

RESUME OF G. ROBERT BLAKEY

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PROFESSIONAL CHRONOLOGY

2013 to Present - William J. and Dorothy K. O'Neill Professor of Law Emeritus.

1985 to 2012 - William J. and Dorothy K. O'Neill Professor of Law, Notre Dame Law School. Taught courses in federal criminal law, including RICO, federal criminal procedure, criminal law, and jurisprudence. While a professor, I also was co-counsel in or consulted on numerous civil and criminal cases, including RICO matters.

1980 to 1985 - Professor of Law, Notre Dame Law School. Taught courses in federal criminal law, including RICO, and federal criminal procedure. While a professor, I also was co-counsel in or consulted on numerous civil and criminal cases, including RICO matters.

1988 - Consultant, United States House Judiciary Committee (Congressman John Conyers). Worked on white-collar crime control; drafted 18 U.S.C. § 1346, *overturning McNally v. United States*, 483 U.S. 350 (1987).

1985 to 1986 - Special Counsel, United States Senate Judiciary Committee (Senator Joseph Biden). Worked on white-collar crime control.

1973 to 1980 - Professor of Law and Director, Cornell Institute on Organized Crime, Cornell Law School. Taught courses on federal criminal law, including RICO, federal criminal procedure, and criminal law; hosted a summer seminar on the investigation and prosecution of organized crime, including the use of civil and criminal RICO, for federal, state, and local prosecutors, FBI agents, and other law enforcement agents.

1977 to 1978 - Chief Counsel and Staff Director, United States House Select Committee on Assassinations (Congressman Louis Stokes, Chairman). Investigated assassinations of President John F. Kennedy and Dr. Martin Luther King, Jr. For using modern forensics in the investigations and hearings, I received the National Academy of Forensic Sciences Award of Merit (February 19, 1979).

1969 to 1973 - Chief Counsel, Subcommittee on Criminal Laws and Procedures, United States Senate (Senator John L. McClellan, Chairman) (work of the Subcommittee described *infra*).

1964 to 1969 - Professor of Law, Notre Dame Law School. Taught courses on federal criminal law, federal criminal procedure, and criminal law.

1960 to 1964 - Special Attorney, Organized Crime and Racketeering Section, United States Department of Justice. Trial attorney employed under Attorney General's Honors Program, investigating and trying racketeering cases.

EDUCATION

College. University of Notre Dame, A.B., *cum laude* (1957) (Philosophy).

Law School. University of Notre Dame Law School, J.D. (1960).

SCHOLARSHIPS, AWARDS, AND RELATED MATTERS

- Recipient of John J. Cavanaugh Law Scholarship, Notre Dame Law School.
- Associate Editor, NOTRE DAME LAW REVIEW.
- Phi Beta Kappa.
- Order of the Coif.
- Legal Award, Association of Federal Investigators, October 11, 1969 (for work on drafting the Organized Crime Control Act of 1970).
- Appreciation Award, Federal Bureau of Investigation - New York Office, December 1985 (for assistance in formulating the theory of the RICO prosecution of the heads of the five organized crime families in New York City, upheld in *United States v. Salerno*, 868 F.2d 524 (2d Cir. 1989); see S. Rep. No. 91-617, at 36-43 (1969) (reporting out RICO and identifying six of the eleven individuals indicted as a focus of RICO)).
- 1989 Faculty Member of the Year Award, Notre Dame Law School.

- Named one of the hundred most influential lawyers in the United States, *The National Law Journal*, April 15, 1985; *id.*, May 2, 1988; *id.*, March 25, 1991.
- The Charles Crutchfield Award, Black Law Students Association, 1996.
- The American Law Institute, 1999.

BAR MEMBERSHIPS

- North Carolina (August 5, 1960; inactive).
- District of Columbia (October 21, 1960).
- Colorado (July 22, 1986; active).
- United States Supreme Court (October 28, 1963).
- Various federal district courts and circuit courts of appeals.

