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Diego Gambetta: Codes of the Underworld

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Criminal Credentials

Just like ordinary business, most criminal endeavors are not solo affairs. Thieves need fences; robbers rely on informants; drug dealers depend on producers and pushers; pushers and contract killers require customers; terrorists want arms dealers; and corrupt officials are lost without corrupters. Among the few economists to pay attention to criminal communications, Thomas Schelling wrote: “The bank employee who would like to rob the bank if he could only find an outside collaborator and the bank robber who would like to rob the bank if only he could find an inside accomplice may find it difficult to collaborate because they are unable to identify each other, there being severe penalties in the event that either should declare his intentions to someone who proved not to have identical interests.”¹ Identifying partners and, correspondingly, advertising as bona fide denizens of the underworld are indispensable means to carrying out criminal activities. And they are much more complicated than the parallel operations are for ordinary business. Even before worrying about their partner’s trustworthiness or competence as a criminal, people who want to commit a crime need first of all to identify *who* is potentially prepared to cooperate with them in breaking the law.

When contemplating straying from the lawful path, people whose main business is not criminal are even more hindered than professional criminals by the problems of identification. A building contractor once told me that he would have been delighted to pass on a brown envelope to end his long wait for a planning permission if only he knew whom to approach. Identification mistakes can cost dearly, but while the risks deter many they do not deter all. George Fallows, a property landlord of Llangernyw, near Abergele, north Wales, was determined to avoid paying his wife a large divorce settlement and tried to have her killed by a hit

man, who was supposed to crash a lorry head-on into her car as she drove down a country lane. The contract killer he sought to hire, however, turned out to be an undercover policeman posing as a criminal. The policeman recorded the negotiations, and in 2003 Fallows was sentenced to five years in prison, lucky to have found a lenient judge.²

In 2000, a member of a Sicilian gang, who was planning a monumental robbery by setting up a website imitating the online services of the Banco di Sicilia, contacted the director of a branch of the Banco di Roma to enlist his assistance in the fraud. He failed to realize that the director was an undercover policeman, and his mistake led to his arrest and to that of twenty-two others, including members of a Palermo mafia family.³

The hotter the trade, the more daunting are the problems of identification. How do you go about, for instance, finding a black-market buyer for eight bars of enriched uranium? This question taxed the brains of eleven Italian mobsters, an unholy coalition of Sicilian mafiosi and Roman and Calabrian organized criminals, who had the bars in their hands for some time. These bars have a troubled history. They are 90-centimeter-long cylinders, wrapped in steel, each containing 200 grams of uranium, and designed for peaceful uses. They were produced in the labs of General Atomics in San Diego and sent to the Congo as a gift in February 1971, where they were to be used as nuclear fuel in the labs of the experimental reactor Mark II, in Kinshasa. The gift program was known, ironically, as “Atoms for Peace.” However, if blown up by means of an ordinary explosive, they can serve as “the poor man’s nuclear bomb,” spreading deadly nuclear radiation. In the words of Captain Roberto Ferroni of the Italian customs police in Rome, “If they were blown up in Villa Borghese, the center of Rome would become uninhabitable for a century.”⁴ From the labs in Kinshasa the bars mysteriously disappeared. In 1997, when Mobutu’s regime was overturned and he left for France, where he died of cancer, the bars apparently traveled with him. They surfaced once in France and were the cause of a gunfight between French police and a group of criminal merchants who were trying to sell them.

A year later they reemerged in the hands of the Italian mobsters,

whose telephone communications were intercepted by the Italian customs police in the course of investigating them for other crimes. The police were amazed to hear the mobsters speak of unspecified “nuclear stuff” and were initially unsure what that meant. In the spring of 1998, the mobsters finally thought they had found a buyer, an emissary of an Arab country. The buyer, who introduced himself as “the Accountant,” was in reality an undercover agent for whom the police had created a whole new identity. They gave him false penal and prison records for fencing, and fabricated a nonexistent relationship between him and an Arab country and the Islamic Jihad, which the agent mentioned as the ultimate buyer. “Our sellers,” says Captain Ferroni, who led the operation, “did not lose their composure. On the contrary, the credibility of the Arab world, which is always hunting for nuclear material, convinced them that [our man] was not a trap.” The agent brought with him an associate, an engineer, who was allowed to test one of the bars and found that it did indeed contain uranium. The police then transferred a virtual sum of 20 billion lire on a Swiss Bank account, bargaining down the requested price that was twice as much. The brilliant operation, however, was only a partial success. As in the best crime stories, the mafiosi cheated twice over. On the agreed day for completing the transaction, they showed up with only one bar, a different one from the one that had been tested, and failed to deliver the other seven. At that point, however, the cover was blown, and the police had to arrest them. The bars’ current location remains unknown. Captain Ferroni says: “The man who could have taken us to those bars, Domenico Stilitano, refuses to speak. It is not in his interest. On the 11th of October [2001] he was sentenced to 4 years and 6 months as the new antiterrorism laws are not yet applicable and the traffic of strategic material is still considered, as it were, a minor crime.”⁵

The identification problem is further intensified by the fact that, contrary to a widespread belief, criminal groups are unstable. In the underworld, people have a higher rate of mobility (and mortality) than in most professions: “most adult co-offending does not arise from participation in groups. . . . the typical co-offending relationship appears to be transitory and there is a continual search for co-offenders.”⁶ And “the

life of most of the mobs,” said a professional thief, “is comparatively short.”⁷ This is partly because criminals are chased by law enforcers and have to keep moving and hiding, and because they are more inclined to use violence against each other than regular businessmen are. It could also be for “*endogenous* reasons. The more lucrative the business, the more potential entry it will attract, resulting in (literally) cutthroat competition and short expected life for an incumbent.”⁸

The difficulties of identifying partners keep much potential crime at bay. Making identification hard is arguably the most powerful deterrent against crime that the force of the law brings about, by discouraging the countless dormant criminals who refrain from acting unlawfully for fear of being caught when searching or advertising. A blessing for society, identification constraints are a serious hindrance for criminals, who dearly wish they could use the Yellow Pages. How do they solve the problem?

