CRIMINAL LAW I

UNITED STATES v. BLEDSOE: RICO—LIMITING THE ENTERPRISE

INTRODUCTION

During the survey period, the Eighth Circuit decided three cases involving an interpretation of the term "enterprise" as it is used in the Racketeer Influenced and Corrupt Organizations (RICO) statute. This article examines the Eighth Circuit's interpretation of the term in United States v. Bledsoe,1 which builds on its previous interpretation in United States v. Anderson2 and the Supreme Court interpretation in United States v. Turkette.3

BACKGROUND

RICO is part of the Organized Crime Control Act of 1970.4 The substantive provisions of RICO are codified at Title 18, section 1962 of the United States Code.5 This section prohibits:

1. 674 F.2d 647 (8th Cir. 1982). The two other Eighth Circuit decisions were Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982) and United States v. Lemm, 680 F.2d 1193 (8th Cir. 1982), cert. denied, 103 S. Ct. 739 (1983). For a synopsis of Bennett and Lemm, see note 83 infra.
5. 18 U.S.C. S 1962 (1976) provides:

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

(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
(a) Investing funds derived from a pattern of racketeering in an enterprise which is engaged in interstate or foreign commerce;

(b) Acquiring or maintaining an enterprise through a pattern of racketeering activity or by collecting an unlawful debt;

(c) Conducting the affairs of an enterprise through a pattern of racketeering activity or collection of an unlawful debt, or

(d) Conspiracy to violate this section.\(^6\)

In *United States v. Anderson*,\(^7\) the Eighth Circuit identified the three elements of the substantive crime created by RICO as: (1) the predicate acts; (2) the pattern of racketeering activity; and (3) the requirement of an enterprise.\(^8\) The predicate acts are enumerated in 18 U.S.C. section 1961(1)\(^9\) and include “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." Predicate acts also include twenty-three federal crimes relating to fraud, counterfeiting, embezzlement, theft, extortion, gambling, narcotics, racketeering, obstruction of law enforcement, and illegal welfare payments. A pattern of racketeering is demonstrated by evidence of the commission of two predicate acts within a period of ten years. The enterprise required by RICO is defined as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. ..." All of these elements are distinct and must be proved in order to convict a defendant for a violation of RICO. A person

ture, importation, receiving, concealing, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States. ...

10. Id.

11. 18 U.S.C. § 1961(5) (1976) provides that " 'pattern of racketeering activity' requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity. ..."

12. Id. at § 1961(4).

13. See United States v. Turkette, 452 U.S. 576, 583 (1981) (The enterprise is an entity. The pattern of racketeering activity is a series of specifically defined criminal acts); United States v. Anderson, 626 F.2d 1358, 1366-67 (8th Cir. 1980) (the enterprise and the pattern of racketeering are the elements of the RICO substantive offenses); United States v. McLaurin, 557 F.2d 1064, 1072-73 (5th Cir. 1977) (the substantive crimes charged under 1962(c) are predicated on the existence of an enterprise), cert. denied, 434 U.S. 1020 (1978); United States v. Parness, 503 F.2d 430, 441 (2d Cir. 1974) (to convict under 1962(b), the prosecution must prove that the interest in the enterprise was acquired through two or more predicate acts), cert. denied 419 U.S. 1105 (1975); United States v. Marcello, 537 F. Supp. 1364, 1385 (E.D. La. 1982) (RICO does not criminalize either associating as an enterprise or engaging in a pattern of racketeering alone; both elements are essential for conviction of violation of a RICO substantive or conspiracy offense), Waterman S.S. Corp. v. Avondale Shipyards, Inc., 527 F. Supp. 256, 259 (E.D. La. 1981) (RICO creates substantive federal offenses making it unlawful to participate in an enterprise whose activities affect interstate commerce through a pattern of racketeering activity). Cf. United States v. Rone, 598 F.2d 564, 568, 571 (9th Cir. 1979) (The statute proscribes the conduct of specified activities regardless of the type of enterprise involved. The court apparently read the enterprise element out of the statute, stating that had the two predicate acts been extortion there may have been a double jeopardy problem), cert. denied, 445 U.S. 946 (1980); United States v. Morris, 532 F.2d 436, 441-42 (5th Cir. 1976) (the prosecutor must prove association with an enterprise and the existence of a pattern of racketeering activity; however, a group of persons associated in fact to defraud people in illegal card games was sufficient for conviction under 1962(c)). Contra United States v. Altese, 542 F.2d 104, 109 (2d Cir. 1976) (Van Graaeiland, J., dissenting) (the majority failed to distinguish between the enterprise and the pattern of activity), cert. denied, 429 U.S. 1039 (1977); United States v. Cappetto, 502 F.2d 1351, 1358 (7th Cir. 1974) (the court read the enterprise element out of the stat-
who violates RICO is subject to a fine of up to $25,000, up to twenty
years imprisonment, or both, and civil forfeiture of any interest ac-
quired or maintained in violation of the statute.\textsuperscript{14}

