Civil RICO: Searching for the Appropriate Statute of Limitations in Actions Under Section 1964(c)

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INTRODUCTION

The Racketeer Influenced and Corrupt Organizations Act (RICO),\(^1\) title IX of the Organized Crime Control Act,\(^2\) prohibits\(^3\) a person from investing in, maintaining an interest in, or participating in an enterprise\(^4\) through a pattern of racketeering activity.\(^5\) The purpose of RICO is to eliminate the influence of organized crime\(^6\) in the American economy by providing

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3. RICO's prohibition section provides in relevant part:
   
   (a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce . . .
   
   (b) It shall be unlawful for any person through a pattern of racketeering activity . . . to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.
   
   (c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . .
   
18 U.S.C. § 1962 (1976). Subsection (d) of this section makes it a substantive RICO offense "for any person to conspire to violate any of the provisions of subsections (a), (b) or (c) of this section." Id. § 1962(d).


5. RICO defines "pattern of racketeering activity" to require "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." Id. § 1961(5).

RICO defines "racketeering activity" to include eight designated state law felonies as well as acts indictable under various sections of titles 18 and 29 of the United States Code. Id. § 1961(1).

6. "Organized crime" is a discordant term subject to imprecision in its application. RICO's definition of racketeering activity is without explicit reference to organized crime.
“enhanced sanctions and new remedies”\textsuperscript{7} to deal with racketeering activities. Violators of RICO are subject to severe criminal\textsuperscript{8} and civil sanctions.\textsuperscript{9} In addition, section 1964(c) of the statute provides a private civil cause of action for treble damages, costs and attorney’s fees to persons injured in business or property by reason of a RICO violation.\textsuperscript{10}

This innovative provision vindicates the rights of the victims of racketeering through the treble damage suit which assures injured parties full compensation.\textsuperscript{11} The enforcement of this right serves both public and private ends by encouraging the injured party to bring suit, thereby deterring criminal activity.\textsuperscript{12} In


\textsuperscript{8} 18 U.S.C. § 1963(a) (1976) provides for fines up to $25,000, imprisonment for as long as 20 years, and forfeiture of any interests in the enterprise.

\textsuperscript{9} 18 U.S.C. § 1964(a) (1976) provides for divestiture, injunctions, and dissolution of the enterprise.

\textsuperscript{10} 18 U.S.C. § 1964(c) (1976) provides:

\begin{quote}
Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the costs of the suit, including a reasonable attorney’s fee.
\end{quote}

\textsuperscript{11} In enacting the victim treble damage action, Congress was primarily concerned with “creating civil remedies for the honest businessman who has been damaged by . . . the racketeer businessman.” 115 CONG. REC. 6992, 6993 (1969) (statement of Sen. Hruska upon introduction of S. 1623, RICO’s predecessor). See infra text accompanying notes 23-26. See also Blakey & Gettings, supra note 6, at 1042, where the authors note that RICO is concerned “with compensating victims and making them whole.” A treble damage provision is a practical device designed to provide monetary relief when the legal damages proved are inadequate compensation. Trebling the damages proved provides compensation for the accumulative indeterminate harm to the injured party. See Vold, Are Threefold Damages Under the Anti-Trust Act Penal or Compensatory?, 28 Ky. L.J. 117 (1940). See also Goering, The Character of Treble Damages: Conflict Between a Hybrid Mode of Recovery and a Jurisprudence of Labels, in 1 TECHNIQUES IN THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME: MATERIALS ON RICO 428 (G.R. Blakey ed. 1980) (publication of Cornell Institute on Organized Crime).

order to effectuate RICO's remedial purpose, Congress has mandated that this Act be liberally construed.13

The proliferation of civil RICO suits has caused numerous problems regarding the interpretation and application of this broadly drafted provision.14 Among those problems is the appro-


14. The civil RICO treble damage action has invoked considerable consternation over the appropriate scope of this statute. The decisional law exposes two problems concerning what limitations, if any, should be imposed on § 1964(c) actions: (i) whether a violation of the Act requires an independent showing of organized criminal activity and (ii) what type of injury the plaintiff must allege to have standing to sue. The courts are not in agreement with regard to either the interpretation or application of this provision.


For a broad construction, see Bennett v. Berg, 710 F.2d 1361 (8th Cir. 1983) (en banc) (civil RICO actions do not require that plaintiff suffer a commercial or competitive injury, nor is RICO limited in use against organized crime); Mauriber v. Shearson/American Express, Inc., 546 F. Supp. 391, 396 (S.D.N.Y. 1982) (RICO does not require proof of organized crime); Hanna Mining Co. v. Norcen Energy Resources Ltd., 1982 FED. SEC. L. REP. (CCH) ¶ 98,742 (N.D. Ohio June 11, 1982) (RICO is not restricted in use against organized crime nor does plaintiff have to allege a competitive or racketeering enterprise injury); Hellenic Lines, Ltd. v. O’Hearn, 523 F. Supp. 244, 247-48 (S.D.N.Y. 1981) (RICO does not require that defendants be members of organized crime or that plaintiff suffer a competitive injury).


Two potential issues were resolved in United States v. Turkette, 452 U.S. 576, 580-87 (1981), where the Court held that “enterprise” as defined in § 1961(4) and used in § 1962(c) encompasses legitimate as well as illegitimate enterprises. In addition, the plaintiff must establish that the enterprise is an entity separate and apart from the pattern of racketeering activity. Id. at 583. Other unresolved issues in civil RICO treble damage actions are: the use of collateral estoppel by private plaintiffs, the burden of proof in the proceeding, and the availability of equitable relief.

For a discussion of the various interpretations and applications of civil RICO, see generally Blakey & Gettings, supra note 6, at 1037-48; Long, Treble Damages for Violations...
appropriate time limitations for suits under section 1964(c) because Congress did not prescribe a statute of limitations. The lack of a governing statute of limitations for private RICO actions gives rise to inconsistent application of the statute which diminishes its effectiveness.

This article will examine the legislative history of RICO and discuss briefly the nature and purposes of statutes of limitations. It will also analyze the federal courts' traditional practice of borrowing state time bar provisions under the RICO statute and other federal legislation. After discussing the problems engendered by the traditional practice, this article will recommend specific alternatives for a uniform approach to determine the timeliness of civil RICO actions.

BACKGROUND

Legislative History of RICO

The first legislative efforts to combat the infiltration of business enterprises by organized crime consisted of two bills introduced into the Ninetieth Congress. Senate bill 2048 (S. 2048), a proposed amendment to the Sherman Act, prohibited the invest-


15. The only temporal parameter set forth in RICO is that the "pattern of racketeering activity" must consist of at least two acts of racketeering within a ten-year period, one of which occurred after October 15, 1970. See supra note 5.

16. The national concern over the problem of criminal infiltration into businesses has been well documented. In 1951, it was disclosed that "one of the most perplexing problems in the field of organized crime is presented by the fact that criminals and racketeers are using the profits of organized crime to buy up and operate legitimate business enterprises." S. REP. No. 141, 82d Cong., 1st Sess. 33 (1951).

A national investigative commission recommended the use of regulatory measures, such as antitrust-type remedies, to combat and control organized criminal activities. PRESIDENT'S COMM. ON LAW ENFORCEMENT & ADMIN. OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 208 (1967). In response to this Task Force Report, Senator Hruska introduced Senate bills 2048 and 2049. See 113 CONG. REC. 17,999 (1967) (remarks of Sen. Hruska).

For an in-depth review of the legislative history of the entire statute, see Blakey & Gettings, supra note 6, at 1014-21; Mann, Legislative History of RICO, in 1 TECHNIQUES IN THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME: MATERIALS ON RICO 58 (G. R. Blakey ed. 1980).
ment of unreported income in any business enterprise affecting interstate or foreign commerce.\textsuperscript{17} Under this proposed amendment, a victim's treble damage suit would have been governed by the four-year antitrust statute of limitations.\textsuperscript{18} Senate bill 2049 (S. 2049), an independent proposal, included similar antitrust techniques intended to thwart organized crime's attempt to infiltrate businesses.\textsuperscript{19} S. 2049 would have provided victims a treble damage action, subject to a four-year statute of limitations.\textsuperscript{20} Both bills perished in the Senate Committee on the Judiciary.\textsuperscript{21}

In January 1969, Senate bill 30 (S. 30), the Organized Crime Control Act (OCCA),\textsuperscript{22} was introduced into the Ninety-first Congress. Shortly thereafter, Senate bill 1623 (S. 1623), the Criminal Activities Profit Act,\textsuperscript{23} was introduced in response to American Bar Association proposals and recommendations on the defunct Senate bills 2048 and 2049.\textsuperscript{24} S. 1623 consolidated many provi-

\textsuperscript{17} S. 2048, 90th Cong., 1st Sess. § 8, \textit{reprinted in} Mann, \textit{supra} note 16, at 72 n.26 (the text of the bill is not reprinted in the Congressional Record or Hearings) provided:

\begin{quote}
Every person who (1) invests directly or indirectly any intentionally unreported income derived by such person from a proprietary interest in any business enterprise in any pecuniary interest in any other business enterprise engaged in or affecting trade or commerce among the several states, with foreign nations, or within any place subject to the provisions of section 3, or (2) uses any such income to establish or operate any such other business enterprise, shall be fined not more than $50,000, or imprisoned for not more than one year or both.
\end{quote}


\textsuperscript{19} S. 2049, 90th Cong., 1st Sess. § 3, \textit{reprinted in} Mann, \textit{supra} note 16, at 73-74 n.30 (text of S. 2049 is not reprinted in the Congressional Record or Hearings) prohibited: (1) the acquisition of an interest in a business enterprise affecting interstate commerce with income derived from specified criminal activities; and (2) the agent of a corporation from authorizing or ordering the corporation to engage in any of the specified proscribed conduct.

