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RICO: Is it a Panacea or a Bitter Pill for Labor Unions, Union Democracy and Collective Bargaining?

Steven T. Ieronimo

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RICO: IS IT A PANACEA OR A BITTER PILL FOR LABOR UNIONS, UNION DEMOCRACY AND COLLECTIVE BARGAINING?

I. INTRODUCTION

Congress enacted the Racketeer Influenced and Corrupt Organizations statute1 ("RICO") in 1970. Its aim was to take on the ever increasing problem of organized crime’s corruptive grip on legitimate businesses and unions.2 RICO was a fresh approach to the problem of uprooting organized crime.3 “[T]he RICO statute was intended to provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots.”4 However, RICO does not exist in a vacuum. The statute also affects legitimate interests, such as those of labor.5

Criminal and civil RICO actions brought by the government can affect labor interests in both positive and negative ways. The emplacement by the government of a RICO trustee upon a labor union to, in effect, purge the union of the influence of organized crime or traditional labor racketeering and the use of other such equitable relief undermines the notion of union democracy. However, the government does attempt to ensure that true union democracy will be restored. This is bitter medicine indeed, but such action is necessary in certain situations to ensure union democracy, legitimate collective bargaining, and the continued support of organized labor by the federal government. The government uses civil RICO actions to replace duly elected union officials with RICO trustees who oversee elections, investigate charges, discipline union members, review and expenditures and contracts. However, in the hands of private individuals and corporations, civil RICO is not bitter medicine. Rather, it is a poison which seems

3. Mastro, supra note 2, at 575.
5. These interests include preservation of union democracy, union organization, and the collective bargaining process.
to always adversely affect labor's interests. Civil RICO actions brought by employers against their collective bargaining partners serve as a setback for the American labor movement.6

In this article, I will briefly describe RICO and its interaction with other statutes that affect labor and show RICO's disproportionate effect on those statutes in an effort to illustrate and distinguish government and private use of civil RICO. I will also review recent court decisions which demonstrate that civil RICO in private hands is being utilized in the labor arena in ways which were never contemplated, creating a disruptive rather than a stabilizing force in labor relations. Finally, I will consider some persistent constitutional questions that civil RICO presents, especially in light of employees' right to bargain collectively. I conclude that the disruptive force of private civil RICO litigation in the field of labor relations should be proscribed.

II. RICO

A. The Statute

A unique aspect of the RICO statute is that it does not make illegal any specific action that is not otherwise illegal.7 Indeed, Sections 1961(1) of RICO prohibits racketeering activities.8 Collectively,


The use of RICO lawsuits against unions by employers during labor disputes threatens a return to a darker, more sinister era of labor relations in the United States. Once denounced as criminal syndicates, then antitrust conspiracies, then communist fronts, American labor unions now increasingly face being labeled as racketeering conspiracies for which they may be liable for treble damages and sizeable attorneys' fees. Although use of the RICO statute is commonly believed to be for rooting out corruption and organized crime, private RICO litigation has no such interest or limitation. To the contrary, it usually is aimed directly at conduct arising out of bona fide labor disputes, where there is no hint of "racketeering" on the part of the unions.

Simonoff & Lieverman, supra, at 335-36 (footnote omitted).


8. Section 1961(1) provides in pertinent part:

"Racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drug, which is chargeable under State law punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate ship-
these sections include eight felonies under state law and at least twenty-four federal felonies, among which are certain labor related offenses, such as restrictions on payments and loans to labor unions, and embezzlement from union funds. This gives RICO a blanket or umbrella-like effect which allows it to reach a wide range of activities. When a person commits two of these RICO prohibited racketeering offenses, normally referred to as "predicate acts" for the purposes of RICO, a pattern of racketeering activity can be established. RICO was designed to be broad and flexible enough to meet the various situations in which organized crime finds, takes over, and controls legitimate businesses and unions, as well as illegitimate entities. Rather than concentrating on just isolated acts or
events, RICO allows an attack on a much wider scope.\(^{13}\)

RICO's provisions provide four possible paths for criminal prosecution and civil litigation.\(^{14}\) First, it is unlawful for any person to receive any income, directly or indirectly, from racketeering activities.\(^{15}\) Second, it is unlawful for any person, through a pattern of racketeering activity, to acquire an interest, directly or indirectly, in an enterprise.\(^{16}\) Third, it is unlawful for any person to participate, directly or indirectly, in any enterprise through racketeering activity.\(^{17}\) Finally, it is unlawful for any person to conspire to violate any of the first three provisions.\(^{18}\)

1. The Person

RICO provides that a "'person' includes any individual or entity capable of holding a legal or beneficial interest in property.”\(^{19}\) However, “[a]s a matter of statutory construction courts will generally afford ‘includes’ a broader interpretation than the word ‘means.’ This canon of construction is premised on the assumption that ‘including’ is not a restrictive term, but one of enlargement.”\(^{20}\) Consequently, a court can reach the conclusion that an item not specifically identified may still be included in the statute.\(^{21}\) Thus, there is no dispute that union officers, union members, and even a union itself can fall within RICO’s definition of a “person.”

2. The Enterprise

RICO provides that an enterprise “includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”\(^{22}\) The rule of statutory construction for enterprise, like the statutory construction for person, is one of expansion, not of limitation.\(^{23}\)

\(^{13}\) Prior to RICO “it was nearly impossible to reach legitimate businesses which served to launder money.” Blakey & Goldstock, supra note 7, at 349.


\(^{17}\) 18 U.S.C. § 1962(c).


\(^{19}\) 18 U.S.C. § 1961(3).

\(^{20}\) Blakey & Goldstock, supra note 7, at 350 (footnote omitted).

\(^{21}\) Blakey & Goldstock, supra note 7, at 350 (citing United States v. Roselli, 432 F.2d 879 (9th Cir. 1970), cert. denied, 401 U.S. 924 (1971) which held that RICO is not limited to persons specifically intent on using interstate facilities).


\(^{23}\) Blakey & Goldstock, supra note 7, at 351. See supra note 20 and accompanying
A labor union can constitute an enterprise for the purposes of RICO.\textsuperscript{24} The element of an enterprise is crucial to the establishment of a RICO violation, and the interpretation of the term has been far reaching.\textsuperscript{2} Thus, RICO has been able to reach into billiard parlors in Chicago\textsuperscript{26} as well as restaurants in New York,\textsuperscript{27} and because Congress did not distinguish between private and public entities,\textsuperscript{28} RICO has also reached various local\textsuperscript{29} and state government agencies.\textsuperscript{30}

3. The Pattern

RICO provides that a pattern of racketeering activity "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity."\textsuperscript{31} These acts of racketeering are termed "predicate acts" for the purposes of RICO.\textsuperscript{2} In addition, one must demonstrate the relationship between the predicate acts and "their temporal proximity, or common goals, or similarity of methods, or repetitions."\textsuperscript{33} In fact the text.

\textsuperscript{24} Either a local union, a larger international union, or both, depending on their constitutions, inter-linking bonds, body of rules, or offices may fit this definition. Mastro, \textit{supra} note 2, at 586.

\textsuperscript{25} Blakey & Goldstock, \textit{supra} note 7, at 350-54.

\textsuperscript{26} United States \textit{v.} Cappetto, 502 F.2d 1351 (7th Cir. 1974) (enjoining gambling activities at a billiards parlor), \textit{cert. denied}, 420 U.S. 925 (1975).

\textsuperscript{27} United States \textit{v.} Ianniello, 824 F.2d 203 (2d Cir. 1987) (placing the notorious Umberto's Clam House into receivership).

\textsuperscript{28} Blakey & Goldstock, \textit{supra} note 7, at 352.

\textsuperscript{29} United States \textit{v.} Brown, 555 F.2d 407 (5th Cir. 1977) (holding that the Macon, Georgia Police Department was an enterprise for the purposes of RICO), \textit{cert. denied}, 435 U.S. 904 (1978).

\textsuperscript{30} United States \textit{v.} Frumento, 563 F.2d 1083 (3d Cir. 1977) (holding that the Pennsylvania Bureau of Cigarette and Beverage Taxes was an enterprise for the purposes of RICO), \textit{cert. denied}, 434 U.S. 1072 (1978).

\textsuperscript{31} 18 U.S.C. § 1961(5) ("excluding any period of imprisonment").

\textsuperscript{32} Mastro, \textit{supra} note 2, at 586-87.

\textsuperscript{33} Mastro, \textit{supra} note 2, at 587 (quoting United States \textit{v.} Indelicato, 865 F.2d 1370, 1382 (2d Cir.) (en bane), \textit{cert. denied}, 491 U.S. 907 (1989)). See G. Robert Blakey & Brian Gettings, \textit{Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts — Criminal and Civil Remedies}, 53 Temple L.Q. 1009, 1030 (1980). "The racketeering acts must have been connected with each other by some common scheme, plan, or motive so as to constitute a pattern and not simply a series of disconnected acts." \textit{Id.} (footnotes omitted). However, acts unrelated to each other may still be "held together by a relationship to an enterprise." \textit{Id.} In fact, "patterns have been found where the separate acts have had similar purposes, results, participants, victims or methods." \textit{Id.} (footnotes omitted).
Supreme Court has stated that RICO's pattern of racketeering requirement is demonstrated through continuity plus relationship.\textsuperscript{34} Therefore, mere isolated acts, incidents, or events will not satisfy RICO's pattern of racketeering requirement.

Upon examination of RICO Sections 1962(a)-(d), it becomes clear that to establish a violation one must demonstrate that a person is unlawfully receiving income, directly or indirectly, through a pattern of racketeering activity to acquire an interest, directly or indirectly, in an enterprise, or is participating, directly or indirectly, in any enterprise through racketeering activity, or that person has conspired to do so.

B. The Labor Policy of RICO

RICO targets organized crime as it attempts to infiltrate legitimate businesses, including labor unions.\textsuperscript{35} However, this problem is more complex in regard to labor unions because of the traditional misuses of union power.\textsuperscript{36} Labor racketeering traditionally consisted of individuals using union power to promote a variety of illicit activities including misuse of funds, "sweetheart" deals, and "strike insurance."\textsuperscript{37} Prior to RICO it had been difficult to prove these types of charges because of the very nature of the illegal activity. For instance, in the context of syndicated crime, labor racketeering was not perceived as a single action or event.\textsuperscript{38} Additionally, labor racketeering was usually conducted by members of organized crime who would find, take control, and make use of the union for their own personal profit.\textsuperscript{39} What RICO allows that prior legislation had not, is an attack on entire organizations for their patterns and practices of corruption, rather than chasing these racketeering criminals one-by-one through the labyrinth of criminal law.\textsuperscript{40}

\textsuperscript{35.} Garth L. Mangum, RICO Versus Landrum-Griffin as Weapons Against Union Corruption: The Teamster Case, 40 LAB. L.J. 94, 98 (1989). See Mastro, supra note 2, at 574-75.
\textsuperscript{36.} Blakey & Goldstock, supra note 7, at 341-42.
\textsuperscript{37.} For example, stealing union member's dues, manipulation of union welfare and pension funds, embezzlement, kick backs, bribery, extortion, phantom employees on payroll and the like. Blakey & Goldstock, supra note 7, at 342-46.
\textsuperscript{38.} Blakey & Goldstock, supra note 7, at 346-47.
\textsuperscript{39.} Blakey & Goldstock, supra note 7, at 347.
\textsuperscript{40.} Mangum, supra note 35, at 98.
C. RICO’s Interaction with Other Statutes

In the field of labor law, there seems to be little that RICO cannot reach. Furthermore, many of the federal labor law statutes and previous racketeering statutes provide only fodder for finding predicate act violations which are needed for RICO’s pattern of racketeering element. Neither labor law statutes such as the Norris-LaGuardia Act, the Wagner Act, the Taft-Hartley Act, and the Landrum-Griffin Act, nor the Hobbs Act, an earlier anti-racketeering statute, have provided the preemptive sanctuary protection against RICO actions one would expect to find in the national labor policy pontificated by the United States.

