

# **The FBI is a Racket and a Menace**

**History and Commentary on RICO, The Federal Government's Most  
Weaponized Litigation Tool**

GSO Legal Defense

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*“Conspiracy charges are convenient for police and feds because they don’t require authorities to prove that any actual illegal activity took place, only shared intent. In that regard, they’re an ideal weapon to wield against ideologically based communities; they also lend themselves to government agencies’ attempts to entrap inexperienced organizers and activists.”*

*-Jeff Change, author of Can't Stop, Won't Stop*

*note: Broken Window has largely kept the original text intact, with minor edits for clarity or updates for passed time, and has added several items to the RICO Timeline. The intent and spirit of the original text was integral to this publisher's understanding of political solidarity in the legal system at the time, and in the current context of late 2019 it seemed appropriate to release a 2nd edition.*

## **FOREWORD**

The writers of this zine never wanted to become RICO experts. Before December 2011, our knowledge extended to Ricos of the Coco and Suave variety, and not much beyond. But then a bunch of our friends and a bunch of our friends's friends got kidnapped by federal law enforcers and locked up without bail.

We go through the indictment that the paramilitary goon squad (known to the earnest citizens of our fair city as the Safe Streets Task Force) had shoved in their back pockets as they abducted Latin Kings in Greensboro. They were being charged with RICO. We learned what they took besides our dudes: drawings, hats, beads, clothes, letters. It struck us as funny at the time – what a bunch of bozos these feds are, they don’t have any drugs or guns or money to take, just a crayon drawing of a lion and a black & yellow Steeler's jersey! Surely this is just another frivolous harassment, writ large – but now, seven years later, the same men are still in jail.

Why? Because RICO prosecutions don’t necessarily need body bags or packs of coke to delete a free life. RICO is a unique, potent, and highly evolved litigation tool that was designed to find convictions where conventional law fails. It criminalizes thought, intention, and circumstance. So a drawing or a wardrobe with a certain chromatic character suddenly becomes damning under RICO.

When RICO hit in court, we got a sense of just how slimy and conniving RICO is. Dismissed charges are exhumed for their relevance in a federal jurisdiction. Surveillance technology places you where organized criminals are understood to be. Informants shed light where the eye in the sky can't see. Plea bargainers confirm the structure of the enterprise and nobly seek truth; perhaps, incidentally, they will be exonerated or given reduced time. Testifying cops help corroborate shaky narratives. “Experts” shit all over everything. And prosecutors will brandish shiny weapons no one ever used.

What RICO amounts to is the crime of (already) being (determined) criminal. It's dangerous because its pre-emptive – Minority Report stylized a futurist version of that fear, American military leaders have bested opponents bogged down by linear time by retaliating preemptively. It's dangerous because it disrupts autonomous self-organized, affinity-based relationships in the name of regulating associations within private organizations.

It's slimy because it generates signifiers of crime – the old Sicilian gangster, the young black hood, the face-tattooed brown teen – and the reproduces them by wielding them relentlessly as

science in front of doughy juries who've watched enough Gangland to know how to do some civic good: Get a conviction, let em 'em rot.

Theres a binary and empirical hysteria surrounding criminals in our society. If you're not good, you're evil; if you're not innocent, you're guilty; if you can't earn a living, your income is illegitimate. Hollywood has left us with a psychic allergy to nuance in the representation of criminality. Washington makes it clear that criminals aren't citizens once they pass a felonious threshold – that is if they can manage to ever return from the penal vortex. And Jerusalem, Mecca, Utah, (or wherever you get your Abrahamic fix) equates redemption with repression and urges us to confess our sins to the Court (the repository of objective morals and truths on Earth) and accept our consequences with deference.

More potent than any of these is the influence economics has on the matter. A RICO conviction must contain evidence that a criminal enterprise affected interstate commerce. That's the government turf. Maybe its a facile to understand things like this. But theres startling evidence in the Latin Kings case that suggest a primarily financial motive for deploying RICO: the Latin Kings and Queens were critical of and relentlessly stood up to the most funded gang in Greensboro, even being so fed up as to file a Title VI complaint against the Greensboro Police Department to the Department of Justice. Maybe unrelatedly, the GPD's Gang Unit disbanded after the specter of Greensboro's "violent gang problem" was repeatedly revealed as smoke and mirrors, and so there was a risk that some cops would be put out of work. Rumor has it that the GSO pigs had to petition the Feds at least three times to get them to agree to bring the case down. December 6th, 2011, the day of the raid, the Safe streets Task Force was awarded more than \$50,000 by Greensboro's city council. The way the FBI behaves certainly feels like a racket. They make the rules and strong-arm dissenters out of their way, stacking papers the whole way.

Conspiracies rule everything around us. They can entrap us or embolden – depending on who's theorizing and who's targeted. Paranoia can generalize and grow like a cancer in our communities, pointing towards "outsiders" and fighting over legitimacy. Or we can refuse to allow the State-sanctioned conspiracy theories to have us running for cover, we can continue to freely associate and do what we need and desire to transform our current conditions.

## INTRODUCTION

RICO stands for the Racketeer and Corrupt Organizations Act (18 U.S.C. § 1962), and was enacted in 1970.

The act was developed under LBJ during the early formative stages of post-red scare America that begat COINTELPRO & The War on Drugs under Nixon. RICO was a form of legislation that could contribute to the interference and disruption of both criminal and non-criminal groups the government sought to damage for political reasons.

It contains a specific clause that dictates that RICO must be "construed liberally to effectuate its remedial purpose". In other words, when there is a question about what counts as RICO, the courts will usually defer to a more inclusive definition. This in turn, allowed for RICO to become a powerful & aggressive tool for prosecutors.

Congress explicitly designed RICO to address a broad class of unlawful activity that has a substantial effect on interstate and foreign commerce – the act serves as a mechanism to validly exercise Congress' Commerce Clause powers. In other words, there is always an economic com-

ponent to RICO violations. It's understood that regulating commerce and keeping private forces from interfering is rational and necessary.

