The Racketeer Influenced and Corrupt Organizations Act: Twenty Years of Debate

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In 1970 the United States Congress passed the Organized Crime Control Act (OCCA), which contained a myriad of amendments designed to ease the prosecution of racketeers and remove the shadow of organized crime from American society. Title Nine of the OCCA, the Racketeer Influenced and Corrupt Organizations Act(RICO), constituted the newest weapon in the federal government's arsenal in the the war against organized crime. RICO soon proved to be one of the most controversial laws ever enacted in the criminal code.

Organized crime's infiltration of legitimate business provided the original impetus behind the RICO statute. Congress wanted to devise a way to ward off the future corruption of American commerce and uproot organized crime from those busisnesses already controlled. In order to do this, lawmakers needed to enact a law that would severely penalize the individual racketeer and deprive the organization of the economic power to continue its illegal operations.

Historically, gangsters were not particularly intimidated by the forces of justice. Though the law could send mobsters to prison, it could not touch the profits that the racketeers had made from their lives of crime. Whether the mobster got sent "up the river" for two or ten years, he would eventually return to a life of luxury. Often, jail offered the best protection from the bullets that threatened a long and prosperous life. Finally, the law did not contain a single measure that challenged the continuation of organized crime. Regardless of how many gangsters

went to prison, organized crime continued to flourish. As long as the bankrolls and operations existed, new gangsters would take over.

RICO sought to eradicate the immunity from the law that organized crime enjoyed. The statute constituted a milestone in the fight against organized crime because it focused on an economic and institutional approach. Though individuals would stand trial, the real target of RICO was the economic base that provided organized crime with the power to buy political protection and conduct future criminal adventures. While RICO subjected the actual perpetrator to a lengthy prison term and a substantial fine, its real power lay within its forfeiture provisions. A RICO conviction forced the defendent to forfeit to the U.S. government any "interest" in any "enterprise" that he had acquired or maintained through a "pattern of racketeering". The RICO statute intended to deprive organized crime of the very operations that it ran. The creators of RICO decided that the only way to destroy organized crime was to take away its businesses. Though the RICO statute offered a new hope of winning the war against organized crime, it quickly ran into trouble in the courts. The main problems revolved around the statute's terminology. The drafters wrote RICO in an open manner, so that it could challenge many different forms of organized crime activity. The vagueness of key terms such as "interest", "enterprise", and "pattern of

racketeering", however, resulted in severe confusion. If these terms were liberally construed, the statute might infringe upon certain rights, or be applied in unintended ways. Conversely, strict interpretations would limit the usefullness of the law. Finally, many opponents of the statute argued that key facets of the law violated a number of civil liberties.

From the statute's inception, in 1970, until 1977 the government initiated only thirty-seven RICO cases.[1] This suggested that RICO formed just another legislative showpiece that the government had created to quell public accusations that it was either unwilling or unable to challenge organized crime. Many people saw RICO as nothing but a threat to the civil liberties of the American populace.

In the 1980s, however, RICO gained respect due mainly to two findings of the Supreme Court that supported liberal interpretation of the statute. One case, *Turkette v. the United States* (1980), suggested that the term "enterprise" included not only legitimate businesses invaded by organized crime, but wholly illicit operations as well.[2] In the second case, *Russelo v. the United States*, the Supreme Court decided that profits and proceeds from any "enterprises" were subject to forfeiture under the RICO statute.[3] These findings caused an upsurge in the frequency of RICO prosecutions and a marked improvement in their effectiveness in fighting organized crime. Under the new interpretation, RICO has

been used to destroy huge organized crime empires and send their owners off to both the big house and the poor house. It has also brought forth an onslaught of cases, especially under RICO's civil provisions, that officials never expected.

This increase in the usage of RICO has continued, if not heightened, the intense debate over the statute. RICO's opponents stress that the statute runs roughshod over our civil rights. Many of these people have vigorously demanded its repeal. Though both sides have valid arguments, those opposed to RICO ignore perhaps the most important point. That point, and the one that this paper will illustrate, is that it would be sheer folly to abolish the one law that has made those involved in organized crime wonder whether crime pays.

This paper, in order to justify the liberal interpretation and application of RICO, will examine the impetus behind RICO and its effects upon our society. The paper has five chapters, which include: 1) some background on the problems that justice officials have faced when confronting organized crime, 2) the reasoning behind RICO, 3) the specifics of the statute, 4) an examination of the criticism of RICO, and 5) the effects of a liberally interpreted RICO on organized crime and American society. There is no doubt that RICO, if inappropriately used, could endanger the rights that all Americans own. This study, however, will show, that if it is carefully prosecuted, RICO can rid our nation of the criminal institution known as organized crime.

Chapter One: Historical Backround On The Problems Involved In Fighting Organized Crime

Organized crime, or a joint venture by a number of people to undermine the normal process of business or politics through illicit means for their own benefit, has a long history. People always have and always will break the laws of society to advance their social or economic position. Therefore, society must make sure that those criminals receive a just punishment. In our society, however, prior to the passage of RICO, this goal proved unattainable.

As organized crime began to prevade American society in the early 1900's many factors limited the government's ability to challenge the growing criminal menace effectively. The earliest vintages of organized crime, gambling and prostitution, were acceptable to many segments of society. In some cities such as Chicago and New Orleans, these activities were even encouraged by the local municipalities. When the era of national prohibition began in 1920, criminal activities expanded exponentially. Though gangland violence rocked the urban centers of America, law enforcement agencies were virtually powerless to contain or deter the criminal syndicates, because so much of the public wanted the liqour that gangsters were providing. As long as there was a

multitude of customers, there would be criminals to produce and sell the illegal booze. It was not until the late 1940s and early 1950s that much of the public realized that besides providing some harmless yet illegal services, the forces of organized crime were also stealing billions of dollars from the economy by subverting legal businesses and labor organizations. Thus, prior to this realization there was no unified call from the public for the government to take effective measures against organized crime.

