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COMMENTS

TITLE IX OF THE ORGANIZED CRIME CONTROL ACT OF 1970: AN ANALYSIS OF ISSUES ARISING IN ITS INTERPRETATION

Title IX of the Organized Crime Control Act of 1970¹ represents Congress' attempt to eradicate the influence of organized crime in the United States.² The basic substantive sections of Title IX prohibit one from acquiring an interest in or conducting the affairs of an enterprise affecting interstate commerce through a pattern of racketeering activity or collection of an unlawful debt.³ "Racketeering

1. 18 U.S.C. §§ 1961-68 (1970).

2. The impact of organized crime on American society is staggering. In 1969, the total income from racketeering activity was estimated at 80 billion dollars, which is one-tenth of the country's gross national product. See Hills, *Combating Organized Crime in America*, 33 FED. PROB., Mar. 1969, at 23, 25. For a sobering account of the activities of organized crime, see Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. CRIM. L.C. & P.S. 399 (1962). See generally D. PACE & J. STYLES, *ORGANIZED CRIME: CONCEPTS AND CONTROL* (1975); McKeon, *The Incursion by Organized Crime into Legitimate Business, Symposium: Organized Crime*, 20 J. PUB. L. 117 (1971); Comment, *The Strike Force: Organized Law Enforcement v. Organized Crime*, 6 COLUM. J.L. SOC. PROB. 496, 498-500 (1970); Comment, *Organized Crime: Developing Devices for Debilitating Desperados*, 1970 L. SOC. ORD. 121, 121-22.

3. § 1962 of the statute provides:

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

(b) 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.

(c) 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

activity" includes the commission of certain felonies under state law or one of several federal offenses.⁴ A "pattern" of racketeering activity is defined as two or more racketeering acts occurring within ten years of each other.⁵ Title IX provides that a criminal conviction under the statute is punishable by a maximum fine of \$25,000 and imprisonment for a maximum of twenty years.⁶ In addition, any interest the defendant may have sustained or acquired in the enterprise must be forfeited to the United States.⁷ The statute also allows the government or private parties who have been economically injured by such prohibited conduct to bring civil actions for damages.⁸

Since its enactment, Title IX has been employed extensively by prosecutors. Many questions, therefore, concerning the scope of the statute have arisen which have required judicial interpretation. The courts have faced three major problem areas in applying Title IX. First, there has been some question concerning the meaning of the term "enterprise." Courts have attempted to determine whether the term is limited to legitimate businesses that have been infiltrated by crime or if it also includes associations of individuals whose exclusive purpose is to commit criminal acts.⁹ Questions concerning whether

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.

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

4. § 1961(1) of the statute provides:

(1) "Racketeering activity" means (A) any act or threat involving murder, kidnaping, 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: [18 U.S.C. §§201, 224, 471, 472, 473, 659, 664, 891-94, 1084, 1341, 1343, 1503, 1510, 1511, 1951, 1952, 1953, 1954, 1955, 2314, 2315, 2421-24; 29 U.S.C. §§186, 501(c)] . . . , or (D) any offense involving bankruptcy fraud, fraud in the sale of securities, or the felonious . . . dealing in narcotic or other dangerous drugs, punishable under any law of the United States.

5. § 1961(5) of the statute provides:

(5) "pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years . . . after the commission of a prior act of racketeering activity.

6. 18 U.S.C. § 1963 (1970).

7. *Id.* at subsection (a).

8. 18 U.S.C. § 1964 (1970). Title IX also has procedural provisions for venue and process (§ 1965), expedition of actions (§ 1966), evidence (§ 1967), and a civil investigative demand (§ 1968). The provisions of Title IX are discussed in Legislative Note, *Organized Crime Control Act of 1970*, 4 U. MICH. J.L. REF. 546, 622-27 (1971) [hereinafter cited as *Organized Crime Control Act*].

9. See notes 20-101 and accompanying text *infra*.

“enterprise,” under the statute, includes foreign businesses and governmental units also have been litigated.¹⁰ Second, the meaning of the word “pattern” has created difficulties. Some courts have suggested that, in order for two acts to constitute a pattern, they must bear some relationship to each other.¹¹ Defendants also have argued that the acts forming the pattern must bear a specified degree of proximity to the essential functions of the legitimate business.¹² They have charged that the statute is unconstitutionally vague for failing to clarify what, if any, peripheral acts would not violate the law. Third, courts have disagreed concerning whether a potential defendant must be a member of organized crime as a requisite for conviction under this act.¹³

This Comment will explore these three problem areas, analyze the relevant holdings, and suggest guidelines for the future. It specifically will demonstrate that the term “enterprise,” properly construed, should include foreign businesses and departments of government. “Enterprise” should not, however, encompass associations the sole purpose of which is to commit illegal acts. This Comment will also explain why two racketeering acts need not be related to each other to constitute a “pattern” and why the pattern of racketeering activity is not required to be related in any central way to the business essential functions. Finally, it will assert that defendants under the statute need not be members of commonly recognized organized crime groups.

THE SCOPE OF “ENTERPRISE”

A. “Enterprise” as Including Foreign Businesses

The scope of the term “enterprise” first was litigated in *United States v. Parness*.¹⁴ In that case, the defendants were convicted of violating Title IX by acquiring an interest in three foreign corporations through a pattern of racketeering activity.¹⁵ The defendants

10. See notes 14-19 and 102-109 and accompanying text *infra*.

11. See notes 110-136 and accompanying text *infra*.

12. See notes 137-144 and accompanying text *infra*.

13. See notes 145-154 and accompanying text *infra*.

14. 503 F.2d 430 (2d Cir. 1974), *cert. denied*, 419 U.S. 1105 (1975).

15. The defendants had transported stolen money in interstate commerce on two separate days in violation of 18 U.S.C. § 2314. These funds enabled the defendants to acquire interests in corporations located in the Netherland Antilles. The court held that the two violations of 18 U.S.C. § 2314 were sufficient to constitute a “pattern of racketeering activity” in violation of Title IX.

unsuccessfully asserted that "enterprise" referred only to domestic businesses. The statute defines "enterprise" as follows:

- (4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.¹⁶

This definition does not refer to domestic businesses, nor does its wording imply such a restriction. Furthermore, the *Parness* court observed correctly that the legislative history of the act in no way suggests that Congress intended only to deal with the infiltration of domestic enterprises.¹⁷ Congress' main concern in enacting Title IX was the economic protection of businesses.¹⁸ It felt that the racketeering activities of organized crime tended to stifle competition. In *Parness*, the defendants invested in businesses by means of illegal acts which precluded other individuals from legally investing in those businesses. Thus, a legitimate American investor may have been injured economically. This was precisely the type of harm that Congress sought to prevent or redress in Title IX. The fact that a tainted enterprise is not domestic has no bearing on the fact that economic harm was caused. Thus, the *Parness* decision in itself is not astounding. Its significance lies in the fact that subsequent courts have cited it as authority for unrelated holdings.¹⁹

B. "Enterprise" as Including Associations Formed Exclusively for Illegal Purposes

Since the enactment of Title IX, several cases have arisen in which a group of individuals have associated for the sole purpose of conducting an illegal society.²⁰ In these instances, the group or one of its members has committed two or more illegal acts which qualified

16. 18 U.S.C. § 1961(4) (1970).

17. The *Parness* court felt that the congressional intent was reflected in a House Report which stated that "any acquisition meeting the test of subsection (b) is prohibited *without exception*." 503 F.2d at 439, quoting H.R. REP. NO. 1549, 91st Cong., 1st Sess. reprinted in 2 U.S. CODE CONG. & AD. NEWS 4033 (1970) (emphasis added by the court).

