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RICO EXTENDED TO APPLY TO WHOLLY ILLEGITIMATE ENTERPRISES

United States v. Turkette, 101 S. Ct. 2524 (1981).

I. INTRODUCTION

In *United States v. Turkette*,¹ the Supreme Court resolved the conflict over the scope of the term "enterprise" in the Racketeer Influenced and Corrupt Organizations (RICO) statute. The high Court agreed with the majority of the courts of appeals that the RICO proscriptions should not be confined to legitimate businesses, but rather should be read broadly to extend even to wholly illegitimate enterprises.² The Court also narrowed the applicability of RICO by requiring that the existence of an "enterprise" be proved by evidence of an "ongoing organization" whose "various associates function as a continuing unit."³

The Racketeer Influenced and Corrupt Organizations statute,⁴ known commonly as RICO, was enacted as Title IX of the Organized Crime Control Act of 1970.⁵ The substantive provisions of RICO are in section 1962. Sections 1962(a) and (b) prohibit the use of a "pattern of racketeering activity" or the income received from such activity to acquire an interest in or control of "any enterprise" affecting interstate commerce.⁶ Section 1962(c) provides:

¹ 101 S. Ct. 2524 (1981).

² Courts and commentators have used the word "legitimate" in discussions of RICO to refer to enterprises that engage in *some* legal business activities. The Supreme Court holding in *United States v. Turkette* extends the RICO "enterprise" to "wholly illegitimate" enterprises, that is, to organizations that engage solely in criminal activity. *Id.* at 2527. Nevertheless, confusion as to what organization should be considered the "enterprise" in a given RICO prosecution renders the distinction between "legitimate" and "illegitimate" enterprises unclear. See note 46 *infra*.

³ 101 S. Ct. at 2528.

⁴ 18 U.S.C. §§ 1961-68 (1976).

⁵ Pub. L. No. 91-452, 84 Stat. 941 (1970).

⁶ 18 U.S.C. § 1962 provides:

(a) It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce. . . . (b) It shall be unlawful for any person through a

It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

Section 1962(d) makes it unlawful to conspire to violate subsections (a), (b), or (c).⁷ RICO provides for both criminal and civil penalties.⁸ The criminal penalties are severe, allowing forfeiture of interests acquired in enterprises in violation of section 1962, fines of \$25,000, and imprisonment for twenty years.⁹ The civil remedies provided in section 1964 are modeled after those which have proven effective in antitrust prosecutions.¹⁰ These remedies include injunction, divestiture, dissolution and reorganization.¹¹ Treble damages are available to any person whose property or business has been injured as a result of a section 1962 violation.¹²

An "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and *any* union or *group of individuals associated in fact* although not a legal entity."¹³ Section 1961(1) lists specific state and federal crimes which constitute "racketeering activity" for prosecution under RICO.¹⁴ Commission of two acts of "racketeering

pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

⁷ 18 U.S.C. § 1962(d) provides:

"It shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section."

⁸ 18 U.S.C. §§ 1963, 1964 (1976).

⁹ *Id.* at § 1963.

¹⁰ 115 CONG. REC. 9567 (1969); 116 CONG. REC. 591, 602 (1970).

¹¹ 18 U.S.C. § 1964 (1976).

¹² *Id.* at § 1964(c).

¹³ *Id.* at § 1961(4) (emphasis added). The description "associated in fact" is at the center of the controversy over the scope of "enterprise" in RICO. *See, e.g.*, *United States v. Turkette*, 101 S. Ct. at 2526, 2527; *United States v. Turkette*, 632 F.2d 896, 905 (1st Cir. 1980).

¹⁴ 18 U.S.C. § 1961(1) provides:

'racketeering activity' means (A) any act or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), § 224 (relating to sports bribery), §§ 471, 472, and 473 (relating to counterfeiting), § 659 (relating to theft from interstate shipment) if the act indictable under § 659 is felonious, § 664 (relating to embezzlement from pension and welfare funds), §§ 891-894 (relating to extortionate credit transactions), § 1084 (relating to the transmission of gambling information), § 1341 (relating to mail fraud), § 1343 (relating to wire fraud), § 1503 (relating to obstruction of justice), § 1510 (relating to the obstruction of criminal investigations), § 1511 (relating to the obstruction of State or local law enforcement), § 1951 (relating to interference with commerce, robbery, or extortion), § 1952 (relating to racketeering), § 1953 (relating to interstate transportation of wagering paraphernalia), § 1954 (relating to unlawful welfare fund payments), § 1955 (relating to the prohibition of illegal gambling businesses), §§ 2314 and 2315 (relating to interstate transportation of stolen property), §§ 2341-46

activity" within ten years establishes a "pattern of racketeering activity."¹⁵

II. FACTS AND HISTORY OF TURKETTE

The issue in *Turkette* was whether a group whose members engaged solely in criminal activity constituted an "enterprise" within the scope of RICO section 1962.¹⁶ The indictment alleged that Turkette was the central figure in an "enterprise," which the indictment described as:

a group of individuals associated in fact for the purpose of illegally trafficking in narcotics and other dangerous drugs, committing arsons, utilizing the United States mails to defraud insurance companies, bribing and attempting to bribe local police officers, and corruptly influencing and attempting to corruptly influence the outcome of state court proceedings. . . .¹⁷

The indictment charged Turkette and his twelve associates with conspiring to conduct or participate in the affairs of an "enterprise" affecting interstate commerce through a pattern of racketeering activity.¹⁸ The activities of the "enterprise"¹⁹ constituted a "pattern of racketeering activity" since they included at least two state and federal crimes listed in RICO section 1961.²⁰ Turkette was convicted by a jury, sentenced to a

(relating to trafficking in contraband cigarettes), §§ 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, § 186 (dealing with restrictions on payments and loans to labor organizations) or § 501(c) (relating to embezzlement from union funds), or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States. . . ."

¹⁵ 18 U.S.C. § 1961(5): "'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity. . . ."

¹⁶ 101 S. Ct. at 2526.

¹⁷ Indictment at 15. (The indictment is contained in the Joint Appendix following the Brief for the Petitioner). The RICO conspiracy count was the last count of a nine-count indictment and charged Turkette and his twelve associates. *Id.* at 14-15. Seven of the defendants pleaded guilty before trial. Of the six remaining defendants, the district court convicted only Turkette on the RICO count. Although the district court dismissed the RICO count against defendant Vargas, it refused his motion for severance, and he was convicted on one of the other counts. The appeal to the First Circuit involved both Turkette and Vargas. *United States v. Turkette*, 632 F.2d at 896.

¹⁸ The participation in the affairs of the enterprise through a pattern of racketeering activity violated 18 U.S.C. § 1962(c). The defendants were charged with violating 18 U.S.C. § 1962(d) which makes it unlawful to conspire to violate 18 U.S.C. § 1962(c). *See* note 7 *supra*.

