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THE MEANING OF PATTERN IN RICO

DONALD J. MORAN*

In Sedima S.P.R.L. v. Imrex Co.,¹ the Supreme Court rejected two judicially created restrictions² that would have nullified the civil provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO").³ Sedima has been generally viewed as signalling the Court's disapproval of judicially fashioned limitations on civil RICO, and as establishing the basis for broad construction of the statute in accord with its remedial purposes. This view is inaccurate. Noting in Sedima that the "extraordinary" uses to which civil RICO has been put is attributable to "the failure of Congress and the courts to develop a meaningful concept of 'pattern'",⁴ the Court invited district and appellate courts to formulate such a concept. In so doing, however, the Court has provided no clear and consistent guidelines, thus leaving hostile judges free to fashion new limitations on civil RICO now that the old ones have been rejected.

At least one district court has enthusiastically accepted the Supreme Court's invitation. In Northern Trust Bank/O'Hare v. Inryco, Inc.,⁵ a district judge for the Northern District of Illinois held that two mailings made in connection with a single construction contract kickback scheme failed to establish the requisite pattern of racketeering activity.⁶ Stating

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2. These restrictions, which were borne of a pervasive judicial hostility to the scope of the statute, required a prior criminal conviction and a racketeering-type injury before a civil RICO action could be maintained. For a thorough discussion of the manifestation of judicial hostility to civil RICO, see Moran, Pleading a Civil Rico Action Under Section 1962(c): Conflicting Precedent and the Practitioner's Dilemma, 57 Temp. L.Q. 731 (1984).
4. "Pattern of racketeering activity" is the operative phrase used in RICO. Such a pattern "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [October 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." 18 U.S.C. § 1961(5) (1982).
6. Id. at 833. In dictum, the court observed that even if three additional kickback payments involved use of the mails, this would still implement the same fraudulent scheme as the first two mailings. Id. The court noted that because a single scheme does not establish a pattern, amending the complaint by alleging these additional kickbacks would still fail to overcome the insufficiency of the RICO complaint. Id. On the authority of Inryco, the court also dismissed a civil RICO com-
that *Sedima* "creates a whole new ballgame," the court found that a pattern requires "repeated criminal activity, not merely repeated acts to carry out the same criminal activity." Based upon its reading of *Sedima*, the court declined to follow well-established Seventh Circuit precedent, which holds that acts conducted in furtherance of a single criminal activity or scheme are sufficient to satisfy the "pattern" requirement.

This article will reexamine the pattern requirement in light of *Sedima*. It will propose a meaning to be applied by the courts that comports with RICO's text, its underlying policies, and the Congressional mandate that the statute be liberally construed to achieve its remedial purposes.

I. THE STATUTE

A. Operative Terms of RICO

The key terms in RICO are "person", "enterprise" and "pattern of racketeering activity." In essence, RICO prohibits a person from investing, acquiring an interest or participating in an enterprise through a pattern of racketeering activity.

A "person" is defined as "any individual or entity capable of holding a legal or beneficial interest in property." A person would therefore include individuals, corporations, associations and partnerships. An "enterprise" is defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals

plaint in Morgan v. Bank of Waukegan, 615 F. Supp. 836 (N.D. Ill. 1985), finding there was no repeated criminal activity sufficient to form a pattern. *Id.* at 837-38.

8. *Id.* at 831.
9. *Id.* at 833.
10. *United States v. Starnes*, 644 F.2d 673, 678 (7th Cir.), *cert. den.* 454 U.S. 826 (1981); *United States v. Weatherspoon*, 581 F.2d 595, 601-02 (7th Cir. 1978). Other circuits have similarly construed the pattern requirement. *See United States v. Watchmaker*, 761 F.2d 1459, 1475 (11th Cir. 1985) (shooting of three policemen at clubhouse constituted three predicate acts sufficient for RICO violation); *United States v. Phillips*, 664 F.2d 971, 1038 (5th Cir. 1981) (predicate acts necessary for finding a pattern of racketeering must be two separate crimes but need not be in the context of independent schemes or objectives); *United States v. Parness*, 503 F.2d 430, 441-42 (2d Cir. 1974) (two acts of interstate transportation of stolen property sufficient to constitute a pattern of racketeering). Moreover, in a decision handed down after both *Sedima* and *Inryco*, the Seventh Circuit has reaffirmed its holding that separate mailings in furtherance of a single scheme to defraud are sufficient to constitute a pattern of racketeering activity under RICO. *Ill. Dept. of Revenue v. Phillips*, 771 F.2d 312, 313 (7th Cir. 1985); *see also Ray v. Karris*, 780 F.2d 636, 644-45 (7th Cir. 1985) (in reversing trial court's dismissal of RICO action and allowing plaintiffs to replead, court of appeals suggests that single fraudulent scheme can constitute pattern of racketeering activity.)

associated in fact although not a legal entity." Thus, an enterprise would include both legal entities and *de facto* associations of persons.

Unlike person and enterprise, "pattern of racketeering activity" is not so neatly described. The statute speaks in terms of the minimum, but not necessarily the sufficient, standards to establish a "pattern." The statute states that a pattern of racketeering activity "requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [October 15, 1970] and the last of which occurred within two years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity." Racketeering activity is defined as a specific "act" or "offense" which is chargeable or indictable under certain state or federal laws. The word "pattern" is not separately defined.