The act exists in criminal and civil forms, and there are two aspects to criminal violation: substantive RICO & conspiracy to commit racketeering. You can be charged with conspiracy to commit RICO without actually ever committing a crime and even if you are acquitted of a substantive RICO charge, you can still be convicted of RICO conspiracy.

## RICO CONSPIRACY

There are two elements of a Conspiracy to Commit Racketeering violation: (1) that the defendant agreed to the overall objective of the conspiracy or (2) that the defendant personally committed two predicate acts thereby participating in a single objective conspiracy. Unlike the general conspiracy statute, RICO conspiracy requires no overt act or specific act in carrying conspiracy forward, only agreement to commit or facilitate some part of substantive offense.

To be prosecuted for RICO conspiracy, the government doesn't have to prove that a defendant knew all of the details of unlawful enterprise or number of identities of all the co-conspirators, as long as there is evidence from which a jury could reasonably infer that a defendant knowingly participated in some manner in overall objective of conspiracy. Still, conspirators are liable for the acts of their co-conspirators as long as they share a common purpose.

Moreover, RICO conspiracy need not be proved through direct evidence; the government can establish guilt solely by *circumstantial* evidence. Circumstantial evidence is evidence that follows from "probable conclusion from the circumstances."

A predicate act is something you do for the purpose of carrying out a crime later. This can include minor crimes like theft or intimidation, or non-crimes like talking about committing a crime. As long as someone has committed two such acts that share the same or similar purposes, results, participants, victims, other methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated events, then they can count as predicate acts and thus be used to prove a RICO conspiracy violation (and, as we'll see later, two predicate acts can also count as a substantive RICO charge, and conspiracy can count as one of the acts. If it sounds redundant, that's by design: RICO has been called "The Crime of Being Criminal").

## SUBSTANTIVE RICO

There are five elements of a substantive RICO violation. The government must show:

1. an enterprise existed;
2. the enterprise participated in or its activities affected interstate commerce;
3. the defendant was employed by or was associated with the enterprise;
4. the defendant conducted or participated in the conduct of the enterprise;
5. through a pattern of racketeering activity.

1.  
For the first criteria, the definition of 'enterprise' originally was intended to apply to groups like La Cosa Nostra (the Italian Mafia) and other crime syndicates of that type. The enterprise need not be a "legitimate business" or a form of organization sanctioned by state law. In *U.S. v. Turkette*, (1981) the definition was broadened. It "need only be a group of persons associated

together for a common purpose of engaging in a criminal course of conduct”, which effectively broadened it to the extent that now any two people who have discussed a crime could be called an 'enterprise'.

2.

The second criteria, 'Interstate Commerce' is a controversial one, one which the government has attempted to make extremely broad in the same way as it has for the enterprise clause, but has had less success. In *U.S. v. Nascimento* (2007), the court upheld a conviction based on the fact that a violent gang had bought and used guns that were manufactured out of state, even though the gang had no economic activity, and didn't itself operate as an interstate enterprise. There are many cases in which the interstate commerce component becomes the crucial aspect of the case. See the case timeline below for more details.

3.

The third criteria is being employed by or associated with that racketeering enterprise. As mentioned above, groups without strict organization can still “employ” the services of associates. The matter of 'association-in-fact' deals with categorizing any incidental or impromptu grouping of people endeavoring to commit crimes as an enterprise that meets this criteria.

4.

The fourth criteria conducting or participating in the conduct of the racketeering enterprise, which in some cases means discussing crimes or bragging about doing them, whether or not they ever actually occurred.

5.

The fifth criteria requires proof of a 'pattern', which is any two racketeering acts that the defendant is able to commit either by means or as a result of their involvement with the “enterprise”. This is particularly easy to prove, since, as mentioned in *U.S. v. Nascimento*, one act can be a crime (in this case shooting someone), and the second act can be conspiring to commit that crime (and the court is allowed to draw from that and based on your involvement in a 'criminal enterprise' that you intended to do so more than once but for being stopped by them). This may seem like it violates the Double Jeopardy Clause that forbids the government from punishing a person twice for the same offense, but the government says you are allowed to punish the same conduct under more than one statute if each offense “requires proof of fact that the other does not”. For more on Double Jeopardy, see *Boyle v. U.S.* (2008) below.

So when you invent a new statute like RICO that creates new crimes that are exceptionally broad and tailored for prosecutors to use aggressively, it becomes very easy to criminalize the people of color involved in “violent gangs”, and to “enhance” the severity of their punishments. The courts also respond to the current social environment in their decisions, and have played on amplified fears generated by movements like “The War on Drugs”, “The War on Terrorism”, and other government-generated social “wars” that rely on othered archetypes to perpetuate gang hysteria. The US Federal Government has a rich history criminalizing the association of people of color.

Many gangs are violent, threatening, destabilizing forces. A robust appreciation for gangs requires historical consideration and nuance – understanding how crime operates as an economic necessity and the extent to which gang in-fighting is a product of a long-term government operation to derail self-defense groups in neighborhoods of color. Misunderstanding 'crime' to be synonymous with 'illegitimate' further clouds the matter. Regardless of the aesthetic and material position one takes on gangs, it's clear that the threat they pose is less severe by virtue of its

being less formal, more spontaneous, and relatively unsubsidized – unrefined by the machinery of capital. While racism, homophobia, misogyny, etc. do exist in gangs, they don't perpetuate them on superstructural levels the way law enforcement does.

Plus the government already has tools that are more than adequate to deal with violent gang problems, and has invented weapons of litigation like RICO to unfairly prosecute people who seem like they could be criminals. Just as every RICO prosecution must have an economic component on its face, so too do we believe that there is an ulterior economic motive at play here: as manufacturing leaves the U.S. In the post-industrial-complex exists as a curative to this problem, generating new jails, new police officers, installing new security technology, and spending money on research to continue managing the population are all economic components that rely on an inflated crime problem. The Violent Crime and Law Enforcement Act of 1994 (see below) is a recent and obvious example of this, but it represents merely the latest in an exponential litany of crime litigation whose genesis is exclusively economic.

