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## Bringing RICO to the Ring: Can the Anti-Mafia Weapon Target Dogfighters?

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# BRINGING RICO TO THE RING: CAN THE ANTI-MAFIA WEAPON TARGET DOGFIGHTERS?

## INTRODUCTION

Dog Number 118 had no front lips.<sup>1</sup> Her nose was torn and lopsided.<sup>2</sup> Her crooked, broken teeth stood out without protection, constantly exposed to the air.<sup>3</sup> Scar tissue layered her snout.<sup>4</sup> When approached, her handlers warn that she's "a lickier."<sup>5</sup>

Known to her caretakers as Fay, Number 118 was one of the more graphic surviving illustrations of dogfighting.<sup>6</sup> Press reports describe other dogs as missing ears, legs,<sup>7</sup> and eyes.<sup>8</sup> One puppy was found with "maggots in its lips, nose, legs and tail."<sup>9</sup> All were rescued in a single series of raids, arresting twenty-six people and seizing more than 500 dogs across eight states.<sup>10</sup> This event in July 2009 was hailed as the largest bust of a dogfighting ring in U.S. history.<sup>11</sup>

"Ring" may be the operative word. Illegal dogfights are not the work of a single law-breaker<sup>12</sup> and instead constitute a form of organized crime.<sup>13</sup> Fights—particularly among avid hobbyists and professional dogfighters—are often highly organized events with spectators, guards, agreed-upon

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1. Robert Patrick, *Dogs Show Scars from the Ring*, ST. LOUIS POST-DISPATCH, Sept. 15, 2009, at A1 (photo by Dawn Majors).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at A4.

6. *Id.* at A1. Fay died several months after her rescue when she did not wake from her third surgery to reconstruct her lips. *Sudden Death of Fay Saddens All*, HUMANE SOCIETY OF MISSOURI (Dec. 29, 2009), <http://www.hsmo.org/news/sudden-death-of-fay-saddens.html>.

7. Patrick, *supra* note 1, at A4.

8. Keegan Hamilton, *Dog Beat Dog*, RIVERFRONT TIMES, Sept. 2, 2010, at 12 (photo).

9. *Id.* at 17 (photo).

10. *Id.* at 13.

11. Patrick, *supra* note 1.

12. Notably, the Animal Welfare Act, which provides the federal prohibition on dogfighting, only pertains to "a fight between at least two animals for purposes of sport, wagering, or entertainment." 7 U.S.C. § 2156(g)(1) (2006) (defining "animal fighting venture"). Conceivably, a single lawbreaker *could* individually conduct a fight in violation of this act, particularly during "training." However, in practice, this seems uncommon or, at least, unlikely to lead to prosecution.

13. See Hamilton, *supra* note 8, at 14, 16–17 (describing participants as "insular criminal networks" and as a close-knit group of dogfighters covering a multistate region); BLACK'S LAW DICTIONARY 1210 (9th ed. 2009) (defining "organized crime" as "widespread criminal activities that are coordinated and controlled through a central syndicate").

rules, referees, side gambling, prize purses,<sup>14</sup> and sometimes even concession stands.<sup>15</sup> Like any planned event, they require networking, preparation, and coordination between at least two, and typically three or more, parties such as kennels, dog “sponsors,” referees, the fight promoter, and spectators.<sup>16</sup> In this way, dogfights often mark the synchronization of criminal efforts from various players, all linked together through their common purpose of the fighting ring.<sup>17</sup>

In the quest for stronger methods to punish dogfighters, some have suggested turning to the Racketeer Influenced and Corrupt Organizations Act (RICO),<sup>18</sup> a law originally inspired to combat La Cosa Nostra (“the Mafia”).<sup>19</sup> RICO creates criminal and civil penalties<sup>20</sup> for using certain ill-gotten gains to run, control, or invest in a business or “enterprise.”<sup>21</sup>

RICO’s potential application in dogfighting cases became a topic of media speculation in 2007 following the indictment of then-Atlanta Falcons’ quarterback Michael Vick.<sup>22</sup> Language in the indictment and

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14. Court’s Sentencing Memorandum at 6, 11–14, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010) (describing typical fight scenarios); Summary of the Facts at 3, *United States v. Vick*, No. 3:07CR274 (E.D. Va. Aug. 24, 2007). In *Vick*, Defendant Michael Vick agreed to the accuracy of the Summary of the Facts as part of his plea agreement. Plea Agreement at 2, *United States v. Vick*, No. 3:07CR274 (E.D. Va. Aug. 24, 2007).

15. See Francesca Ortiz, *Making the Dogman Heel: Recommendations for Improving the Effectiveness of Dogfighting Laws*, 3 STAN. J. ANIMAL L. & POL’Y 1, 42 (2010); see also *United States v. Frazier*, 595 F.3d 304, 307–08 (6th Cir. 2010) (charges against cockfighting organizer upheld based on profits from admissions and concessions).

16. See Hamilton, *supra* note 8, at 16–17, 19 (giving examples of coordinated fights while noting role of promoter and interstate nature). Other individuals involved in a dogfight may include “conditioners” (who prepare dogs for fights), “timekeepers,” or “stakeholders” (who hold the prize money or wagers for safekeeping during the fight). FireBone, *Game Dog Glossary*, GAMEDOG.COM (May 4, 2005, 10:51 AM), <http://www.game-dog.com/forums/showthread.php?t=4805>.

17. See BLACK’S LAW DICTIONARY, *supra* note 13, at 1587 (defining “syndicate”).

18. 18 U.S.C. §§ 1961–68 (2006).

19. G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts—Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1015 (1980).

20. This Note focuses exclusively on criminal RICO; however, RICO also allows civil suits brought by the Attorney General or “any person injured in his business or property.” 18 U.S.C. § 1964(c) (2006). Animal welfare organizations that rescue, heal, feed, house, assess, rehabilitate, and otherwise care for dogs rescued directly from fight busts could conceivably have the necessary standing to serve as plaintiffs in such a suit. Successful plaintiffs “shall recover” three times the equitable damages, as well as court costs and reasonable attorneys’ fees. *Id.*

21. 18 U.S.C. §§ 1961–62 (2006).

22. While Mr. Vick’s case touched off a media firestorm, he is not the first NFL player to participate in dogfighting. In 1993 and 1996, NFL running back Todd McNair was convicted of seventeen different animal neglect and cruelty charges. Lance Pugmire & Gary Klein, *McNair Says His Case Differed from Vick’s*, L.A. TIMES, Aug. 30, 2007, <http://articles.latimes.com/2007/aug/30/sports/sp-mcnair30>. McNair later emphasized that he was not convicted of dogfighting. *Id.* Investigators insist the dogs were used for fighting, and claim the conviction was based on cruelty charges simply because cruelty was easier to prove and, “[d]ogfighting wasn’t a big deal back then like it is now.” *Id.*

facts provided by a co-conspirator emulated language in RICO,<sup>23</sup> touching off speculation of a future indictment against Mr. Vick under RICO.<sup>24</sup> Because the defendants in *United States v. Vick* ultimately pled to lesser charges,<sup>25</sup> this potential use of RICO remains untested in court.<sup>26</sup>

Since its passage in 1970, RICO has been both revered and reviled because of its strong penalties and broad applicability.<sup>27</sup> It has been called “brilliant . . . [but] totalitarian,” “like using a cannon to go hunting for squirrels,”<sup>28</sup> and “the ‘nuclear weapon’ of enforcement mechanisms.”<sup>29</sup> The law is intentionally flexible, mandating its provisions “be liberally construed”<sup>30</sup> to eradicate organized crime in the United States.<sup>31</sup> As a result, prosecutors have been able to use RICO charges to address a wide range of criminal activity beyond the Mafia,<sup>32</sup> such as corrupt government

23. Most notably, the Indictment and later Summary of the Facts contained repeated allusions to a “business enterprise.” Indictment at ¶ 1(a), *United States v. Vick*, No. 3:07CR274 (E.D. Va. July 17, 2007); Summary of the Facts at ¶¶ 1(a), 3, 4, 10, *Vick* (No. 3:07CR274); see also James Pinkerton, *A Step Backward into Barbarism*, THE HUFFINGTON POST (June 6, 2007, 6:42 PM), [http://www.huffingtonpost.com/james-pinkerton/a-step-backward-into-barb\\_b\\_51046.html](http://www.huffingtonpost.com/james-pinkerton/a-step-backward-into-barb_b_51046.html); William L. Anderson, *Michael Vick and the Feds*, LEWROCKWELL.COM (Aug. 20, 2007), <http://www.lew-rockwell.com/anderson/anderson194.html>.

24. This was not the first suggestion that RICO could be applied to dogfighters. See Amy A. Breyer, Comment, *Asset Forfeiture and Animal Cruelty: Making One of the Most Powerful Tools in the Law Work for the Most Powerless Members of Society*, 6 ANIMAL L. 203, 227 (2000) (briefly commenting on potential application of RICO to “animal cruelty” in general and dogfighting specifically as illegal gambling).

25. Mr. Vick ultimately pled guilty to a single count of conspiracy in violation of 18 U.S.C. § 371 (2006). Plea Agreement at 1, *United States v. Vick*, No. 3:07CR274 (E.D. Va. Aug. 24, 2007). Some speculated that the threat of a RICO prosecution was a factor that helped motivate Vick’s plea agreement. See, e.g., Pinkerton, *supra* note 23; Anderson, *supra* note 23.

26. Just as importantly, because such an indictment never materialized, it remains unknown if the Department of Justice is willing to support such a use of RICO. Subsequent dogfighting prosecutions have not pursued RICO charges. See, e.g., Criminal Complaint, *United States v. Berry*, No. 09-M-6059-CJP (S.D. Ill. July 6, 2009); Indictment, *United States v. Morgan*, No. 4:09-cr-00441-CEJ (E.D. Mo. July 1, 2009).

27. Blakey & Gettings, *supra* note 19, at 1012–13 n.13; Barry Tarlow, *RICO: The New Darling of the Prosecutor’s Nursery*, 49 FORDHAM L. REV. 165 (1980).

28. Blakey & Gettings, *supra* note 19, at 1012 n.13 (collecting criticisms) (internal citations omitted).

29. Pinkerton, *supra* note 23.

30. Organized Crime Control Act, Pub. L. 91-452, § 904(a), 84 Stat. 922, 947 (1970) (“The provisions of this title shall be liberally construed to effectuate its remedial purposes.”).

31. Organized Crime Control Act, Pub. L. 91-452, § 1, 84 Stat. 922, 923 (1970) (“It is the purpose of this Act to seek the eradication of organized crime in the United States . . .”).

32. Gerard E. Lynch, *A Conceptual, Practical, and Political Guide to RICO Reform*, 43 VAND. L. REV. 769, 777 (1990) (“Because RICO is such a broad and abstract crime, it is capable of application to a number of different types of conduct in a wide range of circumstances.”).

agencies, health care fraud,<sup>33</sup> securities fraud,<sup>34</sup> and drug trafficking by police.<sup>35</sup>

Compared to traditional prosecution methods, RICO provides longer sentences and strong asset seizure capabilities. RICO also provides a method of consolidating numerous offenses that may not otherwise be pursued by prosecutors, such as gambling and drug offenses, into a single charge.

