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INTRODUCTION

In United States v. Sutton¹ the Sixth Circuit Court of Appeals adopted an interpretation of the federal enterprise racketeering statute² that was directly contrary to previous decisions by five other circuit courts of appeals.³ The fundamental issue in Sutton was whether the racketeering statute could "be applied to persons engaged in racketeering activity unrelated to any legitimate organization but in furtherance of something the government term[ed] 'a criminal enterprise.'"⁴ The Sixth Circuit held that the statute could be applied only to persons engaged in racketeering activity related to legitimate organizations. The court's narrow construction of the statute has created the split among the circuit courts of appeals.

Congress enacted 18 U.S.C. §§ 1961-1968 as Title IX of the Organized Crime Control Act of 1970.⁵ Two particular sections of Title IX provide the source of the controversy that has precipitated the recent division among the courts. Section 1962(c) states:

¹ 605 F.2d 260 (6th Cir. 1979).
⁵ Pub. L. 91-452, § 901(a), 84 Stat. 941 (codified at 18 U.S.C. §§ 1961-68 (1976)). In this comment the statute will be referred to interchangeably as either Title IX or RICO, an acronym for "Racketeer Influenced and Corrupt Organizations," which is the criminal code subtitle for the statute.
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.  

The second relevant provision is section 1961(4); that section defines "enterprise" as "includ[ing] any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." In Sutton the government contended that several individuals who were involved in a number of crimes, including significant heroin distribution and a large-volume stolen property fencing operation, constituted a "criminal enterprise," and were thus subject to the provisions of Title IX. The government's argument was founded on the precedent established by five circuit courts of appeals which had held that Title IX applied to the infiltration of both legitimate and illegitimate enterprises. The Sutton court rejected this inter-

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6 18 U.S.C. § 1962(c) (1976) (emphasis added). A "pattern of racketeering activity" is defined in 18 U.S.C. § 1961(5) (1976) as requiring "at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [enacted Oct. 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity."

"Racketeering activity" is defined in 18 U.S.C. § 1961(1) (Supp. 1978) as follows:

1. "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 . . . United States Code: [title 18 U.S.C. §§ 201, 224, 471, 472, 473, 659, 664, 891-894, 1084, 1341, 1343, 1503, 1510, 1511, 1951, 1952, 1953, 1954, 1955, 2314, 2315, 2341-2346, 2421-2424]; (C) any act which is indictable under title 29, United States Code [§§ 186, 501 (c)]; 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.


8 United States v. Sutton, 605 F.2d 260, 264-65 (6th Cir. 1979). The government contended that the defendants were a "group of individuals associated in fact," 18 U.S.C. § 1961(4) (1976), for the purpose of committing crimes, that therefore they were an "enterprise," and that they conducted "such enterprise's affairs through a pattern of racketeering activity," 18 U.S.C. § 1962(c) (1976), thereby making them liable under § 1962(c).

9 See note 3 supra for a list of these circuit court decisions.
pretation and determined that Title IX applied only to the infiltration of legitimate enterprises.

In order to determine the proper scope of Title IX and the meaning of the word "enterprise" in that statute, this comment will examine the judicial treatment of the statute and the statute’s legislative history. Such examination will indicate that the construction expounded by the Sixth Circuit in Sutton is the better reasoned approach.

I. "ILLEGAL ENTERPRISES" UNDER TITLE IX: CASE HISTORY

A. Early Precedent: Parness, Cappetto, and Moeller

1. Parness: A Broad Interpretation of the Section 1961(4) Definition of "Enterprise"

The first case to consider the scope of the term "enterprise" in Title IX was United States v. Parness. In Parness the Second Circuit expressly acknowledged that Congress intended that the word "enterprise" be given a very broad definition. The government charged the defendants with interstate transportation of stolen property, and with acquisition of a foreign hotel through a "pattern of racketeering activity" consisting of the interstate transportation of the stolen property in violation of Title IX. After adopting a broad construction of "enterprise" the court rejected the defendant's weak argument that the hotel was not an "enterprise" since it was in a foreign country.