## **A SELECTED RICO TIMELINE**

### **14th Century – Thuggee Gang**

Since before 1356, organized gangs of professional assassins who traveled in groups across India originate. This is where the term “thugs” originates. The special band or fraternity of thugs would join travelers, gain their confidence, then take them by surprise and strangle them ritually before robbing the bodies of valuables and burying them. The thuggees based their actions on a foundation myth in which they consider themselves children of Kali, a Hindu goddess associated with empowerment. According to some historians, the Thuggee believed they had a positive role, saving humans' lives by committing a sacred service to placate Kali and keep her from destroying all humankind. Others claim they had no religious motive and that colonial sources of history were wrong and prejudiced in that respect. The gangs exist for nearly 500 years before being seemingly eradicated by the efforts of the British rulers of India, specifically Lord William Henry Sleeman, a British colonialist and Governor General of India in the 1830s.

### **17th Century – Yakuza**

Origin of the Yakuza, the traditional Japanese organized crime syndicate occurs as peddlers of illicit, stolen, or shoddy goods, as well as gamblers, loan sharks, and other extortionists began structuring their criminal operations and arming themselves. The word Yakuza is derived from a losing hand in the card game Oicho-Kabu, a form of blackjack, in which 8-9-3 or ya-ku-za, is a losing hand. Bakuto, the gamblers in Japan during that era, were regarded with disdain by society at large, and much of the undesirable image of yakuza originates from bakuto.

### **19th Century – Early New York City Gangs**

The First major gangs to develop in New York City was among ethnic whites, such as the Jewish Eastman Gang and the Irish Whyos. There were also “nativist” anti-immigration gangs such as the Bowery Boys.

### **Mid-19th Century – La Cosa Nostra**

the Sicilian Mafia, or La Cosa Nostra (Italian for “Our Thing”), a criminal syndicate, emerges in Italy as a response to Sicily's transition out of feudalism in 1812 and annexation by mainland Italy. Feudal barons steadily sold off their rented lands to private citizens, and the law enforcement

once left to private armies dissolved into an informal criminal hierarchy, a loose association of criminal groups that share a common organizational structure and code of conduct.

#### **1920s-1930s – Early American Rackets**

Depression and prohibition bring about first organized crime laws. Some bootleggers, speakeasy runners, extortionists, bank robbers, and other criminals sophisticate their operations into systemized elements of organized crime, otherwise known as Rackets. People running or involved in these activities become gangsters. The best-known racket is the protection racket, in which criminals demand money from businesses in exchange for the service of “protection” against crimes that the racketeers themselves instigate if unpaid. Other types of rackets like illegal bribery, gambling, and sexual exploitation, for example, also exist.

#### **1927 – Racketeering**

The term “racketeering” was coined by the Employer's Association of Chicago in June 1927 in a statement about the influence of organized crime in the Teamsters union.

#### **1946 – 18 USC § 1951**

Also known as the Hobbs Act, the federal statute prohibits actual or attempted robbery or extortion affecting interstate or foreign commerce. Also proscribes conspiracy to commit robbery or extortion without reference to the conspiracy statute. Early anti-racketeering law for labor-management disputes, frequently employed in cases involving public corruption, commercial disputes, and labor unions.

#### **1946- Pinkerton v. U.S.**

Pinkerton rule established, wherein a person is considered guilty of all the crimes of a group of conspirators.

#### **1947- U.S. v. Walsh**

A defendant shipped vitamins to a business that was engaged in the business of introducing the vitamin in interstate commerce; supreme court stated that the Federal Food, Drug, and Cosmetic Act of 1938 seeks to keep interstate channels free from deleterious, adulterated, and misbranded articles of the specified types; SC said that any transaction that concerns a business generally engaged in interstate commerce, Commerce may act on.

#### **1960s – Young Lords**

The radical Puerto Rican nationalist group, the Young Lords, originates in Chicago. Other neighborhood-specific gangs of youth and people of color develop, some as petty crime syndicates and some as means of informal protection against racist police and the peoples they serve and protect.

#### **1966 – Black Panther Party**

The Black Panther Party for Self Defense is founded by Huey P. Newton, explicitly a radical alternative to the strictly non-violent rhetoric espoused by other civil rights leaders at the time. The BPP becomes the primary target of the operations of COINTELPRO and is systematically dismantled over the decades by false and frivolous charges made by the FBI on its most prominent and influential members and leaders.

#### **1970s – Medellin Family Cartel**

The group, based out of Medellin, Colombia and famously led by Pablo Escobar, spreads throughout South and Central America, becoming the most successful drug racket in history.

#### **1970 – Organized Crime Control Act**

Direct Predecessor of RICO. Sets up the way 'organized crime' is officially/legally understood in the U.S. Based on La Cosa Nostra. Among other things, it says:



“The congress finds that (1) organized crime in the US is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens...”

**1970 – 18 USC § 1968**

The Racketeer Influenced and Corrupt Organizations Act (RICO) is signed into law.

**1979 – Sonny Barger**

Barger, leader of the California motorcycle club The Hell's Angels, beat RICO by claiming the charges leveled against him were not national, and that the government failed to prove that it was part of a club policy to do crime, and couldn't come up with any incriminating minutes from meetings mentioning guns or drugs.

**1980 – Frank Tieri**

Genovese crime family boss Frank “Funzi” Tieri was the first Mafia boss to be convicted under RICO.

