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Should the Treble Damages Provision of RICO be Revisited by Congress?

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"It does not require any one to be long in a court before he discovers how many things brought there ought to have been settled elsewhere or never laid hold of anywhere."[1]

I. INTRODUCTION

In 1970, Congress enacted the Racketeering Influenced and Corrupt Organizations Act (RICO) to combat the encroachment of organized crime upon legitimate business organizations.[2] To achieve this end, the statute was drafted with intentionally broad language,[3] providing for a variety of criminal sanctions and civil remedies.[4] The civil remedies include a provision for treble damages to those injured by racketeering activity.[5] While utilization of RICO in civil cases lay dormant for many years, the 1980s have witnessed a dramatic increase in civil RICO actions.[6]

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1. C. EDWARDS, PLEASANTRIES ABOUT COURTS AND LAWYERS OF THE STATE OF NEW YORK 22 (1867).

2. *See* United States v. Turkette, 452 U.S. 576, 591-92 (1981) (citing S. REP. No. 617, 91st Cong., 1st Sess. 79 (1969)).

3. *Id.*

4. *See* 18 U.S.C. §§ 1963-64 (1982 & Supp. 1989).

5. 18 U.S.C. § 1964(c) (1982).

6. Many commentators have noted the increase in the utilization of RICO in civil actions. *See, e.g.*, Koenig, *What Have They Done to Civil RICO: The Supreme Court takes the Racketeering Requirement out of Racketeering*, 35 AM. U. L. REV. 821, 823 n.11 (1986)

This Comment reevaluates the rationale of the treble damages provision of RICO in view of its increased utilization in civil actions. Section II provides the necessary background by focusing on the *prima facie* elements of a RICO action. Section III exemplifies the dilemma created in holding civil and criminal actions to the same statutory standard under RICO. Section IV suggests a possible legislative solution to curb the improper utilization of RICO, especially in view of the original legislative purpose of the statute. Finally, Section V concludes by proposing that the frivolous use of civil RICO can be controlled by modifying the treble damages provision of the statute.

II. CURRENT APPLICATIONS OF THE RICO STATUTE

A. *Defining the Elements of a RICO Violation*

A thorough analysis of the elements of a RICO violation requires an examination of both the statute and its interpretation by the courts. First, with reference to the statutory language, 18 U.S.C. § 1962 specifically prohibits four types of conduct: 1) it is unlawful to receive income derived from a pattern of racketeering activity and to subsequently invest this income in an enterprise which impacts interstate or foreign commerce;[7] 2) it is unlawful to acquire or maintain an interest in, or control of, any enterprise which impacts interstate or foreign commerce through a pattern of racketeering activity;[8] 3) it is unlawful for a person employed by or associated with any enterprise which impacts interstate or foreign commerce to conduct or participate in the affairs of the enterprise through a pattern of racketeering activity;[9] and 4) it is unlawful for any person to conspire to violate any of the foregoing provisions.[10]

("Over 100 decisions have been published concerning private civil RICO actions since 1978.") (citing *A RICO Crisis - 2nd Circuit Rulings Sharply Curb Civil Actions: Lawyers See Confusion Until the High Court Acts*, Nat'l L. J., Aug. 13, 1984, at 31 col.1). "In contrast, courts published only two decisions concerning private civil RICO during the first seven years of RICO's existence". *Id.* at 823 n.11 (citing Long, *Treble Damages for Violations of the Securities Laws: A Suggested Analysis and Application of the RICO Civil Cause of Action*, 85 DICK. L. REV. 201, 206 n.32 (1981)).

7. *See* 18 U.S.C. § 1962(a) (1982).
8. *See* 18 U.S.C. § 1962(b) (1982).
9. *See* 18 U.S.C. § 1962(c) (1982).
10. *See* 18 U.S.C. § 1962(d) (1982 & Supp. 1989).