¹⁹ The activities included in the indictment are listed in the text accompanying note 17 *supra*.

²⁰ Indictment at 15-16. The indictment charged the defendants with violating 18 U.S.C. § 1341 (relating to mail fraud), 21 U.S.C. § 841(a) (relating to the unlawful distribution of controlled substances), and several sections of the Massachusetts General Laws. *Id.*

twenty-year term and fined \$20,000 for the RICO count.²¹

On appeal, Turkette argued that because the sole purpose of RICO was to protect legitimate enterprises from infiltration by organized crime,²² RICO did not extend to the illegal activities of Turkette and his associates.²³ After examining the language and structure of RICO and the statute's legislative history,²⁴ the Court of Appeals for the First Circuit concluded that RICO limited "enterprise" to legitimate organizations.²⁵ Since Turkette and his associates were not connected with any legitimate "enterprise," the First Circuit held that RICO was inapplicable.²⁶ The court of appeals reversed Turkette's conviction and remanded the case for a new trial.²⁷

This narrow interpretation of "enterprise" by the First Circuit was contrary to the position adopted by every other circuit which had addressed the issue.²⁸ The Supreme Court granted certiorari²⁹ in order to resolve the conflict over the scope of the term "enterprise" in RICO.³⁰

The Court examined the language of the statute and concluded, contrary to the findings of the First Circuit, that "neither the language nor structure of RICO limits its application to legitimate 'enterprises.'" ³¹ The Court also examined the legislative history of the Organized Crime Control Act of 1970 as a whole and Title IX in

²¹ 101 S. Ct. at 2527. The jury also found Turkette guilty on the other eight counts contained in the indictment. *Id.* Turkette's sentence on the RICO conviction was to run concurrently with his twenty-year sentence for the other counts. *Id.*

²² See notes 80 and 83 & accompanying text *infra*.

²³ 632 F.2d at 898. Courts that limited RICO to legitimate enterprises required that the enterprise be a legitimate business organization or individuals connected with such an organization. See notes 37-38 *infra*.

²⁴ 632 F.2d at 898-903.

²⁵ *Id.* at 901, 905-06. The First Circuit also held in *Turkette* that the joinder of Turkette and Vargas was impermissible because it violated FED. R. CRIM. P. 8(b) which requires joint defendants "to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." 632 F.2d at 906. The Supreme Court did not address the joinder issue. The Court's definition of "enterprise" would appear to make such joinder permissible. See 101 S. Ct. at 2528 and note 47 & accompanying text *infra*.

²⁶ 632 F.2d at 906.

²⁷ *Id.* at 910.

²⁸ See *United States v. Sutton*, 642 F.2d 1001 (6th Cir. 1980); *United States v. Provenzano*, 620 F.2d 985 (3d Cir.), *cert. denied*, 101 S. Ct. 269 (1980); *United States v. Whitehead*, 618 F.2d 523 (4th Cir. 1980); *United States v. Aleman*, 609 F.2d 298 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Rone*, 598 F.2d 564 (9th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Elliot*, 571 F.2d 880 (5th Cir. 1978), *cert. denied*, 439 U.S. 953 (1978); *United States v. Altese*, 542 F.2d 104 (2d Cir.), *cert. denied*, 429 U.S. 1039 (1977). The Eighth Circuit had not addressed this issue directly. See note 39 *infra*. The First Circuit noted in *United States v. Turkette* that its decision was opposed to the majority view.

²⁹ 101 S. Ct. 938 (1981).

³⁰ *United States v. Turkette*, 101 S. Ct. at 2526.

³¹ *Id.* at 2530.

particular.³² Unlike the First Circuit, the Supreme Court could find no basis for concluding that Title IX did not extend to "enterprises organized and existing for criminal purposes."³³ The Supreme Court reversed the judgment of the court of appeals. Justice White, writing for the eight justice majority, held that RICO is equally applicable to legitimate enterprises and to criminal enterprises which engage in no legitimate activities.³⁴ Justice Stewart dissented, stating that he agreed "with the reasoning and conclusion of the Court of Appeals as to the meaning of the term 'enterprise.'"³⁵

III. TURKETTE AND PRIOR CASE LAW: DISPUTE OVER THE INCLUSION OF WHOLLY ILLEGITIMATE ENTERPRISES

The Supreme Court's decision in *Turkette* confirmed the majority view, adopted by eight circuits,³⁶ that the term "enterprise" in RICO encompassed illegitimate enterprises. In four of these circuits, however, there had been strong dissents arguing that "enterprise" should be interpreted narrowly so as to exclude illegitimate organizations.³⁷ The Sixth Circuit had only recently adopted the broad interpretation when it reversed en banc a decision by a three-judge panel.³⁸ Commentators were fairly evenly divided over the issue.³⁹ The position of the Eighth Circuit

³² *Id.* at 2530-34.

³³ *Id.* at 2532.

³⁴ *Id.* at 2533-34.

³⁵ *Id.* at 2534.

³⁶ See note 28 *supra*.

³⁷ See *United States v. Sutton*, 642 F.2d at 1042 (Merritt, J., dissenting); *United States v. Aleman*, 609 F.2d at 311 (Swygert, J., dissenting); *United States v. Grzywacz*, 603 F.2d 682, 690 (7th Cir. 1979) (Swygert, J., dissenting), *cert. denied*, 446 U.S. 935 (1980); *United States v. Rone*, 598 F.2d at 573 (Ely, J., dissenting); *United States v. Altese*, 542 F.2d at 107 (Van Graafeiland, J., dissenting).

³⁸ A three-judge panel had held in *United States v. Sutton*, 605 F.2d 260, 270 (6th Cir. 1979), that "enterprise" must be confined to individuals "organized and acting for some ostensibly lawful purpose, either formally declared or informally recognized." *Id.* The Sixth Circuit, en banc, rejected the narrow interpretation: "the statute itself makes it plain that Congress intended to bring the full force of federal law enforcement into the effort to destroy organized crime and that it had no intention of limiting the federal effort to just those 'ostensibly legitimate' enterprises which organized crime might use." 642 F.2d at 1003. Since the Sixth Circuit found no ambiguity in the statute, it concluded that the statute must be interpreted by courts as written. *Id.*

³⁹ Commentators agreeing that "enterprise" includes illegitimate organizations include: Atkinson, "Racketeer Influenced and Corrupt Organizations," 18 U.S.C. §§ 1961-68: *Broadest of the Federal Criminal Statutes*, 69 J. CRIM. L. & C. 1 (1978); Blakey & Goldstock, "On the Waterfront: RICO and Labor Racketeering," 17 AM. CRIM. L. REV. 341 (1980); Bradley, *Racketeers, Congress, and the Courts: An Analysis of RICO*, 65 IOWA L. REV. 837 (1980); Note, *RICO and the Liberal Construction Clause*, 66 CORNELL L. REV. 167 (1980); Note, *The Enterprise Element in RICO: A Proposed Interpretation*, 49 GEO. WASH. L. REV. 123 (1980); Note, *The Racketeer Influenced and Corrupt Organizations Act: Proscription of Illegitimate and Criminal Enterprises*, 10 MEM. ST. L. REV. 633 (1980); Note, *RICO: Are the Courts Construing the Legislative History Rather than the Statute*

on the applicability of RICO to illegitimate enterprises was unclear.⁴⁰ The points of disagreement between the Supreme Court and the Court of Appeals for the First Circuit in *Turkette* mirror the dispute among judges in other circuits and among commentators.