Before RICO the greatest obstacle to effectively challenging organized crime was the inability of prosecutors to secure a harsh enough penalty for convicted gangsters. Too often justice officials watched guilty mobsters walk away with a slap on the wrist. Most organized crime figures convicted in a court of law faced charges for lower-level felonies (e.g., gambling, prostitution, fraud). Convictions for those types of racketeering, however, carried only minimal jail sentences and minor fines. Though most gangsters could have qualified as habitual offenders, which warrants special sentences of up to twenty-five years in prison, these decisions (in organized crime cases) have been few and far between. Many organized crime cases never got into court because the prosecution had too many obligations or too little evidence. Consequently, few judges would sentence a man, whom they had seen only once or twice before, to a long jail term for having committed only minor felonies. Even mobsters who received heavy

sentences for racketeering charges seemed adept at using their political leverage to get out of jail early.[4]

Since prosecutors could not allocate penalties for racketeering convictions that effectively curtailed or deterred organized crime, they often tried to secure charges of income-tax evasion or violent crime. The use of the Internal Revenue Service in disabling organized crime has had mixed results. On the positive side, prosecutors usually succeeded in securing these charges because the gangsters evaded taxes and flaunted their illegal wealth. Indeed, from 1961 to 1965, tax-evasion made up sixty percent of all organized crime convictions.[5] Tax-evasion charges often incurred heavy fines and on occasion a lengthy jail sentence. On the other hand, however, the penalties for tax-evasion were not devastating. Lower level racketeers, who rarely got indicted, could usually pay the fines they received and return to their old operations. More prosperous gangsters served long jail terms, but continued to run their enterprises either directly from jail or by proxy. In either case, the punishment provided for income-tax evasion did not curtail the growth of organized crime.

Justice officials also failed to deter organized crime by prosecuting mobsters on charges of violent crime. Although the punishment for these crimes always included long prison sentences, if not more severe measures, few top-level gangsters got convicted

on such charges. Hit-men who committed brutal beatings and killings rarely testified against their employers. Thus violent crime investigations did nothing more than send low ranking hit-men off to prison.

The law, prior to RICO, insufficiently challenged organized crime in two different ways. First, the individual racketeer stood to make more than he could lose. Gangsters rarely faced charges that incurred punishments greater than a couple years in jail and a fine of a few thousand dollars. The exceptional cases that did result in stiffer punishment hardly scared the rest of those involved in organized crime. The potential to make a fortune in illicit business made the risks well worth taking. Finally, even those racketeers that had to serve a long prison term knew that their profits still belonged to them. Going to jail only postponed the life of ease that the gangster had earned from participating in organized crime.

More importantly, however, the criminal code offered no recourse against the institution of organized crime. The most potent law in the prosecutors' hands, the conspiracy charge, might send a whole group of racketeers off to prison, but it did nothing to destroy the criminal enterprise. Time and time again, new organized crime bosses stepped up to take over for convicted mobsters. The massive organized crime empires that stole billions of dollars from the American economy did not shut down because a

few of their operators had to go to jail or pay fines. Justice officials could only wait for the transfer of power, and begin another painstaking investigation. Despite all efforts, business in the criminal underworld went on as usual. Though government attorneys struggled to prosecute those involved in organized crime to the fullest extent of the law, the law simply did not extend far enough.

Chapter Two: The Genesis of RICO

Two years before the election of Richard Nixon, President Lyndon B. Johnson ordered a new and improved effort against organized crime. Prompted by the growing evidence that organized crime was rapidly invading the legitimate business world, Johnson created a special fact finding crime commission. He ordered the task force to examine organized crime and figure out how justice officials could rid the nation of this institution. The commission's report, released in 1967, introduced many new ideas that eventually took form in the Organized Crime Control Act of 1970.

The President's Commission on Law Enforcement and Administration of Justice registered some innovative ideas on how to challenge organized crime. Rather than concentraiting on creating new laws, the commission suggested that the government focus on more effectively channeling its efforts. The task force made two key obervations on how the government might refocus its fight against organized crime.

The commission believed that organized crime reflected a nation-wide attempt by criminal cartels to corrupt the business and politics of America. The task force also asserted that, "Organized crime exists by virtue of the power it purchases with its money."[6]

In other words, organized crime could only survive in areas where it had nullified government through corruption.[7] The source of this money was various illicit goods and services, such as gambling, loan sharking, narcotics, and more recently the subversion of legitimate businesses. According to the commission, organized crime gained control of legitimate business concerns in four different ways: "1) investing concealed profits aquired from gambling and other illegal activities; 2) accepting business interest in payment of the owner's gambling debts; 3) forclosure on usurious loans; and 4) using various forms of extortion."[8] Thus, denying the organization of its funds, rather than throwing each and every gangster in jail, formed the best way to defeat organized crime. According to the commission, the government needed to develop a national plan of attack that would create a unified effort to close down organized crime's sources of income.

The task force's report detailed the steps the government could take in creating a new plan of attack. The first section offered several suggestions that might facilitate easier organized crime investigations. The commission recommended that: 1) special organized crime grand juries be regularly formed; 2) the immunity statute should protect government witnesses from incriminating themselves on any charges except purjury; 3) the government needed to increase its funds for the witness protection program; and 4) the government had to legalize some usage of electronic

surveillence.[9] The second part of the outline dealt with unifying the efforts of the federal justice agencies (the F.B.I, I.R.S., D.E.A., etc.), the state and municipal law enforcement departments, and the citizenry of America.[10] If the federal government created an organized crime computer file, and fastened the ties between these various groups, then everyone could confront the common enemy more efficiently.[11] If these steps were taken, the commission believed that the nation's justice officials could structure their efforts more effectively, and close in on organized crime's money-making operations.

The task force also called for the creation of a new criminal offense that would prohibit the existence of cartels whose main business concerns were the contiuence of criminal operations. The commission realized that most racketeers did not appear in court often enough to face habitual offender charges, and consequently did not receive a punishment equal to their crimes. Therefore, both federal and state governments should create a law that sanctioned extended prison sentences, of up to thirty years, where the evidence proved a crime was committed as part of an on-going business.[12] This suggestion established the notion that participation in organized crime should constitute a criminal offense.