MISTAKEN IDENTIFICATION

When trying to identify partners, criminals can make two types of mistakes. First, they can miss opportunities, failing to see through the disguises that genuine potential partners adopt in order to pass themselves off as law-abiding citizens and avoid being caught (the false-negative mistake). In this case, both parties have the same interests but miss the opportunity for a fruitful partnership. Notice that the failure of one to identify reflects the failure of the other to advertise. Mimicking a law-abiding citizen, which sometimes simply means keeping a low profile, is something most criminals have to do. This, however, can succeed too well, and one can fail to advertise when it would be in one’s interest to do so.

Second, searchers may approach a law-abiding citizen or, worse, an undercover agent, mistaking them for potential partners in crime (the false-positive mistake). Law-abiding citizens are not a cause of great concern for criminals. True, if approached they may inform the authorities. But ordinary people do not have an interest in passing themselves

off as criminals. If anything they are careful to avoid looking like one. Only utter carelessness in approaching others or some inane misunderstandings can lead to confusing law-abiding citizens for criminals—such as that of the forty-seven-year-old Canadian woman who in 1991 did use the Yellow Pages and contacted a firm in Phoenix, Arizona, called “Guns for Hire” seeking to put a contract on her husband’s life. She failed to notice that the firm specialized in putting on “Wild West theatrical shows for conventions, private parties and the like.” After handing \$2,000 to an undercover detective posing as a hit man, the woman was arrested and later sentenced to four and a half years in jail. Before calling Guns for Hire, the detective later explained, she had considered calling motorcycle clubs and an Italian-American association.⁹ If contract killers and people seeking them really could advertise openly, one wonders how many more murders there would be.

The real worry concerns undercover agents or informers who have an active interest in pretending to be a genuine partner and deceiving the searching criminal. In this case, which I consider here, the criminal’s failure to identify correctly a law-and-order agent reflects the latter’s mimicking success. In particular, I consider the case of two individuals who are in asymmetrical positions. A already knows that B is a criminal (and B knows that A knows that). B, however, does not know whether A is a criminal. Regardless of whether A is truly a criminal or an undercover agent posing as one, A wants to persuade B that he is a real criminal. B, at the same time, is looking for evidence of the type that A is. The question is, what kind of evidence can satisfy B?

The probability of making identification mistakes is “frequency dependent”: the higher the proportion of criminals in the search environment, the lower the risk of approaching the wrong people. Where corruption is known to be widespread, for instance, corrupting others or signaling one’s willingness to accept bribes is not much of a problem. If the probability of encountering a corrupt agent is correctly believed to be high, criminals will rationally try more and bolder approaches, and will easily uncover corrupt partners. In Russia, which may have approached this state of affairs in recent times, the values of corruption “fees” for different positions of authority were openly reported in the

press.¹⁰ Identification mistakes are also less likely to occur or to be consequential wherever law enforcement is feeble. Where laws are enforced, there is always a greater probability that a criminal will make acquaintances of the wrong kind while searching for partners.

So our question is: what do criminals look for, what kind of signs do they attend to, in order to identify their kindred spirits or catch the undercover agents? The little we can find in the literature explicitly discussing the identification problem suggests that criminals claim to possess a special ability that enables them to identify other crooks by “gut feelings,” “a look in the eyes,” “vibrations.”¹¹ Nowhere could I find any theory that unpacks those feelings, that predicts what criminals can be expected to look for. But, carefully scrutinized, the evidence we can gather from the many ethnographic accounts of criminals’ activities strongly suggests that they do not go about it erratically. Criminals systematically look for signs that identify another agent as a genuine criminal type and, at the same time, they try just as systematically (and carefully) to advertise by sending signals that only another genuine criminal type will pick up.

“On the street”—wrote FBI special agent Joseph Pistone, who infiltrated the Colombo and later the Bonanno mafia families of New York under the name of Donnie Brasco—“everybody is suspicious of everybody else until you prove yourself.”¹² If someone says, “I am ready to deal with you, pal,” or sports some item of clothing that conventionally indicates he is a criminal, such as a pair of dark glasses, these signals are hardly sufficient to prove that he is a criminal. As a professional thief put it, “language is not in itself a sufficient means of determining whether a person is trustworthy, for some people in the underworld are stool pigeons and some outsiders *learn some of the language*.”¹³ Proving oneself requires tougher tests than cheap talk.

COST-DISCRIMINATING SIGNALS

Just how tough should these tests be? The general property for a signal, including an identifying signal, to be persuasive is the cost-discriminat-

ing condition: a given signal, s , can convince a rational receiver of a signaler's criminality if, given the expected benefits, a rational mimic who could gain by posing as a criminal finds s too costly to produce or to display. In other words, *a convincing signal of a criminal type is that which only a true criminal can afford to produce and to send.* That does not mean that such signaling will necessarily be very costly for a real criminal. In the course of his career he may have acquired much raw material that can be displayed at little extra cost. It suffices that the signal be too costly for the mimic to afford.

Selective Environments

A good, indeed the best, sign of a criminal type consists, of course, of observing someone committing a crime. This is not likely to occur, though, for people do not normally wish to be seen engaging in villainous acts. This is a constraint that ordinary businessmen do not face, as they can show what they do to third parties without fear of the law. By contrast, criminals have to resort as much as possible to indirect methods.