\textsuperscript{20} "Any action under this section shall be barred unless it is commenced within four years after the cause of action accrued." S. 2049, 90th Cong., 1st Sess. § 5(c), \textit{reprinted in} Mann, \textit{supra} note 16, at 76 n.35.

\textsuperscript{21} 113 CONG. REC. 18,007 (1967).

\textsuperscript{22} S. 30, 91st Cong., 1st Sess., 115 CONG. REC. 827 (1969).


\textsuperscript{24} The Antitrust Section of the American Bar Association had studied S. 2048 and S. 2049 and endorsed the use of antitrust machinery as a weapon to combat organized criminal activity. Although supporting the objectives and principles of S. 2048 and S. 2049, the Committee recommended that an independent statute be enacted. American Bar Association Section of Antitrust Law, Report on S. 2048 and S. 2049 (1967), 115 CONG. REC. 6994-95 (1969), \textit{reprinted in} Measures Relating to Organized Crime: Hearings on S.
sions of the prior two bills, including the victim treble damage action\textsuperscript{25} and a governing four-year statute of limitations.\textsuperscript{26}

Numerous Senate hearings on S. 30 and S. 1623 resulted in the Corrupt Organizations Act, Senate bill 1861 (S. 1861).\textsuperscript{27} Although substantially broader in scope than its predecessor, S. 1861 omitted a victim treble damage remedy.\textsuperscript{28} S. 1861 was integrated into the redrafted S. 30 as title IX, the Racketeer Influenced and Corrupt Organizations Act (RICO). It was passed by the Senate\textsuperscript{29} and sent to the House.\textsuperscript{30}

The House Judiciary Committee, following ABA recommendations, drafted private treble damage actions into S. 30.\textsuperscript{31} Two bills were proposed, both paralleling the Senate versions of civil RICO, with the addition of private causes of action for treble damages. House bill 19586 (H.R. 19586)\textsuperscript{32} did not provide a civil statute of limitations. However, House bill 19215 (H.R. 19215)\textsuperscript{33} did authorize a five-year statute of limitations as well as other necessary provisions.\textsuperscript{34} In amending S. 30, the House Committee


\textsuperscript{26} “[A]ny action under this section shall be barred unless it is commenced within four years after the cause of action accrued.” S. 1623, 91st Cong., 1st Sess., § 4(c), reprinted in Hearings on S. 30 Before the Subcomm. on Crim. Laws, supra note 24, at 42.


\textsuperscript{28} See Blakey & Gettings, supra note 6, at 1017-18, where the authors explain the deletion of private civil actions as an attempt to streamline the bill, thereby avoiding complex subsidiary issues such as standing to sue, proximate causation, private injunctive relief and statutes of limitations.

\textsuperscript{29} 116 CONG. REC. 972 (1970).

\textsuperscript{30} The House referred S. 30 to the Committee on the Judiciary. 116 CONG. REC. 1103 (1970).


\textsuperscript{32} H.R. 19586, 91st Cong., 2d Sess. (1970), reprinted in Mann, supra note 16, at 95 n. 82.


\textsuperscript{34} “[A]ny civil action under this section shall be barred unless it is commenced within five years after the cause of action accrued.” Unenacted § 1964(h) as proposed by H.R. 19215, 91st Cong., 2d Sess. (1970), reprinted in Mann, supra note 16, at 97 n.87.

H.R. 19215 authorized private injunctive actions, government damage actions, government intervention in private suits and automatic tolling of private actions during
RICO's Statute of Limitations on the Judiciary adopted the less complete H.R. 19586.\textsuperscript{35} While S. 30 was on the House floor, an amendment was offered to insert a five-year statute of limitations.\textsuperscript{36} The amendment was withdrawn because of promises that "it might properly be considered by the Judiciary Committee when the Congress reconvenes following the elections or some other appropriate time."\textsuperscript{37} 

Upon passage of S. 30 in the House,\textsuperscript{38} the Senate received the bill shortly before the end of the session. Due to time constraints and the urgency to enact long awaited legislation, the Senate agreed to the House version of S. 30 without Committee consideration.\textsuperscript{39} President Nixon signed OCCA into law on October 15, 1970.\textsuperscript{40}

An amendment to title IX of the Organized Crime Control Act of 1970, Senate bill 16 (S. 16), was introduced in the Ninety-second Congress.\textsuperscript{41} S. 16 provided, inter alia, a five-year time bar on RICO civil treble damage actions.\textsuperscript{42} Upon the Judiciary Committee's recommendation,\textsuperscript{43} the Senate passed S. 16.\textsuperscript{44} The House referred S. 16 to the Committee on the Judiciary for consideration where the bill then died.\textsuperscript{45}

During the Ninety-third Congress, the Senate passed another amendment to RICO, identical in scope to S. 16.\textsuperscript{46} This bill

\begin{footnotesize}
\begin{itemize}
\item 35. 18 U.S.C. § 1964(c) (1976) was adopted as proposed by H.R. 19586, 91st Cong., 2d Sess. (1970).
\item 36. Representative Steiger offered an amendment to title IX which provided a uniform five-year limitations for private treble damage actions. 116 CONG. REc. 35,346 (1970).
\item 38. 116 CONG. REc. 35,363 (1970).
\item 39. The Senate received the amended S. 30 on October 12, twenty-nine working days before the end of the session. 116 CONG. REc. 36,280-296 (1970).
\item 40. Id. at 37,264.
\item 42. "[A]ny civil action under this section shall be barred unless it is commenced within five years after the cause of action accrued." S. 16, 92d Cong., 2d Sess. § 102(h) (1972), reprinted in S. REP. No. 1070, 92d Cong., 2d Sess. 2 (1972).
\item 43. Id. at 1.
\item 44. 118 CONG. REc. 29,379 (1972). The vote was unanimous, 81-0.
\item 45. 118 CONG. REc. 29,615 (1972).
\item 46. S. 13, 93d Cong., 1st Sess. (1973), which was passed by the Senate, was introduced
\end{itemize}
\end{footnotesize}
shared the same fate as its predecessor in the House. Although the RICO legislation as enacted did not prescribe a governing statute of limitations, a time bar is of critical importance.

General Overview of Statutes of Limitations

Consistency, fairness to litigants, and judicial economy are three compelling reasons for placing temporal limitations on rights of action. Statutes of limitations provide the certainty, predictability and finality of legal relations which in turn insure the orderly and smooth flow of commercial intercourse.

Although inherently arbitrary, these statutes assure fairness to potential defendants by relieving them of the uncertainty of contingent liability for stale claims against which defenses may no longer be available. Moreover, plaintiffs are afforded the knowledge, to a reasonable certainty, of the length of time avail-

by Senators McClellan and Hruska, as was S. 16 in the Ninety-second Congress. "[S. 13] was introduced last year as S. 16 and S. 2426." 119 CONG. REC. 10,318 (1973) (statement of Sen. McClellan).

47. 119 CONG. REC. 10,592 (1973) (S. 13 introduced and referred to committee).


49. See Gates Rubber Co. v. U.S.M. Corp., 508 F.2d 603, 611 (7th Cir. 1975) ("The interest in certainty and finality in the administration of our affairs, especially in commercial transactions, makes it desirable to terminate contingent liabilities at specific points in time."); Limitations Developments, supra note 48, at 1185 ("[T]he public policy of limitations lies in avoiding the disrupting effect that unsettled claims have on commercial intercourse.").

50. In Johnson v. Railway Express Agency, 421 U.S. 454, 463-64 (1974), the Supreme Court noted that "[a]lthough any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones."

51. Statutes of limitations assure fairness to defendants "by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded and witnesses have disappeared." Order of R.R. Telegraphers v. Railway Express Agency, 321 U.S. 342, 348-49 (1944). See also Ohio v. Peterson, Lowry, Rall, Barber & Ross, 651 F.2d 687, 694 (10th Cir. 1981) (Statutes of limitations "seek to relieve defendants of the cost and vexation of protracted litigation and the uncertainty of contingent liabilities.").
able for the vindication of their rights. Statutes of limitations relieve courts of the burden of trying stale claims and allow them to focus judicial resources on resolving current disputes. An unlimited right of action would not only deprive the legal system of the benefits which statutes of limitations provide, but also would be "utterly repugnant to the genius of our laws."

All states have limitations provisions that categorize rights of action into separate time periods. Federal rights, however, are frequently created without express congressional limitations, and the timeliness of these rights of action are not subject to a general statute of limitations. Federal courts have traditionally sought an appropriate state limitations period with which to limit a facially unlimited statutory right of action.

52. In Limitations Developments, supra note 48, at 1186, the authors noted that statutes of limitations benefit plaintiffs by the "knowledge of the time after which a suit would be futile." Time bars also provide plaintiffs with the incentive to commence their rights of action in a timely fashion. See Special Project, supra note 48, at 1018.

53. See United States v. Western Pac. R.R., 352 U.S. 59, 72 (1956) ("purpose of [statutes of limitations] is to keep stale litigation out of the courts").


55. The American colonies generally adopted the British statute of limitations and retained the concept of limitations after independence. See Special Project, supra note 48, at 1020-23; Note, Limitations Borrowing, supra note 48, at 1129.


