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THE SCOPE OF BRIBERY UNDER THE TRAVEL ACT

INTRODUCTION

The Travel Act[1] makes bribery in violation of state or federal law a federal offense. The meaning of this prohibition is currently a source of controversy between the Fourth, Fifth, and Second Circuits. The specific question that has split the Fourth and Fifth Circuits from the Second Circuit is whether commercial bribery[2] is encompassed under the Travel Act's prohibitions.

The Travel Act was passed in response to the determination by the Department of Justice that local law enforcement authorities, burdened by the depredations of organized crime,[3] were without the means necessary to strike at the heart of these criminal operations, since their locus was often beyond the state's jurisdiction.[4] Attorney General Robert F. Kennedy submitted the bill, which blossomed into the Travel Act, as part of his legislative program designed to aid local law enforcement authorities in their efforts to combat organized crime.[5]

The draft legislation provided that either a business enterprise involving gambling, liquor, narcotics, or prostitution offenses, or extortion or bribery, in violation of the laws of the state where committed or of the United States was to serve as the

[1] The Travel Act, 18 U.S.C. § 1952 (1976), provides:
Interstate and foreign travel or transportation in aid of racketeering enterprises
(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—
(1) distribute the proceeds of any unlawful activity; or
(2) commit any crime of violence to further any unlawful activity; or
(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.
(b) *As used in this section "unlawful activity" means* (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in Section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) *extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.*
(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.
(Emphasis added).

[2] Commercial bribery is defined by two sections of the N.Y. PENAL LAW §§ 180.00 and 180.05 (McKinney 1975). They deal with the conferring of any benefit upon, or the receipt of any benefit by, an employee, agent, or fiduciary without the consent of the latter's employer or principal, with intent to influence his conduct in relation to his employer's or principal's affairs.
Louisiana defines commercial bribery in a single section comparable to the two New York sections, LA. REV. STAT. ANN. § 14:73 (West 1974).

[3] For discussions of the nature and degree of organized criminal activity in America at the time the Travel Act was enacted, see Johnson, *Organized Crime: Challenge to the American Legal System, Part I: Organized Crime: The Nature of Its Threat, The Reasons for Its Survival, 53* J. CRIM. L.C. & P.S. 399 (1962); Miller, *The "Travel Act": A New Statutory Approach to Organized Crime in the United States*, 1 DUQ. L. REV. 181, 181–83 (1963); Pollner, *Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering*, 28 BROOKLYN L. REV. 37 (1961); Woetzel, *Organized Crime in America*, 4 CRIM. L. REV. 611 (1963). *See also* the testimony of Herbert Miller describing gambling, prostitution, liquor, and narcotics offenses as four types of offenses which were known to be linked to organized crime, *Hearings Before the Senate Judiciary Committee on the Attorney General's Program to Curb Organized Crime and Racketeering*, 87th Cong., 1st Sess. 102 (1961) [hereinafter cited as *Senate Hearings*].

[4] *See Hearings Before Subcommittee No. 5 of the House Judiciary Committee on Legislation Relating to Organized Crime*, 87th Cong., 1st Sess. 20–24 (1961) [hereinafter cited as *House Hearings*]. Attorney General Kennedy stated: "In summary, our information reveals numerous instances where the prime mover in a gambling or other illegal enterprise operates by remote control form the safety of another State—sometimes half a continent away. He sends henchmen to the scene of operations or travels himself from time to time to supervise the activity and check on his underlings. As for the profits, he receives his share by messenger." *Id.* at 23. *See also* S. REP. No. 644, 87th Cong., 1st Sess. 3 (1961); H.R. REP. No. 966, 87th Cong., 1st Sess. 2, 3 (1961).

[5] S. 1653, 87th Cong., 1st Sess. (1961); Pollner, *supra* note 3, at 38 n. 9. *See also* S. Rep. No. 644, *supra* note 4, at 2, for the letter included by Kennedy with the draft legislation; *Senate Hearings*, *supra* note 3, at 16; Kennedy, *The Program of the Department of Justice on Organized Crime*, 38 NOTRE DAME L. 637, 637-39 (1962). For additional background and information on the enactment process, see Connor, *The Travel Act: Its Limitation by the Seventh Circuit in the Context of Local Political Corruption*, 52 CHI.-KENT L. REV. 505, 505–08 (1975); Miller, *supra* note 3, at 181; Pollner, *supra* note 3, at 37–42.

underlying offense of the Travel Act.[6] The business enterprise requirement was included, according to the Attorney General, because the Department of Justice was "not trying to curtail the sporadic, casual involvement in these offenses, but rather a continuous course of conduct sufficient for it to be termed a business enterprise."[7] Since bribery and extortion as practiced by organized criminals tends to be composed of discrete instances of improper influence,[8] the business enterprise requirement was not attached to the bribery or extortion offenses in the proposed or adopted legislation.[9]

Whether commercial bribery was meant to be encompassed by this Act was not clearly indicated. Several courts have addressed this issue and reached different conclusions.

THE CONFLICTING CASES

In *United States v. Pomponio*[10] the defendants were charged with violating the Travel Act by making payments to a bank officer for the purpose of influencing his conduct with respect to loans made by his employer-bank to corporations owned or controlled by the defendants. The indictable state law "unlawful activity" upon which the prosecution relied was the offense of commercial bribing under New York law.[11] The defendant, however, argued that commercial bribing was outside the scope of the Travel Act which, they maintained, prohibited only bribery as known at common law.[12] Under the common law, "bribery is the offense of giving or receiving money or anything of value in return for which a *public officer* agrees to do or refrain from doing an act, contrary to his legal duty."[13] Nevertheless, the Fourth Circuit held that bribery, as used in the Travel Act, referred to bribery in a generic sense and was not restricted to its common-law meaning.[14] Therefore, the Fourth Circuit found that bribery of persons other than public officials, when prohibited by a state law, constitutes an "unlawful activity" for purposes of the Travel Act.[15]

In *United States v. Perrin*,[16] the Fifth Circuit agreed with the broader definition of bribery adopted by the Fourth Circuit. The defendants in *Perrin* were charged with using interstate facilities with intent to promote a commercial bribery scheme in violation of the laws of Louisiana.[17] As in *Pomponio*, the target of the bribery scheme was a private em-

[6] Pollner, *supra* note 3, at 39. *See also* text accompanying notes 47–50 *infra*.

[7] *Senate Hearings*, *supra* note 3, at 16.

[8] *See* text accompanying note 61 *infra* and notes 59–62 *infra*.

[9] Miller, *supra* note 3, at 195–96. The House took the Senate-passed bill and narrowed the unlawful activities of extortion and bribery to cover only "extortion or bribery in connection with gambling, liquor, narcotics, or prostitution." H.R. REP. No. 966, *supra* note 4, at 2.

