A Leash Upon Labor: RICO Trusteeships on Labor Unions

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I. INTRODUCTION

In 1982, the Department of Justice filed suit under RICO1 to liberate Teamsters Local 560, a "captive labor organization,"
2 from the clutches of the Provenzano regime of the Genovese Mafia Family.3 The government successfully sought to impose a court-appointed trustee on Local 560.4 This marked the first time that the Justice Department sought equitable relief of this nature under the auspices of the RICO statute5 even though receiverships and trusteeships have been imposed on labor unions almost since their inception in the United States.6

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4. 581 F. Supp. at 337.
5. 550 F. Supp. at 512. The government is entitled to injunctive relief under 18 U.S.C. § 1964(a) (1988). In a RICO trusteeship action, the Justice Department seeks to impose a court-appointed trustee on the executive body of a labor union. See, e.g., Local 560, 780 F.2d at 267. While this was the first suit seeking a RICO trusteeship, the history of RICO actions and organized labor is extensive. See Blakey & Goldstock, "On the Waterfront": RICO and Labor Racketeering, 17 AM. CRIM. L. REV. 341 (1980).
6. See, e.g., United States v. Local 638, Enterprise Ass'n of Steam, Hot Water, Hydraulic Sprinkler, Pneumatic Tube, Compressed Air, Ice Machine, Air Conditioning & General Pipelayers, 360 F. Supp. 979 (S.D.N.Y 1973) (empowering an administrator to remedy racial bias in union hiring and referral practices); Cunningham v. English, 41 L.R.R.M. 49 (D.D.C. 1958) (establishing a voluntary Board of Monitors to watch over the Teamsters Union); Local No. 11, Int'l Ass'n of Bridge, Structural & Ornamental Ironworkers v. McKee, 114 N.J. Eq. 555, 169 A. 351 (N.J. Ch. 1933); see also Pressman, Appointment of Receivers for Labor
Relying on the success of Local 560, the Justice Department filed an action in 1988 seeking to impose a trusteeship on the International Brotherhood of Teamsters. However, shortly before the scheduled trial, the Justice Department and the Teamsters Executive Board reached a settlement. In both the Local 560 and International Brotherhood of Teamsters actions, the government claimed that the unions were enterprises operated through a pattern of racketeering activity, in violation of RICO.

Recently another theory behind RICO labor union trusteeships was demonstrated. In Local 30-30B Roofers, the government argued that threats to public safety warranted imposition of a trusteeship on the union. The court found that the union leaders developed a system of "physical coercion, violence, threats of violence and terrorism to extort agreements from non-Union and Union contractors alike, and use of arson and violence to drive out of business any contractor who refused to submit to Roofers Union control." The court declined to appoint a trustee, fashioning instead the unique remedy of a decreeship, to be enforced by court-appointed liaison officers.

Part II of this Article examines the two current theories of trusteeships, which are based on the resurrection of union democracy and public safety. Part III considers the constitutional, statutory and practical problems associated with RICO trusteeships and the potential alternatives. Part IV examines the success of the various remedies fashioned by the district courts. Finally, the Conclusion suggests a standard for the imposition of RICO trusteeships on labor unions.

Unions, 42 YALE L.J. 1244 (1933) (discussing early receiverships under state law).
12. Id. at 1171-74; see infra notes 128-35 and accompanying text.
13. See infra text accompanying notes 17-135 (examining these two theories). This Article does not attempt to address the broader subject of labor racketeering beyond the issues directly addressed in the principal cases. For a comprehensive discussion of the use of labor unions to advance organized crime objectives, see Blakey & Goldstock, supra note 5.
14. See infra text accompanying notes 136-96.
15. See infra text accompanying notes 197-267.
16. See infra text accompanying notes 268-81.
II. TRUSTEESHIP THEORIES

A. United States v. Local 560: The RICO Complaint

RICO was passed as part of the Organized Crime Control Act of 1970,\(^{17}\) and was aimed partly at attacking mob corruption in labor unions.\(^{18}\) The bill was sponsored by Senator McClellan of Arkansas, who had also been the chairman and a leading force in the committee which created the Landrum-Griffin Act.\(^{19}\) The Landrum-Griffin Act was aimed at promoting union democracy.\(^{20}\) RICO is a penalty-enhancement statute,\(^{21}\) and does not make any act illegal that is not already prohibited under another statute.\(^{22}\) Rather, certain limited federal and state felonies are defined as "predicate offenses."\(^{23}\) The commission of two predicate acts within a ten-year period\(^{24}\) potentially subjects one to criminal\(^{25}\) or civil\(^{26}\) liability under RICO.

RICO is based on the concept of enterprise criminality. A RICO defendant must invest income derived from a pattern of racketeering activity,\(^{27}\) acquire an interest in an enterprise through a pattern of racketeering activity,\(^{28}\) participate or operate in any enterprise through a pattern of racketeering activity,\(^{29}\) or conspire to commit any of these acts.\(^{30}\) While RICO opponents often claim that the statute was not aimed at legitimate enterprises,\(^{31}\) such as busi-

20. See infra notes 70-80 and accompanying text (discussing the Landrum-Griffin Act).
21. 18 U.S.C. § 1963(a) (1988) (making it illegal for anyone who has received money, directly or indirectly through racketeering activity, to use or invest that money in an interest establishment, or operation of an enterprise engaged in interstate or foreign commerce).
22. See Blakey & Goldstock supra note 5, at 348-62 (providing a more complete analysis of the RICO statute).
31. "[E]nterprise" is defined to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (1988).
nesses\textsuperscript{32} and labor unions,\textsuperscript{33} the courts have consistently applied RICO to both legitimate and illegal, racketeer controlled enterprises.\textsuperscript{34} Labor unions have often been found by the courts to be enterprises.\textsuperscript{35} RICO was enacted with a specific legislative directive to interpret the "provisions of this title . . . liberally to effectuate its remedial purposes."\textsuperscript{36}

The RICO trusteeship actions have sought the broad equitable relief available under 18 U.S.C. \S\ 1964, which allows the court to enjoin future acts of racketeering, order divestiture of any interest, or dissolution of an enterprise.\textsuperscript{37} Under the statute, civil plaintiffs may also recover treble damages.\textsuperscript{38} Specifically, the government asks that the named individual defendants be enjoined from further direct or indirect participation in the union,\textsuperscript{39} and that a trustee replace them in union government. Until the \textit{Local 560} suit, no civil penalties had been imposed on labor racketeers, although Robert Blakey, Chief Counsel to the Senate Subcommittee, which crafted the RICO statute, had long before suggested that prosecutors employ RICO in civil actions, (with their reduced burden of proof) against them.\textsuperscript{40}

In \textit{Local 560}, the government claimed that an "association-in-fact" known as the Provenzano Group of the Genovese Cosa Nostra Family operated the "Local 560 Enterprise" through a pattern of racketeering activity.\textsuperscript{41} The government alleged predicate acts of


\textsuperscript{34} See Blakey & Goldstock, supra note 5, at 351.


