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## Shutting Down the Child Exploitation Industry Through Enterprise-Based Prosecution, 51 J. Marshall L. Rev. 59 (2017)

Julia Maloney

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# SHUTTING DOWN THE CHILD EXPLOITATION INDUSTRY THROUGH ENTERPRISE-BASED PROSECUTION

JULIA MALONEY\*

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## I. INTRODUCTION

Child exploitation enterprises are formal or informal organizations dedicated to profiting from the sexual or physical exploitation of children. This exploitation can include child pornography production and distribution, prostitution, human trafficking, and similar crimes. This paper will discuss the current individual-based method of prosecuting these organizations and suggest a shift to a more modern enterprise-based approach. Specifically, this paper advocates for greater use of conspiracy law, the Racketeer Influenced and Corrupt Organizations Act (“RICO”), and the Child Exploitation Enterprise statute (“CEE”) in child exploitation cases.

Although it is difficult to estimate the value of child exploitation worldwide, it forms a huge industry. Child pornography in the United States alone is estimated to be worth

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approximately \$20 billion.<sup>1</sup> In 2001, University of Pennsylvania researchers estimated that as many as 300,000 children were at risk of human trafficking.<sup>2</sup> In 2003, 1400 minors were arrested for prostitution in the United States. Fourteen percent of these minors were below the age of fourteen.<sup>3</sup> In 2014, FBI agents in Southern California rescued over 3600 minors from the sex trade.<sup>4</sup> Homeless and runaway children are especially vulnerable to exploitation; the National Runaway Switchboard estimated that 28% of homeless youth have been engaged in prostitution.<sup>5</sup> Unfortunately, due to the secretive nature of this industry, it is difficult to paint a more specific picture of how far the child exploitation industry reaches.

The United States has a web of federal laws designed to fight child exploitation. Federal prosecutors typically indict enterprise members under the statutes that directly criminalize the harmful behavior itself – production or possession of child pornography, buying or selling of children, or human trafficking of minors. States also have countless laws on these same matters; however, since enterprises typically have members who operate in different states or countries, most prosecution of exploitative enterprises takes place at the federal level. This traditional approach to these prosecutions is individual-based and focuses on the acts explicitly taken by a specific defendant without addressing the larger issue of the organization behind the individual.

As demonstrated by the success of the Racketeer Influenced and Corrupt Organizations Act (“RICO”) in response to organized crime, a more appropriate method of prosecution when handling child exploitation enterprises is one that is enterprise-focused. This method allows prosecutors to handle the increasing sophistication of technology available to these enterprises and would result in better sentencing of both the individual members and the enterprise leaders. Prosecutors have already begun to make this shift in practice but are not fully taking advantage of the tools currently available to make this change.

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1. United Nations General Assembly Report, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development* (July 13, 2009), [www.crin.org/en/docs/A.HRC.12.23.pdf](http://www.crin.org/en/docs/A.HRC.12.23.pdf).

2. Study, *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*, ABOLITIONIST MOM (Sept. 18, 2001), [abolitionistmom.org/wp-content/uploads/2014/05/Complete\\_CSEC\\_0estes-weiner.pdf](http://abolitionistmom.org/wp-content/uploads/2014/05/Complete_CSEC_0estes-weiner.pdf).

3. U.S. DEPT. OF HEALTH & HUMAN SERVS., *Human Trafficking into and Within the United States: A Review of the Literature*, ASSISTANT SECRETARY FOR PLANNING AND EVALUATION (Sept. 30, 2009), [aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature#Trafficking](http://aspe.hhs.gov/report/human-trafficking-and-within-united-states-review-literature#Trafficking).

4. Rob Hayes, *FBI Multi-State Child Prostitution Sting: Hundreds Arrested, Many Saved*, ABC 7 NEWS (June 23, 2014), [abc7.com/news/fbi-child-prostitution-sting-arrests-rescues/135659/](http://abc7.com/news/fbi-child-prostitution-sting-arrests-rescues/135659/).

5. Juliet Linderman, *Child porn ring with 27,000 members run by Abita Springs man, feds say*, THE TIMES-PICAYUNE (Feb. 20, 2014), [www.ncbi.nlm.nih.gov/pmc/articles/PMC2563846/pdf/354.pdf](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563846/pdf/354.pdf).

Traditional federal statutes on child exploitation and their limitations when handling organized enterprises will be discussed in Part II of this paper. Part III will discuss the most traditional enterprise-based charge under conspiracy law and how it can be used against these enterprises. Part IV will discuss the novel use of RICO to prosecute and provide a potential civil remedy for these enterprises. Part V will explain the CEE statute, how it relates to and incorporates precedent from more established law, and how it compares to RICO. Part VI will discuss the best use of these actions to prosecute child exploitation enterprises and recommend a shift to enterprise-based charges to further improve efforts to combat exploitation.

## II. THE DRAWBACKS TO TRADITIONAL INDIVIDUAL-FOCUSED PROSECUTION WHEN HANDLING CRIMINAL ENTERPRISES

Federal prosecutors handling child exploitation enterprises usually indict the members of an exploitation group as if each were acting alone. In a case involving loose associations between members rather than organized enterprises, this individual-based method of prosecution seems logical since it holds each individual solely responsible for his own actions. However, ultimately, this method is flawed because it overlooks the additional culpability inherent in working with others to effectuate and profit from child exploitation; it will ultimately be rendered ineffective due to advances in technology. Therefore, federal prosecutors should move towards a more enterprise-based approach whenever possible.

The main benefit of the current individual-based approach of prosecution is that it is relatively straightforward. The prosecutor simply presents evidence to show each defendant's direct involvement in the exploitation. When prosecuting an individual, the government is not required to show association with or involvement by anyone else. Furthermore, institutional knowledge under this approach is strong; many crimes under the banner of child exploitation, such as possession and distribution of child pornography, are routine practice for federal prosecutors and judges.

Another advantage of the individual-based approach of prosecution when handling child exploitation is that it provides strong remedies available in sentencing. Individuals convicted of one of the various federal child pornography offenses may be sentenced to up to forty years in prison.<sup>6</sup> The sentence for buying and selling a child for the purpose of sexual exploitation is "not less than 30 years or for life."<sup>7</sup> The high end of these sentencing

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6. 18 U.S.C. § 2251 (2012).

7. 18 U.S.C. § 2251A (2012).

requirements is given out relatively often.<sup>8</sup> Shifting to an enterprise-based approach would not be likely to substantially increase sentences.

