

July 2015

# Northeast Women's Center, Inc. v. McMonagle: A Message to Political Activists

Jo Anne Pool

Please take a moment to share how this work helps you [through this survey](#). Your feedback will be important as we plan further development of our repository.

Follow this and additional works at: <http://ideaexchange.uakron.edu/akronlawreview>



Part of the [Law and Gender Commons](#), and the [Law and Politics Commons](#)

---

## Recommended Citation

Pool, Jo Anne (1990) "Northeast Women's Center, Inc. v. McMonagle: A Message to Political Activists," *Akron Law Review*: Vol. 23 : Iss. 2 , Article 8.

Available at: <http://ideaexchange.uakron.edu/akronlawreview/vol23/iss2/8>

This Article is brought to you for free and open access by Akron Law Journals at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Review by an authorized administrator of IdeaExchange@UAkron. For more information, please contact [mjon@uakron.edu](mailto:mjon@uakron.edu), [uapress@uakron.edu](mailto:uapress@uakron.edu).

## ***Northeast Women's Center, Inc. v. McMonagle:* A Message to Political Activists**

### INTRODUCTION

The Racketeer and Influenced Corrupt Organization (RICO) statute<sup>1</sup> was enacted as part of Title IX of the Organized Crime Control Act of 1970.<sup>2</sup> The statute provides criminal penalties,<sup>3</sup> as well as civil remedies<sup>4</sup> for the violation of four types of prohibited activity.<sup>5</sup> The portion of the statute providing civil remedies is known as civil RICO. This note focuses on the application of civil RICO.

Since its enactment in 1970, the RICO statute has ridden the waves of tempest and turmoil. The vague and poorly written statute encounters judicial hostility and harsh criticism from legal commentators. In an effort to reform the inherent problems created by the statute's wording, Congress bats the statute between committees in both houses. Despite legislative activity surrounding RICO, the statute remains unchanged. In the absence of reform, courts continue to interpret and apply the RICO statute liberally.

This note examines *Northeast Women's Center, Inc. v. McMonagle*,<sup>6</sup> a successful civil RICO claim brought by an abortion clinic against anti-abortion activists who "used force, threats of force, fear and violence in their efforts to force the clinic out of business."<sup>7</sup> As a background to examining the case, this note will explore the RICO statute, the judicial extension of RICO, and the current congressional action concerning reform.

Analysis of *Northeast* reveals an emerging extension of civil RICO. Civil RICO is applied to curb unlawful political protest. Such an extension allows certain victims of domestic terrorism private recovery of damages. This note concludes that this extension of civil RICO serves as appropriate private enforcement to deter structured, continuing criminality.

---

<sup>1</sup> 18 U.S.C.S. § 1961 et. seq. (Law. Co-op. 1979 & Supp. 1989).

<sup>2</sup> Pub. L. No. 91-452, 84 Stat. 922 (1970).

<sup>3</sup> 18 U.S.C.S. § 1963 (Law. Co-op. 1979 & Supp. 1989).

<sup>4</sup> *Id.* § 1964.

<sup>5</sup> *Id.* § 1962.

Published by [IdeaExchange@Uakron](mailto:IdeaExchange@Uakron), 1990

<sup>6</sup> 868 F.2d 1342 (3rd Cir. 1989).

<sup>7</sup> *Id.* at 1350.

## STATEMENT OF THE CASE

*Facts*

The Northeast Women's Center, Inc. (Center) is a Pennsylvania corporation providing various gynecological services.<sup>8</sup> One such service is abortion.<sup>9</sup> The Center filed an action in the United States District Court for the Eastern District of Pennsylvania alleging illegal and tortious activity by twenty-six anti-abortion protesters.<sup>10</sup> The suit centered around the fourth occasion of trespass when the protesting allegedly exceeded the demonstrators' constitutional rights of dissent and publication.<sup>11</sup>

At trial, the Center presented evidence that the protesters had unlawfully entered the Center's facilities on four different occasions.<sup>12</sup> The first occasion occurred on December 8, 1984, when approximately fifty demonstrators rushed into the Center.<sup>13</sup> During the entrance, protesters knocked down employees, blocked access to rooms, and strewed medical equipment on the floor.<sup>14</sup> On the basis of this incident, the administrator of the Center decided to hire security guards to protect the safety of the Center's employees and patients.<sup>15</sup> One employee testified that she was injured in the incident and resigned her position at the Center as a result of the harassment.<sup>16</sup> After this incident, thirty protesters were arrested and charged with trespass.<sup>17</sup> Twelve Defendants were among the persons arrested.<sup>18</sup>

The second incident occurred on August 10, 1985 when twelve Defendants defiantly entered the Center.<sup>19</sup> An employee testified that a number of protesters locked themselves in an operating room.<sup>20</sup> As the protesters left, the employee noticed an object concealed under the coat of one of the protesters. Upon entering the room, the employee discovered the machinery disassembled and damaged.<sup>21</sup> Twelve Defendants were arrested and convicted of defiant trespass for this incident.<sup>22</sup>

---

<sup>8</sup> *Id.* at 1345.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 1346.