The conference committee struck the requirement added by the House that extortion or bribery be in connection with one of the enumerated unlawful business enterprises. This decision to drop the restrictive language was likely in response to then Deputy Attorney General Byron R. White's letter of August 7, 1961, protesting the limitation on behalf of the Department of Justice. It read in part:

> The effect is to require proof that there was a continuous course of conduct involving extortion or bribery in connection with gambling, liquor, narcotics, or prostitution. It eliminated from the purview of the bill extortions not related to the four above offenses but which are, and have historically been, activities which involve organized crime. Such activities as the "shakedown racket," "shylocking" (where interest of 20% per week is charged and which is collected by means of force and violence, since in most states the loans are uncollectible in court) and labor extortion. It also removes from the purview of the bill the bribery of state, local and federal officials by the organized criminals unless we can prove that the bribery is directly attributable to gambling, liquor, narcotics or prostitution.
>
> The Department is strongly opposed to this amendment and recommends that the Committee accept and report the proposal with respect to extortion and bribery as submitted by the Department and as passed by the Senate.

Letter from Byron R. White, Deputy Attorney General, to the Honorable Emmanuel Celler, Chairman, House Committee on the Judiciary, August 7, 1961. *See also* Pollner, *supra* note 3, at 41.

[10] 511 F.2d 953 (4th Cir. 1975), *cert. denied*, 423 U.S. 874 (1975).

[11] N.Y. PENAL LAW § 180.00 (McKinney 1975); *See* note 2, *supra*.

[12] 511 F.2d at 956.

[13] 3 WHARTON'S CRIMINAL LAW AND PROCEDURE, § 1380 (emphasis added). (1957). *See also* BISHOP ON CRIMINAL LAW, § 85(1) (9th ed. 1923); BLACK'S LAW DICTIONARY 239 (4th ed. 1968).

[14] 511 F.2d at 956. Although the generic meaning of bribery is not specifically defined, it apparently refers to the act or practice of bestowing upon, or promising money or a favor "to a person in a position of trust to pervert his judgment or corrupt his conduct." WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY 104 (19th ed. 1971).

[15] 511 F.2d at 957.

[16] 580 F.2d 730 (5th Cir. 1978), *cert. granted*, 47 U.S.L.W. 3615, 3616 (U.S. Mar. 20, 1979) (No. 78-959); *see* note 2 *supra* for the applicable commercial bribery statute.

[17] 580 F.2d at 732. *See* note 2 *supra* for a summary of the Louisiana statute.

ployee.[18] The court rejected defendants' argument that *Pomponio* had been decided incorrectly and held that "the term 'bribery' is a generic one not limited to its meaning in common law."[19]

In the interim between the Fourth and Fifth Circuit decisions, the Second Circuit decided *United States v. Brecht*.[20] *Brecht* involved an alleged violation of the same New York commercial bribery statute at issue in *Pomponio*.[21] The defendant, who had responsibility for awarding certain subcontracts for his employer, demanded a bribe from a subcontractor as a condition to receiving a contract.[22] After noting that district judges in the Second Circuit had split upon the issue of whether such unlawful activity rose to a federal offense under the Travel Act,[23] and after giving consideration to the affirmative view expressed by the Fourth Circuit, the Second Circuit held that the Travel Act does not encompass the crime of commercial bribery.[24]

Interpretation of the Bribery Provision

The ultimate quest of this article is the determination of the meaning which Congress intended to be attached to a single word in the Travel Act—bribery. This is in accord with the duty which rested upon the Second, Fourth, and Fifth Circuits, and which now faces the United States Supreme Court, for the obligation of courts in construing legislation is to give effect to the intent of Congress.[25]

This article will present and analyze the arguments raised by the circuit courts in reaching their conclusions. Attention will be directed at the outset to the facial meaning of the statute. The legislative history of the Travel Act will be examined and principles of statutory construction applied to determine which circuit court of appeals has interpreted the Travel Act correctly.

The Facial Meaning of the Act

Prefaced by the observation that the Travel Act is a penal statute and deserved strict construction,[26] the defendant in *Pomponio* raised the plain-meaning doctrine.[27] He contended that by referring specifi-

[18] 580 F.2d at 733.

[19] *Id.*

[20] United States v. Brecht, 540 F.2d 45 (2d Cir. 1976), *cert. denied*, 429 U.S. 1123 (1977).

[21] N.Y. Penal Law § 180.05 (McKinney 1975); *see* note 2 *supra*. This case involved receiving a commercial bribe as opposed to paying a commerical bribe. *See* 540 F.2d at 47.

[22] 540 F.2d at 47. The defendant was also charged with violating 18 U.S.C. § 1951 (1976) (the Hobbs Act).

[23] *See* United States v. Niedelman, 356 F.Supp. 979 (S.D.N.Y. 1973).

[24] 540 F.2d at 48–50.

[25] United States v. American Trucking Ass'n, 310 U.S. 534, 542 (1940); *see* 2A Sutherland Statutory Construction, §§ 45.01–45.08 (1975) [hereinafter cited as 2A Sutherland]. This standard of interpretation is not without competition. It has also been asserted that one must look to the meaning of the statute as understood by those to whom it is directed. These two standards need not necessarily diverge. Presumably the legislature chooses its language with some appreciation of how those to whom it is addressed will understand it; and conversely, those to whom the language is directed ordinarily reach an understanding of it with reference to its source. In approaching this analysis from the standpoint of Congress' intended meaning of bribery, rather than bribery as understood by the general public, (presumably in accord with Webster's definition, *see* note 14 *supra*), my rationale is that only the conduct which Congress intended to be criminal ought to be covered. This is in agreement with the doctrine that penal statutes should be strictly construed. *See* note 32, *infra*. Secondly, one might reason that the statute is directed more toward organized criminals than toward the general public, and it is the organized criminals' understanding which is relevant—which may be indicated by the sort of bribery with which organized crime is typically associated.

[26] It is a traditional principle that penal statutes are to be strictly construed against the Government and only conduct clearly falling within them is to be prosecuted. *See* United States v. Campos-Serrano, 404 U.S. 293, 297 (1971); Kordel v. United States, 335 U.S. 345, 348, 349 (1948); United States v. Gradwell, 243 U.S. 476, 485 (1916); United States v. Lacher, 134 U.S. 624, 628 (1890); 3 Sutherland Statutory Construction, §§ 59.01–59.09 (1975) [hereinafter cited as 3 Sutherland]. The rationale for strict construction is that a person should have notice of the conduct prohibited, that he should be protected from arbitrary administration of criminal laws which act only upon the individual, and that the judiciary should exercise care not to legislate in construing statutes. *Id.* at § 59.03.