Given the institutional knowledge, relative ease of prosecution, and high sentencing range, it is clear an individual-based approach to prosecuting child exploitation enterprises has some merit. The problems with this approach are largely rooted in the nature of enterprises. More specifically, individual-based prosecutions are not well suited to handle enterprise members who were aware of the exploitation and even profited off of it, but did not personally engage with the victims.

The first problem with an individual-based approach is the lack of accountability for the specific act of organizing and supervising an enterprise. For example, a 2014 case involving two separate child pornography distribution websites with over 27,000 members resulted in ten federal prosecutions for receipt of child pornography. The architect of both sites was charged with twelve counts of production of child pornography and two counts of distribution.<sup>9</sup> However, no one was charged with any form of conspiracy or additional charges for their involvement in or creation of this organized enterprise.

Another flaw with this method is that it omits information about the broader context in which the offenses were created, including the often rigorous and lengthy process of becoming a member of an exploitative enterprise. Even internet-based groups have traditional initiation and membership requirements. For example, prospective members of one online child exploitation enterprise ring had to possess “at least 10,000 images of pre-teen children[,] agree to share them with other members” and pass an intensive background check.<sup>10</sup>

In another enterprise, prospective members had to upload material of “children under the age of 12 engaged in sexually explicit activity.”<sup>11</sup> Once members of the “Wonderland Club,” these individuals had to continuously upload more material or be promptly expelled from the organization. The process of obtaining and maintaining membership in an exploitation enterprise makes it clear that a defendant’s involvement is “intentional ... and not insignificant.”<sup>12</sup>

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8. See, e.g., *United States v. Groce*, 784 F.3d 291 (5th Cir. 2015) (finding that a statutory maximum sentence of 240 months for receipt of child pornography was reasonable); *United States v. McKinley*, 647 Fed.Appx. 957 (11th Cir. 2016) (holding two lifetime sentences for sex trafficking and kidnapping to be reasonable).

9. Hayes, *supra* note 4.

10. *United States v. Williams*, 444 F.3d 1286, 1290 (11th Cir. 2006).

11. Press Release, *Child Predator Sentenced to Life Imprisonment in Louisiana*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (July 18, 2012), [ww.ice.gov/news/releases/child-predator-sentenced-life-imprisonment-louisiana](http://ww.ice.gov/news/releases/child-predator-sentenced-life-imprisonment-louisiana).

12. *United States v. Gourde*, 440 F.3d 1065, 1070 (9th Cir. 2006) (en banc).

By focusing charges on individuals rather than enterprises, prosecutors lose valuable insight into each enterprise member's dedication to the abuse and exploitation of children. Further, ignoring the organization that provides support and affirmation to its members ensures that its activities will continue even after individual members have been successfully prosecuted.

Another issue with the current method of prosecution can arise when prosecutors try to link leaders to the activities of an online enterprise. Today this process is relatively easy; by obtaining the leaders' IP addresses and a log of the enterprise activity, investigators can view a clear log of who was involved at each level of the enterprise. However, as IP masking technology advances, this link will become harder for prosecutors to identify, making it more difficult to charge organizers and leaders of these enterprises through this type of evidence.

An enterprise-based prosecution strategy would shift the burden off the prosecution when collecting evidence against enterprise leaders because it would focus on the activities of the whole organization rather than the abuse committed by an individual. This usually reduces the burden on the government to link leaders to the hands-on offenses of their organization. Rather, a showing that the leaders knew of the activities and did nothing to intervene will typically result in a conviction under enterprise-focused charges.

A final problem with individual-focused prosecution arises when the enterprise exists entirely offline. In these cases, it is extremely difficult to connect the members of an exploitative enterprise. The Catholic Church sex abuse cases demonstrate this problem well. In 2002, it was reported that a large number of Catholic priests had sexually abused minors over the course of decades.<sup>13</sup> Victims reported this abuse on many occasions, but officials within the church simply moved the offenders to new locations, concealing and facilitating further abuse. Because offline communications are more difficult to retrieve, despite decades of abuse prosecutors simply did not have enough evidence to convict anyone other than the hands-on abusers themselves.

### III. AN OVERVIEW OF TRADITIONAL CONSPIRACY LAWS

Traditional conspiracy laws are the baseline enterprise-based method of prosecution that can be useful in handling child exploitation. Federal conspiracy law is codified at 18 U.S.C. § 371 and merely requires proof of "two or more persons" conspiring to

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13. Michael Rezendes, *Church allowed abuse by priest for years*, THE BOSTON GLOBE (Jan. 6, 2002), [www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTTrAT25qKGvBuDNM/story.html](http://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTTrAT25qKGvBuDNM/story.html).

“commit any offense against the United States.” Conspiracy charges are particularly useful for child exploitation enterprises in the same context of RICO – when handling defendants for whom there is not enough evidence to convict of the conspired crime itself.

To convict under § 371, the prosecution only needs to prove (1) an agreement to break the law between the defendant and at least one other person and (2) a member of this agreement made some overt act towards accomplishing the goals of that agreement. An agreement can be inferred from circumstantial evidence; there is no requirement that it be explicit. Furthermore, the defendant does not need to know every member of the conspiracy, nor does he need to make any overt acts himself. Under the Pinkerton Rule, as long as the defendant was a member of the conspiracy, he can be convicted of the criminal actions of other members in furtherance of their agreement.

Federal conspiracy law is relatively well suited for child exploitation enterprise cases. Federal rules typically allow for cross-jurisdictional joinder of all members of a conspiracy. This allows prosecutors to put each member’s actions in the context of the entire organization, theoretically aiding with the process of assigning guilt and sentencing. Although § 371 has a maximum sentence of five years and a maximum fine of \$250,000, conspiracy charges are typically stacked with more substantive charges.<sup>14</sup> In practice, Pinkerton allows § 371 to work similarly to RICO in that there is no burden on prosecutors to prove each defendant was directly involved with substantive crimes. The benefit conspiracy charges provide in the trial process is worth the negligible boost in sentences.

Unlike RICO, which is largely untested in this field, or the CEE statute, which many courts are still unfamiliar with, conspiracy charges have been consistently and successfully used against child exploitation enterprises.<sup>15</sup>

One complication in using conspiracy law for child exploitation enterprises is that a Double Jeopardy problem may arise when a defendant is charged under both the CEE statute and § 371. Supreme Court precedent established this principle for the CCE statute in *Rutledge v. United States*.<sup>16</sup> As discussed in Section III, lower federal courts were not hesitant to apply it to CEE cases as well.<sup>17</sup> Both the CEE statute and § 371 would likely focus on the

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14. There are other conspiracy laws with more generous sentencing options that may apply to child exploitation besides 18 U.S.C. § 371. For example, under 18 U.S.C. § 1594(d), conspiracy to commit sex trafficking may result in a prison sentence up to life. However, this Note is focusing on conspiracy laws for their effect on trials and in conjunction with other charges rather than as stand-alone remedies.

