

Welcome to Civil Discourse. This podcast will use government documents to illuminate the workings of the American Government and offer contexts around the effects of government agencies in your everyday life. Now your hosts, Nia Rodgers, Public Affairs Librarian and Dr. John Aughenbaugh, Political Science Professor.

N. Rodgers: Hey, Aughie.

J. Aughenbaugh: Morning Nia, How are you?

N. Rodgers: I'm good. How are you?

J. Aughenbaugh: I'm fine. Thank you. What would you like to discuss today?

N. Rodgers: Well, normally we try not to do a direct ripped from the headlines. You guys have to say that after you say [inaudible 00:00:21] .

J. Aughenbaugh: We're not like the producers of Law and Order, ripped from the headlines.

N. Rodgers: Although sometimes we do because sometimes we rip this SCOTUS from the headlines and stuff like that.

J. Aughenbaugh: Yes.

N. Rodgers: But there is a recent thing that I'd like to talk about and by the time this comes out, it'll be, oh no, three or four weeks old, but I would still like to work it out in my brain exactly what happened if you don't mind, explaining a little bit. Mr. Kelly, otherwise known as R. Kelly, R&B singer, recently was found guilty. I was a little confused when it reminded me of was the Al Capone where they didn't get Al Capone for murdering people, they got Al Capone for tax evasion. R. Kelly, in my mind is a rapist. He's a violent sex offender. I admit that I'm biased, I was not on the jury, I did not see all the evidence, I saw the documentary is now my man, that dude jacked up in the head. That's not fully how that played out, he was prosecuted not for rape or not directly for rape.

J. Aughenbaugh: Okay.

N. Rodgers: What was he prosecuted for, and what do those things mean ultimately, for his long-term incarceration?

J. Aughenbaugh: In late September.

N. Rodgers: September of 2021?

J. Aughenbaugh: Yes. Federal jury located in New York, found R&B singer, R. Kelly, and his given birth name is Robert Sylvester Kelly, he was found guilty of one charge of violating the Federal Racketeer Influenced and Corrupt Organizations Act, in eight charges of violating the Mann Act.

N. Rodgers: The first one is called Rico, for short.

J. Aughenbaugh: Yeah.

N. Rodgers: Because the government loves an acronym. In fact, I think sometimes they name things intentionally to get the acronym. They come up with an acronym and they say, "Okay, now let's work out the words."

J. Aughenbaugh: Yeah, because think about, for instance, you and I are very familiar with the USA Patriot Act.

N. Rodgers: Right. Patriot actually stands for stuff.

J. Aughenbaugh: Yeah. Basically all the letters in patriot refer to items.

N. Rodgers: It's an acrostic where when you write it out, word for word, down the side it goes USA Patriot.

J. Aughenbaugh: In the USA Patriot Act, for listeners who don't know was passed post 911, and it's the federal law that impact graded the Department of Homeland Security and was the foundation of the US federal government's global war on terrorism. But the RICO Act or statute is the offense that you referenced a few moments go, where it's probably going to lead to R. Kelly receiving a significant jail sentence, but there were other criminal offenses that he was charged with per the Mann Act. I'm going to go ahead and briefly discuss the Mann Act, and then we'll get to the RICO statute. Because the RICO statute is actually somehow controversial, at least as far as criminal defense attorneys are concerned.

N. Rodgers: Wait. Sorry. Can I interrupt you briefly and say this is a double jeopardy. Because while R. Kelly was tried earlier, he was tried under different charges.

J. Aughenbaugh: Yes.

N. Rodgers: He was found not guilty.

J. Aughenbaugh: Yeah, in previous trials, but also listeners know this. Even though he's found guilty by a federal jury, his also facing charges for violating other federal laws and other state laws.

N. Rodgers: Yeah, he's got several more cases ahead of him. He's not done.

J. Aughenbaugh: Yeah, he's not done.

N. Rodgers: But people will point to earlier non guilty verdicts and say, "How come he is being charged again?" Well, he was charged for different crimes this time.

J. Aughenbaugh: It's right. He was found guilty of eight offenses under the Federal Mann Act. M-A-N-N Act, and that's actually not an acronym. It was actually named for the Illinois congressperson James Man, who wrote the law. The Mann Act was passed in 1910, and it criminalizes the transportation of, "Any woman or girl for the purposes of prostitution or debauchery or for any other immoral purpose."

N. Rodgers: Interesting woman or girl?

J. Aughenbaugh: Yeah.

N. Rodgers: Although R Kelly, I think was also accused of, that there were boys involved.

J. Aughenbaugh: Yes.

N. Rodgers: Occasionally.

J. Aughenbaugh: In the Mann Act when he was subsequently reauthorized, Nia, actually included.

N. Rodgers: So when it was written, it was written about women, but then eventually as a society progressed.

J. Aughenbaugh: Yes.

N. Rodgers: It was also realized that you could do that with boys and men.

J. Aughenbaugh: Men, that's right. Basically the purpose of the law was to stop interstate prostitution and sex trafficking.

N. Rodgers: Wait. Let me guess. Somehow the Commerce Clause was involved in this.

J. Aughenbaugh: Yes.

N. Rodgers: Because as we know, the government needs the Commerce Clause for breakfast every morning, and includes it as a piece of fruit every day, in it's work.

