



Task Force to Study Maryland's Criminal Gang Statutes Meeting Minutes

U.S. Attorney's Office
36 S. Charles Street, Baltimore, Maryland 21201 (Fourth Floor)
Tuesday, April 30, 2019, 9:30 a.m.

Members in Attendance: Senator Michael Hough, Maryland Senate; Delegate Jesse Pippy, Maryland House of Delegates; Lt. Colonel David Ruel, Maryland State Police; Michael D. Moore, representative for Bill Sage, Department of Public Safety and Correctional Services; Katie Dorian, Attorney General's Office; Ricardo Flores, representative for Mary Siegfried, Office of the Public Defender; Judge William Tucker, Maryland Judiciary; Carl J. Kotowski, Governor's Office of Crime Control and Prevention; Nicole Hanson, Out for Justice; and James Trusty, Ifrah Law PLLC.

Members Not in Attendance: Senator William C. Smith, Jr., Maryland Senate; Delegate Wanika Fisher, Maryland House of Delegates; Gavin Patashnick, Department of Juvenile Services; Michael Yeagy, Maryland Retailers Association; Toni Holness, American Civil Liberties Union; Anthony McNeil, Farming4Hunger; Scott Shellenberger, Baltimore County State's Attorney's Office; and Chief Henry P. Stawinski III, Prince George's County Police Department.

Other Guests in Attendance: U.S. Attorney Robert Hur, U.S. Attorney's Office; Assistant Special Agent in Charge Brian Nadeau, Federal Bureau of Investigation, Baltimore Field Office; Assistant U.S. Attorney Michael Hanlon, U.S. Attorney's Office; Assistant U.S. Attorney Clint Fuchs, U.S. Attorney's Office; Marcy Murphy, U.S. Attorney's Office; Steven Clark, Legislative Aide for Senator Hough; Melanie Shapiro, Office of the Public Defender; Cierra Rodgers, Governor's Office of Crime Control and Prevention; Marty Hammond, Governor's Office of Crime Control and Prevention; Rachel Kesselman, Governor's Office of Crime Control and Prevention; and more.

Welcome and Introductions

Senator Hough called the meeting to order at approximately 9:38 a.m. as he welcomed everyone to the second *Task Force to Study Maryland's Criminal Gang Statutes* (Task Force) meeting.

Introductions of Gang Task Force Members

Senator Hough invited members to introduce themselves.



Approval of Minutes

Senator Hough mentioned the draft minutes from the March meeting and asked members to provide input if any corrections are needed. The draft minutes were subsequently approved because no one requested any changes.

Federal Criminal Gang Statute(s)

Senator Hough invited U.S. Attorney Robert Hur to present on the Federal statutes relating to criminal gang-related activity. U.S. Attorney Hur indicated that his presentation would serve as a factual presentation, only. He then introduced Assistant U.S. Attorney (AUSA) Michael Hanlon. He also mentioned AUSA Clint Fuchs, Assistant Special Agent in Charge (ASAC) Brian Nadeau, and James Trusty, Esq., Partner at Ifrah Law, PLLC. U.S. Attorney Hur stated that Mr. Hanlon, Mr. Fuchs, Mr. Nadeau, and Mr. Trusty all have valuable expertise in conducting federal RICO investigations and prosecutions.

RICO Overview

U.S. Attorney Hur directed everyone's attention to a PowerPoint presentation (*please see the **Application of the Federal RICO Statute to Gang Prosecutions** PowerPoint presentation for more information*). As illustrated in slide #2, the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968, was enacted to address the mob and leaders who were ordering criminal activity. **"The purpose of the RICO statute is 'the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce'"** (*see slide #3*).

USA Hur discussed some of the legal aspects of the RICO statute, including:

- The elements that must be proven for RICO Conspiracy (*see slide #6*).
- Some of the differences between the federal RICO statute and the Maryland gang statute, including that proof of a defendant's membership or association in a RICO enterprise may be easier to prove under the federal statute in some cases.

U.S. Attorney Hur indicated that conspiracy is an extremely powerful tool to use with RICO cases because often times, the evidence used to demonstrate the existence of a conspiracy may be the same as, or closely related to, the evidence used to prove the elements of the "enterprise." A RICO enterprise may include not only gangs or criminal organizations, but also legal entities such as local government agencies.



Broad Definition of “Enterprise”

Because a RICO charge is broadly defined, U.S. Attorney Hur said the terms need to be liberally construed (*see slide #9*). In addition, and because “RICO broadly defines enterprise,” U.S. Attorney Hur provided insight on how to use the legal phrase:

“An ‘enterprise’ may be a group of people who have associated together for a common purpose of engaging in a course of conduct over a period of time” (*see slide #10*).

