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# Illegal Traffic in Women: A Civil RICO Proposal

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## Notes

### Illegal Traffic in Women: A Civil RICO Proposal

Lan Cao

For thousands of years, it has been regulated, reviled, and criminalized, yet it remains a deeply entrenched and pervasive institution in our society. Despite its ubiquitous presence, prostitution and the problems associated with it—the violence, abuse, and degradation of women—remain invisible to and low priorities for the nation’s law enforcement agencies. Invisibility, paradoxically, is even more pronounced in cases of forced prostitution.<sup>1</sup> This Note first examines the nature of forced prostitution and the

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1. This Note only deals with forced prostitution and does not address cases where women voluntarily work as prostitutes. Women who choose prostitution as a mode of employment will simply not exercise the option of instituting civil suits described in this Note. This Note considers forced prostitution in accordance with the definition proposed by Kathleen Barry: Forced prostitution or “[f]emale sexual slavery is present in *all* situations where women or girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation.” K. BARRY, *FEMALE SEXUAL SLAVERY* 33 (1979). This Note thus focuses on external conditions, such as the organization of business, modes of recruitment, and trafficking patterns, rather than on internal, psychological motivations of women in prostitution. *Id.* at 7. The inquiries are shifted away from the victim’s innocence or purity, whether she is a “madonna” or “whore,” and whether or not she initially entered into prostitution voluntarily. *Id.* at 10. “The issue is not whether a child, teenager, or adult woman is a poor, innocent, sweet young thing.” *Id.* Despite the enormity of the problem, reluctance to acknowledge its presence continues. R. ROSEN, *THE LOST SISTERHOOD* 112–16 (1982). When the subject is confronted, its treatment borders on sensationalism, K. BARRY, *supra*, at 10, and its coverage is riddled with dramatization of lurid details of young girls trapped by evil men, R. ROSEN, *supra*, at 114–15. The image of a victimized white girl is created and captured by the popularly coined phrase “white slave.” K. BARRY, *supra*, at 27. The White-Slave Traffic Act (Mann Act), ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424 (1982)) was passed, in the words of its sponsor, Representative Mann, to assist “those women and girls who, if given a fair chance, would, in all human probability, have been good wives and mothers.” C. BARNES, *THE WHITE SLAVE ACT*, (1946), *submitted in* Petitioner’s Brief at 27, *Cleveland v. United States*, 329 U.S. 14 (1946) (quoting H.R. REP. NO. 47, 61st Cong., 2d Sess. 10 (1909)). The concept of “white slavery” reflects the tenor of the late nineteenth to early twentieth century purity crusade, which focused on “the immoral destruction of innocent girls’ virtue and sinful incontinence in men.” K. BARRY, *supra*, at 26. White, middle class women were the embodiments of innocence and purity. *See* R. ROSEN, *supra*, at 49, 62. By contrast, this Note is concerned not with issues of morality but with issues of power and sexual exploitation.

illegal traffic in women for this purpose. It then describes how a private right of action under the Racketeer Influenced and Corrupt Organizations Act (RICO)<sup>2</sup> can enable women in prostitution to fight the problems that the government can or will not.

### I. NATURE OF PROBLEM

Forced prostitution today is a highly organized,<sup>3</sup> clandestine, and immensely profitable<sup>4</sup> business in which women are controlled by organized enterprises and pimps who profit from their sexual labors.<sup>5</sup> Indeed, the problem has become so large and organized that the United Nations (U.N.) has ranked it with other major human rights violations in the world. U.N. bodies are called on "to review developments in the field of slavery and the slave trade in all their practices and manifestations, including the slavery-like practices of apartheid and colonialism, *the traffic in persons and the exploitation of the prostitution of others.*"<sup>6</sup>

2. 18 U.S.C. §§ 1961-1968 (1982 & Supp. III 1985). RICO was enacted as Title IX of the Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 941-48.

3. See K. BARRY, *supra* note 1, at 55, 82; R. ROSEN, *supra* note 1, at xii, 37; G. SHEEHY, *HUSTLING* 13-14, 121-23 (1973); see also *infra* note 6 and accompanying text.

4. See R. ROSEN, *supra* note 1, at 71-72; G. SHEEHY, *supra* note 3, at 4 (estimated 7 to 9 billion dollars annually); Kaplan & Kessler, *The Economics of Prostitution*, in *AN ECONOMIC ANALYSIS OF CRIME* 327-28 (L. Kaplan & D. Kessler eds. 1976) (gross revenues in massage parlors estimated at \$2000 to \$3000 daily by New York City Police Department vice squad members); see also *Plea by Girl, 15, Sparks Raid on Sex Studio*, *Detroit Free Press*, Aug. 28, 1972, at 10-A, col. 1 [hereinafter *Detroit Free Press*] (\$17,000 confiscated from Times Square massage parlor, estimated by police to be no more than "a week's take").

5. See, e.g., *United States v. Clemones*, 577 F.2d 1247, 1250-51 & n.2 (5th Cir. 1978) (women bought and sold by pimps), *cert. denied*, 445 U.S. 927 (1980).

Prostitution remains an enormously profitable business, with most of the profits siphoned off by men—pimps, taxidrivers, members of organized crime, liquor dealers, physicians, and real estate speculators. . . . [I]t is nearly impossible for a woman to ply her trade independently on the street for fear of trespassing on some pimp's territory.

R. ROSEN, *supra* note 1, at 171-72. G. SHEEHY, *supra* note 3, at 5-7 (average net income is less than \$100 per week for streetwalker; pimps demand \$200 to \$250 per night from their girls, but girls themselves keep no more than five percent), 105 (one woman interviewed turned over all money to her pimp); Jennings, *The Victim as Criminal: A Consideration of California's Prostitution Law*, 64 CALIF. L. REV. 1235, 1246 n.62 (1976) (control of prostitutes by pimps); Kaplan & Kessler, *supra* note 4, at 328; cf. NATIONAL PROSTITUTION COMM., NATIONAL ORG. FOR WOMEN, *WORKING ON PROSTITUTION* 8-9 (n.d.) [hereinafter *PROSTITUTION COMMITTEE*] (psychological reasons why prostitutes have pimps); Jennings, *supra*, at 1246-47 (prostitutes, especially streetwalkers, rely on pimps for protection).

6. *Updating of the Report on Slavery Submitted to the Sub-commission in 1966*, U.N. ESCOR Commission on Human Rights, (35th sess.) (Agenda Item 14) at para. 18, U.N. Doc. E/CN.4/Sub.2/1982/20/Add.1 (1982) (emphasis added). For more information on international treatment of the trafficking business, see *id.* at para. 72(xv)-(xvii); *Exploitation of Labour Through Illicit and Clandestine Trafficking*, U.N. ESCOR Commission on the Status of Women (25th sess.) (Agenda Item 9) at paras. 32, 33, U.N. Doc. E/CN.6/582 (1973) [hereinafter *Exploitation of Labour*]. In his official report, the U.N. Special Rapporteur, Jean Fernand-Laurent, wrote: "[W]e . . . consider prostitution to be a form of slavery." *Report of the Special Rapporteur on the Suppression of The Traffic in Persons and the Exploitation of the Prostitution of Others*, U.N. ESCOR, (1st reg. sess.) (Agenda Item 12), U.N. Doc. E/1983/7 (1983) [hereinafter *Fernand-Laurent*], reprinted in *INTERNATIONAL FEMINISM: NETWORKING AGAINST FEMALE SEXUAL SLAVERY* app. 6 at 131 (K. Barry,

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### A. *How Women Are Procured*

To run and furnish the sex slave business, women are recruited by organized rings of procurers, using fraudulent recruiting methods.<sup>7</sup> For example, they are abducted,<sup>8</sup> procured through organized crime, recruited by phony employment agencies, and trafficked into the U.S. via false marriage contracts.

The migrant labor system is particularly susceptible to abuse because migrant workers are organized under the strict supervision of crew leaders, who often seek to control the workers and keep them in debt by inducing them to spend their money on liquor and prostitution.<sup>9</sup> Women, many of whom are retarded or emotionally disturbed, and recently released from mental institutions, are recruited for work by these crew leaders; once they arrive, however, they are "forced to serve as labor camp prostitutes in return for food."<sup>10</sup> Other women serve the migrant camps after having been released from prison and sold to the crew leaders by jailers for a small sum of money.<sup>11</sup>

Bogus employment agencies and artistic tours provide another common

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C. Bunch & S. Castley eds. 1984) [hereinafter *INTERNATIONAL FEMINISM*]. Traffic in women and forced prostitution are internationally recognized as organized criminal activity. The enormous scope of trafficking has led the United Nations to recommend that all appropriate international organizations—the Office of the U.N. High Commissioner for Refugees, the World Health Organization, the International Labor Organization, the U.N. Children's Fund, the U.N. Educational, Scientific and Cultural Organization, the World Tourism Organization, Interpol, and other non-governmental agencies—be coordinated to address the problem. E.S.C. Res. 1982/20, U.N. ESCOR Supp. (No. 1) at 15, U.N. Doc. E/1982/82 (1982).

7. *Exploitation of Labour*, *supra* note 6, para. 6 (U.N. Commission on Status of Women addressing problem of "young girls and women who were lured into lives of prostitution by false promises of overseas jobs"), para. 32 (women who are "recruited under the cover of seemingly normal contracts for prostitutional or pre-prostitutional activities . . . may find themselves in an illegal situation involving practices similar to slavery or a form of forced labour"); *Interpol Report, Report by the General Secretariat of Interpol*, U.N. Division of Human Rights (1974), reprinted in K. BARRY, *supra* note 1, app. A, at 238 (modes of recruitment); S. BARLAY, *SEX SLAVERY* 61-74, 78-90 (rev. ed. 1975) (fraudulent theatrical touring troupes); K. BARRY, *supra* note 1, at 90; R. ROSEN, *supra* note 1, at 125-26 (false promises of marriage; fraudulent employment agencies; offers of assistance to teenage runaways).

8. See *United States v. Watchmaker*, 761 F.2d 1459, 1463-64 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 879 (1986) (women bought and sold by motorcycle gang operating prostitution enterprise); *United States v. Hattaway*, 740 F.2d 1419, 1422, 1427 (7th Cir.), *cert. denied*, 469 U.S. 1028 (1984) (women abducted and held by motorcycle gang for prostitution); *United States v. Bankston*, 603 F.2d 528, 530 (5th Cir. 1979) (women abducted at gunpoint and told to engage in prostitution); *United States v. McLaurin*, 557 F.2d 1064, 1068 (5th Cir. 1977), *cert. denied*, 434 U.S. 1020 (1978) (same); see also *A Shocking Glimpse at Cycle Gang Life*, *San Francisco Chron.*, Oct. 12, 1979, at 11, col. 4 (hitchhikers beaten and forced to prostitute themselves).

9. See, e.g., Schwartz, *The Plight of America's Five Million Migrants*, Ms., June 1978, at 65, 66.

10. *Id.* Sociologist Richard Morrison, coordinator of a migrant service agency, described finding a retarded black woman who had been transported from Florida to Virginia to serve as a prostitute for a crew of a hundred and fifty men. See also *United States v. Winters*, 729 F.2d 602, 603-04 (9th Cir. 1984) (prostitution at migrant labor camps); *United States v. McLaurin*, 557 F.2d at 1069-70 (prostitution ring controlled by defendants catered to "high-volume, low-overhead business" generated by migrant workers).

