



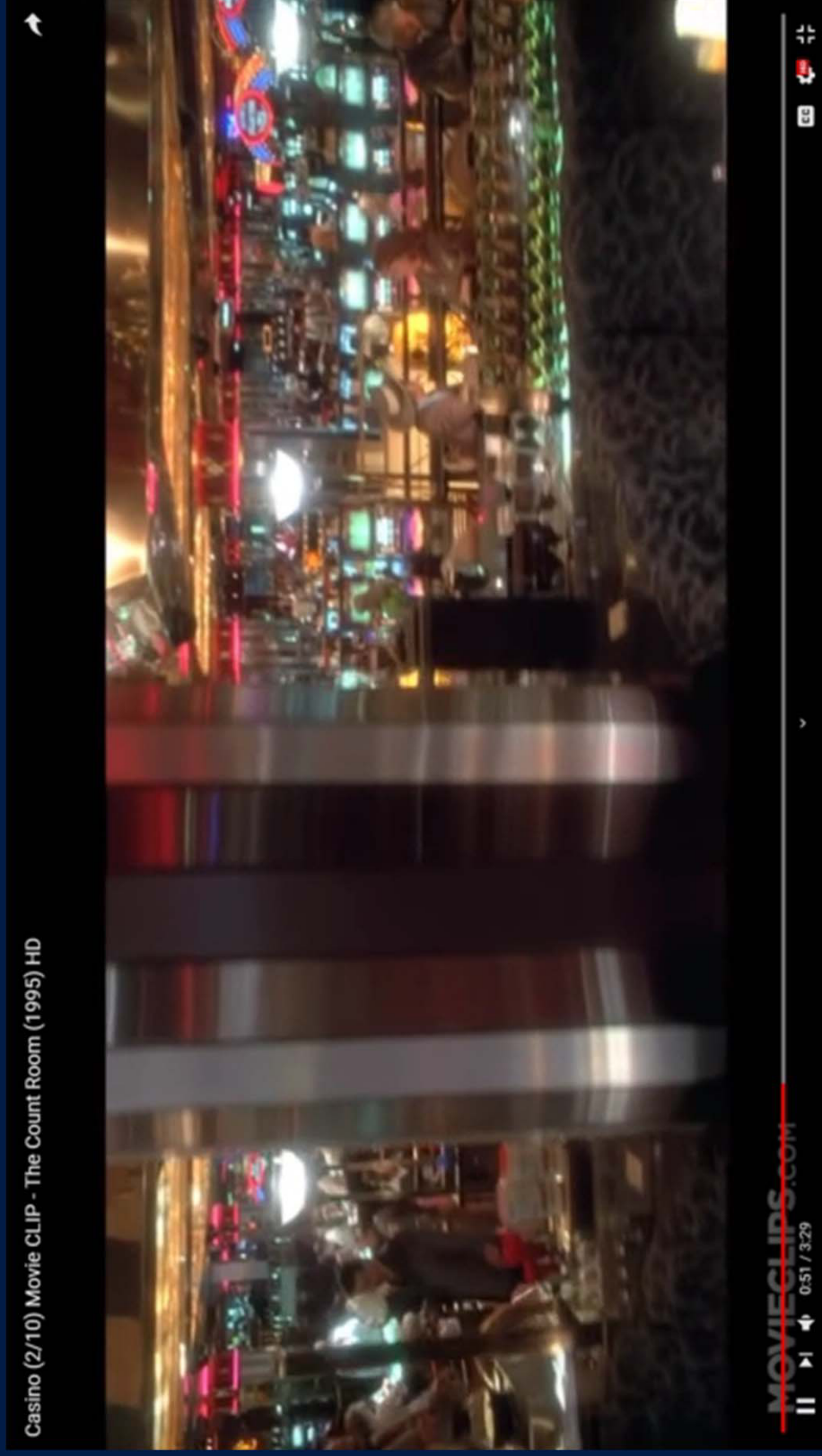
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RICO 101

John A. Regan
Gang Resource Prosecutor
Prosecuting Attorneys' Council of Georgia

What do you think of when you hear the word “RICO” ?



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Where did RICO come from?



