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BAILIFF: PLEASE RISE. PLEASE ARE SEATED.

ALL RIGHT. THE NEXT CASE ON THE COURT'S CALENDAR IS GROSS VERSUS THE STATE OF FLORIDA. MR. HALPERN.

GOOD MORNING. MAY IT PLEASE THE COURT. MY NAME IS SAM HALPERN, AND I REPRESENT THE PETITIONER, RALPH GROSS. THE ISSUE TO BE DECIDED HERE, TODAY, IS WHETHER OR NOT THE PETITIONER WAS DENIED A FAIR TRIAL, BECAUSE THE TRIAL COURT DENIED A SPECIALLY REQUESTED JURY INSTRUCTION, WHICH PROPERLY AND ADEQUATELY DEFINED THE ENTERPRISE ELEMENT OF THE RACKETEERING STATUTE. AT TRIAL, PETITIONER REQUESTED THAT THE JUDGE READ THE JURY AN INSTRUCTION, KONZENT WITH THAT OF THE HOLDING -- CONSISTENT WITH THAT OF THE HOLD ARE OF BOYD. HE ASKED THAT THE JUDGE INSTRUCT THE JURY THAT, IN ORDER FOR THERE TO BE AN ENTERPRISE, THERE MUST BE ESTABLISHED THAT THERE IS AN IDENTIFIABLE DECISION-MAKING STRUCTURE WHICH OPERATED TO CONTROL THE GROUP ON AN ONGOING RATHER THAN ON AN AD HOC BASIS, THAT THE ASSOCIATES OF THE GROUP FUNCTIONED AS CONTINUES UNIT, AND THAT THE GROUP OR ENTERPRISE HAD SOME SORT OF EXISTENCE, SEPARATE AND APART FROM THAT WHICH IS SIMPLY REQUIRED TO COMMIT THE RACKETEERING ACTIVITY.

DO YOU SEE THIS AS BEING TWO SEPARATE FACTORS, ONE OF BEING WHETHER A GROUP IS OPERATING WITHIN AN IDENTIFIABLE DECISION-MAKING STRUCTURE, WHICH SEEMS TO IMPLY SOME HIGHER LEVEL OF ORGANIZATION, VERSUS THE TURKETT, SEEMING, REQUIREMENT, THAT THE ENTITY HAS TO SEPARATE SEPARATE AND APART FROM THE ACTUAL CRIMINAL ACTIVITY?

WELL, TURKETT, ALSO, HELD THAT THERE MUST BE A STRUCTURE, AND I THINK THAT, IN ORDER FOR THERE TO BE STRUCTURE, IT IS IMPLICIT THAT THERE MUST BE SOME SORT OF A DECISION-MAKING STRUCTURE. IT IS ALMOST ILLOGICAL TO IMAGINE THAT THERE IS GOING TO BE AN ORGANIZATION THAT DOESN'T HAVE ANY WAY TO MAKE DECISIONS OR CONTROL THE REST OF THE GROUP.

WELL, THAT IS WHY -- SO, LIKE JUDGE COPE SAID IN HIS DISSENT IN BOYD, WOULDN'T PUTING IN THERE AN INSTRUCTION THAT REQUIRED PROOF OF DETAILS OF THE GROUP'S ORGANIZATIONAL AND DECISION-MAKING STRUCTURE AS SORT OF A SEPARATE REQUIREMENT, POSSIBLY, MISLEAD THE JURY INTO THINKING THERE HAS GOT TO BE SOME TYPE OF A SOPHISTICATED ORGANIZATION, IN ORDER TO HAVE AN ENTERPRISE?

SORT OF THE OPPOSITE. IN OTHER WORDS ONE OF YOU JUST CAN'T HAVE A COUPLE OF CRIMINAL ACTS AND THAT BE AN ENTERPRISE, VERSUS YOU DON'T HAVE TO HAVE AN ORGANIZEED, YOU KNOW, IBM STRUCTURE TO HAVE AN ENTERPRISE, EITHER.

I THINK THAT, IN TRUTH, THE PROPER DEFINITION TO BE GIVEN "ENTERPRISE" HAS TO BE GLEANED FROM THE LEGISLATIVE INTENT. I THINK, REALLY, IF YOU LOOK AT BOYD AND YOU LOOK AT RICK ABONI, AND YOU LOOK AT TURKETT, THOSE CASES ALL SUGGESTION THAT, IN ORDER FOR US TO KNOW WHAT AN ENTERPRISE IS, WE HAVE TO LOOK TO IS SEE WHAT WAS CONTEMPLATED PIE, EITHER, CONGRESS,, IN THE HE -- CONTEMPLATED BY, EITHER, COCK, IN THE CASE OF THE FEDERAL COUNTER-- BY, EITHER, CONGRESS, IN THE CASE OF THE FEDERAL COUNTERPART, OR IN THIS CASE, REQUIRING INTENT, AND I THINK IT IS CLEAR IN THE FLORIDA RICO STATUTE CONTEMPLATED THAT WE WERE INTERESTED IN TARGETING ORGANIZED CRIME.

BUT THAT DOESN'T MEAN THAT WAS THE EXCLUSIVE REACH. OTHERWISE YOU COULD HAVE

MOVED FOR A JUDGMENT OF ACQUITTAL, SAYING THIS ISN'T AN ORGANIZED CRIME SITUATION WITH A LEGITIMATE BUSINESS ENTERPRISE AND NONE OF THESE CASES SHOULD BE PROSECUTED UNDER THE RICO STATUTE.

AS TURKETT MADE CLEAR, AND WE DON'T HAVE ANY QUAM WITH, THE -- ANY QUALM WITH, THE RACQUET EARING -- THE RACKETEERING STATUTE IS NOT LIMITED SOLELY TO THOSE THAT ARE ENGAGED IN BUSINESSES, AND WE CONCEDE THAT IT CAN BE WHOLLY CRIMINAL ENTERPRISE. I THINK THAT IS CLEARLY THE LAW. THE QUESTION IS WHAT AN ENTERPRISE, REALLY, IS, AND IT GETS BACK, I THINK, ALWAYS, TO WHAT DID THE LEGISLATURE INTEND, WHEN THEY GOWNSED -- WHEN THEY ANNOUNCED THE STATUTE? -- WHEN THEY ENACTED THE STATUTE? AND IT IS CERTAINLY SOMETHING TO CONSIDER THAT THEY AULD KAULED THIS THE RACQUET -- THAT THEY CALLED THIS THE RACKETEERING INFLUENCE CORRUPT ORGANIZATIONS ACT. THEY ARE LOOKING TOWARDS ORGANIZATIONS, AND WHEN THE STATUTE WAS FIRST ENACTED IN FLORIDA, BACK IN 1977, WE CAN LOOK AT THE PREAMBLE OF OF THE STATUTE, AND WE CAN GLEAN LEGISLATIVE INTENT FROM THE PREAMBLE. AND IN THAT PREAMBLE, IT WAS FAIRLY CLEAR THAT THE LEGISLATURE WAS AFTER SOPHISTICATED CRIMINALS. IN FACT THE VERY FIRST "WHEREAS" CLAUSE, SAYS THAT WHEREAS THE LEGISLATURE FINDS THAT ORGANIZED CRIME IS A HIGHLY SOPHISTICATED, DIVERSIFIED, AND WIDESPREAD PROBLEM, AND THEY GO TO TALK ABOUT THE EVILS OF, IT AND THEY CONCLUDE WITH SAYING THAT, IN ORDER TO SUCCESSFULLY RESIST AND ELIMINATE SUCH INFILTRATION, IT IS NECESSARY TO PROVIDE NEW CRIMINAL AND CIVIL REMEDIES AND PROCEDURES, AND THEN THEY GOAD DPED AND ENACT THE -- AND THEN THEY GO AHEAD AND ENACT THE STATUTE.

