

**TOWARD A SUNNIER DAY FOR RICO: THE SIXTH AMENDMENT
IMPLICATIONS OF FORFEITURE OF ATTORNEYS' FEES PAID BY
A CRIME FAMILY DEFENDANT**

by
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The late 1960's and early 1970's signalled the beginning of a sustained effort by the United States Government to eliminate organized crime. The executive branch established the Department of Justice Organized Crime and Racketeering Section, along with Department Strike Forces located in major cities, to address what was perceived as a pressing national concern. The legislative branch passed a series of laws intended to choke off organized crime, including the 1968 Consumer Credit Protection Act,¹ the 1968 Gun Control Act,² and the 1968 Omnibus Crime Control and Safe Streets Act.³ The legislative effort culminated in 1970 when Congress passed the Organized Crime Control Act⁴ and the Comprehensive Drug Abuse Prevention and Control Act.⁵ The two landmark statutes enabled by this legislation are the Racketeer Influenced and Corrupt Organizations Act⁶ and the Continuing Criminal Enterprise statute⁷ (hereinafter referred to as RICO and CCE).

RICO is useful in attacking highly-sophisticated, organized, and diversified criminal activity. The statute prohibits: using income derived from a "pattern of racketeering activity" to acquire an interest in, establish, or operate any

¹ 18 U.S.C. § 891-94 (1968) (contains provisions relating to extortionate credit transactions, i.e., loan-sharking).

² 18 U.S.C. § 921-929, 26 U.S.C. § 5861 (1968).

³ 42 U.S.C. § 3711-12 (1984) (providing in part for court-authorized interception of wire and oral communication, and protection of federal witnesses).

⁴ The Act contains the Hobbs Act (18 U.S.C. § 1951) (banning interference with commerce by threats or violence), measures banning interstate and foreign travel or transportation in aid of racketeering enterprises (18 U.S.C. § 1952), and the creation of special investigating grand juries (18 U.S.C. § 3331-34), in addition to the Racketeer Influenced and Corrupt Organizations statute (18 U.S.C. § 1961-68).

⁵ 21 U.S.C. § 800 (1970).

⁶ 18 U.S.C. § 1961-68 (1970), enabled by the Organized Crime Control Act.

⁷ 21 U.S.C. § 848 (1970), enabled by the Comprehensive Drug Abuse Prevention and Control Act.

"enterprise" engaged in, or whose activities affect, interstate commerce;⁸ acquiring an interest in an enterprise engaged in, or whose activities affect, interstate commerce through a "pattern of racketeering activity";⁹ conducting, or participating in the conduct of, the affairs of an enterprise engaged in, or whose activities affect, interstate commerce through a "pattern of racketeering activity";¹⁰ or conspiring to violate any of these provisions.¹¹

In addition to creating an innovative framework for prosecution, Congress created strict penal provisions for RICO. The provisions allow for forfeiture to the government, upon conviction for a RICO offense, of any interest or asset gained by the defendant through unlawful activity. These forfeiture provisions, which have identical counterparts in CCE,¹² supply much of the prosecutorial firepower found in RICO. Both the original RICO and CCE provisions were amended in 1984 by the Comprehensive Forfeiture Act. The RICO provisions state that one found in violation of §1962 shall forfeit to the United States:

[A]ny interest the person has acquired or maintained in violation of section 1962;...any interest in...any enterprise which the person has...participated in the conduct of, in violation of section 1962; and any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity...in violation of section 1962.¹³

Property subject to forfeiture includes real property and tangible and intangible personal property.¹⁴ The provisions state that all rights to forfeitable property vest in the United States at the time of commission of the alleged crime giving rise to forfeiture. Property transferred to a third party after this time is forfeitable unless the transferee can establish (1) that he held title to the particular property over the defendant at the time defendant allegedly committed the RICO violations¹⁵ or (2) that he is a bona fide purchaser for value of the

⁸ 18 U.S.C. § 1962(a) (1970) (an example of this violation is the laundering of "dirty" money through a legitimate business).

⁹ 18 U.S.C. § 1962(b) (1970) (an example of this violation is the use of extortion, fraud, murder, etc., to take control over a legitimate business).

¹⁰ 18 U.S.C. § 1962(c) (1970) (an example of this violation is the operation of a legitimate business through unlawful means such as bribery, threats, etc.).

¹¹ 18 U.S.C. § 1962(d) (1970).

¹² 21 U.S.C. § 848, 853 (1984).

¹³ 18 U.S.C. § 1963(a) (1984).

¹⁴ 18 U.S.C. § 1963(b) (1984).

¹⁵ 18 U.S.C. § 1963(m)(6)(A) (1984).

property, who at the time of transfer was reasonably without cause to believe the property was subject to forfeiture.¹⁶ The forfeiture provisions can apply post-conviction, to assets previously transferred by the defendant to a third party, and pretrial, by the issuance of a restraining order freezing defendant's assets pending outcome of the trial.¹⁷

In light of organized crime's heavy reliance on legal talent,¹⁸ a critical issue is the application of the RICO forfeiture provisions to the attorneys' fees paid by a defendant who is a member of an organized crime syndicate, or crime family. This article will examine whether applying the RICO forfeiture provisions pretrial to property or funds a crime family defendant intends to transfer to an attorney as legal fees or post-conviction to property or funds he has transferred to an attorney as legal fees deprives that defendant of the right to counsel guaranteed by the sixth amendment of the United States Constitution. The article will analyze the RICO forfeiture provisions, which are applied to the widest variety of organized crime cases, but will raise both RICO and CCE cases because the forfeiture provisions in each are identical.

Because each presents the identical issue in sixth amendment terms, post-conviction forfeiture and pretrial restraining orders are treated interchangeably. The article concludes that this application does not violate the right to counsel due to both the unique relationship between the crime family defendant and his attorney and the availability of appointed counsel. I propose a revision to the traditional method of appointing counsel in such cases in order to safeguard both the right of the crime family defendant to the assistance of counsel and the interest of the government in gaining forfeiture of illicit profits to the full extent consistent with the purposes underlying forfeiture.

