# FROM THE MAFIA TO MILKING COWS: STATE RICO ACT EXPANSION

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## I. INTRODUCTION

When the Racketeer Influenced and Corrupt Organizations Act ("RICO") was drafted as part of the Organized Crime Control Act of 1970, Congress described its purpose as an attack on a "highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct...."[1] RICO was enacted as part of an effort to deal with organized crime, and it included enhanced criminal penalties[2] and civil sanctions[3] for those who acquire or operate an enterprise through a pattern of racketeering activity. Prior to its enactment, the Department of Justice and its many regional United States Attorneys had no legislation to pursue complex criminal organizations. Instead, federal prosecutors were limited to individual prosecutions with little or no impact on the strength of the criminal enterprise.[4]

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1. Racketeer Influenced and Corrupt Organizations Act of 1970, Pub. L. No. 91-452, 84 Stat. 922 (codified as amended at 18 U.S.C. §§ 1961–1968 (1994 & Supp. III 1997)).

2. 18 U.S.C. § 1963 (1994). Among RICO's enhanced criminal penalties are a fine of up to $25,000, imprisonment of up to twenty years, or both, and forfeiture of any interest acquired or maintained in violation of the act. *See id.*

3. 18 U.S.C. § 1964 (1994 & Supp. III 1997). Among RICO's civil penalties are divestment, imposition of restrictions, orders of dissolution or reorganization, treble damages, and reasonable attorney's fees. *See, e.g.*, United States v. Bonanno Organized Crime Family, 683 F. Supp. 1411, 1445 (E.D.N.Y. 1988)

> The point was repeatedly made [during Congressional hearings on RICO] that conviction and imprisonment of the perpetrators of organized crime were not sufficient to deter or curtail organized criminal activities since the incarcerated individuals were merely replaced with other members of the criminal enterprise while the economic base of the enterprise remain untouched.

*Id.*

4. *See* UNITED STATES GENERAL ACCOUNTING OFFICE, EFFECTIVENESS OF THE GOVERNMENT'S ATTACK ON LA COSA NOSTRA 14 (1988). ("Prior to the passage of [RICO], attacking an organized criminal group was an awkward affair. RICO facilitated the prosecution of a criminal group involved in superficially unrelated criminal ventures and

Since its enactment, RICO has grown into a tool which has gone far beyond its original organized crime limitation.[5] In the nearly thirty years since Congress passed RICO, thirty states have enacted similar legislation to deal with crimes within their jurisdictions.[6] In passing their own statutes, these states have

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enterprises connected only at the usually well-insulated upper levels of the organization's bureaucracy.").

5. *See* Kentucky Laborers Dist. Council Health and Welfare Trust Fund v. Hill & Knowlton, Inc., 24 F. Supp. 2d 755, 770 (W.D. Ky. 1998) (acknowledging that plaintiffs stated a proper claim under civil RICO § 1964(c) where the defendant tobacco companies conspired to shift the cost of health care for victims of its products to the plaintiffs); National Org. for Women, Inc. v. Scheidler, 510 U.S. 249, 262 (1994) (allowing women's' rights organization and abortion clinics to file a RICO action alleging that the defendants were members of nationwide conspiracy to shut down abortion clinics through a pattern of racketeering activity).

6. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, LOCAL PROSECUTION OF ORGANIZED CRIME: THE USE OF STATE RICO STATUTES 3 (1993). *See generally*, Arizona Racketeering Act, ARIZ. REV. STAT. §§ 13-2301 to -2318 (1998); California Control of Profits of Organized Crime Act, CAL. PENAL CODE §§ 186–186.8 (West 1998); Colorado Organized Crime Control Act, COLO. REV. STAT. ANN. §§ 18-17-101 to -109 (West 1999); Corrupt Organizations and Racketeering Act (CORA), CONN. GEN. STAT. ANN. §§ 53-393 to -403 (West 1994 & Supp. 1999); Delaware Racketeer Influenced and Corrupt Organizations Act, DEL. CODE ANN. tit. 11, §§ 1501–1511 (1995 & Supp. 1998); Florida RICO (Racketeer Influenced and Corrupt Organization Act), FLA. STAT. ANN. §§ 895.01–.09 (West 1994 & Supp. 1999); Civil Remedies for Criminal Practices Act, FLA. STAT. ANN. §§ 772.101–.190 (West 1997 & Supp. 1999); Georgia RICO (Racketeer Influenced and Corrupt Organizations) Act, GA. CODE ANN. §§ 16-14-1 to -15 (Harrison 1998 & Supp. 1999); Organized Crime Act, HAW. REV. STAT. §§ 842-1 to -12 (1993 & Supp. 1998); Racketeering Act, IDAHO CODE §§ 18-7801 to -7805 (1997 & Supp. 1999); Narcotics Profit Forfeiture Act, 725 ILL. COMP. STAT. ANN. § 175/1–9 (West 1992 & Supp. 1999); Racketeer Influenced and Corrupt Organizations Act, IND. CODE ANN. §§ 35-45-6-1 to -2 (Michie 1998); Louisiana Racketeering Act, LA. REV. STAT. ANN. §§ 15:1351–1356 (West 1992 & Supp. 1999); Criminal Enterprises Act, MICH. STAT. ANN. §§ 28.356F–.356X (Law. Co-op. 1999); MINN. STAT. ANN. §§ 609.901–.912 (West Supp. 1999); Racketeer Influenced and Corrupt Organization Act, MISS. CODE ANN. §§ 97-43-1 to -11 (1994); Racketeering Act, NEV. REV. STAT. ANN. §§ 207.350–.520 (Michie 1997 & Supp. 1997); New Jersey RICO (Racketeer Influenced and Corrupt Organizations) Act, N.J. STAT. ANN. §§ 2C:41-1 to -6.2 (West 1995); Racketeering Act, N.M. STAT. ANN. §§ 30-42-1 to -6 (Michie 1997 & Supp. 1999); Organized Crime Control Act, N.Y. PENAL LAW §§ 460.00–.80 (McKinney 1989 & Supp. 1999); North Carolina Racketeer Influenced and Corrupt Organizations Act, N.C. GEN. STAT. §§ 75D-1 to -14 (1990 & Supp. 1998); Racketeer Influenced and Corrupt Organizations Act, N.D. CENT. CODE §§ 12.1-06.1-01 to .1-08 (1997); Ohio Corrupt Activities Act, OHIO REV. CODE ANN. §§ 2923.31–.36 (Anderson 1996 & Supp. 1998); Oklahoma Corrupt Organizations Prevention Act, OKLA. STAT. ANN. tit. 22, §§ 1401–1419 (West Supp. 2000); Oregon Racketeer Influenced and Corrupt Organization Act, OR. REV. STAT. §§ 166.715–.735 (1997); Corrupt Organizations Act, 18 PA. CONS. STAT. ANN. § 911 (West 1998); Rhode Island Racketeer Influenced and Corrupt Organization (RICO) Statute, R.I. GEN. LAWS §§ 7-15-1 to -11 (1992 & Supp. 1998); Racketeer Influenced and Corrupt Organization Act of 1989, TENN. CODE ANN. §§ 39-12-201 to -210 (1997); Pattern of Unlawful Activity Act, UTAH CODE ANN. §§ 76-10-1601 to -1609 (1995 & Supp. 1996); Criminal Profiteering Act, WASH. REV. CODE ANN. §§ 9A.82.001–.904 (West 1988 & Supp. 1999); Wisconsin Organized Crime Control Act, WIS. STAT. ANN. §§ 946.80–.88 (West 1996 & Supp. 1998).

gone in two directions. Some states have modeled their statute after the federal statute, but have also imposed an organized crime limitation on it.[7] The majority of states, however, have lifted this organized crime limitation and followed the expansive nature of the federal statute.[8]

This Note serves two purposes. First, this Note serves as a guide to state and federal prosecutors on the various state RICO statutes in comparison with the federal statute. Specifically, this Note will address three key RICO concepts: (1) the organized crime element, (2) the enterprise element, and (3) the pattern element.[9] Second, this Note will touch upon recent state RICO litigation, demonstrating how the majority of states are following the federal RICO statute in moving towards a more expansive application of RICO.

Organized crime is an appropriate starting point for any RICO discussion because the federal statute was originally created to address this problem.[10] This Note contends that with few exceptions, the states have expanded on this implied limitation within RICO. The remaining two concepts are substantive elements unique to RICO. "Enterprise" is a term of art which focuses on businesses maintained through the use of racketeering activity. "Pattern" is also a term of art which requires prosecutors to show that the defendant made continuing efforts to engage in illegal activity. This Note will show the overall parity between state interpretation of these elements and the federal statute.