**1981 – U.S. v. Turkette (Supreme Court)**

Ruling expands RICO from infiltrators of legitimate businesses to perpetrators of wholly illegitimate businesses; proof of a pattern of racketeering activity may be sufficient to permit a jury to infer the existence of an association-in-fact enterprise (which is, simply, a continuing unit that functions with a common purpose, which doesn't necessarily need to have a hierarchical structure or a chain of command: decision can be made ad hoc and by any number of methods; needs no fixed roles; no group name; regular dues, established rules, disciplinary procedures or induction/initiation ceremonies. All you need is 3: (1) a purpose (2) relationships among those associated with the enterprise & (3) longevity sufficient to permit these associates to pursue the enterprises purpose).

**1984 – 18 USC § 1959**

The Violent Crimes in Aid of Organized Crime Act (VICAR) was designed to supplement RICO, substantially similar to RICO in scope and content, and may be used in addition to RICO. Among other things, it criminalizes:

“Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished.”

A Senate Report states that in view of the Federal Government's strong interest in suppressing the activities of organized criminal enterprises, and the fact that the FBI's experience and network of informants and intelligence with respect to such enterprises will often facilitate a successful Federal investigation where local authorities might be stymied. Murder, kidnapping, and assault

violate State law, and the States will have an important role to play in many such cases that are committed as an integral part of an organized crime operation.

#### **1984 – Key West Police**

The Key West Police Department in Florida was declared a criminal enterprise under the federal RICO statutes after a lengthy U.S. Department of Justice investigation. Several high-ranking officers of the department, including Deputy Police Chief Raymon Cassamayor, were arrested on federal charges of running a protection racket for illegal cocaine smugglers. At trial, a witness testified he routinely delivered bags of cocaine to the Deputy Chief's office at City Hall.

#### **1988 – U.S. v. Perholtz (DC Circuit Court of Appeals)**

RICO for sophisticated racketeers but even more for 'the artless' non-corporate goons; essence of criminal enterprise was the means by which companies were formed and take public; the existence of enterprise could be inferred from the proof of a pattern of racketeering acts.

#### **1991 – [U.S. v. Farmer (7th Circuit Court of Appeals)]**

Interstate commerce nexus of RICO was satisfied where cocaine was flown directly from South America to Illinois and where drug scales in Illinois were manufactured in New Jersey. De minimis test established.

#### **1994 – N.O.W. v. Scheidler (Supreme Court)**

The National Organization for Women (N.O.W.) sued a coalition of anti-abortion groups called the Pro-Life Action Network (PLAN) under RICO. N.O.W. Alleged that Scheidler and other anti-abortion protesters were members in a nationwide conspiracy to obstruct women's access to abortion clinics through a pattern of racketeering activity including the actual or implied threat of violence. The District Court dismissed the suit, holding that the voluntary contributions are not proceeds of racketeering and that a "racketeering enterprise" must have an economic motive, a fact that NOW could not demonstrate. The Court of Appeals affirmed and the Supreme Court granted certiorari. The unanimous Court held that organizations without an economic motive can detrimentally "affect interstate or foreign commerce", satisfying the RICO definition of a racketeering enterprise. An "enterprise" does not have to be an economic organization or a principally criminal organization to trigger the RICO act (in other words, RICO could apply to enterprises without economic motives). Consequently, the Court reversed the appeals court decision which allowed the original case to proceed, and removed the non-economic precedent.

#### **1994 – Violent Crime and Law Enforcement Act (VCLEA)**

Congress passes the largest crime bill in the history of the US at 356 pages. It provides for 100,000 new police officers, \$9.7 billion in funding for prisons, and \$6.1 billion in funding for prevention programs which were designed with significant input from experienced police officers. Originally written by then-Senator Joe Biden of Delaware (now former Vice President and 2020 Democratic nominee hopeful). This act came in the wake of the 101 California Street Shooting (in which Gian Luigi Ferri shot and killed 8 people and himself), the 1993 Waco Siege ( a 51-day ATF & FBI slaughter in which 82 men, women, and children were killed. The victims were members of the Branch Davidian Church, led by David Koresh, legally possessed a cache of firearms for self-defense that the ATF believed to be involved in illegal gun trade, reports of automatic gunfire, and the possible manufacture of a machine gun, which is the reason cited for the surprise raid. There were later allegations of amphetamine production, sexual abuse and misconduct tacked on retroactively to discredit the Davidians), and other high-profile instances of violent crime.

The act contains a Federal Assault Weapons Ban criminalizing possession of semi-automatic firearms and other weapons classified as "assault weapons", large-quantity ammunition maga-

zines, a Federal Death Penalty Act creating about 60 new death penalty offenses (for crimes related to acts of terrorism, murder of a federal law enforcement officer, drug trafficking, drive-by shootings resulting in death, use of weapons of mass destruction resulting in death, and carjackings resulting in death) (Notably, Timothy McVeigh, responsible for the 1995 Oklahoma City Bombing, was executed under this title in 2001), Elimination of Inmate Education, a controversial provision that overturned a section of the Higher Education Action of 1965 (which permitted prison inmates to receive a Pell Grant for postsecondary education while incarcerated, effectively eliminated the ability of lower-income prisoners to receive college educations during their term of imprisonment, ensuring the education level of most inmates remaining unimproved over the period of their incarceration), a Violence Against Women Act allocating \$1.6 billion to “help prevent and investigate violence against women, an act renewed in 2000 and 2005. The act also initiated “boot camps” for delinquent minors, helping to institutionalize the mindsets of minors and to perpetuate the criminalization of youth in general. In addition, 50 new federal offenses were drafted, including provisions making membership in gangs a crime. Some argued that these provisions violated the guarantee of freedom of association in the Bill of Rights, but the law remains on the books. The act also made drug testing mandatory for those serving on federal supervised release.

#### **1995 – U.S. v. Lopez (Supreme Court)**

Supreme Court has eschewed expanding the scope of Congress' legislative authority under the commerce clause after *Lopez*; gun statute on school grounds had nothing to do with commerce or any sort of econ enterprise; nor was the statute an essential part of a larger regulation of economic activity. This case said determining whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. See glossary for court's ID of 3 categories re *U.S. v. Farmer*.