SCHOLARSHIP AND EVOLUTION OF RICO

ENACTMENT OF RICO

In 1970, Congress enacted Pub. L. No. 91-452, the “Organized Crime Control Act.” Title IX of the Act is the “Racketeer Influenced and Corrupt Organizations Act,” or RICO. From 1969 to 1973, I was the Chief Counsel, Subcommittee on Criminal Laws and Procedures, United States Senate Judiciary Committee, chaired by Senator John L. McClellan. During that time, I processed legislation pending before the subcommittee and the full committee, including Pub. L. 91-452.

Because of my work on racketeering legislation for the President’s Commission on Law Enforcement and Administration of Justice, the United States Senate Judiciary Committee, and the American Bar Association, the federal government and 35 states passed racketeering legislation. I helped in drafting and implementing the legislation in approximately half of the states that adopted RICO, in particular Illinois, Colorado, Florida, and Oregon. In construing the statutes, courts often use my testimony before legislative bodies and my scholarship. *See, e.g., Russello v. United States*, 464 U.S. 16, 28 (1983) (RICO); *Tafflin v. Levitt*, 493 U.S. 455, 466 (1990) (RICO); *Reves v. Ernst & Young*, 507 U.S. 170, 179-82 (1993) (RICO); *NOW v. Scheidler*, 510 U.S. 249, 259 n.5 (1994) (RICO); *People v. Chaussee*, 880 P.2d 749, 757-58 (Colo. 1994) (CO RICO); *Computer Concepts v. Brandt*, 98 Or. App. 618, 628, 780 P.2d 249, 254, *aff’d*, 801 P.2d 800, 807 (Or. 1990) (OR RICO); *Banderas v. Banco Cent. del Ecuador*, 461 So. 2d 265, 269 n.2 (Fla. App. 3d Dist. 1985) (FL RICO).

Comment: in 1963, the FBI determined that the mob had 22 families in cities

across the nation. Its membership was approximately 5,000. For every member, it had 25 associates. Today, the estimated membership is 1700 in two or three families located in the New York City area. Functioning families are not in any other area. The reasons for this decline are multiple (e.g., old age, changing socio-economic factors), but most credit an energized and reformed FBI (to focus on families not individuals alone) and aggressive RICO, civil and criminal, litigation by the Department of Justice in the context of the federal sentencing guidelines. *See, e. g., supra, United States v. Salerno*, 868 F.2d 524 (2d Cir. 1989).

EVOLUTION OF MY RICO SCHOLARSHIP

- (i) In 1980, I published, along with Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009 (1980) (“*Basic Concepts*”).

Reves v. Ernst & Young, 507 U.S. 170, 179 (1993) cites *Basic Concepts*, as do the Second, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits. With the exception of the Second Circuit in its panel decision in *Sedima*, the citations are favorable.

In its panel decision in *Sedima*, which the Supreme Court reversed, the Second Circuit called *Basic Concepts* “influential,” yet decried its influence. Significantly, its opinion principally relied on the work of a student, Andrew Bridges, *Private RICO Litigation Based on “Fraud in the Sale of Securities,”* 18 GA. L. REV. 43 (1983), and the analysis of *Kaushal v. State Bank of India*, 556 F. Supp. 576 (N.D. Ill. 1983). *Sedima v. Imrex, Inc.*, 741 F.2d 482, 487 n.6 (2d Cir. 1984), *rev’d*, 473 U.S. 479 (1985). The Ninth Circuit in *Religious Technology Center v. Wollersheim*, 796 F.2d 1076, 1081 (9th Cir. 1986), rightly observed that the value of the student’s work and *Kaushal’s* analysis are “thrown into considerable doubt by the Supreme Court’s total rejection of the conclusions drawn by the Second Circuit from its historical analysis of the RICO statute.”

In sharp and unfavorable contrast, the Second Circuit went *en banc* in *United States v. Indelicato*, 865 F.2d 1370, 1382-1384 (2d Cir. 1989), to determine the meaning of “pattern” under RICO; it used *Basic Concepts* as the underpinning of its decision.