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7. Those states which have imposed an organized crime limitation on their RICO statutes are: California, New York, Pennsylvania, and Illinois. In these states, only traditional organized criminals like the mafia are prosecuted. *See* CAL. PENAL CODE § 186.1; N.Y. PENAL LAW § 460.00; 18 PA. CONS. STAT. ANN. § 911; 725 ILL. COMP. STAT. ANN. 175/2. Illinois has further limited its statute to activities involving drugs and drug trafficking. *See generally* Illinois Narcotics Profit Forfeiture Act, 725 ILL. COMP. STAT. § 175/1–9 (West 1992 & Supp. 1999).

8. Those states which have followed the expansive nature of federal statute with respect to an organized crime limitation are: Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, Tennessee, Utah, Washington, and Wisconsin. *See* ARIZ. REV. STAT §§ 13-2301 to -2318; COLO. REV. STAT. ANN. §§ 18-17-101 to -109; CONN. GEN. STAT. ANN. §§ 53-393 to -403; DEL. CODE ANN. tit. 11, §§ 1501–1511; FLA. STAT. ANN. §§ 895.01–.09; GA. CODE ANN. §§ 16-14-1 to -15; HAW. REV. STAT. §§ 842-1 to -12; IDAHO CODE §§ 18-7801 to -7805; IND. CODE ANN. §§ 35-45-6-1 to -2; LA. REV. STAT. ANN. §§ 15:1351–1356; MICH. STAT. ANN. §§ 28.356F–.356X; MINN. STAT. ANN. §§ 609.901–.912; MISS. CODE ANN. §§ 97-43-1 to -11; NEV. REV. STAT. ANN. §§ 207.350–.520; N.J. STAT. ANN. §§ 2C:41-1 to -6.2; N.M. STAT. ANN. §§ 30-42-1 to -6; N.C. GEN. STAT. §§ 75D-1 to -14 (1990 & Supp. 1998); N.D. CENT. CODE §§ 12.1-06.1-01 to .1-08; OHIO REV. CODE ANN. §§ 2923.31–.36; OKLA. STAT. ANN. tit. 22, §§ 1401–1419; OR. REV. STAT. §§ 166.715–.735; R.I. GEN. LAWS §§ 7-15-1 to -11; TENN. CODE ANN. §§ 39-12-201 to -210; UTAH CODE ANN. §§ 76-10-1601 to -1609; WASH. REV. CODE ANN. §§ 9A.82.001–.904; WIS. STAT. ANN. §§ 946.80–.88.

9. It is not the purpose of this Note to give an in-depth analysis of every portion of the federal RICO statute. However, many other key concepts are worthy of discussion: provisions for joinder of parties, forfeiture provisions, treble damages, notice requirements, venue, applicability of rules of evidence, and the civil investigative demand.

10. *See* S. REP. NO. 82-141, at 1 (1951).

Part II provides a brief introduction to RICO and discusses the historical progression of the organized crime element. Part III discusses the enterprise and pattern concepts of the federal statute which are unique to RICO. Parts IV and V discuss how state statutes have addressed the organized crime limitation and the two substantive elements of enterprise and pattern, respectively. Part VI concludes that, with the exception of a small minority of states, state RICO acts will continue to move in the same expansive direction as the federal RICO statute.

## II. ORIGINS OF FEDERAL RICO

### *A. RICO and the Attack on Organized Crime*

In 1965, President Johnson named Attorney General Nicholas Katzenbach to head a commission to study the administration of justice, including the problem of organized crime.[11] The commission determined that organized crime legislation required defining illicit business in organizational terms and then making participation in such activities a violation of criminal law.[12] Accordingly, any legislation aimed at the enterprise criminal had to achieve at least five goals. First, it had to define what would be criminal.[13] Second, it had to identify, specifically if possible, the activity that would constitute the crime.[14] Third, it had to identify the participants in the criminal activity and their relationship to the organization.[15] Fourth, it had to allow for the admission of evidence that characterized the participants in the criminality.[16] Finally, it had to avoid the constitutional stigma attached to status legislation.[17] In short, it had to be careful to focus not on who the person was, but on what the person did.

As a result of the commission's careful planning, RICO's essential elements have survived constitutional attack.[18] Generally speaking, RICO makes it

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11. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY (1967).

12. *See* HENRY S. RUTH, THE CHALLENGE OF CRIME IN A FREE SOCIETY: PERSPECTIVES ON THE REPORT OF THE PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE 12 (1971).

13. *See* 18 U.S.C. § 1962 (1994) (defining the prohibited activities under RICO).

14. *See* 18 U.S.C. § 1961(1) (1994 & Supp. III 1997) (defining the types of activity that are considered "racketeering activity").

15. *See* 18 U.S.C. § 1961(3)–(5) (1994) (defining "person," "enterprise" and "pattern of racketeering activity").

16. *See* 18 U.S.C. § 1961(5) (1994) (defining "pattern of racketeering activity" which is part of the required proof in a RICO prosecution).

17. *See, e.g.*, United States v. Kragness, 830 F.2d 842 (8th Cir. 1987) (holding that conviction on both RICO conspiracy charge and various drug conspiracies did not violate the Fifth Amendment's double jeopardy clause).

18. RICO initially produced two constitutional concerns: (1) it was too broad in scope, and (2) it was vague in its language. *See* United States v. Aleman, 609 F.2d 298, 305 (7th Cir. 1979) ("Being broad in scope is not synonymous with being vague."). *Cf.* Parnes v. Heinhold Commodities, 548 F. Supp. 20, 22–24 (N.D. Ill. 1982) (applying the broadly drafted RICO definitions in a way that would not "turn the English language on its head"). *See also* United States v. Sutton, 642 F.2d 1001, 1008 (6th Cir. 1980) (no ambiguity in use of the word "enterprise"); United States v. Thompson, 669 F.2d 1143, 1145 (6th Cir. 1982)

unlawful for a person to acquire, maintain, or operate an enterprise through a pattern of racketeering activity.[19] Section 1962 sets forth the unlawful conduct, [20] and section 1961 defines each element.[21] Section 1961 defines the activity that constitutes the criminality, which is the pattern of racketeering activity.[22] Specifically, section 1961 lists each act that may comprise the criminal activity, referred to as the racketeering acts.[23] Further, section 1961 defines the participants—the person[24] and the enterprise.[25] Sections 1963[26] and 1964[27] provide for criminal sanctions and civil remedies, respectively; sections 1965 through 1968[28] facilitate civil enforcement of the statute.

### *B. Organized Crime Loses its Place in Federal RICO*

Although RICO was originally designed to infiltrate organized crime, it was also crafted broadly enough to deal with all forms of enterprise criminality.[29] The 1968 President's Commission on Law Enforcement and Administration of Justice, whose studies led to RICO, addressed not only organized crime but also

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(definition of "enterprise" clear and broad); United States v. Parness, 503 F.2d 430, 442 (2d Cir. 1974) (section 1962(b) not unconstitutionally vague).

19. 18 U.S.C. §§ 1962(a)–(d) (1994).

20. *Id.*

21. 18 U.S.C. § 1961 (1994 & Supp. III 1997).

22. 18 U.S.C. § 1961(5) (1994). ("'[P]attern 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 [excluding any period of imprisonment] after the commission of a prior act or racketeering activity....").

23. 18 U.S.C. § 1961(1) (Supp. III 1997).

24. 18 U.S.C. § 1961(3) (1994) ("'[P]erson' includes any individual or entity capable of holding a legal or beneficial interest in property.").

25. 18 U.S.C. § 1961(4) (1994) ("'[E]nterprise' 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....").

26. *See* 18 U.S.C. § 1963 (1994).

27. *See* 18 U.S.C. § 1964 (1994).

28. *See* 18 U.S.C. §§ 1965–1968 (1994).

29. RICO's purpose is "the imposition of enhanced criminal penalties and new civil sanctions to provide new legal remedies for all types of organized criminal behavior, that is, enterprise criminality—from simple political corruption to sophisticated white-collar crime schemes to traditional Mafia-type endeavors." G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1013–14 (1980), *cited in* United States v. Cauble, 706 F.2d 1322, 1330 (5th Cir. 1983).

white-collar crime.[30] The text and legislative history of the statute demonstrate that RICO is properly applied to white-collar crime.[31]

In *Sedima, S.P.R.L. v. Imrex Co.*,[32] a Belgian corporation in a joint business venture with a New York exporter sued the exporter and its officers under the private treble damages provision of the federal act. The United States Supreme Court held that the suit was proper because "there is no requirement that a private action under § 1964(c) can proceed only against a defendant who has already been convicted of a predicate act or of a RICO violation."[33] What was left unsaid was whether the Court would expressly limit RICO actions to factual situations involving conduct traditionally attributed to organized crime.