18. See notes 65-78 and accompanying text *infra*.

19. See notes 29-33 and accompanying text *infra*.

20. See, e.g., *United States v. Morris*, 532 F.2d 436 (5th Cir. 1976) (defendants associated for sole purpose of defrauding persons engaged in card games); *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), cert. denied, 97 S.Ct. 736 (1977) (defendants associated for purpose of conducting a gambling business); *United States v. Cappelto*, 502 F.2d 1351 (7th Cir. 1974), cert. denied, 420 U.S. 925 (1975) (defendants associated for purpose of receiving and transmitting wagering information); *United States v. Winstead*, 421 F. Supp. 295 (N.D. Ill. 1976) (defendants associated for purpose of conducting illegal gambling business); *United States v. Moeller*, 402 F. Supp. 49 (D. Conn. 1975) (defendants associated for purpose of committing arson); *United States v. Castellano*, 416 F. Supp. 125 (E.D. N.Y. 1975) (defendants associated for purpose of loaning money at usurious interest rates).

as a "pattern of racketeering activity."²¹ In addition, the acts of the group have had a sufficient effect on interstate commerce.²² Indictments were brought under Title IX, charging that the group constituted an "enterprise" within the meaning of 18 U.S.C. § 1961(4)²³ and that the affairs of the "enterprise" were conducted through a "pattern of racketeering activity" in violation of section 1962(c).²⁴ Defendants frequently have challenged the indictments, charging that "enterprise" as defined in section 1961(4) refers to legitimate organizations that have been infiltrated by crime, not associations formed exclusively for illegal purposes. In all but one case, *United States v. Moeller*,²⁵ the courts have held that the statute does apply to associations formed exclusively for illegal purposes.²⁶ An analysis of relevant precedent, rules of statutory interpretation, legislative intent, and the operation of the statute itself, indicates, however, that this judicial interpretation is unsound.

The question of whether "enterprise" refers to illegal organizations first was raised in *United States v. Cappetto*.²⁷ In that case, the government alleged that the defendants had associated for the sole purpose of illegally receiving and transmitting sports wagers. Injunctive relief against further illegal activity was sought pursuant to section 1964.²⁸ The defendants objected to the injunction, claiming that their illegal association was not within the scope of "legitimate" enterprises contemplated in section 1961(4). The court of appeals rejected this contention, holding that the term "enterprise" was to be interpreted broadly, citing *Parness* for support.²⁹ The court felt that the *Parness* decision mandated a broad construction of "enterprise" and thus reasoned that their holding was congruous with this decision.³⁰

21. See cases cited in note 20 *supra*. *Castellano*, however, involved collection of unlawful debts, not a pattern of racketeering activity. Both actions are prohibited by Title IX.

22. The requisite effect on commerce apparently can be quite minimal. See note 85 and accompanying text *infra*.

23. See note 16 and accompanying text *infra*.

24. See note 3 *supra*.

25. 402 F. Supp. 49 (D. Conn. 1975). See notes 54 & 92 and accompanying texts *infra*.

26. The *Moeller* court's holding on this point is no longer law in the District of Connecticut. See *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977) and notes 38-40 and 62-63 and accompanying text *infra*.

27. 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

28. For a discussion of the injunctive relief authorized by 18 U.S.C. § 1964 as applied in *Cappetto*, see Note, *Equitable Law Enforcement and the Organized Crime Control Act of 1970*, 25 DEPAUL L. REV. 508 (1976).

29. 502 F.2d at 1358.

30. The court also believed that one could not infer from the statute a restriction limiting the scope of "enterprise" to legitimate organizations. *Id.* See note 42 and accompanying text *infra*.

The tenuity of the Court's reasoning is apparent. Congress' intent in enacting Title IX was to deal effectively with the economic harm resulting from criminal infiltration into legitimate organizations.³¹ Since economic harm to Americans can result when a foreign business is infiltrated or acquired by unfair means, as in *Parness*, it is not reasonable to conclude that Congress intended to omit foreign businesses from the scope of Title IX. Therefore, the *Parness* decision did not stretch the meaning of "enterprise," nor did it mandate as broad an interpretation of the word as suggested in *Cappetto*.³² Unfortunately, other courts subsequent to *Cappetto* have also employed this same reasoning and, in addition, have cited *Cappetto* as authority.³³ This line of cases exhibits poor analysis. It indeed would be unfortunate for this pattern to continue.

Several courts, when confronted with the "legality" issue, have turned to the wording of the statute to determine whether illegal associations are included in section 1961(4). Most courts that have attempted such statutory interpretation have concluded that the statutory language does not limit its application to legitimate associations.³⁴ In *United States v. Castellano*,³⁵ for example, the district court noted that if Congress had desired to limit the application of Title IX in this way, it could have done so "by simply adding the word 'legitimate' in front of the word 'enterprise.'" ³⁶ The court also stated that section 1961(4) "gave a very broad meaning to the term 'enterprise.'" ³⁷ In another case, *United States v. Altese*,³⁸ the Second Circuit noted "the continued repetition of the word 'any'" in several sections of the statute.³⁹ The court felt that the phrase "any

31. See notes 55-82 and accompanying text *infra*.

32. The impropriety of referring to *Parness* in support of the *Cappetto* holding also is noted in Comment, *Organized Crime and the Infiltration of Legitimate Business: Civil Remedies for "Criminal Activity,"* 124 U. PENN. L. REV. 192, 203-04 (1975).

33. See, e.g., *United States v. Altese*, 542 F.2d 104, 106 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977), (citing *Parness*, with strong dissent by Van Graafeiland, J., at 110); *United States v. Hawes*, 529 F.2d 472, 479 (5th Cir. 1976) (citing *Parness* and *Cappetto*); *United States v. Winstead*, 421 F. Supp. 295, 296-97 (N.D. Ill. 1976) (citing *Cappetto*); *United States v. Castellano*, 416 F. Supp. 125, 128 (E.D. N.Y. 1975) (citing *Parness* and *Cappetto*).

34. For courts extending §1961(4) to include illegal associations, see *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977), *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States v. Castellano*, 416 F. Supp. 125 (E.D. N.Y. 1975). *United States v. Moeller*, 402 F. Supp. 49 (D. Conn. 1975) is the only reported case limiting the application of § 1961(4) to legitimate organizations based on statutory interpretation.

35. 416 F. Supp. 125 (E.D. N.Y. 1975).

36. *Id.* at 129.

37. *Id.* at 127-28.

38. 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977).

39. *Id.* at 106. In reality, the word "any" is only used twice in the definition of enterprise, § 1961(4).

individual, partnership, corporation . . . or other . . . entity" dictated the conclusion that illegal associations should be included within the statutory scope.⁴⁰ Finally, in *United States v. Cappetto*,⁴¹ the Seventh Circuit stated merely that "there is nothing in [section 1961(4)] to suggest that the enterprise must be a legitimate one."⁴²

These attempts at statutory interpretation are not persuasive since the courts failed to apply well-established canons of statutory construction. One particularly relevant canon is the doctrine of *ejusdem generis* which is applied when a statute lists several specific, narrow categories, followed by a single broad one.⁴³ The rule generally provides that the broad or general category should be "construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words."⁴⁴ To apply this doctrine to the definition of "enterprise," it is again necessary to examine section 1961(4):

(4) "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

The first step in applying *ejusdem generis* is, of course, to separate the specific language from the general language.⁴⁵ The specific terms in section 1961(4) are "individual," "partnership," "corporation," "association," and "union." The general terms, which some courts have held to include illegal associations, are "other entity" and "group of individuals associated in fact although not a legal entity." The next step is to determine the similarity among the specific terms.⁴⁶ It is

40. *Id.*

41. 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

42. *Id.* at 1358. *See also* *United States v. Castellano*, 416 F. Supp. 125, 128 (1975).

