

A Brief Overview of Federal Racketeering Laws in the United States

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Major Areas of Economic Activity for Organized Crime

- Narcotics trade.
- Prostitution.
- Illegal immigration.
- Illegal sale of alcoholic beverages, cigarettes, weapons and gasoline (tax avoidance).
- Credit card fraud.
- Illegal money lending.
- Insurance fraud and protection rackets

Framework for U.S. Racketeering Legislation

While there is federal legislation specifically dealing with racketeering (and organized crime), some U.S. States use non-specialized statutes, such as for criminal conspiracy for prosecuting crimes committed by organized crime groups, while other States have their own racketeering statutes.

This presentation focuses on the federal “Racketeering Influenced and Corrupt Organizations” (RICO) statute, enacted in 1970 as Title IX of the Organized Crime Act of 1970, and codified at 18 U.S.C. §§ 1961-1968 {Title 18, U.S. Code, Sections 1961 through 1968}.

This statute was developed principally for combating organized crime, but is also used against white collar (financial fraud/securities fraud) and even possibly against Catholic priests for sexual abuse of minors). Interplay with Sarbanes-Oxley Act may be important.

Principal Federal Actors

- Local U.S. Attorneys (one in each federal judicial district within the U.S.)
- Department of Justice's Organized Crime and Racketeering Section (OCRS)

Civil RICO, 18 U.S.C. §1962 (a) – (c)

- To state an actionable RICO claim under 18 U.S.C. §1962, a private plaintiff must plead seven elements:
 - (1) that the defendant
 - (2) through the commission of 2 or more acts
 - (3) constituting a ‘pattern’
 - (4) of ‘racketeering activity’
 - (5) directly or indirectly invests in, or maintains an interest in, or participates in
 - (6) an ‘enterprise’ [undertaking]
 - (7) the activities of which affect interstate or foreign commerce

Plaintiff seeks treble monetary damages,

- The RICO statute defines an “enterprise” as “any individual, partnership, corporation association, or other legal entity and any union or group of individuals associated in fact although not a legal entity. 18 U.S.C. §1961 (c).

Basic Concepts in RICO

- RICO provides for severe criminal and civil penalties for persons who engage in a “pattern of racketeering activity” or “collection of an unlawful debt” and who have a specified relationship to an “enterprise” that effects interstate commerce.
- Under the statute, “racketeering activity” includes state offenses involving murder, robbery, extortion, and several other serious crimes punishable by imprisonment for more than one year and more than 70 serious federal crimes including extortion, interstate theft, narcotics violations, mail fraud, securities fraud, currency reporting violations and certain immigration offenses when committed for financial gain.

Basic Concepts (cont'd)

- A “pattern” may be comprised of any combination or two or more of these state or federal crimes committed within a statutorily defined time period.
- The “predicate acts” must be related and constitute part of a pattern of continued criminal activity.
- An “unlawful debt” is a debt that arises from illegal gambling or loan-sharking activities.
- An “enterprise” includes any of the following: individual, partnership, corporation, association or other legal entity, and any group of individuals associated in fact although not a legal entity.

The Concept of “Act or Threat”

- 18 U.S.C. § 1861(1)(A) defines racketeering as “any act or threat, involving murder, kid-knapping, extortion, dealing in obscene matters, or in dealing in controlled substances or listed chemicals (as defined by the Controlled Substances Act), which is chargeable under state law and punishable by prison for more than one year. The words “act or threat” have been construed broadly by federal courts. An accessory after the fact, however, does not count as a predicate offense. In contrast, one who aids and abets the commission of a federal offense is treated as if he committed the crime as a principal and thus may be charged under RICO for an enumerated offense.
- Note that an offense must be punishable by prison for more than one year at the time it was committed – no retroactivity.
- Also important is that the individual need not be actually charged and convicted under state law for an offense to serve as a predicate to a RICO indictment.

Illustrative Federal Predicate Offenses

- Travel Act, 18 U.S.C. § 1952.
- Mail & Wire Fraud, 18 U.S.C. § 1341.
- Obstruction of Justice, 18 U.S.C. §§ 1503-1513.
- Bribery, 18 U.S.C. § 201.
- Counterfeiting, 18 U.S.C. §§ 471-73.
- Identity Fraud, 18 U.S.C. § 1028.
- Sale and Receipt of Stolen Goods, 18 U.S.C. § 2315.

RICO Provides for 4 Criminal Violations

- §1862(a) investing the proceeds of a pattern of racketeering activity or from collection of an unlawful debt in an enterprise affecting interstate commerce.
- §1862(b) acquiring or maintaining an interest in an enterprise affecting interstate commerce through a pattern of racketeering or collection of an unlawful debt.
- §1862(c) conducting the affairs of an enterprise affecting interstate commerce “through” a pattern of racketeering activity or through the alternative theory of collection of an unlawful debt.
- §1862(d) conspiring to commit §1862(a) –c, above.