One objection to the broad interpretation of "enterprise" in RICO has been that if wholly illegitimate organizations qualified as "enterprises," the "enterprise" element would be eliminated from the statute.⁴¹ Proof of two acts of racketeering would establish both the "pattern" and the existence of an "enterprise," making RICO merely a proscription against "patterns of racketeering activity."⁴² The First Circuit offered this argument in support of its narrow interpretation of "enterprise" in *Turkette*.⁴³ This objection to the inclusion of illegitimate enterprises within the scope of RICO confuses the elements necessary to establish a RICO violation. As the Supreme Court pointed out in *Turkette*, to secure a conviction under RICO, the government must establish both the existence of an "enterprise" and a "pattern of racketeering activity" con-

Itself?, 55 NOTRE DAME LAW. 777 (1980). Commentators favoring the narrow interpretation include: Tarlow, *RICO: The New Darling of the Prosecutor's Nursery*, 49 FORDHAM L. REV. 165 (1980); Comment, *Title IX of the Organized Crime Control Act of 1970: An Analysis of Issues Arising in its Interpretation*, 27 DEPAUL L. REV. 89 (1977); Comment, *United States v. Sutton and the Scope of Title IX of the Organized Crime Control Act of 1970: The Sixth Circuit's Narrow Interpretation of the Meaning of "Enterprise"*, 68 KY. L. J. 469 (1979-80); Comment, *Organized Crime and the Infiltration of Legitimate Business: Civil Remedies for "Criminal Activity"*, 124 U. PA. L. REV. 192 (1975); Note, *United States v. Sutton: Reining in on Runaway RICO*, 42 U. PITT. L. REV. 131 (1980); Note, *Statutory Interpretation—Racketeer Influenced and Corrupt Organizations Statute (RICO) Applies Only to "Legitimate" Enterprises: United States v. Sutton*, 11 U. TOL. L. REV. 685 (1980); Note, *The Racketeer Influenced and Corrupt Organizations Act: An Analysis of the Confusion in its Application and a Proposal for Reform*, 33 VAND. L. REV. 441 (1980).

⁴⁰ In *United States v. Anderson*, 626 F.2d 1358 (8th Cir. 1980), *cert. denied*, 101 S. Ct. 1351 (1981), a panel of the Eighth Circuit held that "enterprise" encompasses "only an association having an ascertainable structure which exists for the purpose of maintaining operations directed toward an economic goal that has an existence that can be defined apart from the commission of the predicate acts constituting the 'pattern of racketeering activity.'" *Id.* at 1372. The court distinguished its holding from the panel decision in *United States v. Sutton*, 605 F.2d 290, by pointing out that its decision did not rest "on the word 'legitimate' but rather on the need for a discrete economic association existing separately from the racketeering activity." 626 F.2d at 1372. The definition of "enterprise" in *Anderson* appears to encompass wholly illegitimate enterprises if they meet the requirements quoted above. See, e.g., Tarlow, *supra* note 39, at 198; Comment, *RICO: Confusion in the Circuits in Interpreting "Enterprise"*, 50 U. CIN. L. REV. 120 (1981).

⁴¹ See, e.g., *United States v. Turkette*, 632 F.2d at 903; *United States v. Sutton*, 642 F.2d at 1054 (Merritt, J., dissenting) (Judge Merritt had authored the panel decision rejected by the Sixth Circuit sitting en banc); *United States v. Anderson*, 626 F.2d at 1362-72; *United States v. Sutton*, 605 F.2d at 265-66; *United States v. Rone*, 598 F.2d at 573 (Ely, J., dissenting); *United States v. Altese*, 542 F.2d at 107 (Van Graafeiland, J., dissenting); Bradley, *supra* note 39, at 854; Tarlow, *supra* note 39, at 197-98; Note, 42 U. PITT. L. REV., *supra* note 39, at 146; Note, 11 U. TOL. L. REV., *supra* note 39, at 701; Note, 33 VAND. L. REV., *supra* note 39, at 462, 467, 469.

⁴² 632 F.2d at 903.

⁴³ *Id.*

nected with this "enterprise."⁴⁴ "The 'enterprise' is not the 'pattern of racketeering;' it is an entity separate and apart from the pattern of activity in which it engages."⁴⁵

The confusion over the need to establish the existence of an "enterprise" separate from the occurrence of the acts which constitute the "pattern of racketeering activity" stems in part from the failure of courts to indicate clearly which entity is the "enterprise" significant for the RICO prosecution.⁴⁶ The decision in *Turkette* should eliminate some of the confusion over the proof necessary to establish an "enterprise" and the type of "enterprise" relevant to a RICO charge. The Court stated that the existence of an "enterprise" is "proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."⁴⁷ This description restricts the definition in RICO section 1961(4) and represents a departure from the vague standards previously applied by lower courts.⁴⁸

The Supreme Court's restriction of the term "enterprise" answers

⁴⁴ 101 S. Ct. at 2529. The prosecution had not disputed this point. *Id.* at 2529 n.5.

⁴⁵ *Id.* at 2528-29.

⁴⁶ For example, in *United States v. Aleman*, 609 F.2d 298, the court did not discuss what evidence established that the defendants constituted an "enterprise." In the statement of findings, however, the court did note facts that indicated that the defendants were "associated in fact" and had participated in the three criminal acts together. *Id.* at 301-02. Thus, the court may merely have failed to state that since the defendants were "associated in fact," they were an "enterprise" as required by RICO, 18 U.S.C. § 1961(4). The court, however, may have been confused as to which entity was the "enterprise." *See* 609 F.2d at 305. There seems to have been early confusion over how the broad definition of "enterprise" related to the RICO concern with infiltration of legitimate business. *See id.*; *United States v. Sutton*, 642 F.2d at 1005, 1010-11, 1015.