10 503 F.2d 430 (2d Cir. 1974), cert. denied, 419 U.S. 1105 (1975).
11 Id. at 439.
14 There really was no question that the hotel was a legitimate enterprise. The court stated: "'Enterprise' is defined in § 1961(4) to include 'any . . . corporation.' On its face the proscription is all inclusive. It permits no inference that the Act was intended to have a parochial application. The legislative history, moreover, strongly indicates the intent of Congress that this provision be broadly construed." 503 F.2d at 439. It is important to note that this statement was made in response to an argument that "enterprise" was limited to domestic corporations; the court was not confronted with the issue of whether or not the statute applied to illegitimate as well as legitimate enterprises.
2. Cappetto: Illegitimate “Enterprise” Included

*United States v. Cappetto* was the first case to confront the question of whether “enterprise” included illegitimate as well as legitimate businesses. In *Cappetto* the defendants argued that their illegal gambling operation was not subject to Title IX since “Congress' purpose was to protect 'legitimate business' against infiltration by racketeers.” While the Seventh Circuit agreed that “one of Congress' targets was the 'infiltration of legitimate organizations by organized crime,'” and that section 1962(a) was “aimed at the target,” it held that “Congress also intended to prohibit any pattern of racketeering activity affecting commerce,” and that section 1962(b) and section 1962(c) specifically prohibited such activity. However, the court’s attempt to distinguish between

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15 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975).
16 The defendants were charged with violations of 18 U.S.C. § 1955 (1970).
17 502 F.2d at 1358.
18 Id.
19 Id. Section 1962(a) provides:
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. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this subsection if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any pattern of racketeering activity or the collection of an unlawful debt after such purchase do not amount in the aggregate to one percent of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.
20 502 F.2d at 1358.
21 Id.
22 Section 1962(b) states: “It shall be unlawful for any person through a 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.”
23 See note 6 supra and accompanying text for the text of § 1962(c) and definitions of several of its terms. Section 1962(d) provides that “[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsections (a), (b), or (c) of this section.”
the use of the term "enterprise" in the three different sections is contrary to section 1961(4), which assigns "enterprise" a uniform definition throughout the chapter.24

After citing Parness in support of the proposition that "enterprise" should be given a "very broad meaning,"25 the court attempted to bolster its holding that illegal gambling was included in the definition of "enterprise" by quoting legislative history.26 However, the legislative history relied upon was not applicable to Title IX; rather, it was in reference to Title VIII, which deals specifically with gambling. In addition to this misplaced reliance on legislative history, the courts citation to Parness also was inappropriate inasmuch as the Parness court never addressed the issue of whether Title IX should be applied to the infiltration of illegitimate, as well as legitimate, enterprises.27 In light of these shortcomings in the court's analysis, the Seventh Circuit's decision that "enterprise" included illegitimate operations is assailable.

3. Moeller: Early Disagreement with the Cappetto Decision

In United States v. Moeller28 the District of Connecticut

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25 502 F.2d at 1358.
26 The Cappetto court stated: There is nothing in the language of subsection (b) or (c) or in the definition of the Act, Section 1961, to suggest that the enterprise must be a legitimate one. Congress' intention to include an illegal gambling business in the categories of "racketeering activity" and "enterprise" appears not only from the language of the statute but from the Senate Committee Report: "Despite the best efforts made to date by both the Federal and the several State governments, gambling continues to exist on a large scale to the benefit of organized crime and the detriment of the American people. A more effective effort must be mounted to eliminate illegal gambling. In that effort the Federal Government must be able not only to deny the use and facilities of interstate commerce to the day-to-day operations of illegal gamblers—as it can do under existing statutes—but also to prohibit directly substantial business enterprises of gambling. . . ." Sen. Rep. 91-617, pp. 72, 73 (1969).
27 See notes 10-14 supra and accompanying text for a discussion of Parness.
28 402 F. Supp. 49 (D. Conn. 1975). It should be noted that United States v. Altese, 542 F.2d 104 (2d Cir. 1976), cert. denied, 429 U.S. 1039 (1977); will effectuate a change in the law in the District of Connecticut. See notes 40-41 infra and accompa-
court discussed the inadequacies of the Cappetto court's reasoning and held that application of Title IX was restricted to the infiltration of legitimate businesses. The court stated that while the statutory definition of "enterprise" contained no specific words of limitation concerning the legality of endeavors, the legislative history "provides the clearest indication that Congress intended 'enterprise' to mean legitimate business." The court also found support for its narrow construction in both the "traditional canon of resolving ambiguities in criminal statutes in favor of leniency," and "the concern . . . not to give federal criminal laws a broad construction that 'would alter sensitive federal-state relationships'."

