OFFICIAL TRANSCRIPT

PROCEEDINGS BEFORE

THE SUPREME COURT

OF THE

UNITED STATES

CAPTION: FRANCINE TAFFLIN, ET AL., Petitioners, v.

JEFFREY A. LEVITT, ET AL.

CASE NO: 88-1650

PLACE: Washington, D.C.

DATE: November 27, 1989

PAGES: 1 - 29

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IN THE SUPREME COURT OF THE UNITED STATES

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FRANCINE TAFFLIN, ET AL., :

Petitioners :

v. : No. 88-1650

JEFFREY A. LEVITT, ET AL. :

- - - - - - - - - - - - - - - - - - X

Washington, D.C.

Monday, November 27, 1989

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 2:01 p.m.

APPEARANCES:

M. NORMAN GOLDBERGER, ESQ., Philadelphia, Pennsylvania; on behalf of the Petitioners.

ANDREW H. MARKS, ESQ., Washington, D.C.; on behalf of the Respondents.

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PROCEEDINGS

(2:01 p.m.)

CHIEF JUSTICE REHNQUIST: We'll hear argument next in No. 88-1650, Francine Tafflin v. Jeffrey A. Levitt.

We'll wait just a moment, Mr. Goldberger.

Very well, Mr. Goldberger, you may proceed.

ORAL ARGUMENT OF M. NORMAN GOLDBERGER

ON BEHALF OF THE PETITIONERS

MR. GOLDBERGER: Mr. Chief Justice, and may it please the Court:

The issue presented in this case is whether the private civil treble damage remedy provided by Congress in the Racketeer Influenced and Corrupt Organizations Act known as RICO and codified at 18 U.S.C. Section 1964(c) is within the exclusive jurisdiction of the federal courts. We contend that Section 1964(c) is within the exclusive jurisdiction of the federal courts.

This Court in the Gulf Offshore case set forth the test that it had applied in determining whether any given congressional enactment is within the exclusive jurisdiction of the federal courts.

Analysis must always begin with the presumption that jurisdiction is concurrent. Congress, however, does have the power to confer exclusive jurisdiction on the

federal courts, and with respect with each congressional enactment the question is whether Congress intended to exercise that power.

This Court in Gulf Offshore set forth three methods by which the congressional intent to confer exclusive jurisdiction could be discerned.

First, that congressional intent could be discerned by an explicit statutory directive that jurisdiction be exclusive. Second, the congressional intent to confer exclusive jurisdiction could be discerned by an unmistakable implication from legislative history. Third, the congressional intent to confer exclusive jurisdiction could be discerned by an incompatibility between federal interests and the exercise of state court jurisdiction.

QUESTION: Mr. Goldberger, do you think there is any difference between the standards laid down in Gulf Offshore and the traditional standards of the Claflin case?

MR. GOLDBERGER: Your Honor, I do not think so. There was in Claflin a holding that exclusive jurisdiction could be determined either explicitly or implicitly, and also a reference to incompatibility in Claflin. I think Gulf Offshore and Claflin, therefore, are entirely compatible.

With respect to Section 1964(c) there is no explicit statutory directive that jurisdiction be exclusive. There is, however, an unmistakable implication that arises from the legislative history of Section 1964(c) as well as exclusive jurisdiction can also be seen because of an incompatibility between the exercise --

QUESTION: Well, where do you find in the legislative history that Congress even considered the question?

MR. GOLDBERGER: Your Honor, there is no explicit legislative discussion of the question of exclusive jurisdiction. There is, however, a clear reliance on Section 4 of the Clayton Act in drafting Section 1964(c) of RICO.

QUESTION: Yeah, but that falls far short of any kind of indication by Congress that they didn't expect the normal presumption of concurrent jurisdiction to apply.

MR. GOLDBERGER: Your Honor --

QUESTION: It looks to me like you're just left with your argument on incompatibility and I'm not sure it is.

