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The R.I.C.O. Act: America's Approach Against the Mafia and Corporate Crime

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The R.I.C.O. Act:

America's Approach Against the Mafia and Corporate Crime

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The R.I.C.O. Act: America's Approach Against the Mafia and Corporate Crime

Introduction

The Italian Mafia has always piqued my interest since I was a small child. At the age of ten, I was rushed out of the room while my father watched the many infamous gangster films such as: *The Godfather*, *Goodfellas*, *Donnie Brasco*, *The Sopranos*, and *Scarface*. In particular, *The Godfather* always fascinated me as an organized crime film because of its unique depiction of Don Corleone and the New York Mafia in the post-World War II era. The movie gave the Mafia a romanticized view that identified these racketeering gangsters as honorable men acting as some form of “anti-hero” organization with the goal of advancing their wealth and the wealth of their communities. While the action caught most people’s eyes, it was this distinct code of honor—the “Cosa Nostra” mentality that caught mine. It was not until I was in high school when I learned the truth about who these men really were disguised underneath the Hollywood image they’ve been given. They were brutal, tyrannical dictators of the criminal world that acted in their own self-interest. These men would even harm members of their own communities to advance their criminal organizations. Although horrified, I found myself even more captivated by the unfathomable power that these crime syndicates possessed in order to alter their savage image in the public eye and try to dignify their actions. With all of this power they possessed, I was curious about how the New York Mafia specifically was decimated by the 1990s after nearly seventy years of overwhelming control.

Therefore, my fascination did not end with just the Mafia. Upon the years of shows I watched, I was also attracted to the FBI (the main opponent of the Mafia and other organized crime syndicates). That attraction was shared by my father and the two of us began to learn that there was more to the world than just petty crimes and the Mafia. There were also “white-collar”

crimes that consist of legitimate businesses acting in illegitimate fashion. With my father being an employee to multiple different insurance companies throughout the years, I have heard the many horror stories about insurance companies fooling their clients into fraud, denying protection that they promised to provide, and many other terrible things. Interestingly, I do not hear about these corporations as much as I do the Mafia. With the exception of murder and extortion, some of them do the same things: tax evasion, fraud, bribery, jury tampering, etc. They both commit devastating effects on communities. However, it would be difficult for someone to learn about the many forms of fraud that companies like State Farm have been involved in if they did not dig deep into the internet to find articles tucked away. This is why I am here writing this; to give a full explanation of how the federal government has made provisions to take down the Mafia that can and have been used against corporate crime through something known as the R.I.C.O. Act of 1970, and how the courts have failed to interpret the laws that were developed with the intent to neutralize both crime syndicates and corporate crimes.

The R.I.C.O. Act: America's Approach Against the Mafia and Corporate Crime

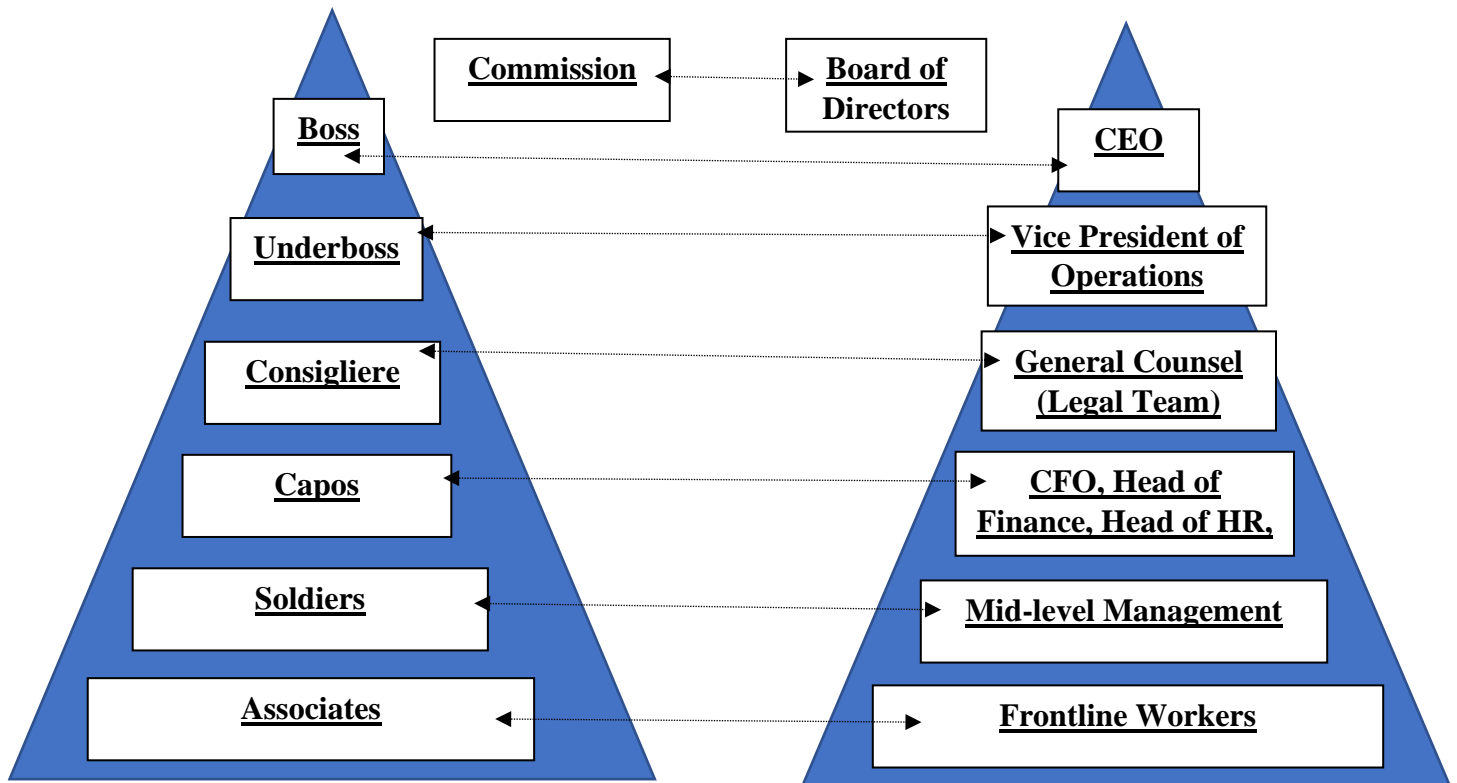
The R.I.C.O. Act

The R.I.C.O. Act stands for Racketeer Influenced by Corrupt Organizations and was passed in 1970. President Nixon and his Attorney General, John N. Mitchell were the major proponents of this bill because areas like New York City were being overrun by organized crime syndicates. This particular law focused on the illegal activity and the way in which the government should approach the organizations that operate these kinds of activities by referring to all racketeering businesses as “illegal enterprises” that represent a methodological flow of money from the ground-up towards its leaders. R.I.C.O. allowed prosecutors and law enforcement to follow this flow of money in order to identify the leadership of the illegal organization and provide the necessary evidence against them to have these racketeering leaders convicted.

