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INTRODUCTION

At the time of its enactment the Racketeering Influenced and Corrupt Organizations Act (RICO)\(^1\) was considered by Congress to be a revolutionary new tool in fighting against organized crime. RICO provides for criminal and civil sanctions at the instigation of the Attorney General\(^2\) and private civil actions.\(^3\) Since RICO's creation, the Justice Department has used it extensively, and it has proven to be a valuable tool in the fight against organized crime.\(^4\) Recently RICO, although ignored for a number of years, has been increasingly used by private litigants.\(^5\) This expansion in use can be traced to a surge in recent commentary on RICO and the prospect of obtaining treble damages\(^6\) if successful. However, as of this writing there has been only one reported case in which a plaintiff has been successful in obtaining treble damages.\(^7\) While a number of factors have contributed to this result, one stands out. The courts, seeing this influx of private RICO actions, have become fearful of the potential for abuse the statute presents. This statute, which was enacted to fight organized crime, has become a dangerous weapon against "legitimate" business.\(^8\) In response, the courts have at-

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3. 18 U.S.C § 1964(c) (1982).
4. One recent article notes that the Justice Department has recently placed its own restrictions on RICO in response to concerns about possible abuse. See Wexler, Civil RICO Comes of Age: Some Maturational Problems and Proposals for Reform, 35 Rutgers L. Rev. 285, 291 (1983).
5. Prior to 1978 there were only two reported cases in which a private civil RICO action was brought. King v. Vesco, 342 F. Supp. 120 (N.D. Cal. 1972) (dismissed for improper venue), and Barr v. WUI/TAS, 66 F.R.D. 109 (S.D.N.Y. 1975) (dismissed for failure to show defendant's connection to organized crime).
6. It has been recently noted that since 1978 there have been over one hundred civil RICO cases reported, with more pending. Siegel, RICO Running Amok in the Board Rooms, L.A. Times, Feb. 15, 1984, at 1.
7. Treble damages are damages given by statute in certain cases, consisting of single damages found by the jury, actually tripled in amount. BLACK'S LAW DICTIONARY 1347 (5th ed. 1979).
9. Recent RICO litigation has involved such companies as Rockwell International
tempted to limit private RICO causes of action by placing various limitations on its use. Some of these limitations may be viewed as valid and others may not. Among the limitations that have been implemented is the denial of any form of equitable relief to private litigants.

The denial or granting of equitable relief to RICO plaintiffs could have a tremendous impact on its use. If RICO is read as granting equitable remedies to private litigants under section 1964(a), it would become possible for private litigants to seek divestiture, dissolution or reorganization of many enterprises. Considering RICO's potential for improper use, this could be a dangerous result. This Comment will examine the issue whether Congress intended for the court to grant such drastic remedies to private litigants. The conclusion is that RICO as it stands today should not be the source of equitable relief to private litigants. Such a conclusion will be reached first, by examining recent court holdings either denying or granting equitable relief to private litigants. Second, this Comment will examine the language of the RICO statute itself and its legislative history in relation to the denial or granting of equitable relief to private litigants. Third, it will compare RICO to similar antitrust legislation. Finally, this Comment will discuss whether the right to equitable relief may be implied through the court's inherent equitable power.

I. A RICO CAUSE OF ACTION

To plead a RICO cause of action, a plaintiff must establish that a person has committed two or more predicate acts. The commis-

9. See infra notes 16-37 and accompanying text.
10. Equitable relief is that form of relief granted by a court with equity powers as, for example, in the case of one seeking injunctive relief. Ordinarily a plaintiff, to obtain equitable relief, must establish his remedy at law is inadequate (money damages would not fully compensate the loss). This requirement often makes equitable relief more difficult to obtain. BLACK'S LAW DICTIONARY 484 (5th ed. 1979).
12. Black's defines "divestiture" as an "order of the court to a defendant to divest himself of property or other assets." BLACK'S LAW DICTIONARY 429 (5th ed. 1979).
13. Black's defines "dissolution" as "the act or process of dissolving; termination; winding up." BLACK'S LAW DICTIONARY 425 (5th ed. 1979).
14. Black's defines "reorganization" as "a major change in the capital structure of a corporation that leads to changes in the right, interests and implied ownership of the various security owners." BLACK'S LAW DICTIONARY 1167 (5th ed. 1979).
15. While the legislative history of RICO does indicate that Congress recognized that RICO could be used against legitimate business, the primary purpose of RICO is eradication of organized crime. See infra note 115.
16. 18 U.S.C. § 1961(3) (1982) provides: " 'person' includes any individual or entity capable of holding a legal or beneficial interest in property. . ."
sion of these predicate acts must constitute a pattern of racketeering activity. A plaintiff must also establish that through this activity the defendant directly or indirectly maintained an interest in or participated in an enterprise. Finally, the plaintiff must

18. 18 U.S.C. § 1961(5) (1982) provides that a “pattern of racketeering activity” requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity. . . .”

The majority of courts as of this time agree that a pattern of racketeering activity is shown by establishing that at least two racketeering acts have been committed in furtherance of a single scheme. Clute v. Davenport Co., 584 F. Supp. 1562, 1570 (D. Conn. 1984) (pattern shown by two acts of securities fraud); In re Action Industries Tender Offer, 572 F. Supp. 846, 849 (E.D. Va. 1983). But see Teleprompter of Erie Inc. v. City of Erie, 537 F. Supp. 6, 13 (W.D. Pa. 1981) (to establish a pattern the plaintiff must establish more than two acts of bribery; he must establish more than one unlawful scheme.)
“racketeering activity” means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1515 (relating to interference with commerce, bribery, or extortion), section 1522 (relating to racketeering), section 1553 (relating to interstate transportation of wagering paraphernalia), section 1554 (relating to unlawful welfare fund payments), section 1555 (relating to the prohibition of illegal gambling businesses), sections 2314 and 2315 (relating to interstate transportation of stolen property), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(e) (relating to embezzlement from union funds), or (D) any offense involving fraud connected with a case under title II, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealing, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States . . . .
(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. A purchase of securities on the open market for pur-
establish that the activities of the enterprise affect interstate commerce.\textsuperscript{22} Even if a plaintiff is able to overcome the burden of establishing a substantive violation of RICO,\textsuperscript{23} the issue of relief, equitable or compensatory, is still subject to other court created limitations. These limitations include the requirement that the defendant have a connection with organized crime.\textsuperscript{24} This limitation poses of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchase, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

(c) 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 directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

(d) It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

21. 18 U.S.C. § 1964 provides: "'enterprise' 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."