\textsuperscript{37} 18 U.S.C. \S 1964(a) (1988).

\textsuperscript{38} 18 U.S.C. \S 1964(c) (1988).


\textsuperscript{40} See Blakey & Goldstock, supra note 5, at 362 (citing Address by Robert Blakey, \textit{Legislative Approaches to Organized Crime Control}, at National Association of Attorneys General, Committee on the Office of Attorney General (Mar. 19, 1974)).

\textsuperscript{41} 581 F. Supp. at 303-06. The RICO requirement of "person" is interpreted broadly and includes an association-in-fact of various individuals. See Blakey & Goldstock, supra note 5, at 350.
murder and Hobbs Act extortion. The Hobbs Act is directed at interference with interstate commerce through the use of robbery, extortion and threats of physical violence. Violations of the Hobbs Act are listed among those that may lead to a RICO prosecution. Labor extortion has traditionally been thought of as extortion directed against employers and contractors. While such elements were present in the Local 560 case, the Justice Department advanced the theory that the union members' democratic rights had been extorted. The government claimed, and the court agreed, that these rights constitute intangible property rights under the Landrum-Griffin Act. This foundation of predicate crimes cleared the way for the trusteeship as a remedy.

After appeals to the Court of Appeals for the Third Circuit and the United States Supreme Court, the court finally appointed a trustee on June 23, 1986. In a clean sweep, the court ordered the removal of the entire executive board, including those who had not been indicted or convicted. While the Justice Department characterized the Local 560 case as its greatest success, a handful of other suits have also sought trusteeships under a theory of restoring extorted union members' rights, meeting with mixed results.

47. 780 F.2d at 267 (3d Cir. 1985).
48. Local 560, 476 U.S. at 1140.
50. Local 560, 581 F. Supp. at 321 (noting that removal of each member was necessary because they were either unwilling or unable to objectively evaluate the criminal conduct of the others or to prevent past criminal conduct from recurring).
52. United States v. Bonanno Organized Crime Family, 683 F. Supp. 1411 (E.D.N.Y. 1988) (seeking a trustee for Teamsters Local 814, consent decree ordered); United States v. Local 6A, Cement & Concrete Workers, 663 F. Supp. 192 (S.D.N.Y. 1986) (appointing a monitor under a consent decree); United States v. Long, 697 F. Supp. 651 (S.D.N.Y. 1988); see infra notes 174-96 and accompanying text. In United States v. Local 359, United Seafood Workers, (popularly known as the Fulton Fishmarket case), the court declined to appoint a trustee. Instead, the court appointed an administrator to monitor the union and barred certain Mafia figures from participating in the union. Local 359, 705 F. Supp. 894 (S.D.N.Y. 1989), aff'd in part and remanded in part, 889 F.2d 1232, (2d Cir. 1989) The government alleged that the Mafia used the union to control the Fulton Fish Market, from which virtually all fresh
B. Toward a More Perfect Union: A Question of Democracy

Union democracy is a long-standing public goal in our nation. Senator Orrin Hatch of Utah, a former union machinist,53 has proclaimed that the Justice Department interference in the Teamsters Union "flies in the face of democratic principles"54 and is a "terrible precedent."55 Reacting to judicial injunctions against union strikes, Congress passed the Norris-LaGuardia Act56 to sharply curtail the power of courts to enjoin union activities. In the face of rising union power and questionable union operations, Congress again acted to ensure union democracy with the passage of the Labor-Management Reporting and Disclosure Act.57 Known popularly as the Landrum-Griffin Act, the Act seeks to ensure that each union worker will have equal rights in union decisions and full freedom of speech in union politics.58

Theoretically, a prime objective of RICO trusteeships is to advance the cause of union democracy.59 However, union leaders vehemently challenge the premise that a trusteeship leads to greater democracy.60 Addressing the suit against the International Brotherhood of Teamsters, AFL-CIO President Lane Kirkland stated that "government trustees are not platonic guardians and their installation in office provides a most modest return for a large investment."61 Furthermore, he stated that:

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58. 29 U.S.C. § 411(a)(1),(2); (1982); see infra notes 70-80 and accompanying text.
60. Id.
61. Kirkland, supra note 33. The International Brotherhood of Teamsters had been expelled from the AFL-CIO in 1957, following revelations of extensive corruption. See Teamsters Rejoin AFL-CIO, 47 Facts on File (Random McNally & Co.) No. 2449, 793, 803 (Oct. 30, 1987). Ironically, the Teamsters' membership was restored in October, 1987, shortly before the Justice Department filed suit in a New York federal district court. Id.
This concept of collective institutional guilt is fundamentally contrary to the most elementary principles of justice. It is also unworkable. If applied consistently, it would have justified placing under trusteeship the City of New York in the days of Tammany Hall, the State of Louisiana in the days of Huey Long, the entire federal executive in the days of Warren Harding, and the entire Department of Justice in the days just prior to Watergate.

Newspaper accounts of the insider trading scandals, the savings and loan frauds, the defense contractor procurement frauds, the insurance industry medicare frauds, and the rampant bank laundering of drug money suggest as well that the Department of Justice would have by far the largest institutional presence of anyone in the "private" business sector if the prosecutors applied their current RICO concepts across the board.\footnote{62}

The foundation of the union's opposition to a RICO trusteeship is the severance of control from elected union leaders.\footnote{63} Decrying the government's intervention in an area where the clearest legislative intent supports government abstention,\footnote{64} the unions claim that using existing federal labor law, they can adequately police themselves.\footnote{65} At the same time, however, the President of the International Brotherhood of Teamsters, William McCarthy, protested to Congress that the union is in a "'Catch-22' of the worst kind."\footnote{66} On the one hand, the Landrum-Griffin Act limits a national union's interference with a local's affairs.\footnote{67} On the other hand, the union may now be threatened with a complete national trusteeship if it fails to control the local's affairs.\footnote{68} McCarthy does not point to a single instance, however, where the Teamsters have intervened in a local's affairs due to allegations of corruption.\footnote{69}

Other observers critical of RICO labor trusteeships suggest that existing labor laws, principally the Landrum-Griffin Act, are ade-
quate to deal with the problem of labor racketeering. However, the Landrum-Griffin Act was enacted to address a wholly diverse sort of challenge to union democracy. In an early case applying Landrum-Griffin, the Court of Appeals for the Second Circuit stated that the judiciary held no particular expertise to supervise union activities and condemned "officious intermeddlng" in union affairs. The court further stated that court supervision of unions "would not contribute to the betterment of the unions or their members." This attitude is not atypical of courts interpreting the Landrum-Griffin Act. On the whole, the Landrum-Griffin Act has not been an effective tool in promoting union democracy, especially in hostile environments.