Much of the advice included in the commission's report later became part of the Organized Crime Control Act of 1970. Even

before the OCCA, the Omnibus Crime Control and Safe Streets Act of 1968 legalized certain forms of electronic surveillence.[13] The task force's report also had a specific influence on the creation of RICO. Although Congress eventually decided that the report's ideas in themselves could not destroy organized crime, it did take to heart the notions of creating a special organized crime law and of focusing on organized crime's sources of income. Without the work done by the President's Commission on Law Enforcement and Administration of Justice, these notions might have never surfaced.

In 1969, the newly elected president, Richard Nixon, who had run on a law-and-order platform, asked Congress to approve his plans calling for the creation of twenty task force units across the country, and doubling the overall anti-organized crime funds.[14] According to the president, however, these measures alone could not effectively challenge organized crime. On April twenty-third, 1969, President Nixon stated that, "The arrest, conviction, and imprisonment of a mafia lieutenant can curtail operations, but does not put the syndicate out of business. As long as the property of organized crime remains, new leaders will step forward to take the place of those we jail."[15] This statement supported the efforts of three Senators who were trying to push a major organized crime bill through Congress.

Throughout the early months of1969, Senators Sam Ervin, Roman Hruska, and John McClellan introduced several bills that they

believed would win the war against organized crime. During their work on the Senate Judiciary Committee, Senators Hruska and McClellan developed two bills entitled the "Corrupt Organizations Act" and the "Criminal Profits Act".[16] These bills made it illegal for racketeers to gain control of legitimate businesses, and subjected the violator to a lengthy jail term, a heavy fine, and forfeiture of any "interest" in the said business, to the government.[17] Although forfeiture had not been used in criminal proceedings since colonial times, the Senators wanted to revive it in order to challenge organized crime.

Following the advice of the President's Commission on Law Enforcement and Administration, Senators Hruska and McClellan reasoned that the government could defeat organized crime if it took away organized crime's sources of income. Their new criminal offense, the act of corrupting legitimate business (which constituted organized crime's most recent source of funds), had legal precedence rooted in the anti-trust laws. According to the courts, anti-trust suits legitimatized the penalty of forfeiture, provided that a certain concentration of wealth had threatened public interest and restricted fair trade.[18] Senators Hruska and McClellan believed that organized crime certainly formed a dangerous concentration of wealth, and that it clearly restricted fair trade by using violence or extortion to squeeze out competition.[19] RICO developed out of a combination of the"Corrupt

Organizations Act" and the "Criminal Profits Act".

Eventually, Senators Ervin, Hruska , and McClellan combined these bills and introduced them to Congress in the form of the Organized Crime Control Act of 1970. The OCCA sought to eradicate all forms of organized crime in America. While the bill contained several measures aimed at strengthening government investigations, its real weapon, RICO, sought to penalize racketeers by taking away their sources of income. The creators of RICO, believed that the bill would finally allow prosecutors to severely punish the members of organized crime and help destroy this criminal institution once and for all. Apparently, Congress agreed, because on October 15, 1970, RICO entered the criminal code as part of the OCCA. In doing so, however, the legislature opened up a war in the courts of America, that still persist today.

Chapter Three: The Racketeer Influenced and Corrupt Organizations Act

The enactment of the Organized Crime Control Act of 1970 reflected a major shift in the views of the American public. For several years Americans had been growing wary of the liberal decision of the Warren Supreme Court. The Warren court had made many controversial decisions on issues such as civil rights, abortion, and criminal rights. To the growing conservative factions, the Warren court had brought about an ever increasing break-down of law and order. Thus, law and order became a focal point of the 1968 national elections. The conservatives demanded order and their champion, Richard M. Nixon, promised them satisfaction. In the area of criminal rights, and organized crime, the Racketeer Influenced and Corrupt Organizations Act heralded in this new conservative approach to justice .

On October 15 the legislators began their new hard-line approach to crime by passing the OCCA with only twenty-seven dissenting votes.[20] Congress noted in the openning statement of the OCCA that due to the diverse activities of organized crime, the American economy lost billions of dollars, and control over a number of legitimate businesses and labor unions, every year.[21] Further, the government could not defeat organized

crime because the current legal sanctions available to the government had too little scope and impact.[22] The purpose of the OCCA was to destroy organized crime in the United States by improving the investigation process, developing new penal prohibitions that carried far more damaging penalties than previous offenses.[23] The first seven titles of the OCCA dealt with increasing the investigatory powers available to the government, and the following four titles, including RICO, created new criminal violations and sanctions with which the government would challenge organized crime.

Title One of the OCCA created special organized crime grand juries, in any district with more than four million inhabitants, on a regular basis.[24] These grand juries would inquire into any organized crime activity in their district and submit their findings and opinions in written notices.[25] The second title of the OCCA gave government witnesses the protection of immunity from facing any charges that might result from their testimony, except for perjury.[26] Title Three, "Recalcitrant Witnesses", allowed the government to place in custody any subpoenaed witness who refused to testify for up to eighteenth months or the duration of the hearing.[27] Title Four, "False Declarations", modified the perjury law by allowing two inconsistent statements, made by a single witness, to constitute a

violation.[28] The fifth title of the OCCA regulated the provision of protected facilities for government witnesses.[29] Title Six of the OCCA provided for the allowence of testimony in the form of deposition in organized crime cases.[30] Finally, Title Seven, "Litigation Concerning Sources Of Evidence", declared that no claims could be made against a given source of evidence (e.g. evidence gathered in an illegal fashion), provided that the evidence was gathered more than five years prior to the claim.[31] These first seven titles sought to ease the process of collecting enough evidence in organized crime cases to produce a case worth prosecuting. Together, they would help justice officials bring forth the newly created charges provided in the next four titles.

