suffocated the middle class out of the economy creating an oligarchy of elites.\textsuperscript{80} The cocaine trade is viewed by the peasant class as themselves rising in a new economic order with the traffickers.\textsuperscript{81} As one trafficker might have quipped, “I’m a businessman, my commodity just happens to be cocaine.”\textsuperscript{82} Insulation was the name of the game.

\textsuperscript{75} \textit{Id.} at 186.
\textsuperscript{76} \textit{Id.} at 184.
\textsuperscript{77} \textit{Id.} at 186.
\textsuperscript{78} Wilson, \textit{supra} note 53, at 1170.
\textsuperscript{79} See generally Stearns, \textit{supra} note 55 at 547.
\textsuperscript{80} Wilson, \textit{supra} note 53, at 1170.
\textsuperscript{81} \textit{Id.}
\textsuperscript{82} SCOTT H. DECKER & MARGARET TOWNSEND CHAPMAN, DRUG SMUGGLERS ON DRUG SMUGGLERS: LESSONS FROM THE INSIDE 105 (2008).
Very much like the Russian mafia filled in for parts of Russian society that fell apart in the post-Soviet world, Colombian traffickers did not just control the justice system but became the justice system.\textsuperscript{83} Not only did the cartel bribe its way out of law enforcement, but it was not uncommon for the cartel’s defense lawyers to be former Colombian Supreme Court justices who made only one appearance or phone call and indictments evaporated as quickly as they arose.\textsuperscript{84} Judges, lawyers, police, and even presidential candidates were all puppets to the Medellin puppeteers those who did not follow suit and went their own way met a grisly end with the cartel’s savage side.

3. \textit{Plomo o Plata (“Lead or Silver”)}

The cartel’s murderous assault on the judiciary includes: 3 Presidential Candidates, 11 Supreme Court Justices, 242 Judges.\textsuperscript{85} In addition to the judiciary the Colombian cartel also killed: 110 People on an airliner, 400 policemen, 50 journalists, and over 16,200 Colombian civilians in 1987 alone.\textsuperscript{86} A total of over 45,000 dead in Medellin alone from the savage reign of the cartel.\textsuperscript{87} Public assassinations, bombings, entire airliners exploding are trademarks of the cartel.\textsuperscript{88} The hymn of Colombia for judges, lawyers, and police was “plomo o plata” [lead or silver] which meant if you convict the trafficker you and your family will die (“lead”).

\textsuperscript{83} Kallenbach, supra note 52, at 184.
\textsuperscript{85} \textit{Id.} at 958.
\textsuperscript{86} Wilson, supra note 53 at 1171.
\textsuperscript{87} \textit{Id.}
\textsuperscript{88} \textit{Id.}
or if you acquit the traffickers then you get the mind-blowing bribes (“silver”).

When a judge indicts a given trafficker it is said that a shoe-box with a little coffin is sent out, inside is a videotape of that judge’s daughter and wife making it clear to the judge that his family will now die unless the case is dismissed. Even the valiant judges who look past the certain threats of death are rewarded by cases that never come to trial and risk their lives for nothing. The annual caseload per judge is 400,000 cases of which only 70,000 are processed. Even those that go to trial most of them are dismissed due to scarcity of jail resources. So among the choice of certain death, the rape and murder of your wife and children or playing hero to a justice system that will set the trafficker free most judges simply keep their heads down and lady justice is left for dead in an alleyway.

C. Extradition & Liquidation: The Bloody Downfall of the Colombians

While the U.S.-Italian mafia’s downfall was facilitated by turncoats and surveillance technology, the Colombian cartel’s downfall proved extradition and wearing out its domestic welcome. While the specific weaponry differed both criminal empires suffered from institutions who had finally grown tired and weary of all the killings, corruption, and decadence that surrounded each entity. In Colombia since the judiciary was actually an instrument of the cartel the way to

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89 Kallenbach, supra note 52, at 185.
90 Wilson, supra note 53 at 1172.
91 Id. at 1173.
92 Id.
93 Id.
94 Id at 1174.
combat the Medellin cartel was to ensure that the traffickers would be in a venue that was completely hostile to its persuasion, the United States.\textsuperscript{95} Thus spawned the twenty year war to extradite Colombian traffickers and kingpins.\textsuperscript{96}