[27] Brief for appellee at 15, 16, 17, United States v. Pomponio, 511 F.2d 953 (4th Cir. 1975); 511 F.2d at 453. The plain meaning rule provides that "where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended." United States v. Missouri Pacific R.R., 278 U.S. 269, 278 (1929). The rule purports not to be a rule of construction, for its command is that "where the language is plain and admits of no more than one meaning the duty of the interpretation does not arise and the rules which are to aid doubtful meanings need no discussion." Caminetti v. United States, 242 U.S. 470, 485 (1916). However, it has been recognized that this literalistic approach is, in fact, a form of interpretation, for words simply do not have intrinsic meanings. 2A Sutherland, *supra* note 25, at §§ 45.02, 46.02. Courts often give recognition to the rule,

cally to bribery, rather than commercial bribery or bribery in a generic sense—which are "plainly distinct from the crime of bribery"—the Travel Act ought to be limited to the narrower type of activity clearly encompassed by the statute.[28]

However, such a contention, without more, simply states the conclusion. In other words, it is not clear from the face of the statute that the term "bribery" describes an offense distinct from commercial bribery. To hold that it does would require an implicit assumption that the term is used in its common-law sense rather than generically. While the defendant did point to the fact that bribery and commercial bribery refer to plainly distinct offenses under the New York codification of bribery offenses,[29] his point is of questionable relevance concerning congressional intent. Once this extraneous information is applied to the text, it merely describes what the New York legislature regarded as bribery, rather than what Congress intended bribery to cover in the Travel Act. Of course, congressional knowledge of the distinct definitions might indicate that it used "bribery" as the New York legislature would understand the term.[30] This presupposes greater knowledge and consideration of this specific question than is evident in the legislative history of the Travel Act.[31]

Furthermore, under federal law, there are a number of sections prohibiting various types of bribery, not all of which involve the bribery of public officials.[32] The court in *Perrin* suggested that it would be incongruous for Congress to have intended to outlaw only the bribery of public officials in the Travel Act when it had proscribed commercial bribery in other statutes.[33]

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but rarely allow it to preclude consideration of legislative history. They often state that the statutory language is clear and that there is no need to look at the legislative history, and then do so anyway. *See, e.g.,* Greyhound Corp. v. Mount Hood Stages, Inc., 437 U.S. 322, (1978); TVA v. Hill, 437 U.S. 153, (1978); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 201 (1976). Furthermore, despite frequent restatements of the rule, it has been undermined by the United States Supreme Court's statement that, "when aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" United States v. American Trucking Ass'n, 310 U.S. 534, 543-44 (1940). *See also* United States v. Culbert, 435 U.S. 371, 374 n.4 (1978); Train v. Colorado Pub. Interest Research Group, Inc., 426 U.S. 1, 9, 10 (1976); Cass v. United States, 417 U.S. 72, 78, 79 (1974).

[28] 426 U.S. at 16, 17.

[29] *Id.* at 11; *see* note 2, *supra*, for a summary of the New York commercial bribery statutes. § 200.00 of the N.Y. PENAL LAW appears as follows:

> Bribery in the second degree
>
> A person is guilty of bribery in the second degree when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement of understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.
>
> Bribery in the second degree is a class D felony.
>
> A class D felony carries a maximum term of imprisonment of seven years.

N.Y. PENAL LAW § 70.00 (McKinney 1975).

A similar argument could be raised on the basis of Louisiana's separate codification of commercial bribery and public bribery. The Louisiana public bribery statute reads:

> Public bribery
>
> Public bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any of the following persons, with the intent to influence his conduct in relation to his position, employment, or duty:
>
> (1) Public officer or public employee; or
> (2) Election official at any general, primary, or special election; or
> (3) Grand or petit juror; or
> (4) Witness, or person about to be called as a witness, upon a trial or other proceeding before any court, board, or officer authorized to hear evidence or to take testimony.
> (5) Any person who has been elected or appointed to public office, whether or not said person has assumed the title or duties of such office.
>
> The acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value, under such circumstances, by any of the above named persons, shall also constitute public bribery.
>
> Whoever commits the crime of public bribery shall be fined not more than one thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both.

LSA-R.S. 14:118 LA. REV. STAT. ANN. § 14:118 (West 1974).

[30] *See* note 25, *supra*.

[31] There is very little discussion of bribery as prohibited by the Travel Act in either the *House Hearings*, note 4 *supra*, or the *Senate Hearings*, note 3 *supra*. Nor does one find a definitive statement as to the word's meaning in any of the committee reports. *See, e.g.,* S. REP. No. 644, *supra* note 4; H.R. REP. No. 966, *supra* note 4. *See* text accompanying notes 56-58 *infra*, for a discussion of the references to bribery in the legislative history of the Travel Act.

[32] *See, e.g.,* 18 U.S.C. § 201 (1976) (bribery of public officials and witnesses); 18 U.S.C. § 224 (1976) (bribery of athletes); 18 U.S.C. § 215 (1976) (bribery of bank officers); 49 U.S.C. § 1(17) (1976) (bribery of agents and employees of carriers by rail); 7 U.S.C. §§ 60, 85 (1976) (bribery of licensed classifiers of cotton or any grain); 47 U.S.C. § 509 (1976) (bribery in connection with any quiz show).

[33] 580 F.2d at 734.

This view is supported by Herbert Miller, Assistant Attorney General, Criminal Division, Department of Justice at the time Congress passed the Travel Act. In a law review article published after passage of the Act, Miller cited a number of federal bribery statues not involving public officials when he observed that any extortion or bribery in violation of state or federal law would amount to an "unlawful activity" under the Travel Act.[34]

In interpreting the Travel Act, reliance upon Miller's citation of federal bribery statutes not involving public officials suffers from a major weakness. A serious question arises as to how indicative of congressional intent such an observation is. Miller's view on this issue never appeared in his testimony before Congress[35] and certainly could not be regarded as having been adopted by any Congressmen.