The question whether an enterprise has been shown has been a problem. A number of courts have held that the person cannot also be the enterprise. Rae v. Union Bank, 725 F.2d 478, 481 (9th Cir. 1984) (the enterprise must be distinct from the person); Bennett v. Berg, 685 F.2d 1053, 1061 (8th Cir. 1982); Saine v. AIA, Inc., 582 F. Supp. 1299, 1306 (D. Colo. 1984); In re Action Industries Tender Offer, 572 F. Supp. 846, 849 (E.D. Va. 1983); Bays v. Hunter Savings & Loan Ass'n, 539 F. Supp. 1020, 1024 (S.D. Ohio 1982). \textit{But see} United States v. Local 560, Int'l Bd. of Teamsters, 581 F. Supp. 279, 329 (D.N.J. 1984) (person may also be the enterprise).

Also at issue is whether or not the pattern of racketeering activity can also be the enterprise as an association in fact. The Supreme Court may have answered the question in United States v. Turkette, 452 U.S. 576, 583 (1981) (the enterprise is not the pattern of racketeering activity). \textit{See also} Bennett v. Berg, 685 F.2d 1053, 1058 (8th Cir. 1982); Saine v. AIA, Inc., 582 F. Supp. 1299, 1305 (D. Colo. 1984) (the enterprise must have an existence separate and distinct from the pattern which it is engaged); Kimmel v. Peterson, 565 F. Supp. 476, 496 (E.D. Pa. 1983) (the enterprise must have an ascertainable and distinct function from the racketeering activity).


22. This requirement is satisfied if any function or act of the enterprise affects interstate commerce, including the racketeering acts of the enterprise. Bunker Ramo Corp. v. United Business Forms, 713 F.2d 1272, 1289 (7th Cir. 1983).


may be traced to RICO's statement of purpose,\textsuperscript{25} which if read alone supports such a limit. However, most courts have rejected this restriction as contrary to the legislative history of RICO.\textsuperscript{26} Another limitation is the requirement that the defendant be convicted of the commission of at least two predicate acts in a criminal proceeding before a private action may be brought. While such a requirement has also been rejected by most courts,\textsuperscript{27} the Second Circuit recently chose to adopt such a limitation in all private civil RICO actions.\textsuperscript{28}

Finally, the most prevalent limitation on private civil RICO causes of action is the requirement that the plaintiff establish he has incurred the requisite type of injury. This standing\textsuperscript{29} requirement arises out of the language of section 1964(c)\textsuperscript{30} and the similarly worded section 4 of the Clayton Act.\textsuperscript{31} Some courts have directly applied antitrust concepts to RICO, by requiring that the injury to the plaintiff be in the nature of a commercial or competitive injury.\textsuperscript{32} Some courts characterize the requisite injury as a racketeer-
ing enterprise injury.\textsuperscript{33} Other courts have required that the plaintiff be injured by reason of a violation of section 1962.\textsuperscript{34} These standing limitations improperly apply antitrust concepts to RICO.\textsuperscript{35} Moreover, these limitations deny recovery to plaintiffs directly injured\textsuperscript{36} by the commission of the predicate acts. Recognizing this, a number of courts have rejected these standing requirements.\textsuperscript{37} While a complete discussion of all these principles and limitations is beyond the scope of this Comment, it can be stated that courts look upon civil RICO with disfavor. While the validity of many court imposed restrictions is unclear, the limitation which can be most easily justified is the denial of equitable relief to private litigants.

II. Denying Equitable Relief

The question whether courts could grant equitable relief to private RICO litigants was surprisingly not addressed until 1981. The first reported case in which a court was faced with this issue was \textit{Vietnamese Fisherman's Association v. Knights of the Ku Klux


\textsuperscript{35} The use of antitrust standing requirements is incorrect in light of RICO's legislative history. While RICO was partially modeled after antitrust law, RICO was purposely cast as a separate statute. This was done upon recommendation of the American Bar Association commenting on two predecessors of RICO, S. 2048 and S. 2049. The A.B.A. Antitrust Division, after examining these bills, recommended they be cast as a separate statute so as to avoid the possibility that such strict standing requirements would force "litigants to contend with a body of precedent appropriate [only] in a purely antitrust context." Presumably, Congress expressed an intent to avoid these concepts by casting RICO as a separate statute. The American Bar Association's report is reprinted in 115 CONG. REC. H994 (1969). For further discussion on this topic, see Note, \textit{Civil RICO: The Temptation and Impropriety of Judicial Restriction}, 95 HARV. L. REV. 1101 (1982).

\textsuperscript{36} The term directly injured in relation to RICO means that the plaintiff has been injured by the defendant's racketeering activity, rather than by the defendant's acts in violation of section 1962.

\textsuperscript{37} For an excellent discussion of these concepts and the various approaches different jurisdictions have taken, see \textit{In re Catanella & E.F. Hutton and Co.}, 583 F. Supp. 1388 (E.D. Pa. 1984).
Klan. This case involved problems that arose in southern Texas between local residents and Vietnamese refugees who had recently settled in the area. The Vietnamese Fisherman's Association sought both preliminary and permanent injunctive relief against the Klan for violation of section 1962 of RICO, and various state causes of action. The court, however, failed to even address the issue whether it was authorized to grant equitable relief in a private RICO action. The court merely denied the granting of preliminary injunctive relief for failure to show a likelihood of success on the merits. Like the court in Vietnamese Fisherman's Association, other courts faced with the issue of equitable relief for private litigants applied the same approach. Some courts simply assumed equitable relief was available without discussion. These decisions

39. Id. at 1001.
40. Specifically, the Vietnamese Fisherman’s Association sought preliminary and permanent injunctive relief to restrain the Klan from undertaking activities designed to interfere with the Vietnamese fishermen. The Klan’s activities included acts of violence and intimidation, such as inciting local residents to engage in boat burning, armed boat patrols, assaults, and the Klan’s maintenance of paramilitary camps. Id. at 1000.
44. The court in Ashland Oil v. Gleave, 540 F. Supp. 81 (W.D.N.Y. 1982), implied that the remedies found in 18 U.S.C. § 1964(a) are available to private litigants, but held that the type of relief sought by the plaintiff (attachment) was not one of the available remedies. Id. at 85. See also, USACO Coal Co. v. Carbomin Energy Inc., 539 F. Supp. 807 (W.D. Ky. 1982) (the court’s opinion gives the impression that preliminary injunctive relief may be granted to private RICO litigant); but see USACO Coal Co. v. Carbomin Energy Inc., 689 F.2d 94 (6th Cir. 1982) (characterizing the issuance of the preliminary injunction by the lower court as pursuant to a pendant state claim, not pursuant to RICO). The court in Marshall Field & Co. v. Ichan, 537 F. Supp. 413 (S.D.N.Y. 1982), assumed equitable relief may be granted to private RICO litigants, but denied the plaintiff’s request for a preliminary injunction for failure to establish irreparable injury or to show a likelihood of success on the merits. The court’s opinion does not make clear whether this power is found in RICO or from the court’s inherent power, most likely because the court did not see this as an issue.