The three prohibitive titles of the OCCA other than RICO dealt with gambling, special offenders, and explosives. Title eight,"Syndicated Gambling", redefined illegal gambling operations, and subjected violators to a fine of no more than twenty thousand dollars or imprisonment for no more than five years or both.[32] The tenth title of the OCCA allowed the courts to increase the sentence facing anyone who had previously been convicted of two felonies, was over twenty-one years of age, and was considered especially dangerous to society, to up to twenty-five years in prison.[33] Title eleven penalized any illegal transportation, use, or sale of explosives. Anyone found guilty of a number of such violations

could face a fine of no more than ten thousand dollars or imprisonment for no more than ten years or both.[34] The legislature had increased the punishments for illicit gambling and distribution of explosives, and created a new statute that would raise the punishment for gangsters with previous convictions. Thus, Congress intended to put more pressure on organized crime with these three sections of the OCCA.

RICO, however, constituted the most powerful anti-organized crime weapon included in the OCCA. In order to drive organized crime out of legitimate business, section 1962 of Title Nine created four new criminal prohibitions. Anyone of these four offenses could be prosecuted in either a criminal or civil court. The first of these prohibitions made it illegal for anyone who had received income from "a pattern of racketeering" (two or more acts of racketeering committed within a period of ten years) to invest, any such income, in acquisition of any "interest" in, or the establishment or operation, of any "enterprise" engaged in or affecting interstate or foreign enterprise.[35] Further, no person could gain "interest" or control of such an operation, through "a pattern of racketeering or the collection of unlawful debt.[36] Third, no person could conduct such an "enterprise's" affairs through "a pattern of racketeering" or collection of an unlawful debt.[37] Finally, it would be unlawful for any person to conspire to

violate any of the previous prohibitions.[38]

These prohibitions sought to prevent organized crime from taking over or running a business through unfair practices, such as forcing the owner out by violence or collecting a usurious loan, using illegal monies from racketeering to run the business, or increasing the businesses profits by using illegal methods. One example of an "enterprise" run on a "pattern of racketeering" would be a trucking company that charges higher rates to insure that the customer's products get there on time. If the customer refuses to pay these rates or goes to another company, he may find that his products were hi-jacked along the way, or that his wharehouse was burnt down.

Congress had several ideas in mind when it drafted these four criminal provisions. First, the legislature wanted to prevent organized crime from entering a field with unlimited possibilities for criminal expansion. Evidence had proven that organized crime was concentrating more and more on corrupting legitimate business. Second, except for small personal investments (investmenst of under one percent interest in an enterprise was allowable under the statute), Congress did not want gangsters to gain any appearance of legitimacy by entering the legitimate business world. Finally, the lawmakers planned on using the criminal penalties and civil remedies of RICO to destroy organized crime by taking away its sources of income.

Three penalties faced the defendants in criminal RICO cases. Anyone convicted of a RICO violation would be subject to a fine of not more than twenty-five thousand dollars or imprisonment of not more than twenty years, or both.[39] More importantly, however, a RICO conviction would force the violator to forfeit to the United States:

> "(1) any interest he has acquired or maintained in violation of section 1962, and (2) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which he has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962"[40]

The courts also had the jurisdiction to issue holding orders on any such property or "interests" prior to a conviction in order to prevent the racketeer from selling them.[41]

The United States or any individual injured by a RICO violation could also instigate a civil RICO suit. When initiating a civil RICO investigation, an Attorney General could require any person or enterprise to present any requested materials or evidence or any such materials used in a previous criminal case, before actually beginning the court proceedings.[42] Further, anyone found guilty of a RICO violation in a criminal proceeding could not deny

the essential allegations, of that offense, in a subsequent civil case.[43] In the event of a civil RICO action, the courts could apply several remedies. In preventitive action, the courts had the jurisdiction to order any violator of section 1962 to divest himself of any such "interests", and forbid the accused to ever again engage in the same type of endeavor.[44] The courts could also order the dissolution or reorganization of any "enterprise"involved in a RICO violation. Lastly, any individual injured in property or business by a RICO violation could sue for treble damages and the costs of the suit.[45]

Together, the criminal penalties and civil remedies provided for RICO violations formed a new and exceptionally potent challenge to organized crime. While the first seven titles of the OCCA made organized crime investigations easier, and titles eight, ten, and eleven attempted to prevent other racketeering abuses, RICO sought to actually take away organized crime's operations. Any mobster found guilty of trying to enter or maintain organized crime's newest source of income (legitimate business) would have to forfeit that "enterprise" to the government. The government hoped to gradually take away all of these enterprises, and thus deprive organized crime of its power. By enacting the Racketeer Influenced and Corrupt Organizations Act, the government believed it finally had a law powerful enough to eradicate organized crime in the United States.

Chapter Four: Criticism and implementation of RICO

Although the Congress believed that RICO would justly challenge organized crime without threatening the constitutional rights of American citizens, many critics of the statute disagreed. The opponents of RICO stated that not only did the law threaten numerous civil liberties, but also that RICO had failed to achieve the desired results in the courtroom. The complaints against RICO increased drastically after courts began to interpret the the statute more liberally. Though the liberal interpretation of RICO had begun to produce some crippling decisions against organized crime, it also created a deluge of unintended applications of the statute.

The first criticism registered against RICO occurred while the statute was still being debated in the Congress. In a letter to the Congress, the American Civil Liberties Union (ACLU) predicted a number of problems that RICO would create. First, the ACLU questioned how the government could possibly discover the source of monies invested years before an investigation.[46] The ACLU also listed several threats to civil liberties that RICO might create. The ACLU worried that the unlimited breadth of the statute's criminal provisions would allow it to be used in

non-organized crime cases.[47] Further, the law's forfeiture penalties might affect innocent third party investors.[48] While the ACLU believed that the threat created by organized crime warranted the harsh penalties of RICO, the Union feared that the broad language in the statute might be used to prosecute non-organized crime violators, and would subject them to "cruel and unusual punishment".

Another grave concern, that the ACLU registered, involved RICO's civil investigatory powers. RICO's power to demand investigation materials, without even a court order, violated the defendant's right of protection from self-incrimination.[49] Finally, the ACLU suggested that the power to demand evidence from previous criminal trials might create prejudicial feelings of guilt, and result in an unfair conviction.[50] The ACLU believed that if a defendent had to produce evidence before the trial even began then the jury would have reason to assume that he was guilty.

