FEDERAL STATUTES — RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT — EN BANC NINTH CIRCUIT HOLDS THAT RICO ENTERPRISE NEED NOT HAVE ANY PARTICULAR ORGANIZATIONAL STRUCTURE. — *Odom v. Microsoft Corp.*, 486 F.3d 541 (9th Cir. 2007) (en banc), *cert. denied*, 128 S. Ct. 464 (2007).

Courts have grappled with the complexity of the Racketeer Influenced and Corrupt Organizations Act[1] (RICO) since its passage in 1970. The development of the statute has been characterized as a "tug of war" between the Supreme Court and lower courts,[2] with the Court rejecting judicially imposed limitations on the application of the statute. At the same time, civil plaintiffs have advanced the uses of RICO far beyond those that Congress primarily intended in 1970, often targeting activity that amounts to simple "business disputes" and frauds.[3] Recently, in *Odom v. Microsoft Corp.*,[4] the Ninth Circuit held that a RICO enterprise need not have a separate structure other than that necessary to commit the underlying crimes, deepening a circuit split on the question of what sort of organization may be charged (or pleaded in civil cases) as an "enterprise" under the statute.[5] In so ruling, the majority reached the correct outcome per the text of the RICO statute and appropriately rejected an interpretation focused on the intent of Congress. Instead of limiting its discussion to RICO's text, however, the court invoked an unnecessary and overly broad interpretive rule of its own that obscures the continued importance the Supreme Court gives to common law–based limitations on the RICO statute.

In May 2002, James Odom bought a laptop computer at a Best Buy store in California.[6] The Best Buy employee who processed Odom's purchase also scanned a compact disc (CD) that provided a free trial subscription to Microsoft's internet access service, MSN.[7] Six months later, Microsoft began charging Odom's credit card for the service, which Odom cancelled after discovering the charges.[8] Odom and a class of plaintiffs filed suit against both Microsoft and Best Buy

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[1] 18 U.S.C. §§ 1961–1968 (2000 & Supp. V 2005).

[2] Mark D. Plevin, Holmes v. Securities Investor Protection Corp.*: The Supreme Court Restricts Civil RICO*, 16 AM. J. TRIAL ADVOC. 447, 448 (1992).

[3] *See* Gerard E. Lynch, *A Conceptual, Practical, and Political Guide to RICO Reform*, 43 VAND. L. REV. 769, 797 (1990) ("If over seventy percent of the civil RICO cases are essentially ordinary business disputes in which no prosecutor would dream of charging criminal violations, there is little justification for continuing a civil remedy as broad as the present law contains.").

[4] 486 F.3d 541 (9th Cir. 2007) (en banc), *cert denied*, 128 S. Ct. 464 (2007).

[5] *Id.* at 551.

[6] *Id.* at 543–44.

[7] *Id.* at 544.

[8] *Id.* Odom was never refunded the two months of charges. *Id.*

in federal district court under RICO § 1964(c), which allows recovery of treble damages for those injured by a violation of RICO's criminal provisions.[9] Odom alleged that, pursuant to a joint marketing agreement between Best Buy and Microsoft made in 2000, Best Buy had created an MSN subscription for Odom and sent his credit card information to Microsoft, all without Odom's knowledge or consent.[10] Odom asserted that Microsoft and Best Buy acting together therefore constituted an "enterprise" under RICO § 1962(c)[11] that had engaged in the predicate acts of wire fraud through the unwanted creation of the MSN accounts,[12] which also constituted a "pattern of racketeering activity" under RICO.[13]

The district court dismissed the suit in March 2004.[14] The court noted that civil RICO plaintiffs, per Ninth Circuit precedent, needed to show that the alleged enterprise had some "separate structure" apart from that needed to engage in the pattern of racketeering activity.[15] The court found that Odom's complaint failed to satisfy this separate structure requirement. In particular, the alliance between the companies had neither a "separate system of authority" for directing the enterprise nor a structured "disburse[ment of] proceeds" from the alleged wire fraud.[16] The court concluded that the lack of any such evidence meant that Odom had failed to plead a RICO "enterprise."