<sup>12</sup> *Id.* at 1345.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 1346.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

The third incident occurred on October 19, 1985 when protesters once again attempted to enter the Center<sup>23</sup> Only two succeeded.<sup>24</sup> Among the activists arrested were twenty-four Defendants. Three of them were subsequently convicted of defiant trespass.<sup>25</sup>

The fourth incident occurred on May 23, 1986.<sup>26</sup> A videotape of the incident depicted the protesters "sitting down on the floor of the waiting room inside the clinic, standing in front of patients awaiting services and castigating them, and ignoring repeated requests that they cease trespassing and leave the building . . . One Defendant stated, 'We're going to shut this place down.'"<sup>27</sup> Police removed the trespassers.<sup>28</sup> Defendants on the outside of the premises blocked the doors to the Center.<sup>29</sup> Twenty-six persons were arrested.<sup>30</sup> Fifteen Defendants were convicted for criminal conspiracy, disorderly conduct, and/or defiant trespass as a result of this incident.<sup>31</sup>

Witnesses at the District Court trial testified to the Defendants' behavior during the four incidents of protest and other occasions:

[T]hey observed Defendants photographing patients, chanting through bullhorns, blocking building entrances, and surrounding and pounding on the windows of employees' cars. In fact, an assistant district attorney who witnessed a demonstration testified that the demonstrators' activity rose to a "frenzy" and that he delayed leaving the Center out of fear for his physical safety. . . . A doctor testified that the sound of chanting, amplified by bullhorns, was audible in the Center's operating room. . . .

Three employees testified that they were repeatedly subjected to picketing at their homes.<sup>32</sup>

Videotape evidence depicted the activists "pushing, shoving, and tugging on patients as they attempted to approach the Center, knocking over and crossing beyond the ingress of cars. A protester is recorded stating, 'I bet you ten to one this place doesn't last six months.' Another added, 'This place is going to be shut down.'"<sup>33</sup>

---

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

The Center brought the district court action against Defendants alleging that Defendants had conspired among themselves to disrupt the Center's business, to injure its property by harassing clients and employees, to unlawfully enter the property, and to destroy and damage medical equipment.<sup>34</sup> The Center sought damages and injunctive relief under the Sherman Antitrust Act, the Clayton Act, RICO, and the common law torts of trespass and intentional interference with contractual relations.<sup>35</sup>

The RICO and the common law tort actions were the only two claims sent to the jury.<sup>36</sup> The jury found twenty-seven Defendants liable under RICO and assessed \$887.00 in damages. The jury also found that three Defendants interfered with the Center's contracts with employees, and that twenty-four Defendants were liable for trespass. Damages were assessed at \$42,087.95 (compensatory) and \$48,000.00 (punitive).<sup>37</sup> The District Court granted a partial j.n.o.v. to the Defendants on the punitive damage award and denied the Center injunctive relief.<sup>38</sup>

### *Issues on Appeal*

The Plaintiff's appealed challenging the District Court's use of the Unclean Hands Doctrine as a bar to injunctive relief and the Court's order setting aside the punitive damage award.<sup>39</sup>

The Court remanded the issue of injunctive relief to the district court<sup>40</sup> and refused to reinstate punitive damages.<sup>41</sup>

### *Issues on Cross-appeal*

The Defendants cross-appealed challenging the application of civil RICO, the availability of the justification defense, and various claims of prejudicial error.<sup>42</sup> The Defendants did not succeed in any of their challenges. The issues of prejudicial error were set aside by the appellate court.<sup>43</sup>

<sup>34</sup> *Id.* at 1347.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* The Center alleged a violation of 18 USCS § 1964(c). The Center alleged that Defendants were participating in the conduct of an enterprise engaged in extortion under the Hobbs Act.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 1345.

<sup>40</sup> *Id.* at 1357.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 1345.

<sup>43</sup> *Id.* at 1353.

## 1. Denial of the Justification Defense

The Defendant's claimed that trying to save innocent lives was a defense to the charges against them.<sup>44</sup> The court rejected this defense by stating that good motives do not constitute a legal defense.<sup>45</sup> In denying the justification defense, the court quoted *United States v. Malinowski*:<sup>46</sup> "Such a position represents a feeble effort to emasculate basic principals of civil disobedience, and simply stated, is invalid . . . [T]he actor wants the best of both worlds; to disobey, yet to be absolved of punishment for disobedience."<sup>47</sup>

The abortion protestors had legal alternatives available to achieve their goal; i.e. persuade women not to have abortions.<sup>48</sup> They could peacefully march, distribute literature, and discuss their political views with individuals in the community. While these legal alternatives were available, the Defendants did not choose them. Instead, the Defendants' actions broke the law and good intentions<sup>49</sup> cannot keep them from suffering the consequences of their actions.<sup>50</sup>

## 2. Application of Civil RICO

The Defendants argued that civil RICO could not apply in this case for three reasons. First, the Defendants' actions were protected by the First Amendment right of dissent and publication.<sup>51</sup> Second, the Center had failed to establish the injury to its business or property required by the RICO statute.<sup>52</sup> Third, the Center had failed to prove an economic motive for the extortion claim under the Hobbs Act.<sup>53</sup>

### *a. Situational Scope of the First Amendment*

In rejecting the Defendants' argument that their actions were protected by the first amendment, the court applauded the jury instruction concerning the situational scope of the first amendment:

<sup>44</sup> *Id.* at 1351.