The substantive prohibitions of RICO are found in section 1962. Section 1962(a) makes it unlawful for any person to use or invest any income derived from a pattern of racketeering activity in acquiring, establishing or operating any enterprise. Section 1962(b) prohibits any person from acquiring or maintaining any interest or control of any enterprise through a pattern of racketeering activity. The most widely invoked provision, section 1962(c), prohibits any person employed by or

12. *Id.* § 1961(4).

13. An enterprise has been held to include legitimate business entities, United States *v.* Hartley, 678 F.2d 961, 989-90 (11th Cir. 1982); labor unions, United States *v.* Scotto, 641 F.2d 47, 52 (2d Cir. 1980), *cert. denied*, 452 U.S. 961 (1981); state civil courts, United States *v.* Angelilli, 660 F.2d 23 (2d Cir. 1981); sole proprietorships, McCullough *v.* Suter, 757 F.2d 142, 143-44 (7th Cir. 1985); groups of individuals and corporations associated in fact, United States *v.* Aimone, 715 F.2d 822, 828 (3d Cir. 1983); and law firms, United States *v.* Jannotti, 729 F.2d 213, 226 (3d Cir. 1984).


15. *Id.* § 1961(1).

16. 18 U.S.C. § 1962(a) reads as follows:

(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 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 of more directors of the issuer.

17. 18 U.S.C. § 1962(b) reads as follows:

(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.
associated with any enterprise from conducting or participating in the enterprise's affairs through a pattern of racketeering activity.\(^\text{18}\) Section 1962(d) prohibits any person from conspiring to violate any of these three substantive provisions.\(^\text{19}\) RICO, then, does not prohibit merely the commission of a pattern of racketeering activity, but, rather, the commission of such a pattern in connection with an enterprise.

If any person is injured in his business or property as a result of this conduct, RICO provides a remedy in the form of a civil cause of action for treble damages and attorneys' fees.\(^\text{20}\) This private right of action is independent of any criminal prosecution the Government might bring regarding the same conduct under section 1963.

### B. The Statutory Purpose

In enacting RICO, Congress found that "organized crime activities . . . weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security and undermine the general welfare of the Nation and its citizens."\(^\text{21}\) Because of defects in the evidence-gathering process and because the available remedies were "unnecessarily limited in scope and impact", RICO provided "enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."\(^\text{22}\)

Congress, however, did not limit RICO's prohibitions to those who were members of organized crime. As both a legal and practical matter, Congress could not sufficiently define organized crime.\(^\text{23}\) Moreover, recognizing its role as developing comprehensive solutions to identified problems, Congress was unable to draft "an effective statute which reaches most of the commercial activities of organized crime, yet does not include offenses commonly committed by persons outside organized crime as well."\(^\text{24}\) Congress, therefore, targeted a person's conduct, not

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18. 18 U.S.C. § 1962(c) reads as follows:
   
   (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 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.

19. 18 U.S.C. § 1962(d) reads as follows:
   
   (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.


22. Id.


24. Id. at 18,940 (statement of Sen. McClellan). See also McClellan, The Organized Crime Act (S. 30) or Its Critics: Which Threatens Civil Liberties?, 46 Notre Dame Law. 55, 142-43 (1970) ("The
his association, as the object of RICO's prohibitions. That conduct includes participating in an enterprise through a pattern of racketeering activity.

The purpose of RICO is remedial rather than penal.\textsuperscript{25} It intended to provide "enhanced sanctions and new remedies" against the infiltration of legitimate business by organized criminal activity,\textsuperscript{26} and to enable persons who suffer injury as a result of this conduct to bring a civil action for damages.\textsuperscript{27} The primary aim, therefore, is to compensate victims and deter the commission of RICO offenses, not to punish offenders.\textsuperscript{28} Victims include innocent investors, competing organizations and the Nation's citizens.\textsuperscript{29} The remedial purposes are most evident in section 1964(c),\textsuperscript{30} which provides a treble damages recovery for "(a)ny person injured in his business or property by reason of a violation of section 1962 . . . ."\textsuperscript{31}

C. The Liberal Construction Clause

Congress has expressly declared that RICO is to "be liberally construed to effectuate its remedial purposes."\textsuperscript{32} This mandate should only be followed, however, when the words of the statute are ambiguous; liberal construction is unnecessary when the statutory language is clear.\textsuperscript{33}

Senate report does not claim, however, that the listed offenses are committed \textit{primarily} by members of organized crime, only that those offenses are characteristic of organized crime. The listed offenses lend themselves to organized commercial exploitation, unlike some other offenses such as rape, and experience has shown they are commonly committed by participants in organized crime. That is all the title IX list of offenses purports to be, that is all the Senate report claims it to be, and that is all it should be") (Emphasis by the Senator). \textit{See also} Hearings Before Sub-comm. No. 5 of the House Comm. on the Judiciary, on S. 30 and Related Proposals, Relating to the Control of Organized Crime in the United States, 91st Cong., 2d Sess. 689 (1970) ("Organized criminals who injure business today do not look like stereotyped criminals. They are executives and technicians. Their forte is manipulation of computer information, tampering with accounting procedures, theft of trade secrets and invasion of confidential company files").


\textsuperscript{28.} \textit{See} S. Rep. No. 617, 91st Cong., 1st Sess. 81-82.

\textsuperscript{29.} 84 Stat. 923.