#### **1995 – U.S. v. Wilkerson (4th Circuit Court of Appeals)**

The defendant claimed the district court erred by prohibiting cross examination of the government's agent regarding Wilkerson's exculpatory explanation about how he obtained bail money in a bank robbery case. Court allows for the denial of cross examination – rules do not provide an exception for self-serving, exculpatory statement made by a party which are being sought for admission by that same party. But admissions by a party-opponent are not considered hearsay and therefore can be admitted against that party, including inculpatory statements.

#### **1995 – National Youth Gang Center**

NYGC funded by the Office of Juvenile Justice and Delinquency Prevention. In 2009, the NYGC merged with the NGC, a partnership designed to consolidate resources and leverage them to pursue gangs across age lines and to approach gang crime more comprehensively, according to their web site.

#### **1997 – U.S. v. Davidson (8th Circuit Court of Appeals)**

According to the opinion handed down, a “consistent pattern of robberies, number and variety of crimes jointly committed, and financial support of underlings demonstrates an ongoing association with common purpose to reap economic awards flowing from crimes, rather than a series of ad-hoc relationships”. Broadening the criteria constituting criminal enterprise association under RICO.

#### **1997 – Salinas v. U.S. (Supreme Court)**

Mario Salinas, a sheriff's deputy, was involved in a scheme in which he assisted the sheriff in allowing a prisoner “contact visits” (a.k.a conjugal visits) in exchange for money and goods. Even

if Salinas did not accept or agree to accept two bribes, there was ample evidence that the sheriff committed at least two predicate acts when he accepted numerous bribes, and that Salinas knew about and agreed to facilitate the scheme, and this is sufficient to support Salinas' RICO conspiracy conviction. Established a precedent wherein it suffices that a conspirator adopt the goal of furthering or facilitating the criminal endeavor; defendants don't have to be aware or willing to commit predicate acts; just maintained criminal organization that did crimes; if conspirators have a plan which calls for some conspirators to perpetrate the crime and others to provide support, the supporters are as guilty as the perpetrators.

#### **1997 – Regional Information Sharing Systems (RISS)**

RISS is an information-sharing program funded by the U.S. Federal government, creates RISS-NET, a network to interconnect many local, state, regional, and tribal law enforcement databases. In 2002 RISSNET was connected to the FBI's Law Enforcement Online system, and in 2003, became the official backbone for all unclassified but sensitive criminal intelligence data traffic. As an aspect of the National Criminal Intelligence Sharing Plan (NCISP), RISSNET was connected to the Automated Trusted Information Exchange (ATIX) database, which contains information on homeland security and terrorist threats. RISSNET came about under an information-sharing initiative championed by the International Associations of Chiefs of Police (IACP), the world's oldest and largest nonprofit membership organization of police executives, with more than 20,000 members in more than 100 different countries.

#### **1999 – U.S. v. Frega (9th Circuit Court of Appeals)**

The defendants, including attorney and state court judges, were convicted of mail fraud and conspiring to conduct affairs of state court through pattern of racketeering activity in violation of RICO. In 1991, Jim Williams and Patrick Frega, an attorney, disbursed over \$100,000 in bribes to former California Superior Court Judges Michael Greer, James Malkus, and Dennis Adams, or members of their families. When the California Commission on Judicial Performance opened an investigation of the enterprise, Frega and the judges created a coverup by backdating or altering document to conceal the connection between Frega and judges. They were later charged with RICO conspiracy based on the allegation that Frega and accomplices conspired to participate in the affairs of the Superior Court through a pattern of bribery and extortion.

#### **2000 – Jones v. U.S. (Supreme Court)**

The defendant tossed a molotov cocktail into a home owned and occupied as a dwelling place for everyday living by its owner and was not used for commercial purposes. The court ruled that the defendant could not be convicted of federal arson crime because it did not have a substantial effect on interstate commerce. The case was about substantial effect on commerce and rejected a broad arson statute. It also referenced *Lopez* & the constitutional avoidance doctrine in not making a federal matter out of a case that was patently local.

#### **2000 – U.S. v. Morrison (Supreme Court)**

A freshman student at Virginia Tech was assaulted and raped repeatedly by Antonio Morrison and James Crawford, members of the school's football team. School conducted hearings on the survivor's complaint found that Morrison admitted having sexual contact with her despite the fact that she had twice told him "no". College proceedings failed to punish the two men, and later a state grand jury did not find sufficient evidence to charge either man with a crime. The survivor then filed suit under the Violence Against Women Act (VAWA) of 1994 that gave victims of gender-motivated violence the right to sue their attackers in federal court because gender-motivated crimes are not economic activity. Demonstrated *Lopez* could be extended to remove

Cash Flow Posse from commerce clause power, we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases. An acutely unfortunate outcome for the rape and sexual assault survivor, but a meaningful precedent set in limiting the power of the federal courts to regulate noneconomic activity.

**2003 – Scheidler v. N.O.W (Supreme Court)**

The court overturns the 1994 case (see above) and says the application of RICO there was overbroad and couldn't apply to the noneconomic activity of PLAN, the anti-abortion activists; finds that non-economic violence doesn't violate RICO. Finalized in an appeal in 2006.

**2003 – National Gang Center**

NGC funded by the Bureau of Justice Assistance, and operated by the Institute for Intergovernmental Research on behalf of the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention and the Bureau of Justice Assistance. According to their web site, the NGC uses strategies of "prevention, intervention, suppression, and follow-through", and "provides technical assistance and training to communities that are planning and implementing multi-strategy approaches to their gang problem". The center also trains state, federal, and tribal criminal justice personnel engaged in gang suppression.