A common strategy that allows criminals in search of one another to exchange signals consists of frequenting places where noncriminals are not likely to be found, which is like patronizing a "singles bar" when searching for a mate. "To search for accomplices and to dispose of illegal goods . . . adult offenders patronise the same places, make the same kinds of transactions, and often reside in the same area."¹⁴ They hang out in bars, gambling dens, boxing gyms, and social clubs full of other men during normal working hours or late at night, at times, that is, when a common person is otherwise occupied. Or they live in rough neighborhoods for the same reason well-to-do citizens move out of them—both dread making encounters of the wrong sort. In his research on crime in New York City, Sullivan (1989) found that much recruitment occurs in neighborhoods, where people know about one another and check each other out in the natural course of their daily interactions. Environments selected for their criminality, those which "regular guys" find more costly or less attractive to patronize than criminals do, make identifica-

tion and advertising easier. There is a natural sorting and mixing activity in such places that takes care of the problem of identification.

By itself, though, this strategy works only up to a point. It saves criminals from dealing by mistake with law-abiding citizens. However, if the cost of hanging around in such environments is not very high for a non-criminal, they may become very dangerous places for criminals, precisely the places where undercover agents will converge when attempting to infiltrate criminal networks. Singles bars increase the probability of meeting single people, but they do not eliminate the probability of meeting patrons who, while married, go there merely pretending to be single. In the underworld, where the stakes of mistaken identity are higher, if someone just shows up in a bar full of criminals he is not likely to go far without further credentials. To be reassured, criminals need signs the cost of which a law-enforcement agent or a spy would find harder to pay. Rather than being reliable signs in themselves, selective environments merely offer better opportunities to gather further evidence, directly and indirectly.

Referrals

“Another method [to establish someone’s criminal credentials] is by finding out what people the stranger knows.”¹⁵ If C knows that A is a criminal, C may introduce A to B. Or B can simply see C with A and infer that A is one too. A gangster called Jackson in his autobiography wrote: “on the street I know hundreds and hundreds of characters, but I do not know their names. Say you are a character and I’m a character and I see you with a character that I know. I have no way of checking your credit rating or anything else, so *I judge you by whom you associate with*. If I know that this person is a good person and not a polecat, not a stool pigeon, not the man’s man, then I have to give you the credit for being all right.”¹⁶ In certain criminal circles, “you’d be surprised. It’s a very close-knit thing among hustlers. You meet someone you’ve never met before in a place you’ve never seen before, you find out someone they know. They may even have heard of you.”¹⁷ Interestingly, this implies that criminals have to be extra vigilant about whom they are seen

with, as other criminal onlookers may interpret the association as an implicit endorsement, even if no overt guarantees are given (as we shall see below, Donnie Brasco skillfully manipulated this method to infiltrate the mob).

Prisons as Screening Devices

One way to acquire good evidence of someone's criminality, which intersects with the referral method, exploits law enforcement itself. In terms of how effectively they can mix and match kindred spirits, the hangouts that criminals freely choose cannot compete with the places they are forced to go by the agents who fight *against* crime: there is nothing like prison to mix like with like. Prisons promote crime in many obvious ways,¹⁸ teaching criminals new skills and brutal modes of behavior, but they also do so, less obviously, by shouldering the costs of advertising and identifying who is a criminal to begin with.

Just being a prisoner is a clear and simple sign that one is criminally inclined. The hard part is paying the price of going there in the first place. But it is precisely that cost that makes a prison term such a good sign of being a real criminal. Paradoxically, the better the criminal justice system is, the safer it is to assume that the company put behind bars will be invariably villainous. Though there are surely innocent prisoners, many are guilty, the more so the better the system. One can also be reasonably sure that phonies, people who talk big about their dangerous criminal tendencies but do nothing, will not end up in prison. The interpersonal conflicts that are rife within prisons, as we shall see in chapter 4, further ensure that the phonies are quickly identified. And even though undercover policemen have certainly been sent to prison for short periods to gain criminal credentials, the longer the time prisoners spend in jail, the closer we get to prison being a perfect discriminating sign—no one chooses to spend twenty years behind bars for the sake of posing as a villain. Doing time in prison can thus be both a stigma and a badge, depending on who is looking at it. An ex-convict who wishes to return to the path of the righteous can find doing so very hard because his time spent in prison identifies him as a criminal. "Once you're

marked in prison you're done for," says a delinquent boy recounting his own story.¹⁹ But one who intends to persist in his old ways will find his path smoothed, and can display his prison credentials to further his criminal career.

One may not go as far as arranging a jail sentence for oneself for the purpose of fostering new associations with kindred spirits. But, once in prison, there is an abundance of opportunity to make villainous acquaintances who will be useful after one leaves:

Say that there are fifty quite well established thieves in Malmö, only thirty of those have a fence. Those who don't are the younger ones around eighteen or twenty who haven't been around enough, so they'll have to ask their friends or sell to thieves. For someone who has been inside as much as me, it's no problem.²⁰

Incarceration as a mark of reliability works at a remove. If two former prisoners did not actually meet in jail, they can still display evidence of having been "in the can" to advertise their credentials. So even if going to prison was not intended as a perverse form of résumé building, the revelation of the experience can be and often is an intentional signal. The "referral" method I discussed above exploits prison contacts too—for if one is embedded in a network, one is in a better position both to refer others and to be referred by them. There is even evidence that, unwittingly, unions and organizations that are supposed to help ex-inmates to reenter mainstream society also help unreformed criminals in their business.²¹ Not least, these charitable organizations assist them by certifying their status as genuine ex-prisoners, thus innocently facilitating encounters with active villains.