57. In 1799, Congress enacted a five-year statute of limitations governing suits or prosecution for any penalty or forfeiture. Act of March 2, 1799, ch. 22 § 89, 1 Stat. 696. The modern counterpart of this statute, 28 U.S.C. § 2462 (1976), provides in pertinent part:

Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued . . . .

The Supreme Court has construed the term "penalty" narrowly, holding that a strictly penal law encompasses offenses committed against the public as opposed to private civil injuries. See Meeker v. Lehigh Valley R.R., 236 U.S. 412, 423 (1915).

This construction of the term "penalty" has rendered the statute inapplicable to most civil actions. See, e.g., O'Sullivan v. Felix, 233 U.S. 318, 322-23 (1914) (statute inapplicable in civil rights actions); Keen v. Mid-Continent Petroleum Corp., 58 F. Supp. 915, 919 (N.D. Iowa 1945) (statute inapplicable in actions under the Fair Labor Standards Act). For a discussion of the federal statute's inapplicability in civil antitrust actions prior to congressional limitation, see infra notes 83-85 and accompanying text.
Borrowing a State Statute of Limitations

Today, resort by federal courts to the forum state’s statutes of limitations in cases arising under federal law is largely the result of historical habit. Three rationales are generally offered to support this practice. First, omission of a statutory limitations provision manifests congressional intent to incorporate local laws. Second, fixing time bars is solely a legislative task and

58. For purposes of this discussion, that federal courts will absorb the law of the forum state is assumed. This practice is well established. See, e.g., White v. Sanders, 650 F.2d 627, 629 (5th Cir. 1981); Carothers v. Rice, 633 F.2d 7, 8 (6th Cir. 1980); Forrestal Village, Inc. v. Graham, 551 F.2d 411, 413 (D.C. Cir. 1977).

If the cause of action arises outside of the forum state, a persuasive argument can be made that federal choice of law rules should be applied to choose a state for the purposes of borrowing a statute of limitations. When state interests are nonexistent, using federal choice of law rules would effectuate uniform results in federal litigation. See Hill, State Procedural Law in Federal Nordiversity Litigation, 69 HARV. L. REV. 66, 102 n.164 (1955). For a thorough discussion of this issue in the context of civil RICO litigation, see Smith, Flanagan & Pastusynski, The Statute of Limitations in a Civil RICO Suit for Treble Damages, in 2 TECHNIQUES IN THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME: MATERIALS ON RICO 974, 998-1004 (G.R. Blakey ed. 1980). The authors conclude that with regard to this issue, it is easier and more efficient to borrow from the forum state’s time provisions.

59. The present borrowing practice originated from a misconceived premise that the Rules of Decision Act mandated the absorption of state rules on timeliness in solely federal rights of action. See 28 U.S.C. § 1652 (1976) (corresponds to Judiciary Act of 1789, ch. 20 § 34, 1 Stat. 73, 92) which provides: “The laws of the several States, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.”

The first unequivocal application of a state statute of limitations in a federal right of action was in Campbell v. Haverhill, 155 U.S. 610, 620 (1895). The Court borrowed a six-year Massachusetts statute to bar a patent infringement claim, reasoning that the state time period did “apply” to the federal cause of action within the meaning of the Rules of Decision Act.

Clearly the Rules of Decision Act applies to suits based on state rights in federal courts. However, the conclusion that the Act mandates absorption of state statutes of limitation to federal rights of action is tenuous. Commentators have criticized this interpretation of the statute. See, e.g., Special Project, supra note 48, at 1024-42; Note, A Limitation on Actions for Deprivation of Federal Rights, 68 COLUM. L. REV. 763, 769-71 (1968); Note, Limitation Borrowing, supra note 48, at 1135-36.

In recent years, the Rules of Decision Act has been abandoned as a justification for borrowing state time periods. See e.g., Johnson v. Railway Express Agency, 421 U.S. 454, 469 (1975) (Marshall, J., concurring) (“As a general practice ... the federal courts uniformly borrow the most analogous state statute of limitations.”); Holmberg v. Armbrecht, 327 U.S. 392, 395 (1945) (“The implied absorption of State statutes of limitation ... is a phase of fashioning remedial details where Congress has not spoken. ...”).

60. See, e.g., Holmberg v. Armbrecht, 327 U.S. 392, 395 (1945) (“the silence of Congress has been interpreted to mean that it is federal policy to adopt the local law of limitation.”). But see UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 709 (1966) (White, J., dis-
not an appropriate subject of judicial formulation. Finally, precedent compels courts to absorb a time provision from the available resource of state law.

Federal courts are not required to apply state rules to govern the timeliness of claims lacking congressional limitations. If the incorporation of state law would frustrate the implementation of the federal policies underlying the claim then state law would not be applied. Deviation from the traditional borrowing practice is rare, however.

sentencing) ("the silence of Congress is not to be read as automatically putting an imprimatur on state law."). See also infra text accompanying notes 171-75 for a discussion that the congressional intent of RICO is not necessarily in accord with this rationale.

61. In UAW v. Hoosier Cardinal Corp., 383 U.S. 696 (1966), the Court affirmed the district court's application of the six-year Indiana statute of limitations to a claim under the Labor Management Relations (Taft-Hartley) Act § 301, 29 U.S.C. § 185 (1976). In response to petitioner union's contention that state law should not apply to a federal right of action, Justice Stewart stated, "We are urged to devise a uniform time limitation to close the statutory gap left by Congress. But the teaching of our cases does not require so bald a form of judicial innovation." Id. at 701. But see infra note 182 and accompanying text for a discussion of this rationale's inapplicability to RICO.

62. The operation of stare decisis is evident in the borrowing practice. See, e.g., Burns v. Sullivan, 619 F.2d 99, 105 (1st Cir. 1980) ("This mandated adoption of state law . . ."); Roberts v. Magnetic Metals Co., 611 F.2d 450, 456 (3d Cir. 1979) (Sloviter, J., concurring) ("in the absence of a federal limitations period, resort must be had to the applicable state statute of limitations").

Another rationale is that borrowing state law is a practical solution to filling these time gaps. Roberts v. Magnetic Metals Co., 611 F.2d 450, 457 (3d Cir. 1979). But cf. McLain v. Magnolia Petroleum Co., 357 U.S. 221, 229 (1958) (Brennan, J., concurring) ("The state statutes were chosen by default."). For a discussion that federal rather than state law provides the appropriate borrowing source in civil RICO actions, see infra text accompanying notes 169-83.

63. In Occidental Life Ins. Co. v. EEOC, 432 U.S. 355 (1977), the EEOC brought an employment discrimination claim under title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5 (1976). Suit was filed after three years of investigation and efforts to obtain voluntary compliance. The district court held the action barred by California's one-year statute of limitations. (Cal. Civ. Proc. Code Ann. § 340(3) (West 1982)). The Supreme Court affirmed the circuit court reversal noting that the borrowed one-year limitation would frustrate the goal of equality in employment opportunities through voluntary compliance. 432 U.S. at 367-68. Justice Stewart recognized that "[s]tate legislatures do not devise their limitation periods with national interests in mind, and it is the duty of the federal courts to assure that the importation of state law will not frustrate or interfere with the implementation of national policies." Id. at 367. The Court refused to absorb any state time bar and limited the action by the doctrine of laches.

64. Generally, courts search the state's catalogue of limitations provisions, rejecting burdensome time periods and selecting one that is consonant with the underlying federal policy. See Christianson v. Pioneer Sand & Gravel Co., 681 F.2d 577, 582 (9th Cir. 1982) (court rejected application of state's six-year time period in claim arising under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1976) and absorbed the state's three-year time period as it furthered national labor policy of rapid disposition of dis-
Generally, the catalogue of state statutes of limitations contain any one or more of the following provisions: (1) liability for tort actions, (2) liability for contract actions, (3) liability created by a statute for a penalty or suit for a penalty, (4) liability created by a statute other than for a penalty or forfeiture, and (5) a "catch-all" provision for actions not specifically governed by other state limitations provisions. Typically, the federal courts will absorb the statute of limitations governing the state cause of action which is most analogous to the federal claim at issue. Fashioning the appropriate analogy turns largely on how the court determines the essential character of the federal claim. Circuits are not in agreement as to whether federal or state law governs the characterization process.

A court using the federal approach relies solely on federal law to determine the nature of the federally created cause of action. The court examines the forum's catalogue of time provi-
sions and as a matter of federal law absorbs that provision which best effectuates the federal policies underlying the claim.\textsuperscript{70}

Under the state approach, courts primarily focus upon how the courts in the forum would characterize the action. The federal court does not determine for itself the nature of the claim but rather asks "which of said statutes the [state] court would apply if it had jurisdiction of this case."\textsuperscript{71} Federal interests are of slight import and are generally subordinated to the application of the state law characterization.\textsuperscript{72}

The Supreme Court has provided little guidance in establishing a uniform characterization process. In \textit{UAW v. Hoosier Cardinal Corp.},\textsuperscript{73} the Court held that the characterization of a claim under section 301 of the Labor Management Relations Act\textsuperscript{74} is "ultimately a question of federal law" but "there is no reason to reject the characterization that state law would impose" unless it is inconsistent with federal labor policies.\textsuperscript{75} As a result of this lack of uniform guidelines, the courts remain split over whether state or federal law should control the characterization of a federal cause of action.\textsuperscript{76}

\textit{Id.} at 865-66.