15. See, e.g., *United States v. Grovo*, 653 Fed.Appx. 512 (9th Cir. 2012); *United States v. Diwan*, 864 F.2d 715 (11th Cir. 1989).

16. 517 U.S. 292, 297 (1996).

17. *U.S. v. Wayerski*, 624 F.3d 1342, 1351 (11th Cir. 2010); see also *United*

same behavior, resulting in a Double Jeopardy problem. However, careful drafting of charges can avoid this issue.<sup>18</sup>

Prosecutors should be mindful of potential Double Jeopardy problems when using conspiracy law to tie together exploitative enterprises. More proper methods would be to either limit conspiracy charges to lower-level members of the enterprise or use predicate offenses separate from those charged for § 371 for any CEE charges.

The 2009 series of “Lost Boy” cases demonstrates this method of avoiding Double Jeopardy. According to prosecutors, the principle purpose of the Lost Boy forum was to “victimize children ... [to] facilitate the sexual abuse of children and enable its users to produce and share child pornography.”<sup>19</sup> Most members of the ring were charged with conspiracy to advertise child pornography, a sentence that carries a fifteen-year mandatory minimum, or lesser conspiracy charges. Meanwhile, the ringleaders were charged under the CEE statute. However, there was no central indictment and little coordinated prosecution.

Although the prosecution arguably achieved the proper result in the Lost Boy cases, their method was more inefficient than necessary. There was almost no coordination between prosecution efforts, and out of twenty-seven defendants, almost all received separate trials and hearings spread across the country. Depending on witness availability and the willingness of victims to travel or work with dozens of separate prosecutors, this method could have been fatal to the successful prosecution of these cases.

#### IV. CRIMINAL AND CIVIL RICO AS WEAPONS AGAINST CHILD EXPLOITATION

An existing remedy against illicit enterprises is the Racketeer and Corrupt Organizations Act (“RICO”), which makes it illegal to acquire, operate, or receive income from an enterprise through a pattern of racketeering activity, and provides both criminal and civil remedies.<sup>20</sup> Originally passed to fight organized crime, the broad wording of RICO has allowed it to be applied in a wide variety of cases. Although it has not been used widely to fight child exploitation, the organized structure of this industry lends itself well to RICO suits. Prosecutors who apply RICO to child exploitation enterprise cases can benefit from its focus on the

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States v. McGarity, 669 F.3d 1218, 1229 (11th Cir. 2012) (dismissing conspiracy charge due to Double Jeopardy with CEE charge).

18. *Grovo*, 653 Fed.Appx. 512.

19. Press Release, *Georgia Man Pleads Guilty to Participating in International Child Pornography Ring Dismantled by International Law Enforcement Effort*, FEDERAL BUREAU OF INVESTIGATION (Dec. 14, 2010), [archives.fbi.gov/archives/losangeles/press-releases/2010/la121410.htm](https://www.fbi.gov/archives/losangeles/press-releases/2010/la121410.htm).

20. 18 U.S.C. § 1961 (2012).

actions of the enterprise as a whole rather than the requirement for individual criminal actions.

### *A. RICO's History and Traditional Use*

Under RICO, simply belonging to an enterprise involved in a pattern of racketeering activity is a crime, even if the activity was actually committed by others. Specifically, RICO prohibits (1) using income from a pattern of racketeering activity to acquire an interest of an enterprise affecting interstate commerce, (2) acquiring or maintaining an interest in an enterprise affecting interstate commerce with funds acquired through a pattern of racketeering activity, (3) conducting or participating in an enterprise affecting interstate commerce through a pattern of racketeering activity, or (4) conspiring to commit any of the above.<sup>21</sup> The broad prohibitions established under RICO can be applied to child exploitation enterprises.

RICO provides both criminal and civil remedies. Under criminal RICO, defendants may be sentenced up to twenty years in prison and forced to forfeit their assets. These penalties are in addition to any sentences defendants may receive for the racketeering activity itself.<sup>22</sup> Defendants may be convicted for criminal acts committed by other members of their enterprise if (1) the acts were within the scope of the defendant's agreement and (2) the acts were foreseeable to the defendant.<sup>23</sup> Further, because RICO is based on a pattern of racketeering activity, it enables prosecutors to bring cases that include acts that would otherwise be time-barred by the statute of limitations. Charging leaders of child exploitation enterprises under RICO would provide greater accountability for the acts of creating and maintaining the organization itself.

Civil RICO allows the government, or a party injured in their property or business by the defendant's actions, to bring suit. Plaintiffs can request the defendants forfeit any property, enjoin defendants from engaging in a particular enterprise or business, or dissolve an enterprise. The government may also engage in civil forfeiture of the defendant's property based solely on probable cause. Civil RICO is controversial but intended to repair the economic damage inherent in the operation of a business through racketeering activity. Using civil RICO to combat child exploitation enterprises would provide a powerful weapon for the victims of exploitation themselves.

It took a number of years for federal prosecutors to adopt RICO into their standard practice. The statute's enterprise-based

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21. 18 U.S.C. § 1962 (2012).

22. CRIMINAL RICO: A MANUAL FOR FEDERAL PROSECUTORS (United States Department of Justice), [www.justice.gov/usam/file/870856/download](http://www.justice.gov/usam/file/870856/download).

23. *Id.*

approach was so different from traditional criminal laws that the amount of new knowledge required for charging, much less convicting, someone under these laws initially provided a significant chilling effect. Today, similar concerns limit prosecutors from expanding RICO to the extent technically possible under the plain language of the statute. As explained later in this paper, there would be potential benefits to this expansion, but RICO is not frequently used in response to child exploitation enterprises at the present time.

The first major RICO cases involved mob leaders who were so far removed from street-level crime that they were essentially immune from traditional criminal laws. Most notably, starting in 1985 with the Mafia Commission Trial, RICO was successfully used to imprison virtually all leaders of the New York Mafia.<sup>24</sup> However, it quickly became apparent that RICO could be used for broader purposes; today, practically any ongoing criminal association is eligible for a RICO prosecution. Three primary elements are required for RICO: (1) an enterprise, (2) pattern, (3) of “racketeering activity.”<sup>25</sup> A closer look at how these elements can be applied to child exploitation enterprises will show that these enterprises should be considered strong cases for criminal RICO enforcement.

### *B. Elements Necessary to Prosecute Under Criminal RICO*

The first question to ask when initiating a RICO proceeding is whether there was actually an enterprise. RICO itself defines an enterprise as “any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.”<sup>26</sup> However, this list “is not exhaustive but merely illustrative.”<sup>27</sup> As a result, the question of what qualifies as an enterprise has been the subject of most RICO litigation.