Where did RICO come from?



Why RICO?

- Indictment has an opening statement in it
- Difficult to sever counts
- 404(b) already built in – no need for hearing
- No geographic boundaries
 - just need one crime or act in furtherance in the venue county
- 5 year statute of limitations which can extend to back to creation
 - From the date of discovery
 - Of the last act



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Why RICO?

- No lesser included offenses
- No merger with other counts
- Just about everything is intrinsic to proving the conspiracy or scheme
- A fuller picture of your defendant
- Focuses complex case prep to just indictment
- No double jeopardy (can use prior convictions as predicate acts)



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Why RICO?

- 20 years (including for conspiring or endeavoring)
- Parole Grid 7
- Minimum 48 months
- Rumored 90%

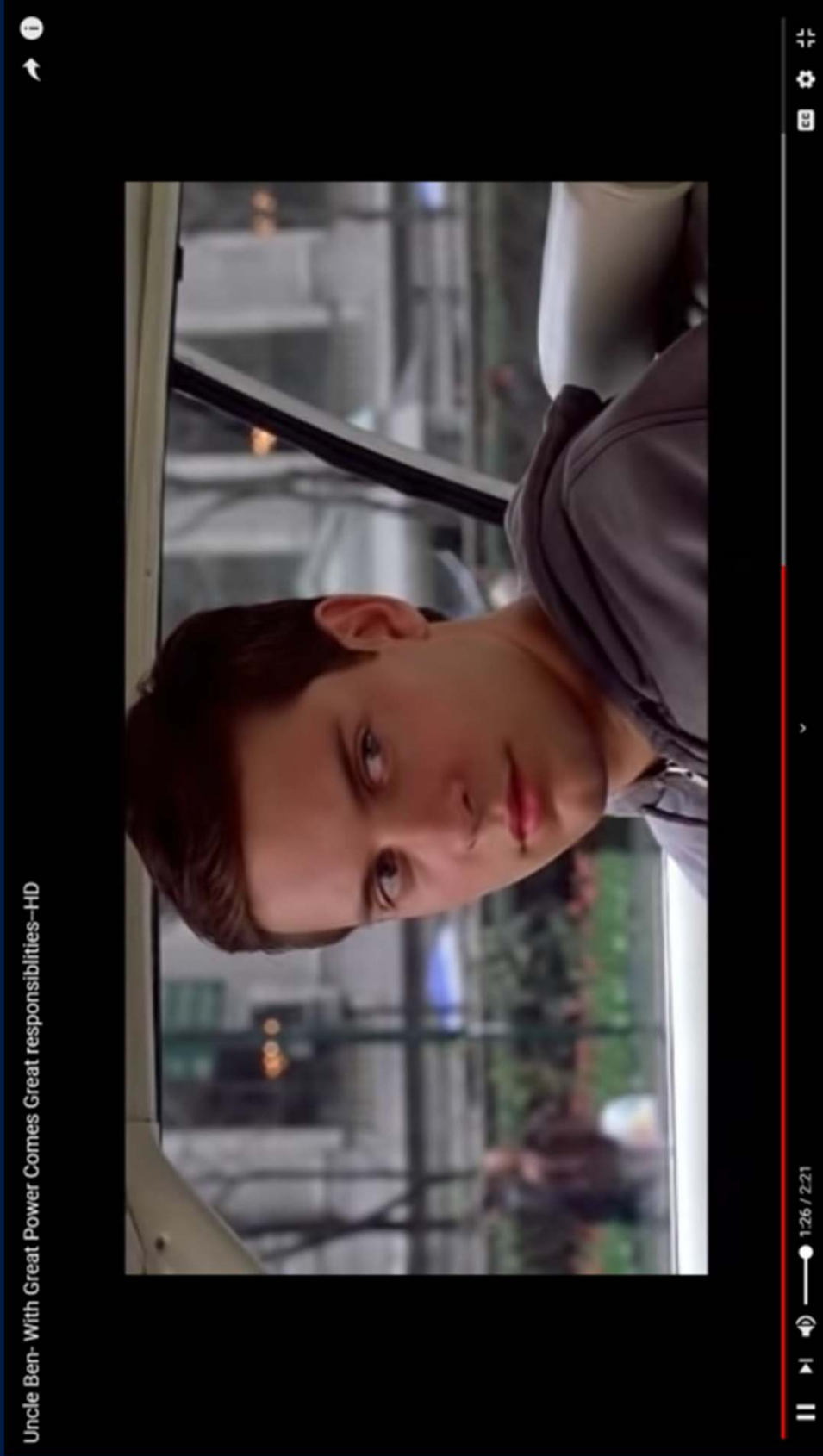


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But remember

Uncle Ben- With Great Power Comes Great responsibilities--HD



1:26 / 2:21

BE CAREFUL



The RICO Statute

- 3 Types of RICO cases O.C.G.A. § 16-14-4:
- (a) Committing a RICO violation (2 or more related crimes to get money)
 - (b) Enterprise RICO
(expert/gang act)
 - (c) Conspiring or endeavoring to violate (a) (advanced) or (b) (super expert)



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§ 16-14-4 Prohibited activities

- (a)** It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.
- (b)** It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.
- (c)** It shall be unlawful for any person to conspire or endeavor to violate any of the provisions of subsection (a) or (b) of this Code section. A person violates this subsection when:
 - **(1)** He or she together with one or more persons conspires to violate any of the provisions of subsection (a) or (b) of this Code section and any one or more of such persons commits any overt act to effect the object of the conspiracy; or
 - **(2)** He or she endeavors to violate any of the provisions of subsection (a) or (b) of this Code section and commits any overt act to effect the object of the endeavor.



R.I.C.O.

O.C.G.A. 16-14-4 (a)

Committing 2 or more related
crimes to get money or
property



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The RICO Statute

(a) It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.



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Defendant/s

in furtherance of one or more incidents, schemes, or transactions



Act 1

interrelated by distinguishing characteristics

Act 2
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Compare to the CSGA



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Criminal Street Gang

§ 16-15-3(2)