Section 1962 requires that the defendant be "employed by or
associated with" an enterprise.\textsuperscript{15} These terms have been inter-
preted very broadly by the courts.\textsuperscript{16} The Eighth Circuit has ex-
pressed doubt about the use of an expansive reading of the
terms.\textsuperscript{17} Most litigation concerning the requisite relationship is
based on subsection (c).\textsuperscript{18} A careful reading of section 1962(c)
would indicate that the defendant's relationship to the enterprise
must consist of either employment or association. The terms "di-

\begin{itemize}
\item \textsuperscript{14} 18 U.S.C. § 1963(a) (1976).
\item \textsuperscript{15} Id. at § 1962(c).
\item \textsuperscript{16} See United States v. Dozier, 672 F.2d 531, 544 (5th Cir. 1982) (use of an elec-
tive office to extort funds to be spent on re-election was sufficient relationship be-
between defendant and the enterprise for violation of section 1962(c)), cert. denied, 51
U.S.L.W. 3303 (U.S. Oct. 18, 1982) (No. 82-60); United States v. Phillips, 664 F.2d 971,
1011-12 (5th Cir. 1981) (each defendant may participate in the affairs of the enter-
prise in a different, unrelated way so long as it may be inferred that the activities
promote the affairs of the enterprise), cert. denied, 102 S. Ct. 2963 (1982); United
States v. Forsythe, 560 F.2d 1127, 1136 (3d Cir. 1977) (Violation of RICO is dependent
upon behavior, not status. The term "associated with" is defined as direct or indi-
rect participation in the conduct of an enterprise); United States v. Lavin, 504 F.
Supp. 1356, 1359 (N.D. Ill. 1981) (Defendants not directly employed by the enter-
prise are within the ambit of the statute because they were associated with it by
soliciting and accepting property assessment complaints. The language of the stat-
ute itself inerentially defines "associated with" as "direct or indirect participation
in the conduct of the enterprise"). Cf. United States v. Hartley, 678 F.2d 961, 988
(11th Cir. 1982) (when the defendant is a corporation, the corporation can be the
entity that is charged as well as the enterprise); Van Schaick v. Church of
clearly envisions a relationship between a person or entity and the enterprise as an
element of the offense § 1962(c) proscribes. The defendant cannot be both the asso-
ciated person and the enterprise); Bays v. Hunter Sav. Ass'n, 539 F. Supp. 1020, 1024
(S.D. Ohio 1982) (RICO prohibits any person employed by or associated with an
enterprise from participating in the affairs of the enterprise through a pattern of
racketeering activity. RICO does not hold the enterprise criminally liable).
\item \textsuperscript{17} United States v. Bledsoe, 674 F.2d 647, 661 (8th Cir. 1982) (the court ex-
pressed "grave doubts" as to the propriety of cases applying a "loose conception" of
what it means to be employed by, or associated with, an enterprise and what it
means to conduct or participate in its affairs). See generally Bennett v. Berg, 685
F.2d 1053, 1061 (8th Cir. 1982) (the defendant must be distinct from the enterprise
being conducted through the pattern of racketeering activity under 1962(c)).
\item \textsuperscript{18} See cases cited at note 16 supra. There are some decisions construing the
relationship required by subsections (a) and (b). E.g., United States v. Godoy, 678
F.2d 84, 86-87 (9th Cir. 1982) (the language and legislative history of RICO indicate
that Congress intended "interest in . . . any enterprise," as used in section 1962(a),
to apply to commercial real estate); United States v. Mandel, 415 F. Supp. 997, 1018
(D. Md. 1976) (conviction under section 1962(b) or (c) is dependent on doing the
proscribed acts, not on the status of being a member of organized crime).
\end{itemize}
rectly or indirectly" refer to the conduct of, or participation in, the affairs of the enterprise through a pattern of racketeering activity.

Much litigation has centered around the scope of the term “enterprise.” An enterprise was included as an element of the substantive crime created by RICO to limit application of the statute to those persons and entities Congress intended to affect.\textsuperscript{19} Title IX of the Organized Crime Control Act of 1970 primarily was intended to remove organized crime from legitimate organizations.\textsuperscript{20} Senator McClellan of Arkansas, a sponsor of the Senate version of the Organized Crime Control Act, described organized crime as a “functional concept like ‘white-collar crime,’ serving simply as a shorthand method of referring to a large and varying group of criminal offenses committed in diverse circumstances.”\textsuperscript{21} Although the predicate acts included in the statute are not performed exclusively by members of organized crime, they are offenses which lend themselves to commercial exploitation and are typically engaged in by organized crime syndicates.\textsuperscript{22} If the enterprise element is read out of RICO it becomes nothing more than a recidivist statute\textsuperscript{23} with heightened penalties for the enumerated crimes.\textsuperscript{24} Elimination of the enterprise element would also raise constitutional questions concerning double jeopardy\textsuperscript{25} and federalism.\textsuperscript{26} In


\textsuperscript{21} McClellan, supra note 20, at 61.

\textsuperscript{22} Id. at 142-43.

\textsuperscript{23} See United States v. Bledsoe, 674 F.2d 647, 659 (8th Cir. 1982).

\textsuperscript{24} Id. The maximum penalty under 18 U.S.C. § 1341 (mail fraud) is five years and $1,000 fine. The maximum penalty under 15 U.S.C. § 77x (security fraud) is five years and $10,000 fine. A conviction under RICO for commission of the predicate acts of mail fraud and security fraud has a maximum penalty of 20 years and $25,000 fine, as well as possible forfeitures.

\textsuperscript{25} The fifth amendment declares that no person shall “be subject for the same offense to be twice put in jeopardy of life or limb. . .” U.S. CONST. amend. V. The underlying idea is that the state should not make repeated attempts to convict a person of the same offense because of the embarrassment, expense, and ordeal of continual anxiety and insecurity, plus the possibility that a person may be found guilty even though innocent. Green v. United States, 355 U.S. 184, 187-88 (1957). The provision against double jeopardy consists of three protections: (1) against a second prosecution for the same offense after acquittal; (2) against a second prosecution for the same offense after conviction; and (3) against multiple punishments for the same offense. North Carolina v. Pearce, 395 U.S. 711, 717 (1969).

