

JUDICIAL CREATION OF AN ECONOMIC REQUIREMENT UNDER RICO: TIME TO DISMANTLE THE BARRICADE

The Racketeer Influenced and Corrupt Organization¹ (RICO) statute continues to assume new roles.² Observers attribute the statute's versatility to its long list of triggering offenses.³ The scope and variety of these offenses allow litigants to append RICO counts to complaints asserting a wide range of other civil causes of action.

Originally, the prospect of receiving treble damages motivated parties to include RICO counts in their complaints.⁴ As plaintiffs and their attorneys became more sophisticated, however, they also began to bring civil RICO claims to obtain access to the federal courts for their ancillary state claims,⁵ or to harass defendants whose activities or politics they morally opposed.⁶ The increased application of RICO has stimulated

1. Organized Crime Control Act of 1970, tit. IX, Pub. L. No. 91-452, 84 Stat. 922, amended by Comprehensive Crime Control Act of 1984, tit. II, Pub. L. No. 98-473, § 302, 98 Stat. 2040 (1970) (codified as amended at 18 U.S.C. §§ 1961-1968 (1988)).

2. See, e.g., Cao, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297, 1307 (1987) (proposing that prostitutes use civil RICO to escape the prostitution enterprise); Gough, *Wrongful Discharge: Can RICO Come to the Rescue?*, 61 FLA. B.J. 91 (1987) (advocating use of civil RICO to circumvent the Florida employment-at-will doctrine); Juster & Nathan, *Law Enforcement Against International Terrorists: Use of the RICO Statute*, 60 U. COLO. L. REV. 553 (1989) (recommending use of civil RICO for combatting terrorism). *But cf.* Abrams, *A New Proposal for Limiting Private Civil RICO*, 37 UCLA L. REV. 1, 4 (1989) (offering a method for ensuring that all civil RICO claims would warrant criminal prosecution); Dorigan & Edwall, Jr., *A Proposed RICO Pattern Requirement for the Habitual Commercial Offender*, 15 WM. MITCHELL L. REV. 35, 39 (1989) (proposing an interpretation of pattern that limits RICO to habitual offenders); Morgan, *Civil RICO: The Legal Galaxy's Black Hole*, 22 AKRON L. REV. 107 (1988) (the Department of Justice and the Judicial Conference of the United States do not favor creative use of RICO).

3. See *Sedima, S.P.R.L. v. Imrex, Co.*, 473 U.S. 479, 500 (1985) (attributing the expansive use of RICO to the extensive list of predicate offenses).

4. 18 U.S.C. § 1964(c) (1988). See Hallelend, *Adventures in Racketeering*, 45 BENCH & B. MINN., March 1988 at 14 (discovery of RICO's treble damage provision triggered its broader use).

5. In *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1345 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989), an abortion clinic sued anti-abortion demonstrators. The clinic suffered only \$887 in damages because of the defendants' RICO violation. *Id.* at 1347. The clinic reaped its big financial recovery from a state law trespass claim. *Id.* Thus, the RICO claim served primarily to allow the clinic to bring its state claims in the federal court. See also Blakey & Perry, *An Analysis of the Myths That Bolster Efforts to Rewrite RICO and the Various Proposals for Reform: "Mother of God—Is This the End of RICO?"*, 43 VAND. L. REV. 851, 871-72 (1990) (in 1986, RICO provided the sole basis for federal subject matter jurisdiction in 37.6 percent of the reported RICO decisions); Rasmussen, *Introductory Remarks and a Comment on Civil RICO's Remedial Provisions*, 43 VAND. L. REV. 623, 629 (1990) (some plaintiffs bring a RICO suit for access to the federal courts).

6. The abortion demonstration cases illustrate the use of RICO against individuals with a

debate over whether its use should be limited to defendants whose activities involve an economic goal.

This Note argues against an economic goal requirement for actions under RICO. Part I reviews the statute and its pertinent legislative history. Part II presents the principal cases addressing the issue whether RICO requires defendants to have an economic motive. Finally, Part III concludes by opposing the theory that RICO requires defendants to have an underlying economic incentive.

I. RICO

A. Legislative History

For two decades Congress studied various means of controlling organized crime.⁷ In 1970, this effort culminated in the enactment of RICO, a statute whose criminal and civil provisions⁸ are designed to eradicate organized crime,⁹ halt its detrimental effect on the economy and protect

different moral agenda. These cases involve a clinic targeted by demonstrations or an association such as the National Organization for Women (NOW) filing a RICO suit against the demonstrators. *See, e.g.,* Northeast Women's Center, Inc. v. McMonagle, 868 F.2d 1342 (3d Cir.), cert. denied, 110 S. Ct. 261 (1989). *See also* Scheidler v. National Org. for Women, Inc., 739 F. Supp. 1210 (N.D. Ill. 1990) (anti-abortion demonstrators, defendants in a pending case, filed defamation claim against NOW, in part for publicly announcing that NOW added a RICO count to its claims against the defendants); Town of West Hartford v. Operation Rescue, 726 F. Supp. 371 (D. Conn. 1989) (town's RICO claim premised in part on the additional expense incurred in enforcing the law as a result of the demonstrations); Roe v. Operation Rescue, 710 F. Supp. 577 (E.D. Pa. 1989) (withholding decision on plaintiff's summary judgment request pending the *McMonagle* decision). *See also* Penthouse Int'l, Ltd. v. American Family Ass'n of Fla., Inc., No. 89-2526 (D. Fla. filed Nov. 14, 1989) (alleging that defendant violated RICO when it threatened to label certain magazines as obscene); Walden Book Co. v. American Family Ass'n of Fla., Inc., No. 89-2426 (D. Fla. filed Oct. 31, 1989) (same).

7. *United States v. Ivic*, 700 F.2d 51, 62 (2d Cir. 1983) (noting various possible approaches).

8. The criminal portion of RICO appears at 18 U.S.C. § 1963(a) (1988). That section provides in pertinent part that "[w]hoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both." 18 U.S.C. § 1963(a) (1988).

RICO grants a civil cause of action at 18 U.S.C. § 1964(c). That section provides in pertinent part that "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court." 18 U.S.C. § 1964(c) (1988).

9. Congress enacted RICO on Oct. 15, 1970 as title IX of the Organized Crime Control Act of 1970, Pub. L. 91-452. Congress designed the eleven titles of the Organized Crime Control Act of 1970 to accomplish several purposes. These purposes included providing stronger evidence gathering tools, enhanced sanctions, new remedies, and new penal prohibitions in the fight against organ-

businesses from the stifling impact of organized crime.¹⁰

Although Congress focused on organized crime, it encouraged liberal use of the statute.¹¹ A principal sponsor of RICO hoped that "experts on organized crime [would] conceive of additional applications of the law."¹² Thus, over the objections of members opposed to RICO's potential for use far beyond organized crime,¹³ Congress passed a broadly worded statute capable of wide-ranging applications.

ized crime. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S. CODE CONG. & ADMIN. NEWS (84 Stat. 922) 1073.

Despite congressional proposals to modify the statute, RICO has undergone little change in its twenty year existence. In 1984, Congress changed the forfeiture provisions and added an obscenity predicate act. The changes RICO has experienced have broadened its scope. The list of predicate offenses has grown through the years to include trafficking in contraband cigarettes (added in 1978), dealing in obscene matter (added in 1984), and sexually exploiting children (added in 1988), to name a few. See 18 U.S.C. § 1961(1) (1988).

Recent congressional proposals attempted to remove ambiguity and limit the scope of RICO. In the 99th Congress, Senator Metzenbaum (R-Ohio) and Representative Boucher (D-Virginia) introduced a bill to modify RICO. Their bill would have eliminated treble damage awards against defendants without a prior criminal conviction and for civil claims based on commercial fraud. In addition, the bill would have shortened the maximum period between racketeering acts from ten to five years and replaced the phrase "racketeering activity" with "illicit activity." Although the bill passed in the House, the Senate defeated it by three votes. Senator Metzenbaum and Representative Boucher again introduced RICO reform bills in the 100th Congress. Both bills resembled the previous proposal. Both, however, awarded an attorney's fee to the defendant if the plaintiff's claim was unreasonable. Boucher's bill would also raise the level of proof for a plaintiff seeking treble damages from the usual "preponderance of evidence" standard used in civil cases to "clear and convincing evidence." Jones, *Civil RICO and the General Practitioner*, 5 *COMPLEAT LAW.*, Winter 1988 at 37.