MR. GOLDBERGER: Your Honor, I think under this Court's decision in the Cannon case and Lorillard v. Pons that when Congress bases one statute on another statute it is presumed to know what this Court's interpretation is

for a statute.

And absent any change in the applicable language to incorporate that language -- incorporate those precedents in the --

QUESTION: Well, it isn't all that clear that this Court was on the right track under the Clayton Act. Why would we want to extend it to a new statute?

MR. GOLDBERGER: I think, Your Honor, whether this Court was on the right track with respect to Clayton may be in some sense beside the point because it is what Congress knew this Court had done when it enacted Section 1964(c). That is, Congress was aware of the Court's decisions in Freeman v. Bee Machine Company and in General Investment that jurisdiction was exclusive.

Thereby, when it enacted Section 1964(c) it was presumably adopting those decisions as well, for it made no change in the statutory language between the Clayton Act and Section 1964(c).

Moreover, this Court has previously recognized these two similarities between Section 1964(c) and Section 4 in interpreting Section 1964(c). Thus, in the Sedima decision, this Court was confronted with the question of whether there was a requirement that there be a prior predicate act conviction before a successful 64 -- 1964(c) action could be brought.

In part relying on the history of the Clayton Act and this Court's interpretations of the Clayton Act, the Court concluded that it was -- such a predicate act conviction was unnecessary.

The Court made similar references to Section 4 of the Clayton Act and Section 1964(c) in trying to adopt the proper statute of limitations in the Malley-Duff decision. And also, in deciding whether RICO claims were arbitrable, this Court also made reference to Section 4 of the Clayton Act and noted the similarity in purpose and structure between Section 4 of the Clayton Act and Section 1964(c).

This congressional intent to model Section 1964(c) on Section 4 of the Clayton Act does give rise to an implication that Congress intended Section 1964(c) to be interpreted in the same way as Section 4 of the Clayton Act and to provide for exclusive jurisdiction.

This congressional intent that Section 1964(c) be interpreted in the same way is buttressed by an examination of RICO's underlying policies and structures which are incompatible with any exercise of state court jurisdiction.

To begin with, many of the predicate acts which form the heart of any Section 1964(c) claim, the pattern of racketeering activity, are federal crimes. Congress in

18 U.S.C. Section 3231 has provided that jurisdiction over federal offenses shall be exclusively federal.

At least one of the purposes of Section 3231 has been to enable there to be an orderly development of the federal criminal laws and to provide for the development of expertise with respect to those federal criminal laws.

If jurisdiction is held to be concurrent, in every RICO case in which there is an allegation of a federal predicate offense the state courts will necessarily have to become involved in the interpretation of these federal criminal offenses.

QUESTION: Well, it seems to me that state courts are called upon to interpret federal law in every situation in which there is concurrent jurisdiction. I don't see why this is any different.

MR. GOLDBERGER: Your Honor, it's because of the congressional enactment in 3131 -- in 18 U.S.C. Section 3231 -- committing jurisdiction of the federal criminal offenses to the federal courts exclusively. There is not concurrent jurisdiction over federal criminal offenses.

And therefore, Congress has expressed its intent as to how federal criminal offenses are to be treated.

QUESTION: And state courts can follow that federal interpretation as they employ suits under RICO it seems to me. I don't see that it arises -- or, that it

rises to the level of any serious incompatibility.

MR. GOLDBERGER: Your Honor, if you take as a given that Section 3231 has as its purpose the development of expertise and the development of -- the orderly development of the federal criminal laws, there is an incompatibility. It arises because there will be over time the accretion of state court precedent with respect to federal criminal offenses, which today does not exist.

The predictability of the federal criminal laws will, as a result, necessarily be undercut, and the congressional purpose in enacting Section 3231 will also be undercut.

QUESTION: Do you think the state courts would just go off on their own in interpreting federal criminal laws? Just like federal courts construing questions of state law tend to follow state law, I would think the state courts would tend to follow federal court decisions in the area of federal criminal law.