After a panel of the Ninth Circuit heard argument, it ordered the case reargued en banc;[17] the full court then reversed and remanded.[18]

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[9] 18 U.S.C. § 1964(c) (2000) ("Any person injured in his business or property by reason of a violation of [RICO's criminal provisions] may sue therefor . . . and shall recover threefold the damages he sustains . . . ."). Odom also brought a claim under the Washington Consumer Protection Act, WASH. REV. CODE §§ 19.86.010–.920 (1999). *See* Odom v. Microsoft Corp., No. C03-2976P, 2004 WL 5407314, at *1 (W.D. Wash. Mar. 16, 2004).

[10] *Odom*, 2004 WL 5407314, at *1.

[11] 18 U.S.C. § 1962(c) (2000) ("It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate . . . in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . .").

[12] *See* 18 U.S.C. § 1343 (2000) (the federal wire fraud statute).

[13] *Odom*, 486 F.3d at 544.

[14] *Odom*, 2004 WL 5407314, at *6.

[15] *Id.* at *3 (citing United States v. Turkette, 452 U.S. 576, 583 (1981)); *see also* Chang v. Chen, 80 F.3d 1293, 1299 (9th Cir. 1996) (requiring separate structure), *overruled by Odom*, 486 F.3d 541.

[16] *Odom*, 2004 WL 5407314, at *5. The court also dismissed on the grounds that the plaintiffs had failed to plead the underlying predicate act of wire fraud with sufficient particularity as required by the heightened pleading standards of Federal Rule of Civil Procedure 9(b). *Id.*

[17] The case was heard first on appeal in November 2005, by a panel consisting of Judges Reinhardt, Fletcher, and Bybee. The panel, eight months later, ordered briefing on "whether this matter should be reheard en banc." Odom v. Microsoft Corp., No. 04-35468 (9th Cir. Jul. 26, 2006) (unpublished order, on file with the Harvard Law School Library). The full court ordered the case reargued en banc in September 2006. Odom v. Microsoft Corp., 466 F.3d 747 (9th Cir. 2006). It does not appear that the original panel filed any opinion in the case.

[18] *Odom*, 486 F.3d at 555.

Writing for the majority, Judge Fletcher[19] began his discussion by reviewing the history of Supreme Court interpretation of the RICO statute,[20] concluding as a general rule that the terms of RICO ought to be construed broadly.[21] The court noted that a circuit split existed, however, on the nature of the "enterprise"[22] that plaintiffs needed to allege, with several circuits requiring a showing of "ascertainable organizational structure beyond whatever structure is required to engage in the pattern of illegal racketeering activity" and others not.[23] The split stemmed from differing applications of *United States v. Turkette*,[24] in which the Supreme Court held that RICO applied to purely criminal organizations as well as legitimate entities.[25] Recognizing that lower courts had found its own jurisprudence defining a RICO enterprise to be "less than clear,"[26] the Ninth Circuit held that plaintiffs alleging an associated-in-fact RICO enterprise need not show "any particular organizational structure, separate or otherwise."[27] To hold the opposite, the court argued, would be in effect to reverse *Turkette*: because ordinary criminal organizations do not often have separate structures for conducting legitimate activities apart from the "pattern of racketeering," requiring a separate structure would prevent purely criminal organizations from being charged under the statute.[28]

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[19] Judge Fletcher's opinion was joined by Chief Judge Schroeder and Judges O'Scannlain, Hawkins, Thomas, Fisher, Paez, and Berzon.

[20] *Odom*, 486 F.3d at 545–47. The Court had overturned a variety of judicial attempts to read the statute narrowly, rejecting interpretations that would have confined "enterprises" to only legitimate organizations, *see* United States v. Turkette, 452 U.S. 576 (1981), that limited the potential defendants to those who had actually been convicted under the statute's criminal provisions, *see* Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 (1985), that limited "enterprises" to only those with economic motives, *see* Nat'l Org. for Women, Inc. v. Scheidler, 510 U.S. 249 (1994), and that defined a sole shareholder of a company as not a separate "person" from the RICO "enterprise," *see* Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158 (2001).

[21] *Odom*, 486 F.3d at 547.

[22] "Enterprise" is defined in the RICO statute at 18 U.S.C. § 1961(4) (2000): "[E]nterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."

