Laying Hands on Religious Racketeers: Applying Civil RICO to Fraudulent Religious Solicitation

Jonathan Turley
LAYING HANDS ON RELIGIOUS RACKETEERS: APPLYING CIVIL RICO TO FRAUDULENT RELIGIOUS SOLICITATION

JONATHAN TURLEY*

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* Federal Judicial Clerk, United States Court of Appeals for the Fifth Circuit. J.D., Northwestern University School of Law, 1987; B.A., University of Chicago, 1983. I wish to thank Thomas Eovaldi for his encouragement at various stages of this research. The responsibility, however, for all theories and conclusions in this Article is entirely the author’s.
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"Thou shalt not defraud thy neighbor."\(^1\)

"[T]t happens to all good Christians, to Jesus and Paul and Dr. Falwell."\(^2\)

I. INTRODUCTION

In one television commercial, an American evangelist in Africa pulls back a blanket to expose a dead child being cradled in its mother's arms.\(^3\) In another commercial, a charity representative in Portugal is shown leading five children away from their mother, who cannot feed them. As the Portuguese mother goes into a seizure brought on by malnutrition, the church spokesman assures the television audience that this is not a staged event.\(^4\) In another commercial, a California preacher announces his divinely inspired "Dare to be Rich" religion that, among other things, guarantees believers a four-fold return on every dollar given to God—via the preacher.\(^5\) These are all examples of religious television solicitation, and in the United States this is big business. Every year an estimated two billion tax-deductible dollars are given to religious fund raisers.\(^6\) Of that sum, \$1 billion goes directly to support television ministries such as those run by Jerry Falwell, Pat Robertson, Jimmy Swaggart, Oral Roberts, and Robert Schuller.\(^7\) The remaining \$1 billion goes to smaller television ministries and an

\(^1\) Leviticus 19:13 (King James).

\(^2\) Pastor Carl Stevens, leader of The Bible Speaks, after being found guilty of "clerical deceit, avarice and subjugation" by a federal judge. Fisher, Controversial Church Group Resettles Near Baltimore, Wash. Post, Sept. 29, 1987, at A10, col. 5.


\(^4\) Id.


\(^6\) Ostling, TV's Unholy Row, Time, Apr. 6, 1987, at 60. Americans give \$18 billion to religious organizations annually. C. Bakal, Charity USA 85 (1979).

assortment of religious fund-raising charities, such as International Christian Aid, that solicit donations for relief programs and ministries abroad, often in Africa, Asia, and Latin America.8

Every year, potentially hundreds of millions of dollars are lost to religious fraud.9 Religious organizations use television to solicit funds for specific purposes such as African relief without any requirement, or apparently any desire, to verify their use.10 Many of the top televangelists11 and religious relief organizations12 have been accused of major fraudulent solicitation, although little actual

8. International Christian Aid and its president, L. Joe Bass, have repeatedly been accused of financial improprieties. See infra notes 57-58 and accompanying text.

9. Estimating how much fraudulent solicitation occurs is difficult because few cases are litigated. Nevertheless, considering the total amount of money involved, the potential numbers are staggering. In one solicitation by a Roman Catholic order, $20.4 million was raised in an 18-month drive for hungry children in Africa, but only $500,000, or less than 3%, was actually spent on the missions. Rakay & Sugarman, A Reconsideration of the Religious Exemption: The Need for Financial Disclosure of Religious Fund Raising and Solicitation Practices, 9 Loy. U. Chi. L.J. 863, 864 n.7 (1978). For additional facts on this solicitation drive, see infra note 92. Other organizations that collect millions of dollars annually have been accused of diverting the money from the advertised purposes. See infra notes 70-99 and accompanying text.

10. A number of top televangelists solicit funds for missions overseas. For example, Jerry Falwell at one time raised considerable amounts of funds ostensibly for such missions. Inability to account for the spending of these funds has prompted the continual concern of public interest groups. Woodward, The Churches vs. the State, Newsweek, Feb. 23, 1981, at 78 (discussing Falwell’s annual campaigns raising $50 million in unchecked funds).

11. For a discussion of the current top televangelists, see infra notes 33-45 and accompanying text. One expert in the area estimates that half of all televangelists engage in dubious solicitation techniques. Nightline: PTL Club Scandal Continues (2), at 5 (ABC television broadcast, Apr. 27, 1987) [hereinafter Nightline] (interview with Paul Roper, Operation Anti-Christ). Recently, one of the best-known fundamentalist broadcasters, Carl Stevens, was forced to sell all of his church assets to repay $6.6 million to a contributor. Fisher, supra note 2, at A10, col. 5. Operating mainly via satellite radio, Stevens ran The Bible Speaks, a fundamentalist church with 16,000 members in the United States and 23 other countries. Id. A federal bankruptcy judge found that Stevens had deceived a wealthy devotee into giving him money. In re The Bible Speaks, 73 B.R. 846 (Bankr. D. Mass. 1987), aff’d sub nom The Bible Speaks v. Dovydenas, 81 B.R. 750 (D. Mass. 1988). After selling his assets, Stevens relocated with an estimated 1,000 followers in Baltimore and has established an organization called Greater Grace. Fisher, supra note 2, at A12, col. 2. Stevens is somewhat ambiguous regarding his ministry’s ethical obligations. When asked recently “whether he teaches [his followers] that it is permissible to lie, Stevens said only that ‘the church has always had to defend itself against people who are against Jesus Christ. There’s no lying there.’” Id. at A12, col. 4.

12. Religious relief organizations include World Vision and International Christian Aid, which have both been accused of financial misconduct. See infra notes 95-99 and accompanying text.
litigation, private or governmental, has ever resulted. Governmental agencies face a number of legal and political disincentives in pursuing fraudulent religious solicitation and private citizens have few incentives for bringing action themselves.

This Article examines the various legal remedies available to combat religious fraud. Although much of the discussion will focus on television fraud, specifically top television ministries and religious relief organizations, the remedy advanced by this Article is equally applicable to any case of religious fraud regardless of the medium used for solicitation. In particular, the Article considers the possible use of the Racketeering Influenced Corrupt Organization (RICO) Act in prosecuting religious racketeers. The Article argues that RICO, designed originally for use in the fight against organized crime, can be used against religious organizations that use television to solicit funds fraudulently. In order to facilitate private suits, Congress set a low standard of proof for the required "pattern of racketeering," which is itself defined quite liberally. In addition, Congress offered RICO plaintiffs a generous incentive for bringing successful private suits against racketeers—attorney fees and treble damages. These and other incentives made civil RICO a powerful tool for "private attorneys general" and one that can be applied successfully in the area of religious fraud.

This Article shows why civil RICO promises to be a better deterrent than the current private and governmental remedies for religious fraud. The Article also argues that RICO can be changed to better deter racketeering in religious programming, by a modification in the way damages are measured. Under the current system, a victim of racketeering is awarded three times the value of the proven damages, or harm, resulting from a racketeering offense. This harm-oriented measurement of damages permits some inef-

13. The Article concentrates on the top televangelists and religious relief organizations because they represent a sizable share of the estimated $2 billion collected each year through radio and television solicitation. See Ostling, supra note 6, at 60. It is in radio and television solicitation that the danger of fraud is the greatest and the legal remedies the fewest. A person defrauded by a ministry in which he or she is active may have a number of possible contract and tort claims unavailable to a television contributor. See infra notes 112-21 and accompanying text.
15. Id. § 1961(5).
16. Id. § 19164(c).
fectiveness that could be eliminated by an alternative measurement approach that this Article calls "gains multiplication."

The gains multiplication approach to damages\textsuperscript{17} would require trebling a racketeer's gains from racketeering rather than trebling the harm to the victims. In the religious fraud context, this change would result in higher damage figures because profits made with fraudulently solicited funds would be included in the figure to be trebled. The value in this approach is its differentiation among racketeers based on their reliance on racketeering proceeds. The Article shows that the trebling multiplier is most useful in testing the reliance and thereby the reform potential of racketeering businesses. Although victims of religious fraud would be well served under either measure of damages, this Article argues that the gains multiplication method may be more effective at deterring religious racketeers who use their ill-gotten gains for even greater profits.

The Article begins with a short overview of the origins and present scope of religious fraud in the United States. Part II shows how religious groups borrowed from secular charities in developing television appeals and programming. Types of fraud—general solicitation fraud and goal-specific fraud—are considered in the context of recent cases of religious fraud. Part III addresses the various private and governmental remedies used against religious fraud. After showing how these remedies have failed to compensate the victims of religious fraud and to deter future fraudulent practices, the Article turns to the possible use of RICO by private parties. Part IV discusses the purposes and provisions of civil RICO. The Article shows how RICO functions to maximize penalties\textsuperscript{18} in awarding damages and thereby ruin racketeering enterprises. After showing how RICO supplies private parties with the incentive and the means for suing religious racketeers, the Article considers the alternative gains multiplication approach. The Article concludes


\textsuperscript{18} Penalty maximization, as applied in civil RICO cases, describes a system that works to drive damages as high as possible in order to force a racketeering business into insolvency. See generally Turley, supra note 17 (in which author developed this concept).
with an application of the gains multiplication approach to a number of cases of religious fraud.

II. RELIGIOUS TELEVISION SOLICITATION: SHOULD THE ELEVENTH COMMANDMENT BE ‘CAVEAT EMPTOR’?

In 1951, a New York charity dedicated to fighting cerebral palsy hit on a novel idea. The charity decided to hold its annual theatrical variety benefit show on television. Broadcasting from Carnegie Hall, this first “television fund-raising marathon” raised more money in one evening than the charity had raised the entire previous year. With that inaugural show, the charity “telethon” was born.\(^{19}\) Since this first telethon, television has become a financial bonanza for charitable and religious organizations. The relatively recent marriage between television and charity fund-raising has produced what has been called “one of the last great unregulated financial frontiers in America.”\(^{20}\) It has also produced a whole new problem for constitutional and administrative law scholars—religious fraud.\(^{21}\) Almost entirely free of any governmental regulation,\(^{22}\) religious organizations can collect unlimited funds for purposes ranging from ballooning Bibles over the Iron Curtain\(^{23}\) to

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19. Johnston & Leonard, supra note 3, at 3. The first telethon for United Cerebral Palsy raised $276,408, a sum that, although small by today's standards, was extraordinary at that time.\(^{\text{Id.}}\)
20. Id.
21. Only a few articles deal with religious fraud and then often only within the context of specific litigation or legislation. See Heins, “Other People’s Faiths”: The Scientology Litigation and the Justiciability of Religious Fraud, 9 Hastings Const. L.Q. 153 (1981); Rakay & Sugarman, supra note 9; Ryan, The Crumbling Wall Between Church and State: Attorney General Supervision of Religious Corporations in California, 9 Hastings Const. L.Q. 691 (1982) (discussing attempts, which the author views as unsuccessful, by the California legislature to regulate religious corporations); Comment, Diversion of Church Funds to Personal Use: State, Federal and Private Sanctions, 73 J. Crim. L. & Criminology 1204 (1982).
23. Johnston & Leonard, supra note 3, at 3. Rev. Peter Popoff, an ardent anticomunist minister, solicited funds to buy helium-filled balloons to carry Bibles and religious paraphernalia over the Iron Curtain. Id. Popoff, a faith healer, attracted national attention recently when a group that investigates religious healers charged that he used a hidden microphone during videotaping to receive critical information on particular audience members—leaving the impression that he was receiving information from a divine source. Dart,
buying religious books for the starving children of Indonesia.\textsuperscript{24} No regular official accounting of these donations is required and there is no legal requirement that religious organizations spend a minimum percentage of donations on the cause advertised.

With Americans spending an estimated $74 billion annually on charities worldwide, finding God can make extraordinarily good financial sense.\textsuperscript{25} State and federal officials readily admit that religious fraud is both profitable and virtually risk (and tax) free. "If I were a con man and wanted to make a lot of money," a California state official remarked, "I'd set up [a] scam and call it a religion. Then nobody can look at my books, and if people say I'm a crook, I'd just say, 'Stay out of my business; you're violating my rights under the First Amendment!'"\textsuperscript{26}

Religious television solicitation was a natural development after the tremendous success experienced by secular groups in charity telethons and fund-raising campaigns. Through early television charity drives, little-known diseases such as cerebral palsy and muscular dystrophy became household terms. United Cerebral Palsy, the fledgling group that launched the first telethon, is now a major charitable organization with a regular two-day telethon that grosses close to $20 million.\textsuperscript{27} Telethons, in fact, have been so suc-

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\textsuperscript{24} United States v. Gering, 716 F.2d 615 (9th Cir. 1983). For the details of this fraudulent scheme, see infra note 152. \\
\textsuperscript{25} Sontag, \textit{Assessing How Gifts to Charity Are Used}, N.Y. Times, June 29, 1985, at 52, col. 2 (citing a report by the American Association of Fund Raising Counsel). The broadcasting ministries have a solid financial base from which to draw support in a country in which an estimated 80 million people profess having a religious experience. \textit{Nightline}, supra note 11, at 6 (interview with Cal Thomas, syndicated journalist). Moreover, a 1984 survey found that 13.3 million people watch religious shows regularly. Ostling, \textit{Power, Glory and Politics}, Time, Feb. 17, 1986, at 62, 63. This represents 62\% of the national audience. \textit{Id.}
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Sixty-one million people spend some time watching these programs each month. \textit{Id.}

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\textsuperscript{26} Lindsey, \textit{Are Some Helping Hands Helping Themselves?} N.Y. Times, Jan. 20, 1985, at 8E, col. 3 (statement by unidentified California Deputy Attorney General). \textit{See also} Johnston & Leonard, \textit{ supra} note 3, at 3. "If you call yourself evangelical—whether you are or not—and you spend 96 cents of every donated dollar on big salaries, hotel suites, corporate jets and gold-plated Jeeps and only four cents go to feed people, it is absolutely legal and there's nothing we can do about it." \textit{Id.} (quoting Bob Burns, general manager of the Los Angeles Department of Social Services).
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\textsuperscript{27} Johnston & Leonard, \textit{ supra} note 3, at 3. Today the Cerebral Palsy telethon is one of the most high-tech productions of any charity. Hosted by John Ritter, CP's "Weekend With
cessful that even national governments have turned to television solicitation. In Argentina, for example, the government arranged a star-studded telethon to raise money for its war with England over possession of the Falkland Islands.\textsuperscript{28} Australia produced a similar government-run telethon to help finance its 1984 Olympic team.\textsuperscript{29} The potential of television religious programming and solicitation was not lost on religious leaders, particularly evangelical preachers.Accustomed to traveling from revival meeting to revival meeting, evangelical preachers saw television as liberating them from the crude limitations of the revival tent.\textsuperscript{30} In 1951, Billy Graham was the first to broadcast a religious program on television.\textsuperscript{31} In 1961, Pat Robertson established the first Christian television station.\textsuperscript{32} With these ventures, a new term, “televangelist,” entered the language. Since then, television ministries have sprung up on both the local and national level. The largest of these television ministries are those featuring the top religious personalities:\textsuperscript{33} Er-

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28. Id. Ironically, in the 1979 movie entitled Americathon, the President of the United States hosted a telethon to retire the national debt and save the country from bankruptcy. The actor who played the President was John Ritter, who is now the real host for United Cerebral Palsy’s annual telethon, “Weekend With the Stars.” \textit{Id.}

29. Id. Other unique causes include telethons for a heart transplant, for the legal fees of a sheriff accused of illegally laundering campaign funds, and for buying balloons to fly Bibles over the Iron Curtain. \textit{Id.}

30. Many of the early televised sermons were actually filmed in old revival tents. Ministers commonly referred to today as evangelical were once called “revivalists” because they travelled across the countryside conducting revival meeting featuring healings and fire-and-brimstone sermons. These revivalists often worked with local ministers, who received a percentage of the collection. The terms “born again” and “being saved” are generally attributed to these old revival meetings, which were often punctuated with glossolalia, or speaking in tongues. Sinclair Lewis’s book, \textit{Elmer Gantry}, featured a revivalist and the culture of the travelling revival show. S. Lewis, \textit{ELMER GANTRY} (1970).