\textsuperscript{31.} \textit{Id.}


As previously mentioned, the conduct proscribed in section 1964(c) includes conducting or participating in an enterprise through a pattern of racketeering activity.\textsuperscript{34} If there is any ambiguity in construing an element of the proscribed conduct which gives rise to a private right of action under section 1964(c), the liberal construction clause should be applied. If the term "pattern of racketeering activity" is deemed ambiguous, it should be liberally construed to promote RICO's remedial purposes.

II. THE STATUTORY LANGUAGE

In construing RICO, one must look first to its language.\textsuperscript{35} If that language is unambiguous, it must ordinarily be regarded as conclusive, absent any clearly expressed legislative intent to the contrary.\textsuperscript{36} The term "pattern of racketeering activity" is ambiguous because it is not completely defined in the statute. While "racketeering activity" is specifically defined, the word "pattern" is not. Pattern is susceptible to various meanings. Herein lies the difficulty in construing the statutory language.

"Racketeering activity" is defined as any one of a number of acts that are chargeable or indictable under state or federal law.\textsuperscript{37} Therefore, one racketeering activity is defined as a single act which is itself a crime or offense subjecting the perpetrator to prosecution. There is nothing explicit or implicit in the statutory language to suggest that a racketeering activity need consist of anything more than a single, isolated criminal act.

A person, however, cannot be held liable for engaging in racketeering activity—he must engage in a pattern of racketeering activity. RICO does not define what is meant by pattern, but instead only states what a pattern requires.\textsuperscript{38} Pattern "requires at least two acts of racketeering activity . . . ."\textsuperscript{39} This language establishes a quantitative, not a qualitative, requirement. More significantly, the language "at least" suggests that while this quantitative standard is required in determining whether a pattern exists, it may not be sufficient.

Pattern is formally defined as a "grouping or distribution."\textsuperscript{40} It is also defined as a "definite direction, tendency, or characteristic", such as

\textsuperscript{34} See supra notes 16-20 and accompanying text.
\textsuperscript{36} Id.
\textsuperscript{38} 18 U.S.C. § 1961(5).
\textsuperscript{39} Id.
\textsuperscript{40} Webster's Dictionary of the English Language, Unabridged.
a behavior pattern.\textsuperscript{41} In the context of section 1961(5), pattern may thus
be viewed as a "grouping" of racketeering activity that possesses a defi-
nite purpose or definite characteristic. "Group" is defined as "a number
of persons or things gathered closely together and forming a recognizable
unit."\textsuperscript{42} The word "number" means "the sum of any collection of per-
sons or things."\textsuperscript{43} Two persons are the sum of each one of them, and
hence two persons are sufficient to form a "number" and a "group." The
formal definition, therefore, contains no requirement that a pattern con-
tain a minimum number, beyond two, of persons or things.

The definition also suggests the element of relationship, which con-
nects the persons or things by common characteristics or goals so as to
form a recognizable arrangement. The commonly understood meaning
of pattern is not so easily identified. Certainly it includes the principle of
relationship between or among the things in the group. However, as the
Supreme Court has pointed out in \textit{Sedima}, "in common parlance two of
anything do not generally form a 'pattern'."\textsuperscript{44} Similarly, one district
court has stated that a pattern "connotes a multiplicity of events."\textsuperscript{45} Yet
no one has attempted to determine at what number a group of acts or
things become a pattern. There appears to be no logical or pragmatically
compelling basis for the position that four acts constitute a pattern, but
two or three do not. In practical terms, a pattern can be perceived in two
acts as well as in four. For example, if a person commits two acts of
murder by strangling his victims with a garden hose, has not a pattern
been established? Would two additional murders by the same method
(thereby bringing the total to four) make the four acts any more, or the
two acts any less, a pattern? It would seem not. Notwithstanding this
conclusion, the widely held belief that a pattern consists of something
more than two acts or events persists. We shall now consider whether
the legislative history furnishes any clarification.

\textbf{III. LEGISLATIVE HISTORY}

The legislative discussion involving the pattern requirement re-
flected a greater concern with the concept of relationship than with
number. No definitive answer is furnished to the question of how many
acts are necessary to constitute a pattern. The legislative history does
make clear, however, that RICO is not aimed at sporadic activity, and

\textsuperscript{41} Id.
\textsuperscript{42} Id.
\textsuperscript{43} Id.
that relationship is therefore an essential component of pattern.\textsuperscript{46}

The report of the Senate Judiciary Committee provides the most extended consideration of the pattern concept:

The concept of "pattern" is essential to the operation of the statute. One isolated "racketeering activity" was thought insufficient to trigger the remedies provided ... largely because the net would be too large and the remedies disproportionate to the gravity of the offense. The target of title IX is thus not sporadic activity. The infiltration of legitimate business normally requires more than one "racketeering activity" and the threat of continuing activity to be effective. It is this factor of continuity plus relationship which combines to produce a pattern.\textsuperscript{47}

After quoting this portion of the Report Senator McClellan, the sponsor of the Senate bill, stated that "[t]he term 'pattern' itself requires the showing of a relationship ... so, therefore, proof of two acts of racketeering, without more, does not establish a pattern. ..." (emphasis added)\textsuperscript{48} Representative Poff, a sponsor of the bill in the House, stated that a pattern of racketeering activity means "at least two independent offenses forming a pattern of conduct," and that RICO was "not aimed at the isolated offender."\textsuperscript{49} He also stated that a " 'pattern of racketeering activity' means simply two or more acts of racketeering activity, one of which ... must have occurred subsequent to enactment of the title."\textsuperscript{50}