J. Aughenbaugh: Yes, because as we've discussed previously, Nia, the federal government doesn't have police power.

N. Rodgers: Right.

J. Aughenbaugh: If you look at the US constitution, unlike state governments, which historically have regulated individual behavior for public health and safety, the federal government doesn't have that authority, so how can the federal government has criminal statutes?

N. Rodgers: The federal government doesn't care about your health and safety, they care about your money.

J. Aughenbaugh: If the federal government can go ahead and tie individual behavior that may cross state lines or have a substantial impact on the nation's economy, then they can regulate it, i.e., make it criminals.

N. Rodgers: They did that through the Commerce Clause. By the way, I was kidding, they do care about your health and safety, and that's the whole point of HHS and EPA and a lot of other agencies. I was being flipped.

J. Aughenbaugh: But within your flippancy, you highlight something that many Americans just don't understand, even after living in a pandemic, because you've heard it, I've heard it, you see newspaper accounts about this all the time. Why doesn't the federal government just mandate behavior that would reduce the incidence of COVID-19.

N. Rodgers: Because it does not have the constitutional authority to do that.

J. Aughenbaugh: Only to do so.

N. Rodgers: It's a good thing. We don't want a federal government that can override the states, because the ideal with government to me is that you have it at the local lowest possible level. I don't want the federal government fixing the streets enrichment, I want Mayor Stoney to fix the streets enrichment, because he knows which streets needs to be fixed first, he knows which could travel the most. Once he would go out through a federal bureaucracy, you would lose all of that nuance.

J. Aughenbaugh: Lose all that nuance, lose the response to this to the citizens who actually live in the city of Richmond.

N. Rodgers: Exactly.

J. Aughenbaugh: In the trade-offs, we've seen this during the pandemic. But with the Mann Act, the basic idea was, as we move into the 20th century, Congress responded to a public policy problem, which was, you had recent immigrants to the United States, who didn't have jobs, didn't know the language, may not have had homes, and they were easy prey for sex traffickers.

N. Rodgers: Yeah. Come here and work on my farm, oh turns out I'm going to sell you into prostitution instead.

J. Aughenbaugh: That's right. That was the purpose of the Mann Act. Those were the primary offenses that he was charged and eventually convicted up.

N. Rodgers: When he took them over state lines, that became a federal crime.

J. Aughenbaugh: That became the federal crime, because the allegations that were made was that for over 30 years, R. Kelly and his subordinates within his large organization, at one point he was probably the best selling R&B singer in the United States, and for that matter, around the world.

N. Rodgers: Right.

J. Aughenbaugh: Okay.

N. Rodgers: He had a lot of people around him.

J. Aughenbaugh: Yeah. He had a lot of pimps.

N. Rodgers: His squad was large.

J. Aughenbaugh: Yes, his entourage was large. They basically did his bidding and according to the federal government, and the jury actually agreed, what his subordinates oftentimes did for him was recruit minor girls and boys, transported them across state lines, use them for sex, and in some cases controlled their lives, which lead to various kidnapping charges. But the thing that tied it all together was the RICO Act. This is a federal law that was passed in 1970. Its original purpose, Nia, was to target mafia organizations.

N. Rodgers: I was going to say I tie this in my brain to the mafia.

J. Aughenbaugh: Yes. Basically, this is the way RICO works. We're going to give a hypothetical. Let's just say, for instance, I am a mob boss, and my organization has various, if you will, businesses. I have a prostitution business. I have a gambling business. I have a loan shark business. I have an extortion business. Then I might have for good measure because I want to enforce various, if you will, behavioral norms, I have an enforcement business.

N. Rodgers: Friendly gentleman, who come around and visit you and tell you to knock stuff off.

J. Aughenbaugh: You're a little bit late, pay back your loan. They will come by and encourage you to repay. You don't pay, my various pimps who are running my prostitutes, they will come to your house and encourage you to pay what you owe.

N. Rodgers: You gamble in my gambling establishment, and you don't make it on your debts, they're going to come around, give you your knees a little bit of loving attention.

J. Aughenbaugh: That's right.

N. Rodgers: With a baseball bat encouraging you to pay. They're unlikely to kill you because then you definitely can't pay.

J. Aughenbaugh: That's right.

N. Rodgers: They didn't just randomly kill people. Beating you up is a whole different thing than killing you. Because if they kill you, they never get the money. Otherwise, if they scare you, they can get the money.

J. Aughenbaugh: That's right. However, if let's say there are competitors.

N. Rodgers: They might have to go.

J. Aughenbaugh: They may have to go because if you will, cutting in to my market share, this isn't legitimate businesses that complaint to the federal government. Then what I'm doing is violating federal antitrust laws. With the Justice Department, pretty please investigate this.

N. Rodgers: Look into this. That's right. No. This is when they feed you for a pair of snatch shoes and drop you into the river.

J. Aughenbaugh: The racketeering or the RICO charge basically goes ahead and says, I, as the mob boss, control the organization that is engaged in corrupt activities.

N. Rodgers: It's only for a certain level in the organization.

J. Aughenbaugh: Yes. Because how mob bosses frequently avoided prosecution before the RICO statute was their subordinates would get arrested.