Blumstein et al. note that incarceration can have a "criminogenic effect [that] may result from the offender's enhanced identification as 'criminal.'"²² But apart from fleeting references such as this, the existence of this particular effect is virtually unacknowledged in criminology, even though much attention is paid to other effects of incarceration, such as the learning of criminal techniques and the formation of ties with other inmates. Although there are no precise measures, and we do not know

whether and how far the enhancing of one's criminal identity offsets the attempts at rehabilitation, there is much anecdotal evidence from criminals' biographies of the enhancing effect's existence. It starts early, in young-offenders' institutions. In his autobiography, Jimmy Boyle, a Scottish gangster, reminisces that when he was sixteen,

the Approved School surely played a vital part in my criminal development. It gave me connections that I was to find useful in my adult days. It gave me an introduction to guys from towns and cities throughout Scotland and from many areas in Glasgow, many of whom grew up to be the top thieves or fighters in their areas. There is no doubt at all that most of them gained, in a criminal sense, from their Approved School experience.²³

He was doing his best, he writes, to avoid being caught, "but every time I went into prison I broadened my criminal horizons by making more and more connections in different areas."²⁴ Malcolm Braly, who spent nearly seventeen years in various U.S. prisons for burglary, wrote: "He was broke, as I was, and he suggested we try something together. It was reasonable. Who is more likely to be trustworthy than someone you have just met in jail?"²⁵

Criminal and rebel organizations regard a prison record as a sign of distinction. The Russian criminal fraternity known as *vory* made having been in a prison camp a formal requirement of membership.²⁶ According to Marek Kaminski, at least one member of the underground Solidarity movement in Poland provoked the communist secret services to put her in prison so she could improve her reputation: "Under the well-progressing perestroika in 1987, the Polish communists essentially stopped incarcerating the opposition (so the 'incarceration' was a brief 48 hours), they started talks with selected opposition groups, and many underground politicians thought that there would be some role for them to play within the communist regime soon. Thus, the expected cost of incarceration was low and the expected benefits were high."²⁷

The length of time spent in prison further provides an "objective" measure of the respect one is owed relative to other gang members. Thus

Christopher Seymour writes of taking a drive with Japanese *yakuza* (mobsters): “In the loose hierarchy of the Hara-gumi, Ken is the most senior in the automobile. He has already served time in adult prison whereas the others have only been through juvenile detention.”²⁸ Likewise, Marek Kaminski—who, when he was a sociology sophomore in the 1980s, was arrested by the Polish communist secret police together with eleven other members of an underground *Solidarność* publishing house and jailed for five months—reports: “Some of the Polish *grypsmen* [inmates who are members of a prison fraternity; see chapter 4] claim that in the case of a prisoner with a sentence of 20+ years he does not have to join the *grypsmen* formally and suffer the costs of the initiation rituals. He is eligible for enjoying all the benefits of the caste membership by virtue of the sentence’s length.”²⁹ For the Russian mafia as well, “the length of time spent in prison was a source of prestige and a sign of distinction among the criminals who aspired to become *vory*.”³⁰ In a telephone conversation secretly recorded by Italian police, the wife of Ivan Yakovlev (the names have been changed), a Russian mobster arrested in Italy in 1997,³¹ uses the length of her husband’s prison sentence to induce one of his associates to show due respect. Assigned to the task by her husband, she warns the Russian wife of the accomplice Mario Ferrari: “Ivan is bigger than [your husband], he has been in prison for 15 years.” Ferrari did not enjoy the same prison credentials, though he had clashed with the law in the past for drug dealing. He was now misbehaving, being often drunk and disheveled, and, according to Ivan’s wife, did not show enough respect to Ivan. In a subsequent conversation between the two women, Ferrari’s wife apologized for her husband’s behavior. She clearly took the point and repeated word for word what Ivan’s wife previously told her: “[My husband] understood that it is not Ivan who must look for him, but that he, clean and well dressed, must go to Ivan in the car and ask him what needs to be done because Ivan is bigger than he is, he has been in prison for 15 years.”³²

There is also some evidence that the *type* of prison in which one is incarcerated has an effect on recidivism. Using a quasi-experimental design on U.S. data, Chen and Shapiro found that “harsher imprisonment conditions cause greater recidivism,” a finding that goes against the com-

monly accepted view that “punishing a criminal more severely reduces that individual’s subsequent probability of recidivism.”³³ Since prisoners are assigned to minimum-, low-, or high-security prisons on the basis of their score on a scale from 1 to 10 points “intended to reflect [their] need for supervision,”³⁴ Chen and Shapiro were able to compare the rearrest rates of ex-inmates who had been on either side of the cutoff boundaries that had led them to be incarcerated in prisons with different security levels: “in essence, we argue that within a small interval around a cutoff the allocation of prisoners to different security levels amounts to a random assignment.”³⁵ Although the results are based on a small number of cases, 948, they still enable the authors to reject strongly the hypothesis that lower levels of prison security lead to more recidivism after release; instead, they indicate in many ways that the opposite effect obtains. The authors’ interpretation of this effect refers to lower labor-market opportunities for higher-security ex-inmates and to peer effects—“inmates may acquire skills, learn of new prospects, or develop criminal contacts”³⁶ more often in higher- than in lower-security prisons. Their results are also perfectly compatible with another interpretation: having been in prisons with a stricter regime strengthens the certifying effect on criminal credentials and gives ex-inmates from these prisons, relative to those from prisons with lower security levels, greater credibility on the *criminal* labor market.

Criminal Acts as Signals

Referrals and prison sentences are both evidence of criminality acquired indirectly through a third party. B relies on the fact that C—be C another criminal or the justice system—has evidence of A’s type. B does not observe direct evidence that A is a criminal. B infers this from the fact that A is known to C as a criminal. The weight of the cost-discriminating condition shifts to the trust that B has in C. If B trusts C’s competence in assessing another person’s type and C’s truthfulness in revealing that knowledge, B too can embrace C’s claim with some degree of certainty. This “referral” method involves at least three agents, two pairs of whom must already know each other, and is parasitic on the fact that

the two pairs have solved the identification problem in the past. But what about the elementary case in which referrals are not available or not persuasive or safe enough—can two agents then find a direct solution to the problem?

It is hard to observe someone committing a crime in the natural course of events, but villains can certainly ask a potential partner or recruit to give them evidence of having committed crimes, and can do so without resorting to an intermediary. This can work if the crimes in question leave a trace that can be known or possessed only by the real perpetrator. One cannot just *say* that one has committed a crime—a phony may have read about it in the paper and simply be claiming to be the perpetrator. One has to *show* the booty as it were, as in the following case. Police in fourteen countries, including the United States, arrested nearly two hundred suspected members of an Internet child pornography ring, the Wonderland Club. To join the ring one had to show that one possessed ten thousand photographs and be prepared to share them with other members. The photographs were screened by a computer program, which checked whether they were different from one another and from those already available from other sources.³⁷ This action signaled that prospective members had committed a crime and were seriously committed to the activity of common interest, and could not thus be undercover agents (I return to this case in chapter 3).