43. Like all rules of statutory interpretation, the doctrine of *ejusdem generis* is an aid or "axiom of experience," not a rule of law. *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221 (1952), *quoting* *Boston Sand Co. v. United States*, 278 U.S. 41, 48 (1928). Nor are these canons applied to defeat clear legislative intent. 2A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 47.22, at 118 (C. Sands 4th ed. 1973) [hereinafter cited as SUTHERLAND], *quoting* *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 88-89 (1934). For purposes of § 1961(4), the result obtained through the application of *ejusdem generis* coincides with the intent of Congress. *See* notes 55-82 and accompanying text *infra*.

44. 2A SUTHERLAND, *supra* note 43, § 47.17 at 103. "[T]he doctrine of *ejusdem generis* warns against expansively interpreting broad language which immediately follows narrow and specific terms. [It] counsels courts to construe the broad in light of the narrow, in a common-sense recognition that general and specific words, when present together, are associated with and take color from each other." *United States v. Insko*, 496 F.2d 204, 206 (5th Cir. 1974). *See also* *United States v. Altese*, 542 F.2d 104, 107 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977) (Van Graafeiland, J., dissenting).

45. *See* W. STATSKY, LEGISLATIVE ANALYSIS: HOW TO USE STATUTES AND REGULATIONS 100 (1975) [hereinafter cited as STATSKY].

46. *Id.*

apparent that they all connote legal, legitimate organizations. In particular "partnership" indicates a legitimate business, since partnership rights are not recognized if the objective of the partnership is illegal.⁴⁷ Likewise, the purpose of any corporation must be legal.⁴⁸ Finally, the remaining general terms are construed in light of the specific terms.⁴⁹ It follows that the words "other legal entity" or "group of individuals associated in fact although not a legal entity" refer only to other types of organizations with legal purposes. Therefore, the doctrine of *ejusdem generis* indicates that all "enterprises" in Title IX must be legitimate organizations. Courts which have applied Title IX to illegal associations have ignored this concept.

Another well-established doctrine of statutory interpretation is that of resolving ambiguities in penal statutes in favor of lenity.⁵⁰ Essentially, the doctrine requires that, if the meaning of a penal law is uncertain, it is to be construed in favor of the defendant and against the law's enforcement.⁵¹ Thus, if it is not clear from section 1961(4) whether "enterprise" includes illegal associations, then "enterprise" should be construed to exclude illegal associations, as this would benefit potential defendants. The canon of lenity is, of course, subject to common-sense restrictions. Courts warn that the doctrine should not be employed to violate legislative intent.⁵² In the case of Title IX, however, interpreting "enterprise" to include only legitimate organizations does not violate the intent of Congress, as will be discussed below.⁵³ As a result, application of the canon of lenity in this instance rests on solid ground.⁵⁴

Legislative intent is also a reliable indicator of the proper construction and application of a statute.⁵⁵ Some courts that have held "enterprise" to include illegal associations have made weak attempts to justify their holdings by citing congressional intent. For example, in

47. See *Central Trust & Safe Deposit Co. v. Respass*, 112 Ky. 606, 66 S.W. 421 (1902); J. CRANE, PARTNERSHIPS § 21 at 66 (1938).

48. See ABA-ALI MODEL BUS. CORP. ACT § 3 (1960).

49. See STASKY, *supra* note 45, at 100.

50. *United States v. Bass*, 404 U.S. 336, 348 (1971); *Rewis v. United States*, 401 U.S. 808, 812 (1971); *Bell v. United States*, 349 U.S. 81, 83 (1955). See also 3 SUTHERLAND, *supra* note 43, § 59.03 at 6-8.

51. *United States v. Bass*, 404 U.S. 336, 348 (1971).

52. *United States v. Brown*, 333 U.S. 18, 26 (1948); *United States v. Gaskin*, 320 U.S. 527, 530 (1944). See also 3 SUTHERLAND, *supra* note 43, § 59.06 at 19.

53. See notes 55-82 and accompanying text *infra*.

54. In *United States v. Moeller*, 402 F. Supp. 49, 59 (D. Conn. 1975), the court briefly noted that the canon of lenity limits the application of Title IX to legitimate organizations.

55. It has been said that "[t]he intention of the lawmaker is the law." *Piper v. Willcuts*, 64 F.2d 813, 814 (8th Cir. 1933).

United States v. Cappelto,⁵⁶ the Seventh Circuit held that an illegal gambling business constituted an enterprise within the scope of section 1961(4). In support of its holding, the court referred to a Senate Committee Report which noted that "the Federal Government must . . . prohibit directly substantial enterprises of gambling."⁵⁷ The court interpreted that phrase to mean that Congress viewed illegal gambling associations as enterprises within the scope of section 1961(4).⁵⁸ However, the Committee Report that the *Cappelto* court cited referred to *Title VIII* of the Organized Crime Control Act of 1970,⁵⁹ not Title IX. Title VIII specifically deals with illegal gambling businesses.⁶⁰ It bears no relation to Title IX, but was merely a part of the same omnibus act. Therefore one cannot assume without support that the congressional intent behind Title VIII was identical to that behind Title IX.⁶¹

Similarly, in *United States v. Altese*,⁶² the court stated that Congress demonstrated its intent in its comment that Title IX should be "liberally construed to effectuate its remedial purposes."⁶³ A superficial observation of that phrase understandably could lead a court to conclude that Congress intended to include illegal associations within the scope of "enterprise." It also could be viewed as instructing

56. 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

57. *United States v. Cappelto*, 502 F.2d 1351, 1358 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975), *quoting* S. REP. NO. 617, 91st Cong., 1st Sess. 72-73 (1969).

58. *Id.*

59. 18 U.S.C. §§ 1511, 1955 (1970).

60. Title VIII contains two substantive provisions. The first, 18 U.S.C. § 1511, prohibits conspiracies to interfere with law enforcement with the intent of furthering illegal gambling business. Under this section, one of the conspirators must be a government official or employee. The second provision, 18 U.S.C. § 1955, prohibits gambling businesses that are illegal under state law, that involve five or more persons, and that either are in operation for at least 30 days or gross more than \$2,000 in any single day. *See* McClellan, *The Organized Crime Act (S. 30) or its Critics: Which Threatens Civil Liberties?* 46 NOTRE DAME LAW. 55, 133-40 (1970) [hereinafter cited as McClellan]; *Organized Crime Control Act*, *supra* note 8, at 614-21. *See also* notes 89-92 and accompanying text *infra*.

61. The impropriety of the *Cappelto* court's reliance in this portion of the Senate Report was noted in *United States v. Moeller*, 402 F. Supp. 49, 60 (D. Conn. 1975). In *Moeller*, the court held that § 1961(4) did not include illegal organizations. It asserted that the excerpt from the Senate Report, read together with Title IX, indicated that "when Congress wanted to proscribe an illegitimate enterprise, it knew precisely how to do it." *Id.* The court felt that this proscription was dealt with in Title VIII, not Title IX. Also, in *United States v. Castellano*, 416 F. Supp. 125 (E.D. N.Y. 1975), the court, while concurring with the *Cappelto* holding, apparently felt compelled to comment on the *Cappelto* court's reasoning. However, the *Castellano* court sought to justify the *Cappelto* court's reliance on Title VIII by claiming that the use of the word "enterprise" in Title VIII's legislative history nevertheless could shed light on the interpretation of § 1961(4). *Id.* at 131-32.

62. 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977).