Courts are given immense discretion in defining an enterprise; however, they have struggled with this question for many years. As one court noted, the definition of “enterprise” is necessarily a shifting one, given the fluid nature of criminal associations.<sup>28</sup> The

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24. Richard Stengel, *The Passionate Prosecutor*, TIME MAGAZINE (June 24, 2001), [content.time.com/time/magazine/article/0,9171,1101860210-143096,00.html](http://content.time.com/time/magazine/article/0,9171,1101860210-143096,00.html).

25. 18 U.S.C. § 1961 (2012).

26. 18 U.S.C. § 1961(4) (2012).

27. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (RICO): A MANUAL FOR FEDERAL PROSECUTORS, § II(D)(1) 53 (U.S. Dept. of Justice, 5th ed. 2006) (“RICO Manual”). *But see* *Reves v. Ernst & Young*, 507 U.S. 170, 182-83 (1993) (explaining that courts should not apply RICO to purposes Congress never intended to reach).

28. *United States v. Swiderksi*, 593 F.2d 1246, 1249 (D.C. Cir. 1978).

Supreme Court has set a number of standards. However, in general, it appears there is almost no limit on the types of associations-in-fact which may qualify as enterprises under RICO.<sup>29</sup>

The Supreme Court has found that an enterprise must be something distinct and separate from its members; it cannot be the defendants simply by another name.<sup>30</sup> There must be some mechanism for directing the affairs of the group; it cannot simply be an ad hoc relationship between peers.

RICO enterprises can be either formal organizations, such as private businesses or companies, or “associations-in-fact,” which encompasses both legal and illegal informal relationships. Not every conspiracy is an enterprise.<sup>31</sup> An association-in-fact must have a shared purpose, continuity, and unity. The Supreme Court recently resolved a circuit split by declaring that associations-in-fact do not need any structure beyond that “inherent in the pattern of racketeering activity.”<sup>32</sup> However, the defendant must have somehow engaged in the “operation or management” of the enterprise.<sup>33</sup> This does not mean that he must be the actual leader, but usually street-level members will not qualify for criminal RICO charges.

The second requirement for a RICO action is that the defendant has engaged in a “pattern” of “racketeering activity.” The requirement of a pattern is simple—there must be more than two occasions of racketeering activity over the past ten years. This is a relatively simple factual inquiry; the defendant does not have to be convicted of this pattern prior to being charged under RICO.<sup>34</sup> Crimes of which the defendant has been acquitted may also qualify.<sup>35</sup>

The Oxford Dictionary defines racketeering activity as “dishonest or fraudulent business dealings.”<sup>36</sup> However, the definition of this term is slightly more specific for RICO. Under 18 U.S.C. 1961, racketeering activity includes any one of thirty-five predicate offenses. These offenses range from the more obvious bribery and counterfeiting statutes to the less clear crime of threatened use of nuclear weapons. Relevant to the prosecution of child exploitation enterprises are the predicate offenses of production, possession, receipt, or distribution of child pornography and buying or selling of children.

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29. RICO Manual, *supra* note 27.

30. Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161 (2001).

31. Bachman v. Bear, Stearns & Co., 178 F.3d 930, 932 (7th Cir. 1999).

32. Boyle v. United States, 556 U.S. 938, 945-48 (2009).

33. *Reves*, 507 U.S. at 182.

34. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 488 (1985).

35. United States v. Farmer, 924 F.2d 647, 649 (7th Cir. 1991).

36. *Racketeering*, OXFORD DICTIONARY, [en.oxforddictionaries.com/definition/racketeering](http://en.oxforddictionaries.com/definition/racketeering) (last visited May 9, 2017).

### C. Use of RICO for Child Exploitation Enterprises

RICO claims against child exploitation enterprises are uncommon. Civil RICO would have to be amended before it could be successfully applied in this context. Criminal RICO is applicable currently, but it has been rarely utilized until very recently. Although the recent use of criminal RICO to fight child exploitation enterprises is promising, the recent passage of the Child Exploitation Enterprise statute, discussed in part III, offers a better alternative.

#### 1. Why Civil RICO Cannot Currently Be Used Against Child Exploitation Enterprises

Some plaintiffs have attempted to use civil RICO to combat child exploitation; however, none of these suits have been successful. The current civil RICO action would need to be amended to handle child exploitation enterprises. As it currently stands, civil RICO's requirement that plaintiffs have injury to their "business or property" simply bars victims of child exploitation from successfully litigating such a claim.

The Catholic Church child abuse scandal exposed in the mid-2000s is the source of most attempts to use civil RICO in the child exploitation context. In 2007, *Hoatson v. New York Archdiocese* considered a civil RICO suit from a former church employee against the Catholic Church after he was allegedly terminated for reporting a conspiracy to conceal the sexual abuse of minors.<sup>37</sup> Unfortunately, his complaint was "wholly deficient" and lacking in any details to show how his supervisors in the church qualified as an enterprise and did not make a tangible connection between his firing and the child exploitation itself.<sup>38</sup> In fact, the plaintiff's lawyer was sanctioned for even bringing a civil RICO case under these facts.<sup>39</sup>

Civil RICO cases usually end similarly to *Hoatson*, although the fatal detail is often that of establishing standing. In *Magnum v. Archdiocese of Philadelphia*, twelve former victims of sexual abuse at the hands of multiple priests brought a civil RICO suit against the city's archdiocese for a conspiracy to conceal the abuse for over fifty years. To meet civil RICO's "injury to property" requirement, plaintiffs alleged three harms: (1) severe emotional distress resulting in loss of earnings and earning capacity, (2) out of pocket medical expenses, and (3) loss of ability to pursue a different tort due to the plaintiff's conspiracy to conceal the abuse.

The court found that none of these harms alleged in *Magnum* were sufficient to sustain standing for civil RICO. Personal injuries

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37. *Hoatson v. New York Archdiocese*, 2007 WL 431098 (S.D.N.Y. 2007).

38. *Id.*

39. *Id.* at 10.

and economic losses derived therefrom are not qualifying injuries to property in the Third Circuit.<sup>40</sup> The medical expenses associated with treating these injuries were derivative and similarly insufficient.<sup>41</sup> Finally, the court squarely rejected “loss of tort claims” as an injury to property. Ability to bring a tort claim is not “property” under Pennsylvania law, so loss of that ability was irrelevant for civil RICO standing.