The logical conclusion that has shown the greatest success in defeating the Mafia since the 1970s is to attack the “head of the snake”, which would be the head bosses in terms of the Mafia. However, the government has found that it is nearly impossible to attack one individual with crimes that he did not commit directly when the Mafia is not seen as an “legitimate organization”. So, the R.I.C.O. Act has made it so that it can include both legitimate and illegitimate groups under the particular term of an “enterprise”. An enterprise should display a chain of command in which the directives, approvals, strategy, etc., flow down through the corporation, and then the results are flowed back up through the corporation to the Board of Directors (the same can be said for the Mafia).

This chain of command is highlighted just like it would be in corporate America. The Head Boss is the CEO of the “enterprise”, the Commission of the five main families would be considered Board of Directors, the underboss could be seen as the vice president of operations, the consiglieres and other close advisors would be considered the legal team (also known as the “general counsel” of an organization), the capos would be seen as the other executives such as the CFO, the Head of Human Resources, and the Head of Finance for a company, soldiers would be considered mid-level management (like supervisors or managers for a particular franchise restaurant), and associates of the Mafia would be considered front-line workers for the enterprise. This is further illustrated on the pyramid figure presented below that compares the two hierarchal ladders of each enterprise. By providing this viewpoint, it gives the government the ability to treat organized crime like an enterprise so they can proceed in a manner than can allow them to gather the evidence necessary to catch them in the act and take down the head bosses.

G. Robert Blakey, a Notre Dane Law School professor and U.S. attorney, wrote the R.I.C.O. Act with the supervision of Senator John L. McClellon, who was the chairman of the United States Senate Government Operations Committee in Congress. Blakey and McClellon have also made it known that this act is not just for crime syndicates but can also be used against corporations that perform similar acts of what is generalized as “racketeering” (which will be explained in greater detail later).



The main points of the R.I.C.O. Act are split into four main sections: §1961, §1962, §1963, and §1964. Each section provides the explanation for what racketeering is, how it is performed and viewed by the law, the punishments that would be placed, and the civil remedies that follow along with the punishments. Sections 1965-1968 provide an explanation for how the prosecutor would provide the evidence, which is unnecessary for this particular subject.

The first section is Section 1961 (or §1961). This section lays out what the term “racketeering” means and provides examples in order to interpret it properly. According to the Merriam-Webster Dictionary, someone who “racketeers” is “one who obtains money through illegal enterprise.” The term enterprise is very important to the entire process. Petty theft and other singular acts of an individual would not place someone under the R.I.C.O. Act. It has to be

derivative of an enterprise. According to Section 1961 of the R.I.C.O. Act, “‘racketeering’ means any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in an obscene manner, or dealing in a controlled substance or listed chemical (as defined in Section 102 of the Controlled Substances Act).” This is just a more detailed explanation as to what Merriam-Webster has described. The statement above provides an overview of the R.I.C.O. Act’s main focus of what is viewed as acts of an “illegal enterprise”. Other forms of racketeering also include insurance fraud rings (which will be explained in greater detail later), tax evasion, forgery, espionage, threatening a witness to a crime, falsifying government documents, illegal foreign labor, embezzlement, human trafficking of any kind, money laundering, etc. As you can see, racketeering does not just involve crimes of the highest degree like murder. The fact that racketeering is so broad allows the federal government to catch an illegal enterprise in an act like bribery before continuing their investigation to catch them in higher-level crimes. It also can apply to legitimate enterprises acting in an illegitimate manner. The wide range of racketeering is vital to the takedown of these illegal enterprises.

Section 1962 (or §1962) is focused around the specific “prohibited activities” of the enterprise. The biggest identification of racketeering that is vital to this act is that it must provide a direct or indirect flow of income. Hence, a brutal murder of a homeless man who has not been purchasing drugs or other forms of contraband of any kind cannot be considered part of racketeering because there is no financial benefit. However, if a family restaurant owes the Italian Mafia a certain debt and a mafia family member comes to their restaurant and breaks the owner’s limbs for being unable to provide the tribute they owe, that would be under extortion and is considered a form of racketeering because it is an illegal form of prying money from someone. This would be seen as a direct form of racketeering. If an enterprise is being sued for

damages, but they have been supporting the judge for re-election under the table for many years, this is known as “jury tampering” and is an indirect form of racketeering in which the flow of money may not be directly influenced by the act, but there is a fiscal benefit from the illegal act that will be seen later on.

This also applies to situations that effect interstate *and* foreign commerce. If an enterprise is illegally printing money in order to advance their company, that is a form of racketeering—it is known as “counterfeiting”. Gambling can affect both interstate and foreign commerce, especially in sports like soccer or boxing. Tax evasion is a prime example of acts that affect interstate and foreign commerce. In terms of tax evasion, an enterprise may have multiple businesses all around the country but may try to disguise or hide their financial statements in order to evade heavy taxation as well as the government tracing that money back to the illegal activities being formed to obtain that money. This will affect the flow of money in the economy because the states are not benefitting from the sale of land and business that they allowed to be there. Evading taxes is a serious offense, and is how infamous gangster, Al Capone, got caught and sentenced to life in prison.

Section 1963 (§1963) is defined in the actual law as “criminal penalties”. If an enterprise is found guilty in a criminal case, there is a wide range of penalties to be placed. According to the law, penalties can range from a fine to a maximum of 20 years or less in prison or both. Of course, depending on the level of sentencing, it could be a life sentence if a person is found guilty of first-degree murder. Section 1963 also pinpoints the manner in which the federal government can further provide evidence against criminals like the Mafia who are capable of erasing them once caught. Once the defendant is found guilty under the R.I.C.O. Act they will lose ownership of any and all interest, securities, claims against, or property or contractual right

of any kind that allows them control over an “enterprise” as specified in Section 1962. In this process, any form of assets and property will be forfeited from the defendant that had been gained from direct or indirect means of racketeering.

The federal government can also file a request to the judge to have the assets and properties in question forfeited prior to the hearing as long as they can prove a reasonable connection to illegal means of gaining those things. This means houses, other real estate, checking accounts, stock portfolios, automobiles, aerial transportation, naval transportation, etc. In fact, machines that operate in factory also apply under this rule. A huge step is given to the federal government by adding this provision. By forfeiting the assets, it damages the enterprise and its leaders while the prosecution is taking place, applying pressure on them as the prosecutors provide the necessary evidence to prove these men are guilty of the crimes of which they are being charged.