\textit{1. Extradition}

Extradition is a quasi-judicial process by which an asylum state surrenders an alleged criminal to a requesting state as a form of intergovernmental assistance in the prosecution and punishment of evasive criminals.\textsuperscript{97} In the realm of international extradition this usually requires both states to have a treaty with each other.\textsuperscript{98} The general process involves a requested government, sending a fugitive to a requesting state to stand trial for the offense charged.\textsuperscript{99} This is an immense crime-fighting tool against the cartels because extradition levels the playing field by not letting jurisdiction stop a prosecution.\textsuperscript{100} Yet, there are some tremendous challenges to international extradition. The process of navigating two countries into an extradition treaty is fragile and can be disturbed by a variety of factors including internal revolutions, pressure from criminal lobbyists, and shifts in each country’s legal doctrines.\textsuperscript{101} In addition, unlike the U.S. mafia witness protection program that extradition process is so bureaucratic that it is high profile and leaves many traffickers and kingpins exposed for preemptive assassinations thus spoiling any attempts to flip them for information on the rest of the cartels.\textsuperscript{102}

\footnotesize
\begin{itemize}
  \item \textsuperscript{95} Otera, \textit{supra} note 84, at 968.
  \item \textsuperscript{96} \textit{Id.}
  \item \textsuperscript{97} Wilson, \textit{supra} note 53, at 1179.
  \item \textsuperscript{98} Otera, \textit{supra} note 84, at 968.
  \item \textsuperscript{99} \textit{Id.}
  \item \textsuperscript{100} \textit{Id.} at 976.
  \item \textsuperscript{101} \textit{Id.} at 956.
  \item \textsuperscript{102} Otera, \textit{supra} note 84, at 956.
\end{itemize}
The extradition treaty between the U.S. and Colombia has been a bloody and tragic rollercoaster. Colombia and the U.S. had a treaty in 1891 but it, like many older extradition treaties in the 19th century dealt with religious and political infractions and had absolutely no mention of drugs or drug trafficking.\footnote{Wilson, supra note 53, at 1180.} The first modern treaty was the Extradition Treaty in 1979 but not a single extradition was honored since President Turbay found it anti-nationalist to turn over traffickers to the requesting outsider the United States.\footnote{Id. at 1180-1183.} Furthermore the cartel had created a massive campaign pulling on all its influence to inspire leaders to find rationales to never extradite any Colombians.\footnote{Otera, supra note 84, at 970.} In 1984 a Justice Minister named Rodrigo Lara Bonilla joined up with DEA and Colombian Police and seized 27,500 pounds of cocaine worth $1.2 billion, one month later after a contract was put on his life he was assassinated on April 30, 1984.\footnote{Id.} The response was Colombia’s executive branch declared war on the cartels and the Supreme Court approved 13 extradition orders and the cartel’s response was the killing of 13 judges sending a chilling message.\footnote{Id. at 970-971.} The Colombian Supreme Court responded by finding the extradition treaty unconstitutional twice in 1986 and in 1987 thereby stalling any ability to extradite but one noteworthy trafficker in the first 10 years of its existence despite hundreds of thousands of murders and illegal drug distributions in both the U.S. and Colombia.\footnote{Id.}
In fact extradition not only is one of the few things that strikes fear in the heart of the cartel but it has produced at least the downfall of the very founder of the Medellin cartel, Carlos Lehder.\textsuperscript{109} Despite an almost twenty year reign as founder of the Medellin cartel he was arrested by anti-narcotic Colombian police on February 4, 1987.\textsuperscript{110} The U.S. had wanted Lehder for decades and filed 12 counts against him including a charge for being a part of a Continued Criminal Enterprise (CCE).\textsuperscript{111} He immediately challenged his extradition on two grounds: the CCE charge was not listed in the Colombian Supreme Court’s approval of extradition thus precluding extradition and the CCE charge failed the doctrine of dual criminality since Colombia had no such law.\textsuperscript{112} The Colombian court held that his first challenge was misplaced since it is the executive not the Supreme Court that has the final say in the extradition and even if it had such powers the Colombian Supreme Court did not object to any grounds of the U.S. extradition-cited offenses.\textsuperscript{113} Next, the Court held that while dual criminality, which requires that a crime for the basis of extradition must be recognized as a chargeable offense in both the housing and requesting nation, is possibly at issue the liberal construction of the U.S.-Colombian treaty allowed for extradition on such an offense.\textsuperscript{114} The fact that the court had to cling to narrow appendix language and rules of construction

\begin{footnotes}
\textsuperscript{109} Otera, \textit{supra} note 84, at 993.
\textsuperscript{110} \textit{Id.} at 993-998.
\textsuperscript{111} \textit{Id.}
\textsuperscript{112} \textit{Id.}
\textsuperscript{113} \textit{Id.}
\textsuperscript{114} Otera, \textit{supra} note 84, at 993-998.
\end{footnotes}
was a telling sign that while this is a success story for cartel extradition future treaties should have more comity among their criminal offenses.  

In 1987 Lehder was found guilty and sentenced to life without parole plus an additional 135 years in prison. In 1992 for testifying against Manuel Noriega his sentence was reduced to 55 years and since then he has raised appeals before the 11th circuit and various district courts on habeas corpus claims. Recently in 2008 he even petition the Colombian government to find the extradition and U.S. conviction invalidated by the U.S.’s mistreatment of him. Despite his cooperation, he remains in U.S. prison as of 2011.