My proposal is limited to crime family defendants (what most think of as "the Mafia") and their attorneys. Crime family defendants may be identified by pretrial judicial determination pursuant to an adversarial hearing. The government can present evidence of the defendant's involvement in unlawful crime family activity, with the defendant having the opportunity to present evidence in rebuttal. Virtually all crime families in major cities are well-known to law enforcement and judicial officials. If the indictment in a case alleges that the defendant is part of a larger group engaging in illegal activities, as with a RICO conspiracy charge, or if investigations reveal that he has no legitimate sources of income, this may create an inference that he is a crime family member if additional corroborating facts so indicate. Cases and commentators have

¹⁶ 18 U.S.C. § 1963(m)(6)(B) (1984).

¹⁷ 18 U.S.C. § 1963(e)(1) (1984).

¹⁸ See *infra* note 44.

frequently addressed the constitutionality of forfeiture of attorneys' fees of a RICO or CCE defendant generally, but have never focused solely on a crime family defendant. Indeed, defendant's status as a crime family "member" contributes significantly to the finding that forfeiture of attorneys' fees does not infringe on his right to counsel.

BACKGROUND

RICO

The critical terms of RICO have been broadly defined. "Racketeering activity" is defined to mean any of the eight state crimes¹⁹ or twenty-four federal crimes²⁰ serving as predicate RICO offenses, and is established by proving the necessary elements of the relevant crimes. "Enterprise" is defined to mean essentially any individual or association of individuals,²¹ and is established by evidence of an ongoing organization whose associates function as a continuing unit.²² "Pattern of racketeering activity" is defined to mean a series of two or more predicate criminal acts committed within ten years of one another, at least one of which was committed after October 15, 1970. It is established by evidence of two or more of the relevant crimes committed by members of the enterprise within the requisite time frame.²³

Purposes of RICO

The purposes of RICO are to "provide new weapons of unprecedented scope for an assault upon organized crime and its economic roots."²⁴ The Statement of Findings prefacing the Organized Crime Control Act states that in prior studies and investigations, Congress had found organized crime in the United States to be a highly-sophisticated, multi-faceted activity that annually drains billions of dollars from the economy through unlawful conduct and social exploitation.²⁵ Congress also reported that organized crime activities weaken the U.S. economic system by cutting competition, burden commerce, threaten domestic security, and

¹⁹ 18 U.S.C. § 1961(1)(a) (1970).

²⁰ 18 U.S.C. § 1961(1)(b) (1970).

²¹ 18 U.S.C. § 1961(4) (1970).

²² *United States v. Turkette*, 452 U.S. 576, 583 (1981).

²³ *Id.*

²⁴ *Russello v. United States*, 464 U.S. 16, 26 (1983).

²⁵ Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 922, 923 (1970) (noted in *United States v. Turkette*, 452 U.S. 574, 588-89 (1981)).

undermine the general welfare of all citizens.²⁶ Congress found that organized crime continues to grow due to the limited scope and impact of traditional sanctions and remedies available to the government.²⁷

In light of such findings, Congress declared its purpose "to seek the eradication of organized crime in the United States by strengthening the legal tools"²⁸ used against those engaged in organized crime. It sought to mount "a full-scale attack on organized crime."²⁹ "What is needed...are new approaches that will deal not only with individuals, but also with the economic base through which those individuals constitute such a serious threat to the economic well-being of the Nation. In short, an attack must be made on their source of economic power itself..."³⁰ RICO is a comprehensive statute, intended to give the federal government powerful tools with which to pursue the rampant problem of organized crime. The vague terms of the statute, together with their broad judicial interpretations, allow federal prosecutors wide range in bringing actions against a gamut of organized crime activity. Unlike CCE, which is primarily limited to individuals who manage or organize narcotics-producing or distributing enterprises, RICO is a versatile weapon in the federal prosecutorial arsenal.

Purposes of RICO Forfeiture

The unique feature of the forfeiture provisions is their in personam operation. Traditionally, all forfeiture provisions in the U.S. were civil in nature and operated in rem, against the property of defendant. The property was viewed as the offending party. Under RICO, the defendant is viewed as the offending party and forfeiture of the property is triggered only by his conviction. In personam provisions were unprecedented in the U.S. until RICO, even though they were known to the common law of England and the colonies.³¹

Congress' utilization of a revolutionary approach evidences the special legislative intent supporting the RICO forfeiture provisions. If the intent behind RICO is to eradicate organized crime, then the forfeiture provisions are intended to achieve this result by enabling the government to erode the economic base of organized crime. "[T]he forfeiture provision was intended to serve all the aims of

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ 116 CONG. REC. 602 (1970) (remarks of Sen. Yarborough).

³⁰ *Id.* at 35193 (1970) (remarks of Rep. Poff).

³¹ Note, *Criminal RICO Forfeitures and the Eighth Amendment: "Rough" Justice Is Not Enough*, 14 HASTINGS CONST. L.Q. 451, 457 (1987).

the RICO statute..."³² and represents an effort to "... develop law enforcement measures at least as efficient as those of organized crime."³³ During the Senate debates prior to the enactment of RICO, one supporter announced:

While prosecutions and convictions of leaders of organized crime and their confederates are increasing each year...it is becoming increasingly apparent that such convictions alone, which simply remove the leaders from control of the syndicate-owned enterprises but do not attack the vested property interests whose control passes on to other Cosa Nostra leaders, are not adequate to demolish the structure of the surviving organizations which they run.³⁴

Prior to the 1984 amendment of the RICO forfeiture provisions, the Senate Judiciary Committee remarked that the Comprehensive Forfeiture Act was "designed to enhance the use of...criminal forfeiture, as a law enforcement tool in combatting two of the most serious crime problems facing the country: racketeering and drug trafficking...it is through economic power that [racketeering] is sustained and grows."³⁵ The Committee went on to comment that conviction of individual racketeers under RICO would be meaningless if "the economic power bases of criminal organization or enterprises were left intact."³⁶ The forfeiture provisions were promulgated in order to effectuate RICO's purpose by stripping crime families of their economic power.³⁷ An earlier Senate Report echoes this goal by indicating that the RICO remedies seek to divest crime family kingpins of their economic sources of power in order to choke off the family and free the channels of commerce from racketeering influence.³⁸ The Supreme Court has joined this consensus by stating that the goal of RICO forfeiture is to remove the profit from organized crime by separating the crime family kingpin from his

³² 116 CONG. REC. 18955 (1970) (remarks of Sen. McClellan).

³³ *Id.* at 35199 (1970) (remarks of Rep. Rodino).