- (ii) In 1982, I published *The RICO Civil Fraud Action in Context*, 58 NOTRE DAME L. REV. 237 (“*Civil Fraud*”).

Now v. Scheidler, 510 U.S. 249, 259 n.5 (1994) (RICO), *Reves v. Ernst & Young*, 507 U.S. 170, 180 (1993) (RICO), and *Russello v. United States*, 464 U.S. 16, 28 (1983) (RICO), each favorably cites *Civil Fraud*, as do the First, Second, Third, Fifth, Sixth, Seventh, Eighth, and Ninth Circuits. The citations are favorable.

- (iii) In 1987, I published, along with Scott D. Cessar, *Equitable Relief Under Civil RICO*, 62 NOTRE DAME L. REV. 526 (“*Equitable Relief*”).

The Fourth, Sixth, and Tenth Circuits cite *Equitable Relief* favorably. The Fourth Circuit’s decision is particularly significant, because the analysis of *Equitable Relief* forms the rationale for its *en banc* opinion in *Busby v. Crown Supply, Inc.*, 896 F.2d 833, 837 (4th Cir. 1990) (*en banc*) (RICO is not limited by an investment injury rule), a minority view on RICO the Circuit continues to follow.

- (iv) In 1996, I published, along with Kevin P. Roddy, *Reflections on Reves v. Ernst & Young: Its Meaning and Impact on Substantive, Accessory, Aiding Abetting and Conspiracy Liability Under RICO*, 33 AM. CRIM. L. REV. 1345 (“*Reflections*”).

The Third Circuit used *Reflections* in overruling its prior RICO holding and adopting its new position in *Smith v. Berg*, 247 F.3d 532, 536 (3d Cir. 2001) (RICO conspiracy is not limited by a management rule), that, in turn, led the Ninth Circuit to adopt its similar new position in *United States v. Fernandez*, 388 F.3d 1199, 1229 (9th Cir. 2004) (RICO conspiracy is not limited by a management rule).

SELECTED CONSULTANTSHIPS AND RELATED MATTERS

Counsel before the Supreme Court in *Berger v. New York*, 388 U.S. 41 (1967) (for the Attorneys General of Massachusetts and Oregon and the National District Attorneys Association as Amici). This appeal involved the constitutionality of court-ordered electronic surveillance, in which the Court held a New York statute unconstitutional. The arguments of Amici formed the basis for Justice Harlan’s and Justice White’s dissents. Later, the Court upheld court-ordered electronic surveillance in *Katz v. United States*, 389 U.S. 347 (1967), adopting the Harlan and White dissents.

“Aspects of the Evidence Gathering Process in Organized Crime Cases,” 80 TASK FORCE REPORT: ORGANIZED CRIME, PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE (1967). In his dissent, Justice

White, in *Berger v. New York*, 388 U.S. 41, 112 n.3 (1967), suggested that this paper was “why most Commission members favored legislation permitting controlled use of electronic surveillance for law enforcement purposes.”

Reporter, American Bar Association Project for Minimum Standards in Criminal Justice, Electronic Surveillance (1967-68).

Special Counsel to Senator John L. McClellan, Judiciary Committee, United States Senate, Title III on Electronic Surveillance, Pub. L. No. 90-351, “Omnibus Crime Control and Safe Streets Act of 1968” (1967-68).

Because of my work on electronic surveillance for the President’s Commission on Law Enforcement and Administration of Justice, the American Bar Association, and the United States Senate Judiciary Committee, the federal government and 40 states enacted electronic surveillance control legislation. I was involved in drafting and implementing the legislation in California, Florida, New Jersey, and New York. In construing the statutes, courts often use my testimony before legislative bodies and my scholarship. *See, e.g., United States v. White*, 401 U.S. 745, 771 n.4 (1971); *United States v. Giordano*, 416 U.S. 505, 518 (1974); *United States v. Chavez*, 416 U.S. 562, 580, 593 (1974); *Dalia v. United States*, 441 U.S. 238 (1979); *People v. Otto*, 831 P.2d 1178, 1185 (Cal. 1992); *Standiford v. Standiford*, 598 A.2d 495, 500 (Md. App. 1991).

