RICO, Part 1
RICO - Purpose

RICO: the Racketeer Influenced and Corrupt Organizations Act
- Was enacted as Title IX of the Omnibus Crime Control Act of 1970.
- The statute was designed to:
  - Strike at the economic base of organized crime by imposing severe criminal penalties (including forfeiture of crime-related assets);
  - Provide the government with bold civil enforcement powers; and
  - Create a private civil cause of action allowing injured parties to recover treble damages and the cost of suit, including attorneys' fees.

RICO targets activities traditionally associated with organized crime
- However, Congress defined “racketeering activity” broadly to include white collar crimes such as mail fraud, securities fraud, and bribery.
- Prosecutors have come to view the statute as an important weapon against white collar criminals.

- RICO’s scheme of liability is premised on three discrete types of conduct:
  - § 1962(a): investing in an enterprise with income derived from a pattern of racketeering activity;
  - § 1962(b): acquiring an interest in or maintaining control over an enterprise through a pattern of racketeering activity; and
  - § 1962(c): participating in the conduct of the affairs of an enterprise through a pattern of racketeering activity.
  - § 1962(d) It is also unlawful to conspire to violate (a), (b), or (c).

- The enterprise element thus is central to every RICO prosecution.
Definitions

- **Pattern of racketeering activity:**
  - A series of acts

- **Enterprise:**
  - A bunch of people who are acting towards a common purpose
  - A de facto entity

- **Conspiracy:**
  - An agreement between two or more people to carry out an unlawful purpose.
Racketeering Activity

- In 18 U.S.C. § 1961(1), Congress defined the term “racketeering activity” to mean:
  - (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed chemical (as defined in section 102 of the Controlled Substances Act), which is chargeable under State law and punishable by imprisonment for more than one year;
  - (B) any act which is indictable under any of the following provisions of title 18, United States Code…
    - Examples include bribery; counterfeiting; mail, wire, or bank fraud; false statements; money laundering; and many others.
  - (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act…
## Enterprises and Conspiracies

<table>
<thead>
<tr>
<th>Enterprise</th>
<th>Conspiracy</th>
</tr>
</thead>
<tbody>
<tr>
<td>May not have to involve an agreement between the participants.</td>
<td>Requires an actual agreement between the participants.</td>
</tr>
<tr>
<td>Participants in an enterprise must commit more than two acts to be prosecuted under RICO.</td>
<td>May contemplate only a single act to be prosecuted under RICO.</td>
</tr>
</tbody>
</table>
The Enterprise

- In 18 U.S.C. § 1961(4), Congress defined the term “enterprise” to include “any
  - individual,
  - partnership,
  - corporation,
  - association,
  - or other legal entity,
  - and any union or group of individuals associated in fact although not a legal entity.”

- This definition did little, however, to stem the tide of litigation challenging the breadth of the enterprise concept.
The Enterprise, cont.

- Associations may constitute a RICO enterprise as defined by § 1961(4). Association include:
  - An association of corporations or
  - An association of individuals and corporations

- REMEMBER: a conspiracy is an agreement requiring plurality of actors and the agreement to bring about the unlawful objective.

- **Facts:**
  - Defendant and 12 others were charged with conspiracy to conduct and participate in the affairs of an enterprise engaged in interstate commerce through a pattern of racketeering activities, in violation of 18 U.S.C. § 1962(d).
  - The common thread between the counts was Defendant’s alleged leadership of this criminal organization through which he orchestrated and participated in the commission of the various crimes delineated in the RICO count or charged in the eight preceding counts.
  - Defendant was convicted on all nine counts.
  - The appellate court reversed the conviction.
    - The court held that the term “enterprise” referred to legitimate enterprises, not illegitimate enterprises.

Issue:

Is an enterprise for illegitimate activities a legitimate enterprise which may be charged under the RICO statute?
Holding/Rule:

- The Supreme Court reversed.
- The court held that neither the language nor structure of RICO limits its application to legitimate “enterprises.”
- The “enterprise” is not the “pattern of racketeering activity”; it is an entity separate and apart from the pattern of activity in which it engages.
- Had Congress not intended to reach criminal associations, it could easily have narrowed the definition of “enterprise” to “legitimate enterprise.”
- However, Congress did not indicate that an enterprise consisting of a group of individuals was not covered by RICO if the purpose of the enterprise was exclusively criminal.

**Explanation:**

- The RICO statute covers legal entities and associations in fact, including a group of 13 individuals who carry out criminal activities together.
- Such a group is conceptually distinct from the pattern of activity in which it engages.
- This type of group is not necessarily a conspiracy.

Facts:
- National Organization for Women, Inc. (NOW) is a national nonprofit organization that supports the legal availability of abortion.
- NOW sued and a coalition of antiabortion groups under §1962(c).
- The anti-abortion groups were part of a conspiracy aimed to shut down abortion clinics through a pattern of racketeering activity.

Issue:
- Must the racketeering enterprise or the racketeering predicate acts must be accompanied by an underlying economic motive.
Holding/Rule:

- The court held that an enterprise, for purposes of Section 1962(c), does not have to have an economic or profit-seeking motive.
- The enterprise must be engaged in or its activities must impact or effect interstate or foreign commerce.
- Although the predicate acts, such as the alleged extortion, may not benefit the protestors financially, they still may drain money from the economy by harming businesses such as the clinics.