\textsuperscript{70} The federal approach does not ensure a consistent methodology in the borrowing process. \textit{See infra} text accompanying notes 91-100. Rather, that approach connotes a total disregard of state law in determining the essential nature of the federal claim. \textit{See Roberts v. Magnetic Metals Co.}, 611 F.2d 450, 458-59 (3d Cir. 1979) (Sloviter, J., concurring) ("It is important to recognize that it is federal law and federal policy which is paramount, and if the federal policy leads to the state law, it is done as an application of a federal choice of law.").

\textsuperscript{71} Ingram v. Steven Robert Corp., 547 F.2d 1260, 1262 (5th Cir. 1977).

\textsuperscript{72} \textit{Id.} at 1261.

\textsuperscript{73} 383 U.S. 696 (1966).

\textsuperscript{74} 29 U.S.C. § 185 (1976).

\textsuperscript{75} 383 U.S. at 706.

\textsuperscript{76} In recent decisions, the Supreme Court has relied solely upon an evaluation of federal policy and congressional intent in characterizing a federal statutory right. \textit{See United Parcel Serv., Inc. v. Mitchell}, 451 U.S. 56, 60-61 (1981). However, because \textit{UAW}'s pronouncement that consistent state characterization may be employed has not been explicitly rejected by the Court, inconsistencies in approaches will continue to flourish within the lower courts.
A treble damage action such as civil RICO is a creature of statute and a difficult concept to characterize.\textsuperscript{77} Decisions in the federal antitrust area prior to congressional enactment of a time limitation\textsuperscript{78} exemplify the characterization problem. These decisions reveal not only the application of different time periods to the same federal right of action but also the reason underlying this result: a divergence of opinion as to whether a treble damage action is remedial in operation or is penal in nature.\textsuperscript{79} This characterization was significant because generally the forum's penalty limitations provision was substantially shorter in time than that governing tort actions or non-penalty statutory liability.\textsuperscript{80} Under the federal approach to characterization, absorption of the state penalty provision was foreclosed.\textsuperscript{81} However, courts which adopted the state approach frequently borrowed the shorter penalty limitations period.\textsuperscript{82}

Each approach found Supreme Court support in Chattanooga.\textsuperscript{77, 78} Because treble damages serve purposes of both deterrence and compensation, it is difficult to fit the concept into the framework of traditional modes of recovery. See infra text accompanying notes 79-90. For a discussion of the difficulties in labeling treble damages, see Goering, supra note 11, at 428-532.

\textsuperscript{77} See supra note 18. The Amendment's legislative history documents the confusion that resulted from borrowing state rules of timeliness to govern antitrust treble damage actions:

Even when the State whose statute of limitations is applicable has finally been ascertained, there remains still another hurdle to be overcome, namely the selection of the appropriate law of the State that governs private triple-damage proceedings. The problem is complicated in many instances by virtue of the fact that statutes of limitation must frequently be chosen from those pertaining to the ancient common-law forms of action such as trespass to persons and property, damage to property, and actions in the nature of actions on the case.

It is one of the primary purposes of this bill to put an end to the confusion and discrimination present under existing law where local statutes of limitations are made applicable to rights granted under our Federal laws. This will be accomplished by establishing a uniform statute of limitations applicable to all private treble damage actions as well as Government damage actions, of 4 years.


\textsuperscript{79} See infra notes 86-90 and accompanying text.

\textsuperscript{80} A state's provision governing suits for a penalty or forfeiture is typically a one- or two-year limitation period. See Smith, Flanagan & Pastusynski, supra note 58, at 1013, where the authors calculated that the statute of limitations decreased an average of 3.3 years in cases where the court borrowed the state penalty limitations provision (1.5 years) as compared to the alternative statute of limitations (4.8 years).

\textsuperscript{81} See infra note 86 and accompanying text.

\textsuperscript{82} See infra notes 88-90 and accompanying text.
foundry and Pipe Works v. City of Atlanta. In Chattanooga, the Court held that the federal five-year statute of limitations governing suits for penalties was not applicable to the antitrust treble damage suit. Rather, the timeliness of federal actions was "left to the local law by the silence of the Statutes of the United States." Courts which adopted the federal approach reasoned that the nature of the treble damage action was remedial, based on the Supreme Court’s refusal to apply the federal penalty provision in Chattanooga. As a matter of federal law, a state’s penalty limitation provision could not govern the timeliness of a remedial and compensatory action. In effectuating the remedial nature of the claim, the courts generally absorbed a longer period to govern the timeliness of antitrust treble damage suits.

The majority of circuits, however, adopted the state approach and frequently borrowed the penalty provision. These courts relied on the Court’s instruction to resort to local law in order to resolve the timeliness issue. In this regard, the use of the word “penalty” in a state statute could have a substantially broader meaning than the use of that word in the federal statute. If the

83. 203 U.S. 390 (1906).
84. Justice Holmes relied upon the narrow construction of the phrase “penalty or forfeiture” and, accordingly, held the federal statute inapplicable to civil antitrust actions. Id. at 397. See supra note 57.
85. Chattanooga, 203 U.S. at 397. This decision fell within the conceptual framework that the Rules of Decision Act mandated the absorption of states rules of timeliness. See supra note 59.
86. Because the Supreme Court held that the treble damage action was not a suit for a penalty within the meaning of the federal statute, it could not be characterized as such within the state’s penalty provision, regardless of that state’s interpretation of its statute. See, e.g., Norman Tobacco & Candy Co. v. Gillette Safety Razor Co., 197 F. Supp. 333, 335 (N.D. Ala. 1960) (action for treble damages under federal antitrust laws is compensatory and not in the nature of a penalty), aff’d, 295 F.2d 362 (5th Cir. 1961); Electric Theatre Co. v. Twentieth Century-Fox Film Corp., 113 F. Supp. 937, 942 (W.D. Mo. 1953) (private antitrust suit for treble damages is remedial because federal precedent holds).
88. See, e.g., Leh v. General Petroleum Corp., 330 F.2d 288, 301 (9th Cir. 1964) (court borrowed a one-year California penalty limitations provision); Baldwin v. Loew’s Inc., 312 F.2d 387, 390 (7th Cir. 1963) (court absorbed a two-year Wisconsin penalty limitation); North Carolina Theatres, Inc. v. Thompson, 277 F.2d 673, 676 (4th Cir. 1960) (court borrowed a one-year North Carolina penalty limitation); Gordon v. Loew’s Inc., 247 F.2d 451, 457 (3d Cir. 1957) (court applied a two-year New Jersey penalty statute).
89. Exemplary of the state’s approach to characterization is Gordon v. Loew’s Inc., 247 F.2d 451 (3d Cir. 1957);
statutory penalty provision was construed by the state courts to encompass treble damage actions, then the federal court applied this relatively short time period to the antitrust claim.\textsuperscript{90}

In recent years, most courts have adopted the federal approach in the characterization process.\textsuperscript{91} However, selecting the analogous state cause of action that best promotes the federal policies involved allows courts wide latitude. For example, in actions under section 10(b) of the Securities Exchange Act of 1934\textsuperscript{92} and rule 10(b)-5\textsuperscript{93} promulgated thereunder, most federal courts have chosen to analogize the claim to state securities law actions. The rationale for this analogy stems from the "commonality of purpose" and close resemblance between such federal and state actions.\textsuperscript{94}

Certain federal courts reject this method of analogy and have selected a state statute of limitations on an ad hoc basis. For example, some courts have looked at the operative facts alleged in the complaint or the type of relief sought and then analogized to a particular state cause of action.\textsuperscript{95} Another approach used has been to analyze the substantive similarities between the federal claim and a recognized state claim.\textsuperscript{96} Some courts have

\begin{center}
\underline{It must of course, be conceded that [a private antitrust treble damage suit] is not for a penalty within the meaning of the federal statute of limitations . . . But it does not follow that the law which authorizes such a suit to be brought may not be a penal statute within the meaning of the [state] statute. For "penal" and "penalty" are not words of art . . . their meaning varies with the circumstances in which they are used and takes on the meaning in each instance which the user intends.}
\end{center}

\textit{Id.} at 457.

\textsuperscript{90} This deference to each state's interpretation resulted in even greater intra-circuit disparity in time limits for the same cause of action. Compare Shapiro v. Paramount Film Distrib. Corp., 274 F.2d 743, 745 (3d Cir. 1960) (court applied a six-year Pennsylvania statute for actions on the case) with Gordon v. Loew's Inc., 247 F.2d 451, 457-58 (3d Cir. 1957) (court applied a two-year New Jersey penalty statute). For a thorough analysis of the impact of early antitrust precedent on RICO cases, see Smith, Flanagan & Pastuszenski, \textit{supra} note 58, at 1005-16.

\textsuperscript{91} See infra notes 94, 99.


\textsuperscript{93} 17 C.F.R. \textsection 240.10b-5 (1982).

\textsuperscript{94} See, e.g., Cahill v. Ernst \& Ernst, 625 F.2d 151, 155-56 (7th Cir. 1980); O'Hara v. Kovens, 625 F.2d 15, 17 (4th Cir. 1980), \textit{cert. denied}, 449 U.S. 1124 (1981); Morris v. Stifel, Nicolaus \& Co., 600 F.2d 139, 142-45 (8th Cir. 1979); Forrestal Village, Inc. v. Graham, 551 F.2d 411, 414 (D.C. Cir. 1977).