A decision of the Eleventh Circuit merits special notice. In *Glazner v. Glazner*, 347 F.3d 1212, 1213 (11th Cir. 2003), the Court *en banc* relied on my testimony before Congress to overrule within the Circuit *Simpson v. Simpson*, 490 F.2d 803, 808 (5th Cir. 1974) (rejecting my testimony and the plain text of the statute on the question of the unlawful character of spousal overhearing).

Presidential appointee to the Wiretap Commission established by the Omnibus Crime Control and Safe Streets Act of 1968. REPORT, NATIONAL COMMISSION FOR THE REVIEW OF FEDERAL AND STATE LAWS RELATING TO WIRETAPPING AND ELECTRONIC SURVEILLANCE 187-212 (1976) (concurring opinion of Professor G. Robert Blakey).

Member, Task Force on Legalized Gambling, Twentieth Century Fund (1974).

Consultant, Commission on the Review of the National Policy Toward Gambling (1974-75).

Member, Task Force on Organized Crime, National Advisory Committee on Criminal Justice Standards and Goals (1976).

Counsel before the Supreme Court in *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479 (1985) (RICO) (for the Attorneys General of a number of states as Amici). The arguments of the Amici prevailed.

Vice Chairman, American Bar Association RICO Cases Committee and Reporter for A COMPREHENSIVE PERSPECTIVE ON CIVIL AND CRIMINAL RICO LEGISLATION AND LITIGATION (1985).

Counsel before the Supreme Court in *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46 (1989) (IN RICO) (for the National Association of District Attorneys as Amicus). I presented to the Court the facts of the pornography traffic and organized crime. I also drafted the legal arguments for the State of Indiana that prevailed.

Counsel before the Supreme Court in *H. J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229 (1989) (RICO) (for the Attorneys General of a number of states as Amici). The arguments of the Amici prevailed.

Counsel before the Supreme Court in *Tafflin v. Levitt*, 493 U.S. 455 (1990) (RICO) (for the Amicus).

Counsel and argued before the Supreme Court in *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258 (1992) (RICO). My arguments did not prevail, but my arguments formed the basis of the concurring opinion by Justices O'Connor, White, and Stevens.

Counsel before the Supreme Court in *Reves v. Ernst & Young*, 507 U.S. 170 (1993) (RICO) (for the Amicus).

Counsel and argued before the Supreme Court in *NOW v. Scheidler*, 510 U.S. 249 (1994) (RICO). This appeal involved two issues. The Court reversed and remanded the first issue (economic motive). My arguments did not prevail on the first issue. Later, it reached my second argument (scope of extortion), adopted my arguments, and read RICO extortion to require a demand for property (extortion), not a mere change in conduct (coercion). *Scheidler v. NOW, Inc.*, 547 U.S. 9 (2006).

Counsel and argued before the Supreme Court in *Humana Inc. v. Forsyth*, 525 U.S.

299 (1999) (RICO). The Court unanimously adopted my position.

Counsel before the Supreme Court in *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451 (2006) (RICO) (for the Amicus).

Counsel before the Supreme Court in *Bridge v. Phoenix Bond & Indem. Co.*, 553 U.S. 639 (2008) (RICO) (for the Amicus). My arguments prevailed.

Counsel before the Supreme Court in *Boyle v. United States*, 556 U.S. 938 (2009) (RICO) (for the Amicus). My arguments prevailed.

Counsel before the Supreme Court in *Hemi Group, LLC v. City of New York*, 559 U.S. 1 (2010) (RICO) (for the Attorneys General of a number of states as Amici). I argued for the Amici contrary to Appellants that the scope of “property” includes “government property.” The Amici did not make an argument on the remoteness issue adopted by the plurality, which did not reach the property argument. The dissent by Justices Breyer, Stevens, and Kennedy addressed the issue; my arguments prevailed.