The test established by the Supreme Court in Blockburger v. United States, 284 U.S. 299 (1932), for determining whether there are two offenses or only one is
order to serve the purpose Congress intended and to avoid constitutional infirmities, the enterprise element must be a meaningful one.

The problem of determining what an enterprise is for purposes of section 1962 results from the failure of section 1961(4) to define an "enterprise." Section 1961(4) provides only an illustrative list of what the term may include, but it is not exhaustive. Courts have attempted to identify enterprises using the statutory definition for guidance. Generally, enterprises may be categorized as public entities, legal entities, and illegal associations. The

"whether each provision requires proof of a fact which the other does not." Id. at 304.

An expansive reading of the enterprise element that renders it redundant with the pattern of racketeering effectively eliminates the enterprise element and may make RICO subject to constitutional attack. Note, Distinguishing the "Enterprise" Issues, supra note 19, at 1368. RICO has withstood many constitutional double jeopardy attacks. Generally, it is upheld because of the requirements of a pattern of activity and an enterprise in addition to the predicate acts. E.g., United States v. Peacock, 654 F.2d 339, 349 (5th Cir. 1981); United States v. Grande, 620 F.2d 1026, 1030 (4th Cir. 1980), cert. denied, 449 U.S. 830, 919 (1981); United States v. Boylan, 620 F.2d 359, 361 (2d Cir. 1980), cert. denied, 449 U.S. 833 (1981).

26. Note, Distinguishing the "Enterprise" Issues, supra note 19, at 1365-68.

27. "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." 18 U.S.C. § 1961(4). See also United States v. Sutton, 605 F.2d 260, 265 (6th Cir. 1979) (the statutory definition is silent regarding what attributes or activities these entities must assume or undertake before they may be deemed an enterprise in any meaningful sense), aff'd in part and vacated in part, 642 F.2d 1001 (1980), cert. denied, 453 U.S. 912 (1981).


29. See United States v. Barber, 668 F.2d 778, 785 (4th Cir. 1982) (the Alcoholic Beverage Control Commission, when conducting its affairs through a pattern of racketeering, was a RICO enterprise), cert. denied, 103 S. Ct. 66 (1982); United States v. Sutherland, 656 F.2d 1181, 1198 (5th Cir. 1981) (municipal court of the city of El Paso is a RICO enterprise), cert. denied, 455 U.S. 949 (1982); United States v. Long, 651 F.2d 239, 241 (4th Cir. 1981) (office of a state senator is an enterprise encompassed by RICO), cert. denied, 454 U.S. 896 (1981); United States v. Lee Stoller Enterprises, Inc., 652 F.2d 1313, 1316-19 (7th Cir. 1981) (use of the term "any" in the statute along with the congressional directive that RICO be "liberally construed" and the broad definition given RICO by the courts lead to the conclusion that the County Sheriff's Department may be a RICO enterprise), cert. denied, 102 S. Ct. 636 (1982); United States v. Dean, 647 F.2d 779, 791 (8th Cir. 1981) (office of a county judge may be a RICO enterprise), reh'g en banc 667 F.2d 729 (8th Cir.), cert. denied, 102 S. Ct. 2296 (1982); United States v. Clark, 646 F.2d 1259, 1264 (8th Cir. 1981) (office of county judge is a public legal entity); United States v. Stratton, 649 F.2d 1066, 1074-75 (5th Cir. 1981) (third judicial circuit of the State of Florida is a RICO enterprise); United States v. Altomare, 625 F.2d 5, 7 (4th Cir. 1980) (county prosecutor's office may be a RICO enterprise); United States v. Baker, 617 F.2d 1060, 1061 (4th Cir. 1980) (the "overwhelming" weight of authority supports the conclusion that the County Sheriff's Department may be a RICO enterprise); United States v. Bacheler, 611 F.2d 443, 450 (3d Cir. 1979) (Philadelphia Traffic Court constituted an enterprise); United States v. Joseph, 526 F. Supp. 504, 507 (E.D. Pa. 1981) (the defendant
only common factor tying these types of enterprises together is that courts have held them to be enterprises under the statute.

Courts have relied extensively on legislative history and precedent to determine the scope of the definition of enterprise. Referring to the “avalanche” of cases construing an enterprise to include government entities, the Sixth Circuit noted that many courts simply cite earlier precedent without further consideration of the issue. This is also generally true with wholly illegal associations. It is difficult to believe that Congress intended to put

who was elected to the office of Clerk of Courts was convicted for being associated with or employed by the office which was the enterprise). Contra United States v. Thompson, 669 F.2d 1143, 1145-48 (6th Cir. 1982) (The court noted the anomoly of applying RICO civil sanctions to public entities which would result in an action for damages against the public official, require forfeiture of office and dissolution of the state government. The court also cited legislative history to support its holding that the public entity may not be a RICO enterprise); United States v. Mandel, 415 F. Supp. 997, 1020-22 (D. Md. 1976) (reading “enterprise” to include public entities does not properly apply the statutory language, produces anomolous results when civil sanctions are invoked and does violence to the intended purposes of Title IX).

The language of § 1961(4) leaves no doubt that corporations, partnerships, or individuals may be RICO enterprises. This issue has seldom been litigated. See, e.g., United States v. Kaye, 556 F.2d 855, 861 (7th Cir. 1977) (a labor union falls within the definition of a RICO enterprise), cert. denied, 434 U.S. 921 (1977); United States v. Parness, 503 F.2d 430, 439 (2d Cir. 1974) (a foreign corporation acquired through a pattern of racketeering is a RICO enterprise for purposes of section 1962(b)), cert. denied, 419 U.S. 1105 (1975).