The court in Aetna Casualty & Surety Co. v. Liebowitz, No. 81 Civ. 2616, slip op. (E.D.N.Y. 1981), actually granted equitable relief pursuant to a RICO cause of action. The court, however, failed to give a rationale for where it felt the power to do so was derived. However, during oral arguments Judge Pratt is quoted as stating, in response to the plaintiff’s request for a temporary restraining order, “I don’t have that authority under RICO. You read the statute wrong. The United States Attorney has that authority, but not as a private litigant. If I have the authority it’s only because there is some inherent authority to issue a preliminary injunction. Whether I told you when we first had the argument about the motion or not, I do not see that you have any authority under RICO for the relief you’re seeking. If I have it it’s under rule 65, I guess an injunction.” Brief for Defendant-Appellee at 5, Aetna Casualty & Surety Co. v. Liebowitz, 730 F.2d 905 (2d Cir. 1984) [copy on file in the offices of California Western Law Review].

Judge Pratt reaffirmed that the preliminary injunction was not granted pursuant to authority found in § 1964(a) in Aetna Casualty & Surety Co. v. Liebowitz, 570 F. Supp. 908, 909 (E.D.N.Y. 1983) aff’d, 730 F.2d 905 (2d Cir. 1984) but did note that “whether
failed to make it clear whether such a right was found in the RICO statute or was available through the courts inherent equitable power. 45

The first case which recognized the issue whether section 1964 46 granted private litigants the right to seek equitable relief was the landmark case of Bennett v. Berg. 47 The plaintiffs in Bennett brought a RICO action against a number of defendants, including John Knox Retirement Village, of which they were residents. 48 The plaintiffs claimed they faced a “loss of life care” that they would have received but for fraud perpetrated by the defendants. 49 The plaintiffs sought equitable relief against the village itself in the form of reorganization pursuant to the remedies found in section 1964(a) of RICO. 50 The court expressed uncertainty on whether a private RICO litigant could be granted this form of relief, either through authorization of section 1964 51 or through the court’s inherent equitable power. The court, however, found it unnecessary to answer the “difficult” question whether section 1964 authorized private equitable relief. 52 The court dismissed the count against the Village on other grounds. 53 Subsequently other courts which addressed the issue began to express doubts on the availability of equitable relief for a private RICO plaintiff. 54 But, like the court in Bennett, these courts found it unnecessary to make a ruling for other reasons.

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45. If the courts imply the power to grant private RICO litigants equitable relief, this right would be subject to the traditional rules of granting such relief. Thus, to obtain injunctive relief, the plaintiff would have to show he is threatened by some injury for which he has no adequate legal remedy, and there is a danger the act complained of will actually occur, in other words, he will incur irreparable injury if the relief requested is not granted. Temporary or preliminary injunctive relief would be subject to the requirements set out in Rule 65 of the Federal Rules of Civil Procedure. See Wright & Miller, Federal Practice & Procedure § 2941 (1973). On the other hand, if RICO is read as an express grant of a right to equitable relief it is possible that neither of these prerequisites need be shown. See infra note 94 and accompanying text.

46. 18 U.S.C § 1964 (1982).
47. 685 F.2d 1053 (8th Cir. 1982).
48. Id. at 1057.
49. 685 F.2d at 1064.
51. Id.
52. 685 F.2d at 1064.
53. The court dismissed the count against John Knox Retirement Village for the plaintiff’s failure to establish a person distinct from the enterprise. Id. at 1064.
54. The court in Dan River, Inc. v. Ichan, 701 F.2d 278 (4th Cir. 1983), found that section 1964 did not authorize equitable relief for private litigants. The court also expressed doubt that the right to equitable relief may be implied, but found it unnecessary to examine this issue because the plaintiffs failed to show a likelihood of success on the merits. See also Trane Co. v. O’Conner Sec., 561 F. Supp. 301 (S.D.N.Y. 1983), aff’d, 718 F.2d 26 (2d Cir. 1983). The lower court’s opinion expresses doubt as to whether equitable relief is available to private RICO litigants. The circuit court affirmed these doubts, but found it unnecessary to make a holding on this issue.
At present there have been only three reported cases in which courts have expressly ruled on the availability of equitable remedies to private civil RICO litigants. Most recently the court in *Chambers Development Co. Inc. v. Browning-Ferris Industries*\(^\text{55}\) ruled that equitable relief was available to private RICO litigants. The court did not make it clear whether such authority was found in section 1964(a)\(^\text{56}\) or through the court's inherent equitable powers. The court in *Chambers* based its holding on a recent article arguing such relief was expressly authorized\(^\text{57}\) and other holdings seeming to imply there is a right to equitable relief under the court's inherent power.\(^\text{58}\) The distinction the court fails to deal with is whether the drastic remedies set forth in section 1964(a)\(^\text{59}\) should be made available to private litigants.\(^\text{60}\) In another recent decision, *DeMent v. Abbott Capital Corp.*,\(^\text{61}\) the court ruled that the forms of relief in section 1964(a)\(^\text{62}\) were not available to private RICO litigants.\(^\text{63}\) The court did rule that the granting of equitable restitution\(^\text{64}\) is permissible in a civil RICO cause of action.\(^\text{65}\) The court's decision implies that the power to grant such relief may be found in the court's inherent equitable power.\(^\text{66}\) Even the validity of this holding is subject to question in light of RICO's legislative history and current rules of statutory construction.\(^\text{67}\)

Despite *Chambers* and *DeMent*, there is only one case to date which a court went into detail on the issue of granting equitable relief to private RICO litigants: *Kaushal v. State Bank of India*.\(^\text{68}\) The court's holding in *Kaushal* makes two significant points. First,

\(^{58}\) The court notes that it is following *Marsh Field & Co. v. Ichan*, 537 F. Supp. 413 (S.D.N.Y. 1983) and *Vietnamese Fisherman's Ass'n v. Knights of the Klu Klux Klan*, 518 F. Supp. 993 (S.D.Tex. 1981). However, these cases also fail to make it clear where the authority to grant private party's equitable relief is derived from.
\(^{59}\) 18 U.S.C § 1964(a) (1982).
\(^{60}\) *See infra* note 180 and accompanying text.
\(^{63}\) 589 F. Supp. at 1383. The court noted that while it was holding that the remedies found in section 1964(a) were not available to private RICO litigants, it was not ruling on the availability of preliminary injunctive relief in extraordinary circumstances. *Id.* at n.3.
\(^{64}\) Restitution in a legal sense is an equitable principle founded on the maxim that he who seeks equity must do equity. One of the grounds on which the doctrine is based is the prevention of unjust enrichment. *77 C.J.S. Restitution § 322 (1952).*
\(^{65}\) *DeMent*, 589 F. Supp. at 1385.
\(^{66}\) *Id.*
\(^{67}\) *See infra* notes 179-93 and accompanying text.
\(^{68}\) 556 F. Supp. 576 (N.D. Ill. 1983).
section 1964 by its language does not grant private litigants the right to seek equitable relief for violations of RICO. Second, the courts should not make equitable relief available to private RICO litigants based on their inherent power to grant equity.