Fight Back Committee v. Gallagher, a recent case involving Local 1-2 of the Utility Workers of America, demonstrates the ideal situation for relief under the Landrum-Griffin Act. In Fight Back Committee, an opposition group fought for representation in a union torn by democracy issues for nearly twenty years. Despite numerous elections in which the opposition prevailed, and a supposedly neutral election committee was appointed, the opposition was granted no voice in the union. The Fight Back Committee, an amalgamation of opposition forces, filed suit under Landrum-Griffin and sought judicially supervised elections. After protracted litigation, the Fight Back Committee was successful in obtaining the secret and fair election guaranteed by the Act.

While the result in Fight Back Committee may sound like a

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72. Id. at 371.
73. See Schwartz, The Judicial Imperative—Court Intervention and the Protection of the Right to Vote in Unions: A Case Study of Fight Back Committee v. Gallagher, 4 HOFSTRA LAB. L.J. 269, 270 (1987) (citing numerous cases wherein courts were most reluctant to act aggressively under the Landrum-Griffin Act).
74. Id. at 271.
75. 120 L.R.R.M. (BNA) 2688 (S.D.N.Y. 1985).
76. Id.
78. 120 L.R.R.M. (BNA) 2372, 2374-75 (S.D.N.Y. 1985).
79. Id. at 2373, 2376-77.
80. Id. at 2376-77, modified, 120 L.R.R.M. (BNA) 2688 (S.D.N.Y. 1985).

http://scholarlycommons.law.hofstra.edu/hlelj/vol7/iss2/3
fairy-tale ending, proponents of a "RICO hands-off labor" approach must remember that Fight Back Committee and similar cases involve vocal, active opposition parties within the union whose voice is being suppressed by the reigning administration. RICO trusteeship actions attack unions where the reigning administration silences opposition voices through violence and intimidation. In the few cases where the government has brought suit under RICO, the results have been refreshing, despite the distasteful infringement on elected union officials' power.

It is too soon to pass final judgment on the success of RICO trusteeships in restoring union democracy. Nonetheless, early reports from the four trusteeships are positive. For instance, in Local 560, trustee Edwin Stier has begun his task with an educational process. He has held meetings for minority union members and sponsored seminars led by nationally respected labor leaders, seeking to educate local members on the value of participation in union activities. He has begun a union newspaper, which publishes the views of union members, as well as union leaders.

Working with the court and various political factions within the union, an election set for December, 1988. Three candidate tickets were nominated, one of which was lead by Daniel Sciarra, brother of Michael Sciarra who had been the former president of the local.

81. Indeed, one commentator rejoiced at the federal court's finally embracing the role envisioned in passage of the Act, albeit 28 years late, saying that the judge had gone further than any other judge. Schwartz, supra note 73, at 297-98.
82. Id. at 287-94 (discussing the approach taken by various courts).
85. See infra notes 157-267 and accompanying text.
87. Id.
88. Id.
89. Id.
90. Id.
Daniel Sciarra won the election by a margin of 2 to 1. Critics within the union presented the victory of those closely aligned with the deposed leadership as proof of the failure of the trusteeship. However, the election saw a sixty-two percent voter turnout, with opposition candidates garnering a third of the votes. Viewed in the context of a local where an opposition candidate had not been placed on the ticket since the days of Walter Glockner’s murder, the result is indeed positive. Moreover, a sixty-two percent turnout is nothing less than spectacular, considering that most union meetings have approximately a four percent attendance rate.

The AFL-CIO claims that at the crux of the Justice Department’s complaint in the Teamsters case were allegations of Cosa Nostra influence over the election of past Teamster general presidents Roy Williams in 1981 and Jackie Presser in 1986, and that the Teamsters General Executive Board had failed to investigate or remedy past corruption. Kirkland correctly noted that none of those alleged to be influenced by organized crime currently were serving on the General Executive Board and that the government had not produced any evidence of mob influence over the elections of either Presser or Williams.

Much of the substance of the complaint filed by the Justice Department addressed corruption in the Central States Pension Fund. Under the Taft-Hartley Act, all union pension funds are legally separate and distinct entities. The appropriate union merely appoints one-half of the trustees. The government, not the union,

91. Id.
92. See McCarthy & Grady, supra note 63.
93. See Stier, supra note 86.
94. Local 560, 581 F. Supp at 316-17. The court noted that the history of the local is “unparalleled for its absence of both contested elections and other criticism or opposition.” Id. at 317 (quoting Professor Clyde Summers, who testified at the trial).
96. See Kirkland, supra note 33. Presser was an FBI informant. See Clark, supra note 83.
97. See Kirkland, supra note 33.
98. Id.
102. Id.
oversees administration of the funds. The unions feel that it is therefore improper to attribute any malfeasance committed by pension fund trustees to the supporting union. However, this view fails to take into account the more active role of the union-appointed trustees and employer-appointed, union-influenced, trustees who control the pension investments. Moreover, while much of the Justice Department's case rested on the mismanagement of the Central States Pension Fund, these allegations covered a period of many years. Had the Teamsters been so inclined, there was ample opportunity to clean house of the pension trustees. The Teamsters had, in the words of the Justice Department, "flagrantly abdicated [their] responsibility to root out union corruption."

C. RICO and the Rough Roofers

The Justice Department has brought one RICO trusteeship action under a theory of preserving public safety. In United States v. Local 30, United Slate, Tile and Composition Roofers by reciting a pattern of violence spanning over twenty years. The union had committed terrorist acts on any contractor refusing to be dominated by the union. Contractors, including both large roofing companies and one-person operations, had equipment valued at thousands and thousands of dollars destroyed and workers and supervisors were beaten by union enforcement squads. Union officials obtained public contracts and ensured protection from government agencies by bribing over fifty public officials, including

104. See Kirkland, supra note 33.
105. See Complaint, supra note 99.
107. See United States v. Local 30, United Slate, Tile & Composition Roofers, 686 F. Supp. 1139 (E.D. Pa. 1988), aff'd, 871 F.2d 401 (3d Cir.), cert. denied, 110 S. Ct. 363 (1989). Although there was considerable evidence of organized crime involvement with the Philadelphia and Southern New Jersey Cosa Nostra family, the government did not allege that the union was controlled by the Mafia. See Local 30, 686 F. Supp. at 1139.
108. Id. at 1143-64. The government also brought charges of violations of the Landrum-Griffin Act, 29 U.S.C. §§ 401-551 (1982). Id. A union representation election was conducted with armed union leaders standing near the ballot box. Id. Faced with bullets for opposition ballots, the workers voted in favor of holding an election, which the union subsequently lost. Id. at 1144-45.
109. Id. at 1151-54.
110. Id. at 1143-48.
111. Id. at 1148-50.
112. Id. at 1144-50.
113. Id. at 1145, 1148-49.
judges. Corrupt Occupational Safety and Health Administration inspectors were used to further harass non-union contractors through unwarranted inspections and fines.