“associated or employed”
(§ 16-15-4(a))

“commit”
(§ 16-15-3(1))

O.C.G.A. § 16-15-4(a)

Street Gang Act Violation

Person
(§ 16-15-4(a))

“conduct or
participate”
(§ 16-15-4(a))

Criminal Gang
Activity

(§ 16-15-3(1))



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**BUT
REMEMBER**



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With a RICO indictment

- You can draft a much more **detailed** and **vivid** indictment
- You get to “explain” the Scheme
- And how the predicate crimes form a “pattern”
- Giving the **WHOLE PICTURE** of the gang and its crimes



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RICO Benefit - VENUE

Venue

In any criminal proceeding brought pursuant to this chapter, the crime shall be considered to have been committed **in any county in which an incident of racketeering occurred** or in which an interest or control of an enterprise or real or personal property is acquired or maintained.



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RICO - benefits

Statute of Limitations - 5 years

Notwithstanding any other provision of law, a criminal or civil action or proceeding under this chapter may be commenced up until **five years** *after the conduct in violation of a provision of this chapter terminates* or the cause of action accrues...

OCGA 16-14-8



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RICO - benefits

Statute of Limitations - *Look back*

Engaging in at least two acts of racketeering activity in furtherance of one or more incidents, schemes, or transactions that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics and are not isolated incidents, provided at least one of such acts occurred after July 1, 1980, and that the last of such acts **occurred within four years, excluding any periods of imprisonment, after the commission of a prior act of racketeering activity...**

OCSA 16-14-3(4)(A)



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RICO - benefits

Like the SGA, under RICO laws, those found guilty of racketeering face a complete **seizure** of all their ill-gotten assets, which is often enough to cripple organizations.



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RICO - benefits

Under RICO, assets can be frozen *before a trial* to ensure they are not liquidated or moved.



RICO – Civil Benefits

Like SGA, allows for private parties who are harmed or victimized by indicted criminal enterprises to file civil suits and collect treble damages, which triple the amount awarded in a civil trial plus attorney's fees.



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RICO – Civil benefits

Like SGA, a conviction in a criminal proceeding collaterally estops in any subsequent civil action or civil forfeiture proceeding.