MR. GOLDBERGER: Your Honor, they may or may not follow federal court decisions. They certainly will follow the decisions of this Court, bound as they are by the supremacy clause. But they may not necessarily follow, and they are under no obligation to follow, the decisions of the federal circuits or the federal district courts.

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Moreover, there -- the crimes that are involved as predicate acts under RICO may well be still in the stage of development. This Court's recent holdings with respect to the mail fraud statute in the McNally decision is an example where the mail fraud statute although on the books for a number of years is constantly developing.

So that it's not that all the law is certain at this state with respect to any of these criminal offenses.

QUESTION: Well, we couldn't get something much more fouled up than we had under the McNally case with a uniform federal --

MR. GOLDBERGER: Your Honor, it may be that it was fowled up under uniform federal jurisdiction, but I suggest that it may become even more fouled up, to use your terms, if the state courts in all 50 jurisdictions are permitted to issue opinions on the federal criminal laws which they would necessarily have to do in the context of ruling on motions for summary judgment, in the context of jury instructions, and even in the context of discovery motions as they discuss the relevancy of various discovery which is sought.

In addition to the incompatibility which is provided by the use of the federal criminal laws in the RICO statute, incompatibility also arises because of the broad nature of RICO itself.

This Court has noted in Sedima and the recent H.J. decision that RICO was deliberately crafted by Congress as a broad statute so as to catch within its parameters all types of repetitive criminal conduct which was invasive of the business community.

Necessarily the terms used by Congress were somewhat vague and broad when the statute was drafted. As a result, the various terms in RICO, such as enterprise and pattern, have received what this Court called in H.J. a plethora of opinions and the concurrence called a kaleidoscope of views.

If the state courts are permitted to exercise jurisdiction over RICO, civil RICO actions, this plethora of opinions over many of the issues still remaining under RICO and even under the pattern issue, which this Court has now left to basically a case-by-case analysis, will increase and the natural synergy of the federal system is not available to harmonize the various outstanding issues and the opinions which may issue with respect to these various outstanding issues.

QUESTION: I think what you're saying is that if there is any statute that can't suffer from leaving it to state courts it's RICO. Is that --

MR. GOLDBERGER: Your Honor, that -- that statute and perhaps the antitrust laws. And it is no

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coincidence that Section 1964(c) is based on Section 4 of the Clayton Act. Both were deliberately broad attempts to reach out and attack problems invasive of the national economy.

Finally, the procedural devices which are available to litigants in Section 1964(c) actions provided by Congress in connection with those actions are simply unavailable in state courts. Thus, Section 1965(b) provides for a nationwide service of process. Section 1965(d) provides for expanded subpoena power. Section 1965(a) provides for expanded venue. And by their terms, those provisions are not applicable to the state courts.

As a result, the Congress in enacting RICO recognized that the patterns of criminal conduct which it sought to reach out and attack were in many instances multi-state and nationwide in scope. It therefore provided plaintiffs with nationwide procedural devices to attack this nationwide problem.

At least one of the purposes of Section 1964(c) was to create plaintiffs who would become private to the attorney general and assist in the extirpation of what Congress saw as the evil which it sought to address in RICO, namely the invasiveness of organized criminal activity into the legitimate business world.

If state courts are to exercise jurisdiction,

plaintiffs will not be able to utilize all the procedures provided by Congress and therefore --

QUESTION: Mr. Goldberger, what's the name of the case in which this Court decided that state courts did not have jurisdiction over Clayton Act claims?

MR. GOLDBERGER: Your Honor, Freeman v. Bee Machine Company and General Investment are the two cases that --

QUESTION: Freeman v. Bee decided that?

MR. GOLDBERGER: Your Honor, in -- I believe it's footnote 4, but I'm not sure --

QUESTION: Don't -- please go on with your argument.

MR. GOLDBERGER: Six, your Honor. I'm sorry, it's note 6.