<sup>45</sup> *Id.*

<sup>46</sup> 472 F.2d 850 (3d Cir.), *cert. denied*, 411 U.S. 970 (1973).

<sup>47</sup> *Malinowski*, 472 F.2d at 857.

<sup>48</sup> *Northeast*, 868 F.2d at 1352.

<sup>49</sup> The court did not allow these abortion activists to act in furtherance of their political belief, break the law, and then claim innocence from their crime because they believed they were helping society.

<sup>50</sup> *Id.* at 1351.

<sup>51</sup> *Id.* at 1348.

<sup>52</sup> *Id.* at 1349.

<sup>53</sup> *Id.*

The First Amendment of the United States Constitution guarantees the defendants a right to express their views. The defendants have a constitutional right to attempt to persuade the Northeast Women's Center to stop performing abortions. They have a constitutional right to attempt to persuade the Center's employees to stop working there and they have a constitutional right to attempt to persuade the Center's patients not to have abortions there . . . The mere fact, also, that the defendants or some of their protests may be coercive or offensive, does not diminish the First Amendment right to a protest.

However . . . the First Amendment does not offer a sanctuary for violators. The same Constitution that protects the defendants' right to free speech also protects the Center's right to abortion services and the patients' rights to receive those services.<sup>54</sup>

The Court refused to allow the abortion activists to hide behind their political belief where a jury had found that the actions *extended beyond* lawful dissent.<sup>55</sup>

### *b. Injury Requirement of Civil RICO*

The Defendants argued that the Center failed to establish injury to its business or property as required under civil RICO.<sup>56</sup> The court answered this argument by carefully distinguishing the tangible economic injury requirement under civil RICO<sup>57</sup> and the intangible injury requirement under the Hobbs Act.<sup>58</sup>

Under civil RICO, injury is satisfied by the mere evidence of tangible economic loss to the Center's business or property.<sup>59</sup> Damage to the Center's medical equipment during forcible entry was sufficient to meet the civil RICO injury requirement.<sup>60</sup> Under the Hobbs Act, an intangible loss may be injury.<sup>61</sup> The Defendants violated the Hobbs Act by

<sup>54</sup> *Id.* at 1349.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 1350. Apparently, the court distinguished the injuries because the Defendant's argument was confused regarding which type of injury satisfied which violation. The RICO statute is violated if any person participates in the conduct of an enterprise engaged in activity that violates the Hobbs Act.

<sup>59</sup> *Northeast*, 868 F.2d at 1349.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 1350.

“attempting and conspiring to *extort* from the Center its *property interest* in *continuing to provide* abortion services; from its employees, their property interest in *continuing their employment* with the Center; and from patients, their property interest in *entering into a contractual relationship* with the Center.”<sup>62</sup>

The extortion of intangible interests violated the Hobbs Act. This violation was used as the predicate offense in the RICO claim. Committing a predicate offense under RICO triggers the recovery of civil damages. Civil damages are equal to the amount of tangible economic loss to the victim’s business or property while the extortion was happening.<sup>63</sup> In *Northeast*, proof of damage to medical equipment triggered the civil RICO damage recovery.<sup>64</sup>

### *c. Motive of Extortion under the Hobbs Act*

Defendants’ claimed that extortion must have an economic motive. They argued that the protestors did not have an economic motive and did not even receive the benefit of the alleged extortion of the property interests. The court rejected this argument. Under the Hobbs Act, money does not have to be the motive of extortion. The extortionist does not even have to receive the benefit of his actions.<sup>65</sup>

The court reasoned that the Center’s property interest in continuing business, the employees’ property interest in continuing their employment, and the patients property interest in doing business with the center are all intangible interests. The protestors’ conduct attempted to take these interests away. The protestors’ conduct amounted to an extortion of intangible interests.<sup>66</sup>

## BACKGROUND

### *RICO Statute*

The RICO statute<sup>67</sup> was enacted as part of Title IX of the Organized Crime Control Act of 1970.<sup>68</sup> The statute provides criminal penalties,<sup>69</sup> as well as civil remedies,<sup>70</sup> for four types of prohibited activities.<sup>71</sup>

<sup>62</sup> *Id.* (emphasis added).

<sup>63</sup> See *infra* note 84 and accompanying text.

<sup>64</sup> *Northeast*, 868 F.2d at 1349.

<sup>65</sup> *United States v. Cerilli*, 603 F.2d 415, 420 (3rd Cir. 1979), *cert. denied*, 444 U.S. 1043, (1980). See also *United States v. Starks*, 515 F.2d 112, 124 (3rd Cir. 1975) (permitting extortion for a religious purpose); *United States v. Anderson*, 716 F.2d 446 (7th Cir. 1983) (permitting extortion for threats against a doctor as inducement to cease performing abortions).