Before the liberal interpretation of RICO, the statute's critics argued that RICO had failed to stop organized crime from invading legitimate business. Prosecutors simply could not find enough evidence that verified the use of illicit funds in purchasing or subverting legitimate businesses. Only the prosecution of section 1962(c) violations, the maintenance or operation of an "enterprise" through "a pattern of racketeering"

had stood up in court.[51] In these cases, however, the "enterprises" in question rarely represented large organized crime operations.[52] Most often, these defendents were small-time criminals running some kind of mail or wire fraud scheme.[53] These apllications had not only changed the type of criminal that RICO targeted, but also shifted RICO's aim from the invasion of legitimate business to any "pattern of racketeering" related to a legitimate business.

During these early years of RICO's history (1970-1978) critics asserted that since the statute had only been used a few times, and only succsessfully against non-organized crime offenders, then Congress would need to abolish the statute's draconian penalties. The opponents of RICO believed that even if the law had worked as intended, its penalties would still have violated civil rights. Some insisted that the Constitution prohibited any statute that stopped a person from investing money in legal enterprises, regardless of the origins of that money.[54] Other critics wondered how a racketeer might ever forsake a life of crime, if he lost his right to invest money in legitimate businesses.[55] RICO critics also suggested that since a conviction inflexibly demanded forfeiture, the penalty violated the Eighth Amendment's prohibition against (cruel and unusual punishment).[56] This was especially true because the automatic forfeiture clause

could rob innocent third-parties of their legitimately purchased investments.[57] Finally, issuing holding orders, that could tie up a defendent's assets prior to a court case violated the right to obtain the best defense available.[58]

Even before the courts ordained the liberal interpretation of RICO, many critics stated that the statute had several unconstitutional facets. The critics felt that not only did RICO's prohibitions contradict the right to own property, but also that the law's penalties subjected the violator to "cruel and unusual punishment". Further, they had serious concerns about how the courts had applied the law to non-organized crime operations. These grievances paled to nothingness, however, when compared to those raised by critics after the Supreme Court decided to allow RICO to apply to completely illicit "enterprises" and include profits among the forfeitable "interests". The establishment of a liberally construed RICO furthered the critics' belief that the statute was highly unconstitutional.

Prior to 1980 federal prosecutors had failed to seriously challenge organized crime through the use of the RICO statute. Their only successes had come as a result of indictments dealing with the running of an "enterprise" through a "pattern of racketeering". As this mode of attack became more viable prosecutors decided to bring RICO charges against organized crime's wholly illicit operations. Although this deviated from the notion

of stopping the infiltration of legitimate business, the Supreme Court upheld this application of the statute in the 1980 case of *the U.S. v. Turkette.*

The Court stated several reasons as to why it had come to such a conclusion. First, according to Justice White the term "enterprise" meant nothing more than 'any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity'; this definition did not rule out associations dedicated to completely illegal activities.[59] Second, as long as the group involved was in fact "an ongoing organization" whose associates had run the business through a "pattern of racketeering", then a RICO offense had been commited.[60] In this interpretation, the "enterprise" was the ongoing association and their "pattern of racketeering" was any such offense used to further that group's existence.[61] Finally, Justice White explained that the court's decision did not violate the legislative history of RICO, because the statute was simply one part of the OCCA, which called for the elimination of organized crime.[62]

The Supreme Court's decision, in 1980, that maintaining any enterprise, even illegal ones, through "a pattern of racketeering" violated section 1962(c) increased the belief among RICO's critics that the Congress had worded the statute far too vaguely. These

opponents of RICO felt that this decision had no relation to the legislative history of the law.[63] In their eyes, Congress had created RICO for the sole purpose of preventing organized crime from corrupting legitimate business.[64] Thus, the high Court's decision proved that the statute's terminology allowed prosecutors to use RICO improperly.

Critics argued that by setting this judicial precedent the Supreme Court had multiplied the dangers that RICO presented to the civil rights of the American people. The new interpretation of RICO meant that the statute prohibited the acts of committing or conspiring to commit "a pattern of racketeering".[65] The penal code, however, already provided punishments for the types of racketeering listed in RICO. This violated the Eigth Amendment because RICO simply increased the penalties for previous criminal violations.[66] The opponents of RICO also noted that since the term a "pattern of racketeering" covered a large number of previous penal violations, the statute had turned into a powerful criminal catch-all.[67]

This development in turn created three potentially dangerous situations. First, as an all-encompasing criminal offense, RICO dramatically increased the federal government's jurisdiction, and only the judgement of federal prosecutors would prevent abuse of the law.[68] Critics also alleged that, with its new interpretation,

RICO would do away with the need for a large segment of the criminal code.[69] Most importantly, however, as a criminal catch-all, RICO violated the need for a law to express, in concrete terms, its exact prohibitions.[70] Without any such definitions people would not know that they had actually broken a law, and the government could instigate RICO charges with random discrepency.[71]

The growth of RICO's scope also resulted in a resounding increase of civil RICO suits. While these suits did not necessarily focus on illicit "enterprises", they instituted some rather outlandish applications of the RICO statute. Critics felt that if RICO was liberally interpreted in civil actions, no one would limit the abuses.[72] Indeed, opponents suggested that lawyers would develop some very imaginative RICO suits in order to collect treble damages or label their employer's competitors as racketeers. After all, they noted that civil RICO suits most commonly involved white-collar or corporate criminals.[73] More shockingly, lawyers had prosecuted RICO cases against churches, retirement homes, and even an anti-abortion organization.[74] In either case these actions hardly redressed damages fostered upon innocent citizens by the institution of organized crime.