11. Schwartz, *supra* note 9, at 66-67.

method of recruitment.<sup>12</sup> Women are promised legitimate show-business jobs by recruiters who tell them upon arrival that the original job is no longer available and that the only jobs open are those for stripteasers and exotic dancers.<sup>13</sup> These women, many of whom are brought into U.S. cities from Canada,<sup>14</sup> are required to socialize, mix drinks with customers,<sup>15</sup> and are then forced into prostitution.<sup>16</sup>

One Japanese syndicate, for example, uses this strategy to lure American women into Japan for prostitution. The women are recruited through seemingly legitimate show-business advertisements placed in American newspapers by West Coast talent agencies.<sup>17</sup> Before departure, the recruit is given a contract specifying salary, place and time of performance, and a pre-paid plane ticket. Upon arrival, however, she is met by a different agent and informed that her contract has been bought by him. Her papers are seized, and she is intimidated and forced into working as a prostitute.<sup>18</sup>

Besides employment frauds, women are also procured through marriage frauds.<sup>19</sup> Many Korean women who work in massage parlors throughout

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12. See *American Guild of Variety Artists: Hearings Before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Operations*, 87th Cong., 2d Sess. 134 (1962) [hereinafter *AGVA Hearings*] (statement of William J. Scott, former Special Assistant U.S. Attorney, Northern District of Illinois) (girls from rural areas of U.S. and Canada promised starring roles in show business and eventually forced into prostitution at exotic nightclubs); *id.* at 278-79 (statement of Glen F. Rice, Immigration and Naturalization Service (INS) investigator) (Canadian girls recruited by AGVA agent for legitimate dancing jobs but sent instead to nude dancing clubs, where they were "held in literal bondage by the club operator" and guarded by bodyguard); see also S. BARLAY, *supra* note 7, at 1-17, 50-60 (fraudulent employment agencies advertising for jobs overseas); K. BARRY, *supra* note 1, at 90 (general discussion of fraudulent employment agencies); *Women—The Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others—A Report by Fernand Laurent*, at 2 (Radio U.N. broadcast, No. 186) (transcript on file with author) [hereinafter *Radio U.N.*] ("girls . . . lured into leaving their country to take part in tournée of dancing and singing in cabarets that ends up in brothels").

13. *AGVA Hearings*, *supra* note 12, at 134 (statement of William J. Scott), 137-38 (same), 276-80 (statement of Glen Rice).

14. *Id.* at 282 (statement of Mario T. Noto, Associate Commissioner, INS, Washington, D.C.), 318 (statement of E. Thomas Maxwell, Jr., former Assistant State Attorney, Baltimore City).

15. *Id.* at 148-49 (woman required to solicit drinks from customers in violation of AGVA union contract), 261 (statement of Martin Cavanaugh, branch manager of Chicago office of AGVA) (clause in union contract requiring club owners to comply with laws which prohibit mixing drinks with customers and prostitution not enforced by union), 327 (statement of E. Thomas Maxwell, Jr.) ("solicitation of drinks . . . and prostitution" a prerequisite to keeping job). Although aware of the conditions in the clubs, the union did nothing. *Id.* at 221-23 (statement of Sergeant Louis Cantone, Intelligence Division, Chicago Police Department).

16. *Id.* at 134 (statement of William J. Scott), 153 (statement of AGVA dancer) (backrooms in clubs for prostitution), 159-60 (same), 171-72 (statement of Casimir E. Linkiewicz, chief of police of Calumet City, Illinois).

17. Oppenheim, *Japanese Mafia's Recruiting of American Women Probed*, *Chicago Trib.*, Mar. 14, 1982, § 1, at 6.

18. *Id.*

19. *20/20: GI Brides* (ABC television broadcast, Oct. 6, 1983) [hereinafter *20/20*] (transcript on file with author).

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the U.S. are brought into this country by GIs paid to marry them.<sup>20</sup> Fake marriage brokers set up connections with visa fraud businesses in Korea. To expedite the process, these brokers collude with U.S. Embassy employees to manufacture false documents needed to obtain U.S. visas.<sup>21</sup> This fraud in Korea is in turn connected to organized prostitution rings in the U.S.<sup>22</sup> Both work together in the business of "importing prostitutes as sex slaves," who are employed in saunas and bars that act as fronts for prostitution.<sup>23</sup>

The mail-order-bride business is another method used to bring women into the U.S. While most are legitimate businesses set up to offer American men correspondence and marriage to foreign women,<sup>24</sup> many agencies are fraudulent organizations used as prostitution fronts.<sup>25</sup>

### B. *Organized Prostitution*

In all of these schemes, the procurers are not loose and disjointed groups sporadically engaged in pimping activities. On the contrary, they are organized networks structured to procure, transport, and retain women in

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20. *Id.* at 3. Telephone interview with Detective Fred Clapp, Los Angeles Police Department, Administrative Vice Division (Oct. 3, 1986) [hereinafter Clapp Interview] ("It happens a lot with servicemen. The marriage broker over there [Korea] makes the deal. And the massage parlor owners here buy these people, usually for a time period, from those people over there that arranged the marriage."). Police observations of Korean massage parlors in the Queens area of New York City suggest that the military is being used to bring in the women, although conclusive evidence is hard to obtain. Interview with Thomas Russo, Executive Assistant District Attorney of Queens County, N.Y. (Oct. 17, 1986) [hereinafter Russo Interview].

21. The false documents include divorce certificates, false bank statements, and notary public seals. 20/20, *supra* note 19, at 4.

22. *Id.* at 3.

23. *Id.* at 2. Korean women are not the only ones brought into the U.S. for prostitution. Taiwanese women have also been used. *See, e.g.,* United States v. I Huei Chin, No. S. 86. Cr. 393 (RWS) (S.D.N.Y., filed May 8, 1986); *Family Charged with Operating Taiwan Prostitution Ring*, N.Y. Times, Apr. 26, 1986, § 1, at 31, col. 2.

24. *See* Agus, *The Brides-To-Order Business*, Newsday, Mar. 8, 1984, § 2, at 4 (discussion of abusive conditions encountered by mail-order brides, even when agencies are legitimate); Joseph, *American Men Find Asian Brides Fill the Unliberated Bill*, Wall St. J., Jan. 25, 1984, at 1, col. 4 (same).

25. Belkin, *The Mail-Order Marriage Business*, N.Y. Times, May 11, 1986, § 6 (Magazine), at 28. "Not all mail-order marriage agencies are reputable. The post office box number listed for an agency one day may be closed the next, and the business that advertises itself as a marriage broker may in fact be promoting pornography or prostitution." *Id.* According to Verne Jervis, a spokesperson for the INS, "[i]t is a situation that is rife with the potential for fraud . . ." *Id.* at 52. Authorities in the Philippines are "concerned that women are being gulled by phoney introduction agencies that promise them they will get a foreign husband and instead ship them overseas to work as bar girls or prostitutes." *The Asian Bride Boom*, Asiaweek, Apr. 15, 1983, at 36, 43. In 1982, 4,491 Filipinos entered the U.S. as spouses of Americans, more than twice the combined total from India, Japan, Taiwan, and the Republic of China. In addition, 1,763 more Filipinos entered the U.S. on fiancé visas, more than the combined total from Japan, China, Germany, the United Kingdom, and France. It is not known how many are mail-order brides. Agus, *supra* note 24, at 4-5. The Philippines has been cited by Interpol as being part of an "East Asian market" to recruit women and send them to other countries. K. BARRY, *supra* note 1, at 50 (referring to report by General Secretariat of International Police Organization submitted to U.N.).

prostitution.<sup>26</sup> Once procured, the women are psychologically conditioned, physically and mentally intimidated,<sup>27</sup> and if needed, trafficked through established transportation networks.<sup>28</sup>

These networks also have sound financial bases<sup>29</sup> and work largely through organizations that also conduct legitimate business. In fact, the modern strip joint, which often is a front for prostitution, "affects to be a phase of legitimate show business . . . [A]lthough racketeer controlled, [the joint] operates with an air of legitimacy with the use of fronts. They have contracts with the American Guild of Variety Artists and employ girls who are members of the organization."<sup>30</sup>

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26. See generally *supra* text accompanying notes 12-25. Investigators into Korean massage parlor operations believe that "there is a nationwide network involved, going all the way back to Korea." Russo Interview, *supra* note 20; see also G. SHEEHY, *supra* note 3, at 123 (police found every New York city midtown massage parlor, except four, run by same overlord and all had ties to one criminal organization). For testimony on the organized nature of criminal involvement in striptease clubs, see AGVA Hearings, *supra* note 12, at 134, 139, 142, 175, 208, 315-16; 20/20, *supra* note 19, at 5 (statement of Sergeant Fred Palmer, sheriff department, Pierce County, Tacoma, Washington).

27. United States v. Winters, 729 F.2d 602, 605 (9th Cir. 1984) (experts testifying on post-traumatic stress disorder and psychological conditioning process undergone by victims of forced prostitution); K. BARRY, *supra* note 1, at 78-82 (psychological conditioning process and courting techniques known as "seasoning" used by pimps to wear down victim and make her psychologically, emotionally, and financially dependent); Fernand-Laurent, *supra* note 6, reprinted in INTERNATIONAL FEMINISM, *supra* note 6, at 131 (women "subjected by the procurer to a very effective discipline . . . undergo a psychological conditioning such as may be experienced by someone living in community within a sect."); see also AGVA Hearings, *supra* note 12, at 134 (women threatened with their own and children's lives), 159-60 (girls beaten by customers).

28. See AGVA Hearings, *supra* note 12, at 139 (statement of William J. Scott, former Special Assistant U.S. Attorney, Northern District of Illinois) (women moved to different cities to avoid arrest). One case involved the transportation of twenty-eight women found suffocated in sealed containers used to traffic them from St. Martin to St. Thomas in the U.S. Virgin Islands. The metal containers had no breathing holes, and the women died of suffocation during the two day journey. 28 *Women Said To Die in Cargo Box*, Philadelphia Inquirer, Apr. 21, 1985, at 11A, col. 6.

29. See *supra* note 4. While prostitution house operators and owners clearly profit from their operations, as do pimps, *supra* note 5, a score of other financial interests are involved as well. Many prominent business people, including property owners and landlords of prostitution hotels, massage parlors, and topless bars, profit enormously from the sex industry. G. SHEEHY, *supra* note 3, at 12-13, 118-19, 129-30. Lawyers, too, have been involved both as owners of property housing high-rent tenants in prostitution-related businesses, and as fronts, allowing the massage parlors' incorporation papers to carry their names rather than the names of the actual owners. *Id.* at 120-27; see also NATIONAL ADVISORY COMM. ON CRIMINAL JUSTICE STANDARDS AND GOALS, REPORT OF THE TASK FORCE ON ORGANIZED CRIME 225 (1976) [hereinafter 1976 TASK FORCE] ("Attorneys' names appear on [massage parlor] licenses to hide the identity of actual owners. Many of the members of organized crime who own these facilities are extensively involved in other real estate."); R. ROSEN, *supra* note 1, at 71-77 (profiteers of prostitution in early 1900's included wide array of interest groups, including politicians, police, hotel and saloon owners, and pimps). "It's really an exploitation issue. While the girls are making some money, the real money is made by the real estate people, the owners, and the people involved in the trafficking business." Russo Interview, *supra* note 20. Sheehy points to the broader context: "The prostitutes continue to take all the arrests, the police to suffer frustration, the lawyers to mine gold, the operators to laugh, the landowners to insist they have no responsibility, the mayor to issue press releases. The nature of the beast is, in a word, greed." G. SHEEHY, *supra* note 3, at 153-54.