1. Norris-LaGuardia Act

The policy behind the Norris-LaGuardia Act is to limit the power of the federal courts to enjoin the activities of labor organizations so that those organizations are free from interference, restraint, or coercion by employers, thereby allowing union members to freely associate, organize and collectively bargain without the fear of being enjoined, except in very limited circumstances. However, temporary or permanent restraining orders may be issued when there is witness testimony in support of allegations made in a complaint that unlawful acts have been threatened and will be committed unless restrained, or have been committed and will continue to be committed unless restrained. Accordingly, judges have been quite reluctant to allow preliminary requests for trustees in civil RICO actions without evidentiary hearings which include discovery and effective cross-examination of witnesses. This may have more to do with the Federal Rules of Civil Procedure than with the Norris-LaGuardia Act, but union defendants should raise both arguments when given the opportunity.

41. See infra notes 49-54, 77-98 and accompanying text.
42. See infra notes 43-48, 70-98 and accompanying text.
44. Id.; see also infra notes 46, 179 and accompanying text.
45. Deborah Squiers, Bar on Secret Testimony in RICO Suit Request by Government Refused in Union Case, N.Y. L.J., Dec. 19, 1990, at 1 (regarding United States v. Local 1804-I, Judge Sand refused a request by the prosecutor to allow union members to testify behind closed doors about corruption in the International Longshoreman’s Association because of the defendants’ inability to challenge and assess the credibility of the witness).
46. See FED. R. CIV. P. 65.
In addition, the Norris-LaGuardia Act provides that a burden of clear proof of actual participation in unlawful activity must be met before a member of a labor union is held responsible for that unlawful activity.\(^4^7\) However, civil RICO does not use this standard; rather, civil RICO applies the lesser preponderance of the evidence standard.\(^4^8\)

2. Hobbs Act

The Hobbs Act of 1934\(^4^9\) is anti-racketeering legislation directed at threats and violence which interfere with commerce.\(^5^0\) In anticipating the use of extortion, the Hobbs Act defines extortion as the "obtaining of property from another, with his [or her] consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right,"\(^5^1\) and affecting interstate commerce.\(^5^2\) The government's use of the Hobbs Act allows it to reach union officers for creating, maintaining, or tolerating the existence of such a situation.\(^5^3\)

RICO is not precluded by the Hobbs Act. Furthermore, Hobbs Act violations can be used as predicate acts to prove a pattern of racketeering activity.\(^5^4\) However, not every act of violence which interferes with interstate commerce is covered by the Hobbs Act, because the Hobbs Act does not cover violence committed during a

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47. 29 U.S.C. § 106; see infra note 343 and accompanying text.
48. See Wilcox v. First Interstate Bank of Or., 815 F.2d 522, 533 (9th Cir. 1987) (Boochever, J., dissenting). Judge Boochever criticized the majority for not using the state standard of clear and convincing evidence when the predicate acts were state fraud statute violations. Id. at 534.
50. Section 1951(a) provides in pertinent part:
[w]hoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.
52. 18 U.S.C. § 1951(b)(3).
53. Mastro, supra note 2, at 596, 603 (stating that union officers, whether or not they participate directly or by aiding and abetting, are liable for acts of extortion under 18 U.S.C. § 2(a) (1988)).
54. See United States v. Local 560, Int'l Bhd. of Teamsters, 581 F. Supp. 279, 289 (D.N.J. 1984). Among the predicate acts making up the RICO action against Local 560 was the conviction of Anthony "Tony Pro" Provenzano on one count of Hobbs Act extortion. Id.
lawful strike. In *United States v. Enmons*, the Supreme Court defined the word “wrongful” in the statute, limiting it “to those instances where the obtaining of the property would itself be ‘wrongful’ because the alleged extortionist has no lawful claim to that property.” The Supreme Court did not agree with the government’s broad construction of “wrongful,” which would have included the use of force to obtain legitimate union demands of higher wages, that is, conduct that takes place openly during the course of a union’s economic strike which could be seen as coercive conduct because it obstructs and delays commerce. The Supreme Court was aware that violence to persons or property is not an unknown result in the tense environment of a prolonged labor dispute. However, there is no exception for such conduct in the Hobbs Act. The Supreme Court strictly construed this criminal statute, resolving ambiguity in favor of lenity and noting that nothing in the language of the Hobbs Act or its legislative history could lead to the conclusion that Congress intended the federal government to stand sentinel over the conduct of strikes. In consequence, the Supreme Court narrowly affirmed the district court’s dismissal of the government’s action, five to four.

However, unlike the Hobbs Act, RICO is written in general terms and creates liability for prescribed conduct regardless of the status or final objectives of the individuals involved. This is demonstrated in *United States v. Thordarson*. In *Thordarson*, the Ninth

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56. 410 U.S. 379 (1973). The employees of Gulf States Utilities Company were striking in support of a new collective bargaining agreement and were charged with violating the Hobbs Act for firing high-powered rifles at company transformers, blowing up a company transformer substation, and conspiracy. *Id.* at 381-82.
57. *Id.* at 383. See also *United States v. Green*, 350 U.S. 415 (1956) (upholding a Hobbs Act prosecution where force and violence were employed to compel concessions from the employer which the union had no legitimate right to demand).
59. *Id.* “The worker who threw a punch on a picket line, or the striker who deflated the tires on his employer’s truck would be subject to a Hobbs Act prosecution and the possibility of 20 years’ imprisonment and a $10,000 fine.” *Id.* at 389.
60. *Id.* at 389 n.20.
61. *Id.* at 389.
62. Simonoff & Lieverman, *supra* note 6, at 363. Simonoff and Lieverman point out that with the change of membership on the Supreme Court, *Enmons*’ continued viability is questionable and that a number of lower courts have proceeded to restrict *Enmons*’ application in civil RICO cases.
64. 646 F.2d 1323 (9th Cir. 1980), *cert. denied*, 454 U.S. 1055 (1981).
Circuit determined that arson and the willful misuse of explosives were serious enough threats for which Congress passed acts calling for criminal sanctions. The Ninth Circuit then went on to find that for the enforcement of these laws, Congress did not distinguish between individuals indulging in the prohibited conduct for their own personal gain and individuals indulging in the prohibited conduct for the gain of fellow union members. The Ninth Circuit distinguished the type of low-level violence it felt the Supreme Court in Enmons feared would become a federal crime under the Hobbs Act from the destruction of vehicles by means of arson and explosives. Thus, under the circumstances presented, a pattern of racketeering activity was forged with the inclusion of these Hobbs Act violations. However, even if the Thordarson court did not find these actions to be within the scope of the Hobbs Act, that court could have still forged a pattern of racketeering activity utilizing RICO's wide scope in regards to any of the state felonies enumerated in Section 1961(1) of the statute. Indeed, RICO's definition of racketeering activity encompasses "any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion . . ." Clearly the defendants' actions in Thordarson would fall within the scope of this definition.

3. Wagner Act

The Wagner Act, also known as the National Labor Relations Act of 1935 ("NLRA"), gave employees enforceable rights usually referred to as their Section 7 rights: "[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." Clearly, when union members feel that their Section 7 rights are being attacked they will

66. Id. at 1328-31. See also United States v. Chambers, 515 F. Supp. 1, 3 (N.D. Ohio 1981) (interpreting 18 U.S.C. § 844(f), a statute which prohibits the malicious destruction of property by means of explosives as containing no exceptions, expressed or implied, for those acts committed in furtherance of a legitimate goal, in other words, the end does not justify the means).
68. Thordarson, 646 F.2d at 1327-32.
attempt to invoke the NLRA and its preemptive protection of that Act. Indeed, the rule usually is that state and federal courts do not have jurisdiction over suits involving activity which "is arguably subject to [section] 7 or [section] 8 of the [NLRA]." However, Section 7 does not give employees the right to engage in unlawful conduct. In addition, the NLRA and RICO do not target the same areas of congressional concern. The NLRA was not enacted with the goal of eliminating or preventing organized crime from finding, taking, and controlling labor unions. Conversely, a civil RICO action is not brought to simply invalidate a union election or alter a collective bargaining agreement or relationship.

However, one must question whether the use of civil RICO does have that unintended adverse effect upon rank-in-file elections, collective bargaining agreements, and collective bargaining relationships. In fact the gains for employers who bring successful civil RICO actions against their collective bargaining partner or other labor union, rather than utilizing the procedures Congress has already provided, are multiple. The employer will be entitled to treble damages and attorney’s fees. In addition, the labor union will have to absorb its own litigation expenses. Both of these factors will weaken the union financially. Furthermore, this demonstrates to the rank-in-file union members their relative weakness in the collective bargaining relationship, and undoubtedly affects the overall morale of the labor organization negatively. At the same time, such a civil RICO action greatly enhances the employer’s position in its bargaining relationship with the labor union.

4. Taft-Hartley Act

The purpose behind the Taft-Hartley Act of 1947, also known as the Labor Management Relations Act ("LMRA"), was to readjust the balance between employers and labor organizations which had originally been created by the NLRA in 1935. Congress wanted to pro-

74. Mastro, supra note 2, at 620-23.
75. Mastro, supra note 2, at 620-23.
76. Mastro, supra note 2, at 620-23.
77. The stated purpose of the Taft-Hartley Act is:
   It is the purpose and policy of this [Act], in order to promote the full flow of
tect the rights of employees while at the same time allowing for the free flow of commerce. A violation of the Taft-Hartley Act by a union official can constitute a predicate act for the purpose of forging a pattern of racketeering activity in a RICO action. In *United States v. Scotto*, the defendants, Anthony M. Scotto and Anthony Anastasio, were the president and executive vice president of International Longshoremen’s Association Local 1814. The defendants were charged with thirty-five violations of the Taft-Hartley Act, specifically, demanding and receiving unlawful labor payments. In reviewing the defendants’ appeal, the Second Circuit concluded that while the illegal payments were not specifically covered under Taft-Hartley’s bribery section, they were still predicate acts because RICO’s definition of racketeering activity reached every part of Section 186, including Section 186(c). Thus, violations of Section 186(c) are sufficient predicate acts for the purposes of RICO.

5. Landrum-Griffin Act

The Landrum-Griffin Act, also known as the Labor Management Reporting and Disclosure Act (“LMRDA”) of 1959, was specifically designed to prevent financial and other corruption within unions and to guarantee the internal rights of union members. However, the
Landrum-Griffin Act was directed exclusively at labor unions. It was Congress’ perception that inadequate democracy was the core reason for corruption in labor unions and that through increased union democracy corruption could be eliminated.\(^8\) Toward that end, a bill of rights of union members was incorporated into Landrum-Griffin.\(^8\) Secret ballot election procedures were also required.\(^8\) Additionally, strict financial reporting requirements were imposed upon the labor organization, such as reporting to its members and to the United States Secretary of Labor.\(^9\) A violation of the Landrum-Griffin Act by a union official can constitute a predicate act for the purposes of RICO. In *United States v. LeRoy*,\(^9\) the government brought criminal RICO charges against union officials resulting from a Department of Justice investigation of Laborers International Union, Local 214. Among the predicate acts committed was the embezzlement of labor union funds in violation of the Landrum-Griffin Act.