AND THEN THEY DEFINE ENTERPRISE.

WHAT THEY DID IS THEY COPIED THE STATUTE, VERBATIM, FROM THE FEDERAL STATUTE, AND THAT -- IF WE WERE TO LOOK SOLELY TO GLEAN INTENT AT THE WAY THE STATUTE IS WRITTEN, YOU WOULD HAVE A PROBLEM OF CRIMINALIZING ASSOCIATIONS OF CRIMINALS. THAT IS NOT WHAT THIS STATUTE WAS INTENDED TO DO. OTHERWISE EVERY SINGLE TIME WE HAVE A CODEFENDANT CASE, YOU ARE GOING TO BE SUBJECT TO RICO PROSECUTION. THAT IS CLEARLY NOT WHAT THE INTENT UNDERLYING THE STATUTE WAS. FOR INSTANCE, IF WE WERE TO HAVE, LET'S SAY, A COUPLE OF KIDS GET TOGETHER AND DECIDE THEY ARE GOING TO BREAK INTO A CAR. AND THEY BREAK INTO A CAR. AND THEN, LATER, MAYBE, A FEW WEEKS LATER, THEY BREAK INTO ANOTHER CAR, AND MAYBE THEY BREAK INTO A THIRD CAR, AND THEN THEY ARE CAUGHT. WELL, ARE THOSE KIDS THAT ARE BREAKING INTO CARS, BECAUSE THEY ARE ASSOCIATED CRIMINALS, REALLY RACQUET EARS -- RACKETEERS, AS THE FLORIDA LEGISLATURE CONTEMPLATED THAT? AND I SUGGEST THAT THEY WERE NOT, AND I THINK THAT IT IS IMPORTANT --

WHAT ELEMENT IN YOUR -- IN YOUR SCENARIO IS MISSING? WHY ISN'T THAT AN ENTERPRISE?

WELL, THERE MAY NOT BE AN ENTERPRISE IN THAT SCENARIO, BECAUSE THERE MAY NEVER BE ANYTHING MORE THAN JUST A COUPLE OF KIDS THAT SPORADICALLY GET TOGETHER TO COMMIT A CRIME.

SO IT IS IMPORTANT TO AN ENTERPRISE DEFINITION THAT YOU GET TOGETHER FOR THINGS OTHER THAN THOSE ACTS THAT ARE THE PREDICATE FOR THE ACTUAL RICO COUNT?

WELL, THAT CERTAINLY IS CONTEMPLATED, EVEN IN TURKETT, AND EVEN IN CAGNEY AND ELLIOTT, AND THE CASES THAT THE COURT BELOW, IN THE FOURTH DISTRICT, RELIED ON, THAT THERE MUST BE SOME EXISTING, SOME EXISTENCE OF THE GROUP, SEPARATE AND APART MERELY FROM THE RACKETEERING ACTIVITY IN WHICH THEY ENGAGE IN, RACKETEERING, OF COURSE, NOT THE MORE --.

SO NO MATTER HOW MANY RACKETEERING TYPES AND NO MATTER HOW LONG IT HAS GONE ON,

IT WOULD NOT SATISFY AN ENTERPRISE, IF THERE WERE NO OTHER ACTIVITIES BY THIS GROUP.

WELL, I SUBMIT THAT, GENERALLY SPEAKING, AND FROM A PRACTICAL POINT OF VIEW, IF YOU HAVE A SUFFICIENT NUMBER OF PREDICATE ACTS THAT ARE COMMITTED BY AN ASSOCIATED GROUP, THAT YOU ARE GENERALLY GOING TO FIND THAT THERE IS GOING TO BE SOME SORT OF STRUCTURE AND ORGANIZATION TO THE GROUP. THAT IS HOW THEY ARE ABLE TO GET TOGETHER. I THINK IT WOULD BE A VERY UNLIKELY SCENARIO THAT YOU WOULD HAVE SOMETHING, JUSTICE QUINCE, LIKE YOU SUGGESTED, WHERE THERE IS NUMERABLE ONES OR THE RESPONDENT HAS POINTED OUT IN A BRIEF, HUNDREDS OF CRIMES COMMITTED BY THE VARIOUS ASSOCIATES, WHERE THERE IS NO DECISION-MAKING STRUCTURE. I THINK YOU CAN ALMOST CIRCUMSTANTIALALLY INFER IT IN CASES LIKE THAT, BUT THAT DOESN'T MEAN THAT IT IS NOT AN ELEMENT OF THE OFFENSE. IT, STILL, MUST BE AN ELEMENT OF THE OFFENSE, TO PROVE THE ENTERPRISE. AND I SUBMIT THAT GETTING BACK TO THE INTENT QUESTION, FOR JUST A MOMENT, BOYD WAS DECIDED BACK IN 1991. NOW, CAGNEY AND ELLIOTT PRECEDED THIS, AND BOYD RECOGNIZED THAT THOSE CASES WERE IN EXISTENCE OUT OF THE ELEVENTH CIRCUIT AND THE FIFTH CIRCUIT RESPECTFULLY I FEEL. -- RESPECTIVELY. BOYD REJECTED THE ARGUMENTS THAT THE ELEVENTH CIRCUIT ACCEPTED, AND, REALLY, THEY REJECTED IT BECAUSE, TO ACCEPT THEIR ANALYSIS, IS GOING TO CRIMINALIZE, FOR RACKETEERING PURPOSES, MERE ASSOCIATED CRIMINALS, AND I THINK THAT THE COURT SHOULD LOOK TO WHAT THE FLORIDA LEGISLATURE DID NOT DO SINCE BOYD.

