RICO batters U.S. rule of law

How the RICO statutes became the premier tool for restricting political debate—a constitutional police state. By Leo F. Scanlon.

The continuing series of juridical atrocities, committed in the lawsuits brought by the U.S. government against the political movement associated with Lyndon LaRuoche, has astounded legal observers around the world, and caused many to ask how the legal system in America could operate in such a manner, while the Constitution itself still seems to stand. One of the secrets to this "magic act" is the RICO (Racketeer Influenced Corrupt Organization) Act, passed by the Congress almost 20 years ago, and which is receiving much attention in recent weeks.

In March 1989 the United States Court of Appeals for the Third Circuit (federal court) ruled that the Northeast Women's Center, Inc. (a Pennsylvania abortion clinic) had valid grounds to use the civil provisions of the RICO statute to sue a group of protesters associated with the Pro-Life Coalition of Southeastern Pennsylvania, who had staged a series of demonstrations and a sit-in at the abortion clinic. Within weeks, 10 other lawsuits filed by abortionists, and state authorities prosecuting protesters, were amended to utilize RICO as well.

The protest movement is now finding itself confronting very serious fines and jail terms, with the potential of punitive awards totaling three times the monetary amount of "damage" caused by the protest. Damage is not calculated by totaling the value of property destroyed in the skirmish associated with the eviction of a sit-in, but includes monetary loss incurred by the abortionist as a result of the cumulative actions of the protesters. The more obscure implication of successful prosecutions on this basis is that the protest movement is classified by the FBI as a "criminal conspiracy" and an "ongoing criminal enterprise"; thus the guideline restrictions which prevent the use of intrusive surveillance techniques, entrapments, and other police-state devices, by the FBI against "political" movements, are nullified. With this step, RICO has emerged as the premier tool utilizing the criminal statutes to restrict political debate—a constitutional police state.

History of the RICO police state statute

The RICO law is the most enduring legacy of the frenzy whipped up in Congress during the famous "War on Crime" waged by the Nixon administration. This effort suffered from the fact that the Establishment intended to leave the enemy, international drug trafficking, safe in its sanctuary, and turn the criminal courts into a meatgrinder which more and more came to resemble the senseless battlefields of the "no-win" war in Vietnam. Prosecutors, desperate to deal with a population becoming increasingly criminalized by the influence of drugs, demanded, and got, sensationalist gimmicks from the Congress to aid in their fight. The infamous "no-knock" search laws, pre-trial detention schemes, and other devices created in that era, have long since been eliminated or modified greatly, but RICO, which is called "the tactical nuke" of the prosecutor, has been consistently strengthened by the courts over the intervening years.

RICO was passed, supposedly, for the purpose of giving the government new weapons to use in its fight against the infiltration of legitimate businesses by organized crime. Unlike any other criminal statute, it states that it is to be "liberally construed" (criminal laws are normally to be narrowly and strictly interpreted), and this feature has prevented the courts from constraining its use.

Robert Blakey, now a professor of law at Notre Dame University, wrote the statute in 1969, and states flatly, that "We didn't draft a statute that only applies to the Mafia. It is not only for persons whose names end in vowels." Critics of the law, says Blakey, "want a Colosseum. They want to watch the Christians being eaten, but they don't want the lions to have any teeth. And that is not how the system works." Not coincidentally, Blakey's analogy equates Christians with criminals and prosecutors with gladiators—an illustration of his equal contempt for Christianity and the law. Paul E. Rothstein of the Georgetown University Law Center is another prominent defender of RICO, and he exults in the Hobbesian legal world created by the statute: "Prosecutors are doing the job society has assigned them to do very well and very vigorously, just as defense lawyers should be rabidly fanatic for their side. . . . It is a tug of war. Both sides are struggling with all their might. That is how the truth emerges."

RICO is said to have descended from the anti-trust and securities laws. These are very broad regulatory statutes which have no clearly and precisely defined activity as their targets. They can easily be abused by prosecutors, and usually are. The Commonwealth of Virginia and other states are using these statutes to prosecute fundraisers associated with former presidential candidate Lyndon LaRouche—a grotesque, but typical, use of these laws, under which, for example, Ro-

chelle Ascher was sentenced to 86 years.