The shortcoming of the Landrum-Griffin Act is that for civil and criminal actions, the remedies must be sought on a case-by-case basis.\(^9\) Furthermore, for union members to exercise their rights, they must first exhaust the internal appeal procedure that their labor union supplies.\(^9\) Conversely, RICO bypasses Landrum-Griffin’s case-by-case approach.\(^9\) Consequently, the Department of Justice’s challenge to the Teamsters may have been a reflection of its impatience with Landrum-Griffin’s effectiveness or the way the Department of Labor pursued such actions.\(^9\) Indeed, prior to the Justice Department filing a RICO claim against the Teamsters,\(^5\) the D.C. Circuit in *Theodus v. McLaughlin*\(^6\) affirmed a Department of Labor
finding that the automatic selection process of local union officers as ex officio delegates to the Teamsters' national convention did not violate the LMRDA. Before the government's civil RICO suit against the Teamsters, no union member within the organization had succeeded in bringing about union election reform.

III. THE GOVERNMENT'S USE OF CIVIL RICO

After cases such as Scotto and LeRoy, prosecutors have taken a quantum leap in their approach to organized crime's infiltration of labor unions and to labor racketeering, truly taking RICO to its furthest possible conceptual point. These prosecutors use RICO to replace duly elected union officials with RICO trustees who oversee elections, investigate charges, discipline union members, and review expenditures and contracts. Because of the size of the Teamsters union and the operational commitments the Teamsters maintain throughout the country, the having a trusteeship emplaced upon them is comparable to imposing a RICO trustee on a municipality or a state.

One can speculate that the material reason for the increase in civil RICO litigation being brought to judgment after 1985 is the increase in large awards. That is, nothing succeeds like success. Similarly, the same can be said of federal prosecutors' use of civil RICO over the same time period. After having successfully used criminal and civil RICO against individual union officials, it was natural to then utilize civil RICO against local unions. Furthermore, when RICO proved successful against local unions, it was then expanded to the next logical point, international unions.

Additionally, RICO is a very difficult and complex statute which many attorneys and judges have had trouble mastering. This is made even more difficult by the continuing problems revolving around RICO's interpretation. Consequently, one can interpret the

97. Id. at 1384. See supra note 88 and accompanying text.
98. Mangum, supra note 35, at 100. See infra note 172 and accompanying text.
100. To do so has been called "truly Herculean." Buffone & Reed, supra note 99.
101. Buffone & Reed, supra note 99. See Yolanda Eleni Stefanou, Concurrent Jurisdiction
government’s utilization of RICO, first against union officials, then against local unions, and finally against international unions, as an experience in progressive learning.

A. RICO’S Slow Start, a la Scotto

In the beginning, the application of RICO was not of unprece- dented scope. Rather, RICO was used on select individuals in labor organizations where the labor organization was considered the enterprise. A clear example of this is demonstrated in Scotto, where the call for a RICO trustee was absent despite the fact that the defendants, Anthony M. Scotto and Anthony Anastasio, were the president and executive vice president of International Longshoremen’s Association Local 1814. The application of RICO was straightforward. Scotto was a person under RICO. Scotto was employed as the labor organization’s president and the labor union was considered an enterprise. Specifically, ILA Local 1814 met the “affecting commerce” elements of RICO’s jurisdiction requirement. The pattern of racketeering prerequisite was satisfied when there was a finding of at least two predicate acts within the appropriate time span and of a nexus between those acts and the racketeering activity.

Over Federal Civil RICO Claims: Is It Workable? An Analysis of Tafflin v. Levitt, 64 St. JOHN’S L. REV. 877 (1990) (discussing the problems of concurrent jurisdiction and civil RICO interpretation). Ms. Stefanou stresses the need for uniform interpretation of civil RICO, which already has an “extreme and wide disparity of case law in determining issues of pattern, enterprise, and injury,” and whose concurrent jurisdiction will only further compound the problems of its interpretation. Id. at 892-93. Furthermore, she questions the Supreme Court’s Tafflin v. Levitt, 493 U.S. 455 (1990), decision because it fails to reflect the reasonable intent of Congress to have all of RICO’s sections utilized together to effectuate its purpose. Id. However, she does not even touch upon the Supreme Court’s holding that RICO should be “liberally construed to effectuate its remedial purposes.” Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 494-95 (1985). Also, Stefanou stresses the need for the expertise of federal judges because “the vast number of enumerated acts in the statute are federal crimes involving extremely specialized areas of the law.” Stefanou, supra, at 892-93. However, she gives no weight to the fact that state criminal laws qualify as predicate acts for the purposes of RICO. See Simpson Elec. Corp. v. Leucadia, Inc., 530 N.E.2d 860 (N.Y. 1988). The New York Court of Appeals stated that “there is little difference between State Judges interpreting Federal criminal law if the predicate act alleged is a Federal law violation and the Federal Judges interpreting State criminal law if the predicate act alleged is a State law violation.” Id. at 865.

102. See supra note 99 and accompanying text. Indeed, RICO was “[l]argely ignored at first . . . .” Blakey & Gettings, supra note 33, at 1011.

103. See supra notes 80-84, 90 and accompanying text.

104. See supra notes 80-84 and accompanying text.

Such a nexus was not difficult to establish. The first nexus related to the numerous kickback and fraud violations which evidenced the existence of Scotto's organizational plan, and the second nexus involved Scotto's enlistment of other union members to assist him in this ongoing pattern of racketeering activity.

B. Trusteeships, RICO and Otherwise

The concept and actual placing of a union in the hands of a trustee is not new.106 Indeed, courts were willing as early as the 1930s to use their equitable powers to identify union members' interests and assist them in partaking in matters of their union.107 Those courts were motivated to move against the corruption that dominated local unions, which parallels much of the reasoning underlying the enactment of RICO by Congress in 1970.108 The congressional concerns which RICO was specifically aimed at were the taking over of legitimate businesses and unions by organized crime.109 However, even in the 1930s, the imposition of a trustee upon the labor union was "considered a 'drastic form' of judicial intervention."110 Indeed, courts used self-restraint and caution because such interference into the internal affairs of a union would give the perception that the union could not "properly function while in receivership."111 Thus, such a drastic remedy was imposed in only the most extreme cases.

The RICO trustee, like the trustee of the 1930s, is seen by the government as an "extraordinary weapon" that has been used "very sparingly."112 This "extraordinary weapon" has been used only where

108. Tilles, supra note 106, at 951 n.164. In Collins v. International Alliance of Theatrical Stage Employees, 182 A. 37 (N.J. Ch. 1935). The New Jersey court stated that the real issue was whether the inherent right of the individual to work out his own destiny, declared by the Constitution to be unalienable, shall be preserved . . . . There can be but one answer to this issue. Once it is thoroughly understood, the rank and file of labor will revolt against the assumed dictatorship of so-called labor leaders and the racketeering business agents and resume their right to individual effort and insist on the freedom of contract which is guaranteed them by the basic law of the land. Union labor may purge itself.
109. Mastro, supra note 2, at 574-75.
110. Tilles, supra note 106, at 951.
111. Tilles, supra note 106, at 951 (footnote omitted).
112. Mastro, supra note 2, at 573.
unions have been "plagued by 'systemic corruption' for 'so many years' that a drastic remedy was necessary." However, there is nothing in RICO's statutory language that specifically authorizes the court to remove from office those individuals who were duly elected union officers or to transfer authority from those union officials to a federal trustee. Despite the absence of specific authority, the Justice Department directs courts to the "not limited to" language of RICO to find such authority. The Justice Department may ask the court for such an equitable remedy from the start of the action and, "pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions . . . as it shall deem proper."

There have been at least three situations where courts have deemed it proper to call for a RICO trustee. The most clear cut situation is when the labor union is controlled by organized crime. In another situation, a RICO trustee was put in place for the advancement of union democracy. Lastly, in at least one instance, a RICO trustee was put in place for public safety.

However undesirable the RICO trusteeship may appear to the concept of union democracy, government intervention is felt to be needed. RICO provides a flexible answer to the complex problem of labor racketeering, because RICO takes into account the extent of

113. Mastro, supra note 2, at 573 (footnote omitted).
114. Mangum, supra note 35, at 102.
115. Mangum, supra note 35, at 102 (noting that this language only remotely supports such action). Section 1964(a) provides in pertinent part:

The district courts . . . shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on future activities . . . including but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in . . . or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

116. 18 U.S.C. § 1964(b) (emphasis added); see Mastro, supra note 2, at 572-73. See also supra notes 45-46 and accompanying text.
118. Kenneth R. Wallentine, A Leash Upon Labor: RICO Trusteeships on Labor Unions, 7 Hofstra Lab. L.J. 341, 346 (1990); see Mangum, supra note 35, at 100.
120. Tilles, supra note 106, at 932.
intimidation that corrupt union leaders inflict on both union members and employers, so that these union members and employers will not feel safe asserting their statutory rights.\textsuperscript{121} RICO also takes into account the inefficiencies of investigating, solving, and prosecuting isolated crimes.\textsuperscript{122} However, there are some clear lines where the imposition of a RICO trustee upon a labor union should not be used as a remedy.\textsuperscript{123} A trustee should not be imposed simply to remove officers or to end corruption and abuse of powers.\textsuperscript{124} A RICO civil action is not initiated to brush aside election results or to change the collective bargaining relationship or the collective bargaining agreement.\textsuperscript{125} A RICO trustee should only be utilized to reestablish an effective union democracy.\textsuperscript{126}

C. The Provenzano Group, the Genovese Cosa Nostra Family and the Boys of Local 560

The concept of a labor union trustee entered a new era in 1986 when Judge Harold Ackerman imposed a RICO trustee over Teamsters Local 560.\textsuperscript{127} Indeed, the judge's description of Local 560 as "not a pretty story" was an understatement.\textsuperscript{128} Local 560 had been described as the "textbook example of the creation and use of a climate of fear and intimidation to extort union members' rights."\textsuperscript{129} This climate was exemplified by the murders of Anthony Castellitto in 1961 and Walter Glockner in 1963, and by union members who opposed Anthony "Tony Pro" Provenzano and spoke out publicly in

\begin{footnotesize}
\bibitem{121} Blakey & Goldstock, supra note 7, at 365; Tilles, supra note 106, at 932.
\bibitem{122} Blakey & Goldstock, supra note 7, at 365.
\[A\] trusteeship should not be imposed except where it is clear that corrupt and abusive leadership has obtained such a stranglehold that members no longer have the possibility of removing the officers, ending the corruption, and deciding upon policies through the democratic process.
\textit{Id.}
\bibitem{124} Summers, supra note 123, at 695.
\bibitem{125} Mastro, \textit{supra} note 2, at 620.
\bibitem{126} See Summers, \textit{supra} note 123, at 695.
\bibitem{129} Mastro, \textit{supra} note 2, at 601.
\end{footnotesize}
that regard. However, even if the record taken as a whole could not support the fact that the Provenzano group had these union members killed, despite using the preponderance of the evidence standard, the record supported the finding that the Provenzano group did utilize the perception that it had these individuals killed to intimidate, instill fear, and quash any opposition to the union. Besides coercing the union membership into giving up their guaranteed rights under federal labor law, the Provenzano Group carried on almost every labor racketeering act known.

