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Rico vs. 416-bis: A Comparison of U.S. and Italian Anti-Organized Crime Legislation

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Rico vs. 416-bis: A Comparison of U.S. and Italian Anti-Organized Crime Legislation

I. INTRODUCTION

Comprised of twenty-five ethnic Italian organized crime families, La Cosa Nostra (LCN) is the principal organized crime group in the United States.\(^1\) Although primarily engaged in drug trafficking and gambling operations, LCN is also involved in business racketeering, prostitution rings, and black market trade.\(^2\) Through its investigations of LCN, Congress determined that the organization has exerted a tremendous criminal influence on the nation's economy and infrastructure.\(^3\)

Over the past two decades, however, a number of significant prosecutions under the Racketeer Influenced and Corrupt Organizations Act (RICO) have undermined LCN's power in the United States.\(^4\) During the 1980s and 1990s, law enforcement "substantially weakened" or even "virtually eliminated" LCN in most major U.S. cities, including New York, Boston, Philadelphia, Cleveland, Detroit, Chicago, Kansas City, Los Angeles, and New Orleans.\(^5\)

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1. CRIMINAL INVESTIGATIVE DIV., ORGANIZED CRIME/DRUG BRANCH, Fed. BUREAU OF INVESTIGATION, AN INTRODUCTION TO ORGANIZED CRIME IN THE U.S. (1993) (reprinted in ORGANIZED CRIME 15 (James D. Torr et. al. eds., 1999)). LCN means "This Thing of Ours." Id. LCN is often used interchangeably with the term "Mafia" to describe Italian-American organized crime groups. Lesley Suzanne Bonney, Comment, The Prosecution of Sophisticated Urban Street Gangs: A Proper Application of RICO, 42 CATH. U. L. REV. 579, 583 (1993). For purposes of this Comment, the term "LCN" is used in reference to the Italian-American Mafia. In contrast, the term "Mafia" refers to all Italian organized crime groups in Italy.

2. Bonney, supra note 1, at 586-87.

3. Id. at 580.


5. Id. (quoting Robert Blakey, co-author of RICO).
Officials credit RICO with law enforcement’s remarkable progress in combatting organized crime.\(^6\) Between 1981 and 1988, the U.S. government convicted dozens of LCN bosses, underbosses, and “crew chiefs” under RICO.\(^7\) Additionally, prosecutors have used RICO to indict LCN members and associates at least 2,500 times between 1983 and 1986.\(^8\)

Law enforcement efforts in Italy, however, have not had the same powerful effect on organized crime.\(^9\) For example, notwithstanding the 1993 arrest of the “boss of all bosses,” Salvatore “Toto” Riina, and other influential Mafia members, the Italian Mafia remains a sophisticated organized crime network.\(^10\)

After Riina’s arrest, the Italian police believed that Riina had not “lost his power in the organization as a boss” and that “the top staff” remained in place.\(^11\) Riina’s fugitive lieutenants simply took command of operations after Riina’s arrest.\(^12\)

In 1982, after Mafia members murdered several public figures, the Italian government enacted Italian Penal Code Article 416-bis\(^13\) as a new weapon for prosecuting organized crime.\(^14\) Article 416-bis outlaws membership in, or collaboration with, a Mafia-type association.\(^15\) Additionally, under 416-bis, prosecutors can indict an individual for association with a Mafia-type organization, even without a direct link between the individual and a criminal act.\(^16\)

The Italian government implemented Article 416-bis during the early 1980s,\(^17\) around the same time that U.S. prosecutors


\(^7\) JAMES B. JACOBS ET AL., *BUSTING THE MOB: UNITED STATES V. COSA NOSTRA* 4–5 (1994). The number of RICO prosecutions peaked during the 1980s. *Id.* at 18.

\(^8\) *Id.* at 4–5.


\(^10\) *Id.*

\(^11\) *Id.*

\(^12\) *Id.*

\(^13\) CODICE PENALE [C.P.] art. 416-bis (Italy). “Bis” is the Italian abbreviation for amendment.


\(^15\) *Id.*

\(^16\) *Id.*

\(^17\) *Id.*
recognized RICO's strength in combatting organized crime.\textsuperscript{18} Despite shared similarities between the laws,\textsuperscript{19} however, several factors have prevented the Italian law from becoming as effective as its U.S. counterpart. Although Italian officials have curtailed some Mafia activities, they initially applied Article 416-bis indiscriminately\textsuperscript{20} due to difficulties in determining what it meant to "belong" to a Mafia-type organization. Moreover, the Mafia's widespread influence over the Italian social and political infrastructure has proven to be a considerable obstacle to implementing and enforcing effective laws against organized crime.

Part II of this Comment describes RICO and its use against LCN, briefly describes the history of LCN in the United States, and traces the legislative response to organized crime. Part II also examines U.S. Supreme Court interpretations of key RICO terms.

Part III describes the evolution of the Italian Mafia and the development of criminal statutes used to combat organized crime activities. Part III also examines the difficulties Italian lawmakers have faced in making progress against organized crime, including problems with the initial application of 416-bis and the Mafia's strong influence over the Italian legal and political systems.