See United States v. DeRosa, 670 F.2d 889, 895-96 (9th Cir. 1982) (a lengthy association among defendants who tried to arrange narcotics transactions for a percentage of the resulting payments is an illegal association encompassed by RICO); United States v. Thevis, 665 F.2d 616, 625-26 (5th Cir. 1982) (a group of individuals associated with various organizations may be a RICO enterprise), cert. denied, 102 S. Ct. 2300 (1982); United States v. Clemente, 640 F.2d 1069, 1074 (1st Cir. 1981) (a highly organized entity which infiltrated waterfront labor, ship servicing, and shipping is a RICO enterprise), cert. denied, 102 S. Ct. 102 (1982); United States v. Provenzano, 620 F.2d 985, 992 (3d Cir. 1980) (an organization which infiltrated legitimate carriers and extorted money in return for “labor peace” is a RICO enterprise), cert. denied, 449 U.S. 899 (1980); United States v. Aleman, 609 F.2d 298, 303-06 (7th Cir. 1979) (three burglaries committed by the same defendant satisfied the requirement of a RICO enterprise); United States v. Thompson, 669 F.2d 1143, 1149 (6th Cir. 1982) (persons associated together who committed three murders and two acts of extortion are a RICO enterprise); United States v. Elliott, 571 F.2d 880, 884, 899-900, (5th Cir. 1978) (a group of persons informally associated for the purpose of profiting from criminal activity is a RICO enterprise), cert. denied 439 U.S. 953 (1978); United States v. McLaurin, 557 F.2d 1064, 1073 (5th Cir. 1977) (an organized prostitution ring is a RICO enterprise), cert. denied, 434 U.S. 1020 (1978); United States v. Altese, 542 F.2d 104, 109 (2d Cir. 1976) (majority read the enterprise element out of the statute by holding that a gambling operation, whose sole reason for being was the carrying on of criminal conduct, was a RICO enterprise) (Van Graafeiland, J., dissenting), cert. denied, 429 U.S. 1039 (1977); United States v. Morris, 532 F.2d 436, 442 (5th Cir. 1976) (a group of individuals associated in fact for the purpose of defrauding others in illegal card games is a RICO enterprise).

See cases cited at notes 29-31 supra.

United States v. Thompson, 669 F.2d 1143, 1149 (6th Cir. 1982).

See cases cited at note 31 supra.
defendants who committed three burglaries\textsuperscript{35} in the same category as defendants who operated a complex waterfront extortion operation.\textsuperscript{36} More evidence of the inadequacy of the statutory definition is found in the Sixth Circuit's adoption of a position concerning public entities which is directly contrary to the position adopted by other circuits which have decided the issue.\textsuperscript{37}

Generally, courts have failed to articulate a working definition of the elements necessary to constitute a RICO enterprise.\textsuperscript{38} However, an early case which defined the elements of an enterprise was \textit{United States v. Forsythe}.\textsuperscript{39} The district court defined an enterprise as: "[A] separate and independent unit in the marketplace, discerned operationally through its behavior or functioning, regardless of its legal or proprietary structure."\textsuperscript{40} The court did not develop a rationale for this definition, stating only that "[t]his is shown by the definition in Section 1961(4) . . ."\textsuperscript{41}

The question was partially addressed prior to \textit{Forsythe} by two district courts.\textsuperscript{42} A Connecticut federal district court read a continuity requirement into the enterprise definition, holding that a venture designed to accomplish one specific criminal episode was not a RICO enterprise.\textsuperscript{43} An interpretation without the continuity requirement would be an extraordinary extension of federal criminal authority and would not be in accord with the express intent of Title IX.\textsuperscript{44} A continuity requirement was also read into the definition of a RICO enterprise by a Pennsylvania federal district court.\textsuperscript{45} The court required a continuity element only to the extent necessary to establish a pattern of racketeering, which makes it questionable whether this was a meaningful addition to the interpretation of the statute.\textsuperscript{46} There was no requirement of "any particular structure or badge of recognizability, other than that the

\textsuperscript{35} United States v. Aleman, 609 F.2d 298, 303-06 (7th Cir. 1979).
\textsuperscript{36} United States v. Clemente, 640 F.2d 1069, 1081 (2d Cir. 1981).
\textsuperscript{37} See cases cited at note 29 supra.
\textsuperscript{38} See notes 29-31 supra. The problem is that courts have determined what falls within and without the statutory definition based on statements of congressional intent and precedent without explaining why the entity is or is not within the definition.
\textsuperscript{39} United States v. Forsythe, 429 F. Supp. 715 (W.D. Pa. 1977), rev'd, 560 F.2d 1127, 1131 (3d Cir. 1977) (concluding that the district court misinterpreted the requisite relationship of the defendants to the enterprise).
\textsuperscript{40} 429 F. Supp. at 721.
\textsuperscript{41} Id.
\textsuperscript{43} 402 F. Supp. at 60.
\textsuperscript{44} Id.
\textsuperscript{45} 434 F. Supp. at 192-93.
\textsuperscript{46} Id.
individuals be associated in fact." 47

The Fifth Circuit, following the definitional style of section 1961(4), has held that the definition includes 
"any . . . group of individuals' whose association, however loose or informal, fur
nishes a vehicle for the commission of two or more predicate crimes." 48 This interpretation of the enterprise element is nothing more than a duplication of the interpretation of the pattern of racketeering activity. 49 As a result, the Fifth Circuit has "transform[ed] the statute into a simple proscription against patterns of racketeering activity." 50