\textsuperscript{95} See, e.g., Carothers v. Rice, 633 F.2d 7, 10 (6th Cir. 1980) (inquiry was whether the plaintiff could bring his federal securities claim under state common law or blue sky law); Roberts v. Magnetic Metals Co., 611 F.2d 450, 452 (3d Cir. 1979) (court looked to the allegations in the complaint to determine the analogous state cause of action).

\textsuperscript{96} See Wood v. Combustion Eng'r, Inc., 643 F.2d 339, 345 (5th Cir. 1981) (the [state] general fraud statute bears a closer substantive resemblance to 10(b)-5).
limited their inquiry solely to which state statute of limitations, independent of substantive similarities, best effectuates the federal policies in the securities area at issue.97

Cases in which a federal court borrowed a state statute of limitations to govern the timeliness of federal civil rights actions98 have also produced confusing results. Although the majority of circuits have consistently looked to federal law to determine the nature of a civil rights cause of action,99 they have been less consistent in choosing the appropriate state analogy.100 In contrast to an ad hoc method of selection, the Seventh and Ninth Circuits have uniformly applied the forum's statutory liability limitation, or when unavailable, the "catch-all" provision.101 This method recognizes that federal civil rights actions are not analogous to state causes of action.102

97. Courts which have adopted this method of analogy generally observe that the broad remedial purposes of the federal securities acts are best served by longer, not shorter, statutes of limitations. See IDS Progressive Fund, Inc. v. First of Mich. Corp., 533 F.2d 340, 343-44 (6th Cir. 1976). See also Nickels v. Koehler Management Corp., 541 F.2d 611, 618 (6th Cir. 1976), where the court concluded that federal policy would be best served by the continued application of the same limitations provision.

The Third Circuit's decision in Roberts v. Magnetic Metals Co., 611 F.2d 450 (3d Cir. 1979), revealed this pervasive lack of a firm consensus as to the proper method of selecting the relevant limitations provision that should apply to a federal right of action. There, members of the same panel proposed three divergent methods of analysis.


99. See, e.g., Kilgore v. City of Mansfield, 679 F.2d 632, 633-34 (6th Cir. 1982); Garmon v. Foust, 668 F.2d 400, 402-06 (8th Cir. 1982), cert. denied, 102 S. Ct. 2283 (1982); Pauk v. Board of Trustees, 654 F.2d 856, 861-66 (2d Cir. 1981); Johnson v. Davis, 582 F.2d 1316, 1318-19 (4th Cir. 1978); Beard v. Robinson, 563 F.2d 331, 334-38 (7th Cir. 1977); Shouse v. Pierce County, 559 F.2d 1142, 1146-47 (9th Cir. 1977).


101. See, e.g., Beard v. Robinson, 563 F.2d 331, 334-38 (7th Cir. 1977) (as a matter of federal law, a § 1981 claim was "fundamentally different" from common law tort; the statutory liability period was the most analogous); Shouse v. Pierce County, 559 F.2d 1142, 1146-47 (9th Cir. 1977) (Ninth Circuit, as a matter of federal law, borrows state statutory liability period; if unavailable it applies "catch-all" limitations period).

Recently, the Eighth Circuit also adopted this approach. See Garmon v. Foust, 668 F.2d 400, 402-05 (8th Cir. 1982), cert. denied, 102 S. Ct. 2283 (1982). Accord Roach v. Owen, 689 F.2d 146, 147 (8th Cir. 1982) (state's general statute of limitations applied to civil rights action).

102. Since courts refuse to analogize the federal claim to state causes of action on a case-by-case basis, characterization of the federal claim is unnecessary. Rather, it is recognized that the underlying federal policies and purposes of the claim are independent of, and fundamentally different than common law actions. See Beard v. Robinson, 563 F.2d 331, 337 (7th Cir. 1977) (federal claim "creates rights and impose[s] obligations different from any which would exist at common law in the absence of statute" (quoting Smith v. Cremins, 308 F.2d 187, 190 (9th Cir. 1962)).
EMERGING INCONSISTENCIES IN TIME LIMITATIONS IN CIVIL RICO ACTIONS

Relatively few cases have addressed the issue of which statute of limitations applies in private treble damage RICO actions. The first case to consider the applicable statute of limitations in a civil RICO suit was Ingram Corp. v. J. Ray McDermott & Co. In Ingram, an action was brought in 1979 by a marine contractor against its competitors alleging, inter alia, that the defendants had engaged in a worldwide bid rigging conspiracy between 1964 and 1971. The plaintiff contended that the defendants had conspired to drive it out of the marine construction business through the submission of artificially high bids in those areas where the plaintiff could not compete, but in places where it could compete, defendants submitted intentionally low bids. In November of 1971, the plaintiff withdrew from the industry and sold its assets to one of the defendants.

The plaintiff alleged that the defendants had defrauded purchasers by submitting artificially contrived bids in violation of RICO. The asserted “pattern of racketeering activity” was the defendants’ continued use of the mails and wires during the period 1964 to 1971 to execute the fraudulent scheme. The proceeds of that fraud were alleged to have been used by the defendants in their business enterprises.

The court disposed of the statute of limitations question in a footnote: “The RICO statute does not specify a limitations period, and therefore, the analogous one-year [state limitations] period applies. This one-year period also applies to the state antitrust claims.” Although the plaintiff had not filed its

103. Rapid increases in litigation under RICO is resulting in new decisions in this area on a frequent basis.
105. Id. at 1322-23.
106. Id. at 1323.
110. Ingram, 495 F. Supp. at 1324 n.4.
111. The district court applied LA. CIV. CODE ANN. art. 3536 (West Supp. 1981) which provides in pertinent part: “The following actions are also prescribed by one year: [t]hat for injurious words, whether verbal or written, and that for damages . . . resulting from
action within one year, defendants' motion for summary judgment was denied to provide the plaintiff with an opportunity to prove that defendants had fraudulently concealed the cause of action.112

Correspondingly, the court in the Northern District of Georgia in Delta Coal Program v. Libman,113 briefly considered what limitations period governs a civil RICO claim.114 The court looked to state law and reasoned that the Georgia RICO statute115 embodied the most analogous state cause of action. In a footnote, the court stated that “the five year Georgia [RICO] statute seems to apply.”116

In Willcutts v. Jefferson Trust & Savings Bank,117 the plaintiffs brought a civil RICO action in 1981, claiming that the defendant bank had misrepresented lending rates, and in violation of RICO, had conducted its activities through the use of the mails. The plaintiffs had agreed in 1975 to borrow from the bank at the misrepresented rate and claimed they were injured as a result.

offenses or quasi offenses.”

The Louisiana Supreme Court in Loew’s Inc. v. Don George, Inc., 237 La. 132, 110 So. 2d 553 (1959), held the limitations provision applicable to state antitrust claims. The court characterized the treble damage action as sounding in tort and applied the one-year time bar. 110 So. 2d at 554-60.


The federal doctrine of fraudulent concealment has been applied to toll a borrowed limitations period in private treble damage actions under RICO. See Engl v. Berg, 511 F. Supp. 1146, 1151-52 (E.D. Pa. 1981); see also infra text accompanying note 120. A thorough discussion of this doctrine is beyond the scope of this article. For further information, see Collins, The Federal Doctrine of Fraudulent Concealment, in 2 TECHNIQUES IN THE INVESTIGATION AND PROSECUTION OF ORGANIZED CRIME: MATERIALS ON RICO 1096 (G.R. Blakey ed. 1980).


114. The court addressed the timeliness issue in light of the original plaintiff’s motion for substitution of the proper party. Id. at 690.

115. In 1980, the Georgia legislature enacted that State’s Racketeer Influenced and Corrupt Organizations Act, which is substantially similar to the federal statute. GA. CODE ANN. § 26-3401 to -3414 (Supp. 1982). Section 26-3406(c) provides a private civil cause of action for treble damages, costs and attorney’s fees to any person injured by reason of a state RICO violation. Pursuant to § 26-3407, both criminal and civil RICO actions are governed by a five-year statute of limitations.


117. No. 81-1153 (C.D. Ill. Apr. 21, 1982) (order denying defendant’s motion to dismiss).
For purposes of borrowing a state statute of limitations, the court analogized the RICO claim to common law actions for fraud and tortious misrepresentation.\textsuperscript{118} The court adopted the five-year limitations provision which the Illinois Supreme Court held to be applicable to actions for fraud and deceit.\textsuperscript{119} The action was not time barred due to the defendant's continuing pattern of wrongful conduct constituting the fraud.\textsuperscript{120}

In \textit{Prudential Lines, Inc. v. McKeon},\textsuperscript{121} the plaintiff filed a RICO treble damage suit in 1980 claiming that the defendant had engaged in a scheme of kickbacks with plaintiff's employee. The plaintiff alleged that the defendant and plaintiff's employee fraudulently induced the plaintiff to enter into a ten-year lease agreement in 1974 causing it to suffer financial loss. The defendant contended that the action was barred pursuant to the state's three-year statutory penalty limitations provision. Without articulating its rationale, the court held that the nearest analogous state cause of action was one for fraud, governed by a six-year limitations and, accordingly, the claim was not barred.\textsuperscript{122}