WHY ISN'T THE ELEMENT OF ENTERPRISE SATISFIED, WHEN SEVERAL PEOPLE DIDN'T GET TOGETHER AND SAY WE ARE GOING TO PREY ON DRUG DEALERS. WHY DOESN'T THAT SATISFY IT, AND THEN FWE THEY GO OUT AND DO JUST -- AND THEN THEY GO OUT AND DO JUST THAT. FOR THE NEXT YEAR OR SO, THEY --

JUSTICE SHAW, I HAVE TO AGREE THAT, IN THIS PARTICULAR CASE, THAT MAY, THE ENTERPRISE ELEMENT, UNDER A BOYD ANALYSIS, MAY HAVE BEEN -- MAY HAVE BEEN SATISFIED. THE PROBLEM IS THE JURY WASN'T PROPERLY TOLD WHAT AN ENTERPRISE IS. AS I WAS GOING TO SUGGEST, THAT WE, I THINK WE KNOW, WHAT THE FLORIDA LEGISLATURE MEANT, IN ADDITION TO JUST PREAMBLE. BUT WE CAN LOOK TO WHAT THEY DIDN'T DO. THEY DIDN'T AMEND THE STATUTE. NOW, BEAR IN MIND, SINCE 1991, FOR THE PAST 8 AND-A-HALF OR 9 YEARS, THE PROSECUTORS, THROUGHOUT THE STATE, HAVE ROUTINELY SCRUTINIZED THE EVIDENCE THAT THEY HAD BEFORE THEM, TO MAKE CERTAIN THAT WHAT THEY HAD WAS AN IDENTIFIABLE STRUCTURE, OPERATING UNDER SOMETHING OTHER THAN ON AN AD HOC BASIS, AND THAT OTHER ELEMENTS EXIST, IN ORDER FOR THERE TO BE AN ENTER -- AN ENTERPRISE. THE PROSECUTORS HAVE HAD TO NOT FILE RACKETEERING BUT OTHER SUBSTANTIVE COUNTS, WHICH WOULD HAVE BEEN RACKETEERING ACTIVITY, IF THEY HADN'T SCRUTINIZED. I WOULD STATE THAT THAT HAS BEEN THE CONTINUING LEVEL OF LAW IN THE STATE FOR ALL OF THESE YEARS, AND NOTWITHSTANDING THAT THE LEGISLATURE HAS AMENDED THE RICO STATUTE ON A NUMBER OF OCCASIONS, THEY HAVE NEVER ONCE TINKERED WITH THE DEFINITION OF ENTERPRISE, TO CLARIFY THAT THEIR INTENT IS SOMETHING DIFFERENT THAN THE WAY THE STATUTE HAS BEEN ROUTE IBLE INTERP -- ROUTE IBLE INTERPRETED IN THIS STATE.

JUST LIKE JUSTICE, IN BOYD, WHERE EVERYONE AGREED THAT THAT WASN'T ENOUGH, LEGALLY, FOR A RICO VIOLATION, HERE YOU ARE CONCEDING THAT THERE WAS SUFFICIENT EVIDENCE TO GO TO THE JURY, I THINK YOU ARE AGREEING TO THAT. NOW WE ARE TALKING ABOUT WHAT JURIES SHOULD BE INSTRUCTED ON AROUND THE STATE, AND SINCE 1991, WHEN BOYD CAME OUT, UNTIL THE PRESENT TIME, DO WE HAVE ANY WORK OF THE STANDARD CRIMINAL JURY INSTRUCTIONS, TO HAVE FURTHER ELABORATED ON THE JURY INSTRUCTIONS? BECAUSE WHAT YOU ARE ASKING US TO DO IS SAY THAT THERE WAS ERROR COMMITTED IN GIVING ONLY THE DEFINITION OF ENTERPRISE USED IN THE STATUTE.

I THINK THAT IS CLEAR ERROR, AND TO SPECIFICALLY ANSWER YOUR QUESTION, I THINK FOR

PURPOSES OF WHETHER OR NOT A JURY COULD HAVE FOUND THAT THE PETITIONER WAS ACTUALLY A MEMBER OF THIS ENTERPRISE, AND THAT THEY DID CRIMES OTHER THAN ON JUST SIMPLY AN AD HOC BASIS, MAY WELL HAVE BEEN ENOUGH. HOWEVER, WHAT I AM SUGGESTING TO YOU IS THIS, THE STANDARD JURY INSTRUCTION DOES NOTHING MORE THAN CRIMINALIZE THE ASSOCIATION OF CRIMINALS.

WHAT I AM -- WHAT I ASKED YOU, YOU SAID, WHAT HAS BEEN GOING ON SINCE BOYD, IS THAT PROSECUTORS ARE BEING SELECTIVE IN WHO THEY CHARGE. WHAT I AM ASKING YOU, SINCE BOYD WE HAVE HAD PROSECUTIONS IN THIS STATE. DO THE JURY, DO YOU KNOW WHETHER THE JURY INSTRUCTIONS HAVE BEEN ALTERED TO USE THE BOYD DEFINITION, IF THAT HAS BEEN SOMETHING THAT HAS BEEN CONSIDERED BY THE STANDARD JURY INSTRUCTION?

NOT BY THE STANDARDS. HOWEVER, I THINK IT IS REALLY IMPORTANT TO ANALYZE WHAT IS DONE AND WHAT THE RULE OF LAW IS CONCERNING INSTRUCTING THE JURY ON THE APPLICABLE LAW. IF THIS COURT WERE TO ACCEPT, AS I URGE THAT YOU SHOULD, THE ELEMENTS REQUIRED BY BOYD, TO ESTABLISH AN ENTERPRISE, AND IF THAT WAS THE APPLICABLE LAW, AND IF, AS IN THIS CASE, THE PETITIONER DEFENDANT BELOW, ASKED THAT THE TRIAL COURT BE INSTRUCTED -- INSTRUCT THE JURY ON THAT SPECIFIC APPLICABLE LAW THAT WAS THE THEORY OF HIS DEFENSE, AND IF THAT IS DENIED BY THE COURT, THEN IT SHOULD BE REVERSED FOR A NEW TRIAL, JUST AS IT WAS DONE IN THE SHIMMICK CASE, WHICH I CITED IN MY BRIEF. THAT WAS OUT OF THE FIRST DCA. WHERE IN THIS COURT HAD PREVIOUSLY HELD, IN BOWEN, THAT, EVEN THOUGH THERE IS NOT A CONTINUITY REQUIREMENT FOR RACKETEERING SET OUT IN THE STATUTE OR THE JURY INSTRUCTIONS, IF THAT WAS THE THEORY OF HIS CASE, WHICH IT WAS IN SHIMMICK, THAT HIS CRIME SPREE DIDN'T CONSTITUTE SOME LONG HE ENDED INDEFINITE -- LONG-ENDED INDEFINITE PERIOD OF CRIMES THAT WOULD GO OFF IN THE FUTURE, AND HE ASKED THAT THE COURT INSTRUCT THE JURY SPECIFICALLY THAT THERE BE A CONTINUITY INSTRUCTION, THAT WAS REVERSIBLE ERROR NOT TO INSTRUCT THEM, NOTWITHSTANDING THAT IT DID NOT APPEAR IN THE STANDARDS. NOT EVERYTHING IS GOING TO APPEAR IN THE STANDARDS. THE STANDARDS ARE GENERALLY SUFFICIENT BUT NOT EVERY CASE.

LET ME CLARIFY YOUR POSITION ABOUT ONE ISSUE THAT WE DISCUSSED EARLY IN THE EXCHANGE, AND IN ANSWER TO A QUESTION FROM JUSTICE QUINCE. I AM NOT SURE IF I UNDERSTAND YOUR POSITION. IS IT YOUR POSITION THAT ONE OF THE ELEMENTS THAT MUST BE PROVEN, AND THEREFORE INSTRUCTED ON, IS THAT THIS ENTERPRISE, THE ORGANIZATION, THEN, MUST HAVE SOME OTHER PURPOSE, OTHER THAN THE COMMISSION OF CRIMES?