Despite its success there are ongoing challenges in U.S.-Colombian extraditions in that extradition is viewed as invasive to Colombia’s ability to try to clean up its own backyard and the U.S. is one of the most resistant nations to extradite its own citizens to other countries. Tactically and pragmatically the 1979 treaty and subsequent revivals of it are so outdated they entirely do not address or include RICO and CCE as chargeable offenses. This strips the U.S. in its ability to build strong cases against Colombian cartel members since RICO is the number one tool that brought down domestic organized crime in the 1980s and 1990s. These challenges are ongoing but already many authors have proclaimed


116 Id.
117 Id.
118 Id.
119 Wilson, *supra* note 53, at 1181-1182.
that this legal response to the cartel plus Colombia’s own reformer-based internal pressure has cut the cartel’s cocaine shares in U.S. traffic down from 85% to only 20%. This reduction also has to do with the military responses to the cartel that replace laws with assault rifles.

2. Killing Pablo: Medellin Cartel No More

If there were ever a face to the Medellin cartel it was Pablo Escobar, he was the John Gotti untouchable gangster celebrity of the Colombian criminal empire. His reign stretched from 1978 to 1993 where any given time during his height he was worth $25 billion dollars. He has been called the most successful criminal in human history surpassing Al Capone, Lucky Luciano, and even the most prolific U.S. mafia masterminds. He is portrayed in countless films including Blow, Clear & Present Danger, and holds his spot in pop culture as the fictionalized Sosa who kills Al Pacino’s character in the movie Scarface that remains one of the greatest U.S. films of all time. Yet this man who once ran for office in Colombia mildly offering to pay off its entire national debt of $10 billion ended his life on a rooftop riddled with bullets, bloated, bleeding as soldiers posed smiling on top of his corpse.

By the early 1990s Pablo’s bloody reign of bombings, political assassinations, and brutal endless murders inspired President Gaviria to chase down the kingpin. Seizing the moment, Pablo agreed to turn himself over if he was not extradited and built his own prison, La Catedral. It was not long before the

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120 Wilson, supra note 53, at 1175.
121 Id.
122 Wilson, supra note 53, at 1175.
123 Id.
authorities learned that he was still conducting business and before they could move him to a new facility he escaped and generated an all-out search mission by U.S. Delta Forces, Colombian police, and Los Pepes (group of assassins who have been harmed or attacked by Pablo in the past). For 16 months he lived on the run amid safe houses but on December 2, 1993 he was killed running on rooftops amid a firefight. The ghastly downfall of the Medellin cartel paved the way for the more sophisticated, business-oriented, and quiet Cali cartel to takeover Colombia’s cocaine trade until they were, as well, diminished in the late 1990s.

III. The King is Dead, Long Live the King: The Rise & Threat of the Mexican Cartels

As the cocaine cowboys of Medellin and Cali cartel’s were being dismantled the very blueprint for our darkest fears lay simmering beneath our southern border; the Mexican drug cartels. Worse yet, Mexico was not new to smuggling so the downfall of the South American powerhouses created the ultimate power vacuum for the small-time Mexican smugglers to attain a new zenith of transnational criminal trafficking.

A. Pleasure Pushers & Secondhand Smugglers: 1967-1994

1. Mexico’s Smuggling Past

Mexico’s inception into the drug trafficking business precedes the cocaine craze and is actually based on its original drug, marijuana, which came into vogue

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125 Id.
126 Id. at 254-272.
in the late 1960s.\textsuperscript{127} From San Francisco Haight-Ashbury district to college campuses abound a drug of choice was marijuana and it was Mexico’s ability to produce it domestically that led it to become the number one trafficker of marijuana into the U.S.\textsuperscript{128} Unlike the Colombian cartels the Mexican smugglers have historically diversified their vices putting Mexico as a leading trafficker of not just marijuana, but also heroin and methamphetamine.\textsuperscript{129} In fact by the 1990s the DEA stated that Mexican crime families had overthrown the U.S. biker gangs as the supreme suppliers of speed and crank, regarded as the “poor man’s cocaine” across the U.S.\textsuperscript{130} As Mexico continued its domination as the main exporter of marijuana into the U.S. the Colombians were taking over Miami as the primary exporter of cocaine.\textsuperscript{131} When the pressure came down on the Colombians in Miami the cartels started to lean on Mexico as alternative routes for trafficking cocaine.\textsuperscript{132} Specifically it was the quiet and dangerous Cali cartel, a Medellin rival in Colombia that decided to truly shift heavy operations from directly transporting cocaine into the U.S. to Mexico instead and slowly phasing shipments across the border.\textsuperscript{133}