Explanation:

- The object of the anti-abortion protests here was to shut down clinics.
- This could have entailed employees from different states losing their jobs, suppliers losing business, and patients traveling through interstate commerce to visit a clinic no longer being able to do so.
- Therefore, the anti-abortion groups were responsible.
Interstate Commerce Requirement

- In the NOW, the Supreme Court determined that a RICO enterprise must be engaged in, or its activities must affect, interstate or foreign commerce.

- In virtually every other context, however, this jurisdictional requirement may be satisfied by the presence of minimal contact with interstate commerce.

- Because RICO does not require proof that any of the racketeering activity had an interstate dimension, the prosecution need only show that the enterprise itself has some involvement with commerce.

  - Examples that have been held to satisfy the interstate commerce element:
    - Using the mails or interstate telephone systems,
    - Purchasing goods from out-of-state vendors,
    - Purchasing real estate in another state

See pages 406 in the textbook
Since 1994, the Supreme Court has considered and reconsidered the breadth of Congress's power to exercise commerce-based criminal jurisdiction.


Although the Court did not rule that Commerce Clause jurisdiction can never be based on the aggregate effects of noneconomic activity on commerce, it emphasized that all of the prior cases that upheld aggregate effects jurisdiction were construing statutes that regulated economic activity.

See pages 407 in the textbook
The Pattern Requirement


- **Background:**
  - Customers of Northwestern Bell Telephone (NBT) sued the company, the Minnesota Public Utilities Commission (MPUC), and others with regards to bribes paid to MPUC officials for approval of higher NBT rates.
  - The MPUC is the state body responsible for determining the rates that Northwestern Bell may charge.
  - Between 1980 and 1986, Northwestern Bell allegedly sought to influence members of the MPUC in the performance of their duties.
  - They caused them to approve rates for the company in excess of a fair and reasonable amount by making cash payments to commissioners, negotiating with them regarding future employment, and paying for parties and meals, for tickets to sporting events and the like, and for airline tickets.
The Pattern Requirement, cont.


- **Holding/Rule:**
  - Reversed.
  - The petitioners satisfactorily met all of the requirements needed to prove that NBT had violated the RICO statute.
  - The Court defined “pattern” as (1) relatedness and (2) continuity.

- **Relatedness** can be demonstrated by showing the same or similar purposes, results, participants, victims, methods of commission, or other distinguishing characteristics.
  - The court looked to Title X of the Organized Crime Control Act to determine what constitutes a pattern of criminal acts.
  - Racketeering acts are not related when they tend to be sporadic or isolated occurrences.

- **Continuity** may be demonstrated by showing
  - (a) that the racketeering acts themselves included a specific threat of repetition extending indefinitely into the future or
  - (b) that the predicate acts or offenses were part of an ongoing entity’s regular way of doing business.
The Pattern Requirement, cont.

Explanation:

In this case, reading what Petitioners alleged in their complaint, the bribes were related by common participants and a common purpose.

To influence the MPUC and obtain approval of unfairly high rates for NBT.

The bribes satisfied the continuity requirement in two ways:

1 - They occurred over a six-year period and there was no indication that the bribes would stop.

2 - They were part of the regular way of conducting business at NBT and MPUC.

NOTE: Some courts heard vagueness challenges in RICO’s early days but the consensus was that there is no due process problem with this statute.
State Predicate Crimes

- Most crimes defined as racketeering activity are federal offenses.

- A limited number of state crimes may also serve as RICO predicate crimes.

- 18 U.S.C. § 1961(1)(A) defines racketeering activities to include:
  - “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year.”
State Predicate Crimes

*United States v. Garner, 837 F.2d 1404 (7th Cir. 1987)*

**Background:**
- The case involved the payment of bribes by private sewer contractors to sewer inspectors of the City of Chicago.
- Sewer work on private property in Chicago is performed by contractors regulated by the city. All contractors must be licensed by the city, and a permit and inspection must be obtained for most sewer work.
  - Sewer contractors pay a fee to the city to obtain work permits.
  - Inspectors are not entitled to any payment other than the permit fee.
- The contractors made additional payments to the inspectors.
- Defendants argued that their conduct constituted the unlawful receipt of gratuities, not bribery, which is illegal under state law but not one of the predicate offenses listed in § 1961(1)(A).
State Predicate Crimes, cont.

*United States v. Garner, 837 F.2d 1404 (7th Cir. 1987)*

**Rule:**

- The court held that the references to the state crimes in the definition of racketeering activity are generic.
- Because unlawful receipt of gratuities is included in the federal bribery statute (§ 201), the court inferred that unlawful gratuity is included in the reference to “bribery” in § 1961(1)(A).
- It doesn’t matter if Defendants were acquitted of the predicate offenses, or if the statute of limitations for the predicate offenses has expired.
- For state offenses, § 1961(1)(A) says “any act or threat … which is chargeable under State law and punishable by imprisonment for more than one year.”
- It does not whether a particular defendant is chargeable.
- For federal offenses, § 1961(1)(B) says “any act which is indictable.”