³⁴ *Id.* at 607 (1970) (remarks of Sen. Byrd).

³⁵ S. REP. NO. 225, 98th Cong., 1st Sess. 191-192, *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 3182, 3374.

³⁶ *Id.*

³⁷ In the early 1930's, violence between gangs of Sicilian and Neapolitan immigrants caused gang leaders to devise a plan of organization for crime in the U.S. The existing gangs became recognized as families, each with its own hierarchy of leadership and territorial limits. 116 CONG. REC. 598 (1970) (citing cover story of *Time* of August 22, 1969).

³⁸ S. REP. NO. 617, 91st Cong., 1st Sess. 80 (1969).

unlawful gains.³⁹ By taking the profit out of organized crime, the forfeiture provisions would also act as a "mighty deterrent to any further expansion of organized crime's economic power."⁴⁰ In the face of the relative impotence of the traditional sanctions of fine and imprisonment, forfeiture diversifies and strengthens federal prosecutorial weapons designed to fight organized crime by enabling the government to strip the crime family of the fruits of unlawful activities. Courts believe that forfeiture is the only effective penalty against the crime family defendant, holding that if the defendant is fined or incarcerated but his "family" is left with the economic vestiges of his unlawful acts, the defendant could manage the organization by proxy from prison, or successors could quickly climb the hierarchical ladder within the family and continue illegal activities.⁴¹

DISCUSSION

Scope of RICO Forfeiture and the Sixth Amendment

Judicial interpretation of the breadth of the RICO forfeiture provisions determines the scope of their effectiveness in destroying the economic base supporting crime families. The demand for high-quality legal services by crime families is intensely high. Many attribute the longevity and prosperity of crime families to their ability to command high-quality legal talent⁴² and to the ability of their attorneys to repeatedly win sanctions of fines and short prison sentences. These sanctions are ineffective against organized crime because of the seemingly endless supply of cash and new managerial talent within crime families.⁴³ Attorneys are the "lifeblood" of organized crime and have become a "critical

³⁹ *Russello v. United States*, 464 U.S. 16, 28 (1983).

⁴⁰ 116 CONG. REC. 607 (1970) (remarks of Sen. Byrd).

⁴¹ See *United States v. Rubin*, 559 F.2d 975, 991 (5th Cir. 1977), *cert. denied*, 444 U.S. 864 (1979).

⁴² See *In re Forfeiture Hearing as to Caplin and Drysdale*, 837 F.2d 637 (4th Cir. 1988).

⁴³ "...in the past five years the 25 major identified traditional organized crime groups in the country have had 75 separate changes in leadership-28 resulting from prosecutions. Yet, to our knowledge not a single one of these groups has broken up as a result of the change in leadership." *Forfeiture of Narcotics Proceeds: Hearings Before the Subcomm. on Criminal Justice of the Senate Comm. on the Judiciary*, 96th Cong., 2d Sess. 1 (1980) (statement of Irving B. Nathan, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice). See also Dombrink and Meeker, *Racketeering Prosecution: The Use and Abuse of RICO*, 16 Rutgers L.J. 633, 635-636 (1985).

element in the life support system of organized crime."⁴⁴ "It is clear that traditional organized crime...depend[s] upon, and could not effectively operate without, these attorneys."⁴⁵

The plain language of §1963 calls for forfeiture of any interest the defendant gained in violation of the substantive section of RICO.⁴⁶ Legislative history gives an equally broad interpretation of forfeitable interests. The Senate Judiciary Committee wrote that the language of the forfeiture provisions "is designed to accomplish a forfeiture of any interest of any type in the [unlawful] enterprise..."⁴⁷ The Supreme Court has held that forfeiture applies to any interest traceable to racketeering activity, including cash profits as well as ownership interests in an enterprise.⁴⁸ The Court reasoned that a broad reading of "interest" is consistent with the pattern of RICO in using broad terms and concepts,⁴⁹ and that Congress would have expressly limited forfeitable interests in the statute if it had so intended.⁵⁰ A broad interpretation allows the government to defeat transactions where a defendant transfers assets or income gained through racketeering activity to a third party for concealment in order to avoid forfeiture. This interpretation best achieves the purposes of the forfeiture provisions to erode the economic power of organized crime by mandating forfeiture of any form such power could take.

"Any interest" is a concept broad enough to include assets or funds gained through illegal activity and paid as attorneys' fees. However, many courts and commentators claim that requiring post-conviction forfeiture of attorneys' fees or allowing the issuance of a pretrial restraining order freezing a defendant's assets infringes on the sixth amendment right to counsel.⁵¹

⁴⁴ *Lawyers Called Organized Crime "Life Support"*, 193 N.Y.L.J. 1 (March 11, 1985) (quoting 1985 staff report of the President's Commission on Organized Crime).

⁴⁵ *Id.* (referring to the small group of lawyers deeply involved in representing crime family defendants).

⁴⁶ 18 U.S.C. § 1963(a)(1) (1970).

⁴⁷ S. REP. NO. 617, 91st Cong., 1st Sess., 79 (1969).

⁴⁸ *Russello v. United States*, 464 U.S. 16 (1983).

⁴⁹ *Id.* at 21, 27 (citing a portion of legislative history which states: "The provisions of this title shall be liberally construed to effectuate its remedial purposes." Organized Crime Control Act of 1970, Pub. L. No. 91-452, 84 Stat. 947 (1970)).

⁵⁰ *Id.* at 23.

⁵¹ *United States v. Jones*, 837 F.2d 1332 (5th Cir. 1988); *United States v. Harvey*, 814 F.2d 905 (4th Cir. 1987); *United States v. Badalamenti*, 614 F. Supp. 194 (S.D.N.Y. 1985), *aff'd on other grounds*, 794 F.2d 821 (2d Cir. 1986).

The Deterrence Theory

The federal courts are split on the sixth amendment propriety of applying the RICO forfeiture provisions to attorneys' fees. The Supreme Court has not decided the issue. None of the cases establishes a general rule concerning a crime family defendant.

The law is clear on a single point. Property or funds transferred or contracted to be transferred to an attorney as part of a sham or fraudulent transaction, where the transfer is fraudulently disguised as a fee payment and the attorney is being used as a haven for concealing forfeitable property, must be forfeitable in order to prevent the dissipation of unlawfully-acquired assets.⁵² This interpretation preserves the forfeiture goal of stripping the racketeer of his illicit economic gains. The split in the case law develops concerning the forfeitability of legitimately-paid attorneys fees.