30. AGVA Hearings, *supra* note 12, at 377 (statement of Daniel Sullivan, operating director of Crime Commission of Greater Miami). In fact, in many cases, the women working in these striptease clubs had been promised "stardom in the entertainment field," *id.* at 278 (statement of Glen Rice, INS investigator), and had been recruited by AGVA-franchised booking agencies licensed by AGVA

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To avoid detection, the organizations are tightly structured and methodically run. Force and threats are often used to intimidate the women to keep them from leaving or going to the police.<sup>31</sup> In addition, precautionary measures are used to insulate the recruiters from prosecution.<sup>32</sup> Contact names used in ads for singers change frequently; old offices are vacated and new ones opened at different locations.<sup>33</sup> The networks provide the women with a number of aliases and move them to different cities to work in different prostitution houses.<sup>34</sup> Prosecution is made much more difficult by the elaborate methods used to evade detection.

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to solicit new members. *See also supra* note 15.

Congress found that "organized crime in the United States is a highly sophisticated, diversified, and widespread activity . . . [Its] money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions . . ." Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, at 922-23. It is also "an elusive, changing, nationwide activity involving criminal, quasi-criminal, and deceptively legitimate individuals." 1976 TASK FORCE, *supra* note 29, at 21. Organized prostitution is part of this general phenomenon. The Senate Subcommittee on Investigations, after holding hearings and listening to witness testimony, concluded that:

a) These clubs . . . are controlled by criminal organizations of gangsters and hoodlums operating through fronts so that they can get the necessary liquor and other licenses.

c) Illegal activities, such as the solicitation of alcoholic drinks from patrons, and even prostitution, exist in these places to the extent that in many cases they are obviously the rule rather than the exception. A legitimate female entertainer who will not abide by the "house rules," however vicious and degrading they may be, cannot work.

d) The AGVA members employed in these clubs are under complete domination and control of hoodlum owners.

AGVA Hearings, *supra* note 12, at 630 (remarks of Sen. McClellan, chairperson, who later became principal sponsor of RICO). For more documentation of infiltration by organized crime into businesses and the use of businesses such as massage parlors as fronts for prostitution, see 1976 TASK FORCE, *supra* note 29, at 12, 14, 16, 225. Consistent with underworld use of threats and intimidation, a massage parlor in Times Square, New York City, was found to have used recording equipment, probably to tape customers for extortion purposes. Detroit Free Press, *supra* note 4.

31. For specific examples, see AGVA Hearings, *supra* note 12, at 138 (statement of William J. Scott, former Special Assistant U.S. Attorney, Northern District of Illinois), 182 (statement of Casimir Linkiewicz, former police chief, Calumet City, Illinois), 213-16 (statement of Sgt. Louis Cantone, Intelligence Division, Chicago Police Department), 281 (statement of Glen Rice, INS Investigator), 315-16 (statement of Thomas Maxwell, former Assistant State Attorney for Baltimore City).

32. Recruiters often claim they never intended to expose the women they recruited to prostitution situations. AGVA Hearings, *supra* note 12, at 137-38 (statement of William J. Scott). The Los Angeles Police Department could not make any arrests despite extensive investigation: "We could not prove the recruiters in the U.S. intended for the women to be in the situation they found themselves in in Japan. We couldn't tie them into any conspiracy. And since the crime occurred outside of our jurisdiction, we could not make any arrest." Clapp Interview, *supra* note 20. The U.N. recognizes the difficulty of proving intent in such cases and has recommended focusing instead on results of the recruiters' action, rather than on their intent. *Exploitation of Labour*, *supra* note 6, para. 29.

RICO, 18 U.S.C. § 1961(1), lists certain acts prohibited under state and federal law, including the federal statute outlawing the interstate transportation of women for prostitution (Mann Act), 18 U.S.C. § 2421 (1982). Although courts interpreting the Mann Act require that an intent to prostitute a woman be a "dominant motive" for transporting her interstate, *Mortensen v. United States*, 322 U.S. 369, 374 (1944), *United States v. Lomas*, 440 F.2d 335, 338 (7th Cir. 1971) (prostitution to be "one of the dominant purposes" of trip), the burden of proving this requirement can be more easily met by a private plaintiff under civil RICO than under a criminal action by prosecutors. *See infra* note 68.

33. Horton & Coll, *White Slaves*, PLAYGIRL, Nov. 1982, at 48, 103.

34. 20/20, *supra* note 19, at 5 (statement by Geraldo Rivera, correspondent). According to one



Nationwide networks of organized prostitution rings also traffic in children. "A group of pimps set up connections in Houston, Los Angeles, San Francisco, New Orleans, New York and Washington, D.C.' . . . 'You could call a number in Houston from Washington and have a young boy brought to your room in Washington.'"<sup>35</sup>

### C. *Ineffectiveness of Official Response*

Despite the enormity of the problem, or perhaps because of it, U.S. law enforcement agencies have made little headway in breaking up the procuring rings. A police officer commenting on his investigation in the traffic of women to Japan says: "After seven years [on the case] I'm frustrated. I can't do anything to stop it, the feds can't do anything, and the State Department doesn't *want* to do anything."<sup>36</sup> All too often, those in the position to do something about the problem either ignore or belittle it. For example, although State Department and Immigration Service officials estimate that at least one GI a day is involved in a false marriage,<sup>37</sup> top Army brass deems this illicit traffic mere rumor: "There's always a certain rumor . . . that there are large numbers, but . . . from the military standpoint, I don't see that."<sup>38</sup> There is sentiment in the Army that it is improper to evaluate a GI's motive for marriage.<sup>39</sup>

Some enforcement officials in the U.S. are also susceptible to bribery: "[The city councils and police] let [prostitution fronts] operate. Their profits are so fabulous that they are able to place such great temptation in

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prosecutor, women working at massage parlors in Queens, a New York City borough, are periodically transported to other massage parlors nationwide. Russo Interview, *supra* note 20.

35. *Call-Boy Rings Said To Aid Spies*, *Newsday*, July 27, 1982, at 3, col. 1 (Detective Anne Fisher of Washington, D.C. Metropolitan Police Department testifying at hearings called by New York State Senator Ralph Marino). Runaway girls also provide easy targets for pimps in the New York City Times Square area. K. BARRY, *supra* note 1, at 82-83; many come from Minneapolis, a phenomenon now known as the "Minneapolis pipeline," *id.*; G. SHEEHY, *supra* note 3, at 100-02 (same). Juvenile prostitutes number approximately 500,000 in the United States. PROSTITUTION COMMITTEE, *supra* note 5, at 11. It is estimated that 600,000 to 1,000,000 children, aged nine to seventeen, run away from home each year, and that a large percentage of them become prostitutes. R. TONG, *WOMEN, SEX, AND THE LAW* 60 (1984). According to Los Angeles District Attorney John Van de Kamp, children have been sold into child prostitution rings for up to \$1000. *9 Indicted in a Child Sex Ring*, *San Francisco Chron.*, Aug. 1, 1978, at 2, col. 5; see also *Detroit Free Press*, *supra* note 4 (report by fifteen year old runaway forced into prostitution led to raid on Times Square massage parlor).

36. Horton & Coll, *supra* note 33, at 108 (statement of Detective Fred Clapp, Los Angeles Police Department).

37. 20/20, *supra* note 19, at 5; see also Shaughnessy, *Fighting Sexual Exploitation of Women*, *NEW WORLD OUTLOOK*, Nov. 1983, at 26, 26 (published by United Methodist Church, Education and Cultivation Division) (Los Angeles police and FBI documented at least 300 to 500 cases a year of women lured by "talent agencies" for entertainment jobs in Japan).

38. 20/20, *supra* note 19, at 5 (statement of Col. John Thornock, judge advocate general of Eighth Army in Seoul, South Korea).

39. *Id.*

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front of law enforcement officers that the first thing you know human frailties prevail and your whole enforcement mechanism breaks down.”<sup>40</sup>

Paradoxically, when officials do respond to prostitution, they usually reinforce the women’s helplessness, because current prostitution penal codes are aimed against the prostitutes.<sup>41</sup> Of those arrested in 1979 on prostitution charges, 70% were female prostitutes and 20% were male prostitutes; only 10% were customers.<sup>42</sup> The law thus victimizes prosti-

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40. *AGVA Hearings*, *supra* note 12, at 384 (statement of Sen. Mundt); *see also* *United States v. Tunnell*, 667 F.2d 1182, 1184–85 (5th Cir. 1982) (operators of prostitution business bribed Justice of the Peace and constable); *United States v. Lee Stoller Enters.*, 652 F.2d 1313, 1314–15 (7th Cir.), *cert. denied*, 454 U.S. 1082 (1981) (sheriff took kickbacks from houses of prostitution); *United States v. Whitehead*, 618 F.2d 523, 525–26 (4th Cir. 1980) (local prosecutor offered protection to prostitution ring in exchange for cash and sexual services); *20/20*, *supra* note 19, at 5 (report by correspondent Geraldo Rivera) (money from \$10 million per year massage parlor industry in Tacoma, Washington, used to bribe local officials). For a general discussion of the connection between political office and organized crime, see *PRESIDENT’S COMM’N ON ORGANIZED CRIME, REPORT TO THE PRESIDENT AND THE ATTORNEY GENERAL—THE IMPACT: ORGANIZED CRIME TODAY* 28–30 (1986) [hereinafter 1986 REPORT]; 1976 TASK FORCE, *supra* note 29, at 23–33; C. MOLLENHOFF, *STRIKE FORCE* 54–55, 77–90 (1972); D. PACE & J. STYLES, *ORGANIZED CRIME*, 26–35 (1975).

41. J. DECKER, *PROSTITUTION: REGULATION AND CONTROL* 93 (1979). According to John Decker, “[a]lthough most of the anti-prostitution laws in effect in the United States are neutral on their face . . . , it is clear that the primary thrust of the offenses are against the activities of women.” *Id.* The U.S. legal system of criminalizing prostitution is antithetical to the letter and spirit of the U.N. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res. 317(IV), U.N. Doc. A/1251, at 33 (1949), which called for the decriminalization of prostitution. The resolution makes prostitution *per se* neither legal nor illegal. It removes scrutiny and punishment from the individual women without legitimizing prostitution as an institution. In other words, it merely tolerates prostitution, while criminalizing pimping and procuring. *Cf.* PROSTITUTION COMMITTEE, *supra* note 5, at 13 (lack of “distinction . . . between a lover relationship in which one person supports another by working as a prostitute . . . makes it difficult for prostitutes to lead normal lives outside of their work, and does little to protect them from exploitation by abusive pimps”). Retaining their rights like other citizens, prostitutes would be subject only to the general scope of civil and business codes, and would be more able to leave prostitution, if they choose to, without being branded by social stigma or by a criminal record. By contrast, legalization would set the state up as pimp, and by requiring prostitutes to register, would brand them, making it harder for them to leave. For example, in several Nevada towns where prostitution is legalized, brothels are licensed by the state and prostitutes registered and fingerprinted. R. TONG, *supra* note 35, at 57. Decriminalization, not legalization, is the system supported by both prostitutes and feminist groups. *See* PROSTITUTION COMMITTEE, *supra* note 5, at 13–19; Macmillan, *Prostitution as Sexual Politics*, *QUEST: A FEMINIST Q.*, Summer 1977, at 41; *see also* Jennings, *supra* note 5, at 1247–48 (decriminalization would lessen dependence on pimp and would allow greater opportunities for prostitutes to find other employment if they so choose), 1263–65 (disadvantages of legalization and government licensing of houses of prostitution).