A different approach was taken in \textit{State Farm Fire & Casualty Co. v. Estate of Caton}.\textsuperscript{123} There, the insurer brought a RICO treble damage action in 1981, claiming that it had been a victim of a fraudulent settlement claim in conjunction with arson of a residence in 1976.\textsuperscript{124} In discussing what temporal limitations should be placed upon an otherwise unlimited federal right, the court acknowledged the general practice of applying a local time period.\textsuperscript{125} The court noted, however, that in treble damage actions under RICO "the better approach would seem to be to apply the nearest analogous federal statute because it would

\begin{itemize}
\item \textsuperscript{118} \textit{Id.}
\item \textsuperscript{119} The district court borrowed ILL. REV. STAT. ch. 83, ¶ 13, § 15 (1979), which provides in pertinent part: "[A]ll civil actions not otherwise provided for, shall be commenced within five years next after the cause of action accrued."
\item The Illinois Supreme Court in Chicago Park Dist. v. Kenroy, Inc., 78 Ill. 2d 555, 560-61, 402 N.E.2d 181, 184 (1980), held the statute applicable to actions for fraud and deceit and to actions for tortious misrepresentations.
\item \textsuperscript{120} \textit{See supra} note 112.
\item \textsuperscript{121} No. 80-5853 (S.D.N.Y. Apr. 21, 1982) (available on LEXIS, Genfed library, Dist file).
\item \textsuperscript{122} The district court applied N.Y.C.P. LAW § 213 (McKinney 1982) which provides a six-year limitation for actions based on fraud and actions not otherwise provided for.
\item \textsuperscript{123} 540 F. Supp. 673 (N.D. Ind. 1982).
\item \textsuperscript{124} \textit{Id.} at 674-75.
\item \textsuperscript{125} \textit{Id.} at 683.
\end{itemize}
promote predictability and uniformity." Moreover, borrowing a federal, as opposed to a state, statute of limitations would foster the remedial purposes of RICO by not burdening such suits with an "unworkable body of law on the question of which state statute of limitations to apply."

Two barriers stood in the way of the court's borrowing the nearest analogous federal statute of limitations to govern the timeliness of civil RICO treble damage actions. First, the district court interpreted the Supreme Court's holding in *Occidental Life Insurance Co. v. EEOC*, as standing for the proposition that deviation from the practice of borrowing state time periods is appropriate only if those time provisions are inconsistent with the policies underlying the federal cause of action. Second, the court concluded that Congress intended the federal judiciary to integrate state law by its failure to provide a time limitation for civil RICO actions.

Relying upon early antitrust precedent, the defendant contended that the claim was barred under the two-year state limitations provision governing statutory penalties. In rejecting this contention, the court adopted the federal approach to characterize the civil RICO claim. The court noted that RICO is remedial rather than penal in nature. The purpose of the statute is to provide liquidated damages to injured private plaintiffs and encourage victims to bring suit to redress violations of the statute. The state's six-year fraud limitations best effectuated these objectives, and, accordingly, the court borrowed it.

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126. Id. at 684.
127. Id.
128. The court failed to mention what federal statute of limitations would be most nearly analogous to this private RICO action.
131. Id. Noting that Congress had numerous opportunities to include a statute of limitations, the court relied upon the rationale that congressional silence manifests an intent to absorb local law. See supra note 60 and accompanying text. For a discussion that this rationale is not necessarily in accord with the legislative intent of RICO, see infra text accompanying notes 171-75.
132. Section 34-1-2-2 of the Indiana Code prescribes a two-year time bar for suits based upon a statutory forfeiture or penalty. In *Sandidge v. Rogers*, 167 F. Supp. 553, 566 (S.D. Ind. 1958), the court held that the antitrust treble damage claim was penal in nature and governed by the two-year statutory penalty provision. Also, the Indiana antitrust statute labels the treble damage action as a "penalty." *Ind. Code § 24-1-2-7* (1975).
134. The court noted that application of a two-year limitations provision would bar
The plaintiff in *Diorio v. Adonizio* filed suit in 1982, seeking to recover RICO treble damages resulting from defendants' allegedly fraudulent transactions. Mail and wire fraud constituted the pattern of racketeering activity. The alleged fraudulent scheme was discovered by the plaintiff in 1979.

The defendants contended that the action was barred by the forum state's one-year limitation imposed on statutory actions for a civil penalty or forfeiture. The court found this state law analogue inappropriate, notwithstanding RICO's treble damage provision. Alternatively, the defendants urged the court to borrow the two-year time period applicable to the initiation of a prosecution under the Pennsylvania Corrupt Organizations Act. Despite a resemblance to federal RICO, the state statute did not create an express private right of action for damages. The court refused to apply the state criminal statute of limitations to the federal civil action.

The court determined that a common law fraud action was most similar to civil RICO because "the jurisdictional underpinnings of this case require pleading and proof of federal mail and wire fraud, both of which depend upon the existence of a scheme . . . to defraud." The action was held timely under the state's many prospective RICO claims. This is because a civil RICO action "may not be brought to light until after a criminal investigation." *Id.* at 685. See also infra note 158.

A civil action subsequent to criminal prosecution raises the issue of the use of collateral estoppel in RICO treble damage actions. See Anderson v. Janovich, 543 F. Supp. 1124, 1127-32 (W.D. Wash. 1982). See also Blakey & Gettings, * supra* note 6, at 1044-46.

The defendants in the case included various business entities and individual shareholders and partners of those enterprises. The plaintiff was also a shareholder and partner in certain defendant business entities. *Id.* at 224.

The district court determined that the alleged fraud was essentially predicated on the individual defendants' breach of fiduciary duty. *Id.* at 228. On the face of the complaint it did not appear that the defendants' use of the mails or wires was directed to the plaintiff. The court concluded, however, that in the absence of a record, a sufficient pattern of racketeering activity had been alleged. *Id.* at 229.

42 PA. CONST. STAT. ANN. § 5523 (Purdon 1981) provides that a statutory action for a civil penalty or forfeiture must be commenced within one year.


The court noted that even if the state statute was construed to include a private right of action, it would still refuse to borrow a criminal time bar. *Diorio*, 554 F. Supp. at 232. But see infra notes 170-83 and accompanying text.

*Id.* at 232.
six-year fraud statute of limitations.142

Two cases have addressed the issue of the appropriate statute of limitations in a civil RICO action predicated on securities fraud as well as mail and wire fraud. Both decisions borrowed the time period applicable to the most similar state cause of action. The courts differed, however, as to RICO’s most analogous state right of action.

In Gilbert v. Bagley,143 a reorganization trustee and shareholders of a corporation filed a complaint in 1978 alleging that the defendants, certain former directors and officers of the corporation and others, violated federal securities laws.144 The plaintiffs amended their pleadings in 1981, adding a RICO cause of action145 that related back to the date of the original complaint.146

Faced with the defense of statute of limitations, the court adopted the federal characterization process to determine the essential character of the RICO claim.147 The plaintiffs argued that the essence of the RICO action was fraud and, accordingly, the state’s three-year fraud limitations period should apply.148 The court noted that the allegations of mail and wire fraud in the complaint were merely perfunctory. Rather, the essence of

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143. [Current] FED. SEC. L. REP. (CCH) ¶ 99,483 (M.D. N.C. Sept. 17, 1982).
144. The alleged course of conduct violating section 10(b) of The Securities Exchange Act of 1934 and Rule 10(b)-5 promulgated thereunder, included a manipulative scheme to affect the market price of the company’s stock and material misrepresentations made by the defendants. Id. at 96,792-93.
145. The plaintiffs charged that the pattern of racketeering activity consisted of “at least two offenses involving fraud in the sale of securities or acts indictable under sections . . . 1341, 1343 . . . of Title 18 of the U.S. Code, within ten years of one another, in violation of 18 U.S.C. § 1962(c).” Id. at 96,793. (emphasis added)
146. The district court concluded that pursuant to FED. R. CIV. P. 15(c) the RICO claim related back to the date of the original complaint because it arose out of the facts alleged therein. Id. at 96,795.
147. See supra text accompanying notes 69-70. The defendants contended that the court should look to state law to determine the essential character of the RICO claim. Id. at 96,796. Because of the treble damage remedy, application of the state characterization process would have rendered the RICO action most closely analogous to a statutory action for a penalty, governed by a one-year limitation period. Id. The court rejected the state characterization method for two reasons. First, the application of the state’s short penalty limitations would bar potential RICO plaintiffs before they even know of the claim. Second, notions of comity do not exist with regard to characterizing a federal RICO claim. Id. For a thorough discussion of the state characterization process, see supra text accompanying notes 71-72.
the RICO action was stock fraud and the state securities laws, governed by a two-year limitations period, provided the analogous state cause of action. To determine when the cause of action arose, the court looked to federal law. In light of the plaintiffs' 1978 discovery of the stock fraud, the action was not time barred.

In Eisenberg v. Gagnon, purchasers of limited partnership shares brought suit charging the defendants with violations of the federal securities laws and RICO. The court refused to borrow the three-year statute of limitations set forth in the state's Blue Sky laws. Rather, the state's six-year fraud limitations period was borrowed by the court.

Although the RICO count was based on securities, mail and wire fraud, the court reasoned that the RICO action would be sustained solely by proof of the mail and wire fraud allegations. To effectuate the remedial purposes of the federal legislation, the court applied the state's longer fraud limitations period. The court declined to rule on the timeliness issue at that juncture in the litigation, directing the parties to proceed with discovery on the question of when the cause of action arose.

Lack of uniformity in time periods applied to the same statutory right of action by federal courts in different states is emerging in civil RICO litigation. These cases exhibit a five year disparity in time limitations. As the disparity becomes apparent, litigants are faced with a situation opposite to the certainty promised by uniform statutes of limitations.