This Comment concludes with the following observations: (1) RICO empowered the U.S. government to prosecute LCN's leadership effectively; (2) although the Italian government has made some progress against Mafia activities, the condemning language of Article 416-bis was too vague when enacted, leading to its indiscriminate application; and (3) the Mafia's influence over the Italian legal and political systems hinders effective law enforcement against organized crime. These factors have limited the effectiveness of Article 416-bis and prevented it from living up to the success of its U.S. counterpart.

\textsuperscript{18} Bonney, \textit{supra} note 1, at 593. Most LCN prosecutions under RICO did not occur until the 1980s. \textit{Id.}

\textsuperscript{19} MARCO JACQUEMET, CREDIBILITY IN COURT: COMMUNICATIVE PRACTICES IN THE CAMORRA TRIALS 46–47 (1996).

\textsuperscript{20} See \textit{infra} Part III.E.
II. LCN AND LAWS DIRECTED AGAINST ORGANIZED CRIME

A. LCN in the United States

La Cosa Nostra is an association of career criminals, organized in a complex, hierarchical structure through which members profit from illegal enterprises.\(^{21}\) In exchange for the benefits of belonging to LCN, members are obligated to remain absolutely obedient and loyal to the organization.\(^{22}\)

LCN developed in the United States during the early twentieth century.\(^{23}\) At that time, the number of Mafiosi in the United States rapidly increased as many sought to avoid Mussolini's crackdown on the Mafia in Italy.\(^{24}\) It was not until the 1920s, however, that LCN's power significantly expanded as a result of the lucrative criminal opportunities that arose during Prohibition.\(^{25}\) By the end of WWII, LCN's influence extended into virtually all areas of legitimate and illegitimate U.S. business.\(^{26}\)

B. Pre-RICO Investigations of La Cosa Nostra

In the 1950s and 1960s, the U.S. government recognized the strength of organized crime and established several investigative commissions.\(^{27}\) The findings and recommendations of these entities eventually became key elements behind RICO's enactment.\(^{28}\)

The first investigative effort began in 1951, when the U.S. Senate established the Kefauver Committee to examine how organized crime was structured, which laws LCN violated, and how these violations affected interstate commerce.\(^{29}\) While the findings and recommendations of the Kefauver Committee did not

\(^{21}\) Bonney, supra note 1, at 583–84.
\(^{22}\) Id. at 584.
\(^{24}\) Id.
\(^{25}\) Id. at 594–95.
\(^{26}\) Id. at 596. LCN also infiltrated labor unions, which increased both their political influence and control over legitimate businesses. Id. at 596–97.
\(^{27}\) Bonney, supra note 1, at 588.
\(^{28}\) Id.
\(^{29}\) Id. at 588–89.
lead to significant changes in law, they did initiate a greater public awareness of LCN, particularly through the Committee's widely-watched televised hearings.30

Government investigations of organized crime continued throughout the 1960s.31 In 1963, Congress formed the McClellan Committee to continue the Kefauver Committee's efforts.32 The McClellan Committee gained valuable information about LCN, which Congress later used in enacting legislation designed to fight organized crime.33 Building on prior investigations, the Presidential Task Force on Organized Crime compiled a well-documented report in 1967.34 In its report, the Task Force included recommendations for legislative initiatives against organized crime.35

Although legislators introduced several bills soon after the Task Force presented its recommendations, Congress did not pass any related legislation until 1969, when it introduced RICO as part of the Organized Crime Control Act of 1970.36 The Judiciary Committee Report accompanying the bill proposing RICO indicated that the government wanted RICO to become the primary weapon "in mounting a 'frontal attack' against organized crime," superceding all previous attempts to address the problem.37

C. Pre-RICO Legislation

Before RICO's inception, the Hobbs Act, enacted in 1946, was the most widely-used legislation against organized crime.38 The Hobbs Act made interference with or obstruction of interstate commerce a federal crime.39 Anyone who advanced criminal

31. Bonney, supra note 1, at 590.
32. Id. at 589.
33. Id. at 589-90.
34. Id. at 590.
35. Id.
37. Bonney, supra note 1, at 590-91.
38. Goodwin, supra note 30, at 289-90.
activities using interstate facilities would be subject to indictment under the Hobbs Act.\textsuperscript{40}

Prior to RICO, the legislation the U.S. government used to fight organized crime had limited effectiveness.\textsuperscript{41} Early legislative and law enforcement efforts aimed at curtailting LCN’s activities applied only against those who actually committed crimes, not the bosses who commanded their performance.\textsuperscript{42} These laws were only useful against weak, lower-level members, who would invariably be replaced by more effective Mafiosi.\textsuperscript{43}

Prior to RICO’s passage, an individual could not be held culpable for the crimes of another; only individuals directly involved in committing a specific crime could be charged.\textsuperscript{44} In a 1988 report, the General Accounting Office described the limitations of pre-RICO legislation and explained how RICO expanded law enforcement’s ability to attack organized crime:

Before [RICO], the government’s efforts were necessarily piece-meal, attacking isolated segments of the organization as they engaged in single criminal acts. The leaders, when caught, were only penalized for what seemed to be unimportant crimes. The larger meaning of these crimes was lost because the big picture could not be presented in a single criminal prosecution. With the passage of RICO, the entire picture of the organization’s criminal behavior and the involvement of its leaders in directing that behavior could be captured and presented.\textsuperscript{45}

Thus, RICO unlocked the restrictive legal handcuffs that had previously limited the scope of prosecutors’ abilities under earlier laws, such as the Hobbs Act.\textsuperscript{46}

Although technically still on the books, the Hobbs Act has been overshadowed by RICO.\textsuperscript{47} In fact, the Hobbs Act did not

\textsuperscript{40.} Id. at 81.
\textsuperscript{41.} Goodwin, \textit{supra} note 30, at 292.
\textsuperscript{42.} Id.
\textsuperscript{43.} Id.
\textsuperscript{44.} RYAN, \textit{supra} note 39, at 85.
\textsuperscript{46.} RYAN, \textit{supra} note 39, at 85.
\textsuperscript{47.} Id. at 81. Compared to the Hobbs Act, RICO provides “relatively harsh penalties that reach 20 years and ... provides for forfeiture of personal assets acquired from the proceeds of criminal activity.” \textit{Id.}
reach its potential as a means to fight organized crime until prosecutors used it as a predicate act under RICO.\(^48\) Ultimately, the U.S. government’s great success in pursuing LCN is due to RICO’s expansive approach.

**D. RICO’s Purpose and Legislative Intent**

In passing RICO, Congress recognized that prosecutors would be more effective against organized crime if they could focus on LCN’s organizational foundations, rather than on individual perpetrators.\(^49\) Since LCN’s organizational structure and strength, as a whole, is greater than that of its individual members, prosecutors could only succeed against organized crime by attacking LCN as an enterprise.\(^50\) Further, by distinguishing between organized crime and ordinary crime, prosecutors could impose harsher penalties against organized criminal groups.\(^51\)

The U.S. Supreme Court in *Russello v. United States* acknowledged the congressional intent aimed towards making RICO a powerful new law for combating organized crime.\(^52\) In reviewing RICO’s legislative history, the Court found that Congress intended RICO to provide “new weapons of unprecedented scope for an assault upon organized crime and its economic roots.”\(^53\)

Congress wanted to use RICO against sophisticated organized crime groups that used profits from illegal activities to infiltrate businesses.\(^54\) The implementation of RICO expanded the scope of LCN prosecutions by permitting the government to focus on the entire history of an organization’s illegal acts.\(^55\) Prosecutors could present, within a single trial, evidence of multiple acts committed by numerous LCN members.\(^56\)

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49. *Id.* at 292.
50. *Id.*
51. *Id.*
54. See Bonney, *supra* note 1, at 591.
55. See *id.* at 594.
56. See *id.*
E. RICO's Application

Described as "the most important substantive and procedural tool in the history of organized-crime control,"57 RICO is one component of a larger statute, the Organized Crime Control Act (OCCA).58 Located in Title IX of OCCA, RICO connects several laws directed against organized crime to create a single comprehensive statute.59 The substantive provision most often used in LCN prosecutions is 18 U.S.C. § 1962(c).60 The broadly constructed language of subsection (c) states:

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.61

Few RICO prosecutions occurred in the early 1970s, largely because prosecutors did not fully comprehend the law's tremendous potential.62 Nevertheless, since the enactment of RICO, numerous Supreme Court decisions have answered many of the legal questions regarding who is subject to RICO and how the law should be applied.63 In these decisions, the Court followed the congressional mandate to construe RICO liberally, which opened the doors to the government's heightened pursuit of LCN.64

F. Judicial Interpretation of RICO's Key Terminology

The U.S. Supreme Court has clarified key terms contained within 18 U.S.C. § 1962(c). By interpreting terms such as "conduct or participate,"65 "pattern of racketeering activity,"66 and

57. JACOBS, supra note 7, at 9–10.
59. Bonney, supra note 1, at 591.
60. RYAN, supra note 39, at 85.
62. RYAN, supra note 39, at 85.
63. Id. at 88–91.
64. Blakey, supra note 45, at 37.
"enterprise," the Court expanded and reinforced prosecutors’ ability to use subsection (c) to pursue LCN. 67

1. Reves v. Ernst & Young: “Conduct or Participate”

In Reves v. Ernst & Young, the Supreme Court settled a dispute concerning the precise meaning of the “conduct or participate” language in 18 U.S.C. § 1962(c). 68 The Court concluded that “conduct or participate” requires participation in the “operation or management” of the enterprise. 69 Since the operation or management test included all individuals “associated with” a criminal enterprise, 70 prosecutors maintained the ability to pursue all members of LCN at every level of the criminal organization. 71 Thus, the “operation and management” terminology encompasses every LCN member, from its leadership to its footsoldiers. 72

2. Sedima S.P.R.L. v. Imrex Co.: “Pattern of Racketeering”

In RICO prosecution, the government must establish that a defendant conducted or participated in the affairs of an enterprise through “a pattern of racketeering activity.” 73 This pattern must consist of at least two racketeering acts committed within ten years of one another, one of which must have occurred within five years of the indictment. 74

Racketeering acts, or RICO predicates, are defined as virtually any serious federal felony and most state felonies. 75 These acts include “any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance or listed

68. 507 U.S. at 177–79.
70. Goodwin, supra note 30, at 296.
71. Id.
72. Id.
73. RYAN, supra note 39, at 176.
74. Id. at 86.
75. Goodwin, supra note 30, at 295.
chemical ... which is chargeable under State law and punishable by imprisonment for more than one year.”