If the Supreme Court's decision in *Sedima*[34] left any doubt, the Court's decision in *H.J. Inc. v. Northwestern Bell Tel. Co.*[35] eliminated it, when it squarely refused to read an organized crime limit into the statute.[36] First, the Court

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30. *See* PRESIDENT'S COMM. ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, TASK FORCE REPORT: CRIME AND ITS IMPACT—AN ASSESSMENT (1967). The Commission determined that "where corporate misconduct is involved, the offenders—and particularly the offenders against whom evidence of guilt can be obtained—act as part of a corporate hierarchy and, ordinarily, follow a pattern of corporate behavior." *Id.* at 108.

31. *See* G. Robert Blakey, *The RICO Civil Fraud Action in Context: Reflections on* Bennett v. Berg, 58 NOTRE DAME L. REV. 237, 249–56 (1982). In the article, this author stated:

> [A] review of the legislative history of [the Organized Crime Control Act] in general, and Title IX [RICO] in particular, establishes the following points beyond serious question:
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> (1) Congress fully intended, after specific debate, to have RICO apply beyond any limiting concept like "organized crime" or "racketeering";
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> (2) Congress deliberately redrafted RICO outside of the antitrust statutes, so that it would not be limited by antitrust concepts like "competitive," "commercial," or "direct or indirect" injury;
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> (3) Both immediate victims of racketeering activity and competing organizations were contemplated as civil plaintiffs for injunction, damage, and other relief;
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> (4) Over specific objections raising issues of federal-state relations and crowded court dockets, Congress deliberately extended RICO to the general field of commercial and other fraud; and
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> (5) Congress was well aware that it was creating important new federal criminal and civil remedies in a field traditionally occupied by common law fraud.

*Id.* The article's review of RICO's legislative history was cited with approval in *Russello v. United States*, 464 U.S. 16, 28 (1983).

32. 473 U.S. 479 (1985).

33. *See id.* at 479.

34. *Id.*

35. 492 U.S. 229 (1989).

36. *See id.* at 244. ("[T]he argument for reading an organized crime limitation into RICO's pattern concept...finds no support in the Act's text, and is at odds with the tenor of its legislative history.").

recognized that an organized crime limitation would imply that only those acts committed by a group, instead of an individual, would fall within RICO's scope.[37] The Court observed that "RICO's language supplies no grounds to believe that Congress meant to impose such a limit on the Act's scope."[38] Second, "no such restriction is explicitly stated."[39] Third, the Court held that Congress specifically limited other titles of the Organized Crime Control Act to organized crime, which indicates that if Congress wanted such a limitation in Title IX, Congress knew how to create it.[40] The legislative history also illustrates that RICO's principal sponsors expressly rejected the limitation.[41] Thus, based on the wording of the statute and its legislative history, the United States Supreme Court expressly rejected the organized crime limitation.

Accordingly, by removing the organized crime limitation, the Court opened the doors to RICO prosecutions beyond the traditional mafia targets. Instead, RICO could be used to infiltrate, generally, the enterprise criminal.

## III. TWO KEY CONCEPTS IN FEDERAL RICO

### *A. The Enterprise Element*

Enterprise, as illustrated in section 1961(4) of the RICO statute, "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."[42] Congress defined the enterprise with the non-exclusive term, "includes."[43] Thus, the terms that follow it are illustrative but not the only types of RICO enterprises.[44]

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37. *See id.*

38. *Id.*

39. *Id.* The Court recognized that the title of the act, its stated purpose, and its legislative history might lend themselves to a narrow view of the act, but it recognized that the text was not so limited. *See id.* The general rule is that a restrictive title or preamble may not be used to restrict a clear text. *See, e.g.*, United States v. Briggs, 50 U.S. 351, 355 (1850); Roush v. State, 413 So. 2d 15, 18–19 (Fla. 1982); Dorsey v. State, 402 So. 2d 1178, 1180–81 (Fla. 1981) (citing Yazzo & Miss. Valley R.R. Co. v. Thomas, 132 U.S. 174, 188 (1889)). *See also* Caminetti v. United States, 242 U.S. 470, 490 (1917) (holding that "the name given to an act by way of designation or description, or the report which accompanies it, cannot change the plain import of its words").

40. *See H.J. Inc.*, 492 U.S. at 244.

41. *See, e.g.*, S. REP. NO. 91-617, at 82 (1969) ("[Title IX] is...a protection of the public against parties engaging in certain types of businesses after they have shown that they are likely to run the organization in a manner detrimental to the public interest.").

42. 18 U.S.C. § 1961(4) (1994).

43. *See, e.g.*, American Sur. Co. v. Marotta, 287 U.S. 513, 517 (1933); United States v. Aimone, 715 F.2d 822, 828 (3d Cir. 1983); Bunker Ramo Corp. v. United Bus. Forms, Inc., 713 F.2d 1272, 1285 (7th Cir. 1983); United States v. Thevis, 665 F.2d 616, 625 (5th Cir. 1982); United States v. Huber, 603 F.2d 387, 394 (2d Cir. 1979); Rhoades v. Powell, 644 F. Supp. 645, 673 (E.D. Cal. 1986).

44. By comparison, Congress defined "racketeering activity" using a word of limitation. 18 U.S.C. § 1961(1) (1994 & Supp. III 1997). Racketeering activity "means" any one of the specified offenses listed in § 1961(1). No crimes or offenses other than the ones listed can be acts of racketeering within the meaning of the statute. The definition of racketeering activity restricts that concept. Enterprise is not so constrained. *See* Helvering

A variety of RICO enterprises not listed in the definition may exist.[45] Indeed, as written, any entity may fall within the scope of the section 1961(4) definition.[46] While the statutory language provides little direct insight into the statutory functions of the enterprise concept, section 1961(4) constitutes the starting point for any effort to employ those functions in RICO.

Definition of the enterprise concept should follow from the function of the concept in the facts of litigation. For example, "corporation," "perpetrator," or "structure enabling the joinder of various corporate employees" could be illustrations of the enterprise concept reflected in RICO.[47] Of these possible definitions, only the first—"corporation"—is expressly provided by section 1961(4). The statute itself, in short, merely illustrates the enterprise by noting examples of entities that will fit within its substantive provisions.[48] The characterizations or functions of the entities are aspects of the concept, however, that are essential to formulating litigation strategy.

Courts have held the section 1961(4) enterprise definition to include commercial entities,[49] benevolent organizations,[50] individuals,[51] and entities associated in fact.[52] In addition, courts have found other entities, notably governmental entities and multi-entity combinations, to be enterprises within the scope of section 1961(4).[53]

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v. Morgan's, Inc., 293 U.S. 121, 125 n.1 (1934) ("The natural distinction would be that where 'means' is employed, the term and its definition are to be interchangeable equivalents, and that the verb 'includes' imports a general class, some of whose particular instances are those specified in the definition.").

45. *See, e.g.*, Cullen v. Margiotta, 811 F.2d 698, 730 (2d Cir. 1987); United States v. McDade, 827 F. Supp. 1153, 1181 (E.D. Pa. 1993).

46. *See* United States v. Turkette, 452 U.S. 576, 580 (1981) (finding "no restriction upon the associations embraced by the definition"). In theory, no restriction should apply to any formulation of enterprise according to the section 1961(4) definition. *Compare* United States v. Sutton, 642 F.2d 1001, 1003–04 (6th Cir. 1980), *rev'g* 605 F.2d 260 (6th Cir. 1979), *with* United States v. Turkette, 632 F.2d 896, 899 (1st Cir. 1980), *rev'd*, 452 U.S. 576 (1981).

47. *See, e.g.*, Word of Faith World Outreach Center Church, Inc. v. Sawyer, 90 F.3d 118, 123 (5th Cir. 1996).

48. *See* 18 U.S.C. § 1961(4) (1994).

49. *See* United States v. Weisman, 624 F.2d 1118, 1120 (2d Cir. 1980) ("corporation"); United States v. Parness, 503 F.2d 430, 440–42 (2d Cir. 1974) ("foreign corporation"); United States v. Jannotti, 501 F. Supp. 1182, 1185–86 (E.D. Pa. 1980), *rev'd on other grounds*, 673 F.2d 578 (3d Cir. 1982) ("partnership").

50. *See, e.g.*, United States v. Provenzano, 688 F.2d 194, 199–200 (3d Cir. 1982) ("labor union"); United States v. Rubin, 559 F.2d 975, 978 (5th Cir. 1977), *vacated and remanded*, 439 U.S. 810 (1978), *reinstated in relevant part*, 591 F.2d 278 (5th Cir. 1979) ("benefit fund"); United States v. Bledsoe, 674 F.2d 647, 659–61 (8th Cir. 1982) ("co-operative").

51. *See* Von Bulow v. Von Bulow, 634 F. Supp. 1284, 1304–05 (S.D.N.Y. 1986).