⁴⁷ This description of the evidence necessary to prove the existence of an "enterprise" does not appear to be limited to the case before the Court. Since the Court had, however, qualified a preceding statement concerning the definition of "enterprise," one could argue that the subsequent statement, quoted in the text, was also limited to *Turkette*. The complete passage reads:

In order to secure a conviction under RICO, the Government must prove both the existence of an "enterprise" and the connected "pattern of racketeering activity." The enterprise is an entity, for present purposes a group of persons associated together for a common purpose of engaging in a course of conduct. The pattern of racketeering activity is, on the other hand, a series of criminal acts as defined by the statute. 18 U.S.C. § 1961(1). The former is proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit. The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise.

101 S. Ct. at 2528.

⁴⁸ *See* note 46 *supra*. In *United States v. Elliott*, 571 F.2d at 898, the court described an "association in fact" enterprise as "an amoeba-like infra-structure that controls a secret criminal network." *Id.* But the court also used language very similar to that found in the Supreme Court's description in *Turkette*: "[i]n defining 'enterprise,' Congress made clear that the statute extended beyond conventional business organizations to reach 'any . . . group of individuals' whose association, however loose or informal, furnishes a vehicle for the commission of two or more predicate crimes." *Id.* *See, e.g., United States v. Turkette*, 101 S. Ct. at 2528.

critics who claimed that the inclusion of wholly illegitimate organizations would permit prosecutorial abuse in the application of RICO.⁴⁹ The First Circuit expressed concern in its *Turkette* decision that RICO would be used against individuals who had merely committed two gambling or prostitution offenses within ten years.⁵⁰ Such violations would be acts of "racketeering activity" sufficient for RICO prosecution if they were prohibited by state law.⁵¹ RICO was designed for use against more than just isolated criminal acts.⁵² The Senate Judiciary Committee Report on RICO explained that "[t]he target of title IX is . . . not sporadic activity. The infiltration of legitimate business normally requires more than one 'racketeering activity' and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern."⁵³ In *Turkette*, the Supreme Court limited the application of RICO to "ongoing organizations" whose "various associates function as a continuing unit."⁵⁴ This definition of "enterprise" reduces the potential for abuse in the application of RICO by requiring continuity in the "enterprise" element.⁵⁵ This approach allows RICO to be used against individuals who engage in organized criminal activity. If the Court had required continuity in the "pattern" element as some courts and commentators have suggested,⁵⁶

⁴⁹ *United States v. Turkette*, 632 F.2d at 902, 903-04; *United States v. Sutton*, 605 F.2d at 266; Comment, 27 DEPAUL L. REV., *supra* note 38, at 100-01; Comment, 50 U. CIN. L. REV., *supra* note 40, at 132; Note, 11 U. TOL. L. REV., *supra* note 39, at 704; Note, 33 VAND. L. REV., *supra* note 39, at 446-47. Although this objection was related to the misconception that the "enterprise" element would be eliminated if the broad interpretation were accepted, these critics would have probably made the same objection if the "enterprise" element, although established separately from the "pattern of racketeering activity," could have consisted merely of individuals "associated in fact" for conducting criminal activity.

⁵⁰ 632 F.2d at 902, 903-04. See also *United States v. Sutton*, 605 F.2d at 266.

⁵¹ 18 U.S.C. § 1961(1)(A). See note 14 *supra*.

⁵² 115 CONG. REC. 9567 (1969).

⁵³ S. REP. NO. 617, 91st Cong., 1st Sess. 158 (1969).

⁵⁴ 101 S. Ct. at 2528.

⁵⁵ The Court did not modify the definition of "pattern" in *Turkette*. See 101 S. Ct. at 2528. See also note 15 *supra*. Some courts and commentators had suggested that continuity be included in the "pattern" element. See note 56 *infra*.

⁵⁶ *United States v. White*, 386 F. Supp. 882, 883-84 (E.D. Wis. 1974); *United States v. Stofsky*, 409 F. Supp. 609, 613-14 (S.D.N.Y. 1973); Tarlow, *supra* note 39, at 213-20; Note, 33 VAND. L. REV., *supra* note 39, at 477. In *United States v. Stofsky*, 409 F. Supp. at 614, the court viewed the "pattern" element in RICO "as including a requirement that the racketeering acts must have been connected with each other by some common scheme, plan or motive so as to constitute a pattern and not simply a series of disconnected acts." *Id.* The language of the Senate Report quoted in the text accompanying note 53 *supra* does offer some grounds for such a conclusion. In *United States v. Elliott*, 571 F.2d at 899 n.23, the court rejected the suggestions of the district courts in *United States v. Stofsky* and *United States v. White*, recognizing that RICO "does require a type of relatedness: the two or more predicate crimes must be related to the affairs of the enterprise but need not otherwise be related to each other." *Id.* This is the approach adopted by the Supreme Court in *Turkette*. See note 47 & accompanying text *supra*.

RICO would have been unnecessarily limited to those criminal enterprises that confine their activities to related types of crimes. As the Fifth Circuit noted in *United States v. Elliott*,⁵⁷ although RICO is not aimed at sporadic activity, there is no reason that it should not be applied to enterprises involved in diversified criminal activity.⁵⁸

The limitation of "enterprise" to organizations that have engaged in ongoing criminal activity does not prevent the application of RICO to persons other than members of organized crime groups such as the Mafia. Although members of such groups had been the original target of the Organized Crime Control Act, Congress decided upon a broader attack.⁵⁹ "Organized crime" is used in RICO in its generic sense, referring to any organized criminal activity.⁶⁰ Since Congress was aware that RICO would also reach individuals not associated with organized crime groups such as the Mafia,⁶¹ criticism of RICO prosecutions of small, informally organized groups which have committed only a few criminal acts is not justified if the acts and the organization of such groups meet the RICO requirements.⁶² The use of RICO against such groups is not prosecutorial abuse.

Opponents of the broad interpretation of "enterprise" have also argued that since adequate remedies already exist for persons who participate in wholly criminal organizations, it is not necessary to extend the application of RICO to such organizations.⁶³ In *Turkette*, the First Circuit noted that Title VIII of the Organized Crime Control Act covered

⁵⁷ 571 F.2d at 899.

⁵⁸ *Id.*

⁵⁹ 116 CONG. REC. 18939-40, 35344 (1970).

⁶⁰ See *id.* at 35344; McClellan, *The Organized Crime Act (S. 30) or Its Critics: Which Threatens Civil Liberties?*, 46 NOTRE DAME LAW. 55, 61 (1970). The drafters of RICO realized that it would be impossible to limit the statute to organized crime groups like the Mafia, and even if such a restriction could be drafted, it would encounter constitutional problems. 116 CONG. REC. 18940, 35343-44 (1970). (An amendment offered in the House to limit RICO to organized criminals of Italian ancestry was rejected. *Id.* at 35346).