Ultimately, criminals can also ask a potential partner or recruit to engage in a *display* crime—an act that a noncriminal would never do—and to commit the crime under their eyes or in such a way as to leave an unmistakable sign of authorship. The nature of the illegal act requested depends on the type of crime in which the agents are involved and the laws that govern it. Divine, the Los Angeles prostitute who achieved her fifteen minutes of fame for administering oral sex to British actor Hugh Grant in 1995, revealed her particular kind of test. Before agreeing to trade she asked Grant to expose himself. The reason, she said, is that an undercover policeman would not do that, for he would be breaking the law. Divine believed, one wonders how accurately, that exposing oneself was a signal only real customers could afford.

The same reasoning inspires a test applied by drug dealers in New

York. Since the mid-1990s, “as police have intensified their assault, the dealers have also adopted more perilous tactics. Five or six times each month, undercover investigators are now forced to use cocaine or heroin at gunpoint, to prove to dealers that they can be trusted. At least twice a month, an officer is shot or otherwise wounded during a staged purchase, say police commanders, who spoke on condition of anonymity.”³⁸

These kinds of tests are common in organizations where loyalty is paramount. Before initiation, mafia novices—especially those not already members of families with a mafia tradition—are asked to commit a murder (sometimes would-be members move first and commit serious crimes before anyone asked them to do so).³⁹ The mafia usually does not kill anyone purely for the sake of a test—it optimizes by “whacking” someone who was meant to be whacked anyway *and* at the same time trying out the determination and bona fides of a novice. The Aryan Brotherhood in prison adopted the same test: to gain membership, candidates “had to kill whomever the Brotherhood targeted.”⁴⁰ A kindred outfit known as the Aryan Warriors also required would-be members to pass a test, “usually a bloody assault or, in some instances, a drug rip-off from a person outside of the brotherhood.”⁴¹ But there are cases in which heinous crimes are committed purely as tests. In a hair-raising account of life in youth gangs in Colombia, the writer Efraim Medina Reyes claims that it is not uncommon for new gang members to be asked to murder innocent friends or members of their own family, which pushes the test to the extreme.⁴² Revolutionary and resistance groups deemed to be illegal by the incumbent government have also used the same test. Being asked to commit a murder was, for instance, a common practice in the Algerian FLN. Sometimes the leaders would pick victims more or less at random, to see if prospective members would obey even meaningless orders.⁴³

This method exploits the law, which restricts the law-abiding undercover agents’ options, and turns it to the criminals’ advantage. If, however, law-enforcement agencies give their undercover operatives greater discretion to act against the law for the sake of persuading the group they are trying to infiltrate of their bona fides, the power of these signals is weakened, for the agent can now afford at least some of them. The

degrees of freedom vary from time to time and from agency to agency. Police in New York are now “instructed to avoid taking the drugs *unless their lives are in danger*.” If dealers read the *New York Times*, where this information was published, they know that forcing buyers to ingest drugs by threatening their lives is now a useless test, for it no longer distinguishes genuine buyers from undercover agents.

Before discussing this problem further, I will present the case of FBI special agent Joseph Pistone, aka Donnie Brasco, who infiltrated the New York mafia and came close to being initiated. I know of no better case for illustrating all the types of cost-discriminating signals used by criminals—and by those who try to fool them. Donnie Brasco persuaded the mobsters of his criminal credentials by employing a breathtaking range of subtle signals, and narrated his experience in a book—arguably the most vivid ethnography of the U.S. mafia from “within.”⁴⁴ By learning how he fooled the mafiosi into believing that he was a real bad guy and not a cop, we can flesh out in detail how signaling strategies work in practice. We shall learn more about how signals work by knowing how they fail.

THE CASE OF SPECIAL AGENT JOSEPH PISTONE, AKA DONNIE BRASCO

Entering the mob world is, needless to say, very hard: “Associates of wiseguys don’t deal with people they don’t know or who somebody else doesn’t vouch for.”⁴⁵ Prior to Pistone’s infiltration, the FBI lacked experience. During J. Edgar Hoover’s reign at the bureau, undercover work was rarely used, “because it could be a dirty job that could end up tainting the agents.”⁴⁶ And although it had been used since, “so far as we knew, the FBI had never planted one of its own agents in the mafia.”⁴⁷ Yet the operation it was about to attempt was extraordinarily shrewd. Pistone needed to build a whole barrage of signals, which taken together could persuade the mobsters that he was a real bad guy. And that is what he and his handlers set out to do, minding that the law constrained his freedom: “The FBI wouldn’t let me actually go out on hijackings and burglaries because the crew went armed,” Pistone writes.⁴⁸

Pistone needed a name: he decided it was easier to stick to Donnie Brasco, the name he had used in a previous undercover operation in Florida. He needed a plausible biography that could be checked or, better, hard to check: he posed as an orphan and a bachelor. He said he had been raised in an orphanage in Pittsburgh that burned down; there were no records left. The story needed to be simple. “The fewer [lies] you have to tell, the fewer you have to remember,” he notes.⁴⁹ He said he had spent time on the West Coast and in Florida, where in fact he had been before, as “Donald Brasco” in the previous operation, and had established some contacts. He needed a “profession” and settled on jewelry theft, something one can do alone and that does not require the use of weapons—something, moreover, that allowed him to use confiscated stolen jewels to sell so he would not have to break the law to steal them.⁵⁰

He could count on advantages that would have been hard to fake had they not been part of his real biography. His Italian ancestry provided him with the “right” ethnic background. He had grown up in the “right” neighborhood and as a youngster hung out in “joints” patronized by wiseguys: “You had to be street-smart, even cocky sometimes. Every good undercover agent I have known grew up on the street, like I did, and was a good street agent before becoming an undercover agent. On the street you learn what’s what and who’s who. You learn how to read situations and handle yourself. *You cannot fake the ability. It shows.*”⁵¹ He muses that given his background it was surprising that he was accepted in the FBI.