The Mafia in particular is known for their ability to erase evidence by any means necessary. Burning checkbooks, disposing of properties, tampering with crime scene evidence, and transferring accounts frequently are only a few of the many ways in which organized crime tries to withhold evidence, and poses the question of how we can avoid losing evidence during a pending investigation and court hearing. Having access of forfeited assets, properties, and other investments made may not be enough to gather the evidence necessary and some important items may still be erased as long as they are live. The government also has the ability to file a restraining order against the defendant towards his/her properties in order to keep them or their associates away from it. This is altogether (forfeiting and restraining) is known as “freezing the assets” and is key to the R.I.C.O. Act in terms of criminal punishment.

However, it is not all black and white in favor of the government or other prosecutors. In fact, the defendant can appeal the forfeiture and restraining order if they can prove to the jury/judge that such an act can cause irreparable injury or damage or loss to the defendant. Thus, the defendant still has a chance to protect their assets from being “frozen”. There is a lot that is at stake when freezing assets of the defendant, so the Attorney General must provide certain provisions in the event that the defendant is found not guilty of the crimes they were being charged with. First of which, he or she must grant petitions for the mitigation, or remission, or restoration of said forfeiture. By doing so, you provide the rights of the defendant to be capable to defend themselves in court and granting a fair trial, which is vital to the very core of the American court system. The rights granted to American citizens are key to the sustainability of the country, and such lack of acknowledgement would make the law unjust and unconstitutional under the Bill of Rights. The Attorney General must also provide compensation to those assisting in giving information resulting in a forfeiture in order to protect them. One of the most important things in order for the property to be forfeited, the assets must be placed under the name of the United States of America in order to protect the sanctity of those assets. If you were to place it under a particular individual, you risk the assets being destroyed, tainted, or seriously damaged, which would be placed at the feet of the Attorney General and the federal government can be sued heavily for damages, especially if the defendant is found not guilty, or even affect the verdict of the case. Placing it under sanctions provides the best security for those assets. Once all provisions are met, the government can proceed and prevent any further forms of obstruction of justice that the defendant may or may not invoke upon those assets, bringing them that much closer to gathering the evidence necessary to secure a guilty verdict on major members of these racketeering enterprises.

Section 1964 (§1964) is known as the “civil remedies” section of the law. This is the final piece to the “takedown” of racketeering enterprises. Section 1964 grants the Attorney General the ability to render the guilty party unable to return to the illegal enterprise. There is no particular way specified in the R.I.C.O. Act; however, the forfeiture of assets, properties, and other securities and investments proven to be involved directly or indirectly with the illegal activities is already a step in that direction. Upon the court hearing of a guilty verdict, imprisonment may be placed, but a hefty fine can also be added in order to pile onto the prison sentence. A hefty fine can dry out the funds that were built up for the illegal enterprise, making it extremely difficult for the guilty party to return to such activities.

There is no perfect solution, especially in the Mafia, because there is a succession order in place. However, there is a high probability that order is never followed through due to the greed of the many followers of the boss that was found guilty, so those under the convicted leader will often fight each other over who takes over as the new boss. This will weaken the crime syndicate significantly and also leave them open to get arrested and potentially convicted of further crimes due to the turmoil overtaking the illegal enterprise as it ultimately dies out. Taking the proverbial “head of the snake” away leads the whole enterprise into turmoil and can even cause it to self-implode. This is why the passing of the R.I.C.O. Act of 1970 was such a success, especially in New York City when the federal government was finally able to take down the five main Mafia families running the city from the underground.

The R.I.C.O. Act does have three more sections after §1964; however, they are merely discussing the process of the court hearing and how evidence gathered should be presented to the judge and/or jury. The key important details are in §1961 to 1964: the recognition of what racketeering is, the affirmation of what identifies as a “prohibited activity” under this particular

law, the criminal penalties put in place and how the government can obtain the necessary evidence without the threat of any obstruction of justice, and the potential for security against the rebirth of that enterprise through civil remedies, such as a hefty fine to drain the finances. With all of these details being met, the federal government (or other prosecutors if it's a civil case) can finally challenge the illegal enterprises and racketeering activities in a more productive manner.

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The Mafia

The image of the Mafia has been romanticized for many years since Hollywood started developing films centered around the “Mafia lifestyle”, such as the 1972 classic, *The Godfather*. They depicted these people as honorable individuals with a propensity towards violence for the purpose of bettering their communities. However, this was far from the reality. Whether it was through drug cartels, prostitution rings, gambling dens, and/or extortion agencies, they gained their wealth and power through brutal force and used it in order to bribe and corrupt the police and political officials that were designed to destroy them and their enterprises. These were dangerous men who should not be revered as romanticized “anti-heroes”, but rather scorned as hardened criminals and murderers. Their cruelty and overpowering nature are what inspired the development of the R.I.C.O. Act in the 1970s.

The history of the Mafia dates back to before the Sicilian immigration to the United States in the early 1900s. In the 19th Century, Sicily required an extralegal force in order to help better protect the “sitting duck” that was the island of Sicily where Italy, Spain, Portugal, the Moors, and other North African countries would try their hand at conquering them throughout the feudal period of Europe. By 1812, Italy had control of Sicily and started their development from feudalism under the rule of the Bourbons of Naples into capitalism. In doing so, the Italian government sold a lot of properties to private owners in Sicily until the island was annexed in 1860, leaving Sicily to deal with the problem of debts and law enforcement. Thus, the “mafiosi” returned to settle debts, enforce laws, and provide protection for everyone. Slowly but sure the Mafia took total control of the island, turning it into a criminal wasteland and causing many people to flee to America by the early 1900s to escape their debts. The mafiosi continued to rise

in Sicily until their greatest enemy came to power in the 1920s, Benito Mussolini. The new fascist prime minister of Italy made it his mission to destroy the Mafia after feeling disrespected and humiliated by the Sicilian people who were ordered to ignore Mussolini's political rally on the island in 1924. By the time World War II was starting to rear its ugly head, Mussolini had successfully kicked the entire Mafia out of Sicily, forcing men like Carlo Gambino to flee to America and Canada for refuge, taking their *Cosa Nostra* ("Our Thing") lifestyle with them. These men rebuilt their empires within the confines of the criminal underground that had already grown exponentially since the Prohibition Act in 1920, an act that America would regret for the next fifty or more years after. If it wasn't for the R.I.C.O. Act of 1970, the Mafia might have been unstoppable, and it may have been more difficult for the American government to take these criminals down. Prior to the law, large urban areas like New York City were wastelands for drug trafficking, murder, extortion, and even simply unclean environments of excrement and trash on the sides of the road. No one was taking care of these cities because everyone was in fear of what these gangsters would do to them. By the time the bill was passed, New York itself had been owned by five main Mafia families: the Gambino's, the Bonanno's, the Genovese's, the Lucchese's, and Colombo's. Specifically, the law was put in place to take down these five families.