<sup>66</sup> *Id.*

<sup>67</sup> 18 U.S.C.S. §§ 1961-1968 (Law. Co-op. 1979 & Supp. 1989).

<sup>68</sup> Pub. L. No. 91-452, 84 Stat. 922 (1970).

<sup>69</sup> 18 U.S.C.S. § 1963 (Law. Co-op. 1979 & Supp. 1989).

<sup>70</sup> *Id.* § 1964.



The statute makes it unlawful for any person: (A) to receive and invest income derived from the racketeering activity of an interstate enterprise;<sup>72</sup> (B) to acquire or maintain any interest in an interstate enterprise through a pattern of racketeering activity;<sup>73</sup> (C) to participate in the conduct of an interstate enterprise engaged in a pattern of racketeering activity;<sup>74</sup> or (D) to conspire to violate any of the above provisions.<sup>75</sup>

“Pattern of racketeering activity” is a frequently recurring phrase within the list of prohibited activities. The statute defines this phrase as requiring “at least two acts of racketeering activity, one of which occurred within ten years . . . after the commission of a prior act of racketeering activity.”<sup>76</sup> Racketeering activity, specifically, consists of eight chargeable state crimes and twenty-eight indictable federal crimes.<sup>77</sup>

<sup>72</sup> *Id.* § 1962(a) states in part: It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt . . . to use or invest, directly or indirectly, any part of income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which it engages in, or the activities of which affect, interstate or foreign commerce.

<sup>73</sup> *Id.* § 1962(b) states: It shall be unlawful for any person through a pattern of racketeering activity or through collection of an an unlawful debt to acquire to maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

<sup>74</sup> *Id.* § 1962(c) states: It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity or collection of unlawful debt.

<sup>75</sup> *Id.* § 1962(d) states: It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.

<sup>76</sup> *Id.* § 1961(5) (Law. Co-op. 1979 and Supp. 1989).

<sup>77</sup> *Id.* § 1961(1) states:

As used in this chapter [18 USCS §§ 1961-1968] (1) “*racketeering activity*” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, 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: Section 201 (relating to bribery), section 224 (relating to sports bribery), section 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation or wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), section 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 [29 USCS § 186] (dealing with restrictions on payments and loans to labor organizations) or section 501(c) [29 USCS § 501(c)] (relating to embezzlement from union funds), (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States (emphasis added).

These racketeering activities listed within the statute are commonly referred to as “predicate acts” or “predicate offenses.”<sup>78</sup> Of particular interest to this note is the inclusion of the Hobbs Act within the list of predicate offenses.<sup>79</sup>

For violations of the RICO provisions, the statute provides both criminal penalties<sup>80</sup> and civil remedies.<sup>81</sup> The civil remedy provision permits: (a) the federal district courts to issue appropriate orders to prevent and restrain violations of the four prohibited acts,<sup>82</sup> (b) the Attorney General to institute proceedings under civil RICO,<sup>83</sup> (c) *victims, injured in their business or property, to sue and recover treble damages and costs including reasonable attorney fees*,<sup>84</sup> and (d) a final judgment in any criminal proceeding to estop the defendant from denying allegations of the criminal offense in any subsequent civil proceeding<sup>85</sup> (emphasis added). Section c, above, is the portion of the civil remedy provision that allows for private recovery of money damages.

While the actual intent of Congress in enacting this statute has been debated,<sup>86</sup> Congress has clearly stated:

It is the purpose of this Act to seek the eradication of *organized crime* in the United States by strengthening the legal tools in the evidence gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in *organized crime*.<sup>87</sup>

When reading the statute definitions,<sup>88</sup> there is a conspicuous absence of a definition for “organized crime.” Congress found the term

<sup>78</sup> Morgan, *Civil RICO: The Legal Galaxy's Black Hole*, 22 AKRON L. REV. 107, 109 (1988).

<sup>79</sup> See *supra* note 67.

<sup>80</sup> 18 U.S.C.S. § 1963 (Law. Co-op. 1979 & Supp. 1989).

<sup>81</sup> *Id.* § 1964.

<sup>82</sup> *Id.* § 1964(a).

<sup>83</sup> *Id.* § 1964(b).

<sup>84</sup> *Id.* § 1964(c). Civil RICO provision for private recovery.

<sup>85</sup> *Id.* § 1964(d).

<sup>86</sup> See *Sedima*, 473 U.S. at 499. Compare with *Sedima*, 473 U.S. at 527 (Powell, J., dissenting); see generally *Oversight on Civil RICO Suits: Hearings Before the Senate Comm. on the Judiciary*, 99th Cong., 1st Sess. (1985) (statement of C. Marinaccio, Member of the Securities and Exchange Commission) and (statement of I. Nathan, for American Property and Casualty Insurance Industry) (inferring Congress intended the RICO Statute to reach only the archetypal mobster); Melley, *The Stretching of Civil RICO: Pro-Life Demonstrators are Racketeers?* 56 UMKC L. REV. 287, 309 (1988) (Congress never intended the RICO statute to be used against pro-life activists staging demonstrations).