To better respond to child exploitation, Congress should amend civil RICO to allow plaintiffs with personal injuries that have limited their earning potential to bring suits against qualifying abusive enterprises. The requirement that victims have suffered some financial injury will limit this extension to only more serious claims. Professor Marci Hamilton at Cardozo School of Law argued that “surely a pattern of abetting or covering up abuse is as, or more, insidious as a pattern of committing arson against non-paying shopkeepers.”<sup>42</sup> Hamilton’s argument points out the apparent hypocrisy in civil RICO’s current standing requirements.

The standing requirement of civil RICO as it is currently drafted specifically excludes the most vulnerable victims simply because of their vulnerability. Plaintiffs who are unable to work due to their trauma from exploitation are clearly hurt in their ability to operate a business or support themselves financially. Civil RICO would best serve the interests of preventing and punishing criminal enterprises if it eliminated this disconnect.

## 2. *The Troubled History of Using Criminal RICO Against Child Exploitation*

Criminal RICO explicitly includes the crimes of possession, production, receipt, and distribution of child pornography and the buying or selling of children for sexual purposes as “racketeering activity.”<sup>43</sup> If any enterprise engages in two or more of these predicate offenses within ten years, its members will face up to twenty years in prison. However, prosecutors have avoided bringing criminal RICO charges for child exploitation until very recently. This practice is unlikely to expand due to the growing use of the CEE statute discussed below in Part V.

Criminal RICO is well suited to fight child exploitation enterprises. As opposed to civil RICO, which needs amendment before it can be applied in child exploitation cases, criminal RICO can be applied in its current form.<sup>44</sup> Criminal RICO also offers an

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40. *Gentry v. Resolution Trust Corp.*, 937 F.2d 899, 918 (3d Cir. 1991).

41. *Id.*

42. Marci Hamilton, *Give laws strength to take down child molesters*, FINDLAW (June 18, 2005), [www.cnn.com/2005/LAW/06/16/hamilton.child.support/index.html?iref=newssearch](http://www.cnn.com/2005/LAW/06/16/hamilton.child.support/index.html?iref=newssearch).

43. 18 U.S.C. § 1961(4) (2012).

44. Marci Hamilton, *The Child Sex Abuse Scandals are All the Same and*

advantage over the traditional conspiracy statute in that it does not require proof of an overt act “to effect the object of the conspiracy.”<sup>45</sup> This makes RICO a strong option for prosecuting enterprise leaders on whom little direct evidence of culpability can be gathered.

Criminal RICO prosecutors can bring separate charges for the RICO violation and conspiracy to commit the violation, as well as each of the predicate offenses to maximize prison sentences. Although this method of prosecution is controversial, one court commented, “Congress clearly intended to permit, and perhaps sought to encourage, the imposition of cumulative sentences for RICO offenses and the underlying crimes.”<sup>46</sup> Unfortunately, despite its benefits, it is rare for a criminal RICO charge to bear on child exploitation cases, and convictions are very rare.

There are a variety of reasons that explain why criminal RICO charges are not brought in exploitation enterprise cases. Since 2009, the main reason is likely that the CEE statute (to be discussed in Part V) covers these enterprises. However, the CEE statute does not have the benefit of over a half-century of precedent in organized crime like RICO does.

Another reason that RICO cases are not often seen in response to child exploitation enterprises is that, depending on the enterprise, some such cases may be politically unpopular. For example, a number of legislators called for RICO charges to be filed against the Vatican in the wake of the Catholic Church’s international sex abuse scandal.<sup>47</sup> However, the Vatican engages in a number of crucial diplomatic roles considered vitally important to America’s interests.<sup>48</sup> Such a prosecution would “seem like career suicide” and put the United States directly at odds with an important global partner.<sup>49</sup> Although a few jurisdictions attempted to bring RICO charges against individual dioceses of the Church, none were successful, and no charges were ever filed against the Catholic Church as a whole.

Nonetheless, RICO itself says it should be “liberally construed to effectuate its remedial purposes,” which indicates Congress encourages prosecutors to break new ground with RICO.<sup>50</sup> The

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*They Demand the Government to Act*, VERDICT (Mar. 22, 2017), [verdict.justia.com/2017/03/22/child-sex-abuse-scandals-demand-government-act](http://verdict.justia.com/2017/03/22/child-sex-abuse-scandals-demand-government-act).

45. *Salinas v. United States*, 522 U.S. 52 (1997).

46. *United States v. Kragness*, 830 F.2d 842, 864 (8th Cir. 1987) (citing *United States v. Sutton*, 700 F.2d 1078, 1081 (6th Cir. 1983)).

47. Laurie Goodstein, *As Pennsylvania Confronts Clergy Sex Abuse, Victims and Lawmakers Act*, N.Y. TIMES (Apr. 4, 2014), [www.nytimes.com/2016/04/05/us/pennsylvania-clergy-sex-abuse.html](http://www.nytimes.com/2016/04/05/us/pennsylvania-clergy-sex-abuse.html).

48. Will Carless, *Could the Vatican face racketeering charges for harboring abusive clergy?*, PRI (Sept. 25, 2015), [www.pri.org/stories/2015-09-25/could-vatican-face-racketeering-charges-harboring-abusive-clergy-0](http://www.pri.org/stories/2015-09-25/could-vatican-face-racketeering-charges-harboring-abusive-clergy-0).

49. Hamilton, *supra* note 41.

50. Organized Crime Control Act of Oct. 15, 1970, Pub. L. No. 91-452, Title IX, § 904(a), 84 Stat. 922, 947 (1970).

Supreme Court endorses this view, saying “[t]he fact that RICO has been applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”<sup>51</sup> Unfortunately, courts have not supported criminal RICO cases against child exploitation enterprises in many cases. In 2002, federal prosecutors attempted to bring criminal RICO charges against clergy in the Catholic Church for their mishandling of child abuse allegations.<sup>52</sup> However, the grand jury failed to indict, the case was dropped, and there have been no further attempts to bring criminal RICO charges in connection with this scandal.

This is not to say that criminal RICO is a dead end when it comes to child exploitation. In *United States v. Pipkins*, two pimps engaged in a human trafficking and child prostitution ring in Atlanta were convicted under criminal RICO.<sup>53</sup> These defendants essentially forced young girls into sex slavery. The victims were not paid and were entirely dependent on the defendants for food, clothing, and shelter.

At the time Pipkins was brought to trial, sex trafficking was not a predicate act under RICO. However, prosecutors were able to identify a number of existing predicate offenses in this case ranging from kidnapping to transportation of prostitutes across state lines.