One of the most effective examples of using the R.I.C.O. Act was against the head boss of the Gambino Family, John Gotti. Gotti had started with the Gambino's as a simple runner and associate of the family, and built his way up to be a trusted man in the family by Carlo Gambino's heir, Aniello Dellacroce. Of course, things took a wide turn when Gambino declared Paul Castellano the new head boss instead of Dellacroce before he passed away, stirring up a hot pot for Gotti to take over. The hostility in the family began to amplify once Gambino passed

away and Castellano and Dellacroce were at each other's throats. By the 1980s, the hostility inside the Gambino family bled into the life of John Gotti as Gotti and Castellano went into a brief war with each other. The federal government arrested Gotti multiple times before, but they had failed to provide enough evidence for the charges to stick. John Gotti was given the infamous nickname, "Teflon Don" for his ability to avoid prison through many counts of bribery and jury tampering, yet never getting caught in doing so. The key to the R.I.C.O. Act is that you need to be caught in two forms of racketeering in order to continue with the case. Of course, most of the time the federal government only had one at a time. They could not compile enough evidence to place a R.I.C.O. charge against him. This is until December of 1985 when Gotti did the unthinkable. He had Castellano assassinated. This move would move him up to be the head boss of the Gambino Family, but also would be his greatest downfall.

In 1986, Gotti assumed the throne of Mafia boss and the federal government pounced on him before his infamous nickname could show itself again. They bugged certain places he liked to visit with the help of the man responsible for the assassination of Castellano, Salvatore Gravano ("Sammy the Bull"), a Gotti associate. They were able to catch Gotti admitting to acts of racketeering including drug trafficking, extortion, and eleven other accounts under the R.I.C.O. Act. The most important was assassination of Castellano under his name. This was huge. This allowed the FBI to officially declare Gotti's case under R.I.C.O. and make the move to freeze his assets and further provide proof of his guilt, including over \$60,000 in jury tampering in 1986. After a long and hard fight in the courts, John Gotti was convicted of those thirteen accounts of racketeering, murder, and obstruction of justice. Thus, he was sentenced to life in prison in 1990 where he would die in 2002 as an incarcerated criminal.

John Gotti's takedown was only one of the many that occurred in New York City years after the emergence of the R.I.C.O. Act of 1970. Joseph Massino was another man who caught the eye of the FBI as the head boss of the Bonanno Family from 1991 until 2004. Massino started out as a street gangster and truck hijacker in the 1960s and 1970s under the leadership of Philip Rastelli, the head boss of the Bonanno Family at the time. Massino began to work closely with Rastelli after earning his stripes by arranged three gang murders that included his rival, Dominick Napolitano in 1981. In 1986, Massino was charged and convicted of racketeering charges in terms of labor trafficking that placed him in prison until 1992. In 1991, Rastelli died and named Massino the new boss of the Bonanno Family. The man's bloody rise to power being accomplished began the sudden rise of the Bonanno Family as the most powerful New York crime family throughout the remainder of the 1990s and into the very early 2000s. This rise also claimed Joseph Massino as the most powerful Mafia boss in all of New York, especially after Gotti was taken down by the FBI.

However, this claim to fame and unchecked power would not last forever. By 2003, the federal government caught Massino in a racketeering scheme with his brother-in-law Salvatore Vitale, Frank Lino, and one of his capos, Daniel Mongelli. Vitale was caught loan sharking, money laundering, and extorting businesses in New York. Massino appeared to be reluctant to help Vitale, so he felt he has to flip against his brother-in-law in order to escape prison and worked with the FBI to testify against Massino. Lino saw the tide change as well and also flipped on Massino. This placed the head boss on eleven total accounts of racketeering including the three accounts of murder he arranged in 1981 that included his old rival, Napolitano. The accounts also included three more murders that included a man in 1994 which would mean that Massino would have qualified for the death penalty in accordance with the newly amended

racketeering laws. However, Massino's lawyer was able to work around that potential sentence. The Bonanno Mafia boss was convicted in 2004 and sentenced to life in prison.

Of course, the story does not end there. Joseph Massino would lose ownership of the Bonanno Family as a man named Vincent Basciano would take over as acting boss until 2006. Massino would spend his time from 2006 until 2011 assisting the FBI in convicting Basciano of racketeering and helping the FBI catch members of other crime families get caught under the R.I.C.O. Act for things like extortion and bribery with families like the Genovese. These acts gained favor with the FBI and the United States Department of Justice. So, in 2013, the Department of Justice requested a reduction for Massino's sentence to the judge overseeing his case, Judge Garaufis. Garaufis accepted the request and granted Massino time served and is believed to be disconnected from the Bonanno Family (although that statement can never be confirmed in total certainty). Joseph Massino is known as one of the last surviving Mafia bosses from the Five Families during the wave of the R.I.C.O. Act's takedown in New York while the others are either still in prison or dead.

Another great example of the R.I.C.O. Act's effect on the Italian Mafia is in the story of Carmine Persico Jr., long time boss of the Colombo Family. Persico's influence in the fabric stretched further beyond his time as a Mafia boss. In fact, the Gambino Family would not exist without Persico's help. In 1957, Carlo Gambino wanted to make a power grab over the Anastasia Family that was running what would later be the Gambino territories. Gambino looked to his allies from the Genovese and Profaci families for help. At this time, Persico was a capo for the Profaci family and assisted Gambino in the murder of Albert Anastasia. Following the hit on Anastasia, dissatisfaction started to brew between the Profaci family and the Gallo family in which the First Colombo war began in 1961 after Persico killed a member of the Gallo

family, giving him the nickname “The Snake” for his betrayal of the Gallo family. After the war ended, the Profaci family defeated the Gallo with the leadership of Joseph Colombo (whom they would later name the newly found crime family after once the war was over). Because of Persico’s help during the war, he was arrested for extortion charges upon multiple accounts, so when the war was over the Profaci awarded Persico with the title of capo in the Colombo family. As a capo, Persico was brutal and was arrested yet again for multiple federal hijacking charges in 1968, only adding to his ever-growing list of charges growing. These charges would not stick until 1972, a few months after Persico had his followers kill Joseph Gallo for trying to assassinate Colombo in 1971.