Taken together, the congressional reliance on Section 4 of the Clayton Act, the modeling of Section 1964(c) on that section, this Court's interpretation of Section 4 as providing exclusive jurisdiction -- create the unmistakable implication that Congress intended jurisdiction under Section 1964 (c) to be exclusive.

This conclusion is buttressed by the incompatibility which arises if state courts exercise jurisdiction because of their interpretation of federal criminal offenses which Congress has provided -- has

provided shall only be in the hands of federal courts under Section 3231, and because of the procedural devices provided by Congress, and, in addition, because of the very broad nature of RICO itself.

Mr. Chief Justice, I would like to reserve the remainder of my time.

QUESTION: Very well, Mr. Goldberger.

Mr. Marks.

ORAL ARGUMENT OF ANDREW H. MARKS

ON BEHALF OF THE RESPONDENTS

MR. MARKS: Mr. Chief Justice, and may it please the Court:

It is striking in listening to Petitioners' argument that they drop from this Court's unmistakable implication test the word "unmistakable," and that they drop from this Court's clear and disabling incompatibility test the words "clear and disabling."

The governing rule here is both clear and well-established. The state courts have an inherent right to adjudicate all claims that their constitutions and their state legislatures empower them to hear. It matters not whether those claims arise under state law or under federal law, or under the laws of India or France or any other foreign sovereign for that matter.

The state courts can be stripped of their

inherent power to adjudicate federal claims only in two limited circumstances: where Congress has clearly indicated its intent to do so either by explicit statutory language or unmistakable -- an unmistakable indication in its legislative deliberations or where the very exercise of state adjudicatory power would be fundamentally incompatible with and inimical to Congress' purposes in enacting the particular statute or with the federal government status as a superior sovereign.

This rule is deeply -- this rule is deeply rooted in our federal system. For the first 100 years of our republic, the federal courts had no general federal question jurisdiction. The state courts alone had jurisdiction over most federal claims. This allocation of juridical authority reflected the conviction of the Constitution's framers and of the First Congress, that the state courts were both competent and appropriate arbiters of federal claims.

QUESTION: Mr. Marks, do you think the Court's decision to say that Clayton Act jurisdiction was exclusively in federal courts meets that test?

MR. MARKS: Your Honor, I think that there are distinctions that the Court may well have relied on in -- in determining that there is exclusive jurisdiction over the Clayton Act.

First and foremost, quite in contrast to RICO, there is an indication in the legislative history that Congress thought about the issue and at least some indication that it was Congress' intent to delegate exclusively to federal courts the responsibility for interpreting the antitrust laws.

Secondly, I think the Court's decision in the Clayton Act cases is probably best explained by the remarkably open-ended texture of the Clayton Act and the antitrust laws and the historical context in what that issue came before the court.

After all, that -- that open texture of a law for the first time criminalizing legitimate business conduct called out to the courts to really develop a federal common law regulating business conduct that -- that the Court may well have recognized to have a pervasive effect on interstate commerce.

So, I think both because of -- of the legislative history and because of the historical -- context of the Clayton Acts, I think that the Court may have approached it differently than -- than we're dealing here with today under RICO.

QUESTION: But, of course, the Court really didn't say anything in the -- in the Bee case. It just has one sentence and a footnote.

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MR. MARKS: That's true, your Honor. And, in addition, the General Investment case certainly doesn't -- doesn't go into the analysis that this Court has prescribed in Claflin and has consistently followed to this date.

The rule of inherent state court jurisdiction over federal claims remained undisturbed when in 1875 Congress for the first time gave the federal courts general federal question jurisdiction. The rule remains undiminished today.

It is particularly appropriate, we submit, to apply this historic rule of concurrent jurisdiction to RICO. Civil claims under RICO implicate no overriding issues of federal policy. Thus, we have here no specialized administrative tribunal created to interpret or enforce RICO.