The Supreme Court addressed the issue of what constituted a pattern in *Sedima S.P.R.L. v. Imrex Co.* In interpreting the meaning of the term “pattern,” the Court held that the legislative intent behind RICO indicated a desire to combat organized crime as a whole, rather than as isolated acts. To meet the RICO pattern requirement, prosecutors must prove that alleged criminal acts have both “continuity” and “relationship.”

To establish continuity and relationship, the Supreme Court in *H.J., Inc. v. Northwestern Bell Telephone Co.*, decided that the criminal acts must be related to each other and “amount to or pose a threat of continued criminal activity.” RICO prosecutions subsequent to the *Northwestern Bell* decision treated proof of the existence of LCN as a useful component in establishing a connection between any two predicate acts.


In *United States v. Turkette*, the U.S. Supreme Court enabled prosecutors to target individuals participating in organized crime by confirming that RICO includes criminal, or illegitimate, enterprises within its scope.

Turkette and twelve other defendants were charged with operating a criminal organization involved in drug trafficking and arson. Because *Turkette* was the first RICO case that involved a wholly illegal enterprise, the defendants claimed that their criminal organization was outside of RICO’s scope. The *Turkette* defendants argued that RICO was designed to protect only legitimate enterprises from criminal infiltration and, as such, RICO did not criminalize involvement in organizations that commit only illegal acts. By basing the argument on RICO’s

79. *Id.*
81. *Id.* at 297.
83. *Turkette*, 452 U.S. at 578–79.
84. Bonney, *supra* note 1, at 396.
85. 452 U.S. at 579–80.
definition of "enterprise," the defendants convinced the court of appeals that they were not culpable under RICO because they had not attempted to infiltrate a legitimate enterprise.

The Supreme Court disagreed with the lower court's holding and held that the term "enterprise" included within its scope both legitimate and illegitimate enterprises. According to the Court:

Had Congress not intended to reach criminal associations, it could easily have narrowed the sweep of the definition by inserting a single word, "legitimate." But it did nothing to indicate that an enterprise consisting of a group of individuals was not covered by RICO if the purpose of the enterprise was exclusively criminal.

The Court noted that to exclude illegitimate organizations from RICO's scope would frustrate the statute's intended objective to be used as a powerful weapon against organized crime. Consequently, the Turkette decision expanded the government's ability to prosecute individuals who participated in criminal syndicates such as LCN.

G. Impact of RICO's Judicial Interpretations

Such broad Supreme Court rulings essentially marked the beginning of the end for LCN in the United States. Judicial interpretation defined and clarified RICO's language and aided the government's prosecution of organized crime.

Ironically, use of the RICO statute has led to an unprecedented assault against LCN despite the fact that RICO never mentions terms such as "organized crime," "La Cosa

86. RICO defines "enterprise" as including "any individual partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4) (1974).
87. RYAN, supra note 39, at 87.
88. Turkette, 452 U.S. at 580-81.
89. Id. at 581.
90. Bonney, supra note 1, at 597.
92. Bonney, supra note 1, at 597.
Nostra,” or “Mafia.”93 Italian laws that specifically target Mafia membership have yet to achieve similar results.

III. THE ITALIAN MAFIA AND LAWS DIRECTED AGAINST ORGANIZED CRIME

A. Italian Mafia Background

Organized crime in Italy is comprised of different criminal entities based in the southern part of the country. Among these groups are the Mafia in Sicily, the Camorra in Naples, the ‘Ndrangheta in Calabria,94 and, the Sacra Corona Unita, in Puglia.95 Due to the location of these Mafia families, crime in Italy—especially murder—is heavily concentrated in the four southern regions of Sicilia, Campania, Calabria, and Puglia.96

Although its particular origins are not clear, the Italian Mafia appears to have emerged and developed in response to foreign domination of the country.97 Historically, the Mafia provided refuge and protection to Italian peasants who lived under harsh foreign rule.98 The Italian Mafia was originally considered to be a “patriotic, albeit clandestine, society” whose members used guerilla warfare against foreign intruders.99 Over time, however, the Italian Mafia became increasingly involved in criminal activities, particularly extortion and murder. The Italian Mafia's power and its involvement in illegal activities is extensive:

Their illegality bordered on anarchy except that the Mafia substituted their version of law and social control for that of the duly constituted government. Even today, it is generally