B. Judicial Treatment of the Statutory Language

In attempting to resolve the controversy concerning the meaning of "enterprise" in section 1962, several courts have preferred to look primarily at the statutory language. For example, in United States v. Castellano, the court stated:

[W]e believe that the express words of the statute must gov-

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29 402 F. Supp. at 60.
30 Id.
31 Id. at 58. See notes 45-64 and 82-87 infra and accompanying text for a discussion of the legislative history of Title IX.
32 402 F. Supp. at 59 (citing Rewis v. United States, 401 U.S. 808, 812 (1971) and Bell v. United States, 349 U.S. 81, 83 (1955)).
33 402 F. Supp. at 60 (citing Rewis v. United States, 401 U.S. at 812, and United States v. Five Gambling Devices, 346 U.S. 441 (1953)). The Moeller court stated:
If "enterprise" in § 1962(c) includes unlawful ventures, then the statute could be used to prosecute any unlawful activity that affected interstate commerce so long as the participants in the activity committed any two acts within the broad definition of racketeering activity. Congress may have power to extend federal criminal jurisdiction that far into areas normally handled by the states, but it should take a clear indication of legislative intention before such a sweeping purpose is attributed to it.
402 F. Supp. at 59.

Prior to the court's decision in Moeller the Supreme Court had made reference to the scope of Title IX when in a footnote in the case of Iannelli v. United States, 420 U.S. 770, 787n.19 (1975), the Court stated that "Title IX . . . 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. (emphasis added).
\end{footnotesize}\]
ern unless there is a clear contrary intent manifested in the House and Senate Reports. If Congress wished to restrict the word "enterprise" to "legitimate enterprise" in the statute, it knew how to do so by simply adding the word "legitimate" in front of the word "enterprise."

Although the Castellano court admitted that the legislative history revealed that the primary purpose of Title IX was to prevent the infiltration of racketeering funds into legitimate business, it also stated that there was no indication that this was the sole purpose of the statute. The court noted that the term "enterprise" was clear, and had no adjective limiting it to "legitimate" enterprises.

Similarly, the Fifth Circuit Court of Appeals in United States v. Hawes cursorily rejected defendant's argument by citing Cappetto and Parness and stating that the definitions of "enterprise" and "racketeering activity" contained in the statute both were terms used in section 1962(c) to describe illegal activity and therefore clearly went beyond the scope of legitimate business activity. In United States v. Altese, the Second Circuit Court of Appeals focused on the statutory language and concluded that a broad interpretation of "enterprise" was appropriate. The court noted that the term "enterprise" is preceded by the word "any" in each of the subsections of section 1962(a)-(c), and that the word "any" is explicit, thereby bringing racketeering activities under the term "enterprise."

35 Id. at 129.
36 Id. The court had earlier stated that infiltration of legitimate businesses was one of the targets of Congress in enacting Title IX, but that it was not the only concern. Id. at 127. This language was very similar to that used in the Cappetto case, which the Castellano court relied upon heavily. See notes 15-27 supra and accompanying text for a discussion of Cappetto.
37 Id.
38 529 F.2d 472 (5th Cir. 1976).
39 Id. at 479.
41 Id. at 106. The court explained:
In the light of the continued repetition of the word "any" we cannot say that "a reading of the statute" evinces a Congressional intent to eliminate illegitimate businesses from the orbit of the Act. On the contrary we find ourselves obliged to say that Title IX in its entirety says in clear, precise and unambiguous language—the use of the word "any"—that all enter-
The Ninth Circuit Court of Appeals also looked to the text of the statute for support of its decision in United States v. Rone that illegitimate enterprises come within the purview of Title IX. The court stated that a reading of Title IX in its entirety indicates that “any enterprise which is conducted through a pattern of racketeering activity falls within the statute,” and that “[t]he words ‘legitimate’ or ‘illegitimate’ appear nowhere in Title IX and nowhere does Congress evince an intent to make such a distinction.”