This is not to suggest that television is an exclusively evangelical medium, of course. An estimated four million households tune into Mother Angelica of the Roman Catholic Church’s Franciscan order. Ostling, \textit{supra} note 25, at 69. Mother Angelica’s Eternal Word program broadcasts nationally four hours each night. \textit{Id.}

31. See Ostling, \textit{supra} note 25, at 62, col. 3. Rex Humbard began a weekly religious program two years later. \textit{Id.}

32. As legend has it, Pat Robertson began his Virginia station, WYAH, with $37,000 and one camera. Ostling, \textit{supra} note 25, at 66. This is a trivial sum of money in comparison with the $233 million that Robertson’s network earned in 1985. \textit{Id.} at 62.

33. The six television ministers with the largest audiences are Pat Robertson (16.3 million households reached monthly), Jimmy Swaggart (9.3 million), Robert Schuller (7.6 million),
nest Angley, Herbert W. Armstrong, Jim Bakker, Paul Crouch, Richard and Martin De Haan, Jerry Falwell, Billy

Jim Bakker (5.8 million pre-scandal), Oral Roberts (5.8 million), and Jerry Falwell (5.6 million). Id. at 67.

34. Angley is a televangelist who buys time on secular stations, broadcasting from his ministry in Akron, Ohio. Angley's style comes very close to that of the old-fashioned revivalist. He claims special healing powers and conducts healings on television and in revival meetings, primarily in the Midwest. He relies heavily on television solicitation, often using numbers from each day's readings to determine the size of the proper donation. Id. at 68-69.

35. Armstrong operated the Worldwide Church of God, a popular California evangelical ministry. Armstrong broadcasted on both secular and religious stations, usually once a week. Woodward, supra note 10, at 78. Armstrong was probably the only top televangelist who stressed apocalyptic messages that foretold the coming of the messiah and thus the end of the world. The California Attorney General recently took a more mundane interest in that ministry, attempting to take over financial control of the organization because of allegations of financial misconduct. See Comment, supra note 21, at 1219.

36. Bakker is the founder of the PTL (Praise The Lord/People That Love) Club. He was a minister of the Assemblies of God, the largest Pentecostal denomination. Following the recent scandals regarding his personal and financial affairs, Bakker was stripped of both his title as a minister with the Assemblies of God and control over the PTL Club. See infra notes 62-66 and accompanying text. PTL broadcasts daily on its own television station, the PTL Network, located in Fort Mill, South Carolina, and Charlotte, North Carolina. Ostling, supra note 6, at 61-62. Bakker has engaged in relief and general solicitations and is currently under investigation for fraud and financial misconduct. Craig, Falwell quits PTL, says Bakker may return, The Houston Post., Oct. 9, 1987, at 16A, col. 5.

Bakker built the PTL empire into the largest and most successful religious television ministry in the country, with a television program that reached 13.5 million homes daily and was carried on 178 local stations. Ostling, supra note 6, at 62. PTL also runs Heritage USA, the nation's third largest amusement park (after the two Disney operations), which includes a 500-room hotel, a 2500-seat church, a mall with 25 different stores, a 650-seat cafeteria, a new $100 million re-creation of the Crystal Palace, and a five-acre water park. Bakker, once thought to be ruined by the recent scandal, appears to be planning a comeback at either PTL or a new ministry. Craig, supra, at 16A, col. 1 ("Barring a miracle of God, Bakker will ultimately regain control of PTL") (quoting Falwell).

37. Crouch is a neo-Pentecostalist minister operating out of his California-based Trinity Broadcasting Network (TBN). Crouch's TBN reaches six million households on cable television with a broadcasting budget of $35 million. Ostling, supra note 25, at 67. Crouch has gained some notoriety for his hard-sell approaches to donations. In one show he reportedly announced that a widow had donated her life savings to the ministry. Id. Ostling quotes Crouch as saying, "I'm either the biggest fool and idiot and con man in the world or else I'm plugged into heaven." Id.

38. The De Haans and their colleague Paul Van Gorder broadcast their Day of Discovery nondenominational program to 153 cities regularly. Ostling, supra note 25, at 68. With a 1985 budget of $16 million for television broadcasting, this television ministry, based in Grand Rapids, Michigan, is a growing television force. The De Haans' ministry is more sedate than that of other televangelists. Id.

39. Probably the best known televangelist, Falwell is a fundamentalist minister who temporarily took control of the PTL empire from Jim Bakker. See supra note 36. Falwell first
attracted national attention in 1979 when he formed the Moral Majority, a political action
group dedicated to supporting a conservative political agenda, including stands against
abortion and advocating school prayer. Now renamed the Liberty Federation, Falwell’s or-
ganization includes its own Liberty Broadcasting Network, which carries his daily program
(Old Time Gospel Hour, Inc.) to more than 350 TV stations and 1.5 million cable subscrib-
ers. He also heads Liberty University, a fundamentalist college with 7500 students. The
Liberty Federation receives an estimated $100 million annually. Ostling, supra note 6, at 62.
Falwell currently does not use relief solicitation, although he used to raise approximately
$50 million a year for relief programs and missionary work. Woodward, supra note 10, at 69.

Falwell’s financial and power base grew enormously when Jim Bakker asked him to take
over PTL. PTL includes its own network, PTL Network, used by a number of other
televangelists. Falwell ultimately withdrew from PTL, but only after bitter public battles
with Bakker, a man he now calls “the greatest scab and cancer . . . in the past 2000 years of
the church.” Craig, supra note 35, at 16A, col. 2.

40. Graham is the grandfather of all televangelists. Although he no longer has his own
station and broadcasts only occasionally, he still commands an enormous national following.
Graham also carries the distinction of being the only top televangelist who is in good stand-
ing with the Washington-based Evangelical Council for Financial Accountability. Ostling,
supra note 6, at 67.

41. Kennedy runs a 7000-member church in Fort Lauderdale and spends $10 million an-
nually on television broadcasting. Ostling, supra note 34, at 63. A conservative Presbyterian,
Kennedy uses a more traditional religious approach, in sharp contrast to his fellow televi-
sion ministers.

42. Roberts is a charismatic United Methodist preacher, claiming both repeated conversa-
tions with God as well as the power to heal by laying on of hands. For a definition of such
terms as “charismatic,” see infra note 78. Roberts began as a revivalist in the 1940s and in
the mid-1950s began to televise his tent revivals. Since then the preacher has assembled an
impressive empire called the City of Faith, which has a reported annual income of $120
million. Located in Tulsa, Oklahoma, the City of Faith includes the 4500-student Oral Rob-
erts University and a new $250-million medical complex. Roberts broadcasts his syndicated
30-minute program on various religious stations. Roberts and his son reach an estimated 5.8
million households monthly. Ostling, supra note 25, at 66.

On January 31, 1987, Roberts announced that God had appeared to him at Roberts’s City
of Faith. According to Roberts, God told him that unless he raised $4.5 million by March 31,
1987, God would “call Oral Roberts home.” Money came flooding in, and the $4.5-million
demand was met. Roberts has engaged in other questionable solicitation appeals, including a
1980 appeal in which Roberts stated that he was awakened one morning by a 900-foot Jesus
who demanded that Roberts build his $250-million medical center and instructed him to
tell his television audience that through them—and their donations—God would work a miracle.
Ostling, supra note 6, at 63. Both Roberts’s viewers and donations have been dropping, with
a loss of 800,000 viewers since 1978. Id. at 66.

43. Robertson, also a candidate for the 1988 Republican presidential nomination, runs the
Christian Broadcasting Network (CBN), which at one time employed Jim Bakker, from his
Virginia Beach, Virginia, ministry. In 1986, CBN’s revenues reportedly reached $233 million,
a remarkable figure considering Robertson’s beginnings with a $37,000 television station in
Virginia in 1961. Ostling, supra note 25, at 62, 67. Robertson no longer appears regularly on
CBN because of his presidential campaign. The Robertson organization does not conduct relief solicitation drives, although it does use general television solicitation.

44. Schuller is a television minister operating out of Garden Grove, California. His organization features the "Crystal Cathedral," a 128-foot structure built for $18 million in 1980, mainly by private donations. Ostling, supra note 25, at 64. Schuller's weekly religious program, *Hour of Power*, reaches a reported 169 cities on a television budget of $37 million. Id. Schuller's ministry is renowned for its upbeat messages, as evidenced by the minister's various books bearing titles like *The Be-Happy Attitudes*. Id. Schuller has been accused by a former aide of falsifying information in relief solicitations. See infra text accompanying note 87.

45. Scott is a charismatic minister who heads the California-based Faith Center Church of Glendale. For definitions of technical terms like "charismatic" see infra note 78. Scott used to broadcast on his own channel, Channel 30, but the Federal Communications Commission (FCC) withdrew Channel 30's operating license in 1983. See infra notes 118-22 and accompanying text. Now Scott buys time on other networks. Johnston & Leonard, supra note 3, at 3, col. 1. The FCC brought but failed to prove charges of fraud and financial misconduct against Scott. A number of Scott's former associates, however, came forward to give testimony against the minister. See Scott v. Rosenberg, 702 F.2d 1263, 1266 (9th Cir.), cert. denied, 465 U.S. 1078 (1983).

46. A Pentecostal minister of the Assembly of God, Swaggart is probably one of the most controversial televangelists. He attracted national attention through his role in exposing the sexual misconduct of fellow Assembly of God minister Jim Bakker. Bakker and Swaggart are often viewed as polar extremes in style and message. Swaggart has never hidden his dissatisfaction with Bakker's Christian theme park, Heritage USA, and PTL's slick television operation. Swaggart is more of a traditional revivalist in character and philosophy. Centered in Baton Rouge, Louisiana, Swaggart appears nationally on the PTL Network, although Bakker has on a number of occasions barred Swaggart. Swaggart has drawn a great deal of criticism for anti-Catholic and antisemitic remarks. Ostling, supra note 6, at 63.

Jimmy Swaggart Ministries grossed an estimated $140 million in 1986. See Applebome, *Scandal Spurs Interest in Swaggart Finances*, N.Y. Times, Feb. 25, 1988 at 10, col. 2. Swaggart's Baton Rouge operation consists of a 270-acre complex, a new Bible college, a 15,000-square-foot printing and distribution center, a full television studio, and a separate radio recording studio. Ostling, supra note 6, at 63. Swaggart is currently the most active in missionary work, particularly in Latin America. Ostling, *Offering the Hope of Heaven*, Time, Mar. 16, 1987, at 69. Swaggart claims to have spent $8 million in El Salvador and Costa Rica alone. His popularity in Latin American countries, moreover, is growing with his investments. On a recent tour of Latin America, Swaggart filled Santiago's 80,000-seat National Stadium. Id.

The top televangelists alone account for more than $1 billion in annual contributions.47

Top television ministries often employ many of the gimmicks and sales tactics used in regular advertising campaigns. A former director of National Charities Information Bureau, a charity watchdog group, studied the solicitation techniques used in religious advertising and objected to the use of slick commercial pitches. “It’s a hype, a pitch,” he stated, “and they are doing a selling job, just the way car manufacturers are when they put some sexy person on an automobile hood and say ‘buy this car.’”48 Often large television ministries will “mine” an audience for new donors by encouraging people to write in for material or free gifts.49 Once these viewers send in their addresses, the ministry adds them to their mailing lists. People are more likely to donate money if their first interaction with a ministry is a free gift or pamphlet. Moreover, the one person in a hundred who does give money in a television appeal will give money again sixty-five to seventy-five percent of the time.50 Jerry Falwell can be seen regularly offering the faithful a free stamp-sized piece of celluloid containing the entire Bible, printed in microscopic type. Robert Schuller does the same with an offer of a free bracelet. Most of the top ministries follow suit with pamphlets and gifts designed to induce people to send in their names and addresses.51

47. Nightline, supra note 11, at 6 (interview with Frosty Troy, Editor, Oklahoma Observer). The remaining televangelists collect an estimated $1.5 billion. Id. Almost $500 million in annual contributions can be tied to five of the top televangelists. According to the Evangelical Council for Financial Accountability, Billy Graham, who does not have a regular television ministry, raises around $64.5 million in donations annually. Evangelical Council Report, supra note 7, at 1. Before his recent difficulties, Jim Bakker raised roughly $129 million annually in contributions and profits from his various PTL enterprises. Ostling, supra note 6, at 60. Jerry Falwell reportedly generates $100 million a year and Oral Roberts raises roughly $80 million. Id. at 62-63. In 1986, Jimmy Swaggart’s organization raised $140 million. Id. at 63.

48. Johnston & Leonard, supra note 3, at 3, col. 1. “They aren’t saying anything about the quality of the car, what’s under the hood; they are selling by glamorizing the product.” Id. (statement by M.C. Van de Worken, former executive director of the National Charities Information Bureau).

49. Id. “Many appeals you see on television are, in effect, prospecting for their direct mail operation. They are literally mining the TV audience to find new contributors.” Id. (statement by Tom Belford, Vanguard Communications).

50. Id.

51. Id.
Televangelists have also borrowed heavily from secular medical charity advertising. Secular charities, particularly the Muscular Dystrophy Association (MDA), have perfected the “pity approach” used extensively in religious relief commercials. For example, in 1981 Jerry Lewis’s Labor Day Telethon was criticized for its use of graphic, sometimes misleading pictures of children suffering from muscular dystrophy. Advocate groups for the handicapped objected to MDA’s depiction of people with muscular dystrophy as “childlike, helpless, hopeless, nonfunctioning and noncontributing members of society.”

MDA responded by changing its 1982 telethon format to include pictures of adults with muscular dystrophy. The result was a sharp drop in donations during the telethon, and not until two years later, after MDA returned to the earlier format, did donations begin to rise again to the 1981 levels.

Like their secular counterparts, most of the top television preachers conduct massive fund-raising drives on behalf of missionary work and famine relief in the Third World. These campaigns are often characterized by graphic pictures and urgent calls for help. The commercials at times personalize aid by asking for donations to help a specific child. Maurice Mosley, the head of

52. Id. “Many charities see the great success of Muscular Dystrophy, Easter Seals and Cerebral Palsy and say 'let's do it.'” Id. (statement by Harold Hoffman, president of Theater Authority, an entertainers' union coalition).

53. Id.

54. Id.

55. Id. “They went backwards, from pity to bad. . . . There appeared to be no attempt to present disabled people as active in society or having control over their own lives.” Id. (statement of Evan Kemp, executive director of the Disability Rights Center).