93. Christopher D. McDemus, Reves v. Ernst & Young: The Supreme Court's Recent Restrictive Standard Concerning § 1962(c) of the Civil RICO Statutes, 19 DEL. J. CORP. L. 1027, 1036-37 (1994). The lack of focus on organized crime in the RICO statute was due to “legislative compromise.” Id.
94. For brief definitions of the three respective crime groups, see RYAN, supra note 39, at 274-75. Distinguishing between the names of these “families” is not particularly important, as use of the popular term “Mafia” has become all-encompassing. Id. at 36.
97. RYAN, supra note 39, at 33-34.
98. Id. at 34. Italy was controlled by the Arabs in the ninth century, the French in the eleventh century, and the Spanish in the fifteenth century. Id. at 33-34.
99. Id. at 34.
acknowledged that the citizens of Sicily pay taxes (and show loyalty) both to the duly constituted government and to the Mafia.\textsuperscript{100}

The widespread societal influence of the present-day Italian Mafia can be traced back to nineteenth-century feudal Italy, where Mafiosi took advantage of the unsteady relationships between the central government, landlords, and peasants.\textsuperscript{101} By using the conflicts between these three groups to their benefit, Mafia leaders solidified and expanded their organization.\textsuperscript{102} Because of the ineffective nature of governmental law enforcement, the Italian Mafia became the principal vehicle for both law enforcement and law violation.\textsuperscript{103}

\textbf{B. Mafia Influence Over the Italian Legal and Political Systems}

The extent of the Mafia's influence over Italian legal and political entities presents a substantial obstacle to controlling organized crime. Numerous government and public officials have been suspected or accused of collusion with the Mafia.\textsuperscript{104} For example, in a highly-publicized four-year trial, the Italian government accused the ex-Prime Minister of Italy, Giulio Andreotti, of expanding the Mafia's criminal capabilities within the country.\textsuperscript{105} Among other things, prosecutors charged Andreotti with accepting, as Mafia favors, the murders of two men who allegedly possessed damaging information about him.\textsuperscript{106} According to the chief prosecutor at the trial, Andreotti's actions

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\textsuperscript{100} Id.
\textsuperscript{101} Id. at 35.
\textsuperscript{102} Id.
\textsuperscript{103} Id.
\textsuperscript{104} See, e.g., SEINDAL, \textit{supra} note 14, at 146-47 (discussing instances of collaboration between the Italian authorities and the Mafia).
\textsuperscript{105} Richard Boudreaux, \textit{Ex-Premier of Italy Acquitted of Mafia Charges}, L.A. TIMES, Oct. 24, 1999, at A20. Initially, Mr. Andreotti was acquitted of all charges. \textit{Id.} However, on November 17, 2002, an appeals court in Perugia found Andreotti guilty of ordering the 1979 murder of Mino Pecorelli, and sentenced him to twenty-four years in prison. It was alleged that Mr. Andreotti had the controversial magazine editor killed to prevent the publication of a potentially damaging document. Mr. Andreotti remains free until the Supreme Court reaches a final verdict. Philip Willan, \textit{Andreotti fights back on Mafia allegations}, The Age, Nov. 30, 2002, \textit{at} http://www.theage.com.au/articles/2002/11/29/1038386308331.html.
\textsuperscript{106} PATRICK MCCARTHY, \textit{CRISIS OF THE ITALIAN STATE} 151-52 (1997).
allowed the Mafia to become "the only organization in the world that could exercise its power over a legal state."\footnote{107}

Moreover, Italian judges and magistrates have also succumbed to Mafia corruption.\footnote{108} Members of the Italian judiciary have been known to accept bribes in exchange for issuing building permits or arranging "adjustments" of trials.\footnote{109} Magistrates have been charged with notifying Mafiosi of impending investigations and otherwise hindering such procedures.\footnote{110}

In addition to using methods such as bribery, the Mafia has effectively controlled Italian officials through violence and intimidation. Police officers who cross paths with Mafiosi often "look the other way," knowing that any officer who confronts a Mafia member can be killed.\footnote{111} By assassinating Italian officials, the Mafia might discourage governmental action deemed threatening.\footnote{112}

According to investigators, Mafia leaders further protect themselves against law enforcement by limiting each member's knowledge about the organization, and establishing new ties with other Italian organized crime gangs.\footnote{113} Further, when the government makes advances against Mafia interests, Italian crime families are able to quickly recover. "As soon as voids are created, they are filled . . . [W]hen one or two people are captured, the organization continues to work. The people who take their places have already been preordained as successors."\footnote{114} Due to the enormous power the Mafia has over the Italian political and legal systems, the government continually faces a difficult challenge to develop and enforce laws that can effectively fight organized crime.

\section*{C. Pre-1982 Italian Laws Against Organized Crime}

Although the Italian Mafia in its present form has been active for over a century, the first significant legislative efforts against it

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108. MCCARTHY, supra note 106, at 77; SEINDAL, supra note 14, at 146-47.
109. SEINDAL, supra note 14, at 146; MCCARTHY, supra note 106, at 77.
110. MCCARTHY, supra note 106, at 77-78.
111. \textit{Id.} at 151.
112. SEINDAL, supra note 14, at 146.
113. Cowell, supra note 9, at 10.
114. \textit{Id.} (quoting Roberto Scarpinato, a high-level prosecutor in Palermo).
did not occur until the 1950s. In addition, before 1965, no laws explicitly named the "Mafia." This failure to specifically identify the Mafia probably stemmed from the widespread reluctance to acknowledge the Mafia's existence as a problem. Before 1982, Italy's laws against the Mafia focused on crime prevention, specifically regarding individual criminal acts.

