



Testimony of John J. Flynn  
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*The Rise of Organized Retail Crime and the Threat to Public Safety*

House Committee on the Judiciary

Subcommittee on Crime and Federal Government Surveillance

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Good afternoon Chairman Biggs, Ranking Member Jackson Lee and Members of the Subcommittee. My name is John Flynn and I am the elected District Attorney for Erie County, NY and the current President of the National District Attorneys Association (NDAA). NDAA recognizes the vital role that prosecutors play in the safety of local communities, including addressing the serious challenge of retail theft and organized retail crime.

Prosecutors are responsible for ensuring that justice is carried out in a fair and equitable manner, protecting the rights of victims, and holding accountable those who violate the law. NDAA's mission is to support prosecutors in their efforts to fulfill these responsibilities and to promote a criminal justice system that is fair, effective, and accountable. I appreciate the opportunity to testify before you today.

### **Background**

Let me begin with a couple of statistics to give you the broad scope of the problem we are talking about today. According to a report by the Retail Industry Leaders Association (RILA) on the impact of organized retail crime and retail theft, almost \$70 billion worth of products was stolen from U.S. retailers in 2019. Connected to that is the cost to federal and state governments in lost personal and business tax revenues: estimated at about \$15 billion.

[According to business.org](https://www.business.org), the percentage of small-business owners reporting daily shoplifting increased from 14% to 23% from 2020 to 2021. These are just a few data points illustrating the problem.

These statistics are comprised of large and small, urban and rural communities. Organized retail crime and retail theft are equal opportunity destroyers of communities and must be addressed to ensure healthy and vibrant communities.

In order to address organized retail crime and retail theft, we have to differentiate between the two and break down the types of defendants seen by law enforcement and prosecutors around the country.

### **Categories of Defendants**

In my county of almost 1 million people, we see three main categories of defendants:

1. *Organized Crime Syndicates*: organized Russian crime syndicates, the Mafia, highly sophisticated gangs, other transnational crime rings.
2. *Organized Criminal Groups*: groups of 4-5 individuals that get together to steal merchandise; they have some level of sophistication, are somewhat organized and are considered more professional shoplifters, or what are commonly called boosters. (ex. Youth smash and grabs)
3. *Individuals*: individuals who commit theft for personal use; this category often involves a single individual who is suffering from a substance use disorder, mental illness, is homeless or is in poverty. (ex. Something to eat or theft of formula for an infant)

Overall, we are seeing the vast majority of activity in the second and third categories of defendants as opposed to the first, however, it's important to note that the first group of defendants very much exists and has a negative impact on communities.

### **Impact on Communities**

Both retail theft and broader organized retail crime have a negative impact on communities. Unfortunately, it has taken the form of violence including death and serious bodily injury as well as damage to storefronts and other property. That's on top of the economic loss that

I referenced earlier in my testimony, which then potentially adds to the burdens faced by consumers. The U.S. Chamber of Commerce estimates that roughly 25% of businesses have raised prices in order to offset losses in their stores.

I think we can all agree that this should not be tolerated. As a result, it's important to consider how we in public safety approach these serious crimes. The approach must be targeted and tailored as opposed to a one-size-fits-all strategy.

### **Approaches to Accountability**

To address the serious problems of organized retail crime and retail theft, we must address the issue holistically. For those individuals who steal for their own personal use, they may need services like alcohol, drug or mental health treatment. For other individuals and more sophisticated operations, particularly involving repeat offenders, a more law and order approach is needed, like incarceration. Each category of defendant, and even each individual within the categories I've mentioned today, must be treated differently depending on the circumstances and facts of each case.

It's also important to differentiate which level of government is handling these categories of defendants. For example, the first category of organized criminal groups such as Russian syndicates or other highly sophisticated enterprises is primarily handled by the Federal Government through agencies like Homeland Security Investigations (HSI) at the Department of Homeland Security and US Attorney's Offices through the Department of Justice. This is particularly important when criminals cross state or international borders.

The second and third categories of defendants are local in nature and should be handled by local law enforcement and prosecution agencies. That requires law enforcement and prosecutors to step up and

acknowledge the serious nature of these crimes and their impact on communities.

Just last week, my office prosecuted a habitual offender for retail theft. He had been previously banned from entering a local home improvement store for three years after a prior incident. The individual then entered the same store and walked out with merchandise without paying. Just three weeks later, the same individual entered another store he had been banned from after a prior incident and stole additional merchandise. He was then picked up on an outstanding warrant and ultimately received a two-to-four-year prison sentence.

As I stated when I announced the sentencing, “Shoplifting is a not a victimless crime. I want the retailers in Erie County to know that these thefts will not be tolerated and that my office will continue to hold these offenders accountable for their crimes”.

Prosecutors must be fair and impartial in the evaluation of each case that comes before them. We must hold bad actors accountable and recognize the harm caused to businesses and innocent bystanders. We must also recognize the power of rehabilitation for individuals in our community and be proactive in connecting individuals who suffer from substance use and mental health issues to the services they need in order to get back on the right path and become productive members of their communities.

### **Policies and Partnerships to Change Behavior**

There is some positive news to share on the policy and partnership front that is encouraging in our fight to combat retail theft and organized retail crime.

In August 2022, NDAA and RILA [announced the first-of-its-kind national partnership](#) to combat retail crime, which followed a successful summit

in June last year that brought together prosecutors and retailers from around the country. This partnership is specifically designed to provide technical resources and lessons learned to prosecutors and retailers for more effective and successful prosecutions of retail crime.

And, just this May, NDAA and RILA [announced the launch of its Vibrant Communities Initiative](#), an innovative pilot project to address root drivers of habitual theft, violence and other unlawful activity in and around retail establishments. This initiative will bring together prosecutors, retailers, law enforcement, social service organizations, local policymakers, the business community and others to increase information sharing, assist in the prosecution of habitual and violent offenders, propose meaningful second chance opportunities to reduce recidivism and explore cutting-edge technology solutions to help prevent retail crime and deter violence against employees and consumers.

Finally, I'd like to briefly mention the issue of online marketplaces and their role as a venue for the trafficking and resale of stolen merchandise. As technology continues to advance, so does the ease in which stolen and counterfeit goods can flow into the hands of bad actors, but also into the hands of everyday consumers who unknowingly are purchasing them.

At the end of 2022, Congress passed the Integrity, Notification, and Fairness in Online Retail Marketplaces for Consumers Act, referred to as the INFORM Act, which requires online marketplaces to collect, verify, and disclose certain information from high-volume sellers and to provide consumers with means to report suspicious activity. This was a needed step to address the issue of online marketplaces and I hope we can continue that conversation beyond today's hearing.

I appreciate the opportunity to speak to you about these important and complex issues. The National District Attorneys Association stands ready to assist this subcommittee and the broader committee as we look for ways to tackle organized retail crime and retail theft that threatens the vibrancy of our communities.