The Opponents of RICO also believed that the Supreme Court's decision in *Rusello vs. the U.S.* (1983), which made profits and proceeds from RICO violations subject to forfeiture, violated the

Constitution and the legislative history of the statute. Critics argued that the Congress had only intended to take away the money making operations of organized crime, in order to force them out of business.[75] Otherwise, the Congress would not have included the one percent of "interest" allowance in the statute.[76] The critics also believed that the Fifth Amendment absolutely prohibited forfeiture of estate.[77] These critics wondered where the government would draw the line. If the courts allowed the forfeiture of profits and proceeds the government could claim just about anything that a convicted gangster (if the convicted person was a gangster) owned.[78]

From the moment the Congress initiated the legislation of the Racketeer Influenced and Corrupt Organizations Act, the statute generated a massive amount of opposition. Many people felt that the statute would violate their constitutionally guaranteed rights, and that RICO's expansive language would lead to unintended usage of the law. When the Supreme Court allowed uses of the statute that the Congress had not expressed, the opponents of the statute felt that their fears had come true. The liberal interpretation of RICO increased the danger that the statute presented towards civil rights. Despite the fact that many parts of the law violated individual rights, the critic's main arguement remained that, although RICO had hurt organized crime, the statute had also unfairly devastated petty criminals or even people who somehow

bizarrely fit the statute's requirements. In the critics' opinion, the danger represented by RICO outweighed that from organized crime, and only the statute's repeal could protect the American people from this threat to their civil liberties.

Chapter Five: In Defense of RICO

The criticisms leveled at the Racketeer Influenced and Corrupt Organizations Act have centered around three main flaws. The three major problems have been the abuses which resulted from the statute's expansive language, including severe disregard for the law's legislative history, the unfair draconian penalty of forfeiture, and the flagrant misuse of RICO in civil court cases. In each of these areas RICO's opponents have argued that the statute has violated a number of constitutionally guaranteed rights. Although they have raised some important questions, careful consideration of the facts disproves their arguments, and invalidates their calls for the repeal of the law.

RICO's greatest source of infringments upon our civil liberties, according to the critics, is the statute's ambiguous and expansive language. In their eyes, the lack of concise meanings for terms such as a "pattern of racketeering", "interest", and "enterprise" has resulted in unintended uses of RICO (e.g., non-organized crime cases, white collar crime, and illicit "enterprises"), the creation of a powerful criminal catch-all, and a new and unfair punishment for previous criminal offenses. Perhaps, what the critics neglect, however, is that due to the complex and unclear nature of organized crime, the statute will

only work if its language remains broad.

Though critics argue that the sole purpose of RICO was to eliminate the infiltration of organized crime into legitimate business, and that any other use constitutes a violation, they have not examined the facts closely. First, the main objective of the Organized Crime Control Act of 1970, and subsequently RICO, is the complete eradication of all organized crime in the United States.[79] In order to destroy organized crime, prosecutors have used the law in a number of ways that, although not directly enumerated in the statute, have been upheld in court as fitting the crimes prohibited under RICO. RICO's use against completely illicit businesses has gained judicial acceptance because organized crime's illicit operations still constitute an ongoing organization ("enterprise") run through a "pattern of racketeering".[80]

Secondly, though the Congress created RICO to fight organized crime, a number of reasons exists as to why it should be used in certain non-organized crime cases as well, and especially in the case of white-collar crime. Often it is virtually imposible to discern who belongs to organized crime groups and who does not, and the law's usefullness would decrease considerable if prosecutors had to prove that the defendant had ties to "organized crime".[81] Further, in the opinion of Senator McClellan, if the law violates the rights of those involved in organized crime then it is objectional; if it does not, however, then it also does not violate

the rights of other criminals.[82] Finally, to assume that the statute should not include white-collar crime or other criminals who commit the same crimes, affixes a limitation of status (involvement in "organized crime") upon the law. To qualify a law in this way surely violates the constitution.[83] According to Notre Dame Proffesor G. Robert Blakey, an expert on organized crime who helped draft the statute, the pervasiveness of white-collar crime merits the use of RICO in these cases. According to Blakey, we should stop applying RICO only to cases involving those people whose names end in vowels (sugesting ethnic syndicates).[84]

Critics of RICO also suggest that the statute's expansive language and broad terminology has created an indiscriminate offense that simply assigns much stiffer penalties for crimes already listed in the criminal code. This would allow the government to use the statute in any case where there was a "pattern of racketeering", and lead to abuses such as using RICO as a bargaining tool. These arguments, however, are completely unfounded. RICO has in fact created a new criminal offense that prohibits the existence of organizations dedicated to commiting any one or several types of racketeering.[85] RICO can not be used indiscriminately because the statute relies on the existence of a relationship between the crimes that have been committed, and a sense of continuity to the operation of these criminal activities.[86] RICO focuses on criminal cartels who continue to run

their operations (legal or illegal) through certain racketeering activities. Isolated criminal ventures are not the target of RICO prosecutions. In fact, suggesting that the government would do so makes little sense because the RICO cases take too much time and effort. Such uses would only complicate the jobs of the prosecutors, who could prosecute on simpler charges. Thus, the relationships between the "enterprise" and the "pattern of racketeering" negate the allegation that RICO simply assigns harsh new penalties to old offenses. Finally, the federal government has recently forbade the use of RICO as a bargaining tool, or as a charge that might induce the defendant to accept a plea bargain.[87]

Another major concern that leads critics to call for the repeal of RICO is the statute's provisions for the draconian punishment of forfeiture. Opponents of RICO suggest that the penalty of forfeiture is unconstitutional, especially considering the the Supreme Court's decision in *U.S. v. Russelo* , allowing the confiscation of profits and proceeds. Opponents of RICO also argue that the Congress' inclusion of the one percent clause, makes the forfeiture of profits and proceeds illegal in regard to the statute itself. Finally, the critics believe that RICO's pre-trial holding orders, that tie up a defendant's assests, violate his right to defense and unfairly interfere with with the businesses of innocent third-party interests.