1. Act Number 1435 of 27 December 1956

One of the first Italian laws to affect the Mafia was Act Number 1435 (Act 1435), which implemented "preventative measures designed to protect public security and morals." Under Act 1435, law enforcement officers would first provide warnings to individuals who were perceived to threaten public security or morals. If individuals failed to comply with the initial warning, officers could place them under surveillance, subject them to house arrest, or send them into internal exile in a different municipality. Act 1435 provided only for administrative measures implemented by law enforcement and, as such, did not require the accused to appear before a court. Ultimately, Act 1435 proved to be counterproductive, however, since it contributed to Mafia expansion outside of Sicily. Mafia members sent into internal exile had the opportunity to connect with like-minded criminals in other areas of Italy.

2. Act Number 575 of 31 March 1965

After seven police officers died in a car bomb ambush, the Italian government responded by passing Act Number 575 (Act 575). Act 575 essentially modified the administrative measures in Act 1435 and extended its scope to include persons "associated with" the Mafia. In addition to the penalties of surveillance, house arrest, and internal exile contained in Act 1435, the new law included a provision allowing law enforcement to confiscate

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115. SEINDAL, supra note 14, at 18.
116. Id.
117. Id. at 19.
118. Id.
119. Id.
120. Id.
121. Id. at 15–16, 19.
122. Id. at 19.
passports, driver's licenses and gun licenses. Act 575 was limited, however, in a manner similar to U.S. pre-RICO legislation because it only criminalized the "mafioso as an individual, but ... not ... the Mafia as an organization."  

3. Article 416 of the Italian Penal Code  

Prior to the enactment of Acts 1435 and 575, other laws, such as Article 416 of the Rocco Code of 1931, attempted to address organized crime. Article 416 enables the Italian government to prosecute individuals who form an independent organization to engage in criminal activity. By so doing, the law provides the government with a platform from which to launch an assault against organized crime.  

Article 416 focuses on the creation of the criminal organization. Under Article 416, if at least three persons associate for the purpose of committing crimes, they can be punished by imprisonment for a term of three to seven years. The group's structure needs only to be adequate enough to commit its intended crimes. For example, to be culpable as members of a criminal association under Article 416, the members must "join the organization voluntarily ... agree to pursue the shared criminal goals of the group ... [and] intend to engage in a continuous course of criminal conduct," as opposed to isolated acts or a fixed number of crimes.

D. Post-1982 Italian Laws Against Organized Crime  

The relationship between the Mafia and the Italian State has been analogized to an accordion: the State attacked the Mafia only

123. Id.  
124. Id. at 20. By criminalizing Mafia association, the government actually compounded the problem. See discussion infra Part E.  
125. ENCILOPEDIA GARZANTI DEL DIRITTO 1062 (2d ed. 1997). The Rocco Code derives its name from the surname of two brothers, both jurists, who coauthored the code. Id.  
126. Tripp, supra note 69, at 301 (citing 7 MANZINI, TRATTATO DI DIRITTO PENALE ITALIANO 192 (Gian Domenico Pisapia ed., 5th ed. 1983)).  
127. Id. (citing 7 MANZINI, TRATTATO DI DIRITTO PENALE ITALIANO 197 (Gian Domenico Pisapia ed., 5th ed. 1983)).  
128. C.P. art. 416 (Italy).  
129. See Tripp, supra note 69, at 301 (citing 7 MANZINI, TRATTATO DI DIRITTO PENALE ITALIANO 197 (Gian Domenico Pisapia ed., 5th ed. 1983)).  
130. See id. (citing 7 MANZINI, TRATTATO DI DIRITTO PENALE ITALIANO 195 (Gian Domenico Pisapia ed., 5th ed. 1983))
when there were particularly grave homicides, and the Mafia only attacked State representatives when they showed too much zeal in their repressive actions. This quasi-peaceful coexistence reached an impasse in 1982, when the Mafia assassinated Prefect Carlo Alberto Della Chiesa. Ten days after his assassination, the legislature responded with the La Torre-Rignoni Act, which criminalizes Mafia-type associations. The La Torre-Rignoni Act’s passage marked a legislative turning point against the Italian Mafia.

Prompted by the murder of Della Chiesa, the Italian legislature determined a more refined law was necessary to combat the Mafia. With the passage of the La Torre-Rignoni Act, formally codified as Article 416-bis, not only would the government punish Mafia association and collaboration, but also Mafia membership itself. The legislative intent behind Article 416-bis was to prosecute the intoccabili, those individuals who belong to the criminal organization but “against whom law enforcement agencies . . . [lack] concrete evidence of particular criminal acts.” Article 416-bis allows prosecutors to go beyond prosecuting individual Mafiosi in order to confront the Mafia’s entire dynamic structure. Within the four years following the law’s enactment, approximately 15,000 individuals were reported for Mafia association.