The federal courts have interpreted the foregoing operative provisions to require the following *prima facie* elements as a prerequisite to bringing an action under RICO: "1) That a person; 2) employ a pattern of racketeering activity; 3) so as to affect an interstate enterprise; 4) in one or more or the ways prohibited under title 18 United States Code section 1962; 5) which causes injury to the plaintiff's business or property."[11] The elements required to bring a criminal or civil action are the same, except that a civil action requires the additional element of damages.

Holding both criminal and civil prosecutions to the same statutory standard presents a serious dilemma: Should RICO be applied broadly to hinder the growth of organized crime, or should it be applied narrowly to protect the interests of business and commerce?[12] The gravamen of the RICO dilemma, however, does not lie in the *prima facie* elements established by the courts as prerequisites to bringing a RICO action or in the operative provisions of the statute. Rather, the dilemma lies in the fact that both civil and criminal actions are based on the same statutory language; language which the judiciary has interpreted broadly.[13] The discussion that follows suggests that judicial interpretation of the foregoing statutory terms has led to a dramatic increase in the utilization of the RICO statute, especially in the civil context.

B. *Increased Utilization of RICO in Civil Actions and Criminal Prosecutions*

In the past decade, the RICO statute has been applied to an increasing number of scenarios.[14] Many commentators suggest

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11. Lieberman, *A Primer on RICO*, 53 INTER ALIA 3, F-1. *See also* Utz v. Correa, 631 F. Supp. 592, 594 (S.D.N.Y. 1986).

12. *See generally* Comment, *Innocence by Association: Entities and the Person-Enterprise Rule Under RICO*, 63 NOTRE DAME L. REV. 179 (1988) (proposing that the corporation be held liable under the tort doctrine of *respondeat superior*); Comment, *Judicial Efforts to Redirect an Errant Statute: Civil RICO and the Misapplication of Vicarious Corporate Liability* 65 B. U. L. REV. 561, 606 (1985) ("Holding a corporation liable under RICO's treble damages provision based solely on vicarious liability is an unjustified expansion of civil RICO.").

13. *See infra* note 28 and accompanying text.

14. *See, e.g.*, United States v. Bonanno, 879 F.2d 20 (2d Cir. 1989) (where the federal government was held not to be a person under RICO and, thus, not have standing to seek treble damages). *See also supra* note 6 and accompanying text.

that this increased utilization of RICO is necessary in order to arrest the growth of organized crime.[15] This Comment, while agreeing with this premise, maintains that RICO has been extended to circumstances which Congress may not have anticipated RICO to apply.[16]

An examination of RICO case law indicates that in most instances the judiciary has liberally construed the language of the statute.[17] For instance, the language: "pattern of racketeering activity" has invariably received broad judicial interpretation. In *Blake v. Dierdorff*,[18] the Court of Appeals for the Ninth Circuit found that a "pattern of racketeering activity" could consist of as little as two separate acts.[19] Moreover, in *Smith v. Cooper*,[20] the Court of Appeals for the Fifth Circuit stated that "racketeering acts" need not be in connection with one another and that two related acts were sufficient to constitute a pattern under RICO.[21] Furthermore, in *United States v. Bagaric*,[22] the Court of Appeals for the Second Circuit stated that the object of racketeering activity must not necessarily be profit oriented.[23] In *Bagaric*, an organization motivated by political goals, rather than financial profits, was found to be under the purview of RICO.[24]

The term "person" has also been liberally construed by the courts. For instance, in *United States v. Elliot*[25], the Court of

15. *See* Blakey, *Equitable Relief Under Civil RICO: Reflections on Religious Technology Center v. Wollersheim: Will Civil RICO Be Effective Against White-Collar Crime?*, 62 NOTRE DAME L. REV. 526, 592-95 (1987).

16. *See supra* note 6 and accompanying text; *see also infra* note 55 and accompanying text.

17. *See infra* note 28 and accompanying text. *Cf.* Californian Architectural Building Products, Inc. v. Franciscan Ceramics, Inc., 818 F.2d 1466 (9th Cir. 1987) (where the court rejected the defendant's theory that twenty separate acts of mail and wire fraud constituted a single episode). As most business is conducted by wire and mail, the use of mail and wire fraud as predicate acts extends the scope of RICO. *See, e.g.*, Petro-Tech, Inc. v. Western Co. of North America, 824 F.2d 1349, 1354 (3d Cir. 1987) (RICO applies to "garden variety fraud").