NOTE: “The first element that the government must prove beyond a reasonable doubt is that an ‘enterprise’ existed as charged in the Indictment” (*see slide #10*).

For example, in proving the existence of the MS-13 gang enterprise in MS-13 cases, prosecutors have been able to present evidence of the common purposes of MS-13 (*see slide #11*).

There are also examples of charging RICO cases in which the enterprise is a legal entity. U.S. Attorney Hur mentioned the federal corruption cases involving Baltimore City Detention Center (BCDC), the Maryland Eastern Correctional Institution (ECI), and the Maryland Correctional Institute Jessup (MCIJ). In each of these cases, the indictments charged RICO violations in which the enterprise was a legal entity. As illustrated in slide #12, “ECI constituted an ‘enterprise,’ as defined in Title 18, United States Code, Section 1961” in which “ECI engaged in, and its activities affected, interstate commerce.”

The enterprise can be a legal entity or “association-in-fact” (*see slide #13*). USA Hur discussed some of the ways that the existence of a RICO enterprise have been proven for individual gangs, like MS-13 (*see slides #14, 15, 16, 17*).

U.S. Attorney Hur indicated that dangerous Baltimore gangs are not always large organizations that control vast territory; rather, many of them are smaller groups that control a discrete area within the city. Among these groups, violence is often triggered by members of one group disrespecting members of another via social media.

“Association” with the Enterprise

In order to prove the third element (“Association with the Enterprise”), “the government must prove beyond a reasonable doubt that the defendant was connected to the enterprise in some meaningful way, and that he knew of the existence of the enterprise and of the general nature of its activities” (*see slide #20*).

NOTE: “The third element that the government must prove beyond a reasonable doubt is that the defendant was associated with the enterprise” (*see slide #20*).



Multi-Defendant Trials

U.S. Attorney Hur mentioned that the ECI case charged 80 defendants, including both inmates and correctional officers. In cases of this size, significant numbers of defendants who elect to go to trial are usually tried together, and additional tables are required in the courtroom to seat the defendants and counsel. Multi-defendant trials also save time for the judges and helps with judicial economy. U.S. Attorney Hur asked Judge Tucker for his input on how joinder and severance works in state cases. Judge Tucker said motions are filed on behalf of the defendant to have the case severed.

Mr. Trusty said, in reference to the “association-in-fact,” people may not be made members of any particular enterprise. In addition, and as U.S. Attorney Hur mentioned, this all started with the Supreme Court in which there were questions regarding the legitimacy and level of knowledge needed. All aspects of RICO have been litigated for many years. Mr. Trusty added that, the “association-in-fact” is not just a flash mob prosecution, and it is not just when a girlfriend or buddy of the enterprise is swept into the enterprise. Instead, they look at substantial involvements in which people must have significant knowledge and roles.

Delegate Pippy asked how difficult it is to take State cases to the Federal level? AUSA Hanlon provided insight regarding the Federal advantages to particular defenses, and provided examples of RICO. He then invited Ms. Dorian to speak on the State opinion. Ms. Dorian said part of the concern that they see is the “labeling” of the gang versus the enterprise; and the challenge to explain this to the judge and jury that it can be a street organization or street crew. AUSA Hanlon added it is great if we have evidence of tattoos and graffiti; however, they are not needed to charge at the RICO level.

Delegate Pippy mentioned that his group often brings State law to the Federal definition. If this were to happen, he asked, would this make someone's job easier? Ms. Dorian said the purpose of this statute was to model the Federal RICO; however, it is a bit more narrow and constrained. She also mentioned a Gang Statute “cheat sheet” that can be used to help with its complexity. However, if the definitions were to be clarified, this would make it easier to understand on both sides for prosecution and defense.

Ms. Hanson indicated that she was under the impression that RICO is a broader policy that can be used at the State level. An AUSA responded that an important component is that RICO is based on illegal acts of the enterprise or association in which the individual participates in that group and commits illegal acts as part of that particular group. One could, in theory, be a member of the “40th Street Guys,” a social collective family group, and do stuff together that is not illegal. The gang component is not a problem unless they are committing an illegal act. He added that it cannot just be those who are hanging out with them but rather those who are participating in the criminal act. An AUSA added that this allows non-structured enterprise



gangs (the “association-in-fact”) to be able to be charged under RICO (those non-structured groups that commit illegal acts). Mr. Trusty added that RICO does not include one pure act but rather multiple acts. RICO is not unlimited but the charges must be in relation to the enterprise in which the individual is robbing money and then taking stolen money to help the gang do something else. Ms. Dorian added that the State statute includes the covert or overt gang structure. Ms. Hanson stated her concern of the definition. Senator Hough said it is important to see how the Feds address this.