56. World Vision, the nation’s top relief organization in contributions, uses this method to help generate more than $237 million in contributions annually. Evangelical Council Report, supra note 7, at 17. See also Johnston & Leonard, supra note 3, at 3, col. 1 (reporting World Vision’s profits in 1984-1985 as $128 million). Under World Vision’s Child Care Partnership Program, contributors normally give a monthly donation of $14 to $18 to support a specific child. Actually, however, hundreds of contributors are receiving the same pictures and letters. Johnston & Leonard, supra note 3, at 3, col. 1. For a discussion of potential contracts remedies for contributors to the Child Care Partnership Program, see infra note 116. Jerry Falwell once solicited over $50 million a year for relief organizations, often using personalized appeals. In one case, he showed a picture of Vietnamese boat people in desperate conditions. Falwell made an urgent appeal to help the refugees, though the picture actually had been taken a year before. At least $4 million reportedly was raised, of which only $350,000 went to boat refugees. Nightline, supra note 11, at 3-4.
Priority One International, a Texas-based relief organization, takes special care to dramatize scenes of suffering in his solicitation drives. After unwrapping a dead child in one scene, Mosley turned to the camera and said, “Don’t wait . . . . Last night, 40,000 people died.” World Vision, the current champion of relief solicitation with $237 million in donations annually, uses similar tactics. World Vision’s studio backdrop is a stage set with clocks. Viewers are asked every three minutes to donate now because “time is running out.”

These state-of-the-art commercials seem to adhere to the rule that a charity can rarely be graphic enough. Joseph Campanella, host of International Christian Aid (ICA), knows this rule well. When filming a spot featuring five children being given up by their starving mother, Campanella was careful to remind the audience that the scene was not staged. When the sick mother fell into a convulsive seizure, he filmed her suffering as he flashed a toll-free number on the screen. Spots of this sort enabled ICA, which is now under investigation for possible fraudulent practices, to gross more than $33 million in 1983.

A. General Solicitation Fraud

All religious fraud can be condensed into a breach of a single promise. In soliciting funds, a television ministry or religious group holds itself out as a certain kind of organization, performing a service or following a belief that the viewer should support. A religious advertisement makes an implicit promise that it is soliciting funds for the purposes mentioned or alluded to in the commercial and not for any hidden agenda. Television solicitations can be either general or specific in nature. General solicitation involves fund raising for the support of the ministry itself. This type of solicitation is analogous to the neighborhood Sunday collection plate.

57. Johnston & Leonard, supra note 3, at 3, col. 1. Established in 1980, Priority One International is a relatively young evangelical ministry with an annual income of roughly $1 million, all of which comes from contributions. EVANGELICAL COUNCIL REPORT, supra note 7, at 139. Priority One has its own nationally syndicated television specials and claims to have missions in twenty countries. Id.
59. Id.
60. Id.
Some preachers stress continual monthly pledges to finance their ministry. Others use numbers from the daily scripture reading to determine that day's desired contributions. Regardless of the tactic used, however, general solicitations make no specific promises about how the money will be spent, beyond stating that it will be used to support the ministry.

Fraudulent general solicitation can involve either the use of donations for purposes outside the proper functioning of the ministry or the simple misrepresentation of the ministry itself. The former type of fraud, involving the improper use of church funds, is often publicized in scandals disclosing extravagant spending by religious leaders or their organizations. Allegations of this type of fraud have been made against Jim and Tammy Bakker, the dethroned hosts of the popular PTL show. The Bakkers used their television ministry to assemble the $129-million-a-year PTL empire. PTL was rocked by a series of charges involving Jim Bakker's alleged heterosexual and homosexual trysts. In one case, PTL allegedly paid more than $265,000 in church funds to suppress the episode before it became public. New evidence also suggests that the Bakkers received $4.8 million in salary from 1984 to 1986 despite

61. Some ministers demand something more substantial. Kenneth Copeland, head of Fort Worth's Eagle Mountain Chapel, reportedly asks viewers to donate a tenth of their annual income, an approach used by some top television ministries. Ostling, supra note 25, at 69. Ostling quotes Copeland responding to the question of tithing by saying, "Yes, yes, yes! A thousand times yes! I want to get healed. I want to get well. I want to get money. I want to get prosperous!"

62. Ernest Angley often employs this type of solicitation. See supra note 34. Jim Bakker's PTL Club used a variety of solicitation methods, including its very successful "lifetime partner" program. Under this program, PTL followers could donate $1000 in exchange for three nights free lodging every year for life at PTL's Christian theme park, Heritage U.S.A. Craig, supra note 36, at 16A, col. 4. Approximately 120,000 people signed on to the program, far in excess of what Heritage U.S.A. could reasonably handle. Ostling, Enterprising Evangelism, TIME, Aug. 3, 1987, at 52. The ministry raised $108 million through this program. Id.

63. This Article concentrates on the use of church funds for personal enrichment as a problem of fraudulent solicitation rather than one of embezzlement or financial misconduct. The promise that money will go to a ministry or for a religious purpose serves as the basis of the fraudulent predicate acts under civil RICO. See infra notes 192-96 and accompanying text.

64. Ostling, supra note 6, at 60.

65. Id. at 62.

66. Id. at 62-63. See also The Jessica Hahn Story, PLAYBOY, Nov. 1987, at 83 (interview with Jessica Hahn discussing her dealings with PTL to receive the $265,000); Nightline, supra note 11, at 4.
Bakker's assurances to his viewers in 1985 that his net worth a few years earlier "came out to be 15,000." While at PTL, the Bakkers also purchased "$700,000 worth of real estate and luxury cars, including a $404,000 home." Other top preachers face similar charges of misusing church funds. Oral Roberts, for example, who has a syndicated thirty-minute program that reaches 210 stations and raises an estimated $88 million a year, has come under attack for using church funds to buy such items as a $2.5-million home in Beverly Hills. Nevertheless, these types of transactions are different from embezzlement of church funds. Instead these cases involve uses of church funds that are known and condoned by church leaders, though often these leaders are loyal followers or even family members of the televangelist.

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68. Ostling, supra note 6, at 64. The Bakkers have been accused by another televangelist, John Ankerberg, of "diversion of funds." Brand, supra note 67, at 82. The Bakkers' assets reportedly include four condominiums, homes in California and Tennessee, and two Mercedes-Benz automobiles. Watson, Heaven Can Wait, NEWSWEEK, June 8, 1987, at 59.

69. Nightline, supra note 11, at 5 (interview with Paul Roper of Operation Anti-Christ). Oral Roberts's home is actually in his church's name, although this legal distinction has been challenged by a leading watchdog group in the area. Id. Other television ministers have similar arrangements. Pat Robertson, for example, lives in a church-owned $420,000 mansion. Ostling, supra note 25, at 65.

70. A number of leading ministers have been prosecuted as embezzlers for diverting church funds into secret or personal accounts. A good example is Father Carcich of the Pallotine Fathers of Baltimore, who pleaded guilty to, among other things, diverting relief funds into private bank accounts. See infra note 85. Similar charges have been made in cases such as that involving the Worldwide Church of God, in which members alleged that church leaders were diverting huge sums of money for personal use. Lauter, Are Churches Under Attack?, N.A.R. L.J., Nov. 2, 1981, at 1, col. 1. See Worldwide Church of God, Inc. v. California, 623 F.2d 613, 614 (9th Cir. 1980); Comment, supra note 21, at 1219. The leaders of International Christian Aid have been accused of diverting money to Swiss bank accounts. Lindsey, Religious Group Facing Inquiries On Ethiopia Aid, N.Y. TIMES, Jan. 13, 1985, at L14, col. 1. See also Founding Church of Scientology v. United States, 412 F.2d 1197 (Ct. Cl. 1969), cert. denied, 397 U.S. 1009 (1970) (holding that the founder of a church is not entitled to income tax exemption because a portion of the earnings was diverted for his personal enrichment).

71. The PTL controversy increased public scrutiny of the use of church funds for the personal benefit of a minister. In addition to a salary that reached $638,112 in 1983, Jim Bakker enjoyed a $390,000 condominium in Highland Beach, Florida, among other church-supplied perks. Ostling, supra note 62, at 52. The condominium was also furnished by PTL at a cost of $202,566. Id. Reportedly, Jim Bakker also received more direct financial assistance, such as a $76,000 interest-free loan from PTL. Id.
Another form of general solicitation fraud occurs when contributions are solicited for a ministry that is a sham or substantially different from what it purports to be in its television spots. A good example of this type of fraud is the now-defunct Church of Hakeem.\textsuperscript{72} Headed by Hakeem Abdul Rasheed (a.k.a. Clifford Jones), the Church of Hakeem advanced the belief that material desires could be achieved through introspection and faith in God. A central tenet of the Church of Hakeem was "the law of increase, or the law of cosmic abundance, which provided that if one gave freely one would receive returns greater than the initial gift."\textsuperscript{73} The Church began a "Dare to be Rich" program that promised contributors an "increase of God" amounting to four times their donations.\textsuperscript{74} God, the Church promised, would give contributors four-fold their money at rates calibrated to the amount of their donation. For example, a donation of $249 would be increased in 70 days whereas a donation of $1,000,000 would take God at least three years to increase.\textsuperscript{75} These cycles, Rasheed explained, were tied to different levels of consciousness, the lower figure representing a level of consciousness that had transcended greed and thus could be increased sooner.

The IRS had another explanation. It identified the "Dare to be Rich" program as simply a "ponzi" or pyramid scheme. Instead of investing with divine supervision as he promised, Rasheed would actually give contributors four-fold their money by shifting funds

\textsuperscript{72} See United States v. Rasheed, 663 F.2d 843 (9th Cir. 1981).
\textsuperscript{73} Id. at 845.
\textsuperscript{74} Id. Oral Roberts has at times used a similar approach in his "Seed-Faith" messages. Roberts tells his followers that donations to God, through Roberts, will be repaid financially as well as spiritually. Galloway, Worldliness or Godliness, Chicago Tribune, June 21, 1987, § 5, at 7. As biblical support for this promise, Roberts cites 2 Corinthians 9:6, in which Paul assures Christians that those who bountifully sow their seeds shall "reap also bountifully." Id.
\textsuperscript{75} Rasheed, 663 F.2d at 846.
around. Early donors with smaller contributions, therefore, received part of the money Rasheed was receiving from later contributors. In the meantime, he bought a number of strictly earthly possessions, including a $900,000 yacht and a $100,000 Rolls Royce. The Church of Hakeem is an example of fraudulent general solicitation because contributors were led to believe that Rasheed was investing their money and that the increases were the result of divinely guided investment.

B. Goal-Specific Solicitation Fraud

Fraud also occurs with funds raised for a specific stated goal of the ministry. This goal can range from money for a new television antenna to, in the most extreme case, paying God's stated price for letting a minister live. In the last decade, however, a particular kind of goal-specific solicitation has become commonplace in television ministries and solicitations. Religious organizations, particularly fundamentalist, evangelical, and Pentecostal ministries, have organized drives for missions and relief projects abroad. Most of the top televangelists raise funds specifically for work in Africa,
Latin America, and parts of Asia. Other large protestant and main-
line churches have similar mission and relief programs. Most of
these relief programs are legitimate and send the bulk of their con-
tributions to the programs and missions advertised. Last year, a
record 67,242 American protestants took part in missions abroad,
financed by an estimated $1.3 billion in donations.

Televangelists became deeply involved in relief drives in the
early 1970s. Of the top televangelists, Jimmy Swaggart is probably
the most active in missionary work. Swaggart claims to have
spent more than $8 million in El Salvador and Costa Rica alone
and makes frequent (and popular) trips to Latin America. Although
the televangelists insist that they are sending relief dona-
tions to their advertised destination, there is no way of confirming
these statements. Only one top televangelist, Billy Graham, regu-
larly discloses financial records to the Evangelical Council for Fi-
nancial Accountability (EFCA), the leading monitoring group for
televangelists. Moreover, top evangelists and religious relief or-
ganizations are increasingly being accused of diverting donations
from their advertised use or sending only a small fraction of the
donations received. Jimmy Swaggart Ministries, for example, has
been accused of diverting funds raised to feed hungry children.
Likewise, Jerry Falwell has been accused of raising $6 million for
refugees in northern Thailand but sending only $150,000 to the
refugees. Tens of millions of dollars raised through relief drives

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82. Ostling, Protestantism's Foreign Legion, Time, Feb. 16, 1987, at 62. The largest protes-
tant mission program is run by the Southern Baptist Convention. In 1987, 39,309 protes-
tants were engaged in long-term mission commitments and an additional 27,933 protestants
were involved in short-term mission commitments. In comparison, the Roman Catholic
Church sponsors only 9124 missionaries. Id.
83. Ostling, supra note 46, at 62.
84. Id.
85. EVANGELICAL COUNCIL REPORT, supra note 7, at 1. World Vision also makes annual
disclosures to EFCA. Id. at 17. Another organization the National Religious Broadcasters
Association (NRBA), recently released new financial disclosure rules for religious broadcast-
9, col. 4. Twenty-five percent of religious broadcasters, however, are not members of the
NRBA. Id.
86. Applebome, supra note 46, at 10, col. 1.
87. Nightline, supra note 11, at 3 (statement of Dr. Michael Korpi, former Falwell
cameraman).
may have been siphoned off for use in other areas of various ministries, and in some cases, organizations may simply have failed to send any of the relief donations abroad.\textsuperscript{88}

Moreover, when abuse does occur it is not always committed by fringe or evangelical groups. One of the more substantial cases of deceptive relief solicitation involved the Roman Catholic Church. In 1974 and 1975, the Pallotine Fathers of Baltimore raised $20 million in contributions to be used to support Pallotine missions in underdeveloped countries around the world. In 1976, however, it was disclosed that the Pallotine Order had spent less than four cents of every dollar on its missionary work.\textsuperscript{88}

Several other top televangelists have been accused of diverting relief donations. Jim and Tammy Bakker are currently under investigation for possible diversion of church funds for personal or unadvertised uses.\textsuperscript{90} Robert Schuller has been accused of similar deceptive practices, including the use of blatantly false advertising. A few years ago, Schuller began a campaign for helping the spiritually and physically starved people of China. Schuller's organization published a letter from the minister standing in front of the Great

\textsuperscript{88} Although prosecutions are rare, diversion cases are occasionally litigated. See infra note 152. Often, questions of diversion are raised simply by ambiguous or misleading solicitations. The former appears to have occurred in at least one Feed The Children program. During one television drive, viewers were exposed to a litany of horrible pictures and urgent appeals for contributions. In contrast, viewers reportedly did not get a great deal of exposure to the organization itself, which is part of the Larry Jones Evangelistic Association. Sontag, supra note 25, at 52, col. 2. According to reports on Feed The Children, only 31\% of the contributions went to "child care," whereas at least some of the money went toward "relief, development evangelism," and "education programs." Id.

\textsuperscript{89} Wilson, supra note 81, at A19, col. 1. See Rakay & Sugarman, supra note 9, at 864 n.7. The Order solicited the funds through the use of a sophisticated mail campaign that showed pictures of starving children. The campaign lasted for eight months. The head of the charity drive, Very Reverend Guido Carcich, pleaded guilty to mishandling $2.2 million of the funds raised for the benefit of overseas missions and was sentenced to 18 months probation. Carcich used the money for business deals, loans, and even gifts to friends. One such gift of $42,000 was diverted to then Governor of Maryland, Marvin Mandel, to help pay for Mandel's divorce settlement. Weeding Out Clergymen Who Go Astray, U.S. News & World Rep., Oct. 2, 1978, at 63.