<sup>87</sup> Pub. L. No. 91-452, 84 Stat. 922 (1970) (emphasis added).

<sup>88</sup> 18 U.S.C.S. § 1961 (Law. Co-op. 1979 & Supp. 1989).

too amorphous to specifically define.<sup>89</sup> Rather than trying to define the term, the drafters focused on the activities engaged in by organized crime.<sup>90</sup> The drafters realized that the statute might reach into activity outside the sphere of organized crime.<sup>91</sup>

To compensate for the over-inclusive nature of the statute, some circuit courts took it upon themselves to limit the scope of the statute through interpretation. Organized crime was interpreted by many circuit courts to mean the stereotypical "Mafia Family."<sup>92</sup> Despite the fact that Congress directed that the statute "be liberally construed to effectuate its remedial purpose,"<sup>93</sup> many circuit courts specifically limited the cause of action to persons associated with crime families.<sup>94</sup> Courts accomplished these limitations through judicially imposed restrictions in bringing the cause of action.<sup>95</sup> Overall, the circuits' treatment of the RICO statute was diverse. Depending on the jurisdiction, the statute might be construed liberally (applying it to any violation) or by judicial limitation (only applying it to persons associated with a crime family).<sup>96</sup>

### *Judicial Extension of Civil RICO*

The diverse treatment, in regard to whom the RICO statute would apply, was finally addressed by the U.S. Supreme Court in 1985. The Court, in *Sedima S.P.R.L. v. Imrex Co., Inc.*,<sup>97</sup> chose the liberal application that congress had directed. The Court's choice was not surprising. Early treatment of criminal RICO cases predicted the *Sedima* decision. Both *United States v. Turkette*<sup>98</sup> and *Russello v. United States*<sup>99</sup> strongly suggested that all RICO cases would receive the liberal construction that Congress directed.<sup>100</sup>

<sup>89</sup> Koenig, *What Have They Done to Civil RICO: The Supreme Court Takes the Racketeering Requirement Out of Racketeering*, 35 AM. U.L. REV. 821, 830-1 (1986). See *Oversight on Civil RICO Suits*, supra note 86, at 122 (testimony of Stephen S. Trott).

<sup>90</sup> *Id.*

<sup>91</sup> See *Oversight on Civil RICO*, supra note 86, at 123. "It is impossible to draw an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside organized crime as well." (quoting Senator McClellan, the principal Senate sponsor of the RICO legislation).

<sup>92</sup> See, *Annotation, Civil Action For Damages under 18 U.S.C.S. § 1964(c) of the Racketeer Influenced and Corrupt Organizations Act for Injuries Sustained by Reason of Racketeering Activities*, 70 A.L.R. FED. 538, 552-53 (1984).

<sup>93</sup> Pub. L. No. 91-452, 84 Stat. 947 (1970).

<sup>94</sup> See supra note 92.

<sup>95</sup> See *Oversight on Civil RICO Suits*, supra note 86, at 123-24. See also Goldsmith and Keith, *Civil RICO Abuses: The Allegations in Context*, B.Y.U. L. REV. 55, 64 (1986).

<sup>96</sup> See supra note 86. See also *Oversight on Civil RICO Suits*, supra note 86, at 418-19 (Congress expected diverse treatment and included the liberal construction clause in the statute to avoid the effects of judicial hostility toward the statute).

<sup>97</sup> 473 U.S. 479 (1985).

<sup>98</sup> 452 U.S. 576 (1981).

<sup>99</sup> 464 U.S. 16 (1983).

<sup>100</sup> See *Civil RICO Abuses: The Allegations in Context*, supra note 95, at 65.

In *Sedima*, the Court removed two judicially imposed limitations in bringing a civil RICO action.<sup>101</sup> First, the Court struck down the racketeer injury limitation, finding that the injury need not be caused by the conduct that RICO was designed to deter.<sup>102</sup> Second, the Court held that a civil RICO action could be brought against a defendant who did not have a prior criminal conviction.<sup>103</sup>

The *Sedima* decision, in effect, extended the civil RICO cause of action to the ordinary commercial setting.<sup>104</sup> The Court commented that if the extension was a defect, then the correction would lie with Congress in amending and clearly defining the statutory language.<sup>105</sup> After the Court's call for legislative revision, the debate on civil RICO switched to the congressional forum.

### *Congressional Action Since Sedima*

Despite the *Sedima* Court's call for legislative revision as the means of limiting civil RICO, no revisions have been made to date. Congress continues to discuss the issue,<sup>106</sup> and several bills have been introduced.<sup>107</sup> After four years, the need for revision nor the method of revision have been agreed upon.

Many commentators complain that extension of civil RICO to the commercial arena is an abuse of the RICO statute.<sup>108</sup> In general, the business community agrees.<sup>109</sup> Most of these complaints stem from the use of civil RICO to "garden variety" fraud cases.<sup>110</sup> The complainers do not view the "garden variety fraud" that occurs in the business arena comparable to organized crime.<sup>111</sup>

The lobbies of securities brokers, accountants, and insurance com-

<sup>101</sup> 473 U.S. 479 (1985).