OCGA 16-14-6(e)



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New Concepts

RICO introduced new concepts

- » Pattern
- » Racketeering Activity
- » Enterprise

that permitted prosecutors to tell the entire story of a group's criminal activity.



RICO – burden of proof

RICO charges are considered **easier to prove** in court, as the focus is on *patterns of behavior* instead of individual criminal acts.



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Georgia RICO

The RICO act does this by identifying 42 **total types of crime** (federal and state), and then stating that anyone, or a member of a criminal enterprise, who has committed any two of those crimes as part of a pattern over a five year period can be charged with racketeering.



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ALSO

§ 16-14-3(5)(B) Racketeering Activity

(B) "Racketeering activity" shall also mean any act or threat ***involving***

- murder,
- kidnapping,
- gambling,
- arson,
- robbery,
- theft,
- receipt of stolen property,
- bribery,
- extortion



ALSO

§ 16-14-3(5)(B) Racketeering Activity

"Racketeering activity" shall also mean any act or threat ***involving***

- obstruction of justice,
- dealing in narcotic or dangerous drugs, or
- dealing in securities

which is chargeable under the laws of the United States, any territory of the United States, or any state and which is punishable by imprisonment for more than one year.



§16-14-4(a) Prohibited activities

(a) It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.



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RICO A

§16-14-4(a) It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money.



Pattern



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“Racketeering Activity”

Means “certain crimes”

a/k/a “predicate acts”



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§16-14-3(4) defines “pattern” as

**2 or More Acts
of racketeering activity**

in furtherance of one or more
incidents, schemes, or transactions



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OCGA 16-14-3(4)(A)

“Pattern of Racketeering Activity”

Means

- Engaging in at least **two acts** of racketeering activity
- in furtherance of **one or more incidents**, schemes, or transactions
- that have the same or similar intents, results, accomplices, victims, or methods of commission
- or otherwise are interrelated by distinguishing characteristics and are not isolated incidents



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RICO A

Defendant/s

in furtherance of one or more incidents, schemes, or transactions



Act 1

interrelated by distinguishing characteristics

Act 2
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The Heart of the Matter: *Racketeering Activity*

“Racketeering Activity” consists of
“ Predicate” Acts



These are the building blocks of RICO



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OCGA §16-14-3(4)

“Racketeering Activity”

Means

- to commit,
- to attempt to commit,
- or to solicit, coerce, or intimidate
- another person to commit

any crime which is **chargeable by indictment** under the following laws of this state:



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OCGA §16-14-3(4)(A) “Pattern of Racketeering Activity”

Means

- Engaging in at least two acts of racketeering activity
- in furtherance of one or more incidents, schemes, or transactions
- that have the same or similar intents, results, accomplices, victims, or methods of commission
- or otherwise are interrelated by distinguishing characteristics and are not isolated incidents



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But first, a difference

- Unlike federal RICO, Georgia RICO uses the word “*means*” in its definition of pattern, indicating that the definition is complete and self-contained.

O.C.G.A. § 16-14-3(8). Compare *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479,496 n.14 (1985) (pointing out that definition of pattern set forth in 18 U.S.C. § 1961(5) "states that a pattern '*requires* at least two acts of racketeering activity,' ... not that it '*means*' two such acts").



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OCGA 16-14-3(4)

"Racketeering Activity"

