In this paper-- a study of the emergence and transformation of the term "racketeering" between 1927 and 1935-- I will complicate our inherited understanding of the New Deal by looking at shifting line between criminal and legitimate activity. Rather that discussing the rise of New Deal labor law and economic planning, so effectively considered by scholars such as Christopher Tomlins, Robert Himmelberg, Colin Gordon, and Ellis Hawley, this essay will emphasize the de-criminalization of collective activity during the same period. In other words, I will investigate the ways in which concepts of criminality relate historically to broader legal and economic issues.

This paper will trace the emergence of "racketeering" as a criminal category in the twenties and thirties, attempting to understand it in its historical context and relating it to broader social and economic currents. I will argue that "racketeering" was a hotly contested criminal category-- one terrain for the larger economic debates about competition, violence, and the legitimacy of labor unions which dominated the years around the New Deal. In this paper, I will show how the term "racketeering" was invented in Chicago in the late nineteen-twenties by business elites seeking to generate public antipathy towards various forms of collective activity-- unions, trade agreements, and price fixing. Workers, small businessmen, and academicians contested this definition of "racketeering, and co-opted the category for their own uses. In the thirties, collective activity gained greater legitimacy, and "racketeering" became a crime committed by individuals rather than groups. The
meaning of "racketeering" was transformed in ways which accompanied and accommodated the "New Deal Order."

What is "racketeering"? Today, although generally synonymous with organized crime, the meaning of the term is actually far from clear. In recent years, the state has applied "racketeering" law to characters as varied as Nancy Kerrigan assault conspirator Jeff Gilooly and anti-abortion activist Randall Terry. This variance reflects the historical changeability of the term. "Racketeering" emerged as a criminal category in the late twenties, but had no legal definition until 1934, the year the U.S. Congress passed its first anti-racketeering law. Even after the 1934 statute, "racketeering" remained a vaguely defined crime. In 1945, Harry Millis, a University of Chicago Economics Professor and the Chair of the National Labor Relations Board, commented that "racketeering has developed in labor organizations as well as in business and political affairs. The expression 'racket' is used so loosely as to include a great variety of things one does not like-- graft, violence, monopolistic exactions, etc."

The word "racketeering" came into the language amidst the reactionary anti-unionism of the nineteen-twenties. Specifically, the term emerged in 1928 as part of a campaign instigated by the Employers Association of Chicago-- the foremost open shop group in the city-- against labor agreements in certain

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local industries. The word "racket" had existed for over a century, loosely defined as any illicit form of business. But neither the gerundive noun "racketeering," nor the specific, anti-labor, definition of the word "racket" existed until the Employers' Association hired a new secretary, Gordon Leslie Hostetter.

A self-described "industrial relations engineer," Hostetter began a public relations war against unions, unionized businessmen, and labor agreements. In 1927, writing in the Employers News, the house organ of the Employers Association, he used the term "racket" for the first time. In 1929, with the help of a publicist named Thomas Quinn Beesley, Hostetter produced a book entitled *It's a Racket*, a broad study of "racketeering" which set the terms for future debate. Defining a "racket" as "any scheme by which human parasites graft themselves upon and live by the industry of others, maintaining their hold by intimidation, force and terrorism," Hostetter placed particular emphasis on what he called the "Collusive Agreement".

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2Listing the services offered by the Association, Hostetter shows himself to be a master of euphemism stating that "the office is equipped to provide guards and other protective forces during troublesome times at minimum costs." *Employers' News*, 4/28, 6. For more on open shop proprietary groups, their efforts at reinvigorating nineteenth century labor law, and the shift to criminal prosecution see Daniel Ernst, "The Closed Shop, the Proprietary Capitalist, and the Law" in Masters to Managers, ed. Sanford Jacoby (New York: Columbia University Press, 1991,) 132-48, esp. 136.


6Hostetter and Beesley, 4. Thomas Quinn Beesley was only affiliated with the Employers Association for two years, during which time he was Vice-President of his own publicity service. Given his occupation we
A "collusive agreement" was Hostetter's term for a form of trade agreement commonly found in Chicago's service and retail sectors. In industries such as barbering, butchering, and dry cleaning, small businessmen and unionists found common ground in their mutual need to reduce competition. To that end, employers signed closed shop agreements in exchange for assistance in fixing prices and in limiting entry. If for example a new dry cleaning shop opened too close to an established firm, or if the store deviated from the established price, or if it failed to pay its dues to the trade association, then the teamsters refused to cart its clothes. The other unions set up pickets around the store. And if the shop remained recalcitrant, violence ensued.  