18. 856 F.2d 1365 (9th Cir. 1988).

19. *Id.* at 1368.

20. 846 F.2d 325 (5th Cir. 1988).

21. *Id.* at 326-29.

22. 706 F.2d 42 (2d Cir. 1983), *cert. denied*, 464 U.S. 840 (1983).

23. *Id.* at 53.

24. *Id.*

25. 571 F.2d 880 (5th Cir. 1978), *reh'g denied*, 575 F.2d 300 (5th Cir. 1978).

Appeals for the Fifth Circuit found that the term "person" extended to individuals who were either inside or outside the enterprise as long as they participated in the affairs of the enterprise.[26] Other courts have gone as far as finding that, even in the absence of allegations that the "person" is in anyway connected with organized crime, dismissal of the RICO charges is not required.[27] In essence, the common thread of analysis running through the cases dealing with the definition of the term "person" is the relationship of the defendant to the enterprise, rather than whether the defendant(s) are in effect "persons" under the RICO statute.[28]

Not all decisions, however, have served to broaden the scope of RICO. In *United States v. Mandel*,[29] the United States District Court for the District of Maryland examined the issue of whether the State of Maryland could meet the "enterprise" requirement of RICO. The court stated:

> It is simply untenable to argue that Congress, without saying so, intended to federalize crimes involving acts of a public official in conducting the government of a state. In the absence of clear Congressional intent, courts traditionally should be reluctant to give a broad construction to a criminal statute which would transform matters primarily of local concern into federal felonies.[30]

The facts and procedural history of *Mandel* provide further insight into the interrelationship of the predicate acts of RICO and the elements of a RICO claim. In *Mandel*, the Governor of Maryland and his co-defendants were initially convicted of fifteen counts

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26. *Id.* at 903.

27. *See, e.g.*, United States v. Mandel, 415 F. Supp. 997, 1019 (D. Md. 1976), *convictions vacated on other grounds*, 591 F.2d 1352 (4th Cir. 1979), *aff'd original convictions*, 602 F.2d 653 (4th Cir. 1979) (*en banc*), *cert. denied*, 445 U.S. 961 (1980), *vacated*, 672 F. Supp. 864 (D. Md. 1987) (granting defendant's writ of error), *aff'd*, 862 F.2d 1067 (4th Cir. 1988).

28. The term "enterprise" has also been construed broadly, perhaps further inviting the use of civil RICO. *See, e.g.*, United States v. Turkette, 452 U.S. 576, 578-587 (1981) (stating that Congress adopted a broad interpretation of the word "enterprise" when it enacted the RICO statute). *See also* United States v. Amione, 715 F.2d 822, 828 (3d Cir. 1983) (where the "enterprise" element was plead as an association in fact).

29. 415 F. Supp. at 997.

30. *Id.* at 1021. *But see* United States v. Brown, 555 F.2d 407 (5th Cir. 1977), *cert. denied*, 435 U.S. 904 (1979) (holding that the term "enterprise" can be either a public or private concern).

of mail fraud and one count of a RICO violation as a result of accepting gifts in exchange for their support of certain race track legislation.[31] The RICO conviction, however, was based on the activities of the defendants in a securities firm, not with their activities connected with the State of Maryland.[32]

Nevertheless, the underlying predicate acts of the RICO violation involved mail fraud and were based on the defendants defrauding the citizens of Maryland of their "right to have [their] Government conducted honestly and impartially."[33]In 1987, however, the Supreme Court held in *McNally v. United States*[34] that the mail fraud statute only protects property rights, not the intangible rights of citizenry to good government.[35] Based on *McNally*, the *Mandel* defendants moved the court for a writ of error to vacate their earlier convictions, arguing that *McNally* reversed the predicate acts on which their RICO convictions were based.[36] The District Court granted their motion, and the Court of Appeals for the Fourth Circuit affirmed the decision.[37]

The foregoing analysis demonstrates how the elements of a RICO claim are inextricably connected to the underlying predicate acts of the case. All requirements must, therefore, be present in order to prevail in a RICO action.[38] Cognizance of this phenomena by the judiciary can help ensure the proper application of the RICO statute, can help preserve scarce judicial resources, and can help ensure that the intended social policy goals behind the statute are reached.[39]

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31. *Mandel*, 591 F.2d at 1352.