This Note examines how the existing RICO structure might be applied to dogfighting rings, particularly in relation to recent large busts. Section I examines the history of dogfighting and how it evolved to its modern form. Section II describes modern dogfighting, particularly in relation to three subgroups of dogfighters (professionals, hobbyists, and street fighters), as well as harms associated with the crime. Section III discusses traditional and non-RICO prosecutions of dogfighting, as well as some common barriers. Section IV provides an introduction of the criminal RICO statute. This includes a discussion of its legislative purpose, followed by analysis of the most important RICO elements and self-imposed limits on RICO prosecutions observed by the Department of Justice. Finally, section V addresses if and how the typical dogfighting situations may fit RICO requirements.

## I. HISTORICAL CONTEXT

Dogfighting has ancient roots. Romans, renowned for their love of blood sports, included dog-versus-dog events in their gladiatorial entertainment schedules.<sup>36</sup> American dogfighting most likely predates the Revolutionary War, when the sport was intimately tied to British roots.<sup>37</sup> British colonists brought their dogs to the colonies to compete in the more popular blood sports of the day, bull- and bear-baiting.<sup>38</sup> Dogfighting rose in popularity in the 1800s as industrialization moved the working class into cities, making baiting sports less practical.<sup>39</sup>

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33. STEPHEN A. SALTZBURG ET AL., CRIMINAL LAW CASES AND MATERIALS 781 (3d ed. 2008).

34. Lynch, *supra* note 32, at 780.

35. United States v. Casamayor, 837 F.2d 1509, 1510–11 (11th Cir. 1988).

36. Jacob Silverman, *How Dogfighting Works*, HOWSTUFFWORKS.COM (July 27, 2007), <http://people.howstuffworks.com/dogfighting.htm>; Monica Villavicencio, *A History of Dogfighting*, NPR (July 19, 2007), <http://www.npr.org/templates/story/story.php?storyId=12108421>.

37. Court's Sentencing Memorandum at 2, United States v. Berry, No. 09-CR-30101-MJR (S.D. Ill., 2010).

38. *Id.*; Ortiz, *supra* note 15, at 7–8. Baiting involves setting one or more dogs on another animal, such as a bull or bear, that is chained or confined. Sentencing Memo, *supra* note 37, at 2.

39. Ortiz, *supra* note 15, at 7–8.

Dogfighting's popularity was further bolstered on both sides of the Atlantic after Parliament outlawed baiting sports.<sup>40</sup> With baiting illegal, dogfighting reportedly replaced baiting as a venue for both entertainment and gambling.<sup>41</sup> This boost in English popularity was mirrored stateside.<sup>42</sup>

During the 1800s, upcoming dogfights were advertised in national magazines.<sup>43</sup> Railroads even offered discounted tickets to travel to the events.<sup>44</sup> In 1856, New York became one of the earliest states to outlaw the blood sport.<sup>45</sup> In the next decade, other states followed suit, but enforcement was lax and did little to curb dogfighting's popularity.<sup>46</sup> The United Kennel Club (UKC)—then newly formed, but today the second-largest purebred-dog registry in the world<sup>47</sup>—sanctioned dogfighting, drafting some of the earliest rules and providing referees.<sup>48</sup>

It was not until the 1930s that dogfighting was finally forced underground when the UKC and other influential organizations withdrew support.<sup>49</sup> The blood sport, however, has never gone away.<sup>50</sup> It resurfaced again in the 1950s and 1960s with the advent of the now-common “Cajun Rules” by a former Louisiana police chief<sup>51</sup> and the publication of magazines touting the blood sport, including *Sporting Dog Journal* and *Pit Dog Report*.<sup>52</sup>

40. Sentencing Memo, *supra* note 37, at 2; Ortiz, *supra* note 15, at 10.

41. Ortiz, *supra* note 15, at 8. While several authorities suggest that dogfighting remained a legal alternative to baiting, the text of Parliament's Cruelty to Animals Act of 1835 suggests at least a partial ban on dogfighting. In the relevant part, it penalizes anyone who “shall keep or use any . . . Place for the Purpose of . . . fighting any Bull, Bear, Badger, Dog, or other Animal (whether of domestic or wild Nature or Kind), or for Cock-fighting.” Cruelty to Animals Act, 1835, 5 & 6 Will. 4, c. 59, § 3 (Eng.). Legal or not, dogfights were less visible than large-animal baiting and could more easily be staged indoors. Ortiz, *supra* note 15, at 8 n.26; LIZ PALIKA, *AMERICAN PIT BULL TERRIER* 23 (2d ed. 2006).

42. Palika, *supra* note 41, at 24.

43. Court's Sentencing Memorandum at 3, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010).

44. *Id.*

45. Ortiz, *supra* note 15, at 10 n.38 (citing Rhonda D. Evans & Craig J. Forsyth, *The Social Milieu of Dogmen and Dogfights*, 19 *DEVIANT BEHAV.* 51, 52 (1998)).

46. Sentencing Memo, *supra* note 43, at 3.

47. PATRICK BURNS, *AMERICAN WORKING TERRIERS* 62 (2005). The UKC was formed in 1898 after the American Kennel Club (AKC) chose not to recognize the American Pit Bull Terrier as a pure breed. *Id.*

48. Sentencing Memo, *supra* note 43, at 3.

49. *Id.*

50. *See id.*

51. *Id.* at 12. The former law enforcement officer had the foresight to include “Rule 19: Should the police interfere the referee to name the next meeting place.” G.A. Trahan, *Cajun Rules*, *SPORTING DOG ONLINE*, <http://www.sporting-dog.com/select-pages/cajunrules.html>.

52. Sentencing Memo, *supra* note 43, at 3.

In 1976, dogfighting was banned federally.<sup>53</sup> While illegal nationally, it persisted as legal or only a misdemeanor in many states until 2008 when the last holdouts—Idaho and Wyoming—upgraded dogfighting to felony status.<sup>54</sup>

## II. MODERN DOGFIGHTING

### A. Dogfighter Classifications

Today, dogfighting is a felony offense in all fifty states.<sup>55</sup> Despite this, the events thrive as a half-billion-dollar industry.<sup>56</sup>

There are two basic types of modern dogfights, each with very specific characteristics: street fights or “traditional” planned events.<sup>57</sup> Law enforcement further classifies the handlers of fighting dogs into three general profiles.<sup>58</sup> Each profile is based on the handler’s level of sophistication,<sup>59</sup> the amount at stake in each fight, the location of fights, and similar factors.<sup>60</sup> The levels, from highest sophistication to lowest, are professionals, hobbyists, and street fighters.<sup>61</sup>

Street fights represent the largest growth of fighters,<sup>62</sup> fueled in part by the “discovery” of dogfighting by urban gangs.<sup>63</sup> Street fights are largely unstructured,<sup>64</sup> sometimes spontaneous,<sup>65</sup> and while they often include betting, the dogs serve more as status symbols and fight results are proxies for the handler’s own masculinity or toughness, or even proxies for a fight between rival gangs.<sup>66</sup> Street fighters tend to breed dogs haphazardly,

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53. Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, § 17, 90 Stat. 421 (1976).

54. Ariana Huemer, *Milestone Against Dogfighting*, HUMANE SOCIETY OF UNITED STATES (Mar. 19, 2008), [http://www.hsus.org/acf/news/milestone\\_against\\_dogfighting\\_030708.html](http://www.hsus.org/acf/news/milestone_against_dogfighting_030708.html).

55. *Id.*

56. Bill Burke, *Once Limited to the Rural South, Dogfighting Sees a Cultural Shift*, THE VIRGINIAN—PILOT, June 17, 2007, <http://hamptonroads.com/node/283641>.

57. Silverman, *supra* note 36 (referring to traditional fights as “professional”).

58. Court’s Sentencing Memorandum at 5, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010).

59. *Id.*

60. Ortiz, *supra* note 15, at 14.

61. *Id.* at 14–16; Sentencing Memo, *supra* note 58, at 5–7.

62. Sentencing Memo, *supra* note 58, at 7.

63. Ortiz, *supra* note 15, at 19; Agustina Guerrero, *Police Say Dogfights Becoming Gang Game*, CHI. TRIB., July, 29, 2001, [http://articles.chicagotribune.com/2001-07-29/news/0107290197\\_1\\_dog-fighting-gang-game-anti-cruelty-society](http://articles.chicagotribune.com/2001-07-29/news/0107290197_1_dog-fighting-gang-game-anti-cruelty-society) (“There is a marriage between dog fighting and gangs.” (quoting Chicago Police Sergeant Steve Brownstein)).

64. Silverman, *supra* note 36.

65. Ortiz, *supra* note 15, at 34–35.

66. *Id.* at 18–20; Sharon L. Peters, *A Fight to Save Urban Youth from Dogfighting*, USA TODAY, Sept. 29, 2008, [http://www.usatoday.com/news/nation/2008-09-29-dogfighting\\_N.htm](http://www.usatoday.com/news/nation/2008-09-29-dogfighting_N.htm); *see also*

seeking size but with little emphasis on preserving bloodlines.<sup>67</sup> Their fights are typically lower-stakes battles that ignore traditional customs and pit rules, sometimes inventing sadistic twists to the blood sport.<sup>68</sup> An estimated 100,000 people participate in street fights in the United States.<sup>69</sup>

At the other end of the spectrum are traditional fights.<sup>70</sup> These range from high-stakes national and international fights<sup>71</sup> to local-level events.<sup>72</sup> They are supported by a clandestine subculture of dogfighters and spectators.<sup>73</sup> Events often require a password for entry, and guards may be hired to keep an eye out for police or other disruptions.<sup>74</sup>

Unlike the street fight, the traditional fight relies on codes of conduct and “pit rules,”<sup>75</sup> such as the popular Cajun Rules.<sup>76</sup> There is a heavy emphasis on breeding, with bloodlines and championships closely monitored,<sup>77</sup> reminiscent of an underground version of purebred-dog fancier organizations such as the UKC or AKC.<sup>78</sup> This infatuation with pedigree makes champion and grand-champion dogs<sup>79</sup> a valuable commodity both for winning fights, but also for breeding purposes.<sup>80</sup> Puppies from successful fighters may sell for anywhere from a few hundred dollars to \$5,000.<sup>81</sup> One professional fighter told undercover

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Silverman, *supra* note 36.

67. Ortiz, *supra* note 15, at 17.

68. *Id.* at 16–17 (describing the street fighting style known as “trunking” in which two dogs are locked in a car trunk together while bets are placed on which will emerge alive).

69. Silverman, *supra* note 36.

70. *Id.*

71. Ortiz, *supra* note 15, at 14.

72. Burke, *supra* note 56.

73. Silverman, *supra* note 36; Hamilton, *supra* note 8, at 14.

74. Court’s Sentencing Memorandum at 6, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010); Hamilton, *supra* note 8, at 13.

75. FireBone, *supra* note 16.

76. Sentencing Memo, *supra* note 74, at 12.

77. *Id.* at 13–14; Ortiz, *supra* note 15, at 14–15.

78. See, e.g., *AKC Rules and Regulations*, AM. KENNEL CLUB, <http://www.akc.org/rules/index.cfm>; *UKC Guidelines*, UNITED KENNEL CLUB, <http://www.ukcdogs.com/WebSite.nsf/WebPages/RegistrationPolicyRulesLaunch> (requiring conformity with the club’s breeding standards as a condition for registration of a dog, and offering DNA verification of pedigree). This perhaps is an echo of the UKC’s influence in the early 20th century, as it sought to bring “organization . . . and a semblance of respectability for the [American Pit Bull Terrier] breed, if not for the fighting.” Ortiz, *supra* note 15, at 10 (citation omitted).