The government had indicted, convicted and sentenced Anthony Provenzano on prior occasions. He was indicted in 1960 for Hobbs Act extortion and in 1975 for conspiracy to violate an anti-kickback statute. Anthony Provenzano and four others were indicted and convicted on criminal RICO charges stemming from labor peace payoffs. However, even while serving a twenty-two year prison sentence, Anthony Provenzano was able to influence Local 560 through family members and friends. Clearly the government’s intent in bringing a civil RICO action was to once and for all sever the Provenzano group from Local 560 and its pension funds, and to halt the injuries to Local 560 members and others who had collective bargaining relationships with Local 560.

The government alleged that Local 560 was an enterprise within the meaning of Section 1961(4). The government alleged that the individual defendants were associated together under the leadership of Anthony Provenzano, that they were aided and abetted by past and present members of the executive board of Local 560, and that they conspired in violation of Section 1962(d) to violate Sections 1962(b) and (c). That is, that the Provenzano group and the executive board unlawfully acquired and maintained, directly and indirectly, an interest in and control of the Local 560 Enterprise through a pattern of racketeering activity in violation of § 1962(b) of the RICO Act.

130. Local 560, 581 F. Supp. at 312. See also Mastro, supra note 2, at 601-02.
131. Local 560, 581 F. Supp. at 312.
132. Id. at 283-92; see Goldberg, supra note 127, at 965-66.
134. Id. at 290 (citing United States v. Provenzano, 605 F.2d 85 (3d Cir. 1979)).
135. Id. at 283-92. Some of the Provenzano Group had been appointed to the executive board. Id.
136. Id. at 283.
137. Id. at 283-84. See supra notes 14-18 and accompanying text.
This racketeering activity was alleged to have involved murder and the systematic use of extortion, with the latter allegedly consisting of, according to the complaint, "the wrongful use of actual and threatened force, violence and fear of physical and economic injury in order to create within Local 560 a climate of intimidation which induced the members thereof to consent to the surrender of certain valuable property in the form of their union rights as guaranteed by the provisions of [the Taft-Hartley Act]."\textsuperscript{138}

The government presented a very strong and compelling case built around many of the prior violations and convictions of the individual defendants that served as predicate acts for the purposes of RICO.\textsuperscript{139} Thus, it came as no surprise that Judge Ackerman ruled that because the Executive Board members were either unwilling or unable to objectively evaluate the criminal conduct of their fellow members, all the members of the Executive Board should be removed as a condition precedent to restoring union democracy.\textsuperscript{140}

Judge Ackerman selected Joel R. Jacobson, a long time friend and twenty-five year veteran of the labor movement, to be the RICO trustee of Local 560.\textsuperscript{141} Jacobson was given a court order stating that he had all the authority and power to act as he saw fit to administer Local 560 and to create and maintain conditions in which a freely supervised election could be held, supposedly within the first eighteen months of the RICO trusteeship.\textsuperscript{142} Jacobson had complete control over the Local's organization, collective bargaining, grievance procedure, hiring and firing of staff, and expenditures from the Local's treasury.\textsuperscript{143} However, it took Jacobson over six months to replace the seven paid business agents, and he refused to replace the 400 unpaid shop stewards who apparently effectively assisted in carrying out the union's collective bargaining with over 300 employers.\textsuperscript{144} Jacobson felt that the cost of replacing the shop stewards would be too great and that it would be inconsistent to remove duly elected shop stewards without showing individual misconduct.\textsuperscript{145} However, due to the evidence, it was clear to Judge Ackerman that these shop stewards were loyal to the Provenzano group and that they

\begin{thebibliography}{9}
\bibitem{138}Local 560, 581 F. Supp. at 284.
\bibitem{139}Id. at 285.
\bibitem{140}Id. at 321.
\bibitem{141}Goldberg, \textit{supra} note 127, at 967.
\bibitem{142}Local 560, 581 F. Supp. at 337.
\bibitem{143}Goldberg, \textit{supra} note 127, at 967.
\bibitem{144}Goldberg, \textit{supra} note 127, at 968.
\bibitem{145}Goldberg, \textit{supra} note 127, at 968.
\end{thebibliography}
Local 560's former president, Michael Sciarra, continued his attempt to assert de facto control over the union until finally being permanently enjoined from further participation in union affairs in 1991. This under-estimation by the trustee resulted in the "Teamsters for Liberty" campaign lead by Sciarra and Joseph Sheridan, a former vice president of Local 560. Both Sciarra and Sheridan were counting down the number of months to the forthcoming election. Under these circumstances, Judge Ackerman replaced the "union man," Jacobson, with a "cop," the former Assistant United States Attorney and Director of the New Jersey State Division of Criminal Justice, Edwin H. Stier, and the election was then pushed back an additional year, to at least 1988. Shortly before the 1988 elections, Sciarra and Sheridan were enjoined from running in the elections. However, before the government was able to permanently enjoin Michael Sciarra from Local 560 activity, he was able to get his brother, Danny, to run to for president in the 1988 election. Danny's campaign was successful, thereby enabling Michael Sciarra to return as a business agent, where he was once again able to exercise control.

Some people point out that the second time Michael Sciarra was on the Executive Board there was a distinct break with the past because the rank-and-file rejected contracts he had negotiated, and because the shop stewards made demands and registered complaints with executive officers, neither of which occurred before the RICO trusteeship. Therefore, the Local 560 trustee should not be declared a failure because conditions were clearly better after the RICO trusteeship than before it.

146. Goldberg, supra note 127, at 969.
148. See Wallentine, supra note 118, at 360-62; Goldberg, supra note 127, at 969-70.
149. Goldberg, supra note 127, at 971.
150. United States v. Local 560, Int'l Bhd. of Teamsters, 694 F. Supp. 1158 (D.N.J. 1988) (defendants arguing that they should not be barred because neither had ever been convicted of a crime).
152. Wallentine, supra note 118, at 361-62.
D. The Columbo Crime Family and Cement: If They're So Bad, Why Only a Limited Trusteeship?

During the summer of 1986, Local 6A, Cement and Concrete Workers, Laborers International Union of North America ("Local 6A") represented approximately 1400 members, while the District Council represented nearly 4000 members. Unfortunately, the president of the District Council two years earlier was Ralph Scopo, an allegedly "made" member of the Columbo Crime Family. Another bad turn for Local 6A was that this was the time of the Cement Workers litigation. It was under these circumstances that the government brought a civil RICO action against Local 6A including a request for preliminary relief in the form of a trustee. However, the union defendants argued that there had been no wrong-doing since Ralph Scopo had been removed from office back in 1984, and that the call for injunctive relief was untimely.

In addition, the government argued that the Local 560 case was factually comparable, except that there had been no comprehensible criminal RICO claim against the twenty-five union officers individually named as defendants in the complaint. Despite the government's pleas, the court scheduled an evidentiary hearing to allow the union an opportunity to bring to the court's attention any evidence that might be relevant to the court's ruling. Subsequent to the evidentiary hearing the government and the union entered a consent judgment where a trustee would be appointed to oversee the operations of Local 6A for four years. Additionally, the consent judgment barred some individual defendants from holding union office, and under certain instances, from ever being a laborer in the union.

However, Local 6A's trustee was not a full trustee. The trustee, Eugene R. Anderson, was limited, analogous to the role of an advi-
RICO: Panacea Or Bitter Pill?

Anderson did not oversee daily union affairs and many of the former union leaders were allowed to retain their positions. Only sixteen of the twenty-five local and joint council officers resigned their positions. This relates directly to the overall strengths and weaknesses of the government's case, especially because the government premised its case by stating that Local 6A was comparable to Local 560.

The Local 6A trustee did, however, have "specific authority to remove union officers, business agents, and shop stewards for acts of racketeering or malfeasance, or for knowingly associating with La Cosa Nostra members, and to veto any contracts or expenditures constituting or furthering acts of racketeering or malfeasance." In addition, the trustee also had authority to oversee union elections.

An irony in the Local 6A litigation was that because so much of the union's funds were spent on the union's defense of the action, very little was left for investigatory purposes. Furthermore, Anderson's pessimistic view that Local 6A would revert back to its old ways after the trusteeship lends to the overall appearance that the Local 6A trusteeship was a failure.

E. The Teamsters

Daniel Webster once said that "[l]abor is independent and proud." But what happens when labor is neither independent nor proud? What happens when members of a labor union become aware that their leadership has made a "devil's pact with La Cosa Nostra" and are unable to rid themselves of those leaders through the election procedures already in place? Indeed, from 1976 until 1987, the Teamsters for a Democratic Union ("TDU") had been trying without success to "take[e] matters into their own hands to reform their union."

163. Wallentine, supra note 118, at 362-63.
164. Wallentine, supra note 118, at 362-63.
165. Goldberg, supra note 127, at 975.
166. Goldberg, supra note 127, at 976.
167. Wallentine, supra note 118, at 363.
168. Goldberg, supra note 127, at 976.
169. Wallentine, supra note 118, at 363.
171. Goldberg, supra note 127, at 995 (quoting from the government's complaint against the IBT).
172. Ken Paff, Insight — Let the Teamsters Vote; We Need Union Democracy, Not a
1. Setting Up the Teamsters

On June 28, 1988, the government filed a civil RICO suit against the Teamsters, which represented "the boldest step taken under RICO in the labor arena, and perhaps the boldest step taken under RICO in any context." The government once again argued as it had in Local 560 that the union was contaminated by organized crime and that the organized crime elements had gone so far as to engineer the IBT presidential elections of Roy Williams and Jackie Presser. The government also alleged that top union officers had continuously aided and abetted organized crime at every possible opportunity. Because of the numerous allegations, many of which had been presented and proven in prior cases, the government sought immediate preliminary injunctive relief in the form of a pendente lite court liaison officer. Judge Edelstein properly concluded that such an action would be improper without first having an evidentiary hearing, however, he did agree to an expedited consolidated trial on the merits.

2. Settling the Teamsters

On the eve of the expedited trial, the Teamsters and the government settled the action and entered into a consent decree. The

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174. Wallentine, supra note 118, at 359.
175. Goldberg, supra note 127, at 995.
176. Goldberg, supra note 127, at 995. See also George Kannar, Making the Teamsters Safe for Democracy, 102 YALE L.J. 1645 (1993). However, long before this time, the public was aware of the Teamsters' criminal connections. Id. at 1646.
177. Kannar, supra note 176, at 1646. See also Frank Swoboda, Prosecutor Defends Suit Against Union; Teamsters' Lawyer Denounces 'Abuse', WASH. POST, June 30, 1988, at A6. Former United States Attorney Rudolph Giuliani, in defending the government suit against the Teamsters, stated that "[t]here have been over 300 people convicted . . . . But you can prosecute forever and you can't remove the influence of the Mafia from the Teamsters without having the use of the civil RICO statute." Id.
178. Goldberg, supra note 127, at 995.
179. Goldberg, supra note 127, at 996.
government’s principal concession allowed individual defendants to remain in office until the 1991 elections and in return, the Teamsters agreed to reorganize the IBT governing structure and election process. In addition, three court officers were appointed to oversee the unions: an administrator, an investigations officer, and an elections officer. The administrator was to share power equally with the Teamsters’ president. The administrator was also given the power of the General Executive Board, within the scope of the IBT constitution, to remove from office, expel, or otherwise discipline corrupt officers and members. Furthermore, the administrator was also given the power to impose intra-union trusteeships over corrupt affiliates, and to review and veto IBT expenditures, appointments, or agreements, outside of collective bargaining agreements that appeared to further acts of racketeering or cultivate union association with organized crime. The investigative officer was given even broader powers to investigate corruption within the unions and to press disciplinary charges against violators. Finally, the election officer was given authority to oversee the election process, culminating in the Teamsters’ first direct, secret ballot election for national office in 1991. This Independent Review Board was to serve until 1992, at which time the Teamsters were to have established a permanent Independent Review Board.