52. *See* United States v. Turkette, 632 F.2d 896 (1st Cir. 1980), *rev'd*, 452 U.S. 576 (1981).

53. *See* United States v. Thompson, 685 F.2d 993, 994 (6th Cir. 1982).

The notion that RICO prosecution is limited to complex organized crime syndicates quickly falters. Section 1961(4) provides on its face that an individual may be a RICO enterprise.[54] In *Von Bulow v. Von Bulow*, for example, the defendant was charged with a section 1962(c) violation for conducting the affairs of his wife through a pattern of racketeering activity.[55] The court held that "an individual may qualify as an enterprise within the meaning of 18 U.S.C. § 1961(4)."[56] Thus, Mrs. Von Bulow, as an individual, was a RICO enterprise.[57]

RICO's expansive nature was further defined when the courts determined that a unit of government could also be a RICO enterprise. In *United States v. Thompson*, the Sixth Circuit, sitting *en banc*, reversed a panel holding that Congress did not intend for RICO to apply to government enterprises.[58] The panel conceded that section 1961(4) was clear and broad, but decided to look beyond the language in order to avoid the "anomalous result[]" of applying RICO remedies against the office of the governor of Tennessee.[59] The full circuit rejected the panel's argument, and reaffirmed that Congress purposefully enacted the RICO statute with broad language.[60] The court also found that "Congress chose language that was clear and broad," but did not find reason to go beyond the language for further signs of congressional intent.[61] Accordingly, the limited origins of federal RICO in organized crime have not served to limit its application or interpretation of enterprise.

### *B. The Pattern Element*

Although the legislative history of RICO does not discuss pattern in depth, it does establish certain standards for the concept. For instance, beyond the limitation of at least two acts within ten years, the legislative history indicates that a 'pattern of racketeering activity' should also reflect the twin factors of 'relationship' and 'continuity.'[62] The Senate report accompanying RICO explains that "the target of [RICO] is thus not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus

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54. *See* 18 U.S.C. § 1961(4) (1994). ("'[E]nterprise' 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."(emphasis added)).

55. Von Bulow v. Von Bulow, 634 F. Supp. 1284, 1305 (S.D.N.Y. 1986).

56. *Id.*

57. *See id.* For the purposes of this case, the court recognized that Mrs. Von Bulow had been victimized by her husband's activities. As an enterprise under RICO, then, the individual played the enterprise role of "victim" in this case. The court pointed out that even the American Bar Association conceded that the individual as the "victim" of RICO activity will satisfy the enterprise requirement. *Id.*

58. *See* United States v. Thompson, 685 F.2d 993, 994 (6th Cir. 1982), *en banc, rev'g* 669 F.2d 1143 (6th Cir. 1982).

59. *Thompson*, 669 F.2d at 1145.

60. *See Thompson*, 685 F.2d at 998.

61. *Id.* Congress would have known how to characterize private as opposed to public enterprises had it seen fit. *See id.* at 996.

62. *See* 116 CONG. REC. 18,940 (1970) (citation omitted).

relationship which combines to produce a pattern."[63] Furthermore, RICO's sponsor pointed out that the term "pattern" itself requires the showing of a relationship[64] and that "proof of two acts of racketeering activity, without more does not establish a pattern."[65]

The United States Supreme Court, in *Sedima, S.P.R.L. v. Imrex Co.*,[66] stated that one of the reasons for the numerous applications of civil RICO has been the "failure of Congress and the courts to develop a meaningful concept of 'pattern.'"[67] In a footnote, Justice White stated that "the implication [of section 1961] is that while two acts are necessary, they may not be sufficient since in common parlance two of anything does not generally form a pattern."[68]

While the Court did not directly address the issue of pattern in *Sedima*, it did spend considerable time identifying the federal standards for interpreting the term.[69] First, when interpreting a statute, the courts must look to the language because it is the most reliable evidence of congressional intent.[70] Second, courts must read the language of a statute with its plain meaning, yet view the statute in context.[71] Third, courts may not read the language of RICO differently in criminal

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63. *Id.*
64. *Id.*
65. *Id.*
66. 473 U.S. 479 (1985).
67. *Id.* at 500.
68. *Id.* at 497 n.14. The footnote reads:

> As many commentators have pointed out, the definition of a "pattern of racketeering activity" differs from the other provisions in § 1961 in that it states that a pattern "requires at least two acts of racketeering activity," § 1961(5), not that it means two such acts. The implication is that while two acts are necessary, they may not be sufficient. Indeed, in common parlance two of anything do not generally form a pattern. The legislative history supports the view that two isolated acts of racketeering activity do not constitute a pattern.

*Id.* at 497 n.14.

69. *See id.* The Supreme Court addressed the issue of prior criminal conviction and racketeering injury requirements. The Court held that in a civil RICO action there is no prior conviction requirement nor any requirement that the plaintiff establish a "racketeering injury" beyond that resulting from "the predicate acts themselves." *Id.* at 485. The parties presented no pattern issue to the Court.

70. *Id.* at 495 n.13 ("Congress[']...[intent is] best determined by the statutory language it chooses...[;] congressional silence...cannot override the words of the statute."); Russello v. United States, 464 U.S. 16, 20 (1983) ("In determining the scope of a statute, we look first to its language." (citing United States v. Turkette, 452 U.S. 576, 580 (1981))); United States v. Turkette, 452 U.S. 576, 593 (1981) ("The language of the statute...[is] the most reliable evidence of...[ congressional] intent....").

71. *See Sedima*, 473 U.S. at 495 n.13 ("Given the plain words of the statute, we cannot agree with the court below that Congress could have had no inkling of [§ 1964(c)'s] implications."); *Russello*, 464 U.S. at 21 ("[We] start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." (citing Richards v. United States, 369 U.S. 1 (1962)); *Turkette*, 452 U.S. at 580 ("If the statutory language is unambiguous, in the absence of 'a clearly expressed legislative intent' to the contrary, that language must ordinarily be regarded as conclusive." (quoting Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980)).

and civil proceedings.[72] Fourth, courts must read RICO broadly and construe it liberally.[73] *Sedima* also directed courts to the text of RICO and its legislative history when interpreting the statute.[74]

What the Court in *Sedima* failed to do is create one meaningful interpretation of pattern. Based on the expansive nature and application of federal RICO, the Court realized that courts must apply the facts of the individual cases to the violations alleged, look to the purpose of the Act, and then apply the appropriate interpretation. Accordingly, the concept of pattern in federal RICO evolved as case law developed.

## IV. THE DEVELOPMENT OF STATE RICO

### *A. Adoption of State RICO*

After the federal RICO statute became effective in 1970, states were initially slow to enact similar racketeering laws because the impact and effectiveness of the federal law was still unclear.[75] The first state to enact a RICO statute patterned after the federal statute was Hawaii, whose law became effective in 1972.[76] Hawaii was followed by Pennsylvania in 1973, Florida in 1977, Arizona and Puerto Rico in 1978, and Rhode Island in 1979.[77] The largest and most rapid

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72. *See Sedima*, 473 U.S. at 489 ("Section 1962 renders certain conduct 'unlawful'; § 1963 and § 1964 impose consequences, criminal and civil, for 'violations' of § 1962. We should not lightly infer that Congress intended the term to have wholly different meanings in neighboring sections.").

73. *See Sedima*, 473 U.S. at 497–98

> RICO is to be read broadly. This is the lesson not only of Congress' self-consciously expansive language and overall approach..., but also for its express admonition that 'RICO is to be liberally construed to effectuate its remedial purpose.' The statute's remedial purposes are nowhere more evident than in the provision of a private action for those injured by racketeering activity.

*Id* (quoting Pub. L. 91-452, § 904(a), 84 Stat. 947 (1970)).

74. *See Sedima*, 473 U.S. at 486 ("[I]t is worth briefly reviewing the legislative history...."). *See also Turkette*, 452 U.S. at 586 ("[T]he language of the statute and its legislative history indicate that Congress was well aware that it was entering into a new domain...."); *id.* at 590 ("In view of the purposes and goals of the Act, as well as the language of the statute, we are unpersuaded that Congress nevertheless confined the reach of the law to only narrow aspects of organized crime...."). The legislative history of RICO specifically states that the target is not sporadic activity. *See* S. REP. NO. 91-617, at 158 (1969).

75. This was due in part to federal prosecutors' initial reluctance to charge defendants with RICO violations because of uncertainty as to the potential benefits and advantages of RICO. *See* Ira H. Raphaelson & Michelle D. Bernard, *RICO and the "Operation or Management" Test: The Potential Chilling Effect on Criminal Prosecutions*, 28 U. RICH L. REV. 669, 672 (1994).