Means

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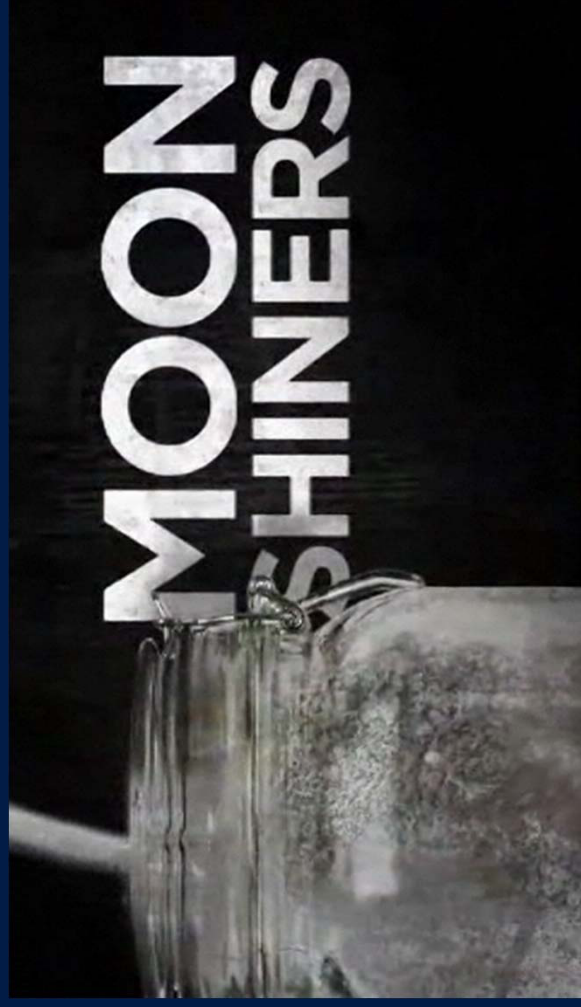


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§ 16-14-3(5)(A) Racketeering Activity

(i) Unlawful distillation, manufacture, and transportation of alcoholic beverages in violation of Code Section 3-3-27;



§16-14-3(5)(A) Racketeering Activity

(ii) Records and reports of currency transactions in violation of Article 11 of Chapter 1 of Title 7;



This is commonly known as *Money Laundering*.
OCGA §7-1-910 through §7-1-916

What is 'Money Laundering'

Money laundering is the process of creating the appearance that large amounts of money obtained from criminal activity, such as drug trafficking or terrorist activity, originated from a legitimate source.

The money from the illicit activity is considered dirty, and the process "launders" the money to make it look clean.



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What is 'Money Laundering'

There are three steps involved in the process of laundering money: **placement, layering and integration**. **Placement** refers to the act of introducing "dirty money" (money obtained through illegitimate, criminal means) into the financial system in some way. **Layering** is the act of concealing the source of that money by way of a series of complex transactions and bookkeeping tricks. **Integration** refers to the act of acquiring that money in purportedly legitimate means.



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Money-Laundering Tactics

There are many ways to launder money, ranging from simple to complex. One of the most common ways to launder money is through a legitimate cash-based business owned by a criminal organization.



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Money-Laundering Tactics

For instance, if the enterprise owns a restaurant or acts as a music group, it might inflate the daily cash receipts to funnel its illegal cash through the restaurant/music group and into the bank.

Then they can distribute the funds to the principals out of the enterprise's bank account.



Money-Laundering Tactics

Another common form of money laundering is called smurfing, where a person breaks up large chunks of cash into multiple small deposits, often spread out over many different accounts, to avoid detection.



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Currency Transaction Fraud - *punishment*

shall be sentenced to a fine of not more than \$500,000.00 or twice the amount involved in the transaction, whichever is greater, or imprisonment for not more than 20 years, or both



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Knowledge

The State must prove that the defendant knew that the money involved in the financial transaction represents the proceeds of some form of unlawful activity that constitutes a felony under state, federal, or foreign law.

Do not have to prove the defendant knew it was from an SUA nor that it was a felony.



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§ 16-14-3(5)(A) Racketeering Activity

(iv) Homicide in violation of Article 1 of Chapter 5 of this title;

This includes:

- Murder
- Felony Murder
- Voluntary Manslaughter
- Involuntary Manslaughter



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§ 16-14-3(5)(A) Racketeering Activity

(v) **Assault and battery** in violation of Article 2 of Chapter 5 of this title;

This includes:

- Simple Assault
- Aggravated Assault
- Simple Battery
- Aggravated battery
- Female Genital Mutilation
- Assault on Unborn Child
- Battery of Unborn Child



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§ 16-14-3(5)(A) Racketeering Activity

(vi) Kidnapping, false imprisonment, and related offenses in violation of Article 3 of Chapter 5 of this title;

This includes:

- Hijacking an aircraft
- Hijacking a motor vehicle
- Interference with Custody
- Trafficking of persons for labor or sexual servitude