[23] *Odom*, 486 F.3d at 549–50. *Compare, e.g.*, United States v. Sanders, 928 F.2d 940, 944 (10th Cir. 1991), United States v. Perholtz, 842 F.2d 343, 354–55 (D.C. Cir. 1988), United States v. Tillett, 763 F.2d 628, 632 (4th Cir. 1985), United States v. Riccobene, 709 F.2d 214, 223–24 (3d Cir. 1983), *and* United States v. Bledsoe, 674 F.2d 647, 665 (8th Cir. 1982) (all requiring a separate structure), *with* United States v. Patrick, 248 F.3d 11, 19 (1st Cir. 2001), United States v. Bagaric, 706 F.2d 42, 56 (2d Cir. 1983), *and* United States v. Cagnina, 697 F.2d 915, 921 (11th Cir. 1983) (all rejecting the separate structure requirement).

[24] 452 U.S. 576 (1981).

[25] *Id.* at 587.

[26] *Odom*, 486 F.3d at 551 (quoting Hansen v. Ticket Track, Inc., 280 F. Supp. 2d 1196, 1206 (W.D. Wash. 2003)) (internal quotation marks omitted).

[27] *Id.*

[28] *See id.*; *see also Patrick*, 248 F.3d at 19 (noting that criminal enterprises "may not observe the niceties of legitimate organizational structures").

The court concluded that Odom's complaint sufficiently alleged an associated-in-fact enterprise between Best Buy and Microsoft. The two companies had formed an "ongoing organization" for the "common purpose" of fraudulently increasing MSN users.[29] The court concluded that, although the lack of a separate structure requirement might allow civil recovery against enterprises "far removed from those actually contemplated by Congress,"[30] attempts to limit the statute's application had been foreclosed by the Supreme Court's RICO cases, and that "this defect — if defect it is — is inherent in the statute as written, and its correction must lie with Congress."[31]

Judge Silverman concurred in the result only.[32] Reviewing the complaint, he found no evidence of an "ongoing organization" between the two companies and characterized their relationship as merely "a marketing contract and [its] performance."[33] The majority's interpretation, Judge Silverman argued, would make a RICO enterprise out of any commercial agreement between two companies that involved performing two or more RICO predicate acts. This was not what Congress intended. "RICO targets a more sophisticated crowd," he argued — those organizations whose activities were structured and coordinated enough to constitute "*organized* crime."[34] Judge Silverman ultimately concurred in the result, however, as he thought the district court ought to have given Odom the opportunity to amend his complaint.[35] Judge Bybee, joined by Judge Reinhardt, filed a one-paragraph concurrence, describing the notion that civil RICO could apply to a "marketing contract" as "outlandish," but concluding that the Supreme Court had foreclosed any other result.[36]

Both the *Odom* majority and Judge Silverman's concurrence based their reasoning on Congress's goals in passing the statute: the majority emphasized RICO's remedial nature, whereas the concurrence looked to the types of organizations Congress intended to target. In rejecting the requirement that a RICO enterprise have some structure separate from that necessary to commit the RICO predicate acts, the majority reached the construction of the RICO statute most consistent with its

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[29] *Odom*, 486 F.3d at 552.

[30] *Id.* at 553 (quoting United States v. Riccobene, 709 F.2d 214, 221 (3d Cir. 1983)) (internal quotation marks omitted).

[31] *Id.* (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985)) (internal quotation marks omitted). The court also reversed the district court's holding that the complaint's failure to allege the names of the employees who scanned the trial CDs made the complaint insufficiently particular under Rule 9(b). *Id.* at 553–55.

[32] Judges Rymer, Tallman, Rawlinson, and Bea joined Judge Silverman's opinion.

[33] *Odom*, 486 F.3d at 555 (Silverman, J., concurring in the result).

[34] *Id.* (quoting United States v. Turkette, 452 U.S. 576, 589 (1981) (emphasis added)) (internal quotation marks omitted).

[35] *Id.* at 556.