Nor is it necessarily true that Congress, which had proscribed bribery of nonpublic officials in numerous other statutes,[36] was acting incongruously if it meant to limit bribery under the Travel Act solely to the bribery of public officials. The reasonableness of such a limitation must be appraised in light of the statute's purpose. Since the statute was addressed to organized crime, if bribery practiced by organized crime typically takes the form of bribery of public officials, then it would be sensible for Congress to limit the Act to common law bribery. In addition, the existence of specific, nongeneric descriptions of bribery offenses elsewhere in the United States Code raises the question why Congress did not proscribe bribery offenses beyond those known at common law with similar specificity in the Travel Act if it meant to include them.[37]

What is plain from this discussion is that the meaning of bribery in the Travel Act is not plain at all. The meaning instead is unclear and ambiguous. In the face of this ambiguity, the doctrine that penal statutes are to be strictly construed against the government,[38] combined with the principle that "one is not to be subjected to a penalty unless the words of the statute plainly impose it,"[39] supports the contention that "bribery" within the Travel Act should be limited to bribery at common law. However, the rule of strict construction is not to be applied without reference to other principles of statutory construction, all of which are directed to discovery of the legislature's intent.[40] In particular, penal statutes "are not to be construed so strictly as to defeat the obvious intention of the legislature."[41] Therefore, before the doctrine of strict construction may be allowed to determine the outcome, resort must be had to the statute's purpose, legislative history, and other constructional aids.[42] If after this inquiry, the legislature's intention as to the meaning of bribery remains ambiguous, then the ambiguity should be resolved in favor of lenity to the accused.[43]

THE LEGISLATIVE HISTORY OF THE ACT

The United States Supreme Court has recognized that the Travel Act "was aimed primarily at organized crime and, more specifically, at persons who reside in one State while operating or managing illegal activities located in another."[44] This is in accord with the objectives of the legislation as described by Attorney General Robert F. Kennedy and Assistant Attorney General Herbert Miller in testimony before Senate and House committees conducting hearings on the proposed bill.[45] Kennedy stated: "The main target of our bill is interstate travel to promote gambling. It also is aimed at the huge profits in the traffic in liquor, narcotics, prostitution, as well as the use of these funds for corrupting local officials and for their use in racketeering in labor and management".[46] Miller added that with respect to the four business enterprise offenses denominated in section 1952(b)(1),

[34] Miller, *supra* note 3, at 196 n. 60.

[35] *Senate Hearings, supra* note 3, at 102, 243, 281, 314; *House Hearings, supra* note 4, at 335.

[36] *See* note 32 *supra*.

[37] United States v. Perrin, 580 F.2d at 739 (Rubin, J., dissenting).

[38] *See* note 26 *supra*.

[39] Keppel v. Tiffin Sav. Bank, 197 U.S. 356, 362 (1905). *See also* United States v. Gradwell, 243 U.S. 476, 485 (1916); United States v. Lacher, 134 U.S. 624, 628 (1890).

[40] 3 SUTHERLAND, *supra* note 26, at §§ 59.06, 59.08, (history and purpose of legislation, common law meaning of words, and construction of other parts of the text). *See also* Scarborough v. United States, 431 U.S. 563, 567–68 (1977).

[41] 134 U.S. at 628. *See also* Kordel v. United States, 335 U.S. 345, 349 (1948), wherein it is stated that "there is no canon against using common sense in reading a criminal law, so that strained and technical constructions do not defeat its purpose by creating exceptions or loopholes in it."

[42] *See* note 40 *supra*.

[43] *Scarborough*, 431 U.S. at 568; United States v. Bass, 404 U.S. 336, 348 (1971); Rewis v. United States, 401 U.S. 808, 812 (1971).

[44] *Rewis*, 401 U.S. at 811. *See also* Erlenbaugh v. United States, 409 U.S. 239, 245 (1972).

[45] *Senate Hearings, supra* note 3, at 16 (testimony of Kennedy), 102 (testimony of Miller); *House Hearings, supra* note 4, at 20 (testimony of Kennedy), 336 (testimony of Miller).

[46] *House Hearings, supra* note 4, at 20.

"we were attempting to limit the scope of this statute to certain types of business that we know are allied with organized crime."[47]

These statements, and the statute which mirrors them, are apparently accurate reflections of the activities of organized crime at the time the Travel Act was passed. At that time, criminal organizations appeared "most active in six fields of endeavor—illegal gambling, the distribution of narcotics, racketeering, prostitution, 'shylocking,' and the infiltration of legitimate business...."[48] The near identity between the activities of organized crime and the activities prohibited in the Travel Act lends additional weight to the conclusion that the bill was addressed to organized crime.[49]

Despite the clear overall purpose of the statute, it is well recognized that one need not be a member of "organized crime" to fall within its reach.[50] The probable explanation for Congress's decision not to make some degree of association with a criminal organization an element of the offense is that such a narrow wording of the statute would have provided a means of evasion.[51] Rather, Congress used the "business enterprise" requirement in subsection (b)(1) of the Travel Act as a limiting device which would encompass the unlawful activities of organized criminals, but which would allow exclusion of the isolated involvement in these activities by persons not allied with organized crime.[52] This overinclusive wording, which was apparently intended, has led to the application of the Travel Act to persons engaged in gambling, liquor, narcotics, and prostitution offenses whether or not they are members of organized crime, so long as there is a "continuous course of conduct" in the unlawful activity.[53]

Furthermore, since there is no business enterprise requirement associated with the unlawful activities of extortion, bribery, or arson, in many prosecutions for bribery under the Travel Act, there has not been any evidence of organized criminal activity.[54] This application of the term bribery is overinclusive in view of the overall purpose of the statute. Yet, the fact that it has captured persons not associated with organized crime within its scope does not necessarily mean that Congress did not intend that the word be construed in a sense consistent with the ordinary form bribery takes when practiced by organized criminals, that is, the bribery of public officials.[55] Overinclusiveness which is necessary to accomplish the objectives of the legislation does not justify added overinclusiveness which does nothing to promote the purposes of the statute.

The legislative history of the Travel Act indicates an intention to prevent the corruption of local officials. At the same time, however, none of the congressional committee reports makes any direct reference to the meaning of the term "bribery."[56]

[47] *Senate Hearings*, *supra* note 3, at 107.

[48] Johnson, *supra* note 3, at 399, 403-05.

[49] 2A SUTHERLAND, *supra* note 25, at §§ 48.01-48.03.

[50] United States v. Hall, 536 F.2d 313 (10th Cir.), *cert. denied*, 429 U.S. 919 (1976); United States v. Phillips, 433 F.2d 1364, 1366-67 (8th Cir. 1970); United States v. Roselli, 432 F.2d 879, 884-86 (9th Cir. 1970); United States v. Deardorff, 343 F.Supp. 1033, 1037 (S.D.N.Y. 1971).

[51] 432 F.2d at 885.

[52] *Id.* at 885, 886. *See also Senate Hearings*, *supra* note 3, at 17, where Kennedy stated:

> Let me say from the outset that we do not seek or intend to impede the travel of anyone except persons engaged in illegal businesses as spelled out in the bill. We specifically have outlined the illicit operations we seek to curtail as those involving gambling, liquor, narcotics, prostitution businesses or extortion or bribery in violation of State or Federal law.
>
> The target clearly is organized crime. The travel that would be banned is travel "in furtherance of a business enterprise" which involves gambling, liquor, narcotics, and prostitution offenses or extortion or bribery. Obviously, we are not trying to curtail the sporadic, casual involvement in these offenses, but rather a continuous course of conduct sufficient for it to be termed a business enterprise.