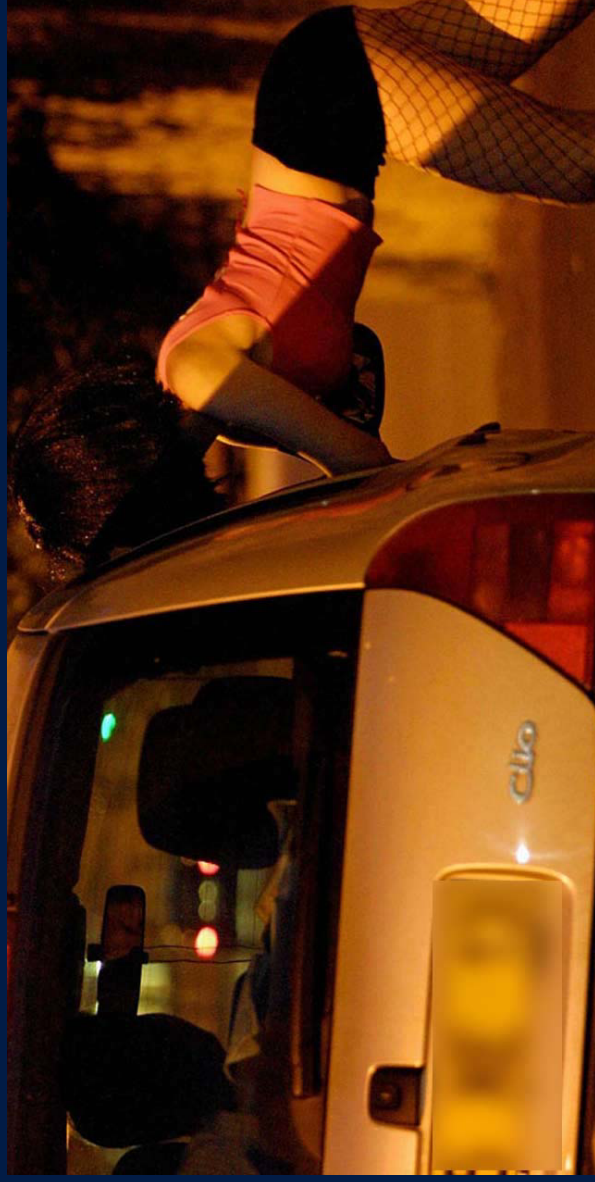


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§ 16-14-3(5)(A) Racketeering Activity

(vii) Prostitution, keeping a place of prostitution, pimping, pandering, and pandering by compulsion in violation of Code Sections 16-6-9 through 16-6-12 and 16-6-14;



§ 16-14-3(5)(A) Racketeering Activity

(viii) **Burglary** in violation of Code Section 16-7-1;

(ix) **Smash and grab burglary** in violation of Code Section 16-7-2;



§ 16-14-3(5)(A) Racketeering Activity

- (x) Arson and explosives in violation of Article 3 of Chapter 7 of this title;
- (xi) Bombs, explosives, and chemical and biological weapons in violation of Article 4 of Chapter 7 of this title;



§ 16-14-3(5)(A) Racketeering Activity

(xii) **Theft** in violation of Article 1 of Chapter 8 of this title;

This includes:

- TxT
- TxD
- TxC
- Tx Services
- Retail Property Fencing
- Tx Lost Property
- TxR
- Trade Secrets
- TxS
- Refund Fraud
- Conversion of Payments for Real Property Improvements
- Extortion
- Misuse of Universal Product Code
- Entering Auto



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§ 16-14-3(5)(A) Racketeering Activity

(xiii) **Robbery** in violation of Article 2 of Chapter 8 of this title;

This includes:

- Robbery
- Armed Robbery



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§ 16-14-3(5)(A) Racketeering Activity

(xiv) Criminal reproduction and sale of recorded material in violation of Article 3 of Chapter 8 of this title;

(xv) The "Georgia Residential Mortgage Fraud Act" in violation of Article 5 of Chapter 8 of this title;



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§ 16-14-3(5)(A) Racketeering Activity