3. Sorting Out the Teamsters

The structural changes that the IBT instituted in response to the consent order have been cited as the most important changes affecting the IBT. Indeed, its national election, which took place in 1991, was an important change, “transform[ing] the Teamsters from the most corrupt [union] to one of the most democratic unions in America.”

189) See also Goldberg, supra note 127, at 996.
181. Goldberg, supra note 127, at 996.
182. Goldberg, supra note 127, at 996.
183. Wallentine, supra note 118, at 360.
186. Goldberg, supra note 127, at 997.
187. Mastro, supra note 2, at 583.
However, clearly as important and far reaching were the changes that came at the hands of the administrator and the investigative officer. As of August 21, 1992, together they have filed charges against 185 individuals and three locals, conducted at least seventy-three hearings on disciplinary charges, imposed at least nine trusteeships, and decided over 250 appeals. Also, because the Teamsters were to have established a permanent Independent Review Board in 1992, these internal changes would be an ongoing process.

IV. ONCE THE GOVERNMENT’S TRUSTEE IS IN PLACE, WHO PAYS FOR THIS WHITE KNIGHT?

Once the RICO trusteeship is ordered into place by the court, the question arises, who will pay for it? The labor organization argues that the government should pay the trustee’s wages and costs because the government persuaded the court to appoint him. The government argues that the labor organization should pay since its members are benefitting. They see it as the price for having democracy and their rights restored.

In United States v. Ianniello, the government was successful in placing a temporary RICO trustee at Umberto’s Clam House prior to the full hearing. However, when the government wanted the trustee to be paid out of corporate funds, the defendant refused. The Second Circuit decided to test the purpose of the trustee by determining who actually benefited from the trustee’s emplacement. In this case, the purpose was to prevent the continued skimming from Umberto’s profits which helped to avoid the payment of taxes. Thus, since the trustee would have increased the taxes paid

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four other unions have direct rank and file elections of national officers.” Id. However, “this seemingly sweeping victory may have been less impressive than it appeared. Overall voter turnout was a depressing twenty-eight percent. Pre-election polls suggested that almost a quarter of the members were still too intimidated or cynical to vote . . . .” Kannar, supra note 176, at 1649 (footnotes omitted).

191. 824 F.2d 203 (2d Cir. 1987).
192. See United States v. Ianniello, 824 F.2d 203, 205 (2d Cir. 1987); Gerald McKelvey & T.J. Collins, How Law Has Been Used to Clip Mob, NEWSDAY, Aug. 27, 1987, at 3. The government had taken over to prevent the continued skimming of millions of dollars from the restaurant where mobster Joey Gallo was publicly murdered. Id.
193. Ianniello, 824 F.2d at 205.
194. Id. at 209.
195. Id. at 205, 209. This civil litigation was brought on the heels of the criminal con-
to the government and the public would have benefited. However, if at a later time the government could establish that Umberto’s benefited from the receivership as a corporation, it might then be appropriate to reimburse the government for some or all of the receiver’s expenses.

The federal courts have agreed with the government’s position that union members benefit from the emplacement of a RICO trustee. Indeed, in the case of Local 560, the trustee’s fees were charged to the union and not the government. There, the court found that it had authority to direct the union to pay under Section 1964(a) of the statute because “RICO is to be read broadly,” as contemplated by both the Supreme Court and Congress, and this broad reading is consistent with RICO’s remedial purposes.

In addition to the court order, parties to a consent decree can agree during the course of negotiations who will bear the cost of the trustee. The consent order entered into by the government and the Teamsters called for all expenses and costs of implementing the consent order to be paid by the union.

V. RICO IN PRIVATE HANDS

The government, having established most of the ground rules for criminal and civil RICO actions against labor organizations, has left a well marked path for private actions against labor organizations. It is against that backdrop that Randy M. Mastro made a sales pitch to the private sector.

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196. Id. at 209.
197. Id.
199. Id. at 1208. Additionally, in the case of Local 560, the court rejected the union’s argument that it could not afford to pay the fees because the union had not put forth any specific evidence that it could not make the payment for the trustee. Id. at 1209. The court also found that the fee of $150 per hour was reasonable and necessary for the services the trustee provided. Id.
200. Goldberg, supra note 127, at 999 (citing the Teamsters’ consent order).
A. Mastro: "You Too Can Sue a Union"

During the summer of 1991, Mastro, a former Assistant United States Attorney and Deputy Chief of the Civil Division of the Office of the United States Attorney for the Southern District of New York, wrote an article explaining how the government had successfully prosecuted civil RICO actions against labor unions to show how private litigants might use civil RICO actions "to achieve similar equitable reform of labor unions." Mastro begins by stating that the use of equity in civil RICO is an "extraordinary" weapon that has been used "very sparingly," but the caveat is he seems all too willing to place in the hands of employers the responsibility to finish the work the government has begun. A fitting analogy is that of nuclear proliferation. Here there is an "extraordinary" weapon being passed out to employers so that they can interfere with the internal affairs of their adversary collective bargaining partners to achieve "equitable reform." This would clearly poison the collective bargaining relationship and destroy the balance that has been created between employers and labor unions. Taken to its extreme, employers could embark on their own litigation to emplace a trustee of their own choice, while making the union pay for the cost of litigation through the award of attorney fees, treble damages, and payment of the trustee.

However, for all the incentives mentioned by Mastro, such as treble damages and attorney fees, there are some precautions given on RICO's use. The jurisdictional cautions which are given address the split present in the circuit courts regarding whether private litigants can obtain equitable relief under RICO. In the end, however, Mastro's position is clear. RICO on its face allows any litigant to seek equitable relief because Section 1964(a) does not mention any limitation on equitable actions brought by private plaintiffs.
...Indeed, Mastro argues that the inclusion of the government in that section of the statute was only to ensure that the government had standing to seek relief.\textsuperscript{208} Despite the fact that Congress had failed to pass an earlier version of RICO that had specific language expressly authorizing equitable relief for private litigants, Mastro firmly believes that there was no reason for Congress to include such a section "because the statutory language already clearly granted that authority."\textsuperscript{209}

B. The Federal Circuits' Split Regarding Private Use of RICO's Equitable Power

The question of whether or not civil RICO allows private plaintiffs injunctive relief has produced a lot of disagreement amongst the courts.\textsuperscript{210} This apparent schism has its roots in the civil remedy section of the RICO statute.\textsuperscript{211} Section 1964(a) grants the courts broad remedial powers, Section 1964(b) clearly allows the government to seek equitable relief, and Section 1964(c) pertains to private parties and contains no explicit grant of equitable relief.\textsuperscript{212}

There is no controlling federal case law on whether or not private plaintiffs are prohibited from seeking equitable relief under civil RICO. Indeed, in \textit{Sedima, S.P.R.L. v. Imrex Co.},\textsuperscript{213} the Second Circuit reviewed the legislative history of Section 1964(c) and concluded in dicta that it "seems altogether likely that [section] 1964(c) ... was

\begin{itemize}
\item \textsuperscript{208} Mastro, \textit{supra} note 2, at 637.
\item \textsuperscript{209} Mastro, \textit{supra} note 2, at 638-39.
\item \textsuperscript{210} \textit{See} Lincoln House, Inc. \textit{v. Dupre}, 903 F.2d 845 (1st Cir. 1990) (holding that whether injunctive relief is available or not in a private civil RICO action is an open question); Religious Technology Ctr. \textit{v. Wollersheim}, 796 F.2d 1076 (9th Cir. 1986) (holding that the plain meaning of the words of the statute and the legislative history of the statute clearly shows that injunctive relief is not available to the private plaintiff), \textit{cert. denied}, 479 U.S. 1103 (1987); \textit{Sedima, S.P.R.L. v. Imrex Co.}, 741 F.2d 482 (2d Cir. 1984) (concluding in extended dicta that § 1964(c) was not intended to provide private equitable relief), \textit{rev'd on other grounds}, 473 U.S. 479 (1985); Bennett \textit{v. Berg}, 685 F.2d 1053 (8th Cir. 1982) (citing Blakey \& Gettings, \textit{supra} note 33), \textit{on reh'g}, 710 F.2d 1361, \textit{cert. denied}, 464 U.S. 1008 (1983); \textit{Kaushal v. State Bank of India}, 556 F. Supp. 576 (N.D. Ill. 1983) (holding that the fair reading of § 1964(c) limits private plaintiffs to treble damages only); \textit{Aetna Casualty \& Sur. Co. v. Liebowitz}, 570 F. Supp. 908 (E.D.N.Y. 1983) (holding that nothing in § 1964 indicates that a preliminary injunction would be an inappropriate order for the court to issue), \textit{aff'd}, 730 F.2d 905 (2d Cir. 1984).
\item \textsuperscript{211} \textit{See} 18 U.S.C. § 1964.
\item \textsuperscript{212} \textit{Id.}
\item \textsuperscript{213} 741 F.2d 482 (2d Cir. 1984), \textit{rev'd on other grounds}, 473 U.S. 479 (1985).
\end{itemize}
not intended to provide private parties injunctive relief."\textsuperscript{214} However, one must be ever mindful of the Supreme Court's reversal of \textit{Sedima},\textsuperscript{215} especially in light of "the Supreme Court's total rejection of the conclusions drawn by the Second Circuit from its historical analysis of the RICO statute."\textsuperscript{216} Therefore, the precedential value of the \textit{Sedima} decision is questionable.\textsuperscript{217}

However, there is persuasive evidence that a plain meaning reading of the statute would not allow private parties to utilize equitable remedies under RICO.\textsuperscript{218} The Ninth Circuit found it significant that "[t]he language of the treble damages antitrust remedy, section four of the Clayton Act . . . is similar to that of civil RICO. The Supreme Court has explicitly held that the language of section [four] \textit{precludes} private injunctive relief."\textsuperscript{219} The Ninth Circuit went on to note that under the Clayton Act a separate section has been provided which explicitly allows private individuals to move for equitable relief and that RICO provides no such parallel section or provision granting private individuals the right to injunctive relief.\textsuperscript{220} Conversely, Professor Blakey, the principal draftsman of the RICO statute, indicates that equitable relief is available to the private plaintiff.\textsuperscript{221} However, Professor Blakey's opinion that equitable relief is appropriate since there is no clear statutory limitation has drawn criticisms from those who feel that this interpretation violates elementary statutory construction.\textsuperscript{222}