⁶¹ 116 CONG. REC. 18940 (1970); Atkinson, *supra* note 39, at 3.

⁶² Commentators have offered several cases as examples of prosecutorial abuse in the application of RICO to small enterprises. Cases criticized included: *United States v. Aleman*, 609 F.2d 298 (7th Cir. 1979), *cert. denied*, 445 U.S. 946 (1980); *United States v. Weatherspoon*, 581 F.2d 595 (7th Cir. 1978) (owner and operator of beauty college used mails in scheme to defraud the Veteran's Administration of payments for students not entrolled in the school); *United States v. Morris*, 532 F.2d 436 (5th Cir. 1976) (the defendant and two associates planned and participated in several rigged card games). See also Note, *United States v. Sutton: The Sixth Circuit Curbs Abuse of RICO, The Federal Racketeering Enterprise Statute*, 28 CLEV. ST. L. REV. 629 (1979); Note, 33 VAND. L. REV., *supra* note 39, at 461-62, 476-77. (These critics were assuming that RICO applied only to legitimate enterprises when they made these objections).

⁶³ *United States v. Turkette*, 632 F.2d at 905-06; Comment, 27 DEPAUL L. REV., *supra* note 39, at 103; Note, 11 U. TOL. L. REV., *supra* note 39, at 701; Note, 33 VAND. L. REV., *supra* note 39, at 466.

one type of criminal enterprise—the illegal gambling business.⁶⁴ Title VIII makes it unlawful to “conduct, manage, supervise, direct, or own all or part” of a gambling business involving five or more persons.⁶⁵ The court of appeals reasoned that Congress could not have intended that Title IX would apply to illegitimate enterprises such as illegal gambling businesses, for this would permit circumvention of the Title VIII five-person requirement.⁶⁶ The Supreme Court did not address this issue in *Turkette*. The First Circuit, however, misinterpreted the RICO requirements. Participation in a gambling business prohibited by Title VIII does qualify as “racketeering activity” under RICO section 1961(1)(B).⁶⁷ Gambling activity in violation of Title VIII is, however, subject to RICO prosecution only if the gambling “enterprise” is indictable under Title VIII.⁶⁸ Operation of a gambling business could serve as one of the predicate acts required for RICO only if the requirements of Title VIII were met.⁶⁹ RICO does not circumvent the provisions of other federal statutes such as Title VIII. RICO prohibits, instead, the separate offense of engaging in a pattern of gambling or other “racketeering activity.”⁷⁰ Although RICO section 1961(1)(A) allows for prosecution of state gambling law violations and these laws may not require five persons, this use of RICO would have no effect on the applicability of Title VIII. The provisions of Title VIII have no import for the issue of whether illegitimate organizations are within the scope of Title IX.

Congress enacted RICO and the other provisions of the Organized Crime Control Act of 1970 because existing remedies were inadequate.⁷¹ The Supreme Court was aware that RICO represented a new approach to combating organized criminal activity when it rejected the First Circuit’s narrow interpretation of “enterprise.”⁷²

IV. INTERPRETING RICO: THE ROLE OF LEGISLATIVE HISTORY

The role of legislative history in the interpretation of RICO has

⁶⁴ 632 F.2d at 902.

⁶⁵ 18 U.S.C. § 1955(b)(1)(ii) (1976).

⁶⁶ 18 U.S.C. § 1961(4) requires only a single individual. *See* note 13 & accompanying text *supra*.

⁶⁷ *See* note 14 *supra*.

⁶⁸ This statement is limited to 18 U.S.C. § 1961(1)(B), which refers only to acts indictable under federal laws. *See* note 14 *supra*.

⁶⁹ *Id.*

⁷⁰ Although RICO does not make illegal any act which was previously legal, it does provide for punishment in addition to that imposed for the individual predicate crimes. *See* Atkinson, *supra* note 39, at 8.

⁷¹ *See* 116 CONG. REC. 591, 18939 (1970); 115 CONG. REC. 9567 (1969). These passages refer specifically to the inadequacy of existing remedies in preventing organized crime from infiltrating legitimate businesses. *See also* Blakey & Goldstock, *supra* note 39, at 365.

⁷² *United States v. Turkette*, 101 S. Ct. at 2530.

been a central issue in the debate over the proper scope of "enterprise."⁷³ The initial decision concerning the presence or absence of ambiguity in the statutory language determines a court's position on the significance of expressions of legislative intent.⁷⁴ A general rule of statutory interpretation provides that if a statute's language is unambiguous, the court must accept the literal meaning of the language unless it is clearly contrary to legislative intent or leads to absurd results.⁷⁵

The definition of "enterprise" in section 1961(4) reads: "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."⁷⁶ The Supreme Court recognized in *Turkette* that the language of section 1961(4) clearly permits both legitimate and illegitimate enterprises.⁷⁷ The definition of "enterprise" contains no restriction on the purpose of the organization. As the Court noted, Congress could have easily limited the application of "enterprise" by inserting "legitimate" into the definition,⁷⁸ but neither the word "legitimate" nor "illegitimate," nor terms with similar meanings, appears in any of the sections of RICO.

All courts which have considered the scope of RICO's "enterprise" requirement have examined the statute's legislative history.⁷⁹ There is no dispute that the primary purpose of Title IX was to combat the infiltration of legitimate businesses by organized crime.⁸⁰ This goal is ex-

⁷³ See, e.g., *United States v. Sutton*, 642 F.2d at 1003-05, 1009-10; *Id.* at 1054 (Merritt, J., dissenting); *United States v. Anderson*, 626 F.2d at 1368-71; *United States v. Rone*, 598 F.2d at 568-69; *Id.* at 573-74 (Ely, J., dissenting); *United States v. Altese*, 542 F.2d at 106-07; *Id.* at 107-11 (Van Graafeiland, J., dissenting); Note, 55 NOTRE DAME LAW., *supra* note 39, at 792-94.

⁷⁴ See, e.g., *United States v. Turkette*, 101 S. Ct. at 2527-28, 2531-34; *United States v. Turkette*, 632 F.2d at 898-903; *United States v. Altese*, 542 F.2d at 106; *Id.* at 107-08 (Van Graafeiland, J., dissenting).

⁷⁵ *United States v. Turkette*, 101 S. Ct. at 2527 (citing *Trans Alaska Pipeline Rate Cases*, 436 U.S. 632, 643 (1978)); 2A C. SANDS, STATUTES AND STATUTORY CONSTRUCTION § 46.04 (4th ed. 1973).

⁷⁶ The definitions in 18 U.S.C. § 1961 differ in whether they are introduced with the term "means" or "includes." Those definitions which begin with "includes" appear to be merely illustrative and not exhaustive lists.