The challenge in *Pipkins*, and in RICO cases in general, was to establish an enterprise. Each defendant alleged he was an independent contractor rather than working in concert with one another. However, their actions spoke louder than their words. Prosecutors were able to identify a code of conduct and procedures in the ring. Further, the defendants often acted together in transporting their victims across state lines, when renting rooms, and in setting prices for their victims’ services.<sup>54</sup> Both defendants charged under criminal RICO were convicted, proving that child exploitation enterprises are viable targets for RICO prosecution.

Recently, RICO has been used in more traditional human trafficking rings with some success. Although human trafficking was added as a predicate offense in 2003, it was not until 2009 that a RICO indictment was issued for this crime. In *United States v. Askarkhodjaev*, eleven individuals were charged with 143 counts for their operation of Giant Labor Solutions.<sup>55</sup> Giant Labor trafficked hundreds of laborers illegally into the United States, provided them

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51. *Sedima*, 473 U.S. 479, 499 (quoting *Harco, Inc. v. Am. Nat’l Bank & Trust Co.*, 747 F.2d 384, 398 (1984)).

52. Marci Hamilton, *The Time Has Come for A Restatement of Child Sex Abuse*, 79 BROOK. L. REV. 397, 414 (2014) (citing an online news article that is no longer available).

53. *United States v. Pipkins*, 378 F.3d 1281 (11th Cir. 2004) (vacated on other grounds).

54. *Prosecuting Pimps Under Rico: The Story of the Nation’s First Federal Prosecutor to Fight Child Prostitution Through Organized Crime Laws*, PROSECUTOR 21 (Oct. 2010).

55. *United States v. Ashkarkhodiaev*, 2010 WL 4038783 (W.D. Mo. 2010).

with fake visas and substandard housing, and threatened their families if they attempted to leave.<sup>56</sup>

Giant Labor provided jobs for the laborers it trafficked; however, after collecting various fees – such as visa extension costs regardless of whether the visa was actually extended or even valid – many laborers ended up with paychecks for negative earnings.<sup>57</sup> As a result, the workers were unable to pay their debts or leave.

In the end, RICO charges were dropped in the Giant Labor case in exchange for the defendants' plea to many of the predicate offenses. The head of the enterprise admitted to “commit[ing] forced labor trafficking, visa fraud, fraud in foreign labor contracting, transportation of illegal aliens, extortion, interstate travel in aid of racketeering, money laundering, and mail and wire fraud, as part of a pattern of racketeering.”<sup>58</sup> Giant Labor was subsequently dissolved, thus proving that human trafficking and other enterprises based on the exploitation of powerless individuals can be successfully fought using criminal RICO.

## V. THE CHILD EXPLOITATION ENTERPRISE STATUTE

The Child Exploitation Enterprise (CEE) statute was passed in 2009 and is codified at 18 U.S.C. § 2252A(g). It is based on the Continuing Criminal Enterprise statute and is similar to RICO. However, the CEE statute focuses more on the individual defendants and their personal crimes rather than their enterprise. It is an intermediary between RICO and traditional child exploitation laws. Although very little scholarship yet exists on the CEE statute, it has been successfully used to prosecute and dismantle a number of high-profile exploitative enterprises.

The CEE statute criminalizes participation in child exploitation enterprises, which it defines as:

A person engages in a child exploitation enterprise for the purposes of this section if the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

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<sup>56</sup>. *Id.* at para. 1.

<sup>57</sup>. *Id.*

<sup>58</sup>. Press Release, *Eight Uzbekistan Nationals Among 12 Charged with Racketeering, Human Trafficking & Immigration Violations in Scheme to Employ Illegal Aliens in 14 States*, U.S. DEPT. OF JUSTICE (May 27, 2009), [www.justice.gov/opa/pr/eight-uzbekistan-nationals-among-12-charged-racketeering-human-trafficking-immigration](http://www.justice.gov/opa/pr/eight-uzbekistan-nationals-among-12-charged-racketeering-human-trafficking-immigration).

<sup>59</sup>. 18 U.S.C. § 2252A(g) (2012).

Those convicted under the CEE statute face a minimum twenty-year sentence. Although there is no express requirement that the statute be saved for the worst offenders, courts have interpreted the CEE statute this way for reasons discussed below. It has primarily been used to prosecute child pornography rings. However, the statute has obviously much broader potential application.

### A. *Applying Continuing Criminal Enterprise Precedent to CEE Cases*

Because of its relatively recent establishment, very little legal scholarship exists on the CEE statute. However, courts may base much of their interpretation of the CEE statute on its model – the 1970 Continuing Criminal Enterprise statute (the “Kingpin Statute”).<sup>60</sup> The Kingpin Statute expressly adds additional penalties to those proven to be principal administrators of major narcotics enterprises.<sup>61</sup>

Many courts have been willing to use precedent from the Kingpin Statute when interpreting the frankly vague language of the CEE statute.<sup>62</sup> For example, given the similarity between the two statutes, the Eleventh Circuit expressly noted that Continuing Criminal Enterprise precedent should be persuasive when confronting CEE cases in *United States v. McGarity*.<sup>63</sup>

The *McGarity* court answered two challenges to a CEE indictment with Continuing Criminal Enterprise precedent. The first argument was that each predicate offense must be pled with specificity in the CEE indictment. While the court conceded that the prosecution must prove each of the predicate offenses to successfully litigate a CEE charge, it found there was no need for such specificity at the indictment stage.<sup>64</sup>

The Eleventh Circuit drew its conclusion in *McGarity* from *United States v. Alvarez-Moreno*, a Continuing Criminal Enterprise case that confronted the same question.<sup>65</sup> In *Alvarez-Moreno*, the court stated that the predicate offenses “need not be charged or even set forth as predicate acts in the indictment.”<sup>66</sup> Instead, “[t]he law only requires evidence that the defendant committed three

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60. 21 U.S.C. § 848 (2012).

61. 21 U.S.C. § 848(b)(1) (2012).

62. *See, e.g.*, *United States v. DeFoggi*, 839 F.3d 701, 710 (8th Cir. 2016); *United States v. Grovo*, 826 F.3d 1207, 1213 (9th Cir. 2016); *United States v. Daniels*, 653 F.3d 399, 413 (6th Cir. 2011); *Wayerski*, 624 F.3d at 1351.

63. *United States v. McGarity*, 669 F.3d 1218 (11th Cir. 2012).

64. *Id.* at 1237.

65. *United States v. Alvarez-Moreno*, 874 F.2d 1402, 1408-11 (11th Cir. 1989); *see also* *United States v. Valencia-Trujillo*, 573 F.3d 1171, 1181 (11th Cir. 2009) (approving of Alvarez-Moreno’s approach to specificity of indictments).