A. Kaushal v. State Bank of India

The plaintiffs in Kaushal, Satya and Vinad Kaushal, and Raja Enterprises, Inc. (Raja Companies), brought suit for violation of RICO against the State Bank of India (S.B.I.), its officers and employees, and Patson Enterprises and its affiliates (Patson Companies). Before 1981, S.B.I. and Patson Companies had engaged in extensive business transactions. By late 1979, S.B.I. had over two million dollars in loans outstanding to Patson Companies. Prior to this time, two officers of S.B.I. had close personal and business associations with a principal shareholder of Patson Companies who was personally liable on the S.B.I. loans. When the officers and the principal shareholder became aware that Patson Companies was unable to repay these loans, they devised a scheme to defraud the plaintiffs. In effectuating this scheme, the defendants used the United States mails numerous times in violation of the federal mail fraud statute; thus, also violating RICO.

The defendants, acting for S.B.I., Patson Companies, and themselves, presented the plaintiff with false financial statements that intentionally overstated the assets of Patson Companies and understated its liabilities by more than $700,000. By doing so, the defendants induced the plaintiffs to form Raja Companies and purchase the assets and liabilities of Patson Companies. Further-

71. Id. at 577.
72. Id.
73. 18 U.S.C. § 1341 (1982) provides:
   Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.
74. Note the actual violation of section 1962 of RICO is not the commission of mail fraud, but the defendant's participation in an enterprise's (S.B.I.) affairs through a pattern of racketeering activity. See supra, note 20.
more, the defendants, through use of the mails, induced the plaintiffs to personally secure Raja Companies' debts with their own assets.\footnote{556 F. Supp. at 578.} Also, as part of this scheme, the defendants planned to seize Patson Companies' only solvent business, which became part of Raja Companies. This portion of the scheme called for S.B.I. to foreclose on this business when the plaintiffs discovered the fraud. S.B.I. then planned to sell this business to one of its principal customers in New York. This portion of the scheme, which also involved numerous acts of mail fraud, had not yet fully been implemented at the time suit was brought.\footnote{Id. at 584.}

The plaintiffs then brought suit for violation of RICO, seeking treble damages, injunctive relief in the form of blocking S.B.I.'s sale of the solvent business, and divestiture of any interest S.B.I. had in Raja Companies. The court found that the plaintiffs had successfully stated a RICO cause of action for violation of section 1962(c).\footnote{18 U.S.C. § 1962(c) (1982).} The court then proceeded to examine the plaintiff's request for injunctive relief and divestiture. The court's ruling makes it clear that equitable relief is not available to private litigants in a RICO cause of action.

B. RICO's Language Denies Private Litigants Equitable Relief

risdiction to issue orders to prevent and restrain violations of RICO.\textsuperscript{84} This power includes, but is not limited to, orders of divestiture of any illegally obtained interest in an enterprise, the issuance of restraining orders and dissolution and reorganization of any enterprise.\textsuperscript{85} While expressly authorizing jurisdiction to grant equitable relief, this section does not say who may invoke the court's power.\textsuperscript{86} However, this section gives the courts the power to grant a number of equitable remedies, which in the antitrust context are only available to the government.\textsuperscript{87} These remedies, if made available to private litigants, could become a dangerous tool against the legitimate business community if they are abused by unscrupulous competitors. While Congress did recognize that RICO had the potential to be used against legitimate business, this was not the purpose for RICO's creation.\textsuperscript{88} In fact, to expand RICO in this manner could defeat Congress' intent.\textsuperscript{89} Section 1964(b)\textsuperscript{90} grants the Attorney General the power to institute civil proceedings against violators of RICO. This section allows the Attorney General to obtain preliminary equitable relief and those other forms of equitable relief found in section 1964(a).\textsuperscript{91} While this section places a potentially significant tool to fight organized crime in the hands of the government, it has, surprisingly, been rarely used.\textsuperscript{92} The advan-

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\textsuperscript{84} \textit{Id.}
\textsuperscript{85} \textit{Id.}
\textsuperscript{86} \textit{See Kaushal, 556 F. Supp. at 582.}
\textsuperscript{87} \textit{See Bosse v. Crowell, Collier & MacMillan, 565 F.2d 602, 607 (9th Cir. 1977) (divestiture not an available remedy to private litigants under 15 U.S.C. § 26); Calnetics v. Volkswagen of Am. Inc., 532 F.2d 674, 692 (9th Cir. 1976), cert. denied, 429 U.S. 940 (1976) (divestiture not available to private litigants in antitrust suits); and International Tel. & Tel. Corp. v. General Tel. & Electronics Corp., 518 F.2d 913 (9th Cir. 1975) (divestiture and dissolution not available to private litigants in antitrust law.) \textit{See infra} notes 172-79 and accompanying text.
\textsuperscript{88} \textit{See infra} note 115 for RICO'S statement of purpose.
\textsuperscript{89} \textit{See infra} note 117.
\textsuperscript{90} 18 U.S.C. § 1964(b) provides:
\textit{The Attorney General may institute proceedings under this section. In any action brought by the United States under this section, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.
\textsuperscript{91} 18 U.S.C. § 1964(a) (1982).
\textsuperscript{92} As of this writing this author is aware of only four cases in which the Attorney General has used civil proceedings to obtain injunctive penalties for violation of RICO. United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975); United States v. Local 560, Int'l Bhd. of Teamsters, 581 F. Supp. 279 (D.N.J.
tages of this statutory grant of equitable relief to the government are substantial. One court\textsuperscript{93} ruled that, to obtain equitable relief, the government does not have to establish irreparable harm or inadequacy of remedy at law.\textsuperscript{94}