The union began its reign of terror in a meeting at the Rifle Club in Philadelphia in 1968 or 1969. This was the union's "Apalachin" where the union unveiled a strategy for union dominance of the roofing industry in Pennsylvania. During the meeting, union leaders explained how roofing operations would be conducted and outlined contract provisions. When certain contractors voiced opposition, their names were taken down, and the union leaders broadcast threats over the public address system. Dissidents were told that they would have ladders stolen while workers were on the roof, their equipment would be broken, their shops would be burned down and they would be attacked by the union enforcers with baseball bats. The seriousness of these threats was demonstrated in an attack by an army of over one thousand union members on a non-union jobsite. Seven rented buses delivered the mob to the construction site, where the guard hut, construction trailer and office building were fire bombed, vehicles were overturned, and virtually all equipment was destroyed. The mob then prevented firefighters from extinguishing the blazes. The ensuing years brought dozens of similar attacks on a smaller scale. Few contractors or suppliers defied union orders.

114. Id. at 1155-57. Fourteen state judges were accused of corruption related to the Roofers Union cases. See Federal Court Imposes "Decreeship" on Philadelphia Roofers Union Local, Daily Lab. Rep. (BNA) No. 101, at A-9 (May 25, 1988) [hereinafter Roofers Union]. Eight were removed from office by the Pennsylvania Supreme Court. See id.


116. Id. at 1144.

117. On November 14, 1957, the Who's Who of La Cosa Nostra met at the home of Joseph Barbara in Apalachin, New York. R. Kennedy, The Enemy Within 239-40 (1960). Sixty-three leaders of the Cosa Nostra from across the nation were arrested on conspiracy charges. Id. All of the convictions were later reversed. Id. Robert Kennedy, while Attorney General, reported that twenty-two of those arrested were directly connected to organized labor. Id.

118. Local 30, 686 F. Supp. at 1144.

119. Id.

120. Id.

121. Id.

122. Id.

123. Id.

124. Id.

125. Id. at 1144-63.

126. Id. at 1151-54. The union's influence extended to roofing suppliers in other states. See id. One New Jersey dealer had a policy of not leasing or renting equipment to non-union contractors in Pennsylvania due to the union's assurance that such equipment would be de-
The government sought to place the union in a trusteeship, but the district court declined to do so. Instead, the court relied on the broad remedial powers of RICO to create a "decreeship." Noting that the only grievance resolution system permitted by the union consisted of meetings on the street with baseball bats and the use of firebombs, the court ordered the union to immediately formulate a grievance procedure subject to court approval. The court also assumed control over the union's finances and barred payment to convicted union leaders until the court had an opportunity to evaluate the legality of the payments. The court also temporarily enjoined collective bargaining, and limited future bargaining by ordering that no more than three union representatives could be present in a bargaining session. Rooftops were specifically prohibited from being the site of any bargaining, probably due to the fact that in prior negotiations a recalcitrant contractor was conveniently thrown from the roof.

III. OBSTACLES TO EFFECTIVE TRUSTEESHIPS

A. Legal Impediments

The loudest cry raised by union leaders, legal critics, and lawmakers against trusteeships centers on the First Amendment right of free association. The preface to the National Labor Relations Act of 1935 declares that:

127. Id. at 1141.
128. Id. at 1171.
130. See infra notes 256-67 and accompanying text.
132. Id. at 1172.
133. Id. at 1173. The court also required that the court's liaison officer designate the location of the bargaining, and that no bargaining could take place on union-owned or controlled property. Id. at 1172.
134. Id.
135. See Roofers Union, supra note 114.
136. See Kirkland, supra note 33; see also McCarthy & Grady, supra 63.
137. See Mangum, supra note 70.
138. See House Members Will Urge Meese to Reject Trusteeship Over Teamsters Under RICO, Daily Lab. Rep. (BNA) No. 235, at A-3 (Dec. 9, 1987) (stating that more than 220 members of the House of Representatives were expected to sign a letter to Attorney General Edwin Meese protesting the use of a trusteeship against the Teamsters union, based on policy grounds of non-intervention) [hereinafter House Members].
[It is the] policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid for protection.

In battling the International Brotherhood of Teamsters trusteeship attempt, the Teamsters relied heavily on First Amendment assembly and association arguments. The Justice Department countered that “[t]he First Amendment does not protect any ‘right’ to associate or speak in order to carry out otherwise unlawful activity. . . . [p]ut simply, the First Amendment does not immunize racketeers from liability merely because they carry out illegal activity through an ‘association.”

Professor Clyde Summers, a preeminent labor law scholar with a career spanning over 45 years, testified as an expert witness in the Local 560 trial. Although noted for his efforts in the union democracy movement, and for his general opposition to trusteeships, Professor Summers stated that the court had no alternative but to impose a trusteeship on Local 560. Summers’ testimony led the court to conclude that the union members’ silence for over twenty years was “incomprehensible without the explanation that the members are too much in fear to raise their voices.” It is difficult, if not impossible, to comprehend how First Amendment rights of speech and association can be violated by a RICO action, when it is evident that there is absolutely no possibility of exercising those

141. Id. (emphasis added).
143. Teamsters DOJ, supra note 106.
145. See Union Democracy Advocates Assess State of Movement After Thirty Years, Daily Lab. Rep. (BNA) No. 96, at A-2 (May 18, 1988). Summers is Professor of Law at the University of Pennsylvania and a Director of the Association for Union Democracy, a coalition of individuals and organizations dedicated to promoting democracy within organized labor. See id.
146. Id.
147. Id.
Another major thrust of organized labor's opposition to the imposition of a trusteeship on the International Brotherhood of Teamsters is based on arguments of statutory preemption. Teamsters' President William McCarthy claims that the Justice Department's use of RICO to impose trusteeships is "fundamentally at odds" with federal labor law. McCarthy argues that because Congress strictly limited the situations in which the national union could impose a trusteeship on a local, and delineated specific democratic participation rights for union members, the government should be similarly limited so as not to undercut the more specific provisions of the Landrum-Griffin Act and other federal labor laws.