[36] *Id.* (Bybee, J., concurring) (citing *Sedima*, 473 U.S. at 497–99).

text, which defines "enterprise" very broadly. But while the majority adopted the correct reading of the statute, it invoked Congress's rule of construction that RICO should be broadly construed to achieve its remedial purposes.[37] The court's focus on this statutory rule was unnecessary and misleading, and it obscures important nuances in the Supreme Court's use of background common law to limit the statute's text in certain circumstances. Supreme Court RICO precedent indicates that this rule of broad construction is unnecessary where the statute is relatively clear. Moreover, where RICO is unclear, the Court has sometimes adopted the *narrower* available construction based on the background common law.

The *Odom* majority's invocation of Congress's rule of statutory construction was, to begin with, unnecessary, because RICO's text is sufficient to reach the same result.[38] The words "associated in fact" do not suggest a requirement of any structure at all. The language of § 1961(4) is quite broad in defining enterprise — "*any* union or group of individuals associated in fact" — indicating that any group of individuals or entities loosely connected could qualify.[39] Moreover, § 1961(4)'s enterprise definition includes "any individual," suggesting that at least in one category of enterprises, "organizational structure" cannot possibly be a requirement. Given that one individual may be an enterprise, it follows that anything with *more* structure than one person may also be, including, as in *Odom*, two corporate entities working together. One could argue that 1961(4)'s definition of enterprise is divided in two parts — legal entities as enterprises, and other associations that do not have a separate legal status[40] — and that a separate structure requirement should only apply to the latter group.[41]

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[37] *See* Pub. L. No. 91-452, § 904(a), 84 Stat. 922, 947 (1970) (codified at note following 18 U.S.C. § 1961 (2000 & Supp. V 2005)).

[38] Some have argued that the type of enterprise alleged in *Odom* could not be an associated-in-fact enterprise because it is composed of corporations. *See* Brief of Petitioner at 12, Mohawk Indus., Inc. v. Williams, 126 S. Ct. 2016 (2006) (per curiam) (No. 05-465) (raising the argument that because § 1961(4)'s definition of "enterprise" includes only "group[s] of *individuals* associated in fact," a corporation could not be part of an associated-in-fact enterprise). The Court never addressed this argument, however, dismissing the writ in *Mohawk* as improvidently granted. *Mohawk*, 126 S. Ct. at 2016. The federal courts of appeals have uniformly rejected this textual argument. *See* Brief of Respondents at 15, *Mohawk*, 126 S. Ct. 2016 (No. 05-465).

[39] *See* Herbert R. Northrup & Charles H. Steen, *Union "Corporate Campaigns" as Blackmail: The RICO Battle at Bayou Steel*, 22 HARV. J.L. & PUB. POL'Y 771, 775 (1999); *cf. Turkette*, 452 U.S. at 580–81 (finding that because the RICO definition of associated-in-fact enterprise did not explicitly specify whether the association could be legitimate or criminal, both were permissible).

[40] "Any individual, partnership, corporation, association, or other legal entity" and "any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (2000); *see Turkette*, 452 U.S. at 581–82 (1981) (identifying this two-part nature of the enterprise definition); Lockheed Martin Corp. v. Boeing Co., 314 F. Supp. 2d 1198, 1216 n.12 (M.D. Fla. 2004).

[41] This argument follows not from the text of § 1961(4) itself, but rather from its legislative history and the types of organizations that Congress was attempting to target with RICO. *See,*

Organizational structure cannot be a requirement of the set of enterprises in the first half of the definition, however, so it is difficult to argue *textually* that the enterprises in the second half *should* have structure; the statute's distinction between legal entities and other means of organization already suggests that enterprises can be either organized or informal.

The majority rejected the concurrence's alternative method of construing the statute, which used the separate structure requirement as a way to limit RICO to target only the types of organizations that Congress intended to cover when it passed the statute.[42] Other courts have argued as well that the separate structure requirement, though not explicit in the statute, is necessary to adhere to Congress's original purpose: preventing the infiltration of legitimate organizations by the mafia.[43] The majority did not rely solely on the statute's text, however, but rather argued that RICO's terms ought to be interpreted "liberally," in order to "effectuate [the statute's] remedial purposes"[44] of preventing criminals from operating through the mainstream economy.

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e.g., United States v. Anderson, 626 F.2d 1358, 1371–72 (8th Cir. 1980) (using legislative history as support for imposing a separate structure limitation on RICO organizations).