THEY MUST EXIST SEPARATELY, OTHER THAN JUST TO COMMIT CRIMES. THAT IS WHAT TURKETT HAS MADE CLEAR.

IN OTHER WORDS, THAT THEY HAVE TO HAVE SOME PURPOSE, LAKE WHAT? OTHER THAN TO COMMIT CRIMES.

WELL, IN A CASE WHICH ADDRESSED THAT QUESTION, RICOBANE, DEALING WITH WHETHER OR NOT THEY HAVE TO HAVE SOME OTHER ELEMENT, THE THIRD AND FINAL ELEMENT, IS A STEP IN ESTABLISHING THE ENTERPRISE IS THAT THE ORGANIZATION MUST BE, QUOTE, AN ENTITY, SEPARATE AND APART FROM THE PATTERN OF RACKETEERING ACTIVITY IN WHICH IT ENGAGES, AND I QUOTE TURKETT. AS WE UNDERSTAND THIS LAST REQUIREMENT, IT IS NOT NECESSARY TO SHOW THAT THE ENTERPRISE HAS SOME FUNCTION WHOLLY UNRELATED TO THE RACKETEERING ACTIVITY BUT RATHER THAT IT HAS AN EXISTENCE BEYOND THAT WHICH IS ISNESSES MERELY TO COMMIT EACH OF THE ACTS CHARGED AS SPREAD CATS, SO THERE MUST BE SOME WAY TO -- AS SPREAD CATS, SO THERE MUST BE -- AS SPREAD I CATS, SO THERE MUST BE SOME -- AS PREDICATES, SO THERE MUST BE SOME WAY TO OVERSEE THEM.

HOW DO YOU DEFINE THAT? IT IS ONE THING TO SAY THAT THEY MUST HAVE SOME

ORGANIZATION AND CONTINUITY, SEPARATE AND APART FROM THE INDIVIDUAL CRIMES THAT THEY MAY AGREE TO COMMIT WITH EACH OTHER, AS OPPOSED TO SAYING, THOUGH, THAT THE REASON THAT WE ARE ALL COMING TOGETHER AND ARE GOING TO STAY TOGETHER IS TO WAIT FOR OPPORTUNITIES OF A PARTICULAR KIND, AND WHEN ONE OF US SPOTS THAT PARTICULAR KIND OF OPPORTUNITY, WE ARE GOING TO COMMIT THAT CRIME?

I THINK THAT, IN ANSWER TO YOUR QUESTION, THAT THE THREE ELEMENTS SET OUT ARE INTERRELATED, AND THAT IN ORDER TO HAVE AN EXISTENCE SEPARATE AND APART FROM THE RACKETEERING ACTIVITY, THERE IS NECESSARILY GOING TO BE SOME SORT OF ORGANIZATION THAT CAUSES THESE MEMBERS OF THE GROUP TO ADHERE TOGETHER FOR A COMMON-SHARED PURPOSE, AND I THINK THAT IS WHAT --

AND THE COMMON-SHARED PURPOSE CAN'T BE SIMPLY THE COMMISSION OF CRIMES FOR PROFIT?

WELL, IT CAN BE, TO MAKE MONEY, BY COMMITTING CRIMES OR HAVE SOME OTHER CRIMINAL INTENT. THE SHARED PURPOSE --

YOU SEEM TO BE SUGGESTING THAT THEY HAVE TO, FOR INSTANCE, BE A SOCIAL CLUB, YOU KNOW, AS WELL, OR THEY HAVE TO BE A CLUB THAT, ALSO, GOES OUT AND TAKES CARE OF RESIDENTIAL YARDS OR THAT THEY --

ACTUALLY I THINK WHAT I AM REALLY --

IS THAT BECAUSE ARE SAYING?

NO. WHAT I AM SUGGESTING TO YOU IS THAT, THE WAY I UNDERSTAND THAT LAST ELEMENT, IS THAT THERE MUST BE SOMETHING OTHER THAN JUST MERE SPORADIC ACTIVITY, WHERE THEY JUST HAPPEN TO BUMP INTO EACH OTHER AND THEN SAY, HEY, THERE IS AN OPPORTUNITY TO COMMIT A CRIME. LET'S GO COMMIT THE CRIME, AND I THINK THAT IS WHAT THAT LAST ELEMENT DEALS WITH.

I KNOW YOU HAVE USED UP MOST OF YOUR REBUTTAL, IF YOU WISH TO RESERVE, YOU MAY.

THANK YOU VERY MUCH. I WILL.

GOOD MORNING, YOUR HONORS. MAY IT PLEASE THE COURT. MY NAME IS MERIT HANNAH, AND I WILL BE ARGUING THE RESPONDENT'S POSITION THIS MORNING. WE ARE HERE BECAUSE THE FOURTH CERTIFIED A CONFLICT WITH THE THIRD DISTRICT IN BOYD, AND WE SUBMIT THAT BOYD WAS AN ABERRATION, AN ABERRANT DECISION THAT SHOULD NOT HAVE BEEN UPHELD AS THE LAW IN THIS STATE, BECAUSE THE STATUTE IS PLAIN, AND THE FOURTH DISTRICT RECOGNIZED THAT FACT. THERE IS NO NEED TO ADD THESE OTHER ELEMENTS, WHICH, BY THE VERY NATURE OF ADDING ELEMENTS, IS LEGISLATING, THE THIRD DISTRICT LEGITIMATED, BY ADDING THESE OTHER ELEMENTS, AND THE FOURTH RECOGNIZED THAT IT IS NOT GOING TO CROSS OVER AND LEGISLATE. IT IS GOING TO LOUISIANA AT THE PLAIN LANGUAGE OF THE STATUTE, WHICH IS CLEAR. WE HAVE AN ASSOCIATION OR A GROUP OF INDIVIDUALS, COULD NOT BE MORE PLAIN, THAT GET TOGETHER AND WE ARE LOOKING AT THIS ENTERPRISE, THIS ASSOCIATION, AND LOOKING, ALSO, AT THE SECOND PORTION OF THE STATUTE, WHICH IS A PATTERN OF RACKETEERING ACTIVITY. WE CAN'T LOOK -- OF RACKETEER RACKETEERING ACTIVITY. WE CAN'T LOOK SOLELY AT THE ENTERPRISE ALONE AND SAY WE COULD HAVE THIS GROUP THAT GOT TOGETHER AND THEY ACCIDENTALLY ROBBED SOMEBODY AND THEN THEY WENT AND ROBBED SOMEBODY ELSE. WE HAVE A PATTERN, WHICH PATTERN OF RACKETEERING ACTIVITY, THAT OCCURS OVER A CONTINUOUS PERIOD OF TIME. IT IS NOT AN ISOLATED INCIDENT. THE VICTIMS ARE RELATED OR THE ACCOMPLICES ARE RELATED OR THERE IS A RELATED PURPOSE. FOR THAT REASON WE DON'T NEED TO LOOK OUTSIDE THE STATUTE TO ADD THESE ELEMENTS.