From what seemed like a secondhand cocaine store, Mexico, ended up revealing two huge advantages to this new trafficking arrangement: a 2,000 mile unsecured expansive U.S.-Mexico border and decades-proven smuggling routes from

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{128} Id.
\item\textsuperscript{129} Id.
\item\textsuperscript{130} Id.
\item\textsuperscript{131} Drug Trade in Mexico: Hearing Before the Senate Foreign Relations Comm. (August 8, 1995) (statement of Thomas A. Constantine, Administrator of the DEA).
\item\textsuperscript{132} Id.
\item\textsuperscript{133} Id.
\end{enumerate}
\end{footnotesize}
the marijuana trafficking ancestors.¹³⁴ No longer did the Colombians have to worry: about the Coast Guard if moving it by boat, about any U.S. aerial surveillance as planes landed in airports, or about stash houses and storage units being raided. Mexico was a pristine lawless wilderness where shipments were not below law enforcement’s radar, there simply were no law enforcement and no radar. These conditions actually accelerated and enhanced the cocaine trafficking business by now establishing untouchable routes, stash houses, and trafficking operations.¹³⁵ The U.S. DEA discovered how big the shift had occurred when they heard about a seizure in 1994 of a cargo 747 jet where 2.5 tons of cocaine was seized but it was stated by many that there were 10 tons on board.¹³⁶ It was the unheard of quantity of cocaine and Jurassic-sized jet seized that signaled that this was no longer a Cessna-sized trafficking situation but a billion-dollar shift had occurred under their noses. What Mexico once was trafficking and involved with concerning Marijuana now in 1994 resembled a lemonade stand compared to the Mexican drug cartel level of sophisticated crime.

2. *Mexico’s Corrupt Political Soul*

Corruption is the lubrication of crime and Mexico has a historical past saturated in corruption corroding any institution that could attempt to fight crime. While Colombia suffered from ongoing clashes of the left and right yet emerged into

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¹³⁴ *Id.*  
¹³⁵ *Id.*  
a fragile democracy there has not been democracy in Mexico since 1929.\textsuperscript{137} It was in the aftermath of the Mexican Revolution that aimed for redistribution of wealth and power to the farmers that ushered the Institutional Revolutionary Party (PRI) into power.\textsuperscript{138} This party has won, dominated, and governed Mexican political institutions for 80 years.\textsuperscript{139} As the PRI became the dictators of political persuasion each Mexican president from 1970 to President Zedillo in 1994 have been stained by ties to drug traffickers.\textsuperscript{140} In each presidency the ties ranged from cabinet ministers, attorney generals, and even law enforcement officials being not just aligned but directly bankrolled and operating on the authority of various Mexican kingpins.\textsuperscript{141} While the Colombian dilemma was bribery and an influx of cocaine cowboys the Mexican situation is grimmer since institutionally even preceding the drug kingpins’ corruption was commonplace establishing a disturbing network to not just evade law enforcement but employ it.\textsuperscript{142}

Mexico’s rampant corruption and political turmoil has concerned U.S. authorities for decades captured by the Congressional testimony from several U.S. figures concerned about President Zedillo’s 1990s administration. In the Zedillo administration there were 3 public assassinations of presidential candidate Luis Donaldo Colosio, Cardinal Juan Jesus Posadas, and PRI party Secretary Jose

\textsuperscript{137} Drug Trade in Mexico: Hearing Before the Senate Foreign Relations Comm. (August 8, 1995) (statement of David C. Jordan, Senate Foreign Relations Committee Member).
\textsuperscript{138} Id.
\textsuperscript{139} Id.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Drug Trade in Mexico: Hearing Before the Senate Foreign Relations Comm. (August 8, 1995) (statement of David C. Jordan, Senate Foreign Relations Committee Member).
Francis Ruiz Massieu by traffickers.\textsuperscript{143} Cardinal Posadas was killed at the Guadalajara airport shootout in 1993 between two Mexican cartels because they mistook him for being a rival kingpin.\textsuperscript{144} Jose Massieu’s was killed in 1994 in downtown Mexico City ironically in front of a PRI building.\textsuperscript{145} The Massieu hit was engineered by Raul Salinas, the brother of the most recent Mexican President Salinas (1988-1994), in addition to high ranking PRI officials that blocked any inquiry into the crime.\textsuperscript{146} Finally Luis Colosio was assassinated at a public rally in 1994 because he was running a presidential campaign rebuking the cartels. Colosio made the brave move to even decline the Gulf Cartel’s invites to a private meeting installing worries that he needed to be removed to protect the cartel’s place in politics.\textsuperscript{147} When governmental actors attempted to pursue investigations on these assassinations particularly Colosio’s anyone who showed dedication to uncovering the pieces was killed as the vicious murder of Tijuana police chief Federico Benitez.\textsuperscript{148} Benitez was mysteriously ambushed and executed on a Tijuana street only a week after making findings on Colosio’s security team. Benitez’s findings were close to naming possible accomplices to the assassination of Colosio all of which was prevented and files mysteriously disappeared forever.\textsuperscript{149} Mexico’s