Another Catholic priest faced similar charges in Boston. Monsignor Walter Leach solicited $1.3 million under a fictitious organization called the Swedish Mission Fund. Id. at 64. In yet another case, the late Cardinal John Patrick Cody of Chicago was investigated for diverting church funds, including making gifts to a long-time friend. Lauter, supra note 70, at 16, col. 2.

\textsuperscript{90} Craig, supra note 36, at 16A, col. 2.
Wall of China. Schuller praised his supporters for sending him to China and encouraged them to continue to help the relief program. He stated that he had had a number of highly successful meetings with Chinese "personalities" whose names were supposedly kept confidential to protect them from persecution. However, an aide to Schuller during the drive, which raised $1.6 million, recently revealed that Schuller had actually composed the letter in the aide's living room in the United States, and that the picture of Schuller at the Great Wall was taken in a studio in the United States.\footnote{Nightline, supra note 11, at 3 (interview with Reverend Timothy Waisanen, former Schuller aide). In his letter, Schuller wrote, "I am writing to you today from Peking, China. The Impossibility Thinkers were wrong. I am here! I cannot give you any details of my conversations with the leading Chinese personalities. I must honor their privacy." Id. (emphasis in original). Waisanen stated that he watched Schuller dictate this letter in his Orange, California, living room. Id.}

Similar charges have been leveled at other leading televangelists\footnote{According to some reports, the government remains interested in one recent goal-specific solicitation drive by the Bakkers. In 1986, the Bakkers conducted a one-month drive for funds to build a home for handicapped children. Although $3 million was raised for the home (Kevin's House), "today only two youngsters live there." Ostling, supra note 60, at 52.} and relief organizations such as International Christian Aid (ICA) and World Vision. World Vision, the largest Christian television fund-raising organization, repeatedly has been accused of making misleading solicitations and employing suspect accounting practices.\footnote{Johnston & Leonard, supra note 3, at 3, col. 1. World Vision was established in 1950 by Dr. Robert Pierce to provide care for Korean orphans. The organization last reported an income of $237 million, of which $236 million came from donations. EVANGELICAL COUNCIL REPORT, supra note 7, at 17.} With $237 million in annual donations, World Vision has started a number of subsidiary groups, such as Black American Response to the African Crisis, that reportedly are simply fronts for the main organization.\footnote{Id.} World Vision has even used the programs of other relief organizations to generate contributions for its own organization.\footnote{In early 1980, Operation California, a California relief organization, aired a three-hour telethon featuring various musical acts. At the end of the program, Operation California made a 17-second appeal for donations. Immediately following that appeal, however, World Vision aired its own toll-free number for contributions. Many viewers mistakenly sent money to that number rather than to Operation California. Recently, Stanley S. Mooneyham, President of World Vision, gave Operation California a $250,000 donation to end the matter. Johnston & Leonard, supra note 3, at 3, col. 1.} ICA has come under attack as well. In 1984,
ICA ran forty-nine commercials on Cable News Network appealing for donations to help its relief efforts in Ethiopia. There is no evidence, however, of any ICA program in Ethiopia.

The State Department claims that both ICA and World Vision systematically overstate the gravity of the situation in particular countries during their programming. Yet because of their quasi-religious character, these organizations, like those of the televangelists, are left largely unregulated. As the next section will show, past private and governmental court action against fraudulent religious organizations has largely been ineffectual for legal as well as political reasons.

III. Private and Governmental Remedies for Religious Fraud

The potential rewards for defrauding the faithful are great and the disincentives few. Because of the country's tradition of religious freedom, religious organizations are the least regulated corporations in our society. Public and judicial opposition to governmental interference with religious organizations has remained consistently high ever since Thomas Jefferson called for "a wall of separation between church and state."

Past attempts by states to curb fraudulent or deceptive religious practices have faced opposition in both the courts and the legislatures. Although the Supreme Court has refused to let religious organizations hide behind the first amendment to avoid "punishment of acts inimical to the peace, good order and morals of society,"

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96. Id.
97. ICA raised millions of dollars for children in East Africa. When asked about their program, ICA officials claimed that they had worked through a French organization, Doctors Without Borders. Doctors Without Borders insists, however, that ICA has never sent it "one centime" for aid. Lindsey, supra note 68, at L14.
98. Johnston & Leonard, supra note 3, at 3, col. 1. Arthur Dewey, head of the State Department's Bureau of Refugee Affairs, called in the ICA spokesmen to ask that the organization stop broadcasting out-of-date figures and misleading stories on the situation in some African countries. According to Mr. Dewey, ICA's representatives responded by accusing him of being "soft on communism." Id.
100. Davis v. Beason, 133 U.S. 333, 342 (1890). The Court also stated, "However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation." Id. at 342-43. More recently, the Court has noted:
it has traditionally taken a dim view of state regulation of religion. The Court has been particularly responsive to claims by religious groups that state regulation of solicitation favors one religion or type of religion over another. Such was the case in Larson v. Valente, in which the Court struck down a Minnesota statute that placed mandatory reporting requirements on religious organizations. Under the law, religious organizations were required to register with the state and report their annual collection and administration of all contributions. The purpose of the statute was to protect against fraudulent practices in the solicitation of contributions. In drafting the statute, however, the Minnesota legislature expressly exempted all religious organizations that received more than half of their total contributions from members or affiliated organizations. The Holy Spirit Association for the Unification of World Christianity (Unification Church) challenged this fifty-percent rule. Led by Reverend Sun Myung Moon, the Unification Church charged that one of its central forms of religious expression was “door-to-door and public-place proselytizing and solicitation of funds to support the Church.” The Court agreed and held that the Minnesota statute favored mainline churches

Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. Certainly penal laws are available to punish such conduct. Even the exercise of religion may be at some slight inconvenience in order that the State may protect its citizens from injury. Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.


101. The Court has long held that a state can forbid a religious activity only when it “pose[s] some substantial threat to public safety, peace or order.” Sherbert v. Verner, 374 U.S. 398, 403 (1963); see also Larson v. Valente, 456 U.S. 228 (1982) (mandatory reporting of contributions for religious organizations receiving more than 50% of their contributions from nonmembers struck down as unconstitutional).


104. Id. at 231.

105. Id. at 230-232.

106. Id. at 234.
and thus violated the establishment clause of the first amendment.\textsuperscript{107}

Although the holding in \textit{Larson} does not bar future nondiscriminatory state reporting requirements, such state regulation would be highly controversial at the state and local levels. California's attorney general's office can attest to this fact after its unsuccessful suit against the Worldwide Church of God.\textsuperscript{108} In 1977, the California Attorney General brought charges against the church on behalf of six church members who alleged that large sums of church funds were being diverted by church leaders for personal benefit. After the charges were made public, a statewide petition drive was launched to enact legislation barring such suits. The California legislature bowed to public pressure and prohibited future suits of that kind.\textsuperscript{109} In passing the bill, one state legislator explained that "[i]f we have a choice of keeping the state out of the legitimate affairs of churches, or to let some charlatans get away with fraud, I'd rather do the latter."\textsuperscript{110}

Without state mandatory reporting laws and civil remedies for religious fraud, citizens and government officials must rely on existing legal sanctions from collateral areas such as tax, federal licensing, and mail fraud statutes. Although use of these sanctions has met with some success, their limited usefulness in combating religious fraud is easily apparent.

\textbf{A. Private Enforcement}

Few cases involve private action against religious organizations for deceptive or fraudulent solicitation. The so-called "Scientology cases" are probably the best known private actions against a religious group.\textsuperscript{111} These cases involved former devotees of L. Ron

\textsuperscript{107} Id. at 255.
\textsuperscript{108} Worldwide Church of God, Inc. v. California, 623 F.2d 613 (9th Cir. 1980).
Hubbard, the founder of Scientology, or Dianetics. Scientology is based in part on a practice called auditing, a process during which a member talks about his or her problems with an auditor while holding cans connected to a "Hubbard Electrometer," which measures an individual's skin responses.\textsuperscript{112} Scientologists claim that a person can cure emotional and spiritual problems through auditing. Former members claimed that Scientology leaders promised them certain benefits, such as increased IQs, better career opportunities, and improved eyesight, that never materialized.\textsuperscript{113} Suits by ex-Scientologists, alleging breach of contract and fraud, have been brought for damages in the millions of dollars.\textsuperscript{114}

Contractual arguments are strengthened by tax decisions that define tax-deductible contributions as payments made "for detached and disinterested motives."\textsuperscript{115} The IRS has denied tax deductions in cases of religious contributions that are made not as "voluntary transfers without consideration, but . . . with the expectation of receiving a commensurate benefit in return."\textsuperscript{116} Contributions made to religious that promise specific benefits thus are treated as a commercial transaction and not as a gift under the tax code.\textsuperscript{117}

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112. A Hubbard Electrometer is really a skin galvanometer that an individual operates by holding two cans while being monitored by an auditor. If the Hubbard Electrometer shows a stable reading, the individual is considered successful in overcoming a particular problem. For a description of Scientology and its methods, see Heins, \textit{supra} note 21, at 156-57.

Another organization, the Church of the New Civilization, uses the same or similar methods. See Religious Technology Center v. Wattersheim, 796 F.2d 1076 (9th Cir. 1986), \textit{cert. denied}, 107 S. Ct. 1336 (1987) (rejecting the Church of Scientology's trade secrets argument to enjoin the Church of the New Civilization from using allegedly stolen Scientology materials).

113. \textit{Id.}

114. In \textit{Van Schaick}, a plaintiff unsuccessfully sought $200 million in damages as well as attachment of church real estate and receivership over church assets. Heins, \textit{supra} note 21, at 156-57. For a discussion of this case, see \textit{infra} note 200.

115. \textit{See, e.g.}, Graham v. Commissioner, 822 F.2d 844, 848 (9th Cir. 1987).


117. Graham, 822 F.2d at 849.

If a transaction is structured in the form of a quid pro quo, where it is understood that the taxpayer's money will not pass to the charitable organization unless the taxpayer receives a specific benefit in return, and where the taxpayer cannot receive the benefit unless he pays the required price, then the transaction does not qualify for [tax deduction].
The Scientology cases, however, are of only limited use to private citizens who have been defrauded by religious television solicitations. These past suits alleged specific promises made in attracting new members and involved direct, long-term relationships. The contractual arguments in these cases were based on clear verbal and written promises made by the church in return for contributions and participation in auditing sessions. Conversely, citizens deceived by televangelists have made gifts to their churches without any consideration in return. Often, little is said about specific programs, and many times contributions are solicited to support the ministry in general. Although some contractual questions are raised by these solicitations, reliance on contractual theories for recovery is highly problematic. Similarly, without proof of emotional distress or direct personal injury from a fraudulent solicitation, tort remedies are largely useless. The only private actions brought against churches for fraudulent solicitation involve very special solicitation schemes. In suits against the Church of Hakeem, for example, citizens sued for the money they “invested” in the pyramid scheme. They were able to allege contractual violations and civil fraud because they were individually promised four-fold returns on their money.

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118. See id. at 847.
119. An interesting contractual issue is raised by World Vision’s Child Care Partnership Program. See supra note 56. World Vision accepts monthly contributions for specific children. There are indications, however, that contributions actually go into a large central fund and that a number of patrons receive pictures of the same child. Johnston & Leonard, supra note 3, at 3, col. 1. World Vision and similar organizations could be viewed as agents in such programs, bearing contractual and quasi-contractual responsibilities. Similar questions are raised by relief drives such as Feed The Children, in which the Larry Jones Evangelistic Association solicited funds by stressing that “$15 will feed a family for one month and . . . $50 will buy 10 blankets.” Sontag, supra note 25, at 52, col. 2. The organization reportedly never fully explained the nature of its mission nor the fact that only 35% of the funds went to “child care.” Id.
120. The most likely defendants in religious tort cases are faith healers who encourage the suspension of medical or psychological treatment. For example, after one service by faith healer Peter Popoff, investigators reportedly found “life-sustaining drugs discarded in trash cans . . . including insulin tablets, nitroglycerin and digitalis.” Dart, supra note 23. Popoff denies that he advocates total suspension of medical treatment. Id. See also Woodward, supra note 46, at 51, col.3 (Jimmy Swaggart considers psychological counseling “to be of the Devil”).
121. United States v. Rasheed, 663 F.2d 843 (9th Cir. 1981).
Nevertheless, the primary reason for the dearth of citizen suits is an absence of private litigation incentives. Most state remedies simply lack the potential damages that can sustain private citizens through a drawn-out litigation battle. For example, church members probably do have standing when alleging a church leader’s breach of fiduciary duties. Yet the benefits of such a suit would accrue to the organization as a whole and not directly to the individual plaintiffs. Accordingly, church members must sue televangelists for recovery of church funds spent for personal purposes under a derivative suit theory. Any incentive in doing so, however, would be purely spiritual and would offer little tangible support or reward for the difficult discovery, trial, and appellate process.

B. Governmental Enforcement

Federal and state officials have been more successful than private individuals in combating religious fraud, albeit on a limited basis. The Federal Communications Commission and the Internal Revenue Service are the primary government agencies involved in regulating religious racketeers. Both of these agencies control the lifeblood of television ministries—broadcasting rights and tax exemption—and in a few instances have successfully prosecuted fraudulent religious organizations.

1. The Federal Communications Commission: “Plugged into Heaven”

Religious organizations use the television airwaves in two ways. First, the larger religious organizations broadcast weekly or daily religious or relief programming. Some of these televangelists actually operate their own television networks. Second, some televangelists share network time for shorter religious program-

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See also Comment, supra note 21, at 1211.
123. Comment, supra note 21, at 1211.
124. Id.
125. Id.
126. For a good discussion of the number and variety of current religious programming and commercials, see W. Fore, TELEVISION AND RELIGION (1987).
127. Paul Crouch, Jerry Falwell, and Pat Robertson all operate their own networks. See supra notes 37, 38, 43.
RELIGIOUS RACKETEERS

ming and solicitation appeals. Relief organizations also buy commercial time on cable networks for their solicitation messages.

To some degree, the Federal Communications Commission (FCC) controls both religious television programming and commercial advertising. Although the FCC leaves the regulation of commercial advertising largely to the Federal Trade Commission and the discretion of the stations themselves, occasionally it has taken an interest in religious television programming and ministry solicitations. Thus far, the FCC has held hearings in a few cases of alleged religious fraud, usually involving fraudulent general solicitation. The most noteworthy case involved televangelist W. Eugene Scott, whose nonprofit church corporation, Faith Center, operated its own television station. Scott was renowned among televangelists for his aggressive donation solicitations, sometimes shaming noncontributors. After a five-year battle, the FCC revoked Faith Center's license after hearing allegations of Scott's improper use of church funds. Interestingly, however, the FCC's action denying the station its operating license was based not on the alleged fraudulent activities, which were never proven, but on Scott's refusal to cooperate with federal investigators.