N. Rodgers: Right, and go to jail. You're the person who actually broke the guy's knees. You're going to jail, and he'd go to jail for three years, and they take care of his family while he was in jail.

J. Aughenbaugh: That's right. Subordinates and mob organizations were well-known for not snitching on their superiors.

N. Rodgers: Right. In part, because they take care of your family, but also in part because they can end you if you do that.

J. Aughenbaugh: That's right. How do we get around this, if you will, transparency wall in organizations? How do we go ahead and skip over some of the ladders in the hierarchy of a criminal enterprise? What you do is you pass a law that basically allows prosecutors to demonstrate that one business or one family was actually in charge of all of these activities and that they were pulling the strings and that the act of pulling the strings or running this multi-subsidary business is in and of itself a criminal act. Because without that organization, then the business enterprise would fail.

N. Rodgers: Or will be very small.

J. Aughenbaugh: Yes.

N. Rodgers: It basically tries to limit the size that an organization because people are going to commit criminal activities. But if you can limit the size of that criminal activity by saying no, you have a whole organization here in which you make thousands to millions of dollars and there's a hierarchy, there's a plan. That's when you're talking about basically an illegal business. It's as if somebody set up a business but didn't follow any regulations whatsoever.

J. Aughenbaugh: You talked about one of the key aspects of the RICO Act in one of your more recent comments, the money. RICO allows prosecutors to seize assets before the trial. Because again, this was another feature of organized crime, mafias.

N. Rodgers: That you would hide the assets immediately.

J. Aughenbaugh: That's right. Even if the subordinates got arrested, even if your criminal enterprise took a hit, you would have already squirreled away a whole bunch of money. Your reference to, for instance, Al Capone and how the Fed's end up arresting him and getting a conviction for tax evasion is part of the reason why you get the RICO statute. Because Al Capone never paid taxes because that's another part of the criminal enterprise, tax avoidance. So many of these businesses and organized crime were cash transaction-laden.

N. Rodgers: Which makes sense because if you were suddenly paying lots of money, the government say, where are you getting that money? Then you'd have to say, I'm getting it through illegal activities, and then they would say, no, you can't do that. I mean it's a catch-22, you can't pay taxes on illegally gotten gains so now you're guilty of not paying taxes on gains.

J. Aughenbaugh: Also, to think about this, Nia, consumers of these businesses don't want a record.

N. Rodgers: Yeah. Here take my credit card for my prostitution. For my night out. [inaudible 00:20:21] your spouse sees it or your parents see it or your friends see it or something, it comes out.

J. Aughenbaugh: Your employer sees it. You raid your kid's college fund and your significant other is, what happened at the \$25,000 for Susie's College? But that was the thing about RICO, right?

N. Rodgers: If they freeze your assets, then it becomes harder for you to pay for a lawyer. It becomes harder for you to maneuver.

J. Aughenbaugh: You can't pay off subordinates to keep silent. You can't skip jurisdiction, because your assets are frozen.

N. Rodgers: There's no leaving the country unless you do it in a row-boat.

J. Aughenbaugh: Your business takes a hit because again, your assets are frozen.

N. Rodgers: Cash flow. You don't have any cash flow.

J. Aughenbaugh: Yes. Again, these are businesses that require constant infusion of cash for the, if you will, services or goods of the underlying businesses to continue to operate.

N. Rodgers: Right.

J. Aughenbaugh: Okay.

N. Rodgers: Did they do that to R. Kelly. Did they freeze his assets?

J. Aughenbaugh: Yes, they did.

N. Rodgers: Does that mean things like royalties on his music got frozen?

J. Aughenbaugh: Yeah.

N. Rodgers: Because that would be part of his assets, right?

J. Aughenbaugh: Yeah. One of the pretrial motions his lawyers filed in this case was to unfreeze enough assets to pay his legal bills.

N. Rodgers: The lawyers with their interests in the money.

J. Aughenbaugh: I mean, this is one of the complaints not only by criminal defense attorneys, but also civil libertarians. Because RICO in the hands of an overzealous prosecutor.

N. Rodgers: Can you imagine if Robert Kennedy had had the RICO Act?

J. Aughenbaugh: He could have went after a lot of mafia families. By the way, he could have also went after a number of labor unions who were mobbed up. That was one of the complaints that the Kennedy Justice Department made, which was labor unions were enforcing them. Discipline and compliance within their ranks because they had gotten in bed with the mob.

N. Rodgers: Well, in Hoffa and the whole of that. But I'm just thinking, wow. I don't know that one would term Robert Kennedy overzealous, but he was certainly zealous. Well, it came to these organizations. I can see where somebody would freeze something so much that you couldn't even put up a good defense. We're entitled in this country to a good defense. You are considered innocent until you're proven guilty. You are allowed to have the best defense possible. In fact, there can be mistrials if you don't have a good defense, if somebody is not able to defend you properly. I can see the argument that they're making. The defense attorneys are making saying, well, we need money for experts, we need money for reports and labs and things like that. We need to be able to fund that in order to defend the client properly.