An AUSA said there is an extraordinary level of review for RICO cases that must go to the U.S. Department of Justice, after applying to the U.S. Attorney’s Office.¹ He added that this extensive process occurs to ensure the information collected is consistent with the RICO statute.² Mr. Trusty mentioned that there are subject experts in the Department of Justice to make the case as strong as possible. He also said that the RICO Review Unit is the “guardian of the statute.” It is important to note that the RICO Review Unit may not always approve of a proposed RICO case. In fact, there are times where the unit rejects RICO prosecutions because of insufficient evidence or because the prosecutors are stretching the use of the RICO statutes in a way that might ultimately hurt all prosecutors in the long run.

Senator Hough asked about the “sign off.” Mr. Trusty said the U.S. Attorney’s Office must submit a memo to the RICO Review Unit to assess the information that looks at each defendant on an individual basis. The job of the reviewers is to ensure that if each defendant went to trial separately, there would be a pattern to show connection to racketeering. If it is approved by the RICO Review Unit, additional information may be needed. U.S. Attorney Hur said the end game is the approval process. Congress provided us with a tool, the RICO statute, and the Justice Department wants to use the tool wisely.

Gang Situation

Senator Hough invited ASAC Nadeau, with the Federal Bureau of Investigation (FBI) Baltimore Field Office, to present on the current gang situation, from the Federal perspective. ASAC

¹ The United States Department of Justice. (2019). [9-110.000 - Organized Crime and Racketeering](#). Section 9-110.101 - Division Approval states that, “No RICO criminal indictment or information or civil complaint shall be filed, and no civil investigative demand shall be issued, without the prior approval of the Criminal Division. See RICO Guidelines at [JM 9-110.200](#).”

² Ibid. Section 9-110.210 - Authorization of RICO Prosecution - The Review Process states that, “*The review and approval function for all RICO matters has been centralized within the Organized Crime and Gang Section of the Criminal Division. To commence the review process, the final draft of the proposed indictment or information and a RICO prosecution memorandum shall be forwarded to the Organized Crime and Gang Section. Separate approval is required for superseding indictments or indictments based upon a previously approved information. Attorneys are encouraged to seek guidance from the Organized Crime and Gang Section by telephone prior to the time in an investigation is undertaken and well before a final indictment and prosecution memorandum are submitted for review. Guidance on preparing the RICO prosecution memorandum is in the [Criminal Resource Manual at 2071 et seq.](#) . . .*”



Nadeau said there are many investigators who open a case and experience some difficulty trying to prosecute everyone. This is not a one individual investigation, it is a long term approach that may consist of a six month, a year, or even a two year process. Baltimore City probably has 250 gang members but that does not mean they are all engaged in criminal activity. The FBI's Safe Streets Gang Task Forces have used the RICO statute for many years.

Senator Hough thanked U.S. Attorney Hur and ASAC Nadeau for their presentations, and for taking the time to go through everything with the group. He said it was very helpful.

Mr. Flores inquired about the sentences imposed. U.S Attorney Hur said the sentence for RICO is a 20 year maximum and the sentence for RICO racketeering ("association-on-fact") is up to life imprisonment.

Senator Hough inquired about large cases and who would prosecute if local law enforcement does not have the resources. Mr. Trusty said the U.S. Attorney's Office can help with this process because of available resources. Lt. Colonel Ruel mentioned that working with the State's Attorney's Office may be difficult because some information is pushed off and becomes problematic (i.e., dealing with 23-24 jurisdictions) which is why it may be easier for the Feds. An AUSA said Feds have the luxury of time in many cases that may take 1-2 years which Maryland does not have.

Ms. Dorian mentioned how her unit is situated differently in which they work with the Maryland State Police and are almost set-up like a state gang task force where they can pick cases and set-up cases. They are trying to do more gang cases in the State's Attorney's Office because that is what her unit was established to do.

Discussion

Senator Hough indicated that he would like to go to Montgomery County for the next meeting, followed by Prince George's County, and Frederick County.

- The third meeting will occur in Montgomery County in the summer of 2019.
- The fourth meeting will occur in Prince George's County in the fall of 2019.
- The fifth meeting will occur in Frederick County at the end of 2019.

For the meeting in Montgomery County, Senator Hough asked the Office of the Public Defender to present. Mr. Flores asked about criminal and white collar activities, and when/how the State and Federal prosecution is determined. Mr. Trusty mentioned the sniper case and that there are many factors that result in the decision to prosecute at the State or Federal level. Ms. Hanson asked if/when we look at the Gang Statute, how do we get the "smart guys?" An AUSA said the



Feds are directed to a location based on knowledge that crimes have occurred. Federal agents will then conduct an investigation to find the “smart people” to include the gun trafficker, etc.

Closing Remarks

Senator Hough asked that the meeting close early. He thanked U.S Attorney Hur and ASAC Nadeau, again, for their time and presentation. The meeting adjourned at 11:07 a.m.