The Sixth Circuit, in a panel decision, formulated an extensive, well reasoned discussion of the elements of a RICO enterprise. 51 The court recognized that the statutory definition is silent regarding the attributes or activities which the association must undertake or assume before it may be deemed an enterprise. 52 Although the court sitting en banc vacated the decision, the panel demonstrated great insight when it stated:

In order to extend the statute to illicit enterprises of some description, and yet preserve some content for the "enterprise" element, we would be required to engraft upon the definition of "enterprise" contained in Section 1961(4) some set of standards that would serve to warn any person or group engaged in racketeering activity when they will be deemed to have embarked upon an "enterprise" to that end. 53

United States v. Turkette: The Supreme Court Defines a RICO Enterprise

Prior to 1980, most circuit courts which had addressed the issue of what constitutes an enterprise had determined that the term included both legitimate and wholly illegitimate entities. 54

47. Id.
50. 605 F.2d at 265.
51. Id. at 264-70.
52. Id. at 265.
53. Id. at 269.
The basis for these decisions included the indication in legislative history that RICO be broadly construed, the frequent use of the term “any” in the statute, and the fact that Congress would have expressly limited application of the statute to legitimate entities if it had intended that result. However, in United States v. Turkette, the First Circuit held that the statute applied only to legitimate entities to avoid internal inconsistency and to prevent the terms “enterprise” and “pattern of racketeering” from becoming redundant. The court supported its interpretation by applying a canon of statutory construction, *ejusdem generis*, to the RICO enterprise definition and by reference to the legislative history which concerned only infiltration of legitimate business.

On appeal, the Supreme Court reversed the First Circuit’s decision and held that “enterprise” encompasses both legitimate and wholly illegitimate entities. In Turkette, the indictment described the enterprise as:

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


*Ejusdem generis* is defined as follows:

Of the same kind, class, or nature. In the construction of laws, wills, and other instruments, the “ejusdem generis rule” is, that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned. . . . The rule, however, does not necessarily require that the general provision be limited in its scope to the identical things specifically named. Nor does it apply when the context manifests a contrary intention.

Under “ejusdem generis” canon of statutory construction, where general words follow the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general class as those enumerated.

*BLACK'S LAW DICTIONARY* 464 (5th ed. 1979).


56. 632 F.2d 896 (1st Cir. 1980).

57. *Id.* at 898-900. For a synopsis of the First Circuit’s decision, see Comment, supra note 55.

58. *Ejusdem generis* is defined as follows:

59. 632 F.2d at 898-900.


61. *Id.* at 579.
1962(d) and eight other substantive crimes, including possession with intent to distribute and distribution of controlled substances and several counts of insurance fraud by arson and other means.\textsuperscript{62} The defendant was convicted on all counts and was sentenced to a term of twenty years for the substantive crimes and to a concurrent twenty year term for the RICO crime.\textsuperscript{63} In addition, a $20,000 fine was imposed, as well as a special two year parole period for the drug charge.\textsuperscript{64} On appeal, the defendant argued that RICO was intended solely to protect legitimate business enterprises from infiltration by racketeers.\textsuperscript{65} The defendant asserted that RICO did not criminalize participation in an association which performed only illegal acts and which had not infiltrated or attempted to infiltrate a legitimate enterprise.\textsuperscript{66}

The Supreme Court held that the definition of a RICO enterprise describes two categories of associations.\textsuperscript{67} The first includes organizations such as partnerships and corporations, which are legal entities.\textsuperscript{68} The second category includes any union or group of individuals who are associated but are not a legal entity.\textsuperscript{69} The Court perceived no uncertainty in the section 1961(4) definition, which therefore made the application of the rule of \textit{ejusdem generis} improper.\textsuperscript{70} It noted that, on its face, the definition did not restrict the type of organizations embraced, and if Congress intended to limit the scope of RICO, it could have inserted the limiting term "legitimate."\textsuperscript{71}

The Court disagreed with the First Circuit's observation that application of the statutory proscriptions to wholly illegal entities would create internal inconsistencies.\textsuperscript{72} The circuit court's conclusion was based on a faulty premise since, as the Court held, the government must prove the existence of \textit{both} an enterprise and \textit{a} pattern of racketeering activity.\textsuperscript{73} Proof of the enterprise is provided by evidence of "an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit."\textsuperscript{74} Proof of the pattern of racketeering is provided by "ev-

\textsuperscript{62} Id. at 578-79.  
\textsuperscript{63} Id. at 579.  
\textsuperscript{64} Id.  
\textsuperscript{65} Id. at 579-80.  
\textsuperscript{66} Id. at 580.  
\textsuperscript{67} Id. at 581-82.  
\textsuperscript{68} Id. at 581.  
\textsuperscript{69} Id. at 581-82.  
\textsuperscript{70} Id. at 582.  
\textsuperscript{71} Id. at 580-81.  
\textsuperscript{72} Id. at 582.  
\textsuperscript{73} Id. at 583.  
\textsuperscript{74} Id.
idence of the requisite number of acts of racketeering committed by participants in the enterprise.\textsuperscript{75}

The Supreme Court supported its interpretation of the statute by examining its purpose and legislative history.\textsuperscript{76} It noted that the language and legislative history indicate Congress' intent to enter a new domain of federal criminal prosecution of organized crime.\textsuperscript{77} Limiting the scope of the statute to insulate wholly criminal enterprises from prosecution would be an absurd and incongruous result.\textsuperscript{78}

United States v. Bledsoe: The Eighth Circuit Defines the Scope of a RICO Enterprise