10. Threats of violence to persons or property deprive individuals and businesses of the freedom to choose how and where to spend their money, the essence of the American economy. S. REP. NO. 617, 91st Cong., 1st Sess. 76-77 (1969). See also 115 CONG. REC. 5874 (1969) (remarks of Senator Hruska). Those who succumb to organized crime's coercive threats pass money untaxed into the criminal arena for later use in corrupting new and different individuals and businesses. S. REP. NO. 617, 91st Cong., 1st Sess. 76 (1969). Congress designed RICO to stop this self-perpetuating cycle by striking out at the economic base of the process and eliminating the unfair competitive advantage accruing to organizations obtaining money through illegal methods. *Id.* at 79; see also 115 CONG. REC. 827 (1969) (remarks of Senator McClellan, the principal sponsor of RICO); Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S. CODE CONG. & ADMIN. NEWS (84 Stat. 922) 1073; S. REP. NO. 617, 91st Cong., 1st Sess. 76, 81 (1969) (quoting Report of Antitrust Section of the ABA on S.2043 and S.2049) ("crime takes billions of dollars . . . annually from the American public").

11. Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947.

12. 115 CONG. REC. 6993 (1969) (statement of Sen. Hruska, a principal sponsor of RICO). For a discussion of Senator Hruska's role in the legislative process, see Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 *NOTRE DAME L. REV.* 237, 253-56, 258-65 (1988).

13. Senators Philip A. Hart and Edward M. Kennedy expressed their concerns regarding the potential abuse of RICO. S. REP. NO. 617, 91st Cong., 1st Sess. 215 (1969).

B. Statutory Provisions

To further its goal, Congress developed an arsenal of weapons and incentives for the civil and criminal organized crime fighter. Provisions allowing forfeiture of profits¹⁴ and stronger evidence gathering tools¹⁵ strengthen criminal RICO, while treble damages,¹⁶ attorneys fees¹⁷ and access to the federal courts¹⁸ are a few incentives¹⁹ for the civil RICO plaintiff.

Congress based both civil and criminal liability on performance of at least one of three substantive prohibited activities.²⁰ Section 1962(a) classifies money laundering as a prohibited activity.²¹ This section pros-

14. 18 U.S.C. § 1963(a)(1) (1988). Section 1963 permits courts to seize any interest a criminal defendant acquired in violation of RICO. Section 1963(a) provides:

Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment), or both, [sic], and shall forfeit to the United States (1) any interest the person has acquired or maintained in violation of section 1962; (2) any — (A) interest in; (B) security of; (C) claim against; or (D) property or contractual right of any kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and (3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

18 U.S.C. § 1963(a) (1988).

15. Prior to bringing a criminal RICO proceeding, the Attorney General can demand evidence relevant to a racketeering investigation. 18 U.S.C. § 1968 (1988). This provision also applies to pending civil RICO claims.

16. 18 U.S.C. § 1964(c) (1988).

17. *Id.*

18. *Id.* Section 1964(c) permits "any person injured in his business or property" by a RICO violation to bring suit in federal district court. 18 U.S.C. § 1964(c) (1988).

19. Other incentives include expedited trial dates and broad venue and process rules. 18 U.S.C. §§ 1965(a)(5), 1966 (1988).

20. Congress provided for criminal prosecution at 18 U.S.C. § 1963(a) (1988) and for a civil cause of action at 18 U.S.C. § 1964(c) (1988). Each of these sections requires a violation by the RICO defendant of one of the prohibited activities in 18 U.S.C. § 1962 (1988).

21. Section 1962(a) makes it:

[U]nlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(a) (1988).

The focus of § 1962(a) is the destination of money obtained through the pattern of racketeering. After acquiring money through illegal means, organized crime typically "launders" the money by investing it in a separate business. Section 1962(a) makes the process of laundering the funds illegal. Halleland, *Adventures in Racketeering*, BENCH & B. MINN., March 1988 at 14, 16.

cries investing money derived from a pattern of racketeering activity in an enterprise affecting interstate commerce.²² Section 1962(b) proscribes controlling an enterprise affecting interstate commerce through a pattern of racketeering activity.²³ Sometimes characterized as the "muscle" portion of RICO, it criminalizes takeovers of unions and businesses through extortion tactics.²⁴ Lastly, section 1962(c) forbids the operation of an enterprise affecting interstate commerce through a pattern of racketeering.²⁵

All three substantive sections require proof of an enterprise and a pattern of racketeering activity.²⁶ Section 1961(4) defines²⁷ an "enterprise" as "includ[ing] any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity."²⁸ "Including" is the pivotal word in this definition. Congress described only a subset of the organizations comprising the entire class of enterprises, thus leaving the ultimate characterization of an "enterprise" to the courts.²⁹

22. See *supra* note 21.

23. Section 1962(b) makes it "unlawful for any person through a pattern of racketeering activity or through collection of any unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce." 18 U.S.C. § 1962(b) (1988).

24. See Halleland, *Adventures in Racketeering*, BENCH & B. MINN., March 1988 at 14, 16 (a § 1962(b) violation, for example, "might involve repeated extortionary activities leading to the takeover of a local union"). Halleland perceived § 1962(b) as the least used section of RICO. *Id.*

25. Section 1962(c) makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." 18 U.S.C. § 1962(c) (1988).

RICO provides a fourth prohibited act. Section 1962(d) proscribes conspiring to violate § 1962(a), (b) or (c). 18 U.S.C. § 1962(d) (1988). It is unnecessary to address this section separately because it criminalizes agreement to perform the conduct specified in § 1962(a), (b) and (c). Thus, any conclusion regarding the existence of an economic requirement in § 1962(a), (b) or (c) applies to § 1962(d) without more analysis. See *United States v. Ivic*, 700 F.2d 51, 59-65 (2d Cir. 1983) (analyzing economic requirement for § 1962(d) conspiracy to violate § 1962(c) by scrutinizing requirements of § 1962(c)).

26. See *supra* notes 21-25 and accompanying text.

27. RICO defines ten terms. Apart from the three terms discussed in this Note, § 1961 also defines "State," "person," "unlawful debt," "racketeering investigator," "racketeering investigation," "documentary material" and "Attorney General." See 18 U.S.C. § 1961(2), (3), (6)-(10) (1988).

28. 18 U.S.C. § 1961(4) (1988).

29. See *United States v. Turkette*, 452 U.S. 576, 580, 593 (1981) (describing the enterprise definition as broad and free of restrictions). For examples of the organizations plaintiffs assert as enterprises, see *H.J. Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893, 2897 (1989) (telephone company and utilities commission); *United States v. Indelicato*, 865 F.2d 1370, 1371 (2d Cir.) (or-

Congress drafted the "pattern" definition employing a similar technique. Section 1961 describes a pattern as "requir[ing] at least two acts of racketeering activity" within ten years.³⁰ The description does not specify the level of activity required to form a pattern.³¹ Instead, it merely establishes a lower limit of two acts, leaving it to the courts to identify the level of activity necessary to constitute a pattern.³²

Though unclear as to the level of activity needed to constitute a "pattern," Congress developed a specific list of crimes comprising "racketeering" activity. Often called predicate acts,³³ this list includes both state crimes³⁴ and federal offenses as unusual as trafficking in contraband ciga-

ganized crime family), *cert. denied*, 110 S. Ct. 56 (1989); *Bank of Am. Nat'l Trust & Sav. Ass'n v. Touche Ross & Co.*, 782 F.2d 966, 970 (11th Cir. 1986) (corporation); *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D, slip op. at 10-11 (W.D. Wash. March 11, 1988) (informally associated group of anti-abortion demonstrators); *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1102 (D. Mass. 1986) (union local).

30. 18 U.S.C. § 1961(5) (1988).

31. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893, 2899 (1989). The definition of other terms buttresses this point. The statute defines "pattern" using the word "requires," while it defines "racketeering activity," "State," "unlawful debt," "racketeering investigator" and "racketeering investigation" by using the more definitive word "means." *Compare* 18 U.S.C. § 1961(5) (1988) and 18 U.S.C. § 1961(1), (2), (6), (7), (8) (1988).

32. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893, 2899 (1989) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 n.14 (1985)). *But see* *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1100 (D. Mass. 1986) (claim alleging two predicate acts survived motion to dismiss).

33. 18 U.S.C. § 1961(1) (1988). *See supra* note 3 and accompanying text.