The preemption argument fails to recognize that the labor laws cited to by opponents are directed at particular practices and at the invalidation of improper elections. The unopposed election of allegedly Mafia-dominated leadership in Local 560 for the past two decades has not violated any provision of any federal labor law. In none of the handful of RICO trusteeship complaints has the Justice Department asked the courts to void any election or collective bargaining provision, which remedy is available under federal labor law. Where elected union officials hold power as a result of apathy or terror, no current federal labor provisions remedy the situation.

149. See supra notes 81-84 and accompanying text.
150. See infra note 157 and accompanying text (discussing preemption).
151. McCarthy & Grady, supra note 63.
152. Id. (referring to the enactment of the Landrum-Griffin Act).
153. Id.
157. The preemption argument is flawed at its very foundation. Preemption is a concept which addresses questions of federalism. See Pacific Gas & Elec. Co. v. State Energy Comm'n, 461 U.S. 190 (1983) (stating that "[i]t is well established that within constitutional limits Congress may pre-empt state authority by so stating in express terms."). A federal law may supersede application of a state law in the same area. U.S. Const. art. VI, § 2. For example, federal labor law is held to preempt any state labor laws in the discrete areas in which the Congress has legislated. See generally Cox, Recent Developments in Federal Labor Law Preemption, 41 Ohio St. L.J. 277 (1980) (discussing preemption in the law of strikes, picketing and collective bargaining agreements); Cox, Labor Law Preemption Revisited, 85 Harv. L. Rev. 1337 (1972) (analyzing the development of the preemption doctrine in labor law). Federal law is interstitial in nature; legislation is generally focused on a discrete problem. See, e.g., Brown v. General Servs. Adm., 425 U.S. 820 (1976) (discussing the 1972 amendment to section 717 of Title VII, 42 U.S.C. § 2000e 16(a), which dealt only with federal employees and which was intended to create an exclusive preemptive administrative and judicial scheme for redress of federal employee discrimination). While it may be true that if Congress had addressed the problem of captive labor unions in one of the several major labor acts then RICO would be misapplied as a method of implanting a trusteeship, the fact remains that
There have been several legislative efforts to amend established labor statutes to address the problem of labor racketeering. For example, Senators Thurmond and Grassley twice introduced a bill which would have broadened the definition of "extortion" in the Hobbs Act to make the Act specifically applicable to extortion by labor unions. These efforts were not successful. It is questionable, however, whether the effect of such legislation, if enacted, would be significant, because the Hobbs Act has already been interpreted fairly broadly when applied to labor unions. Another legislative proposal was aimed at the National Labor Relations Act, and would have given the National Labor Relations Board the right to revoke the collective bargaining authority of any union found to engage in or encourage violence. This effort failed as well.

The Justice Department recognizes that a RICO trusteeship action is not necessarily the treatment of choice for an ailing union. The Justice Department evaluates on a case-by-case basis whether a suit under Landrum-Griffin might be more effective and less costly. In addition, before suing under RICO, federal prosecutors look to the track record of a union to determine if a trusteeship action is warranted. If the criminal RICO prosecution has ade-

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158. *See infra* notes 159-73 and accompanying text.


161. *See 2 Cong. Index (CCH), at 21,002 (1985-1986) (showing that S. 92 died); see id. at 21,034 (showing that S. 1774 died).*


165. *See 2 Cong. Index (CCH), at 35,042 (1987-1988) (showing that the proposal died).*

166. *See Dennis, supra note 51.*

167. *Id.*

168. *Id.* The Justice Department must also consider the distinct disadvantages of a RICO trusteeship suit. A RICO trusteeship action will nearly always follow on the heels of a criminal RICO prosecution. While 18 U.S.C. § 1964(d)(1988) allows for collateral estoppel, many federal prosecutions are based on grand jury investigations. The government is limited in the application of evidence obtained through such an investigation to a civil action. *See Kirkland, supra note 33* (discussing RICO actions in detail). A civil RICO action, for example, has no provision for compelled testimony, which is available through the grand jury system. *See id.* Furthermore, the liberal discovery policy of Federal Rule of Civil Procedure 26 operates equally for civil plaintiff and defendant. Identity of grand jury witnesses and confidential informants, as well as the existence of electronic surveillance, might be revealed. Finally, lawyers specialize in practice. Criminal prosecutors will not be conversant with civil litigation and vice
quately excised the corruptive influence in union leadership, the government will not pursue a civil RICO action.\textsuperscript{160} The Justice Department endorses the suggestion of the President's Commission on Organized Crime\textsuperscript{170} to give standing to bring suit to the Secretary of Labor under the Landrum-Griffin Act.\textsuperscript{171} Presently under the Act, only union members may bring suit.\textsuperscript{172} Equitable relief and damages are now available under the Act.\textsuperscript{173}

\textbf{B. Administrative Challenges}

There is at present no consensus on the appropriate source of funding for the operations of trustees.\textsuperscript{174} The government wants to bill the union; the union wants to bill the government.\textsuperscript{176} The government argues that the national union had the opportunity and responsibility to clean its own house before a trustee was necessary, and therefore the national union should pay the trustee's expenses.\textsuperscript{176} Not surprisingly, the union sharply disagrees, saying that since the government is meddling, it ought to pay.\textsuperscript{177} The Justice Department compares this to asking the police officer to pay the medical bill for the person who has just shot himself.\textsuperscript{178}

As a practical matter, the trustee will have local union funds at her disposal.\textsuperscript{179} It is, however, fundamentally unfair to require the local to cover the expenses of the trusteeship, when these expenses exceed those normally required for the local's operation. Presumably, the union members and leaders neither convicted nor barred from office are innocent of any wrongdoing. It is also likely that the corrupt leaders now replaced by the trustee pirated union funds,\textsuperscript{180} per versa. When a criminal prosecutor achieves a conviction, the defendant is fined or incarcerated. The verdict in a civil case may well be only the gateway to protracted litigation to enforcement of the judgement and further direction of the court concerning the implementation of the trusteeship or similar remedy.

\textsuperscript{169} Dennis, supra note 51.
\textsuperscript{171} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Dennis, supra note 51.
\textsuperscript{175} Id.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} See, e.g., United States v. Local 560, Int'l Bhd. of Teamsters, 581 F. Supp. 279, 285 (D.N.J. 1984), aff'd, 780 F.2d 267 (3d Cir. 1985), cert. denied, 476 U.S. 1140 (illustr-
haps depleting any reserves. However, it is also unfair to burden the equally innocent taxpayer. The logical treasury, suggests the Justice Department, is the parent union. The costs of a trusteeship should be borne by the union on an insurance theory, since the parent union is in the best position to control losses. Future benefits of the trusteeship flowing to the parent union as well as the local also justify financial support from the parent. A strong, independent local will develop leadership and provide continued funding for the parent union. Strong locals also enhance the national union’s position in nationwide collective bargaining.