**2004 – U.S. v. Waucaush (6th Circuit Court of Appeals)**

Indictment alleged that the Cash Flow Posse in Detroit was a violent street gang that sold an unknown frequency at an unknown point in time, and that had violated RICO by murdering and conspiring to murder two rival gang members. The government argued that CFP intrastate acts of violence substantially affected commerce because the murder of rival gang members prevented them from selling drugs, but the court held that fact was insufficient to establish the requisite effect on interstate commerce. The court held that where the enterprise itself did not engage in economic activity, a minimal effect on commerce will not do. The government must establish sufficient evidence to prove the enterprise had substantial effects on interstate commerce. This case cites *Jones v. U.S. (2000)*.

**2004 – U.S. v. Crenshaw (8th Circuit Court of Appeals)**

After a shooting incident in St. Paul Minnesota involving antagonism between the Rolling 60s Crips and the Bogus Boys that resulted in the death of 4-year-old Davisha Brantley-Gillum, defendants Keith Crenshaw, Timothy McGruder, and Kamil Johnson were convicted murder in aid of racketeering and sentenced to imprisonment for life without release. The holding referred to *Turkette* criteria, finding that the Rolling 60s Crips constituted an association-in-fact enterprise, without discussing whether the evidence of the enterprise and the pattern of activity may coalesce. The court also concluded that the regulation of violent or drug-related acts committed as an aspect of membership in RICO enterprises represents one method for Congress to exercise its power under the Commerce Clause to regulate the enterprises themselves (Cites § 1959, concerning violent crimes in aid of racketeering activity, only requires that the ENTERPRISE be engaged in or affect interstate commerce, not that the murder must do so).

**2005 – Gonzalez v. Raich (U.S. Supreme Court)**

The court held that Congress could regulate intrastate economic activity if it was seen as part of a larger regulatory scheme; a broad interpretation of the Commerce Clause of the Constitution. This was specific to a case of people who were legally allowed to use medical marijuana under California State Law (the Compassionate Use Act, which authorized limited marijuana use for medical purposes) but who had their plants destroyed by the DEA under the Controlled Substances Act. But this had significant implications for RICO cases because the court presup-

poses/essentializes “street gangs” as necessarily interstate in reach and economic in motivation, essentially giving the government free reign to pursue RICO indictments for anybody who they decide to label a street gang. (Cf. The North Carolina Almighty Latin King & Queen Nation (NC ALKQN), and the Prison Industrial Complex discussed in Michelle Alexander's *The New Jim Crow*.)

#### **2005 – National Gang Intelligence Center**

The NGIC is established as a multi-agency effort that integrates the gang intelligence assets of federal, state and local law enforcement entities to serve as a centralized intelligence resource for gang information and analytical support.

#### **2006 – U.S. v. Olson (7th Circuit Court of Appeals)**

Evidence of a single enterprise was not [legally spoiled] by a change in the leadership of the enterprise, a subset of the Milwaukee chapter of the Latin Kings; provides for local autonomy and allows that a regional leader may not have absolute control over what's going on in specific local chapters.

“the fact that the Kagel Kings may have splintered for a time was irrelevant to the continuing overall structure of the Milwaukee Chapter” *U.S. v. Olson*, 450 F.3d 655, 668 (7th Cir. 2006)

#### **2006 – Operation Down Crown**

More than 50 people, including most of the state leadership members of the Tampa, Florida Latin Kings arrested in connection with RICO conspiracy charges, after a raid called “Operation Down Crown” coordinated by the Hillsborough County Sheriff's Office, Tampa Police Department, the State Attorney's Office, the FBI, ICE, and the ATF. In 2008, Hillsborough County Circuit Judge Daniel Sleet throws out RICO charges against 23 defendants in the investigation of the suspected Tampa faction of the Latin Kings. Sleet accuses law enforcement of excusing crimes of an informant who violently threatened other Tampa Kings for not going to meeting that they were arrested for attending. Essentially Agosto, the informant, invented the crimes and manufactured the conspiracy. (C.f. December 2011 Raid of NC ALKQN).

#### **2007 – U.S. v. Nascimento (1st Circuit Court of Appeals)**

The alleged RICO enterprise consisted of a violent street gang, Stonehurst, that was active in the mid-90s in Boston, and alleged the defendants had committed nearly two dozen murders and assaults with intent to murder members of a rival street gang. The enterprise, as in *Waucaush*, wasn't involved in economic activity. The court said Stonehurst constituted an enterprise where its members had shared goals, a cache of firearms, self-identified as belonging to an organization, pooled and shared resources, coordinated their activities to carry out numerous acts of violence against other gang members. Stonehurst was not in itself economically motivated, but its activities did indirectly result in a tire shop shutting down for fear of violence. The court held that the constitutional avoidance doctrine was misapplied in *U.S. v. Waucaush* (2004), and held that RICO requires only a *de minimis* effect on interstate commerce in all cases. This case cites *Gonzales v. Raich* (2005) & *U.S. v. Lopez* (1995).

#### **2007 – Magnum v. Archdiocese of Philadelphia (3rd Circuit Court of Appeals)**

Rejected civil RICO claim alleging that the Catholic Church had covered up incidents of sexual abuse by priests; no injury to business pursuits; physical or emotional harm to a person is not property under civil RICO, and losses which flow from personal injuries are not property under RICO.

#### **2008 – Boyle v. U.S. (Supreme Court)**

Edmund Boyle, of New York, was convicted of racketeering, racketeering conspiracy, bank burglary, bank burglary conspiracy, and attempted bank burglary and sentenced to 151 months

imprisonment. He appealed, arguing that the government's case against him was factually contradictory: in his trial, the government charged that the robbery was an act of the Boyle Crew enterprise, but in a previous case had charged that the robbery was an act of the New Springfield Boys enterprise. The district court said Boyle's Fifth Amendment due process rights had not been violated because "nothing dictates that a single crime cannot be committed by two enterprises working together, each in furtherance of its own interest".