J. Aughenbaugh: There's two points here. One is, many Americans struggle with this. We have a legal system that is adversarial. The assumption is, your good attorney will be able to go ahead and contest

what a good attorney hired by the state in a presentation of facts and evidence. To your point, that's one of the reasons why, we're supposed to have good legal counsel for those accused of crime. But the second point, and this goes beyond just defense attorneys. Many civil libertarians have a problem with asset forfeiture done by the government. This happens not only with RICO trials.

N. Rodgers: That's true. It could be in the hands of a very zealous person, a money-making venture for the government.

J. Aughenbaugh: That's right. You know where the police pull you over and in your car you have a briefcase that contains \$15,000 your life savings. Now the assumption of maybe police officers.

N. Rodgers: What the heck are you carrying around \$15,000 for?

J. Aughenbaugh: Yeah. In their experience, anybody that's carrying around \$15,000 worth of cash is more than likely engaged in a criminal act enterprise.

N. Rodgers: Has either sold drugs or is just about to buy some.

J. Aughenbaugh: Or guns or whatever the case may be. They will seize the assets. Now, they may even seize your car while your break keys was held. Because it is in furtherance of a criminal enterprise. Even if the charges get dropped. In some jurisdictions in this country, the burden is on the individual to show that the cash in the car should be returned.

N. Rodgers: Yeah, that's been [inaudible 00:26:23] . I'm not for that. I understand why they want to be able to freeze your assets because super-rich people will jump the country. Let me just put out my personal opinion here and please listeners, it's my personal opinion because he was found not guilty. But I believe OJ Simpson was found not guilty because he had an exceptional legal team which he could afford to hire and pay to keep him out of jail for, I believe, killing his ex-wife and her friend. There is something to be said for there's a different kinds of law for people with assets then there is for people with no assets. I assumed that what RICO is trying to do is even that playing field at least somewhat and say, this should not be about money, this should be about guilt or innocence.

J. Aughenbaugh: This is a federal law that learn valuable lessons over decades of trying to prosecute organized crime figures. From connecting the dots, if you will, between criminal activities that are actually part of a single organization. To the fact that organized crime figures would make a whole bunch of money. As you just pointed out, Nia, then we're able to go ahead and game the system so that the system never touched them, right?

N. Rodgers: Yeah. Is part of this also leverage that the government uses to get people to plea? Wait, let me step back and say just as a side note, I believe that, what is it, something like 94 percent of our cases end up in plea deals because both sides would prefer not to go to court. It's expensive for everybody to go to court. It's time consuming and there's the potential of losing on both sides. It's in interest of everyone to come to some agreement, a plea deal.

J. Aughenbaugh: Plea bargain. The most recent statistics I've seen needed to that point, is well over 90 percent of all criminal charges in the United States are plead out.

N. Rodgers: That just tells you how crazy is because our court system is already-

J. Aughenbaugh: Overburdened.

N. Rodgers: Extremely long time between the time your indicted for something in the time you go on trial. Look at Elizabeth Holmes was two years before she came up with the Theranos trial that's going on now. Maybe over by the time you hear this. But anyway, I can't imagine if there were 90 percent more cases, holy cow. I understand the police system, but I also understand that it disadvantages a lot of people because they don't have money and they don't have good advice. Someone says to them, you know what, I'm going to let you off with time served, but a fine of blah, blah, blah. You have home probation for a year. But now you have this conviction on your record. It takes you two or three years to realize you're not going to get a job in the field that you want because you have a conviction on your record or whatever, right?

J. Aughenbaugh: Yeah, there are a lot of negatives to the American over-emphasis on plea bargains. It creates, for instance, Nia perverse incentives for prosecutors to overcharge people.

N. Rodgers: They can go down to a charge if they actually think they could win or like.

J. Aughenbaugh: Yes. They overcharge too. If you will increase the pressure on a person, on an individual, and then they will plead down to a lesser charge or remove certain charges to get a plea bargain. Then you have, for instance, the fact that as you just pointed out, those without good legal counsel frequently make bad decisions in regards to plea bargains. They don't understand the system. Plea bargains, according to some scholarship I've read, tend to have a greater impact on poor people and people of color.

N. Rodgers: Do you think they offered R. Kelly a deal? Or do you think that in this case they didn't because they were interested in-

J. Aughenbaugh: From what I read, a deal was offered. But his attorneys claimed before the trial and after the trial, that almost all of the victims in this case misinterpreted their actual relationship with R. Kelly, that they were willing participants, and that the jury was basically hoodwinked by the prosecutor into viewing R. Kelly's lifestyle as being bad. Yes.

N. Rodgers: Listeners cannot see my face, but Aughen can see my face and he can see the disbelief in my face. Skepticism. That's excellent. That's exactly the word.

J. Aughenbaugh: The skepticism on Nia's face about the argument made by R. Kelly's attorneys. Is noticeable, it's palpable.

N. Rodgers: Yeah. I have a similar thing when people suggests that Michael Jackson sleeping in beds with children into his adult years was normal. Not really. People you're not related to, like no, that's weird. The jury agreed with me and so I don't have to say allegedly, because R. Kelly's lawyers cannot sue me and even if they did, I don't have anything, so there's nothing for them to get. But it does bring out the question of that idea of if they seize your assets, it pushes you more likely into a deal. If you can make a deal.