II. "ILLEGAL ENTERPRISES" UNDER TITLE IX: STATUTORY HISTORY

A. The Legislative History: An Overview

The legislative history of Title IX clearly reflects a congressional intention to address the problems of the infiltration of legitimate business by organized crime. The difficulty of enterprises that are conducted through a pattern of racketeering activity or collection of unlawful debt fall within the interdiction. Congress could, if it intended any other meaning, have inserted a single word of restriction. Instead it left out the word and inserted a clause providing that the provisions of Title IX "be liberally construed to effectuate its remedial purposes."

It should be noted however that Judge Van Graafeiland stated that the majority's great reliance on the fact that the word "any" precedes "enterprise" escaped him. "'Enterprise' is defined in §1961(4)]. If, in fact, that definition encompasses only legitimate business or organizations, placing the word 'any' before the defined phrase in § 1962 should not expand its meaning." Id. at 107 (Van Graafeiland, J., dissenting).

In United States v. Swiderski, 593 F.2d 1246 (D.C. Cir. 1978), cert. denied, 99 S. Ct. 2055, 2056 (1979), the District of Columbia Circuit Court of Appeals adopted the position advanced by the majority in Altese in support of its decision that the statute should be given a broad meaning. Id. at 1249.

See United States v. McLaurin, 557 F.2d 1054 (5th Cir. 1977) (where defendants were convicted of operating a lucrative commercial enterprise specializing in prostitution); and United States v. Morris, 532 F.2d 436 (5th Cir. 1977) (involving an illegal card game fraud).


isolating any specific congressional repudiation of the notion that Title IX applies to illegal businesses can be explained by apparent congressional agreement that the Act would apply only to infiltration of legitimate business.\textsuperscript{45}

At this point, specific reference to the legislative history is helpful and indeed, imperative. The Senate Report indicates that Title IX "has as its purpose the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce,"\textsuperscript{47} and that the legislation was a recognition "that present efforts to dislodge the forces of organized crime from legitimate fields of endeavor have proven unsuccessful."\textsuperscript{48} Other language in the Senate Report clarifies that Congress contemplated that Title IX would bring "to bear on the infiltration of organized crime into legitimate business or other organizations the full panoply of civil remedies . . . now available in the antitrust area."\textsuperscript{49}

John L. McClellan, sponsor of Title IX, provides excellent insight into congressional intent. McClellan explicitly states that Title IX was "aimed at removing organized crime from our legitimate organizations." \textit{Id.} at 141. The Senator cited several examples of organized crime's infiltration of legitimate businesses, \textit{e.g.}, hotel chains, banks, laundries, grocery chains, \textit{id.} at 142, and concluded that Title IX offered "the first major hope of beginning to eradicate the growing organized criminal influence in legitimate commerce . . . ." \textit{Id.} at 146. According to Senator McClellan, the Department of Justice also supported Title IX and felt that it could be "effectively utilized to remove the influence of organized crime from legitimate business." \textit{Id.} at 140 (quoting from \textit{Hearings on Gambling and Organized Crime Before the Permanent Subcomm. on Investigations of the Senate Comm. on Government Operations}, 87th Cong., 1st Sess. 404-05 (1961)).


\textsuperscript{48} Id. at 79.

\textsuperscript{49} Id. at 81. The Senate Report also indicated that the legislation represented "the committee's careful efforts to fashion new remedies to deal with the infiltration of organized crime into legitimate organizations operating in interstate commerce." \textit{Id.} at 83. In a section-by-section analysis, the report discussed the definitions set forth in § 1961:

Subsection (1) defines "racketeering activity" to include those crimes most often associated with organized crime, especially those associated with the infiltration of legitimate organizations.
The House Report contains more of the same type of language, and even those dissenting from the Act’s promulgation stated that “Title IX . . . seeks to stymie crime’s growing infiltration of legitimate business.” The floor debates also indicate a clear intent that Title IX apply to infiltration of legitimate business.