42. NATIONAL ORG. FOR WOMEN (NOW), SAN FRANCISCO CHAPTER, *PROSTITUTION: A FEMINIST ISSUE* 1 (n.d.) (pamphlet on file with author); *see* PROSTITUTION COMMITTEE, *supra* note 5, at 7–8 (law enforcement’s disproportionate impact on gender and race). FBI Uniform Crime Reports indicate that 70.7% of arrests in 1976 for prostitution were women. In the same year, blacks comprised 52.4%, while whites accounted for 46% of those arrested. J. DECKER, *supra* note 41, at 93; *see also* Haft, *Hustling for Rights*, *CIV. LIBERTIES REV.*, Winter-Spring 1974, at 8, 14 (because many landlords and bar owners refuse to house black prostitutes, many are forced to become streetwalkers where they are most vulnerable to arrest). Although 69% of the adult male population have visited a prostitute at least once, A. KINSEY, W. POMEROY & C. MARTIN, *SEXUAL BEHAVIOR IN THE HUMAN MALE* 597 (1948), the number of customers arrested is far less than the number of prostitutes. J. DECKER, *supra* note 41, at 398; *see also* Jennings, *supra* note 5, at 1255 n.119 (testimony by vice squad officer revealed San Francisco Vice Detail policy of not arresting customers even when they admitted violation); Sciolino, *Off the Street, Prostitution Is Flourishing*, *N.Y. Times*, Nov. 14,

tutes, "while politicians ignore the structure of commercialized vice which sustains them."<sup>43</sup> Raids and crackdowns continue to strike at prostitutes, especially streetwalkers, but political, financial, and real estate interests in prostitution remain essentially untouched.<sup>44</sup>

Police arrests are often made simply to keep prostitutes off the street, or to harass them enough to make them leave the area.<sup>45</sup> Such crackdowns only reinforce a woman's dependence on her pimp, upon whom she must now rely to provide bail.<sup>46</sup> Once the pimp has paid the bail or fines, the woman is released into his custody. The pimp may then force her into more acts of prostitution to satisfy her debt to him. Thus, the system itself—the criminalization of prostitution, discriminatory enforcement of the penal code, habitual harassment of prostitutes by repeated arrests and fines—keeps women trapped in a system of debt bondage.<sup>47</sup>

## II. CIVIL RICO: A PRIVATE CAUSE OF ACTION

Civil RICO<sup>48</sup> allows a private cause of action<sup>49</sup> for anyone injured by the investment in, acquisition or operation of an "enterprise" that affects in-

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1984, at B1, col. 1 (Captain Jerome Piazza, commanding officer of Public Morals Division for southern half of Manhattan, explaining why customers went free although call girls were arrested after police raid on New York City escort service: "You can ruin a lot of marriages by making a 'john' collar."). Studies show that the typical patron of prostitutes is a middle-aged, middle-class married man. J. JAMES, J. WITHERS, M. HAFT & S. THEISS, *THE POLITICS OF PROSTITUTION* 52 (1976); M. STEIN, *LOVERS, FRIENDS, SLAVES* 95-96 (1975); James & Burstin, *Prostitution in Seattle*, 25 WASH. ST. B. NEWS 5, 28 (1971). When the laws are targeted only at prostitutes and not customers, or when law enforcement officials only enforce facially neutral laws against women, R. TONG, *supra* note 35, at 55, the demand for prostitution is allowed to remain essentially unchanged.

43. G. SHEEHY, *supra* note 3, at 11.

44. *Id.* at 11-13.

45. J. DECKER, *supra* note 41, at 102; *see also id.* at 109-10 (enormous costs of processing police arrests); PROSTITUTION COMMITTEE, *supra* note 5, at 11 (in 1977, cost of arresting and keeping one prostitute in jail for two weeks in New York was \$3,000, while minimal amount spent to help those wanting to change jobs); Jennings, *supra* note 5, at 1256, 1258 (myriad costs involved in arresting, processing and prosecuting prostitutes). Most police actions and crackdowns are motivated by political and community pressure. J. DECKER, *supra* note 41, at 109; D. PACE & J. STYLES, *supra* note 40, at 132; G. SHEEHY, *supra* note 3, at 11-12.

46. C. WINICK & P. KINSIE, *THE LIVELY COMMERCE* 109 (1973); PROSTITUTION COMMITTEE, *supra* note 5, at 8 (arrests result in dependence on pimps and, by causing many prostitutes to move to other cities, increase their sense of isolation); Haft, *supra* note 42, at 15 (constant arrests and fines lock women into prostitution both by forcing them to rely on pimps for bail and by creating criminal records that make it difficult to find other work); Jennings, *supra* note 5, at 1246-47 (pimps "provide bail and obtain legal services in the event a prostitute is arrested").

47. 20/20, *supra* note 19, at 6 (according to Cleveland police intelligence report, woman "is placed in a white slavery or indentured servant ring, in which she works off the money fronted by the organization"); *see also* D. PACE & C. STYLES, *supra* note 40, at 137 (although some women initially intended their involvement in prostitution to be temporary, "once in the business and under the austere direction of a pimp, it is difficult for them to return to the work-a-day world"); R. ROSEN, *supra* note 1, at 172 ("[f]ear of violence frequently makes escape impossible or unimaginable for many contemporary prostitutes"). "These girls in massage parlors are mostly young girls. There is an element of fear involved, and they're in a foreign country. So once they get here, they're more or less stuck." Russo Interview, *supra* note 20.

48. Civil RICO, 18 U.S.C. § 1964(c) is part of the RICO statute, 18 U.S.C. §§ 1961-1968 (1982

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terstate or foreign commerce through a "pattern of racketeering activity" occurring within a ten year period.<sup>50</sup> Racketeering activity is defined as the violation of state and federal offenses listed in the RICO statute, including the offense of trafficking in women.<sup>51</sup> The driving force behind the provision is to harness private interests to accomplish what the state does not have the resources to do. Civil RICO, in essence, empowers private prosecutors.

This section shows how the nature and organization of prostitution rings fit the statutory requirements needed to invoke civil RICO. It argues that because injury to "business or property"<sup>52</sup> should encompass the sort of injury incurred by prostitutes, the injury requirement needed for civil RICO standing<sup>53</sup> should be satisfied, thereby giving prostitutes a private right of action against the prostitution enterprise.

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& Supp. III 1985). RICO was enacted in response to the increasing strength and growth of organized crime. See PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMIN. OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 188 (1967) ("organized crime has been expanding despite the Nation's best efforts to prevent it"). As traditional criminal statutes had failed to curb organized criminal activities, RICO was passed "to enable the Federal Government to address a large and seemingly neglected problem." *United States v. Turkette*, 452 U.S. 576, 586 (1981). To accomplish this, Congress authorized private civil actions against RICO violators. See 1976 TASK FORCE, *supra* note 29, at 103 (civil sanctions seen as useful approaches to fighting organized crime).

49. 18 U.S.C. § 1964(c) (1982). Some private individuals forced into prostitution have shown interest in suing their procurers, as in the case of two women promised show-business jobs in Japan and then pressured into prostitution. The women said they tried to get help from the U.S. Embassy but that "the officers of the Foreign Service refused to render any . . . aid or assistance." The suit named the Japanese agents and their aides as well as then Secretary of State Alexander Haig as defendants. Shearer, *Vice Ring*, Wash. Post, June 13, 1982 (Parade Magazine), at 15, col. 1.

50. 18 U.S.C. § 1962(a)-(d) (1982); 18 U.S.C. § 1961(5) (1982).

51. White-Slave Traffic (Mann) Act, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421-2424 (1982)). The term "white slavery" was first used to distinguish the problem from 19th-century black slavery, but racial and class prejudice soon led to the portrayal of a "white slave" to include only innocent white women. K. BARRY, *supra* note 1, at 27; R. ROSEN, *supra* note 1, at 62. See generally *supra* note 1. This Note rejects the term and uses "traffic in women," "sex slave trade," or "Mann Act" instead.

52. 18 U.S.C. § 1964(c) (1982).

53. This Note argues that women injured by prostitution enterprises can sue under the injury to "business or property" provision of section 1964(c). See *infra* text accompanying notes 79-106. Although suing criminal enterprises can be daunting, private plaintiffs can receive legal assistance and other resources from groups ranging from prostitutes' rights organizations, such as COYOTE (Call Off Your Old Tired Ethics), to advocacy groups such as NOW (National Organization for Women).

The gamut of organized crime is wide, ranging from organized criminal activities conducted by groups of individuals to mob-type organized crime such as the Mafia. Private individuals who sue the latter are likely to encounter significant hurdles. Aside from obvious fear of retaliation and the extreme disparity in power and wealth between plaintiff and defendant, such suits are also difficult to execute. See Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg*, 58 NOTRE DAME L. REV. 237, 260 n.59 (1982) (Professor Blakey was Chief Counsel of Senate Subcommittee on Criminal Laws and Procedures in 1969-1970, when Organized Crime Control Act of 1970, Pub. L. No. 910452, 84 Stat. 941, was considered.). The difficulty lies in determining and locating the defendant's assets, getting to the assets if they are held under a third party's name or controlled by corporate shells, and preventing the assets from being dissipated prior to seizure. See Blakey, *supra*, for a discussion of government reports and findings examining this problem. However, the Mafia and other underworld-type organizations are not the only groups targeted by RICO. In fact, RICO neither equates nor identifies "organized crime" with the Mafia alone. See generally 1986 REPORT,

### A. *Harsh Penalties*

To encourage private civil action, the Act provides great monetary incentives for successful plaintiffs by granting them recovery of treble damages, court costs, and attorney's fees.<sup>54</sup> Congress clearly realized not only the need to deal with individuals involved in criminal enterprises, but also the value of attacking "the economic base through which those individuals constitute such a serious threat . . . ."<sup>55</sup> Large monetary awards serve both to provide incentives for private plaintiffs and to divest organized crime of its financial base.

To ensure that private plaintiffs have expansive avenues to institute RICO suits, Congress granted broad procedural rules regarding venue and process.<sup>56</sup> It authorized the courts to serve summons on and join parties residing in other districts, if justice so requires. Thus private plaintiffs can cause any defendant, even one with international prostitution networks, to be sued if the defendant has the specified jurisdictional link to the U.S.

### B. *Elements of Civil RICO*

To have a private cause of action, a plaintiff must prove the existence of certain RICO elements. She must show that she has been injured from the operation of an enterprise affecting interstate or foreign commerce and conducted via acts constituting a "pattern of racketeering."

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*supra* note 40, at 23. Senator McClellan, the sponsor of RICO, said that "in none of the hearings or in the processing of legislation in which I have been involved has the term been used in this circumscribed fashion." Blakey & Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1013 n.15 (1980) (quoting GAMBLING IN AMERICA: REPORT OF THE COMMISSION ON THE REVIEW OF NATIONAL POLICY TOWARD GAMBLING 181-82 (1976)). Thus, under civil RICO, private plaintiffs can sue any organized criminal activities conducted through an enterprise and sufficiently related to constitute a pattern.

54. 18 U.S.C. § 1964(c) (1982).