32. *Id.* at 1353.

33. *Mandel*, 862 F.2d at 1070.

34. 107 S. Ct. 2875 (1987).

35. *Id.* at 2879.

36. *Mandel*, 672 F. Supp. at 866.

37. *Mandel*, 862 F.2d at 1072-74.

38. *See, e.g.*, United States v. Hooker, 841 F.2d 1225, 1228 (4th Cir. 1988) (where the indictment was held insufficient since it didn't state that the business enterprise affected interstate commerce).

39. Prior to the inclusion of treble damages in title IX of the Organized Crime Control Act, the policy objectives of the "Civil Approach" to RICO were presented in Senate Report Number 91-617:

> As a special committee of the American Bar Association observed: "The time-tested machinery of the antitrust laws contains several useful and workable features which are appropriate for use against organized crime."

III. HAS THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT GONE TO FAR?

In *United States v. Hartley,*[40] the Court of Appeals for the Eleventh Circuit extended the scope of RICO[41] by holding that a corporation may be "simultaneously both a defendant and the enterprise under RICO [18 U.S.C. § 1962(c)]."[42] Previously, the judiciary had interpreted the language of § 1962(c) to require that the "person" charged and the "enterprise" be distinct from one another.[43] The *Hartley* decision has not been followed by the balance of the circuit courts. To date, only in the Eleventh Circuit can a RICO defendant pattern racketeering activity on its self under § 1962(c).[44] The facts and procedural posture of *Hartley* provide an adequate starting point of analysis for this novel application of RICO.

In *Hartley*, the "enterprise," Treasure Isle, Inc., had a contract with the Government to provide the United States Military

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> Title IX thus brings to bear on the infiltration of organized crime into legitimate business or other organizations the full panoply of civil remedies, including a civil investigative demand, now available in the antitrust area. The use of such remedies as prohibitory injunctions and the issuing of orders of divestment or dissolution is explicitly authorized. Nevertheless, it must be emphasized that these remedies are not exclusive, and that title IX seeks essentially *an economic, not a punitive goal*

S. REP. NO. 617, 91st Cong., 1st Sess. 80-81 (1969) (emphasis added).

40. 678 F.2d 961 (11th Cir. 1982), *cert. denied*, 459 U.S. 1170 (1983).

41. The decision broadens the scope of RICO in both civil actions and criminal prosecutions because it brings the defendant corporation's assets directly under the fine, forfeiture, treble damages, injunctive relief, and attorneys' fees provisions of the RICO statute. 18 U.S.C. §§ 1963-64 (1982 & Supp. 1989).

42. *Hartley*, 678 F.2d at 988.

43. *Hartley*, 678 F.2d at 988 (finding that a corporation could be both the enterprise and defendant in a RICO claim); *but see* United States v. Computer Science Corp., 689 F.2d 1181, 1190-91 (4th Cir. 1982) (" 'Enterprise' was meant to refer to a being different from, not the same, or part of, the 'person' whose behavior the act was designed to prohibit and failing that to punish."), *cert. denied*, 459 U.S. 1105 (1983); Hirsch v. Enright, 751 F.2d 628, 633 (3d Cir. 1989) ("the 'person' must be associated with a separate 'enterprise' [under § 1962(c)] . . . the Court of Appeals for the Eleventh Circuit is the only appellate court that has come to a different conclusion"); Harco v. American Nat. B. & T. of Chicago, 747 F.2d 384, 402 (7th Cir. 1984) ("[a corporation] may not be held liable under section 1962(c) for conducting its own affairs through a pattern of racketeering activity"). The *Harco* opinion also concluded that the person and enterprise could be the same entity under § 1962(a). The language of § 1962(a) does not contemplate separate entities as does the language of § 1962(c), *e.g.* "employed by" and "associated with."