As a first step, the nature of the sixth amendment must be briefly examined. The amendment provides: "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense."⁵³ Implicit in this basic guarantee is the right of a non-indigent to retain counsel of choice,⁵⁴ out of one's private resources and free of governmental interference.⁵⁵ However, the right to counsel of choice is qualified - it must give way when required by the fair administration of justice⁵⁶ and by the purposes of the criminal forfeiture statutes.⁵⁷ Unlike the basic right to the assistance of counsel, the right is not absolute and "...cannot be used merely as a manipulative monkey wrench."⁵⁸

One line of authority has held that the forfeiture of bona fide attorneys' fees under RICO violates the sixth amendment because the threat of fee forfeiture will deter attorneys from defending RICO cases. Allegedly, an attorney will be reluctant to take on a case if he knows that his fee will be forfeited if his client is convicted. Some courts have engaged in bootstrapping, holding that because of the deterrent potential and subsequent chill on sixth amendment rights, Congress

⁵² *United States v. Monsanto*, 836 F.2d 74 (2d Cir. 1987); *United States v. Harvey*, 814 F.2d 905 (4th Cir. 1987); *United States v. Bassett*, 632 F. Supp. 1308 (D. Md. 1986).

⁵³ U.S. CONST. amend. VI.

⁵⁴ *Powell v. Alabama*, 287 U.S. 45, 53 (1932).

⁵⁵ *United States v. Harvey*, 814 F.2d 905, 923 (4th Cir. 1987).

⁵⁶ *In re Grand Jury Subpoena Served Upon Doe*, 781 F.2d 238, 250 (2d Cir. 1985), *cert. denied*, 475 U.S. 1108 (1986).

⁵⁷ *United States v. Nichols*, 654 F. Supp. 1541, 1558 (D. Utah 1987), *rev'd on other grounds*, 841 F.2d 1485 (10th Cir. 1988).

⁵⁸ *Gandy v. State of Alabama*, 569 F.2d 1318, 1323 (5th Cir. 1978).

never intended the forfeiture provisions to apply to bona fide attorneys' fees.⁵⁹ Other courts have found that Congress clearly intended forfeiture to apply to attorneys' fees, but that such application violates the sixth amendment due to the deterrent factor.⁶⁰

In *United States v. Badalamenti*,⁶¹ the district court held that Congress never intended forfeiture to encompass attorneys' fees. However, the court considered the attorney rendering bona fide legal services to be on notice that property or funds received as fees derived from unlawful activity and were subject to forfeiture.⁶² Therefore, according to §1963(m)(6)(B), the bona fide purchaser exception, the court would find attorneys' fees to be within the scope of forfeiture. In *United States v. Rogers*, the district court concluded similarly, yet conceded that the forfeiture provisions are clear in stating that all proceeds of racketeering activity traceable to that activity are potentially forfeitable. The court added that fees paid to an attorney become the property of the attorney and cease to be the property of defendant.⁶³ Because forfeiture can operate only against the property of defendant, the court reasoned that attorneys fees must not be subject to forfeiture. However, this logic ignores the central reason for the forfeiture provisions, which is to prevent a defendant from avoiding forfeiture by transferring property to his attorney in a sham fee payment. The court found that Congress intended forfeiture to apply exclusively to sham attorney fee payments. The court relied on a portion of the report of the Senate Judiciary Committee issued prior to the 1984 amendment of the forfeiture provisions: "The provision should be construed to deny relief [only] to third parties acting as nominees of the defendant or who have knowingly engaged in sham or fraudulent transactions."⁶⁴

But the *Rogers* court unilaterally inserted the bracketed word of limitation, when the passage as a whole gives no indication that attorneys' fees should be

⁵⁹ *United States v. Badalamenti*, 614 F. Supp. 194, 198 (S.D.N.Y. 1985), *aff'd on other grounds*, 794 F.2d 821 (2d Cir. 1986); *United States v. Rogers*, 602 F. Supp. 1332, 1348 (D. Colo. 1985).

⁶⁰ *United States v. Harvey*, 814 F.2d 905, 926 (4th Cir. 1987).

⁶¹ *United States v. Badalamenti*, 614 F. Supp. 194 (S.D.N.Y. 1985), *aff'd on other grounds*, 794 F.2d 821 (2d Cir. 1986).

⁶² *Id.* at 196.

⁶³ *Rogers*, 602 F. Supp. at 1346.

⁶⁴ S. REP. NO. 225, 98th Cong., 2d Sess. 209 n.47 (1984).

forfeitable only when paid in the course of fraud.⁶⁵ Additionally, the *Rogers* court noted that §1963 does not expressly provide for the forfeiture of assets legitimately transferred to attorneys, arguing that this interpretation does not exempt from forfeiture assets transferred to an attorney as part of a sham. But if the court is going to indulge this type of logic, it could just as easily conclude that all attorneys' fees should be subject to forfeiture, because §1963 makes no express mention of attorneys' fees at all.

In *United States v. Bassett*,⁶⁶ the district court held that the sixth amendment prevented the CCE forfeiture provisions from applying to bona fide attorneys' fees. However, this case is factually unique. CCE applies chiefly to drug-trafficking and does not encompass the wide variety of organized crime activities contemplated by RICO. Failing to apply forfeiture to legitimate attorneys' fees paid by a CCE defendant does not undermine the policy considerations present in RICO regarding the elimination of all of organized crime. Hence, it is more plausible to exempt attorneys' fees from forfeiture in a CCE case. The court did not find deterrence as the reason for the sixth amendment violation but found it in the fact that if the attorneys withdrew from the case, the defendants would be without counsel less than two months before trial. Even if new defense counsel could be secured on such short notice for a complex case, there would be insufficient time to prepare.

That Congress never intended the RICO forfeiture provisions to apply to attorneys' fees can also be rebutted by reference to the line of cases holding that Congress did in fact intend such an application but that it conflicts with the sixth amendment due to the deterrence theory.⁶⁷ The courts in *Harvey* and *Nichols* found that the plain language of §1963, which fails to mention attorneys' fees in any context, combined with the lack of contrary legislative intent, indicates that Congress intended such payments to be subject to the same conditions for exemption provided for all forfeitable property by §1963(m)(6)(A) and (B).⁶⁸ Legislative history indicates that the concept of forfeitable property in §1963 is to be broadly construed.⁶⁹ Because Congress clearly intended attorneys' fee payments to be within the concept of forfeiture, only the sixth amendment question remains unresolved.