The Scott affair illustrates the limited deterrent value of FCC action against televangelists. After losing the license for his own station, Scott simply bought time on other religious stations and continued his programming. Another practical limitation became evident in the 1982 FCC action against Jim Bakker. In that investigation, the FCC heard testimony of "serious misconduct, including substantial and material questions of fraudulent use of the airwaves, breach of fiduciary duty false testimony and corrupt influence of witnesses." Before the FCC could act, however, Bak-

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127. Finding a case involving FTC action against a religious advertiser is difficult. The political and legal problems involved in analogizing a religious enterprise to a commercial product may explain the FTC's apparent reluctance to pursue religious fraud.
129. Id.
130. Scott v. Younger, 739 F.2d 1464 (9th Cir. 1984).
132. Id.
ker circumvented a proposed FCC sanction by transferring the television station to a religious foundation which in turn agreed to pay $1.4 million of Bakker's debts.\footnote{Brown, TV License Decision Sparks Angry Dissent at FCC, Wash. Post, Dec. 11, 1982, at A7, col. 1. Bakker sold the Canton, Ohio, station to anticommunist crusader Billy James Hargis. Ostling, supra note 25, at 69. After allowing Bakker to sell the station, the FCC voted to “forward relevant information to the Justice Department about [the] nonpublic inquiry into whether PTL . . . its principals or affiliates were involved in ‘fraud by wire, radio or television.’” Holsendolph, supra note 133, at 29, col. 1.} Bakker operates another television station in Fort Mill, South Carolina.\footnote{Ostling, supra, note 6, at 60.}

FCC action against televangelists remains a rarity. The FCC is hampered by its own administrative limitations. An FCC decision not to renew a license spawns years of costly litigation and investigation. For example, the FCC spent five years investigating and holding hearings on the Scott affair, and ultimately none of the charges of fraud were substantiated.\footnote{Johnston & Leonard, supra note 3, at 3, col. 1. See supra text accompanying notes 118-21.} The nonrenewal of Scott’s license on the grounds of failure to supply documents and records was a dubious victory. The FCC’s infrequent action against televangelists and the remote possibility of actual penalties seriously undermine the usefulness of FCC sanctions in combating religious racketeers.

2. The Internal Revenue Service: Rendering unto Caesar

The most successful governmental sanctions for religious fraud have come from enforcement of the Internal Revenue Code (IRC). Since early in the country’s history, religious organizations have been accorded tax-exempt status by state and local governments.\footnote{Rakay & Sugarman, supra note 9, at 865 n.11, 875-76.} In addition to the general community support for advancing religious beliefs, the basis for this tradition is largely the belief that taxing churches would raise serious constitutional problems with both the free exercise and establishment clauses of the Constitution.\footnote{Id. at 879.}

The Internal Revenue Service (IRS) can bring any of a number of possible sanctions against religious racketeers. First, it can charge church leaders with tax fraud for failure to report misap-
propriated funds. Second, it can sue church leaders for unpaid taxes on unreported income. Third, it can retroactively or prospectively revoke a church’s tax-exempt status. Unlike the FCC, the IRS has instituted a fair number of these suits and has seriously hampered numerous fraudulent religious enterprises.\(^{139}\) Using the charge of tax fraud to prosecute otherwise-protected criminals is nothing new, however. Mobsters such as Al Capone went to jail for the first time after the IRS proved that they had failed to report ill-gotten gains. The most famous religious leader to be prosecuted for tax fraud is probably the Reverend Sun Myung Moon, leader of the three-million-member Unification Church.\(^{140}\) In 1982, the IRS successfully showed that Moon had conspired to avoid taxes on $162,000 in personal income and sentenced him to prison.\(^{141}\)

The IRS also has charged a number of “mail order ministries” with tax evasion. Mail order ministries are churches established by ministers who are accredited for a small fee by a central accreditation church. The IRS has revealed how these “ministers” avoid taxes by obtaining mail order accreditation. New ministers often take a vow of poverty and give all their earthly possessions to their church. The church then pays all their expenses, tax free.\(^{142}\) In one case, Charles Kageler, an airline pilot, was sentenced to four years in prison and fined $5000 for his mail order ministry in which he claimed his home as a parsonage and his private plane as a church vehicle.\(^{143}\) Analogies may be drawn between the tax evasion found

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141. Lubasch, supra note 140, at 1, col. 3.


143. Comment, supra note 21, at 1213 n.38. These mail order ministries sometimes spring up to replace ministries that have been stripped of tax exemption by the IRS. In United States v. Dubé, 820 F.2d 886 (7th Cir. 1987), Reverend Dubé took a “vow of poverty” with the Life Science Church, which made him a tax-exempt minister for $500. Id. at 888 (the
in the Kageler case and the actions of televangelists who live in large estates at church expense. The IRS has treated mail order churches differently from other religious cases, however, and it has never brought a tax evasion charge against a major televangelist or large religious group.\footnote{144}

Another sanction used by the IRS is the revocation of a church’s tax-exempt status. Revocation can be the death knell for a religious organization, particularly a television ministry with high operating costs. The IRS has used this sanction against churches in a variety of cases. The IRS found one church to be primarily a political rather than a religious organization.\footnote{145} Another church was found to be primarily a business rather than a religious enterprise.\footnote{146} On a larger scale, the IRS has also revoked the tax exemption of churches such as the Founding Church of Scientology for using church funds for the personal enrichment of church leaders.\footnote{147}

Tax-exempt status is a near-essential prerequisite for most television ministries, which require this exemption to offset high pro-

\footnote{144. Although the IRS has never revoked the tax-exempt status of a large, main-line religious organization, it has denied tax exemptions to individual members of such organizations. \textit{E.g.}, Schuster v. Commissioner, 800 F.2d 672 (7th Cir. 1986) (privately employed Catholic nun subject to vow of poverty could not claim tax exemption for salary as health professional); Fogarty v. United States, 780 F.2d 1005 (Fed. Cir. 1986) (Catholic priest employed as college professor not entitled to claim tax exemption for salary even though all checks turned over to religious order pursuant to vow of poverty).}

\footnote{145. \textit{Christian Echoes Nat'l Ministry, Inc. v. United States}, 470 F.2d 849 (10th Cir. 1972), \textit{cert. denied}, 414 U.S. 864 (1973). Section 501(c)(3) of the Internal Revenue Code defines a tax-exempt organization as one “which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.” I.R.C. § 501(c)(3) (1982). Interestingly, this restriction has also been used against the Roman Catholic Church by pro-choice groups, which argue that the Church’s anti-abortion campaign should deprive it of tax-exempt status. \textit{See, e.g.}, \textit{Abortion Rights Mobilization, Inc. v. Baker (In re U.S. Catholic Conference)}, 824 F.2d 156 (2d Cir. 1987).}


duction costs. Jerry Falwell, for example, had to lay off 225 employees and temporarily cancel his programming because of higher expenses caused by a delay in getting tax exemption for his Liberty University in Lynchburg, Virginia. One televangelist is currently facing the possible revocation of his organization's exemption. After it became known that Jim Bakker and his wife Tammy drew $1.3 million in salary over a three-year period, the IRS began an investigation of his entire PTL enterprise. Recently, the IRS publicly acknowledged that it was considering a retroactive revocation of PTL's tax-exemption for a five-year period as a penalty. The IRS allows employees of charitable tax-exempt organizations to receive only reasonable salaries, and thus excessive salaries like those of the Bakkers and their aides might be grounds for a temporary punitive revocation of the organization's tax exemption. However, this line of argument for the IRS is fraught with subjective judgment regarding what constitutes a reasonable salary.

The IRS has also faced stiff public opposition to its occasional suits against religious organizations. The most severe public backlash came after the IRS revoked the tax-exempt status of Bob Jones University on public policy grounds because the school prohibited interracial dating. Recently, religious groups objected to new IRS rules requiring some religious organizations to reveal

148. Ostling, supra note 6, at 67. Probably the strangest case of a revocation of tax exemption is Zion Coptic Church, Inc. v. United States, 79-1 U.S. Tax Cas. (CCH) ¶ 9325 (S.D. Fla. 1979), in which the IRS forced a church group to pay more than $2 million in taxes for failing to report income earned from 33 tons of marijuana purchased by the church. Id.

149. Ostling, supra note 6, at 67. See also Ostling, supra note 62, at 52 (“the IRS believed the [PTL] organization did not operate exclusively for tax-exempt purposes and that part of its income personally benefited the Bakkers and others”).

150. Nightline, supra note 11, at 2. Emboldened by the PTL scandal, the IRS announced that it is conducting 25 audits of televangelist organizations. Merida, TV Preachers Vow to Police Selves, Dallas Morning News, Oct. 7, 1987, at 3A, col. 3. Nevertheless, IRS Commissioner Lawrence Gibbs insists that the IRS can do little because of congressional and judicial restraints. Id. See Ostling, supra note 25, at 64.


152. Given the size of the PTL empire, a salary the size of Bakker's is not clearly beyond the scope of reasonableness. Likewise, what constitutes reasonable fringe benefits raises difficult constitutional questions, particularly with large religious sects that actively lavish gifts on their leaders. See, e.g., Bhagwan Shree Rajneesh: Worldly Guru in the Western Wild, U.S. News & World Rep., Oct. 14, 1985, at 15.

153. Woodward, supra note 10, at 78. Bob Jones University, located in Greenville, South Carolina, is a fundamentalist school committed to a strict interpretation of the Bible.
more of their financial records before receiving tax-exempt status.\textsuperscript{154} With an estimated 340,000 churches not filing annual reports, the IRS insists that there is little it can do to combat religious fraud.\textsuperscript{155}

3. Political and Practical Problems of Governmental Deterrence

The problem with governmental suits against fraudulent religious organizations is evident in past FCC and IRS prosecutions. The FCC rarely has taken an aggressive stand against fraudulent programming, and when it has, the results have been disappointing. Even when the FCC revokes a televangelist's license, religious leaders can still purchase time on other religious television networks. The IRS has had more success than the FCC in prosecuting religious organizations, but its efforts have been directed largely against fringe religions such as the Church of Hakeem. For the IRS to redirect its efforts from mail order churches to a church the size of PTL (with 13.5 million viewers daily) will be difficult. The pending investigation of PTL will show how successful or daring the IRS can be in prosecuting televangelists. Nevertheless, the infrequency of prosecution and the even more infrequent impositions of penalties make the IRS more of an annoyance than a deterrent.

Federal and state governments have used legal tactics other than licensing and tax hearings in combating religious fraud. In California, the Attorney General's office moved against Herbert Armstrong's Worldwide Church of God under its authority over all charitable trusts, alleging that Armstrong was selling enormous amounts of church property at a loss in order to put church assets in a form that could be more easily appropriated by the individual defendants.\textsuperscript{156} Although this particular case was later dropped after public outcry, the charitable trust approach may be a legiti-

\begin{itemize}
\item[154.] The National Conference of Churches strongly opposes any additional mandatory reporting rule. \textit{Id.} Wilfred Caron, general counsel for the United States Catholic Conference, likens the IRS regulations to "slaying the whole herd to get at one supposedly sick calf." \textit{Id. at} 79.
\item[155.] Klott, \textit{supra} note 85, at 9, col. 4 (statement of Lawrence B. Gibbs, Internal Revenue Commissioner).
\item[156.] Comment, \textit{supra} note 21, at 1208-09.
\end{itemize}
mate avenue for governmental intervention. Under this approach, a state could ask for the imposition of receiverships, injunctions, and other remedies used in trust actions “based on the state's obligation to protect the public interest in situations where there is no individual capable of asserting the interest.” Nevertheless, this analogy to trusts is subject to a great deal of question and probably would not be a sufficient rationale in most jurisdictions.

State and federal governments have also instituted civil and criminal fraud actions against religious organizations. The federal government brought a fraud charge against a religious organization as early as 1917. In that case, New v. United States, the government charged Reverend New with religious chicanery, alleging that the religious leader

had no supernatural power or authority of any kind or character, but was an imposter, an heretic, a seeker of vainglory, a coveter of his neighbor's goods and his neighbor's wife, and was also a habitual indulger in each and every of the sins and practices he pretended to condemn.

A more recent example of a governmental fraud action against a church is United States v. Rasheed. The federal government charged Reverend Rasheed with six counts of mail fraud, in addition to other charges, for his “Dare to be Rich” program. The trial court concluded that Rasheed knowingly misrepresented his pyramid or “ponzi” scheme and convicted him on all six counts of mail fraud.

Governmental prosecutions for fraud, however, remain a rarity. Both state and federal agencies are noticeably reluctant to

157. Id. at 1209.
158. Id. at 1210.
159. 245 F. 710 (9th Cir. 1917), cert. denied, 246 U.S. 665 (1918).
160. Id. at 713.
161. 663 F.2d 843 (9th Cir. 1981). See supra text accompanying notes 70-75.
162. Rasheed, 663 F.2d at 845.
163. The government occasionally has prosecuted religious organizations under the fraud statutes. In United States v. Gering, 716 F.2d 615 (9th Cir. 1983), the government successfully convicted Reverend Howard Gering, the Pentecostal leader of the Evangelical Scripture Mission, of 24 counts of mail fraud. Gering had solicited contributions for the publication and distribution of Christian books in Indonesia. One $300,000 contributor, however, went to Indonesia and failed to find evidence of Gering's good works. Id. at 620. Gering unsuccessfully argued that he had never transferred money directly to Indonesia because he
allege fraud by religious organizations, particularly established ones. Most state prosecutors choose not to violate the strong community taboo against governmental meddling in religious affairs. Prosecutors prefer not to act without a strong mandate from the state legislature. Although they have considerable experience with RICO prosecutions, federal prosecutors manifest a similar reluctance.\(^{16}\)

Governmental prosecution of religious groups will always be difficult practically and politically. Federal and state prosecution cannot be assured at the levels necessary for effective deterrence. For this reason, private action may prove the most efficient and reliable answer to religious fraud. Private attorneys general have proven highly successful in the environmental and antitrust areas.\(^{165}\) Private enforcement may be even more vital in the area of religious fraud because the alternative—governmental enforcement—carries with it a plethora of constitutional complications. Also, religious fraud might be best detected and proven by individuals involved with a particular ministry. Given the right incentives, private suits could be brought in numbers that might deter fraudulent religious solicitation. As the next section will show, those incentives can be found in the civil RICO provisions.

IV. FRAUD AND THE FAITHFUL: SUING RELIGIOUS RACKETEERS UNDER CIVIL RICO AND THE GAINS MULTIPLICATION APPROACH

Fraud cases against religious leaders and organizations generally have alleged various counts of mail or wire fraud.\(^{166}\) These charges

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\(^{16}\) Criminal RICO charges, contrary to simple fraud charges, have never been brought against a religious leader. Lauter, supra note 70, at 17 (noting that prosecutors as well as private plaintiffs “hesitate to bring cases against churches, sometimes not pursuing cases that might otherwise be prosecuted”). The specter of state entanglement is most formidable in criminal RICO cases, in which prosecutors have actually taken control of a union away from its mob-connected leaders. See Galen, Union Suits, Nat’l L.J., Aug. 31, 1987, at 1, col. 1 (union control transferred to trustee under RICO provisions regarding syndicate-controlled organizations).

\(^{165}\) See Turley, supra note 17.

\(^{166}\) See, e.g., United States v. Rasheed, 663 F.2d 843 (9th Cir. 1981); New v. United States, 245 F. 710 (9th Cir. 1917), cert. denied, 246 U.S. 665 (1918).
are often brought as part of a multicount prosecution and carry maximum penalties of five years in prison and $1000 fine per count. Mail or wire fraud, however, can also serve as a predicate offense under RICO. In comparison, a RICO charge based on two mail or wire fraud counts can lead to a 20-year sentence, a $25,000 fine, and the possible forfeiture of the defendant’s entire business.