55. S. REP. NO. 617, 91st Cong., 1st Sess. 79 (1969) (Report of Sen. McClellan). Civil remedies are "concerned with prevention and restitution, not with incarceration." Gardner, *Increasing the Effectiveness of the Criminal Prosecutor Through Creative Use of the Civil Courts*, 10 PROSECUTOR 293, 295 (1974). Thus these remedies are particularly effective in attacking the financial bases of organized crime. "Organized crime is an economic phenomenon. It exists not for honor, not for mystique of the secret society, not for anything else but profit . . . . [T]he solution to organized crime in the broadest terms is simply to eliminate the profit." NATIONAL ASS'N OF ATT'YS GEN., THE USE OF CIVIL REMEDIES IN ORGANIZED CRIME CONTROL 5 (rev. ed. 1977) (citation omitted). A similar assessment appears in the U.N.'s Special Rapporteur's comments on the business of traffic in women: "Many violations of human rights [are] committed under the pretense of political excuse, civil war, subversion, national security, disloyalty to the state . . . ; here is no political motive at all. The motive is profit." Radio U.N., *supra* note 12, at 2.

56. 18 U.S.C. § 1965(a)-(d) (1982) ("Any civil action . . . may be instituted in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs.").

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### 1. *Organization: The Enterprise*

Statutorily defined, “enterprise” can be an “individual,” a “legal entity,” or a “group of individuals associated in fact.”<sup>57</sup> This definition is interpreted to mean an “ongoing” and “continuing unit” of “persons associated together for a common purpose of engaging in a course of conduct.”<sup>58</sup> It must have a “financial purpose”<sup>59</sup> and must be more than a loose group created only to commit the racketeering activity. In other words, the enterprise must be “a separate and discrete element of a RICO violation.”<sup>60</sup>

Where traffic rings are closely coordinated and organized, where they are involved in an ongoing process of procurement for prostitution, and where they have sound financial bases, they clearly satisfy the enterprise element required by RICO.<sup>61</sup> In addition, because the term “enterprise” may comprise both legitimate and illegitimate organizations,<sup>62</sup> prostitution rings organized for solely illegitimate purposes—without infiltrating or investing in legitimate businesses—would still qualify as RICO enterprises.

### 2. *Pattern of Racketeering*

To prove a “pattern of racketeering activity,” a plaintiff must show that the defendant has, within the last ten years, committed two violations of a number of acts listed in the RICO statute.<sup>63</sup> Known as “predicate acts,” these include a number of state and federal offenses, such as kidnapping, mail and wire fraud, and interstate transportation of women for prostitution.

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57. 18 U.S.C. § 1961(4) (1982).

58. *United States v. Turkette*, 452 U.S. 576, 583 (1981). The enterprise is not simply the “pattern of racketeering” but rather must be a unit whose existence goes beyond that needed to commit the predicate acts. In other words, the “‘enterprise’ is not the ‘pattern of racketeering activity,’” although “the proof used to establish these separate elements may in particular cases coalesce . . . .” *Id.* In direct opposition to the views of the Second, Fifth, Seventh, and Ninth Circuits, the Eighth Circuit holds that the enterprise must also “have an existence that is independent, self-contained, separate and distinct” from the pattern of racketeering. *United States v. Anderson*, 626 F.2d 1358, 1371–72 (8th Cir. 1980), *cert. denied*, 453 U.S. 912 (1981); *see also* *United States v. Lemm*, 680 F.2d 1193, 1198–1201 (8th Cir. 1982), *cert. denied*, 459 U.S. 1110 (1983). For a critique of the Eighth Circuit’s holdings, *see* Blakey, *supra* note 53, at 299 n.165.

59. *United States v. Ivic*, 700 F.2d 51, 58–65 (2d Cir. 1983) (commission of predicate acts for political or other non-economic purpose not within RICO).

60. *United States v. Bagnariol*, 665 F.2d 877, 890–91 (9th Cir. 1981), *cert. denied*, 456 U.S. 962 (1982).

61. *See supra* notes 6–7, 26–28, and accompanying text (organized structure of prostitution rings). Racketeering acts described in Section I are committed through an organized and structured enterprise that exists apart from the racketeering activities at issue.

62. *Turkette*, 452 U.S. at 580–81; *see* *United States v. McLaurin*, 557 F.2d 1064, 1072–73 (5th Cir. 1977) (enterprise does not have to be legitimate business infiltrated by organized crime; prostitution rings engaged at onset in illegitimate activities are also RICO enterprises).

63. 18 U.S.C. §§ 1961(1), (5) (1982).

Kidnapping applies whenever a woman is abducted.<sup>64</sup> Mail and wire fraud pertain whenever the mails or wires are used in "any scheme or artifice to defraud" through "false or fraudulent pretenses."<sup>65</sup> False pretenses regarding a present or past fact as well as regarding a point in the *future* are deemed mail or wire fraud if transmitted accordingly.<sup>66</sup> Thus, for instance, a fraudulent promise of a legitimate entertainment job made via mail or wire in order to lure a woman into prostitution would constitute a violation of the mail or wire fraud statute. Under the Mann Act, a violation occurs when a person "transports in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution."<sup>67</sup> Prostitution rings that transport women into the U.S. from foreign countries as well as those that transport women across states within the U.S. are violating the Mann Act.<sup>68</sup>

Because RICO is not aimed at sporadic, individual violators, the predi-

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64. See *White Slavery Ring Indictments in Wis.*, Chicago Sun-Times, Jan. 18, 1972, at 20, col. 1 (ring kidnapping women from bars and forcing them into prostitution); see also *supra* note 8.

RICO prohibits a wide array of criminal activities. Section 1961(1)(A) designates eight state law felonies ("any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, or dealing in . . . dangerous drugs"), and §§ 1961(1)(B) and (C) include a list of federal criminal statutes encompassing acts indictable under various sections of U.S.C. titles 18 and 29. The RICO statute "does not make criminal conduct that before its enactment was not already prohibited . . . ." Blakey & Gettings, *supra* note 53, at 1021 n.71.

65. 18 U.S.C. § 1341 (1982). Violation of this statute constitutes a predicate act under § 1961(1) of RICO.

66. The Supreme Court emphasized as early as 1896 the breadth of the mail fraud statute. See *Durland v. United States*, 161 U.S. 306, 314 (1896) ("It was with the purpose of protecting the public against all such intentional efforts to despoil, and to prevent the post office from being used to carry them into effect, that this statute was passed; and it would strip it of value to confine it to such cases as disclose an actual misrepresentation as to some existing fact, and exclude those in which is only the allurements of a specious and glittering promise.").

67. 18 U.S.C. § 2421 (1982); see 18 U.S.C. § 2422 (1982) ("Whoever . . . entices or coerces any woman or girl to go from one place to another in interstate or foreign commerce . . . for the purpose of prostitution . . . whether with or without her consent . . . shall be fined . . . or imprisoned . . . ." (emphasis added)); see also *Gebardi v. United States*, 287 U.S. 112, 119 (1932) (Mann Act covers "cases in which the woman consents to her own transportation"); *United States v. Pelton*, 578 F.2d 701, 712 (8th Cir.), *cert. denied*, 439 U.S. 964 (1978) (consent of woman to be transported is no defense). Neither is it a defense that the woman transported is, has been, or plans to be engaged in prostitution. *Hattaway v. United States*, 399 F.2d 431, 433 (5th Cir. 1968) (*per curiam*); *McGuire v. United States*, 152 F.2d 577, 579 (8th Cir. 1945). This Note takes the position that consent is meaningless in this context not because women do not have the capacity to consent or make rational decisions, but because "free choice" is easily distorted given the extreme disparity in bargaining power between the parties. Cf. Kronman, *Paternalism and the Law of Contracts*, 92 YALE L.J. 763, 774-86 (1983); *id.* at 774-75 ("[P]aternalistic restrictions in our law of contracts . . . [are] intended to prevent an individual from contracting away too large a part of his personal liberty. The most obvious and elementary restriction of this sort is the prohibition against contracts of peonage or self-enslavement.").

68. In proving a predicate act, such as the Mann Act, a civil RICO plaintiff has an enormous advantage over public prosecutors: She need prove those acts only by a preponderance of evidence. *Sedima S.P.R.L. v. Imrex Co.*, 105 S. Ct. 3275, 3282-83 (1985); Blakey, *supra* note 53, at 259-60 n.59 (preponderance standard). Thus, for example, in cases where U.S. agents who book women for entertainment in Japan plead ignorance of the situation there, *supra* note 32 and accompanying text, the burden of proving their intention to procure is more easily satisfied under civil RICO by a private plaintiff than under a criminal action by federal prosecutors.

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cate acts are required to be part of a “pattern of racketeering activity.” Courts have disagreed on the nexus needed among predicate acts to establish a pattern.<sup>69</sup> However, all courts require that the predicate acts be related to the enterprise’s affairs.<sup>70</sup> Thus, while the enterprise is an entity separate and apart from the pattern of racketeering activity, there must be a nexus between them in that the enterprise must be affected by, or conducted via acts constituting a pattern of racketeering.<sup>71</sup> Kidnapping, mail or wire fraud, and the interstate transportation of women for prostitution are conducted through organized prostitution enterprises and would amount to a “pattern of racketeering activity” connected to the affairs of the criminal enterprise.

### C. Injury

A civil RICO plaintiff no longer needs to prove “competitive injury”<sup>72</sup> (an indirect injury suffered as a competitor) or “racketeering in-

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69. Some courts have held that, to constitute a pattern, the predicate acts must be related to each other by some common scheme, plan, or motive and cannot be simply a series of disconnected acts. For a list of such cases, see Project, *White-Collar Crime: Second Annual Survey of Law*, 19 AM. CRIM. L. REV. 173, 355 & n.1429. Other courts reject this requirement and instead hold that the predicate acts need not be related to each other, as long as they are related to the enterprise’s affairs. *See id.* at 355 & n.1434.

70. 18 U.S.C. §1962(b) makes it “unlawful for any person *through* a pattern of racketeering activity . . . to acquire or maintain . . . any interest in or control of any enterprise . . .” (emphasis added). 18 U.S.C. § 1962(c) prohibits conducting or participating in an “enterprise’s affairs *through* a pattern of racketeering activity.” (emphasis added). *See, e.g.*, *United States v. Scotto*, 641 F.2d 47, 54 (2d Cir.), *cert. denied*, 452 U.S. 961 (1981); *United States v. Weisman*, 624 F.2d 1118, 1121–23 (2d Cir.), *cert. denied*, 449 U.S. 871 (1980); *United States v. Elliott*, 571 F.2d 880, 899 & n.23 (5th Cir.), *cert. denied*, 439 U.S. 953 (1978); *see also* Fitzpatrick, *Elements of a RICO Action After Sedima*, in LITIGATION AND ADMIN. PRAC. SERIES, NO. 139, CIVIL RICO 31–35 (1985) [hereinafter CIVIL RICO] (discussion of requirement that enterprise must be affected by or conducted via pattern of racketeering); O’Neill, *The Elements of a Private Civil Action Under the RICO Statute After Sedima*, in CIVIL RICO, *id.* at 55–63 (analysis of requisite connection and degree of relationship between enterprise and pattern of racketeering activities).

71. As long as the enterprise is an “ongoing organization” or a “continuing unit,” *United States v. Turkette*, 452 U.S. 576, 583 (1981), some courts hold that even “different or unrelated crimes” can be admitted as proof of “pattern” because they were perpetrated through and related to the affairs of the enterprise. *United States v. Phillips*, 664 F.2d 971, 1011–12 (5th Cir. 1981), *cert. denied*, 457 U.S. 1136 (1982); *see United States v. Elliott*, 571 F.2d 880, 899 n.23.