⁶⁵ See Brickey, *Forfeiture of Attorneys' Fees: The Impact of RICO and CCE Forfeitures on the Right to Counsel*, 72 VA. L. REV. 493, 501 (1986) (emphasis added).

⁶⁶ *United States v. Bassett*, 632 F. Supp. 1308 (D. Md. 1986).

⁶⁷ See *supra* note 59.

⁶⁸ *Harvey*, 814 F.2d at 913; *Nichols*, 841 F.2d at ____.

⁶⁹ S. REP. NO. 225, 98th Cong., 2d Sess. 200 (1984).

The courts holding that fee forfeiture violates the sixth amendment rely on the deterrence argument. In support of this, the *Rogers* court cited a statement of the House Judiciary Committee prior to the 1984 amendments to the forfeiture provisions: "[N]othing in this section...is intended to interfere with a person's Sixth Amendment right to counsel."⁷⁰ However, the next sentence of the report states: "[T]he Committee...does not resolve the conflict in District Court opinions on...a person's right to retain counsel."⁷¹ This statement demonstrates that Congress did not intend to resolve the sixth amendment question, but intended to leave it to the courts.

The *Harvey* court found a sixth amendment violation by reasoning that fee forfeiture impedes a defendant's ability to pay an attorney and chills his access to private counsel, thereby violating the right to counsel of choice. The court explicitly found no violation of defendant's "basic" sixth amendment right not to be denied counsel.⁷² The court misplaced its focus and failed to properly recognize the qualified nature of the right to counsel of choice. The court asserts that the right to be represented by private counsel is the "primary" component of the sixth amendment. However, other courts have explicitly announced that the right to counsel of choice may be permissibly infringed when required by the fair administration of justice and by the purposes underlying criminal forfeiture.⁷³ In the crime family context, the purposes underlying the RICO forfeiture provisions strongly justify denying the right of a crime family defendant to retain counsel of choice. In enacting RICO, Congress sought to address what two decades of investigations indicated was a major national problem requiring immediate legislative action. Congress recognized the need for a method of eroding the economic infrastructure supporting crime family growth. Forfeiture is the only effective way to divest the crime family of its economic power because it forces the family to disgorge illicit profits. Finding that bona fide attorneys' fees are subject to forfeiture is needed to fulfill the purpose of RICO of obliterating organized crime. This strongly justifies any incidental chilling effect on the ability of a crime family defendant to hire private counsel.⁷⁴ A permissible sixth amendment infringement occurs, not an unconstitutional deprivation of the basic right not to be denied counsel.

⁷⁰ H.R. REP. NO. 845, 98th Cong., 2d Sess., pt. 1, at 19 n.1 (1984).

⁷¹ *Id.*

⁷² *Johnson v. Zerbst*, 304 U.S. 458 (1938).

⁷³ See *supra* notes 55 and 56.

⁷⁴ See *United States v. Monsanto*, 836 F.2d 74, 80-81 (2d Cir. 1987).

A violation of the right to counsel of choice, when warranted by one of these overriding considerations, is not unconstitutional. Indeed, the statement of the House Judiciary Committee cited by the *Rogers* court, together with the subsequent sentence, shows that Congress intended forfeiture to honor only the basic right to counsel. The effects on the right to counsel of choice were to be resolved by the courts. By its logic, the *Harvey* court would imply that appointed counsel is inadequate to satisfy the sixth amendment. Courts have consistently rejected this idea.⁷⁵

The district court in *Nichols* stated that fulfilling the goals of the racketeering statutes does not justify limiting defendant's admittedly qualified right to counsel of choice because legitimate payment of attorneys' fees does not contribute to criminal activity. This is untrue in the crime family context because it is the perpetual generation of cash that allows crime families to prosper and to diversify their criminal operations.⁷⁶ The court also held that it would not undermine the racketeering laws' purpose to exempt from forfeiture funds or property reasonably necessary for defendant to pay attorneys' fees, even if defendant were found guilty on the racketeering charge and had used profits from the unlawful activity to pay his lawyer. However, if the government seeks to punish a defendant for a crime which produced "tainted" profits, it should not be willing to let him use them to hire a lawyer. This is identical to allowing him to keep the fruits of his racketeering activity.⁷⁷ The *Jones* court suggested that the fact that the attorney gives bona fide legal services should overcome any notion of fee forfeiture.⁷⁸ But the legitimacy of the services rendered is no reason to allow a crime family defendant to use the attorney as a conduit for hiding forfeitable assets. This conclusion exempts a transfer based solely on legitimacy of services rendered rather than on the transferee's knowledge of the forfeitability of the assets transferred. This creates an exception to forfeiture outside of the Bona Fide Purchaser (BFP) exception contained in the provisions themselves. It also encourages the proliferation of an intimate attorney-crime

⁷⁵ See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Powell v. Alabama*, 287 U.S. 45 (1932); *In re Forfeiture Hearing as to Caplin and Drysdale*, 837 F.2d 637 (4th Cir. 1988); *In re Grand Jury Subpoena Duces Tecum Dated Jan. 2, 1985*, 605 F. Supp. 839 (S.D.N.Y. 1985), *rev'd on other grounds*, 767 F.2d 26 (2d Cir. 1985).

⁷⁶ Friedman, et. al., *Fighting Organized Crime: Special Responses to a Special Problem*, 16 RUTGERS L.J. 439, 455-56 (1985).

⁷⁷ See *United States v. Rubin*, 559 F.2d 975, 991 (5th Cir. 1977), *cert. denied*, 444 U.S. 864 (1979) (equating the transfer of economic power to attorneys with the retention of economic power by the crime family).

⁷⁸ *United States v. Jones*, 837 F.2d 1332, 1335 (5th Cir. 1988)

family relationship already typifying many crime families.⁷⁹ This directly undermines the goal of stripping illegally-gained economic power from crime families.