J. Aughenbaugh: Yes.

N. Rodgers: Because you don't have money, you don't have cashflow for anything.

J. Aughenbaugh: This is another reason why criminal defense attorneys don't like the RICO statute because frequently what prosecutors will do is charge a whole bunch of people in a criminal organization under RICO. It's the subordinates who all of a sudden have their assets frozen, who are more likely to go ahead and turn.

N. Rodgers: Because they have less squirreled away, they have fewer options. I see. What are the damages? Now, let me back up and say, RICO allows for clearly jail time. But is he also going to have to pay? Is there a financial component to RICO?

J. Aughenbaugh: Yes. Both for criminal cases and then any subsequent civil lawsuits that the victims may want to bring against R. Kelly. The RICO statute allows for triple damages.

N. Rodgers: But I mean, right now does R. Kelly owe money to the federal government or the State of New York or wherever it is that he was tried under this statute.

J. Aughenbaugh: I'll give you an example. Let's say R. Kelly had a particular young person transported across state lines and then he forced them into prostitution. The prosecutor then can go ahead and make a claim in front of the judge that R. Kelly's enterprise made this amount of money on this person and for a RICO, R. Kelly as part of his punishment, would have to pay a fine that is triple the amount of money he may have made on that offense, or on his prostitution enterprise. Or remember my hypothetical of a few moments ago, if I was pulling in every year, a quarter of a million dollars on loan sharking and federal prosecutor is able to convince a jury to find me impart guilty of loan sharking and they show evidence that I did loan sharking for 10 years and in those 10 years, I made a million dollars, the prosecutor then could go ahead and ask the judge.

N. Rodgers: For eight million.

J. Aughenbaugh: Yes. To force me to pay a fine of \$7.5 million.

N. Rodgers: Wow.

J. Aughenbaugh: Now, more than likely that the prosecutor won't but the prosecutor then uses that as leverage in regards to the punishment that is requested of a jury or a judge.

N. Rodgers: What we have now is a conviction. We don't yet have a sentence.

J. Aughenbaugh: That's correct.

N. Rodgers: You're saying this is part of the sentencing?

J. Aughenbaugh: Yes.

N. Rodgers: What happens now is that both sides are going to make statements to the judge about what they think the punishment should be.

J. Aughenbaugh: Yes.

N. Rodgers: The defense is going to say time served and a home bracelet on his ankle and the restitution.

J. Aughenbaugh: A normal contact with young people.

N. Rodgers: Restitution to some Big Brothers, Big Sisters or something like that.

J. Aughenbaugh: Yeah.

N. Rodgers: They'll pick some amount that seems good to them. Then the prosecutors will say, "No, no, no, no, no, we want the full 10 years, we want R. Kelly made however much money off of this or he benefited in some way and we want him to pay \$50 million, " and then the judge will decide something between those.

J. Aughenbaugh: Yeah.

N. Rodgers: That's what he will be sentenced to. He has not yet been sentenced to money, but there will be a financial or there could be a financial aspect in it.

J. Aughenbaugh: There could be a financial element to his punishment and minimum in a year. With the charges he was found guilty of at minimum he's going to spend 10 years in a federal prison, at minimal. If the judge goes for the high end, which by the way the prosecutors will more than likely ask for, he could spend the rest of his life in a federal prison.

N. Rodgers: How?

J. Aughenbaugh: That's beyond any financial punishment. Then you have the civil lawsuits.

N. Rodgers: I don't think R. Kelly can do his whole life in prison. I mean, he folded like a paper sack on that interview with Robin, I can't remember what her name is, from ABC News where he lost his cookies and stood up and was like, "You'll are trying to kill me here."

J. Aughenbaugh: You're prosecuting a successful African-American male. Yes.

N. Rodgers: Yeah. She's an African-American female interviewer. She raised her voice once like she didn't yell with him, he just lost his cookies. Part of me thinks, "Oh, prisons not going to be easy for you, my friend, because people in prison are going to take a lot of pleasure in making you sad."

J. Aughenbaugh: Yeah. Let's just put it this way. There's a whole bunch of people in a federal prison who will raise their status, make their bones within that environment by harming R. Kelly.

N. Rodgers: Right. I'm assuming that under this kind of statue, he won't be in a place like Juliet.

J. Aughenbaugh: He won't be in a country club.

N. Rodgers: He won't be?

J. Aughenbaugh: He will not be.

N. Rodgers: But will he be in the super hard or will he just be in a medium?

J. Aughenbaugh: I think he'll probably be in a medium security facility. He won't be in a so-called super max or federal prison for the most violent criminals. Where we usually put serial killers, mass terrorists, mass murderers, that kind of thing but he's not going to get a country club. For listeners, you don't know what I'm talking about. Typically, those convicted of federal white-collar crime go to what's dismissively referred to as a country club prison, a country club facility.

N. Rodgers: Martha Stewart did crafts in her prison?

N. Rodgers: Yes.

J. Aughenbaugh: Minimum security.

N. Rodgers: Minimum security, she got to have her own clothes. That's a whole different animal than the kind of prison there.

J. Aughenbaugh: Some of them are located in rather bucolic rural areas where, hey, you might learn horseback riding.

N. Rodgers: Lots of visitors, lots of you, the commissary has really nice quality food, you can buy stuff like that. Not like the [inaudible 00:41:45] or Alcatraz or the other places where they throw you in and forget you exist.