It is also interesting to know what he chose *not* to say or do. He avoided acting in a way that could raise suspicion. “No street guy is going to throw money all over the place unless he’s trying to attract attention,” Pistone reveals. “Then the question is: Why is he trying to attract attention?”⁵² By doing so he either becomes a target, in that people think they can rob him, or raises suspicions that he may be a cop. Donnie was parsimonious too in revealing details of his life, whether real or phony, for “you never know what part of what you do will become part of your history when people want to check on you.”⁵³

He was also careful not to make claims that could give him away, such as that of having been in prison.

If they [the mobsters] weren't scheming and dreaming, they were telling war stories, reminiscences about their time in various jails and prisons. Everybody did time in the can. It was part of the price of doing business. They knew all about different jails, cell blocks, guards. I had enough phony background set up to establish my credentials as a serious criminal, to show that I was tough enough to do time if I had to without turning rat. But *I never claimed to have done any prison time* because I didn't know those places, and that could have just ripped me up. If you do three to five years you get to know the guards—what guard's on what tier. You get to know the inmates, guys who are doing fifteen to twenty, guys who are still there. They knew the lingo and the slang. Everybody remembers those relationships and that time.⁵⁴

Indirectly, Pistone's choice shows what a robust signal having been in prison is. It is not something that can be easily faked: guys who have truly been there would quickly spot an impostor.

Donnie went on for a couple of months

playing this game of being noticed without being noticed, slide into the badguy world and become accepted without drawing attention. You push a little here and there, but very gently. Brief introductions, short conversations, appearances one place and another, hints about what you're up to, casual mannerisms, demeanor and lingo that you know your way around—all these become a trail of credibility you leave behind you. Above all, you cannot hurry. You cannot seem eager to meet certain people, make certain contacts, learn about certain scores. *The quickest way to get tagged as a cop is to try to move too fast.* You have to show that you have the time to play by the rules of the street, and that includes letting people check you out and come to you.⁵⁵

He hung around bars. He bet on the horses. "The more places I was seen, the more times I was recognised by wiseguys, the better my credentials."⁵⁶ He became friendly with the bartender of a shady hangout.

He would phone the bar leaving messages for himself just to establish that he had connections and convey the belief people knew he patronized the bar.⁵⁷ “When I went other places, I could say,” Pistone writes, “‘I been hanging out at that place for four or five months.’ And they could check it out. The guys had been hanging around in this place would say. ‘Yeah, Don Brasco has been coming in here for quite a while, and he seems all right, never tried to pull anything on us.’”⁵⁸

We also read: “You can’t go in all the time by yourself, because they think you’re either a fag or a cop. And it’s good to vary company so they don’t see you with the same people all the time and wonder what’s up.”⁵⁹ So Donnie would bring an occasional female or Chuck, another undercover agent. Thanks to Chuck he was introduced to Albert, “a half-ass wiseguy,” a connected-to but not a made member of the Colombo family:

It’s the kind of thing that feeds on itself. [Albert] sees that people know me and acknowledge me, so he feels he can introduce me to other people who know him. It enhances my credibility to be hanging out with a connected guy whose uncle is a wiseguy in the Colombo family. For his part, Albert sees that I am accepted where I go, so it’s good for him to be seen with me.⁶⁰

All in all, “getting established is a subtle business, a matter of small impressions, little tests, quiet understandings.”⁶¹

Donnie eventually became the protégé of a made guy, Benjamin “Lefty Guns” Ruggiero, and spent six years with the mafiosi, living their daily lives and sharing their crooked dealings—constantly exposed to the risk of being discovered and killed. In the course of the operation he was offered the opportunity not only to handle the bookmaking for the mob boss of Milwaukee, Frank Balistreri, but also to get inside the skimmming operation in Las Vegas. Balistreri said he had a good crew, but they were “older, kind of set in their ways. I could use some younger guys that I could trust to take over a couple of my clubs and other businesses. Younger guys would be able to relate to the ways of today’s business world.”⁶² Lefty vouched for Donnie. “I told [Balistreri],” Donnie

says, “you are my blood.”⁶³ But accepting would have made it impossible for Donnie to see his real family, so he turned down the offer. While that decision angered Lefty, it also conferred an advantage, as it further signaled Donnie’s credibility: “One thing I had in my favor, seen through any mob guy’s eyes, was that *no cop would ever turn that job down*. So I would be above suspicion in that regard.”⁶⁴

Donnie came up with many other signals believed to be of a kind that a cop could not afford. He pretended to beat up someone who owed money to Lefty. He roughed up a comedian who had annoyed Lefty at the Thunderbird, a Miami restaurant.⁶⁵ Furthermore, “typically, what an undercover cop will do, in a buy-bust situation, is try to buy something from you. *Cops always buy, never sell. I was going to sell*,” Pistone reveals⁶⁶—thanks to the fact that the FBI allowed him discretion in that regard. One very special commodity he bought, though: Lefty Ruggiero’s protection. The FBI dished out a total of \$40,000 for this purpose while Donnie was undercover: “They were paying him for his services as a ‘wiseguy’ to insure they had the protection of the Bonanno family in the event another family tried to interfere with their business.”⁶⁷ While payment was ostensibly aimed at compensating Lefty, it was also, literally, a costly signal, and intentionally designed to appear to be so: “By giving him money, Conti and Rossi [two undercover agents who collaborated with Donnie] led Lefty to believe that they were willing to become involved with him, and *he trusted them as bad guys*.”⁶⁸

Mafiosi were not taken in because they were dumb; rather, Pistone was unbelievably smart and resilient, and it just was very hard for mobsters to think that, taken together, all the things he did and did not do were not near-perfect discriminating signals. The FBI was later criticized for operating very near or even beyond the limits of the law. But this relative freedom fooled the mafiosi, because they assumed that an undercover agent would not pay the cost of breaking the law. Divine could not have banked on her neat little test if agents of the law had been allowed to expose themselves. The mobsters were cheated not just in the sense that Donnie Brasco, by faking, forging, and pretending, successfully mimicked a real bad guy but also in the sense that he did some *real* bad actions.