Major Amendments to Original Law

- In 1978, amended to add as predicate act cigarette bootlegging.
- In 1984, amended to add as predicate acts dealing in obscene matters, currency violations, and certain automobile-theft violations.
- In 1986, added provisions relating to tampering with and retaliating against witnesses, victims or informants, money laundering and forfeiture of substitute assets.
- In 1988, amended to provide for life sentence where predicate offense also carried life sentence and added new predicate offenses: murder for hire, sexual exploitation of children, certain narcotics offenses.
- In 1996, Civil RICO could not be predicated on the purchase or sale of securities, but could be based on immigration fraud and alien smuggling as well as various infringements on intellectual property.

Civil Remedies

- §1864(a) permits the US to obtain any appropriate relief to prevent and restrain any RICO violations, including divestiture or, subject to the rights of innocent persons, dissolution of an enterprise and injunctions against further violations – i.e. very broad.
- §1864(c) allows for treble damages, plus the cost of the suit and attorneys' fees – usually not available under US legal system (noted above).

State Anti-Organized Crime Legislation

- Some but not all states have the equivalent of anti-racketeering statutes. Many rely on the use of criminal conspiracy statutes.
- Most law enforcement activity has related to narcotics, illegal trade in weapons and alcohol, prostitution, gambling, money laundering, illegal migration.
- Major Web Sites Containing State Criminal or Penal Codes:
California:
<http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=&hits=20>
New York:
<http://assembly.state.ny.us/leg/?cl=82>
Illinois:
<http://www.legis.state.il.us/ilcs/ch720/ch720actstoc.htm>

Illustrative RICO Statistics

TOTAL DEFENDANTS IN CASES FILED	1995	1996
RACKETEERING TOTAL	779	556
Arson	2	--
Bribery	8	4
Extortion	2	14
Gambling	9	5
Liquor	10	10
Narcotics	62	26
Prostitution	13	3
Murder	62	142
Conspiracy/Murder/Conspiracy	9	5
Money Laundering	413	190
Murder (1 st Degree)	1	3
Robbery	10	9
Extortion Credit Transactions	71	39
Threats	--	7
Other	107	99
Source: U.S. Justice Federal Statistics Data Base, Nov. 2001		

Racketeering and Extortion Statistics, U.S. Department of Justice, Compendium of Justice Statistics for 1999, published 2001, p. 56

Total Defendants	1,099
% of Defendants Convicted	88.7%
Total	975
Guilty Plea	865
Nolo Contendre	0
Jury Trial	101
Non-Jury Trial	9
Not Convicted Total	124
Dismissed (Trial)	105
Dismissed Jury (includes mistrials)	17
Dismissed Non-Jury	2

Practical Consequences: Why are There So Few RICO Cases?

- Plea bargaining to lesser crimes is common.
- It is often hard to prove a RICO case because of the difficulty of getting the cooperation of witnesses.
- Organized crime groups not only will kill or threaten potential witnesses, but also often don't keep written records.
- Law enforcement is more successful bringing cases against organized crime for tax evasion and money laundering.
- Punishment for tax evasion and money laundering (and conspiracy to commit both offenses) are not as great as for RICO, but at least the offenses are easier to prove.

State Statistics Are Difficult to Compare without Thorough Analysis

- There is a lack of uniformity in the manner in which a crime is categorized and prosecuted.
- Note that there is considerable variation in reporting behavior by citizens and government officials in the area of criminal statistics.
- Certain State Web Sites providing Criminal Statistics:
 - + California:
<http://caag.state.ca.us/cjsc/>
 - + Illinois:
<http://www.icjia.org/public/index.cfm>
 - + New York:
<http://criminaljustice.state.ny.us/crimnet/ojsa/areastat/areast.htm>

USA Patriot Act: Terrorism as a Form of Organized Crime

- After the events of September 11, 2001, the U.S. adopted a new law which introduced changes in many laws concerning the struggle with terrorism. The Law establishes special courts for the examination of cases involving persons who are not U.S. citizens, who are accused of undertaking or conspiring to undertake terrorist acts.
- The USA Patriot Act establishes new anti-money laundering laws and grants extensive powers to the U.S. Attorney General, Those rules which are highly controversial such as the right to detain foreign citizens and persons without citizenship, simplified procedures for introducing wire taps and other preventive measures. The most controversial of these provisions are temporary and will lose force in a set period unless re-adopted by Congress and signed by the President.