

Proposed RICO 'reforms' would only make the problem worse

by Leo Scanlon

The U.S. Congress is now considering several pieces of legislation which have been billed as reforms of the notorious RICO, or racketeering, laws. Unfortunately, as with the 1984 congressional RICO "reforms," the current proposals will in fact strengthen the dangerous and unconstitutional premises of the statute. A series of RICO lawsuits, accompanied by increasingly brutal police actions directed at anti-abortion protesters in recent weeks, is showing the ugly effect that this law, and its sponsors, are having on the American political system.

The RICO reforms being considered on the hill are contained in Senate bill 438, a similar bill called House Resolution 1046, and Senate bill 1523. The latter is perhaps the most insidious, not surprisingly introduced by Sen. Howard Metzenbaum (D-Oh.),

Metzenbaum proposes to strike the words "Racketeer Influenced and Corrupt Organization" from the language of the law, and replace it with the phrase "Pattern of Unlawful Activity." The change may at first seem to be a self-serving attempt by Metzenbaum to protect his own long-standing ties to organized crime in the Great Lakes area, but in fact the language makes the bill even more broad, vague, and dangerous than it already is, by preserving the concept that a "pattern" of otherwise unrelated acts may be treated as a single crime.

This feature of the RICO law was concisely analyzed by Columbia University Law Professor Gerard Lynch, in his testimony before the House Judiciary Committee on May 4. Pointing out the manner in which RICO has warped the entire basis of the criminal code, Professor Lynch said:

"The rules of evidence generally preclude reference to the defendant's prior record, or to his unsavory associations with others with criminal records. Rules of joinder carefully limit the extent to which several unrelated charges, against the same defendant or against others, can be brought together into the same trial. Jurisdiction over the crime, and the venue in which the trial is to be held, are carefully limited by the type of crime and the place where it was committed. The statute of limitations precludes prosecution of crimes that took place long ago, and double jeopardy prevents the cu-

mulation of punishments for the same act. . . .

"These various rules protect the innocent against wrongful conviction by forcing criminal trial juries to focus on the strength of the prosecution's evidence that the defendant committed the single particular crime . . . undistracted by prejudicial evidence."

Under RICO, he points out, "rules that confine the nature of a trial by focusing on the individual offense suddenly lose their character. For example:

"Evidence that a defendant associated with disreputable colleagues is no longer extraneous, prejudicial matter, but is an essential element of the government's proof. . . .

"Crimes that ordinarily would not be tried together can be joined. (Especially white collar violations can be tainted with charges of violent crimes in one trial)

"This kind of joinder is also permitted across jurisdictional lines. . . . If the crimes were allegedly committed in separate states, they could not be joined in any court, since different states would have jurisdiction of the state offenses . . . but RICO permits a jury in the same federal district to hear about all of the defendant's misdeeds at once. . . .

"Mass trials . . . become . . . expected. A defendant charged with RICO conspiracy for participating in some minor, non-violent venture of the enterprise may be forced to sit through a trial . . . while the more horrible misdeeds of numerous co-defendants are related at length.

"Predicate acts that took place long ago may be charged as part of the same offense."

Professor Lynch cites an extreme case in which a Croatian nationalist terrorist was tried in New York for crimes allegedly committed in Chicago, Los Angeles, Canada, South America, and Europe—but not the jurisdiction in which they were tried.

While Metzenbaum's bill would reinforce every one of the above-cited evils, the House and Senate bills associated with Sen. Dennis DeConcini (D-Ariz.), more to the list. The only reduction in the RICO armamentarium DeConcini proposes, is the elimination of the "triple damages" provisions of civil RICO—the least offensive part of the law. Otherwise, his bill and its companion in the House

add to the list of predicate crimes which constitute RICO violations and also broaden the boundaries for service of process to include any place in the world where the alleged criminal may reside.

The FBI and other U.S. agencies have supported and acted on the basis of this dangerous and unlawful attack on national sovereignty for several years; this proposal will open the door to the legalized kidnaping of any person targeted by a RICO action.

Legal terrorism heralds violence

Lynch's testimony rightly points out that it is a myth that the current use of RICO and related statutes is an abuse not intended by Congress. The current "reform" proposals underline the degenerate state of thinking in that body. This pattern is shown in another, less noticed but very significant area of legislation, involving the awarding of attorney's fees to the victor in a civil litigation.

