Before I discuss the issues about organized crime nowadays, it is necessary to define what organized crime is. Coming up with a definition is, however, not as easy as it seems to be. In fact, it is a difficult task. On one hand, everyone knows organized crime when they see it; on the other hand, trying to describe the various traits that lead to an “organized” criminal act is not easy. In order to combat organized criminal behaviors, the legislative branch of Taiwan enacted a new statute, Organized Crime Prevention Act (OCPV), which defines the fundamental elements of organized crime. Article 2 of OCPV says that the term “criminal organization” referred to in the Act means an enterprise involved in racketeering and consists of an internal management system of three or more persons sharing a common purpose of committing crimes or inciting its member(s) to commit crimes, and is, collectively, habitual and forcible or violent in nature. In the light of the definition provided above, the law enforcement agents in Taiwan are facile to crack down organized crime.

SECTION 1
New investigative measures
The judges in Taiwan have no role in investigating criminal evidences. Criminal investigations are conducted by law enforcement such as police officers, Investigation Bureau of the Ministry of Justice and so on. However, I think that the issue here is to figure out useful methods of investigating organized crime in the light of current statutes or drafts. In addition, investigative measures should be developed by focusing on new types of criminal activities.

Firstly, for the sake of controlling money laundering, pursuing severe crimes, or tracking the economic and financial roots of criminal organizations, controlling some specific bank accounts is an efficient method. In order to put it into practice, the Money Laundering Control ACT (MLCA) was promulgated on October 23rd, 1996. Article 8 in Paragraph 1 of the MLCA requires that “If there is any transaction suspected to be money laundering, the financial institute concerned shall identify the status of the customer involved, keep the records and evidentiary documents of the transaction, and may inform the party or parties to the transaction and report the case to the designated agency.” “Any person who violates the provisions of Paragraph 1 shall be punishable by a fine between NT$ 300,000 and NT$ 1,500,000. Nevertheless, if the financial institution concerned is able to prove that the cause of such violation is not attributable to the intention or negligence of its employee(s), no fine shall be imposed,” states by Article 8 in Paragraph 3. Moreover, Article 9 says that, any person who launders money shall be punished with imprisonment of no more than five years and in addition t, a fine of no more than NT$ 3,000,000. If globalisation is an inevitable trend, illegal money will flow across borders. Take this point into consideration, Article 14 states
that for the purpose of controlling international money laundering activities, the government may, based on the reciprocal principle, enter the control of money laundering together with foreign governments, institutions or international organizations.

Secondly, technology provides an art-of-state communication channel for organized criminals to transfer their messages. For example, after Taiwanese government proclaimed to open telecommunication market about eight years ago, there have been booming users of nearly 25,110,054 mobile phones in Taiwan, the population of Taiwan is 23,000,000, in June 2003. It becomes very easy to get a mobile phone via a false ID number, because telecommunication corporations are keen to expand their market share and therefore are careless about verifying their customers’ identities. That is to say that mobile phones are turning into criminal tools for not only personal illicit behavior but also for organized crimes. As a result, it is necessary to cope with this situation by monitoring suspect’s phone calls and the Protection and Wiretapping of Telecommunication Act (PWTC) was promulgated in July 14th, 1999. Article 5 of the PWTC states that law enforcement could monitor phone calls when they obtain a warrant from prosecutors or judges and under the Act, wiretapping is permitted only under the specific conditions for gathering evidences to proof serious crimes, such as violation of the Regulations for Prevention of the Sexual Transaction With Children and Teenagers, the Statute for Punishment of Smuggling, or MLCA. The law enforcement should avoid violating people’s freedom of communication which is guaranteed by Constitution when they execute the wiretapping.

Thirdly, for the benefit of investigation of specific criminal cases and for the protection of the interests of undercover detectives, the draft Undercover Investigation Bill (UIB) has been discussing for a period a time and it has been deliberating in legislative procedure Article 3 of the draft states that undercover investigation may be applied on a criminal suspect or a defendant who is under any of the following circumstances: drug trafficking, money laundry, organized crime, and other serious situations when no other means can be used for gathering evidence. Furthermore, the validity of evidence gathered by an undercover detective during the undercover investigation shall be determined according to the provisions of the Criminal Procedure Code, states by Article 9 of the Bill. It would secure that every evidence is gathered by due process. In the light of Article 7 of the Bill, during the practical investigation, if the undercover detective needs to use an assumed name, s/he may apply with the competent authority to set up a separate domicile and issue related documents, which shall, however, be cancelled after the undercover investigation comes to an end. The UIB is just a draft, however, I assume that the UIB will provide a new method for law enforcement to crack down organized crimes.