Section 1964(c)\textsuperscript{95} creates a cause of action for private litigants who have been injured by reason of a RICO violation.\textsuperscript{96} This section expressly provides for recovery of treble damages and reasonable attorneys fees.\textsuperscript{97} This section, unlike section 1964(b),\textsuperscript{98} does not refer to any other portion of section 1964.\textsuperscript{99} It does not, by its terms, confer a right to equitable relief on private litigants.\textsuperscript{100} Had Congress intended to confer such a right on private litigants they would have referred to section 1964(a),\textsuperscript{101} however, they failed to do so despite the wishes of certain congressmen.\textsuperscript{102} This fact alone is substantial evidence that RICO does not grant private RICO litigants a right to equitable relief.\textsuperscript{103} The counter argument, however, is that because Congress did not expressly limit the right to seek

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  \item \textsuperscript{94} United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974).
  \item \textsuperscript{95} \textit{Id.} at 1858-59. The court held that it was Congress's intent in adopting § 1964 to provide equitable relief for the government for violations of § 1962. Moreover, there need be no showing of irreparable harm to obtain injunctive relief other than an injury to the public. The court also decided not to require a showing of the inadequacy of the remedy at law because, due to the existence of the criminal remedy under § 1963, such a requirement would defeat a government action under § 1964. \textit{Id.}
  \item \textsuperscript{96} 18 U.S.C. § 1964(c) provides: "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee."
  \item \textsuperscript{97} \textit{Id.}
  \item \textsuperscript{98} 18 U.S.C. § 1964(b) (1982).
  \item \textsuperscript{99} \textit{Compare} 18 U.S.C. § 1964(b) with 18 U.S.C. § 1964(c). Section 1964(b) states the Attorney General may institute proceedings under this section. This wording is significant in light of RICO's legislative history, because at the time section 1964 was drafted by the Senate, it did not contain a private cause of action. While this makes it clear the Attorney General is authorized to obtain the forms of relief found in section 1964(a), it also makes it clear that section 1964(a) was not drafted with private litigants in mind. Furthermore, section 1964(c) does not refer to any other portion of section 1964, thus indicating Congress did not intend for private litigants to be granted the remedies found in section 1964(a).
  \item \textsuperscript{100} 18 U.S.C. § 1964(c) (1982).
  \item \textsuperscript{101} 18 U.S.C. § 1964(a) (1982).
  \item \textsuperscript{102} Congressman Steiger during House debates did propose an amendment granting private litigants equitable relief, but this proposal was rejected. See \textit{infra} note 154 and accompanying text.
  \item \textsuperscript{103} As stated by the Supreme Court in Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11 (1979): "Obviously when Congress wished to provide a private . . . remedy it knew how to do so, and did so expressly." \textit{Id.} at 21. Had Congress wished that there be equitable relief for private litigants, they would have expressly provided so.
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equitable relief to the Attorney General in subsection (b)\textsuperscript{104} and chose the wording “sue and shall recover” in subsection (c),\textsuperscript{105} Congress intended to grant private litigants the remedies found in section 1964(a).\textsuperscript{106}

The court in \textit{Kaushal}\textsuperscript{107} summarily rejected this argument, finding such a reading “bizarre and wholly unconvincing as a matter of plain English.”\textsuperscript{108} Although the statutory language of RICO is arguably ambiguous, the \textit{Kaushal} court refused to read into it an assertable claim to equitable relief for private litigants.\textsuperscript{109}

Nevertheless, the arguable ambiguity of section 1964(c) could lend itself to the opposite conclusion.\textsuperscript{110} The argument remains that even if the courts find section 1964(c) ambiguous, they should still construe the statute to expressly grant private litigants equitable relief.\textsuperscript{111} Since Congress specifically expressed an intent that RICO should be liberally construed,\textsuperscript{112} the courts should read section 1964 to grant equitable remedies to private litigants.\textsuperscript{113} This argument is based on the contention that to so construe section 1964\textsuperscript{114} would further RICO’s purpose.\textsuperscript{115} However, to construe RICO in this manner would not in reality further RICO’s goals.

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\textsuperscript{104} 18 U.S.C. § 1964(b) (1982).
\textsuperscript{105} 18 U.S.C. § 1964(c) (1982).
\textsuperscript{107} 556 F. Supp. 576 (N.D. Ill. 1983).
\textsuperscript{108} Id. at 582.
\textsuperscript{109} Id. at 583.
\textsuperscript{110} 18 U.S.C. § 1964(c) (1982).
\textsuperscript{111} Id.
\textsuperscript{112} Section 904 of title IX of Public Law 91-452 provided that: “(a) The provisions of this title [enacting this chapter and amending sections 1505, 2516, and 2517 of this title] shall be liberally construed to effectuate its remedial purposes.”
\textsuperscript{114} Id.
\textsuperscript{115} Section 1 of Public Law 91-452 provided in part that:
The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America’s economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation’s economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and
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RICO's provision for treble damages alone is sufficient, and possibly the best, remedy to grant private litigants to fight organized crime. Such a remedy is much simpler to enforce and has the greatest effect on organized crime. In contrast, the equitable remedies in section 1964(a) are difficult to enforce and present a greater danger to legitimate business rather than aiding in the fight against organized crime. Furthermore, liberal construction does not give the courts a free hand. The fact that a statute is to be liberally construed does not grant the courts the power to read into it something Congress did not intend. The courts cannot just ignore the intent of Congress. The legislative history of RICO indicates that Congress did not intend to grant private litigants the right to seek the forms of equitable relief found in section 1964(a).

C. Equitable Remedies for Private Litigants: RICO’s Legislative History

The legislative history of RICO supports the conclusion that Congress did not intend for RICO to grant private litigants equitable relief. This conclusion holds true for the arguments that equitable relief is expressly authorized and such authorization may be implied from a court's inherent equitable power.

remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act [see Short Title note above] to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime.