79. “Champion” is defined as a dog that has won three fights; whereas “grand champion” indicates an undefeated dog with five wins. Silverman, *supra* note 36. These terms are identical to those used by the UKC and AKC to describe dogs successful in organization-sponsored shows or events.

80. Court’s Sentencing Memorandum at 14, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010) (describing breeding as “[o]ne of the most lucrative aspects of dogfighting”).

81. *Id.*



officers he had sold at least seventy puppies in a single year at prices ranging from \$1,000 to \$1,500 apiece.<sup>82</sup>

Traditional fights attract both hobbyists and professional handlers, and the main distinctions between these two types of handlers are dedication, reputation, and success within the covert community of dogfighters.<sup>83</sup> Professionals, sometimes called “dogmen,”<sup>84</sup> dominate the fights with the highest stakes.<sup>85</sup> Their dogs are primarily viewed as monetary investments, and they keep meticulous records of breeding, diet, and training of individual dogs.<sup>86</sup> An estimated 40,000 professional dogfighters are active in the United States, with that number projected “to rise as long as dog fighting remains lucrative.”<sup>87</sup> Hobbyists (also known as “enthusiasts” or “fanciers”)<sup>88</sup> tend to stay closer to home, own fewer dogs, and have a greater interest in the gambling and entertainment aspects of the blood sport.<sup>89</sup> Both hobbyists and professionals differ strongly from street fighters in philosophy.<sup>90</sup>

While outsiders are viewed skeptically, professional and hobby dogfighters maintain close communication.<sup>91</sup> Their business and entertainment interest in bloodlines and fight results spawns underground magazines, journals, and websites.<sup>92</sup> Business-like meetings discussing these issues often precede fights.<sup>93</sup>

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82. Hamilton, *supra* note 8, at 14, 16.

83. Burke, *supra* note 56 (“True dogmen ‘are like the Yankees or the Red Sox—major league players . . . The guys on the local level, they’re more like the Tides or Tidewater Sharks—bush-leaguers.”(quoting former dog breeder)).

84. Dogfighters consider the term “dogmen” to denote a kind of professional respect for another dogfighter or breeder. *See* Burke, *supra* note 56.

85. Winnings from a large professional fight can range from \$50,000 to \$2 million dollars. Sentencing Memo, *supra* note 14, at 13. For comparison, Michael Vick (arguably either a professional or a particularly well-financed hobbyist) was accused of fighting dogs for purses ranging from \$1,000 to \$26,000. Summary of the Facts, *supra* note 80, ¶¶ 18, 50.

86. Sentencing Memo, *supra* note 80, at 6.

87. *Id.*

88. Ortiz, *supra* note 15, at 16.

89. *Id.*; Sentencing Memo, *supra* note 80, at 6.

90. One dogfighter compares professional fighters to the Mafia and streetfighters to gangs. Ortiz, *supra* note 15, at 16–17.

91. *Id.* at 15.

92. *Id.*; Burke, *supra* note 56 (noting the Internet as especially important to dogfighter communication, including webcasts of fights to allow offshore betting).

93. Ortiz, *supra* note 15, at 15.

### B. *Animal Cruelty*

The abuses suffered by dogs at the hands of their owners are often constant, with the brutality of the fight itself typically only serving as the culmination of a life of cruelty.<sup>94</sup> “Training” begins during puppyhood and may include being chained onto treadmills, forced to swim for hours, or dragged for miles behind a moving vehicle.<sup>95</sup> Dogs are commonly kept either in small cages<sup>96</sup> or on heavy chains locked to thick collars that create raw, open wounds.<sup>97</sup> They live with little shelter, are fed only once or twice a week, and have infrequent access to clean water.<sup>98</sup> The dogs are generally neglected and receive little to no socialization.<sup>99</sup> A dog that fails to show adequate animal-aggression or interest in fighting may be killed, abandoned, or used as bait for other dogs.<sup>100</sup>

Dogs are frequently injected with steroids or other illegal drugs, beaten, burned, or starved in an effort to increase aggression.<sup>101</sup> They are also commonly disfigured by cutting off tails (“docking”), or ears (“cropping”), or filing their teeth.<sup>102</sup> Dogfighters rarely seek professional veterinary care for such procedures and perform the operations “with dull, unsterilized objects, such as scissors or knives, without any anesthetic and without proper medical attention.”<sup>103</sup>

Dogs that lose fights are frequently killed immediately to destroy evidence, maintain credibility, and to avoid the cost and difficulty of rehabilitation.<sup>104</sup> These killings are often gruesomely performed—shot,

94. Court’s Sentencing Memorandum at 8–9, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010); Ortiz, *supra* note 15, at 40–41; Humane Society of Missouri (“HSMo”), *Rescued from a Heinous Blood Sport*, TAILS, Fall 2009, at 6, 8. In the interest of brevity, this Note only presents an overview of abuses.

95. HSMo, *supra* note 94, at 8; Sentencing Memo, *supra* note 94, at 10.

96. Silverman, *supra* note 36.

97. HSMo, *supra* note 94, at 8–9, 11 (including photographs).

98. *Id.* at 8.

99. *Id.* at 8. Human and animal socialization is critical to the development of domestic dogs, particularly the human-focused bully breeds favored by dogfighters. Palika, *supra* note 41, at 16. Dogfighters prey on this unusually strong desire to please as a means of encouraging “gameness” or tenacity in the pit, turning the dog’s love into the instrument of its own torment. *See* Ortiz, *supra* note 15, at 14; Sentencing Memo, *supra* note 94, at 8; HSMo, *supra* note 94, at 11; Hamilton, *supra* note 8.

100. Court’s Sentencing Memorandum at 11, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010); Summary of the Facts at ¶¶ 12, 32, *United States v. Vick*, No. 3:07CR274 (E.D. Va. 2007).

101. Sentencing Memo, *supra* note 100, at 9.

102. *Id.* at 9–10.

103. *Id.* at 10.

104. *Id.* at 14–15.

drowned, hanged, strangled, beaten, burned alive, chemically burned alive, electrocuted—and done in part for the crowd’s amusement.<sup>105</sup>

The animal cruelty is not limited to the animals raised by the dog fighter. Some dog fighters use other animals as bait, sometimes including abducted household pets.<sup>106</sup>

### C. Associated Social Problems

Beyond the dog’s suffering, dogfighting is intimately linked to other, non-animal crimes and social ills.<sup>107</sup> Far from occurring in isolation, dogfights have been called “convenience stores for criminals.”<sup>108</sup>

The most obvious among these is illegal gambling, which is integrally connected to dogfighting.<sup>109</sup> Gambling makes a dogfighting venture lucrative.<sup>110</sup> Illegal gambling at dogfights typically comes in two main forms: spectator bets and a fight purse.<sup>111</sup> A single fight will involve tens to hundreds of thousands of dollars in betting volume, not counting the price of admission.<sup>112</sup> The fight purse itself is funded by the owners, who each put up half; winner takes all.<sup>113</sup>

Violence, guns, and drugs also accompany dogfighting.<sup>114</sup> A survey of thirty-seven raids nationwide from 1999 through 2004 found police seized either guns or illegal drugs—and usually both—at all but two raids.<sup>115</sup>

105. *Id.*; HSMo, *supra* note 94, at 8; Hamilton, *supra* note 8, at 17 (quoting undercover investigators saying dogfighters “spend months with a dog and smile before a fight and talk about how good they are. And then they execute them in a second when they don’t fight well.”). Notably, the dogs do not typically kill each other, leaving the fight loser to be disposed of by their disappointed master. See Hamilton, *supra* note 8, at 19; Sentencing Memo, *supra* note 100, at 12; see also Trahan, *supra* note 51.

106. See, e.g., Jamie Welham, *Petnapper Returns Marion Dill’s Cat Grabbed as Dog Fight Bait*, CAMDEN NEW JOURNAL, Mar. 17, 2011, <http://www.camdennewjournal.com/news/2011/mar/%E2%80%98petnapper%E2%80%99-returns-marion-dills-cat-grabbed-dog-fight-bait>.

107. Ortiz, *supra* note 15, at 39–40; Mich. St. U. Coll. Law, *Dog-Fighting Raids: A Comparative Analysis of Peripheral Criminal Activity and Seizures*, ANIMAL LEGAL & HISTORICAL CTR., [http://www.animallaw.info/articles/art\\_img/dog\\_fighting\\_raids\\_chart\\_summary.doc](http://www.animallaw.info/articles/art_img/dog_fighting_raids_chart_summary.doc) (last visited Sept. 1, 2011).

108. Sentencing Memo, *supra* note 100, at 16.

109. See, e.g., Ortiz, *supra* note 15, at 51; Silverman, *supra* note 36; Burke, *supra* note 56 (quoting spokesman for the South Carolina Attorney General’s Office); Sentencing Memo, *supra* note 100, at 15; Summary of the Facts at ¶¶ 4, 13, 16, 18, 19, 21, 24, 25, 27, 28, 30, *United States v. Vick*, No. 3:07CR274 (E.D. Va. 2007).

110. See Guerrero, *supra* note 63.

111. See Ortiz, *supra* note 15, at 51.

112. Silverman, *supra* note 36; see also Guerrero, *supra* note 63. Hamilton reports on a fight with approximately forty attendees and an admission price of \$20. Hamilton, *supra* note 8, at 17, 19.

113. Ortiz, *supra* note 15, at 51.

114. *Dog-Fighting Raids*, *supra* note 107.

115. *Id.*

Weapons listed as seized from the various busts included a TEC-9 semi-automatic handgun, bulletproof vests, sawed-off shotguns, explosives, and a bomb.<sup>116</sup> The multistate raid of 2009 uncovered drugs (methamphetamine and crack cocaine), drug production operations (marijuana grow operations), more than one hundred guns, and around \$60,000 in stolen property.<sup>117</sup> Stories of dogfights-turned-people-fights abound, often revolving around bet welshers or sore losers.<sup>118</sup> In addition to street fighters' links to gang activity, dogfighters also associate with other criminal groups; for example, dogfighters hired a "known domestic terrorist group" as muscle to guard fights in Missouri.<sup>119</sup>

Perhaps most troubling are the child welfare implications of dogfighting. Enthusiasts commonly see the blood sport as a family event.<sup>120</sup> In urban areas, dogfights serve as an introduction to gang life,<sup>121</sup> especially among poor urban youths without many entertainment options.<sup>122</sup> Many active street fighters are teenagers,<sup>123</sup> with younger children watching or actively participating.<sup>124</sup> A 2001 survey of Chicago second- to eighth-graders found more than 20 percent had attended a dogfight,<sup>125</sup> and evidence suggests fights have grown in popularity since then.<sup>126</sup> The early introduction to animal cruelty, especially repeated acts, impacts development and has strong links to later interpersonal violence.<sup>127</sup>

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116. *Id.*

117. Tabatha Wethal, *Saving Man's Best Friend from Dog's Worst Enemy*, LAW ENFORCEMENT TECH., Mar. 2011, <http://let.epubxpress.com/link/let/2011/mar/12?s=0>.