<sup>102</sup> *Id.* at 495.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 499.

<sup>105</sup> *Id.*

<sup>106</sup> There have been fifty-five presentations before Congress concerning civil RICO since May 1985. (Search conducted on WESTLAW, Congressional Record data-base.)

<sup>107</sup> Congressional attention on civil RICO reform legislation has primarily focused on bills introduced by Representative Frederick Boucher (D-Virginia) and Senator Howard Metzenbaum (R-Ohio). During the 99th Congress, Representative Boucher sponsored H.R. 2943. In the Senate, Senators Orrin Hatch and Howard Metzenbaum introduced S. 1521 and S. 1523, respectively. None of the bills passed. During the 100th Congress, Boucher presented H.R. 5445 before the House and Metzenbaum sponsored S. 1523 before the Senate. H. R. 5445 passed easily, but S. 1523 was narrowly defeated by three votes. During the 101st Congress, Feb. 22, 1989, Boucher once again introduced civil RICO reform legislation before the House as companion legislation to S. 1523.

<sup>108</sup> See generally, Melley, *supra* note 86; Koenig, *supra* note 89; Goldsmith and Keith, *supra* note 95.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

panies push for legislative reform.<sup>112</sup> As a result, reform legislation centers around curbing the abuse of civil RICO in commercial transactions.<sup>113</sup> Congress is searching for ways to curb abuse while perserving RICO's benefits in combating organized criminality.<sup>114</sup> To preserve RICO's benefits, Congress refuses to limit the definition of organized crime to the stereotypical crime family.<sup>115</sup>

## ANALYSIS

### *Extension of Civil RICO*

Upon the surface, there is nothing particularly striking about the appellate court decision in *Northeast*.<sup>116</sup> The court applied sound legal reasoning backed by strong precedent to reach its decision. The case becomes intriguing as one examines the combination of holdings to the cross-appeal. In essence the court said that despite good motive, political protest extending beyond the first amendment right is not protected.<sup>117</sup> If this unprotected activity rises to the character of extortion, taking from another the right to continue his business, the extortion violates the RICO statute.<sup>118</sup> When the RICO statute is violated, a victim may recover resulting tangible economic damage to their business or property.<sup>119</sup> *North-east* is part of an emerging extension of civil RICO, an extension to the new arena of unlawful political protest. The extension of civil RICO damages to this arena is proper and consistent with the purpose of the RICO statute.

### *Extension Consistent with the Purpose of the RICO Statute*

#### 1. Congressional Intent to Eradicate Organized Crime

When the RICO statute was enacted, Congress intended to eradicate continuing organized criminality.<sup>120</sup> When Congress drafted the statute,

<sup>112</sup> Jones, *Civil RICO and the General Practitioner*, 5 *COMPLEAT LAWYER* 37, 38 (1988).

<sup>113</sup> See generally, Goldsmith and Keith, *supra* note 80.

<sup>114</sup> *Id.*

<sup>115</sup> The controversy surrounding the application of RICO centers on the definition of organized crime. By refusing to limit the definition to the stereotypical crime family, Congress is recognizing that organized criminality occurs in other contexts including the commercial setting. See *supra* note 97 (proposed reform legislation).

<sup>116</sup> *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> See *supra* note 87.

they refused to specifically define the term “organized crime.”<sup>121</sup> What Congress meant by the term “organized crime” then and what Congress means now appears to be quite different. In 1970, Congress may have meant for organized crime to relate to the stereotypical crime family.<sup>122</sup> Nineteen years later, in 1989, Congress has not attempted to limit the definition to the mob.<sup>123</sup> An inference can be drawn from the refusal to limit the definition that Congress recognizes the existence of organized criminality in other forms. Such an inference is strengthened by comments of other branches of government. The Justice Department publicly recognizes organized crime in a variety of forms including unlawful political protest.<sup>124</sup>

## 2. Unlawful Political Protest as Organized Crime

All Americans have a protected right of lawful civil disobedience.<sup>125</sup> If the form of civil disobedience exceeds first amendment protection, the protest becomes unlawful.<sup>126</sup> Good motives will not excuse the unlawful conduct.<sup>127</sup>

Some forms of political protest, exceeding first amendment protection, rise to the character of force and violence. Acts of political protest have included murder, arson, and attempts to blow up a natural gas pipeline.<sup>128</sup> These acts are unlawful political protest.

In the eyes of the law, it doesn't matter whether the Klu Klux Klan, the neo-Nazi's, or pro-life demonstrators commit the crime. Each group engages in unlawful conduct. Arson committed by pro-life demonstrators is no less unlawful than arson committed by a neo-Nazi organization. The motive behind the unlawful conduct cannot justify the crime.

---

<sup>121</sup> See *supra* notes 87-91 and accompanying text.

<sup>122</sup> See *supra* note 86.

<sup>123</sup> See *supra* notes 106 and 107.

<sup>124</sup> See *infra* note 133 and accompanying text.