RICO takes this tyrannical concept one step further: It makes it a crime to control a business through a "pattern of racketeering activity," and a person can be prosecuted for this. A "pattern" of racketeering activity is established by any multiple activities, such as phone calls, carried out by the alleged conspirator in furtherance of a criminal act; but "racketeering" remains completely undefined by the law—it can mean anything.

RICO has both civil and criminal provisions, and it allows civil standards of proof ("reason to believe") as opposed to criminal standards ("beyond a reasonable doubt") to establish guilt in a conspiracy charge. It is one of the few laws which can bar one person from associating with another.

At the same time, RICO provides for sweeping civil remedies (fines and triple damages), which is what the government usually seeks against its targeted victim. Most importantly, it gives the prosecutor the ability to ask the court to seize the assets and proceeds of an alleged "conspiracy" before the trial even begins.

Trade unions, then political movements

The main target of government RICO suits has been the International Brotherhood of Teamsters, an alleged hotbed of "mafia" activity. The government's July 1988 RICO indictment establishes "criminal conspiracy" among IBT leaders on the grounds that one executive of the union had been convicted of "vagrancy." Other members of the board are accused of being related to other alleged criminals, i.e., guilt by association. The use of union funds to hire defense lawyers is potentially a criminal offense, and in some cases defense lawyers have been issued subpoenas—a weapon which makes a mockery of the right to a defense in court.

The unions that have struck Eastern Airlines are now to be sued under RICO by Frank Lorenzo, the notorious corporate raider who looted the company for years. He charges that the strike activity (perfectly legal) constituted a conspiracy to disrupt the economic activity of the airline, and the unions are thus liable for damages. While this may seem a laughable contention, it is the very logic which has been employed against the anti-abortion movement by the abortionists, and has every bit as much chance to be upheld in a court.

Supreme Court runs amok

The terror potential of RICO has been reinforced by a series of rulings by the Supreme Court which established the prosecutor, not the judge, as the sovereign in the American courts. In 1982 the Court ruled that government misconduct in the form of withholding or destroying exculpatory evidence, which leads to a mistrial, does not prevent the government from retrying the case unless the prosecutor "provoked" the defendant into asking for a mistrial. Then, a 1985 Supreme Court ruling made it a minor offense for the prosecution to leak the proceedings of grand jury investigations—an act which formerly would guarantee a mistrial. In the same year, the court ruled that prior criminal convictions are not required to sustain a civil RICO action. These landmark decisions unleashed a wave of legal terror which has now spread to encompass the financial community, the defense establishment, and the Congress itself.

Ironically, "organized crime" figures represent the smallest percent of targets hit by RICO. The Justice Department says that from 1970 to 1980, RICO was used 217 times, and from 1984 to 1987, it was used 564 times. Fifty-six percent of those cases involved organized crime figures or government officials. A *Wall Street Journal* commentary by the executive director of the American Civil Liberties Union stated, "A 1985 study by the American Bar Association showed that only about 9% of civil RICO cases up to that time even involved allegations of criminal activity of the kind normally associated with professional criminals and that no probate civil RICO cases had ever been filed against organized crime groups."

Prosecutors in Chicago became notorious for using the pre-trial seizure provisions of RICO to threaten commodities traders at the Chicago Board of Trade. A midnight visit from the U.S. Attorney brought the promise that the house, savings, and personal possessions of the family would be immediately seized unless the trader "volunteered" information about an associate or supervisor.

The same technique has worked wonders in the ongoing "Ill Wind" investigation against defense contractors. The target is guilty of knowing someone who may have committed a criminal act; if he does not "cooperate" with the authorities, he will be classed a "co-conspirator" and subject to the property seizure provisions of RICO. The result of this methodology is an avalanche of "plea bargains" in which the victim agrees to plead guilty to a charge less severe than the one the other "conspirators" engaged in, and in return he will be dealt with leniently by the court.

In 1987 the Supreme Court upheld the constitutionality of the 1984 revision of the Federal Sentencing Guidelines, which eliminated judicial discretion in favor of "determinate sentencing" based on a Benthamite calculus. This reform puts a "guaranteed" sentence in the hands of the prosecutor, who can use it as a club in the plea-bargaining process, since cooperation with the government is one of the few exceptions to the sentencing limits imposed on judges. (The victim has no hope that a judge might impose a merciful sentence in a situation with extenuating circumstances, or a frameup.) "The prosecutor has more power than the judge, in sentencing," according to a prominent defense attorney.