With Colombo incapacitated for the rest of his life (until his death in 1978), Joseph Yacovelli assumed the role of acting boss for the crime family. After the assassination of Joey Gallo, his brother, Albert, sought for revenge by attempting to assassinate Yacovelli while he was out at dinner with Persico’s son, Alphonse. The shooter mistook four innocents as his intended targets and killed two of them, causing Yacovelli and Alphonse to flee. Persico assumed the role of acting boss from Yacovelli afterwards, controlling the Colombo family within the confines of his prison cell. He would never end up leaving the prison cell longer than a year or two as more and more charges piled up throughout the years until his fateful conviction on July 14, 1986, with multiple racketeering charges, including murder, extortion, money laundering, loan sharking, and many more. In November of that same year, Persico was sentenced to 39 years in prison, meaning that he would not be allowed out of prison until 2025 (basically a life sentence for a man who was already 53 at the time of his sentence). Persico did everything he could to salvage the Colombo family while in prison by declaring his son, Alphonse, the new boss, but that plan failed miserably, and the Colombo family fell apart over

time as the syndicate continued to lose more and more power. Like the Gambino's and Bonnano's, the Colombo's were taken down by the R.I.C.O. Act by targeting the head boss of the industry in order to destroy the sustainability of the enterprise.

The biggest takeaway in this analysis is the approach taken by the federal government in the methodology in which they attempt to dissolve organized crime. To prevent further racketeering from those specific organizations, they go after the most important people of the illegal enterprise as a means to show other enterprises that such activity is unacceptable, and they will be punished for those crimes. Catching and punishing those who were seen as untouchable as "Teflon Don" shows that there is no one beyond the reach of the federal government. The R.I.C.O. Act made the most insulated and powerful individuals within these criminal enterprises now vulnerable to prosecution.

It is essential to display this strength in situations like this because it is difficult to deter illegal activity when people see others getting away with the same crime. People soon realize that America has certain loopholes because of its capitalist and democratic system that has been in place for over two hundred years. Money buys power, and power instills fear. Fear creates openings for illegal activity to thrive because there is nothing stopping these criminals from continuing these illegal acts, thus creating the vicious cycle that has plagued the United States for over a hundred years in which individuals commit these crimes for a criminal enterprise, they get caught by the police, they strong-arm their way out of getting serious punishment for their crimes, and then continue this process over and over again. It was not until the R.I.C.O. Act came into effect that the government was able to push back against the stronghold organized crime had on the United States.

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Corporate Crime

Corporate crime in the United States has generally existed since the beginnings of the free market system during the Industrial Revolution from the 1820s until the late 1860s. This time period is where crimes existed based upon labor issues in which people (especially immigrants) were desperate for an income and would work in unsafe conditions for extremely long hours, leading to poor health and very short lifespans for below real living wages. These kinds of crimes continued into the twentieth century with little to no regulation. It was not until the early 1900s during Teddy Roosevelt's administration when *The Jungle*, written by Upton Sinclair, which exposed the horrid environments of factory life. This article made the general population more aware of corporate crime in which the federal government began to set stricter regulations on corporations with the assistance of unions that would apply pressure on the government and the corporate world to provide the necessary benefits and wages and working conditions for the front-line workers.

The change in the corporate world substantially reduced poor labor conditions, but, like organized crime, unethical corporations are always looking for the next avenue or loophole to use in order to maximize their profits by any means necessary. Some of the means they do this are through tax evasion, insurance fraud, money laundering, bribery, jury tampering, and many more. Many laws have been passed to combat the problem including the Sarbanes-Oxley Act in 2002, which applied pressure on the Chief Executive Officer and Chief Financial Officer to make sure that there are proper internal controls put in place in the company in order to prevent fraud because the liability will then be placed upon them. The R.I.C.O. Act of 1970, according to Judge Blakey (the writer of the law), was put in place not only for organized crime syndicates,

but also corporations under the same pretenses of racketeering. Although murder and extortion are not practiced in the corporate world, other forms of racketeering are. So, the concept of an “enterprise” gaining wealth through illegal means still applies here. In this section, I have three prime examples both nationally and internationally in which the R.I.C.O. Act was put into action against three multi-million-dollar companies: State Farm Insurance, Major League Baseball, and the International Federation of Association Football (also known as FIFA).

In the mid-1990s, State Farm Insurance was commissioning sub-standard “Original Equipment Manufacturer” (OEM) auto parts in order to try and save money. Their clients would receive the auto parts and the cars would malfunction and often cause accidents for them. The clients in would, then, try to file a claim from State Farm for their auto insurance. However, instead of taking the claim, they deny insurance and force their clients to try and pay for the damages themselves. This continued for a while until 1998 in which many clients in Illinois specifically unified under one plaintiff to sue State Farm for damages in a civil suit. The initial case settled at \$1.86 billion to be paid out to the clients, which was appealed and brought down to \$1.18 billion in 2000. State Farm attempted to appeal again in 2002 in which Judge Karmeier of the Illinois Supreme Court voided the jury, thus returning the advantage back to State Farm.

During this period from 2002 and 2004, the plaintiff discovered alarming information that State Farm had been secretly endorsing Karmeier’s campaign into the Illinois Supreme Court in 1999. The plaintiff continued the investigation and discovered that State Farm was involved in an insurance fraud ring in which it would insure clients, deny them services when necessary, and avoid hefty fines by having someone in the courts to protect them and cheating the plaintiffs out of their owed damages. The plaintiff pursued the case at a different angle by filing a R.I.C.O. case against State Farm under the charges of insurance fraud, jury tampering,

and bribery. This changed the case from a classic civil case at potentially \$1.18 billion down to a R.I.C.O. case in which the defendant was found guilty and was charged with a two-hundred and fifty million dollar fine to pay out to the plaintiff—a \$1.61 billion differential from the original settlement. No other punishments were filed, and no one was removed from any positions in the insurance company.

In 2002, Major League Baseball was accused of racketeering and other offenses. The majority owner of the Montreal Expos, Bud Selig, and the former owner, Jeffery Loria, wanted to move the Expos from Montreal to Washington. However, the other owners stalled the move, believing that Montreal is a better market than Washington for their baseball team. This act by the Expos board of directors did not stop the majority shareholder from attempting to change everyone's minds. Selig intentionally attempted to devalue the organization by slowly draining money from them in order to lower revenues and profits over the span of a few years prior to 2002. It was not until a group of anonymous minority shareholders came together, unsure as to how the value of the team was going down so steadily. So, they hired independent auditors and private investigators to figure out the problem with the organization.