34. State offenses include "murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs" so long as the acts are "chargeable under State law and punishable for more than one year." 18 U.S.C. § 1961(1) (1988). RICO litigation focuses on both the "chargeable under State law" and the "punishable for more than one year" requirements. For the former requirement, courts must determine when the acts are chargeable under state law: when committed or when the RICO claim is filed? In *United States v. Davis*, 576 F.2d 1065, 1067 (3d Cir.), *cert. denied*, 439 U.S. 836 (1978), the Third Circuit concluded that the "chargeable" requirement refers to "chargeable under State law at the time the offense was committed." In *Davis*, at the time the RICO claim was filed, the statute of limitations would have barred two of the five acts under state law. The court concluded, however, that all five acts were chargeable under state law at the time they were committed and therefore the RICO claim could stand. *Id.* The strength of the court's assertion is weakened, however, by the court's reliance on the fact that three acts, a sufficient number to sustain a RICO claim, were not barred, even in the state courts, by the statute of limitations. *Id.*

Although the *Davis* court announced a simple rule for determining if an alleged act was "chargeable under State law," an exception clearly arises when a state's right to charge an individual is terminated by state prosecution. Courts reach varying conclusions on the effect a state court acquittal has on a RICO claim which relies on the acts underlying the state court claim. *Compare* *United States v. Louie*, 625 F. Supp. 1327, 1335-37 (S.D.N.Y. 1985) (acquittal extinguishes state claim and therefore no longer "chargeable" within the meaning of criminal RICO) with *Von Bulow ex rel. Auersperg v. Von Bulow*, 634 F. Supp. 1284, 1309-10 (S.D.N.Y. 1986) (civil RICO claim stands despite prior acquittal in state court) and with *United States v. Frumento*, 563 F.2d 1083, 1088-89

rettes³⁵ and white slaves.³⁶ However, the more mundane predicate acts of securities,³⁷ mail,³⁸ and wire fraud³⁹ form the basis of most RICO claims.⁴⁰

Because organized crime's economic domination of legitimate businesses was a primary impetus for enacting the statute,⁴¹ Congress incorporated hefty financial penalties into RICO. For civil RICO violations, a successful plaintiff can recover treble damages.⁴² Moreover, criminal RICO defendants are subject to the standard fines for federal crimes⁴³ and imprisonment for up to twenty years or for life, if the maximum penalty for the underlying racketeering activity includes life imprisonment.⁴⁴ In both civil and criminal RICO cases, the statute also grants the courts extensive power to excise illegal income from defendants, thus returning it to the free economy and preventing future similar occurrences.⁴⁵ For example, courts can fashion civil remedies such as divest-

(3d Cir. 1977) (criminal RICO conviction stands despite prior acquittal in state court), *cert. denied sub nom. Millhouse v. United States*, 434 U.S. 1072 (1978).

The "punishable for more than one year" requirement also gives the courts pause. A state may have several penal statutes addressing various forms of bribery. Some of those statutes may allow punishment for more than one year and some may not. If the alleged RICO predicate acts are state law bribery, are the acts punishable for more than one year? The court in *United States v. Forsythe*, 560 F.2d 1127 (3d Cir. 1977), addressed this exact issue. Citing the legislative history, the court claimed that "state offenses are included by generic designation." *Id.* at 1137 (citations omitted). Thus, the court concluded that although the state bribery statute did not allow for punishment for more than one year, other similar state statutes covering corrupt solicitation did allow punishment for more than one year. *Id.* at 1138. The alleged acts of bribery could form RICO predicate acts. *Id.*

35. 18 U.S.C. §§ 2341-2346 (1988).

36. 18 U.S.C. §§ 2421-2424 (1988).

37. 18 U.S.C. § 1961(1)(D) (1988) (any "fraud connected with a case under title 11, fraud in the sale of securities").

38. 18 U.S.C. § 1341 (1988).

39. 18 U.S.C. § 1343 (1988).

40. REPORT OF THE AD HOC CIVIL RICO TASK FORCE 417, 457 (1985) (seventy-nine percent of the pre-1985 cases involved mail, wire or securities fraud.)

41. See *supra* note 10 and accompanying text.

42. 18 U.S.C. § 1964(c) (1988).

43. A federal statute authorizes fines in excess of the amount specified in federal criminal statutes. 18 U.S.C. § 3571 (1988). The statute imposes a maximum fine calculated by the nature of the offense and the status of the defendant. Thus, because RICO convictions are class B felonies, individual defendants are generally subject to a maximum fine of \$250,000 and corporate defendants to a maximum fine of \$500,000. 18 U.S.C. §§ 3559, 3571(b)(3) & (c)(3) (1988). These general maximums can be exceeded, however, when the defendant prospers or another party suffers a loss as a result of the offense. In that event, "the defendant may be fined . . . the greater of twice the gross gain or twice the gross loss." 18 U.S.C. § 3571(d) (1988).

44. 18 U.S.C. § 1963(a) (1988).

45. See *supra* note 10 and accompanying text.

ment or restrictions on future activities.⁴⁶ In criminal cases, courts can order forfeiture of profits or other property interests obtained through activities in violation of RICO.⁴⁷

II. JUDICIAL CONSIDERATION OF THE ECONOMIC GOAL REQUIREMENT⁴⁸

The issue of whether to impose an economic goal requirement arises in both criminal and civil cases.⁴⁹ Though the type of proceeding in which the issue arises may provide insight into the court's approach, it ultimately does not alter the decision's relevance to future civil and criminal RICO cases.⁵⁰ Both criminal and civil RICO claims are based on the same section 1962 substantive offenses,⁵¹ thus any interpretation of section 1962 or its terms applies equally to both.

A. Economic Goal Required for Enterprise or Predicate Acts

The Second Circuit first identified a financial requirement for RICO violations in *United States v. Ivic*.⁵² In *Ivic*, the defendants were Croatian nationalists accused of attempting several acts of terrorism designed to further the cause of Croatian independence.⁵³ A jury convicted the na-

46. 18 U.S.C. § 1964(a) (1988).

47. 18 U.S.C. § 1963(a), (c) (1988).

48. Congress fashioned RICO after the equally ambiguous Sherman Act. See Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 253-56, 262-63 (1982). In enacting the Sherman Act Congress contemplated extensive judicial interpretation of the ban on combinations and conspiracies in restraint of trade. See P. AREEDA & L. KAPLOW, *ANTITRUST ANALYSIS* 50 (1988). RICO practitioners, as well, must rely to a greater degree than most statutes on judicial interpretation. Such interpretation plays a critical role in RICO claims as courts struggle to reconcile congressional intent to strike out at organized crime with the broad statutory language in RICO. For example, in *United States v. Turkette*, 452 U.S. 576 (1981), the Court resolved the controversy over the scope of the term "enterprise" by holding that contrary to the decisions of some lower courts, an enterprise is not limited to criminal associations. In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893 (1989), the Supreme Court focused on RICO's "pattern" requirement, refusing to hold that a pattern requires more than two acts or more than one scheme.

49. For criminal cases, see *infra* notes 52, 72, 84, 86 and accompanying text. For civil cases, see *infra* notes 93, 103 and accompanying text.

50. See *Rewis v. United States*, 401 U.S. 808, 812 (1971) (courts should resolve ambiguities in criminal statutes "in favor of lenity").

51. See *supra* notes 20, 21, 23, 25.

52. 700 F.2d 51 (2d Cir. 1983). Oddly enough, the defendants did not raise this defense. The court of appeals suggested the issue at oral argument and requested written briefs on the issue. *Id.* at 59 n.5.

53. The defendants failed in their attempt to plant a bomb at the site of a Yugoslavian Indepen-

tionalists of conspiring to violate section 1962(c).⁵⁴ The trial court found that the defendants' plot to murder certain political enemies⁵⁵ comprised the required racketeering acts,⁵⁶ and the Croatian nationalists formed the alleged enterprise.⁵⁷ However, the Second Circuit reversed, concluding that because neither the enterprise nor the racketeering acts had a financial purpose, the defendants did not violate RICO.⁵⁸

In holding that a RICO violation occurs only if the acts or the enterprise have a financial motive, the Second Circuit first reviewed the language of the statute. The court noted that sections 1962(a), (b) and (c) all refer to an "enterprise."⁵⁹ The court found that the language of sections 1962(a) and (b), referring to individuals investing in or acquiring a property interest in an enterprise, implies that an enterprise is a "profit-seeking venture."⁶⁰ Because section 1962(c) also uses the term "enterprise," the court concluded that a section 1962(c) enterprise must likewise be a "profit-seeking venture."⁶¹

dence Day Party in New York City because "there was no place to park." *Id.* at 54-55. After the defendants observed a Croatian journalist and politician for three days, the FBI warned the journalist and stymied their assassination plot. *Id.* at 53-54. The defendants abandoned another bomb scheme when they discovered surveillance wires in their home. *Id.* at 55.

54. *Id.* at 52-53.

55. *Id.* at 59. The defendants favored attaining Croatian independence through violence, while their targets, although equally favoring independence, vocally opposed violence. *Id.* at 53-54.

56. *Id.* at 58-59.

57. *Id.*

58. *Id.* at 59.

59. *Id.* at 60. See *supra* notes 21, 23, 25.

60. *Ivic*, 700 F.2d at 60. Because it prohibits investment of income, § 1962(a) clearly evidences an economic requirement. Similarly, the language of § 1962(b), referring to acquiring an interest in an enterprise, evinces an economic requirement. Thus, the economic requirement issue has only arisen in cases alleging a violation of § 1962(c) or a § 1962(d) conspiracy to violate § 1962(c). See *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1348 (3d Cir.) (§ 1962(c)), *cert. denied*, 110 S. Ct. 261 (1989); *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D (W.D. Wash. Mar. 11, 1988) (WESTLAW, 1988 WL 156656) (§ 1962(c) and (d)); *United States v. Flynn*, 852 F.2d 1045, 1046 (8th Cir.) (same), *cert. denied*, 109 S. Ct. 511 (1988); *United States v. Bagaric*, 706 F.2d 42, 52 (2d Cir. 1983) (same); *United States v. Ivic*, 700 F.2d 51, 54 (2d Cir. 1983) (§ 1962(d)); *United States v. Anderson*, 626 F.2d 1358, 1360 (8th Cir. 1980) (same), *cert. denied*, 450 U.S. 912 (1981).