The vast majority of RICO cases involve claims of garden-variety fraud, the type of claim with which the federal courts -- or, the state courts -- pardon me -- are intimately familiar. In addition, state law violations as well as federal law violations comprise RICO's predicate acts.

Moreover, the states plainly share the federal government's interest in eradicating organized crime and in compensating its victims. More than half the states

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have enacted their own versions of little RICO, modeled after the federal act.

It is particularly noteworthy in this regard that each of the state high courts that has considered the issue has ruled that its courts are competent and appropriate tribunals to adjudicate federal RICO claims.

Finally, and most significantly, RICO's remedial purposes will be promoted by giving victims of organized crime a choice of forums in which to assert their claims for damages.

It has been conceded that RICO's legislative history is mute as to whether Congress gave -- even gave thought to the issue of exclusive versus concurrent jurisdiction. Every court that has examined the Act's legislative history has come to this conclusion.

As Justice O'Connor recognized, it's abundantly clear that Congress never even considered the issue. This is not surprising. This is -- quote -- recognized in the Shearson/American Express v. McMahon case. The addition of RICO's civil damages remedy was an 11th hour amendment to that legislation and received only brief discussion.

The only fragment of legislative history that the proponents of exclusive jurisdiction seize on is that Congress borrowed the treble damage remedy that had been used successfully in the Claytons Act and put that remedy

into the text of RICO.

Whereas here -- whereas here it is clear that Congress never even considered the issue of whether to divest the state courts of their inherent jurisdiction, such modeling, we submit, cannot meet this Court's unmistakable implication test.

Moreover, in the case of RICO this modeling is a particularly weak analogy because, as this Court has recognized, the legislative history of RICO shows that Congress did not intend by adopting the treble damage remedy to bring with it all of the -- of the baggage that -- had been developed with the antitrust laws over the years, particularly, as legislative indicates, that Congress did not want to incorporate the many obstacles to enforcement of the antitrust private damage remedy that had been developed.

This Court has never found an implication in legislative history sufficient to rebut the strong presumption of concurrent jurisdiction. The rigor with which this Court has applied its unmistakable implication test is demonstrated, we believe, by both Gulf Offshore and the Court's Section 1983 decisions.

The legislative history of the Outer Continental Shelf Lands Act, which the Court considered in Gulf Offshore, contained a clear statement of concern by the

opponents of that bill that the law would have the effect of providing exclusive federal jurisdiction over claims under that Act.

The Court dismissed that evidence of legislative intent as insufficient to constitute an unmistakable implication of an intent to strip the state courts of their jurisdiction.

Even more instructive is the Court's determination that Section 1983 claims are subject to concurrent jurisdiction. The legislative history of Section 1983 makes unmistakably clear that Congress' predominant concern was creating a federal forum for the vindication of federal rights against state officials.

Yet, despite that predominant focus by Congress, this Court has concluded that Section 1983 claims are subject to concurrent, not exclusive, jurisdiction.

Turning to the disabling incompatibility test, here we have no inconsistency, much less any incompatibility, between RICO's -- RICO'S purposes and the state court adjudication of civil damage claims.

The overriding purpose of RICO's civil damage provisions was to provide a remedy for innocent parties who are victimized by organized crime. Congress expressly admonished the courts to construe RICO liberally to effectuate those remedial purposes.

This Court has consistently found that permitting the state courts to entertain federal causes of action facilitates the enforcement of federal rights. Here, recognizing state court jurisdiction over RICO claims will allow persons victimized by organized crime to pursue their claims in the first instance in forums which they may find more convenient or less expensive.

Certainly there is nothing inconsistent with RICO's remedial aims in providing plaintiffs this choice. Indeed, it is the closing not the opening of state courts that would undermine RICO's purposes.

Let me -- let me address briefly the three policy considerations on which Petitioners rest their incompatibility argument. None, we submit, comes close to showing any disabling incompatibility.

As I understand the argument today, they essentially collapsed two of those considerations into one. That is, the concern with uniformity of interpretation and what they have deemed inappropriateness of a state court interpretation of a statute that relies on federal criminal laws in part.