Regardless, even if equitable relief were denied to private plaintiffs in civil RICO actions under Section 1964(c), private plaintiffs could make an argument under Section 1964(a) for the same such

\begin{itemize}
\item \textsuperscript{214} Religious Technology Ctr., 796 F.2d at 1081.
\item \textsuperscript{215} 473 U.S. 479 (1985).
\item \textsuperscript{216} Religious Technology Ctr., 796 F.2d at 1081.
\item \textsuperscript{217} \textit{Id.} Furthermore, private plaintiffs can argue that Congress expressly wanted to have RICO "liberally construed to effectuate its remedial purposes." \textit{Id.} at 1083 (quoting \textit{Sedima}, 473 U.S. at 498). Clearly, its remedial purposes "are nowhere more evident than in the provision of a private action for those injured by racketeering activity." \textit{Id.} (citing \textit{Sedima}, 473 U.S. 479, and United States v. Turkette, 452 U.S. 576 (1981)).
\item \textsuperscript{218} \textit{See Religious Technology Ctr.,} 796 F.2d 1076; Town of W. Hartford v. Operation Rescue, 726 F. Supp. 371 (D. Conn. 1989), vacated, 915 F.2d 92 (2d Cir. 1990).
\item \textsuperscript{219} Religious Technology Ctr., 796 F.2d at 1087 (emphasis in original).
\item \textsuperscript{220} \textit{Id.}
\item \textsuperscript{221} Blakey & Gettings, \textit{supra} note 33, at 1038 nn.132-33. \textit{See also} Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982) (citing Professor Blakey), \textit{cert. denied}, 464 U.S. 1008 (1983).
\item \textsuperscript{222} \textit{See, e.g.,} Kaushal v. State Bank of India, 556 F. Supp. 576 (N. D. Ill. 1983). "[C]urrent Supreme Court doctrine sharply limits the implication of rights of action or remedies where Congress has not provided them." \textit{Id.} at 584. \textit{See also Sedima,} 741 F.2d 482; Religious Technology Ctr., 796 F.2d 1076.
\end{itemize}
equitable relief. Nothing in Section 1964(c) strips the court of its inherent power to grant equitable relief to prevent irreparable injury from prohibited conduct under RICO. Under this rationale, it becomes apparent that the only limits on private plaintiffs' requests for equitable relief are those limits that are already imposed on the courts' traditional powers in equity, such as the prohibitions against injunctive interference against labor organizations set out in the Norris-LaGuardia Act.

C. Frivolous and Abusive Litigation, or Not?

There has been an explosion of civil RICO litigation. This trend is also reflected in the field of labor law. Whether this litigation is largely motivated by the treble damages and attorney fees, or by the desire to inflict a punitive measure upon one's adversary in a collective bargaining relationship, is unclear. However, it is clear that the use of civil RICO by either party poisons the collective bargaining relationship.

1. Attempting to Organize C & W Construction Company

In *C & W Construction Co.*, the plaintiffs, C & W Construction Co. ("C & W"), and individual contractors, brought numerous causes of action against Local 745, including a civil RICO action stemming from the Local's organization campaign of C & W to obtain a union contract in December 1980. However, C & W refused to sign. Then, according to the plaintiff, the union's agent threatened violence and picketing at C & W job sites. The union continued its quest for recognition into January 1981, at which time the union started to picket C & W job sites. In response to the picketing, C & W asked the NLRB to supervise an election of its
employees. An election was held in February 1981 and Local 745 lost.\textsuperscript{229} However, Local 745 allegedly continued its picketing despite the fact that the NLRB sought to have it enjoined.\textsuperscript{230} Indeed, the picketing did not stop until April 1981.\textsuperscript{231} During this time period, C & W accused the union of preventing deliveries of necessary materials, as well as reaching, influencing, and coercing suppliers who had contracts with C & W.\textsuperscript{232} This caused delays, increased costs and loss of jobs.\textsuperscript{233}

The court then applied the RICO elements to C & W's allegations.\textsuperscript{234} Here, the person element was directed at the defendants, both the union and its officers. The plaintiffs pleaded C & W and its suppliers as the enterprise which had been affected.\textsuperscript{235} The court found that the plaintiffs had not adequately identified the enterprise, stated whether the enterprise was a continuing operation, nor showed that the predicate acts served a common purpose.\textsuperscript{236} The alleged predicate acts fell into three categories: obstruction of justice, mail and wire fraud, and the Hobbs Act violation.\textsuperscript{237} The obstruction of justice stemmed from alleged perjury presented in defendants' affidavits to the district court regarding the NLRB lawsuit.\textsuperscript{238} The court noted that perjury had not been uniformly held to be a predicate act for the purposes of RICO by federal courts.\textsuperscript{239} However, the court would not conclude that perjury could never be a predicate act for

\begin{itemize}
  \item \textsuperscript{229} Id.
  \item \textsuperscript{230} Id.
  \item \textsuperscript{231} Id.
  \item \textsuperscript{232} Id.
  \item \textsuperscript{233} Id.
  \item \textsuperscript{234} In its discussion of the RICO claim the court stated:
    
    \begin{quote}
    [A] plaintiff suing under civil RICO must allege:
    1. The defendant ("person" in terms of RICO)
    2. through the commission of two or more timely acts (i.e., within 10 years)
    3. constituting a "pattern"
    4. of "racketeering activity"
    5. directly or indirectly invests, maintains and [sic] interest in, or participates in
    6. an "enterprise"
    7. the activities of which affect interstate (or foreign) commerce
    8. "by reason of" which the plaintiff was injured in his business or property.
    \end{quote}
  \item \textsuperscript{235} Id. at 1465.
  \item \textsuperscript{236} Id. at 1466.
  \item \textsuperscript{237} Id. at 1470.
  \item \textsuperscript{238} Id. at 1466.
\end{itemize}
the purpose of RICO. Furthermore, the court would not narrow the interpretation of predicate acts because both the Supreme Court and the Ninth Circuit had stated that "RICO was to be read broadly."240 Therefore, perjury would be a predicate act only if it were part of a larger pattern of racketeering activity.241 However, the court was quick to dismiss the mail and wire fraud claims because there was no direct or indirect reference to a misrepresentation, or "no specific intent to defraud."242 The court found that the union was straightforward and candid with its demands, both to the employers and the employees.243 However, the court distinguished the activity of Local 745, particularly the threatened violence against C & W job sites, from protected activity regarding legitimate collective bargaining objectives.244 Consequently, because of the prohibitory nature of the secondary boycott, the court found that the alleged violations of the Hobbs Act supported the pattern of racketeering activity requirement.245 In so doing, the court found that the plaintiff's allegations were satisfied because the prohibited activities affected interstate commerce and resulted in injury.246 The RICO claim was dismissed with leave to file a motion to amend.247

What was clearly omitted from the C & W court's decision, and its analysis, was any form of investigation into the congressional intent behind RICO, such as fighting the takeover of legitimate businesses and unions by organized crime.248 The court never connected the fact that Section 1961 of RICO specifically addresses only two sections of Title 29 of the United States Code.249 In addition, neither of the two sections that the court cited250 were specifically within RICO's scope and one was not even punitive to the offender outside of being charged with unfair labor practices under the National Labor
Relations Act ("NLRA").

2. Recognizing Yellow Bus Lines

In the fall of 1981 James Woodward, a business agent for Drivers, Chauffeurs & Helpers Local Union 639 ("Local 639"), staged a strike against Yellow Bus Line, Inc. ("Yellow Bus") to gain recognition as its exclusive bargaining partner. During the course of this campaign, both sides accused the other of making threatening remarks and various acts of violence were allegedly committed. Finally, Woodward was allegedly arrested without cause. Thus, amongst the claims of false arrest, alleged violations of constitutional and statutory rights, and supposed intentional infliction of emotional distress upon the officers of Yellow Bus, the seemingly endless Yellow Bus Lines litigation was launched. Eventually, in 1990 the RICO claims against the union were dismissed by the D.C. Circuit Court of Appeals.

a. Round One: To the Union

Yellow Bus sought treble damages and attorney's fees under civil RICO from both Woodward and the union. Yellow Bus' complaint initially asserted that both Woodward and Local 639 were persons under RICO, and that both engaged in a pattern of racketeering activity to further the enterprise's goal of unionizing Yellow Bus. In addition, Yellow Bus pleaded that there were many predicate acts. However, the D.C. District Court found that Local 639 was not a suable "person" but was a non-suable RICO "enterprise." In its careful review of RICO cases, the court was per-

251. The district court found that the secondary boycott activity was clearly illegal. Id. See also 29 U.S.C. § 158(b)(4) (regarding secondary boycott activity).
253. One such threat was telling the parents of the children who would ride the bus that the drivers were carrying guns and that the brake lines would be cut. Id. at *5.
254. The tires on six buses were punctured. Id.
255. Id.
256. See Woodward, 1984 WL 2915.
259. Id.
260. Id.
261. Id. at *3.
suaded that the intent of RICO was not to impose civil liability upon a criminal enterprise, but rather to allow monetary recovery only against those persons who had participated in the affairs of an enterprise through a pattern of racketeering activity. Of course, this does not mean that a union can never be sued in this capacity. A union engaged in a pattern of racketeering activity in order to assist an outside criminal organization could, under those circumstances, be considered a person under RICO. However, a RICO enterprise can not simultaneously be a RICO person. Thus, Local 639 was viewed as an enterprise and not a person under the presented circumstances for civil RICO purposes.

Subsequent to the filing of its complaint, Yellow Bus realized this error and sought to amend its complaint, stating that Yellow Bus was the enterprise and that the strike by Local 639, or those acts that made up the strike, was committed in the conduct of Yellow Bus’ affair. Alternatively, Yellow Bus argued that Local 639 and Woodward were in fact a RICO enterprise. However, the court concluded that Yellow Bus was just the setting for the union’s activities and that the amendments came too late to properly defeat the union’s request for summary judgment. In addition, among the predicate acts that Yellow Bus alleged were the unfair labor practices committed by Local 639 in violation of Section 8(b)(4) of the NLRA. Specifically, Local 639’s strike of Yellow Bus was a prohibited secondary boycott activity. However, the court found that

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262. Id. The court never reached the issue of the existence of the qualification of a predicate act.
263. Id.
264. Id. at *4 (citing Rae v. Union Bank, 725 F.2d 478, 481 (9th Cir. 1984)).
265. Id.
266. Id. at *7.
268. Yellow Bus Lines, 883 F.2d at 141.
270. Id. See supra notes 70-76, 278 and accompanying text. Secondary boycotts caused by labor union activity are not criminal per se; nor are there any punitive sanctions available for violating this section of the NLRA. See 29 U.S.C. §§ 151-169 (1988).
the violent nature of the activity that took place during the strike did not transform the acts into secondary boycott activity. Thus, there was no injury, and the RICO claims were temporarily dismissed.

b. Round Two: To the Employer

There came a time when the Supreme Court vacated the earlier decision and remanded the case to the D.C. Circuit for its “consideration in light of the Court’s teaching in H.J. Inc. v. Northwestern Bell Telephone Co.” The D.C. Circuit went on to find that the dismissal of the RICO claim and the denial of leave to amend were in error. In reviewing the defendants’ conduct, the court found that the four alleged direct threats to Yellow Bus’ property and its employees, as well as the alleged acts of vandalism and intimidation, all occurred during a specific time period in pursuit of a single goal. The court went on to state that if the acts could be proven, they could establish “a distinct threat of long-term racketeering activity, either explicit or implicit,” thus apparently fulfilling the pattern requirement of “continuity plus relationship.” Subsequent to the District Court dismissal of Yellow Bus’ RICO claims the Supreme Court’s Sedima decision held that RICO “required no allegation of a separate ‘racketeering injury,’” therefore, the District Court had erred.