61. *Ivic*, 700 F.2d at 60. The First Circuit accepted a similar line of argument in *United States v. Turkette*, 632 F.2d 896 (1st Cir.), *rev'd*, 452 U.S. 576 (1981). In *Turkette* the court addressed whether RICO extends to illegitimate enterprises and it observed that § 1962(a) and (b) apply only to legitimate enterprises. *Id.* at 898-99. With that understanding, the First Circuit concluded that § 1962(c) contains the same limitation. *Id.* at 899. The Supreme Court, however, concluded that the First Circuit erred in initially limiting § 1962(a) and (b) to legitimate enterprises. *United States v. Turkette*, 452 U.S. 576, 584 (1981). The Court held instead that all three substantive provisions extend to illegitimate organizations. *Id.* at 585.

The title of the act further supported the Second Circuit's conclusion that RICO includes an economic requirement.⁶² The court found an intent to limit the statute's focus to "money-making activities" by turning to the dictionary's definition of "racketeer,"⁶³ "one who extorts money," and to its understanding of the ordinary use of "corrupt."⁶⁴ In addition, the court analyzed the statement of findings in the legislative history.⁶⁵ In the statement of findings, Congress claimed organized crime siphons billions of dollars out of the American economy and identified economically oriented crimes which make this drain possible.⁶⁶ The court stated that these findings, combined with the history of RICO and its precursors, evidence congressional concern for the illicit income derived from organized crime.⁶⁷

Finally, the *Ivic* court turned briefly to the question of whether a RICO defendant may satisfy the economic requirement by committing financially motivated predicate acts. The court relied primarily on statements made by Senator McClellan, the principal sponsor of the Organized Crime Control Act.⁶⁸ On several occasions, Senator McClellan stated that the pattern of violations or crimes must lead to "obtain[ing] or operat[ing] an interest in an interstate business" in order to fall under RICO.⁶⁹ Based on Senator McClellan's statements, the court concluded that either the enterprise or the predicate acts must have an economic

62. *Ivic*, 700 F.2d at 61. The court recognized that the title did not control over the words of the statute, but viewed it as providing insight into legislative intent. *Id.*

63. *Id.* (citing WEBSTER'S NEW INTERNATIONAL DICTIONARY (3d ed. 1963)).

64. *Id.* Because the defendants were freedom fighters who did not desire personal gain, the court concluded that "misguided" and not "corrupt" more appropriately described the defendants. *Id.*

65. *Id.* at 61-62.

66. The Statement of Findings provides:

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation.

Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S. CODE CONG. & ADMIN. NEWS (84 Stat. 922) 1073.

67. *Ivic*, 700 F.2d at 62-63. Legislative proposals preceding RICO focused on money derived from illegal activities. The court admitted RICO "went somewhat beyond this initial conception." *Id.* at 63.

68. *Id.* at 63-64.

69. *Id.* at 64 (quoting 116 CONG. REC. 18,940 (1970)).

goal.⁷⁰

In a footnote, the Second Circuit deferred judgment on the application of RICO to individuals who extort money to further political activities.⁷¹ Within a few months of the *Ivic* decision, however, the Second Circuit decided that issue in *United States v. Bagaric*.⁷² *Bagaric* again involved Croatian nationalists.⁷³ This time, the defendants sent extortion letters requesting financial support for the independence movement.⁷⁴ They attempted to assassinate any recipient who did not comply with the request.⁷⁵ Because the racketeering acts had a financial as well as a political motive, the Second Circuit upheld the RICO conviction.⁷⁶ The court found it inappropriate to inquire into the defendant's subjective intent.⁷⁷ Instead, it explained that the financial goal requirement is satisfied if there exists an objectively visible economic goal.⁷⁸

Bagaric's reasoning clarifies the holding and the logic of the *Ivic* deci-

70. *Ivic*, 700 F.2d at 64.

71. *Id.* at 61 n.6.

72. 706 F.2d 42 (2d Cir.), *cert. denied sub nom.* Logarusic v. United States, 464 U.S. 840 (1983).

73. *Id.* at 46. The court convicted a group of Croatian nationalists led by Ante Ljubas of a series of violent crimes and extortion schemes committed in the name of Croatian nationalism. Initially, two Chicago mobsters hired by Ljubas attempted to murder a Pittsburgh businessman whom Ljubas felt was pro-Yugoslavian. *Id.* at 47. Subsequently, Ljubas recruited other Croatians to join him in his cause. *Id.* In the year that followed, terrorist activities for the "Croatian cause" escalated. The New York City Bomb Squad found and dismantled bombs in the United Nations library and in a locker at Grand Central Station. *Id.* at 49. Several terrorists set fire to the Yugoslavian American Club in California. They also attempted to assassinate the Yugoslavian consul in San Francisco. *Id.* at 49. In mid-1977, Croatian terrorists developed an extortion scheme at a meeting in West Germany. *Id.* at 48. The terrorists escalated their use of activities such as arms trafficking, arson, and bombings to support the extortion scheme as well as to threaten pro-Yugoslavian factions. *Id.* at 49-51. A few terrorists travelled to Europe to share their bomb construction knowledge with their European counterparts. *Id.* at 51. The appellants were arrested and brought to trial in early 1982. *Id.* at 51-52.

74. In mid-1977, Ljubas travelled to West Germany, where he and others committed to Croatian nationalism devised a scheme to extort money from "moderate" Croatians. *Id.* at 48. Under this scheme, Croatian terrorists sent letters to wealthy Croatians in the United States demanding financial support for their terrorist activities. *Id.* at 48. These letters usually requested between \$5,000 and \$20,000 and threatened violent reprisal for refusal to contribute. *Id.* at 49.

75. A few months after mailing the letters, the terrorists carried out violent attacks on several recipients. *Id.* at 49-50. The terrorists shot and killed one man outside his home and threw pipe bombs into the homes of others. *Id.* at 50. Two "book bombs" sent by the defendants through the mail were dismantled without incident. *Id.* at 51.

76. *Id.* at 58. The core of the enterprise "was the commission of more than fifty acts of the classic economic crime of extortion." *Id.*

77. *Id.* at 53-54.

78. *Id.* at 55. The court feared that requiring more would politicize the trial. *Id.* In addition,

sion.⁷⁹ The defendants in *Bagaric* alleged that their activities did not meet the *Ivic* test because their enterprise lacked an economic purpose.⁸⁰ In rejecting this argument, the court explained that the “nature of the misconduct often provides the best clue toward defining the enterprise.”⁸¹ The court asserted that an organization’s acts, as well as the nature of the enterprise, provide clues to the organization’s true intentions.⁸² Thus, the economic nature of the predicate acts in *Bagaric* satisfied the Second Circuit’s requirement that an economic goal in the enterprise or its acts is a prerequisite to a RICO violation.⁸³

B. Economic Goal Required for Enterprise Only

Like the Second Circuit, the Eighth Circuit requires a financial goal as a prerequisite to a RICO violation. The Eighth Circuit, however, requires proof that the enterprise has a financial motive, independent of the nature of the predicate acts.⁸⁴ The financial orientation of the predicate

the court recognized that inquiry into motive is unorthodox and rare. Congress requests inquiry into motive only when the acts are blameless absent an improper motive. *Id.* at 53.

The court recognized that nonprofit organizations are enterprises. *Id.* at 56. However, by definition, nonprofit organizations do not operate primarily to make money. An enterprise may have Croatian freedom as its primary goal. If the organization has a subordinate interest in obtaining money, however, the economic requirement is met. *Id.* at 58.

79. *Id.* at 53-58.

80. *Id.* at 53.

81. *Id.* at 55.

82. *Id.*

83. *Id.*

84. In *United States v. Anderson*, 626 F.2d 1358, 1372 (8th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981), the Eighth Circuit held that an enterprise must have a financial goal apart from the racketeering activities. There, two judges performed administrative functions, including purchasing, in addition to their judicial responsibilities. *Id.* at 1361. In performing these administrative duties they became involved in a scheme whereby an independent businessman falsified purchase vouchers to reflect an inflated price, and then shared the overcharge with the judges. *Id.*

The case turned on the court’s holding that the tests for a pattern of racketeering and an enterprise do not coalesce in a § 1962(c) violation. *Id.* at 1362-72. Because the government alleged that the two judges and the businessman constituted a RICO enterprise, the court held that the enterprise did not exist separate from the pattern of racketeering activity and reversed the judges’ convictions. *Id.* at 1361-62. See also *United States v. Turkette*, 452 U.S. 576, 582-83 (1981) (enterprise and pattern elements in a RICO claim are separate and distinct, although in certain cases they may coalesce).