Subsection (4) defines “enterprise” to include associations in fact, as well as legally recognized associative entities. Thus, infiltration of any associative group by any individual or group capable of holding a property interest can be reached.

Subsection (5) defines “pattern of racketeering activity” to require at least two acts of racketeering activity, as defined above.

The concept of “pattern” is essential to the operation of the statute. One isolated “racketeering activity” was thought insufficient to trigger the remedies provided under the proposed chapter, largely because the net would be too large and the remedies disproportionate to the gravity of the offense. The target of title IX is thus not sporadic activity. The infiltration of legitimate business normally requires more than one “racketeering activity” and the threat of continuing activity to be effective.

Id. at 158.

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Id. at 158.

Several statements made in relation to Title IX evidence this intent. Senator Byrd referred to organized crime’s “alarming expansion into the field of legitimate business . . . .” 116 Cong. Rec. 607 (1970). Senator Thurmond referred to the problem of “racketeers . . . gaining inroads into legitimate business . . . .” Id. at 953.

Several Representatives also had similar impressions. Representative Celler stated that “Title IX is designed to inhibit the infiltration of legitimate business by organized crime.” Id. at 35196. Representative St. Germain commented that “Title IX . . . is aimed at keeping organized crime out of legitimate businesses through the use of both criminal and civil penalties.” Id. at 35200. Representative Poff, floor manager for the bill, referred to “[t]he money which the syndicate uses to infiltrate legitimate business enterprises . . . .” id. at 35201, and Representative Kleppe referred to “the suppression of the infiltration of legitimate enterprises by racketeers . . . .” Id. at 35206. Representative Railsback stated that “[T]itle IX is designed to deal with the infiltration of organized crime into legitimate business and labor. The title makes it a crime to use organized crime profits or methods to establish, acquire, or operate any legitimate business.” Id. at 35304. Representative Anderson felt that “Title IX is
B. Judicial Treatment of the Legislative History

As previously noted, the Cappetto and Moeller courts have each examined the statutory history of Title IX, with widely divergent interpretations.\(^5\) In United States v. Rone,\(^5\) however, the Ninth Circuit asserted that an examination of legislative history is inappropriate when a statute is patently unambiguous.\(^5\) The court reasoned that the proper function of legislative history is to rectify inconsistencies on the face of a statute rather than to create them.\(^5\) Despite this adamant refusal to consider the legislative history when faced with a clearly worded statute, the court did state that the legislative history was consistent with its decision that the statute applied to the infiltration of both illegitimate and legitimate enterprises.\(^7\) While recognizing that the problem of infiltration of legitimate business was one significant purpose of the legislation, the Ninth Circuit found that the “recognition of this particular purpose hardly leads to the conclusion that § 1962 applies only in the case of an actual infiltration of a legitimate business.”\(^8\)

In United States v. Elliot\(^9\) the Fifth Circuit held that “[o]n its face and in light of its legislative history, [Title IX]

\[^{5}\] See notes 15-27 supra and accompanying text for the views of the Cappetto court. See notes 28-33 supra and accompanying text for the views of the Moeller court.

\[^{5}\] 598 F.2d 564 (9th Cir. 1979).

\[^{5}\] Id. at 569.

\[^{7}\] Id.

\[^{7}\] Id.

\[^{5}\] 571 F.2d 880 (5th Cir. 1978).
clearly encompasses 'not only legitimate businesses but also enterprises which are from their inception organized for illicit purposes.' However, the court cited no specific legislative history to support this statement.

Judge Van Graafeiland’s dissenting opinion in United States v. Altese provides a different viewpoint on the need for an analysis of legislative history. Judge Van Graafeiland stated that he felt “duty bound to examine the legislative history to ascertain Congressional intent. In expounding a statute, we must not be guided by a single sentence or word therein. Rather we must look to the provisions of the whole

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60 Id. at 897 (citing United States v. McLaurin, 557 F.2d 1064, 1073 (5th Cir. 1977), cert. denied, 434 U.S. 1020 (1978)). The court also stated that “[t]here is no distinction, for ‘enterprise’ purposes, between a duly formed corporation that elects officers and holds annual meetings and an amoeba-like infra-structure that controls a secret criminal network.” 571 F.2d at 898.