Hostetter attacked these industries, calling them "rackets." He represented them as monopolies, exploiting the public, and he championed the poor small businessmen who resisted the "rackets" and were visited by violence and economic ruin. The reality was, however, slightly different. While many small shop owners might assume that Beesley was hired to help write the book and to shape its rhetoric. Thus, occasionally I will refer to Hostetter alone as the author of It's a Racket. Who's Who in Chicago (Chicago: A.N. Marquis Co., 1931,) v.5, 77-8.

Morrison Handsaker, did the most detailed study of the cleaning and dying industry during this period, a dissertation entitled 'The Chicago Cleaning and Dyeing Industry: A Case Study in 'Controlled Competition',' Unpublished dissertation, Dept. of Economics, University of Chicago, 1939, 383. Handsaker concluded that these price fixing plans did have a positive effect on wages of the ordinary worker. Certainly, the drivers, who worked partly on commissions, made more from higher prices. And the laundry drivers were one of the strongest and richest unions in the Chicago Federation of Labor. "Mourn Killing of Another Racketeer Victim", Federation News (The weekly newspaper of the Chicago Federation of Labor), 11/24/28, 1,3,5. Handsaker contends that the employers in the cleaning industry helped to found the drivers and tailors unions in order to enforce their cartel. The industry, however, opposed the formation of an inside workers union consisting of unskilled washers and pressers. Nonetheless, once organized, the employers brought the union in on it price fixing plans. Handsaker 117-8.
suffered under the trade agreements, many others accepted them in order to stave off competition from large corporate firms. For example, the "racket" in the dry cleaning industry was developed by small businessmen seeking to resist corporate chains by fixing prices, and to avoid price wars which only the chains could win. But Hostetter suggested a different picture—individuals coerced by the collusive schemes and evil organizations.

Couching occasionally contradictory, often false, but sometimes factual, claims in a powerful mythology, Gordon Hostetter constructed a new criminal category—"racketeering"—to describe the various forms of collective activity found in unionized, cartelized industries like dry cleaning. By terming industries which illegally limited competition "rackets"—a general slang term for illicit enterprises such as bootlegging, prostitution, and gambling—Hostetter succeeded in focusing attention on coercion and collusion in the urban economy.

"Racketeering" became a major issue in the nineteen-thirties, prompting Federal legislation and launching the career of future

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8 Hostetter placed particular focus on the story of Morris Becker, a man who resisted the "racket." He did not mention that Becker was not a small businessman, but a chain store owner. Thus, these schemes unlike agreements recently described by Colin Gordon, hardly epitomized "corporatism." Hostetter and Beesley, 37-41; This story was told in many other sources. Morrison Handsaker, 125-9; John Landesco, Organized Crime in Chicago, Part III of the Illinois Crime Survey 1929 (Chicago: University of Chicago Press, 1968,) 157-60; See also Baxter Laundries Inc., a corporation, Complainant v. Morris Becker, Defendant, In Equity No. 8578 and No. 9078. U.S. District Court, Northern Illinois, Eastern Division. Briefs from this case can be found in the Ernest Burgess Papers, University of Chicago Special Collections, Box 37, Folder 4; Hostetter and Beesley, 34; Hostetter and Beesley, 31.

9 In the back of It's a Racket, Hostetter included a Glossary of Hoodlum language, justifying it by stating "The language of the racketeer world is colored and interwoven with words and phrases peculiar to the
Presidential candidate Thomas Dewey. But "racketeering" was not a stagnant term conforming changelessly to Hostetter's original definition. As it rose to national prominence between 1928 and 1934, the definition of "racketeering" was subject to considerable debate, and "racketeering" developed new connotations, many of them hostile to its creator's intentions.

Labor, in particular sought to question Hostetter's arguments and redefine "racketeering." The Chicago Federation of Labor took Hostetter's charges seriously and responded immediately. Their first reaction was denial. The Federation asserted its absolute innocence, accusing Hostetter of conflating "the racketeers whom labor condemns and the legitimate labor unions". 