Because the court relied on the lack of separateness between the enterprise and the racketeering activity, it did not address the economic nature of the enterprise. However, it stated that the enterprise must not only exist independent of the pattern, but it must have a discrete economic existence. *Anderson*, 626 F.2d at 1372 (a violation requires “a discrete economic association existing separately from the racketeering activity”). In so construing the statute, the court focused on the economic orientation of many of the predicate acts and Congress’ concern for protecting the free market economy. *Id.* at 1368. See *supra* note 10 and accompanying text.

offenses and congressional concern for protecting the free market economy lead the Eighth Circuit to this result.⁸⁵

In *United States v. Flynn*,⁸⁶ a case involving a struggle for control of a union in St. Louis, Missouri,⁸⁷ the complaint charged the defendant with three predicate offenses involving murder and conspiracy to murder.⁸⁸ The defendant did not receive any money for these acts.⁸⁹ The court held, however, that the interest in gaining control of the union constituted an economic goal distinct from the predicate offenses.⁹⁰ The defendant's enterprise thus satisfied the Eighth Circuit's economic requirement.⁹¹ The Eighth Circuit sustained the RICO convictions.⁹²

85. *Anderson*, 626 F.2d at 1368.

86. 852 F.2d 1045 (8th Cir.), *cert. denied*, 109 S. Ct. 511 (1988).

87. *Id.* at 1047. The squabble centered around control of Local 42 of the Laborers' International Union in St. Louis. An Italian faction controlled one of St. Louis' three laborers' locals. A faction headed by Paul Leisure was gaining control of another. The Leisure faction feared that if the Italian faction dominated the third local, Local 42, it would jeopardize Leisure's existing power. *Id.*

88. *Id.* at 1050. The defendant, Flynn, was the business manager of Local 42. *Id.* at 1047. A member of the Leisure crime faction recruited Flynn to participate in its scheme. *Id.*

89. *Id.* In all likelihood, Flynn acted out of fear for his life. Spica, a member of the Italian faction, told Leisure that the Italians planned to kill Flynn. Leisure viewed this as an opportunity to gain Flynn's support and told Flynn of the plan. After that, Flynn became actively involved in furthering the Leisure organization's interests. *Id.*

90. *Id.* at 1052. The court stated that "[f]or purposes of RICO, an enterprise must be directed toward an economic goal." *Id.*

91. *Id.* (citing *United States v. Anderson*, 626 F.2d 1358, 1372 (8th Cir. 1980), *cert. denied*, 450 U.S. 912 (1981)).

92. *Id.* The predicate acts in *Flynn*, however, did not have an economic orientation independent of achieving the enterprise's economic goal. See *supra* note 84 and accompanying text. Thus, it is arguable that the *Flynn* decision did not resolve the question whether the Eighth Circuit would allow a RICO claim against an enterprise without an economic goal if the predicate acts did have an economic orientation.

Two arguments can be made against this claim. First, the court unequivocally stated that a RICO "enterprise must be directed toward an economic goal." *Flynn*, 852 F.2d at 1052. However, following this quote and a cite to *Anderson*, the court also directed attention to *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983), in which the Second Circuit held that economically motivated predicate acts will satisfy RICO's economic requirement. 852 F.2d at 1052. The court may have considered the *Ivic* standard equivalent to the *Anderson* standard or it may have thought the *Ivic* standard, although not equivalent, still supported its position. The latter perspective has greater merit because the court, clearly aware of the *Ivic* decision, articulated the economic requirement without reference to predicate acts as the court in *Ivic* had done expressly. See *Ivic*, 700 F.2d at 65. The court's decision not to mimic the language of the *Ivic* decision indicates departure from the *Ivic* standard.

Second, the Eighth Circuit's economic requirement was first articulated in dicta in *Anderson*, a case involving predicate acts with an economic orientation. See *supra* note 84. If economically oriented predicate acts could serve as a substitute for an enterprise with an economic goal, that court would have announced that standard. Thus, although arguments can be made supporting the claim that the Eighth Circuit's economic test is equivalent to the Second Circuit's test, the stronger posi-

C. No Economic Requirement

Recently, the Third Circuit rejected both the Second and Eighth Circuits' formulation of RICO's economic requirement. In *Northeast Women's Center, Inc. v. McMonagle*,⁹³ the defendants, anti-abortion demonstrators, repeatedly trespassed at an abortion clinic.⁹⁴ The defendants harassed the clinic's clients and employees and damaged and disassembled machinery.⁹⁵ In its civil RICO suit, the clinic accused the defendants of violating the Hobbs Act⁹⁶ by extorting the clinic's right to operate a business and its staff's right to employment.⁹⁷

The Third Circuit rejected defendants' contention that RICO does not extend to acts of "civil disobedience."⁹⁸ In so doing, the court followed well-established precedent and held that the predicate offense, a Hobbs Act crime,⁹⁹ did not require an economic goal.¹⁰⁰ The court's holding

tion is that the Eighth Circuit meant exactly what it said when it stated that a RICO "enterprise must be directed toward an economic goal." *Flynn*, 852 F.2d at 1052.

93. 868 F.2d 1342 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989). Because he perceived a need to resolve the split of authority on this issue, Justice White dissented from the Supreme Court's denial of certiorari. *Northeast Women's Center, Inc. v. McMonagle*, 110 S. Ct. 261 (1981). Justice White relied on *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983) and *United States v. Flynn*, 852 F.2d 1045 (8th Cir.), *cert. denied*, 109 S. Ct. 511 (1988), to illustrate the split in authority on the economic issue. Justice White is quite familiar with RICO having written some of the more famous RICO decisions: *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985) and *United States v. Turkette*, 452 U.S. 576 (1981).

94. *McMonagle*, 868 F.2d at 1345.

95. *Id.* at 1346. On their first visit, the protestors stormed the clinic, threw medical supplies on the floor, and prevented access to the rooms. *Id.* at 1345. In the process, they knocked down and injured employees. *Id.* Less than one year later, the defendants returned. *Id.* at 1346. This time they locked themselves in a room while they damaged and disassembled operating room machinery. *Id.* The third trespass was less successful, with only two protestors making it into the clinic. During the fourth and final trespass, the protestors chided the clinic's patients. The last three trespasses resulted in trespass charges and conviction. *Id.*

96. 18 U.S.C. § 1951 (1988).

97. *McMonagle*, 868 F.2d at 1350. The Hobbs Act makes it a crime to extort property from a business engaged in interstate commerce. *See* 18 U.S.C. § 1951(a) & (b)(2) (1988).

98. *McMonagle*, 868 F.2d at 1348. The defendants moved to introduce evidence that their political beliefs motivated their actions. *Id.* Because the defendants did not show some purpose for the evidence other than to prove absence of an economic motivation, the court rejected this evidence as irrelevant. *Id.* at 1352-53.

99. *See supra* note 97.

100. *McMonagle*, 868 F.2d at 1349-50. The Second Circuit agrees with this interpretation of the Hobbs Act. *United States v. Tropiano*, 418 F.2d 1069 (2d Cir. 1969), *cert. denied*, 397 U.S. 1021 (1970). Thus, the difference in the Second and Third Circuits' interpretations of RICO's economic requirement does not arise from disagreement over interpretation of the Hobbs Act.

In addition, the court ensured that the prosecution did not infringe on the defendants' first amendment rights. *McMonagle*, 868 F.2d at 1348-49. The court reviewed the jury instruction explaining

made it unnecessary to consider the defendants' more expansive argument—that an economic requirement applies to all of RICO's predicate offenses.¹⁰¹

In *McMonagle*, the court did not decide whether proof of the economic nature of the enterprise is required because the defendants did not raise that issue on appeal.¹⁰² However, in a similar case in the Western District of Washington, *Feminist Women's Health Center v. Roberts*,¹⁰³ that court rejected both the need for economically motivated activity and for a profit-seeking enterprise. *Roberts* involved protests against an abortion clinic similar to those in *McMonagle*.¹⁰⁴ The defendants' repeated harassment forced the Feminist Women's Health Center to close.¹⁰⁵ Rejecting the economic limitation adopted in *United States v. Ivic* as inconsistent with the Supreme Court's directives to construe RICO broadly, the trial court denied the defendants' motion to dismiss the RICO count.¹⁰⁶

both the demonstrators' first amendment rights as well as the clinic's rights. The district court advised the jury that an individual who exceeds her right to dissent and violates the rights of others cannot cloak herself in first amendment protections. *Id.* at 1349. The court found that the district court's instruction adequately protected the defendants' first amendment rights. *Id.*

101. *McMonagle*, 868 F.2d at 1349 n.7.

102. The court did not address the enterprise element because the demonstrators did not appeal that jury instruction. The trial judge instructed the jury that an enterprise existed if the defendants formed an "ongoing organization, either formal or informal in nature in which the various associates functioned as a continuing unit." *Id.* at 1348 n.5. Because the clinic charged the demonstrators with a § 1962(c) violation, the judge also instructed the jury that the enterprise's goal must be distinct from completing the predicate offenses. *Id.* Contrary to the Eighth Circuit's rule, the jury instruction included no mention of an economic goal.