In a short biography of Bonanno family members—posted on the Internet for a while, then removed—Lefty was described as “the biggest idiot in the history of La Cosa Nostra. His blind greed and lack of instinct were felt hard in the American mafia.” And yet Lefty was careful even years after Donnie had been accepted as a connected guy. Donnie was assisted by other undercover agents, one of whom was “Rossi.” To test whether Rossi was an undercover agent, Lefty deliberately “lost” a plane ticket that Rossi had booked on his own credit card for Lefty (this was a covert way of paying protection to Lefty). “By pretending to lose the ticket, Lefty wanted to see how Rossi reacted. If he was an agent, Lefty reasoned, he would get nervous because he would probably have to account for the ticket to his office, plus he would be worried that somebody ‘in the underworld business’ might meanwhile find the ticket and check out the American Express number to see if it was a government number.”⁶⁹

In other cases, Donnie was subtly watchful in avoiding giveaways:

I didn’t go out of my way to learn what intelligence the FBI might have been getting about the murder [of Carmine Galante in Little Italy in 1979] from informants. I did not want to know more than I could logically know as a connected guy. It would be just as risky to know too much as to know too little. I did not want the burden of having to sort out what I should know from what I shouldn’t.⁷⁰

When it was finally revealed that Donnie was an undercover agent, the mobsters were shocked and did not believe it till Donnie actually testified in court against them. His operation managed to send many of them, mostly members of the Bonanno family, to jail.⁷¹

The mobsters learned their lesson and increased the price of the tests. Now not just one but “two mafiosi have to vouch for the proposed member.” “They have to say they have known the proposed member if not since childhood, then at least for fifteen to twenty years.”⁷² According to the FBI, they also resumed a traditional practice that had been abandoned: “a proposed member must ‘make his bones’ or kill someone, before he can become a made guy. They have done so *because no agent*

would commit murder while posing as a bad guy.”⁷³ Murder is really a perfectly discriminating signal of being a bad guy, a signal that no undercover agent, not even one belonging to a rather lax law-enforcement agency, could afford.

This entry requirement—which shows how criminal acts can be perpetrated not merely for their immediate instrumental value but also for their signaling value—had never been explicitly removed, but it was no longer used with great determination. In truth, Dominick “Sonny Black” Napolitano, who eventually became Donnie’s main mentor and planned to propose Donnie for membership, had asked Donnie to murder someone. “He gave me a contract so that I would have that credential when he put my name up.” But the opportunity to carry it out did not arise, for Anthony Bruno Indelicato, the intended victim, went successfully into hiding. Donnie showed that he was doing all he could to track Indelicato down, and it was not thought to be his fault when he failed. Thus, although he did not carry out the killing, he still managed to show his willingness to do it, and a few months later Sonny put his name forward for membership. At that point the FBI decided to stop the operation, and Donnie resumed once again his real identity.

Sonny paid for his mistake with his life. He was killed in 1981, but his decomposing body was not discovered until 1982. He had been shot, his hands severed, and then placed in a body bag on Staten Island. Lefty got twenty years in jail, where he died of lung cancer in 1995.

FROM THE MIMICS’ PERSPECTIVE

Undercover agents—who have to persuade the group they aim to infiltrate of their criminal credentials—are a serious threat, for unlike solo mimics they can draw on the resources of state agencies and can afford complex mimicry acts, which involve posing, forging credentials, training, and funds. Still, it can be near impossible to infiltrate groups protected by an array of features that cannot be successfully imitated—which, in other words, perfectly distinguish the real from the phony. For

instance, Reuel Marc Gerecht, a former CIA operative, has raised serious doubts over the feasibility of infiltrating Islamic movements.⁷⁴

Even a Muslim CIA officer with native-language abilities (and the Agency, according to several active-duty case officers, has very few operatives from Middle Eastern backgrounds) could do little more in this environment [Peshawar, Pakistan] than a blond, blue-eyed all-American. Case officers cannot long escape the embassies and consulates in which they serve. A U.S. official overseas, photographed and registered with the local intelligence and security services, can't travel much, particularly in a police-rich country like Pakistan, without the "host" services knowing about it. An officer who tries to go native, pretending to be a true-believing radical Muslim searching for brothers in the cause, will make a fool of himself quickly.

Undercover operations are a problematic form of anticrime activity for another reason as well. The logic of cost-discriminating signals inclines undercover agents to go beyond innocent pretensions and support initiatives of the same kind a true criminal or terrorist would undertake. Since law-enforcement agencies are under pressure to keep their agents safe, they push for discretion to be granted to them. And sometimes the undercover agents themselves, unbeknownst to their employers, choose to break the law because they worry about their credibility in the eyes of the host group and the consequences if they are discovered. The memoirs of undercover agents and spies are replete with this dilemma.

A grand case of infiltration that went well beyond the limits of the law occurred in Russia in the early 1900s. In their struggle against the terrorist bombers of the Socialist-Revolutionary Party, the tsar's agencies made ample use of infiltration.