10 Questioning Hostetter's motives, the Federation's weekly newspaper suggested that his war on "racketeering" was merely a war on unions. Edward Nockles, the Secretary of the Federation charged that Hostetter sought to "vilify labor representatives as 'racketeers'." Nockles continued, placing the Employers' accusations in the context of a generally oppressive legal system and stating that "the police and the courts are being intimidated in helping the Employers Association in any

hoodlums it employs in its service or who have risen to positions of power and authority in the rackets." Hostetter and Beesley, 215.

way, right or wrong, to disrupt the labor unions. 11 To the unions, Hostetter's assault on "racketeers" seemed part of a larger mission to pressure the state to destroy organized labor.

In the thirties, workers became less defensive and sought to aggressively redefine "racketeering." By 1932, having watched interlopers--seeking to steal union treasuries--murder respected friends like John Clay of the Laundry Drivers Union, organized labor had reconceived "racketeering" as the problem of outsiders threatening their unions. 12 In a declaration entitled, "The Gangster Menace," the state federation noted the threat posed by gangster incursion. Positing trade unions as "the only medium through which the organized voice of workers can be heard in a representative manner", the declaration noted, "it is difficult to imagine anything that can be more dangerous to the common weal than the misuse or perversion of any of these organizations." But evidencing labor's changing attitude towards the state, the declaration asked for government assistance in the fight against outsiders. 13 Thus A.F.L. unions defined "racketeering" as

11 Article, 'Seeks to Expose Racketeer Bodies', Federation News, 7/7/28, 2.
13 In one critical paragraph, the Illinois State Federation of Labor encapsulated its attitude towards gangs, the accusations of the Employers Association, state intervention, and industrial relations, stating:

Trade unions and their members and their representatives are as much entitled to the protection of law in all its forms and through all its representatives as are the organizations, members, and representatives of any other form of human activity... it is one thing to have a difference of opinion as to what is practicable or impracticable, or just or unjust, in relation to wage payments and working time, and quite another thing to have a difference of opinion as to whether the organizations established
external, preying on the "legitimate" trade unionism of the American Federation of Labor. In the future, the A.F.L. would use this definition not only to repel outsiders seeking to steal their funds, but to attack unaffiliated unions attempting to organize "their" workers.14

Combining questions of crime, labor, and competition, "racketeering" gained the attention of sociologists, economists, and law professors between 1929 and 1934. Scholars did not challenge the employer's definition, but they saw collusive trade agreements as positive and as inevitable and "racketeering" as

to deal with these important matters should or should not have the right to exist. Yet the right of the organization to exist is often the issue and it is a deplorable fact that there can be found among the more fortunately situated elements of the community, with whom life has dealt kindly in matters of wealth and position, leaders who are so antagonistic towards the organizations of working people that they seem willing to ignore professional gangster activities of a known criminal nature, when such activities are directed against trade unions.

Letter, Illinois State Federation of Labor to Trade Unionists and All Other Interested Citizens in Illinois, 1/9/33 in Victor Olander Papers, Box 62, 2.

14 The State Federation of Labor did more than criticize these unaffiliated unions. Letters written late in 1933 indicate that William Stratton, the Illinois Secretary of State from 1928 to 1932, agreed to submit all applications for charter by worker organizations to Victor Olander, the Secretary of the Illinois State Federation. In other words, the state would not sanction any group attempting to organize workers unless the State Federation approved of the application. These efforts were part of a sincere desire to remove eliminate "racketeering", but they also reflected the Federation's opposition to dual unionism. The American Federation of Labor conceived of itself as the House of Labor, the sole legitimate representative of the workers, and they saw the "racketeering" issue in this context. Letter J.J. Uhlmann, Secretary of the Metal Trades Council of Chicago, to Olander, 10/12/33 in Olander Papers, Box 72. Uhlmann wrote many letters to prominent politicians-- Illinois Secretary of Labor Durkin, Governor Horner, Secretary of State Hughes, and States Attorney Courtney--protesting the issuance of a charter to a lawyer, a doctor, and a bond salesman to organize garage workers. These letters are immensely informative, indicating the close correspondence, in the minds of A.F.L unionists, between dual unions and "racketeering", and the degree to which the state government accepted the Illinois State Federation of
further evidence that the government ought to encourage, rather than prohibit, cartelization and unionization. For example, in 1929, John Landesco, the foremost authority on crime in Chicago, saw "racketeering" as a by-product of anti-trust law. And in September, 1931, John Commons, the dean of the institutional economists, wrote a letter to the editor of *The New Republic*, in which he stated the positive stabilizing effects of "racketeering." These academicians among the growing number of scholars and businessmen who considered competition wasteful and proposed increased economic planning. Facing "racketeering" in the late twenties, these men would condemn graft and violence, but not cartels and labor monopolies. Suggesting the legalization and contractualization of collusive trade agreements, these academicians believed that the state would replace the gangs in the role of enforcer, and the violence and corruption would disappear.