61 In a footnote, the Fifth Circuit merely stated that the legislative history supported a broad application of the statutes. 571 F.2d at 897 n.17. The court referred to the “Congressional Statement of Findings and Purpose” of the Organized Crime Control Act of 1970, 18 U.S.C. §§ 1961-1968 (1976). The Act’s statement of purpose provides:

The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America’s economy by unlawful conduct and the illegal use of force, fraud, and corruption; (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; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation’s economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

It is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening [sic] 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.

law so that we may give effect to the legislative will." Judge Van Graafeiland also espoused a different view of the meaning of the legislative history; he concluded that "[a] review of legislative history of Title IX leaves no doubt that Congress never contemplated that 'enterprise' as used in §§ 1961, 1962 would extend beyond legitimate business or organizations."

III. United States v. Sutton: The Sixth Circuit's View of the Scope of Title IX

In the face of the precedent established by five other circuit courts the Sixth Circuit was confronted with the task of determining the scope of RICO in United States v. Sutton. By relying on the language of the statute, the legislative history and traditional canons guiding the construction of criminal statutes, the Sixth Circuit held that Title IX proscribed only the infiltration of legitimate enterprises through patterns of racketeering activity.

A. The Sixth Circuit's Analysis of the Language of the Statute: "The Plain Meaning of the Words in Context"

Those circuits that have adopted a broad construction of the term "enterprise" as it is used in RICO have supported their interpretation by focusing on three aspects of the statutory language. First, those courts have emphasized that the statutory language is unambiguous, and second, that a literal reading of the statute indicates that it applies to "any enterprise." Finally, those circuits have reasoned that because the words "legitimate" and "illegitimate" do not appear in the

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63 Id.
64 Id. at 108.
65 See note 3 supra for decisions of other circuit courts of appeals prior to the Sixth Circuit's decision in Sutton.
66 605 F.2d 260 (6th Cir. 1979).
67 See notes 71-81 infra and accompanying text for a discussion of the Sixth Circuit's analysis of the relevant statutory language.
68 See notes 82-87 infra and accompanying text for a discussion of the Sixth Circuit's analysis of the legislative history.
69 See notes 88-95 infra and accompanying text for a discussion of the Sixth Circuit's consideration of these traditional canons of construction.
70 605 F.2d at 270.
statute, a distinction between legitimate and illegitimate enterprises could not be justified.\textsuperscript{71}

In \textit{Sutton}, the Sixth Circuit rejected a "rigorous fidelity to the text"\textsuperscript{72} of the statute; rather, the court considered the implications of a "deceptively literal treatment"\textsuperscript{73} and held that such a construction would result in section 1962(c)'s becoming a "purposeless circumlocution."\textsuperscript{74} An analysis of the government's argument in \textit{Sutton} illustrates that an application of section 1962(c) to the infiltration of illegitimate enterprise would indeed render the statute "purposeless." The government contended that the federal enterprise statute applied to the defendant because: (1) the defendants were engaged in a pattern of racketeering activity, and (2) the defendants were operating an "enterprise"—the enterprise of racketeering.\textsuperscript{75} Although the government conceded that this enterprise was illegitimate, it advanced the broad interpretation adopted by the other circuit courts. As the \textit{Sutton} court observed, "applying the statute in this fashion renders the 'enterprise' element of the crime wholly redundant and transforms the statute into a simple proscription against 'patterns of racketeering activity.'"\textsuperscript{76} The court stated that such an application is inconsistent with the statute as written:

Surely, the draftsmen would not have opted for so complex a formulation if the legislative purpose had been merely to proscribe racketeering, without more. A straightforward prohibition against engaging in "patterns of racketeering activity" would have sufficed, and there would have been no need for a reference to "enterprises" of any sort.\textsuperscript{77}

The Sixth Circuit concluded that in order for the word "enterprise" to have any "independent significance"\textsuperscript{78} and for

\textsuperscript{71} See notes 34-44 supra and accompanying text for a discussion of the other five circuits' treatment of the statutory language.
\textsuperscript{72} 605 F.2d at 265.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 266.
\textsuperscript{75} Id. at 269.
\textsuperscript{76} Id.
\textsuperscript{77} Id. at 266.
\textsuperscript{78} Id. at 269.
the statute to be more than a "purposeless circumlocution," the statute must be read to proscribe only the infiltration of legitimate enterprises. By so holding, the court rejected the literal interpretation of the statute adopted by other circuits and instead relied upon the "plain meaning of the words in context."