The principal reason why deterrence cannot support finding a sixth amendment violation when attorneys' fees paid by a crime family defendant are subject to RICO forfeiture is revealed by the unique relationship existing, in reality, between members of a crime family and their attorneys. Any reasons why an attorney may be deterred by the prospect of losing his fees from representing an ordinary RICO defendant do not exist in the crime family context. There is a remarkable trend for crime families to depend on a very small number of lawyers for all of their legal advice and representation. In 1985, the staff report of the President's Commission on Organized Crime found that "a small group of lawyers" have become critically important to the survival of crime families.⁸⁰ The chief reason for this is because crime families are understandably secretive, and distrustful of "outsiders." They are reluctant to open their doors to those whom they do not know. The result is that this small number of lawyers comprises people who devote much, if not all, of their time to advising and representing crime families. They perform roles similar to those of house counsel in major corporations, and are rarely paid on a per-case fee basis. Compensation tends to be in the form of large annual retainers. Rarely, then, will a "crime family attorney" be deterred from representing a client in a RICO case simply by the prospect of losing what would ordinarily be viewed as a fee payment. Any payment he receives during the course of a particular case is likely no more than a bonus coming outside of his normal retainer-style compensation.

There is a line of authority offering several compelling reasons why applying the RICO forfeiture provisions to attorneys' fees, either post-conviction or pretrial, presents no sixth amendment problem. The cases uniformly indicate that nothing in either the language or legislative history of §1963 calls for an exemption of attorneys fees of any type. They emphasize that the canons of professional responsibility require an attorney to represent a criminal defendant zealously despite the risk of not receiving compensation,⁸¹ thereby minimizing the possibility of deterrence. Additionally, courts have held that attorneys' fees forfeited to the government may be distributed back to an attorney, in the

⁷⁹ See *supra* note 44.

⁸⁰ *Id.*

⁸¹ See *In re Grand Jury Subpoena Duces Tecum Dated Jan. 2, 1985*, 605 F. Supp. 839 (S.D.N.Y. 1985), *rev'd on other grounds*, 767 F.2d 26 (2d Cir. 1985) (citing MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 2-110(c)(1) and DR 7-101(A)(2)(1980)).

amount of a reasonable fee, upon petition to the court.⁸² The existence of this avenue of relief forecloses all reasonable possibility that attorneys will be deterred from representing crime family defendants facing RICO charges.

In addition, crime families frequently use attorneys as conduits through which to launder money or as harbors for the safekeeping of illegally-obtained funds or property.⁸³ These sham transfers are disguised as attorneys' fee payments, and courts have emphasized that an important goal of the forfeiture provisions is to block such bogus transactions⁸⁴ and to prevent the dissipation of forfeitable assets.⁸⁵ A rule limiting forfeiture of attorneys' fees to sham transactions would require differentiation between a bona fide fee payment and a sham payment. This distinction cannot always be accurately made.

The district court in *In re Grand Jury Subpoena* added: "In the same manner that a defendant cannot obtain a Rolls Royce with the fruits of a crime, he cannot...obtain the services of the Rolls Royce of attorneys from these same tainted funds."⁸⁶ This reflects the argument that a defendant has no sixth amendment right to pay an attorney with the proceeds of illicit activity.⁸⁷ In *Monsanto* the second circuit supported this conclusion by stating that a discrimination problem would be created if an otherwise indigent defendant was allowed to use large sums of money gained through illegal activity to retain high-priced counsel, while an indigent defendant who committed a crime producing no such spoils was denied this benefit.⁸⁸

Sections (m)(6)(A) and (B) create two exceptions to the general rule that forfeitable property or funds transferred to a third party after commission of the act giving rise to forfeiture are themselves subject to forfeiture. The third party may keep the property or funds if he can establish that at the time of commission of the allegedly unlawful acts he had title to the property or funds superior to that of defendant; or if he can establish that he is a BFP for value of

⁸² *United States v. Figueroa*, 645 F. Supp. 453, 456 (W.D. Pa. 1986).

⁸³ See *supra* note 44.

⁸⁴ See *In re Grand Jury Subpoena Duces Tecum Dated Jan. 2, 1985*, 605 F. Supp. at 850 n.4 (S.D.N.Y. 1985), *rev'd on other grounds*, 767 F.2d 26 (2d Cir. 1985).

⁸⁵ *In re Forfeiture Hearing as to Caplin and Drysdale*, 837 F.2d 637, 643 (4th Cir. 1988).

⁸⁶ See *supra* note 81.

⁸⁷ *Caplin and Drysdale*, 837 F.2d at 646 (4th Cir. 1988) (quoting Brickey, "The sixth amendment guarantees only the right to use *legitimate* assets to obtain the assistance of counsel. If the defendant has no assets, the sixth amendment requires the appointment of counsel." 72 VA. L. REV. 493, 553 (1986)).

⁸⁸ *Monsanto*, 836 F.2d at 85 (2d Cir. 1987).

the property or funds who at the time of transfer was reasonably without cause to believe the property or funds were subject to forfeiture. "Purchasers" applies to providers of legal services as well as to other transferees for value.⁸⁹

These are the sole exceptions to forfeiture contained in the provisions. The attorney will never be able to satisfy the "superior title" exception simply because he would have to show that he had title over defendant in the funds or property which defendant gained through allegedly unlawful activity. The only party with superior title to defendant at the relevant point in time will be the victim of the allegedly unlawful activity, not defendant's attorney. Similarly, the attorney will never be able to meet the BFP exception due to the nature of his relationship with the crime family client. Courts have held that the indictment alone puts the attorney on notice of the forfeitability of defendant's assets⁹⁰ and have viewed the attorney rendering bona fide legal services as being in position to be on notice of the forfeitability of property or funds.⁹¹ The attorney representing a crime family defendant will be on perpetual "constructive notice" of the forfeitability of his client's assets and the funds out of which his fee was paid due to the dynamics of the relationship between a crime family and the attorneys it employs. Most attorneys representing crime families do so on an ongoing and comprehensive basis and possess an intimate knowledge of the family's internal affairs.⁹² It is difficult to comprehend a crime family RICO case where defense counsel is without notice that his client's assets have derived from unlawful activity and are subject to forfeiture.⁹³

Because he meets neither exception, an attorney rendering bona fide legal services to a crime family defendant will always be subject to fee forfeiture, according to the terms of the statute. This means that finding a transfer of property or funds as legitimate attorneys' fees to be exempt from forfeiture, given that deterrence of representation is too tenuous a sixth amendment claim in the crime family context, is to create a new exception entirely unwarranted by the text of RICO. It creates a loophole for an attorney to avoid forfeiture which he otherwise would never be able to avoid. It also directly controverts the

⁸⁹ See *United States v. Harvey*, 814 F.2d 905, 915 (4th Cir. 1987).