<sup>125</sup> U.S. CONST. amend. I.

<sup>126</sup> See *supra* notes 54 and 55 and accompanying text.

<sup>127</sup> See *supra* notes 44-47 and accompanying text.

<sup>128</sup> See *Oversight on Civil RICO Suits*, *supra* note 86, at 111; *U.S. v. Bagaric*, 706 F.2d 42 (2d Cir. 1983), *cert. denied*, 104 S.Ct. 283 (1983) (Croatian terrorists); *Portland Feminist Women's Health Center v. Advocates for Life, Inc.* 1988 WL 156180 (D.Or. 1988) (unreported decision).

Unlawful conduct by the Klu Klux Klan and the neo-Nazi organizations is characterized as a form of domestic terrorism.<sup>129</sup> The characterization of domestic terrorism encompasses unlawful forms of political protest by anti-abortion activists. Domestic terrorism is a form of organized crime the RICO statute was designed to eradicate. The aim of the statute is to eliminate organized continuing criminal enterprises.<sup>130</sup>

RICO has been credited as a significant roadblock to groups engaging in domestic terrorist activity.<sup>131</sup> Law enforcement officials have convicted domestic terrorist groups under RICO.<sup>132</sup>

In a statement before the Committee on the Judiciary, Stephen S. Trott, the Assistant Attorney General, representing the Department of Justice, applauded significant criminal RICO achievements against groups acting upon their political beliefs:

Nor has RICO been limited to traditional organized crime . . . For the same reason that RICO has proved so effective against the mob, it has become an effective tool against domestic terrorism, as evidenced by two RICO indictments last month. A case in Seattle alleges that twenty-three members of "The Order" engaged in acts of terrorism and violence, including the murder of a well-known Denver radio personality. In Arkansas, a RICO indictment was filed against members of a neo-Nazi organization called "The Covenant, the Sword, and the Arm of the Lord" for alleged arson of religious buildings and an attempt to blow up a natural gas pipeline.<sup>133</sup>

*Northeast* is a case where twenty-six individuals, in concert, conspired and attempted to extort from the Center its right to conduct a lawful business by trying to "shut it down."<sup>134</sup> The activists, trying to

---

<sup>129</sup> See *infra* note 133 and accompanying text.

<sup>130</sup> *Id.*

<sup>131</sup> *Proposed RICO Reform Legislation: Hearing on S. 1523 Before the Senate Comm. on the Judiciary*, 100th Cong., 1st Sess. 62 (1987) [hereinafter *Proposed RICO Reform*] (statement of the National Assoc. of Attorneys Gen. on RICO Reform) (citing *The Hate Movement*, ADL Special Study 1987). (A study by the Anti-Defamation League of B'nai B'rith concluding that neo-Nazi and the Klu Klux Klan are suffering serious setback as a result of RICO prosecutions and civil suits).

<sup>132</sup> *U.S. v. Bagaric*, 706 F.2d 42 (2d Cir. 1983), *cert. denied*, 104 S. Ct. 283 (1983) (Croatian terrorists); *Portland Feminist Women's Health Center v. Advocates for Life, Inc.*, 1988 WL 156180 (D.Or. 1988) (unreported decision).

<sup>133</sup> See *Oversight on Civil RICO Suits*, *supra* note 86, at 111.

<sup>134</sup> See *generally*, *Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342.

hide behind their political beliefs, acted beyond their first amendment protection.<sup>135</sup> The anti-abortion activists “used force, threats of force, fear and violence in their efforts to force the Center out of business.”<sup>136</sup> Such unlawful conduct, despite any good motive is domestic terrorism. The unlawful conduct of the abortion protestors, terroristic in nature, is organized continuing criminality by an enterprise. Conduct that RICO is designed to eradicate.

### *Benefits of Civil RICO Extension*

The extension of civil RICO damages to the arena of unlawful political protest buttresses traditional law enforcement methods and provides restitution to victims of organized crime.

#### 1. Buttresses Traditional Law Enforcement Methods

Drafters of RICO recognized that traditional law enforcement efforts failed to reach the roots of the criminal activity of organizations.<sup>137</sup> The statute was designed to buttress traditional enforcement which only prosecutes individuals.<sup>138</sup> The statute allows officials to reach past the individuals and seize the organized network supporting the criminal activity.<sup>139</sup> Groups which organize, conspire, and attempt to commit unlawful activities may perpetuate their goals despite the fact that individual members may be removed from their ranks. The soldiers, once removed, will simply be replaced by another willing to carry out the aim of the group’s activities.

In *Northeast*, civil and criminal trespass actions against Defendants were available to curtail the activists’ demonstrations.<sup>140</sup> Opponents to the use of civil RICO in *Northeast* argue that these traditional law enforcement methods are sufficient.<sup>141</sup> These methods are not sufficient, evidenced by the four separate incidents of forced entry resulting in convictions. The traditional methods were used, but the unlawful form of demonstrations were not curtailed.<sup>142</sup> Use of civil RICO in *Northeast* buttressed traditional methods that were not effective in deterring the organized continuing criminality.

<sup>135</sup> *Id.* at 1349.