The Eighth Circuit, prior to Turkette, defined the scope of a RICO enterprise without resorting to the legitimate/illegitimate distinction. In United States v. Anderson,\textsuperscript{79} the court required evidence of a discrete economic association existing separately from the racketeering activity.\textsuperscript{80} This conclusion was reached by examining the legislative history of RICO, applying canons of statutory construction, and considering the congressional purpose indicated by the act as a whole.\textsuperscript{81} The court noted that broad construction of the term "enterprise" would render that element of the substantive offense meaningless and would raise problems of double jeopardy and federalism.\textsuperscript{82}

Subsequent to the Supreme Court decision in Turkette, the Eighth Circuit decided three cases in which the defendants were charged with violations of RICO,\textsuperscript{83} the first of which was United

\begin{itemize}
\item \textsuperscript{75} Id.
\item \textsuperscript{76} Id. at 585-93.
\item \textsuperscript{77} Id. at 586-87.
\item \textsuperscript{78} Id. at 587.
\item \textsuperscript{79} United States v. Anderson, 626 F.2d 1358 (8th Cir. 1980), cert. denied, 450 U.S. 912 (1981).
\item \textsuperscript{80} 626 F.2d at 1372.
\item \textsuperscript{81} Id. at 1365-72. For a synopsis of the Eighth Circuit's decision, see Comment, supra note 55, at 128-31.
\item \textsuperscript{82} 626 F.2d at 1366-72.
\item \textsuperscript{83} Bennett v. Berg, 685 F.2d 1053 (8th Cir. 1982). Bennett was an appeal from a dismissal for failure to state a claim. Id. at 1055-56. The action was brought by private plaintiffs in the United States District Court for the Western District of Missouri against John Knox Village, an incorporated retirement village, and the promoters of the village. Id. at 1053, 1056-57. The residents of the village alleged that the retirement community had been subject to financial mismanagement and self dealing such that they were in danger of losing the lifetime care they were promised. Id. at 1057. The district court dismissed the complaint because it failed to allege an identifiable enterprise and because the equitable relief sought by appellants was not available to private plaintiffs. Id. The Eighth Circuit reversed in part and affirmed in part, basing its decision only on the pleadings construed most favorably for the Appellants. Id. at 1057-58. The court reversed the dismissal on the
States v. Bledsoe. Bledsoe is significant because it clarified the requisite elements of a RICO enterprise for the Eighth Circuit.

FACTS AND HOLDING

The five defendants in Bledsoe, Phillips, Cloninger, Bledsoe, Moffitt, and Stafford, appealed their convictions in the United States District Court for the Western District of Missouri. The predicate acts under the RICO charge involved fraudulent sales of securities of agricultural cooperatives. In May 1972, Phillips incorporated Progressive Investors (PI) to sell a security called an

charge which named the promoters of the village as defendants. Id. at 1060-61. The court had no problems finding the corporation, a legal entity, to have a discrete existence apart from the pattern of racketeering, stating that “[l]egal entities are garden-variety ‘enterprises’ which generally pose no problem of separateness from the predicate acts.” Id. at 1060. The court affirmed the dismissal of the count which named the corporation as the defendant because if the corporation was responsible for conducting the affairs of the enterprise through a pattern of racketeering activity the residential community would have to be the enterprise. Id. at 1061-62. Since this allegation was not made, the complaint did not state a claim. Id. at 1061-62. The court did not reach the issue of whether equitable remedies were available to private plaintiffs. Id. at 1064.

In United States v. Lemm, 680 F.2d 1193 (8th Cir. 1982), cert. denied, 103 S. Ct. 739 (1983), the appellants were convicted in the United States District Court for the District of Nebraska of conspiracy to violate RICO and one count each of mail fraud. Id. at 1196. The three appellants were part of an arson ring which operated from April 1, 1975 to September 1, 1978 and set 17 fires in five states. Id. at 1196-97. The government's chief witness, Eugene Gamst, was a public insurance adjuster and the center of the arson ring. Id. at 1197. Gamst, or a coconspirator, would recruit a person to start a fire, give instructions, and then Gamst would adjust the loss of an accidental fire. Id. The appellants participated in the scheme in various ways by providing money to purchase property, locating property for burning, providing property to be burned, preparing and torching property, and recruiting others to assist. Id. The conspirators profited by collecting insurance proceeds and occasionally Gamst would repair fire damage in order to obtain insurance proceeds. Id. at 1197-1199.

On appeal, the appellants claimed that a RICO enterprise was not alleged or proved. Id. at 1197. The Eighth Circuit affirmed the district court conviction. Id. at 1196. The court required proof of three basic characteristics to show a RICO enterprise: (1) common or shared purpose; (2) some continuity of structure and personnel; and (3) an ascertainable structure distinct from that inherent in the conduct of a pattern of racketeering. Id. at 1198. The common purpose was demonstrated by proof of the shared purpose of setting arson fires to defraud one or more insurance companies. Id. at 1198. Continuity of structure was shown by the unchanging pattern of roles necessary to perpetrate each arson fire. Id. In each instance, someone recruited personnel, purchased equipment, arranged acquisition of property to be burned, and set the fire. Id. The continuity of personnel was not complete; however, the appellants' ongoing ties with Gamst and with lesser operatives were sufficient to satisfy this requirement. Id. at 1199-1200. The final requirement of a distinct, ascertainable structure was satisfied by evidence of an ongoing structure which engaged in legitimate purchases and repairs of property, as well as arson. Id. at 1201. See also United States v. Bledsoe, 674 F.2d 647 (8th Cir. 1982).