76. HAW. REV. STAT. §§ 842-1 to -12 (1993 & Supp. 1998).

77. *See generally supra* note 7 and accompanying text. The scope of this Note focuses on differences between the federal RICO statute and the 30 state RICO statutes. Therefore, it is beyond the scope of this Note to discuss the RICO statutes in the Virgin Islands and Puerto Rico. *See* Act Against Organized Crime, P.R. LAWS ANN. tit. 25,

growth of state RICO statutes occurred during the 1980s, when twenty-three states enacted RICO statutes generally patterned after the federal version.[78] The idea behind enacting state RICO acts alongside the federal act was to empower local and state authorities with the tools to address enterprise criminality in their communities. It stands to reason that local authorities are much more knowledgeable than their federal counterparts when it comes to localized crime.

### *B. The Myth of the Organized Crime Limitation*

Largely, this state tool of the 1980s followed its federal counterpart and avoided an organized crime limitation.[79] For example, in *State v. Nuckolls*, Florida prosecutors brought a RICO claim against a defendant that sold high mileage cars to small wholesalers who fronted the cars for him after they rolled back the odometers.[80] The court reasoned that as long as the information "tracks the statute and alleges the existence of a criminal 'enterprise,'" there is no requirement that the enterprise have connections to organized crime.[81] Similarly, a federal district court in Ohio determined that the Ohio organized crime statute[82] is "not narrowly drawn to proscribe only particular areas of 'organized' criminal activity. Rather, the statute operates to transform any criminal offense of an economic nature, no matter how petty, into one of Ohio's most serious classifications of criminal activity...." [83]

With the influx of federal civil RICO suits in the early nineties, states made reasonable and unreasonable adjustments to accommodate more technologically advanced enterprise criminals by making their RICO statutes more expansive. North Dakota added a conspicuous chapter specifically addressing computer fraud and computer crimes under its RICO statute.[84] Other states, like

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§§ 971–971s (1980 & Supp. 1981); Criminally Influenced and Corrupt Organizations Act, V.I. CODE ANN. tit.14, §§ 600–614 (Supp. 1995).

78. These states are: New Mexico (1980), Georgia (1980), Indiana (1980), New Jersey (1981), Utah (1981), Colorado (1981), Idaho (1981), Oregon (1981), Wisconsin (1982), Illinois (1982), Connecticut (1982), North Dakota (1983), Nevada (1983), Louisiana (1983), Mississippi (1984), Washington (1985), Ohio (1986), Tennessee (1986), New York (1986), Delaware (1986), North Carolina (1986), Oklahoma (1988), and Minnesota (1989). *See* sources cited *supra* note 6.

79. Only Pennsylvania and New York have explicit organized crime limitations in their RICO statutes. *See generally supra* note 7 and accompanying text.

80. State v. Nuckolls, 677 So. 2d 12, 13 (Fla. Dist. Ct. App. 1996).

81. *Id.* at 14 (citing State v. Whiddon, 384 So. 2d 1269 (Fla. 1980)).

82. OHIO REV. CODE ANN. §§ 2923.31–.36 (Anderson 1996 & Supp. 1998).

83. Amusement Devices Ass'n v. Ohio, 443 F. Supp. 1040, 1049 (S.D. Ohio 1977). It is worth noting that the issue in this case was the constitutionality of the Ohio statute as challenged by two plaintiffs who alleged that the statute failed to specify with reasonable clarity which kind of conduct it prohibits. The two were challenging the statute's prohibition on furnishing legal services to a criminal syndicate with the purpose of establishing or maintaining a criminal syndicate or facilitating any of its activities. *See id.*

84. *See* N.D. CENT. CODE §§ 12.1-06.1-01 to .1-08 (1997) which reads in part: "(1) A person commits computer fraud by gaining or attempting to gain access to, altering, damaging, modifying, copying, disclosing, taking possession of, or destroying any

Louisiana, amended their statutes in order to accommodate non-organized crime and drug litigation.[85]

However, a minority of states isolated themselves from the expansive nature of federal RICO and neighboring statutes. Because state RICO was a local response to localized enterprise criminality, some states justified limiting their RICO acts to specific local problems. For instance, while Illinois took its guidance on the construction of its act from federal case law,[86] it narrowly shaped its act to target the growing problem of narcotics racketeering in high drug-trafficking cities like Chicago.[87] In *People v. Calloway*,[88] the state charged the defendant with operating a scheme whereby he persuaded people to sell drugs for him and then collected their profits and turned the people in to law enforcement authorities in exchange for cash for providing information.[89]

Other states like New York and Pennsylvania, with infamous histories of organized crime going back several decades,[90] limited their Acts to address the problem that Title IX aimed to correct in 1970—organized crime. The target group envisioned by the New York legislature in enacting the Organized Crime Control Act[91] was discussed by one of the statute's authors, Assembly Member Melvin H. Miller, then Chair of the Committee on Codes. In a letter to Evan A. Davis, counsel to the Governor, Mr. Miller wrote that the extraordinary sanctions

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computer, [or] computer system...." Ironically, North Dakota prosecutors have not prosecuted anyone under this statute as of the date of this Note.

85. *See* LA. REV. STAT. ANN. §§ 15:1351–1356 historical and statutory notes (West 1992 & Supp. 1999) ("The 1992 amendment, in subsec. A, changed the defined term from '*Drug* racketeering activity' to 'Racketeering activity.'" (emphasis added)).

86. *See* 725 ILL. COMP. STAT. § 175/8 (West 1992 & Supp. 1999) ("It is the intent of the General Assembly that this Act be liberally construed so as to effect the purposes of this Act and be construed in accordance with similar provisions contained in Title IX of the Organized Crime Control Act of 1970, as amended [at 18 U.S.C. §§ 1961–1968].").

87. *See* 725 ILL. COMP. STAT. § 175/2 (West 1992 & Supp. 1999) ("Narcotics racketeering is a far-reaching and extremely profitable criminal enterprise.... It is therefore necessary to supplement existing sanctions by mandating forfeiture of money and other assets generated by narcotics racketeering activities.").

88. 540 N.E. 2d 1153 (Ill. App. Ct. 1989).

89. *See id.* at 1154–55. The scheme took the following pattern. The defendant would ask a friend to sell drugs to a third person, usually described by the defendant as his cousin from out of town. Each testified that the defendant told them that he did not want his cousin to know he was a dealer. The defendant supplied the drugs and returned after the sale to collect the money, between $100 and $300 per transaction. In the meantime, the defendant would make arrangements with local narcotics investigators to act as an informant concerning illegal drug sales. The individual purporting to be the defendant's cousin was, in fact, an undercover law officer. For each drug transaction arranged by the defendant, he would receive a fee from the government of $35 to $50, depending upon the type of drug involved. The scheme was not discovered until the defendant had fled to Texas. *See id.*

90. For an excellent and in-depth look at organized crime and its history in New York, see ESTES KEFAUVER, CRIME IN AMERICA (1968).

91. N.Y. PENAL LAW §§ 460.00–.80 (McKinney 1989 & Supp. 1999).

provided by the act "should be reserved for those who not only commit crimes but do so as part of an organized criminal enterprise."[92]

*People v. Yarmy*[93] involved activities more akin to the organized criminal enterprise Miller envisioned. Two defendants operated a scheme in which the first defendant, who was a licensed firearm dealer, would provide firearms to the second defendant. The second defendant, who was not a licensed firearm dealer, would then sell the firearms to his neighborhood customers.[94] The New York Supreme Court recognized that the standard for proving enterprise corruption was higher than the federal statute's counterpart because the scope of New York's act was defined more rigorously.[95]

Similarly, the Pennsylvania Supreme Court looked no further than the actual words of its state RICO statute[96] to determine that the "express intent was to prevent infiltration of legitimate business by organized crime."[97] The Court solidified its organized crime limitation in *Commonwealth v. Bobitski*.[98] In that case, the issue was whether the Pennsylvania Corrupt Organizations Statute could be applied to an individual who committed a series of criminal acts for his own benefit while employed by a legitimate enterprise, and where there were no ties between the individual, the enterprise and organized crime.[99] The defendant in that case, an employee of Thrift Drug, was responsible for soliciting bids and awarding construction contracts. The defendant took advantage of his position in Thrift Drug by soliciting bribes from various contractors, but solely for his own benefit. Thrift Drug neither was involved nor profited from his illegal acts.[100] The prosecutors tried to argue that "[a]lthough...[the defendant] has no ties to 'organized crime' as

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92. Letter from Melvin H. Miller, Chair, New York Committee on Codes, to Evan A. Davis, counsel to the Governor, (July 16, 1986) *quoted in* People v. Yarmy, 171 Misc. 2d 13, 16 (N.Y. 1996). The text as quoted by the court reads:

> [T]he members of the Codes Committee felt that the extraordinary sanctions allowed under the Act should be reserved for those who not only commit crimes but do so as part of an organized criminal enterprise...[.] For that reason, it was not the sponsors' intent to redefine or sanction anew conduct already punishable under current law...[.] Rather, the bill now requires association with an ascertainably distinct criminal enterprise in addition to corruption of a legitimate enterprise by criminal activity.