118. See, e.g., Hamilton, *supra* note 8, at 19–20 (describing bet welsher who fled fight and was chased, ending in an armed standoff defused by undercover officers); Ortiz, *supra* note 15, at 51–52 (describing losers who subsequently broke into winner's home seeking lost money, shot winner in front of his wife and children, and fled with \$500,000 while allowing winner to bleed to death); Julie Straw, *Yazoo Co. Sheriff Is Looking for Person of Interest in Dog Fight Murder*, WLBT NEWS (Jan. 21, 2011, 8:10 PM), <http://www.wlbt.com/Global/story.asp?S=13943276>.

119. Hamilton, *supra* note 8, at 13. This connection ultimately led to undercover agents infiltrating a multistate ring and pulling off the largest dogfighting bust in U.S. history.

120. Ortiz, *supra* note 15, at 42 n.207 (collecting sources).

121. Guerrero, *supra* note 63.

122. *Id.* ("A 7th grader told us a dogfight is the most exciting thing in his neighborhood and that dogfights are the place to meet girls." (quoting Gene E. Mueller, then-president of Chicago's Anti-Cruelty Society)).

123. Peters, *supra* note 66.

124. Guerrero, *supra* note 63.

125. *Id.*

126. Peters, *supra* note 66 (citing the *Vick* case as generating more interest among urban youth).

127. See generally, e.g., Suzanne E. Tallichet & Christopher Hensley, *Exploring the Link Between Recurrent Acts of Childhood and Adolescent Animal Cruelty and Subsequent Violent Crime*, 29 CRIM. JUST. REV. 304 (2004); Michael G. Vaughn et al., *Correlates of Cruelty to Animals in the United States: Results from the Nat'l Epidemiologic Survey on Alcohol and Related Conditions*, 43 J. PSYCHIATRIC RES. 1213 (2009).

## III. TRADITIONAL DOGFIGHTER PROSECUTIONS

Recently, dogfighting has become a felony in all fifty states.<sup>128</sup> However, state penalties and definitions of the crime vary widely.<sup>129</sup> In North Carolina, first-time offenders face four to eight months in prison.<sup>130</sup> In Georgia, first-time offenders face one to five years in prison.<sup>131</sup> Most commonly, states classify dogfighting as a Class C,<sup>132</sup> Class D,<sup>133</sup> or comparable mid- to low-level felony, although several states allow prison sentences of up to five years.<sup>134</sup> A slim minority of states (twenty-one) may impose fines,<sup>135</sup> ranging from \$500 in Maine<sup>136</sup> to a mandatory minimum of \$5,000 in Georgia for first offenses and \$15,000 for subsequent convictions.<sup>137</sup>

States also vary in how they prosecute related offenses, most notably if and how the state law punishes (1) ownership of dogs for fighting and (2) being a spectator at a dogfight.<sup>138</sup> Ownership or possession of fighting dogs is illegal in all states, although each state punishes the offense to varying degrees.<sup>139</sup> Far more variation occurs in the punishment of spectators, who face felony charges in twenty-four states (and Washington D.C.) and misdemeanor charges or less in twenty-five states.<sup>140</sup> Spectating at a dogfight is legal in Montana.<sup>141</sup> Another variation is that state laws may not punish the knowing sale of fighting dogs, a problem that can thwart prosecutions in otherwise promising cases.<sup>142</sup>

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128. Huemer, *supra* note 54.

129. See Hanna Gibson, *Chart of State Dogfighting Laws*, ANIMAL LEGAL & HIST. CTR., <http://animallaw.info/articles/ovusstatedogfightingchart.htm> (last visited Sept. 1, 2011).

130. N.C. GEN. STAT. §§ 14-362.2, 15A-1340.17(c) (2007).

131. GA. CODE ANN. § 16-12-37(b) (2007).

132. Gibson, *supra* note 129 (Alabama, Alaska, Hawaii, Maine, North Dakota, Oregon, and Washington).

133. *Id.* (Arkansas, Indiana, Iowa, Kentucky, Missouri, and Nevada).

134. *Id.* (Connecticut, Georgia, Massachusetts, Montana, South Carolina, Vermont, and West Virginia).

135. *Id.*

136. ME. REV. STAT. ANN. tit. 17, § 1033(1-A) (2006).

137. GA. CODE ANN. § 16-12-37(b) (2007). The Georgia fine may be imposed either in addition to or in lieu of imprisonment. *Id.*

138. Gibson, *supra* note 129.

139. *Id.* Possession of a dog for fighting is a misdemeanor or less in Nevada, New York, Texas, and West Virginia. *Id.*

140. *Id.* In some states where being a spectator is a misdemeanor crime, it may be a felony for repeat offenders. See *Dogfighting: State Laws*, HUMANE SOCIETY OF THE UNITED STATES (updated June 2011), [http://www.humanesociety.org/assets/pdfs/animal\\_fighting/dogfighting\\_statelaws.pdf](http://www.humanesociety.org/assets/pdfs/animal_fighting/dogfighting_statelaws.pdf).

141. *Id.*

142. See Patrick McNamara, *Pair Acquitted in Dog Fighting Case*, THE EXPLORER (ARIZ.), Nov. 26, 2008, [http://www.explorernews.com/news/pima\\_pinal/article/06c94b9c-bf5f-599d-848c-4a2d7489](http://www.explorernews.com/news/pima_pinal/article/06c94b9c-bf5f-599d-848c-4a2d7489)

This wide variation in state penalties has served to encourage dogfighters to participate in interstate travel,<sup>143</sup> increasing the importance, relevance, and legitimacy of federal intervention. Regardless, the majority of dogfighting convictions occur under state law.<sup>144</sup>

In 1976, Congress made participation in animal fighting a misdemeanor through amendments to the Animal Welfare Act.<sup>145</sup> The Act created offenses for (1) sponsoring a dog “in an animal fighting venture,” (2) “buying, selling, delivering, possessing, training, or transporting” fight dogs in support of such a venture, and (3) using interstate communication such as mail to “promote or further” such a venture.<sup>146</sup> However, federal prosecutors rarely pursued dogfighting cases, leaving state laws as the dominant form of prosecution.<sup>147</sup> This spurred Congress to strengthen federal penalties as the Michael Vick case was ongoing, bumping dogfighting up to felony levels with a maximum penalty of five years.<sup>148</sup>

In spite of the criminal penalties that have been in place for decades (in some cases, for over a century),<sup>149</sup> dogfighting convictions have remained uncommon.<sup>150</sup> A number of influences have been attributed to this dearth, including varied legislative value of the crimes, low priority from law enforcement, prosecutorial inexperience, problems locating the activity, unwilling witnesses, and an almost necessary over-reliance on

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abcc.html.

143. Burke, *supra* note 56.

144. See *Animal Abuse Crime Database*, PETABUSE.COM, [http://www.pet-abuse.com/pages/cruelty\\_database.php](http://www.pet-abuse.com/pages/cruelty_database.php) (hyperlink, then “Fighting,” then “dog (non pit-bull)” then hold shift and “dog (pit bull),” then “select status” of “convicted/civil,” then “Search”) (last visited Sept. 1, 2011).

145. Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, § 17, 90 Stat. 421 (1976).

146. 7 U.S.C. § 2156(a)–(c) (2006).

147. H.R. REP. NO. 110–27, pt. 1, at 2 (2007), *reprinted in* 2007 U.S.C.C.A.N. 37, 38 (“Federal authorities have pursued fewer than a half dozen animal fighting cases [between 1976 and 2007], despite receiving numerous tips from informants and requests to assist with state and local prosecutions.”).

148. Enforcement of Animal Fighting Prohibitions, 18 U.S.C. § 49 (2006 & Supp. 2010); Animal Fighting Prohibition Enforcement Act of 2007, Pub. L. No. 110–22, 121 Stat. 88 (2007) (creating felony offense); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–234, 122 Stat. 923, § 14207(b) (increasing maximum penalty from three years to five years).

149. New York is regarded as passing the first U.S. anti-dogfighting statute in the mid-1800s. *Dog Fighting FAQ*, AM. SOC’Y FOR THE PREVENTION OF CRUELTY TO ANIMALS (ASPCA), <http://www.aspc.org/fight-animal-cruelty/dog-fighting/dog-fighting-faq.html> (last visited Sept. 1, 2011); Ortiz, *supra* note 15, at 10 n.38, 21 n.99.

150. Ortiz, *supra* note 15, at 7; Steve Brownstein, *Voice of the People: Animal Cruelty Is All But Ignored*, CHI. TRIB., Sept. 30, 2009, [http://articles.chicagotribune.com/2009-09-30/news/0909290352\\_1\\_animal-cruelty-dog-fighting](http://articles.chicagotribune.com/2009-09-30/news/0909290352_1_animal-cruelty-dog-fighting). The problem is not limited to dogfighting but strikes animal cruelty in general. See Jennifer H. Rackstraw, *Reaching for Justice: An Analysis of Self-Help Prosecution for Animal Crimes*, 9 ANIMAL L. 243, 245–47 (2003) (citing studies suggesting 3 percent of complaints or fewer lead to prosecution, and less than half of those lead to convictions).

circumstantial evidence.<sup>151</sup> Confusion over enforcement authority further stymies prosecution, with some cities relegating the enforcement to undertrained, underequipped groups, such as animal control departments, that may lack the necessary tools to investigate a fighting ring, much less build the necessary evidentiary support for a prosecution.<sup>152</sup>

Investigative costs may also discourage investigation and prosecution, particularly when weighed against the often light penalties for dogfighting. As an example, the largest fight-ring bust in the U.S. entailed acquiring remote farmland, purchasing forty fight dogs, keeping two officers undercover for eighteen months, and participating in fights.<sup>153</sup> More than 500 dogs were rescued from twenty-nine sites in eight states with twenty-six arrests.<sup>154</sup> The resulting convictions ranged from twenty-four months in federal prison<sup>155</sup> down to only probation.<sup>156</sup> The strongest of these sentences was only achieved through an upward departure from federal sentencing guidelines in recognition of “extraordinary cruelty.”<sup>157</sup> Meanwhile, expenses to care for seized animals were assessed around \$350,000.<sup>158</sup> While these results only represent a portion of one unusually large investigation, there are few large cases that can serve as a template for fighting this type of crime.<sup>159</sup> Investigations that last as long as, or longer than, the prison terms handed down to offenders could understandably be discouraging, particularly since dogs are often viewed as merely property and the tertiary effects of dogfighting may be unrecognized.<sup>160</sup> Without stronger penalties and recognition of the

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151. Ortiz, *supra* note 15, at 27–39.

152. *Id.* at 30–31; Brownstein, *supra* note 150.

153. Hamilton, *supra* note 8, at 13, 16; HSMo, *supra* note 94, at 8, 10.

154. Hamilton, *supra* note 8, at 13. The number of dogs seized increased dramatically as pregnant dogs gave birth to more than one hundred puppies. HSMo, *supra* note 94, at 10.

155. *See, e.g.*, Judgment in a Criminal Case at 2, United States v. Addison, No. 3:09-cr-30101-005-MJR (S.D. Ill. 2010) (24 months); Judgment in a Criminal Case at 2, United States v. Bacon, No. 3:09-cr-30101-003-MJR (S.D. Ill. 2010) (16 months); Judgment in a Criminal Case at 2, United States v. Creach, No. 4:09-cr-00441-CEJ (E.D. Mo. 2009) (18 months); Judgment in a Criminal Case at 2, United States v. Hihath, No. 09-06007-01-CR-SJ-ODS (W.D. Mo. 2010) (16 months).