63. *Id.* at 106, *quoting* Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970).

courts to ignore the canon of lenity.⁶⁴ Such an interpretation, however, would misconstrue the "remedial purpose" intended by Congress. As will be detailed below, the congressional intent was to remedy the economic effects of criminal infiltration of legitimate organizations.⁶⁵ The congressional statement upon which *Altese* relied merely instructed courts to apply Title IX liberally in order to deal with the problem of infiltration and corruption. It did not authorize courts to apply the statute beyond the scope of its purpose.⁶⁶

The published legislative history of Title IX, which is quite substantial, convincingly indicates that Congress aimed exclusively at legitimate organizations.⁶⁷ For example, the Senate Judiciary Committee prefaced its report by stating that the purpose of Title IX was to eliminate "the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce."⁶⁸ This concept of infiltration was later discussed in detail under sections entitled "subversion of legitimate organizations,"⁶⁹ "infiltration of legitimate businesses,"⁷⁰ and "takeover of legitimate unions."⁷¹ Significantly, the late Senator John McClellan,⁷² who introduced Title IX in the Senate,⁷³ authored an article in which he clearly indicated that the purpose of the bill was to remove "organized crime from our

64. The canon of lenity apparently can be modified by statutory mandate. See 3 SUTHERLAND, *supra* note 43, § 62.04 at 77. See also *People v. Sciortino*, 175 Cal. App.2d Supp. 905, 909, 345 P.2d 594, 596 (1959).

65. See notes 67-79 and accompanying text *infra*.

66. Thus, even if it is assumed that Congress did intend to suspend the canon of lenity, it does not follow that illegitimate organizations should be included in § 1961(4).

67. No court which has held that illegitimate associations are included within the scope of § 1961(4) has attempted to support its holding with legislative history (e.g., committee reports, debates, etc.) relative to Title IX. See *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977); *United States v. Hawes*, 529 F.2d 472 (5th Cir. 1976); *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975); *United States v. Winstead*, 421 F. Supp. 295 (N.D. Ill. 1976); *United States v. Castellano*, 416 F. Supp. 125 (E.D. N.Y. 1975). Undoubtedly, this is due to the fact that Title IX was aimed at infiltrated, legitimate associations. See notes 68-79 and accompanying text *infra*.

68. S. REP. NO. 617, 91st Cong., 1st Sess. 76 (1969).

69. *Id.*

70. *Id.*

71. *Id.* at 78.

72. United States Senator from Arkansas.

73. 115 CONG. REC. 9566 (1969). Senator McClellan, along with Senator Ervin of North Carolina and Senator Hruska of Nebraska, introduced the Bill on April 18, 1969. In his remarks that followed, Senator McClellan extensively spoke of Title IX in terms of legitimate organizations:

The problem, simply stated, is that organized crime is increasingly taking over organizations in our country, presenting an intolerable increase in deterioration of our Nation's standards. Efforts to dislodge them so far have been of little avail. To aid in the pressing need to remove organized crime from legitimate organizations in our country, I have thus formulated this bill which I am introducing today . . .

legitimate organizations.”⁷⁴ The Senator cited examples of infiltration of businesses and indicated the need for Title IX.⁷⁵ Consistent with published legislative history, Senator McClellan indicated that the purpose of Title IX was to prevent and remedy the economic effects of such infiltration.⁷⁶ This attitude is further manifested in the Report of the Senate Judiciary Committee which stated that “organized crime . . . poses a new threat to the American economic system.”⁷⁷ The Committee explained that Title IX “seeks essentially an economic, not a punitive goal.”⁷⁸

Hence, Title IX unquestionably was directed at the economic effects of the corruption of legitimate organizations. It was not intended to punish associations whose sole purpose is to commit illegal acts.⁷⁹ Courts that have interpreted “enterprise” to include illegal associations may have acted within the letter of the statute, but not within its intent. The Supreme Court commented in *Church of the Holy Trinity v. United States*:⁸⁰

[F]requently, words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment . . . makes it unreasonable to believe that the legislator intended to include the particular act.⁸¹

Unfortunately, many of the courts’ interpretations of section 1961(4) appear to violate this principle.⁸²

This bill is designed to attack the infiltration of various congressional committees and the President’s Crime Commission.

Id. at 9567.

74. McClellan, *supra* note 60, at 141. The article was written prior to the passage of the act.

75. *Id.* at 142. He specifically referred to the infiltration of manufacturing concerns, banks, and the A&P grocery chain. See 116 CONG. REC. 22772 (1970); 115 CONG. REC. 17504 (1969). The operations of organized crime, and particularly La Cosa Nostra, are discussed in Wilson, *The Threat of Organized Crime: Highlighting the Challenging New Frontiers in Criminal Law*, 46 NOTRE DAME LAW. 41 (1970).

76. McClellan, *supra* note 60, at 141.

77. S. REP. NO. 617, *supra* note 68, at 77.

78. *Id.* at 81.

79. The legislative history behind Title IX is extensive. It is hardly necessary to examine it further, since the continual theme of the infiltration of legitimate organizations is omnipresent. See, e.g., 116 CONG. REC. 6709-10 (1970); 116 CONG. REC. 35193-94 (1970). Indeed, the House, Senate, Justice Department and even those opposed to the act viewed Title IX as applying only to legitimate enterprises. See *United States v. Moeller*, 402 F. Supp. 49, 58-59 (D. Conn. 1975); Comment, *Organized Crime and the Infiltration of Legitimate Business: Civil Remedies for “Criminal Activity,”* 124 U. PENN. L. REV. 192, 204-05 (1975).

80. 143 U.S. 457 (1892).

81. *Id.* at 459.

82. The problem that the *Holy Trinity* Court faced was not unlike the “enterprise” issue in Title IX. In that case, the Court considered 23 Stat. 332, c. 164, which forbade “any person . . .

Finally, the operation and the effect of the application of Title IX indicate that it should not apply to illegal organizations. An analysis of the operation of Title IX in conjunction with Illinois law will demonstrate that an application of Title IX to illegal organizations leads to an unwarranted increase in federal jurisdiction.

For purposes of this analysis, assume the following fact situation: Two defendants associated for the sole purpose of selling bets upon the result of football games. The bets were sold twice at the defendants' place of employment located near the Illinois border to defendants' fellow employees, some of whom were from out of state. The total amount handled in both pools was no more than a few hundred dollars. For this offense, an Illinois gambling statute imposes penalties which could exceed one year's imprisonment.⁸³

If one assumes further that the United States Circuit Court of Appeals in this jurisdiction has held that section 1961(4) includes illegal organizations,⁸⁴ a disturbing result arises. The two defendants would qualify as forming an "enterprise" within section 1961(4) and, since out of state residents were involved, the "enterprise" affected interstate commerce.⁸⁵ The defendants also would be guilty of a "racketeering act" which is defined as "any act . . . involving . . . gambling . . . which is chargeable under State law and punishable by

[to] . . . in any way assist or encourage the importation or migration of [an] alien . . . to perform labor or service of any kind in the United States." The Court held that the statute did not apply to a church that arranged for an alien to come to New York to serve as a Pastor. It was recognized that the church's act did fall within the language of the law. However, the Court refused to allow the statute to be construed in a manner that would contradict legislative intent or lead to absurd results. 143 U.S. at 459.

83. ILL. REV. STAT. ch. 38, § 28-1(a)(6) (1975) makes this conduct a gambling offense. A second or subsequent conviction for selling pools is a Class 4 felony. *Id.* at § 28-1(c). The maximum term of sentence for a Class 4 felony is three years imprisonment. *Id.* at § 1005-8-1(b) (5).