People v. Yarmy, 171 Misc. 2d 13, 16 (N.Y. 1996).

93. *Yarmy*, 171 Misc. 2d at 13.

94. *See id.*

95. *See id.* at 16. ("[T]he purpose of [the Act] is to arm state prosecutors with the ability to prosecute organized crime activities on a similar—but more limited—basis than the federal [RICO]." (citing N.Y. PENAL LAW § 460.00 (McKinney 1989 & Supp. 1999))). The intent of the legislature was to define the scope of the enterprise corruption statute more rigorously than comparable federal statutes. *See* N.Y. PENAL LAW § 460.00 (MCKINNEY 1989 & SUPP. 1999); People v. Cantarella, 160 Misc. 2d 8, 15–16 (N.Y. 1991); People v. Moscatiello, 149 Misc. 2d 752, 754–55 (N.Y. 1990).

96. 18 PA. CONS. STAT. ANN. § 911 (West 1998).

97. Commonwealth v. Bobitski, 632 A.2d 1294 (Pa. 1993).

98. *Id.*at 1296.

99. *See id.* at 1295.

100. *See id.*

that term is defined within the corrupt organizations statute, the organized, systematic method by which the defendant committed his crimes brings him within the purview of the statute."[101]

In a footnote, the Pennsylvania Supreme Court acknowledged that federal courts have held that there is no requirement "under the Racketeer Influenced Corrupt Organizations Act, 18 U.S.C. § 1961 et. seq., for the prosecution to establish a nexus between the individual and/or the enterprise being charged and 'organized crime.'"[102] Yet, the court did not find this interpretation of the federal statute controlling in the analysis of the Pennsylvania statute.[103] It instead focused on the intent of the General Assembly in determining that the purpose of the statute was to "punish persons engaged in organized crime, not 'organized criminals.'"[104]

Nevertheless, states like New York and Pennsylvania are the anomalies of the organized crime limitation myth of state RICO. If, in fact, more states adopt acts similar to the federal RICO, they will more than likely adopt the expansive federal approach rather than the limited approach of the minority states.

An expansive approach to RICO affords local authorities more opportunities to convict criminals. Additionally, it allows states that find federal case law interpretative of their own state RICO statutes to use the vast federal precedent as persuasive interpretative authority.

## V. SUBSTANTIVE ELEMENTS OF THE STATE RICO STATUTES

### *A. Enterprise Definition*

While the majority of state RICO statutes "look to federal decisional law for guidance in construing and applying [their State's] statute,"[105] most states have expanded on concepts like enterprise. For instance, the federal statute aims to illustrate kinds of enterprises by using a non-exclusive term, "includes."[106] Since

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101. *Id.* at 1296. "'Organized crime' means any person or combination of persons engaging in or having the purpose of engaging in conduct which violates any provision of subsection (b) and also includes 'organized crime' as defined in 5702 (relating to definitions)." 18 PA. CONS. STAT. ANN. § 911(h)(8) (West 1998).

102. *Bobitski*, 632 A.2d at 1296 n.2.

103. *See id.* ("We do not find the interpretation of a federal statute to be controlling in our analysis of the Pennsylvania Corrupt Organizations Statute.").

104. *Id.* at 1297.

105. Baines v. Superior Court, 688 P.2d 1037, 1040 (Ariz. Ct. App. 1984). *See* People v. Chaussee II, 847 P.2d 156, 159 (Colo. Ct. App. 1992) ("[A]bsent a prior interpretation by [Colorado] state courts, federal case law construing the [RICO ACT] is instructive because COCCA was modeled after the federal act."); Stroik v. State, 671 A.2d 1335, 1340 (Del. 1996) ("Delaware RICO statute is essentially an adaptation of its federal counterpart"); State v. Nishi, 521 So. 2d 252, 253–54 (Fla. Dist. Ct. App. 1988) (examining federal court decisions for guidance in interpreting and applying the Florida act). *See generally supra* note 7 and accompanying text.

106. 18 U.S.C. § 1961(4) (1994) ("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." (emphasis added)). *See also supra* notes 41–42 and accompanying text.

the states began to adopt their own RICO statutes, eleven states have also used the non-exclusive term "includes."[107] Of those states, many have gone several steps further than their federal counterpart and expanded on the illustrative list following "includes."[108]

In a Georgia case, a defendant tried to argue that since the federal RICO act does not explicitly forbid participation in a legitimate corporation, it was insulated from liability under the Georgia RICO Act which saw federal case law as instructive in its interpretation.[109] The court in that case properly ruled that "the fact that [the defendant] was a legitimate corporation does not insulate it from RICO liability."[110] Federal case law contradicted the defendant's treatment of the issue.[111] Also, the Georgia statute specifically included "illicit as well as licit enterprises" as targets of RICO prosecution.[112]

Similarly, in *Commonwealth v. Brown*,[113] the defendant argued that state case law held that a conviction under the Pennsylvania Corrupt Organizations Act[114] required an illegitimate enterprise to have a connection with a legitimate business.[115] However, the court relied on another decision which reflected the legislature's intent to apply the Act to both legitimate and illegitimate enterprises.[116]

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107. *See generally supra* note 7 and accompanying text. Those states incorporating "includes" in the definition of enterprise are: Delaware, Hawaii, Illinois, Michigan, Nevada, New Jersey, Ohio, Oklahoma, Oregon, Rhode Island, and Washington. *See* DEL. CODE ANN. tit. 11, § 1502(3) (1995 & Supp. 1998); HAW. REV. STAT. § 842-1 (1993 & Supp. 1998); 725 ILL. COMP. STAT. ANN. § 175/3(d) (West 1992 & Supp. 1999); MICH. STAT. ANN. § 28.356f (Law Co-op. 1999); NEV. REV. STAT. ANN. § 207.380 (Michie 1997 & Supp. 1997); N.J. STAT. ANN. § 2C:41-1(c) (West 1995); OHIO REV. CODE ANN. § 2923.31(c) (Anderson 1996 & Supp. 1998); OKLA. STAT. ANN., tit. 22 § 1402(2) (West Supp. 2000); OR. REV. STAT. § 166.715(2) (1997); R.I. GEN. LAWS § 7-15-1(a) (1992 & Supp. 1998); WASH. REV. CODE ANN. § 9A.82.010(8) (West 1988 & Supp. 1999).

108. *See, e.g.*, N.J. STAT. ANN. §§ 2C:41-1 to -6.2 (West 1995) (expanding the federal definition of enterprise to include "sole proprietorships," "business trusts," "licit and illicit entities" and "governmental agencies"); OKLA. STAT. ANN. tit. 22, §§ 1401–1419 (West Supp. 2000) (establishing that enterprises also include "those involved in any lawful or unlawful project or undertaking").

109. *See* Reaugh v. Inner Harbour Hosp., Ltd., 447 S.E.2d 617, 621 (Ga. Ct. App. 1994).

110. *Id.* at 622.

111. *See* United States v. Turkette, 452 U.S. 576, 593 (1981) (interpreting the federal act to subject both licit and illicit enterprises to RICO prosecution).

112. GA. CODE ANN. §§ 16-14-1 to -15 (Harrison 1998 & Supp. 1999).

113. 701 A.2d 252 (Pa. Super. Ct. 1997).

114. 18 PA. CONS. STAT. ANN. § 911 (West 1998).

115. *See Brown*, 701 A.2d at 255 (citing Commonwealth v. Besch, 674 A.2d 655, 661 (Pa. 1996) (holding that a conviction cannot stand absent evidence connecting the illegal enterprise to a legitimate business)).

116. *See id.* (citing Commonwealth v. Schaffer, 696 A.2d 179 (Pa. Super. Ct. 1997)).

> [T]his court noted that within two weeks after the *Besch* decision the legislature expressed its disagreement with the supreme court's decision and amended the statute to evidence its intent to apply

Although the majority of states choose to use the more exclusive word "means" to limit the concept of enterprise,[117] even these states have expanded their illustrative terms beyond the federal RICO statute.[118] For example, in *State v. Schwartz*, the court addressed the issue of whether a sole proprietorship standing alone can constitute an enterprise, within the meaning of illegally conducting an enterprise.[119] In that case, the defendant was the sole proprietor of several adult-oriented companies that arranged photograph and videotape sessions with customers and the defendant's employees.[120] On appeal, the defendant argued that since he was the sole proprietor of the operation, no enterprise could have existed.[121] Since the Arizona RICO Act required an association between a person and the enterprise, the defendant argued that if he was being indicted as both the "person" and the "enterprise" he could not be "associated" with himself.[122] The court agreed. Looking to federal case law for guidance,[123] it held that "a sole

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the Act to both legitimate and illegitimate businesses. The court in *Shaffer* considered these intervening circumstances in an effort to determine the intent of the legislature, and ruled that *Besch* cannot be relied upon to afford relief because it arrives at a result contrary to what the legislature intended.