156. *See, e.g.*, Judgment in a Criminal Case at 2, United States v. Makstaller, No. 09-06007-03-CR-SJ-ODS (W.D. Mo. 2010).

157. *See* United States v. Hackman, 630 F.3d 1078, 1080, 1082 (8th Cir. 2011).

158. Brief of Defendant-Appellant at 6, United States v. Hackman, 630 F.3d 1078 (8th Cir. 2010) (No. 09-3948).

159. *See* Hamilton, *supra* note 8, at 16 (“We joked with our bosses early on . . . They’d always go, ‘Don’t reinvent the wheel. Do this and do that.’ We’re going, ‘Reinvent the wheel? This has never been done before. We are *inventing* the wheel!’” (quoting an undercover investigator) (emphasis in original)).

160. *See* Breyer, *supra* note 24, at 228.

organized nature of the crime, traditional prosecution of dogfighting under current laws may seem not worth the effort.

#### IV. RICO

##### A. *Introduction to RICO*

Organized crime came into Congress' sights in 1950 when Senator Estes Kefauver famously and publicly investigated the extent and influence of crime syndicates.<sup>161</sup> The Kefauver Committee's findings included notes on the "perplexing problem" of syndicates using crime profits to purchase legitimate businesses, infiltrating industries from baking to banking, garments to gas stations.<sup>162</sup> In the next decade, the McClellan Committee (sometimes called the "Valachi Hearings"<sup>163</sup> after key witness Joseph Valachi) reiterated, confirmed, and expanded on the Kefauver Committee's work, most importantly exposing the structure of the Mafia in great detail.<sup>164</sup>

With this background, Congress passed the Organized Crime Control Act of 1970,<sup>165</sup> a set of "legal tools" designed to "eradicat[e] organized crime in the United States."<sup>166</sup> Included among the Act's many tools was the Racketeering Influenced and Corrupt Organizations (RICO) Act.<sup>167</sup> In the most basic sense, RICO criminalizes the running, controlling, or acquiring of an "enterprise" (or interest in an enterprise) through racketeering or the collection of illegal debt, and provides civil remedies for those injured by such activity.<sup>168</sup>

While RICO was developed with an eye to take down the Mafia, it was written to serve as a very adaptable tool.<sup>169</sup> It has been used to battle a wide range of criminal activity beyond the Mafia,<sup>170</sup> such as government

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161. See S. REP. NO. 82-141 (1951).

162. SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, THIRD INTERIM REPORT, S. REP. NO. 82-307, at 170-71 (1951). The report cites organized criminal involvement in many industries conceptually similar to a typical dogfighting venture, including sports (bowling, basketball, boxing, football, dog and horse racing), gambling houses, and general entertainment ("amusement industry," taverns, bars, nightclubs, theaters). *Id.*

163. See, e.g., *Patriarca v. United States*, 402 F.2d 314, 315-16 (1st Cir. 1968); *Zannino v. Arnold*, 531 F.2d 687, 691 (3d Cir. 1976).

164. Blakey & Gettings, *supra* note 19, at 1015.

165. Pub. L. No. 91-452, 84 Stat. 922 (1970).

166. *Id.* at 84 Stat. 923.

167. See RICO, *supra* note 18.

168. *Id.*

169. See Blakey & Gettings, *supra* note 19, at 1011-12.

170. Lynch, *supra* note 32, at 777.



corruption,<sup>171</sup> health care fraud,<sup>172</sup> securities fraud,<sup>173</sup> and police corruption.<sup>174</sup> Despite being developed to address organized crime and being embedded in a Congressional act dedicated to that effect, RICO itself is not limited to prosecution of organized syndicates or syndicate participants.<sup>175</sup>

Criminal RICO offenders face steep penalties including substantial fines and twenty years of prison time.<sup>176</sup> RICO also provides powerful forfeiture procedures, requiring the forfeiture of the offender's interest in any enterprise.<sup>177</sup> As a result, offenders can lose both their freedom and their livelihood.

### *B. Prohibited Activities*

RICO criminalizes four variations of the same basic theme.<sup>178</sup> All involve a "person," acting through either "a pattern of racketeering" or the "collection of illegal debts" to affect an interest in an "enterprise."<sup>179</sup> First, income acquired through racketeering or illegal debts may not be used to purchase interest in an enterprise.<sup>180</sup> Second, the racketeering proceeds or illegal debts may not themselves be used to gain or maintain interest in an enterprise.<sup>181</sup> Third, an enterprise may not conduct its affairs through a pattern of racketeering or the collection of illegal debts.<sup>182</sup> Finally, any conspiracies to commit the above acts are prohibited.<sup>183</sup>

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171. SALTZBURG ET AL., *supra* note 33, at 781.

172. *Id.*

173. Lynch, *supra* note 32, at 780.

174. *United States v. Casamayor*, 837 F.2d at 1509, 1510–1 (11th Cir. 1988) (upholding RICO conviction of three narcotics officers who supplied cocaine to drug traffickers).

175. *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 243–49 (1989) ("The occasion for Congress' action was the perceived need to combat organized crime. But Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime."); *Russello v. United States*, 464 U.S. 16, 28 (1983) ("Congress' concerns were not limited to infiltration. The broader goal was to remove the profit from organized crime by separating the racketeer from his dishonest gains.")

176. 18 U.S.C. § 1963(a) (2006 & Supp. 2010). *Compare* 18 U.S.C. § 49 (Supp. 2010) (establishing maximum dogfighting prison sentence at five years).

177. 18 U.S.C. § 1963(a) (2006 & Supp. 2010).

178. 18 U.S.C. § 1962 (2006).

179. *Id.*

180. 18 U.S.C. § 1962(a) (2006). For example, this applies where the criminal activity is used to acquire capital, then that capital is used to purchase a business.

181. 18 U.S.C. § 1962(b) (2006). This applies where the criminal activity (as opposed to the capital acquired through the criminal activity) is used to acquire or control the enterprise interest.

182. 18 U.S.C. § 1962(c) (2006).

183. 18 U.S.C. § 1962(d) (2006).

RICO proceedings are most commonly based on the last two of these four variations.<sup>184</sup> Thus, the most typical case requires proof that (1) the defendant was associated, (2) with an enterprise affecting interstate commerce, (3) the defendant took part in conducting the enterprise's affairs, and (4) that defendant's participation involved either a pattern of racketeering activity or the collection of unlawful debts.<sup>185</sup>

### 1. Predicate Offenses

RICO charges may be based either on a "pattern of racketeering" or on the "collection of unlawful debt."<sup>186</sup> "Racketeering" refers to commission of any of the approximately one hundred offenses (or "predicate offenses") specifically listed within the RICO statute.<sup>187</sup> Predicate offenses include certain state charges involving "murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance,"<sup>188</sup> as well as a very expansive list of federal offenses.<sup>189</sup> RICO requires a *pattern* of racketeering, meaning two or more occurrences of predicate offenses that represent "continuity of racketeering activity, or its threat."<sup>190</sup> Neither dogfighting nor other Animal Welfare Act violations are listed as predicate offenses under the RICO statute.<sup>191</sup>

Importantly, RICO offenses based on the collection of unlawful debt do not require a pattern.<sup>192</sup> To utilize this alternative route to prosecution, the debt in question must have resulted from either illegal gambling or

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184. Lynch, *supra* note 32, at 774.

185. 18 U.S.C. § 1962(c) (2006); *see also, e.g.*, United States v. Posada-Rios, 158 F.3d 832, 855 (5th Cir. 1998). Courts commonly describe RICO as requiring "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity." *Sedima v. Imrex Co.*, 473 U.S. 479, 496 (1985) (footnote omitted). While this is useful as shorthand, it is important to note that, strictly speaking, this description is a simplification that overlooks RICO claims based on collection of unlawful debts.

186. *See* 18 U.S.C. § 1962 (2006).

187. 18 U.S.C. § 1961(1) (2006).

188. 18 U.S.C. § 1961(1)(A) (2006).

189. 18 U.S.C. § 1961(1)(B)–(G) (2006). Some predicate offenses are specifically defined; for example, embezzlement from pension and welfare funds in violation 18 U.S.C. § 664 (2006) would form one predicate offense. § 1961(1)(B). Other predicate offenses are more general. For example, any offense under the bankruptcy code (Title 11) involving fraud can form a predicate offense, with the exception of bankruptcy fraud itself. § 1961(1)(D).

190. 18 U.S.C. § 1961(5) (2006); *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 241 (1988).

191. 18 U.S.C. § 1961(1)(A). One commentator suggests that, theoretically, state animal cruelty laws could form a RICO predicate offense where the cruelty results in an animal's death. *See* Breyer, *supra* note 24, at 227. However, the argument requires courts to accept animal cruelty as an "act . . . involving murder." *Id.*

192. *See, e.g.*, United States v. Weiner, 3 F.3d 17, 23–24 (1st Cir. 1993); United States v. Tocco, 200 F.3d 401, 426 (6th Cir. 2000).

usurious lending in excess of twice the legal rate.<sup>193</sup> Unlike the racketeering route to prosecution, the underlying crime itself need not be punishable by more than a year of imprisonment.<sup>194</sup>

## 2. Enterprise

RICO's definition of enterprise is broad, extending to nearly anything that organized crime could infiltrate.<sup>195</sup> This goes well beyond basic commercial entities and businesses to include "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."<sup>196</sup> Because Congress defined enterprise as "including" these groups, this list is inclusive, but not exclusive; other forms of organizations may be enterprises.<sup>197</sup> Enterprises have included associations as diverse as the Palestinian group Hamas,<sup>198</sup> the State of Illinois,<sup>199</sup> street gangs,<sup>200</sup> and a beauty school.<sup>201</sup>

When the enterprise in question is a legal entity, proving its existence may be simple; however, proving the existence of an "associated-in-fact" enterprise can be more difficult.<sup>202</sup> The Supreme Court first gave some direction in defining this form of RICO enterprise in *United States v. Turkette*,<sup>203</sup> noting that an enterprise may be an exclusively criminal organization.<sup>204</sup> The Court held that "association-in-fact" enterprises may be proven "by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing

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193. 18 U.S.C. § 1961(6) (2006).

194. *United States v. Aucoin*, 964 F.2d 1492, 1496 (5th Cir. 1992).

195. Lynch, *supra* note 32, at 771.

196. 18 U.S.C. § 1961(4) (2006).

197. *Id.*; *see, e.g.*, *United States v. Huber*, 603 F.2d 387, 394 (2d Cir. 1979).

198. *United States v. Marzook*, 426 F. Supp. 2d 820, 825 (N.D. Ill. 2006) (upholding RICO convictions premised on providing support to foreign terrorist organization).

199. *United States v. Warner*, 498 F.3d 666, 696 (7th Cir. 2007) (upholding RICO conviction against former Illinois Governor George Ryan, Sr., and an advisor for selling public licenses and contracts). Notably, in *United States v. Mandel*, a district court held that the State of Maryland was not a RICO enterprise. 415 F. Supp. 997, 1020–22 (D.Md. 1976). Courts, including the Fourth Circuit, have subsequently rejected the *Mandel* result. *See, e.g.*, *Warner*, 498 F.3d at 694–95; *United States v. Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980).