84. 674 F.2d 647 (8th Cir. 1982).
85. Id. at 647.
Estate Builder. Income from the sales was diverted to Phillips through a number of personal corporations. Moffitt was engaged in the sale of PI securities. In October 1972, Phillips and Gibson formed UFA-Mo., which also sold Estate Builder securities. Moffitt was a salesman for UFA-Mo. After six months, Phillips and Gibson had a misunderstanding, and Phillips left to form PFA. Cloninger, Bledsoe, Stafford, and Moffitt all participated in the sale of PFA Estate Builders. PFA did have some legitimate business operations, but none proved to be profitable.

In 1975, Gibson and Moffitt were involved in formation of UFA-Ok. Phillips and Gibson had a secret agreement to share Gibson's one third interest. Stafford sold UFA-Ok. Estate Builders. Cloninger and Phillip participated in one meeting of the UFA-Ok. officers. Gibson also participated in the formation of CFA, an Arkansas cooperative, and agreed to share his profit with Phillips. Moffitt sold CFA Estate Builders. The final cooperative formed was PFA-FMA, and Bledsoe became its president in 1976. Substantial shares of PFA-FMA stock were held by Bledsoe, Cloninger, Stafford, and Phillips.

The United States obtained indictments against twenty-two defendants who were charged with conspiracy to violate RICO and with participation in the affairs of an enterprise through a pattern of racketeering. For various reasons, only Bledsoe, Moffitt, Cloninger, Stafford and Phillips remained as defendants when the case was submitted to the jury. The predicate acts were mail fraud and securities fraud in the sale of the securities by the agricultural cooperatives. The enterprise alleged in the indictment was "a group of individuals associated in fact to offer and sell securities of corporations organized as agricultural cooperatives in order to obtain money and property for fraudulent means from residents of the states of Missouri, Oklahoma and Arkansas. . ." Phillips was also charged with fraudulently selling securities of PI, evading

86. Id. at 652. The Estate Builder was an unsecured annuity contract in which Progressive Investors agreed to make a lump sum payment to an investor after a period of years provided the investor made certain installment payments.
87. Gibson was an unindicted coconspirator and the government's principal witness. Id.
88. Id. at 665.
89. Id. at 666.
90. Id. at 663.
91. Id.
92. Id. at 651.
93. Id. at 652.
94. Id. at 659.
95. Id.
personal income taxes, and failing to file corporate tax returns. All five defendants were charged with fraudulently selling PFA securities. Phillips, Cloninger, and Bledsoe were charged with devising a scheme to defraud in the sale of PFA securities.

The Eighth Circuit held that there was no continuing unit functioning with a common purpose. The only continuity between UFA-Mo. and PFA was Phillips' participation in both, but there was no common purpose because Phillips operated PFA independently. There was evidence of a shared purpose among the five defendants in the operation of PFA. However, Moffitt and Stafford were not part of the association which existed separate from PFA. There was no evidence of a single enterprise which operated UFA-Ok., CFA, UFA-Mo., and PFA and which existed apart from the individual cooperatives. The associations were characterized as "loose and discontinuous patterns of associations" which were insufficient to support a RICO conviction. Judge Ross dissented, arguing that the requirement set forth in United States v. Turkette had been satisfied.

ANALYSIS

In Bledsoe, the Eighth Circuit held that three elements must be proved to show the existence of a RICO enterprise: (1) there must be a common or shared purpose which animates those associated with it; (2) the enterprise must function as a continuing unit; and (3) the enterprise must have an ascertainable structure distinct from that inherent in the conduct of a pattern of racketeering.

The court based its interpretation of the enterprise element on the premise that Congress' intent was to eliminate the infiltration of legitimate business by organized crime. However, this did not limit its application to legitimate entities. The court explained that, since it would be nearly impossible to require direct proof of involvement in organized crime, Congress employed a per se ap-
proach.\(^\text{107}\) Under this approach, activities characteristic of organized crime are prosecuted.\(^\text{108}\)

The court recognized that any two criminal acts will necessarily be surrounded by some degree of organization.\(^\text{109}\) Two individuals would never perpetrate a crime jointly without some degree of association apart from that involved in the commission of the crime itself.\(^\text{110}\) The inclusion of the enterprise element must require proof of a structure separate from the racketeering activity and distinct from the organization which is a necessary incident to the racketeering.\(^\text{111}\) Otherwise, the statute simply punishes the commission of two of the crimes specified in the statute within a ten year period.\(^\text{112}\)

The severe penalties authorized by RICO indicate that the statute is aimed at participation consisting of more than conspiracies to perpetrate the predicate acts of racketeering.\(^\text{113}\) The court also noted that if the RICO enterprise is not given meaning, the statute would become a recidivist statute.\(^\text{114}\) Congress clearly did not intend this result because Title X of the Organized Crime Control Act, codified at 18 U.S.C. section 3575, explicitly provides for repeat offenders.\(^\text{115}\) Finally, this interpretation avoids the joinder problem of "guilt by association." By requiring that the enterprise have certain identifiable characteristics, those who choose to associate with such an enterprise will be on notice that they are dealing with an entity which is involved in a variety of criminal activities, and it would therefore be just to try such individuals with other members where evidence of all such crimes will be introduced.\(^\text{116}\)

The court, citing Turkette, incorporated the requirement of continuity of personnel and structure.\(^\text{117}\) The requirement that the enterprise have an ascertainable structure distinct from that inherent in the conduct of a pattern of racketeering was originally formulated by the Eighth Circuit in Anderson.\(^\text{118}\) In Anderson, the