In 2002, auditors found that Selig was steadily devaluing the Expos. Private investigators found that both Selig and Loria were involved and were bribing people to overlook the transgressions. So, the minority shareholders came together and sued Selig and the Expos. The case was appealed by the Expos in which the plaintiff enacted the R.I.C.O. Act lawsuit with charges of racketeering and other offenses.

However, the plaintiff did not stop there. They went after Major League Baseball as a whole for being "complicit" in the activity. They sued the MLB under the charges of money laundering, bribery, and other forms of racketeering. Hence, the R.I.C.O. Act can be put into

effect. This lawsuit grew into a large fine for the organization. The potential penalty reached higher than three-hundred million dollars. Those actions of the plaintiff were aggressive and unconventional. Most lawyers would have attacked a particular franchise rather than the entire professional baseball organization because Selig and Loria, as major shareholders of the franchise, were directly responsible for the racketeering activity and no members outside of the franchise were involved. Therefore, placing the blame at the feet of the MLB was not the wisest course of action because there was no proof to their involvement, meaning they were most likely not involved as an entire organization.

The court case went on for two full years from 2002 until 2004. Not much was accomplished for the vast majority of the case because neither side provided a good enough case for or against Major League Baseball for the jury to come across of proper decision. In the end, the jury requested an arbitration to help make the decision. An arbitration is when there is an independent third party that is requested to make a decision from an outside perspective. In 2004, the arbitration made their statement in favor of the MLB. The organization won the case and avoided the three-hundred-million-dollar penalty fine that they were going to have to pay if convicted. Later that year, the Expos officially began the move from Montreal to Washington with no further complications. Selig and Loria were never convicted of any crimes and no fines or punishments were made.

This is a prime example of the misuse of the R.I.C.O. Act in a court case that results in an unsuccessful attempt to settle a lawsuit. By suing Major League Baseball under these charges, it required the R.I.C.O. Act guidelines to be put in place. It had two or more forms of racketeering that the defendant was being accused of per Section 1961 of the act. However, it lacked evidence that there was a flow of money that moved up to the top of the organization, per

Section 1962. Yes, there was a development of conspiracy and racketeering occurring; however, the acts were done by two people and two people only. The MLB organization as a whole was not involved in the acts they were being accused of, so it was futile to try and get a conviction out them. By using the arbitration method, the third-party resolution was able to reason that the MLB was not directly involved in the act, nor were they directly or indirectly benefitting from the act in any way. Therefore, nothing could be done in regard to the R.I.C.O. Act.

In 2010, members of FIFA (International Federation of Association Football) were discovered of committing racketeering, wire fraud, money laundering, and bribery in order to fix profit for individuals and companies alike. Members including the vice president, Jeffrey Webb, conspired together to abuse their power for personal gain. They would communicate with sports marketing executives from the South American Football Confederation (CONMEBOL) and the North, Central America, and Caribbean Association Football (CONCACAF) who would shut out their competitors through bribes and kickbacks (a form of bribery used to incite an agreement; typically used for contract negotiations between companies). These contracts were providing a great deal of profit by forcefully shutting out the competitors in both merchandising and international advertisement, giving FIFA and the executives a huge gain as a result. This series of events occurred from 1991 until 2010 when it was discovered.

FIFA gained one hundred and fifty million dollars in bribes and kickback negotiations with sports marketing executives. There was an estimated \$5.7 billion in revenues in which seventy percent of that was from sales of television and other marketing products by 2014. In the end, they were caught and accused under the R.I.C.O. Act in 2015, including Jeffrey Webb. The charges, as stated above, resulted in an initial settlement of two hundred million dollars and

even prison sentences were brought to the table; however, this settlement was appealed near the end of 2015.

Nine members of the International Federation of Association Football were convicted in 2017, including Webb. However, none of these charges included a prison sentence. In fact, the original two hundred-million-dollar penalty for all offenders convicted went down significantly by this point up to forty million dollars in total. This was a huge downgrade especially when understanding that their revenues from 2010 until 2014 reached nearly six billion dollars in total. Such a fine barely scratches the surface of what FIFA makes in profit every year.

There are some examples of money laundering, bribery, and similar forms of racketeering in which people have been put in prison and forced to pay far heavier fines for much less. However, in many of those cases, there was a specific target the government could target when applying the court of law against them. The mystique of the International Federation of Association Football appeared to provide more protection for the individuals involved in the conspiracy. However, the case is still ongoing, which means that there may be more fines and potentially a prison sentence in the future.

All in all, there are three different viewpoints regarding the application of R.I.C.O. to legitimate companies that have been provided in this paper. State Farm's 1998-2004 R.I.C.O. case was an example of a national insurance company receiving fine far below the level of damages that was caused because of a bribery that was overlooked in its severity. Because the bribery was overlooked, State Farm received a light punishment that does not affect the insurance company enough for any real action to take place. The Major League Baseball's 2002-2004 R.I.C.O. case was an example of a lack of understanding of the R.I.C.O. Act in its entirety. The crime could be proven and there was good reason for the plaintiff to push for a R.I.C.O.

case; however, the approach was wrong. They should have gone after the Expos themselves rather than the entire organization in order to place the blame solely on the shoes of Bud Selig and Jeffery Loria, which would have been a more effective case to bring to court that would be more likely to establish a conviction. There was evidence that showed Loria's and Selig's involvement in the racketeering as the leaders and the burden of proof would have been much easier to present in court against the Expos rather than against the entire MLB. International Federation of Association Football's 2014-2017 case was an example similar to that of State Farm, but on an international level. Because FIFA has a lot of power on an international scale, it becomes difficult to place a conviction against them. Even when you succeed, the fines get diminished to a minuet sum, which we saw in this case as the total fines went from nearly two hundred-million dollars to forty million dollars (a one hundred- and sixty-million-dollar difference). These three viewpoints provide the framework for the troubling reality of the R.I.C.O. Act in regard to crime on the corporate level.

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Dilemma & Hypothesis

Based upon the research outlined in this paper, there is an concerning issue with the manner in which the R.I.C.O. Act has been applied to corporate crime. There is a lack of pressure placed upon the heads of corporations that appears to be applied to the heads of organized crime syndicates. There should be an understanding that corporate crime and organized crime are on different levels of severity. Murder, extortion, and trafficking of all kinds are components involved in organized crime; although, these crimes do not generally exist in corporate crime. There are other forms of racketeering that have devastating and generally irreconcilable outcomes that fall under the R.I.C.O. Act and should be taken seriously.