⁷⁷ 101 S. Ct. at 2527. "On its face, the definition appears to include both legitimate and illegitimate enterprises within its scope; it no more excludes criminal enterprises than it does legitimate ones." *Id.*

⁷⁸ *Id.* at 2527. One could counter with the argument that since Congress intended for the statute to reach only legitimate businesses, there was no need to qualify "enterprise." See note 103 *infra*. Although the concern with legitimate enterprises is obvious in the legislative history, see note 80 *infra*, this purpose is not clear in the language of the statute.

⁷⁹ See, e.g., *United States v. Turkette*, 632 F.2d at 899-903; *United States v. Anderson*, 626 F.2d at 1368-69; *United States v. Aleman*, 609 F.2d at 303; *United States v. Altese*, 542 F.2d at 106. See also Comment, 27 DEPAUL L. REV., *supra* note 39, at 96; Comment, 124 U. PA. L. REV., *supra* note 39, at 204-06.

⁸⁰ *United States v. Turkette*, 101 S. Ct. at 2532; *United States v. Sutton*, 642 F.2d at 1005;

pressed clearly in the reports of the hearings and debates on RICO and the other provisions of the Organized Crime Control Act.⁸¹ Language in an earlier Supreme Court opinion had also indicated that the primary aim of Title IX was to protect legitimate enterprises.⁸² The real dispute over the significance of the legislative history of RICO is whether the prevention of further infiltration of legitimate businesses by organized crime was the sole objective of Title IX, or merely one of the statute's purposes.⁸³

The First Circuit concluded in *Turkette* that because the definition of "enterprise" did not indicate whether it included illegitimate organizations, the language of the definition was ambiguous.⁸⁴ The Supreme Court, however, agreed with the majority of the courts of appeals that the language of Section 1961(4) was clear and broad,⁸⁵ and the Court held that wholly illegitimate enterprises were included within "enterprise" in RICO.⁸⁶

If one reads the definition of "enterprise" together with the legislative history of RICO, it is possible to conclude that the language of section 1961(4) is unclear, since "enterprise" is not confined to the "legitimate enterprises" which were clearly Congress' primary concern in enacting RICO. The First Circuit committed a logical error, however, when it concluded from the legislative history that "enterprise" must be limited to legitimate businesses.⁸⁷ The Supreme Court recognized correctly in *Turkette* that, although it was clear from the legislative history that RICO was aimed at preventing the infiltration of legitimate businesses, it did not necessarily follow that this was the statute's sole

United States v. Turkette, 632 F.2d at 900; United States v. Anderson, 626 F.2d at 1371-72; United States v. Rone, 598 F.2d at 569; Atkinson, *supra* note 39, at 9; Note, *Coverage and Application of the Organized Crime Control Act of 1970: The Anti-Racketeering Statute in Operation*, 53 CHI.-KENT L. REV. 498, 499-500 (1976); Note, 28 CLEV. ST. L. REV., *supra* note 62, at 644-45.

⁸¹ 116 CONG. REC. 591, 592, 601, 18939, 18940, 18941 (1970); 115 CONG. REC. 9567, 9568 (1969).

⁸² Iannelli v. United States, 420 U.S. 770, 787 n.19 (1975). "Title IX, codified in 18 U.S.C. §§ 1961-1968, seeks to prevent the infiltration of legitimate business operations affecting interstate commerce by individuals who have obtained investment capital from a pattern of racketeering activity." *Id.*

⁸³ Courts and commentators who have viewed the prevention of the infiltration of organized crime as the *sole* goal have concluded that "enterprise" must be confined to legitimate organizations. See notes 86-87 *infra*. Those who have realized that the protection of legitimate businesses was only the major purpose, however, have adopted the broader definition. See, e.g., United States v. Rone, 598 F.2d at 569; United States v. McLaurin, 557 F.2d 1064, 1073 (5th Cir. 1977); Note, 66 CORNELL L. REV., *supra* note 39, at 189; Note, 49 GEO. WASH. L. REV. *supra* note 39, at 138-39.

⁸⁴ 632 F.2d at 899.

⁸⁵ United States v. Turkette, 101 S. Ct. at 2527.

⁸⁶ *Id.* at 2533-34.

⁸⁷ *Id.* at 2532. See also Note, 66 CORNELL L. REV., *supra* note 39, at 189.

purpose.⁸⁸ There was evidence that Congress was concerned with more than just the protection of legitimate businesses.⁸⁹

The statement of findings prefacing the Organized Crime Control Act of 1970 stated:

The Congress finds [that] . . . (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation . . . and (5) organized crime continues to grow . . . because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.⁹⁰

The findings further stated that it was the purpose of Congress in enacting the Organized Crime Control Act "to seek the *eradication of organized crime* in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."⁹¹ In *Turkette*, the Supreme Court recognized that if the term "enterprise" in RICO were limited to legitimate enterprises, a number of the targets mentioned in section (2) of the statement of findings (quoted above) would not be within the reach of the Act.⁹² "[L]oan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs"⁹³ would be "immune from prosecution under RICO so long as the association did not deviate from the criminal path."⁹⁴ Since no other title of the Act addresses these activities, crimes which Congress had indicated it wanted to reach would not be within the scope of the Act.⁹⁵

Additional support for the inclusion of illegitimate associations within the meaning of "enterprise" in RICO is found in the fact that it would be impossible to apply a legitimate-illegitimate distinction without absurd results.⁹⁶ For example, consider a cigarette distributor who

⁸⁸ United States v. Turkette, 101 S. Ct. 2532.

⁸⁹ See 116 CONG. REC. 591, 844, 18940, 35328 (1970).

⁹⁰ Pub. L. No. 91-452, § 1 (1970), *quoted in* United States v. Turkette, 101 S. Ct. at 2531.

⁹¹ *Id.* (emphasis added).

⁹² 101 S. Ct. at 2532.

⁹³ See note 90 & accompanying text *supra*.

⁹⁴ United States v. Turkette, 101 S. Ct. at 2532.

⁹⁵ Turkette argued in his brief to the Supreme Court that the activities listed in (2) of the Statement of Findings were covered by Title X which provides for the sentencing of special offenders. Brief for Respondent at 11-12, United States v. Turkette, 101 S. Ct. 2524. But Title X applies only to dangerous special offenders who have served previous prison sentences or meet other specific standards. See 18 U.S.C. § 3575 (1976). The traditional remedy of imprisoning individual members of organized crime groups has been inadequate. Blakey & Goldstock, *supra* note 39, at 365. See also notes 63 & 71 *supra*.