200. *E.g.*, *United States v. Smith*, 413 F.3d 1253, 1266–68 (10th Cir. 2005) (upholding RICO conviction of leader of the "King Mafia Disciples," a Salt Lake City gang).

201. *United States v. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978) (upholding RICO conviction for defrauding Veterans Administration through falsifying student information).

202. FRANK J. MARINE ET AL., DEPARTMENT OF JUSTICE, CRIMINAL RICO: 18 U.S.C. §§ 1961–1968: A MANUAL FOR FEDERAL PROSECUTORS 60–65 (5th ed. 2009) (collecting cases).

203. 452 U.S. 576 (1981).

204. *Id.* at 587.

unit.”<sup>205</sup> *Turkette* may be distilled into requiring that association-in-fact enterprises include the elements of (1) “ongoing organization” (continuity) and (2) some common purpose.<sup>206</sup> Continuity of an enterprise is not necessarily lost merely because the members of the alleged enterprise change over time.<sup>207</sup>

Following *Turkette*, a circuit split developed over whether RICO enterprises required evidence of structure and hierarchy beyond that necessary to accomplish the pattern of racketeering itself.<sup>208</sup> The split developed over language in *Turkette* that specified that the “pattern of racketeering” itself is distinct from the enterprise.<sup>209</sup> The Supreme Court recently resolved this division in *Boyle v. United States*,<sup>210</sup> expressly rejecting the requirement that a RICO enterprise’s structure exist “beyond that inherent in the pattern of racketeering activity in which it engages.”<sup>211</sup>

Instead, the Court harkened back to *Turkette*’s instruction that an enterprise be “a group of persons associated together for a common purpose of engaging in a course of conduct.”<sup>212</sup> The Court reiterated this as

205. *Id.* at 583.

206. *See, e.g.*, *United States v. Patrick*, 248 F.3d 11, 17 (1st Cir. 2001) (upholding jury instructions requiring “[t]o find that an association in fact existed, you must find that the alleged enterprise had an ongoing organization, formal or informal, and that its various associates functioned as a continuing unit for a common purpose”); *United States v. Davidson*, 122 F.3d 531, 535 (8th Cir. 1997) (describing the enterprise as “an ongoing association with a common purpose to reap the economic rewards flowing from the crimes, rather than a series of ad hoc relationships”).

207. *See, e.g.*, *United States v. Nabors*, 45 F.3d 238, 240–41 (8th Cir. 1995) (“[T]he personnel of an enterprise may undergo alteration without loss of the enterprise’s identity as an enterprise.”); *MARINE ET AL.*, *supra* note 202, at 64 n.87 (collecting cases).

208. *Compare* *United States v. Bledsoe*, 674 F.2d 647, 665 (8th Cir. 1982) (requiring “ascertainable structure distinct from that inherent in the conduct of a pattern of racketeering activity”) (internal quotation removed), *and* *United States v. Riccobene*, 709 F.2d 214, 222 (3d Cir. 1983) (requiring that a RICO enterprise have “some sort of structure exist[ing] within the group for the making of decisions, whether it be hierarchical or consensual”), *with* *United States v. Patrick*, 248 F.3d 11, 18 (1st Cir. 2001) (“We today explicitly reject the *Bledsoe* test as an additional requirement beyond the *Turkette* instruction.”), *and* *United States v. Mazzei*, 700 F.2d 85, 88–90 (2d Cir. 1983) (“[I]t does not make sense to impose a ‘distinctness’ requirement in RICO cases.”).

209. *Turkette*, 452 U.S. at 583 (“The ‘enterprise’ is not the ‘pattern of racketeering activity’; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved by the Government.”). The split developed as some courts expressed concerns that any overlapping set of RICO predicate offenses could subject defendants to greatly enhanced penalties. *See Bledsoe*, 674 F.2d at 661–62 (“[RICO] was not intended to reach any criminals who merely associate together and perpetrate two of the specified crimes, rather it was aimed at ‘organized crime.’”).

210. 129 S. Ct. 2237 (2009). Coincidentally, “Boyle” is also the name of a “highly regarded bloodline” of fighting dogs. Hamilton, *supra* note 8, at 14; Top Dog, *A Boyle Dogs Really Good Dogs*, GAMEDOG.COM (June 10, 2005, 6:25 PM CST), <http://www.game-dog.com/forums/showthread.php?t=5726>.

211. *Boyle*, 129 S. Ct. at 2245.

212. *Turkette*, 452 U.S. at 583.

three distinct elements: a purpose, relationships among those associated with the enterprise, and longevity sufficient to permit these associates to pursue the enterprise's purpose."<sup>213</sup>

### *C. Department of Justice Approval*

Recognizing the strength of RICO and citing a hesitancy to overstep state law enforcement, the Department of Justice has created self-imposed restrictions to criminal prosecution through RICO.<sup>214</sup> U.S. Attorneys wishing to bring criminal RICO charges must first apply to the Organized Crime and Racketeering Section (OCRS).<sup>215</sup> A case that too heavily duplicates the elements of a single predicate offense "will not be approved unless it serves some special RICO purpose."<sup>216</sup> Furthermore, the Department of Justice expressly denounces using a RICO charge simply as a bargaining chip.<sup>217</sup>

The Department of Justice offers seven considerations that individually may support pursuit of RICO charges.<sup>218</sup> These include where the RICO charge (1) better reflects the nature and extent of the criminal activities, (2) allows more appropriate sentencing, (3) allows consolidation of charges across multiple jurisdictions, (4) is necessary for successful prosecution, (5) provides more appropriate forfeiture than the underlying crime, (6) enables enforcement of state law where local officials "are unlikely or unable to successfully prosecute the case," or (7) enables enforcement of state law against "significant or government individuals" that local prosecutors would have difficulty charging.<sup>219</sup> One or more of these must be present before a Justice Department attorney submits a potential RICO case to the OCRS.<sup>220</sup>

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213. *Boyle*, 129 S. Ct. at 2244.

214. U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL, § 9-110.200 (Aug. 1999), [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/](http://www.justice.gov/usao/eousa/foia_reading_room/usam/).

215. *Id.* § 9-110.210.

216. *Id.* § 9-110.200.

217. "Inclusion of a RICO count in an indictment solely or even primarily to create a bargaining tool for later plea negotiations on lesser counts is not appropriate and would violate the Principles of Federal Prosecution." *Id.* § 9-110.320.

218. *Id.* § 9-110.310.

219. *Id.*

220. *Id.*

## V. APPLYING RICO TO MODERN DOGFIGHTING

Because neither dogfighting nor other violations of the Animal Welfare Act constitute RICO predicate offenses,<sup>221</sup> RICO's applicability to such a case may not seem apparent. However, dogfighting defendants appear to fit the basic legislative purpose for a RICO prosecution.<sup>222</sup> The blood sport constitutes a half-billion-dollar industry, with professional and hobby fighters operating in organized rings. For some, dogfighting is a way of life.<sup>223</sup> Dogfighters may mask their breeding operations through legitimate businesses, such as selling puppies as pets.<sup>224</sup> The House of Representatives noted as recently as 2007 that nationally circulated magazines and websites continue to promote the sport, and lobbyists continue to advocate on behalf of animal fighters.<sup>225</sup> Dogfights are committed by groups of people, often crowds, as coordinated events that are intricately tied to other illegal activities.<sup>226</sup>

Again, a typical RICO prosecution requires proof that: (1) the defendant was associated, (2) with an enterprise affecting interstate commerce, (3) the defendant took part in conducting the enterprise's affairs, and (4) that defendant's participation involved either a pattern of racketeering activity or the collection of unlawful debts. When applying RICO to dogfighting, only two of these four prongs should prove to be novel: establishing the underlying RICO offense ("pattern of racketeering" or "collection of unlawful debts") and defining the "enterprise affecting interstate commerce." Once these two prongs are established, the remaining two prongs involve the typically straightforward task of connecting the defendant to the enterprise.

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221. See discussion of predicate offenses, *supra* Part IV.B.1.

222. The basic legislative purpose for a RICO prosecution is to enhance criminal penalties for patterns of criminal conduct, particularly where that conduct is continuous or threatens to be continuous. See, e.g., *H.J. Inc. v. N.W. Bell Tel. Co.*, 492 U.S. 229, 239 (1989) ("RICO's legislative history reveals Congress' intent that . . . the racketeering predicates are related, *and* that they amount to or pose a threat of continued criminal activity.") (emphasis in original); *United States v. Marren*, 890 F.2d 924, 936 (7th Cir. 1989) (noting that "the stated legislative purpose of RICO [was] to expand criminal punishment").

223. *United States v. Hackman*, 630 F.3d 1078, 1084 (8th Cir. 2011).

224. See Patrick, *supra* note 1, at A4 ("In court, Hackman told U.S. District Judge Carol Jackson that some of his dogs were sold as pets."). Commercial dog breeding is generally regulated by state laws. See, e.g., MO. REV. STAT. § 273.327 (2000). Animal "dealers," including breeders, are further regulated by the United States Department of Agriculture through the Animal Welfare Act, 7 U.S.C. §§ 2132(f), 2133 (2000).

225. H.R. REP. NO. 110-27, pt. 1, at 2 (2007).

226. Ortiz, *supra* note 15, at 39, 50-54.

### A. Potentially Applicable RICO Predicate Offenses

It is not surprising that dogfighting is not specifically listed as a predicate offense supporting RICO prosecution.<sup>227</sup> Dogfighting was not federally criminalized until 1976, several years after RICO was enacted.<sup>228</sup> Even then, the crime remained a misdemeanor until 2007.<sup>229</sup> As a result, any application of RICO must rely on peripheral activities to animal fighting. However, because of the close connection between dogfighting and other crimes, RICO charges could be founded under either the “pattern of racketeering” prong or the “collection of unlawful debts” prong.

#### 1. The Pattern of Racketeering Approach

RICO includes several predicate offenses under its definition of “racketeering” that could potentially be useful, though many would depend on the evidence available in the individual case being prosecuted. Examples of those that may apply with limited usefulness include 18 U.S.C. § 1956 (money laundering), 18 U.S.C. § 1957 (transactions in property derived from unlawful activity), or felony controlled substance crimes.<sup>230</sup> For example, if a dogfighter were to inject his dogs with illegal drugs such as steroids, the related drug offenses could form one or more predicate offenses to help establish a pattern of racketeering.<sup>231</sup>

Because of frequent commission in conjunction with dogfighting, gambling offenses are by far the most promising “racketeering” predicate offense. Criminal culpability can derive either from state<sup>232</sup> or federal<sup>233</sup> anti-gambling statutes.

Taking the state route, RICO charges can be predicated on nearly any state anti-gambling statute with one caveat: it must be punishable by

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227. Interestingly, since the Michael Vick case, animal fighting has been added as a predicate offense to “little-RICO” statutes in several states, including Oregon, Texas, Utah, and Virginia. OR. REV. STAT. § 166.715(6)(a)(T) (2011); TEX. PENAL CODE ANN. §§ 42.10, 71.02(a)(14) (2011); UTAH CODE ANN. tit. 76, § 10-1602 (4)(ggg) (West 2011); VA. CODE §§ 3.2-6571, 18.2-513 (2011); *Getting Tough on Dogfighting*, ANIMAL LEGAL DEFENSE FUND (May 21, 2009), <http://www.aldf.org/article.php?id=963>.

228. Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, § 17, 90 Stat. 421 (1976).

229. 18 U.S.C. § 49 (2006 & Supp. 2010).

230. 18 U.S.C. § 1961(1)(B) (2006).

231. Dogfighters commonly use steroids as well as various other controlled substances to enhance “training.” Court’s Sentencing Memorandum at 9, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010).

232. 18 U.S.C. § 1961(1)(A) (2006).

233. 18 U.S.C. § 1961(1)(B) (2006).

imprisonment of more than one year.<sup>234</sup> In states with typical anti-gambling laws, this excludes “simple gambling”<sup>235</sup> but would include players that partake in “professional” gambling and those who advance or promote the activity.<sup>236</sup> Such laws likely provide necessary predicate offenses against fight organizers, dog handlers, and successful or prolific participants while excluding those whose participation is merely as a spectator in a given fight. However, this route may be disfavored because of the Department of Justice’s hesitancy to enforce state law through RICO without special reasons.<sup>237</sup> As a result, a federal law foundation may be preferred.

To take the federal route, RICO charges could be predicated on violations of 18 U.S.C. § 1955, which prohibits operation of an illegal gambling business.<sup>238</sup> Section 1955 prohibits owning or operating a gambling business in violation of state laws,<sup>239</sup> so it would primarily be applicable in areas where the state route was also available. However, it would also extend to states where such a gambling business was simply a misdemeanor, petty crime, or civil infraction.

There are further complicating factors under § 1955. The illegal gambling business must also have either “substantially continuous operation” for more than thirty days, or have gross revenue of \$2,000 in any single day.<sup>240</sup> Additionally, the illegal gambling business must “involve[] five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business.”<sup>241</sup>

These “gambling” paths to RICO may be further bolstered through yet another predicate offense from the Organized Crime Control Act of 1970: the prohibition on interstate and foreign travel or transportation in aid of racketeering enterprises.<sup>242</sup> This statute prohibits traveling in or using

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234. See 18 U.S.C. § 1961(1)(A) (2006).

235. As used here, “simple gambling” refers to lesser gambling offenses, as opposed to “aggravated” or “professional” gambling. See, e.g., ALA. CODE § 13A-12-21 (2011) (defining crime of “simple gambling”). Different states use different terminology, and many just refer to “simple gambling” as “gambling.”

236. See, e.g., MO. REV. STAT. § 572.020 (2011); WYO. STAT. ANN. § 6-7-102 (2011).

237. For more on the Department of Justice considerations regarding enforcement of state law, see *Department of Justice Approval*, *infra* Part V.C.

238. 18 U.S.C. § 1955 (2006). Like RICO, this federal offense was also created through the Organized Crime Control Act of 1970. *Id.*

239. 18 U.S.C. § 1955(b)(1)(i) (2006).

240. 18 U.S.C. § 1955 (b)(1)(iii) (2006).

241. 18 U.S.C. § 1955(b)(1)(ii) (2006).

242. 18 U.S.C. § 1952 (2006). Aside from its applicability to RICO, this statute could provide a powerful tool for federal prosecutors bringing charges against a dogfighter yet unable to gain OCRS approval for full RICO charges.



instruments of interstate commerce to either (1) distribute income from unlawful activity, (2) commit “any crime of violence” to further unlawful activity, or (3) otherwise assist unlawful activity.<sup>243</sup> “Unlawful activity” is confined to a relatively small set of crimes, including “any business enterprise involving gambling . . . in violation of the laws of the State in which they are committed.”<sup>244</sup> This may prove applicable to typical dogfighting cases.

In some cases, the “pattern of racketeering” prong may prove impractical because of difficulties in establishing a pattern. Currently, dogfighting prosecutions tend to rely heavily on circumstantial evidence.<sup>245</sup> This makes proving even a single instance of dogfighting a hurdle on its own;<sup>246</sup> thus, establishing a pattern of related activities could prove equally burdensome. As a result, the “collection of unlawful debts” prong may prove more practical to this application of RICO.<sup>247</sup>

## 2. *The Collection of Unlawful Debts Approach*

RICO’s “collection of unlawful debts” prong may provide a more straightforward path to prosecution than the “pattern of racketeering” prong. In the applicable part, RICO defines unlawful debt as:

a debt (A) incurred or contracted in gambling activity which was in violation of the law of the United States, a State or political subdivision thereof, . . . and (B) which was incurred in connection with the business of gambling in violation of the law of the United States, a State or political subdivision thereof. . . .<sup>248</sup>

Here there is no requirement that the underlying statute that criminalizes gambling punish the crime as a felony—or even as a criminal offense; the

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243. *Id.* § 1952(a).

244. *See id.* § 1952(b) (limiting “unlawful activity” to certain crimes related to: gambling, alcohol, drugs, prostitution, extortion, bribery, arson, currency reporting, and money laundering).

245. *See Ortiz, supra* note 15, at 36–39. Ortiz notes difficulties including unwilling witnesses, the rarity of catching dogfighters during actual dogfights, and the common need to prove that the defendant actually caused the dogfight. *Id.* at 34–36.

246. *Id.*

247. An alternate possibility, however, is that the elements of predicate offenses may prove to be far easier to establish than some of the more difficult elements of dogfighting itself. For example, demonstrating intent often creates difficulty in dogfighting prosecutions. *Id.* at 36–37. Reliance on tertiary, non-animal-cruelty crimes may greatly enhance the ability to build a case against dogfighters regardless of if prosecutors utilize RICO.

248. 18 U.S.C. 1961(6) (2006).

only requirement is “illegality.”<sup>249</sup> Collecting the purse or other winnings from a dogfight could thus serve as the foundation for the RICO claim.

The downside of utilizing this provision is that it does not enable RICO claims against those individuals who lose dogfights. However, regardless of the winner, it could likely still be applied to the fight organizer. If the organizer takes a cut from the purse, bids on the fight, or otherwise profits “in connection with” the illegal gambling, there may be the beginnings of a RICO case. Because the fight organizer takes a leadership role in a dogfighting venture, this could serve as a way to “cut off the head of the snake.”<sup>250</sup>

### *B. Enterprise Affecting Interstate Commerce*

While the predicate offenses constituting a RICO indictment necessarily must be separate from the relevant animal welfare concerns, dogfighting may be most helpful to prosecutions when viewed as the RICO enterprise.<sup>251</sup> Because RICO uses such an expansive definition of “enterprise,”<sup>252</sup> the typical dogfighting operation includes several groupings of individuals that could potentially comprise a RICO enterprise.

At the highest level, proving the existence of a dogfighting ring itself serves as an obvious enterprise. Such a ring would encompass the various kennels and individuals who coordinate on a regular basis to breed animals, organize fights, conduct fights, and otherwise support their individual dogfighting efforts.<sup>253</sup> Crime rings are consistently deemed

249. See, e.g., *United States v. Weiner*, 3 F.3d 17, 23–24 (1st Cir. 1993); *United States v. Tocco*, 200 F.3d 401, 426 (6th Cir. 2000).

250. “[A]nd the body will die.” *VIVA ZAPATA!*, at 01:33:17 (Twentieth Century Fox 1952).

251. Because the dogfighting itself may not serve as a predicate offense, there is no danger of the “pattern of racketeering” being confused with the “enterprise”—the two elements will be clearly separate. This concern helped motivate the circuit split (resolved by *Boyle*) reflected in *Turkette*’s reminder that “[t]he existence of an enterprise at all times remains a separate element which must be proved by the Government.” *United States v. Turkette*, 452 U.S. 574, 583 (1981).

252. See *United States v. Boyle*, 129 S. Ct. 2237, 2243 (2009).

The statute does not specifically define the outer boundaries of the “enterprise” concept . . . encompassing “any . . . group of individuals associated in fact.” The term “any” ensures that the definition has a wide reach, and the very concept of an association in fact is expansive. In addition, the RICO statute provides that its terms are to be “liberally construed to effectuate its remedial purposes.”

*Id.* (internal citations removed).

253. To conceptualize this “enterprise,” it may be helpful to compare the entire dogfighting ring to professional sports leagues. Many competitors comprise the whole enterprise, but each frequently operates with the others for common purposes. See *Mayer v. Belichick*, 605 F.3d 223 (3d Cir. 2010) (National Football League as an alleged RICO enterprise) (dismissed on other grounds).

RICO enterprises and appear to be most consistent with the type of organized crime prosecution that inspired RICO.<sup>254</sup> Unfortunately, while dogfighting prosecutions are rare,<sup>255</sup> prosecution of large rings is even more extraordinary.<sup>256</sup> As a result, the opportunity for utilizing this enterprise as the basis of a RICO charge may be limited. On the other hand, recognizing the potential for RICO charges against a dogfighting ring, as opposed to weaker Animal Welfare Act charges, could encourage such investigations by reducing the disparity between investigative costs and the resulting punishment that defendants face.<sup>257</sup>

Another “enterprise” likely to be available for a RICO prosecution is the group comprising an individual kennel and/or breeding operation.<sup>258</sup> Dogfighting kennels operate parallel to a legitimate business equivalent—ordinary dog breeders. In many respects, dogfighting kennels are functionally similar to ordinary dog breeders. In addition to the obvious parallel that both raise dogs, like legitimate breeders, dogfighters typically name their kennels,<sup>259</sup> and they sometimes hire staff.<sup>260</sup>

*United States v. Vick* serves as an example of this level of enterprise. *Vick* involved four individuals who worked together to operate Bad Newz Kennels.<sup>261</sup> The group shared several common purposes, including operation of the animal fighting venture and “a business enterprise [involved in] gambling.”<sup>262</sup> The members operated together as co-conspirators to accomplish these purposes over the course of six years.<sup>263</sup>

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254. See, e.g., *Boyle*, 129 S. Ct. at 2239 (bank robbery ring); *United States v. Thomas*, 114 F.3d 228, 244 (D.C. Cir. 1997) (narcotics dealing ring); *United States v. Oreto*, 37 F.3d 739, 742 (1st Cir. 1994) (loan shark ring); *United States v. Lemm*, 680 F.2d 1185, 1197 (8th Cir. 1982) (arson ring); *United States v. Elliott*, 571 F.2d 880, 885 (5th Cir. 1978) (car theft ring); *United States v. McLaurin*, 557 F.2d 1064, 1073 (5th Cir. 1977) (prostitution ring).

255. See Ortiz, *supra* note 15, at 26; Joey Bunch, *Prosecution of Dogfighting Cases Kept on Short Leash*, DENVER POST, July 30, 2007, [http://www.denverpost.com/headlines/ci\\_6495949](http://www.denverpost.com/headlines/ci_6495949).

256. See Hamilton, *supra* note 8, at 16 (describing investigation that infiltrated dogfighting ring in 2008 through 2009 as entirely novel).

257. See Ortiz, *supra* note 15, at 28–29, 32.

258. To extend the sports league metaphor, this would represent the “team” or “franchise” level. Comparable enterprises successfully prosecuted under RICO can be found in sports bribery cases. See *United States v. Burke*, 700 F.2d 70 (2d Cir. 1983) (enterprise composed of a Boston College basketball player and a gambling syndicate); *United States v. Winter*, 663 F.2d 1120 (1st Cir. 1981) (enterprise composed of horse owners who bribed jockeys and purposely lost races).