\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
\textsuperscript{147} Id.
\textsuperscript{149} Id.
political past was rife with corruption but its present showcased that any reformers who sought to stand in the way of a drug trafficking machine would be killed even if you are as high profile as a presidential candidate; no one was safe.150

3. Family Ties: Mexico’s Cartels of the 1990s

As the smuggling level of Mexico increased the political culture where exercise of power supersedes respect of law became crystallized anointing the first major Mexican drug cartel crime families of the 1990s: Gulf, Tijuana, Juarez, and the Caro Quintero Organization (now known as Sonora cartel).151 Each cartel, like rival businesses, offered a specialty or unique angle on the routes across the US-Mexico border.152 The Tijuana Cartel’s edge was simply controlling the routes along the California and Arizona borders and had a claim to fame as the cartel who assassinated Cardinal Posadas in 1993.153 Not limited itself to mere cocaine the Caro Quintero Organization cultivated, processed, and smuggled both heroin and large amounts of marijuana into the U.S. diversifying its criminal empire.154 The leader of the Juarez cartel has been nicknamed ‘lord of the skies’ due to his owning several airline companies which allowed him to fly 727s to Colombia and directly into Juarez providing massive distribution possibilities for cocaine trafficking.155 Finally the famous Juan Garcia Abrego kingpin of the Gulf Cartel was the first

150 Id.
152 Id.
153 Id.
154 Id.
155 Id.
international drug smuggler to be on the FBI’s most wanted list.\textsuperscript{156} This drug kingpin pioneer negotiated that his cartel be paid by Colombia in cocaine and not cash thereby establishing a lucrative foundation to launch his own distribution networks beyond the reach of the Cali cartel.\textsuperscript{157} This Gulf Cartel was so onerous that in connection with them two American Express bankers were indicted for laundering $30 million of their proceeds establishing this criminal family as both innovative and already embedded in the U.S. border industries.\textsuperscript{158} As Pablo Escobar’s Medellin cartel cascaded into slow ruin and the Cali cartel itself dwarfed its operations, it was these early families that gave rise to the pandemonium that is the U.S.-Mexico border today.\textsuperscript{159}

B. Apocalypse Now: The current U.S.-Mexico Border situation

The U.S.-Mexico border is now a common newsreel of terror, misery, and gruesome murders. In a perverse twist of history, it is now Mexico not Colombia, which controls over 90% of all cocaine that makes it into the U.S. in addition to it’s trafficking of marijuana, heroin, and methamphetamines. Since Mexican President Felipe Calderon’s election in 2006 there have been over 36,000 murders in Mexico from drug trafficking and border-related violence.\textsuperscript{160} In 2010 alone there were

\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{159} Id.
11,600 drug-related murders in Mexico.\textsuperscript{161} The border town of Juarez had more than 2,000 homicides which are more than every major U.S. city’s homicide rates combined annually.\textsuperscript{162} Drug-related kidnapping in Phoenix, Arizona toppled 358 in 2009.\textsuperscript{163} A plethora of U.S. law enforcement agencies now work around the clock on countless operations to assault and interdict in the Mexican drug cartel affairs while billions of U.S. dollars flow into their budgets.\textsuperscript{164} At the same time the number of cartels has doubled. Joining the Gulf, Juarez, and Tijuana cartels are the Sinaloa, Los Zetas, La Michoacán, and the Beltran-Leyva cartels.\textsuperscript{165} Each one fully formed with sophistication and penchant for vicious violence makes the mafia look infantile as the bodies stack. It is estimated that Mexico’s drug profits are at $7 billion dollars annually.\textsuperscript{166} Salvation and salient plans are nowhere on the horizon, welcome to the 2011 U.S. drug war with Mexico.

1. The U.S. Response to the Rise of Mexican Cartels

Mexico’s cartels have come a long way from their humble marijuana smuggling days. The Mexican cartels now 7-deep are all huddled against the U.S. border even their crime has diversified into the trafficking of humans, weapons, counterfeiting, 

\textsuperscript{161} Id.
\textsuperscript{162} Id.
\textsuperscript{163} Escalating Violence in Mexico and the Southwest Border as a Result of the Illicit Drug Trade: Hearing Before the House Judiciary Committee. (May 6, 2009) (statement of Rep. Scott (D-VA)).
piracy, kidnapping for ransom, and old fashioned extortion. Given this daunting
demon the response from the U.S. law enforcement has been expansive and
expensive ranging from the Merida institution-building measure to the endless
operations of these federal agencies such as: the Alcohol, Tobacco, Firearms and
Explosives (ATF), Drug Enforcement Agency (DEA), Customs and Border Protection
(CBP), Immigration and Customs Enforcement (ICE), and even the Department of
Treasury.