84. Indeed, this is the current position in the Seventh Circuit. *See United States v. Capetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

85. 18 U.S.C. § 1962(c) (1970). Conceivably, a much lesser effect on interstate commerce than that set forth in this situation could satisfy the requirements of Title IX. Cases dealing with the Hobbs Act, 18 U.S.C. § 1951, which prohibits extortionate conduct that affects interstate commerce, have held that an arguably *de minimis* effect on commerce is sufficient to bring the statute into play. *See United States v. Crowley*, 504 F.2d 992, 997 (7th Cir. 1974). One of the more extreme examples of the minimal commerce requirement is *United States v. Irati*, 503 F.2d 1295 (7th Cir. 1974), *cert. denied*, 420 U.S. 990 (1975). In that case, the defendant, a city clerk, had extorted money from a woman who had applied for a liquor license. Because her tavern received liquor from local companies who secured their supplies from out of state, the court held that the extortion sufficiently affected commerce under the Hobbs Act. *Id.* at 1298. Thus, it is quite obvious that the commerce requirement in federal criminal statutes is unsubstantial. It is therefore reasonable to expect that the commerce requirements of Title IX are likewise nominal. *See generally* Comment, *The Scope of Federal Criminal Jurisdiction Under the Commerce Clause*, 1972 U. ILL. L.F. 805.

imprisonment for more than one year.”⁸⁶ Since two such acts were committed within ten years, the defendants carried out a “pattern of racketeering activity.”⁸⁷ As a result, the defendants violated section 1962(c), having conducted the affairs of an “enterprise” through a pattern of racketeering activity. They are now subject to a maximum \$25,000 fine and twenty years imprisonment.⁸⁸

The absurdity of the severe penalties which can be imposed upon such relatively minor criminal conduct is evident immediately. However, a more serious problem is the automatic grant of federal jurisdiction. In this instance, the federal courts are forced to open their doors to a prosecution of a gambling association involving only two defendants and a few hundred dollars. Although Congress’ authority to grant such jurisdiction, if it so chooses, will not be disputed, it appears that Congress did not intend the federal courts to be involved in such minor offenses. Part of Title VIII of the Organized Crime Control Act of 1970⁸⁹ deals with illegal gambling businesses. However, the statute is not violated unless five or more persons are involved⁹⁰ and the business is “in substantially continuous operation for a period in excess of thirty days” or have a gross revenue of \$2,000 in any given day.⁹¹ The reasonable inference is that Congress chose to invoke federal jurisdiction in cases involving gambling businesses only when the operation was quite substantial.⁹² A construction of “enterprise” in Title IX to include illegal associations results in relatively insubstantial operations being brought under federal jurisdiction, contrary to the clear congressional intent apparent in Title VIII.⁹³

86. 18 U.S.C. § 1961(1) (1970).

87. *Id.*

88. 18 U.S.C. § 1963 (1970).

89. *Id.* § 1955. See notes 59-60 and accompanying text *supra*.

90. *Id.* § 1955 (b)(1)(ii).

91. *Id.* § 1955 (b)(1)(iii).

92. See *United States v. Moeller*, 402 F. Supp. 49, 59 (1975).

93. In addition, expansion of federal jurisdiction has been viewed as undesirable. For example, in *Rewis v. United States*, 401 U.S. 808 (1971), the defendants were convicted of violating the Travel Act, 18 U.S.C. § 1952. The statute prohibits interstate travel with intent to “promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.” *Id.* § 1952(a)(3). The defendants in *Rewis* operated an illegal lottery which attracted out of state patrons. The Supreme Court reversed, holding that the statute was not violated “solely because [the defendants’] activity [was] at times patronized by persons from another State.” 401 U.S. at 812. Significantly, the Court noted that if the statute were overly expansive, it “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.” *Id.* (emphasis added). Indeed, the problem of an overloaded federal docket is not to be taken lightly. In 1976, there were 171,617 filings in the district courts, which

Of course, not all acts of "racketeering activity" are as insubstantial as the one discussed in the above hypothetical situation. Title IX defines racketeering acts to include certain federal offenses,⁹⁴ many of which are serious and have undoubted effects on interstate commerce. However, an analysis of these offenses also indicates that Congress did not intend "enterprise" to include purely illegal organizations. Separate consideration will be accorded to instances in which racketeering acts (1) further no other interest, but are committed only for their own sake, (2) further illegitimate or illegal interests, and (3) further legitimate interests or enterprises. The analysis will demonstrate that Title IX yields benefits peculiar to other federal statutes only in the last situation in which the racketeering acts are connected with legitimate associations.

Considering the first situation, Title IX enumerates certain federal offenses the commission of which could logically be the sole purpose for a group of individuals to associate. An example of such an offense is counterfeiting.⁹⁵ If the term "enterprise" is interpreted to include illegal associations, then a group of counterfeiters could be charged with conducting the affairs of an enterprise through a pattern of racketeering activity (counterfeiting) in violation of Title IX. However, this type of illegal association is punishable already as a conspiracy.⁹⁶ Title IX, with "enterprise" construed as encompassing illegal associations, is therefore of no real assistance in law enforcement.

Title IX also enumerates federal offenses that would not logically provide the exclusive impetus for an association of individuals, but which are committed for the purpose of furthering another interest. An example of such an offense or racketeering act is bribery of public officials.⁹⁷ It is unlikely that a group of persons would associate

represents a 25.7% increase since 1971. In addition, there were 18,408 filings in the circuit courts of appeals, which is a 43.9% increase from 1971. DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, MANAGEMENT STATISTICS FOR UNITED STATES COURTS, 13, 127 (1976). See also Aldisert, *Judicial Expansion of Federal Jurisdiction: A Federal Judge's Thought on Section 1983, Comity and the Federal Caseload*, 1973 L. SOC. ORD. 557, 558-61.

94. 18 U.S.C. § 1961(1)(b) (1970).

95. 18 U.S.C. § 1961(1)(b) (1970), incorporating 18 U.S.C. §§ 471-73 (1970). Other crimes enumerated in § 1961(1)(b) which fall into this second class are: 18 U.S.C. § 659 (theft from interstate shipment), § 664 (embezzlement from pension and welfare funds), § 1951 (extortion), 29 U.S.C. § 501(c) (embezzlement from union funds). These offenses may be committed for their own sake. They are not necessarily committed for the purpose of furthering another interest.

96. See, e.g., *United States v. LaVecchia*, 513 F.2d 1210 (2d Cir. 1975); *United States v. Crocker*, 510 F.2d 1129 (10th Cir. 1975); *United States v. Efronson*, 505 F.2d 104 (5th Cir. 1974).

97. 18 U.S.C. § 1961(1)(b), incorporating 18 U.S.C. § 201 (1970). Other crimes enumerated in § 1961(1)(b) which fall into this first class are: mail fraud (18 U.S.C. § 1341), wire fraud (*id.* §

solely for the purpose of committing bribery. The perpetrators would obviously be furthering another interest which could well be illegal. For example, the individuals might attempt to bribe law enforcement officials to overlook their gambling operation which is their primary interest. However, both the gambling business and the bribery are already punishable under federal law.⁹⁸ In this situation, again, Title IX, interpreted to include illegal associations, is of no real assistance.

On the other hand, the primary interest sought to be promoted through bribery could be legal. For example, the individuals might attempt to bribe tax officials to overlook tax liabilities of a legitimate business. In this situation, Title IX provides great assistance. In particular, the forfeiture provisions require the defendants to release their interest in the legitimate business to the United States,⁹⁹ a remedy which would not be available otherwise.¹⁰⁰

Hence, Title IX generally yields benefits only when illegal acts are connected with legitimate organizations. The interpretation of "enterprise" to include illegal associations is of no practical assistance in law enforcement.

In summary, "enterprise," as defined in section 1961(4), should be interpreted to include legitimate organizations that have been acquired by or sustained through the perpetration of racketeering acts. There is no significant precedent which should mandate courts to hold the contrary. The established rules of statutory interpretation indicate that "enterprise" should not include exclusively illegal associations. The legislative history persuasively indicates that this was Congress' intent. Finally, the operation and effect of the application of the statute demonstrate that the value of Title IX is not magnified by such an expansive interpretation to "enterprise." Unfortunately, courts in three circuits have broadened the term in this manner.¹⁰¹ Hopefully, when other circuits confront this problem, they will carefully examine the question rather than cite erroneous holdings of other courts. At this point, a state of confusion exists which only the Supreme Court can resolve authoritatively.

1343), obstruction of justice, criminal investigations or law enforcement (*id.* §§ 1503, 1510, 1511), etc. These offenses are committed only for the purpose of furthering another interest.

