

G. Robert Blakey

G. Robert (Bob) Blakey is the William and Dorothy O'Neill Professor of Law; he has served on the NDLS faculty for more than 20 years. He is the nation's foremost authority on the Racketeer Influenced and Corrupt Organizations Act (RICO). He also has had extensive legislative drafting experience, having worked on the drafting of the Crime Control Act of 1973, Title III of the Omnibus Safe Streets and Crime Control Act of 1968, and, most significantly, the Organized Crime Control Act of 1970, of which RICO was Title IX. He has also assisted various states with the drafting of state-level RICO-type legislation and wiretapping statutes.

Professor Blakey earned his B.A. cum laude and his J.D. from Notre Dame in 1957 and 1960, respectively. He is a member of Phi Beta Kappa and the Order of the Coif.

So, the mob is pretty much dead. Why worry about RICO anymore?

Actually, RICO is one reason why the mob's power has so dramatically diminished. Before RICO, estimates put "made" members of the mob at 3000-5000; today, those estimates come in at less than 1500. Of course, other factors, such as socio-economic conditions and deaths from natural—and other—causes, have also contributed to the decrease in membership.

Originally, twenty-two cities in the United States were centers of mob activity, including Boston, Cleveland, Detroit, Pittsburgh, Philadelphia, Chicago, and New York City. Now, only Chicago and New York City reflect much mob activity. For example, originally, five major mob families operated in NYC, many of which had direct links to unions. Today, only two such families remain with any serious influence, the Genovese and Gambino families, but even their influence is diminishing, including in the unions.

Unfortunately, we now are also experiencing the rise of other ethnically-based gangs, such as those from Russia, China, Mexico, Jamaica, and Colombia. As with the mob, investigating or infiltrating these gangs is always difficult, as the FBI (or other agencies) has to have agents that can relate to or pass as members of the particular ethnic group, a process that is only now taking place at the same time that combating ethnically-based terrorism from the Middle East is also becoming one of the FBI's major priorities. The Bureau finds itself constantly changing in light of changes in our society.

How did RICO accomplish such a victory?

In several ways. RICO is the product of different pieces of different puzzles put together in a new way. In effect, it requires reinventing law enforcement mechanisms to be used for a different model; it is a new theory of investigation, trial, and sanction.

RICO offers a substantive tool, affecting trial—joinder of offenders and offenses and the admissibility of evidence—and sanction—imprisonment and forfeiture, designed to achieve more than mere deterrence or rehabilitation. Its repertoire includes the use of isolation through long sentences and the loss of profit from crime by seizing assets. And it applies to all types of "organized crime," from traditional Mafia families on Mulberry Street, to politicians in government, to white-collar swindlers on Wall Street; yet, it is only one tool among many. There must also be procedural tools of a legal character (wiretapping, immunity, etc.), trained personnel, and an organizational structure that can oversee both investigations and prosecutions.

I was fortunate to work with two people in 1967 on the President's Crime Commission who helped me shape the concepts reflected in RICO: Tom Shelling and Don Cressey. Tom was a Harvard economist who encouraged me to "think" about economic processes as I already did about criminal activity and its investigation and prosecution. Don was an organizational theorist from Santa Barbara who encouraged me to "think" about organizations as I already did about the mob and how to curtail its influence in the United States.

I suppose you could say that from these separate pieces, that is, legal theory (my contribution), economic analysis (Tom's contribution), and organizational theory (Don's contribution), we arrived at a new paradigm. Instead of looking at individual criminals or individual crimes at particular times and places, I began to think about patterns of offenses (violence, the provision of illegal goods and services, corruption in unions and government, and systemic fraud) and the criminal organizations behind the individual offenders and offenses, rather than simply about individual criminals committing particular crimes at discrete times and places of their criminal activity. RICO focuses, therefore, on the patterns of crimes—on courses of criminal activity over extended times and multiple places. In effect, rather than focusing on a particular rider of a particular horse on a merry-go-round, RICO seeks to dismantle the merry-go-round itself—riders, horses, and all.

Why the need for state-level RICO legislation?

Well, the short answer is that federal-level agencies, such as the FBI, now “get” the need to fight organized crimes from an organizational perspective. State law enforcement and prosecutorial groups have not done so as easily, and they still have a long way to go.

In order for RICO to work at a state level, various attorneys general, local prosecutors, state police agencies, and local police departments must undergo reorganization and retraining to work cooperatively in light of new challenges. Sadly, local district attorneys today too often distrust the state attorneys general, and vice versa. Sometimes, great cooperation becomes a fact, but then personnel change, so the flame of cooperation goes out and requires reigniting, so to speak. It turns out that the original cooperation was personal, not institutional. Unfortunately, law enforcement is not as organized as the criminals.

Are today's gangs different from yesterday's?

Absolutely. As strange as it may seem, our “domestic” gangs—e.g., the mob—were much more “lawful.” What I mean is that the mob recognized the legitimacy of the law enforcement system itself, that is, agents, prosecutors and courts; mobsters saw themselves as part of our social and economic system, though obviously an illegal part. They did not want to destroy the system; they wanted to profit from it. The mob’s ethos applauded the capitalist system, of which law enforcement was a part. Killing agents, prosecutors, or judges, for example, was simply not on its radar screen.