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107. Id. at 663.
108. Id.
109. Id. at 664.
110. Id.
111. Id.
112. Id.
113. Id.
114. Id.
115. Id.
116. Id.
117. Id. at 665.
118. 626 F.2d at 1372. In Anderson, the court held that:
a group of individuals associated in fact although not a legal entity, "as used in its definition of the term "enterprise"... [encompassed] only an
court stated that the structural interrelationship of the statutory elements mandates this result to carry out congressional intent.119

It is apparent from Bledsoe and Anderson that the Eighth Circuit interprets congressional intent as mandating a strict reading of the enterprise element. This interpretation is necessary to effectuate RICO's intended purpose. The Eighth Circuit supported its interpretation by examining the purposes which the enterprise element was not intended to serve.120 The enterprise element was not designed to punish the mere commission of two specified crimes in a ten year period.121 Nor was it designed to create a new federal conspiracy law.122 Furthermore, the statute is not a recidivist statute.123 Finally, the statute was not designed to assign guilt based on association with an entity.124 Apparently, this negative approach was necessitated by the absence of any guidance in the legislative history or the statute itself.

The Eighth Circuit's recent decisions strive to fulfill congressional intent by limiting the scope of RICO. In Bledsoe, the court stated that each element of the crime is designed to limit applicability of the statute and separate individuals engaged in organized crime from ordinary criminals.125 This decision is consistent with the court's prior ruling in Anderson, which held that the enterprise element served as a limit on RICO prohibitions, thus preventing the statute from reaching sporadic criminal activity.126 The fact that the court required a showing of three characteristics to prove an enterprise, as the statute defines the term, indicates an intention strictly to construe the term—especially since the court believes that RICO is a carefully crafted piece of legislation in which the various elements intricately interrelate.127

The Eighth Circuit's limitation on the scope of RICO, established by its strict interpretation of the enterprise element, is probably the most restrictive application of the statute by any circuit

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association having an ascertainable structure which exists for the purpose of maintaining operations directed toward an economic goal that has an existence that can be defined apart from the commission of the predicate acts constituting the "pattern of racketeering activity."

Id. 119. Id. at 1365.
120. 674 F.2d at 659-65.
121. Id. at 664.
122. Id. at 660-61.
123. Id. at 664.
124. Id. at 664-65.
125. Id. at 663.
126. Id. at 1365.
127. Id. at 1367.
court to date. Prior to Bledsoe, the only characteristic a RICO enterprise was expressly required to embody was continuity.

The continuity requirement set forth in Turkette requires "evidence of an ongoing organization, formal or informal, and . . . evidence that the various associates function as a continuing unit." The Supreme Court did not distinguish between "associates functioning as a continuing unit" and an "ongoing organization." In Bledsoe, the Eighth Circuit indicated that the language "ongoing organization" and "associates functioning as a continuing unit" referred to continuity of structure and continuity of personnel respectively.

Although the Supreme Court does require that the government prove the existence of an enterprise and the connected pattern of racketeering, and it identifies the enterprise as a group of persons associated together for a common purpose, it does not expressly require that every individual associated with the enterprise have a common purpose or that the enterprise must have an ascertainable structure distinct from that inherent in a pattern of racketeering activity. Apparently, the Supreme Court did not intend to limit the scope of RICO to any great extent. The only limit placed on its scope was that the government must prove an enterprise separate from a connected pattern of racketeering. The existence of an enterprise is shown by continuity. However, this requirement is qualified by the admission that, in some instances, proof of the enterprise and the connected pattern of racketeering may coalesce. It appears that the Supreme Court may be willing to adopt a very broad reading of the RICO prohibitions and may not be willing to accept the limitations placed on

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128. The First Circuit decision, which was reversed by the Supreme Court in United States v. Turkette, possibly was more restrictive than the Eighth Circuit position. See text at notes 55-57 supra.
129. See text at notes 38-47 supra. The definition given in Forsythe is not particularly meaningful because it is not supported or explained.
130. 452 U.S. at 583.
131. Id.
132. 674 F.2d at 665.
133. 452 U.S. at 583.
134. Id.
135. Id. at 580-93.
136. Id. at 583.
137. Id.
138. Id.
139. The Supreme Court stated:
If Congress had intended the more circumscribed approach espoused by the Court of Appeals, there would have been some positive sign that the law was not to reach organized criminal activities that give rise to the concerns about infiltration. The language of the statute, however,—the most
CONCLUSION

There is no legislative history or explanatory statutory language addressing the characteristics of a RICO enterprise. Both the Supreme Court and the Eighth Circuit relied on the express congressional purpose—attacking organized crime—as the basic premise from which to begin their interpretations of the elements of an enterprise. The interpretation of the statute formulated by the Eighth Circuit appears to achieve more fully the goal set by Congress. Use of the continuity requirement alone would allow prosecution of persons associated together for the purpose of committing a series of crimes which are predicate acts. There is no reason why state law could not be employed to prosecute these persons. Furthermore, there is no reason to apply the heightened penalties of RICO to “ordinary criminals” when the statute is directed at organized crime. The three requirements formulated by the Bledsoe court limit RICO’s application to entities that are truly “criminal organizations.” This interpretation may eliminate some prosecutions which Congress never intended RICO to encompass. In addition, this interpretation may serve to warn individuals when their association has developed into a RICO enterprise.

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reliable evidence of its intent—reveals that Congress opted for a far broader definition of the word “enterprise,” and we are unconvinced by anything in the legislative history that this definition should be given less than its full effect.

Id. at 593.

140. Id. at 588-93. See also 674 F.2d at 662.