[42] *See Odom*, 486 F.3d at 555 (Silverman, J., concurring in the result). The concurrence advanced a second argument for the separate structure requirement: that some structure apart from the pattern of racketeering should be required of RICO enterprises because otherwise ordinary criminal conspiracies, which are also composed of "individuals associated in fact," *see* 18 U.S.C. § 371 (2000) (the federal conspiracy statute), would also be indictable under RICO. *See Odom*, 486 F.3d at 555 (Silverman, J., concurring in the result). The concurrence's concern was that the broader construction of the RICO statute would allow federal prosecutors to threaten conspiracy defendants with much greater punishment than they would normally face under an ordinary conspiracy indictment. *Compare* 18 U.S.C. § 371 (2000) (conspiracy carries with it a term of imprisonment "not more than five years"), *with* 18 U.S.C. § 1963(a) (2000) (RICO conviction can carry a twenty-year sentence, or even life imprisonment). This concern is not well founded, however, because ordinary criminal conspiracy cases require the government to prove an agreement to commit a *specific* crime. *See* United States v. Burgos, 94 F.3d 849, 885 (4th Cir. 1996); 1 WHARTON'S CRIMINAL LAW § 24 (Charles E. Torcia ed., 15th ed. 1993). RICO, in contrast, allows prosecutors to bundle together organizations that make agreements to commit criminal conduct *in general*, where no conspiracy charge would be possible because no proof exists of a specific agreement among all the organization's members to commit a specific crime. *See* United States v. Griffin, 660 F.2d 996, 999–1000 (4th Cir. 1981).

[43] RICO grew out of a 1960s presidential commission on crime, which concluded that one of the major ways that organized crime operated was through infiltration of businesses and unions. PRESIDENT'S COMM'N ON L. ENFORCEMENT & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 188–89 (1967). RICO's proponents drew heavily on the Commission's conclusions. *See* Gerard E. Lynch, *RICO: The Crime of Being a Criminal, Parts I & II*, 87 COLUM. L. REV. 661, 667 (1987). The proponents of RICO intended to target criminal organizations that used legitimate commerce to protect and shield their activities from detection. *See, e.g.*, 113 CONG. REC. 17,997–99 (1967) (remarks of Sen. Hruska).

[44] *Odom*, 486 F.3d at 547 (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 498 (1985)). This "remedial purpose" maxim of statutory construction is derived from Blackstone, *see* 1 WILLIAM BLACKSTONE, COMMENTARIES *87, and means that the statute should be interpreted to eliminate the evil that it was intended to remedy. *See id.* Apart from the general problems of the remedial purpose canon, *see generally* Antonin Scalia, *Assorted Canards of Contemporary Legal*

Although it is true that RICO instructs courts generally to interpret its provisions broadly, the *Odom* court's invocation of this instruction at the outset of the opinion is questionable on at least three counts. First, the court seems not even to have relied on the rule in its ultimate disposition of the issue; instead, the court simply applied the *Turkette* factors of common purpose, ongoing organization, and continuing function as a unit to find that Odom had pled an associated-in-fact enterprise between Microsoft and Best Buy.[45] Second, although Congress may have intended courts to construe RICO broadly *because* it is a remedial statute, the Supreme Court's major RICO cases show that this rule is not necessary to achieve a broad construction. Rather than being examples of "liberal" construction, the Supreme Court cases that the *Odom* majority cited were text-based decisions that merely rejected judicially created limitations on particular terms of RICO.[46] The cases stand only for the proposition that RICO should be interpreted according to its text, not that a rule of statutory interpretation need be invoked to achieve broad (or "liberal") constructions.

The final problem with the majority's invocation of the liberal construction rule is that extra-textual limitations on the statute, like those rejected by the Court in *Turkette*, *do* sometimes appear in Supreme Court RICO opinions. The Court's RICO jurisprudence therefore cannot be explained, as *Odom*'s discussion implied, merely as a search for a broad construction of RICO to effect its "remedial purpose." The Court has, in fact, adopted a narrow definition of crucial elements of the statute in the civil context. For instance, in *Holmes v. Securities Investor Protection Corp.*,[47] the Court was faced with the question of which injured parties had standing to sue for violations of RICO's criminal provisions. Section 1964(c) provides a cause of action for those injured "by reason of" the defendant's violation.[48] Although a broad construction of the phrase "by reason of" would require only

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Analysis, 40 CASE W. RES. L. REV. 581, 581–86 (1990), it is unclear that it would even apply in a civil RICO case such as *Odom* that does not involve the specific evil — organized crime — that Congress originally sought to remedy.