SELECTED WORK OF THE UNITED STATES SENATE JUDICIARY SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

Pub. L. No. 91-39, “National Commission on Reform of Federal Criminal Laws” (1969); *see* I WORKING PAPERS OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS 381 (JULY 1970) (Professor G. Robert Blakey, Consultant’s Report on “Conspiracy and Organized Crime”).

Pub. L. No. 91-644, the “Omnibus Crime Control Act of 1970.”

Hearings on the codification, reform, and revision of the federal criminal law based on the recommendations of the National Commission on the Reform of Federal Criminal Laws (1971-72). The hearing resulted in the introduction by Senator John L. McClellan of S. 1, the “Criminal Justice Codification, Revision, and Reform Act of 1973.”

Pub. L. No. 93-83, the “Crime Control Act of 1973.”

OTHER LEGISLATION

Pub. L. No. 102-526, the “President John F. Kennedy Assassination Records

Collection Act of 1992.”

SELECTED LAW REVIEW ARTICLES AND OTHER PUBLICATIONS

Welfare and Pension Plans Disclosure Act Amendments of 1962, 38 NOTRE DAME L. REV. 263 (1963) (commenting on 18 U.S.C. § 1954, which I drafted).

The Rule of Announcement and Unlawful Entry: Miller v. United States and Ker v. California, 112 U. PA. L. REV. 499 (1964) (“*Unlawful Entry*”). The Supreme Court in *Wilson v. Arkansas*, 514 U.S. 927, 933 (1995); *Payton v. New York*, 445 U.S. 573, 593 (1980); and *Sabbath v. United States*, 391 U.S. 585, 589 (1968), favorably cited *Unlawful Entry* in deciding cases involving the rule of announcement. The Courts of Appeals in the Second, Third, Fifth, Sixth, Seventh, Eighth, Ninth Circuits, and the District of Columbia favorably cited *Unlawful Entry* in similar decisions. Appellate courts in Alabama, California, Connecticut, Idaho, Illinois, Indiana, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin also favorably cited *Unlawful Entry* when dealing with the rule of announcement.

Sex, Pornography, and Justice, 41 NOTRE DAME L. REV. 1055 (1966), cited in *Ginsberg v. New York*, 390 U.S. 629, 642 n.10 (1968).

The Organized Crime Control Act (S. 3) or Its Critics: Which Threatens Civil Liberties?, 46 NOTRE DAME L. REV. 55 (1970) (with McClellan).

Codification, Reform, and Revision: The Challenge of a Modern Federal Criminal Code, 1971 DUKE L.J. 663 (with McClellan).

The Application of the Video Telephone to the Administration of Criminal Justice, 3 J. POLICE. SCI. & ADMIN. 38 (1975).

Criminal Redistribution of Stolen Property: The Need for Law Reform, 74 MICH. L. REV. 1511 (1976) (with Goldsmith). This article included a draft model act, the “Theft and Fencing Act,” which the National Association of Attorneys General endorsed. Arizona, Florida, New Jersey, and North Dakota adopted the model act in whole or in part. State courts in these states cite this article prominently in their decisions pertaining to the acts.

The Development of the Federal Law of Gambling, 63 CORNELL L. REV. 923 (1978) (with Kurland).

State Conducted Lotteries: History, Problems, and Premises, 35 J. SOC. ISSUES 62 (1979).

On the Waterfront: RICO and Labor Racketeering, 17 AM. CRIM. L. REV. 341 (1980) (with Goldstock).

“Organized Crime: Enforcement Strategies,” ENCYCLOPEDIA OF CRIME AND JUSTICE, vol. 3, p. 1107 (1983).

Legal Regulation of Gambling Since 1950, 474 ANNALS AM. ACAD. POL. & SOC. SCI. 12 (1984).

Gaming, Lotteries, and Wagering: The Pre-Revolutionary Roots of the Law of Gambling, 16 RUTGERS L.J. 211 (1985).