These attitudes were perhaps epitomized by Raymond Moley in an essay he wrote for the *New York Times Magazine* in November 1930. Moley, a law professor at Columbia University specializing in criminal justice, argued that "racketeering" justified an expansion of the state's role in the economy. Defining the crime Labor as the "House of Labor". Whether or not this new garage organization was in fact gang dominated is unknown.

17Ellis Hawley notes the hegemonic position of anti-competitive economic arguments in the late twenties among businessmen and others. Economists and businessmen, however, disagreed over the manner in which competition should be limited. Ellis Hawley, *The New Deal and the Problem of Monopoly* (Princeton: Princeton University Press, 1966,) 10-14.
expansively— included in his definition were collusive agreements, strike bribes, and gang infiltration— Moley blamed "cut-throat competition" and the restraint of trade laws which made it mandatory. Describing a city lacking any legal order, he argued that Chicago's economy was operating on the fringes of instability and had thus reverted to "primitive forms of order" such as "racketeering."  

Moley's solution to the problem of "racketeering" closely resembled the law he would draft as an advisor to President Roosevelt in the spring of 1933— the National Industrial Recovery Act— which suspended anti-trust laws and instituted governmentally enforced trade agreements, produced through cooperation between different employers and their employees. Moley proposed the legalization of anti-competitive agreements and replace gang enforcement with state enforcement. Urging intervention in the economy through legislation Moley supported "what we may call political and economic statesmanship that the lesser forms of disorder that we call the racket may be abated."  

The counter-definitions of "racketeering" proposed by labor leaders and scholars took root in the thirties and supplanted Gordon Hostetter's original conception of "racketeering". By late-1932, even Hostetter himself had shifted his emphasis to

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19 Hawley, 24; Moley, 19.
"gangsterism". While holding to his definition of "racketeering", Hostetter had joined with labor and scholars in opposing gang infiltration of legitimate business and unions. Why did the originator of "racketeering" redefine his creation? The answer is that public priorities had changed. The end of the "great experiment"—the prohibition of alcoholic beverages—provoked the fear that bootleggers would invade the legitimate economy. More importantly, the Great Depression thoroughly reshaped the way in which people thought about competition and about labor. New plans to stabilize the economy included labor, thus making unions for the first time a central part of that legitimate economy.

With the end of Prohibition, the object of popular fears shifted from collusive tradesmen to "gangsters." Many Americans worried publicly that the purveyors of beer during the twenties—bootleggers—would look for new income in legitimate businesses and in union treasuries. Businessmen and newspaper reporters, formerly antipathetic to unions, suddenly expressed concern that dealing with men like Al Capone would be worse than dealing with William Green. The result was a series of journalistic works

20 Hostetter still condemned the anti-competitive arrangements, but he now recognized gang infiltration as a major problem, writing that "whereas several years ago organizations of business men and organized labor were principally responsible, with the criminal acting merely as a tool or agent, the criminal is now gaining the ascendancy." Gordon Hostetter, "The Growing Menace of the Racketeer", The New York Times Magazine, 10/30/32, 3. Six months later, Hostetter solicited funds from the members of the Employers Association, by noting that "for the first time, racketeers and underworld alcohol criminals are indistinguishable."Letter Hostetter to members, 4/8/33 in Olander Papers, Box 66. Philip Taft a former student of John Commons sent a copy this letter to Olander with the note stating, "Here is the latest masterpiece of Mr. Hostetter." Olander Papers, Box 66.
with colorful titles like Only Saps Work (1930) and Muscling In (1931) which exposed the threat to unions posed by soon-to-be-unemployed bootleggers. Of course, the threat posed by such hostile takeovers did not begin with the demise of Prohibition. What was new was the public interest in preserving the integrity of unions.