With respect to the uniformity argument, this identical argument was advanced and rejected by the court in Dowd Box. Just as in Dowd, there is simply no evidence here that Congress believed uniform interpretation to be

any more important with respect to RICO than with respect to the myriad of other federal statutes that the state courts apply every day of the week.

With respect to the inappropriateness of -- that -- the Petitioners allege of the state court's interpreting federal criminal laws, the concern, as I understand it today, is that somehow the state courts may create bad precedent by misinterpreting the federal criminal laws.

In the first instance, as has been pointed out, the state courts are obliged to follow the precedence of this Court in interpreting the federal criminal laws.

There is nothing, moreover, in our constitutional scheme that prohibits the state courts from adjudicating federal criminal cases. Indeed, as the Court recognized in Testa v. Kat, there have been times in the history of our republic where Congress has delegated to the federal courts the enforcement of federal criminal laws.

There is also nothing unique about recognizing concurrent jurisdiction of the state courts to hear civil cases where there is a criminal analog. That is exactly the situation in Section 1983. That statute, of course, has a criminal analog in 18 U.S.C. Section 242.

Finally, the same incompatibility argument in

different guise was made to the Court in McMahon and this Court rejected it. The Court said -- the argument was made that private arbitral panels were an inappropriate forum for there to be interpretation of straight -- of federal criminal laws. The Court rejected that. The court -- certainly, state courts have more experience in interpreting the criminal laws than private arbitral panels.

Finally, there has been -- the Petitioners have made some argument concerning the fact that there are certain procedural advantages to proceeding in federal court and that Congress' inclusion of those procedural advantages expanded service of process and broad venue in some way evidences an intent by Congress to relegate all civil RICO claims to the federal courts.

Those procedure -- procedural benefits are just that, procedural. They're not substantive. They are not an integral part of RICO. And it is wholly -- consistent with RICO's remedial purposes to allow plaintiffs in the first instance to choose whether they want to avail themselves of those benefits of the federal courts or whether to pursue their claims in the state courts.

Let me close by saying that this Court has consistently and emphatically held that the state courts are competent and have inherent power to adjudicate both

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federal statutory and constitutional claims.

Here the exercise of concurrent state court jurisdiction will further, not frustrate, the redial purposes of the statute. In view of the conceded absence of a statutory directive to the contrary and Congress' failure even to consider the issue during its legislative deliberations, it is clear that RICO does not fall within that limited class of cases in which the presumed jurisdiction of the state courts has been rebutted.

We, therefore, urge the Court to affirm the judgment below. Thank you.

QUESTION: Thank you, Mr. Marks.

Mr. Goldberger, you have 15 minutes remaining.

REBUTTAL ARGUMENT OF M. NORMAN GOLDBERGER

ON BEHALF OF THE PETITIONERS

MR. GOLDBERGER: Just briefly. First, respondents place reliance on the Section 1983 cases which hold that jurisdiction is concurrent under that act and on the Dowd Box decision. Both of those cases are distinguishable.

In the case of Section 1983 this Court in Patsy v. Board of Regents and Felder v. Casey engaged in an extensive analysis which demonstrated that Congress in enacting Section 1983 in fact had an affirmative intent to retain concurrent jurisdiction over Section 1983 claims.

The same is true with -- respect to the Dowd Box decision. The court there engaged in analysis of Section 301 and determined that Congress in enacting that section intended to expand, not to contract, the four that were available for Section 301 actions.

In addition, the Respondents indicate that there is Congressional history which shows that Congress did not intend to adapt all of the baggage of the Clayton Act to Section 1964(c) actions.

There is some legislative history that supports that, but as Justice Marshall pointed out in his dissent in the Sedima case and as other courts have pointed out as well, there is a limitation in that legislative history which indicates that what Congress was concerned about was importing into Section 1964(c) concepts of antitrust standing and antitrust injury.