72. Because civil RICO’s treble damage provision was modeled after section 4 of the Clayton Act, 15 U.S.C. § 15 (1982), many lower courts, prior to the Supreme Court’s decision in *Sedima*, 105 S. Ct. 3275, had held that only those injured indirectly as competitors rather than those injured directly by the commission of the predicate acts had RICO standing. For a list of decisions requiring a competitive injury, *see Sedima*, 741 F.2d 482, 493 n.33 (2d Cir. 1984). The dissent in *Sedima* illustrates the rejected competitive injury requirement: If a racketeer used arson and assault to force competitors out of business and acquire their shares of the market, arson and assault constituted the predicate acts. Those competitors forced out of business could recover under civil RICO. However, those who suffered direct damages from the predicate acts could not recover, for example, for the cost of the building or for personal injury. *Sedima*, 105 S. Ct. 3275, 3303 (Marshall, J., dissenting). *Contra* Note, *Civil RICO: The Temptation and Impropriety of Judicial Restriction*, 95 HARV. L. REV. 1101, 1109–13 (1982) and Blakey, *supra* note 53, at 255–56 & nn.52–53, 261 n.63, 263 n.72 (legislative history shows rejection of antitrust competitive injury for RICO purposes). Strict requirements for antitrust plaintiffs for “standing to sue” are appropriate because to ruin an antitrust defendant by



jury”<sup>73</sup> (an injury from the *pattern* of racketeering rather than simply from the predicate acts). Under the Supreme Court’s decision in *Sedima S.P.R.L. v. Imrex Co.*, “racketeering activity” consists of no more and no less than commission of a predicate act.”<sup>74</sup> Thus the “compensable injury . . . is the harm caused by the predicate acts sufficiently related to constitute a pattern . . . .”<sup>75</sup>

This interpretation is extremely important for bringing victims of prostitution rings within the general ambit of civil RICO. Before *Sedima* resolved the controversy among the circuits regarding the necessity of proving “competitive” or “racketeering enterprise” injury,<sup>76</sup> it was unclear whether or not women injured by a Mann Act violation could even invoke civil RICO. The injury suffered by them would have been unlikely to fit the “racketeering” or “competitive” injury envisioned by certain circuits. With the Court’s decision in *Sedima*, however, injury resulting directly from the predicate acts is sufficient to invoke RICO,<sup>77</sup> provided all other RICO elements are met. Since a violation of the Mann Act is a predicate act,<sup>78</sup> a showing of injury stemming from such violation would qualify as the sort of injury now recognized by RICO.

One significant barrier remains. Although *Sedima* now allows recovery for injury from the predicate acts themselves, in the case of the Mann Act, the section 1964(c) requirement of injury to “business or property” is one of the elements that must be met before a victim can have a private right of action against the prostitution ring. This Note argues that, given the underlying purposes of RICO, the traditional concept of “property” injury should be expanded to allow for such an action.

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opening the door to frivolous suits would be antithetical to the purpose of the statute and would further reduce competition. RICO, by contrast, should not be similarly restricted because its purpose is to eradicate organized criminal activities.

73. Prior to *Sedima*, 105 S. Ct. 3275, the “racketeering injury” requirement was adhered to by many courts. See Comment, *Civil RICO: The Resolution of the Racketeering Enterprise Injury Requirement*, 21 CAL. W.L. REV. 364, 368 n.28 (1985) (list of courts requiring and list rejecting “racketeering” injury). Even those courts requiring such an injury failed precisely to define it. *Id.* at 372–74. In practice, this requirement meant that a plaintiff victimized by acts of arson was unable to recover immediately; instead the plaintiff had to wait until his or her property was damaged again in another fire, show that because of his or her past record, he or she was denied fire insurance and would not get reimbursed for damages from the new fire. This monetary loss would then qualify as injury due to the “pattern” and would therefore be recoverable. *Bankers Trust Co. v. Rhoades*, 741 F.2d 511, 517 (2d Cir. 1984).

74. *Sedima*, 105 S. Ct. at 3285.

75. *Id.* at 3286.

76. This requirement would have precluded recovery for violation of certain predicate acts listed in section 1961(1). See Blakey, *supra* note 53, at 257 & n.57 (civil RICO action would be precluded where union fund is looted, because hardly possible to show competitive injury); *id.* at 258 & n.58 (no civil RICO action where government agencies are corrupted by organized crime because government hardly capable of being hurt competitively). Similarly, one would not speak of a woman injured by prostitution enterprises as having suffered competitive injury.

77. 105 S. Ct. 3285–86.

78. 18 U.S.C. § 1961(1) (1982).

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### D. *Proposal To Expand the Scope of "Property Injury"*

Injury to a victim's person or body should satisfy the standing requirement of injury to "property" as called for under section 1964(c).<sup>79</sup> Within this limited setting, the victim's body should be understood as property. The first part of this section shows why this proposal does not contravene, but indeed accords with, congressional purpose. The second part sets forth the proposal itself. The last part contemplates questions of damages and explores how they might be calculated.

#### 1. *Legislative History*

The legislative history of RICO reveals nothing that would forbid this interpretation. Congress was primarily concerned with the growth of organized crime.<sup>80</sup> The Act's Statement of Findings and Purpose clearly states that RICO is intended to "seek the eradication of organized crime . . . 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>81</sup> Statements by members of Congress reflect similar concern over the general threat posed by organized crime,<sup>82</sup> as well as its infiltration into legitimate businesses.<sup>83</sup> Because prostitution rings and their traffic networks are operated and controlled by organized criminal elements,<sup>84</sup> often hiding behind a facade of legitimate enterprise,<sup>85</sup> they lie precisely within the core of congressional concern. Allowing private civil actions to supplement limited government resources<sup>86</sup>

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79. A private plaintiff must be able to show injury to "property" or "business" before a private cause of action is granted. 18 U.S.C. § 1964(c) (1982).

80. See, e.g., 115 CONG. REC. 5872 (1969) (review by Sen. McClellan on development of organized crime in U.S. and on failure of traditional laws to stop its growth); *Measures Relating to Organized Crime: Hearings on S. 30, S. 974, S. 975, S. 976, S. 1623, S. 1624, S. 1861, S. 2022, S. 2122, and S. 2292 Before the Subcomm. on Criminal Laws and Procedures of the Comm. on the Judiciary*, 91st Cong., 1st Sess. 107-55 (1969) [hereinafter *Hearings on S. 30*]; see also Blakey, *supra* note 53, at 249-80 (extensive discussion of legislative history of RICO); Strafer, Massumi & Skolnick, *Civil RICO in the Public Interest: "Everybody's Darling,"* 19 AM. CRIM. L. REV. 655, 681 n.195 (1982) (remarks of members of Congress regarding dangers of organized crime and need to eradicate organized criminal activities).

81. Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 922-23 (1970) (emphasis added).

82. Strafer, Massumi & Skolnick, *supra* note 80, at 700-01 & nn.307-13.

83. *Id.* at 687 nn.228-30.

84. See *supra* Section I.B. and accompanying notes.

85. See *supra* notes 30-31 and accompanying text.

86. "[E]xisting law, state and federal, . . . was not adequate to address the problem, which was of national dimensions." *United States v. Turkette*, 452 U.S. 576, 586 (1981). Because "temporary, one-shot attacks" are not effective, "continuing pressure" must be exerted against organized crime. *AGVA Hearings*, *supra* note 12, at 316, 325 (statement of Thomas Maxwell, former Assistant State Attorney, Baltimore City). Furthermore, law enforcement agencies may not be as organized and well-coordinated as organized crime, *id.* at 136 (statement of William J. Scott, former Special Assistant U.S. Attorney, Northern District of Illinois); these agencies also are faced with personnel shortages, *id.* at 72-73 (testimony of Frank Rizzo, Philadelphia Police Department Inspector).

would thus further the Congressional purpose of attacking criminal activities "on all available fronts."<sup>87</sup>

Furthermore, Congress was concerned not just with organized crime and its infiltration into businesses, but also with the underlying racketeering acts.<sup>88</sup> Because the Mann Act is listed as a racketeering act, activities associated with it—prostitution rings engaged in the traffic of women, for example—are precisely the sort of activities Congress sought to eradicate. Private causes of action would further this goal.

To effectuate RICO's purpose in fighting organized crime and related racketeering activities, Congress specifically wrote in a directive not found in any other federal law that imposes criminal penalties:<sup>89</sup> "[T]he provisions of this title shall be liberally construed to effectuate its remedial purposes."<sup>90</sup> In addition, the sponsors of RICO envisioned its creative use: "The bill is innovative . . . . Hopefully, experts on organized crime will be able to conceive of additional applications of the law. The potential is great."<sup>91</sup> RICO is not "limit[ed] [to] the remedies . . . already . . . established. The ability of our chancery courts to formulate a remedy to fit the wrong is one of the great benefits of our system of justice."<sup>92</sup> It is precisely within this context that this Note's proposals should be examined.

87. S. REP. NO. 617, 91st Cong., 1st Sess. 79 (1969) (report of Sen. McClellan).

88. "While RICO had as *one* of its purposes preventing the takeover of legitimate business by organized crime, it is myopic to read RICO as if that were its *only* purpose. RICO was also aimed at racketeering." Blakey, *supra* note 53, at 254 n.49. In holding that RICO should be applied to wholly illegitimate activities and enterprises as well as to legitimate businesses infiltrated by organized crime, the Court stated that such application would "deal with the problem at its very source." *United States v. Turkette*, 452 U.S. at 591. The Court further said that "the infiltration of legitimate businesses was of great concern, but the means provided to prevent that infiltration plainly included *striking at the source of the problem*." *Id.* at 592-93 (emphasis added). In other words, the Court suggested that RICO is applicable against illegal activities themselves and is not limited only to the infiltration of legitimate business. *Id.* at 590. It follows then that RICO "is *not* limited to investment in or takeover of legitimate businesses, but extends to the *operation* of 'enterprises,' . . . by 'racketeering acts . . .'" Blakey, *supra*, at 258 n.59. Both eradicating racketeering or predicate acts and preventing the operation of an enterprise by racketeering are goals envisioned by Congress in enacting RICO. Because the Mann Act is expressly listed as a racketeering act, 18 U.S.C. § 1961(1), breaking up prostitution enterprises used to traffic women would legitimately fall under RICO. *See, e.g., United States v. Martino*, 681 F.2d 952, 958 (5th Cir. 1982), *aff'd sub nom. Russello v. United States*, 464 U.S. 16 (1983) ("Narcotics trafficking, loan sharking, insurance fraud, extortion, gambling, and prostitution—all crimes in which the proceeds primarily consist of money—were all objects of congressional concern." (footnotes omitted)); *United States v. Thompson*, 669 F.2d 1143, 1148-49 (6th Cir. 1982) (court refusing to allow RICO to be used "against every instance of venality," and citing with approval use of RICO against prostitution ring protected by bribed prosecutor); *cf. United States v. Ivic*, 700 F.2d 51, 61 (2d. Cir. 1983) (court refusing to consider activities of terrorist groups as racketeering acts, stating that they are "worlds removed from that of such venal organizations as gambling, narcotics, or prostitution rings").

89. Note, *RICO and the Liberal Construction Clause*, 66 CORNELL L. REV. 167, 168 n.6 (1980).

90. Organized Crime Control Act of 1970, Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947.

91. 115 CONG. REC. 6993 (1969) (statement of Sen. Hruska). Senator Hruska was a principal sponsor of RICO and was involved from its inception to its final acceptance into law. *See, e.g.,* 113 CONG. REC. 17,997-18,002 (1967). For a discussion of Senator Hruska's role in the legislative process, see Blakey, *supra* note 53, at 253-56, 258-65.