The *coup de grace* is the RICO powers which allow the government to seek forfeiture of attorney's fees paid to the defense attorney on the ground that they have been paid out of defendants' improperly acquired assets. In many cases this means that no top-flight defense lawyer will touch a case

involving a RICO defendant. The defendant must the rely on court-appointed attorneys who will be pressured to accept the prosecutor's "plea bargain" as the reasonable thing to do.

The press has given widespread coverage to the notorious arrangement foisted on Drexel Burnam's Michael Milken (an illegal arrangement in which he agreed to pre-pay large fines in return for leniency toward his company during the trial period) and similar cases.

However sleazy Milken may be, RICO reduces law to a level every bit as thuggish as the criminal activity it allegedly deters. RICO is used as a bludgeon in the most routine court proceedings. The largest suit involves an allegation by the AAA (automobile club) that a group of attorneys and insurance agents was involved in a phony accident con game, and it involves millions of documents and has taken years of court time. The other end of the spectrum is a divorce proceeding where the husband claims that his family engaged in "racketeering activities" associated with investments he made in their businesses. These bizarre matters are at best the province of civil fraud statutes.

While there are numerous proposals for RICO reform in the Congress, they are oriented to the civil provisions only. As yet, no one has dared to challenge the tyrannical content of the criminal portions of the RICO law in Congress, and a thug-like comment made by former U.S. Attorney Joseph DiGenova, on ABC's "Nightline" program, tells why. DiGenova alleged that the entire $150 billion bailout of the savings and loan industry was necessitated by "fraud" on the part of the S&L executives, and threatened that they would be prosecuted under RICO for their "crimes." This theme has since been echoed by all the major "watchdog" groups in the media. "Nightline" host Ted Koppel pointed out that the Congress wrote the rules governing the S&Ls and must share in the blame for the problem, so DiGenova's logic would make them conspirators also. To the apparent shock of Koppel, DiGenova snapped back, "That's right, and they will find out that they are not above the law."

For further reading

"DoJ seizure of Teamsters 'smacks of totalitarianism,' " *EIR* Vol. 15 No. 28, July 15, 1988.

"When rule of bureaucracy replaces rule of law," Interview with Lennart Hane, *EIR*, Vol. 16, No. 2, Jan. 6, 1989.

Edwin Vieira: "Secret government moves to impose an oligarchical legal system in U.S.," *EIR* Vol. 16, No. 11, March 3, 1989.

'Verdi A' echoes in New York music world

On April 9, exactly one year after the famous conference organized by the Schiller Institute in Milan, Italy that launched a worldwide campaign to lower the tuning fork, New York City's Town Hall was the site of an operatic recital designed to promote what has become known as "Verdi's A." Singers from the Lubo Opera Company of New Jersey were joined by Adalisa Tabiadon, a young soprano from Italy and Pavarotti prizewinner, in singing a series of selections especially featuring the operas of Verdi and Beethoven at A-432, for an audience of over 1,000 people.

Since the April 9 concert, called "In Defense of the Human Singing Voice," reverberations of the tuning battle have continued to echo through the high-powered New York musical world, where many of the top stars of the Metropolitan Opera, past and present, have signed a petition circulated by the Schiller Institute in support of a law to mandate the "Verdi A" in Italy. So far, both of New York's mass circulation tabloids, New York *Post* and *Daily News*, have reported on the campaign, and Andrew Porter of the monthly *New Yorker* magazine gave the April concert a thoughtful review.

As the *Post* and Porter both report, the campaign was started by the controversial American political leader Lyndon LaRouche and his wife, Schiller Institute founder Helga Zepp-LaRouche.

First time in decades

The three-hour concert of operatic arias and ensembles on April 9 marked the first time in several decades, perhaps in this century, that a professional operatic performance was held in New York at "Verdi's pitch."

The artists demonstrated how the natural beauty of the human singing voice is enhanced when the scientific tuning of Middle C-256 is used (this was the basis Verdi used to set his A tuning fork at 432 Hz). This, combined with the quality of the performances, drew a warm response from the extremely diverse audience of over 1,000, which ranged from music critics, opera and symphonic conductors, and professional singers and players, to members of local church choirs