117. The legislative history clearly indicates RICO's purpose is not to aid organized crime but to rid legitimate business of organized crime. Yet just such a result could occur if the equitable remedies found in § 1964(a) are made available to private litigants. Organized crime's propensity for taking over or controlling legitimate business has been well documented. If private litigants were given such remedies as divestiture, dissolution or reorganization there is the potential that organized crime, in the guise of legitimate business, will use these remedies to rid itself of competition. A result which is contrary to the purpose behind RICO. For some excellent examples of how organized crime infiltrates legitimate business See H. ABADINSKY, ORGANIZED CRIME (1981) and J. KWITNY, VICIOUS CIRCLES: MAFIA IN THE MARKETPLACE (1979).
118. Liberal construction does not provide the courts the power to put into the law what the legislature never intended to be there. Nor does liberal construction allow the courts to give words forced meaning or expand or enlarge a statute beyond congressional intent. 73 AM. JUR. 2D Statutes § 273 (1965). See also Touche Ross & Co. v. Redington, 442 U.S. 560 (1979). "The ultimate question is one of congressional intent, not whether the court thinks it can improve upon the statutory scheme that Congress enacted into law." Id. at 578.
119. See Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union AFL CIO-CLC, 457 U.S. 15 (1982). "Whenever the court determines the scope of rights and remedies under a federal statute, the critical factor is the congressional intent behind the particular provision at issue." Id. at 22.
RICO was enacted as Title IX of The Organized Crime Control Act of 1970,\(^{121}\) which was originally introduced as Senate Bill 30 (S. 30).\(^{122}\) The beginnings of RICO can be found in two bills introduced prior to the introduction of S. 30. In 1967, Senator Hruska from Nebraska had introduced two bills similar in nature to RICO, Senate Bill 2048 (S. 2048) and Senate Bill 2049 (S. 2049).\(^ {123}\) These bills were introduced in response to the recent report of the President's Crime Commission, and presented novel concepts for fighting organized crime.\(^{124}\) Senate Bill 2048 suggested that an amendment be made to antitrust laws making it a violation of antitrust law to use unreported income derived from one line of business in another line of business.\(^ {125}\) Senate Bill 2049 was very similar to RICO. This bill, like RICO, would have made it a crime to invest income derived from specified criminal activities into any legitimate business.\(^ {126}\) Most significantly, this bill expressly provided for treble damages and injunctive relief for private litigants.\(^ {127}\) The bills, however, were withdrawn at the suggestion of the American Bar Association, which approved of the concept but noted certain inherent problems which could have affected their use.\(^ {128}\)

Subsequently, in January 1969, Senator McClellan introduced S. 30, The Organized Crime Control Act.\(^ {129}\) At this time, however, S. 30 did not contain a RICO type provision, but did provide a number of other provisions to fight organized crime.\(^ {130}\) In March 1969, Senator Hruska introduced Senate Bill 1623 (S. 1623), a bill which was modeled after S. 2048 and S. 2049. Senate Bill 1623, entitled the Criminal Activities Profits Act, represented a synthesis of S. 2049 and similar bills introduced by Congressman Poff in the House.\(^ {131}\) Senate Bill 1623, like S. 2049 and other bills introduced

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121. Pub. L. 91-452, § 901(a) 84 Stat. 941.
123. 113 Cong. Rec. S17,997 (1967).
124. At the introduction of these bills Senator Hruska quoted a comment in the President's Crime Commission report which noted, “Law enforcement's way of fighting organized crime has been primitive compared to organized crime's way of operating. Law enforcement must use methods at least as efficient as organized crime's.” The bills introduced suggested use of antitrust law are best suited to accomplish this. 113 Cong. Rec. S. 17,799 (1967).
125. Id.
126. Id.
127. Id.
128. The ABA report is reprinted in 116 Cong. Rec. S. 6994 (1969). See supra note 35. For the reasons behind the bills suggested rejection by the A.B.A.
130. Other provisions included special grand juries, immunity for witnesses, provisions for false declarations before a grand jury, provisions for protective housing for witnesses, special rule relating to evidence, special offender sentencing. 115 Cong. Rec. S5873-82 (1969).
in the House by Congressman Poff,\textsuperscript{132} provided expressly for treble damages and equitable relief for private litigants.\textsuperscript{133} No action, however, was taken on this bill.

Finally, in April 1969, Senators McClellan and Hruska introduced S. 1861, The Corrupt Organizations Act,\textsuperscript{134} the provisions of which were described as bipartisan legislation.\textsuperscript{135} Unlike the previous bills, S. 1861 did not contain a private cause of action.\textsuperscript{136} Senate bill 1861 provided for only criminal sanctions and civil actions at the instigation of the government.\textsuperscript{137} Senator McClellan, commenting on the bill at its introduction, did note that equitable remedies provided could be a valuable tool, and that ample precedent for their use by the government existed in the antitrust laws.\textsuperscript{138} The Senator also made a point of noting that the equitable remedies listed were not exclusive, and “the ability of our chancery courts to formulate remedies to fit the wrong is one of the great benefits of our system.”\textsuperscript{139} The Senator did not speak to the use of these remedies by private litigants, nor did he in any way suggest this could be done. In December 1969, the report of the Senate Judiciary Committee on S. 30 amended to include S. 1861 as title IX was presented to the Senate by Senator McClellan.\textsuperscript{140} The report for the most part consisted of similar language to that used by Senator McClellan in the past.\textsuperscript{141} The Committee’s report describes title IX as providing for civil provisions to dislodge the racketeers from legitimate business through an approach of equitable relief broad enough to do “all that is necessary” to free the channels of commerce from illicit activity.\textsuperscript{142} Title IX, however, as reported did not contain a private cause of action.\textsuperscript{143} Subsequently S. 30 was passed by the Senate in

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  \item \textsuperscript{132} See infra note 147.
  \item \textsuperscript{133} 115 Cong. Rec. S6995 (1969). This bill would have granted injunctive relief only to private litigants. There is no mention of granting the drastic remedies found in section 1964(a) to private litigants.
  \item \textsuperscript{134} 115 Cong. Rec. S9566 (1969).
  \item \textsuperscript{135} 115 Cong. Rec. S9567 (1969). In commenting on the introduction of this bill, Senator McClellan noted that he had been in contact with Congressman Poff in reference to this bill.
  \item \textsuperscript{136} Id. at 9569.
  \item \textsuperscript{137} Id.
  \item \textsuperscript{138} Id. at 9567.
  \item \textsuperscript{139} Id.
  \item \textsuperscript{141} Id. On the subject of equitable remedies, the committee’s report repeats the language of Senator McClellan at the introduction of S. 1861. The committee again notes the remedies listed in section 1964(a) are not exclusive, but no mention is made of the fact that S. 1861 lacks a private cause of action, nor is there any suggestion one should be included.
  \item \textsuperscript{142} Id. at 79. The significance in this language is the fact that S. 1861 did not contain a private cause of action, yet the committee expressed the opinion that the statute already provided “all that is necessary.”
  \item \textsuperscript{143} Id. No explanation is ever given for why a private cause of action was not
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January 1970.\textsuperscript{144}