At no point does the legislative history establish that two acts are sufficient to form the requisite pattern. On the other hand, based upon Senator McClellan’s statements, it is not clear whether ten, fifteen or twenty acts, without more, would be sufficient to constitute a pattern.\textsuperscript{51}

In short, Congress’ principal concern was not with the number of acts sufficient to establish a pattern, but with their relationship.\textsuperscript{52} Concerning the question of number, the legislative history and statutory language are

\textsuperscript{47} Id.
\textsuperscript{48} 116 Cong. Rec. 18940 (1970) (statement of Sen. McClellan). In a subsequent law review article, Senator McClellan affirmed these statements in writing that "commission of two or more acts of racketeering activity is made a necessary, but not a sufficient, element of a pattern under Title IX. ... The term 'pattern' itself requires the showing of a relationship ... ." McClellan, \textit{The Organized Crime Act (5.30) or Its Critics: Which Threatens Civil Liberties}, 46 Notre Dame Law. 55,144 (1970).
\textsuperscript{50} Id. at 35295.
\textsuperscript{51} See supra note 48.
\textsuperscript{52} Congress was also concerned with "continuity." S. Rep. No. 91-617, 91st Cong., 1st Sess. at 158 (1969). Beyond its statement that the infiltration of legitimate business normally requires more than one racketeering act and "the threat of continuing activity," Congress did not explain what it meant by continuity. For example, is the required continuity satisfied by a mere succession or series of acts within the context of a single scheme, so that a single scheme consisting of two or more acts is sufficiently continuous? On the other hand, does this continuity require separate criminal activities or schemes directed against different victims? Or does it require only a "threat" of
This standard recognizes that a pattern could consist of any sum between two and, theoretically, an infinite number of acts. It is not the number, standing alone, which creates a pattern. It is, rather, the concept of relationship which is the something "more" that imparts to the individual acts their recognizable form or pattern.

Congress, however, failed to define the nature and scope of the relationship necessary to establish a pattern. In stating that it is the "factor of continuity plus relationship which combines to produce a pattern," Congress did not explain its terms. Congress did not, for example, consider whether two or more acts committed in furtherance of a single scheme would be sufficiently related and continuous. Similarly, it did not explain whether these acts had to be separate in time and place and, if so, to what extent.

Moreover, Congress did not address whether the necessary relationship required a connection between or among the predicate acts, or between the acts and the enterprise, or both. The fact that Congress explicitly stated that RICO was not aimed at "sporadic activity" suggests that a required relationship between the predicate acts was intended. On the other hand, the emphasis on the enterprise as a key concept in the statutory scheme suggests that isolated acts, unrelated to each other but initiated and directed by the enterprise, would be sufficient to form a pattern. The question whether a pattern requires two criminal episodes or schemes, separate in time and place, and each consisting of at least two predicate acts, is simply not addressed.

Notwithstanding these unanswered issues, the legislative history clearly establishes the following points:

1. A pattern may consist of two predicate acts;

Further activity? The formal definition states that continuity is an "[u]ninterrupted connection, succession or union." Webster's Ninth New Collegiate Dictionary.

It is unlikely that Congress intended the word to have such a strict meaning, for infiltration and other criminal schemes can be perpetrated in distinct and separate activities as well as in a coherent and continuous scheme. Continuity should not be construed so strictly as to permit persons who conduct single criminal schemes to escape civil RICO liability. If the predicate acts further a single scheme, they comprise a series or succession of acts sufficiently continuous in the context of that scheme. Requiring continuity through distinct criminal schemes or activities would unnecessarily restrict RICO by excluding from its provisions the victim of a scheme that is continuing and injurious, but also singular. Continuity, therefore, should be viewed as an element of the required relationship between or among the predicate acts, not as an independent standard requiring multiple schemes. See infra notes 64-78 and accompanying text.

53. See supra notes 14 and 48.
55. See supra note 52.
56. See supra notes 12-19 and accompanying text.
(2) two or more predicate acts are a necessary, but not a sufficient, condition to establish a pattern;
(3) in addition to the predicate acts, a relationship must be demonstrated before a pattern is established.

These three points are consistent with the text of RICO. Neither the text nor the legislative history, however, adequately defines the type of relationship which is an essential element of pattern.

IV. DEVELOPING THE MEANING OF PATTERN

In common understanding, the word pattern means a grouping of qualities or acts forming a consistent or characteristic arrangement. This meaning implies a relationship between the qualities or acts that are reflected in common characteristics or shared goals. While the formal definition does not require more than two acts to establish a pattern, common usage generally deems a pattern to consist of something greater than two acts.

The text of RICO and its legislative history resolve this ambiguity concerning number by declaring that “at least two acts” are required to form a pattern. The required relationship of these acts, implied by the common understanding and confirmed by the legislative history, is not specified. This relationship will, therefore, be developed on the basis of the purposes and policy considerations underlying RICO.

RICO was primarily intended to combat the deleterious effects on the nation’s economy caused by organized criminal activity. Because of the legal and practical difficulties in limiting RICO’s prohibitions to those linked with organized crime, Congress focused on conduct, not association, as the basis for imposing liability under the statute. RICO was expressly intended to provide “enhanced sanctions and new remedies to deal with” this unlawful conduct. Where ambiguities existed, the statute was “to be liberally construed to effectuate” these remedial purposes.