66. *Alvarez-Moreno*, 874 F.2d at 1408.

substantive offenses to provide the predicate for a [CCE] violation, regardless of whether such offenses were charged in counts of the indictment.”<sup>67</sup>

The *McGarity* court affirmed this language and helpfully noted that courts considering CEE cases should consider Continuing Criminal Enterprise precedent. “We see no reason to vary from this holding for a conviction under [the CEE statute], which the parties (and at least one of our sister circuits) agree should be interpreted similarly to [the Continuing Criminal Enterprise statute].” The consequence of this interpretation is that though the CEE statute is barely a decade old, advocates for its application can point to over a half-century of precedent.

The second issue in *McGarity* that was addressed with Continuing Criminal Enterprise precedent was whether the district court was obligated to instruct the jury that it had to unanimously agree on the specific instances in which the defendant violated the CEE statute.

The court drew from Supreme Court precedent in handling the same question in a Continuing Criminal Enterprise case and found in the affirmative. In other words, when a defendant charged under the CEE statute for more than three instances of the predicate offenses, the court must give a jury instruction that they must unanimously agree on at least three specific instances of guilt.<sup>68</sup>

In *United States v. Daniels*, the Sixth Circuit noted that “federal courts have had little opportunity to consider the elements required for a conviction under [the Continuing Criminal Enterprise statute].”<sup>69</sup> However, given the similar language—“series of ... violations” and “in concert with ... other persons”—it felt the precedent from the CCE statute was appropriate to apply to CEE cases.<sup>70</sup>

The Eighth Circuit also drew from Continuing Criminal Enterprise precedent when interpreting the requirement that CEE defendants have committed at least three instances of child exploitation “in concert with” at least three other individuals. Helpfully, this same language appears in the Continuing Criminal Enterprise statute. In *Rutledge v. United States*, the Supreme Court explained that “in concert with” requires a mutual agreement in common plan or enterprise sufficient to establish a conspiracy.<sup>71</sup> Based on this holding, the Eighth Circuit held that simply being a member of an online child pornography website does not constitute working “in concert with” others to the extent necessary to convict under the CEE statute.

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67. *Id.* at 1408-09.

68. *Id.* (ultimately this finding was inconsequential for six of the seven defendants as they were simultaneously convicted of three predicate offenses).

69. *Daniels*, 653 F.3d at 411.

70. *Id.* at 412.

71. *Rutledge v. United States*, 517 U.S. 292, 300 (1996).

Given the fifty-seven years of precedent which has been established under the Kingpin Statute, it should be relatively simple for courts considering CEE cases to find supporting material. Indeed, when compared to the gradual and over-cautious use of RICO to handle child exploitation, it is clear courts and prosecutors have embraced the CEE statute. This is likely due to the existence of rich precedent under the Continuing Criminal Enterprise statute that guides CEE decisions and arguments.

### *B. Benefits of the CEE Statute Over Individual-Based Approaches*

Although the CEE statute was recently enacted and has little legal scholarship, it has already led to a surprisingly large number of high-profile convictions. Most individuals convicted under the CEE statute are the leaders of online child pornography rings. Given the mandatory minimum sentence of twenty years, prosecutors have been eager to use the CEE statute in this context to avoid handling each potential charge separately.

The clear advantage of the CEE statute over traditional child pornography laws in handling online child pornography rings is easy to demonstrate. On May 5, 2017, Steven Chase, the founder of a major child pornography distribution website named “Playpen” boasting some 150,000 users worldwide, was sentenced to thirty years’ imprisonment under the CEE statute. His two co-defendants were each sentenced to twenty years under the same statute.<sup>72</sup>

In the realm of CEE convictions, these are relatively light sentences. However, Chase’s co-defendants quickly pled guilty to the CEE charge and were given leniency. Chase himself is already nearly sixty; his sentence is essentially a life sentence. Further, Chase was ordered to forfeit all property traceable to his criminal activities, including his home. Each defendant, including Chase, received a life term of supervised release.

Evidence gathered through the Playpen investigation has led to at least 520 arrests, the conviction of 51 hands-on child molesters and 25 child pornography producers, and the rescue of 55 American children who were subject to sexual abuse.<sup>73</sup> In total, tens of thousands of items of child pornography were found in the Playpen investigation.

Prosecutors did not have to present every piece of evidence at trial to convict the ringleaders under the CEE statute. Instead they

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72. Press Release, ‘Playpen’ Creator Sentenced to 30 Years, FEDERAL BUREAU OF INVESTIGATION, (May 5, 2017), [www.fbi.gov/news/stories/playpen-creator-sentenced-to-30-years](http://www.fbi.gov/news/stories/playpen-creator-sentenced-to-30-years).

73. Press Release, *Florida Man Sentenced to Prison for Engaging in a Child Exploitation Enterprise*, UNITED STATES DEPARTMENT OF JUSTICE (May 1, 2017), [www.justice.gov/opa/pr/florida-man-sentenced-prison-engaging-child-exploitation-enterprise](http://www.justice.gov/opa/pr/florida-man-sentenced-prison-engaging-child-exploitation-enterprise).

only needed to establish the pattern of offenses. Under traditional child pornography laws, prosecutors would have been forced to focus on the individual offenses. Pursuing charges under the CEE statute is more efficient than the traditional individual-based charges and helps investigations focus on the bigger picture when handling child exploitation enterprises.

The CEE statute also allows for the possibility of life imprisonment. This is not usually an option considered under traditional child exploitation laws. In *United States v. Gmoser*, a man received a life sentence under the CEE statute for running a child pornography website with over thirty thousand members. Additionally, investigators found he was in possession of “millions of files depicting the sexual exploitation of children.”<sup>74</sup> Cases like *Gmoser* demonstrate the additional culpability of the leaders of exploitation enterprises that demanded the creation of the CEE statute and its strict sentencing range.

In contrast, under the traditional child exploitation statutes, sentencing can be more lenient. For example, in 2014 a defendant was sentenced to just seventy-eight months imprisonment for possession of “more than five million images of child pornography” on his computer.<sup>75</sup>

Similarly, in *United States v. Lockett*, three men pled guilty to a single count of sex trafficking of a minor and each received less than twenty years’ imprisonment.<sup>76</sup> The men had abducted underage girls in Chicago and forced them into prostitution, charging more than \$100 per hour. When the girls tried to escape, the defendants “slapped, choked, and even threatened [them] with death.”