103. No. C86-161Z (W.D. Wash. May 5, 1989) (WESTLAW).

104. *Id.* The antiabortion demonstrators in *Roberts* performed various acts of harassment. *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D (W.D. Wash. Mar. 11, 1988) (WESTLAW). They made "hang up" phone calls to the Center; they occupied all the center's parking with their automobiles; they created a gauntlet that patrons had to pass through to enter the Center; one defendant went as far as to set the Center on fire three times. *Id.* The Center closed after the last fire. *Id.*

105. *Id.* In addition to the Center, other plaintiffs included the Center's director and employees. *Id.*

106. *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D n.2 (W.D. Wash. Mar. 11, 1988) (WESTLAW). In a supplemental motion to strike other predicate offenses, the district court did strike some alleged predicate offenses, rejecting plaintiff's claim that some defendants violated the Travel Act and feloniously rendered criminal assistance. *Feminist Women's Health Center v. Roberts*, No. C86-161Z (W.D. Wash. May 5, 1989). The court refused to dismiss, however, the allegations of Hobbs Act extortion, aiding and abetting arson, and mail fraud. *Id.*

The defendants contended that RICO does not apply to non-economic political activities. The district court rejected this motion, noting that it had addressed this concern in a prior Order for Reconsideration. *Feminist Women's Health Center v. Roberts*, No. C86-161(V)D (W.D. Wash.

III. ANALYSIS

A. *Enterprise*

RICO presents a bifurcated definition of enterprise.¹⁰⁷ One clause in the definition encompasses legitimate organizations such as partnerships and corporations.¹⁰⁸ The other embraces illegitimate organizations¹⁰⁹ and applies broadly to "any . . . group of individuals associated in fact."¹¹⁰ "Any union or group" includes informal organizations without reference to their financial orientation.¹¹¹

Thus, the specific language of the statute does not impose an economic goal requirement on these informal enterprises; the requirement must arise from the general tenor of the "enterprise" definition's first clause. This clause lists examples of legitimate organizations that may satisfy the enterprise element.¹¹² Of these examples at least two typically operate to make money: corporations and partnerships.¹¹³ Thus, a noneconomically motivated defendant might assert that RICO includes an economic requirement by invoking the *ejusdem generis* rule of statutory construc-

Mar. 11, 1988) (WESTLAW). In that Order, the court rejected the defendants' assertion that RICO requires an economic motivation. *Id.* n.2. The court reaffirmed its prior decision, adding that a non-profit organization can constitute a RICO enterprise because of the Supreme Court's directives to construe RICO broadly. *Feminist Women's Health Center v. Roberts*, No. C86-161Z (W.D. Wash. May 3, 1989) (WESTLAW) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985)).

107. 18 U.S.C. § 1961(4) (1988). *See supra* note 28 and accompanying text.

108. *United States v. Turkette*, 452 U.S. 576, 581 (1981). In *Turkette*, the Supreme Court addressed the First Circuit's interpretation of "enterprise." *Id.* at 578. The First Circuit stood alone in its opinion that the enterprise definition was not limited to criminal organizations. *Id.* In its nearly unanimous decision (Justice Stewart dissented), the Court provided the first thorough analysis of the "enterprise" definition. The Court concluded that regardless of the legitimacy of the organization, an enterprise is simply "a group of persons associated together for a common purpose of engaging in a course of conduct." *Id.* at 583. The Court distinguished this group as an entity separate and apart from the pattern of racketeering in which it engaged. *Id.*

109. *Id.* at 580-81. The term "illegitimate" encompasses all entities that do not have a legal charter whether or not they exist for purely criminal objectives. After *Turkette*, "enterprise" indisputably includes all nonlegal entities whether or not they exist for exclusively criminal objectives. *Id.* at 578.

110. 18 U.S.C. § 1961(4) (1988). *See supra* note 28 and accompanying text.

111. "There is no restriction upon the associations embraced by the definition: an enterprise includes any union or group of individuals associated in fact." *Turkette*, 452 U.S. at 580.

112. *See supra* note 28 and accompanying text.

113. Although nonprofit corporations and partnerships do not operate to make a profit, they require financial income. Just as the defendants in *United States v. Bagaric*, 706 F.2d 42 (2d Cir.), *cert. denied sub nom. Logarusic v. United States*, 464 U.S. 840 (1983), needed funds to achieve Croatian independence, a nonprofit organization needs money to achieve its charitable goals. As the Second Circuit stated in *Bagaric*, the defendants must act at least in part to fulfill an economic goal, but the defendants' economic goal need not form their primary motivation. *Id.* at 58.

tion. The rule states that when “general words follow a specific enumeration of persons or things, the general words should be limited to persons or things similar to those specifically enumerated.”¹¹⁴ The defendant would argue that because the associations listed in the first clause of the definition of “enterprise” have a financial orientation, Congress intended that those listed in the second clause also have an economic motivation.¹¹⁵

The Supreme Court, however, rejected a similar argument in *United States v. Turkette*.¹¹⁶ In *Turkette*, the defendant claimed that the rule of *ejusdem generis* required the Court to conclude that RICO extends only to legitimate organizations.¹¹⁷ The defendant reasoned that because the first clause refers to legitimate organizations, the second clause, which the defendant claimed was a general statement of the first clause, was equally confined to legitimate organizations.¹¹⁸ Rejecting the defendant’s argument, the Court stated that the two clauses in the enterprise definition are independent.¹¹⁹ The Court held that the second clause refers exclusively to illegitimate organizations and the first clause to legitimate organizations.¹²⁰ Although *Turkette* involved the relationship of the two clauses in the context of the legitimacy of an organization, the Court’s holding implies that the financially oriented examples in the first clause do not similarly limit the broad language, “any union or group of individuals,” in the second clause.

If Congress intended to limit the application of RICO to enterprises with an economic motivation, it knew how to do so explicitly.¹²¹ Con-

114. *United States v. Turkette*, 452 U.S. 576, 581 (1981).

115. However, the first clause also includes “individual[s],” “association[s],” and “other legal entit[ies].” 18 U.S.C. § 1961(4) (1988). The fact that it is less clear that these entities have an economic motivation weakens the *ejusdem generis* argument.

116. 452 U.S. 576, 581 (1981).

117. *Id.* at 581.

118. *Id.* at 581-82.

119. *Id.* at 582. The Court found two flaws in the defendant’s assertion. First, courts apply rules of statutory construction only to ambiguous or unclear language. The Court held that the language at issue here was clear. *Id.* at 581. Second, this tool of statutory interpretation applies only when general words follow specific words. The Court held that the second clause in the enterprise definition was not a generalization of the first clause, but a different and independent category. *Id.* at 582.

120. *Id.*

121. See *United States v. Turkette*, 456 U.S. 576 (1981). The dispute in *Turkette* centered around the definition of enterprise. The Court stated that Congress would have inserted the word “legitimate” if it intended to limit RICO enterprises to legitimate organizations. *Id.* at 581. The language of the statute best exemplifies congressional intent. *Id.* at 593. Because the statute does not

gress demonstrated this in other substantive provisions of the Organized Crime Control (OCC) Act.¹²² In the sections regulating explosives,¹²³ Congress used the term "business" when defining the covered entities.¹²⁴ Congress also limited application of the OCC's syndicated gambling section¹²⁵ to "illegal gambling business[es]"¹²⁶ and defined an illegal gambling business as one which operates for more than thirty days or grosses over \$2000 a day.¹²⁷ These definitions illustrate Congress' ability to limit entities to those operating for economic profit. Congress imposed no similar limits in the definition of enterprise.¹²⁸

B. Racketeering Acts

Increased difficulty arises when courts require proof that a defendant's racketeering acts have an economic motivation. "Racketeering activity" is defined in terms of performing at least two of the predicate acts listed in the statute.¹²⁹ Thus, the requisite *mens rea* and *actus reus* derive from the statutes codifying these predicate acts.¹³⁰ Such crimes as murder,¹³¹

indicate congressional intent to exclude exclusively criminal organizations, the Court refrained from interpreting the statute to include such a limitation. *Id.*

122. Organized Crime Control Act of 1970 (OCC), tit. IX, Pub. L. No. 91-452, 84 Stat. 922, as amended by Comprehensive Crime Control Act of 1984, tit. II, Pub. L. No. 98-473, § 302, 98 Stat. 2040 (1970) (codified as amended at 18 U.S.C. §§ 1961-1968 (1988)). The OCC has three substantive titles: title VIII covers illegal gambling; title IX is RICO; and title XI regulates explosives.

123. Organized Crime Control Act of 1970, tit. XI, Pub. L. No. 91-452, 68 Stat. 170, 74 Stat. 87 (codified at 18 U.S.C. §§ 841-848 (1988)).

124. Section 842 makes it illegal for individuals to operate a "business of importing, manufacturing or dealing in explosive materials without a license." 18 U.S.C. § 842(a)(1) (1988). The statute also limits "importers," "manufacturers," and "dealers" to individuals engaged in that "business." 18 U.S.C. §§ 841(g), (h), (i) (1988).