The criminal activity addressed by RICO is set forth in section 1961(1). This activity includes arson, bribery, and mail, wire and securities fraud. These acts frequently occur in the context of a scheme or

58. See supra notes 14 and 48.
59. See supra notes 21-22 and accompanying text.
60. See supra notes 23-24 and accompanying text.
61. See supra note 22 and accompanying text.
62. See supra notes 32-33 and accompanying text.
plan. The scheme may consist of one or a number of acts intended to further or achieve specific goals. When there is more than one, the acts may form a pattern. The common feature characterizing this pattern is generally the goal or purpose of the scheme. Hence, the acts constituting the pattern are related by this shared goal. For example, a scheme to commit arson involves a number of acts designed to bring about the destruction of a building or other structure through burning. The scheme may consist of the single act of setting the fire, or it might include such additional acts as travelling across state lines to set the fire, using the mails to defraud the insurer and kidnapping.\(^6\) Similarly, a scheme to commit mail fraud might involve a single use of the mails designed to deprive one of money or property, or it might involve numerous mailings to achieve its purpose.\(^6\) When there is more than one act comprising the scheme, such acts\(^6\) are connected with each other, at a minimum, by the goal or objective of the scheme.

These acts will also be related in time and place. The acts could be carried out and completed in the same place on the same day, or they could occur in different places over a longer period of time. Regardless of where and when they took place, the acts would be related because of the shared goal or purpose of the scheme, and would be continuous because they constituted a series of acts within the structure of the scheme. The fact that acts which further a shared criminal goal may be committed in the same place and on the same day does not detract from the nature or purpose of the underlying scheme.\(^6\) There is no logical or practical reason to differentiate between a single scheme whose predicate acts are committed within a day and one whose predicate acts are committed over some longer period of time. If the criminal ends of both schemes have been achieved, and innocent persons harmed, the evil which the statute seeks to address has occurred, and the perpetrators of


66. The acts may all involve mail fraud, or they may include bribery, mail and wire fraud or other criminal actions set forth in section 1961(1).

67. See United States v. Moeller, 402 F. Supp. 49, 58 (1975) (pattern can be established "by two acts occurring on the same day in the same place and forming part of the same criminal episode . . . ") For the contrary view, see Teleprompter of Eric, Inc. v. City of Eric, 537 F. Supp. 6, 12-13 (W.D. Pa. 1981) (receipt of numerous bribes in same location on same day insufficient to form pattern).
the former scheme should not be allowed to escape application of RICO simply because their acts were short and swift.

A single scheme, therefore, may consist of a pattern of discrete acts related by a common goal, irrespective of whether those acts are separated in time and place or occur in different criminal episodes. Indeed, RICO was designed to combat any scheme that causes injury to business or property. Such a scheme, when it involves arson, certainly tends to weaken the stability of the Nation's economic system, harms competing organizations and threatens the domestic security.68 Similarly, a mail fraud scheme whose target is a federal governmental agency69 seriously burdens interstate commerce and tends to undermine the economic system and the general welfare of the Nation. Provided that they consist of at least two acts of racketeering that are committed in connection with the operation of an enterprise, single schemes that cause the type of harm for which Congress expressed great concern should be subjected to RICO's sanctions. The fact that the acts committed in furtherance of the scheme do not occur in different criminal episodes or events, separate in time and place, is insufficient to conclude that a single scheme, consisting of a number of predicate acts related by a common purpose, cannot constitute a pattern under RICO. It would frustrate the purpose of the statute to allow a person to insulate himself from RICO liability merely by committing criminal acts in the context of single, but unrelated, criminal schemes, or by perpetrating and completing such schemes in the same place on the same day.

The relationship necessary to establish a pattern, therefore, does not include any spatial or temporal relationship between or among the predicate acts. The required relationship is reflected, instead, in the connection of the acts to the goal or purpose of the scheme. This relationship not only comports well with the practical realities involved in the perpetration of a criminal scheme, but it also takes into account the Congressional intent that RICO not be directed to isolated or unrelated instances of prohibited behavior.

The inquiry does not, however, end here. As previously noted, RICO does not prohibit the commission of a pattern of racketeering activity.70 Rather, the statute prohibits conducting or participating in an enterprise through a pattern of racketeering activity.71 This raises the question whether the acts, in addition to their interrelationship through a

68. See supra note 21.
69. United States v. Weatherspoon, 581 F.2d 595 (7th Cir. 1978).
70. See supra notes 16-19 and accompanying text.
71. Id.
common goal or objective, must also be related to the enterprise. More importantly, it raises the question whether the existence of a relationship between the acts and enterprise itself is sufficient to establish a pattern.

It appears fundamental that the predicate acts should in some way relate to the enterprise. On its face, the statute prohibits acting upon an enterprise through a pattern of racketeering activity. Merely engaging in a pattern of racketeering activity is not proscribed. In addition, there is nothing in the legislative history to suggest to the contrary. To allow a RICO action to be brought on the basis of predicate acts which bear no relation to the enterprise would subvert the statutory language by nullifying the enterprise element.

The type of relationship required depends upon whether the enterprise is the victim, tool or perpetrator of the pattern of racketeering activity. As victim, the enterprise will suffer harm as a direct or indirect result of the predicate acts. As tool, the enterprise will serve as a front or instrument through which the predicate acts are carried out. As perpetrator, the enterprise will initiate, supervise or sponsor the predicate acts.