LET ME ASK YOU THIS. UP ADMIT THAT THERE HAS GOT TO BE SOME TYPE OF STRUCTURE, AND WHAT I AM ONLY CONCERNED ABOUT IS, MAYBE, THAT -- I MIGHT AGREE THAT BOYD HAS GONE TOO FAR, BUT WHAT I AM CONCERNED ABOUT IS THAT THE WAY THE STATE WAS ALLOWED TO ARGUE IN THIS CASE, IT WAS ALLOWED TO, BASED ON THE FACT OF THERE BEING NO INSTRUCTION, IS THAT THE STATE WAS ABLE TO ARGUE THAT ALL THEY HAD TO SHOW IS THAT RALPH GROSS WAS ASSOCIATED WITH A GROUP OF PEOPLE THAT WERE CRIMINALS. AND WOULDN'T WE BE BETTER OFF, AT LEAST HAVING SOME PART OF THE TURKETT INSTRUCTION, WHICH SAYS THAT THERE HAS GOT TO BE AN ENTITY SEPARATE AND APART FROM THE PATTERN OF ACTIVITY, AND THAT AN ORGANIZATION OR AN ENTERPRISE CAN BE PROVED BY EVIDENCE OF AN ONGOING ORGANIZATION, AND THAT BY EVIDENCE, THAT THE VARIOUS ASSOCIATES FUNCTION AS A CONTINUING UNIT, WHICH RIGHT OUT OF TURKETT IT, WHICH IT SEEMS IT WOULD TAKE CARE OF THE PROBLEM BETWEEN HOW DO YOU SEPARATE A GROUP OF PEOPLE HAVING TO HAVE COMMITTED A SERIES OF CRIMES, VERSUS THE RICO SITUATION, WHICH REQUIRES SOMETHING MORE THAN JUST THAT SERIES OF ACTS. SO COULD YOU ADDRESS THAT? MAYBE BOYD IS TOO FAR, BUT BY FAILING TO HAVE ANYTHING, AN ENTERPRISE BEING AS BROAD AS IT IS -- AS BROAD, AS IT IS, THAT THE JURY SHOULD BE INSTRUCTED, IN SOME LIMITING WAY, THAT IT JUST DOESN'T MEAN A GROUP OF INDIVIDUALS THAT HAPPEN TO BE CRIMINALS.

WELL, MY FIRST RESPONSE IS THAT THAT APPEARS, TO MAE, TO BE A CONSTITUTIONAL CHALLENGE OR A CHALLENGE FOR ANOTHER DAY THAT WASN'T MADE IN THIS CASE. HERE WE ARE SIMPLY ADDRESSING THE SUFFICIENCY UNDER THE CRITERIA THAT IS SET FORTH IN THE STATUTE. SECONDLY, I WOULD LIKE TO SAY, IF YOU WERE TO GO AND LOOK AT TURKETT AND COMPARE THE TURKETT DECISION OR THE TURKETT DEFINITION, IT IS ASSUMED WITHIN TWO ELEMENTS, ENTERPRISE AND RACKETEERING ACTIVITY. IF YOU BOUNCE BACK AND FORTH, YOU CAN SEE THAT THE ASCERTAINABLE STRUCTURE IS IMPLICIT IN THE FACT THAT THESE PEOPLE GET TOGETHER, AND THEY OBVIOUSLY HAVE AGREED TO GO, TOGETHER, TO COMMIT THE CRIME. WE KNOW THAT FACT.

I AM JUST WONDERING WHETHER YOU ARE SAYING IT IS IMPLICIT, BUT WHETHER IT IS NOT A BETTER PRACTICE, WHETHER IT IS REVERSIBLE ERROR IN THIS CASE, GOT TO LOOK FOR THE FUTURE, FOR THE JURY TO BE INSTRUCTED ON WHAT YOU SAY IS IMPLICIT, WHICH COULD VERY WELL BE CONFUSING TO THE JURY, AS FAR AS THE PRESENT STATE OF THE INSTRUCTIONS, WHICH DON'T HAVE ANYTHING ABOUT THE STRUCTURE IN THERE.

AGAIN, I JUST HAVE TO SAY THAT LEGISLATIVE INTENT IS CLEAR, THAT THEY INTENDED A BROAD DEFINITION TO ENCOMPASS A BROAD RANGE OF CRIMINAL ACTIVITY, AND AS I THINK IT WAS JUDGE COPE POINTED OUT IN HIS SPECIAL CONCURRENCE, THESE ARE CAREER CRIMINALS. THESE ARE PEOPLE WHO ARE ENGAGED IN THE CAREERS OF BREAKING THE LAW. SO WE ARE NOT JUST GETTING THE SPORADIC ACTIVITY OR THE HOODLUMS ON A LARK.

ISN'T THAT AN IMPORTANT ISSUE? THAT IS OF WHETHER OR NOT THEY ARE CAREER CRIMINALS, AND AS PEOPLE WOULD ORDINARILY TAKE THAT, A GROUP OF CAREER, IN OTHER WORDS, PERMANENT, ONGOING, CONTINUING, THAT HAVE GOTTEN TOGETHER AND HAVE STAYED TOGETHER FOR THE PURPOSE OF COMMITTING CRIMES, VERSUS THE SPORADIC SITUATION THAT OCCURRED IN BOYD? SO LET ME, ARE YOU FAMILIAR WITH THE ARGUMENT OF THE PROSECUTOR IN THIS CASE? IT WAS CITED BY YOUR OPPONENT IN HIS BRIEF? DO YOU THINK THAT WAS PROPER ARGUMENT UNDER THIS STATUTE?

YES. UNDER THE BROAD LANGUAGE OF THE STATUTE.

THAT THERE IS AN ENTERPRISE IF THERE IS ONE?

THE ENTERPRISE HAS BEEN DEFINED AS ANY OF AN INDIVIDUAL, SOLE PROPRIETORSHIP, CORPORATION, AND IT IS VERY BROAD IN ITS INTERPRETATION.

SO ONE PERSON COULD CONSTITUTE A RICO?

YES. I BELIEVE THAT WAS DORSEY, THIS COURT ADDRESSED THAT ISSUE, THAT AN INDIVIDUAL , CAN AS LONG AS THE ENTERPRISE IS SHOWN TO EXIST, SEPARATE AND APART FROM THE PATTERN OF RACKETEERING ACTIVITY. WHAT --

SO HOW DOES THAT WORK WITH ONE?

I BELIEVE --

GIVE ME A HYPOTHETICAL.

A HYPOTHETICAL. HUM. WELL, LET'S SAY I DECIDE THAT I WANT TO RUN NUMBERS. AND I HAVE THIS NUMBERS-RUNNING BUSINESS. MY NUMBERS-RUNNING BUSINESS IS OCCURRING OVER A SPECIFIC TIME PERIOD, AND MY NUMBERS-RUNNING BUSINESS IS MY BUSINESS. IT IS ME. I AM DOING IT, BUT YOU CAN'T DENY THAT THAT IS A CRIMINAL ENTERPRISE THAT WAS CALCULATED UNDER THE ENTERPRISE DEFINITION, AND I AM ENGAGING IN A PATTERN OF RACKETEERING ACTIVITY. IT IS ILLEGAL UNDER THE STATUTE TO RUN NUMBERS, AS I AM RUNNING MY NUMBERS, I AM, ALSO, I AM NOT -- I AM DOING IT, MYSELF, BUT I AM THE ENTERPRISE, AND BEING THE ENTERPRISE, LOOKING AT THE ENTERPRISE, IN ADDITION TO THE PATTERN OF RACKETEERING ACTIVITY, WHICH IS I FEAR IS WHAT IS HAPPENING HERE IS THAT WE ARE LOOKING SOLELY AT THE ENTERPRISE AND NOT AT THE PATTERN OF RACKETEERING ACTIVITY.

