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The advocate traveling the RICO[1] road might well liken his experience to Dorothy of the Wizard of Oz as she trod down the "yellow brick road." Examining the strange results in cases across the land, he might wonder what sort of strange creature he will next encounter—a strawman, a tinman or, perhaps, the heartless lion. Most assuredly, he will have seen cases by the dozen in which "strawmen" are raised early on in decisions, only to be whisked away in the final result. Then too, he will have seen narrow, brittle, tin like decisions hewing closely to the most conservative interpretation of the RICO statute. He may well speculate with others at the apparent lack of heart that the Supreme Court seems to have for entering into the RICO fray.

To those of us who have followed closely the development of Civil RICO from its twelve years of virtual somnolence, followed by the explosion which has occurred since 1982, the California Western Law Review Symposium promises to be a most timely event. Civil RICO stands at the crossroads in the ongoing development of this juggernaut of legal remedies. The full breadth and scope of actions cognizable under RICO is limited only by the imagination of aggressive litigators.

In the rapid expansion of RICO litigation, the commercial litigator seemed at first to be the prime mover in developing novel causes of action. Thus, almost any matter predicated upon an allegation of fraud could be molded into a RICO claim and lawyers by the hundreds flocked to outdo each other in structuring causes of action.

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1. Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-68 (1982).

From "prime rate" cases to section 1983 actions, with stops along the way for security law violations, the course of Civil RICO has indeed run the gamut.

Similarly, the field of those who have adopted RICO actions has broadened to include labor lawyers, both on the side of unions and management, insurance related cases, and class actions of every nature.

Another area where the dust has hardly settled, and indeed is just now gathering, is that of the possible use of the injunctive provisions of RICO. Depending upon the course eventually taken by the courts, be it narrow, liberal or somewhere in between, the entire area of RICO's application to the injunctive remedy has the potential for expanding the use of the statute by geometric proportions.

Courts throughout the country have grappled with the broad terms of the statute in varying ways. From an early restrictive view which characterized many lower court decisions, to the more liberal construction extended by most Appellate courts, the cases indeed have been the height of inconsistency and have posed serious problems to lawyers seeking to advise their clients as to predictable results. The whole body of law continues to grow concerning each and every element of the statute and indeed it is not too far off the mark when we look at the cases construing "by reason of" a violation of section 1962, to say that virtually every phrase of the statute furnishes an opportunity for judicial interpretation. "Enterprise" has already attracted the scrupulous attention of judges all over America with little, if any, consistent results.

Even as the contributors to the Symposium prepare for the task of constructing signposts along the RICO road, circuit court opinions indicating radical changes from previously established directions make the seers of RICO less than confident in forecasting the way of the future for Civil RICO. Probably the most striking example of the quandary in which the RICO student finds himself is found in the recent action of the Second Circuit, when it handed down a trilogy of cases holding that to sustain an action there must be a showing that the defendant has previously been convicted of predicate crimes and that the injury suffered other than that caused by the predicate crimes must in fact be a separated "racketeering enterprise" injury. Compounding the problem is the fact that in each case the court split in its decision.

In what must be deemed a most unusual posture for the Second Circuit, these cases represented a pointed change of view from the majority views of other panels of the Court who had earlier held far more liberal views. The Second Circuit, when called upon to re-

solve the conflict, amazingly voted 8-3 against en banc consideration of the cases.

While scholars continue to debate the future course of those cases, the Third Circuit, which had consistently supported the broader view of RICO, recently (February 1, 1985) reversed and remanded a district court decision for the plaintiff on a 1962(c) claim for the reason that the RICO "enterprise" and the corporate defendant were not distinct entities. Whether this portends a deeper philosophical change of heart, only time will tell.

The Litigation Section of the American Bar Association and the Corporation and Business Section have combined their resources in polling their memberships (almost 100,000 in total) seeking to ascertain the views of practitioners in the RICO field as to their opinion of the rapid growth of RICO and specifically whether legislative changes should be sought.

Classic evidence of the need for the exchange of ideas which this Symposium promotes can be found in the actions of other interested parties.

The Office of Legal Policy of the United States Department of Justice is in the midst of an in depth study as to the status and future of both civil and criminal RICO. Civil RICO also received the close attention of "The Vice President's Task Group on the Regulation of Financial Services." In their report, after noting that "RICO is attractive to litigants because it provides treble damages and attorney fees that are unavailable under banking or security laws and due to the breadth and ambiguity of the statute," it went on to state, "consequently, the Task Group recommendations would limit the application of the civil penalty provisions of RICO to prevent their misuse by private parties in cases solely involving legitimate business activities by financial institutions."

Deputy Attorney General Carol E. Dinkins, in a recent address delivered at the University of Houston Law Center described the RICO statute as "one of the most important and controversial weapons in the government's legal arsenal and in the legal arsenal of private plaintiffs." She went on to note that the statute is one which is extremely powerful because of its broad substantive reach.

Until the Supreme Court enters the fray of Civil RICO, it is safe to say that the turbulent RICO waters will continue to boil unabated.

All litigators look forward with great interest to the work of the California Western Law Review Symposium.