Although the penalty of forfeiture has been abhorred

throughout American history, organized crime's existence and ability to continue operating depends on illicit money. Allowing for the forfeiture of such funds constitutes the only viable way to destroy such criminal operations.[88] Forfeiture and civil injunction are weapons of unequaled scope in the war against organized crime because they strike at the heart of these criminal institutions' power.[89] Furthermore, if a defendant's entire fortune has been amassed by stealing it from the economy then the penalty of forfeiture fits the crime, and therefore does not violate the constitution.[90]

Forfeiture of profits and proceeds also does not violate the constitution or the statute, despite the arguments of the critics. Profits and proceeds, such as cash, bonds, cars, houses, and other luxuries often serve the criminals as the capital that provides them with "interest" or control over an "enterprise. According to Supreme Court Justice Blackmun, this is especially true when the "enterprise" is an illicit operation (e.g. gambling rings, narcotics trafficking,etc.).[91] Without the inclusion of such assets, forfeiture would have litle effect in numerous RICO cases, as the government can hardly confiscate a gambling operation.[92] Although the Congress did indeed permit investments by such criminals of less than one percent interest of an "enterprise" (so a racketeer might go legitimate), the forfeiture of profits and proceeds are allowable in many RICO cases. In fact, they remain

vital to winning the war against organized crime.

RICO's critics also argue that the pre-trial holding orders provided for in the statute violate the rights of both the defendant and innocent third-party interests. The idea behind freezing of RICO defendant's assests is the same as behind keeping a crook in jail before his trial. Without these orders many RICO trials would be senseless, as the assests or businesses in question would be sold or given away before the end of the trial. While these orders might interfere with a defendant's ability to secure the highest paid lawyers, they do not violate the constitution. The Bill of Rights guarantees the services of legal counsel, not a five hundred dollar an hour lawyer paid with ill-begotten funds.[93] In regards to the rights of innocent third party interests, their business inconveniences simply must be outweighed by the need to secure any probable illicit assests or businesses.[94] Perhaps these inconveniences to innocent third-parties, caught up in RICO prosecutions, will cause a greater concern amongst companies about whom they do business with.[95]

The last main criticism voiced by RICO's opponents involves the statute's misuse and abuse in civil cases. First, they believe that the statute's civil investigatory powers abuse the defendant's rights and work as predjudicial evidence. Further, they argue that with no one to check the limitation of applications of the statute in private suits, civil RICO cases are likely to become more and

more ridiculous. They cite the use of a RICO injunction against an anti-abortion group, that threatened anyone entering a certain clinic (thereby running their organization through a "pattern of racketeering"), as a prime example. Also, in their opinion, civil RICO's most frequent application, white-collar crime, was never included amongst the Congress' intended uses. In addition, the critics' suggest that companies are using RICO cases against each other in a new sort of business competition. All of these abuses constitute, according to the statute's oppnents, reasons for removing RICO's civil remedies.

The civil investigatory powers available to prosecutors in RICO cases have the same attributes as those in most other federal civil cases. These procedures mirror those used in anti-trust suits[96], and simply ask the defendant to hand over his records. If the defendant is innocent, he has nothing to fear. If, however, the records indicate his guilt, then the prosecutors will seek the correct civil remedies. These remedies include divestiture, dissolution, fines, or forfeiture, all of which seek to break up an illegal and dangerous concentration of economic power. It is hard to imagine, that in a country with the toughest criminal sentencing in the free world, the opponents of RICO would worry so much over the financial security of white-collar criminals.[97]

Critics' fears about the abuse of RICO in civil courts have some legitimate foundation. With RICO suits listed against church

organizations, anti-abortion groups, and even a case between two rabbis, it is obvious that non-governmental prosecutors have allowed their imaginations to run wild. Remedies other than the repeal of RICO, however, do exist. Initially, the opponents of RICO may seem to have a valid point, but the facts do not support their accusations. In 1987-1988 federal civil RICO cases actually declined by twelve percent, and never in fact accounted for more than one-half of one percent of all such cases.[98] Most importantly, however, the courts themselves have the power to limit abuses of RICO by simply tossing any flagrant misuses out of court. Indeed, twenty-four of the thirty-four cases cited most often by RICO opponents, as examples of major abuse, were thrown out of court by the presiding justices.[99]

Finally, the critics' complaints about the use of RICO against white-collar crime hardly serve as grounds for repealing the law. Although the statute does not specifically target white-collar crime, this pervasive form of criminal activity has reached a level of incredible magnitude. There is no reason as to why RICO should not be used against these criminals, who steal over two hundred billion dollars from the economy annually, since they commit crimes prohibited by the RICO statute.[100] In addition no one can say for sure that organized crime has not spurred on many of these schemes. RICO offers the hapless victims of these crimes a powerful means of redress, one that they can not afford to lose.[101]

Few people would suggest that RICO has had a perfect record. Due to the statute's broad, but necessarily expansive language, misuse and abuse has plagued the statute since its inception. The law, however, is extremely complex, and such errors must be slowly eradicated. These errors, however, have not occured due to inherent inadequacies within the statute but rather because of inappropriate prosecution. Although RICO could undoubtably use some fine-tuning, the evidence suggests that no reasons exist for repealing the statute.

While the statute has gone through some tough times, the Justice Department and the Attorney General's office have continually attempted to increase the efficiency and effectiveness of RICO. The Justice Department recently published a manual for federal prosecutors, explaining the statute and detailing the most effective ways of using it. These agencies would enjoy nothing more than having a RICO unplagued by legal problems, so that they may finally challenge organized crime without threatening anyone's rights.

All of these facts stand as support for the continued use of RICO in the war against organized crime. One other piece of evidence illustrates just how much we need to keep RICO a part of the effort to destroy organized crime. In the past nine years federal attorneys have prosecuted fifty-four major organized crime cases involving the RICO statute, resulting in approximately two

hundred and forty-five convictions, three thousand and seventy combined years in jail, twenty-nine million dollars in fines and retributions, and forfeiture of close to fifty-three million dollars in various assests.[102]

These figures prove that in recent years, RICO has begun to accomplish the goals set out for it in 1970. Major organized crime figures have received jail sentences of up to one hundred years, and have forfeited huge segements of their criminal empires. The forces of organized crime are slowly losing their businesses and the working capital that provides them with police and political protection and that allows them to enter into new criminal ventures. Thanks to RICO, organized crime's economic base is being destroyed, which is the first step in ridding our country of this vast criminal institution.