A. Border Warriors: CBP & ICE

As the historical guardians of the border ICE and CBP have been at the
forefront of trying to address the explosive border trafficking situation. The number
of Border Patrol agents has skyrocketed from 2,900 in 1980 and 4,000 in 1994 to
now more than 20,000 agents with a budget of $40 billion annually. Meanwhile
ICE has over 7,000 Special Agents in more than 200 cities in the U.S. where their
purpose is to catch trafficking at ports of entry, transportation systems, and
capturing illegal aliens in criminal organizations embedded in domestic cities. A
Border Enforcement Security Taskforce (BEST) program was started in 2005 which
pools federal, state, local, tribal, and foreign law enforcement programs together on
the southwest border. The BEST program already in 2010 saw 1,616 criminal

Oversight, Investigations, and Management. (March 31, 2011) (statement of Kristin M. Finklea,
Analyst in Domestic Security Congressional Research Service).
Oversight, Investigations, and Management. (March 31, 2011) (statement of Dr. David A. Shirk,
Director Trans-Border Institute at the Univ. of San Diego).
Oversight and Government Reform Comm. (July 9, 2009). (statement of Kumar Kibble, Deputy
Director of ICE).
arrests, 907 administrative arrests, 868 indictments, and 689 criminal convictions.\textsuperscript{170} ICE has even stepped into the money laundering interdiction game by Operation Firewall and the National Bulk Cash Smuggling Center both of which are resources where people crossing borders and strange financial transactions are analyzed for criminal involvement.\textsuperscript{171} Already these have spawned over 348 investigations seizing over $3 million in proceeds related to narcotics as the program expands to more border cities.\textsuperscript{172} Countless programs have targeted human trafficking, drug-runner tunnels under the border, and even anti-gang task force operations such as Project Tempest in February of 2011. Project Tempest produced the arrest of over 678 U.S. gang members with suspected ties to drug trafficking resulting with 447 members being charged with criminal offenses.\textsuperscript{173} As of March 2010 Secretary Napolitano signed an agreement with Mexico’s Interior Secretary finally making progress into DHS being able to share sensitive data and intelligence across to Mexican agencies.\textsuperscript{174}

B. Drugs: DEA

By their own admission before Congress, it is the DEA that among all U.S. agencies has the most operatives and presence in Mexico.\textsuperscript{175} Due to the fact that the DEA is one of the few of all agencies with its entire purpose being to protect

\textsuperscript{170} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
U.S. citizens from illegal drugs its tacit purpose with the Mexican cartels is to investigate, extradite, prosecute, and incarcerate as many cartel staff and kingpins as possible. The very tools used on the mafia in the 1980s and 1990s by the Department of Justice are now being used to fight the cartels through informants, witness protection programs, and electronic surveillance.\textsuperscript{176} Two major operations, Operation Xcellerator and Project Reckoning, have been recent successes led by the DEA. Operation Xcellerator was a transnational attack on the Sinaloa Cartel concluding in 750 arrests, seizing $61 billion U.S. currency, and capturing 12,000 kilos of cocaine.\textsuperscript{177} Project Reckoning was a bilateral operation with Mexico bruising the Gulf Cartel by making 600 arrests, seizing $76 million U.S. currency, and capturing 20,000 kilos of cocaine.\textsuperscript{178} As it will be discussed in the next section the only disadvantage is that without knowing the context, these landmark seizures and interdictions can either be crippling or simply a speeding ticket to the insurmountable drug cartels.

C. Guns: ATF

Repeatedly in Congressional hearings about the Mexican border violence and drug trafficking situation it is the ATF that has caught heaps of scorn for rogue reports that over 90% of the guns found at crime scenes in Mexico are from the U.S.\textsuperscript{179} Although this statistic was later disputed as exaggerated it does put the

\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
ATF in a unique situation of being held accountable for not militarized weapons pouring into the U.S. but instead lacking in enforcing gun registry and sales laws at U.S. citizens selling to Mexican traffickers. In keeping with the operations flavor of federal agencies two major operations have helped bring ATF’s profile back into favorable light, Project Gunrunner and Armas Cruzadas.\textsuperscript{180} The Gunrunner project sent over 148 special agents into the southwest border area to do inspections and investigations of federally licensed gun dealers as well as staffing agents with Mexican intelligence communities to trace the origins of various weapons used in drug-related homicides in Mexico.\textsuperscript{181} This project netted 882 cases, 1,838 defendants, involving over 13,382 illegal firearms.\textsuperscript{182} Armas Cruzadas is a joint operation with other federal agencies and Mexico’s attorney general started in 2008 where through a sharing of real-time intelligence on gun traffickers and suspicious dealers bilateral raids are conducted on both sides of the border to seize assault and deadly homemade military weapons used in trafficking operations.\textsuperscript{183} Since Armas Cruzadas inception three years ago over 1,440 weapons have been seized, 122,000 rounds of ammunition have been taken off the black market, and 329 arrests produced from the program.\textsuperscript{184} In a final note of progress in July of 2009 the ATF celebrated formally making a partnership with ICE to help combat this situation, something worrisome is why it took over 30 years for the border agency and the