According to incomplete calculations, there were about 6500 agents, provocateurs, and other political investigations specialists operating in various political parties and organizations in the Rus-

sian Empire at the start of the twentieth century. . . . the police and gendarmes often set priorities themselves, at times even at the risk of the lives of high-ranking government officials and members of the imperial family. Matters concerning the security of the secret agents were of top priority, and maintaining the strong positions of agents within the terrorist organizations of the Socialist-Revolutionaries was considered more important than preventing assassinations, even against officials of the government.⁷⁵

A famous case was that of Evno Azef, an agent who operated in revolutionary circles for about fifteen years. From 1893 on, he was a police agent. As a student in a German polytechnic school, he took the initiative of offering his services to the police department at the rate of 50 rubles per month, after which he attached himself to a foreign group calling itself the Union of Russian Socialist-Revolutionaries. He knew about the majority of terrorist acts being planned by the SRs, but he did not always report to his bosses about them. Nevertheless the police paid him well for his services.⁷⁶

Episodes of this kind are not restricted to predemocratic societies. An illuminating case occurred in Canada. At its peak in 1993, the Heritage Front was the largest and best-organized neo-Nazi group in Canada, boasting a contact list of 1,800 names. Grant Bristow, cofounder and a leading member of this white racist group, turned out to be a paid informant of the Canadian Security Intelligence Service. "Bristow orchestrated a harassment campaign that terrorized Front enemies, harbored leading international racists in his own home in clear violation of both CSIS rules and the Immigration Act, and assisted in the Front's infiltration of the Reform Party."⁷⁷ "CSIS mole Grant Bristow, was an 'agent provocateur' who, with his spymasters, broke Canadian laws and internal CSIS regulations, a group of MPs have concluded. . . . Bristow's leadership role in the white racist Heritage Front, the report suggests, *may have led to the very events that caused CSIS to keep him in place for several more years.*"⁷⁸ An inquiry by the Security Intelligence Review Committee into the affair played down the accusations, but it is clear from the report that there were serious breaches. For instance, on the issue of harassment

of antiracist militants and Jewish community members, the document concludes that “any informant who enters the Heritage Front or a similar group has to maintain his credibility with his associates otherwise he would not remain a trusted member for long. The question we were faced with was whether the CSIS source [Grant Bristow] had remained within the bounds of appropriate behaviour while trying to maintain his credibility. The answer we arrived at was that *in certain circumstances he had not* [emphasis in the original].”⁷⁹

Even if they are only supposed to collect information on criminal or subversive activities, spies may end up producing more of such activities on their own initiative. They tend to become agents provocateurs not necessarily for the conspiratorial reasons why Joseph Conrad’s protagonist in *The Secret Agent* does (Verloc was in the pay of an unnamed foreign embassy that wanted to persuade the British to take a tougher line against the anarchists and used his dim-witted nephew to stage an “anarchist” bombing attack) but, typically, only out of fear of not being credible enough and of risking their lives. The costs that make their signals credible in the eyes of their targets are after all “only” those of breaking legal constraints. They may never be caught, given the intrinsic opacity of what they do, and if caught they are not so likely to be punished, certainly not by death. And on the other side of the equation they have to consider the personal costs of failing to persuade. When one’s life is threatened, the costs of breaking the law may suddenly appear smaller than those of obeying it. The set of those who are ready to risk their life, sacrifice their family, and deceive dangerous criminals for long periods of time, while at the same time remaining strictly a law-abiding citizen, must be extremely small.

This raises an interesting quandary for the criminals or terrorists who are trying to test the bona fides of others. For, by increasing the severity of the punishment meted out against undercover agents who are discovered, they encourage the latter to afford costly signals that, once displayed, may make it impossible for the bad guys to say whether the potential recruits are undercover agents in the first place.

If the punishment is kept low—and amounts, for example, just to a refusal to deal with those who will not swallow a spoonful of drug—the

undercover agent may find it preferable to refrain from swallowing it even at the cost of revealing his true type, for he does not want to break the law. By contrast, the real criminal who wants to deal with the drug dealers may prefer to pay the cost of the physical illness caused by swallowing, for he is entirely at ease with breaking the law. The key extra cost that discriminates between the real criminal and the undercover agent is the cost of breaking the law, which the mimic faces while the genuine article does not. A harsher punishment, however, can reverse the equation and make it cheaper for the undercover agent to swallow rather than not swallow, even at the cost of breaking the law, and thus make him behaviorally indistinguishable from the real criminal. When administered under the threat of the harsher punishment, the test no longer separates one type from the other. By failing to appreciate this quandary and threatening death against those who refuse to swallow the drug, the dealers fail to realize that they are deactivating the very source of the reliability of their test, for under that threat the agents are now allowed (and would in any case feel inclined) to swallow the drug.

CONCLUSIONS

Once someone intent on crime identifies a potential partner as a bona fide criminal, he has solved one problem only to land in another, equally difficult, one. He now has to establish whether his partner is not just a crook but an honorable one. After Hugh Grant exposed himself, Divine knew that he was not an undercover cop, for she believed that cops do not do that. Yet she still did not know what kind of a customer he was. Prostitutes are constantly on guard against robbers or perverts who pose as ordinary customers.⁸⁰ Anyone who works outside the law is more exposed than ordinary businessmen to becoming the prey of other criminals who mimic being a criminal of the honest sort. A street-drug dealer who successfully advertises to customers may also attract robbers who pretend to be customers in order to get close to the dealers and rob them.⁸¹ A criminal has to be on guard against both kinds of mimics, law-enforcement agents and criminals of the wrong sort.

If honesty were thought to be a trait of certain criminals and not others, in order to establish whether a potential partner is honest one could follow the same strategy one uses for identifying whether someone is a criminal to begin with. The same kind of costly signals would be required for criminals to persuade one another that they were the honest type. In certain cases the game they play is indeed one of signaling their type. However, in most circumstances criminals tend to think of each other as being of just one type, namely the dishonest one, and believe that given half a chance they will take advantage of each other. The only way in which they can come almost to “trust” each other enough to cooperate is, therefore, not by signaling their type, but either by enforcing their partners’ honesty with the threat of some kind of retaliation or, more generally, by putting themselves and their partners in a condition whereby “honesty” rather than cheating is their best course of action, whatever their type. I shall explore some of the strategies they adopt in chapters 2 and 3.