That the predicate acts should bear some relation to the enterprise does not answer the question whether that relationship is sufficient to establish a pattern. Put another way, the issue is whether both a relationship between the predicate acts and between the acts and the enterprise are required to establish a pattern, or whether the existence of either of those relationships would be sufficient. As previously noted, statutory language and legislative history provide little guidance. Because the structure of the statute places significant emphasis on the interplay of the enterprise and pattern of racketeering activity, a relationship between the acts and the enterprise is a *sine qua non* for the finding of a pattern. If the acts are unrelated to an enterprise, it is difficult to perceive how a RICO violation could be charged without ignoring the statutory framework. Similarly, that framework strongly suggests that a RICO plaintiff must in some way be victimized by a pattern of racketeering activity, not by "sporadic" or "isolated" acts. The pattern of racketeering acts will frequently reflect or establish a criminal scheme or schemes. This does not mean, however, that all predicate acts must be related, but only that at least two should be sufficiently related to form a scheme or criminal activity which results in injury.

72. *Id.*
74. See 18 U.S.C. §§ 1962(a), (b), (c) (1982).
The "sporadic activity" or "isolated acts" which have been declared inappropriate RICO targets would include a single predicate act or a number of predicate acts, no two of which are related both to the same enterprise and to the alleged injury. Multiple schemes or activities are not necessary to preclude an act from being characterized as "sporadic" or "isolated." If, for example, two or more acts are part of a single scheme that are carried out through an enterprise and cause injury, these acts are not "sporadic" or "isolated." They are, in fact, the constituent elements of the scheme. The acts are continuous in the context of the scheme and are related in the sense that they are intended to further its objectives or goals. The acts define, and are in turn defined by, the nature and objectives of the scheme. They are, therefore, related to each other and to the scheme, and cannot be said to be "sporadic" or "isolated." Logic does not require that other schemes or criminal activities be perpetrated so that these acts can be found to be sufficiently related and continuous.

If, a predicate act in no way causes or contributes to the injury that civil RICO is intended to redress, it would seem illogical to permit that act to be bootstrapped with another to state a cause of action under the statute. Civil RICO is available to those who have suffered injury to their business or property by reason of the conduct of a pattern of racketeering activity in connection with an enterprise. The pattern, i.e., its predicate acts, should in some way cause or contribute to the injury the plaintiff has suffered. Otherwise, a civil RICO plaintiff could allege as an essential element of the cause of action predicate acts bearing no relation to his injury, and no relevance to the critical issue of damages. Yet, as prerequisites for establishing the pattern, these acts would still have to be proved. Such a result would appear to contravene logic, common sense and the efficient administration of justice. If, however, these acts were perpetrated in similar schemes by or through the same enterprise against different victims, there is no legal or logical reason to preclude one victim from establishing the requisite pattern by alleging acts, reflecting the same modus operandi directed toward other victims. Thus, acts are

76. See supra note 71.
77. See Papagiannis v. Pontikis, 108 F.R.D. 177, 179 (N.D. Ill. 1985) (perpetration of fraudulent activities on more than one victim, following the same modus operandi can be a pattern). In criminal RICO, when separate individual acts may be directed against different victims over a long period of time under the auspices of a single enterprise, the relationship of the predicate acts to the enterprise may be sufficient to form a pattern. See United States v. Elliott, 571 F.2d 880, 889 (5th Cir. 1978). Practical as well as policy considerations support this conclusion. Where a series of separate and unrelated schemes are directed by an enterprise as perpetrator, it would be anomalous to say that a pattern could not be established because the separate schemes or acts were not related...
not "sporadic" or "isolated" if at least two of them relate to the enterprise and to the scheme, or modus operandi, and at least one of them relates to the alleged injury.

In sum, the statutory pattern is properly defined as a grouping of two or more racketeering acts that bear some relation to an enterprise. A single scheme can constitute a pattern, provided there are at least two racketeering acts committed in furtherance of the scheme that are also related to an enterprise. A pattern is thus appropriately found where two or more racketeering acts related to an enterprise have the same or similar purposes, results, participants, victims or methods of commission.\(^7\) As they are not supported by the text, legislative history or policy of RICO, multiple criminal activities or schemes, each consisting of numerous acts of racketeering activity, should not be required to establish a pattern.

V. **JUDICIAL CONSTRUCTION OF THE PATTERN REQUIREMENT IN THE WAKE OF SEDIMA**

The dictum in *Sedima* inviting lower courts to develop a meaningful concept of "pattern" unfortunately provided minimal guidance as to how this development should be accomplished.\(^7\) While focusing on the language in *Sedima* that "two isolated acts of racketeering activity do not constitute a pattern",\(^8\) certain courts have concluded that at least two related acts of racketeering activity are sufficient to form a pattern.\(^8\) Other courts, however, have read that dictum as authority for venturing beyond the text, legislative history and policy of RICO to create new
to each other, though they were clearly related to the enterprise. To require a relationship between the acts would enable persons to insulate themselves from RICO liability by planning their criminal designs in distinct and unrelated single act schemes aimed at different victims. Congress, having unequivocally expressed its desire to curb the inimical effects of organized criminal activity, surely did not intend, in its discussion of the relationship concept, to preclude RICO actions for separate yet continuing criminal schemes carried on by or against enterprises. To construe such a loophole would undermine the remedial purposes of the statute and ignore the mandate that it be liberally construed to effectuate those purposes.