This interest emanated out of a new attitude towards unions and competition, epitomized by the most significant piece of legislation passed in the "first New Deal"-- the National Industrial Recovery Act. This law, written in 1933 by the aforementioned Raymond Moley, created a National Recovery Administration which administered codes regulating production, hours, wages, and even prices in each of the nation's industries. The act suspended anti-trust law, allowing firms to collude legally under legally enforceable codes. And section 7A of the N.I.R.A. guaranteed workers the right to be represented by a

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21 One labor leader commented to journalist Louis Adamic that, facing the threat of gang control of the unions, "the Chicago press struck off in a different key... Now they are shedding crocodile tears of concern lest the 'racketeers capture the unions.' Before labor unions were either Communist or a gang of hoodlums; now they are workingmen's associations in danger of being captured by Capone." Louis Adamic, Dynamite (Gloucester, MA: Peter Smith, 1963,) 347.

22 In Misleaders of Labor, his attack on corrupt craft unions, William Z. Foster described numerous interlopers who attempted to strong-arm themselves into the leadership of different unions. Tim Murphy was a bank robber whom the Chicago Federation of Labor disavowed, yet he managed to control three different unions over the course of twenty years. Foster, 171-5; Editorial, "Slur Union Labor", Federation News, 7/7/28, 4. Another example is Steve Sumner, the President of the Milk Drivers Union local. After outsiders threatened his life turned his office into an armed fortress in order to protect himself and his members. Hearings 416-9. Louis Adamic and Irving Bernstein both describe "racketeering" as a consequence of the weakness of the unions, of the desperation of the workers. This argument is not convincing. The union most threatened by violent takeovers both before and after 1929 was the teamsters. Both the laundry drivers and the milk drivers were strong and affluent unions, facts which attracted "gangsters".
union in collective bargaining. Many states duplicated the N.I.R.A., forming "little N.R.A.s". Thus, agreements which would have been considered illegal conspiracies and "rackets" in the twenties were now mandated. With collusion and unionization both legitimized, "racketeering" could no longer refer to illegal cartels.

This transition, and the role of social scientists in its occurrence, is further illustrated by developments in Chicago's dry cleaning industry in the thirties. In 1931, Benjamin Squires-- an arbitrator and University of Chicago economics lecturer-- put his plans to legally stabilize competition into practice. Like many other scholars and economists, Squires believed that "racketeering" was caused by excessive competition and price cutting in the industry, and he attempted to control prices legally through the use of contracts, thus replacing the violence and bribery with legally enforceable agreements. An attorney, Morris Kaplan advised Squires that such agreements were not violations of Illinois anti-trust law since cleaning and dyeing was a service, not a commodity. Squires accepted a dual responsibility-- he would regulate wages as impartial arbitrator while regulating prices through a new trade association, called the Cleaners and Dyers Institute, with the power to answer grievances, handle public relations, and solve labor disputes. Squires signed sales manager contracts with every cleaner in the industry giving him the power to set prices for each firm.23

23The effectiveness of this plan was limited. Most significantly, some employers declined membership in the institute. The chain stores which
In 1934 the State of Illinois would question the legality of Squires' contractual price fixing schemes, indicting him and seventeen others for conspiracy to restrain trade. This trial, dubbed by the press "the racket trial" and the first "racketeering" prosecution in Illinois history, reveals both the residual salience and increasing irrelevance of Hostetter's conception of "racketeering." Pressed by the Employers Association, the state tried prominent men-- unionists, businessmen, a politician, and an economist-- for their efforts at price control. At issue was an anti-competitive scheme which involved, but did not center upon, men like Capone. But the jury saw the prosecution's notion of "racketeering" as outdated in the context of the Depression and the New Deal. Lasting over four months-- the longest criminal trial in Cook County history-- the jury acquitted all of the defendants, noting that the price refused to fix prices when violence was prevalent showed little desire to join after violence was disavowed. While there were many methods of securing compliance, including strikes, these methods failed to stop price cutting, at least partly because of the depression. Moreover, between March and May, 1931, Alphonse Capone and his lieutenant, Murray "The Camel" Humphreys, offered to enforce industry agreements for a fee. Squires, firmly opposed to the gangsters, refused the offers and appealed to government officials for help. Yet the plant owners acted for themselves, paying off Humphreys for his assistance. Thus, despite the best efforts of Squires, he able neither to actually set prices without violence nor to keep "gangsters" out of the industry. In May 1932, unable to effectively regulate the industry, members began deserting the institute; and when the Supreme Court ruled that retail stores were subject to anti-trust law, the Institute disbanded. Handsaker details the history of the Institute in meticulous detail since he knew and worked with Squires see Handsaker, 214-80 esp. timeline 215-9; The end was not clean, as Squires refused to resign even after the Institute was moribund and this led to confusion as to what powers he had during strikes in mid-1932. For this and the dealings between Squires and the Chicago Federation of Labor See John Fitzpatrick Papers, Box 18, Folder 131. The U.S. Supreme Court subjected service industries to anti-trust law in Atlantic Cleaners & Dyers Inc. et al. v. United States, 286 U.S. 427. 24Chicago Sunday Tribune, May 6, 1934, part 1 p. 2.
fixing schemes closely resembled the plans advocated in the National Industrial Recovery Act. This resemblance was highlighted when President Roosevelt named Squires the administrator of the cleaning and dyeing code under the recovery act. To the jury, Squires, the labor leaders, and the dry cleaners were not "racketeers." They were pillars of the legitimate economy.