BUT DOESN'T THE INDIVIDUAL, FOR INSTANCE, THAT HAS ROBBED SEVERAL 7-11S OR DRUGSTORES OR WHATEVER, QUALIFY UNDER THIS STATUTE?

NO. THE -- I WOULD ARGUE THAT THE INTENT WOULD BE DIFFERENT, UNDER THE --

WHAT IS LACKING?

THE PATTERN OF --

THE PERSON THAT HAS GONE OUT AND ROBBED SEVERAL 7-ELEVENS?

UNDER THE DIFFERENT PATTERN OF ACTIVITY, THE VICTIMS AREN'T THE SAME. GRANTED HIS ACCOMPLICES, IN AS MUCH AS HIMSELF, IS THE SAME, BUT HE IS NOT -- I AM GETTING CAUGHT UP HERE -- HE IS NOT THE TYPE OF PERSON THAT THE LEGISLATURE CONTEMPLATED THIS ACT FOR. HE IS -- WHY IS HE ROBBING THIS 7-ELEVEN? THE FACTS OF THIS CASE ARE CLEAR THAT --

WELL, WHAT HE FIT UNDER THAT PATTERN, IF, JUST LIKE THE NUMBERS PERSON, DECIDES THAT THIS IS GOING TO, AND YOU CAN DEMONSTRATE THAT HE HAS DECIDED THAT THIS IS GOING TO BE MY METHOD OF WORK. THIS IS HOW I AM GOING TO TAKE CARE OF MYSELF. BY ROBBING 7-ELEVEN STORES, SO, WOULD HE, THEN, FIT UNDER THE ENTERPRISE AND PATTERN OF RACKETEER SOMETHING.

AN ARGUMENT COULD BE MADE, YES, THAT HE WOULD FIT UNDER THAT.

SO IT IS THE INTENT THAT YOU CAN DEMONSTRATE THAT WOULD CHANGE AN INDIVIDUAL FROM BEING A RACKETEER VERSUS NOT BEING?

IT IS A VARIETY OF THINGS. IT IS THE CONTINUITY OR THE TEMPORAL RELATIONSHIP OF THE CRIMES. IT IS THE PURPOSE. IT IS THE --

WELL, EVERY, I TAKE IT, THEN, EVERY STREET CORNER MARINSELLER WOULD FIT UNDER THIS CLEARLY.

THEN, YES, YOUR HONOR. IF WE WERE GOING TO ATTACK THAT, THOUGH, THEN WE WOULD ATTACK THE LAW FOR OVERBREADTH, WHICH IS NOT THE CHALLENGE HERE TODAY. THIS IS SIMPLY A SUFFICIENCY OF THE EVIDENCE CHALLENGE THAT IS CLEARLY MET, UNDER THE --

SO ANYBODY THAT REGULARLY COMMITS CRIMES AND SORT OF DOES IT FOR A LIVING FITS UNDER THIS STATUTE?

I WOULD HAVE TO BACK STEP AND SAY THAT, NO, I DON'T THINK THAT THAT WOULD BE THE CASE. I THINK THAT, CLEARLY, THERE IS LIMITING LANGUAGE, AND THAT THERE IS THIS REQUIREMENT THAT WE HAVE THE ENTERPRISE, AND THAT THE ENTERPRISE DOES EXIST IN A FORUM. AND THE ELEVEN CIRCUIT POINTED OUT THAT IT IS NOT AN AMOEBA LIKE OR IT CAN BE AN AMOEBA-LIKE STRUCTURE. IT CAN BE INFORMAL AND LOOSE, AND THAT THESE DECISIONS CAN BE MADE ON A CONSENTUAL BASIS OR A HIRE ARCCAL BASIS -- OR A HIREARCHICAL BASIS, BUT IN THIS CASE WE HAVE A BOARD OF DIRECTORS DIRECTING THIS GROUP OR CONTROLLING THESE ORGANIZATIONS. THE LAW WAS INTENDED TO BE BROAD, TO PREVENT THIS IN FILTRATION INTO LEGITIMATE BUSINESSES, AND IT WAS DESIGNED TO GIVE TEETH TO THE PROSECUTORS, TO PREVENT THIS IN FILTRATION, AND TO PREEMPT THESE CRIMINAL --

WAIT A MINUTE. WE ARE NOT TALKING, HERE, ABOUT IN FILTRATION. THIS CASE DOESN'T INVOLVE ANY IN FILTRATION INTO THE LEGITIMATE BUSINESS, DOES IT?

NO. WE DON'T NECESSARILY HAVE THAT HERE, BUT WE DO KNOW THAT THE PETITIONER -- DO WE HAVE IT HERE AT ALL?

THE PETITIONER DID OPERATE A BUSINESS CALLED CORVETTE COUNTRY. THERE WAS IN EVIDENCE LINKING THE IN FILTRATION, BECAUSE WE DIDN'T GET TO THAT, BECAUSE THEY WERE ABLE TO STOP THAT, WHICH IS EXACTLY WHAT THE LAW WAS DESIGNED TO DO. IT WAS DESIGNED TO PREVENT THAT IN FILTRATION, A PREEMPTIVE STRIKE, IF YOU WILL.

SO IF YOU DON'T HAVE A CASE WHERE IT INVOLVES IN FILTRATION, YOU DON'T HAVE A RICO VIOLATION?

NO. THAT IS NOT THE DEATH KNELL, AND THE SUPREME COURT HAS SAID --

I THOUGHT YOU SAID THAT IS WHAT THE PURPOSE OF THE LAW WAS, TO PREVENT THIS IN FILTRATION.

IT IS A PREVENTIVE MEASURE, AND IF WE CAN GET TO IT BEFORE IT OCCURS, THEN ALL THE BETTER.

HAVEN'T YOU JUST DEMONSTRATED WHY AN INSTRUCTION IS NEED ODD RICO? BECAUSE -- NEEDED ON RICO? YOU ARE BEING PINNED AGAINST THE WALL IN CERTAIN INSTANCES HERE, AND HOW IS THE JURY, WITHOUT AN INSTRUCTION, JUST STANDARD JURY INSTRUCTION, GOING TO DEAL WITH RICO? ISN'T THAT THE PROBLEM IN THIS CASE? THAT WHY IT IS ERROR NOT TO HAVE GIVEN A SPECIAL INSTRUCTION?

-- THE BOYD DEFINITION OF RICO?

THE JURY WAS INSTRUCTED, HERE --.

DEPENDING ON HOW THE QUESTION IS PUT TO YOU, YOUR ANSWER SEEMS TO BE VARYING.