The Supreme Court, on appeal, held that the government does not need to show connections between the enterprises beyond what is apparent in the criminal activity itself. Boyle solicited a review of the case, which happened in December 2011. The basis of the review was that successive prosecutions violate the Double Jeopardy Clause where the offenses are the subject of both prosecutions and "are the same in fact and in law"; also, when a defendant is prosecuted twice for RICO violations, there is no double jeopardy problem unless the racketeering enterprise and the pattern of racketeering elements are the same in both prosecutions.

The court, disagreeing with Boyle's claims to the contrary, found that (1) the enterprise and the pattern of activity proved by the government in the case were not the same as those proved by the Eastern District trial (negating his claim of Double Jeopardy), and that (2) "the scope of the activities charged in the case undisputedly reached far beyond the bank crimes that defined the pattern in the Eastern District case to include obstruction of justice, extortion, loan sharking, gambling, auto theft, and murder" (negating his claim that the two patterns of racketeering activity were the same). So the court affirmed the previous prosecution, and RICO's scope remained exceptionally broad.

#### **2009 – Anti- I-69 Protests**

In Bloomington, IN, there were RICO charges brought against Gina "Tiga" Wertz and Hugh Farrell, and other activists who protested the development of I-69, an interstate highway that would decimate indigenous ecological systems. The racketeering charges stemmed from alleged participation in office evictions, confrontations, conversion (unauthorized use of someone else's property), corrupt business influence (racketeering) and threats to law enforcement officials who removed an EarthFirst! roadblock tree-sit platform in the proposed I-69 path.

The "conspiracy" allegedly culminated with "an internet blog on public internet sites stating to such officers and officials 'you will suffer the consequences' and 'perhaps we will go into your homes'". The prosecutor also mentioned that Farrell "has been observed advocating literature and materials which advocate anarchy, property destruction, and violence". In early March 2010 the judge dismissed the felony racketeering charge, which left four misdemeanors that carried a maximum sentence of four years. The defendants worked out a plea bargain and got 2 years unsupervised probation. This, in concert with other such "eco-terrorism" enhancement prosecutions sets a dangers precedent for associations of people beyond those typically understood as gangs; folks who are white and who label their associations as 'social-justice' oriented are still subject to RICO prosecution.

#### **2010 – U.S. v. Ayala (4th Circuit Court of Appeals)**

In a case arising out of La Mara Salvatrucha (MS-13) gang activity, the court found no Double Jeopardy problem with a prosecution arising out of the same course of conduct for both conspiracy to commit murder in violation of the VICAR statute (a)(5), and larger racketeering conspiracy charged under RICO, because Congress intended murder conspiracy and racketeering conspiracy to be distinct offenses.

#### **2011 – Greensboro, NC ALKQN Raid – U.S. v. Cornell**

A home was raided by a team called the “Safe Streets Task Force”, comprised of Greensboro Police Department (GPD), FBI Agents, and a fully armed and armored FBI elite tactical unit, complete with assault rifles and helmets. The US Attorney's Office, the Department of Justice, The US Marshalls, the DEA, and the ATF were all involved in the raid.

Jorge Cornell (also known as King J), the Inca (leader) of the North Carolina Almighty Latin King and Queen Nation (ALKQN) and several other members of the ALKQN were arrested at the home and elsewhere. King J had established himself as a community leader in Greensboro, running twice for City Council, brokering a peace treaty among local gangs and street organizations, calling for a Title IV investigation into corrupt and discriminatory practices within the GPD, being an active member of the School Safety Board for the district where his daughter attended school, partnering with local clergy and civil rights leaders to foster an environment of empowerment and pride among black & brown youth to discourage criminality, working to create a temporary employment agency to serve folks disenfranchised from employment due to criminal background histories, and in general promoting cross-cultural and multi-generational civic engagement among socially conscious folks in Greensboro.

As in all RICO cases, a strong economic correlation is suggested by the facts of the indictment. The work being done by Cornell from 2008 to 2011 focused heavily on police accountability and reconciliation justice, culminating in a request for the federal Department of Justice to investigate misconduct within the force. As the gang unit was disbanded, some police personnel lost their jobs, but more jobs were created under the commission of the Safe Streets Task Force, and more than \$60,000 was awarded to that task force in a Greensboro City Council meeting that was held soon after the raid.

Testimony before a Federal Grand Jury, including information provided by informants, led to the raid. The FBI & GPD had been surveilling the NC ALKQN and collecting information for years under the provision to do so set forth under RICO, and have put together a 25-page indictment accusing the men of murder, arson, assault, and a laundry list of other felonies. About half of the charges included in the indictment are ones already faced and dismissed over the few years prior to the raid. These have amounted to frivolous charges from the now-defunct GPD Gang Squad in a poorly coordinated attempt to discredit and disband the ALKQN. The other claims made in the indictment are vague and/or unsubstantiated.

In 2013, Cornell was sentenced to 28 years while Russell Kilfoil (King Peaceful), whom the government alleged acted as second-in-command, was sentenced to 15 years. Several others arrested during the raid, Randolph Kilfoil (King Paul) and Irvin Vasquez (King Dice) were found not guilty of racketeering but are both serving out a prior sentence; Wesley Williams (King Bam) took a non-cooperating plea and is serving 7 years; Steaphan Acencio-Vasquez (King Leo) also took a non-cooperating plea and is serving time.

Even though some people did plead out and took non-cooperating agreements, the complexity of legally acknowledging their guilt, to not only their alleged crimes but also their participation in a racketeer influenced corrupt organization (“the crime of being a criminal”[1]), still did not lay the alleged crimes at any one's feet but their own. This is an unfortunate reality within class society and the industrial justice system.

#### **2012 - U.S. v. Israel Ernesto Palacios (4th Circuit Court of Appeals)**

Palacio (a.k.a. Homie) found guilty of RICO in association with La Mara Salvatrucha; conspiracy to commit murder in aid of racketeering, murder in aid of racketeering, and other violent crimes. In brief, MS-13 is described as a transnational gang formed by El Salvadorian immigrants



in LA in the 1980s that operates via a network of local cliques. These two MS-13 cases represent the deep legitimacy with which federally-funded research is regarded concerning street organizations and gangs.