259. Examples include “Cannibal Kennel,” “Hard Goodbye Kennel,” “Shake Rattle and Roll Kennel” (a “roll” refers to a short practice fight, often against a bait animal), and “Bad Newz Kennels.” Patrick, *supra* note 1, at A4; Summary of the Facts, *supra* note 14, ¶ 3.

260. See Hamilton, *supra* note 8, at 13 (noting that a “yard boy” hired to feed, water, and “shape” dogs served as an informant for police).

261. Summary of the Facts at 1, 3, *United States v. Vick*, No. 3:07CR274 (E.D. Va. 2007).

262. *Id.* at 1–2.

263. *Id.*

Thus, the kennel itself could have served to form an enterprise under *Boyle*.

Alternately, at the lowest level, even an individual “contract fight”<sup>264</sup> and the events leading up to it could arguably be deemed an enterprise for RICO purposes. The actual event requires coordination from a group of individuals over a period of time, both in promotions prior to the event and during the event, which is dictated by a set of agreed-upon rules of conduct. This may be supported in part by the Animal Welfare Act’s use of similar language, specifically prohibiting “an animal fighting venture.”<sup>265</sup> The Supreme Court has itself noted that “venture” is often synonymous with “enterprise.”<sup>266</sup>

Structurally, a single dogfight meets the “enterprise” requirements as outlined in *Boyle*. Participants share a common purpose—the pursuit of dogfighting for entertainment and profit. Relationships exist between participants, who serve in various roles like handler, breeder, or referee.<sup>267</sup> Both the relationships and the common purpose are bolstered by the blood sport’s necessary use of rules.<sup>268</sup> The longevity requirement could prove more difficult to demonstrate on the basis of a single fight. However, *Boyle* does not set any minimal time requirement, requiring merely that the enterprise’s structure exist long enough to allow “associates to pursue the enterprise’s purpose.”<sup>269</sup> As a result, the single fight should qualify as a RICO enterprise.

### C. Department of Justice Approval

U.S. Attorneys also face an administratively imposed barrier to applying RICO in a modern dogfighting case: they must acquire approval from the Organized Crime and Racketeering Section of the Department of Justice. Technical compliance with the RICO elements is not enough.<sup>270</sup>

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264. Hamilton, *supra* note 8, at 13.

265. 7 U.S.C. § 2156(g)(1) (2006).

266. *Boyle v. United States*, 129 S. Ct. 2237, 2244 (“That an ‘enterprise’ must have a purpose is apparent from meaning of the term in ordinary usage, i.e., a ‘venture,’ ‘undertaking,’ or ‘project.’” (quoting Webster’s Third New International Dictionary 757 (1976)) (emphasis added)).

267. *See, e.g.*, Plea Agreement at 2, *United States v. Reyes*, No. 09-6007-04-CR-SJ-ODS (W.D. Mo. 2009), ECF No. 83 (noting involvement of seven individuals in the events leading to one contract fight).

268. As noted above, traditional fights adhere to clearly outlined rules. *See, e.g.*, Trahan, *supra* note 51. However, rules are also present in street fights. Even brutal fight formats like “trunking” (described in footnote 68) include rules, if only to clearly identify the winner to accommodate the attendant gamblers.

269. *Boyle*, 129 S. Ct. at 2244.

270. DEP’T OF JUSTICE, *supra* note 214, § 9-110.200. The U.S. Attorneys’ Manual acknowledges

The Department of Justice further requires that at least one of seven guidelines be present before approving a Federal RICO prosecution.<sup>271</sup> Because prosecution of dogfighting defendants under RICO is novel, an application for prosecution could meet extra scrutiny.<sup>272</sup> But despite being novel, the required considerations should be present in the dogfighting context.

Under the first two DOJ considerations, RICO charges are appropriate where prosecution of the underlying offenses does not capture the “nature and extent of the criminal conduct” or provide appropriate sentencing “under all the circumstances of the case.”<sup>273</sup> In the dogfighting context, the crime involves the interplay between many criminal violations<sup>274</sup> that could only be adequately captured by the most thorough and lengthy indictment of underlying offenses. For example, the July 2009 multistate dogfighting bust, touted as the largest in U.S. history,<sup>275</sup> involved a ring of individuals participating in fighting-dog sales, breeding, training, fights, illegal gambling, multistate coordination, a near-gunfight, illegal steroid sales, killing of poor-performing dogs including at least one by electrocution, police recovery of mutilated and neglected dogs, and other offenses.<sup>276</sup> Indictments, however, did not cover the full breadth of the crimes and typically were limited to conspiracy charges of “buying[,] selling, delivering, possessing, training, or transporting animals for participation in animal fighting ventures,” and using the Post Office to promote an animal fighting venture.<sup>277</sup> The resulting sentences similarly failed to reflect the gravity of the criminal actions, ranging from probation to two years in prison.<sup>278</sup>

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that this self-imposed policy exists “despite the broad statutory language of RICO and the legislative intent that the statute ‘. . . shall be liberally construed to effectuate its remedial purpose.’” *Id.*

271. *Id.* § 9-110.310. While prior approval is required for either criminal or civil prosecution, approval is *not* necessary to conduct grand jury investigations of RICO violations. *Id.* § 9-110.320.

272. “[T]he Criminal Division will not approve ‘imaginative’ prosecutions under RICO which are far afield from the congressional purpose of the RICO statute.” *Id.* § 9-110.200.

273. *Id.* § 9-110.310.

274. *See, e.g.*, Court’s Sentencing Memorandum at 16, *United States v. Berry*, No. 09-CR-30101-MJR (S.D. Ill. 2010) (stating that dogfighting is a “convenience store for criminals”); *Dog-Fighting Raids*, *supra* note 107; *Burke*, *supra* note 56; *Ortiz*, *supra* note 15, at 51; *Silverman*, *supra* note 36.

275. *Patrick*, *supra* note 1, at A1.

276. *United States v. Hackman*, 630 F.3d 1078, 1080–81 (8th Cir. 2011); Brief of Defendant-Appellant at 1–6, *United States v. Hackman*, 630 F.3d 1078 (8th Cir. 2010) (No. 09-3948); *Hamilton*, *supra* note 8; RFTVSTL, *Behind the Scenes of the Biggest Pit Bull Fighting Bust in U.S. History*, YOUTUBE (Sept. 1, 2010), <http://www.youtube.com/watch?v=OHq2oSis3YA>.

277. *See, e.g.*, Indictment at 2, *United States v. Morgan*, No. 4:09-cr-00441-CEJ (E.D. Mo. July 1, 2010), ECF No. 2.

278. *See supra* note 155.

The third DOJ consideration examines if RICO charges would allow a combination of offenses from different jurisdictions into a single case.<sup>279</sup> This is particularly applicable to dogfighting because of its interstate nature. In particular, this consideration should weigh heavily in favor of allowing a RICO charge where it allows consolidating predicate gambling offenses based on various state laws.

The fourth DOJ consideration allows RICO prosecutions where it would be necessary to a successful case against the defendant or a co-defendant.<sup>280</sup> While this could potentially apply to dogfighting cases, reliance on this consideration would appear to be case-specific.

The fifth DOJ consideration allows RICO prosecutions to “provide a reasonable expectation of forfeiture which is proportionate to the underlying criminal conduct.”<sup>281</sup> Dogfighting cases present a unique need for effective forfeiture. While conviction of an Animal Welfare Act offense (such as dogfighting) allows forfeiture of animals and collection of related care and veterinary treatment costs, it does not provide an avenue for attacking assets gained through dogfighting.<sup>282</sup> As a result, the worst that befalls a dogfighter is the loss of valuable breeding stock and time invested in training. The basic infrastructure of the illicit business remains. Utilizing RICO’s powerful forfeiture provisions would provide a check that could help curb this conduct.

Both the sixth and seventh DOJ considerations concern prosecutions based on state law, limiting such cases to incidents where local officials “are unlikely or unable to successfully prosecute the case,” or cases involving high-profile or government officials. Where RICO prosecutions target interstate rings, these considerations will likely be moot. In many other cases, the inclusion of federal offenses in the indictment may also weigh against DOJ deference to this consideration. In those cases that rely exclusively on state law predicate offenses, the pervasive rarity of dogfighting prosecutions in many jurisdictions may itself signal an inability to prosecute, justifying DOJ’s assistance.<sup>283</sup> Furthermore, a simple request for prosecutorial assistance may demonstrate local difficulties.<sup>284</sup>

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279. DEP’T OF JUSTICE, *supra* note 214, § 9-110.310.

280. *Id.*

281. *Id.*

282. 7 U.S.C. § 2156(f) (2000).

283. *See* Ortiz, *supra* note 15, at 26–27.

284. *See* H.R. REP., *supra* note 147, at 2 (noting that there had been “numerous . . . requests [for Federal Prosecutors] to assist with state and local prosecutions” of animal fighters).

Thus, multiple DOJ considerations will likely be impacted in any RICO case involving dogfighting. While the exact impact of these considerations will vary with the structure of the indictment, approval should not be an insurmountable challenge to the dogfighting RICO indictment.

#### CONCLUSION

In many cases, charges under the Racketeer Influenced and Corrupt Organizations Act may be appropriate to bolster dogfighting prosecutions. This application of RICO is appropriate given the pervasive, organized nature of dogfighting, the interstate character of fighting rings, and the multifaceted associated crimes.

Applying RICO to dogfighters could yield many benefits. Primary among them would be the availability of increased penalties and strong asset forfeiture provisions. These penalties could serve to reduce the dramatic disparity between the investigation/prosecution costs of dogfighting and the punishment of offenders. Furthermore, RICO prosecutions could more adequately represent the numerous crimes that go into a dogfighting ring without unmanageable and unwieldy indictments, and avoiding some of the proof problems inherent in the typical dogfighting statute.

Such an application of RICO may better serve criminal law objectives than current Animal Welfare Act prosecutions. Increased prison sentences may better serve to create general deterrence within the dogfighting community. Since RICO would be best suited for attacking the most organized offenders, this would be particularly valuable to making examples of dogfighting “leaders.” Additionally, because RICO holds the possibility of better seizing dogfighting assets and equipment, it could increase individual deterrence by both eliminating profits and hampering possible recidivism—upon conviction, a professional fighter would be forced to start from scratch to rebuild his kennel.

The business-like quality of the crime lends itself well to criminal RICO prosecution. However, application of RICO in the dogfighting context will require investigators to look beyond the animal cruelty and into the surrounding criminal activities—gambling, drug use, etc.—that often surround dogfighting ventures. Investigators and prosecutors may do

well to heed “Deep Throat’s” timeless advice to Bob Woodward: “Follow the money.”<sup>285</sup>

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285. Timeless, but fictional. The oft-quoted line was actually the creation of Hollywood writer William Goldman, not the instructions of Mark Felt, the real-life “Deep Throat.” Frank Rich, *Don’t Follow the Money*, N.Y. TIMES, June 12, 2005, <http://www.nytimes.com/2005/06/12/opinion/12rich.html>; ALL THE PRESIDENT’S MEN, at 00:40:24 (Warner Bros. Pictures 1976).

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