80. *Id.* at 3285 n.14.

restrictions on its application in the civil context. 82

Foremost among jurists adopting this approach is District Judge Milton Shadur of the Northern District of Illinois. In *Northern Trust Bank/O'Hare v. Inryco*, 83 Judge Shadur declared that “pattern” requires not only a relationship between the predicate acts, but also a series of separate criminal activities or schemes. 84 According to Judge Shadur, a single scheme, consisting of numerous predicate acts, would not constitute the necessary pattern of racketeering activity. 85

*Inryco* involved a construction kickback scheme. Plaintiff contracted with Inryco for the construction of a warehouse addition. 86 Inryco assigned one of its employees, Mr. Ranke, as project manager. 87 His duties included soliciting bids and awarding subcontracts. 88 Inryco and the project manager hired Century Construction Company to act as concrete subcontractor. 89 The project manager then arranged a kickback scheme in which he would issue a phony work order to Century in a certain amount. 90 Inryco paid the amount to Century, but the work was never done. 91 Century subsequently paid a kickback by check to the project manager under an alias. 92 The project manager received four payments totalling almost $265,000. 93

In charging Inryco with violating civil RICO, plaintiff alleged that Century performed its concrete work in an unworkmanlike manner, and that the project manager was responsible for the defects because he either failed to supervise the work or knowingly permitted Century to perform in an unsatisfactory manner. 94 Inryco moved to dismiss the RICO action on a number of grounds, including the contention that Inryco was improperly named as a defendant because it was itself a victim of the

84. Id. at 831-33.
85. Id. at 833.
86. Id. at 829.
87. Id.
88. Id.
89. Id. at 829-30.
90. Id. at 830.
91. Id.
92. Id.
93. Id.
94. Id.
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fraud. The insufficiency of the pattern requirement was not argued in the motion. The court raised the issue *sua sponte*. The court began its analysis with a brief review of the precedents construing the pattern requirement. The court concluded that controlling Seventh Circuit precedent, which held that acts taken in furtherance of a single scheme are sufficient to constitute a pattern, were "only partly right in fleshing out the concept of 'pattern'." The more complete answer was that the word "pattern" connotes "a multiplicity of events." The continuity inherent in the word "presumes repeated criminal *activity*, not merely repeated *acts* to carry out the same criminal activity." For the court, the common understanding of "pattern" include not only two or more acts, but also two or more criminal schemes or activities. This understanding, the court stated, is supported by the language in the Senate Report, quoted in *Sedima*, that it is the factor of "continuity plus relationship which combines to produce a pattern." Based upon the connotation of multiplicity, the court concluded that the statutory "pattern" requires two or more criminal schemes or activities.

The fundamental problem with the court's approach is its disregard of the statutory language and its concomitant creation of a restrictive definition that undermines the remedial purposes of RICO. Section 1962 prohibits a "person" from becoming involved in an "enterprise" as a result of or through a "pattern of racketeering activity." Racketeering activity is defined as an act, specifically, as any one of a number of enumerated state or federal offenses. The phrase a "pattern of racketeering activity" is thus properly read as a pattern of "acts", not a pattern of "schemes" or "activities." The statute makes clear that the pattern "requires at least two acts . . . ." The *Inryco* court, however, ignores the statutory definition of racketeering activity and, drawing upon its finding that "pattern" connotes "a multiplicity of events", rewrites the phrase "pattern of racketeering activity" as a "pattern of multiple or repeated criminal activity". This construction would require not only a relation-

95. *Id.*
96. *Id.*
97. *Id.* at 831.
98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Id.* at 832-33.
103. *Id.* at 833.
ship among the predicate acts within a scheme and between the scheme and the enterprise, but it would also require multiple schemes. Nothing in the text of RICO supports this requirement of multiple schemes. The language says "at least two acts of racketeering activity . . .", not "at least two criminal schemes or episodes."

Moreover, such a requirement finds no warrant in the pragmatic and policy considerations underlying the statute. Criminal conduct, the type which Congress targeted in enacting RICO, may frequently be carried out in single schemes. To illustrate, one effective way to defeat a competitor is to destroy his business. If the business is a grocery or laundromat, a single scheme of arson will normally suffice. The scheme itself might consist of nothing more than making an interstate phone call to contract the job and setting the fire. The two predicate acts necessary to satisfy the statutory "pattern" have taken place. The scheme is certainly the type of conduct Congress had in mind when it enacted RICO to combat activities that "harm innocent investors and competing organizations, interfere with free competition . . . [and] threatens the domestic security . . ." Under \textit{Inryco}, however, this scheme, even if it were comprised of ten or more predicate acts, would not come within RICO's ambit because it would not amount to "repeated criminal activity", but would merely reflect "repeated acts to carry out the same criminal activity." The victim of the arson would be unable to bring civil RICO action unless the perpetrators engaged in another scheme. Creative criminal minds can readily devise broad but singular schemes or activities which encompass numerous and repeated acts taken in furtherance of that single scheme. \textit{Inryco} would enable persons to insulate themselves from RICO liability by shaping their acts to fit a single scheme.

\textit{Inryco} would also insulate from RICO persons engaging in a series of acts within a scheme.


108. See supra note 21.


110. It is not clear whether \textit{Inryco} would require this additional scheme to be directed against the same victim. Under the analysis developed in the text, two single act schemes with different victims perpetrated by or through the same enterprise would suffice to form the requisite pattern. It is unlikely that the \textit{Inryco} court would reach the same conclusion.