*Id.*

117. Currently, eighteen states use the exclusive term "means" to limit their definition of enterprise. Those states are: Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Louisiana, Minnesota, Mississippi, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Tennessee, Utah, and Wisconsin. *See* ARIZ. REV. STAT. § 13-2301(D)(2) (1998); COLO. REV. STAT. ANN. § 18-17-103(2) (West 1999); CONN. GEN. STAT. ANN. § 53-394(C) (West 1994 & Supp. 1999), FLA. STAT. ANN. § 895.02(3) (West 1994 & Supp. 1999); GA. CODE ANN. § 16-14-3(6) (Harrison 1998 & Supp. 1999); IDAHO CODE § 18-7803(b) (1997 & Supp. 1999); IND. CODE ANN. § 35-45-6-1 (Michie 1998); LA. REV. STAT. ANN. § 15:1352(B) (West 1992 & Supp. 1999); MINN. STAT. ANN. § 609.902(3) (West Supp. 1999); MISS. CODE ANN. § 97-43-3(c) (1994); N.M. STAT. ANN. § 30-42-3(c) (Michie 1997 & Supp. 1999); N.Y. PENAL LAW § 460.10(2) (McKinney 1989 & Supp. 1999); N.C. GEN. STAT. § 75D-3(a) (1990 & Supp. 1998); N.D. CENT. CODE § 12.1-06.1-01(2)(b) (1997);18 PA. CONS. STAT. ANN. § 911(h)(3) (West 1998); TENN. CODE ANN. § 39-12-203(3) (1997); UTAH CODE ANN. § 76-10-1602(1) (1995 & Supp. 1996); WIS. STAT. ANN. § 946.82(2) (West 1996 & Supp. 1998).

118. *See, e.g.*, ARIZ. REV. STAT. §§ 13-2301 to -2318 (1998) (defining enterprise to include "sole proprietorship"); MINN. STAT. ANN. §§ 609.901–.912 (West Supp. 1999) (defining enterprise to include "trust," "group of persons," and "illicit and licit enterprises"). *See generally supra* note 7 and accompanying text.

119. 935 P.2d 891, 895 (Ariz. Ct. App. 1996).

120. *See id.* at 893.

121. *See id.* at 895.

122. *See* ARIZ. REV. STAT. § 13-2312(B) (1998) ("A person commits illegally conducting an enterprise *if such person is employed by or associated with any enterprise* and conducts such enterprise's affairs through racketeering or participates directly or indirectly in the conduct of any enterprise that the person knows is being conducted through racketeering." (emphasis added)).

123. *See* Davis v. Mutual Life Ins. Co., 6 F.3d 367, 378 (6th Cir. 1993) (stating that RICO contains no requirement defendant be removed from corporation); United States v. Perholtz, 842 F.2d 343 (D.C. Cir. 1988) (concluding that individuals within a corporation may associate in fact); McCullough v. Suter, 757 F.2d 142, 143 (7th Cir. 1985) (stating that

proprietor [needed to associate] with other individuals to create an enterprise for the purposes of [the Arizona RICO Act]."[124] Thus, the court required the prosecution to prove an association with other individuals since an association between the defendant and himself did not satisfy Arizona RICO.[125]

Few states have sought to limit the concept of enterprise, outright.[126] However, in 1986 the New York State Legislature aimed to "draft a narrower and more precise statute than RICO."[127] New York's Organized Crime Control statute ("OCCA") requires that there be a "criminal enterprise."[128] The legislature was "aware of and sought to avoid the wide scope and sweep of RICO."[129] Thus, mere corruption of a legitimate enterprise by a pattern of criminal activity is insufficient to justify prosecution under this Act.[130]

In *People v. Capaldo*, union officials were charged with enterprise corruption in violation of New York's OCCA.[131] In that case, the defendant challenged the constitutionality of the New York organized crime statute.[132] The court noted that the New York statute was drafted more narrowly than its federal counterpart.[133] Therefore, since the federal statute had survived constitutional scrutiny it stood to reason that the New York statute would survive.[134]

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sole proprietorship and employees constitute association-in-fact); United States v. Thevis, 665 F.2d 616, 625–26 (5th Cir. 1982) (any group of individuals may constitute an association-in-fact).

124. *Schwartz*, 935 P.2d at 896.

125. *See id.*

126. It is worth noting that both Pennsylvania and New York sought to draft statutes narrower than the federal counterpart. In doing so, both kept implied limitations such as only prosecuting organized criminal syndicates. *See generally supra* notes 86–99 and accompanying text.

127. N.Y. PENAL LAW § 460.00–.80 (McKinney 1989 & Supp. 1999).

128. *See* § 460.10(3). "'Criminal Enterprise' means a group of persons sharing a common purpose of engaging in criminal conduct, associated in an ascertainable structure distinct from a pattern of criminal activity, and with a continuity of existence, structure, and criminal purpose beyond the scope of individual criminal incidents." *Id.* The most fundamental difference between this definition and its federal counterpart is the New York state requirement of each defendant's association with a criminal enterprise. Federal law permits prosecution of individuals who engage in a pattern of criminal activity without further proof that the criminal activity was accomplished for the purpose of participating in or advancing the affairs of a criminal enterprise with a separate, distinct and ascertainable structure and continuity of existence and purpose beyond the scope of the pattern itself.

129. *See* People v. Capaldo, 572 N.Y.S.2d 989, 990 (Sup. Ct. 1991).

130. *See id.* at 991.

131. *See id.* at 989.

132. *See id.*

133. *See id.* at 990.

134. *See id.* at 990. The Court stated:

> RICO has survived all constitutional attacks based on vagueness and over-broadness. The drafters of OCCA, who had the benefit of the federal experience, drafted a narrower and more precise statute. None of the defendants has either cited a case or advanced a compelling argument in support of a constitutional challenge to OCCA. Therefore,

The fact that New York, and to some extent Pennsylvania, are the only states that attempt to restrict the broad approach of federal RICO is evidence of a trend for the majority of states. The majority trend is for states to utilize the broad language of their statutes in order to allow new RICO prosecutions against criminals.

### *B. Pattern Definition*

To establish a pattern of racketeering activity under the federal RICO act, the government must show the predicate acts are related, and either constitute or threaten long-term criminal activity.[135] The state counterparts are generally no different. Most state statutes require at least two incidents that constitute the racketeering activity.[136] Also, most states require continuity among the predicate acts.[137] This can either be a closed period of repeated conduct or past conduct that by its nature projects into the future with a threat of repetition.[138] While most state statutes do not explicitly require continuity as an element of proof, state case law often requires it.[139]

For instance, in *Burr v. Kulas*, a graduate student at a state university brought action against university officials, alleging conspiracy to steal her research and hold it out as their own work.[140] She specifically alleged that her professor's act of accessing her computer without authorization plus using the data to enhance the professor's professional status constituted the two predicate acts necessary for

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> the motions to dismiss Count One of the indictment on constitutional grounds is denied.

*Id.* at 992. *See generally supra* note 18 and accompanying text.

135. *See* H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 237 (1989). *See also* Menasco, Inc. v. Wasserman, 886 F.2d 681, 683 (4th Cir. 1989); Medallion Television Enters., Inc. v. SelecTV of Cal., Inc., 833 F.2d 1360, 1362 (9th Cir. 1987).

136. *See, e.g.*, FLA. STAT. ANN. § 895.02(4) (West 1994 & Supp. 1995).

> "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims, or methods of commission or that otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such incidents occurred after the effective date of this act and that the last of such incidents occurred within five years after a prior incident of racketeering conduct.

*Id.*

137. *See, e.g.*, *H.J. Inc.*, 492 U.S. at 239.

138. *See id.* at 241.

139. *See* Bowden v. State, 402 So. 2d 1173, 1174 (Fla. 1981) ("We construe the 'pattern' element to require, in addition to similarity and interrelatedness of racketeering activities, proof that a continuity of particular criminal activity exists."); State v. Ball, 661 A.2d 251, 262 (N.J. 1995) ("some degree of continuity, or threat of continuity, is required"); Burr v. Kulas, 564 N.W.2d 631, 636 (N.D. 1997) (finding that the term "pattern" requires showing a relationship between predicates and the threat of continuing activity). *But see* People v. Chausee II, 880 P.2d 749, 758 (Colo. 1994) (not necessary to prove that criminal acts meet standards of continuity or of relatedness to one another); Computer Concepts, Inc. v. Brandt, 801 P.2d 800, 808 (Or. 1990) (continuity is not a necessary element of state RICO's requirements for 'pattern of racketeering activity').