\textsuperscript{180} Id.
\textsuperscript{181} Id.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
federal firearm agency to even have a face-to-face meeting but it is hailed as progress nonetheless.\textsuperscript{185}

\textbf{D. Economics: Merida Plan}

The Merida Initiative is a new three year plan in which from 2007 to 2010 over $1.6 billion dollars will be supplied by the U.S. to Latin America to aid in equipment, training, technical assistance, counternarcotics intelligence sharing, and rule of law promotion programs.\textsuperscript{186} This is an institution-building program in which there is a tacit four pillar strategy of: disrupting organized crime, instituting judicial reform and curbing law enforcement corruption, creating a 21\textsuperscript{st} century border, and building inherently strong Latin American communities.\textsuperscript{187} Already the U.S. has delivered $210 million of the package including 11 helicopters, 8 Bell-412 helicopters, 3 Black Hawks to Mexican federal police, and 4 surveillance aircrafts.\textsuperscript{188} In addition there have been equipment and weapon enhancement at border checkpoints and software packages for Mexican law enforcement including a program called eTrace that has allowed the tracing of weapons and crimes in Mexico to enable U.S. cases on related crimes from the same trafficking cartel.\textsuperscript{189} As groups lobby for its renewal they point out that instead of rogue U.S. agencies

\textsuperscript{185} \textit{Id.}
\textsuperscript{187} \textit{Id.}
invading Mexican jurisdictions it is economic-savvy programs like the Merida Plan that allow internal institution-building in Mexico that both ease foreign relations while still directly resulting in a safer border for U.S. citizens.

2. Pyrrhic Victory: Why the U.S.-Mexico War on Drugs is a Pyrrhic Victory

Given the intimidating list of agencies, operations, and staggering interdictions of these drug cartels by U.S. authorities it would seem like the nails are in the Mexican cartel’s coffins but nothing could be further from the truth. The reality is that while these agencies and brave federal agents are trying to chase down cartel demons with each passing conviction, operation success, and interdiction a thousand new demons spring up. Unlike the mob, the Cartels are still there and expanding. Unlike the Colombians, the Mexican Cartels are not going quietly into subversive silence but instead are becoming hyper-violent happy to spill even Mexican federal officers blood into the streets. If the above section concerning ATF, DEA, ICE, CBP, and Merida was true, how can this be? The answer lies in the statistical details.

A. Statistics Without Indicators Do Lie

The ATF seized 1,140 guns in Operation Armas Cruzadas, pitched as a success to Congress. It was also pitched as another reason to boost their budget to get those dirty guns out of evil people’s hands. But they seized 1,140 guns out of how many? Obviously some seized are better than none but how many guns are being sold illegally and used in crimes? There is no answer in Congressional testimony or
statistical record. In fact when Congresswoman Del. Eleanor Holmes Norton (D-D.C.) pressed the issue of details beyond talking points the Alan Bersin, Assistant Secretary of Homeland Security had this to say:

Del. Norton: “What are they doing?”
Mr. Bersin: “Well…”
Del. Norton: “Who’s selling the guns?”
Mr. Bersin: “Well…”
Del. Norton: “Is there nothing you can do about those coming from right—“
Mr. Bersin: “Well our ATF agents are doing a lot, but they have limited resources, Congresswoman.”¹⁹⁰

And the Department of Homeland Security is not the only one unable to qualify their success. In another Congressional hearing the Department of Treasury (spokesmen for investigations and enforcement) could not speak to convictions or case statuses regarding money laundering operations but spoke with narrow specificity about creating a task list of targeted kingpins hinting at needing more funds to effectuate departmental goals to pursue kingpins.¹⁹¹ This prompted a Congressman to even joke at the end of that very hearing about whether finally ICE and DEA were getting along yet. For decades many of these agencies have had endless territory wars and tension despite allegedly having a unified goal.¹⁹²

Even the most hailed DEA and drug interdiction victories are susceptible to statistical scorn revealing less than a victorious nature. For example in 2009 U.S. authorities seized 17,000 kilos of cocaine worth $273 million, this is 98% of the