<sup>136</sup> *Id.* at 1350.

<sup>137</sup> See *Goldsmith and Keith*, *supra* note 95, at 60-61.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Northeast Women’s Center, Inc. v. McMonagle*, 868 F.2d 1342.

<sup>141</sup> See *Melley*, *supra* note 86, at 309-10.

<sup>142</sup> *Northeast*, 868 F.2d 1342.



Abortion activists are usually lead by the pro-life philosophy. The leaders and organizers of the protestors may be priests or other types of upstanding members of the community. Many community members sympathize with the goals of the protest and view the protestors as champions of a virtuous social cause. Because of the community standing and virtuous goals of the protestors, criminal and civil trespass convictions result in mild sentencing, even probation. Such leniency toward the individual soldiers has little deterrence in stopping the enterprise from conspiring unlawful forms of protest.

## 2. Civil RICO Provides Restitution

Civil RICO provides private recovery of damages to victims.<sup>143</sup> Victims of a RICO violation may sue and recover treble damages for tangible economic injury to their business or property, plus costs and reasonable attorney fees.<sup>144</sup> Civil RICO was intended as a weapon in stopping organized crime. "Treble damage suits under RICO promise remedial relief against such outrageous conduct that will be swift, sure, and severe . . ."<sup>145</sup>

The RICO statute provides an avenue for victims of unlawful political protest to recover civil damages. In *United States v. Anderson*, the Hobbs Act was used to convict anti-abortion activists for threatening a doctor as inducement to cease performing abortions.<sup>146</sup> But under the Hobbs Act, without RICO, the doctor (the victim) did not have an action for civil remedies. Bringing a RICO action against the activists, while using the Hobbs Act to satisfy the predicate offense, allows the victim private recovery.<sup>147</sup>

It has been argued that extending civil damages to cases of the character of *Northeast* risks penalties out of proportion to the wrong committed.<sup>148</sup> This argument is not plausible. The civil damage provision allows for recovery to be approximately three times the amount of tangible economic damage.<sup>149</sup> The variation in the amount of damages will

---

<sup>143</sup> See *supra* note 84. Civil RICO permits victims, injured in their business or property, to sue and recover treble damages and costs including reasonable attorney fees.

<sup>144</sup> *Id.*

<sup>145</sup> See *Oversight on Civil RICO*, *supra* note 86, at 122 (testimony of Stephen Trott).

<sup>146</sup> *United States v. Anderson*, 716 F.2d 446 (7th Cir. 1983).

<sup>147</sup> See *supra* notes 57-65 and accompanying text.

<sup>148</sup> See Melley, *supra* note 86, at 310.

<sup>149</sup> 18 U.S.C.S. § 1964(c) (Law. Co-op. 1979 & Supp. 1989).

directly relate to the amount of harm incurred. A small amount of damage results proportionately in greater recovery. The argument not only fails to acknowledge the formula for recovery, but infers that cases of this character commit little wrong. This assumption is not correct. Anti-abortion activists, who perhaps view themselves as white knights and great champions of social causes, have been convicted of unlawful protest in the form of threatening life and burning down clinics.<sup>150</sup>

The suggestion has also been made that civil damages threaten individuals from exercising their right to speak freely.<sup>151</sup> This argument is not plausible. Civil damages would never be applied to the peaceful protest which is the lawful exercise of free speech protected by the first amendment. *Northeast* did not say that organized groups of people, peacefully protesting and publicizing their political views will be liable to a business in treble damages, even if the protest interferes with the conduct of the business. Application of civil RICO requires more than that.<sup>152</sup> The acts of expression must extend beyond the protection of the first amendment to unlawful activity.<sup>153</sup> At that point, civil damages may be incurred to the amount of any tangible economic injury to that business.<sup>154</sup>

## CONCLUSION

THE MESSAGE *Northeast* sends to political activists is clear. Peaceful demonstrations are protected by the first amendment, but when activities exceed lawful dissent and publication and rise to the character of force, fear, and violence, such acts rise to the character of domestic terrorism. When these acts are carried out in a continuing pattern by an organization with the intent to interfere with the right to conduct a lawful business, civil RICO will apply. Application of civil RICO is consistent with the purposes of the RICO statute, providing restitution to victims of organized crime and buttressing traditional law enforcement methods that have not been sufficient to halt organized criminality.

JO ANNE POOL

---

<sup>150</sup> *Feminist Women's Health Center v. Roberts*, 1989 WL 56017 (W.D. Wash. 1989) (unreported decision) (Defendants convicted of arson of abortion clinic). *United States v. Anderson*, 716 F.2d 446 (7th Cir. 1983).

<sup>151</sup> See Melley, *supra* note 86, at 309-10; see also *Proposed RICO Reform*, *supra* note 131, at 316-17 (statement of Antonio Califa, Legis. Counsel, ACLU).

<sup>152</sup> See *supra* notes 57-65 and accompanying text.

<sup>153</sup> See *supra* notes 54-55 and accompanying text.

<sup>154</sup> See *supra* notes 57-65 and accompanying text.