44. *Hirsch v. Enright*, 751 F.2d at 633.

with frozen breaded shrimp.[45] The "persons," charged under RICO were G. Cecil Hartley, Vice-President, Travis Dell, Plant Manager and the "enterprise," Treasure Isle, Inc.[46] The predicate acts for the RICO charges consisted of various schemes to defraud the government, including the switching of government inspection tags on the shrimp and the preparation of special non-representative sample lots for government inspection.[47]

The defendants were convicted and subsequently appealed to the Circuit Court of Appeals for the Eleventh Circuit, arguing, *inter alia,* that it was the intent of Congress that the "persons" charged under § 1962(c) and the "enterprise" be separate and distinct from each other.[48] Their argument was based on the language of the operative provisions of RICO which in general make it unlawful for "persons" to engage in a pattern of racketeering activity which affects an interstate "enterprise."[49] Stated differently, the defendants argued that, under the operative provisions of RICO, the "enterprise" could not possibly pattern racketeering activity on its self. The court rejected this argument and upheld all of the convictions.

A careful examination of the opinion, however, indicates that the court failed to directly address the issues raised by the defendants. Specifically, the opinion of the court offered no substantial legal support for its decision that an "enterprise" can pattern activity on its self.[50] Instead, the decision relied on a broad reading of the term "enterprise" given by the Supreme Court in *United States v. Turkette.*[51] The court summed up the remainder of its rationale by stating that "it would defy reason to suggest that the central figure (the enterprise) could not also be prosecuted under RICO."[52]

Hartley is in direct conflict with the precedent set by the balance of the circuits.[53] More significantly, the decision, perhaps

45. *Hartley,* 678 F.2d at 965.
46. *Id.*
47. *Id.* at 966-67.
48. *Id.* at 988.
49. *Id.*
50. *Id.* at 988-90.
51. 452 U.S. 576, 591 (1981).
52. *Hartley,* 678 F.2d at 989.
53. *See supra* note 44 and accompanying text.

unjustifiably, exposes the assets of a corporation to the drastic remedial provisions of RICO, including treble damages, fine and forfeiture, and reasonable attorneys' fees.[54] The remainder of this Comment will suggest, among other things, that Congress intended that such strong weapons be utilized only against organized crime and not against persons or enterprises that one would be hard-pressed to classify as organized criminals, especially for alleged violations of predicate acts that one would be hard-pressed to consider as racketeering activities.[55]

Although it appears that the *Hartley* court went to far in extending the scope of RICO, the decision does serve to illustrate the RICO dilemma,[56] *i.e.*, a broad interpretation of RICO provides a potent weapon and deterrent against organized crime. It also helps protect the interests of those who are legitimately injured by racketeering activities. On the other hand, a broad interpretation of RICO may backfire, and expose RICO defendants to unusually severe, if not insurmountable, burdens.[57]

Presently, the only remedy to a frivolous civil RICO action is

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54. *Hartley* has been followed within the Eleventh Circuit. *See, e.g.*, Outlet Communications v. King World Productions, 685, F. Supp. 1570, 1578-90 (M.D. Fla. 1988) ("The Eleventh Circuit has held in the criminal context that a corporation may be a defendant and enterprise under RICO, and this has been recognized in civil RICO cases *within this circuit.*") (emphasis added). *See also* United States v. Romano 730 F.2d 1432, 1440-41 (11th Cir. 1984); Bank of America National Trust and Savings Association v. Touche Ross & Co., 603 F. Supp. 351, 354 n.5 (N.D. Ga. 1985). *Hartley* was also followed recently in the United States District Court for the Eastern District of Kentucky. *See* MHC, Inc. v. International United Mine Workers, 685 F. Supp. 1370 (E.D. Ky. 1988) (finding that the "enterprise" element had been sufficiently plead when union picketers were both the enterprise and the defendants).