- (xvi) **Forgery** in any degree in violation of Code Section 16-9-1;
- (xvii) **Illegal use of financial transaction cards** in violation of Code Sections 16-9-31, 16-9-32, 16-9-33, and 16-9-34;

This includes:

- FTCT
- Forgery of a FTC
- FTCTF
- Criminal Possession of FTC

§ 16-14-3(5)(A) Racketeering Activity

(xviii) Use of an article with an altered identification mark in violation of Code Section 16-9-70;

(xix) The "Georgia Computer Systems Protection Act" in violation of Article 6 of Chapter 9 of this title;

This includes:

- Computer Theft
- Computer Trespass
- Computer Invasion of Privacy
- Computer Forgery
- Misleading Transmittal

§ 16-14-3(5)(A) Racketeering Activity

- (xx) **Identity fraud** in violation of Article 8 of Chapter 9 of this title;
- (xxi) **Bribery** in violation of Code Section 16-10-2;
- (xxii) **False statements** and writings or false lien statements against public officers or public employees in violation of Code Section 16-10-20 or 16-10-20.1;
- (xxiii) **Impersonating a public officer** or employee in violation of Code Section 16-10-23;



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§ 16-14-3(5)(A) Racketeering Activity

(xxiv) Attempted murder or threatening of witnesses in official proceedings in violation of Code Section 16-10-32;

(xxv) Perjury and other related offenses in violation of Article 4 of Chapter 10 of this title;
Misleading transmittal

This includes:

- False Swearing
- Subornation
- Impersonating another in acknowledgment of bail



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§ 16-14-3(5)(A) Racketeering Activity

(xxvi) Embracery in violation of Code Section 16-10-91;

A person commits the offense of embracery when he:

- (1)** With intent to influence a person summoned or serving as a juror, communicates with him otherwise than is authorized by law in an attempt to influence his action as a juror; or
- (2)** Summoned as a juror, accepts anything of value offered to him with the understanding that it is given with the intent of influencing his action as a juror.



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§ 16-14-3(5)(A) Racketeering Activity

- (xxvii) **Influencing witnesses** in violation of Code Section 16-10-93;
- (xxviii) **Tampering with evidence** in violation of Code Section 16-10-94;
- (xxix) **Intimidation or injury of grand or trial juror** or court officer in violation of Code Section 16-10-97;
- (xxx) **Terroristic threats and acts** in violation of Code Section 16-11-37;



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§ 16-14-3(5)(A) Racketeering Activity

(xxxi) The "Georgia Firearms and Weapons Act" in violation of Part 2 of Article 4 of Chapter 11 of this title;

(xxxii) **Commercial gambling** in violation of Code Section 16-12-22;

(xxxiii) Distributing obscene materials in violation of Code Section 16-12-80;

(xxxiv) The "**Georgia Controlled Substances Act**" in violation of Article 2 of Chapter 13 of this title;



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§ 16-14-3(5)(A) Racketeering Activity

(xxxv) The "**Dangerous Drug Act**" in violation of Article 3 of Chapter 13 of this title;

(xxxvi) **Marijuana** in violation of subsection (j) of Code Section 16-13-30;

(xxxvii) Payday loans in violation of Chapter 17 of this title;

(xxxviii) Insurance fraud in violation of Code Section 33-1-9;



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§ 16-14-3(5)(A) Racketeering Activity

- (xxxix) Certain felonies involving certificates of title, security interest, or liens in violation of Code Section 40-3-90;
- (xl) Removal or falsification of identification numbers in violation of Code Section 40-4-21;
- (xli) Possession of motor vehicle parts from which the identification has been removed in violation of Code Section 40-4-22; or
- (xlii) Article 8 of Chapter 5 of Title 16, relating to protection of elder persons.



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§ 16-14-3(5)(B) Racketeering Activity

(B) "Racketeering activity" shall also mean any act or threat *involving*

- murder,
- kidnapping,
- gambling,
- arson,
- robbery,
- theft,
- receipt of stolen property,
- bribery,
- extortion



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§ 16-14-3(5)(B) Racketeering Activity

(B) "Racketeering activity" shall also mean any act or threat involving

- obstruction of justice,
- dealing in narcotic or dangerous drugs, or
- dealing in securities

which is chargeable under the laws of the United States, any territory of the United States, or any state and which is punishable by imprisonment for more than one year.



