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TESTIMONY BY PAMELA L. DONLEAVY ASSISTANT DISTRICT ATTORNEY PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

The Federal Racketeering Influenced and Corrupt Organizations Act (RICO) was written with two purposes in mind. First, the act enables the government to present a jury with the whole picture of how an enterprise, such as an organized crime family operates. Second, RICO has significant forfeiture and civil provisions to separate the sophisticated, organized criminal from his or her ill-gotten gains and illicit control of legitimate businesses.

RICO makes it illegal:

1. to invest income derived from criminal acts into a business or as the statute terms it, an "enterprise";
2. to acquire or maintain control over an "enterprise" by committing criminal acts; and
3. to conduct a business or "enterprise" through committing criminal acts.

RICO allows the government to present to the jury the entirety of the criminal activity committed by sophisticated and organized criminals, rather than only being able to pursue the leader or a small number of subordinates for a single crime or scheme. Instead of merely proving one criminal act in a defendant's life, RICO permits proof of a defendant's entire criminal enterprise. Thus, RICO combats the entrenched "professional" who is a part of an organization devoted to sophisticated criminal activities.

The Federal RICO Act also has forfeiture provisions that take the profit out of racketeering activities, as well as civil equitable remedies that may be applied in appropriate cases to try to prevent corrupt influences from remaining in control of innocent businesses or organizations.

The Pennsylvania Corrupt Organizations statute has been very effective in allowing prosecutors to present the entire extent of criminality employed by individuals who have corrupted enterprises or have run enterprises corruptly. However, since the Pennsylvania Legislature did not enact RICO's forfeiture or governmental civil equitable remedies, defendants who have been convicted have been

allowed to continue to profit financially from their illegal acts. In some cases, the convictions have only served as an inconvenience which appears to have merely been shrugged off as "a cost of doing business". Examples of this unjust result are included in the material which follows.

I. Pennsylvania's Corrupt Organization Statute has been very effective in prosecuting organizations like the Junior Black Mafia in Philadelphia. Assume, for example, that prosecutors gathered evidence that ten (10) individuals associated together in a structured organization with one individual at the helm supervising the other individuals who are involved in extorting protection money from store owners, drug distribution, and numbers writing and banking. Our Corrupt Organization statute allows all ten (10) individuals and the three (3) distinct criminal schemes to be presented at one trial.

However, under present Pennsylvania law, only the money, property, and proceeds obtained by the individuals in their drug trafficking can be seized, as is authorized by Pennsylvania's Drug Forfeiture Law. The money, property, and proceeds that were obtained by the Junior Black Mafia from extorting the local store owners and from their numbers writing business would remain with the "Mafia" family to underwrite new members who wished to join the ranks depleted by the convicted criminal members. Under these circumstances, Pennsylvania's Corrupt Organization statute does not effectively take the profit out of the criminal activities,

allows defendants to profit handsomely from some of their criminal acts and to finance further acts of crime.

II. In 1989, the Philadelphia District Attorney's Office arrested two brothers who owned and operated a Real Estate Agency in Philadelphia. Over the years these defendants had gotten the well earned reputation as slumlords engaged in criminal activity.

After an investigation by the Philadelphia District Attorney's Office, it was discovered that these defendants were involved in very few legitimate operations at their offices. For years they had made hundreds of thousands of dollars by deciding to conduct their Agency through criminal means.

For example, these defendants owned over sixty (60) rental properties that were grossly beneath the Department of Licenses and Inspections Code for safety and habitability. Licenses and Inspection (hereinafter L&I) inspectors regularly cited the properties, but these defendants paid bribes to an L&I Code Enforcement Officer to pull and destroy the violations. The defendants continued to collect their rents from the tenants who continued to be subjected to substandard housing.

The defendants also found an individual in the City's Law Department Enforcement Section whom they bribed to compromise the tax and utility bills they owed on all of their properties as well as to notify them of any asset seizure actions soon to be enforced by the City. Once this information was received by these defendants, they would quickly move to close out a bank account or

sell an asset targeted so that when the City went to seize the property or money, it would be gone.