55. *Cf.* Norton Tire Co. v. Tire Kingdom Co., Inc., 108 F.R.D. 371 (S.D. Fla. 1988) (upholding the dismissal of a state RICO action against a business competitor), *aff'd*, 858 F.2d 1533 (11th Cir. 1988).

56. The RICO dilemma can be attributed to three interrelated factors: 1) Civil actions and criminal prosecutions have been based on the same statutory standard. *See* Harco v. American Nat. B. & T. Co. of Chicago, 747 F.2d 384 (7th Cir. 1984). 2) RICO was designed to encourage civil actions. *See* S. REP. NO. 617, 91st Cong., 1st Sess. 80-83. 3) Civil claims and criminal prosecutions have different standards of proof. *See* United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974) (finding that the standard of proof in civil proceedings is lower than it is in criminal prosecutions), *cert. denied*, 420 U.S. 925 (1975).

57. Criminal forfeiture provisions can also pose a heavy burden on a RICO defendant. *See* Winnick, *Forfeiture of Attorneys' Fees Under RICO and CCE and the Right to Counsel of Choice: The Constitutional Dilemma and How to Avoid It*, 43 U. MIAMI L. REV. 765 (1989) (demonstrating how the forfeiture provision can deny a RICO defendant a proper defense of the action).

for the defendant to seek costs and sanctions under Rule Eleven of the Federal Rules of Federal Procedure.[58] This remedy is drastically inadequate in two (public policy) respects: First, it forces the victim of an ill-motivated claim to seek relief when that defendant should not have had to face the time and expense of trial in the first place. Second, damage awards are traditionally made toward the conclusion of litigation. The cost of defending a RICO action can be substantial.[59] Even if the defendant prevails in the action and in a motion for costs, he must still survive financially until he is reimbursed.

IV. CONGRESSIONAL SOLUTION

A. *Legislative Purpose of RICO*

In order to ascertain the legislative purpose of RICO, it is necessary to examine the congressional debates which preceded the enactment of RICO. Before examining these debates, it is perhaps prudent to reflect on the political scenario which existed at that time. By 1970, the year that RICO was enacted, proponents of the statute portrayed organized crime as centrally controlled mobs gaining financial strength, not only through traditional criminal activity such as gambling and extortion, but also through infiltration of legitimate business organizations.[60] In effect, the nationwide concern over organized crime had reached such proportions that it was believed that the viability of the free enterprise system was at stake. Senate Report number 617 which was published during the first session of the 91st Congress reflects this concern:

> It must be frankly recognized, moreover, that the infiltration of legitimate organizations by organized crime presents more than a problem in the administration of criminal justice. What is ultimately at stake is not only the security of individuals and their property, but also the viability of our free enterprise system.[61]

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58. FED. R. CIV. P. 11.

59. Winnick, *supra* note 57 at 772-75.

60. *See generally* 116 CONG. REC. 581-607 (1970); S. REP. NO. 617, 91st Cong., 1st Sess. 1, 79-81 (1969).

61. *Id.* at 80-81.

The extreme concern of Congress with organized crime was perhaps attributable to the political touting of the Act by its proponents; members of Congress vehemently spoke out against organized crime.[62] A firm stance against the "evil" of organized crime provided a strong political platform.

This political scenario indicates that the primary intention of Congress in passing RICO was to combat "mafia-like" criminals and not legitimate, non-organized crime, businesses which were already subject to other penal statutes and common law actions. Various remarks by Senator McClellan of Arkansas are illustrative of this purpose:

> I believe that every member of the Senate want[s] to enact whatever legislation is necessary to strengthen the arm of the law and law enforcement in this country so that society may be protected; the impositions of organized criminals will not be placed on our people, and the streets of our communities may at least be made comparatively safe again someday.[63]

Unfortunately, there is no conclusive evidence within the legislative history as to whether Congress intended the "enterprise" and "person" elements be one and the same under § 1962(c). The foregoing Senate reports clearly indicate that the primary target which RICO was intended to combat was organized crime. It is, therefore, unlikely that Congress anticipated that the judiciary would attempt to extend the scope of the statute to business enterprises, other than traditional organized crime concerns, by such mechanisms as employed by the Eleventh Circuit in *Hartley*, especially when congressional deliberations characterized the enterprise as the victim which should be protected from the evils of organized crime.[64]

B. *Modification of the Treble Damages Provision*

Congress has left two conflicting influences to guide the Judiciary in its interpretation of RICO: On the one hand, RICO should

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62. 116 CONG. REC. at 584.