THE JURY WAS INSTRUCTED, HERE, THAT THESE CANNOT BE ISOLATED INCIDENTS, THAT THERE WAS A SPECIFIC, CONTINUING TIME PERIOD, THAT THERE MUST BE SIMILAR VICTIMS, SIMILAR



ACCOMPLICES, THAT SOMEHOW THESE CRIMES ARE RELATED. THAT IS THE PATTERN OF RACKETEERING ACTIVITY. THEY WERE, ALSO, INSTRUCTED THAT AN ENTERPRISE CAN BE DEFINED AS BROADLY AS AN ASSOCIATION OR A GROUP OF INDIVIDUALS WHO GET TOGETHER, BY THE VIRTUE OF THE FACT THAT THEY ARE TOGETHER, THEY ARE AN ASSOCIATION UNDER THE DEFINITION OF ENTERPRISE, AND IT DOESN'T NECESSARILY HAVE TO BE FOR AN ILLEGAL PURPOSE. GRANTED THESE ARE BROAD DEFINITIONS, BUT TO GO FURTHER AND STEP WITHIN THE PROSECUTOR'S SHOES AND THE PROSECUTORIAL DISCRETION THE COURTS CANNOT CROSS THAT LINE. THE COURTS CANNOT LEGISLATE. THE COURTS CANNOT PROSECUTE. WE ARE SIMPLY INTERPRETING THE STATUTE AS THE LEGISLATURE HAS SET IT OUT HERE, AND THE STATUTE IS PLAIN. THERE IS NO NEED TO LOOK FURTHER. THERE IS NO NEED TO LOOK TO THE PREAMBLE, BECAUSE IT IS CLEAR. IT IS VERY PLAIN. THERE IS NO AMBIGUITY IN THE STATUTE.

BUT THERE IS AMBIGUITY IN ITS APPLICATION, BECAUSE IN THE SITUATION YOU SET UP, WHERE YOU SAID THAT, ALL RIGHT, I AM GOING TO GIVE AN EXAMPLE OF HOW ONE PERSON CAN FIT IN THE RICO STATUTE, I AM HAVING DIFFICULTY SEEING A DIFFERENCE BETWEEN THAT AND A PERSON SELLING CRACK ON THE CORNER. EVERY CRACK DEALER OR EVERY -- WOULD AND RICO CASE. WOULDN'T IT?

IF NOTHING ELSE, THEN I FALL BACK ON THE PROSECUTOR'S DISCRETION IN CHARGING THESE INCIDENTS. HOWEVER, AGAIN, I KNOW I KEEP FALLING BACK ON THIS ARGUMENT, BUT THAT IS A CONSTITUTIONAL CHALLENGE FOR ANOTHER DAY, AND WE ARE HERE SOLELY ON THE CRITERIA EXPRESSED IN THE STATUTE. THE STATUTE HAS NOT BEEN CHALLENGED AS BEING VAGUE OR OVERBROAD. WE PRESENTED AMPLE EVIDENCE UNDER THE ENTERPRISE ELEMENT, AND MIGHTY ADD ASIDE NOTE, EVEN IF WE GO UNDER THIS HIGHER STANDARD THAT THE BOYD COURT PUSHED UNDER RICOBANE, WE MET THAT HERE. THERE WAS AN ORGANIZATION. THESE PEOPLE MET AT PREDETERMINED PLACES.

AGAIN, MR. HALPERN SAYS HE IS NOT CHALLENGING THE SUFFICIENCY OF THE EVIDENCE TO CONVICT. WE ARE ONLY HERE TO DECIDE WHETHER THE JURY NEEDED TO HAVE FURTHER INSTRUCTIONS TO CLARIFY WHAT THE LAW SHOULD BE IN THIS AREA, WHERE A STATUTE MAY BE ADMITTEDLY OVERBROAD, BECAUSE IT COULD JUST PUNISH PEOPLE THAT GET TOGETHER, WITHOUT THEIR BEING ANY ORGANIZATION TO IT, OR ANY CONTINUITY TO IT. WHICH ARE REQUIREMENTS. SO HOW DO WE -- I MEAN, WOULDN'T THERE BE AT LEAST YOU MAY SAY, HERE, THAT IT IS NOT REVERSIBLE ERROR NOT TO HAVE INSTRUCTED MORE, BUT COULD YOU AT LEAST CONCEDE THAT THE JURY COULD HAVE BEEN AIDED IN ITS UNDERSTANDING OF WHAT THIS CRIME IS SUPPOSED TO BE AND THE PARAMETERS BY SOME ADDITIONAL INSTRUCTIONS? WE HAVE -- DO YOU AGREE WITH THAT AT ALL? THAT THEY -- BECAUSE, AGAIN, INSTRUCTIONS WE JUST DON'T INSTRUCT, BASED ON WHAT THE STATUTE SAYS. THE JURY INSTRUCTS RESPECT ALLOWED TO ELABORATE ON THE LAW.

GRANTED, BUT THE JURY INSTRUCTIONS HERE WERE VERY CLEAR AND VERY PLAIN, AND FOR ME TO -- I CAN'T CONDITION SEED THAT POINT, THAT THEY WERE UNCLEAR OR THAT THEY REQUIRED FURTHER DEFINITION, AND I MIGHT, ALSO, ADD THAT THE JURY INSTRUCTIONS REQUESTED BY PETITIONER IN THIS CASE ONLY WOULD HAVE SERVED TO MISLEAD THE JURY.

WELL, THAT MAY BE A DIFFERENT ISSUE, AS TO THE MISLEADING WOULD HAVE BEEN BASED ON HIS INSTRUCTION WAS BASED ON BOYD, SO WE WOULD HAVE TO DISAPPROVEING BOYD, TO SAY THAT THOSE INSTRUCTIONS ARE MISLEADING. CORRECT?

YES.

AND THE PROSECUTOR DID ARGUE EW, BASED ON -- ARG, BASED ON WHAT THE IN -- ARGUE, BASED ON WHAT THE INSTRUCTIONS WERE, THAT GROSS ASSOCIATING WITH OTHER PEOPLE, THAT THAT WOULD BE SUFFICIENT TO FIND A RICO VIOLATION. THERE WAS NOTHING THAT THE

DEFENDANT HAD TO FALL BACK ON IN THE INSTRUCTIONS, TO SAY THAT THAT, ITSELF, WOULD NOT BE ENOUGH TO CONVICT UNDER THIS STATUTE.

I BELIEVE THE DEFENDANT OR THE PETITIONER'S DEFENSE IN THIS CASE WAS THAT HE DIDN'T PARTICIPATE IN THESE CRIMES. SO THIS IS UNLIKE THE SHIMMICK CASE THAT PETITIONER POINTED TO, WHERE THAT WAS HIS DEFENSE AND THEREFORE A FAILURE TO GIVE SUCH A REQUESTED JURY INSTRUCTION RESULTED IN ERROR.

SO YOU WOULD SAY THIS IS HARMLESS IN THIS CASE, BECAUSE IT DIDN'T GO TO HIS DEFENSE?

IF ANYTHING. IF I AM GOING TO CONCEDE ANYTHING, I WILL CONCEDE THAT. IT WAS HARMLESS ERROR.