¹⁹² Id.
amount of drugs seized at the border that year, victory right? In abstraction that number like so many Congressional testimonies is inspiring until compared with the annual projected drug cartels profits of $7 billion meaning that 98% of our seizures in 2009 represented only a 9% fraction of the cartel’s shipments. Literally with proper context now that statistic means that in 2009 over 91% of the Cartel’s drugs made it safely and securely into the U.S. Obviously interdiction and disruption of the cartels has its place in the drug war but what is troubling is that without a measuring stick what we think is victory-on-horizon success is really just baby steps with more oversight needed. What are needed are more targets, benchmarks, and quantifiable indicators so that these agencies, Congress, and the U.S. public financing this drug war can understand whether there is progress in these programs. A shift from output to outcome measures would go a long way. To continue to allow all these agencies to toss glory stories and rogue statistics is a disservice not only to Congress, the public, but even to them who are risking their lives in programs that may not be justifiable!

B. Measures to consider implementing to ensure progress

To combat the modernistic transnational Mexican criminal cartels requires what is already being done but with a few policy safeguards in place. These suggestions focus on guns, money, and drugs. First regarding firearms there needs to be a beefing up of registry and reporting requirements for large-volume ammunitions

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194 Id.
195 Id.
and enforcement of federal ban on assault rifles not intended for sporting purposes. The idea that current gun laws are more stringent and deterrent to people trying to purchase handguns than assault rifles is disturbing at the least. Second the fact that money laundering is currently only pursued passionately by ICE and CBP while the SEC, FDIC, and Department of Treasury plays passively ignorant is not acceptable. Since transnational drug cartels require fronts, warehouses, transporting companies and especially lucrative banking systems there is a way to finally hit the kingpins which rarely touch raw drugs. There are countless acts sitting idle such at the Kingpin Act and Foreign Investment and National Security Act of 2007 that can both be enforced to go after the money trails of these entities. Finally, if Congress can spend billions of taxpayer dollars annually on a drug war that is currently not being won or hasn’t been won in decades, then Congress can give at least a few million dollars to scientific and medical research groups to assess the potential effects of legalizing certain drugs that these cartels traffic. For over 60 years researchers, scientists, fringe politicians, and now even the Department of Justice has grown weary of the U.S. demand-side for drugs. A sobering look at proactive demand-side measures to be taken (legalization, rehab clinics, decriminalization of low-level drugs such as marijuana) should come into Congressional sight instead of the costly, deadly, and completely inefficient reactive measures we have been taking. As a testament to

\[196\] Id.
\[197\] Id.
the never-ending nature of a “war” on drugs is revealed in a recent issue of the *Economist* in which the front page story is a declaration that in-fact, now the drug wars have imploded all of Central America including Guatemala, Belize, El Salvador, Honduras, Nicaragua, Costa Rica, and even Panama. This does not seem like a signpost of success but of disturbing defeat since the U.S. market is still saturated in drugs.

CONCLUSION

Drug cartels are socio-economic beasts that arise when you have a steady demand for an illicit drug and either a transporting or processing native country that has no economy to inspire legal employment. The early Italian immigrants had trouble getting work so they created their “thing of theirs”; Colombian farmers and cocoa leaf processors faced starvation or defying distant U.S. laws about a plant that for decades was completely legal to sell. Mexico, decimated by NAFTA and internal corruption has become home to hyper-violent sadist drug cartels that threaten splatter our borders with violence, drugs, and vices. While the news media ramps up horror-show stories to stir up controversy the federal agencies continue to ramp up their budgets, staff, and Congressional begging dishes with stories of “victories” amid escalating violence, drugs, and cartel supremacy. Kin to global terrorism, the new face of the drug war demands innovation and utilizing both lessons of the past as well as transnational partnerships to dampen the evasive and multinational threats. Using the traditional law enforcement model gave early 20th

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century authorities no success against the immutable mob. The flood of violence in south Florida in the 1980s demanded a gaze beyond just U.S. shores for resolution. Both prior criminal empires were dethroned by an intersection of legislative tools and adaptive crime fighting that looked towards the endgame and not piecemeal victories. Cocaine, heroin, and various products will continue to be in demand in the United States but their import and smuggling need not come at such a high cost to human life on both sides of the border. Until we demand benchmarks, oversight, and a serious policy discussion about inverting the economic decay of Mexico’s infrastructure we will continue to subsidize our own hell through burning tax dollars chasing cartel demons. Digging in the graves of the mob and cocaine cowboys reveal a variety of options to adapt to the new millennia of crime-fighting. Not only is there the past informing the present but an effective solution includes forcing U.S. and Mexican federal agencies into a nexus so that both nations can suffocate the cartels. Severed heads proudly tossed in public with no prosecution or consequence can no longer be the status quo of 21st century drug trafficking.