The *Lockett* case would have likely been a solid candidate for CEE charges had there been a fourth conspirator. There were three men organizing the underage prostitution ring. They had more than one victim and engaged in more than three occasions of kidnapping of a minor, a predicate offense for the CEE statute. Further, there was clear evidence that these men worked together in an enterprise—one was the father of the other two, who were twins.<sup>77</sup>

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74. Press Release, *Ohio Man Sentenced to Life in Prison for Engaging in a Child Exploitation Enterprise*, UNITED STATES DEPARTMENT OF JUSTICE (July 15, 2016), [www.justice.gov/opa/pr/ohio-man-sentenced-life-prison-engaging-child-exploitation-enterprise](http://www.justice.gov/opa/pr/ohio-man-sentenced-life-prison-engaging-child-exploitation-enterprise).

75. Press Release, *Southeast Texas man admits possessing more than 5 million child pornography images on his computer*, UNITED STATES DEPARTMENT OF IMMIGRATION AND CUSTOMS ENFORCEMENT (Oct. 30, 2014), [www.ice.gov/news/releases/southeast-texas-man-admits-possessing-more-5-million-child-pornography-images-his](http://www.ice.gov/news/releases/southeast-texas-man-admits-possessing-more-5-million-child-pornography-images-his).

76. Jason Meisner, *Father and 2 sons given prison for sex trafficking underage girls*, THE CHICAGO TRIBUNE (Mar. 24, 2017), [www.chicagotribune.com/news/local/breaking/ct-father-sons-sex-trafficking-met-20170323-story.html](http://www.chicagotribune.com/news/local/breaking/ct-father-sons-sex-trafficking-met-20170323-story.html).

77. *Id.*

Each had a different function in the ring and was dependent on the other two. Given a fourth defendant, this case would have opened the door to CEE charges.

The main drawback to bringing charges under the CEE statute is that its twenty-year mandatory minimum sentence hinders judicial discretion. This high bar makes it difficult to use against all enterprise members uniformly. It is difficult to justify a twenty-year sentence for the most minor players in an enterprise. Effective prosecution of exploitative enterprises should take into account the possibility of traditional conspiracy charges or other enterprise-based solutions for less culpable defendants.

## VI. A COMPARISON OF RICO, CONSPIRACY LAWS, AND THE CEE STATUTE

RICO, conspiracy law, and the CEE statute can be used together to form a comprehensive web of enterprise-based prosecution of child exploiters. Although these statutes can be used for very similar purposes and enterprises, the statutes have some substantive differences. In particular, there are significant differences in their focus in terms of enforcement, the requirements for prosecution, sentencing, and possible remedies.

First, RICO has a strictly enterprise-based focus. Its original purpose was to convict those who were too far removed from street-level crime to be criminally liable, but were no less morally culpable. Conspiracy law generally has a similar focus, thanks to the Pinkerton rule. In contrast, the CEE statute is more in line with traditional child exploitation laws in that prosecutors must be able to prove criminal liability without strictly impugning the guilt of other members of the enterprise. The CEE's approach particularly works well for online child pornography rings today. However, RICO's approach will become more suitable if and when such rings acquire more sophisticated screening technology.

Similarly, RICO and the CEE statute have slightly different requirements for prosecution when handling child exploitation cases. Both include the same statutes as predicate offenses. However, RICO requires only that defendants have committed two racketeering offenses within ten years in connection with an enterprise. The CEE statute requires at least three separate incidents in a series, more than one victim, and at least three other members of the enterprise. Meanwhile, conspiracy law has no requirement that any actual criminal offenses have occurred, merely that steps were taken towards a criminal purpose.

The stricter standard for CEE cases is explained by the possible sentences offered by the two statutes. Under RICO, defendants typically face a maximum of twenty years' imprisonment; the law focuses on punishing wallets more than filling prisons. However, the CEE statute calls for a minimum

sentence of twenty years and allows life sentences. As discussed above in Section III, the CEE statute's mandatory minimum binds judicial discretion and requires that it remain a weapon used sparingly. Conspiracy law is a friendlier option for courts, both in sentencing and in institutional competence.

The differences between RICO and the CEE statute paint a picture of how they should operate when handling child exploitation enterprises. RICO should be used to prosecute leaders of exploitative enterprises, those who are more connected to profiting from the exploitation than committing it themselves. These individuals do not go to prison for very long, but their prosecution allows the court to completely dismantle the enterprise and compensate victims. Meanwhile, the CEE statute can be used for enterprise leaders who were more closely involved in the abuse itself.

Although civil RICO cannot feasibly be used in child exploitation cases today, it could be easily modified to suit them. This would add a powerful option for victims of child exploitation that is not currently available. It could be used in cases involving criminal RICO and CEE prosecution. Civil RICO could level the playing field for victims who do not see the differences in culpability between criminal RICO and CEE defendants.

## VII. CONCLUSION

As long as there are people willing to pay for the exploitation of children, there will be businesses willing to provide it. Unfortunately, the traditional individual-based method of prosecution is not the best way to handle these enterprises. As these enterprises continue to build online followings, it has become clear that an enterprise-based method of prosecution is the more appropriate method. Anything less is simply treading water until someone comes up with a new way to avoid detection.

An enterprise-based method of prosecution focuses on the actions and knowledge of its members. In particular, RICO, the CEE statute, and conspiracy laws allow prosecutors to impute this knowledge to members who would otherwise be nearly impossible to convict. By stopping an enterprise at its source, prosecutors are able to efficiently and effectively cut off outlets for individuals to profit off the exploitation of children. Child exploitation will continue even without profit, but as shown by the success of RICO in response to organized crime, this is an important step.

Prosecutors could use RICO itself against child exploitation. Congress has made it clear that they want RICO to be used liberally; its original intent to combat organized crime should not be considered a restriction on the possibilities it could offer today. However, this shift in criminal RICO use is unlikely to occur. The institutional knowledge necessary to manipulate the massive RICO

code into the complicated issues of child exploitation would be difficult for even the most sophisticated courts.

However, civil RICO should be amended to allow victims of exploitative enterprises to bring suits. These victims are no less harmed by their abusers than are "threatened shopkeepers." Although civil RICO was designed to compensate those whose businesses are hurt, it currently does not assist those who are unable to work due to immense trauma caused by exploitation. This is a major flaw to the act and should be corrected.

Prosecutors have acknowledged the strength of an enterprise-based approach against child exploitation enterprises through their frequent use of conspiracy law and their growing use of the CEE statute. This area of prosecution will likely grow in upcoming years as enterprises adapt to avoid detection, particularly for online-based enterprises.

Child exploitation enterprises are not going anywhere anytime soon. RICO has showed that traditional methods of prosecution merely force prosecutors to wait for evidence that will never come. The traditional approach simply did not recognize that child exploitation enterprises are more than the sum of their parts – they are an entity all on their own. Prosecutors need to recognize this problem and fundamentally shift their focus onto the enterprises themselves. This is our best hope for the safety of hundreds of thousands of children who are at risk of exploitation today.