### **2013 – Cohen v. Trump (U.S. Southern District of California)**

A civil RICO class action suit accused Donald Trump of a nationwide scheme to “make tens of millions of dollars by marketing Trump University” without delivering “neither Donald Trump nor a University”. Despite the marketing statements, Trump had virtually no personal involvement in determining the instructors or coursework. In fact, the initial filing states that “instructors were high-pressure salespeople hired as independent contractors and paid on a commission basis”. Trump University was “unaccredited and unlicensed to operate as an institution of higher learning...provided no degrees, no credits, no licenses, nor anything else of marketable value to student-victims”. In fact, almost immediately after its founding, the New York State Education Department (NYSED) wrote to Trump in 2005 warning him to stop using the name “University” without a license. Shortly after Trump's presidential election, and about a week before scheduled arguments, a \$25 million settlement was reached in November 2016 with Trump avoiding admission of wrongdoing.

### **2017 – Energy Transfer Partners v. Greenpeace, EarthFirst!, and John and Jane Does**

Energy Transfer Partners (ETP) the pipeline company behind the Dakota Access Pipeline (DAPL) filed a series of Strategic Lawsuits Against Public Participation (SLAPP) and RICO charges against Greenpeace, EF!, and multiple protestors claiming that the defendant were engaged in a conspiracy to defraud the public and defame the company, and that defendants were engaged in an “illegal enterprise” targeting ETP and its DAPL project. The suit also alleged that “the Enterprise, through Earth First! And Red Warrior Camp, knowingly funded controlled, directed, and incited acts of terrorism in violation of the U.S. Patriot Act” among other acts, including cyber-attacks.

Ultimately, the court dismissed the case in 2019 after a series of procedures (including dismissing Earth First! as it is not “an entity subject to suit” and was never served) concluding: (1) that an Enterprise did not exist because it “would [not] still exist were the predicate acts removed from the equation” (which then impacted the remaining complaints); (2) Greenpeace was not involved in an ongoing organization with other defendants; it did not direct protestors to “perform specific illegal acts or had any control over the protestors”; “coordinating closely” does not establish a ‘continuing unit’; “donating to people whose cause you support does not create a RICO enterprise”; and “posting articles written by people with similar beliefs does not create a RICO enterprise”.

### **2019 – Sen. Cruz accuses “Antifa” of racketeering**

In July 2019, Senator Ted “Zodiac Killer” Cruz of Texas penned an open letter to Attorney General William Barr, Deputy Attorney General Jeffery Rosen, and FBI Director Christopher Wray, calling for the Justice Department and FBI to “open an organized crime investigation into Antifa, a left-wing anarchist terrorist organization that routinely relies on violence to intimidate and punish its political opponents”. Cruz specifically targets Rose City Antifa, alleging violence and property destruction over the previous three years, as well as Willem Van Spronsen (despite not being affiliated with any specific group beyond identifying as an antifascist, a political position) who was executed by law enforcement while he attacked a ICE center in Tacoma, Washington.

Cruz alleges that that “Antifa” is both an international organization and an enterprise of association-in-fact – but it is questionable if authorities would be successful proving either an

enterprise or racketeering given the thresholds expressed in *Energy Transfer Partners v. Greenpeace*. Cruz alleges racketeering “acts involving robbery or arson” though lacks specific citation, and again argues that “Antifa, especially Rose City Antifa, undertakes these acts in a predictable, continuing pattern...it continues to raise money and recruit members for future violent activities”.

While thankfully neither the FBI nor the Department of Justice at this point seem to have taken Cruz up on his suggestion and offer of congressional support, it nonetheless is a progression by the political right within and around the state apparatus to continue to publicly demonize dissent on a high level, and downplay the ultra-violence being wrought upon everyday people by disaffected white men (noticeably absent from the letter), an unfortunate symptom of colonial capitalism and white supremacy.

## **Afterword**

The aim of this zine is to provide readers with highlights of the history of RICO, notes on how it has developed and grown, and brief commentary to suggest how it can be a dangerous tool at the government's disposal, to radical organizers, people of color, youth, and other folks alike. It represents a body of research that came in the wake of the coordinated Federal & local law enforcement raid of the home of Jorge Cornell, Inca of the North Carolina Almighty Latin King and Queen Nation (ALKQN). The authors of this zine had an opportunity to know Jorge in the months and years before this incarceration following the raid, and were able to learn the he and other in the community, both ALKQN members and others, about the true nature of the “gang” situation in our city. This zine has been collaborated on and influenced by members of the Jorge Cornell Legal Defense Team. For more about the ALKQN in NC check out Guilty County, a zine distributed by NegateCity and available online. Also see [ALKQNSupport.wordpress.com](http://ALKQNSupport.wordpress.com) for more information on the developments in the case and plans for support. Most importantly, cross-reference the facts here with your own knowledge and personal experience, research matters for your self, and reach conclusions that are your own. The position of NegateCity press is to arm folks with information that they are typically led away from or told to discredit or ignore, so they can make more balanced and well-informed decisions.

## **After-Afterword**

Broken Window Press took up the republishing of this important text in the light of the political context of the Trump administration, the increasing state of surveillance driven by the ubiquity of technological devices seemingly everywhere and in everything, and our view of the need for anarchists, autonomists, and other radicals to continue to understand our history so we can plot courses for the future. We encourage anyone currently or contemplating engaging in activities that may or may not have legal implications to review *A Tilted Guide to Being a Defendant* by the Tilted Scales Collective as well as the myriad of security culture/practices/praxis(es) (praxi?) resources available, much of which can be found at [ItsGoingDown.org](http://ItsGoingDown.org)

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