[53] 432 F.2d at 885; United States v. Polizzi, 500 F.2d 856, 874 (9th Cir. 1974); Spinelli v. United States, 382 F.2d 871, 890 (8th Cir. 1967), *rev'd on other grounds*, 393 U.S. 410 (1969).

[54] United States v. Craig, 573 F.2d 455 (7th Cir. 1977); United States v. Bursten, 560 F.2d 779 (7th Cir. 1977); United States v. Hall, 536 F.2d 313 (10th Cir.), *cert. denied*, 429 U.S. 919 (1976); United States v. Rauhoff, 525 F.2d 1170 (7th Cir. 1975); United States v. Isaacs, 493 F.2d 1124 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974); United States v. Kahn, 472 F.2d 272 (2d Cir. 1973); United States v. Deardorff, 343 F.Supp. 1033 (S.D.N.Y. 1971).

[55] Prosecutions for bribery under the Travel Act appear to almost invariably involve the bribery of public officials. The cases cited in note 54 *supra* exemplify this. The cases involving commercial bribery appear to be virtually the only exceptions. *But see* United States v. Michael, 456 F.Supp. 335 (D.N.J. 1978), in which prosecution for bribery of a bank officer in violation of state and federal statutes was allowed. There is also language in United States v. Dansker, 537 F.2d 40, 47 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977), suggesting that bribery prosecutions under the Travel Act need not be limited to situations involving the bribery of public officials. *But see* United States v. Forsythe, 560 F.2d 1127, 1137 n.23 (3d Cir. 1977), which seems to suggest that the Travel Act simply applies to bribery of public officials.

[56] S. REP. No. 644, *supra* note 4, at 1-6; H.R. REP. No. 966, *supra* note 4, at 1-5; H.R. REP. No. 1161, 87th Cong., 1st Sess. 1, 2 (1961).

Only the overall purpose of the Act gives any indication of the meaning. Nevertheless, the hearings do tend to show that Congress was probably thinking about bribery of public officials when it used the word bribery, for there are numerous references to the problem of the corruption of local officials.[57] For example, one such reference was made by Attorney General Robert F. Kennedy: "Organized crime is nourished by a number of activities, but the primary source of its growth is illicit gambling. From huge gambling profits flow the funds to bankroll the other illegal activities I have mentioned including the bribery of local officials."[58]

These circumstantial comments are certainly not conclusive evidence that bribery was to be limited to the bribery of public officials; yet, in view of the absence of any reference to bribery of anyone other than public officials, it may be reasonable to limit the scope of the prohibition to the apparent extent of Congress' thought on the matter.

An additional piece of circumstantial evidence which may shed some light on Congress's conception of bribery in the context of the Travel Act may be found in the enactment process itself. The House amended the version of the bill originally passed by the Senate by adding the requirement that the extortion and bribery prohibited in subsection (b)(2) be "in connection with gambling, liquor, narcotics, or prostitution."[59] Byron R. White, then Deputy Attorney General, vigorously protested the limiting language in a letter to Emmanuel Celler, Chairman of the House Committee on the Judiciary.[60] The conference committee apparently acquiesced to the criticism, for it reported the bill, as subsequently passed, without the objectionable language.[61] White criticized the language in part because, "[i]t...removes from the purview of the bill the bribery of state, local, and federal officials by the organized criminals unless we can prove that the bribery is directly attributable to gambling, liquor, narcotics, or prostitution."[62]

It is interesting that White's complaint refers only to the greater difficulty which would face the Department of Justice in prosecuting state, local and federal officials, and makes no reference to a loss of ability to prosecute the bribery of persons other than public officials. It is more likely that the form of bribery used in connection with gambling, liquor, narcotics, and prostitution would be the bribery of public officials rather than commercial bribery, for the latter would be of little use in securing protection for these illicit activities. Why then does White not express even greater dismay at the impact of the limiting language on the ability to prosecute the bribery of private individuals? This is perhaps because the Department of Justice did not intend for bribery to encompass anything other than common-law bribery even before the amendment.

This negative inference is tenuously drawn and must be approached with caution. In addition to the fragile foundation upon which the conclusion rests, an additional problem presents itself in this instance, for even if the Department of Justice was thinking in terms of the bribery of public officials, another step is required to conclude that this meaning was adopted by Congress. Still, it may not be unreasonable to give some weight to this proposition, for Congress, in the form of a conference committee, apparently considered and acted upon the criticism of the House amendment. Furthermore, it is reasonable to believe that Congress would attach some weight to the Justice Department's interpretation, for the Department of Justice had drafted and submitted the original bill,[63] and Congress's understanding of the legislation was necessarily shaped by the Justice Department's interpretation and explanation of it.[64] Whether in this particular situation, Congress noted and adopted the negative inference apparent in the letter is debatable. However, it is possible that the letter focused the thoughts of Congressmen on the common-law meaning of bribery, and that they did not even conceive of its application to bribery involving persons other than public officials.

This survey of the legislative history of the Travel Act can hardly be said to lead to a definitive

[57] *See House Hearings*, *supra* note 4, at 19, 20 (testimony of Attorney General Kennedy), 105 (testimony of R. Cramer), 253 (statement of commissioner Donald S. Leonard, on behalf of the International Association of Police Chiefs); *Senate Hearings*, *supra* note 3, at 11 (testimony of Attorney General Kennedy), 109, 110 (testimony of Assistant Attorney General Miller), 191 (Appendix III Model Police Council Act and Commentary by Morris Ploscowe, N.Y. City Magistrate, Executive Director of Commission on Organized Crime; Don L. Kooken, Assistant Professor, Police Administration, University of Indiana, A.B.A. Commission on Organized Crime). *See also* Kennedy, *supra* note 5, at 638.

[58] *House Hearings*, *supra* note 4, at 20.

[59] *See* note 9 *supra*.

[60] *Id.*

[61] *Id.*

[62] *See* note 40 *supra*.

[63] *See* text accompanying note 5 *supra*.

[64] *See, e.g.*, an explanatory letter of Attorney General Kennedy included in the Congressional Record, 107 CONG. REC. 16541, 16542 (1961).

answer as to the meaning Congress intended bribery to carry.[65] The overall purpose of the Travel Act is consistent with either a common-law or generic definition of the word. That the generic definition is overinclusive given the purpose of the Act is supported by reference to studies which show that the type of bribery which is typical of organized crime is the bribery of public officials. There are also indications from the testimony in the Congressional hearings and in the letter from then Deputy Attorney General White that Congress was probably thinking of bribery of public officials when it used bribery in the Travel Act.