149. An injured party must bring an action under the North Carolina Securities Act within two years of the sale or contract of sale for securities. N.C. GEN. STAT. § 78A-56(f) (Supp. 1981).
151. 70 PA. CONS. STAT. ANN § 1-504 (Purdon Supp. 1983) prescribes a three-year time bar in state securities law actions. In actions under 10(b)-5, courts in the Third Circuit will borrow the Blue Sky limitations period only when the federal action could have been brought pursuant to the state statute. The Pennsylvania Securities Act grants a right of action to a buyer only against his seller. Eisenberg, 564 F. Supp. at 1357.
152. See supra note 142.
153. The plaintiffs alleged that the defendants "knowingly and willfully transmitted and caused to be transmitted through the mails numerous materials . . . in furtherance of their scheme to defraud in violation of 18 U.S.C. § 1343." 564 F. Supp. at 1351. Similarly, a charge of wire fraud was also set forth in the complaint. Id. Compare these allegations with plaintiffs' complaint in Gilbert v. Bagley, [Current] FED. SEC. L. REP. (CCH) ¶ 99,483 (M.D. N.C. Sept. 17, 1982) set forth in pertinent part supra note 145.
154. For purposes of resolving the timeliness issue, the district court also relied upon the decision in D'iorio v. Adonizio, 554 F. Supp. 222 (M.D. Pa. 1982). See supra text
ANALYSIS

Difficulties in Borrowing a State Time Bar in Civil RICO Actions

The general rule of absorbing state time bars for federal claims without limitations provisions is more easily stated than applied. The pattern of racketeering activity, which is the core of the RICO violation, encompasses a vast array of state and federal offenses. Because the gist of the RICO claim is often so complex, it does not lend itself to a state law analogy for the purpose of borrowing a statute of limitations. The difficulty in characterizing a treble damage action constitutes an additional problem in this area. Borrowing state law in civil RICO actions may result in the same problems that existed in early antitrust cases.

accompanying notes 135-142. The court expressed some doubt as to whether the six-year limitations period still applies to common law fraud actions in light of an amendment to the state legislation. 564 F. Supp. 1357. 42 PA. CONS. STAT. ANN. § 5524(3) (Purdon 1981) prescribes a two-year statute of limitations in any action for injury to personal property. Because the Court of Appeals for the Third Circuit has not applied the two-year limitations in fraud actions, the district court adopted the longer time period. 564 F. Supp. at 1358.

155. See supra note 5.

156. RICO claims can involve any number of the incorporated eight state and twenty-four federal crimes occurring in numerous different factual settings. To find a state law equivalent for purposes of time limitations, courts may look to any or all of the following factors: the facts of the particular case, the nature of the rights and duties created by the statute and the underlying federal policies. See Special Project, supra note 48, at 1066. Each state offers a vast catalogue of limitations provisions, all of which vary in length. A single RICO claim, for instance, can reasonably sound in tort, contract, and common law fraud. For a discussion of the numerous analogies to state law which one RICO claim can support, see Smith, Flanagan & Pastusyenski, supra note 58, at 1035-52.

157. See supra text accompanying notes 79-90.

158. In light of the doctrine that state characterization of a federal claim may be appropriate, a relatively short penalty provision could conceivably be borrowed. See supra text accompanying notes 73-76. But characterizing a civil RICO treble damage action as a penalty for the purpose of borrowing a time limitation would be inappropriate. Admittedly, it is theoretically difficult to separate compensation and deterrence as objects of treble damage awards. The statutory concept cannot be pigeon-holed into the traditional framework of recovery. See supra note 77.

Because a federal statutory right is defined and limited by characterization, federal policy and congressional intent must be analyzed. United Parcel Serv., Inc. v. Mitchell, 451 U.S. 56, 60-61 (1981) (borrowing requires an examination of federal policies involved). Congress has mandated that RICO be liberally construed to effectuate its remedial purposes. See supra note 13. Characterizing the treble damage award as a penalty is, therefore, counter to this expressed intent. Moreover, application of a short penalty limitations would, in many instances, frustrate the injured party's right to a remedy because his RICO claim may not surface until after a long process of criminal investigation. See Smith, Flanagan & Pastusyenski, supra note 58, at 1028-29 (the authors conclude that borrowing a state's penalty limitations provision would defeat the compensatory as well
As the volume of private RICO litigation increases, federal courts will be forced to consider the numerous time provisions in the fifty states. Searching for an appropriate state statute of limitations places a burden on judicial administration and produces inter- and intra-circuit inconsistency. This inconsistency results in uncertainty which restricts the litigants' ability to properly evaluate the viability of a potential federal claim.

The potential RICO defendant's exposure to substantial, contingent liability should clearly be limited to a reasonably certain time frame. Correspondingly, to effectuate the statute's remedial purpose, a private plaintiff must also know how long he has to enforce his right. Deterrence of the proscribed conduct on a national basis will not be effectively achieved through the incorporation of varying state rules of timeliness in civil RICO actions. In order for RICO to operate as truly national legislation to protect society from racketeer-influenced activities, it must be applied and enforced uniformly. To do less severely detracts from the ultimate effectiveness of this comprehensive national legislation.

159. The current practice of analogizing a federal statutory right to a state cause of action is subject to varying interpretations and applications. Borrowing the appropriate state law has truly become a "litigation-creating complexity." UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 713 (1966) (White, J., dissenting). Inconsistency in approaches encourages appeals by both plaintiffs and defendants. See generally Special Project, supra note 48, at 1075 ("[J]udicial inconsistency encourages litigants to appeal in the hope that the appellate court will analogize differently.").

160. See supra text accompanying notes 95-100.

161. The uncertainty produced by the inconsistency in methods and rationales for state borrowing impairs the ability of litigants to know what state time period will apply. See generally Special Project, supra note 48, at 1065; Note, Limitations in Federal Civil Rights Litigation, supra note 48, at 98-102.

162. See supra note 51.

163. See Ingram v. Steven Robert Corp., 547 F.2d 1260, 1263 (5th Cir. 1977) ("uncertainty . . . affords inadequate notice to potential plaintiffs."). Despite the lure of treble damages, uncertainty as to applicable time limitations as well as expense and unknown results may lead a potential plaintiff to decide not to enforce his right of action. See Special Project, supra note 48, at 1078-79.

164. RICO is concerned with the remedies for the proscribed criminal conduct. Blakey & Gettings, supra note 6, at 1042. The civil remedies were also intended to "[s]trike a mortal blow against the property interests of organized crime." 116 Cong. Rec. 602 (1970) (statement of Sen. Hruska). Because the search for a state time limit involves a consideration of numerous variables and produces varying results, remedies will not be applied on a uniform basis. See supra note 156. The award of treble damages to RICO victims and the impact on RICO defendants should not turn on whether a state's time limitations are sufficiently generous to effectuate these remedial policies.

165. The Senate Judiciary Committee emphasized that RICO's civil remedies serve to protect the public against parties engaging in conduct detrimental to the public interest. See S. Rsp. No. 617, 91st Cong., 1st Sess. 81 (1969).
PROPOSALS FOR A CONSISTENT AND UNIFORM APPROACH

Legislative Action

The simplest and most practical solution to the emerging temporal disparity in civil RICO litigation would be a statutory amendment fixing a definite limitations period. The practice of borrowing state rules of timeliness in solely federal rights of action has been criticized both by courts and commentators. Yet, Congress has failed to enact uniform limitations periods for numerous federal rights of action. Moreover, congressional action, although the preferable means to deal with this problem, lags behind the judicial process. Unless and until Congress acts another consistent approach must be fashioned.

Borrowing a Federal Statute of Limitations

Borrowing a federal statute of limitations provides an immediate and final judicial solution to the problem. A logical

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166. For example, in Ingram v. Steven Robert Corp., 547 F.2d 1260, 1263 (5th Cir. 1977), the Fifth Circuit described the problem:
   It borders on the solecistic to legislate a federal cause of action cognizable in federal courts, but migrate to the states for a time limitation based on state law. Not only might the variations in limitations provisions among the states encourage forum shopping, but the stricture that federal courts choose among various state statutes engenders the confusion that often results when a federal court wanders about in alien state territory.
See also supra note 48 for numerous commentaries which have documented this confusion.
167. See supra note 56.
168. For well over 40 years, courts wrestled with the problem of applying an appropriate time limit in antitrust treble damage actions. See supra text accompanying notes 79-90. Congress enacted legislation in 1955, six years after the first bill was introduced proposing a uniform statute of limitations. See Fulda & Klemme, The Statute of Limitations in Antitrust Litigation, 16 OHIO ST. L.J. 233, 235 (1955).
169. See Blakey & Gettings, supra note 6, at 1047; Smith, Flanagan & Pastusynski, supra note 58, at 1034. Both commentaries conclude that the best approach to the timeliness issue would be to apply the most analogous federal statute of limitations. However, neither analysis suggests what federal limitations period should be borrowed. Without specifying an applicable federal time period, the same difficulties apparent in the current practice would exist. There are many federal rights with limitations periods which can be analogized to a complex RICO claim. See Special Project, supra note 48, at 1081 n.327, where the authors consider generally an analogy to other federal rights of action for purposes of borrowing a time limit:
   The use of federal periods would enhance intra-circuit consistency, because the length of a period would not vary from state to state within a circuit. However, unpredictability would still be possible because a circuit could find different federal periods applicable in different cases involving the same right.
choice would be the absorption of the federal five-year statute of limitations governing the prosecution of non-capital offenses.\textsuperscript{170} Two considerations support this approach.