There is no indication that Congress was concerned in any way of limiting this Court's holding in Freeman and General Investment.

QUESTION: Are the two cases you cite for exclusivity -- is that the best you've got?

MR. GOLDBERGER: Your Honor, in terms of this case, I think that's the best we've got because Congress deliberately did model Section 1964(c) --

QUESTION: Well, I know, but --

MR. GOLDBERGER: -- on Section --

QUESTION: -- in holding that the Clayton Act enforcement is exclusively in the federal courts, are those two cases the best you've got?

MR. GOLDBERGER: Yes, your Honor. Oh, no, there's another decision. In the Marrese decision, this Court reaffirmed that holding and cited --

QUESTION: And you cited that? Did you cite that?

MR. GOLDBERGER: Yes, your Honor, we did. It is -- it appears at -- Marrese is -- I'm sorry, your Honor.

QUESTION: Well, you didn't cite it -- you didn't cite it along when you cited these other two?

MR. GOLDBERGER: No, your Honor, we did not. Marrese -- Marrese appears at -- I'm sorry, Your Honor, I --

QUESTION: Is it in your brief -- in your index?

MR. GOLDBERGER: Thank you.

QUESTION: What's the name of the case?

MR. GOLDBERGER: It's Marrese v. American Academy of Orthopedic Surgeons, your Honor.

QUESTION: Oh, yeah. Yeah.

MR. GOLDBERGER: It's 470 U.S. 373.

QUESTION: And where is it cited?

MR. GOLDBERGER: It appears in the Respondents'

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brief, Your Honor, on page 25.

QUESTION: You also say you rely on a case called Continental something for the proposition that antitrust actions cannot be brought in state court? Am I misquoting you?

MR. GOLDBERGER: I think so -- I think so, your Honor. I think it's -- it's General Investment --

QUESTION: General Investment.

MR. GOLDBERGER: General Investment and Freeman v. Bee Machine.

QUESTION: I don't find General Investment in your brief. Do you have a citation? I mean, I don't find it in your index. Do you have a citation?

QUESTION: There it is right there. No, that's the other side.

QUESTION: Do you have --

QUESTION: It's 260, 261?

MR. GOLDBERGER: 260 U.S. 261. Yes, your Honor.

QUESTION: Thank you.

QUESTION: Going back to Marrese for a second, isn't that the case in which Judge Posner on the Seventh Circuit after the remand suggested that maybe the old rule wasn't so correct after all?

MR. GOLDBERGER: Yes, your Honor. The Seventh Circuit has in two opinions --

QUESTION: Yeah.

MR. GOLDBERGER: -- suggested that perhaps the Clayton Act decisions were not --

QUESTION: Were not correct.

MR. GOLDBERGER: -- the best-decided decisions. But I think the point here, to reiterate, is not whether the Clayton Act decisions were the best-decided decisions, but rather than Congress in enacting Section 1964(c) was aware of those decisions and made no change in applicable language when it enacted Section 1964(c).

Finally, I would just like to address the contention that RICO actions -- there's nothing anomalous about state court judges interpreting federal law since federal court judges will be interpreting state law into RICO actions, which is, I understand, the arguments the Respondents have made.

Congress made a choice when it enacted RICO. It made a choice to in fact federalize some state criminal laws. It anticipated, therefore, that federal court judges would in fact be interpreting state criminal laws. It did not anticipate that federal laws would be interpreted in the state -- federal criminal laws would be interpreted in the state courts and that somehow Section 3231 would be changed by the enactment of Section 1964(c).

For all the reasons I've just stated and the

reasons I stated in my opening remarks, we would urge the Court to reverse the judgment below.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Goldberger.

The case is submitted.

(Whereupon, at 2:35 p.m., the case in the above-entitled matter was submitted.)

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No. 88-1650 - FRANCINE TAFFLIN, ET AL., Petitioners V. JEFFREY A. LEVITT, ET AL.

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and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Lena M. Mayo

(REPORTER)