YOU MEAN HE WASN'T DENYING THAT AN ENTERPRISE EXISTED? CLEARLY WASN'T THAT PART OF HIS DEFENSE, THAT AN ENTERPRISE DIDN'T EXIST?

HE DENIED PARTICIPATING IN ANY OF THESE EVENTS AT ALL, THAT HE WAS JUST CURSORY INVOLVED. HE NEVER WENT INTO THESE EVENTS. HE PARTICIPATED.

BUT DON'T YOU THINK THE DEFENSE WOULD HAVE BEEN ALLOWED TO ARGUE TO THE JURY, THAT EVEN IF THEY HAD RECOGNIZED HIS PARTICIPATION, THAT IT WASN'T AN ENTERPRISE, AS IT IS DEFINED BY LAW? THE PROSECUTOR OBVIOUSLY ARGUED THAT AN ENTERPRISE WAS ESTABLISHED.

AND UNDER THE STATUTE, UNDER THE DEFINITION AS SET FORTH BY THE LEGISLATURE, AN ENTERPRISE WAS ESTABLISHED. NOT GOING BEYOND THAT, DEALING SOLELY WITH THE CHALLENGE THAT IS BEFORE THE COURT TODAY, WHICH IS THE FACT THAT THERE ARE THESE SPECIFIC CRITERIA SET FORTH IN THE STATUTE. THAT IS ALL WE HAVE TO WORK WITH. THE STATE PROVED ITS CASE BEYOND A REASONABLE DOUBT. PROVED THAT THEY PRESENTED SUFFICIENT EVIDENCE OF THIS ENTERPRISE, AND I MUST URGE THAT YOU CANNOT LOOK SOLELY AT ENTERPRISE. YOU HAVE TO LOOK, AND THE SUPREME COURT RECOGNIZED THIS. THE EVIDENCE MERGES OR COLE HE SEE. YOU CAN LOOK -- OR COALESCES. YOU CAN LOOK AT THE PATTERN OF ACTIVITY OR DEFINING ENTERPRISE.

DIDN'T WE HAVE A RULE OF LAW, AT THE TIME THIS TRIAL OCCURRED, THAT SAID TRIAL COURTS ARE BOUND BY OTHER DISTRICT OF COURT OF APPEAL DECISIONS, IF THERE IS NOT A CONTROLLING DECISION OUT OF THEIR DISTRICT COURT OF APPEAL?

YES, YOUR HONOR.

SO WASN'T THE TRIAL COURT IN ERROR IN NOT ACCEPTING THE THIRD DISTRICT'S DECISION IN BOYD?

I THINK THE TRIAL COURT RECOGNIZED THE OUTCOME DETERMINATIVE NATURE OF BOYD. AND BOYD --

WASN'T THE TRIAL COURT BOUND BY BOYD?

UNDER THE RULE OF LAW, YES, BUT UNDER THE STATUTE, AS SET FORTH BY THE LEGISLATURE, WHICH THE THIRD DISTRICT SAW FIT TO DISREGARD OR DEPART FROM OR TO LIMIT, NO.

AM I CORRECT THAT, WHAT THE TRIAL COURT DID WAS USE THE STANDARD JURY INSTRUCTION?

YES, YOUR HONOR.

AND IS WHAT THIS BOILS DOWN TO, WHETHER THE TRIAL COURTERED IN REJECTING -- COURT ERRED IN REJECTING THE REQUESTED INSTRUCTION BY THE DEFENDANT IN THIS CASE?

YES. YES.

THAT IS WHAT IT IS.

AND THE STANDARD JURY INSTRUCTION HAD BEEN OUT THERE SOMETIME SINCE BOYD?

YES, IT HAD BEEN.

OKAY.

THE LEGISLATURE HAS NOT CHANGED THE DEFINITION OF ENTERPRISE OR OF PATTERN OF RACKETEERING ACTIVITY. THIS RICO, FLORIDA'S RICO LAW, WAS INTENDED AS A BROAD TOOL TO BE USED AGAINST THIS TYPE OF CRIME. AND THEREFORE, UNDER THE FACTS AS THEY EXISTED AT THAT TIME, AND THE LAW THAT EXISTED AT THAT TIME, UNDER THE SPECIFIC STATUTE, THE STATE SUBMITS THAT THERE WAS SPECIFIC EVIDENCE PRESENTED TO PROVE THAT THERE WAS AN ENTERPRISE PETITIONER PARTICIPATED IN AND THAT HE CONDUCT ADD PATTERN OF RACKETEERING ACTIVITY. THEREFORE WE ASK YOU TO AFFIRM GROSS AND OVERRULE BOYD.

THANK YOU VERY MUCH.

THANK YOU.

I THINK YOU HAVE A FEW SECONDS. USE THEM -- LET ME ASK YOU THIS. DO YOU AGREE THAT, THIS DECISION IN THIS CASE COMES DOWN TO WHETHER THE COURT ERRED IN REJECTING THE SPECIALLY REQUESTED JURY INSTRUCTION.

JURY INSTRUCTION. ABSOLUTELY.

IN THE SPECIALLY REQUESTED INSTRUCTION, IT USES THE TERM "CRIMINAL ENTERPRISE HAS AN IDENTIFIABLE DECISION-MAKING STRUCTURE." .

THAT IS CORRECT.

WHAT DOES THAT MEAN?

THAT MEANS THAT THERE IS SOME WAY TO ESTABLISH THAT THERE IS SOME PERSON OR GROUP OF PEOPLE THAT DIRECT THE GROUP TO DO CERTAIN THINGS.

HAVE TO HAVE A BOARD OF DIRECTORS?

THEY DON'T HAVE TO HAVE ANYTHING LIKE THAT.

IS THERE A CASE THAT DEFINES THAT? DECISION-MAKING STRUCTURE?

RICOBANE TALKS TO THAT ISSUE AND SPEAKS TO THAT ISSUE AND STATES THAT THERE CAN BE A HIERARCHY OF CONTROL, AS YOU HAVE INDICATED, LIKE A BOARD OF DIRECTORS, OR IT CAN BE A SITUATION WHERE AUTHORITY IS CONSENTUAL.

WOULDN'T YOU AGREE THAT THAT TERM, ITSELF, IS SOMEWHAT AMBIGUOUS? IT WOULD BE TO ALLAY JURY, AS TO WHAT -- TO A LAY JURY, AS TO WHAT IS A DECISION-MAKING STRUCTURE?

NO. I THINK THAT TERM IS VERY CLEAR, BECAUSE WE CAN ALL UNDERSTAND, JUST LIKE THIS COURT HAS AN IDENTIFIABLE DECISION-MAKING STRUCTURE THAT TELLS ME WHEN MY TIME IS

UP, BUT I THINK THAT WE ALL CAN UNDERSTAND WHAT IDENTIFIABLE DECISION-MAKING STRUCTURES ARE, AND WE CAN, ALSO, UNDERSTAND THAT DECISION-MAKING STRUCTURES CAN BE CONSENTUAL. THAT IS EVERYBODY AGREES THAT WE WILL MAKE DECISIONS TOGETHER.Z"X

THANK YOU VERY MUCH. WE APPRECIATE BOTH OF YOUR ASSISTANCE.

THANK YOU.

WE HAVE ANOTHER CASE OR TWO