The consequences of the transformation of "racketeering" became evident in when the Federal government finally attempted to confront it as a crime in 1933. The election of Franklin Roosevelt and the New Deal marked a new era in Federal intervention in the peace time economy, and, simultaneously, the Federal government also assumed an expanded role in law enforcement. A United States Senate sub-committee of the Committee on Commerce held hearings beginning in August 1933 pursuant to Senate resolution 74, "authorizing an investigation of the matter of so-called 'rackets' with a view to their suppression". The hearings focused on two issues-- the expansion of Federal responsibilities in order to assist local authorities in fighting crime of all kinds, and the problems posed by corrupt and collusive industrial practices.

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26 U.S. Congress. Senate. Investigation of So-Called "Rackets", Hearings Before a Subcommittee of the Committee of Commerce, United States Senate, Seventy Third Congress, Second Session, Pursuant to S.Res 74, v.1, Parts 1-6, 110, 179, 187, 450, 597; Hearings, 441;
But by considering these two issues simultaneously, the sub-committee assumed that "racketeering" was an issue of criminal jurisprudence. Seeing "racketeering" as a crime problem, rather than as an economic problem, the Congress confirmed labor's definition of "racketeering". Attempting to make conviction more likely, the Congress shifted the emphasis of the law away from collective activity and effectively replaced centuries of criminal conspiracy law. The United States Attorney General noted that,

> In the past such persons[racketeers] have been prosecuted in the Federal courts for incidental violations of the law, such as mail frauds or income tax evasions. The nearest approach to prosecution of racketeers as such has been under the Sherman Antitrust Act. This act, however, was designed primarily to prevent and punish capitalistic combinations and monopolies, and because of the many limitations engrafted upon the act by interpretations of the courts, the act is not well suited for prosecution of persons who commit acts of violence, intimidation, and extortion. Furthermore, the Sherman Act requires proof of conspiracy, combination or monopoly, and is often difficult to prove that the acts of racketeers affecting interstate commerce amount to a conspiracy in restraint of such commerce or monopoly. Moreover a violation of the Sherman Act is a misdemeanor... such restraints, if accompanied by extortion violence, coercion, or intimidation, are made felonies, whether the restraints are in the form of felonies or not.27

Thus, prosecutors would no longer need to prove conspiracy to convict "racketeers." Seeking to create conditions favorable to conviction, the Federal government codified a conception of "racketeering" which condemned individuals rather than combinations, "gangsters" not unions. Thus, the desire to

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27 Congressional Record, Senate, March 23, 1934, 5735.
convict and the new definition of "racketeering" were in perfect harmony. The Federal Anti-Racketeering Act of 1934 marked the end of conspiracy, an end justified by criminal justice realities.

Moreover, the inclusion of labor in the new economic order led businessmen to demand increased vigilance to prevent "gangsters" from controlling the newly empowered unions. Many businessmen did not see the National Industrial Recovery Act, passed by Congress two months before the beginning of the hearings, as a solution to the "racketeering" problem. Instead, taking a different viewpoint, the sub-committee perceived "racketeering" as a possible outcome of the new economic order. Facing new cooperative efforts on the part of the Federal government, labor, and capital, the Senate committee sought to ensure that this new cooperation was not corrupted by "criminals".