Yet, the Fifth Circuit discounted this evidence in *Perrin*.[66] The court reasoned that the underlying crime need not be one typically associated with organized crime and that it lacked the expertise to make such a determination.[67]

While it is true that persons not associated with organized crime are subject to prosecution under the Travel Act, it is specious to suggest that the purpose of the statute and its legislative history may be disregarded in defining the terms of the statute. Congress did not make "racketeering" an element of the Act because it would have led to easy evasion of the statute by organized criminals.[68] But this does not mean that the purpose of the Act should not be taken into account when attempting to decipher ambiguous terms within the statute. The legislative history of the Travel Act, although not perfectly clear and unambiguous, is relevant and should not be overlooked.

[65] It was brought to the attention of the House subcommittee during the hearings that bribery was an offense of the common law. However, the context of the observation was such that it is difficult to say whether the speaker meant to imply that bribery, as it appears in the Travel Act, was to carry its common-law meaning. Also, it is not clear that the subcommittee members were aware, or at least made aware, of the common law definition of the term. However, given the fact that the subcommittee members were at least made aware that bribery was a common law offense, the rule that, "statutes are to be interpreted with reference to the common law and generally be given their common law meaning absent some indication to the contrary," United States v. Monasterski, 567 F.2d 677, 682 (6th Cir. 1977), lends support to the view that "bribery" should be given its common law meaning. *See also Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952); 2A SUTHERLAND, *supra* note 25, at §§ 50.01, 50.03, 50.04. There is still a problem in imputing the knowledge that bribery was a common-law offense from this single subcommittee to the Senate committee, let alone the rest of Congress.

[66] 580 F.2d at 733.

[67] *Id.*

[68] *See* text accompanying note 51 *supra*.

Furthermore, it does not appear that one need be an expert to make a determination as to whether the bribery which is typically associated with organized crime is bribery in the common law sense or bribery in a generic sense.[69] The Second Circuit in *Brecht* did not ignore the purpose of the Travel Act in defining bribery in its common-law sense.[70] Although the purpose of the statute, its legislative history, and the circumstances surrounding its enactment must be weighed in the context of their own lack of clarity with respect to the particular question which has arisen, to disregard this evidence bearing on Congressional intent is to ignore the United States Supreme Court's advice that one "may utilize, in construing a statute not unambiguous, all the light relevantly shed upon the words and the clause and the statute that express the purpose of Congress... Particularly this is so when we construe statutes defining conduct which entail stigma and penalties and prison."[71]

CONSTRUCTION OF OTHER WORDS IN THE ACT

In addition to the legislative history and purpose of the Travel Act, the construction of other words and phrases appearing in the statute may be properly consulted in the search for the meaning of "bribery."[72] In particular, the meaning of surrounding words should be taken into account.[73] In light of this principle of construction, the Second, Fourth, and Fifth Circuits each gave considerable weight to the construction of the term extortion by the United States Supreme Court in *United States v. Nardello*.[74]

In *Nardello*, the defendants were allegedly involved in a shakedown operation.[75] They were charged with a violation of the Travel Act for engaging in extortion in violation of state law.[76] A problem arose because Pennsylvania, the underlying jurisdiction, defined extortion according to its common-law definition, that is, "the obtaining of property of another by a public official under the color of his office when the property was not due

[69] *See* text accompanying notes 56–64 *supra*.

[70] 540 F.2d at 49, 50. *See also* United States v. Niedelman, 356 F.Supp. 979, 981, 982 (S.D.N.Y. 1973).

[71] United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221 (1952).

[72] *See* 2A SUTHERLAND, *supra* note 25, at ch. 47.

[73] Third Nat'l Bank v. Inpact Ltd., 432 U.S. 312, 321 (1977); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 197 (1976); Jarecki v. G.D. Searle and Co., 367 U.S. 303, 307 (1961).

[74] United States v. Nardello, 393 U.S. 286 (1969).

[75] *Id.* at 287.

[76] *Id.* at 288.

either to the office or the official."[77] Pennsylvania statutes denominated the conduct of the defendants as "blackmail."[78] The defendants contended alternatively that the congressional definition of extortion was to be restricted to its common law meaning.[79] The government urged a broad generic construction of the term.[80]

The Court held that extortion was to be taken in its generic sense as prohibiting all types of extortionate conduct proscribed by the states, whether a particular state labeled the conduct as extortion, blackmail, or something else.[81] In reaching this conclusion, the Court carefully surveyed the legislative history and purpose of the Act.[82] It recognized that construing extortion in its common-law sense would "conflict with the congressional desire to curb the activities of organized crime rather than merely organized criminals who were also public officials...."[83] The Court also observed that if only conduct labeled extortion were to be covered, the result would be a nonsensical, nonuniform application of the statute.[84] Whether a state would receive federal assistance under the Travel Act in prosecuting particular extortionate conduct in violation of state law would depend solely upon whether the state labeled the offense "extortion." The Court could not perceive any reason for concluding that Congress would want to aid local law enforcement efforts in one state, but not another, when both states have statutes covering the substantive offense, but label it differently.[85] Therefore, the Court, in light of the scope of the congressional purpose, declined to give the term extortion the unnaturally narrow reading pressed for by the defendants.[86]

In *Pomponio*, the Fourth Circuit, faced with the defendants' contention that bribery was to be limited to its common-law meaning, professed to have found the answer to that assertion in the following language from *Nardello*:

> Appellees suggest, however, that Congress intended that the common-law meaning of extortion—corrupt acts by a public official be retained. If Congress so intended, then § 1952 would cover extortionate acts only when the extortionist was also a public official. Not only would such a construction conflict with the congressional desire to curb the activities of organized crime rather than merely organized criminals who were also public officials, but also § 1952 imposes penalties upon any individual crossing state lines or using interstate facilities for any of the statutorily enumerated offenses. The language of the Travel Act, "whoever" crosses state lines or uses interstate facilities, includes private persons as well as public officials.[87]

The Court conclusorily stated upon the basis of this language from *Nardello* that it would not give bribery an unnaturally narrow reading in light of the scope of the congressional purpose.[88]

The Fourth Circuit opinion fails to explain, however, how the common-law definition of bribery conflicts with the desire of Congress to curb the activities of organized crime. Nor did the court recognize that "whoever" refers to the briber. It is accepted even by those who assert that the bribee must be a public official, that the briber may be a private individual. Nonetheless, the Fifth Circuit in *Perrin* accepted the Fourth Circuit's reading of *Nardello* and added that "it would be incongruous to read the term extortion in its generic sense while reading the term bribery in the literal common law sense."[89]