⁹⁰ See *In re Grand Jury Subpoena*, 605 F. Supp. at 849-50, *rev'd on other grounds*, 767 F.2d 26 (2d Cir. 1985) (following *United States v. Raimondo*, 721 F.2d 476, 477 (4th Cir. 1983), *cert. denied*, 469 U.S. 837 (1984)).

⁹¹ See *supra* note 60.

⁹² See *supra* note 44.

⁹³ See generally *United States v. Nichols*, 654 F. Supp. at 1556 n.21; *United States v. Badalamenti*, 614 F. Supp. at 196.

legislative intent behind forfeiture by creating a situation where a crime family is able to avoid being stripped of the economic power gained through racketeering activity.

Appointment of Counsel

Despite the weakness of the claim that fee forfeiture violates the right to counsel by deterring attorneys from defending crime family clients facing RICO charges, a solution is available to guarantee defendant's sixth amendment rights in case any potential for deterrence exists. He could simply retain an attorney with funds not gained through illicit activity and therefore not subject to forfeiture. If no untainted funds are available, the appointment of counsel will safeguard defendant's sixth amendment rights.

The Criminal Justice Act of 1964 provides that counsel shall be appointed by the court to a defendant who is "financially unable to obtain counsel" after the court has advised defendant that he has a right to be represented by counsel and that counsel may be appointed if he cannot afford it.⁹⁴ Appointed counsel may be furnished by private firms, bar associations, legal aid agencies, or defender associations.⁹⁵ The purpose of appointed counsel is to fulfill the sixth amendment rights of those financially unable to do so through private counsel.⁹⁶ The Criminal Justice Act must not be used to prevent defendants able to afford counsel from exercising that privilege.⁹⁷

Courts have unanimously upheld appointed counsel as sufficient to satisfy the sixth amendment.⁹⁸ The Supreme Court in *Powell* held, on right to counsel and due process grounds, that a defendant in a capital case has a right to appointed counsel. The necessary implication is that appointed counsel satisfies the sixth amendment. The Court in *Gideon* held that the right to appointed counsel applies to any defendant charged with a felony; the implication is the same. In *United States v. Bello*,⁹⁹ the court found that appointment of counsel fulfills the right to counsel. Clearly, appointed and retained counsel are equivalent in sixth amendment terms.

Courts have consistently held in RICO cases that the appointment of counsel fulfills defendant's sixth amendment rights when fee forfeiture renders him unable

⁹⁴ 18 U.S.C. § 3006A(b) (1982).

⁹⁵ 18 U.S.C § 3006A(a) (1982).

⁹⁶ See *United States v. Nichols*, 654 F. Supp. at 1558-59.

⁹⁷ *Id.*

⁹⁸ *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Powell v. Alabama*, 287 U.S. 45 (1932).

⁹⁹ *United States v. Bello*, 470 F. Supp. 723 (S.D. Cal. 1979).

to retain private counsel, either due to a pretrial freeze on assets¹⁰⁰ or a post-conviction forfeiture order allegedly deterring future representation.¹⁰¹ The *Caplin and Drysdale* court held that the sixth amendment guarantees simply the basic right to representation, which is to be represented by either retained or appointed counsel. Forfeiture therefore cannot threaten sixth amendment rights when appointed counsel is available.¹⁰² In *Nichols*, the tenth circuit found no violation of the right to counsel in a similar situation when appointed counsel is available.¹⁰³ The fourth circuit raised an additional argument in *Harvey* by claiming that appointed counsel is no answer to the sixth amendment problem created by fee forfeiture because the "available force of public defenders...is insufficient to provide [sixth amendment] assurance."¹⁰⁴ However, the number of public defenders available to serve as appointed counsel is not so grave a problem as to create constitutional concerns. Neither are public defenders the sole source of appointed counsel.¹⁰⁵ The argument concerning the quality of appointed counsel was rejected by the fourth circuit in *Caplin and Drysdale* and by the implicit holdings of *Powell* and *Gideon*. The *Caplin and Drysdale* court rejected the notion of appointed counsel being presumptively unqualified for complex racketeering cases, claiming that such an idea would lead to "the absurd result that the government could not prosecute racketeers with no funds in their possession."¹⁰⁶

Regardless, the right to counsel assures only the fact of representation and the Constitution reflects the "harsh reality that the quality of a defendant's representation frequently may turn on his ability to retain the best counsel money can buy."¹⁰⁷ Even if appointed counsel were of lower quality than retained counsel, no constitutional problem would exist.

The *Harvey* court argues that the availability of appointed counsel for RICO defendants is of little consolation because of the catch-22 created when a defendant does not qualify for appointed counsel because he possesses untainted

¹⁰⁰ *United States v. Lewis*, 759 F.2d 1316 (8th Cir.), *cert. denied*, 474 U.S. 994 (1985).

¹⁰¹ *United States v. Monsanto*, 836 F.2d 74 (2d Cir. 1987).

¹⁰² See *supra* note 78.

¹⁰³ *Nichols*, 841 F.2d at ____.

¹⁰⁴ *Harvey*, 814 F.2d at 921.

¹⁰⁵ See *supra* note 95.

¹⁰⁶ *Id.* (quoting *United States v. Cronin*, 466 U.S. 648 (1984)).

¹⁰⁷ *Morris v. Slappy*, 461 U.S. 1, 23 (1983) (Brennan, J., concurring).

funds sufficient to hire counsel, yet cannot hire a lawyer because attorneys may be deterred from representing a client whose assets are subject to forfeiture.¹⁰⁸ However, this argument rests on faulty logic. Attorneys will not be deterred from representing a client when they know that the client possesses untainted assets out of which to pay legal fees. But in crime family cases an attorney may not want to take any chance at all of losing his fees. He may be deterred even if some of defendant's assets are subject to forfeiture because of his knowledge that most assets of a crime family member are likely to be tainted. The catch-22 then rests on the validity of the deterrence theory, which has been shown not to apply in the crime family context due to the nature of the attorney-crime family relationship.