125. Organized Crime Control Act of 1970, tit. VIII, Pub. L. No. 91-452, 62 Stat. 769, 81 Stat. 362 (codified at 18 U.S.C. §§ 1501-1510 (1988)).

126. 18 U.S.C. § 1955(a) (1988).

127. 18 U.S.C. § 1955(b)(1)(iii) (1988).

128. Congress not only steered away from the term "business" but it used broad terms. *See* 18 U.S.C. § 1961(4) (1988); *supra* note 28 and accompanying text.

129. 18 U.S.C. § 1961(1), (5) (1988).

130. In *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989), for example, the plaintiffs alleged that the defendants violated the Hobbs Act. The defendants claimed that their acts must have an economic goal to constitute RICO predicate offenses. The court rejected this argument and looked solely to the Hobbs Act to find the necessary intent and injury. *Id.* at 1348-50.

131. The elements of murder vary from state to state but never include an economic requirement. For example, the Model Penal Code defines murder as causing the death of another either purposely or knowingly or with reckless indifference for the value of human life. MODEL PENAL CODE §§ 210.2, 210.1 (1985).

obstruction of justice,¹³² obstruction of criminal investigation,¹³³ and obstruction of state and local law enforcement¹³⁴ do not explicitly require an economic motive. These crimes are frequently committed for reasons other than financial gain. Even mail fraud,¹³⁵ one of the most commonly alleged predicate acts, does not require the perpetrator to have an economic goal.¹³⁶ Moreover, because the statute incorporates the clause "racketeering activity" into the definition of pattern without embellish-

132. 18 U.S.C. § 1505 criminalizes:

corruptly . . . threatening . . . to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States Commissioner or other committing magistrate, in the discharge of his duty, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats of force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice.

18 U.S.C. § 1505 (1988).

The penalty for violating this statute is a fine not to exceed \$5,000 or imprisonment for not more than five years, or both. 18 U.S.C. § 1505 (1988). *See also supra* note 43.

133. 18 U.S.C. § 1510(a) provides that:

Whoever willfully endeavors by means of bribery to obstruct, delay, or prevent the communication of information relating to a violation of any criminal statute of the United States by any person to a criminal investigator shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

18 U.S.C. § 1510(a) (1988). *See also supra* note 43.

134. 18 U.S.C. § 1511 (1988). That section provides in part: "[i]t shall be unlawful for two or more persons to conspire to obstruct the enforcement of the criminal laws of a State or political subdivision thereof, with the intent to facilitate an illegal gambling business." 18 U.S.C. § 1511(a) (1988).

135. 18 U.S.C. § 1341 provides:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . for the purpose of executing such scheme or artifice or attempting to do so, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

18 U.S.C. § 1341 (1988). *See also supra* note 43. The breadth of this statute's application to "any matter" mailed or "knowingly cause[d]" to be mailed leads plaintiffs to use this statute frequently. *See infra* note 136 for a discussion of the broad meaning of property.

136. For decades, the circuit courts construed the mail fraud statute as protecting against the defrauding of intangible rights. But in 1987, the Supreme Court limited the statute to the defrauding of money or property. *McNally v. United States*, 483 U.S. 350, 360 (1987). The Court subsequently extended the definition of property to include confidential business information without regard for its intrinsic value. *Carpenter v. United States*, 484 U.S. 19, 28 (1987). Thus, under the Supreme

ment, the statute's plain language does not require an economic motivation for the predicate acts to form a pattern.¹³⁷

C. *Legislative intent*

In devising RICO, Congress intended to eliminate the powerful economic base of organized crime.¹³⁸ Congress was concerned with the power created by vast amounts of illegal wealth,¹³⁹ and the concomitant devastating effects of organized crime on legitimate businesses and the national economy.¹⁴⁰

The economic power Congress feared does not exist in the case of a noneconomically motivated defendant. While this conclusion suggests that RICO does not reach such defendants, it is only one step in the analysis. The defendant's motivation does not alter the impact on the

Court's construction of the mail fraud statute, a defendant could violate the mail fraud statute without an economic goal as defined by the Second and Eighth Circuits.

Congress intended an even broader construction of the mail fraud statute. In response to *McNally*, Congress enacted 18 U.S.C. § 1346 (1988). With this enactment, the mail fraud statute once again covered schemes to defraud another of the "intangible right of honest services." 18 U.S.C. § 1346 (1988). Thus, acts occurring before or after the enactment of § 1346 can constitute mail fraud even if the acts lacked an economic goal.

137. See *supra* note 30 and accompanying text.

138. See *supra* note 10 and accompanying text.

139. See also,

115 CONG. REC. 827 (1969) (remarks of Sen. McClellan) ("Organized crime . . . uses its ill-gotten gains . . . to infiltrate and secure control of legitimate business and labor union activities"); 116 CONG. REC. 591 (1970) (remarks of Sen. McClellan) ("[I]llegally gained revenue also makes it possible for organized crime to infiltrate and pollute legitimate business"); *id.* at 603 (remarks of Sen. Yarborough) ("[RICO] is designed to root out the influence of organized crime in legitimate business, into which billions of dollars of illegally obtained money is channeled"); *Id.* at 606 (remarks of Sen. Byrd) ("loan sharking paves the way for organized criminals to gain access to and eventually take over the control of thousands of legitimate businesses"); *id.* at 35193 (remarks of Rep. Poff) ("[T]itle IX . . . will deal not only with individuals, but also with the economic base through which those individuals constitute such a serious threat to the economic well-being of the Nation. In short, an attack must be made on their source of economic power itself. . ."); S. Rep. No. 91-617, *supra*, at 76-78; H. R. Rep. No. 1574, *supra*, at 5 ("The President's Crime Commission found that the greatest menace that organized crime presents is its ability through the accumulation of illegal gains to infiltrate into legitimate business and labor unions"); *Hearings on Organized Crime Control before Subcommittee No. 5 of the House Committee on the Judiciary*, 91st Cong., 2d Sess., 170 (1970) (Department of Justice Comments) ("Title IX is designed to inhibit the infiltration of legitimate business by organized crime, and, like the previous title, to reach the criminal syndicates' major sources of revenue.") (emphasis supplied).

cited in United States v. Turkette, 452 U.S. 576, 592 n.14 (1981).

140. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 1970 U.S. CODE CONG. & ADMIN. NEWS (84 Stat. 922) 1073.

victimized organization, another congressional concern.¹⁴¹ In *Northeast Women's Center, Inc. v. McMonagle*,¹⁴² for example, the defendants' activities had a devastating effect on the center's business even though the defendants were zealous political activists rather than members of organized crime.¹⁴³ Congress expressed as much concern for the injury to the organization as for the financial benefits to the perpetrator of the acts.¹⁴⁴ Therefore, Congress clearly did not intend to limit RICO to claims that manifest only one of Congress' concerns, an economically injured plaintiff, but not the other, an economically powerful defendant.

D. Policy considerations

A judicially created financial goal requirement is a poor means of limiting the scope of RICO for several reasons. First, careful pleading can convert a noneconomically motivated enterprise into an economically motivated enterprise. For example, in *Northeast Women's Center, Inc. v. McMonagle*,¹⁴⁵ the plaintiffs alleged that the individuals who planned to destroy the clinic comprised the enterprise. The Pro-Life Coalition of Southeastern Pennsylvania (Coalition), however, orchestrated the anti-abortion demonstrators' activities. The Coalition raised at least \$120,000 a year and paid the named defendant, McMonagle, an annual salary of \$32,000 a year as director of the Coalition.¹⁴⁶ A plaintiff alleging that the Coalition has a financial existence apart from the demonstrations¹⁴⁷ and that the proper nexus existed between McMonagle's acts and the Coalition to characterize the Coalition as the enterprise,¹⁴⁸ could satisfy both the Second and Eighth Circuits' economic requirement.¹⁴⁹

141. See *supra* note 10.

142. 868 F.2d 1342 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989) (anti-abortion protestors force closing of Women's Health Center).

143. Because of the defendants' activities, the Center hired security guards, lost its lease, and installed a security system at its new location. Some employees, fearing for their safety, resigned. *Id.* at 1345-47. These activities limited the Center's "freedom of choice," just as organized crime limits legitimate business' freedom of choice. See also *supra* note 104 and accompanying text.

144. See *supra* note 10.

145. 624 F. Supp. 736, 738 (E.D. Pa. 1985).

146. *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 n.7 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989).

147. See *supra* note 84.

148. See *Hunt v. Weatherbee*, 626 F. Supp. 1097, 1102 (D. Mass. 1986); *infra* note 155 and accompanying text.

149. An economically motivated enterprise satisfies both the Second and Eighth Circuit tests. See *supra* notes 52-92 and accompanying text.