140. *See Burr*, 564 N.W.2d at 633–34.

a pattern under the North Dakota RICO statute.[141] The Supreme Court of North Dakota, finding federal interpretation of pattern instructive,[142] held that the pattern of racketeering activity is not established by "sporadic activity" but instead by showing a "relationship between the predicates and the threat of continuing activity."[143] Whether "particular proven acts establish a threat of continued racketeering activity is a question of fact and is determined on a case by case basis."[144] Accordingly, the *Burr* court overturned a summary judgment ruling by the trial court in favor of the defendant and remanded the case for rehearing.[145]

Alternatively, in *Computer Concepts, Inc. v. Brandt*, the defendant argued that the plaintiff's failure to plead a threat of continuing activity was fatal to its civil claim under the Oregon RICO statute.[146] After looking to the legislative intent, the Oregon Supreme Court determined that the overriding purpose of the act was to "compensate those who had been harmed in the past."[147] Thus, the overriding purpose suggests that the statute defining "pattern of racketeering activity" should be "liberally construed" in favor of plaintiffs, and that the legislature's focus was on past harm rather than threats of future harm.[148]

The area where state statutes have moved ahead of their federal counterpart is in how they choose to define the pattern of racketeering activity. The federal RICO act uses the non-exclusive language "requires" to define a "pattern of racketeering activity."[149] Accordingly, it sets a minimum standard for what constitutes a pattern. However, it does not guarantee that the minimum will always constitute a pattern.

Most states use "means" to define pattern.[150] This latter verb gives prosecutors and potential plaintiffs more definitive ground on what is required to

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141. *See id.* at 636.

142. *See id.* ("Federal law, like North Dakota's amended RICO statute, defines a 'pattern of racketeering' which 'requires at least two acts of racketeering activity, one of which occurred after [October 15, 1970,] and the other which occurred within ten years...after the commission of a prior act of racketeering activity[.]" (alterations in original)). *See also H.J. Inc.*, 492 U.S. at 240.

143. *Burr*, 564 N.W.2d at 636.

144. *Id.* (citing H.J. Inc. v. Northwestern Bell Tel. Co., 492 U.S. 229, 242 (1989)).

145. *Id.* at 637.

146. *See* Computer Concepts, Inc. v. Brandt, 801 P.2d 800, 807 (Or. 1990).

147. *Id.* at 808.

148. *Id.*

149. 18 U.S.C. § 1961(5) (1994) ("'[P]attern 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." (emphasis added)).

150. *See, e.g.*, IDAHO CODE § 18-7803(d) (1997 & Supp. 1999) ("'Pattern of racketeering activity' *means* engaging in at least (2) incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated incidents." (emphasis added)). *See generally supra* notes 100–119 and accompanying text. Other states using "means" to define pattern are: Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Louisiana, Minnesota, Mississippi, New Mexico, New York, North

establish a pattern.[151] Because "means" is a word of limitation, it sets a cap on interpretations of pattern in RICO.

For instance, in *Chancey v. State*, the defendants challenged the Georgia RICO statute's definition of "pattern of racketeering activity."[152] After being indicted and convicted on five counts of murder and arson, the defendants appealed, arguing that section 16-14-3(2) of the Georgia RICO was "vague and overbroad in defining that 'pattern of racketeering activity' [means] at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents...[.]"[153] The Georgia Supreme Court determined that the Georgia RICO statute was "significantly broader than its federal counterpart."[154] However, "[i]n one respect [Georgia RICO] is narrower than the federal statute" in that it limits its meaning of pattern.[155] Thus, the Georgia definition of pattern, unlike the federal RICO statute, "serves to limit the definition of [pattern] rather than render[] the 'pattern' definition vague and overbroad."[156]

Inevitably, a minority of states who initially sought to expand on the power of federal RICO by enacting their own state RICO legislation inadvertently made their statutes narrower than the federal statute.

Georgia RICO, for example, requires plaintiffs to show that any injury resulted from the pattern of racketeering activity.[157] It also requires that the pattern

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Carolina, North Dakota, Pennsylvania, Tennessee, Utah, and Wisconsin. *See* ARIZ. REV. STAT. § 13-2314.04(5)(3) (1998); COLO. REV. STAT. ANN. § 18-17-103(3) (West 1999); CONN. GEN. STAT ANN. § 53-394(e) (West 1994 & Supp. 1999); FLA. STAT. ANN. § 895.02 (West 1994 & Supp. 1999); GA. CODE ANN. § 16-14-3(8) (Harrison 1998 & Supp. 1999); IDAHO CODE § 18-7803(d) (1997 & Supp. 1999); IND. CODE ANN. § 35-45-6-1 (Michie 1998); LA. REV. STAT. ANN. § 15:1352(c) (West 1992 & Supp. 1999); MINN. STAT. ANN. § 609.902(6) (West Supp. 1999); MISS. CODE ANN. § 97-43-3(d) (1994); N.M. STAT. ANN. § 30-42-3(D) (Michie 1997 & Supp. 1999); N.Y. PENAL LAW § 460.10(4) (McKinney 1989 & Supp. 1999); N.C. GEN. STAT. § 75D-3(b) (1990 & Supp. 1998); N.D. CENT. CODE § 12.1-06.1(2)(e) (1997); 18 PA. CONS. STAT. ANN. § 911(h)(4) (West 1998); TENN. CODE ANN. § 39-12-203(6) (1997); UTAH CODE ANN. § 76-10-1602(2) (1995 & Supp. 1996); WIS. STAT. ANN. § 946.82(3) (West 1996 & Supp. 1998).

151. *See* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499, 500 (1985) (positing that one of the reasons for the numerous applications of civil RICO has been the "failure of Congress and the courts to develop a meaningful concept of 'pattern'").

152. 349 S.E.2d 717, 729 (Ga. 1986).

153. *Id.* at 729, 730.

154. *Id.* at 722.

155. *Id.* at 723.

156. *Id.* at 729. Both state and federal RICO has seen many constitutional challenges. For treatment of the constitutionality of federal RICO, see *supra* note 18 and accompanying text.

157. *See* GA. CODE ANN. §16-14-4 (Harrison 1998 & Supp. 1999). *Compare id., with* COLO. REV. STAT. ANN. § 18-17-104 (West 1999) (Under state statute patterned after federal statute, plaintiff need not show injury which results specifically from an overreaching pattern of racketeering; enough to allege injury from separate predicate acts). *See also* Brown v. Freedman, 474 S.E.2d 73, 77 (Ga. Ct. App. 1996); Cobb v. Kennon Realty Svcs., 382 S.E.2d 697, 699 (Ga. Ct. App. 1989); Raines v. State, 467 S.E.2d 217,

of racketeering activity is directed towards something of pecuniary value.[158] Nonetheless, the majority of states enacting their own RICO statutes have sought to limit the definition of pattern in order to create a definitive requirement.

Such a narrow requirement serves to limit second-guessing as to whether the burden of proving a pattern has been met.

## VI. CONCLUSION

The Racketeer Influenced Corrupt Organizations statute was created with two distinct purposes. Its drafters wanted to provide prosecutors with the most effective tool to attack organized crime. They also purposefully drafted the statute broadly in order to accommodate prosecutions of enterprise criminals who might not be part of a syndicate. It only made sense to create a statute which adapted to the ever-changing growth industry of enterprise criminality. When the states followed by creating their own RICO statutes, they sought to follow the general expansive nature of the federal statute. While several states have enacted RICO statutes narrower than their federal counterpart, future state enactments will aim for the expansive nature of the majority of state statutes and the federal statute itself. New crimes and new criminal enterprises develop strongholds on legitimate organizations every day, and it is up to the states to adapt current law or adopt new laws like RICO to prosecute them.

The majority of states have responded by massaging their state RICO statutes in order to follow the expansive nature of the federal RICO act. Enterprise criminality has moved from the big cities to our backyards. Expansive state RICO statutes will serve to infiltrate these backyard enterprises.

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218–19 (Ga. Ct. App. 1996); State v. Shearson Lehman Bros., 372 S.E.2d 276, 278 (Ga. Ct. App. 1988).

158. *See* GA. CODE ANN. § 16-14-2(a) (Harrison 1998 & Supp. 1999). ("RICO's remedial provisions are intended to address 'the increasing extent to which criminal activities and funds acquired as a result of criminal activity are being directed to and against the legitimate economy of the state.'"). *See also* Sevcech v. Ingles Markets, Inc., 474 S.E.2d 4, 6–7 (Ga. Ct. App. 1996).