With the new international gangs, the Russians in particular, but certainly



terrorist organizations, those limitations, especially on violence, are not present. For example, terrorism is about violence used to, well, terrorize people. Contrary to popular impression, terrorism has discrete goals that it has expressly articulated; for example, getting the West—with its atheism, secularism, and materialism—to leave the Middle East. Some argue (but I don't) that combating terrorism may well require not "illegal" but rather "extra legal" methods, including the CIA's apparent approach of "rendition," not "extradition," of individuals out of foreign countries and then secreting these individuals for interrogation and intelligence purposes in other countries, not for trial in courts of law in this country.

The mob lived in our society, in many ways, as a parasite that depended upon its host for its subsistence; the last thing a parasite wants to do is kill its host. Terrorist groups are far more like pathogens that are, in fact, intent on destroying their hosts. Fighting them may well involve capturing them and holding them for military trials by military judges, not for judicial trials in civil courts. Do we really want to subject the usual judge and jury to the physical dangers of holding terrorist trials in our typical federal courthouses in the midst of major metropolitan areas? Think of Madrid or London. Let the military judges hold the trials on military bases, or, if necessary, on carriers at sea. We are currently holding up to 500 people captured in Afghanistan for military prosecution at GITMO. On July 15, 2005, the D.C. circuit court ruled that these kinds of military prosecutions may go forward under the present conditions and currently mandated constitutional notions of due process.

Frankly, I don't cotton up to the idea of trying these people in our domestic, civil courts, not only because of the physical danger such trials pose for us, but also because of the danger to normal rules and procedures that these terrorists trials will pose. I am concerned that result-oriented judges will bend the law to get the "bad guys," and we will then be stuck with those changes in other kinds of cases.

Is the form of the mob, a governmental regulatory agency, if you will, of the underworld, still relevant?

Maybe, maybe not. In fact, I'm now thinking more about terrorism than mob or white-collar crime activity. Mobs were the traditional challenges to our common law system of investigating and prosecuting the common law felonies, subject to the civil liberties found in our Bill of Rights that were fashioned to circumscribe the Stewart monarchy.

Today, we face a new challenge. In the United States, we are trying to combat terrorist organizations that are in opposition to the very foundation of our modern civilization, that is, our plural and secular way of life, although we are obviously less secular than other western countries. In the United States, because of its founding by religious dissenters from Europe and its commitment to religious freedom (a commitment that has been extended to Catholics, Jews, and now Muslims), we are a more religious society than most European countries, which are, if religious at all, more "new age" than Judeo-Christian in orientation.

So, in fact, our culture reflects an older set of values that is not shared by members of terrorist organizations. Indeed, terrorists seek to supplant our way of life with a medieval system of economics, social status (think of the role of women in our modern society, for example), and a theocracy. As we did to combat organized crime or white-collar crime, we need to develop a new paradigmatic way of thought in order to combat this new kind of challenge. We must survive this challenge, and do so without a fundamental alteration of our civil liberties. I am not sure that we will make it.



And finally, do you watch “The Sopranos”?

Well, no, I didn’t, and intentionally so, but my daughter gave me a set of DVDs of the first season as a gift for Father’s Day, and I felt that I had to watch at least parts of it in case she asked me about it.

I have to say that I thought the “Godfather” epic romanticized, in a highly stylized way, mob activity in the United States. It did so in the form of a critique of capitalism as we know it, characterized as it is by the pursuit of power, money, fame, and social status by ruthless entrepreneurs who ignore the rules that are supposed to circumscribe our lowest natures. The writing and acting were great; the cinematography was beautiful. Indeed, I know “real” mob figures who loved to watch the “Godfather” movies because they loved the image the films created of them. The “Godfather” morphed an American war hero into a crime boss; why wouldn’t a mobster like to watch that? But it was a false image. If you want to see a film about the mob that is more accurate, see Scorsese’s “Good Fellas.”

“The Sopranos,” on the other hand, is much more crude and vulgar. Instead of a critique of capitalism, it offers psychological commentary on dysfunctional, fictive mob and blood families. The acting and the plot are great. In particular, the plot, like a soap opera, draws a viewer into the troubled world of a mob boss and his two unenviable families. I am not too sure that Tony’s teenagers do not give him more grief than his mob associates. And, I’m now addicted to watching it.

Nonetheless, the derogatory ethnic stereotypes perpetuated by both series deeply trouble me. Similar movies could not be—and rightly so—produced about African-Americans or Jews. Why Italian-Americans? In fact, they have given to our society far more than gangsters and pizza; take, for example sports (Joe DiMaggio), politics (Mario Cuomo), or physics (Enrico Fermi).

As the rise of the Russian mob demonstrates, organized crime is not ethnic-specific. Such stereotypes, too, hinder the advancement of Italian-Americans in the highest echelons of our society in law or finance. I wish we could get beyond these stereotypes. I am tired to death of hearing snide remarks or jokes about Italian gangsters. They ought to be beyond the pale in the United States.