B. The Sixth Circuit’s Analysis of the Legislative History

As discussed above, those circuits that have adopted a broad construction of "enterprise" have held either that scrutiny of the legislative history is inappropriate in light of the statute’s facial clarity, or that the legislative history does not reflect an unequivocal congressional intention to limit RICO solely to the infiltration of legitimate enterprises. In contrast to other circuits, the Sixth Circuit stated that the "unambigu-
ous thrust"\textsuperscript{55} of the legislative history supports a narrow construction of the statute. After consideration of the history,\textsuperscript{60} the court found that the history conclusively demonstrates that RICO was enacted in response to the growing subversion of our society's legitimate institutions of business and labor by organized crime, a relatively recent development that Congress deemed a significantly more dangerous threat to the nation's social and economic stability than the age-old problem of crime for crime's sake.\textsuperscript{67}

C. The Sixth Circuit's Application of Traditional Canons of Construction

In \textit{United States v. Moeller},\textsuperscript{88} the federal district court for Connecticut rejected the broad definition of RICO espoused by the Seventh Circuit in \textit{United States v. Cappetto}.\textsuperscript{89} In adopting the narrow interpretation that RICO should be applied only to the infiltration of legitimate enterprises, the court utilized traditional canons of construction.\textsuperscript{90} In \textit{Sutton}, the Sixth Circuit employed the same guidelines and reached the same

\textsuperscript{55} 605 F.2d at 269. In commenting on the clarity of the legislative history, the court observed:

Legislative history is sometimes equivocal, and arguments from it may not always be dispositive of concrete issues of statutory construction. But, on this issue, we feel confident in concluding that the Congress was of one mind. Senator McClellan summed up the legislative consensus nicely during the floor debates when he characterized the special class of criminals at whom RICO was aimed as those who "operate illegitimately in legitimate channels."

\textit{Id.} at 268 (footnote omitted) (citing 116 \textit{Cong. Rec.} at 8671 (1970)).

\textsuperscript{56} 605 F.2d at 266-69.

\textsuperscript{57} \textit{Id.} at 268. The Sixth Circuit emphasized that:

"Illegitimate business," so-called, is already comprehensively proscribed and severely punished by the many provisions of state and federal law listed under RICO's definition of "racketeering activity." RICO's evident purpose was to single out racketeering activity undertaken in connection with the subversion of legitimate institutions as a special case, deserving of even harsher penal sanctions.

\textit{Id.}

\textsuperscript{58} 402 F. Supp. 49 (D. Conn. 1975). See notes 28-33 \textit{supra} and accompanying text for a discussion of the \textit{Moeller} decision.

\textsuperscript{59} 502 F.2d 1351 (7th Cir. 1974), \textit{cert. denied}, 420 U.S. 925 (1975). See notes 15-27 \textit{supra} and accompanying text for a discussion of \textit{Cappetto}.

\textsuperscript{60} 402 F. Supp. at 59.
result.

Like the Moeller court, the Sixth Circuit in Sutton applied the tenet that "'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity' . . . unless the legislature has spoken 'plainly and unmistakably' to the contrary." The court observed that inasmuch as the legislative history of RICO "plainly and unmistakably" supported a narrow construction of the statute, "the maxim applies with special force and tells us that we ought not to strain to accommodate the government's desire for a broader construction."93

The Sutton court also applied principles of federalism in concluding that the statute be narrowly construed.94 The court stated that a broad interpretation of the statute

would take us much further into areas traditionally left to state regulation by making a federal felon out of "any individual" or any member of a "group" who has committed any two of the broad range of state offenses denominated "racketeering activity" under section 1961(1). We do not seriously doubt the power of Congress to undertake such a bold expansion of federal criminal jurisdiction. But we will not simply assume that Congress has done so with this statute, when the text, at best, is ambiguous on the matter and the legislative history suggests a different construction that would not alter the traditional division of responsibilities between federal and state governments quite so radically.95