92. 115 CONG. REC. 9567 (statement of Sen. McClellan). Representative Poff, another sponsor of

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### 2. *Body as Property*

Prostitution enterprises control and use prostitutes' bodies as vehicles for conducting their illegal business. The victims' bodies are, in essence, treated as property to generate profit for the enterprise.<sup>93</sup> If the injury is perpetrated on the premise that the victims' bodies are "property," the law should recognize this fact and address the violation rather than pretend that it does not exist. For this purpose, courts should not be reticent to acknowledge body as a form of property<sup>94</sup> and should allow women to show injury in their "property" in order to invoke section 1964(c) of RICO against prostitution rings. Prostitution enterprises, which have considered the prostitutes' bodies to be their property all along, should not be allowed to switch horses midstream just because the equation no longer serves their purpose. Moreover, the idea of conceptualizing one's body as a form of property is in no way far-fetched. Courts, politicians, and philosophers have at one time or another drawn this parallel.<sup>95</sup> Courts should

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RICO, also noted that the bill would "not only sharpen old tools but forge new tools of law enforcement" as well. 113 CONG. REC. 17,947 (1967). Statements of sponsors are normally given great weight by courts. *S&E Contractors v. United States*, 406 U.S. 1, 13 n.9 (1972) ("In construing laws we have been extremely wary of . . . debates on the floor of Congress save for precise analyses of statutory phrases by the sponsors of the proposed laws.") (citations omitted). Though RICO has been applied more in cases involving business and commercial frauds, *Sedima S.P.R.L. v. Imrex Co.*, 105 S. Ct. 3275, at 3287 n.16 (1985), its application should not be cabined by the reasoning used in those very different settings. In fact, a Senate Committee Report commenting on section 1964, S. REP. NO. 617, 91st Cong., 1st Sess. 160 (1970), noted that "[a]lthough certain remedies are set out, the list is not exhaustive, and the only limit on remedies is that they accomplish the aim set out of removing the corrupting influence and make due provision for the rights of innocent persons." Blakey, *supra* note 53, at 266 n.87; see also Blakey & Gettings, *supra* note 53, at 1042 (antitrust law is concerned with competition, while RICO is "more concerned with compensating victims and making them whole"). A creative interpretation designed to grant private rights of action to victims of prostitution enterprises is thus within the ambit of RICO.

93. Where the pimp buys and sells the prostitute and uses her body to make a profit, he is clearly considering her to be his property. See 1986 REPORT, *supra* note 40, at 59-60 ("[I]n some gangs, women are used to generate income through prostitution . . . Some gangs regard women . . . as 'club property,' . . . [or] the 'property' of individual members."), 66 ("[The gang's] general treatment of . . . women, who are typically regarded as gang property, borders on slavery."); see also *supra* notes 5, 8, 29, 35 and accompanying text.

94. This Note suggests that there are compensable interests in many things, even one's bodies, which we prefer to consider inalienable and incommensurable. We set "price on things we desperately would like to treat as priceless." G. CALABRESI & P. BOBBITT, *TRAGIC CHOICES* 144 (1978). For example, we assert "that anyone for whom an implant will be successful will be allotted one," *id.* at 154, in order to appear as though we are not "pricing lives." *Id.* Similarly, we are reluctant to price or to assign property values to our bodies which we rightly consider sacred and priceless. Yet, while we do not want to broadly see body as alienable property, we should not insist on consistency for consistency's sake and refuse, in cases such as these, to imply a property notion to bodies in order to provide relief precisely to those whose bodies have been treated as property.

95. Dicta in slavery cases drew parallels between "property" and "person" or "body." The court in *Commonwealth v. Aves*, 35 Mass. (18 Pick.) 193 (1836), addressing the question of whether a slave owner can bring a slave into a free state and then later force the slave to leave the state, stated, "being contrary to the fundamental laws of this State, such general right of property cannot be exercised or recognized here." *Id.* at 217. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856), held that the Fifth Amendment guarantee, that no one shall be denied life, liberty, and property, meant that slave owners could not be deprived of their property. Similar analogies were drawn by both

conceptually acknowledge body as property, not to legitimize the analogy but to curb its abuse. This analogy, in fact, has come to be similarly recognized in family law cases as a derogatory one.<sup>96</sup> Legal recognition of this analogy for RICO purposes can provide leverage against those engaged in such derogatory acts. Injury to a woman's body under the Mann Act should therefore be given legal definition as injury to property, thereby affording the woman standing to invoke civil RICO.

### 3. *Damages*

The issues surrounding civil RICO damages have largely been ignored, especially by courts.<sup>97</sup> As in the area of antitrust law, measuring damage in the RICO context is similarly susceptible to problems of uncertainty.<sup>98</sup> This section aims only to set a few parameters from which to analyze the sort of recovery available for prostitution victims.

In measuring injury to a woman's body as property, damages such as lost wages or lost opportunities due to her involvement in prostitution enterprises should be considered. The claim would be that but for this involvement, her property (body) could have been put to better use. This determination would naturally entail a case by case analysis with the outcome depending on the specific fact situation of each case. For example, an entertainer injured by prostitution fronts, posing as theatrical agencies recruiting her for legitimate nightclub acts in Japan, should be able to recover under this loss of opportunities theory. Legitimate show business

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abolitionists and anti-abolitionists in the 1800's. Anti-abolitionists argued that Congress could not abolish slavery because the Union had been formed to protect life, liberty, and property—and slaves were property. J. TENBROEK, *EQUAL UNDER LAW* 42 (1965). Abolitionists used the same equation to come up with a different conclusion: "Congress should immediately restore to every slave, the ownership of his own body, mind and soul . . . . The right of property, on the part of the master over the slave, should instantly cease." *Id.* at 46 (statement of abolitionist Henry B. Stanton). "[I]f justice adjudges the slave to be 'private property,' it adjudges him to be *his own* property, since the right to one's self is the first right . . . ." *Id.* at 276 (abolitionist Theodore Dwight Weld). Both sides assumed that a body was property. Their only difference lay in the question of who owned that property. See also J. LOCKE, *THE SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION* para. 27 (J. Gough ed. 1946) (everyone "has a property in his person; this nobody has any right to but himself"). This Note, of course, asserts that the prostitute's body is her own property.

96. See, e.g., *Raymond v. Raymond*, 165 Conn. 735, 741, 345 A.2d 48, 52 (1974) ("Neither parent's interests with regard to his or her children are a property right . . . ."); *Doe v. Doe*, 163 Conn. 340, 307 A.2d 166, 168 (1972); *In re Ladewig*, 34 Ill. App. 3d 393, 398, 340 N.E.2d 150, 154 (1975).

97. Parnon, *RICO Damages: Look to the Clayton Act, Not the Predicate Act*, 21 CAL. W.L. REV. 348, 348 & nn.2-5 (1985).

98. See, e.g., Blakey, *supra* note 53, at 260 n.59 ("as in the antitrust area, while proof of cause and the fact of damage ought to have to be made out, how a plaintiff meets its burden of proof as to the amount of damage ought to be ameliorated considerably") (referring to cases where Supreme Court has recognized that damage issues rarely can be measured with concrete exactness).

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jobs that she could have pursued and which could have been available to her were lost.<sup>99</sup>

Another way of measuring damages would involve “looking to the underlying predicate acts and utilizing the most analogous civil measure of damages.”<sup>100</sup> The appropriate measure of damages would vary depending on the type of injury suffered, which would in turn depend on the predicate acts at issue.<sup>101</sup> The type of injury suffered would determine the type of remedies available, in some cases tort-like remedies, in others, contractual type recovery.<sup>102</sup> Following this mode of analysis, the type of injury incurred from a Mann Act violation is likely to be some form of personal injury. Although this Note does not propose that recovery for personal injuries per se should be made available under civil RICO,<sup>103</sup> it does argue that an exception should be made in the limited context of forced prostitution.

For several compelling reasons, personal injuries should be recognized in prostitution cases. Victims in many of these cases would be unable to recover for lost wages or opportunities, and it would be incongruous to deny them recovery altogether, when recovery would be granted to other Mann Act victims.<sup>104</sup> Furthermore, Congress broadly defined the class of RICO plaintiffs to include victims of crimes ranging from fraud to sex slave traffic.<sup>105</sup> Since *Sedima* has held that direct victims of the predicate acts can recover, it would be inconsistent that some victims in that class

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99. Similarly, commentators have suggested that loss of wages resulting from unjust jail time would count as “business or property” injury. See, e.g., Strafer, Massumi & Skolnick, *supra* note 80, at 664. However, this measurement may not be applicable to other factual scenarios, for example, to cases involving Third World women brought to work in U.S. massage parlors, since the economic opportunities available to them in their native countries may be less than what they have in the U.S. A calculation of damages focused on lost wages may not be possible.

100. Parnon, *supra* note 97, at 348 (citing Gorelick, *The Measure of Damages of RICO Actions*, in *RICO: THE SECOND STAGE* (ABA ed. Oct. 1984)).

101. *Id.* at 348-49.

102. *Id.* Parnon advocates a diametrically opposed approach, although his article is based on the pre-*Sedima* definition of injury. Parnon, *supra* note 97. Parnon would examine damage measurements by “a narrower standard based on Section Four of the Clayton Act. This standard would exclude damages based on contractual ‘expectation interests,’ damages for personal injuries, and damages based on restitution or disgorgement, as well as other types of damages.” *Id.* at 349. Furthermore, proof of “racketeering enterprise injury” required at the pleading stage by many courts before *Sedima*, 105 S. Ct. 1075, would be extended to the damages stage as well. The plaintiff would have to show damages caused by a clear “racketeering injury” and would not recover for damages caused by the predicate acts. *Id.* at 349 & n.14, 350. By contrast, responding to the Supreme Court’s decision in *Sedima*, which struck down the racketeering injury requirement, 105 S. Ct., at 3285-86, this Note proposes that 1) a plaintiff need only show injury sustained by the commission of the predicate acts, 2) the plaintiff be allowed to recover for this injury, and 3) damage measurements be based on the underlying predicate acts whose commission first caused the injury.

103. Courts have traditionally held that civil RICO does not grant recovery for personal injuries. See Kaufman, *RICO Remedies*, in *CIVIL RICO*, *supra* note 70, at 154-55 (discussion of cases denying recovery for personal injury).

104. See *supra* note 99 and accompanying text.

105. 18 U.S.C. § 1961(1) (1982).

would be denied recovery because their injury does not neatly fit into the traditional concept of "property" injury.<sup>106</sup> When a person is forced to prostitute herself, clearly the injury involves something beyond business/property/commercial injury. Courts facing civil RICO claims should recognize that, unlike other predicate acts, those covered by the Mann Act threaten personal injury. Measuring damages for Mann Act violations should take this fact into consideration.