However the D.C. Circuit upheld the lower court’s finding that Local 639 was an “enterprise” and not a “person” under the circumstances, and for the purposes of civil RICO. In addition, the court also would not allow Yellow Bus to plead its RICO enterprise “association-in-fact” argument. Nonetheless, the D.C. Circuit did reject the lower court’s overly restrictive interpretation of Section 1962(c), finding the relationship between Local 639 and Yellow Bus had fallen within the scope of activity contemplated by the statute, and stating that the business relationship that Local 639 had with Yellow Bus was “full-fledged . . . [and] not merely a ‘setting’ for

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272. Id. See infra note 278 and accompanying text.
274. Id.
275. Id. at 138.
276. Id. at 145.
277. Id. at 144-45.
278. Id. at 139.
279. Id. at 139-40.
280. Id. at 140-41.
RICO: Panacea Or Bitter Pill?

The union's strike for recognition was activity sufficiently related to Yellow Bus' ongoing role as an enterprise to establish the requisite nexus. Therefore, Yellow Bus was given the opportunity to amend its complaint accordingly and to test its theory.

c. Round Three: A Union TKO

Ten years after Woodward started this four day strike against Yellow Bus for recognition, the D.C. Circuit, sitting en banc, finally concluded that a union merely "conducting a recognition strike against an employer [does not] 'conduct or participate, directly or indirectly, in the conduct of' the employer's affairs within the meaning of section 1962(c)' of RICO. The court stated that "conduct" was synonymous with "management" or "direction," and because "conducting" connotes more than merely "participating in" affairs, Section 1962(c) applied to a defendant "when a defendant, through a pattern of racketeering activity, exercises significant control over or within an enterprise, participating not merely in the enterprise's affairs, but in the conduct of the enterprise's affairs." RICO does not intend to outlaw the commission of all predicate acts, however, RICO does seek to outlaw the commission of those predicate acts that are a fait through which a defendant conducts or participates in the conduct of an enterprise's affairs. Otherwise, conducting or participating in any strike or organizational effort by a labor organization or employ-

281. Id. at 144.
282. Id.
283. Id.
284. Yellow Bus Lines, 913 F.2d at 948-49.
285. Id. at 954 (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 473 (1961)).
286. Id. at 954. Cf. Reves v. Ernst & Young, 113 S. Ct. 1163 (1993). In Reves, the Supreme Court stated that the word "conduct" required some degree of direction and that the word "participate" required "some part in that direction" and with that understanding "the meaning of § 1962(c) comes into focus." Id. at 1170. Therefore, "[i]n order to 'participate, directly or indirectly, in the conduct of such an enterprise's affairs,' one must have some part in directing those affairs." Id. However, "the word 'participate' makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase 'directly or indirectly' makes clear that RICO liability is not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required" Id. (footnote omitted). The "operation or management" test communicates this fundamental condition. Id. However, the Supreme Court disagreed with the court of appeals' recommendation "that § 1962(c) requires 'significant control over or within an enterprise.'" Id. at 1170 n.4.
287. Yellow Bus Lines, 913 F.2d at 955.
ees would be participating conduct in the affairs of any employer. To apply RICO under those circumstances conflicts with the fundamental tenets of federal labor law, which have been delicately crafted to balance the interests of labor and management. Quoting the Supreme Court in Hudgens v. NLRB, the “accommodation between employees’ rights and employers’ property rights... ‘must be obtained with as little destruction of one as is consistent with the maintenance of the other.’” If Congress wanted to alter this balance in such a dramatic way, “it would have done so clearly and unequivocally.” Thus, by striking, Local 639 was acting with interest adverse to Yellow Bus, but was conducting its own affairs. Consequently, the acts of Local 639 did not “constitute the sort of hijacking of Yellow Bus, in the form of acquiring and exercising control over Yellow Bus’s affairs, that the RICO statute was designed to combat.” Further, the union itself had not lost control to any person that caused it to engage in the alleged racketeering activity.

3. Bargaining with Domestic Linen Supply & Laundry

In 1936, the Domestic Linen Supply & Laundry Company (“Domestic”) and the Teamsters “established a collective bargaining unit which included supervisory and managerial employees.” The parameters of the collective bargaining unit changed with the Taft-Hartley Amendments to the NLRA, in which the statutory definition of “employee” excluded persons employed as supervisors. Although supervisory employees were still free to organize and become members of collective bargaining units, employers were not required to recognize them. A union does not commit an unfair labor practice in proposing that supervisors be included in the collective bargaining agreement, but employers are within their rights to refuse to engage in negotiating over supervisors. In addition, the NLRB

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288. Id.
289. Id.
291. Id. at 956.
292. Id. (noting that this event would place the individual within the reach of § 1962(c)).
294. Id. at 1475 (referencing 29 U.S.C. § 152(11)).
296. Id. at 1476 (citing Sakrete of N. Cal., Inc. v. NLRB, 332 F.2d 902, 908 (9th Cir.).
provides a procedure for unit clarification where the propriety of supervisors being included within the unit may be addressed.\textsuperscript{298} However, Domestic never sought clarification of the bargaining unit through this procedure. Rather, Domestic went on as it had previously and continued to recognize the mixed bargaining unit.\textsuperscript{299}

Furthermore, since 1955, the Teamsters had contended that the supervisors were "route relief drivers" who should be included in both the bargaining unit and the pension fund.\textsuperscript{300} In 1960, a heated disagreement arose between Domestic and the Teamsters over the status of the supervisors.\textsuperscript{301} Domestic unilaterally tried to remove the supervisors from the bargaining unit and discontinue paying the supervisor's pension benefits.\textsuperscript{302} The Teamsters responded with a series of wildcat strikes.\textsuperscript{303} Then, during two strikes in 1970 and 1971, the Teamsters allegedly informed the supervisors that if they crossed the picket line they would lose their pension benefits.\textsuperscript{304} However, this disagreement reached its hottest point during the strike of 1986 when Domestic was going to withdraw completely from the pension fund.\textsuperscript{305} It was then that the Teamsters allegedly threatened Domestic, stating that they were ready to put Domestic out of business before they would compromise on the pension issue.\textsuperscript{306} The strike also brought with it alleged threats and actual violence directed at persons and property.\textsuperscript{307} Of all its possible options, Domestic chose to file civil RICO claims against the Teamsters.\textsuperscript{308} The court found that Domestic's decision to pursue a civil RICO action was appropri-
ate because "where the NLRA does not totally preempt competing law, there is no obligation for an aggrieved person to first exhaust [their] administrative remedies before the NLRB, even though the Board could order remedies which could effectively remedy the wrongful conduct."\textsuperscript{309} In addition, because the demand for the inclusion of the supervisors into the bargaining unit was an unfair labor practice, not a legitimate goal, the court held that the violence that occurred during the strike and the threat to put Domestic out of business was not precluded from the Hobbs Act.\textsuperscript{310}

VI. CALCEUS MAJOR SUBVERTIT: ARE RICO'S SHOES TOO LARGE?

The Supreme Court, along with the rest of the legal community, continues to grapple with the complexities of RICO's interpretation. Furthermore, RICO's treble damages and attorney's fees give plaintiffs and their attorneys incentives and excuses to utilize the statute, clearly leading to abuse and overuse. Indeed, even when the government uses civil RICO there can be abuses or mistakes in judgment. Surely not every labor union that the government moves against can be as bad as the union in \textit{Local 560} and deserving of the same degree of punishment. For every Goliath there is a David waiting for the chance to attack. In RICO's case, a union does have stones to cast that may not bring down the giant but may save it from RICO's grasp.

A. Constitutional Attack: Vagueness

RICO's constitutionality, until recently, had been laid to rest.\textsuperscript{311} In RICO actions, both civil and criminal, the federal courts had "uniformly and rigidly rejected constitutional assaults on the statute."\textsuperscript{312} However, Justice Scalia's concurring opinion in \textit{H.J. Inc. v. Northwestern Bell Telephone Co.} revived the idea that defendants may be

\begin{footnotes}
\item[309] Id. (quoting Linn v. Plant Guard Workers, 383 U.S. 53, 66 (1966)).
\item[310] Id. at 1476-77.
\item[311] Paul A. Batista, \textit{After 'H.J. Inc.': Circuit Review of RICO Part One, N.Y. L.J.,} June 20, 1990, at 3. But cf. Simonoff & Lieberman, \textit{supra} note 6, at 345-46. Simonoff suggests that the Supreme Court's decision in \textit{H.J. Inc.} meant merely that "it is far easier to successfully plead a pattern of racketeering activity than explain what it means." \textit{Id.} at 345. Furthermore, Simonoff contends that the Supreme Court only decided "that multiple schemes/victims were not a necessary perquisite to finding a racketeering pattern . . . ." \textit{Id.} at 346.
\item[312] \textit{Id.}
\end{footnotes}
able to launch a credible constitutional challenge against RICO.\textsuperscript{313}

1. Justice Scalia’s Invitation

The constitutional weakness in RICO to which Justice Scalia speaks is RICO’s pattern requirement which may be unconstitutionally vague.\textsuperscript{314} In \textit{H.J. Inc.}, the Supreme Court reaffirmed RICO’s pattern of racketeering requirement of continuity plus relationship producing a pattern, and stated that continuity was both a closed and open-ended concept. Justice Scalia was quick to criticize this idea, expressing that he had no idea what a closed period of repeated conduct meant.\textsuperscript{315} However, Justice Scalia was unable to provide an interpretation of RICO’s pattern requirement that would give any more guidance regarding its application.\textsuperscript{316} Consequently, he warned that this “bodes ill for the day” when the constitutional vagueness challenge is presented to the Supreme Court.\textsuperscript{317} This warning is especially significant because “the Supreme Court said that RICO must be read expansively, not narrowly, to give effect to the language of the statute, even if Congress may not have intended the result.”\textsuperscript{318} The trend has been that judicial interpretations have effectively broadened the scope of RICO.\textsuperscript{319}

2. Firestone v. Galbreath

The first clear crack in RICO, which has yet to be fully repaired, occurred in the case of \textit{Firestone v. Galbreath}.\textsuperscript{320} In \textit{Firestone}, the

\begin{itemize}
\item \textsuperscript{314} Id. at 241-42.
\item \textsuperscript{315} Id. (Scalia, J., concurring).
\item \textsuperscript{316} Id.
\item \textsuperscript{317} Id.
\item \textsuperscript{318} Edward Brodsky, \textit{Civil RICO — The Proposed Amendments}, N.Y. L.J., Nov. 9, 1990, at 3 (emphasis added) (noting that RICO’s legislative history did not indicate that the statute was designed to expand the scope of securities laws, and citing Securities Investor Protection Corp. v. Vigman, 908 F.2d 1461 (9th Cir. 1990), which held that there is no purchaser-seller requirement in a RICO civil securities fraud action). The Supreme Court has acknowledged that civil RICO has been applied under circumstances not specifically addressed or anticipated by Congress, however, the Supreme Court has stated that this is a manifestation of civil RICO’s breadth, not its ambiguity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985). The Supreme Court has also stated that if this is a defect, it “is inherent in the statute as written, and its correction must lie with Congress.” Id.
\item \textsuperscript{319} Brodsky, supra note 318.
\item \textsuperscript{320} 747 F. Supp. 1556 (S.D. Ohio 1990), aff’d on other grounds, 976 F.2d 279 (6th Cir. 1992). The court of appeals did not pass upon the constitutional aspects of the RICO claim because adjudication of that claim was not necessary; however, it did state that the
\end{itemize}
Southern District of Ohio took up Justice Scalia's invitation by declaring RICO's "pattern of racketeering activity" requirement unconstitutionally vague.\(^{321}\) The court noted that for a statute to be unconstitutionally vague it must fail "to give a person of ordinary intelligence fair notice that [their] contemplated conduct is forbidden by the statute."\(^{322}\) The conduct of that individual is examined against the facts of that particular case, and if the statute is vague to that individual under those circumstances, that individual has standing to challenge that statute or provisions therein.\(^{323}\) Unlike other courts that have also had defendants urge them to take up Justice Scalia's invitation,\(^{324}\) the Firestone court found that the defendants had standing to challenge the statute.\(^{325}\)