111. For example, a scheme to defraud the XYZ Insurance Company might involve numerous acts of arson and mail fraud. Under \textit{Inryco}, if these numerous acts of arson and mail fraud were merely repeated acts to carry out the same criminal activity (i.e., scheme to defraud the XYZ Company), there could be no recovery under RICO.
of single act schemes. Persons involved or participating in an enterprise may devise separate and myriad schemes directed against different victims which consist only of single acts of arson, bribery, or mail, wire and securities fraud. Under Inryco, these multiple schemes would not establish a pattern because the acts would not be sufficiently related to each other. Each would be viewed as a "single criminal transaction." By planning diverse and unrelated single act schemes against different victims, a person could avoid a finding of "pattern" and RICO liability pursuant to Inryco.

The remedial purposes of RICO are undermined when victims cannot obtain compensation because they have not been the target of multiple schemes. A single scheme, consisting of at least two predicate acts connected by a shared goal, is sufficient. RICO was intended to provide "enhanced sanctions and new remedies" to combat and deter certain types of criminal conduct. By creating new restrictions upon the form this conduct must take, the Inryco court has not only ignored the mandate that RICO be liberally construed, but it also has, in effect, frustrated those remedial purposes.

Notwithstanding the Inryco court's observations to the contrary, the Supreme Court opinion in Sedima does not require this result. The Court noted that two "isolated" acts do not constitute a pattern. It later stated that "the compensable injury necessarily is the harm caused by predicate acts sufficiently related to constitute a pattern . . . ." There is no hint or suggestion that two "related" acts, related in the sense that they share a common purpose, plan or scheme would not suffice to establish a pattern. Indeed, the Court's strong emphasis on the directive that RICO is to be broadly construed belies such a conclusion.

There may have been grounds on which Inryco could have been properly dismissed as a RICO defendant. The fact that multiple criminal schemes or activities did not occur was not one of them. Such a requirement ignores the text and policy of RICO. In addition, it frus-

112. Of course, if the series of single act schemes involved the same type of conduct and objectives, such as in the cases of arson for profit and land sales fraud, the requisite relatedness, and thus the pattern, would likely be found. See Inryco, 615 F. Supp. 828, 831 (N.D. Ill. 1985); see also Papagiannis v. Pontikis, 108 F.R.D. 177, 179 (N.D. Ill. 1985).
113. Id. at 832.
115. Id. at 3286.
116. Id.
117. Interestingly, the Inryco court itself refers to other possible grounds for dismissal, most persuasively the fact that Inryco appeared to be the principal victim, rather than the perpetrator, of the fraud. Inryco, 615 F. Supp. at 835.
trates the statute's remedial purposes by preventing victims of racketeering acts from invoking RICO to obtain compensation for injuries to their business or property.\textsuperscript{118}

\textbf{CONCLUSION}

Pattern is one of the key concepts in the statutory framework of RICO. It is not, however, clearly defined. If the ordinary meaning of the word is somewhat ambiguous, the proper approach is not to shape restricting definitions which tend to undermine the broadly drawn Congressional goals. Rather, courts should develop a meaning that furthers these goals.

By its decision in \textit{Sedima}, the Supreme Court invited the judiciary to develop a meaningful definition of "pattern". Implicit in the Court's invitation is the belief that such a definition might curb the "extraordinary" uses to which civil RICO has been put. The Court did not, however, provide specific principles to guide this effort or to resolve the tension between the concern with the extraordinary uses of the statute and its liberal construction clause. The absence of such principles enables courts that are ideologically hostile to RICO to impose new restrictions on the statute that thwart or undermine its remedial purposes.

This article has developed a meaning of pattern, based upon the text, legislative history and policy that accommodates the statute's remedial purposes. A pattern consists of two or more predicate acts which are related to the enterprise and to each other, as part of a single scheme which causes injury. Requiring multiple schemes or activities completely separated in time and place to establish a pattern are judicial creations which find no support in the text or policy of RICO. Adoption of these definitional requirements would preclude the application of RICO to a significant category of conduct the statute was designed to combat. Examples of such conduct include the single criminal schemes involving arson, bribery or mail fraud that causes injury to a person's business or property. If these persons, whether they are innocent investors, competing organizations or hardworking citizens, cannot invoke RICO the remedial purposes of the statute are frustrated.

\textsuperscript{118} Fleet Management Systems v. Archer-Daniels-Midland Co. No. 83-3060, slip op. at 20 (C.D. Ill. January 28, 1986) (single fraudulent scheme, consisting of at least eight separate instances of mail and wire fraud over a period of more than two years, was insufficient to establish pattern); see, e.g., Professional Assets Management v. Penn Square Bank, 616 F. Supp. 1418, 1422-23 (W.D. Okla. 1985) (following \textit{Inreco}, court holds that single scheme by accounting firm consisting of multiple wire or telephone communications intended to disseminate false information regarding bank was insufficient to form pattern).
The proper use of civil RICO has been the subject of widespread and heated debate. Hostility to its use against "legitimate" businesses has been pronounced. Proposals to clarify or redefine certain critical provisions of the statute, including "pattern", have been made by Congress and others. Such proposals are properly directed to and considered by the Congress, not the courts. RICO was broadly drawn, and Congress has commanded that it be similarly construed. The ambiguity in pattern should be construed liberally, as Congress has directed, so that the statute's remedial purposes are promoted. For courts to do otherwise, by restrictively interpreting pattern, would both usurp the legislative function and deny an explicit legislative mandate.