SECTION 2
Gathering of Evidence

Law enforcements have the burden to gather evidences in criminal procedure and prosecutors have to present evidences to proof a defendant is guilty. No matter what new investigative measures are introduced, the most important step to combat organized crime is to gather valid evidences. We
have to emphasize that any measure took to gather evidences should comply with the Code of Criminal Procedure. For example, police officers should obtain a search warrant from judges before they search defendants or buildings. A warrant would be issued if it is necessary and the person, properties, dwellings, or other premises of a third party may be searched only when there is sufficient reason to believe that the accused or property subject to seizure is there, otherwise, the materials gathered by law enforcement agents will be denied as valid evidences.

SECTION 3
Protection of individual in criminal cases
“Criminal proceedings may not be initiated and punishment may not be imposed other than in conformity with the procedure specified in the Code of Criminal Procedure or in other laws,” says by Article 1 in Paragraph 1. For the sake of defendant’s physical freedom and not to affect their stating in courtrooms during the processing, the Code also regulates in Article 282 that restrained may not be placed on the accused person when s/he is in court, but s/he may be ordered to be guarded. In a word, the facts of an offense shall be established by evidence and the facts of an offense shall not be presumed in the absence of evidence. In the sake of obeying this principle of criminal procedure, we have to set up an environment that can protect every individual in the courtroom before a verdict is announced.

SECTION 4
The physical arrangements of the courtroom
As we know, organized crimes are perhaps related to violent traits that make many witness are unwilling to stand against them. For the sake of protecting witnesses who are summoned to testify in courtrooms, the Witness Protection Act was enacted in 1990. According to the Witness Protection Act, judges or prosecutors have to interrogate witnesses in confrontation room which is designed with special glass. Witnesses can clearly see the defendant through the glass, but the defendant can only see a mirror in front of him or her. Moreover, the Judicial Yuan has installed video telephone system in every courthouse that put witness protection up in any criminal cases.

SECTION 5
Problems relating to illegal immigration and so-called “new terrorism”
Due to the political tension and special relationship between the two sides of Taiwan Strait, Chinese people are not allowed to visit Taiwan as other nationalities treated. Chinese citizens have to apply for visas to visit Taiwan under some specific reasons that are stated under The Relationship Between Cross-Strait Civilians’ Act. However, people live in Taiwan and Chinese speaking the same language, Mandarin, and Taiwan’s strong economy and free market circumstances attract a lot of illegal immigrants from Mainland China. It has caused some incidents and tragedies; for example, when the Serious Acute Respiratory Syndrome (SARS) was outbreak in China last November, Taiwan was inevitable influenced by the epidemic, not only because of the short
distance between the two sides but also many illegal immigrants crowding into Taiwan. The steady stream of illegal Mainland Chinese immigrants could pose a threat to Taiwan’s disease control system and medical care for illegal immigrants from China has became a heavy financial burden for the Detention Center for Illegal Mainland Chinese Immigrants, said Lai Hsieh-yi, the director of the Center. In order to deal with this problem, the Red Cross Society of the R.O.C. at Taiwan has signed an agreement, the Kinmen Agreement, with the Red Cross Organization at China as a standard regulation in September 1980 to send back illegal immigrants to China in Kinmen, an offshore island near the Mainland China. Based on the agreement, Taiwan has to repatriate those illegal immigrants to China and Chinese Government should provide help during the processing. However, the toughest job for Taiwanese Government to cope with illegal immigrants from the Mainland is that many, if not most, female immigrants are forced to be prostitutes in brothel and that causes negative side effects in public security. For instance, Chinese people smugglers, known as "snakehead" gangs, have become a global menace and are known for their heartless disregard for the lives of their clients, the illegal immigrants, and at least six Chinese women drowned and up to five more were missing after suspected people smugglers pushed them off speedboats as they were being chased by Taiwanese coast guard cutters in August 26th, 2003. This is a tragedy for both sides of Taiwan Strait and strategy should be taken to restrain it from happening again. However, Smuggling people and goods across the narrow Taiwan Strait is a major problem but the cross-strait rivalry has prevented a joint solution. Even so, those events provide clear warning that illegal immigrants should be prevented before they departure from their country where the government, no doubt, has the obligation to improve people’s living standard that would permanently make the “new terrorism” disappeared.

San-Yuan Lin
Taichung District Court
Taiwan, R.O.C