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131. ENCICLOPEDIA GARZANTI DEL DIRITTO, supra note 125, at 737.
132. See FRANCESCO RENDA, STORIA DELLA MAFIA 404–05 (Sigma Edizioni 1998) (providing a partial list of government officials who the Mafia murdered, including a police superintendent, a police captain, a judge, the provincial secretary of the Christian Democratic Party of Palermo, and perhaps the most famous of all, Prefect Carlo Alberto Della Chiesa); see also ALISON JAMIESON, THE ANTIMAFIA: ITALY’S FIGHT AGAINST ORGANIZED CRIME 27 (2000) (presenting a complete list of the murders of state representatives by the Mafia from 1963 to 1998).
133. Act no. 646 of 13 September 1982 was named after both the Communist author, Pio La Torre, who the Mafia had murdered shortly before Della Chiesa, and then-Minister of the Interior, Virginio Rognoni. SEINDAL, supra note 14, at 20.
134. ENCICLOPEDIA GARZANTI DEL DIRITTO, supra note 125, at 738.
135. Id. at 737.
136. C.P. art. 416 (Italy).
137. SEINDAL, supra note 14, at 20.
138. JACQUEMET, supra note 19, at 47.
139. JAMIESON, supra note 132, at 30. For a specific breakdown of the number of persons arrested for the crime of Mafia association from 1988 to 1997, see id. at 82.
Article 416-bis functions as an extension of the general criminal complicity law of Article 416.140 The amendment targets any group comprised of three or more members whose mission is similar to the Mafia,141 and provides for a prison term of three to six years.142 Individuals can be culpable under Article 416-bis for forming a criminal association and committing crimes in ways considered characteristic of the Mafia.

With Article 416-bis' enactment, prosecutors no longer have to establish the criminal act before establishing the Mafia association's existence. Instead, investigators can pursue criminals who simply have association with the Mafia.143 Prosecutorial tasks are easier under Article 416-bis than under previous laws:

Prior to the addition of [Article 416-bis] prosecutors in Italy, like U.S. prosecutors, had been hindered from prosecuting Mafia leaders by, among other things, the Mafia organizational hierarchy that insulated bosses from the subordinates that committed street crimes. Under [Article 416-bis], a group of three or more people that uses intimidation to commit crimes, or gain control over businesses or public contracts may be a Mafia association.144

Thus, prosecutors no longer need to prove the existence of an organized criminal structure.145 Instead, investigators only have to prove a connection between the Mafia's method of procuring profits, and the types of illegal activities in which its members engage.146 Under 416-bis, witnesses are unnecessary, and prosecution is based upon relating the crimes committed to the documentation of the economic and financial operations carried out by Mafia members.147

E. Problems With Applying Article 416-bis

Although Article 416-bis was passed with a clearly defined purpose, its initial implementation proved problematic. Because
the law criminalizes membership in what the legislature termed a “Mafia-type association,” Italian prosecutors encountered difficulties in collecting evidence to meet this ambiguous definition.\textsuperscript{148} The Italian Justice Department faced emerging problems because 416-bis failed to define the terms “membership,” “belonging,” and “criminal group.”\textsuperscript{149} During the first trial under the newly implemented Article 416-bis, the Justice Department discovered that the boundary between members of a criminal organization and innocent people became obscured.\textsuperscript{150} Numerous innocents were indiscriminately included within the prosecution’s self-developed standards for determining Mafia membership.\textsuperscript{151}

After a June 1983 police roundup, over one thousand individuals, many of whom were innocent, were indicted under the newly enacted Article 416-bis.\textsuperscript{152} During preliminary hearings, the Italian Justice Department attempted to establish formal standards that utilized concrete and credible evidence to identify and prosecute Mafia members.\textsuperscript{153} The prosecution’s reliance on certain written materials as its primary form of evidence tended to be problematic.\textsuperscript{154} These written materials included address books of “certified”\textsuperscript{155} Mafia members, records of people in attendance at Mafia trials, prison receipts of money orders originating from Mafia-controlled areas, and letters written by known Mafia members.\textsuperscript{156}

The Justice Department took a broad approach to using this evidence for determining who belonged to a Mafia association. For example, if a list of names contained the name of at least one convicted Mafia member, the State would identify it as a Mafia list.\textsuperscript{157} Unfortunately, since many Italians share identical

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148. See JACQUEMET, supra note 19, at 46–52.
149. See id. at 47–52.
150. Id. at 46–48.
151. See id. at 46–52.
152. Id. at 48.
153. Id.
154. See id. at 47–52.
155. “Certified” referred to Mafia members who had already been convicted of the crime of association. Id. at 48.
156. Id.
157. Id.
\end{flushleft}
surnames, it was not uncommon for prosecutors to inadvertently seize the wrong person.\(^{158}\)

These evidentiary problems were compounded by speedy preliminary trials, which generated rushed evaluations and hasty summaries of crimes.\(^{159}\) Eventually, the Justice Department acknowledged that innocent people were being erroneously accused.\(^{160}\) The Magistrate Court took note of this concern and refused to prosecute nearly a third of those indicted, of which 144 were cases of mistaken identity.\(^{161}\)