⁹⁶ See note 75 & accompanying text *supra*.

ran a wholly legitimate business which affected interstate commerce. If this distributor began selling contraband cigarettes in violation of 18 U.S.C. §§ 2341-46, defined as "racketeering activity" in RICO section 1961(1)(B),⁹⁷ then persons associated with or employed by the mainly legitimate cigarette distribution business would constitute an "enterprise" and would be subject to prosecution under RICO.⁹⁸ If the distributor ceased selling non-contraband cigarettes, the business would become a wholly illegitimate enterprise. If RICO were limited to enterprises engaging in some legitimate activities, then RICO would not apply to persons associated with the cigarette distribution business once the business had become wholly illegitimate. This example illustrates the absurd outcome which would be possible if RICO were limited to businesses that engage in legitimate activities. As a business shifted from legitimate to totally illegitimate activities, it would move out of the reach of RICO. One guide for determining the scope of statutory language is that "absurd results are to be avoided."⁹⁹ In rejecting the contention of the First Circuit that a broad application of RICO would produce absurd or surprising results,¹⁰⁰ the Supreme Court responded in *Turkette* that, "[o]n the contrary, insulating the wholly criminal enterprise from prosecution under RICO is the more incongruous position."¹⁰¹

It is probable that few, if any, members of Congress contemplated that RICO could be applied to criminal enterprises.¹⁰² Associations whose sole purpose is to commit illegal acts do, however, fit within the description of "enterprise" given in RICO section 1961(4), and section 1962(c) allows for prosecution of persons who participate or associate with such an enterprise. Although Congress does not appear to have considered this application of RICO, it does not necessarily follow, as some courts and commentators have concluded,¹⁰³ that RICO should not be applied to criminal organizations. The relevant issue is not whether Congress intended such an application of the statute, but rather

⁹⁷ See note 14 *supra*. Sections 2421-24 were added to § 1961(1)(B) in 1978. 18 U.S.C. § 1961 (1981 pocket part).

⁹⁸ These persons could be prosecuted under 18 U.S.C. §§ 1962(c) and (d). See also note 7 *supra*.

⁹⁹ See note 75 & accompanying text *supra*.

¹⁰⁰ See *United States v. Turkette*, 632 F.2d at 899, 905-06.

¹⁰¹ 101 S. Ct. at 2531.

¹⁰² Critics of the broad interpretation of "enterprise" have also made this claim. See, e.g., *United States v. Altese*, 542 F.2d at 108 (Van Graafeiland, J., dissenting); *United States v. Moeller*, 402 F. Supp. 49, 58-59 n.8 (D. Conn. 1975).

¹⁰³ See *United States v. Sutton*, 605 F.2d at 268; *United States v. Moeller*, 402 F. Supp. at 58; Comment, 27 DEPAUL L. REV., *supra* note 39, at 98-99; Note, 11 U. TOL. L. REV., *supra* note 39, at 703; Note, 33 VAND. L. REV., *supra* note 39, at 465. But see *United States v. Anderson*, 626 F.2d at 1371.

whether this use of RICO violates congressional intent. There is clear evidence that some members of Congress do approve of the inclusion of wholly illegitimate enterprises within the scope of RICO. The Senate Committee on the Judiciary expressed its approval of the broad interpretation of "enterprise" in its Report on the Criminal Code Reform Act of 1977.¹⁰⁴ The Report mentioned that four circuits had construed "enterprise" broadly so as to include wholly illegitimate organizations.¹⁰⁵ After noting that the three-judge panel decision in *United States v. Sutton* was the only contrary opinion,¹⁰⁶ the Report stated "[t]he Committee endorses the majority view. . . . The Committee intends that the same broad interpretation be given the term 'enterprise' in this bill."¹⁰⁷

The Supreme Court's decision in *Turkette* represents the best approach to the interpretation of RICO. The broad reading of "enterprise" to include wholly illegitimate associations within the purview of RICO's prohibitions permits the statute to serve as an effective tool in combating organized criminal activity. The broad language of Title IX, the overall purpose of the Organized Crime Control Act of 1970, and the Senate Judiciary Committee's recent expressions of approval support the Supreme Court's holding.

V. INTERPRETING RICO: THE APPLICABILITY OF RULES OF CONSTRUCTION

Rules of construction are aids for the interpretation of ambiguous statutory language.¹⁰⁸ In *Turkette*, the First Circuit agreed with a number of judges and commentators that the language of RICO section 1961(4) was unclear, which made it necessary to apply rules of statutory construction to determine the proper scope of "enterprise."¹⁰⁹ The Supreme Court disagreed, however, since it found the definition of "enterprise" unambiguous.¹¹⁰ Even if the high Court had not found the

¹⁰⁴ S. REP. NO. 553, 96th Cong., 2d Sess. 803 (1980). See also S. REP. NO. 605, 95th Cong., 1st Sess. 777 (1977).

¹⁰⁵ The report mentions *United States v. Rone*, 598 F.2d 564; *United States v. Swiderski*, 593 F.2d 1246; *United States v. Altese*, 542 F.2d 104; *United States v. Hawes*, 529 F.2d 472 (5th Cir. 1976). S. REP. NO. 553, *supra* note 104, at 803.

¹⁰⁶ S. REP. NO. 553, *supra* note 104, at 803.

¹⁰⁷ *Id.*

¹⁰⁸ *United States v. Turkette*, 101 S. Ct. at 2528 (citing *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 588 (1979)).

¹⁰⁹ 632 F.2d at 899, 905; *United States v. Anderson*, 626 F.2d at 1365-66; *United States v. Altese*, 542 F.2d at 107 (Van Graafeiland, J., dissenting); Tarlow, *supra* note 39, at 195-98; Comment, 27 DEPAUL L. REV., *supra* note 39, at 95-96; Note, 11 U. TOL. L. REV., *supra* note 39, at 701.

¹¹⁰ *United States v. Turkette*, 101 S. Ct. at 2527-28.

meaning of "enterprise" plain, however, it had other grounds for objecting to the First Circuit's application of construction aids.

The rule of *ejusdem generis* has been used frequently by courts interpreting "enterprise" in RICO.¹¹¹ This rule provides that where general words follow an enumeration of specific items, the general words are read as being limited to items similar to those specifically enumerated.¹¹² The First Circuit applied this rule in *Turkette* and concluded that since each of the enterprises specifically enumerated in the first part of the definition of "enterprise" was a legitimate organization, the phrase "any . . . group of individuals associated in fact" in the second part of the definition must also be limited to legitimate enterprises.¹¹³ A number of judges and commentators had applied the rule with similar results.¹¹⁴ The Supreme Court recognized that the First Circuit had erred in its application of the rule.¹¹⁵ The specifically enumerated enterprises in the first half of the definition—individuals, partnerships, corporations, associations, or other legal entities—could be either legitimate or illegitimate entities.¹¹⁶ The two parts of section 1961(4) describe two different types of enterprises: those which are recognized as legal entities and those which are not.¹¹⁷ *Ejusdem generis* was not applicable to the definition of "enterprise" in RICO section 1961(4).