J. Aughenbaugh: Then you have medium security. These are the people who typically got convicted of not white-collar crime but perhaps not the most violent crimes.

N. Rodgers: Buying or selling drugs, but not killing people while you're doing it.

J. Aughenbaugh: Doing it. Again, I'm not dismissing all the victims of R. Kelly's behavior. I'm not dismissing the pain he caused.

N. Rodgers: Which is a different animal.

J. Aughenbaugh: The abject terror that the prosecutors convinced a jury he was guilty of. But there are differences in the facilities in regards to security in terms of efforts to rehabilitate. Because let's face it, in a super max facility Nia, there isn't any rehabilitation going on.

N. Rodgers: No. Like I said, that's where we put you so we forget you and you're not back out into society. The people who come out of those prisons at the end are usually old and broken and they die relatively soon. That's the throw away the key type of prison.

J. Aughenbaugh: Yes.

N. Rodgers: Well, we could argue and we could have a discussion about whether that's humane or not. It is not to my opinion. But it's what we do when we believe that people are in the extreme of our criminal system.

J. Aughenbaugh: The assumption in those facilities is that these people cannot be rehabilitated.

N. Rodgers: I was going to say unredeemable.

J. Aughenbaugh: They can not be released back into society, or if they ever are it is as Nia you describe. They're old, they're broken, and they're not capable of replicating the crimes that got them there in the first place.

N. Rodgers: Yeah. We could talk about that endlessly because I have many, many feelings. But that is not the issue today. There are very specific crimes that are in the racketeering.

J. Aughenbaugh: Got you. Yes.

N. Rodgers: Right, and they're named specifically in order to say that this is not just the mob that can do this. No one has accused R. Kelly being in the mob. I guess technically he had his own mob, but it wasn't the mob in the way we think of the mafia, it was just a mob in the way we think of the squad of a famous person.

J. Aughenbaugh: Yeah, he had a policy.

N. Rodgers: Which is not quite the same as a mob. These are broad enough that they apply to.

J. Aughenbaugh: Yeah, here are some of the underlying offenses that federal prosecutors can use and by the way folks, not only does the federal government ever RICO statute, nearly every state in the country, subsequent to the federal law being passed has their own state versions. For instance, Illinois has brought State Racketeering charges against R. Kelly.

N. Rodgers: Right, because he lives in Illinois. Got you.

J. Aughenbaugh: But here are some of the underlying offenses, and these are not just if you will, mob or mafia offenses. Gambling, murder, kidnapping, extortion, arson, robbery, bribery, dealing in obscene matters, dealing in a controlled substance or listed chemical. RICO can be applied to drug organizations.

N. Rodgers: Okay.

J. Aughenbaugh: But I'm going to make a distinction about drug organizations once I get through my laundry list of underlying offenses, any act of bribery, counterfeiting, theft, embezzlement, fraud, obstruction of justice, slavery. Some of these are your garden-variety, white-collar crimes, embezzlement, fraud. Embezzlement of union funds. Because again, the Fed's learned a lot from trying to prosecute the connection of unions to the mob and they couldn't get anywhere.

N. Rodgers: Okay.

J. Aughenbaugh: Because one of the allegations of the Kennedy administration was the mob was frequently laundering all of their illegal proceeds through unions.

N. Rodgers: The unions.

J. Aughenbaugh: Of course, the unions were willing to do it because they got a cut of the money that was being laundered, which meant they could have more robust labor unions.

N. Rodgers: Right, better negotiation.

J. Aughenbaugh: You don't have to charge your members as much to participate in the union and you would have a better reserve just in case an employer told you go on strike. Fine. We'll go on strike because we have a reserve. That will force you at some point as an employer to come back to the negotiating table and negotiate in good faith.

N. Rodgers: Got you.

J. Aughenbaugh: Bankruptcy fraud or securities fraud, drug trafficking, which I'll get to a in just a few moments. Criminal copyright infringement. Our good friend Hillary, would love this.

N. Rodgers: Hillary will be coming back to visit us.

J. Aughenbaugh: Yes.

N. Rodgers: In the near future. We should ask her about this, about Racketeering and criminal copyright infringement.

J. Aughenbaugh: Because think about the amount of money Hollywood has claimed it as lost.

N. Rodgers: Oh, I see, so Pirate Bay.

J. Aughenbaugh: Yeah.

N. Rodgers: If they could figure out how to actually find the people in Pirate Bay, they would accuse them of RICO. I got you.

J. Aughenbaugh: Of course, one of the big ones, money laundering and related offenses. Again, if you're running a criminal enterprise, that is based on cash transactions, what do you do with all that money?

N. Rodgers: Right. You have to launder it.

J. Aughenbaugh: Yeah.

N. Rodgers: Yeah, and in Breaking Bad, he owns car washes I think. He launders it through car washes. Because Saul tells him you have to clean the money, you have to bring it into a regular business.

J. Aughenbaugh: Laundry facilities, the coin operated. Laundromats, etc. Any place that has a lot of cash transaction. You can launder the money.

N. Rodgers: Right. You just add a little extra in.

J. Aughenbaugh: Yes.

N. Rodgers: Every day you add an extra 1,000 in and it's not noticeable over just having a really good month. Or we have a really good location or something.