63. *Id.* at 584 (opening remarks of Senator McClellan referring to the entire Organized Crime Control Act; Title XI of this Act was the original RICO statute).

64. *Id.* at 586.

be interpreted broadly in order to be a strong and effective weapon in criminal prosecutions. On the other hand, the statute should not be so liberally construed as to thwart legitimate, non-organized crime, enterprises through frivolous civil actions as these entities are already subject to, among other things, common law actions for fraud should they injure a civil plaintiff. A possible solution for reconciling these conflicting influences would be for Congress to apply the treble damages clause[65] only to cases involving extreme racketeering activity.[66]

By eliminating the automatic application of the treble damages clause, the motivation of civil plaintiffs with questionable claims would be reduced and the primary purpose behind the statute, to combat organized crime,[67] would be attained. Frivolous civil claims under RICO[68] would sharply diminish as the possibility of receiving treble damages would not be gleaming so brightly on the horizon. More importantly, the effectiveness of RICO against organized crime would increase because this modification would relieve the criminal justice system from civil considerations in applying RICO more broadly. Other purposes of civil RICO, *e.g.*, a supplemental policing function and compensation to truly injured parties, would remain intact as the courts could award treble damages in extreme cases of racketeering activity.

V. CONCLUSION

After examining the current problems facing RICO and the

65. The treble damages clause was not included in the text of title IX of the Organized Crime Control Act when read into the Congressional Record. 116 CONG. REC. 581-82 (1970). Congress patterned RICO after the Sherman Antitrust Act. 15 U.S.C. §§ 1 *et seq.* (1982). Like RICO, the antitrust statute has been the vehicle of questionable civil actions. *See, e.g.*, Matsushita Elec. Indus. Co. v. Zenith Radio, 106 S.Ct. 1348, 1354 (1986) (where antitrust actions were brought alleging a conspiracy to charge higher than market prices, which violate the Sherman Act *per se* but could not possibly injure the plaintiff).

66. Other possible alternatives to the RICO dilemma include: 1) following decisions like *Hartley* which broaden the applicability of RICO, 2) not following decisions like *Hartley*, 3) eliminating civil remedies altogether, and/or 4) holding civil actions to a higher standard of proof than criminal actions. Each of these alternatives tends to serve only one interest and fails to adequately address the RICO dilemma.

67. *See* S. REP. NO. 617, 91st Cong., 1st Sess. at 1, 79, 80-81 (1969) (presenting the purpose and the justification for the "Civil Approach" of RICO); 18 U.S.C.S. § 1961 History; Statement of Findings and Purpose (Law Co-op. 1979).

68. *See supra* notes 55 & 56 and accompanying text.

legislative purpose behind the statute, this Comment suggests that the real issue is not whether to broadly or narrowly interpret RICO or whether to eliminate the statute altogether. Instead, the issue is how to apply RICO broadly without creating adverse effects on individuals, commerce, and the judicial system. As a possible solution to this issue, this Comment suggests that the treble damages provisions of RICO be modified so as to be available only in the most extreme situations.

This solution would preserve judicial resources without sacrificing the rights of truly injured individuals. It would not only reduce the incentive to bring frivolous claims, but it would also allow courts to award treble damages, at their discretion, to truly injured parties. Moreover, the original purpose of RICO, *i.e.*, to provide law enforcement officials with a potent and far reaching weapon to eliminate organized crime,[69] would be preserved since the judicial system would be freed from the burden of civil considerations when applying RICO broadly in criminal actions. In sum, by eliminating the automatic application of the treble damages provision, not only would RICO become a more potent medicine against the illness of organized crime, but concern over civil side effects would also be substantially reduced.

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69. *See supra* notes 2 and 67 and accompanying text.