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§ 16-14-3(5)(C) Racketeering Activity

(C) "Racketeering activity" shall also mean any conduct defined as "racketeering activity" under

- 18 U.S.C. Section 1961 (1),
- any violation of 18 U.S.C. Section 1028, or
- any violation of 31 U.S.C. Sections 5311 through 5330.



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Defendant/s

in furtherance of one or more incidents, schemes, or transactions



Act 1

interrelated by distinguishing characteristics

Act 2
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Enterprise RICO

§16-14-4(b)



Enterprise RICO §16-14-4(b)

(b) It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate in, directly or indirectly, such enterprise through a pattern of racketeering activity.



O.C.G.A. 16-14-4(b) Makes it illegal for anyone

Employed/associated w/ Enterprise

To participate in that

Enterprise

Through



a Pattern of Racketeering Activity



ENTERPRISE

Distinguishing Between What is *Relevant* and What is *Required*

- The group can be as organized as an NBA team or as loose as a pick-up game



§ 16-14-4(c) Prohibited activities

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



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§ 16-14-4(c) Prohibited activities

A person violates this subsection when:

- **(1)** He or she together with one or more persons **conspires** to violate any of the provisions of subsection (a) or (b) of this Code section **and** any one or more of such persons commits any overt act to effect the object of the conspiracy; or



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§ 16-14-4(c) Prohibited activities

A person violates this subsection when:

- **(2)** He or she **endeavors** to violate any of the provisions of subsection (a) or (b) of this Code section **and** commits any **overt act** to effect the object of the endeavor.



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Overt Act

- The act need not qualify as an element of the substantive offense
- The Act **does not have to be illegal**
- Proof of any overt act taken by **any** party in pursuit of the conspiracy is **attributable to all parties**



801(d) 'Hearsay' shall be subject to the following exclusions and conditions:

(2) Admissions by party-opponent.

- Admissions shall not be excluded by the hearsay rule. An admission is a statement offered against a party which is:



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Co-Conspirator Statement

(E) A statement by a co-conspirator of a party during the course and in furtherance of the conspiracy, including a statement made during the concealment phase of a conspiracy. A conspiracy need not be charged in order to make a statement admissible under this subparagraph.



RICO conspiracy

Illegal to Conspire to

Through a
Pattern of Racketeering Activity

To acquire an interest in or control of



Enterprise



Property



\$



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2 Concerns

- Too much to prove
- Surplusage



Proving only 2 predicates = Guilt to R.I.C.O.

“We note that a RICO conviction requires proof that a defendant has committed two or more offenses of the kind included in the RICO statute; it does not require the state to prove all of the alleged predicate offenses.”

Mosley v. State, 253 Ga. App. 710, 712, 560 S.E.2d 305, 308 (2002) (emphasis added)



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Surplusage is not fatal

“...mere surplusage will not vitiate an otherwise valid indictment.”

Malloy v. State, 293 Ga. 350, 360 (2013).



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Surplusage Should not be Stricken

Under federal law, “[a] motion to strike surplusage from an indictment should not be granted ‘unless it is clear that the allegations are not relevant to the charge and are inflammatory and prejudicial.... This is a most ‘exacting standard.’”

United States v. Awan, 966 F.2d 1415, 1426 (11th Cir. 1992) (quoting *United States v. Huppert*, 917 F.2d 507, 511 (11th Cir.1990)).



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Georgia law requires explicit RICO charges

“Not knowing whether the enterprise is alleged to be a licit or illicit one, how the defendants allegedly were ‘associated with’ it, or how the alleged racketeering activity relates in any way to the business or affairs of the enterprise, Kimbrough and Mayfield cannot possibly ascertain from the indictment what they must be prepared to meet with respect to proof of the requisite connection between the enterprise and the alleged pattern of racketeering activity.”

Kimbrough v. State, 300 Ga. 878, 882-83 (2017)



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Potential Pitfalls

- Needlessly overcomplicate an otherwise simple case
- Additional Work in Indictment
- Ethics of overcharging
- No lesser included offenses



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