J. Aughenbaugh: Those are some of the underlying acts.

N. Rodgers: You have on your list, one that you didn't mention that I want to just put out here.

J. Aughenbaugh: Okay.

N. Rodgers: Because I find it fascinating. Commission of murder for hire.

J. Aughenbaugh: Yeah.

N. Rodgers: Let us say that you were married to a person, that you no longer want to be married to you. But instead of divorce, because, you know it's going to be ugly and you know that you're not going to end up with the kids or the money or the house or whatever, you decide you're going to have your spouse killed.

J. Aughenbaugh: If you hire somebody. Yes.

N. Rodgers: Is that under RICO?

J. Aughenbaugh: You could be charged with a RICO offense, particularly if the prosecution can go ahead and show that the murder for hire would financially benefit you in ways that you could not benefit if you didn't knock off your spouse or your offspring because you don't want to go ahead and give them money and a will or whatever the case may be.

N. Rodgers: You don't always have to have a policy to be charged with RICO.

J. Aughenbaugh: No, your policy would be the vendor you hired.

N. Rodgers: Vendor, I like that. Hello murder for higher incorporated. I need to hire you please.

J. Aughenbaugh: Speaking of murder incorporated, part of the myth around the mob in the United States was starting in the 1930s and 1940s. There was at least one mob family in the New York, New Jersey area whose main business was to commit murder for the other families within the mafia.

N. Rodgers: Wow.

J. Aughenbaugh: Murder incorporated. They engaged in a wide variety of crimes against person businesses from your garden-variety, leg breaking, nose breaking, back breaking for those who would want to contract out the enforcement of their other enterprises to murder.

N. Rodgers: There's a guy who can be hired to do anything, isn't there?

J. Aughenbaugh: I know I'm betraying my economic background from my undergraduate days. You hired a vendor. But nevertheless, you came basically contract out for a lot of criminal activity.

N. Rodgers: The other thing that you have on your list that you didn't mention that I want to bring out because I think it's important is you could be charged under RICO for smuggling in non documented individuals. Let me put it that way. I won't say illegal immigrants because I don't know if that's quite the right term. But undocumented individuals. You want to help somebody, and that's lovely, and you're also going to take a cut of their pay for the first year because it's putting you in some danger, so you're like combining those two things. You bring them into the country. The first time you take a cut from their pay at their job after they get here, because it's financial gain.

J. Aughenbaugh: Yeah.

N. Rodgers: Or if they pay you to mule them. If they pay you the \$10,000 to get them into the United States, you can be charged with RICO.

J. Aughenbaugh: Let's go back to your first example concerning undocumented citizens. Let's say you run a business, your business is bringing in undocumented citizens into the United States.

N. Rodgers: Right.

J. Aughenbaugh: For a fee, you will bring them in, you will set them up with a new identity, social security number which is fake, and you get them a job and in exchange for the next year till five years, that person has to give you money. You have committed at least three or four offenses. That is a no brainer racketeering case.

N. Rodgers: Okay.

J. Aughenbaugh: Because one, you violated federal law by bringing in an undocumented citizen. Two, you've set them up into a residence with phony ID and a social security number, so those are offenses 2 and 3, and then four, you basically are placing them in a position of servitude.

N. Rodgers: Right, slavery. But you are going to explain to us about drugs.

J. Aughenbaugh: About drugs. In addition to the RICO statute, Feds can also bring charges in violation of the continuing criminal enterprise statute, which is also referred to as the Kingpin Statute, okay?

N. Rodgers: Okay.

J. Aughenbaugh: The Kingpin Statute basically goes after drug trafficker, sex traffickers for a long-term and elaborate conspiracy. Let's go back to my example that I'm a mob boss. Let's say I've been doing this for 30 years. After numerous attempts, the federal prosecutors are finally able to get one of my main lieutenants to roll on me, to snitch. That lieutenant has records, evidence, can provide testimony of how over this 30-year period, I have been running this criminal enterprise. The Feds have now a choice. They can either go after me with RICO or they could go after me for violating the Kingpin Statute.

N. Rodgers: But they can't do both.

J. Aughenbaugh: Some prosecutors have attempted to do this, and judges have told them you got to pick one or the other because the Kingpin Statute even more draconian punishment. The recommended punishment if you're found guilty for violating the Continuing Criminal Enterprise law, the Kingpin Statute is life in prison.

N. Rodgers: Really. Okay.

J. Aughenbaugh: Yes.

N. Rodgers: In R. Kelly's situation, which was a 30-year situation. But I'm assuming that with Kingpin, it's harder to get the conviction.

J. Aughenbaugh: Yes.

N. Rodgers: One of the better things about the American judicial system is if something like let's say death is a potential outcome of the sentencing, there's a lot stricter guidelines to show that you did the same because the outcome can be so catastrophic. I'm assuming that with the Kingpin Statute, if its life in prison, it's probably harder for a prosecutor to get a conviction.

J. Aughenbaugh: Yes.

N. Rodgers: Then it would be under RICO. Otherwise they would have gone after R. Kelly for that because they have proof of a long-term thing going on.

J. Aughenbaugh: But from what I read in the press reports of the R. Kelly trial, most of his subordinates in his enterprise refused to testify for the prosecution.