Conclusion

The institution of organized crime has been a blight upon American society throughout the twentieth century. Organized crime has stolen billions of dollars from the nation's economy annually. In addition they have subjected a large segment of the population to unfair and illegal trade practices, while protecting themselves from retribution through a combination of improper police and political influence, terror and violence. Only a courageous few have successfully challenged organized crime and its massive ill-begotten domain. For the most part organized crime has been allowed to sap the strength of the nation's economy and society through its ability to provide illicit goods and services and by converting legal businesses into new sources of criminal gains.

In the late 1960s, however, the American public made clear its determination to end the rampant rule of crime by electing Richard M. Nixon to the office of president. One of Nixon's fundamental positions was that America needed to change the society created by the liberal verdicts of the Warren Court, and replace it with law and order. Nixon's promise to eradicate crime included the elimination of organized crime and its adverse effects upon our society. The pledge to stamp out these criminal cartels received

serious attention in the federal justice agencies and the United States Congress. After evaluating the nature of these shadowy organizations, the lawmakers decided that organized crime flourished because no law effectively deterred to it. No existing law threatened organized crime's ability to operate.

The key to this issue was the power that organized crime purchased with its money. Money bought organized crime political protection and acted as the capital for its numerous criminal operations. Thus, the lawmakers came to the conclusion that the only way to destroy organized crime was to eliminate its sources of income. This idea, when combined with the desire for law and order, brought about the radical solution known as the Racketeer Influenced and Corrupt Organizations Act.

The expansive nature of RICO's criminal prohibitions and legal terminology, as well as its devastating penalties, suggested that the government would go to great lengths to destroy organized crime. The courts also supported RICO's broad measures, and by the early 1980s had actually expanded the statute's applications to completely illicit "enterprises", and decided that the law allowed the forfeiture of profits and proceeds. These interpretations greatly increased RICO's efficiency in fighting the war against organized crime.

In the eyes' of RICO's critics, however, the statute constituted a major threat to the civil liberties of every United

States citizen and stood as an aberration of the ideals of American justice. The RICO statute had numerous flaws that could lead to severe abuse and misuse. Indeed, the critics suggested that the statute's language could be applied to almost any random case that the government chose. The problem inherent in this situation was that the draconian penalties provided in RICO had been created to destroy organized crime. If they could be applied to other criminals, then the government would have an extremely powerful law held in line only by its own discretion. When the courts expanded RICO's latitude, the critics felt that their fears had been justified. In their opinion, no criminal institution, not even organized crime, warranted this dire threat to the safety of American's civil rights.

RICO's supporters, on the other hand, deny the illegality of its meassures and point out its effectiveness in fighting organized crime. These proponents maintain that the statute has finally brought organized crime "under the gun" because it strikes against the organization rather than the individual. Furthermore, RICO has had permanent effects upon organized crime by using the penalty of forfeiture to take away the businesses and capital of these criminal cartels.

The debate over the RICO statute has evolved out of an important issue in recent American history. Shall America have law and order and rid itself of these criminal syndicates, or

immaculately protected civil rights? The lawmakers who created RICO, and their constituents, were sickened by the impunity with which organized crime seemed to operate. Not unlike Clint Eastwood's character Dirty Harry, the RICO statute was designed to provide absolute and immediate justice. Americans had decided to put away their liberal sentimentality, which championed the rights of even the criminal. On the other side of the issue, however, there can be no doubt that if the RICO statute did heavily infringe upon civil liberties, then it constituted a major threat to the American system of justice.

In considering the value of the RICO staute to American society, one must weigh the positives and negatives. RICO's greatest flaw, the proliferation of odd applications of the statute, especially in the civil courts, leads one to believe that there are inherent dangers within the law. RICO, however, is not a criminal catch-all to be used whenever and however the government chooses. In order to prosecute a RICO case some relationship must exist between the various criminal offenses. Furthermore, there must also be some sort of continuity to the offenses that suggest an on-going criminal operation that makes various forms of racketeering its main activity. This continuity is characteristic of gangsters, white-collar criminals, and many other professional criminals. The key to making RICO work without jepordizing our civil rights is careful consideration of RICO cases on the part of

both prosecutors and judges.

On the positive side, RICO has greatly increased the government's potential to destroy organized crime. First, RICO has revolutionized ciminal prosecution because it targets a multi-defendent organized crime group and charges it for all of its various criminal activities, rather than individual specific offenses. RICO has broken down the wall of protection that for many years protected the institution of organized crime. Where once the businesses and illegal activities of crime groups simply passed on to the next leader, RICO places them in the hands of the federal government. By taking back the money and "enerprises" that organized crime has stolen from the country, the government has effectuated the decline of existing criminal syndicates and deterred the growth of new ones. Furthermore, the increased applications provided by *U.S. v. Turkette* and *U.S. v. Russelo* not only allowed attorneys to more effectively challenge organized crime but to meet the increase of crime in related areas such as white-collar crime.

Although the RICO statute does have certain flaws, no law has ever challenged organized crime nearly as effectively as RICO. The greatest proof of this may come from the mobsters themselves, who for the first time in history are afraid of the consequences of getting caught. The intention of the statute was to eradicate the forces of organized crime, and with the interpretations provided by

Turkette and *Rusello* RICO has taken a dramatic step towards achieving that goal.

While RICO still need some adjustments, the main contingent that should fear the statute are those involved in organized crime. The draconian penalties of the statute may seem severe, but they remain necessary in order to destroy the greatest criminal threat in American history. The Racketeer Influenced and Corrupt Organizations Act can be used without threatening our civil rights if it is prosecuted responsibly. Although organized crime will continue to exist as long as people choose to buy their illicit goods and services, RICO has provided us with a chance to destroy the independant power they have gained from these activities. Though we must never sacrifice the rights that have made this country a land of freedom and justice, we must also continue to fight the institutions, such as organized crime, that would deny us of those very same liberties. RICO has offered us a chance to destroy organized crime, and it is an offer we simply cannot refuse.

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