The RICO statutes are the product of a massive legislative campaign “seek[ing] the eradication of organized crime in the United States.” During the 1950s, a widespread public outcry followed reports of expanding underworld presence in legitimate businesses. A bipartisan effort, RICO was intended to root out the influence of organized crime by imposing both criminal and civil penalties. In designing RICO, Congress was cognizant of the fact

168. 18 U.S.C. §§ 1961(1), 1961-(4) 1961(5), 1962(c) 1962(d), 1963(a). Recently, courts hearing RICO claims have refused to apply the general rule in fraud cases that a single fraudulent letter sent to two people constitutes two offenses. As a result, in civil RICO cases when mail fraud is used as predicate offense, a court will not find a pattern of racketeering if several related acts of mail fraud were part of a single scheme. See, e.g., Holmberg v. Morrisette, 800 F.2d 205, 209-10 (8th Cir. 1986), cert. denied, 107 S. Ct. 1953 (1987).
170. Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 55 NOTRE DAME L. REV. 237 (1982). See 1 ABA SECTION OF CORPORATION, BANKING AND BUSINESS, REPORT OF THE AD HOC CIVIL RICO TASK FORCE 75 (Mar. 28, 1985) [hereinafter ABA REPORT]. One committee noted in its reports to the United States Senate that “[o]ne of the most perplexing problems in the field of organized crime is presented by the fact that criminals and racketeers are using the profits of organized crime to buy up and operate legitimate business enterprises.” S. REP. No. 141, 82d Cong., 1st Sess. 33 (1951). The committee listed many categories of American businesses that were being infiltrated by organized crime. S. REP. No. 307, 82d Cong., 1st Sess. 170-81 (1951). The committee pointed out: “In most cases, these are enterprises in which gangster methods have been used to obtain monopolies so that their vicious practices taint otherwise legitimate businesses. . . . They are able to compete unfairly with legitimate businessmen because of their accumulations of cash and their vicious methods.” S. REP. No. 2370, 81st Cong., 2d Sess. 16 (1950).
171. ABA REPORT, supra note 170, at 86. Senator Hruska pointed out that S. 1623 attacked the “economic power of organized crime . . . on two fronts—criminal and civil.” 115 CONG. REC. 6993 (1969). He considered the civil aspect of the bill the most important: [T]he criminal provisions are intended primarily as an adjunct to the civil provisions which I consider as the more important feature of the bill. . . .

The bill is innovative in the sense that it vitalizes procedures which have been tried and proven in the antitrust field and applies them into the organized crime field where they have been seldom used before. Hopefully, experts on
that it was "entering a new domain of federal involvement . . . [and] that existing law, state and federal, was not adequate to address the problem. . . ."\textsuperscript{172} RICO's sponsors committed themselves to developing new, more potent weapons to carry out its intent. The Act contained unparalleled legal resources for both prosecutors and plaintiffs, which soon found applications far beyond the realm of organized crime. RICO's provisions ultimately proved so generous that one Supreme Court Justice labeled the Court's interpretation of the Act "the federalization of broad areas of state common law of frauds."\textsuperscript{173}

RICO's uncanny adaptability to any fraud-related area is largely due to the Act's definition of "racketeering." Traditionally viewed as one engaged in severe wrongdoing, under RICO a racketeer became any person who could be shown to have committed two predicate acts—which would constitute a "pattern of racketeering"—within a ten-year period and who could be linked to an "enterprise"; that is, any ongoing or continuing unit of persons manifesting a common financial purpose.\textsuperscript{174} Congress intended this broad definition to facilitate prosecution of crimes in which actual evidence of the crime is normally concealed or disguised by the actors.\textsuperscript{175} Congress thus sought to pierce the mask of legitimacy used by mob-infiltrated businesses. Consequently, the absence of a
mob connection or the existence of an established business name became wholly irrelevant as the focus of investigations shifted from complex conspiracy linkages to proving the existence of two predicate acts and a racketeering enterprise.

In addition to defining the racketeering offense broadly to facilitate prosecutions, Congress supplied potential government and private litigants with an impressive array of legal tools to insure success. On the criminal side, Congress authorized severe fines and sentences for anyone convicted under the Act. Federal prosecutors may ask for as much as $25,000 for each proven offense in addition to a potential twenty-year sentence. Moreover, the Act authorizes prosecutors to seize and sell property belonging to convicted racketeers.

On the civil side, penalties are equally severe. Borrowing freely from the antitrust area, Congress authorized civil suits under the Act to create a secondary deterrent force of private attorneys general. Congress fueled this private enforcement mechanism with a number of procedural and financial incentives. The Act authorizes treble damages as well as attorney's fees and costs for successful plaintiffs. Congress also relaxed the standing requirements for RICO plaintiffs, requiring only that a party allege a "business or

177. Id. Section 1963(a) permits the government to seize
   (1) any interest [a racketeer] has acquired or maintained in violation [of the
   Act], and (2) any interest, in security of, claim against, or property or contractual
   right of any kind affording a source of influence over, any enterprise which
   he has established, operated, controlled, conducted, or participated in the con-
   duct of, in violation of [the Act].
   For a brief discussion of the forfeiture provisions of RICO, see generally Russello v. United
   178. Congress borrowed the civil RICO private enforcement mechanism, 18 U.S.C. §
   1964(c), directly from § 4 of the Clayton Act. Representative Poff described this RICO pro-
   vision as "another example of the antitrust remedy being adapted for use against organized
   179. 18 U.S.C. § 1964(c) provides: "Any person injured in his business or property by
   reason of a violation of [the Act] may sue therefor in any appropriate United States district
   court and shall recover threefold the damages he sustains and the cost of the suit, including
   a reasonable attorney's fee." Prosecutors may use this same standard of proof in actions
   brought under civil rather than criminal RICO. United States v. Cappetto, 502 F.2d 1351,
   1357 (7th Cir. 1974); Comment, RICO and Equitable Remedies Not Available for Private
property” injury “by reason of a [RICO] violation.”180 Moreover, the Act gives courts the authority to serve and join parties residing outside their districts181 and contains an exceptionally broad venue provision, permitting suits in any “district in which [the defendant] resides, is found, has an agent, or transacts his affairs.”182 Finally, once in court, plaintiffs are required to prove their case by simply a preponderance of the evidence—in other words, they must show only that the occurrence of the racketeering offense is more probable than not.183

A. Civil RICO: Penalty Maximization and the Economics of Racketeering

The procedural and damages provisions of civil RICO demonstrate certain critical, though often unstated, policy assumptions by Congress that sharply distinguish the Act from antitrust schemes. In civil RICO, Congress sought to create a sanction, not a price, for the crime of racketeering.184 This distinction can be best understood with reference to the antitrust provisions that served as the statutory template for civil RICO’s damages provisions.185 In the antitrust area, damages can be viewed as the “price” for a vio-

180. Id.
184. Turley, supra note 17.
185. Congress incorporated antitrust remedies into RICO at the suggestion of the ABA’s Antitrust Section, which confirmed that racketeering had severe anticompetitive effects as well as other social costs. The substance of the Antitrust Section’s report and its subsequent history are set out extensively in ABA REPORT, supra note 159.

The Section agreed “that organized crime must be stopped,” and further agreed that “the time tested machinery of the antitrust laws contains several useful and workable features which are appropriate for use against organized crime,” including, in addition to criminal penalties, civil enforcement by private party treble damage actions. The ABA Section stressed . . . that “it prefers the approach of S. 2049. By placing the antitrust-type enforcement and discovery procedures in a separate statute, a commingling of criminal enforcement goals with the goals of regulating competition is avoided.”

Id. at 81.
lation. The price reflects the external costs of the violation to society.¹⁸⁸ By setting the price of the violation, society in essence determines the point beyond which a violation will produce more than its cost to society. Like the renowned “efficient breach,” antitrust violations are encouraged when the violations will serve the parties while internalizing their own costs.

A sanction as used in civil RICO performs an entirely different function. Unlike a price, a sanction is meant to deter any occurrence of an activity.¹⁸⁷ A society establishes a sanction when it considers a violation so costly, financially or morally, that a price is impossible to gauge. In establishing certain penalties for racketeering, Congress began from the premise that racketeering was malum in se.¹⁸⁸ Although Congress incorporated the antitrust multiplier, treble damages, into civil RICO, the purpose of using a multiplier was entirely different from the antitrust model. Civil RICO’s treble damages were meant not to reform or regulate racketeers but to ruin them.¹⁸⁹ The notion of an “efficient racketeering offense” had no place in Congress’s goal of delivering “a mortal blow against the property interests of organized crime.”¹⁹⁰

¹⁸⁷. Id. at 1537. See Cullen v. Margiotta, 811 F.2d 608, 712-13 (1987) (civil RICO designed to deter all racketeering).
¹⁸⁸. Schacht v. Brown, 711 F.2d 1343, 1358 (7th Cir.), cert. denied, 464 U.S. 1002 (1983). [T]o the extent that antitrust law and policy are increasingly concerned primarily with market efficiency rather than the deleterious effects of concentrated market power itself, analogies to that body of law become increasing irrelevant, since the exercise of social power by organized crime is thought to be malum in se.”
Considered from the standpoint of a sanction, civil RICO’s damage provision takes on added economic meaning. In developing a sanction rather than a price for racketeering offenses, Congress created a structure to force racketeers into insolvency through prohibitive sanctions. The antitrust pricing system, conversely, seeks to “cost minimize” or set the price for a violation as close as possible to the violation’s actual external costs, so as not to deter “efficient violations.” In civil RICO, Congress sought to “penalty maximize,” or drive up costs and penalties for racketeers, to eliminate any possibility that an “efficient violation” could occur. Under civil RICO, therefore, a plaintiff can receive a treble award for any damages sustained through the racketeering offense, not just for competitive injuries. Moreover, civil RICO’s combination of attorney’s fees and a minimal standard of proof creates a variation of what economists refer to as a “rent-seeking” phenomenon. That

191. Turley, supra note 17. The author refers to this structure as penalty maximization, a useful term to parallel cost minimization and highlight the different purposes of prices and sanctions in a legal scheme. Pricing violations are essential in areas such as antitrust, in which the focus is on market efficiency. Cost minimization can be viewed as that process by which the actual costs of a violation are isolated to better determine the price of the violation. Conversely, a sanctioning system is geared toward driving up costs to prevent any occurrence of the offense. In civil RICO, this sanctioning process is even more accentuated because of the Act’s policy of ruining racketeers.

192. The concept of cost minimization was developed by Gary Becker. Becker, Crime and Punishment: An Economic Approach, 76 J. Pol. Econ. 169 (1968). This concern for market efficiency and pricing violations in terms of their external costs is widely accepted in the antitrust area. See generally Furman v. Cirrito, 741 F.2d 524, 532 (2d Cir. 1984); Turley, supra note 17.


194. See Turley, supra note 17. Rent-seeking is a natural occurrence in any competitive economic system, although excessive rent-seeking can produce prohibitive welfare costs for society. A “rent” is often defined cryptically as a “payment to a resource owner over and above the amount his resources could command in their next-best alternative use.” R. ECKELUND & R. TOLLISON, MERCANTILISM AS A RENT-SEEKING SOCIETY 18 (1981). Gordon Tullock discusses rent-seeking more concretely. Tullock, Efficient Rent Seeking, in READINGS IN THE ECONOMICS OF CONTRACT LAW 56 (V. Goldberg ed. 1985) (unpublished manuscript). Tullock explains the rent-seeking phenomenon through a simple lottery analogy in which two players pursue a $100 prize. In pursuing the prize, each player invests according to what he believes the other party will invest. Excessive rent-seeking occurs when both parties invest more than $100 in pursuing the prize, thereby producing waste.
is, by creating the high prize of treble damages and providing an easy means of seeking this prize, Congress may have created an environment in which litigants on both sides will spend excessively to pursue or avoid RICO convictions. The negative aspect of rent-seeking thus has become part of RICO's overall penalty-maximizing scheme.

Civil RICO's damages structure reveals a philosophy often at odds with suggested modifications of the Act, particularly those advocating a closer adherence to the antitrust approach. These fundamental elements of the Act, however, are also useful in considering the Act's application to the religious fraud area. Comparisons between religious fraud and the crimes envisioned by Congress in drafting civil RICO are easy and telling. Although some commentators point to particular fraud-based crimes, such as securities fraud, as undeserving of the "racketeering" label, religious fraud clearly is a malum in se crime equal to any imagined by civil RICO's drafters. The religious racketeer is a particularly dangerous crime figure; he primarily preys not on businessmen, but on highly vulnerable and often isolated individuals. In addition to the financial havoc he reaps, the religious racketeer robs his victims of moral capital. Any moral or normative distinction between conventional racketeering and religious racketeering is, if anything, only one of a lesser compared to a greater.

Civil RICO's sanctioning approach is also relevant to religious racketeering. A sanction is most useful in areas with expected high information deficiencies or concealability factors. In order to have a pricing system, society must be able to calculate accurately

195. See, e.g., Parnon, RICO Damages: Look to the Clayton Act, Not the Predicate Act, 21 CAL. W.L. REV. 348, 362 (1985) (following the Clayton Act would "prevent RICO from being used as a launching pad for overly 'creative' damage theories, alleged by plaintiffs seeking recoveries far beyond their injuries and far beyond anything available under pre-existing law").


197. In a sanctioning system, informational deficiencies are less problematic than they are in a pricing system because the sanction is simply set high enough to deter all violations. Moreover, with crimes like racketeering, in which concealability is high, calculating the social cost of a violation would be meaningless because "the prospective violator will discount . . . the punishment cost by [the probability of punishment] in determining the expected punishment cost for the violation." R. POSNER, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE
the external costs of a particular crime. In cases of religious racketeering, the victims often are too isolated, stoic, or simply confused to make their injuries known through the press or the courts. Moreover, the true societal costs of a malum in se crime such as religious racketeering are difficult if not impossible to calculate. What is the real cost to society when a televangelist empire collapses in scandal? The costs are as incalculable as the benefits that parishioners seek in joining religious organizations. As in more conventional racketeering, clearly no price is sufficient to yield an "efficient" racketeering offense.

Likewise, civil RICO's concept of "private attorneys general" is essential for any true deterrence of religious racketeers. Because of the high concealability of this crime, religious racketeering, like its conventional counterpart, is best deterred by individuals at the source. Church supporters turned RICO plaintiffs can approach discovery and trial with a greater initial familiarity with the organization, as well as far more zeal in pursuing their individual suits. These private attorneys general, moreover, would be less susceptible to the type of public pressure that has caused the government to end its own investigations of religious fraud. Given civil RICO's many procedural inducements and its penalty-maximizing structure, private suits against religious racketeers could be sustained in the numbers Congress envisioned when it sought an effective secondary deterrent. Finally, and possibly most important, civil RICO's force of "private attorneys general" is a deterrent without the constitutional problems that inevitably accompany governmental action. Private suits under civil RICO offer a

223 (1976). A sanctioning system changes this cost-benefit analysis, offsetting the low probability of detection with the severity of the potential penalty.

198. When society cannot gauge the cost of a violation or even the number of violations occurring, a sanctioning system generally is superior to a pricing system. Cooter, supra note 186, at 1549-50.