These defendants also devised a method of illegally acquiring tax delinquent properties from the City. They found an individual whom they could bribe from the City's Office of Housing. This individual was involved in finding well constructed tax delinquent properties in the City, certifying these properties for Sheriff's Sale, setting a price for a City bid on the property, and then, if the City won the bid, putting the property into a program known as the Sweating Equity Program. This program would allow the tenants of the property or other qualified individuals to purchase the property at a nominal amount, with the agreement that the purchaser would bring the property into compliance with the L&I Code and thereafter maintain the property as the new owner. However, the defendants paid this Housing employee to submit a low offer from the City, and give the defendants prior information on the City's bid. The defendants would then submit a slightly higher bid and be awarded title to the property at the Sheriff's Sale. The defendants then sold the properties at considerable profit to themselves.

Finally, the defendants also obtained lists of tax delinquent properties from the Law Department and sent notices to the tenants of these properties stating that the defendants now owned the properties and would be coming around to collect their rents. This was also done at considerable profit, even though the defendants didn't own the properties or have any right to collect the rents.

All and all, these defendants made hundreds of thousands of dollars by operating their Real Estate business by committing hundreds of criminal acts.

They did plead guilty to Corrupt Organizations and each received three (3) years in prison, but they will emerge from prison as rich men. They continue to own their Real Estate Agency, the profits from the sale of the illegally purchased houses from the Sweating Equity Program, and sixty (60) rental properties that are still substandard housing with multiple L&I violations.

If the Corrupt Organizations amendment had been in effect, the District Attorney could have asked for additional remedies, such as the forfeiture of the real estate agency, the illegally obtained properties, the illegally obtained rents, and the profits from the sale of any illegally obtained properties. The District Attorney would then oversee the sale of the properties, and after providing for the rights of innocent parties, the remaining money could be used by the District Attorney for future investigations.

Or, if the District Attorney decided to proceed using the Civil Corrupt Organization cause of action, he could have asked that the defendants be required to divest themselves of their interest in the Agency. The District Attorney could further request that the court appoint a trustee to oversee the running of the Real Estate Agency. The trustee could be authorized by the court to insure that the sixty (60) properties were brought into compliance with the Housing Codes. Furthermore, the trustee could oversee the return of illegally collected rents, and the payment of

City real estate taxes and utility bills. By proceeding this way, the District Attorney could aid the greatest number of injured parties and compel the upgrading of sixty (60) or more substandard housing units.

However a District Attorney or the Attorney General chose to proceed, a more just result would be obtained instead of allowing the brothers to remain as wealthy slumlords who continue to financially profit from their illegal activities for which they were duly convicted.

III. The third example involves an individual and his employees who operated a Drivers License Restoration Agency. This defendant specialized in obtaining fictitious licenses for individuals who had lost their driving privileges because they had obtained multiple driving violations. His standard charge was \$1,000 for each year the license was suspended.

The defendant also obtained forged State Police drivers examination tests and licenses for individuals who were illegal aliens and illiterate. The defendant was able to service all of these individuals by bribing state officials who had access to the Pennsylvania driving records and the licensing approval process in Harrisburg.

He too made hundreds of thousands of dollars over several years while putting dangerous drivers back on the roads of Pennsylvania.

This defendant also pleaded guilty and received probation, a not uncommon occurrence in Philadelphia these days since our prisons are releasing sentenced defendants early to make room for pretrial detainees. Since there were no innocent victims in this case, and no restitution to be requested, the defendant basically made a fortune and could only be punished by probation.

However, if the Corrupt Organizations amendment had been in effect, the defendant could have been ordered to forfeit all of his ill-gotten gains, property purchased from his illegal fees and any gain made from his criminal acts. This money would have gone to the District Attorney's Office to fight future crime, rather than enriching the defendant.

In all of these examples, I want to make it very clear that the Attorney General or District Attorney has no independent authority under the Corrupt Organization Amendment. Prosecutors would only have a basis to request certain delineated equitable remedies that may or may not be ordered by a Court after a full hearing or trial. Any decision by a Court would be appealable and reviewable if it appeared that an unjust result had been obtained.

It is also interesting to note that under a recent United States Supreme Court case, Tafflin v. Levitt, 110 S.Ct. 792 (1990), the Court ruled that the Federal RICO's private civil action may be brought in state court as well as federal court. So under present law, the only individuals in Pennsylvania who cannot file a RICO civil action in our state court are the District Attorneys and the Attorney General.

I hope these examples have given you some idea how the existing Corrupt Organizations statute is deficient in eliminating the "profit" from sophisticated, organized crime. In this day and age of cut backs, and budget crises, these sophisticated criminals should not be allowed to profit from their criminal acts.

The passage of the Corrupt Organizations Amendment should be supported by legislators as well as all taxpayers.