N. Rodgers: I see. They were better off going under RICO than they were under this Kingpin Statute.

J. Aughenbaugh: Yeah.

N. Rodgers: The Kingpin Statute is what they pull out when they really want to slam you as hard as they possibly can.

J. Aughenbaugh: Yeah. You're talking about the head of drug organizations. I can remember the Mexican drug lord that was brought up to the United States. He escaped and then they brought him back.

N. Rodgers: Escobar?

J. Aughenbaugh: Yeah.

N. Rodgers: Pablo Escobar, is that what you mean?

J. Aughenbaugh: Yeah. I think it was Escobar.

N. Rodgers: His wife's now running that organization.

J. Aughenbaugh: The wife is running it now. The Feds have an indictment out on her so that if she ever pops her head up, either the Colombian government or if she ever comes up to the United States to

view her vast drug enterprise in the United States, she will be arrested for violating the Kingpin Statute. Yes.

N. Rodgers: To wrap up this thing with R. Kelly, which is what brought up the RICO to start with, he is looking at a minimum of 10 years in prison on this conviction.

J. Aughenbaugh: Yeah.

N. Rodgers: He is also looking at at least one more case. He's looking at the Illinois State case, which is also a RICO case. Will that mean 20 years in prison or would you serve both of those at the same time or is that up to the judge in a second case? If you're found guilty, he gets sentenced. Let's say he's sentenced to, I don't know, I'm just making up a number, 12 years. He's sentenced to 12 years. Then in Illinois, he's sentenced to 10 years. Does that mean he serves 22 years? Doesn't mean he serves 12 years? Or does that mean it's up to the judge?

J. Aughenbaugh: Well, it's up to the prosecutors bringing the case in Illinois. The prosecutors in Illinois, if they got a conviction of R. Kelly, might go ahead and say to R. Kelly's attorneys, we're willing to have him serve the sentence concurrently at the same time.

N. Rodgers: Right.

J. Aughenbaugh: Or they might just go ahead and say, yeah, we can't wait for your client to get out of federal prison because we got a nice comfy cell in one of our finer correctional institutions. He can spend the next 10-15 years. It's entirely up to the prosecutors as to whether or not they allow the sentence to be served concurrently or consecutively.

N. Rodgers: In your opinion, will it influence the state trial that the federal trial has gone against him? I know that it'll influence the civil ones. They'll all be much easier.

J. Aughenbaugh: Yeah, because once you get a guilty verdict in a criminal trial, for those who might want to file a civil lawsuit against R. Kelly, there will be a whole bunch of facts that will be considered determinative. They're already been vetted in a court. If he gets a heavy sentence, I could see the Illinois prosecutors saying to the victims of the crimes that they want to charge up R. Kelly with. He's already going to spend time in jail. Do you want us to go forward with this?

N. Rodgers: Because they might decide to drop it for financial reasons.

J. Aughenbaugh: Or the victims just don't want to go through another trial because they've been through a lot.

N. Rodgers: They've been through a lot.

J. Aughenbaugh: We know this about victims of sexual crimes. If they have to testify at a trial, it's like they are reliving the horrific conditions that they've already suffered.

N. Rodgers: Right.

J. Aughenbaugh: This is one of the considerations of prosecutors. What are the wishes of the victims?

N. Rodgers: But I think that the big takeaway for me from this is that RICO is not just for mafia. I've always tied it in my head to mafia activities. I think if nothing else, R. Kelly has served the public interest in that this is a way for us to educate ourselves that there are other people who can be charged under this. It's not just a member of the mafia. You heard the list of things that you can be charged for depending on what the prosecutors decide to do.

J. Aughenbaugh: Yeah. Remember the first word in the RICO statute is racket. What are the criminal rackets? What are the criminal enterprises that are being run by a single organization, a single person, a single family? It's this idea that the criminal offenses are coordinated and they're corrupt. A lot of my students who are of an age to where they've been huge fans of R. Kelly for most of their young lives were like, "What's this RICO statute that he was found guilty of?" I was trying to explain it to them, and then I started giving them hypotheticals, which they all found very entertaining, and started describing myself as a mob boss. Argue, the only thing you're in charge of is drinking a whole bunch of coffee every day.

N. Rodgers: That's right and part-time nine-year-old.

J. Aughenbaugh: Then she gets older.

N. Rodgers: You'll be less and less in charge.

J. Aughenbaugh: Yes, I'm more convinced that I'm less in charge.

N. Rodgers: But he's got a lot in front of him, doesn't he?

J. Aughenbaugh: Yes.

N. Rodgers: I will come back with you probably later when he gets sentenced and talk to you about it briefly then because I'm curious to see what they do with the disposition of his assets. However that works out, who ends up getting money, who ends up getting whatever? I'm interested to hear about all that. Maybe we could visit that when the sentencing is complete, which who knows what that would be because from conviction to sentencing can be several weeks to months.

J. Aughenbaugh: Yeah, several months. Yeah. It would not shock me if we don't find out until after the new year.

N. Rodgers: Okay. Well, we'll come back and talk about it then.

J. Aughenbaugh: I would be happy to. Yeah.

N. Rodgers: Thanks.

J. Aughenbaugh: Thank you, Nia.

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