199. See supra notes 116-54 and accompanying text.

200. In Van Schaick v. Church of Scientology, Inc., 535 F. Supp. 1125, 1139 (D. Mass. 1982), the court in dicta noted that first amendment protection likely would bar the plaintiffs' civil RICO claim against the Church of Scientology. This case, however, involved a broad allegation that the church's literature and general practices were fraudulent. Id. at 1137. Such allegations might raise constitutional problems, although courts regularly make such inquiries in mail order ministry cases. See supra notes 131-37 and accompanying text. Curiously, the court seemed to suggest that civil RICO should be construed narrowly in cases involving religious organizations, Van Schaick, 535 F. Supp. at 1139, whereas it ac-
proven deterrent devoid of church and state complications. 201

B. Religious Racketeering and the Mechanics of a Civil RICO Action

The potential deterrent value of civil RICO’s application to cases of religious racketeering is best appreciated in terms of the ability of plaintiffs to translate a religious racketeering situation into an actual civil RICO suit. 202 As was the intention of civil RICO’s drafters, the four basic elements of a civil RICO charge are easily met and should pose little difficulty in most religious racketeering cases.

In pursuing a civil RICO claim, a plaintiff first must allege an injury. In Sedima S.P.R.L. v. Imrex Co., 203 the United States Supreme Court clarified what constitutes an injury under civil RICO. Rejecting arguments that a plaintiff had to show a “competitive injury” or a “racketeering injury,” the Court defined an injury as simply “the harm caused by the predicate acts sufficiently related to constitute a pattern.” 204 The injury element thus is determined largely by the plaintiff’s ability to show the predicate offenses and “pattern of racketeering” elements under civil RICO.

The second civil RICO element is the two predicate offenses required to constitute a pattern of racketeering. 205 The civil RICO statute lists a number of crimes that can constitute a predicate offense under the Act. 206 A plaintiff must show that two of these predicate offenses were committed in the same ten-year period, although the two offenses can be different crimes. The most contro-

201. See supra notes 106-15 and accompanying text.
202. An estimated two percent of civil RICO cases involve religious disputes. ABA REPORT, supra note 170, at 56.
204. Id. at 497.
206. Id. § 1961(1).
versial and not coincidentally the most commonly used\textsuperscript{207} predicate offenses are mail and wire fraud.\textsuperscript{208} A plaintiff using the mail fraud predicate would have to show only that the defendant had the intention to defraud and that in furtherance of this deception, he had sent two separate mailings.\textsuperscript{209}

The third element of a civil RICO charge is a pattern of racketeering. To prove a pattern, a plaintiff must show that the two predicate acts are related in some way to the racketeering enterprise.\textsuperscript{210} Although courts disagree on how close a nexus is required, under the most stringent test, the acts must manifest "some common scheme, plan, or motive and cannot be simply a series of disconnected acts."\textsuperscript{211} Even under this test, the use of the mails to solicit contributions for a fraudulent purpose would constitute a common scheme.

The final element of a civil RICO charge is the existence of a "racketeering enterprise." This is the element that effectively distinguishes a case of common-law fraud from a fraud-based racketeering offense. Although a single individual can constitute an "enterprise," a plaintiff must show the existence of an ongoing or continuous operation that transcends the racketeering activity in a

\textsuperscript{207} An estimated 44\% of civil RICO cases rely solely on allegations of mail or wire fraud. ABA Report, \textit{supra} note 170, at 57. Of 270 civil RICO cases studied by the ABA, 77\% were based on predicate acts involving fraud. \textit{Id.} at 56-57. Of these cases, 40\% alleged securities fraud and 37\% alleged common-law fraud. \textit{Id.} Only 9\% involved "allegations of criminal activity of a type generally associated with professional criminals." \textit{Id.} at 56.

\textsuperscript{208} One commentator actually waxed poetic in praise of the mail fraud statute:

To federal prosecutors of white collar crime, the mail fraud statute is our Stradivarius, our Colt 45, our Louisville Slugger, our Cuisinart—and our true love. We may flirt with RICO, show off with 10b-5, and call the conspiracy law "darling," but we always come home to the virtues of 18 U.S.C. Sec. 1341, with its simplicity, adaptability, and comfortable familiarity. It understands us and, like many a foolish spouse, we like to think we understand it.


\textsuperscript{209} United States v. Fowler, 735 F.2d 823 (5th Cir. 1984); United States v. Kreimer, 609 F.2d 126 (5th Cir. 1980).


\textsuperscript{211} \textit{Id.} at 355 n.1429. Recently the Supreme Court agreed to hear a case that likely will clarify the pattern requirement. See \textit{H.J. Inc. v. Northwestern Bell Tel. Co.}, 829 F.2d 648 (8th Cir. 1987), \textit{cert. granted}, 56 U.S.L.W. 3647 (U.S. Mar. 21, 1988) (No. 87-1252).
An organization that engaged in either general or goal-specific solicitations and then diverted funds to purposes other than those advertised would meet the enterprise test.

A religious racketeering victim who brings a civil RICO charge is not normally challenging the basis of the religion or the legitimacy of a church’s actual expenditures. Rather, in solicitation cases, the victim is simply attacking the use of funds solicited for a purpose wholly different than that advertised. Civil RICO’s structure isolates the strictly secular elements of the violation and focuses on the promises made, not the legitimacy of the cause.

RICO’s ability to structure a claim in purely secular terms is the Act’s most promising feature as an alternative to governmental action against religious fraud. Moreover, RICO offers society the powerful deterrent of knowledgeable, localized “private attorneys general.” Armed with RICO’s financial and procedural aids, these litigants would constitute a continual check on religious organizations in a way that would be completely impractical for the government. Victims could react quickly and effectively after the first suggestion of impropriety. Once set on the course of litigation, these disenfranchised individuals would likely surpass all Congress’s expectations in their commitment to the suit. If Congress sought committed private attorneys general, religious racketeering victims would amply fill the role. Religious racketeers, however, like other types of racketeers, are not a homogenous group. Some ministries or religious organizations make only occasional fraudulent or deceptive solicitations whereas others rely more substantially on such practices. Although eradicating all religious racketeers clearly is preferable to the present sporadic enforcement, RICO’s blind penalty-maximizing character denies society an easy method of distinguishing between racketeers and reforming those ministries and organizations that are only fractionally reliant on racketeering proceeds. As this Article will demonstrate, distinguishing between racketeers is particularly important in the area of religious fraud.


Since its inception, civil RICO's damages structure has caused great controversy among both academics and practitioners. Most criticism of RICO has centered on the wide array of fraudulent business transactions that can constitute racketeering under the Act. These critics advocate a more narrow definition of the racketeering crime, in essence shrinking RICO's enforcement net. Alternatively, a few commentators have argued for changing the Act's damages formula to lessen the penalties against businesses targeted under the Act. Strong arguments, however, can be made that RICO's wide enforcement net and its penalty-maximizing structure are some of the Act's greatest assets. If civil RICO has a fundamental failing, it is not in its capture of large numbers of racketeers, but in its blind penalty maximization. Clearly, Congress would want some racketeers ruined under the Act, but others may deserve less catastrophic measures. The solution lies somewhere in the middle: capture large numbers of racketeers but ruin only those who exhibit particularly egregious behavior.

In developing civil RICO's penalty-maximizing scheme, Congress viewed the racketeer as something of a monolith, irredeemable and unreformable. This view of the racketeer closely resembled Cooter's exceptional injurer, a violator who finds paying damages cheaper than adhering to a community standard. The exceptional injurer is a person whose intentional or repeated violations of a social standard are such that the threat of normal damages is an insufficient incentive to coax him back to the social norm.

The problem with civil RICO's blind penalty-maximizing scheme is that the Act's sanction is set in response to the most deviant class. Congress designed civil RICO with the substantial racketeer in mind; that is, it targeted businesses that are substantially reliant on racketeering proceeds. Because it viewed this exceptional

213. ABA REPORT, supra note 170, at 277-78; Boucher, Closing the RICO Floodgates in the Aftermath of Sedima, 31 N.Y.L. SCH. L. REV. 133 (1986).
214. ABA REPORT, supra note 170, at 277-80.
215. See, e.g., Parnon, supra note 195.
216. Turley, supra note 17.
217. Cooter, supra note 186, at 1543.
violator as irredeemable, Congress set its sanctions to ruin rather than to reform.\textsuperscript{218} This sanction, however, is also used against businesses that rely on racketeering for only a fraction of their total proceeds. The result is a sanction that works to ruin fractional racketeers whose behavior falls close enough to the social norm that they may be reformable by a smaller penalty. The social cost of ruining reformable businesses is high and could be avoided easily if civil RICO could differentiate at the damages stage according to the degree of reliance on racketeering.

An easy method of differentiation may lie in civil RICO’s damage multiplier. Although crude, the treble damages provision offers an automatic test of racketeering reliance. By awarding damages equal to treble a racketeer’s proceeds from racketeering, the Act allows only those firms with a fractional reliance on racketeering to survive the damage award.\textsuperscript{219} If a business’s income consists primarily of racketeering proceeds, liability for damages three times those proceeds normally would force the business into insolvency. Those firms that could not sustain such a loss are precisely the ones that society would want to ruin as “exceptional injurers.” The gains multiplication approach might prove to be a compromise between reducing the number of racketeers prosecuted under the Act and reducing the damages permitted against defendants. By forcing a racketeer to return triple his reliance on ill-gotten gains, society could still ruin the exceptional injurer while reforming businesses closer to the social norm. Because damages are trebled, the occurrence of an efficient racketeering violator would be unlikely. This approach has particular promise as applied to religious racketeering.

\textsuperscript{218} In enacting civil RICO, Congress stated that the Act’s purpose was “the eradication of organized crime . . . by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.” Pub. L. No. 91-452, §§ 901-02 (1970) (codified as amended at 18 U.S.C. §§ 1961-1968 (1982 & Supp. III 1985)).

\textsuperscript{219} A critical factor in this penalizing scheme, of course, is to apply the multiplier to an accurate estimate of a racketeer’s illegal gains—his reliance on racketeering. If, however, only a few victims sue under civil RICO, this reliance would not be tested adequately. Civil RICO’s promise, however, lies in its case-generating reputation. The promise of treble damages encourages a large number of suits, either individual or joined. See Wolin v. Hanley Dawson Cadillac, Inc., 636 F. Supp. 890, 891 (N.D. Ill. 1986) (“RICO’s lure of treble damages and attorney’s fees draws litigants and lawyers . . . like lemmings to the sea”). The rapid consolidation of large groups of litigants in the PTL controversy, for example, is encouraging. \textit{PTL Faction Is Pushing To Bring Bakkers Back}, Times-Picayune, Oct. 13, 1987, at A-5.
teering because society may value the opportunity to reform fractional religious racketeers.

D. Focused Penalty Maximization: The Gains Multiplication Approach Applied to Cases of Religious Racketeering

The gains multiplication approach strives to eliminate the inefficiency and wastefulness of blind penalty maximization under civil RICO. Although substantial violators are properly subjected to penalty maximization, the gains multiplication approach assumes that fractional racketeers can and should be reformed rather than ruined. The gains multiplication approach achieves this balance through focused penalty maximization, trebling reliance-based damages to ruin substantial racketeers while forcing fractional racketeers back to the social norm. The distinction is important in areas such as religious racketeering, in which defendant organizations will often be fractional racketeers with legitimate religious or charitable purposes. Moreover, because of their normally high operating costs and limited revenue base, religious organizations are particularly vulnerable to penalty maximization under the Act. The ruination of most such organizations serves little purpose because, unlike the substantial racketeer, these organizations can be coaxed back to the social norm with reasonable penalties. By applying blind penalty maximization in this area, society would succeed only in eliminating organizations with primarily charitable, socially advantageous purposes.

The ongoing PTL controversy may offer some interesting insights into the potential costs of penalty maximization in the religious area. Although it is not clear whether Bakker and his associates committed any racketeering violations, PTL's scandal-induced financial crisis exemplifies the extreme vulnerability of large religious ministries to legal and public pressures. Before Bakker's 1980 tryst with a young church secretary became public knowledge, the PTL empire was a televangelist fantasy come true. The PTL network reached a reported 13.5 million households daily and broadcasted over 178 local stations. PTL's legendary Christian

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220. Merida, supra note 150, at 3A, col. 1 (reporting the testimony of televangelists before the House Ways and Means Subcommittee on Oversight).
221. Ostling, supra note 6, at 62.
theme park, Heritage U.S.A., drew more than six million vacationers in 1986.222 PTL's financial outlook today, however, is far from robust. After the Bakkers handed over control of their $129-million-a-year ministry to fundamentalist Jerry Falwell, the PTL empire began to unravel.223 Faced with a $72-million debt and plummeting contribution levels, Falwell was ultimately forced to place PTL in chapter 11 bankruptcy.224

PTL's bankruptcy demonstrates how susceptible a large televangelist organization is to a short-term loss of contributions.225 Even with the steady influx of profits from Heritage U.S.A. and the PTL Network, PTL could not long remain solvent in a business in which seventy-five percent of contributions may be committed to television production costs.226 Although PTL's financial woes may have been worsened by poor management under the Bakkers, other large televangelist organizations display similar financial fragility.227 Blind penalty maximization in this area would exact a considerable toll. The ruination of organizations such as PTL would serve few societal interests. Given the reliance of a televangelist organization on contributions, the organization clearly is reformable under continued public pressure and scrutiny. More-

222. Id.
223. There is some disagreement over how Falwell got control of PTL; the Bakkers insist that Falwell "stole" the organization. Craig, supra note 35, at 16A, col. 2. See also Adler & Carroll, Jim and Tammy Rise Again, Newsweek, Oct. 19, 1987, at 77 (reporting accusations that Falwell's "plan all along has been to let PTL fail and then pick up its valuable satellite network at a distress-sale price"). Regardless of how or why he acquired PTL, Falwell inherited an organization with serious overcommitment and underfunding problems. Craig, supra note 36, at 16A, col. 2. On October 8, 1987, Falwell and his entire PTL board resigned after an unfavorable ruling by the bankruptcy judge. Id. at 1A.
225. The impact of public scandal on television ministries is immediate. Following the PTL revelations, at least three top televangelists experienced a drop in viewers, with Swaggart losing roughly 400,000, Schuller 191,000, and Roberts 155,000. Ostling, supra note 60, at 51.
226. Johnston & Leonard, supra note 3, at 3, col. 1. Falwell reportedly spends $5 on television costs for every $7 he raises; in comparison, the United Methodist Church spends only 5¢ for every $1. Galloway, supra note 74, § 5, at 7.
227. Falwell's own television ministry is facing financial problems. Recently, Falwell had to take his Old Time Gospel Hour off 50 television stations because of funding problems. Craig, supra note 35, at 16A, col. 2. Both Falwell and Oral Roberts have had serious financial problems in the past. See supra notes 38, 41.
over, even PTL's most severe critics would not be able to portray the organization as an enterprise relying substantially on racketeering proceeds. If all of the allegations of solicitation fraud were proven against the Bakkers, racketeering proceeds still would not be significant in comparison to the organization's annual $129-million revenue base.\textsuperscript{228}

The impact that a shift from harm-oriented to gain-oriented measurement would have on religious racketeering cases would vary radically with the nature of the racketeering enterprise. For purposes of analysis, civil RICO cases can be broken down into four principal groups: cases in which racketeering gains are less than the harm inflicted, cases in which the gains equal the harm inflicted, cases in which gains are difficult or impossible to gauge, and cases in which the gains are greater than the harm. This Article analyzes each of these groups separately in terms of what impact, if any, a shift to a gain-oriented measurement would have on actual damage awards under RICO.