Traditionally, each party pays its own costs in the U.S. legal system. Since 1964, a concept called the "private attorney general" has been used to justify the principle that the victor in a civil suit should recover damages, plus legal costs, in order to encourage citizens to utilize the courts in issues that the government does not have the manpower to address. This concept was hailed by liberals when it was used in civil rights and labor disputes, but is now proving to be a noxious potion. Congress added these provisions to Reconstruction-era federal laws that allow citizens to sue corporations on "whistle-blowing" matters, environmental matters, and so on. A new twist has been introduced by an Illinois Supreme Court decision which allows court costs to be assessed against third party intervenors in a law suit.

The practice has a chilling impact on political organizations that are being hit by RICO civil suits, where the arguments in one jurisdiction can have a material effect on issues raised in another. Political protests and labor disputes are most endangered by this bizarre decision.

The problem is not academic. Americans United for Life Legal Defense Fund, a Chicago-based organization, intervened on behalf of the Illinois restrictions on abortion, which were being challenged by the American Civil Liberties Union. The ACLU not only won its case against the state statutes, but also was awarded \$254,000 in fees to be paid by the anti-abortion group that intervened in support of the overturned statute. The issue is now before the U.S. Supreme Court.

The precedent could give tremendous leverage to the numerous RICO suits that have been filed in several states by abortion clinics attempting to suppress political protests against them. Any such targeted group would be hard pressed to find allies, when the consequence of the alliance might be very punitive fines.

Of course, the RICO suits filed in these cases are purely punitive devices to begin with. A suit filed against the Chicago "Operation Rescue" organization accuses its principals

of violations of the Hobbs Act, which prohibits the use of extortion to effect interstate trade. The National Organization for Women (NOW) and various abortion clinics and referral services are the plaintiffs in this suit, and in identical suits in California, Oregon, Washington, and other states.

Ed Tiryak, a Philadelphia civil rights lawyer, is the principal architect of the use of RICO to suppress the political protests targeting the abortion facilities. At the last NOW convention, he made no bones about the aims of his legal actions:

"We also had, during the course of litigation, discovered that the Archdiocese of Philadelphia is very actively involved in helping organize criminal acts at the clinic, and have on numerous occasions attempted to publicize that to the embarrassment of the Archdiocese. . . .

"The idea of course is that by doing this kind of publicity, we have been able to, when we've been successful, point out to fringe types of people, or people who aren't as committed as the leadership, which is maybe fifteen people here, of the perils of following this leadership.

"This leadership spent a lot of time trying to convince the zoning board here in Philadelphia to withdraw some permits for a new clinic. We filed a federal civil rights action against the poor guy who listened to them and got a \$55,000 judgment against the city. "

Tiryak describes his strategy clearly: "What we did was to file this case under RICO, suing 43 of them personally for damages [and since the protest forced the clinic to cease abortions, he alleged that the protesters achieved their ends through either use of force or threats of force].

"Well, if you use force or threats of force to make somebody give up something of value, that's called extortion. And if you commit two acts of extortion in a period of ten years, then that qualifies as being an ongoing criminal enterprise under the Racketeer Influenced and Corrupt Organizations Act."

Referring to the protesters as "drooling androids" (a curiously derogatory term from someone who purports to represent the civil rights of the mentally ill), Tiryak raved, "We were not just going to sit around and wait for these people to do something. We're going to go after them, and we're going to go after them in a way which would hurt them personally."

And Tiryak and his colleagues made good on this threat in more ways than one. In the city of Los Angeles, the pro-abortion city council demanded that the police department present a plan to stop a scheduled protest in April. The police, under the leadership of Daryl Gates, complied in spades, and used a variety of brutal and painful techniques to break up the peaceful sit-in. In Pittsburgh, a similar scenario produced acts of extreme brutality against the Operation Rescue protesters. In both cases, anti-brutality law suits will be filed. (In the Los Angeles case, a video of the violence was made, and is available for \$20 from Finn Video, 1840 S. Elena, Suite 103, Redondo Beach, Calif., 90277.)