We see this in the way the government has dealt with the leaders of the Gambino's, Bonnano's, and Colombo's in which John Gotti, Joseph Massino, and Carmine Persico were all convicted with heavy prison sentences. When looking at the three examples of corporate crime, there is something missing in most of the punishments. In the State Farm case, there was a flow of money with multiple forms of racketeering, per Section 1961, involved which should have been enough for a heavy punishment, but only received a fine. No one in particular was punished, just the corporation. This fine was not very likely to be a preventative measure, but rather it could be considered just another cost for doing business for the enterprise.

In the MLB case, the plaintiff appeared to have misunderstood the concept of the R.I.C.O. Act and attempted to place the blame of the entire organization of the MLB rather than just the Montreal Expos franchise. There was no racketeering involved with the MLB organization. The illegal activity was done by the owners of the Expos only. So, the plaintiff

should have focused their attention on the owner and franchise specifically in the R.I.C.O. case. If they did so, the potential for conviction could have been much more likely.

In the FIFA case, there were nine convictions out of a possible fourteen accused, resulting in only a forty-million-dollar total punishment against the nine convicted members. The first case was decided at a two-hundred-million-dollar total punishment but was later appealed and brought down to forty million. It is important to recognize that the conviction of Jeffrey Webb is a key piece to this puzzle. Webb was the vice president of the multi-billion-dollar sports organization. The plaintiff successfully convicted Webb; however, the punishment still did not fit the crime. \$40 million in penalties divided across nine people results in about a \$4.44 million per person, which is a small sum for a high-ranking executive of a company like FIFA, which has an estimated annual revenue of over \$5 billion annually. This small sum is most likely not going to be a good enough deterrent to prevent further forms of illegal activity in FIFA. With the Mafia, the federal government uses the R.I.C.O. Act to knock off the top leader of the organization in order to create a power vacuum and a level of instability that causes the illegal enterprise to crumble and fall apart. It is this turmoil and power vacuum in the racketeering enterprise that is lacking in the small sum of punishments and fines that have been placed.

A crime of such magnitude through an international organization should result in something beyond a fine. According to federal law in the United States, wire fraud is considered a Class C felony offense (similarly to a maximum R.I.C.O. punishment of twenty years in prison, as well as a \$250,000 fine or more). Of course, this is taking into account that this is under the law of the United States, which is not a reality because FIFA is an international organization so the illegal acts are highly dependent on location of the racketeering activity and the laws in that

area that must be taken into account and how they affect the United States. With FIFA's case, the activities have an effect on both the United States and Europe. According to Debevoise & Plimpton LLP (a law practicing firm in both England and France), crimes in that similar category are anywhere from five to ten years in prison throughout most of Europe. Hence, the punishment should have been similar in that regard based upon the fact that a high-ranking executive was involved in such illegal activities in the attempt to improve both the organization and themselves. At a minimum, based upon the R.I.C.O. act standard, and the European standards on the crimes that Webb was convicted of, there should have been at least a five-year imprisonment sentence compiled with the fine he was given. With the case still on-going, there is a chance for further review; however, the punishment right now appears to fail to act as a deterrent for more bad behavior and racketeering in the future.

There are two key factors from the R.I.C.O. Act that appear to be missing in corporate crime cases that is not missing in organized crime cases that can be alarming: lack of leadership identity, and lack of punishment based upon the crime that the defendant was convicted of. The first is the lack of recognition for the leader of the illegal operation. In the three cases identified, two of them had leaders that were identified, yet were not prosecuted with the bulk of the attention. In other words, the plaintiff in the 2002 MLB case did not work to convict Bud Selig and Jeffrey Loria in particular, but rather the entire MLB organization. This dilutes the direction for a case, which can make it more difficult to gather clear and concise evidence beyond a reasonable doubt. The State Farm case lacked a clear-cut leader benefitting from the insurance fraud ring altogether, placing the blame on an entire enterprise like what happened with the MLB. The FIFA case did not appear to have a clear leader either, although Jeffrey Webb was convicted, it was never clearly stated that he was the leader of the activity. This lack of

accountability placed upon the leaders of these organizations diminishes the deterrent factor of the R.I.C.O. Act because these individuals will feel invulnerable and the tone at the top will trickle down to the others involved in this racketeering enterprise, which will not discourage others from continuing to perform these illegal acts.

The second key factor from the R.I.C.O. Act that appears to be missing in the corporate crime cases is a lack of punishment befitting the particular crimes involved. When looking into the three Mafia cases displayed above, they all had serious, high-class felony offense that Gotti, Massino, and Persico were all convicted of, including murder, bribery, jury tampering, and extortion. Taking just the murder into account could be enough for a life sentence if proven to be a first-degree murder. Because murder has the highest degree of punishment, it appears more reasonable to use the punishments of murder convictions even though there are other crimes involved. However, there are particular crimes committed in the three corporate cases displayed above that lack consistency of the average punishment upon a conviction. As stated before, wire fraud is considered a Class C felony, which is up to twenty years in prison and a \$250,000 fine. FIFA was convicted of wire fraud. Insurance fraud rings, on average, could be punishable by two-to-three years in prison, and/or significant fines. Without a clear leader to convict, there can be no punishment for prison because you cannot send a company to prison. However, there is wiggle room in the term “significant fines” that could be interpreted by the judge depending on the magnitude of the case. Based upon the magnitude of the State Farm case and the fact that the insurance company was a multi-billion-dollar organization, \$250 million seems like a rather small sum of money in comparison and does not appear to fully extinguish the illegal enterprise built within State Farm, nor does it seem to avert others from getting involved in the racketeering activities.

Hypothetically, let's say that Bud Selig and the Expos were convicted of the many crimes they were accused of—money laundering in particular. Money laundering, on average, could be punishable by up to twenty years of imprisonment for each violation and/or up to \$500,000 in fines or double the property amount that was involved in the illegal act. Money laundering was also one of the crimes that FIFA was convicted of in their case, as explained above. Therefore, FIFA could have faced even heftier fines and punishments, yet there was not a single imprisonment conviction. All three cases involved bribery of some sort, whether it was through kickbacks, illegal endorsement bribes, or the classic “paying people off to keep quiet”. Bribery in the United States could be punishable by up to fifteen years of imprisonment and double the fines of the bribe committed. In terms of FIFA, those penalties could have estimated to about \$300 million in total from just the fines (\$150 million in bribes were recorded).

There are two possibilities that could happen in regard to the R.I.C.O. Act against corporate crime. The first being to completely dissolve the R.I.C.O. Act from its participation in corporate crime to devote itself solely on organized crime, or, secondly, revamp the law with the same ideology of “cutting-off the head of the snake” mentality that is used in organized crime cases. The defense of the first hypothetical approaches to this issue could be that, although Mr. Blakey did claim the R.I.C.O. Act could be used against corporate crime, the motive behind the law being passed was to be used against organized crime syndicates because they were the most dangerous group at the time of its passing. The levels of severity are far too different to be placed in the same stratosphere.