[45] *See Odom*, 486 F.3d at 552–53. The Court in *Turkette* seemed to disclaim reliance on the statute's liberal construction instructions in reaching its conclusions. *See Turkette*, 452 U.S. at 587.

[46] *See, e.g.*, *Odom*, 486 F.3d at 546–47 (citing Nat'l Org. for Women, Inc. v. Scheidler, 510 U.S. 249 (1994). In *Scheidler*, the Seventh Circuit had upheld the dismissal of a civil RICO suit against a group of abortion clinic protesters because the organization lacked an economic motive for its actions. The court imposed the "economic motive" requirement to limit the statute to enterprises closer to the legitimate businesses controlled by organized crime that Congress intended to target. *See* Nat'l Org. for Women, Inc. v. Scheidler, 968 F.2d 612, 627–29 (7th Cir. 1992). The Supreme Court reversed, holding that the statute's text did not require the extra "economic motive" requirement for enterprises. *Scheidler*, 510 U.S. at 250.

[47] 503 U.S. 258 (1992).

[48] *Id.* at 265.

that the violation was a "but-for" cause of the plaintiff's injury, the Court opted for a more limiting "proximate cause" requirement, relying on the common law justification that injuries should not be "too remote" from their alleged causes.[49]

The crucial aspect of cases like *Holmes* is that the Court used background law to interpret a term — "by reason of" — that would otherwise lack a defined meaning in the statute's text. The cases cited in *Odom*, however, rejected limitations on RICO based on congressional intent imposed by lower courts on relatively *clear* statutory text. But the cases also leave open the possibility of adopting narrower constructions when the text is ambiguous and the common law provides a meaning.[50] The *Odom* court could therefore have confined its rejection of extra-textual restrictions on the statute to those based on an understanding of Congress's original purpose, rather than stating a categorical rule that would reject the use of background law generally to limit the statute.

Courts and commentators have long argued that plaintiffs have put civil RICO to "outrageous" uses, far beyond those intended by Congress in 1970,[51] seeking treble damages from entirely legitimate, deep-pocketed business organizations, often for claims that amount to nothing more than ordinary business torts or state law claims.[52] But the ingenuity of civil RICO plaintiffs is due largely to the fact that Congress used such capacious language in crafting the statute, and any limitations on the availability of civil recovery imposed by courts relying on RICO's original purpose seem destined to fail. As *Odom* recognized, it is the duty of Congress, not the courts, to curb abusive uses of the statute by civil plaintiffs while respecting its value in the arsenal of federal prosecutors.

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[49] *See id.* at 265–66, 268, 271; *see also* Anza v. Ideal Steel Supply Corp., 126 S. Ct. 1991, 1996 (2006). The Court has used similar methods to limit RICO's reach in other cases. *See, e.g.*, Beck v. Prupis, 529 U.S. 494, 500 (2000) (relying on the common law of civil conspiracy to define "injury" resulting from a criminal conspiracy).

[50] In *Holmes*, for example, the court applied the law construing the language of the antitrust laws that Congress had borrowed in writing RICO. *Holmes*, 503 U.S. at 267–68.

[51] Sedima, S.P.R.L. v. Imrex Co., 741 F.2d 482, 487 (2d Cir. 1984), *rev'd*, 473 U.S. 479 (1985).

[52] *See* Jeffrey E. Grell, *Exorcising RICO from Product Litigation*, 24 WM. MITCHELL L. REV. 1089, 1101 (1998). The use of RICO as a tool to receive treble damages for common law claims is particularly tempting when, as in *Odom*, the predicate acts alleged are instances of wire fraud; because the federal fraud statutes cover schemes to deprive someone of "intangible rights," RICO could conceivably be applied to a simple pattern of dishonesty or self-dealing by an employee or officer of a private entity. *See* United States v. Rybicki, 354 F.3d 124, 141–42 (2d Cir. 2003) (en banc); Grell, *supra*, at 1101.