The shift from collusive agreements to "gangsters" was complete. The problem with this view was that the new law could not prohibit "gangsters"; it could only prohibit coercion. The

28 The testimony of one man, William Fallowes Morgan, an owner of a cold storage company working in the heavily collusive fish industry in New York, illuminated the continued opposition of certain employers to unions on the basis of "racketeering" after the passage of N.I.R.A. Proposing that General Johnson require anti-racketeering clauses in N.R.A. codes, Committee members noted that they had already made this suggestion to General Johnson, the administrator in charge of the National Recovery Administration. Recalling a dispute with the unions in May, before N.R.A. passed Congress, Morgan stated, "I am not [anti-union], but I will not sign a contract with a union that is run by racketeers." To this the A.F.L. responded "You sign the contract and we will throw out the racketeers." Morgan disagreed, but eventually had to sign because of a boycott against his business. But he chided the A.F.L. for not expelling men who were under indictment. Morgan accepted the legitimacy of the unions, but felt that the new rights granted to workers required greater supervision of their leaders. Hearings, 142-3.
courts could interpret such a law as criminalizing all union behavior, not just the activities of men like Capone. After negotiations, the House passed new bill contained three passages explicitly excluding "wages paid by a bona fide employer to a bona fide employee". Moreover, it contained an explicit warning to judges who might misinterpret the law, noting,

that no court of the United States shall construe or apply any of the provisions of this act in such manner as to impair, diminish, or in any manner affect the rights of bona-fide labor organizations in lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States. 29

Within the month the Senate and President had approved of the amended bill. Now "racketeering" was against Federal law. But the law excused "legitimate" labor unions bargaining for higher wages, shorter hours, and better working conditions. Thus, in attacking "racketeering", the state had ratified the definition of "racketeering" set out by the A.F.L. and by some social scientists. "Racketeering" was a form of corruption which plagued unionism but was not intrinsic to it, a crime perpetrated upon unions by evil individuals, rather than a crime committed by all labor organizations. This was a victory for labor, as it freed unions from the semi-outlaw status which had left them vulnerable to prosecution throughout the nineteenth century. The Federal Anti-Racketeering Act of 1934 reflected the growing legitimacy of labor unions, but it also codified that legitimacy.
"Racketeering" has a history, rooted in struggles between labor and the law both before and during the depression. Gordon Hostetter had hoped to reinvigorate the law of labor conspiracy by conflating organized labor with organized crime, by comparing trade agreements to trusts, and generally by re-describing long condemned business practices. By 1934, after six years of debate, labor's right to organize was guaranteed, trade agreements were mandatory, and "racketeering" had become a blight afflicting, but not intrinsic to, businesses and unions. Although price fixing became illegal again in 1935, with the Schechter decision, labor unions retained their legitimacy with the passage of the Wagner Act.

The continuing legitimacy of organized labor was one result of the transformation of "racketeering". In order for politicians to grant power to unions, they had to believe that unions were not evil conspiracies. They had to believe that labor was essentially good, or at least that it might be purified. Is it any coincidence that when the public began to doubt the purity of unions in the late nineteen-forties and early fifties, the Congress passed the Taft-Hartley Amendment restricting union power? The answer is no. The criminal reputation of labor and the legal rights of labor have been mutually constituted.

Thus, a historical understanding of the New Deal and its impact on the American worker demands a rigorous investigation of "racketeering" and the limitations on labor activity. For years,  

29 Congressional Record, v. 78, Part 10, 73rd Congress, 2d Session, 6/3/34, 11403.
unions had found that a criminal reputation, constructed around their struggles with the law, represented an important obstacle to their acceptance as legitimate economic actors. Responses to the depression such as the National Industrial Recovery Act—-itself influenced by Raymond Moley’s understanding of “racketeering”—-created a new economic order in which labor had a prominent place. Criminal law marched in step with labor law, creating a negative image against which many unions defined themselves. Just as stockbrokers legitimized their profession by encouraging the criminalization of "bucket shops", labor successfully fought for its legitimacy by defining "racketeering" as an external threat to bona fide unionism. The debate over the meaning of the word "racketeering" was part of the larger debate over union legitimacy--a debate which mainstream unionists and scholars won. The definition of "racketeering" incorporated into the Federal anti-racketeering law of 1935 reflected labor's view of itself, of good unionism and bad unionism, more than the views of any open shop employers.

Yet the consensus which developed briefly during the economic and ideological rupture of the depression were not permanent. The reputation of labor unions continues to evolve today, affecting the success and failure of specific unions in organizing drives and strikes. That historical reputation draws on representations of labor practice over a century old, representations which were deeply biased and, as such, angrily contested by labor. Historians must, without falling into denial, analyze these representations and counter-representations
in order to understand the changing status of labor in the United States.