In *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 n.7 (3d Cir.), *cert. denied*,

Second, when courts use the defendant's economic motivation as a yardstick for applying RICO, fortuity may determine the availability of a RICO claim. In *Hunt v. Weatherbee*,¹⁵⁰ the plaintiff¹⁵¹ brought a RICO claim against union officers¹⁵² alleging that the defendants on two occasions directed sexually discriminatory animus at her.¹⁵³ The court denied defendants' motion to dismiss the RICO counts.¹⁵⁴ The major issue in the decision was whether an agency relationship existed between the steward, who committed one of the alleged predicate acts, and the union officers. If the plaintiff could establish the agency relationship, the RICO claim would allege the requisite two predicate acts and the union would form the RICO enterprise.¹⁵⁵

Because a union has an economic existence apart from the discrimina-

110 S. Ct. 261 (1989), the Center offered evidence that the anti-abortion coalition raised \$120,000 a year to prove the defendants' economic purpose. The court did not decide the sufficiency of the evidence on this issue because it rejected the defendants' economic defense. *Id.*

150. 626 F. Supp. 1097 (D. Mass. 1986).

151. *Id.* at 1099. The plaintiff, Ms. Hunt, completed a four year apprentice program to become a certified journeyman carpenter. *Id.* The United Brotherhood of Carpenters & Joiners of America, Local 40 (Local 40) contracted to locate employment for Ms. Hunt. The alleged predicate offenses occurred as Ms. Hunt performed the jobs Local 40 provided. *Id.*

152. *Id.* In all, Ms. Hunt sued five defendants. Three were Local 40 officers: a shop steward, the Local 40 business agent, and the financial secretary/assistant business agent. *Id.* The other two were a contractor and its general superintendent. *Id.*

153. *Id.* at 1099. While at work, a "fellow servant" assaulted plaintiff and she filed a criminal complaint. *Id.* Union officers called plaintiff to a meeting where they coerced her into withdrawing the complaint. *Id.* Two of the defendants, Weatherbee and Bryant, were present at this meeting. The meeting was the first instance of sexually discriminatory animus. The second occurred when a third union defendant addressed "hostile and intimidating" statements at plaintiff in an attempt to persuade her to buy Local 40 Political Action Fund raffle tickets. *Id.* Plaintiff left for fear of her safety. *Id.* She reported the incident to Weatherbee, who refused to act. *Id.*

154. *Id.* at 1098. The defendants based their motion on three grounds. First, the defendants contended that plaintiff's claim constituted a request for recovery of emotional distress. *Id.* at 1100. Second, they asserted that plaintiff needed to allege a nexus with organized crime. *Id.* Third, they argued that plaintiff had not alleged activity constituting a RICO pattern. *Id.* at 1101. The court rejected all three grounds. *Id.* at 1100-04.

155. *Id.* at 1102-03. Weatherbee, a union officer, appointed the shop steward, Shaw, to the position of soliciting fund agent. The other union officer-defendant's responsibilities included fund collection. *Id.* at 1103. In addition, plaintiff requested assistance from Weatherbee. *Id.* The court held that if plaintiff proved these allegations at trial, they would suffice to establish the necessary agency relationship. *Id.*

The court held that if the shop steward acted within the scope of his authority as the union officers' agent then the court might find the officers indictable under the Hobbs Act. *Id.* The defendants' positions in the union afforded them the opportunity to commit the predicate offenses and the enterprise need not prosper from the activities. *Id.* at 1102. Thus, the union could form the RICO enterprise. *Id.*

tory acts of its agents,¹⁵⁶ plaintiff's claim would stand even in the Second and Eighth Circuits.¹⁵⁷ If, however, by a fortuitous change in facts the plaintiff could not establish that the enterprise has a separate economic motivation, the Second and Eighth Circuits would dismiss the claim because neither the acts of sexual harassment nor the enterprise has an economic goal.¹⁵⁸

Suppose, for example, the plaintiff belonged to the Sierra Club rather than a union, and, doubting her commitment to the environment, zealous members drove her to resign from her job.¹⁵⁹ Although the impact on the plaintiff in each case is identical, the Second and Eighth Circuits would not allow her claim because neither the Sierra Club nor its members were motivated by money. Such fortuities should not determine the viability of a plaintiff's RICO claim.

Finally, under the Second and Eighth Circuits' tests, courts face the onerous task of determining what constitutes an economic goal. The Second Circuit requires objective manifestation of the defendant's goal.¹⁶⁰ Application of this test is not simple. In *United States v. Ivic*,¹⁶¹ the defendants attempted to murder their Croatian political opponents.¹⁶² In *United States v. Bagaric*,¹⁶³ the defendants, although politically motivated, extorted money.¹⁶⁴ The former case does not implicate an economic consideration,¹⁶⁵ whereas the latter clearly does.¹⁶⁶ Not all cases, however, are so straightforward. A borderline case exists when

156. See *United States v. Flynn*, 852 F.2d 1045, 1052 (8th Cir.), cert. denied, 488 U.S. 974 (1988). In *Flynn*, the defendants sought to control a labor union. *Id.* at 1047-50. The court held that the defendants' "goal served to promote an economic purpose." *Id.*

157. See *supra* notes 52-92 and accompanying text.

158. One act of coercion involved raffle ticket sales. This act might constitute an economic goal. *Hunt*, 626 F. Supp. at 1107. Obstructing a criminal investigation, a noneconomically motivated offense, formed the second predicate act. *Id.* The two alleged predicate offenses could have easily arisen, however, from similar noneconomically motivated offenses because the union officers' acts demonstrated a pattern of sexually discriminatory animus. *Id.* The union officials acted primarily out of sexual animosity and not to profit financially. *Id.* at 1104.

159. This example is purely hypothetical. The Sierra Club merely serves as an example of a nonprofit organization with a clearly non-economic agenda.

160. *United States v. Bagaric*, 706 F.2d 42, 53 n.11 (2d Cir.), cert. denied *sub nom.* Logarusic v. *United States*, 464 U.S. 840 (1983).

161. 700 F.2d 51 (2d Cir. 1983).

162. See *supra* notes 53-55 and accompanying text.

163. 706 F.2d 42 (2d Cir.), cert. denied *sub nom.* Logarusic v. *United States*, 464 U.S. 840 (1983).

164. See *supra* notes 73-75 and accompanying text.

165. See *supra* notes 52-70 and accompanying text.

166. See *supra* notes 72-83 and accompanying text.

robbery or extortion nets the defendants goods rather than cash. For example, when demonstrators remove an essential but inexpensive piece of medical equipment from an abortion clinic, the small value of the stolen good did not motivate the act or benefit the thieves financially.¹⁶⁷ Yet a financial goal does exist when the same individuals break into a jewelry store and remove valuable gold necklaces. The spectrum of possibilities between these two examples contains a myriad of situations in which the court will find it difficult to ascertain whether a financial goal exists. Resolution of such cases may require courts to investigate into the defendant's subjective motivation, an approach even the Second Circuit rejected.¹⁶⁸

V. CONCLUSION

Courts should not require proof of the defendant's economic orientation as a prerequisite to a RICO claim.¹⁶⁹ The statutory language does not support this requirement either explicitly or implicitly.¹⁷⁰ Moreover, an economic requirement fails as a tool to distinguish those claims that RICO should cover from those Congress clearly did not intend RICO to cover. To limit RICO in a meaningful way will require more than a patchwork of judicial modifications. It is up to Congress to review the

167. This occurred in *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 110 S. Ct. 261 (1989). Justice White characterized the demonstrators' actions in that case as not economically motivated. *Northeast Women's Center, Inc. v. McMonagle*, 110 S. Ct. 261 (1989) (dissenting from denial of certiorari).

168. *United States v. Bagaric*, 706 F.2d 42, 54 (2d Cir.), *cert. denied sub nom. Logarusic v. United States*, 464 U.S. 840 (1983).

169. Some authorities feel there is no need to limit RICO because civil plaintiffs have not abused it or, alternatively, have not succeeded in abusing it. See Goldsmith & Keith, *Civil RICO Abuse: The Allegations in Context*, 1986 B.Y.U.L. REV. 55; Goldsmith & Maynes, *The Undermining of Civil RICO*, CRIM. JUST., Spring 1987, at 6 (relatively few plaintiffs' judgments in civil cases because most are dismissed at pleadings stage); Jost, *The Fraudulent Case Against RICO*, CALIF. LAW., May 1989, at 48; Spahn, *Introduction to Civil RICO*, VA. B. ASSN. J., Summer 1987, at 8 (weak cases may offend judge and cause adverse ruling on other matters.)

170. Goldsmith & Maynes, *The Undermining of Civil RICO*, CRIM. JUST., Spring 1987, at 6 (Department of Justice opposed to proposed modifications although agrees on limiting RICO). The Supreme Court described RICO as a carefully crafted piece of legislation in *Iannelli v. United States*, 420 U.S. 770, 789 (1975). More recently, however, the Supreme Court has indicated that Congress may have done a poor job in drafting RICO, but it is still up to Congress and not the courts to rewrite it. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 109 S. Ct. 2893, 2905 (1989).

statute in its entirety and craft appropriate amendments to serve the statute's purposes.

Mary L. Perry