98. 18 U.S.C. § 1955 (1970) (gambling business); *id.* § 201 (bribery).

99. 18 U.S.C. § 1963(a) (1970).

100. The forfeiture concept of Title IX represents a revival of an old common law principle. Forfeiture as a penalty for violation of a criminal statute has not been employed in the United States since 1790. See REPORT OF THE COMMITTEE ON THE JUDICIARY, UNITED STATES SENATE, S. REP. NO. 617, 91st Cong., 1st Sess. 80 (1969).

101. The Circuit Courts of Appeals for the Second, Fifth and Seventh Circuits have reached this holding. See *United States v. Altese*, 542 F.2d 104 (2d Cir. 1976), *cert. denied*, 97 S. Ct. 736 (1977); *United States v. Morris*, 532 F.2d 436 (5th Cir. 1976); *United States v. Cappetto*, 502 F.2d 1351 (7th Cir. 1974), *cert. denied*, 420 U.S. 925 (1975).

C. "Enterprise" as Including Governmental Units

Another issue that has arisen in Title IX's brief history is whether "enterprise" includes offices or agencies of government. The only reported case to date concerning this question is *United States v. Frumento*.¹⁰² In that case, an investigator for the Bureau of Cigarette and Beverage Taxes of the Pennsylvania Department of Revenue was charged with accepting bribes in connection with a cigarette smuggling operation. The government theorized that the Bureau was an "enterprise" affecting interstate commerce, and that the defendant had conducted the Bureau's affairs through a "pattern of racketeering activity" in violation of section 1962(c). In response to a motion to dismiss, the court held that the Bureau was properly characterized as an "enterprise" within the scope of Title IX.¹⁰³ In support of its holding, the court referred generally to Congress' direction that Title IX be "liberally construed to effectuate its remedial purposes."¹⁰⁴ The court also cited remarks of Senator McClellan which indicated Congress' concern that organized crime was corrupting "the process of our democratic society."¹⁰⁵

An interpretation of "enterprise" as including governmental agencies is not unsound. As the *Frumento* court implied, Congress was concerned with the concept of infiltration of legitimate organizations.¹⁰⁶ One cannot deny that government agencies are such organizations. In enacting Title IX, Congress also aimed at the economic consequences of infiltration.¹⁰⁷ *Frumento* provides a clear example of government infiltration causing economic harm. The defendant furthered a cigarette smuggling operation, allowing some individuals to bring cigarettes into the state untaxed. Legitimate dealers who paid the tax and passed the cost on to the consumer suffered competitive disadvantage and economic harm. Applying Title IX to government agencies, therefore, appears to be congruous with congressional intent because infiltration and corruption of a legitimate concern has occurred and honest individuals have suffered economic harm.

102. 405 F. Supp. 23 (E.D. Pa. 1975). It is reasonable to assume that more cases such as *Frumento* will arise. At least one such indictment was returned in the Northern District of Illinois and is now pending trial. See *United States v. Blasco*, 76 CR 1001 (N.D. Ill. 1976). In *Blasco*, the defendant was a Chicago police officer who allegedly received bribes. He was charged with violation of 18 U.S.C. § 1962(c) for conducting the affairs of an "enterprise" (the Chicago Police Department) through a pattern of racketeering activity.

103. 405 F. Supp. at 29.

104. See Pub. L. No. 91-452, § 904(a), 84 Stat. 947 (1970).

105. 405 F. Supp. at 29, quoting 116 CONG. REC. 586 (1970) (remarks of Senator McClellan).

106. See notes 67-75 and accompanying text *infra*.

107. See notes 76-79 and accompanying text *infra*.

However, while such application may be theoretically sound, it has little practical benefit. In *Frumento*, the defendant's acts already were punishable under the federal bribery statute.¹⁰⁸ The only novel benefit of implementing Title IX in this case is that it could be used to require the forfeiture of the defendant's "interest" or position in the Bureau.¹⁰⁹ Since the defendant probably would have been dismissed from his position, the advantages of Title IX's forfeiture provisions are rendered moot.

D. Summary: The Scope of "Enterprise"

Courts have interpreted the term "enterprise" to include foreign businesses, departments of government, and illegal associations. The holding that "enterprise" refers to foreign businesses is consistent with the purpose of Title IX. The inclusion of government agencies is also quite sound theoretically, although of limited potential value. Courts that have construed "enterprise" to include purely illegal associations, however, do not exhibit sound reasoning.

THE MEANING OF "PATTERN OF RACKETEERING ACTIVITY"

In order to establish a violation of Title IX, a "pattern of racketeering activity" must exist.¹¹⁰ The definition of such a pattern, provided in section 1961(5), is quite terse: "two acts of racketeering activity, one of which occurred after the effective date of [Title IX], and the last of which occurred within ten years . . . after the commission of a prior act."¹¹¹ In applying that definition, courts have encountered two questions which will be examined below. The first is whether the two acts must bear some relationship to each other in order to establish a "pattern." The second is whether the pattern of racketeering activity must bear a degree of proximity to the essential functions of the business.

A. Requisite Relationship Between Racketeering Acts

The first case to confront the problem regarding the requisite relationship, if any, between acts of racketeering activity was *United States v. Stofsky*.¹¹² In that case, seven employees of a labor union

108. 18 U.S.C. § 201 (1970).

109. *Id.* § 1963(a). In *United States v. Blasco*, 76 CR 1001 (N.D. Ill. 1976), the indictment prayed that the defendant policeman be required to forfeit his job.

110. See notes 4-5 and accompanying text *infra*.

111. 18 U.S.C. § 1961(5) (1970).

112. 409 F. Supp. 609 (S.D. N.Y. 1973).

allegedly accepted payments from union-shop manufacturers. In return for the payments, the defendants purportedly allowed these shops to subcontract work to non-union shops, contrary to a collective bargaining agreement. In response to a motion to dismiss, the court held that the term "pattern" was not unconstitutionally vague.¹¹³ It decided that a pattern required "more than accidental or unrelated instances of proscribed behavior."¹¹⁴ In support of its interpretation, the court referred to Title X of the Organized Crime Control Act of 1970,¹¹⁵ which concerns sentencing for dangerous offenders¹¹⁶ who have committed a "pattern" of certain criminal conduct.¹¹⁷ The title provides that "for purposes of [Title X], criminal conduct forms a pattern if it embraces criminal acts that have . . . similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated."¹¹⁸ The *Stofsky* court reasoned that the Title X definition of "pattern" also applied to Title IX. The court claimed that Congress had similar motives in enacting the two titles, therefore, they should be construed similarly, or *in pari materia*.¹¹⁹

A close examination of the doctrine of *in pari materia*, as it relates to the Organized Crime Control Act of 1970, reveals that the *Stofsky* court was incorrect. The doctrine of *in pari materia* provides that, when the meaning of a statute is ambiguous, it should be construed together with other statutes which relate to the same subject or have the same purpose.¹²⁰

113. *Id.* at 614.

114. *Id.* at 613.

115. 18 U.S.C. § 3575 (1970).

116. Title X sets forth procedures by which a convicted defendant may be sentenced to an increased prison term if he is proven to be a recidivist, professional offender, or conspirator. Also, the prosecution must prove that the defendant is so dangerous that an increased sentence is necessary to protect the public. See McClellan, *supra* note 60, at 146-86; *Organized Crime Control Act*, *supra* note 8, at 628-50.

117. 18 U.S.C. § 3575(e)(2) (1970).

118. *Id.* § 3575(e).