The Firestone defendants' accountants and attorneys found themselves enmeshed in their client's family dispute over a relative's remaining estate.\(^{326}\) A situation "in all likelihood far removed from the typical situations which Congress envisioned as being within RICO's scope of coverage."\(^{327}\) The court concluded that individuals of ordinary intelligence in the defendants' circumstances, facing a family dispute, would not have had adequate notice that the alleged offenses complained of would constitute a pattern of racketeering.\(^{328}\) The court found that the pattern of racketeering requirement was unconstitutionally vague as applied to these defendants, and persuaded by Justice Scalia's suggestion, went on to declare that RICO's pattern of racketeering element was unconstitutionally vague as written.\(^{329}\)

However, Firestone did not create a fire-storm to envelop RICO or any part or provision therein. Rather, the reviewing court allowed the flame to go out, at least for now. The Sixth Circuit in its


\(^{322}\) Id. at 1580 (citing United States v. Harriss, 347 U.S. 612, 617 (1954)).

\(^{323}\) Id.


\(^{325}\) Firestone, 747 F. Supp. at 1581.

\(^{326}\) Id.

\(^{327}\) Id. Cf. United States v. Angiulo, 897 F.2d 1169, 1179 (1st Cir. 1990) (ruling that defendants faced with situations of gambling, loan-sharking and conspiracy would have adequate notice that their conduct would be prohibited by the statute). It remains an open question as to whether employees exercising their § 7 rights under the NLRA would have adequate notice that their conduct might be prohibited under RICO.

\(^{328}\) Firestone, 747 F. Supp. at 1581 (mail and wire fraud, interstate transportation of stolen property and money laundering).

\(^{329}\) Id.
Firestone decision found that the District Court was correct, insofar as that the plaintiffs had failed to plead the RICO claims properly.\(^3\) The grandchildren in that action lacked standing to bring RICO claims.\(^3\) However, the Sixth Circuit found that it was unnecessary and undesirable to pass upon the constitutional aspects of the RICO claim and expressly distanced itself from that portion of the lower court's decision.\(^3\) Thus, for the moment, Firestone stands alone\(^3\) with no hope of being vindicated in the near future, despite Justice Scalia's open invitation. Clearly, each and every time an employer or the government raises the RICO sword to a labor organization, this argument must now be included.

B. The First Amendment Attack

The First Amendment attack upon RICO is an attack against Congress' limiting of union members' rights of association. The Supreme Court, as far back as 1921, has declared that the "right of employees to self-organization [is] a "fundamental right," which includes the right of employees to organize and select their own representatives.\(^3\) Indeed, the national labor policy has been to encourage "the practice and procedure of collective bargaining and [to protect] 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 or protection."\(^3\)

The statute that has reached the furthest with respect to limitations on the association of union members is the Landrum-Griffin Act, which forbids access to union offices by convicted felons and authorizes their removal upon conviction.\(^3\) However, "there is no
precedent in either statute or case law for removing from office the legally elected officers of a union for having condoned a situation which demonstrably results in a pattern of racketeering and corruption." To have such a procedure, which is nothing more than a shortcut to investigation and prosecution, would clearly appear to violate one's constitutional right to association.

This is the exact course of action that the government takes each and every time it asks to have a RICO trustee installed into union office, while using its aiding and abetting approach. In addition, the government argues that the First Amendment does not protect any right in association or speech that takes place in order to carry out unlawful activity. Because Congress had the constitutional power


337. Mangum, supra note 35, at 102.
338. Mangum, supra note 35, at 103.
339. See supra note 53 and accompanying text.
340. Mastro, supra note 2, at 616-17 (citing United States v. O'Brien, 391 U.S. 367 (1968)). The Supreme Court stated that when speech and non-speech combine in the same course of conduct, a sufficiently important governmental interest in regulating the non-speech element can justify incidental limitation on First Amendment freedoms; but the government's course of conduct must be to (1) further an important or substantial governmental interest, and (2) the governmental interest must be unrelated to the suppression of free expression, and (3) the incidental restriction on the First Amendment freedom must be no greater than is essential for the furtherance of that interest. Id. See Northeast Woman's Ctr., Inc. v. McMonagle, 868 F.2d 1342 (3d Cir. 1989), cert. denied, 493 U.S. 901 (1990). Anti-abortion activists could be liable under RICO for their intimidation and harassment of an abortion center resulting in destruction of the center's property, and they were not protected on the ground that their actions were motivated by their political beliefs. Id. "The First Amendment, which guarantees individuals freedom of conscience and prohibits governmental interference with religious beliefs, does not shield from government scrutiny practices which imperil public safety, peace or order." Id. at 1348. Furthermore, despite the absence of any economic motivation on the part of defendants, the Third Circuit upheld RICO liability. Id. But see, United States v. Ivic, 700 F.2d 51 (2d Cir. 1983) (stating that RICO enterprise or predicate acts must have financial purpose); United States v. Flynn, 852 F.2d 1045 (8th Cir.), cert. denied, 488 U.S. 974 (1988) (stating that RICO enterprise must be directed towards an economic goal). See NOW v. Scheidler, 114 S. Ct. 798 (1994). In NOW, the Supreme Court found that the enterprise referred to in §§ 1962(a) and (b) "is the victim of unlawful activity and may very well be a 'profit-seeking' entity that represents a property interest . . . ." Id. at 804. However, this statutory language does not "mandate that the enterprise be a 'profit-seeking' entity, it simply requires that the enterprise be an entity that was acquired through illegal activity or the money generated from illegal activity." Id. Further, the Supreme Court also found that if the enterprise referred to in § 1962(c) "is not being acquired, it need not have a property interest that can be acquired nor an economic motive for engaging in illegal activity; it need only be an association in fact that engages in a pattern of racketeering activity." Id. (footnote omitted). It is worth noting that employees and union members exercising their § 7 rights for higher wages or better benefits are not criminally extorting money, there-
to enact RICO, and RICO litigation serves the very important public interest of eliminating organized crime and racketeering activity, a public interest is served which is unrelated to the suppression of freedom of expression. For this reason RICO should be able to withstand any First Amendment challenges. Indeed, the government feels that the First Amendment does not immunize racketeering activities just because those activities include association or speech, and the only idea that may possibly be suppressed is that crime pays.

However, Justice Souter stated in a recent Supreme Court decision, National Organization for Women v. Scheidler, "that RICO actions could deter protected advocacy and... courts applying RICO [are cautioned] to bear in mind the First Amendment interest that could be at stake." Furthermore, RICO has the authority to allow the court to "prohibit[] any person from engaging in the same type of endeavor as the enterprise engaged in..." The sad irony is that the Norris-LaGuardia Act provides adequate protection to prevent a union, a union officer, or a union member from being held liable or responsible for unlawful acts of individual union officers or members, except upon clear proof of actual participation. However, RICO uses a preponderance of the evidence standard of proof. In addition, RICO has gone further in some cases, holding "that a union may be.

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341. See Mastro, supra note 2, at 616-20. However, RICO “does not bar First Amendment challenges to RICO’s application in particular cases.” NOW v. Scheidler, 114 S. Ct. 798, 806 (1994) (Souter, J., concurring).

[L]egitimate free-speech claims may be raised and addressed in individual RICO cases as they arise. Accordingly, it is important to stress that nothing in the Court’s opinion precludes a RICO defendant from raising the First Amendment in its defense in a particular case. Conduct alleged to amount to Hobbs Act extortion, for example... may turn out to be fully protected First Amendment activity, entitling the defendant to dismissal on that basis. And even in a case where a RICO violation has been validly established, the First Amendment may limit the relief that can be granted against an organization otherwise engaging in protected expression.

Id. at 807 (citations omitted).

342. Trade Waste Management Ass’n v. Hughey, 780 F.2d 221, 238 (3d Cir. 1985).


346. “It is not necessary that the defendant has been convicted of a criminal offense that forms the predicate act or even that he/she has been criminally charged. It is only necessary that the defendant in fact committed the acts for which he/she could have been criminally charged.” Simonoff & Lieverman, supra note 6, at 340 (emphasis in original) (citing Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 480, 493 (1985)). See supra note 8.
held vicariously liable under RICO for the wrongful conduct of its president.\textsuperscript{347} However, vicarious liability is limited in application to when the union is named as a defendant, or as a person as opposed to an enterprise.\textsuperscript{348}

VII. CONCLUSION

RICO does not exist in a vacuum and can substantially and materially affect the interests of labor unions, union democracy, and the collective bargaining process. Indeed, there has been much praise when RICO, in the hands of the government, is used to positively affect those interests by stabilizing and removing labor racketeering elements from the union and ensuring that the rights of workers are secured by democratic means. Consequently, the goals of civil RICO, as used by the government, have been stated clearly and demonstrated accordingly. The government follows RICO's statutory intent by pursuing and dealing with the unlawful activities of those engaged in organized crime and their infiltration and takeover of legitimate labor unions. It is bitter medicine that is necessary, but whose long term effects may be merely equivocal and temporal.\textsuperscript{349}

However, there are different results when civil RICO is used by employers. Indeed, the possibilities of being awarded treble damages and attorney's fees may blind the private users to RICO's true purpose. Surely the RICO statute, like the Hobbs Act, was not intended to stand watchman over labor organizations' conduct of strikes, organizational campaigns, collective bargaining, or any other lawful use of self interest. Additionally, theories of vicarious liability and the use of injunctions by the private sector upset that delicate balance that has been struck by Congress between labor and management.

Therefore, private civil RICO actions in the field of labor relations should be proscribed. Such a bright-line rule would leave the government with the power to combat organized crime and labor racketeering, and ensure union democracy, while not de-stabilizing the balance between employers and labor organizations which has been created and maintained by the Norris-LaGuardia, Wagner, Taft-

\textsuperscript{347} Peter R. Schlam & Ahuva Genack, \textit{Union's Vicarious Liability Under RICO}, N.Y. L.J., Oct. 12, 1990, at 3 (discussing the decision in \textit{Amendolare v. Schenkers Int'l Forwarders Inc.}, 747 F. Supp. 162 (E.D.N.Y. 1990), in which members of Teamsters Local 295 brought a civil action against their local, its officers and other entities).

\textsuperscript{348} Schlam & Genack, \textit{supra} note 347, at 3.

\textsuperscript{349} \textit{See} supra notes 150-53, 163-69, 178-90 and accompanying text.
Hartley, and Landrum-Griffin Acts.

Steven T. Ieronimo