Although the premise is not entirely wrong, one could argue that this thought process is missing the point of the R.I.C.O. Act. The purpose for the law, per Mr. Blakey, is to be used against “any enterprise”. This includes corporations and organized crime syndicates alike.

Therefore, the level of severity may not be exactly the same in regard to the actual crimes being committed, but there is still a pattern of an enterprise hierarchy in which illegal activities are being done by a collective group of people and displays a benefit of for the group that grows as you move up the hierarchy. This system is not just a Mafia system. This system applies to corporations, as seen in the cases above, so the level of severity of the crimes committed are irrelevant according to the R.I.C.O. Act when it comes to its application to a case.

According to my second hypothesis, the level of severity of punishment should be defined under consistent parameters that are applied to the Mafia. If the concept against the Mafia is to get rid of the leader and damage the enterprise to prevent future illegal activities from occurring, then leaders involved in the crimes committed under the R.I.C.O. Act should also be the main focus in corporate crimes. The prosecutor should have to prove that there is a hierarchy occurring in the illegal activity, and also prove that the head of the enterprise is benefitting the greatest from these activities. Once they do so, then they can proceed with the R.I.C.O. case under the premise that there is a violation of federal laws.

Understanding that there is a violation of federal laws, there should be punishments under the mindset that the enterprise and its leader have been convicted of multiple felonies. Hypothetically, the mindset of the punishments should affect the corporation so much that it produces a greater intensity for internal controls in a company. Also, applying pressure on organizations to act ethically. Currently, the lack of firm material punishment of the companies and criminal punishment of the individual leaders involved seems to perpetuate an incentive to continue unethical behavior. In order to discourage this, you have to apply pressure to the board of directors, investors, and the executives managing the organization. Hefty fines could be placed upon a variable number that is predicated upon the level of the crimes committed, and the

size of the organization. A small insurance company that has a net worth of \$20 million being convicted of an insurance fraud ring should not have \$200 million punishments in fines because that is too harsh and would do more than just bankrupt a company. However, for example, a \$14 billion insurance company committing the same crime (if not greater because the scale of which the crimes could reach is greater) should not be punished under the same terms of the \$20 million company. This logic is similar to how the United States government uses a progressive tax rate; the variable could be a progressive punishment based upon the size of the company in order to maximize the severity of punishment.

Another approach that could recreate the standard is to freeze the stocks of the company owned by the board of directors. This may sound harsh, but this should only be put in place if the prosecutor can prove beyond a reasonable doubt that the board of directors is directly or indirectly benefitting from the illegal activities. Once this is proven, stocks can be considered an asset and can be stripped from the board temporarily for the case. This will apply pressure on the board who will now need to enforce heavier internal controls on the management of the company. In the Sarbanes-Oxley Act, there are stipulations in the law that states that if a bonus is paid out to an individual based on performance that was a result of committing a fraudulent act, that money must be paid back. This could be applied in the R.I.C.O. Act as well and would further place pressure on the company and its top executives to act ethically. Like a vaccine, you have to stimulate the immune system's awareness of a potential threat so that the body can take the necessary actions to fight it when it comes. The same can be said by placing more responsibility of the ethical foundation of a company on the shoulders of the board of directors.

The last, and most important out of the three, is to apply executive punishment. In order for the something to be in violation of R.I.C.O., there has to be two forms of racketeering that the

enterprise is being accused of performing. As stated in the R.I.C.O. Act chapter, racketeering only exists upon the foundation that there is a financial benefit for the enterprise that flows from the front-line workers all the way up to the top of the hierarchy where the CEO, CFO, and board of directors sit. Therefore, the executives could be held to the same ideological standard as the Mafia bosses. So, they should be removed from the organization as the “head of the snake” leading the racketeering activity. Under this context, the executive(s) could be either terminated via the board of directors, or the executive(s) could be fined a hefty amount themselves along with the company, and/or incarcerated by the federal government (depending on the crimes committed). At the end of it all, there has to be a leader that must be removed from the enterprise in its entirety in order to dissolve the racketeering activities.

We have to change the way corporate crime is viewed by the federal government. It should be viewed as a crime, not an unfortunate circumstance. Schemes under the umbrella of racketeering are more common than people realize. In a 2018 report by the United States Sentencing Commission, racketeering activities performed in the corporate world (including fraud, money laundering, etc.) resulted in 11.4 percent of the total criminal sentencing in that year. The total sentences by the federal government were up to 69,524 cases, thus about 7,926 cases were corporate racketeering related. The largest percentages in these statistics were immigration and drugs with racketeering at the next highest. Robbery, sexual abuse, and child pornography altogether does not even come close to the number that corporate racketeering covers (about 6% in total).

Similar to preventing fraud in a business, there has to be a culture established that places intense stress on ethics. Identifying harsh punishments, establishing internal controls, and having a high-quality detective system are all key to defending against corporate crime. In the

end, the R.I.C.O. Act could be more effective in dealing with the corporate world, but that will not happen if we continue to minimize the severity of their crimes. If we establish a standard and stick to it, we could protect investors and innocent consumers as well as small businesses from being seriously harmed. That is the goal of law. Establish a standard that everyone follows and provide the necessary punishment to prevent further violations from occurring. In another sense, the lack of concern by the federal government in these cases can be seen as neglect of the infection and the hypothetical solution proposed above can be seen as the antibiotic to fight against it.

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Conclusion

All in all, the R.I.C.O. Act has had a positive effect against organized crime syndicates since its founding in the 1970s. However, the law, according to its founders, is not limited to just crime syndicates like the Italian Mafia, but to all “illegal enterprises”. Therefore, if a legal corporation was operating an “illegal enterprise” underneath, they could be charged and prosecuted under the R.I.C.O. Act. Unfortunately, the law has been misunderstood because of the large shadow that is cast by the Mafia and corporate crime has not placed the same pressure on the leaders of the organizations in the same way it does for the Mafia. There were two hypothetical solutions to this dilemma that are proposed: (1) get rid of the clause in the law that includes all “illegal enterprises” and focuses solely on crime syndicates; or (2) provide an emphasis on the “cutting off the head of the snake” technique used against the Mafia leaders in order to apply pressure on the CEO and board of directors of an organization performing unethical acts. The second approach would be the most effective measure in addressing the issue because it provides a necessary deterrent that will discourage future racketeering by organizations and properly punish those responsible for organizing the illegal activity.

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