The first case group encompasses those situations in which racketeering gains are less than the harm inflicted. In common cases of religious solicitation fraud, the racketeering injury—the donation—usually will equal the racketeering gain. However, variations are possible. Consider, for example, a racketeer whose organization was deceptively named to resemble a legitimate religious group. Assume that this racketeer was successful in diverting $30,000 of contributions to his organization, so successful in fact that the legitimate church was left with few contributions and was forced to close. As a result, this church might incur extensive real estate and administrative losses. If these losses amounted to $1,000,000, the church could sue the racketeer for the entire amount of the losses, alleging that it was the intended beneficiary of the diverted contributions. Assuming that the church can show standing and all the necessary elements under civil RICO, its potential damages under the present Act would be $3,000,000 plus attorney costs.\textsuperscript{229} This

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  \item \textsuperscript{228} PTL's annual profits have been reported as high as $179 million. Adler & Carroll, \textit{supra} note 224, at 77.
  \item \textsuperscript{229} Because the racketeer defrauded the church's congregation rather than the church itself, a fraud action might be problematic in this situation. Nevertheless, similar accusations have been made against existing religious organizations, with one case ending in an apparent settlement. \textit{Cf.} Cebu Ass'n of California, Inc. v. Santo Nino de Cebu Ass'n of USA,
sum would be three times the damages that it can show were the result of the racketeer's predicate acts of fraud.

Conversely, under the gains multiplication approach, the potential damage award would be $90,000 plus costs—a considerable difference. This difference will mean little if the defendant is a substantial racketeer, because either damage figure likely would force him into insolvency. If the defendant is a fractional racketeer, however, the difference might be critical. A fractional racketeer might be able to sustain a $90,000 loss because, by definition, he has other, legitimate sources of revenue. A $3,000,000 loss, on the other hand, would leave few fractional racketeering businesses solvent.

The PTL controversy may offer a current example of alleged racketeering in this first case group. Although the Bakkers have never been formally charged with fraud or racketeering, the newspapers have carried allegations that, if proven, might involve racketeering injuries that are greater than the racketeer's alleged gain. Falwell has charged that under the Bakkers' management, PTL systematically overcommitted Heritage U.S.A. under the PTL's Lifetime Partners program. For a $1000 donation to PTL, lifetime partners were promised three nights free lodging a year for life at the Christian theme park. Many PTL followers actually purchased multiple lifetime partnerships. In 1987, however, Falwell announced that PTL could not honor its commitment under the partnership program because of huge overbookings by the Bakkers.

If Falwell's accusations were ever proven in a civil RICO action, lifetime members might be able to collect treble their injuries, which could conceivably include travel and lodging costs incurred after being turned away at Heritage U.S.A. Yet PTL never received the money lost by lifetime members after their registration

95 Cal. App. 3d 129, 157 Cal. Rptr. 102 (1979) (rejecting injunctive relief to stop the use of a similar sounding religious name in solicitations).

230. PTL has a reported 114,000 lifetime partners, many of whom are thought to be fiercely loyal to the Bakkers. Adler & Carroll, supra note 224, at 77. In fact, Falwell quit PTL after a bankruptcy judge cleared the way to allow lifetime partners to take four of the nine seats on the PTL Board, a move Falwell insisted would insure the return of the Bakkers. Id.

in the program. Any damages based on this larger figure, therefore, would be unrelated to the degree of PTL's reliance on fraudulent solicitation through this program. Under the gains multiplication approach, these collateral losses would be left to conventional contract or tort remedies and would not be included in the baseline figure to be trebled. In this first group of cases, damages under the present Act and under the gains multiplication approach therefore would be different, with overall lower damages for plaintiffs under the gains multiplication theory.

In the second group of cases, the difference between standard RICO and the gains multiplication approach is less pronounced. This group encompasses those situations in which the harm is equal to the gain derived from a racketeering enterprise. In most cases of solicitation fraud, a goal-specific contribution is made to an organization to support a specific cause. If the organization then uses the funds for questionable or personal uses, the contributor's injury is confined to the amount of the contribution, as is the racketeer's gain. Under both the present Act and the gains multiplication approach, therefore, damages would be the same. For a $30,000 contribution, a plaintiff potentially could receive $90,000 plus costs, or treble the losses (and the racketeer's gain) under the racketeering scheme. 232

A similar result is reached in the third case group, in which gain is difficult or impossible to gauge. When an organization faces financial problems, it might choose to divert money earmarked for mission work to its national organization to prevent more costly measures, such as high-interest loans. Even if allegations of such activity were proven, however, it would be impossible to gauge how much the organization had benefitted from the alleged fraudulent enterprise. The actual damages probably would be limited to the dollar amount of the misused contributions. The amount lost by the contributors and that gained by the organization being the

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232. A New York civil RICO case, dismissed for lack of justiciability, presented a potential example in this category. In Congregation Beth Yitzhok v. Briskman, 566 F. Supp. 555 (E.D.N.Y. 1983), one Hassidic sect accused another of racketeering in an attempt to take over a congregation. Had the plaintiffs proven damages, the likely ultimate figure based on gains would have been identical to the estimate of racketeering harm. Many of the earlier examples of fraudulent religious solicitation would fall into this category.
same, the plaintiffs would receive the same damages under either damage approach.

A shift to gain-oriented measurement of damages would be critical, however, in the last case group, in which racketeering gains are greater than the harm inflicted. This situation will occur whenever ministries use solicitation money for other, assignable capital-generating enterprises.

A fraudulent real estate transaction would be a typical case. Suppose that after defrauding thousands of contributors, a racketeer bought, among other things, a condominium. Assume that this condominium cost $700,000 in 1980, all the money coming from mission funds. If the contributors prove all the elements of a civil RICO action, they would be entitled to their damages, $700,000. The gains from racketeering, however, might be considerably more. With careful planning, the racketeer could sell the property for $1,000,000 or even $1,400,000. Yet, under the present damage measurement approach, the plaintiffs would be entitled only to treble the percentage of their contributions that went to the real estate venture. If the plaintiffs collectively contributed $30,000 to the real estate scheme, then their damages under RICO would be $90,000, plus attorney’s fees and other litigation costs.

Under the gains multiplication approach, however, the plaintiffs’ contributions to the real estate venture would be adjusted before trebling. For example, if the racketeer realized a twenty-percent profit on the initial $700,000 investment, each dollar contributed by the plaintiffs would be increased by twenty percent, or by the appropriate amount adjusted for the date of the contribution. This adjusted figure would then be trebled, resulting in a higher damage figure and a more accurate measurement of the racketeer’s alleged reliance on racketeering.233

In a large religious organization, which might have various racketeering schemes, the particular damages in any given scheme might

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233. Had civil RICO been alleged, the damages in the case of The Bible Speaks would have presented a possible example of racketeering gains outweighing racketeering harm. In re The Bible Speaks, 73 B.R. 848 (Bankr. D. Mass. 1987), aff’d sub nom The Bible Speaks v. Dovydenas, 81 B.R. 750 (D. Mass. 1988), Reverend Carl Stevens was found to have methodically deceived a wealth devotee into giving the church $6.6 million in donations. Among the possessions acquired by Stevens was a $120,000 Palm Beach condominium and a swimming pool. Fischer, supra note 2, at A10, col. 5.
fall into any of these four case groups. Nevertheless, the overall result would be a figure based ostensibly on racketeering profits, although this figure often will equal the racketeering harm. In the first case group, in which racketeering harm outweighs racketeering gains, damages tend to be lower under the gains multiplication approach, with collateral losses recoverable under traditional contract and tort damages. Under the second and third case groups, in which racketeering gains are equal to racketeering harm or are difficult to gauge, the damages will vary little between the two approaches. Finally, under the last case group, in which racketeering gains are greater than racketeering harm, plaintiffs will actually receive more damages under the gains multiplication approach. Overall, plaintiffs likely will receive more damages under the gains multiplication approach because the fourth case group probably is more common than the first. More importantly, however, by adjusting the damages allowed in both these case groups, society focuses civil RICO's penalty-maximizing system on reliance-based figures. By trebling a racketeer's gains, society can test the racketeer's reliance on these gains and thus weed out those ministries most reliant on defrauding the faithful.

V. Conclusion

In the United States, religious racketeering makes good financial sense. In 1984, individual Americans donated $59 billion to charities. With an estimated nine percent of the country's privately owned wealth and more than eight million employees, charitable organizations represent a major financial market in this country.

Although thirty-eight states require annual reporting for charities in their fund-raising drives, all current state regulations specifically exempt religious organizations from the mandatory reporting requirements. Whether soliciting contributions for the general support of a ministry or for a relief program in the Third World, religious groups operate in a market with virtually unlimited po-

235. In 1984 charities in the United States were estimated to have $202 billion in revenues coming from various corporate, public, and private funds. Id.
236. Sontag, supra note 25, at 52, col. 2.
tential donations and almost no governmental supervision of any kind.

Many religious leaders have found this temptation too much to resist. Possibly hundreds of millions of dollars are collected annually by religious groups for purposes different from those advertised on radio and television. Contributions raised for a particular child in Thailand, for example, may go for general ministry costs, for a real estate venture, or even for the personal enrichment of the minister. The assortment of private and governmental remedies for such fraudulent solicitation, when successful, fall far short of an adequate deterrent. Because no state specifically regulates religious charities as charitable organizations, private citizens must rely on collateral remedies, such as suits for breach of fiduciary duties. Although private citizens have sued religious organizations successfully, these suits often involve clear contract, tort, and other grounds that are not present in most fraudulent solicitation cases. Moreover, private suits remain a rarity because of the lack of incentive for private citizens to shoulder the responsibilities of long litigation. Derivative lawsuits and other remedies will most often result in a remedy for the organization as a whole and not for the individual plaintiff.

Similarly, governmental suits have proven of limited value against religious fraud. The two agencies most active in the area, the FCC and the IRS, have limited jurisdiction and administrative capabilities in combating religious racketeers. The FCC has investigated only a handful of religious groups, and the only instance of a license revocation was the result of a penalty entirely separate from the charges of fraudulent solicitation. Even in that case, the television ministry simply began broadcasting on an alternative

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237. Interestingly, Jimmy Swaggart, himself a target of financial investigations, recently gave his own unique view of misappropriations of church funds. Swaggart estimated that "50 to 75 percent of all monies donated to 'religious' activities are totally wasted! . . . Not only are they misdirected, but in many cases they actually go to aid and abet the work of Satan." Applebome, supra note 46, at 10, col. 1.
238. See supra notes 94-154 and accompanying text.
239. Comment, supra note 21, at 1212.
240. See supra notes 106-14 and accompanying text.
241. Comment, supra note 21, at 1211.
242. See supra notes 116-154 and accompanying text.
243. See supra notes 116-23 and accompanying text.
The IRS has had more success prosecuting religious groups but has often concentrated on mail order and fringe churches rather than the larger, politically powerful televangelist ministries. Neither the FCC nor the IRS, moreover, investigates cases of religious fraud in nearly the numbers or frequency needed to serve as a deterrent for the entire market.

The volatile legal and political issues raised by governmental involvement in the operation of religious groups further frustrate state and federal prosecutions. The Supreme Court has struck down a number of statutes requiring mandatory reporting based on the source of the church's funds as violative of the establishment clause of the first amendment. The public, moreover, has halted past state investigations into alleged religious fraud and has even stripped state officials of authority to move against religious groups in some cases of alleged church financial misconduct. Federal agencies also have been chastised for their prosecutions of religious groups. This traditional opposition to even minimal governmental involvement has made officials leery of any significant prosecutions of mainstream or large religious groups without a clear mandate from the legislatures.

Civil RICO could prove the answer to private and governmental problems in prosecuting fraudulent religious groups. Under RICO, private groups would have ample incentives to bring suit against ministers and religious organizations engaging in fraudulent practices. If successful, these private attorneys general would receive treble damages as well as their attorney's fees and other litigation costs. Their chances of being successful are increased by RICO's low standard of proof and liberal definition of racketeering. These incentives are part of RICO's underlying agenda to ruin racketeers through private litigation. In economic terms, RICO establishes a high enough prize to support high litigation costs through rent-seeking behavior.

244. See supra notes 118-22 and accompanying text.
245. See supra notes 127-44 and accompanying text.
246. See supra notes 95-105 and accompanying text.
247. See Comment, supra note 21, at 1206-09 n.18.
248. See supra notes 142-44 and accompanying text.
249. See supra notes 173-89 and accompanying text.
Civil RICO likewise would eliminate the need for governmental action and its constitutional and political complications. As in the environmental and antitrust fields, private attorneys general would supply the necessary deterrent and supervision of the market without governmental intervention. Moreover, unlike governmental investigations, citizen suits might be brought more quickly, thereby publicizing and possibly precluding further fraudulent solicitations. Finally, citizen suits could be brought in the numbers necessary for an effective deterrent, a rate of prosecution probably beyond the capabilities of most state and federal agencies.

The prosecution of religious racketeers, however, also illustrates some flaws in the current method of measuring the harm rather than the gains produced by a racketeering enterprise. RICO creates a perverse incentive for racketeering victims to prolong a violation in pursuit of higher treble damages.\textsuperscript{250} Harm-oriented damages also fail to allow any real differentiation between fractional and substantial racketeers based on their reliance on racketeering proceeds. The gains multiplication approach would allow society to differentiate between the substantial and fractional racketeer. By trebling gains, the racketeer's own reliance on racketeering will determine whether the sanction will be fatal.\textsuperscript{251} Thus, religious racketeers who make a profit from fraudulently solicited funds would be tested according to their actual gains from a racketeering offense and not the initial harm it produced. Moreover, in the area of religious fraud, the shift to gains-oriented damages would not result in damages any lower than are presently awarded. The gains multiplication approach would serve only to increase the baseline for trebling in cases in which plaintiffs could show a profit beyond the initial fraudulent solicitation.

Regardless of the measurement used, civil RICO is a promising and largely unexplored avenue for victims of religious racketeering. RICO's application to cases of religious fraud, however, would yield benefits far beyond those received by the individual victims. The costs of religious fraud to society are not limited to the loss of possibly hundreds of millions of charity dollars annually. The true costs are incurred by every legitimate religious and charitable or-

\textsuperscript{250} See supra notes 180-83 and accompanying text.
\textsuperscript{251} See supra notes 204-06 and accompanying text.
ganization as well as by the system that guarantees their freedom from governmental interference. Through religious skulduggery and racketeering, religious freedoms become little more than glorified tax shelters and profit schemes for the unscrupulous. It may turn out that RICO's greatest service to the country is in prosecuting ministers, not mobsters. Should this prove to be the case, society may yet see Peter's prophecy fulfilled:

[T]here were false prophets . . . who privily shall bring in damnable heresies. . . . And through covetousness shall they with feigned words make merchandise of you: whose judgment now of a long time lingereth not, and their damnation slumbereth not. . . . [They] speak evil of the things that they understand not; and shall utterly perish in their own corruption. . . .

252. 2 Peter 2:1, 3, 12 (King James).