Another difficulty facing the trustee is the lack of investigative resources. If the effects, as well as the cause, of organized crime influence are to be eradicated from the union, a complete review of collective bargaining agreements and pension and benefit investments is prescribed. Investigations such as these were part of the declared strategy of the trustee in Local 560. Reviews of pension and benefit fund operations have already netted great gains in Local 814. When union members see treasuries begin to swell under honest management, they can better comprehend the direct impact that organized crime has on the union. Hopefully, this comprehension will translate to involvement.

In Local 560, the Justice Department, cooperating with the Department of Labor, reviewed all of the local’s contracts. However, it must be remembered that this was the first trusteeship action. Undoubtedly, the Justice Department was anxious to succeed, espe-

18. See, e.g., Statement by Arthur Eisenberg, Statements Delivered April 6, 1989, by Four Trustees Appointed to Oversee Locals of Laborers, Roofers, and Teamsters to Senate Governmental Affairs Permanent Subcommittee on Investigations, Daily Lab. Rep. (BNA) No. 66, at D-1 (Apr. 7, 1989) (reporting that when he took office as trustee of Teamsters Local 814, if outstanding liabilities were paid, the union could have operated for only two weeks on its available funds) [hereinafter Eisenberg.] Eisenberg stated that he favored government funding where warranted. Id. See Dennis, supra note 51.

182. Id.

183. Id.

184. See Stier, supra note 86.

185. See Eisenberg, supra note 181.

186. See Stier, supra note 86. Approximately 400 contracts were involved. Id. The review included a scrutiny of pension fund management. Id. Over 50 related investigations have been initiated by the Justice Department. Id. Some have resulted in litigation. Id. While it is not yet evident, doubtless one benefit of this effort will be to discover and sever even more ties to organized crime.

187. See House Members, supra note 138 and accompanying text.
cially in light of Congressional distaste for the trusteeship and the ties of the Teamsters to President Reagan. While the Federal Bureau of Investigation has made labor racketeering its number one priority within its Organized Crime National Strategy plan, it fully recognizes that its authority to conduct post-litigation investigation is limited by jurisdictional concerns as well as privacy restrictions.

The Department of Labor established the office of Inspector General, as well as an Office of Labor Racketeering, several years ago in direct response to congressional criticism of the Department's attitude toward labor racketeering. Under the direction of the Justice Department, the Office of Labor Racketeering was the primary law enforcement agency in the Local 560 case and in the Local 30-30B Roofers case. The proven success of this agency, combined with its specialized focus, suggest that this is the appropriate investigative agency to pursue RICO investigations.

IV. RICO TRUSTEESHIPS: A STATUS REPORT

A. The International Brotherhood of Teamsters

The trusteeship effort against the International Brotherhood of Teamsters represents the boldest step taken under RICO in the labor arena, and perhaps the boldest step taken under RICO in any context. No trusteeship was imposed, however, as the Justice Department and the Teamsters Executive Board reached a settlement a

189. Id.
190. See Citing Alleged Control by Organized Crime Figures, Government Seeks to Place Trusteeship on Teamsters, Daily Lab. Rep. (BNA) No. 125, at AA-1 (June 29, 1988). The International Brotherhood of Teamsters supported Reagan in the 1980 presidential election. Id. Attorney General Edwin Meese later said that if Reagan had seen evidence of Teamsters corruption before the election, he would not have accepted their endorsement and support. Id.
191. See Clark, supra note 33.
192. Id.
193. Id. (referring to the Privacy Act of 1974, 5 U.S.C. § 552a (1982 & Sup. V 1987), which restricts disclosure of investigative records except as authorized by the Act). A trustee would not likely be able to employ any of the statutory exceptions, other than obtaining an order of the district court supervising the trusteeship. See Clark, supra note 83.
few hours before trial. The settlement terms include appointment of an Administrative Officer who will share equal power with the Teamsters President with regard to discipline of corrupt union officials, appointment of an Investigative Officer with authority to investigate locals and bring charges under the Teamsters' constitution, appointment of an Elections Officer to supervise elections, and direct election of the General Executive Board, previously elected by convention delegates.

The feature of the settlement most repugnant to union leaders is the direct election of the General Executive Board. The Landrum-Griffin Act allows two forms of general election, either direct election or delegate election. Cited as drawbacks to the direct election option are the costs and difficulties of communicating with more than one million voting union members. Given the hostility of the union rank and file towards the trusteeship effort, it seems logical to expect the voting members to return the incumbent General Executive Board of the International Brotherhood of Teamsters to office in 1991, when elections will next be held. That was the result in Local 560, under strict supervision of the court-appointed trustee. Other than an exercise in muscle-flexing, it is difficult to see what was accomplished by the Justice Department by the inclusion of this term in the settlement.

B. A Trusteeship is a Trusteeship is a Trusteeship?

In Local 560, the court imposed a full-scale trusteeship, instructing the trustee to restore union democracy through supervision of free elections. The first trustee, Joel R. Jacobson, served for ten months. He complained that the court and the federal prosecutors, not the Mafia or the Teamsters, thwarted his efforts to bring

198. See supra note 8 and accompanying text.
199. See Dennis, supra note 51.
200. See Kirkland, supra note 33.
202. See Kirkland, supra note 33.
203. See Stier, supra note 86.
204. See Justice Dep't Settles, supra note 8, at 181.
205. See supra notes 89-95 and accompanying text.
207. See Stier, supra note 86.
208. See Kirkland, supra note 33 (citing Jacobson, NEW JERSEY REPORTER, May 1, 1988).
209. See Stier, supra, note 86.
democracy to the local.210 Jacobson hired a new director for the pension and benefit funds, and replaced all of the business agents.211 When Jacobson refused the court’s directive to remove all shop stewards, he was replaced by Edwin H. Stier, the current trustee.212

When the court imposed the trusteeship,213 it stated that it should “continue for such time as is necessary to foster the conditions under which reasonably free supervised elections can be held, presumptively for eighteen months.”214 Over three years have passed and the trusteeship is still in place.215 To be sure, significant progress has been made toward returning control of the union to the membership. The daily business of the union has been returned to the executive board, while the trustee has retained control over the pension and welfare funds.216 The trustee has sponsored general union meetings which have been well attended,217 begun a union newspaper,218 and supervised a “clean” election.219 Teamsters for Liberty, the faction most loyal to the court-removed leadership, won the election by a strong majority, basing their platform on opposition to the trusteeship.220