### III. REMAINING BARRIERS: POSSIBLE CONGRESSIONAL AMENDMENTS

#### A. *Pending Bills*

*Sedima*, over a strong dissent, held that a plaintiff need prove no injury beyond that caused directly by the predicate acts. The Court, in its decision, invited Congress to explicate any limits on the scope of civil RICO.<sup>107</sup> Congress is currently doing just that, although primarily out of concern that RICO is being used in ordinary business disputes to harass

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106. The courts should fashion an effective remedy for each of the RICO predicate acts designated by Congress. The Mann Act is listed in section 1961(l) along with a wide range of other predicate acts. The fact that other predicate acts normally involve injury to traditional business, property, or commercial type injuries, thus resulting in easier standing and damage calculations, does not mean that real and substantial injuries incurred from certain other predicate acts, the Mann Act, for example, can simply be wished away by denying recovery to Mann Act victims altogether. RICO should protect the rights of all victims of all predicate acts equally. In situations where a measurement of lost wages is not possible, *see supra* note 99, recoveries for personal injuries should be granted. The dissent in *Sedima* seems to have recognized this very concern:

[M]any of the predicate acts listed in § 1961 threaten or inflict personal injuries . . . . If Congress in fact intended the victims of the predicate acts to recover for their injuries, as the Court holds it did, it is inexplicable why Congress would have limited recovery to business or property injury. It simply makes no sense to allow recovery by some, but not other victims of predicate acts . . . .

105 S. Ct. at 3297 (Marshall, J., dissenting).

This Note argues that precisely because such discrepancy would not make "sense," damages from personal injury caused by commission of predicate acts that inherently threaten personal injury should be recoverable. This measurement of damages is consistent with the proposal set forth in this Note. *See supra* Section II.D. Once courts accept the suggestion that body is "property" for civil RICO purposes, then damages to "property" in essence include bodily damages. Besides bodily injury and lost earnings, recovery can also be based on restitution theory, whereby proceeds from the prostitution enterprise are placed in trust funds for educational and training programs for prostitutes, or for projects to benefit shelters and covenant houses. The racketeering enterprise should not be allowed to keep its wrongful profit simply because there may be cases in which damages to the prostitute cannot be calculated.

A proposal to allow a limited class of plaintiffs personally injured by the perpetration of certain predicate acts to sue has been suggested by Representative Clinger. H.R. 1704, 99th Cong., 1st Sess. (1985). This bill to amend RICO would "authorize civil suits on behalf of victims of child pornography and prostitution." The amendment would add 18 U.S.C. § 2251 or 2252, dealing with sexual exploitation of children, to the list of predicate acts currently included in RICO, 18 U.S.C. § 1961(l). It would also amend § 1964(c) to explicitly allow anyone injured "personally" by a violation of § 2251 or 2252 to sue. This Note also seeks to give a private right of action for plaintiffs injured by prostitution enterprises. It argues, however, that civil RICO, as it currently stands, should already allow for such suits.

107. 105 S. Ct. at 3287.

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legitimate businesses, who are thus forced to settle for fear of being labelled "racketeers."<sup>108</sup>

Three bills to limit civil RICO are before Congress. One bill would limit private civil action to those suffering "competitive, investment or other business injury."<sup>109</sup> It would also limit the use of the more "troublesome" predicate acts by requiring that at least one of the predicate acts be something other than mail, wire, or securities fraud.<sup>110</sup> Another bill would amend the same private plaintiff provision to require that a defendant be criminally convicted of a predicate act before the plaintiff can sue.<sup>111</sup> This bill has garnered the most support in Congress so far.<sup>112</sup> The third bill would entail three major changes.<sup>113</sup> It would delete "racketeering" from the title and all of the provisions of the statute; it would also require a prior indictment, as well as limit the use of predicate acts relating to the transportation of stolen goods, mail and wire fraud.

### B. *Proposal for Balance: Change Without Vitiating*

As they stand, passage of any one proposed bill would unduly attenuate RICO's strength in combatting criminal activities, especially those connected with prostitution enterprises. Any requirement of prior conviction or prior indictment would be problematic because it would defeat "[p]rivate attorney general provisions . . . designed to fill prosecutorial gaps."<sup>114</sup> The private right of action option was instituted because Congress saw that enforcement agencies were weakened by "official timidity and inaction, or bribery and corruption."<sup>115</sup> Requiring prior government action would force plaintiffs to rely once again on government officials.<sup>116</sup>

Limiting the class of civil plaintiffs to those able to show competitive injury would also unduly restrict RICO's scope. Harm directly caused by perpetration of proscribed acts would not be recoverable, whereas harm that is indirectly incurred would be.<sup>117</sup> Direct injury would not be com-

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108. *Time To Reform RICO*, The Christian Science Monitor, Feb. 12, 1986, at 15, col. 1.

109. S. 1521, 99th Cong., 1st Sess. (1985).

110. *Id.*

111. H.R. 2943, 99th Cong., 1st Sess. (1985).

112. Bradley, *Long Arm of the Rackets Law Draws Fire from White Collar Targets*, The Christian Science Monitor, Feb. 7, 1986, at 21, col. 1.

113. H.R. 2517, 99th Cong., 1st Sess. (1985).

114. *Sedima*, 105 S. Ct. at 3284.

115. *Organized Crime Control: Hearings on S. 30 Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 145 (1970) (statement of Rep. Biaggi) [hereinafter *House Hearings*].

116. "[T]he compelled wait for the completion of criminal proceedings would result in pursuit of stale claims, complex statute of limitations problems, or the wasteful splitting of actions . . . ." *Sedima*, 105 S. Ct. at 3282 n.8.

117. See *supra* note 72; see also the American Bar Association report, reprinted in 115 CONG. REC. 6994-95 (1969) which opposed grafting strict antitrust requirements onto RICO:

[T]he use of antitrust laws themselves as a vehicle for combating organized crime could create



pensable, while indirect injury to one's competitive position would be. This requirement could be tantamount to denying standing to victims of prostitution enterprises altogether.<sup>118</sup> Given that the Mann Act is a predicate act, it would be strange indeed if injury for this predicate act were not recoverable, but injury to other predicate acts—those which by their nature result in competitive injuries—would be. Similarly, limiting the class of defendants to those with “organized crime” connections only in order to exclude legitimate business would pose similar problems, making the act unenforceable if not unconstitutional.<sup>119</sup>

While congressional concern over the harassment of legitimate businesses may be reasonable, it should not override civil RICO's primary purpose of fighting organized criminal activities and of providing a private right of action for victims.<sup>120</sup> Congress passed the civil provisions because it believed them to have “greater potential than that of the penal sanctions,”<sup>121</sup> and to be “more promising.”<sup>122</sup> One senator even saw the criminal sanctions as “an adjunct to the civil provisions.”<sup>123</sup>

To balance these two concerns of empowering victims of criminal activities and protecting legitimate businesses from harassment, this Note proposes the following changes. Removing pejorative connotations by deleting the label “racketeer” would be a good start in accommodating business concerns. The fraud provisions could also be limited to curb overuse by making fraud alone no longer sufficient; one of the two predicate acts would need to be something other than mail, wire, or securities fraud. This should be done without resort to a prior conviction or prior indictment requirement; although good for protecting businesses, this would be bad for fighting organized criminal activities. Some balance is needed, and to this end, Congress should not go beyond limiting the scope of those

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inappropriate and unnecessary obstacles in the way of persons injured by organized crime who might seek treble damage recovery. Such a private litigant would have to contend with a body of precedent—appropriate in a purely antitrust context—setting strict requirements on questions such as “standing to sue” and “proximate cause.”

*Id.* The ABA then recommended that “antitrust-type enforcement . . . [be] in a separate statute . . . [to avoid] a commingling of criminal enforcement goals with the goals of regulating competition . . . .” *Id.* RICO was adopted as an independent statute and not as part of the Sherman Act.

118. See *supra* notes 72–78 and accompanying text.

119. See Blakey, *supra* note 53, at 276 & n.119; Strafer, Massumi & Skolnick, *supra* note 80, at 671–72.

120. Blakey & Gettings, *supra* note 53, at 1042; see also *Sedima*, 105 S. Ct. at 3280 (“those who have been wronged by organized crime should at least be given access to a legal remedy”) (citing *House Hearings*, *supra* note 115, at 520) (statement of Rep. Steiger).

121. *Hearings on S. 30*, *supra* note 80, at 408 (statement of Deputy Attorney General Richard Kleindienst).

122. See *House Hearings*, *supra* note 115, at 327 (statement of Association of N.Y.C. Bar).

123. 115 CONG. REC. 6993 (1969) (statement of Sen. Hruska) (“civil provisions [considered] the more important feature of the bill”).

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provisions that most egregiously open up the floodgates for private RICO suits against legitimate businesses.<sup>124</sup>

Another approach that may accommodate business concerns without overly burdening the fight against organized crime is one implicitly suggested by the Court in *Sedima*. Justice White, in a footnote,<sup>125</sup> suggests that a “pattern” as defined in section 1961(5) requiring two racketeering acts within ten years should be more stringently construed. A finding of “pattern” should reflect evidence of a common continuous scheme in the way the two acts relate, each undertaken in more than a single isolated criminal episode.<sup>126</sup>

Courts before *Sedima* did not strictly interpret the “pattern” requirement,<sup>127</sup> and instead scrutinized the now obsolete requirement of “competitive” and/or “racketeering” injury. Proposals for a more narrow interpretation of the “pattern” requirement have been put forth since the *Sedima* decision.<sup>128</sup> Post-*Sedima* courts have also begun to place more emphasis on the “pattern” element.<sup>129</sup> While this proposal can be said to be simply a concoction of the Court with no clear basis in RICO’s legislative history<sup>130</sup> and potentially subject to its own set of difficulties,<sup>131</sup> it would not result in the same evisceration of civil RICO the way existing bills currently before Congress would.

This restricted definition of “pattern,” coupled with the proposed changes set forth in this Note, would leave intact the “private prosecutorial” powers envisioned in civil RICO and endorsed in *Sedima*. It would also leave intact *Sedima*’s mandate to allow recovery to private plaintiffs injured by the commission of the predicate acts. At the same

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124. See, e.g., Bradley, *supra* note 112, at 21 (businesses such as financial institutions, accounting firms, banks, securities firms, and other organizations such as AFL-CIO pushing for amendment of RICO; “less-moned groups” like Congress Watch, U.S. Public Interest Research Group opposing pending amendments).

125. *Sedima*, 105 S. Ct. at 3285 n.14.

126. *Id.*

127. Chepiga, Bookin & Khuzami, *The “Pattern of Racketeering Activity” Requirement After Sedima*, in *CIVIL RICO*, *supra* note 70, at 76–77 (authors found only one case whereby RICO claim was dismissed because predicate acts deemed not to constitute “pattern” of racketeering).

128. Proposal for amending the current definition of the pattern requirement by the National District Attorneys Association and the National Association of Attorneys General set forth the following: The two or more racketeering acts must be related to the enterprise, the acts must be related to each other, but at the same time not so closely connected as to constitute only a single transaction. *Id.* at 89–90. The Department of Justice also supports a stricter pattern requirement and suggests that the proposed amendment should not allow civil suits “based on a single criminal episode or transaction with only one victim.” *Id.* at 90. For a discussion of the American Bar Association recommendations, see *id.* at 93–94 (proposal focuses on relatedness and continuity requirements needed to establish pattern).

129. *Id.* at 91–93 (discussion of lower courts’ greater focus on the pattern requirement).

130. *Id.* at 96–98 (no requirement that predicate acts be related to each other in legislative history; only requirement that predicate acts be related to enterprise).

131. *Id.* at 98–101.

time, the proposal would still be sensitive to the concerns of legitimate business. It recognizes the need to close RICO's floodgate, only it proposes that attempts to restrict RICO's scope be steered in a different direction, and in a way which would preserve the utility of civil RICO in the fight against organized criminal activities.