[77] *Id.* at 288, 289.
[78] *Id.* at 288.
[79] *Id.* at 290.
[80] *Id.*
[81] *Id.* at 295, 296.
[82] The United States Supreme Court did not overlook committee reports or testimony offered in the hearings, and even cited then Deputy Attorney General White's letter to the Chairman of the House Judiciary Committee protesting the House amendment to subsection b(2) of the Travel Act in its determination of the meaning of "extortion." This suggests that there may well be similar merit in giving consideration to these materials in attempting to define "bribery," in spite of the reluctance of the Fourth and Fifth Circuits to do so. *See* 393 U.S. at 290-96.
[83] 393 U.S. at 293. It should also be recognized that the United States Supreme Court was not unwilling to take notice of the nature of organized crime's extortionate activities: "Extortion is typically employed by organized crime to enforce usurious loans, infiltrate legitimate businesses, and obtain control of labor unions." *Id.* at 295, n.13. Despite the Fifth Circuit's doubt as to whether it could determine whether a crime was one typically associated with organized crime, it would have been justified in attempting to determine what sort of bribery is typically associated with organized crime. The Second Circuit went no further than the Supreme Court went in *Nardello* in taking cognizance of the nature of bribery typically employed by organized criminals. *See* 540 F.2d at 50. *But see* 580 F.2d at 733.
[84] 393 U.S. at 294, 295.
[85] *Id.* at 295. If the Court had found that state labels were to control, the states could of course have relabeled offenses to gain Travel Act coverage. Yet, it seems unlikely that Congress would predicate the uniform operation of a federal statute upon the willingness and ability of states to change their criminal law codifications.
[86] *Id.* at 296.
[87] 511 F.2d at 956, *citing* 393 U.S. at 292, 293.
[88] *Id.* at 957, *citing* 393 U.S. at 296.
[89] 580 F.2d at 734.

The Second Circuit's opinion in *Brecht* evidences a much more well-reasoned reading of *Nardello*.[90] Rather than simply repeating the conclusions of the United States Supreme Court, and inserting bribery for the word extortion, the Second Circuit surveyed the reasoning which led to the Supreme Court's conclusion, and looked to see how it applied to the court's construction of the term bribery.

A significant factor leading to the rejection of the common-law definition of extortion in *Nardello* was that such a reading would have undermined the congressional effort to prosecute extortion by organized criminals.[91] The limitation of bribery to its common-law meaning would not similarly undermine the congressional desire to prosecute bribery by organized criminals, for that meaning—the bribery of public officials—describes the typical form bribery takes when perpetrated by organized crime.[92] An inability to prosecute commercial bribery is of little consequence since it is not typically a feature of organized crime.[93] Thus, to give bribery its common-law meaning would not amount to an unnaturally narrow reading of the word in light of the scope of the congressional purpose.

Moreover, the Second Circuit read *Nardello* as emphasizing that "the inquiry into whether the state violation committed by the defendant comes within the scope of the Travel Act depends not upon the nomenclature used, but upon the nature of the violation."[94] Inasmuch as the nature of the violation with which Congress seemed concerned was the bribery of public officials, the Travel Act would apply so long as a state had a statute relating to the corruption of public officials, regardless of whether it referred specifically to bribery of public officials.[95] The inclusion of violations of state law simply because the statute used the word bribery was, according to the Second Circuit, the sort of literalism rejected in *Nardello*.[96]

It appears that the Second Circuit's reading of *Nardello* is preferable to that of the Fourth and Fifth Circuits. Rather than focusing blindly on the Supreme Court's conclusions, the *Brecht* court carefully applied *Nardello's* reasoning to the question of the meaning of bribery. Its observations that the common-law definition of bribery is consistent with the congressional purpose underlying the Travel Act, and that the adoption of a broad generic definition of bribery would lead to a tyranny of state labels, are telling criticisms of the *Pomponio* and *Perrin* decisions.[97]

In addition to describing the geographic nonuniformity which would result from a broad generic definition of bribery, such an expansive definition would make commercial bribery a major federal felony in those states which have commercial bribery statutes.[98] Not only did merely one-half the states have commercial bribery statutes at the time the Travel Act was passed, but potential prison terms for violation of general commercial bribery statutes varied from six months to no more than one year.[99] Since the passage of the Travel Act, New York has reduced the maximum possible imprisonment for commercial bribery to three months.[100] On the other hand, bribery of a public servant in New York exposes the offender to a maximum of seven years' imprisonment.[101] Thus, in New York, there is less incongruity in making bribery of a public official a federal offense punishable by up to five years' imprisonment, than there is in making commercial bribery a Travel Act offense. While there is no doubt that Congress has the power to achieve such a result,[102] the pertinent question is, did it intend such a result in this

[90] 540 F.2d at 50.

[91] *See* note 83 *supra* & accompanying text.

[92] 540 F.2d at 50.

[93] *Id.*

[94] *Id.*

[95] *Id. But see* United States v. Dansker, 537 F.2d 40, 47 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038 (1977). In light of this analysis and *Brecht*, it seems that the Third Circuit erroneously relied upon *Nardello* when it stated that

> the Travel Act incorporates into federal law New Jersey's substantive law of bribery ... even though it contains a more expansive definition of the crime than that found at common law. The Travel Act does not reach only those state offenses which would have constituted the crimes of "extortion, bribery, arson" at common law. Rather, all state offenses which can be generically classified under those headings fall within its purview.

Id.

[96] *Id.* 540 F.2d at 50.

[97] *See* text accompanying notes 90–95 *supra*.

[98] 356 F.Supp. at 982.

[99] *Id.* Arizona, California, Montana, and New Jersey each allowed more than one year of imprisonment for violation of their limited commercial bribery statutes. Note, *Control of Nongovernmental Corruption by Criminal Legislation*, 108 U. PA. L. REV. 848, 864, 866 (1960).

[100] N.Y. PENAL LAW § 70.15 (McKinney 1975).

[101] *See* note 29 *supra*.