Michael Sciarra, the deposed union president, was returned to

210. See Kirkland, supra note 33.
211. See Stier, supra note 86.
212. See Kirkland, supra note 33 (noting that the new trustee was unable to remove the shop stewards during his term).
214. 581 F. Supp. at 337.
215. It appears that the trusteeship may again be extended. Trustee Edwin Stier has requested that the court extend the trusteeship indefinitely. Interview with Edwin Stier, Court Appointed Trustee in the Local 560, International Brotherhood of Teamsters case, (Dec. 4, 1989)[hereinafter Stier Interview]. Stier and the Justice Department are seeking hearings concerning Michael Sciarra’s current role in the union. Id. When the court allowed the executive board to hire Sciarra as a business agent, against the objections of the Labor and Justice Departments, it stated that it would reconsider if there were evidence that Sciarra was a de facto board member. Id.
216. Stier, supra note 86 (discussing the changes in control which took place within Local 560 as a result of the trusteeship).
217. Id. (stating that, for example, on February 14, 1988 approximately 2,000 members attended a general membership meeting).
218. Id. (initiating the newspaper in an effort to inform members of their basic rights).
219. Id.
220. Id. (noting that the teamsters had won by a margin of 2 to 1); see supra notes 89-95 and accompanying text.
union administration as a business agent. According to the trustee, he is the only union official now in office who has Mafia connections. However, for the first time in the history of Local 560, union rank and file have rejected contracts negotiated and supported by Sciarra. Shop stewards are now known to make demands and register complaints with the executive officers, an event which previously could lead to physical violence. Even more amazing is that the board responds to and acts upon these complaints.

The experiences of one business agent provide a dramatic testimony to the attitude change among the executive board members. The president of the Teamsters for Liberty, the group opposing the trusteeship, was hired as a business agent after being fired for theft from his employer. Some time later, he was indicted for the theft. The executive board encouraged him to resign his union position, which he did. This action stands in sharp contrast to the days when Local 560's officers did not give up union positions until required by federal law, and even collected salary and benefits while incarcerated.

A limited trusteeship was imposed on Local 6A, Cement & Concrete Workers, another New York City union. The RICO suit was

221. Sciarra was never indicted or convicted for any crime. See Local 560, 581 F. Supp. at 279. However, he refused to publicly denounce the convicted union officers. Id. at 321. Furthermore, the court barred him from holding elected office in the local. Id. at 325. The court granted an injunction barring Sciarra from running for office in future elections. United States v. Sciarra, 694 F. Supp. 1158, 1191-92 (D.N.J. 1988). See generally W. KENNEDY & W. KRAUS, THE BUSINESS AGENT AND HIS UNION (1964) (indicating that a union business agent is appointed by the executive board, and fulfills functions such as contract negotiation and monitoring and grievance resolution).

222. Stier Interview, supra note 215.

223. Id.

224. Id.

225. See 581 F. Supp. at 311-13 (describing the Provenzano Group's methods of influence through the use of physical violence against outspoken opponents).

226. Stier Interview, supra note 215.

227. Id.

228. Id.

229. Id.


231. 581 F. Supp. at 311.

halted in the early stages by a consent decree. The trustee does not oversee daily union affairs, but acts more as an advisor. Many of the former union leaders were allowed to retain their positions. The trustee has supervised elections, although the candidates were unopposed. An incidental benefit to the trustee’s involvement has been greater participation by black union members.

The trustee, Eugene R. Anderson, has compared his effectiveness to that of the trustee in Local 560. Anderson complains that leaving concededly innocent union leaders in office presents the image that the corrupt regime is still in power. Moreover, he believes that a limited trusteeship “cannot be as effective as a trusteeship where the trustee essentially controls all aspects of the union’s business.” He is pessimistic about the value of the trusteeship, saying:

The real success of my trusteeship can only be measured once the trusteeship ends. If corrupt influences proceed to infiltrate the union once again, the trusteeship will certainly have failed in its objective. Given the nature of my trusteeship as previously discussed, I, unfortunately, would not give assurances that the objective will be met.

Similar to Local 560, the entire executive board of the Teamsters Local 814 was removed in United States v. Bonanno Organized Crime Family of La Cosa Nostra and trustee Arthur Eisenberg was given complete control over the union. Eisenberg examined the accounts of the pension and benefits funds, receiving

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of the appointment of a trustee, Eugene R. Anderson, in a case involving the Columbo family); see also Anderson, supra note 230 (discussing his role as trustee in Local 6A, Cement & Concrete Workers).


235. Id. (discussing how the consent decree allowed certain persons to remain as officers unlike the cases of Local 560 and Teamsters Local 814).

236. Id. However, another election is to be held in 1990, after which the trusteeship will presumably be dissolved. Id.

237. Id. (noting that while at the inception of his trusteeship there were no black members, out of the current membership 30-40 percent are black).

238. Id. (stating that the limited trusteeship given to him in Local 6A, will not be as effective as the trusteeship given in Local 560).

239. Id.

240. Id.

241. Id.

242. Eisenberg, supra note 181.


244. See Eisenberg, supra note 181.
the cooperation of the funds’ trustees.\textsuperscript{246} Review of Eisenberg’s report on the state of Local 814 illustrates the success of his trusteeship.\textsuperscript{248} He has made tremendous inroads into putting the union solidly in the black.\textsuperscript{247} Eisenberg has taken significant steps toward improving the employment level of Teamsters in Local 814.\textsuperscript{248} Substance abuse counseling and support groups have been made available.\textsuperscript{249} Eisenberg has secured cooperation from the International Brotherhood of Teamsters in establishing classes to develop reading, writing and math skills.\textsuperscript{250} Meanwhile the trustee in Local 6A experienced nothing but overt hostility from the parent union.\textsuperscript{251} Eisenberg has begun training programs for shop stewards, arranged for community education classes aimed at G.E.D. fulfillment, and assisted members’ families with educational opportunities.\textsuperscript{252}

Eisenberg remains committed to his goal of restoring democracy to Local 814. His constant message to the members stated differently each time, but to the same effect, is that the price of liberty is eternal vigilance\textsuperscript{253} that means everything I do is for their benefit and all the programs have but one purpose — to create a climate where a free and fair election was to be held — a climate in which all members feel free to aspire to leadership positions and thereby to control and operate their own Union.\textsuperscript{254}

In elections held a few months ago, a clean campaign was run, and the opposition and “main-line” tickets split evenly.\textsuperscript{255}