After these problems came to light in the first prosecution based on Article 416-bis, the Justice Department noticed that the reliance on circumstantial evidence was far too great. The prosecution's evidence needed to be substantiated. The Justice Department needed to produce individuals who could validate the evidence by clarifying the boundary between the uninvolved community and the criminal organization.\(^{162}\) For this reason, prosecutors increased their use of expert witnesses in the form of pentiti (collaborators from criminal organizations).\(^{163}\)

\section*{F. The Mafia's Powerful Influence over Italy's Legal System}

The Italian Mafia is distinct from other forms of criminal associations because it presents itself as a counterpart in competition with, and sometimes in substitution to, the legitimate legal system of the State.\(^{164}\) The Mafia derives tremendous counter-power directly from its constant use of intimidation and violence.\(^{165}\) Additionally, the power of the Mafia is premised upon its ability to provide advantages or privileges in a shorter period of time than would normally be necessary through legal

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158. \textit{Id.} at 49.
159. \textit{Id.} According to Italian law, the judiciary had only two months to determine the sufficiency of the evidence linking the individual to the criminal organization. \textit{Id.} at 52. In the instant case, of the 1,013 people indicted, the interrogation time for each defendant was twenty minutes (fifty-four working days of seven hours each). During this twenty-minute period, the judge had to determine whether there was adequate evidence to try the individual for a crime that carried a possible twelve-year prison sentence. \textit{Id.}
160. \textit{Id.} at 52.
161. \textit{Id.}
162. \textit{Id.} at 53.
163. \textit{Id.}
164. \textit{Enciclopedia Garzanti del Diritto, supra} note 125, at 736.
165. \textit{Id.}
channels. These factors all tend to feed the illusion that the Mafia is a legitimate alternative to the existing state government.

The Mafia is distinguished from other forms of organized crime by its use of territorial control and its penetration into the core of political, institutional, and administrative powers. In Sicily, Calabria, Puglia, and Campania, the Mafia has successfully substituted itself for the State apparatus, maintaining order and security. Consequently, if the citizenry perceives the State as ineffective in its duties, the Mafia may fortify the people's assessment that criminal organizations are stronger than legal structures.

The Italian State's tendency to maintain a peaceful coexistence with the Mafia has exacerbated the problem of organized crime. Tacit agreements often exist between Mafia leaders and heads of political parties, which may guarantee electoral votes in exchange for benefits such as curbing obstruction of Mafia activity or granting immunity to mob bosses who are accused of criminal acts. Perhaps the most significant obstacle to combating organized crime in Italy relates to the reactive, as opposed to proactive, approach that Italian legislators have taken in dealing with organized crime. The Italian legislature could initiate a more effective anti-Mafia assault by taking a proactive approach and creating a more comprehensive plan to eradicate organized crime:

The antimafia struggle in Italy which began over one hundred years ago ... has been characterized by long periods of inertia and compromise punctuated by knee-jerk reaction and frenzied activity. The result has been a Mafia-Antimafia seesaw, swinging between alternate highs and lows with long periods of equilibrium. The balance was upset when isolated individuals—the heroes of the Antimafia, endowed with unusual intuition and courage—dared to violate the truce of reciprocal tolerance. But these individuals were easily identifiable and could be eliminated, after which, following a period of reaction and reorganization on the part of the State, the balance was re-established.

166. Id. 167. Id. at 736–37. 168. Id. at 737. 169. Id. 170. JAMIESON, supra note 132, at 39.
Because of this dynamic, amending existing laws and enacting additional laws will have only limited success against the Mafia. To make real progress against the Mafia, there must be a change in the laissez-faire attitude of the Italian people. This proposition is properly summarized by Jamieson: "If the Antimafia ultimately triumphs—and the question remained open in 1999—then it will be because society as a whole wills the defeat of the Mafia, not just the few who step out of line." By exerting influence over the police force and the judiciary, the Mafia can ensure that its members enjoy continuing freedom. Thus, the Mafia has all but guaranteed its eternal presence in Italian society.

IV. CONCLUSION

RICO’s broad terminology has required the U.S. judiciary to continually construe its meaning to meet the legislature’s stated objective: destroying organized crime at its roots. Unfortunately, the Italian judiciary has not been able to consistently apply 416-bis for a number of reasons, including the continuing corruption of politicians and officials, societal tolerance of the Mafia, and the inability and inadequacy of the judiciary in developing stringent standards for interpreting the language of 416-bis.

The days of Mafia dominance in Italy will be numbered when the Italian legislature finally decides to aggressively pursue a comprehensive campaign against the Mafia. This campaign must include not only stringent laws aimed at the criminalization of Mafia membership, but also investigations of political figures who continue to demonstrate a willingness to tolerate Mafia presence. Until such time, however, Article 416-bis, unlike its U.S. counterpart, will continue to enjoy only limited success.

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171. Id.
172. ENCYCLOPEDIA GARZANTI DEL DIRITTO, supra note 125, at 737.

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