Bribes, 60 NOTRE DAME L. REV. 1255 (1985).

Forfeiture of Legal Fees: Who Stands to Lose?, 36 EMORY L.J. 781 (1987).

An Analysis of the Myths That Bolster Efforts to Rewrite RICO and the Various Proposals for Reform: “Mother of God--Is This the End of RICO?”, 43 VAND. L. REV. 851 (1990) (with Perry).

Debunking RICO’s Myriad Myths, 64 ST. JOHN’S L. REV. 701 (1990).

Law and the Continuing Enterprise: Perspectives on RICO: Foreword, 65 NOTRE DAME L. REV. 873 (1990).

“Warren Commission,” ENCYCLOPEDIA OF THE AMERICAN PRESIDENCY, vol. 4, p. 1590 (1994).

“Racketeer Influenced and Corrupt Organizations Act (RICO),” THE ENCYCLOPEDIA OF THE UNITED STATES CONGRESS, vol. 3, p. 1659 (1995).

Federal Criminal Law: The Need, Not for Revised Constitutional Theory or New Congressional Statutes, but the Exercise of Responsible Prosecutive Discretion, 46 HASTINGS L.J. 1175 (1995).

Securities Reform and RICO: A Lawyer's Dream, 23 RICO LAW REPORTER 802 (1996).

Of Characterization and Other Matters: Thoughts About Multiple Damages, 60 LAW & CONTEMP. PROBS. 97 (1997) (reviewing the history and rationale for multiple damages and concluding that not all multiple damage awards are punitive).

Threats, Free Speech, and the Jurisprudence of the Federal Criminal Law, 2002 BYU L. REV. 829 (with Murray). The Court adopted the recommendation of this article for a definition of "true threats" in *Virginia v. Black*, 538 U.S. 343, 359-60, 365 (2003); see 2002 BYU L. REV. at 1006-77.

Time-Bars: RICO-Criminal and Civil-Federal and State, 88 NOTRE DAME L. REV. 1581 (2013).

Eliminating Overlap, or Creating a Gap? Judicial Interpretation of the Private Securities Litigation Reform Act of 1995 and RICO, 28 NOTRE DAME JOURNAL OF LAW, ETHICS & PUBLIC POLICY 435 (2014) (with Michael Gerardi)

SELECTED BOOKS OR CHAPTERS IN BOOKS

THE DEVELOPMENT OF THE LAW OF GAMBLING: 1776-1976 (NILE, 1978).

RACKET BUREAUS: INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME (NILE, 1978) (with Goldstock and Rogovin).

PERSPECTIVES ON THE INVESTIGATION OF ORGANIZED CRIME, 3 vols. (1978-80).

THE PLOT TO KILL THE PRESIDENT (New York: Times Books, 1981) (with Billings) (reprinted as FATAL HOUR (Berkley, 1992)).

ORGANIZED CRIME IN THE UNITED STATES: A REVIEW OF THE PUBLIC RECORD ON ORGANIZED CRIME (NILE, 1982).

"Asset Forfeiture Under Federal Criminal Law," chapter 8, pp. 127-144, THE POLITICS AND ECONOMICS OF ORGANIZED CRIME (H. Alexander & G. Caiden eds., Lexington Books, 1985).

“Definition of Organized Crime in Statutes and Law Enforcement Administration,” in THE IMPACT: ORGANIZED CRIME TODAY, REPORT OF THE PRESIDENT’S COMMISSION ON ORGANIZED CRIME 511 (1986).

“RICO: The Federal Experience (Criminal and Civil) and an Analysis of Attacks Against the Statute,” chapter 20, pp. 451-489, HANDBOOK OF ORGANIZED CRIME IN THE UNITED STATES (R. Kelly et al. eds., Greenwood Publishing Group, 1994).

“RICO: An Overview,” chapter 1, CIVIL RICO PRACTICE MANUAL (P. Batista ed., Wiley Law Publications, 1996).