However, even if any potential exists for a crime family defendant to be caught in this catch-22, where he is rendered defacto indigent by the forfeiture order but is not dejure indigent, a solution exists. Rather than resolve the question as the *Harvey* court did, which was to hold that a sixth amendment violation existed and that forfeiture could not apply to attorneys' fee payments, a solution exists whereby defendant's sixth amendment rights can be fulfilled while still applying forfeiture to the attorneys' fees and thereby eroding the crime family's tainted economic base to the maximum amount. The forfeiture provisions should be amended to allow for counsel to be appointed to an alleged crime family defendant facing these circumstances.

The catch-22 is unique to the crime family defendant because it is when representing this type of client that the attorney most likely fears losing his fee even when the defendant possesses assets not subject to forfeiture. Creating a "RICO crime family exception" to the traditional rules for appointing counsel in criminal cases according to the Criminal Justice Act specifically avoids any potential problem a crime family defendant may face in acquiring counsel, while still allowing the government to pursue attorneys' fees under RICO forfeiture. This plan accords full respect to the sixth amendment. It gives the government the greatest opportunity to erode the economic foundation of crime families and to eradicate organized crime. This is the clear purpose of forfeiture and of RICO as a whole.

Singling out crime family defendants for special treatment is justified. In an equal protection context, a crime family member does not qualify as a member of a "suspect" class, and a distinction between defendants who are members of crime families and those who are not must bear only some rational relationship to a legitimate governmental interest.¹⁰⁹ Allowing forfeiture of attorneys' fees paid

¹⁰⁸ See *supra* note 101.

¹⁰⁹ *McDonald v. Board of Election*, 349 U.S. 802, 809 (1968).

by a crime family defendant serves the legitimate governmental interest in eradicating organized crime embodied in RICO by forcing the sacrifice of interests gained through unlawful acts. In addition, this interpretation of the RICO forfeiture provisions suffers no other constitutional infirmities.¹¹⁰ The special treatment is not only constitutional, but its purpose is to guarantee constitutional rights. RICO represents a concerted effort between the executive and legislative branches to destroy organized crime, and Congress envisioned criminal forfeiture as the most efficient way to deteriorate the substantial economic bases supporting crime family empires. If Congress targets the law towards a particular group, the judiciary is justified in applying the law to that group in a unique way. Amending the RICO forfeiture provisions to provide for appointed counsel to defacto indigent crime family defendants serves both the defendant and the goals of RICO.

CONCLUSION

This article has shown that in the unique case of the crime family defendant facing RICO charges, the government is permitted by both the language and legislative history of the statute and by the Constitution to pursue forfeiture of attorneys' fee payments in both a pretrial and post-conviction posture. RICO affords no special protection from forfeiture to attorneys or to attorneys' fees. Due to the unique nature of the relationship between a crime family defendant and his attorney, the latter will not be deterred from representation by the threat of fee forfeiture. The availability of appointed counsel in such cases guarantees defendant's sixth amendment rights. Amending the RICO forfeiture provisions to allow for appointed counsel when a crime family defendant is not de jure indigent but is rendered defacto indigent by the forfeiture order eliminates any potential sixth amendment infringements associated with forfeiture of attorneys' fees. Creation of a "RICO crime family exception" serves both the sixth amendment and the purposes underlying RICO forfeiture.

While the government may incur the cost of appointing an attorney in order to be able to pursue forfeiture of attorneys' fees, this is not a question of

¹¹⁰ Post-conviction deprivation of an attorney's property interest in legitimately-paid fees presents no procedural due process violation for the attorney. The deprivation will not occur unless the government can show at the pretrial adversarial hearing that the defendant is a crime family member. This affords sufficient procedural due process to the attorney in danger of losing his fees. *Mathews v. Eldridge*, 424 U.S. 319, 345 (1975) (holding that procedural due process is satisfied when the petitioner has an effective means of communicating his case to the decision-maker before the deprivation). Issuance of a pretrial restraining order freezing defendant's assets and preventing him from paying an attorney presents no procedural due process violation for the attorney for the same reasons.

spending a dollar in order to earn one. By winning forfeiture of attorneys' fees, the government obtains the additional advantage of forcing a defendant to forego illicit profits, thereby helping to dissolve the foundation of economic strength supporting organized crime.

In *Caplin and Drysdale* the fourth circuit recognized the need to defer to Congressional will concerning the problems RICO seeks to address.¹¹¹ The court states that a ban on fee forfeiture, in addition to restricting the scope of Congress's efforts to solve the organized crime problem, will curtail future legislative flexibility to deal with the problem.¹¹² Allowing attorneys to profit from unlawfully-obtained funds may make it easier for them to become deeply-involved with crime families as ongoing advisers, a characteristic already true of most attorney-crime family relationships. This also creates the potential for increased public cynicism toward the legal system.¹¹³

The right to counsel "cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions.'"¹¹⁴ That crime family defendants have as compelling a right to counsel as anyone else is not disputed. The plan for court-appointed counsel for such defendants in order to preserve the government's interest in pursuing forfeiture of attorneys' fees passes muster under the sixth amendment and is demanded by the high principles underlying RICO.

RICO was enacted in order to make progress in what some have called a national war against organized crime. One of the many Congressional investigations leading to the passage of RICO found: "The Mafia is a secret conspiracy against law and order which will ruthlessly eliminate anyone who stands in the way of...any criminal enterprise in which it is interested. It will destroy anyone...[i]t will use any means available..."¹¹⁵ The special national problem of organized crime justified the creation of a statute specifically targeted towards eliminating that problem. Fulfilling the aims of that statute justifies the

¹¹¹ *Caplin and Drysdale*, 837 F.2d at 648.

¹¹² *Id.*

¹¹³ *Id.* at 649.

¹¹⁴ *Powell v. Alabama*, 287 U.S. 45 (1932) (citing *Hebert v. Louisiana*, 272 U.S. 312 (1926)).

¹¹⁵ *Senate Special Comm. to Investigate Organized Crime in Interstate Commerce, Third Interim Report*, S. REP. NO. 307, 82d Cong., 1st Sess., 150 (1951).

special scheme of treatment for the terrorist element of society represented by crime families, whose continued existence demonstrates the need for innovative application of innovative laws. Forfeiture of attorneys' fees will enhance the quality of RICO crime family convictions and will represent a significant step toward dismantling organized crime's carefully-cultivated myth of being untouchable.