CONCLUSION

The Sixth Circuit's decision in United States v. Sutton has amplified the controversy concerning the scope of Title IX's definition of "enterprise." By holding that RICO proscribes only the infiltration of legitimate enterprises through patterns of racketeering activity, the Sixth Circuit rebuffed

91 605 F.2d at 269 (citing Rewis v. United States, 401 U.S. 808, 812 (1971)).
92 Id. at 269. See notes 82-87 supra and accompanying text for a discussion of the Sixth Circuit's analysis of the legislative history in Sutton.
93 Id. at 269-70.
94 Id. at 270.
95 Id. For a similar viewpoint see United States v. Moeller, 402 F. Supp. 49, 59 (D. Conn. 1975).
precedent established by five other circuits and has paved the way for the Supreme Court’s resolution of this problem in statutory construction.68

The legislative history, the “plain meaning” of the statutory language and traditional canons of construction all support the Sixth Circuit’s narrow interpretation. Even a cursory examination of the legislative history reveals a congressional intent that RICO be applied to the infiltration of legitimate enterprises.67 The absence of a specific congressional refutation of RICO’s applying to illegitimate enterprises can be explained by the fact that Congress never envisioned, much less intended, that Title IX would be applied in such a manner.69 The cases that have permitted the government to apply RICO to illegitimate enterprises have refused either to look to the legislative history, relied on legislative history not relating to Title IX, or relied on cases which have made similar mistakes. Furthermore, the language of the statute militates against a broad construction; as the Sixth Circuit argued, it is illogical to suggest that Congress would have drafted “so complex a formulation if the legislative purpose had been merely to proscribe racketeering without more.”70 Similarly, the fundamental principle that ambiguous criminal statutes should be resolved in favor of lenity and the reluctance to infringe upon state criminal jurisdiction both mandate that a broad reading of the scope of Title IX is inappropriate.100

Although the foregoing considerations suggest that the Sixth Circuit’s analysis in Sutton represents the better reasoned approach, there is little hope that the other circuits will

68 The “character of reasons which will be considered,” while not “controlling nor fully measuring the court’s discretion” in governing review on certiorari by the Supreme Court include “[w]here a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter . . . .” Sup. Ct. R. 19(1)(b), 398 U.S. 1030 (1970).

67 For a general discussion of the statute’s legislative history see notes 45-52 supra and accompanying text. See notes 82-87 supra and accompanying text for the Sixth Circuit’s analysis of the legislative history in Sutton.

69 See note 46 supra and accompanying text for a discussion of this point.

70 605 F.2d at 266. See notes 71-81 supra and accompanying text for a discussion of the Sixth Circuit’s analysis of the language of Title IX.

100 See notes 88-95 supra and accompanying text for a discussion of the Sixth Circuit’s application of traditional canons of construction.
deviate from their interpretations. Indeed, in United States v. Aleman,\(^1\) a case decided after Sutton, the Seventh Circuit did not adopt the Sixth Circuit's interpretation and reaffirmed its holding in United States v. Cappetto,\(^2\) despite a dissenting opinion that urged the court to adopt the Sixth Circuit's "irrefutable" analysis.\(^3\) In light of the improbability that this interpretive dispute will be resolved by the courts, it is incumbent upon the Supreme Court to clarify the scope of Title IX. In so doing, the Court should adopt the position espoused by the Sixth Circuit in United States v. Sutton.

Gary Wayne Hart

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\(^1\) 609 F.2d 298 (7th Cir. 1979).
\(^2\) 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975).
\(^3\) 609 F.2d at 311-12 (Swygert, J., dissenting). In advocating adoption of the Sixth Circuit's narrow interpretation of RICO, Judge Swygert argued that in order to construe RICO to apply to the infiltration of illegitimate enterprises one has to assume that criminal defendants "infiltrate[e] their own unlawful enterprise through a 'pattern of racketeering activity.' . . . [T]his assumption is absurd. To infiltrate an enterprise, that is, 'to conduct or participate . . . in the conduct of such enterprise's affairs [section 1962(c)],' the enterprise must preexist before it is infiltrated by racketeering." Id. at 311.