A variant of the trusteeship, a decreeship, was placed on Local 30-30B of the Roofers Union.\textsuperscript{256} Judge Louis Bechtle found that

\begin{itemize}
  \item \textsuperscript{245} Id.
  \item \textsuperscript{246} See generally id. (illustrating the success of Eisenberg’s trusteeship).
  \item \textsuperscript{247} See id.
  \item \textsuperscript{248} See id. (including efforts to further the education and training of the membership).
  \item \textsuperscript{249} Id.
  \item \textsuperscript{250} Id.
  \item \textsuperscript{251} Anderson, supra note 230 (discussing the trustee’s attempts to develop safety training and educational programs; these attempts were rebuffed by the Laborers International Union).
  \item \textsuperscript{252} See Eisenberg, supra note 181.
  \item \textsuperscript{253} This frequently cited phrase is the motto of the American Civil Liberties Union and is originally attributed to both John Philpot Curran and Thomas Jefferson. J. Bartlett, Familiar Quotations 397 n.8 (15th ed. 1980).
  \item \textsuperscript{254} Eisenberg, supra note 181.
  \item \textsuperscript{255} Id. Elections held February 8, 1989, resulted in a tie. Id. Each ticket elected one trustee and the two combined to appoint a third. Id.
\end{itemize}
"court-imposed trusteeships have not worked as well as expected"²⁵⁷ and appointed a Court Liaison Officer to serve as monitor of the decree terms.²⁵⁸ Judge Bechtle stated that the:

[S]hortcoming of a trusteeship . . . is clearly the distasteful and unworkable act of forcing an authority figure on the existing Union leadership and membership, who they are required to be loyal to, and indeed, expected to like. History has shown that this has rarely worked . . . and there is no reason to expect it to work in the labor Union . . . . [T]his Union may have a chance to succeed, but it must change its ways because it is convinced it must and not because it is forced to.²⁶⁹

In making his broad statement about the faults of a trusteeship, Judge Bechtle failed to offer any supporting authority.²⁶⁰ Early trusteeships, in their various forms,²⁶¹ were primarily aimed at preserving union funds, not at halting violence or removing a totalitarian union leadership.²⁶²

The court removed the union officers convicted of crimes,²⁶³ but left other leadership in place.²⁶⁴ The court liaison officer was given some limited control over finances, however his primary role was aimed at curing past collective bargaining practices.²⁶⁶ The court also placed some of the blame for the history of violent negotiations on the employers, and encouraged the roofing contractors to join together in an association to deal "seriously and firmly" with the union.²⁶⁶

It is yet too early to draw solid conclusions from the experiences in these four cases. At the request of Trustee Edwin Stier, the National Institute of Justice, with support from the Justice Department and the John F. Kennedy School at Harvard University, is conducting a study to assess the efficacy of the trusteeship over Local

²⁵⁷ 686 F. Supp. at 1167.
²⁵⁸ See id. at 1139; see also supra text accompanying notes 130-35 (discussing decrees).
²⁵⁹ Id. at 1167 (emphasis in original).
²⁶⁰ Id.
²⁶¹ See supra note 6 (illustrating several early forms of trusteeships).
²⁶³ 686 F. Supp. at 1171.
²⁶⁴ See id. at 1168.
²⁶⁵ See id. at 1169; see also supra notes 130-35 and accompanying text.
²⁶⁶ See id. at 1170-71.
560. Nonetheless, some pattern seems to be emerging. Where the
trustee is given full power over the affairs of the union, and couples
the use of that power with programs aimed at actively promoting
members' involvement, the union moves ahead toward full demo-
cratic participation.

V. CONCLUSION

The Justice Department's cautious use of RICO as a tool to
restore union democracy and to protect the public against unions op-
erated with goon squads has been well-justified in each instance. However, neither the courts, unions nor the government seem pre-
pared to impose a trusteeship. Standards are lacking for imposition,
and once imposed, for execution of the trusteeship. Edwin Stier, a
veteran state and federal prosecutor and currently the trustee of Lo-
cal 560, believes that the government will waste both time and re-
sources, and more importantly, endanger the future of RICO, if a
strategic plan for seeking and administering trusteeships is not for-
mulated before further trusteeships are attempted.

Unions raise the hue and cry about congressional intent that
unions govern themselves. It is indisputable that union self-govern-
ment is the stated goal of federal labor policy. It must now be
recognized that when union democracy has gone far astray, a stal-
wart tool is needed to restore worker's rights. The early indications
show that RICO is such a tool. However, RICO must be limited to
application only where the heavy hand is truly necessary.

In addition to the requirement of a pattern of predicate acts
required by RICO, the government should be required to show the
necessity of using RICO's broad relief provisions to impose a trus-
teeship. The threshold question must be whether the union is so in-
fected with the racketeer influence as to render impossible demo-
cratic opposition to existing leadership, such as was evident in Local

267. Stier, supra note 86.
268. See supra notes 107-35, 157-267 and accompanying text. Perhaps some evidence of
this is the success with which the government's efforts have met, both in the courtroom and
within the affected unions themselves. Each RICO trusteeship effort has resulted in the gov-
ernment achieving substantially the requested relief, with the possible exception of the Fulton
Fishmarket case, which is now on remand after reversal. See supra note 52.
269. Stier Interview, supra note 215.
270. Kirkland, supra note 33.
271. See supra note 64 and accompanying text.
The Landrum-Griffin Act, suggested by some as an alternative to RICO, works well in a union where the opposition is alive and healthy, although denied participation in elections. The court must find that the trusteeship will benefit the rank and file of the union.

The court has the final task of determining how intrusive the trusteeship will be. The limited data available shows that great successes can be gained quickly where the trustee has full power over union operations. A trustee can reorganize bargaining and craft groups, train stewards, and establish new lines of communication, in addition to policing for the unlawful and speech-stifling practices of the past. He will be in a position to observe whether the corruptive influence has been removed, or if further court action is required. In the Roofers case, Judge Bechtle limited the court's control to those areas in which corruption had been demonstrated. The consent decree in Local 6A also limited the powers of the trustee, who remains pessimistic about the prognosis for a clean and free union. To limit the powers of the trustee is to deprive him of wielding a full range of cures, not unlike the physician struggling in a Third World nation to treat disease without modern medicine. Surely the physician would not administer each medicine available in a fully-stocked pharmacy, just as the trustee must be trusted not to flex each muscle, just because it is there. The alternative is to force the trustee to run to the courthouse at each step.

RICO must remain at the forefront of the Justice Department's statutory arsenal, to be aimed against corrupt and racketeer-influenced labor unions whenever necessary. Senator McClellan, a moving force in both RICO and Landrum-Griffin legislation, said of the
union member:

We should restore to him his rights. We should vest in him again
the power to do something to protect his rights. We must give him
the authority again to run his own union. We must pass a law . . .
which enables him to prevent usurpation by would-be exploiters.  

While McClellan here was urging the passage of Landrum-Griffin,
the objective remains the same. Rather than supplant, RICO can
supplement.  

said that RICO is an "aggressive initiative to supplement old remedies" and creates new
prosecutorial theories.