119. 409 F. Supp. at 614. In support of its contention that § 1961 (Title IX) and § 3575 (Title X) should be construed *in pari materia*, the court cited *United States v. Becker*, 461 F.2d 230 (2d Cir. 1972). The *Stofsky* court claimed that *Becker* stood for the principle that statutes enacted together under the Organized Crime Control Act of 1970 should be construed *in pari materia*. 409 F. Supp. at 614. This, however, is not true. In *Becker*, the court construed *in pari materia* § 1511 and § 1955, both of which appear in Title VIII. 461 F.2d at 232. Thus, while *Becker* may well support the argument that statutes within a title should be construed *in pari materia*, it does not stand for the position that different titles under the same omnibus act should be interpreted likewise.

120. See 2A SUTHERLAND, *supra* note 42, § 51.03 at 298. The purpose of the statutes appears to be the most critical factor, rather than the thing or object to which they relate. For example, in *Northern Pacific R.R. Co. v. United States*, 156 F.2d 346 (7th Cir. 1946), *aff'd*, 330 U.S. 248 (1947), the court interpreted the term "war materials" in the Transportation Act of 1940, 49

In determining whether section 1961 in Title IX and section 3575 in Title X should be construed *in pari materia*, one must first decide if the definition of "pattern" in section 1961(5) is ambiguous.¹²¹ The brief provision appears quite clear and can hardly be considered vague. Therefore, one can argue strongly that the doctrine of *in pari materia* should not be applied in this instance.

However, assuming section 1961(5) is ambiguous, sections 1961 and 3575 could properly be construed together only if the two sections had the same purpose.¹²² Title IX prohibits certain racketeering acts that have been committed more than once.¹²³ The purpose of its pattern requirement is to make certain that the statute will not be invoked against defendants who commit an isolated act.¹²⁴ On the other hand, Title X concerns sentencing provisions for dangerous offenders. Its pattern requirement was intended to aid in determining when an offender is sufficiently dangerous to warrant special sentencing.¹²⁵ Thus, Titles IX and X have distinguishable purposes which should prevent application of the doctrine of *in pari materia*.¹²⁶

An additional factor precluding the application of the *in pari materia* doctrine is that the very wording of Title X indicates that it has no bearing on Title IX. The definition of "pattern" in section 3575 begins with the words "for purposes . . . of this subsection."¹²⁷ Unquestionably, Congress did not intend the definition of "pattern" in section 3575 to influence section 1961.¹²⁸ It is difficult to understand why the *Stofsky* court referred to the doctrine of *in pari materia* when these limiting words were present.

U.S.C. § 65(a). The same words were used in other acts such as National Defense Act of 1941, 55 Stat. 655. Although the statutes related to the same thing (war materials), the court did not construe them *in pari materia* because they did not have the same purpose. 156 F.2d at 350. The court also noted that the doctrine is not resorted to when the statute is unambiguous. *Id.*

121. See note 120 and accompanying text *supra*.

122. See note 120 *supra*.

123. 18 U.S.C. § 1961(5) (1970).

124. See S. REP. NO. 617, 91st Cong., 1st Sess. 158, which states:

The concept of "pattern" is essential to the operation of the statute. One isolated "racketeering activity" was thought insufficient to trigger the remedies provided

. . . .

125. See McClellan, *supra* note 60, at 149-54.

126. On the other hand, the *Stofsky* court felt that "the policies which have led Congress to create a separate crime for a pattern of criminal activity are not very different from those which have led it to create increased penalties for a pattern of conduct which is criminal." 409 F. Supp. at 614.

127. 18 U.S.C. § 3575(e) (1970).

128. See generally *Waldron v. Leevale Collieries, Inc.*, 127 W.Va. 443, 33 S.E.2d 227 (1945); 2A SUTHERLAND, *supra* note 43, § 51.03 at 299.

Conversely, at least one court has held that acts of racketeering activity must be somewhat dissimilar before a "pattern" is established. This position was suggested by the district court in *United States v. Moeller*¹²⁹ which stated that "the common sense interpretation of the word 'pattern' implies acts occurring in different criminal episodes . . . that are at least somewhat separated in time and place yet still sufficiently related by purpose to demonstrate a continuity of activity."¹³⁰ The decision referred to a Senate Report which stated that Title IX was not aimed at "sporadic activity."¹³¹

While this theory may comply with "common sense," it appears to lack valid support. There is nothing in the definition of "pattern" which suggests that anything other than two racketeering acts within a ten year period is required to form a pattern.¹³² Furthermore, there is no solid legislative history which indicates that additional requirements should be established.¹³³ The statement found in the Senate Report which diverts Title IX from mere "sporadic activity" is not sufficiently clear to warrant reconstruction of the term "pattern."¹³⁴ If other courts are called upon to interpret the word, they, hopefully, will employ reasoning having a more solid basis than is apparent in the *Moeller* court's remarks.

129. 402 F. Supp. 49 (D. Conn. 1975). This was not the holding of the case, however, since the court felt that the circuit court had previously resolved the issue to the contrary in *United States v. Parness*, 503 F.2d 430 (2d Cir. 1974), cert. denied, 419 U.S. 1105 (1975). In *Parness*, the defendants committed two acts of interstate transportation of stolen money only five days apart. On one of those days, a defendant travelled interstate to a bank to acquire the money. Of these three racketeering acts, it was held that any two were sufficient to create a "pattern" under Title IX. The *Moeller* court observed that, according to *Parness*, two racketeering acts occurring on the same day in relation to the same criminal episode form a "pattern." Thus, the *Moeller* court believed that *Parness* barred a holding which required any degree of separation between the racketeering acts. 402 F. Supp. at 58. In spite of the fact that the judge in *Moeller* did not ultimately hold in accordance with his own beliefs, his discussion merits attention, because other courts could follow his reasoning.

130. 402 F. Supp. at 56.

131. *Id.* at 58, quoting S. REP. NO. 617, 91st Cong., 1st Sess. 158. The court also stated that the canon of lenity in construing penal statutes indicated that a degree of separation should be required between racketeering acts. *Id.* However, this doctrine is generally applied only when doubt is raised regarding the meaning of the statute. See notes 50-52 and accompanying text *supra*. The definition of "pattern" set forth in Title IX is not ambiguous, but is quite succinct. See note 120 and accompanying text *supra*. Thus, there is no need to apply the canon of lenity.

132. See note 120 and accompanying text *supra*.

133. Indeed, much of the published legislative history behind Title IX contains reports of organized crime infiltrating legitimate organizations. See notes 67-79 and accompanying text *supra*. However, there is little that indicates Congress' interpretation of the term "pattern." The records reveal that Congress was extremely concerned with infiltration of legitimate businesses. Congress did not distinguish between infiltration accomplished via a certain "pattern" or through the course of related or unrelated racketeering acts. See generally remarks cited in note 79 *supra*.

134. See S. REP. NO. 617, 91st Cong., 1st Sess. 158.

There appears, therefore, no persuasive reason to infer that the term "pattern," as defined in Title IX, refers to anything more or less than two racketeering acts occurring within a ten year period. The purpose of the "pattern" requirement was to make certain that the rather substantial penalties available under Title IX would not be invoked against one accused of an isolated crime.¹³⁵ Further restrictions on the meaning of "pattern" will hinder already inadequate prosecutions of racketeers.¹³⁶ Had these restrictions been expressed in the statute, the effectiveness of Title IX would have been sharply limited. Failure to prove two racketeering acts were sufficiently related or unrelated would necessitate dismissal. The intended law enforcement benefits of Title IX, such as the forfeiture provision, would be unavailable.

Hence, neither congressional history nor implicit statutory provisions indicate that "pattern" connotes anything other than two acts within a ten year period. The definition of "pattern" set forth in Title IX does nothing more than assure that single, sporadic acts are not punished. Yet, it does not construe a useless impediment to prosecution. Courts should refrain from adopting an overly stringent interpretation of "pattern" which would upset this delicate balance.