Senate Bill 30 was referred to the House Committee on the Judiciary in January 1970,\textsuperscript{145} and was favorably reported on by that committee in September 1970.\textsuperscript{146} However, the bill as reported by the House Committee now contained a private cause of action for treble damages.\textsuperscript{147} While the committee's description of this provision does not state that the treble damages remedy is exclusive, no reference is made in this description to equitable relief.\textsuperscript{148} Little on section 1964(c)\textsuperscript{149} was said when the bill was brought up for House consideration, but it was noted that at the suggestion of Congressman Stieger of Arizona and the American Bar Association the committee had provided the private treble damages provision.\textsuperscript{150} Again, no mention was made of equitable relief for private litigants, but it was noted that antitrust sanctions of a civil nature were provided.\textsuperscript{151} Surprisingly, this private cause of action received very little discussion in later House debates on S. 30, although some amendments of
title IX were proposed.\textsuperscript{152}

One noteworthy amendment was proposed by Congressman Stieger. He submitted an amendment to section 1964\textsuperscript{153} which would have expressly granted the ability to institute equitable proceedings to private litigants.\textsuperscript{154} In commenting on this amendment, Congressman Poff noted that it “offered additional civil remedies—but prudence would dictate that the Judiciary Committee very carefully explore the potential consequences that this new remedy might have and all the ramifications this legislation contains.”\textsuperscript{155} Congressman Poff, who is considered a manager of the bill,\textsuperscript{156} most likely would not have made such a comment if the statute as it stood already granted equitable relief to private litigants. Furthermore, considering the Congressman’s reservations on such a proposal further the argument that the authority to grant equitable remedies to private RICO litigants should not be implied by the courts. Upon the recommendation of Congressman Poff, Congressman Stieger withdrew his amendment,\textsuperscript{157} and the bill was passed by the House without any further discussion of equitable relief.\textsuperscript{158} Subsequently, when the Senate considered the bill as amended by

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\item \textsuperscript{152} Congressman Mikva suggested that RICO should be amended to provide that any person who brings a frivolous suit would be subject to treble damages. In retrospect such an amendment may have been wise considering the glut of recent RICO actions.
\item \textsuperscript{153} 18 U.S.C. § 1964.
\item \textsuperscript{154} The amendment proposed by Congressman Stieger provided in part: (c) Any person may institute proceedings under subsection (a) of this section, relief shall be granted in conformity with the principles which govern the granting of injunctive relief from threatened loss or damage in other cases. Upon the execution of a proper bond against damages for an injunction improvidently granted and a showing of irreparable loss or damage a preliminary injunction may be issued in any action before a determination thereof upon its merits.
\item \textsuperscript{155} 116 CONG. REC. H35434 (1970).
\item \textsuperscript{156} 155. Id.
\item \textsuperscript{157} 116 CONG. REC. H35347 (1970). Congressman Stieger expressed concern that the issue of equitable relief for private litigants should be taken up at another time. Id.
\item \textsuperscript{158} 116 CONG. REC. H35,364 (1970).
\end{itemize}
the House,159 Senator McClellan noted that only "minor" changes had been made. Senator Hruska also noted the changes were "not of major significance."160 There was no discussion of the new private cause of action inserted by the House, nor any thoughts on its possible repercussions. The bill was passed by the Senate as amended by the House and was signed into law in October 1970.161

Therefore, as the court in Kaushal162 noted, while RICO's legislative history is far from precise, it strongly indicates Congress did not intend to grant private litigants equitable remedies.163 First, the legislative history of RICO in the Senate indicates that the Senate did not intend, when drafting section 1964(a),164 that these remedies should be made available to private litigants. The strongest evidence of this is the fact that as originally passed in the Senate, section 1964165 did not contain a private cause of action. The Kaushal court, in examining RICO's legislative history, came to the conclusion that section 1964(a)166 is wholly separate from section 1964(c)167 and any discussion of section 1964(a) in the Senate bears little weight on the issue of equitable relief for private litigants.168 The history of RICO in the House is more significant.169 The discussion of the amendment introduced by Congressman Steiger170 is strong evidence that, as enacted, section 1964171 does not provide for equitable relief for private litigants, nor should the courts imply a right to equitable relief.

D. The Antitrust Analogy

An analogy of antitrust laws to RICO furthers support for the denial of equitable relief for private litigants.172 In a similar situa-

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159. The House version contained a number of amendments including the private cause of action in title IX and two new titles one dealing with bombings and explosives and another setting up a commission on individual rights, 116 Cong. Rec. S36,293 (1969).
163. Id. at 583.
169. Id.
170. See supra note 154 and accompanying text.
172. The legislative history of RICO establishes a clear intent to analogize RICO with antitrust law, even though RICO was cast as a separate statute to avoid standing problems. The court in Kaushal notes the general analogy to antitrust was clearly behind much of Congress' thinking in enacting the civil RICO provisions. Kaushal, 556 F. Supp. at 583.
tion, the Supreme Court determined that section 7 of the Sherman Act,\textsuperscript{173} which was almost identical to section 1964(c)\textsuperscript{174} of RICO, did not grant private litigants equitable relief.\textsuperscript{175} Considering the numerous references to antitrust law as precedent for RICO's equitable remedies,\textsuperscript{176} Congress seemingly was aware of the possibility of a similar ruling; yet, Congress failed to act to prevent this. It may therefore be inferred that this failure to act implies that Congress did not intend to grant private RICO litigants equitable remedies. Furthermore, the Clayton Act, unlike RICO, expressly provides for equitable relief for private litigants.\textsuperscript{177} The court in \textit{Kaushal}\textsuperscript{178} noted that, had Congress intended to do so, they would have completed the analogy of private RICO actions to the antitrust laws by expressly including a private equitable remedy.\textsuperscript{179} Instead Congress chose not to do so. This congressional silence leads to the conclusion that Congress did not intend to grant private litigants equitable relief.

\textsuperscript{173} Sherman Act, ch. 647, 26 Stat. 209 (1890), provided:

\textbf{§ 7.} Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

\textsuperscript{174} 18 U.S.C. § 1964(c) (1982).

\textsuperscript{175} See Paine Lumber Co. v. Neal, 244 U.S. 459 (1917); Minnesota v. Northern Sec. Co., 194 U.S. 48 (1904).

\textsuperscript{176} See supra note 140.

\textsuperscript{177} 15 U.S.C. § 26 (1982) provides:

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections two, three, seven and eight of this act [15 USCS §§ 13, 14, 18 and 19], when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven [49 USCS § 1 et seq.] in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission.

\textsuperscript{178} 556 F. Supp. 576 (N.D. Ill. 1983).