First, the rationale that Congress by its silence intended the incorporation of state law\textsuperscript{171} finds little support in RICO’s legislative history. To a great extent, this statute’s history manifests a legislative intent that a uniform time limitation be applied in civil RICO litigation.\textsuperscript{172} It is evident that the Senate wanted a uniform statute of limitations for victim treble damage actions under RICO.\textsuperscript{173} The failure of the House to pass this provision may well have been the result of political pressures.\textsuperscript{174} While the legislation was on the House floor, it was being advanced under an informal agreement among Judiciary Committee members to oppose all amendments.\textsuperscript{175} Although the silence of Congress has been construed as manifestation of intent to rely on the various state statutes of limitations, here, it is as valid to construe congressional silence as a result of political considerations, oversight or neglect.

Second, section 1964(c) is part of an integrated comprehensive statute, the declared purpose of which is to “provide enhanced sanctions and new remedies” to deal with the unlawful activities of organized crime.\textsuperscript{176} These civil remedies, although primarily a compensatory device for injured parties, are also weapons in an arsenal attacking the influence of racketeering activity in the

\textsuperscript{170} 18 U.S.C. § 3282 (1976) provides in pertinent part: “Except as otherwise provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found . . . within five years after such offense shall have been committed.” The timeliness of criminal RICO prosecutions is governed by this five-year limitation. See, e.g., United States v. Bethea, 672 F.2d 407, 419 (5th Cir. 1982); United States v. Davis, 576 F.2d 1065, 1066-67 (3d Cir. 1978).

\textsuperscript{171} See supra note 60.

\textsuperscript{172} See supra text accompanying notes 16-47.

\textsuperscript{173} See supra text accompanying notes 38-47. Some members of the House were also concerned with enacting a uniform statute of limitations for civil RICO actions. See supra text accompanying notes 36-37.

\textsuperscript{174} In Smith, Flanagan & Pastusyenski, supra note 58, at 988, the authors conclude that the failure of the House of Representatives to include a limitations provision for RICO civil actions was “more [than] likely . . . the result of political tensions and maneuvering.” In light of the fact that the Senate and some representatives wanted a uniform statute of limitations, “one can only conjecture that the House Committee on the Judiciary felt these outside proposals to be infringements on its domain, therefore, refusing to give them proper consideration.”

\textsuperscript{175} See Blakey & Gettings, supra note 6, at 1020 n.67.

American economy.  

RICO's proscribed conduct is not only defined by criminal statutes but is sanctioned both by criminal and civil remedies. In light of this framework, applying the five-year statute of limitations governing the criminal prosecution of RICO violations to private suits for the same violation is logical. This is not to suggest that the victim treble damage action should be characterized as criminal in nature since clearly it is not. If the treble damage remedy is to aid in the deterrence of the proscribed conduct by inflicting financial injury upon violators, a uniform and


178. See supra notes 5, 8.

179. In United States v. Cappetto, 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975), the government brought a civil action for injunction and divestiture under RICO § 1964(a). The court stated that "a civil proceeding . . . is not rendered criminal in character by the fact that the acts also are punishable as crimes." Id. at 1357.

In this same vein, borrowing the federal five-year statute would not render the civil right of action criminal or penal in nature. Unlike criminal proceedings, the private RICO action is primarily concerned with compensating the victim of racketeering and not punishing the wrongdoer. See supra note 11. This de novo and strictly federal approach does not require explicit characterization of the RICO claim within the framework of possible common law analogues. Rather, courts in seeking to further the statute's stated goals of compensation for victims and deterrence of the proscribed conduct would consistently adopt the five-year time period which governs criminal prosecutions under RICO, without engaging in the traditional borrowing analysis. See supra text accompanying notes 66-100.

This approach is also consistent with the acknowledged rationales underlying both criminal and civil statutes of limitations. See supra text accompanying notes 48-54. In Bache Halsey Stuart Shields, Inc. v. Tracy Collins Bank and Trust Co., 558 F. Supp. 1042 (D. Utah 1983), the court illustrated the dramatic effect of section 1964(c) by contrasting the timeliness of the civil action with the timeliness of a criminal prosecution for violation of a predicate offense. The court recognized that the federal five-year criminal statute of limitations "is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time." Id. at 1046 (quoting Toussie v. United States, 397 U.S. 112, 114 (1970)). The court expressed its concern with civil RICO as follows:

If the basic facts are obscured for the purposes of defending a criminal action with its demanding burden of proof on the prosecutor, they are equally nebulous for purposes of defending against a treble damage action in which the plaintiff need show only that it is more likely than not that the actor probably violated the criminal statute in question.

558. F. Supp. at 1046. In light of the purposes of statutes of limitations, this analysis by the court in Bache Halsey supports application of the express five-year time bar in the treble damage action.
predictable approach by the judiciary to the statutory right of action is necessary.  

The Supreme Court has recognized that when two analogous federal statutory rights of action exist, one with congressional limitation and the other without, reference to the former for purposes of limiting the latter is appropriate. Absorption of a federal, as opposed to a state law of timeliness, should not be characterized as a "bald form of judicial innovation." Rather, such absorption is a realistic attempt to further the ultimate purposes of the legislation by turning to federal law to "fashion remedial details where Congress has not spoken." Such a resolution is certainly preferable to the currently prevalent, and at times arbitrary search for a state statute of limitations.

Consistent Selection of State Statutes of Limitations

The absorption of state statutes of limitations to federal claims is perhaps compelled by stare decisis. If resort to state law in

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180. See supra text accompanying notes 159-65.

181. See McAllister v. Magnolia Petroleum Co., 357 U.S. 221 (1958), where the petitioner seaman sought damages under the Jones Act, 46 U.S.C. § 688 (1976), and under general maritime law for unseaworthiness of his employer's vessel. In reversing the Texas Court of Civil Appeals, the Supreme Court held principles of res judicata counseled the absorption of the three-year federal statute of limitations instead of the state two-year limitation for personal injury actions. 357 U.S. at 224-25.

See also United Parcel Serv., Inc. v. Mitchell, 451 U.S. 56, 60 n.2 (1981) (option to borrow a federal statute of limitations that governs a cause of action similar to that at issue not foreclosed).

182. UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 701 (1966). See supra note 61. Fashioning a uniform limitations period was dismissed as a "bald form of innovation" because the need for uniformity in labor disputes arose during pre-trial settlement procedures, and not in subsequent litigation when those procedures have failed. Id. at 702.

Such is not the case in civil RICO litigation. The victim of racketeering crime, as a practical matter, has available only his right of action under § 1964(c) to seek redress for his racketeering inflicted injuries. See Note, Civil RICO: The Temptation and Impropriety of Judicial Restriction, 95 Harv. L. Rev. 1101, 1119 (1982), where the commentator recognized organized crime's methods of harassment and retaliation. A victim's opportunity to assert his federal claim should be equally available on a national basis.

Moreover, if the "baldness" of the "innovation" refers to a concern that the federal judiciary should not engage in fixing arbitrary time limitations on rights of action, then this concern is not reflected in borrowing the federal five-year statute of limitations for RICO treble damage actions. Absorption of the federal time period does not involve arbitrary line drawing but is the utilization of a definite time limitation governing criminal prosecution for the same claim. The present practice of analogizing a federal claim to a state cause of action approaches the drastic judicial legislation discouraged in UAW. See Special Project, supra note 48, at 1078; Note, A Limitation on Actions for Deprivation of Federal Rights, 68 Colum. L. Rev. 763, 771-72 (1968).


184. In Roberts v. Magnetic Metals Co., 611 F.2d 450 (3d Cir. 1979), the court noted
civil RICO actions is to continue, federal courts should consistently select the same state statute of limitations.

The uniform application of state "statutory non-penalty liability" or "catch-all" limitations provisions constitute an available approach. Selecting either one of these periods would relieve the federal judiciary of the complex process of characterizing the RICO treble damage claim and analogizing it to a state cause of action on a case-by-case basis. As a matter of federal law, a determination is made that no state law equivalent exists.

This proposal would not eliminate inter-circuit inconsistency in time periods applied to civil RICO actions. Inevitably, the time accorded each provision will vary from state to state. Under this approach, however, potential litigants can evaluate the claim's viability. Consistency in applying state time bars to the treble damage action fosters the remedial policies underlying RICO as well as the policies underlying statutes of limitations.

CONCLUSION

RICO is expansive legislation containing both criminal and civil remedies directed at eliminating the influence of racketeering activity in the American economy. In enacting this remedial statute, Congress provided a treble damage action for victims of

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186. Generally, the "catch-all" limitations provision is the longest period in the state's catalogue of statutes. Although statutory non-penalty liability periods are shorter, the consistent selection of this provision provides litigants with the ability to assess the claim's viability. See Smith, Flanagan & Pastusyenski, supra note 58, at 1033.

187. This consistency fosters predictability, thereby providing federal litigants with reasonable knowledge of the claim's viability. See Note, Limitations in Civil Rights Litigation, supra note 48, at 123-26.
racketeering activity without fixing a specified period of limitations for bringing such suits. The traditional judicial response of borrowing an analogous state statute of limitations results in inconsistency in proceedings under solely federally-created rights. Due to RICO's complex nature, this practice will frustrate the remedial purpose as well as diminish the effectiveness of the legislation.

Effective use of the RICO statute dictates that a consistent approach be taken on the statute of limitations question. Absent amendatory legislation, the adoption of the federal five-year statute of limitations governing criminal prosecutions under RICO constitutes a practical and logical approach which should be taken by federal courts. Alternatively, if the doctrine of stare decisis compels federal courts to continue the practice of absorbing state law, then a uniform limitations provision should be borrowed.

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