B. Requisite Relationship Between Racketeering Acts and the Essential Business Functions

A legitimate business can be perverted by criminal conduct in numerous ways. The tainted act may be closely connected to the business' main functions. For example, a trucking company could employ harassing tactics such as extortion or arson in order to force shippers to transact business with them rather than with competitors. On the other hand, illicit conduct may be distantly related to the concern's essential functions. The trucking company, for example, could manage a gambling operation as a means of partially funding the business. Because of the conceivable variety of illicit conduct, defendants in Title IX cases occasionally have charged that the statute is unconstitutionally vague in that it fails to specify what types of

135. See note 124 *supra*.

136. In 1969, it was estimated that La Cosa Nostra had between 3,000 and 5,000 members. 115 CONG. REC. 34390 (1969) (letter from G. Robert Blakely, chief counsel of Senate Subcommittee on Criminal Laws and Procedures). However, in the period 1960-1969, only 235 federal indictments involving 328 defendants had been returned against alleged members of La Cosa Nostra. *Id.* Furthermore, organized crime members were able to obtain acquittals in 69.7% of the cases. Average offenders, on the other hand, achieve an acquittal rate of only 37.8%. *Id.*

perversion are prohibited.¹³⁷ In particular, this issue has arisen regarding section 1962(c), which prohibits the conduct of an enterprise's affairs through a pattern of racketeering activity.¹³⁸

The clarity of section 1962(c) was attacked in *United States v. Stofsky*.¹³⁹ In that case, the court held that the statute was not vague¹⁴⁰ and noted that "[i]t would be futile for a person to argue that he had no warning or knowledge that his commission of such acts would violate the law."¹⁴¹ Significantly, the court added that Congress intentionally failed to specify a requisite relationship between the racketeering activity and the business itself because "the perversion of legitimate business may take many forms."¹⁴²

A brief review of Title IX's legislative history reveals that the *Stofsky* court correctly appraised Congress' intentions. Congress was concerned with the economic harm caused when criminal infiltration occurs.¹⁴³ This harm can result from many types of perversions of legitimate businesses. In the trucking example above, legitimate firms are placed in positions of competitive disadvantage when a racketeering firm uses harassment to gain customers or engages in illegal gambling operations to supplement its trucking receipts. The ways in which a business can perpetrate illegal acts and cause economic harm are too numerous to have been enumerated in the statute. An attempt to exhaustively define the scope of the statute would inevitably have listed only certain types of corruption, excluding equally harmful variations. Hence, the statute in its present unrestricted form is most effective. Fortunately, courts that have dealt with this issue after *Stofsky* have reasoned similarly.¹⁴⁴ No purpose would be served by requiring that the pattern bear a particular relationship to the central

137. Such allegations, of course, presuppose that certain peripheral forms of perversion may not be within the scope of Title IX. However, it appears that Title IX was not intended to be limited in that manner. See notes 139-141 and accompanying text *infra*.

138. See note 3 *supra*.

139. 409 F. Supp. 609 (S.D. N.Y. 1973).

140. *Id.* at 612.

141. *Id.* The court felt that § 1962 was similar to 21 U.S.C. § 848 (1970), which was upheld against a vagueness attack in *United States v. Manfredi*, 488 F.2d 588 (2d Cir. 1973). 21 U.S.C. § 848 prohibits persons from "engag[ing] in a continuing criminal enterprise" which violates certain laws pertaining to controlled substances. The *Stofsky* court viewed § 1962 as a "business regulatory" statute and noted that the Supreme Court, in *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972), stated that such statutes are allowed "greater leeway." 409 F. Supp. at 612-13. Indeed, the court's interpretation of Title IX as "business regulatory" appears quite sound. See notes 75-78 and accompanying text *supra*.

142. 409 F. Supp. at 613.

143. See notes 75-78 and accompanying text *supra*.

144. See, e.g., *United States v. Scalzitti*, 408 F. Supp. 1014 (W.D. Pa. 1975); *United States v. White*, 386 F. Supp. 882 (E.D. Wis. 1974).

functions of the business and nothing in the statute or its legislative history indicates that this is required.

C. Summary: The Meaning of "Pattern"

In order for criminal acts to constitute a "pattern," Title IX clearly requires only that two racketeering acts be committed within a period of ten years. It is improper to infer from other statutes that the acts must bear some similarity to each other. In addition, the pattern need not bear a certain degree of proximity to the essential functions of the corrupt business. Congress wisely chose to deal with all modes of tainting organizations. There is no reason to assume that only certain types of corruption are prohibited.

ARE DEFENDANTS REQUIRED TO BE MEMBERS OF
"ORGANIZED CRIME?"

A final issue that has arisen in Title IX's brief history is whether its prohibitions apply only to defendants who are members of organized crime. Two cases have dealt with this question and have reached opposite conclusions.

In *Barr v. WUI/TAS, Inc.*,¹⁴⁵ the plaintiff alleged that the defendant, a telephone answering service, had conducted its business through repeated acts of mail fraud. In its civil suit,¹⁴⁶ the plaintiff moved to amend the complaint to include a count under Title IX, alleging that the affairs of the enterprise had been conducted through a "pattern of racketeering activity." The court denied the motion, stating that there was "nothing to suggest that [the] defendant is connected in any way with organized crime."¹⁴⁷ Referring to congressional history, the court noted the continual use of words such as "syndicate" and "Mafia" and reasoned that only members identified with those groups are subject to prosecution under Title IX.¹⁴⁸

In contrast, the court in *United States v. Campanale*¹⁴⁹ held that defendants are not required to be members of organized crime. In that case, the court reasoned that although Congress focused on the activities in which organized crime members commonly engaged,¹⁵⁰

145. 66 F.R.D. 109 (S.D. N.Y. 1975).

146. Civil suits may be brought under § 1964. See note 8 and accompanying text *supra*.

147. 66 F.R.D. at 113.

148. *Id.*

149. 518 F.2d 532 (9th Cir. 1975), *cert. denied sub nom. Matthews v. United States*, 423 U.S. 1050 (1976).

150. *Id.* at 363.

the words of the statute were general and the prohibited acts were unlawful regardless of the identity of the perpetrators.¹⁵¹

The *Campanale* court offered the proper interpretation of Title IX. Admittedly, congressional intent was to combat the activities of organized crime groups such as the "Mafia."¹⁵² However, the only logical way to accomplish this is by concentrating on the types of offenses committed by organized crime members.¹⁵³ To require a showing that the defendant is affiliated with organized crime would unnecessarily burden prosecutions.¹⁵⁴ Furthermore, it would preclude recourse against some instances of economic harm merely because the defendant was not identified with a criminal society. The *Barr* court appears to have misinterpreted Congress's plan. Hopefully, other courts will not.

CONCLUSION

When courts are faced with the necessity of interpreting a recently enacted statute, they often employ various aids to discern the meaning of the legislation. Rules of statutory interpretation assist the courts in construing the language of the statute. Congressional committee reports enable the judiciary to determine Congress' intent in enacting the legislation. Also, the effect of the operation of the statute can indicate what purpose Congress hoped to attain in creating the law.

Unfortunately, several courts have ignored or misused these tools in interpreting Title IX of the Organized Crime Control Act of 1970. As a result, Title IX has been both unjustifiably expanded and unnecessarily restricted in some areas. This situation should warn the legislature and the public that courts have the power, through improper use of statutory construction, to distort the meaning of a statute from that intended by the legislature. Hopefully, further judicial interpretations of Title IX will follow established rules of statutory construction and, as a result, render decisions that coincide with the intent of Congress.

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151. *Id.* at 363-64.

152. See notes 73-76 and accompanying text *supra*.

153. This apparently was Congress' approach. See McClellan, *supra* note 60, at 60-62; Wilson, *The Threat of Organized Crime: Highlighting the Challenging New Frontiers in Criminal Law*, 46 NOTRE DAME LAW. 41, 48 (1970).

154. See note 136 and accompanying text *supra*.