\textsuperscript{179} \textit{Id.} at 583. The court also notes that in U.S.C. section 15 the private antitrust remedy of the Clayton Act contains the same "and shall recover" language that arguably implies a right to equitable relief. The court notes that those authors who make this argument would regard Congress' enactment of 15 U.S.C. section 26 "redundant or an example of poor draftsmanship." \textit{Id.} at n.22.
E. Implying the Right to Equitable Relief in RICO

The question whether the courts, through their inherent equitable power, should imply the right of equitable relief for private litigants, while of less importance than whether RICO expressly grants equitable remedies, is still an issue which faces the courts. Recently in *DeMent v. Abbott Capital Corp.*, the court ruled that a court could grant equitable remedies through their inherent power, but that the injunctive forms of relief found in section 1964(a) were not available to private litigants. As previously stated, even this ruling is subject to question in light of RICO's legislative history and rules of statutory construction. The court in *Kaushal* noted that current Supreme Court doctrine severely limits both the implication of a cause of action or additional remedies where a statute fails to expressly provide for them.

Ordinarily when a statute provides for a "general right to sue," federal courts may use any available remedy to provide the plaintiff with redress. However, this is not so, when a statute expressly provides the remedy that is available to a litigant. When a statute creates a cause of action for a private party and provides for a particular remedy, the courts are reluctant to imply additional remedies. It is clear that RICO provides more to private litigants than a general right to sue. Section 1964(c) grants private litigants not only a cause of action, but also expressly provides the available rem-

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180. This issue is of less importance because conceivably the courts would be less likely to issue the drastic remedies found in section 1964(a) without explicit statutory approval. See, *Kaushal*, 556 F. Supp. at 582 wherein the court stated that even if the right to equitable remedies could be implied, those implied remedies would not necessarily include those found in 18 U.S.C. § 1964(a).


182. Id. at 1385.


184. See supra notes 121 through 171 and accompanying text.


186. While there is no question that, in its present form, section 1964 grants private litigants a cause of action for violation of RICO, the question may have arisen but for the House amendment. Professor Blakey argues that even if this had not been done a private cause of action would have been implied under the rules set forth in *Cort v. Ash*, 422 U.S. 66 (1975). However, considering the strict stance the Supreme Court has taken recently in implying causes of action, even this result is questionable. See Blakey, *The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 58 Notre Dame L. Rev. 237 n.71* (1982).


189. See Transamerica Mortgage Advisors Inc. v. Lewis, 444 U.S. 11 (1979): "where a statute expressly provides a particular remedy or remedies the courts must be chary of reading others into it," *id.* at 19; United States v. Babcock, 250 U.S. 328 (1919): "where a statute creates a right and provides a special remedy, that remedy is exclusive," *id.* at 331.

However, the courts may still imply additional remedies in some situations. Recent Supreme Court rulings hold that for a court to imply additional remedies in this type of statute, there must be persuasive evidence that Congress did not intend the remedy granted to be exclusive. In this case the problem is the legislative history presents persuasive evidence of the opposite conclusion. The result, therefore, must be that the right to equitable remedies for private RICO litigants should not be implied.

CONCLUSION

At the present time, the courts should not make equitable relief available to private RICO litigants. While the language of RICO supports such a conclusion in itself, neither the language nor the legislative history make it clear that equitable relief for private RICO litigants was ever intended. The history of RICO clearly establishes that Congress was aware of the possibility of granting private litigants equitable relief. As shown, a number of prior bills and amendments suggesting the use of equitable relief were proposed to Congress. Yet Congress chose not to adopt these proposals. Rather, Congress chose a remedial scheme, which by its own terms grants only treble damages for a cause of action. Moreover, a comparison of RICO to similarly worded antitrust law indicates that Congress did not intend to provide equitable remedies for private litigants. Finally, this Comment has demonstrated that since the RICO statute expressly provides for a remedy, it would be improper for courts to imply equitable remedies under the statute. Until Congress chooses to make equitable relief available to private RICO litigants and expressly provides so, such relief should not be granted absent another federal claim or a pendent state claim upon which equitable relief may be granted. Considering the broad scope of RICO's predicate acts, it seems likely that most private litigants will have such a claim. If Congress considers amending RICO to

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191. Compare 18 U.S.C. § 1964(e) with 42 U.S.C. § 1982 (1982). The statute the Supreme Court was confronted with in Sullivan v. Little Huntington Park, Inc., 396 U.S. 229 (1969)—42 U.S.C. § 1982—provides, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." Section 1982 provides a general right to sue, as it does not state the remedy to be made available. RICO, on the other hand, expressly provides for treble damages in section 1964(e) and therefore provides more than a general right to sue.


194. See supra notes 121-61 and accompanying text.


196. Considering the broad scope of RICO's predicate acts, this would not be an
provide a private litigant with the right to equitable relief, the consequences of possible abuse of the statute should be carefully considered.

Stephen F. Lopez*

unlikely result. Racketeering activity as defined by § 1961 covers a broad range of crimes which are actionable in state and federal courts on ground other than RICO, including fraud, bribery and other causes of action. See supra note 19.

In addition a number of states have recently enacted statutes similar in nature to RICO could possibly be read to grant private litigants equitable relief when injured by racketeering. However, it should be noted that a number of these statutes like RICO are ambiguous on this issue, in that language similar to that found in § 1964 has been used. Like RICO any final determination would be dependent on the legislative history of the statute. See, ARIZ. REV. STAT. ANN. § 13-2312 (1978); COLO. REV. STAT. § 18-17-101 (Supp. 1983); CONN. GEN. STAT. § 33-393 (West Supp. 1984); FLA. STAT. ANN. § 895.01 (West Supp. 1983); GA. CODE ANN. § 1614-1 (Supp. 1982); HAWAII REV. STAT. § 842-1 (1976); IDAHO CODE § 18-7801 (Supp. 1983); ILL. REV. STAT. Ch. 56 1/2, § 1651 (Smith-H Supp. 1983); IND. CODE ANN. § 35-45-6-1 (West. Supp. 1984); LA. REV. STAT. ANN. § 15: 1351-56 (West Supp. 1984); NEV. REV. STAT. § 207.350 (1983); N.J. STAT. ANN. § 2C: 41-1 (Supp. 1983); N.M. STAT. ANN. § 30-42-1 (Supp. 1980); N.D. CERT. CODE § 12. 1-06.1 (Supp. 1983); OR. REV. STAT. § 166-715 (1981); R.I. GEN. LAWS § 7-15-1 (Supp. 1984); UTAH CODE ANN. § 76-10-1601 (Supp. 1981); WASH. REV. CODE § 9A.82.100 (Supp. 1984) (effective July 1, 1985); WIS. STAT. ANN. § 946-80 (West Supp. 1984).

* The author wishes to thank Beth Chaney for her help and cooperation.