The First Circuit also applied the principle of lenity in *Turkette* as an aid in determining the proper scope of "enterprise."¹¹⁸ This "ancient" rule of statutory construction provides that if there is ambiguity in a penal statute, the statute should be strictly construed against the prosecuting party and in favor of the defendant.¹¹⁹ Unlike most penal statutes, however, Title IX contains a "liberal construction" clause which says that provisions included in the title "shall be liberally construed to effectuate its remedial purpose."¹²⁰ The Supreme Court agreed with the majority of the courts of appeal that RICO's liberal

¹¹¹ See *United States v. Turkette*, 632 F.2d at 899; *United States v. Anderson*, 626 F.2d at 1366; *United States v. Altese*, 542 F.2d at 107 (Van Graafeiland, J., dissenting).

¹¹² 2A C. SANDS, *supra* note 75, § 47.17.

¹¹³ 632 F.2d at 899.

¹¹⁴ See note 111 *supra*.

¹¹⁵ *United States v. Turkette*, 101 S. Ct. at 2528.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ 632 F.2d at 905. See also *United States v. Anderson*, 626 F.2d at 1370. C. SANDS, *supra* note 75, at § 59.03 uses "strict construction" to refer to this same principle.

¹¹⁹ *Id.*

¹²⁰ Pub. L. No. 91-452, § 904(a) (1970). It is unusual for a penal statute to contain such a clause. See Note, 66 CORNELL L. REV., *supra* note 39, at 168. The court of appeals concluded in *Turkette* that the liberal construction clause applied only to the civil remedies and not to the criminal sanctions in Title IX. 632 F.2d at 905. Traditional rules for penal and remedial statutes, however, may no longer be applicable. See 3 C. SANDS, *supra* note 75, at § 60.04.

construction clause renders the principle of lenity inapplicable.¹²¹

VI. THE SCOPE OF RICO AFTER *TURKETTE*

Opponents of the broad interpretation of "enterprise" have been concerned that the inclusion of wholly criminal associations in RICO would allow for prosecutorial abuse in the application of the statute.¹²² Although the Supreme Court restricted "enterprise" in *Turkette* to ongoing organizations,¹²³ additional limitations may be needed to prevent abuse.

There has been concern that RICO could be used to prosecute persons only remotely associated with a criminal enterprise.¹²⁴ Some commentators have suggested that since the RICO penalties are so severe, a scienter requirement should be included in RICO to prevent unjust application of the statute.¹²⁵ A scienter requirement would make it necessary to establish that a person prosecuted as a member of an "association-in-fact" enterprise was aware that he was participating in an organization which was engaging in racketeering activities.¹²⁶ If an explicit scienter standard is needed, it should not be too stringent. One commentator has proposed a requirement that all members in a criminal enterprise know each other and be aware of all the types of racketeering activity in which the members engaged.¹²⁷ This requirement would thwart RICO's goal of reaching more than just the central figures in large criminal organizations.¹²⁸ Recent prosecutions under RICO indicate that an explicit scienter requirement may not be needed, however. In cases involving large numbers of defendants, RICO prosecutions have succeeded only against the principal participants.¹²⁹ In *Turkette*, only the leader of the thirteen-member criminal enterprise was convicted on the RICO count.¹³⁰ The criminal enterprise in *United*

¹²¹ *United States v. Turkette*, 101 S. Ct. at 2531. The Court did not find it necessary, however, to base its conclusion on the presence of the liberal construction clause. *Id.* Since the language of the statute was plain, and Congress had not clearly rejected the literal interpretation of the language, there was no need for the Court to rely on rules of construction. *Id.*

¹²² See notes 49-50 & accompanying text *supra*.

¹²³ See note 47 & accompanying text *supra*.

¹²⁴ See Atkinson, *supra* note 39, at 6; Bradley, *supra* note 39, at 838; Note, 28 CLEV. ST. L. REV., *supra* note 62, at 652; Note, 33 VAND. L. REV., *supra* note 39, at 46-47.

¹²⁵ See Atkinson, *supra* note 39, at 4-5; Tarlow, *supra* note 39, at 235-36; Note, 49 GEO. WASH. L. REV., *supra* note 39, at 139-42.

¹²⁶ *Id.* Commentators disagree, however, on how specific a member's knowledge of the other members and activities of the enterprise should be. See *id.*

¹²⁷ Note, 49 GEO. WASH. L. REV., *supra* note 39, at 139-42.

¹²⁸ See notes 59 and 61 & accompanying text *supra*.

¹²⁹ See, e.g., *United States v. Turkette*, 101 S. Ct. 2524; *United States v. Elliott*, 571 F.2d 880.

¹³⁰ 632 F.2d at 898 n.4.

States v. Elliott included forty-three persons involved in twenty-five criminal acts.¹³¹ Thirty-seven members of the enterprise were unindicted co-conspirators.¹³² Five of the six members indicted on the RICO counts were convicted.¹³³ Since only major participants have been convicted in RICO cases involving large criminal enterprises, failure to apply the statute to the extent Congress intended may be a more significant problem than abuse in the application of the statute.

Modification of other RICO elements may be necessary to assure that the statute is used only against organized criminal activity. One court has recommended the restriction of "pattern of racketeering activity" to two acts which occur as part of different criminal episodes.¹³⁴ Since there are no obvious cases of abuse in the application of RICO either to individuals unaware of the activities of the "enterprise" with which they were associated or to enterprises committing two acts during a single criminal episode, no immediate modifications of RICO appear necessary.

CONCLUSION

In *Turkette*, the Supreme Court both broadened and narrowed the scope of the term "enterprise" and hence changed the extent of RICO's applicability. The Court's endorsement of the inclusion of wholly illegitimate enterprises within the purview of RICO allows the statute to serve its purpose of combating organized crime. The definition of "enterprise" clearly permits both legitimate and illegitimate enterprises. Nothing in the legislative history of RICO prohibits this broad interpretation. The Supreme Court's description of an "enterprise" as an "ongoing organization" in which "the various associates function as a continuing unit" prevents the misapplication of the statute without interfering with its effectiveness as a tool against organized criminal activity. Thus, *Turkette* answers major questions about the applicability of RICO and allows for the proper application of the statute.

JAN NEUENSCHWANDER

¹³¹ 571 F.2d at 884, 895.

¹³² *Id.* at 895.

¹³³ *Id.* at 911.

¹³⁴ See Atkinson, *supra* note 39, at 11-12; Tarlow, *supra* note 39, at 216-19. See also *United States v. Moeller*, 402 F. Supp. at 57-58.