[102] United States v. Brennan, 394 F.2d 151, 153 (2d Cir.), *cert. denied*, 393 U.S. 839 (1968); In United States v. Karigiannis, 430 F.2d 148, 150 (7th Cir.), *cert. denied*, 400 U.S. 904 (1970), the court observed that the indictment need not distinguish the unlawful extortion as being either a misdemeanor or a felony, for "the gravamen of a charge under § 1952 is the violation of federal law and 'reference to state law is necessary only to identify the

instance?[103] One court faced with this question could "find absolutely no evidence that the Congress harbored any such intent."[104]

The propriety of taking into account this drastic elevation of state misdemeanors to federal felonies in deciding whether Congress intended bribery to include commercial bribery is supported by the following quotation from *Rewis v. United States*,[105] a case focusing upon whether the interstate travel nexus of the Travel Act had been met when the only interstate activity was the travel of patrons to an illegal gambling establishment:

> In addition we are struck by what Congress did not say. Given the ease with which citizens of our nation are able to travel and the existence of many multi-state metropolitan areas, substantial amounts of criminal activity, traditionally subject to state regulation, are patronized by out-of-state customers. In such a context, Congress would surely recognize that an expansive Travel Act would alter sensitive federal-state relationships, could overextend limited federal police resources, and might well produce situations in which the geographic origin of customers, a matter of happenstance, would transform relatively minor state offenses into federal felonies. It is not for us to weigh the merits of these factors, but the fact that they are not even discussed in the legislative history of § 1952 strongly suggests that Congress did not intend that the Travel Act should apply to criminal activity solely because it is at times patronized by persons from another State. In short, neither statutory language nor legislative history supports such a broad-ranging interpretation of § 1952.[106]

Although there is not extensive discussion in the congressional committee hearings of the factors the *Rewis* Court believed the Congress would have carefully considered had it wished an expansive application of the Travel Act, there are references to the possibility of the escalation of state misdemeanors to federal felonies,[107] the problem of capturing too many petty local offenses in the federal enforcement effort,[108] the alteration of the federal-state balance,[109] and the overextension of federal police resources.[110]

The fact that the Travel Act was passed virtually intact in the face of criticism that many petty local violations not perpetrated by organized crime would be covered, suggests that perhaps Congressmen, in spite of the overbreadth, were simply willing to let the Department of Justice have the weapon it wanted to fight organized crime.[111] Yet, the misgivings which were voiced about the breadth of the legislation,[112] also lead to the conclusion that when a narrow reading of the Act would serve the Justice Department's purposes, it ought to be given that meaning. Thus, if reading bribery in its common-law sense would adequately serve the Justice Department's fight against organized crime, the term should not be defined so as to escalate commercial bribery to the status of a federal felony.

Conclusion

In construing the meaning of a doubtful term in a statute, one should properly take into account

type of unlawful activity in which the defendants intend to engage.'" But this does not preclude a court from considering the classification of an offense by states when the court is attempting to determine the ambit of an ambiguous federal statute, rather than merely applying a clear enactment. *See also* United States v. Garramone, 380 F.Supp. 590, 593 (E.D.Pa. 1974).

[103] 356 F.Supp. at 982.

[104] *Id.*

[105] 401 U.S. 808 (1971).

[106] 401 U.S. at 811–12. There is a split in the United States Courts of Appeals regarding the degree of use of interstate facilities which is necessary to establish federal jurisdiction under the Travel Act. Part of the reason for the split is apparently the differing interpretations of the import of the quotation cited in the text. Some courts regard the factors stated as limiting the language of the Travel Act, while other courts feel the factors were considered in deciding whether the Act's reach should extend beyond the plain meaning of the language. *See* Conner, *supra* note 5, at 508–21; Comment, *The Continuing Debate Over Federal Criminal Jurisdiction Under the Travel Act*, 60 Iowa L. Rev. 1401, 1406–15 (1975). Regardless of which view is correct, given that the language we are attempting to construe is ambiguous and one cannot be certain of its ambit, it seems entirely appropriate to give consideration to these factors which the United States Supreme Court utilized in analyzing the reach of the Travel Act.

[107] *See House Hearings, supra* note 4, at 322 (testimony of Howard M. Holtzman, New York County Lawyers Association), 50 (statement of Professor Louis B. Schwartz, University of Pennsylvania Law School), 162 (Report of National Association of Defense Lawyers in Criminal Cases on Proposed Federal Antiracketeering Legislation).

[108] *See House Hearings, supra* note 4, at 50, 62 (statement of Professor Louis B. Schwartz); 159 (Report of National Association of Defense Lawyers in Criminal Cases); *Senate Hearings, supra* note 3, at 266 (testimony of Assistant Attorney General Miller, comments of Senator Ervin).

[109] *Senate Hearings, supra* note 3, at 260, 261 (colloquy between Senator Carroll and Assistant Attorney General Miller).

[110] *Senate Hearings, supra* note 3, at 113 (testimony of Assistant Attorney General Miller).

[111] *See United States v. Roselli*, 432 F.2d 879, 885, 886 (9th Cir. 1970).

[112] *See* text accompanying notes 107 & 108 *supra*. *See also Senate Hearings, supra* note 3, at 266 (remarks of Senator Ervin).

whatever evidence sheds light on the meaning intended by Congress.[113] In looking to the legislative history of the Travel Act and the circumstances surrounding its enactment, a definitive anwer to the question of the meaning of bribery in the Travel Act is not apparent. Yet, the suggestion is strong that Congress had in mind the bribery of public officials, the typical form of bribery practiced by organized criminals, when it used the term.[114]

The construction of the term extortion by the Supreme Court in *Nardello* also lends support to the contention that bribery should be given its common-law meaning. The Second Circuit recognized in *Brecht* that such a reading would be consistent with the congressional purpose underlying the Travel Act, and would avoid the literalism rejected in *Nardello*.[115] Just as the Second Circuit's analysis of the meaning of bribery was strengthened by its application of *Nardello*, the Fourth and Fifth Circuits' opinions suffer from their misapplication of it.[116]

In addition, the factors cited in *Rewis* counsel against a needlessly broad reading of bribery.[117] A broad generic construction of the term would divert federal police resources, raise state misdemeanors to federal felonies, and alter, to some extent, federal-state relations, all without a clear indication that the purpose of Congress in enacting the Travel Act would be served.[118]

The evidence discussed does not permit a definitive answer that Congress intended bribery to have one meaning or another. While circumstances suggest that Congress was probably focusing upon the bribery of public officials, one cannot be sure that Congress intended to restrict the definition in such a manner. Though this inquiry into the background of the Travel Act has suggested a probable meaning, uncertainty remains. Now that resort has been had to the statute's purpose, legislative history, and other constructional aids, the doctrine of strict construction must be allowed to determine the outcome.[119] The ambiguity in the ambit of this penal statute must be resolved in favor of lenity to the accused.[120] Therefore, bribery should be restricted to its meaning at common law, that is, the bribery of public officials.

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[113] United States v. Nardello, 393 U.S. 286 (1969).
[114] *See* text accompanying notes 56–64 *supra*.
[115] *See* text accompanying notes 90–96 *supra*.
[116] *See* text accompanying notes 87–89, 97, *supra*.
[117] *See* text accompanying notes 105–12 *supra*.
[118] *See* text accompanying notes 111, 112 *supra*.
[119] *See* text accompanying notes 38–43 *supra*.
[120] United States v. Enmons, 410 U.S. 396, 411 (1973); United States v. Bass, 404 U.S. 336, 347 (1971); Rewis v. United States, 401 U.S. 808, 812 (1971).