

RICO PATTERN REQUIRES INTERRELATED CONTINUOUS
RACKETEERING ACTS

Sedima, S.P.R.L. v. Imrex Co.,
105 S. Ct. 3275 (1985)

In *Sedima, S.P.R.L. v. Imrex Co.*,¹ the United States Supreme Court swept away two judicially created restrictions on the burgeoning scope of private civil RICO actions under section 1964(c) of the Racketeer Influenced and Corrupt Organizations Act (RICO).² Nevertheless, the Court suggested an alternative means for narrowing the scope of civil RICO by criticizing the lower courts for failing to develop a meaningful interpretation of a “pattern of racketeering activity,”³ a concept central to the operation of RICO.⁴

Sedima entered into a joint venture agreement with Imrex to supply a NATO subcontractor with electronic component parts.⁵ Sedima secured the orders for component parts, which Imrex then filled.⁶ Sedima brought suit against Imrex, alleging that Imrex fraudulently inflated purchase orders and other costs associated with the venture.⁷

The district court dismissed Sedima’s civil RICO claim because Sedima failed to allege a racketeering injury.⁸ On appeal, the United States Court of Appeals for the Second Circuit affirmed, holding that a civil RICO claim requires a prior criminal conviction of the defendant and an injury of the type that RICO was designed to prevent.⁹ Finding the Second Circuit’s restrictions unwarranted by the legislative history

1. 105 S. Ct. 3275 (1985).

2. Pub. L. No. 91-452, tit. 9, § 901(a), 84 Stat. 941 (1970) (codified as amended at 18 U.S.C.A. §§ 1961-1968 (1984 & Supp. 1985)). Section 1964(c) provides as follows:

Any person injured in his business or property by reason of a violation of Section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee.

18 U.S.C.A. § 1964(c).

3. See *infra* notes 16-24 and accompanying text.

4. 105 S. Ct. at 3285 n.14.

5. *Id.* at 3279.

6. *Id.*

7. *Id.*; see also *Sedima, S.P.R.L. v. Imrex Co.*, 574 F. Supp. 963 (E.D.N.Y. 1983). Sedima alleged that Imrex’s use of the mails and the telephone to transmit fraudulent purchase orders constituted an illegal pattern of “racketeering activity.” *Id.* at 964-65.

8. *Id.* at 965.

9. *Sedima, S.P.R.L. v. Imrex Co.*, 741 F.2d 482 (2d Cir. 1984).

and the language of the statute, the Supreme Court reversed.¹⁰ The Court suggested, however, that courts should look for "continuity" and "relationship" among the alleged racketeering acts in determining whether a RICO defendant engaged in a "pattern of racketeering activity."¹¹

Congress enacted RICO in 1970 as part of the Organized Crime Control Act (OCCA)¹² to curb organized crime's infiltration of businesses, labor unions, and government organizations.¹³ Organized or "enterprise" criminality enables criminals to draw on substantial resources to cultivate illegal schemes and to shield themselves from prosecution.¹⁴ Accordingly, Congress set out to ruin, not simply to regulate, criminal enterprises.¹⁵

Specifically, Congress aimed RICO's prohibitions at continuing, systematic criminal conduct.¹⁶ Ongoing, interrelated criminal acts, rather than sporadic acts, warranted the imposition of RICO's severe penalties.¹⁷ To reach such systematic conduct, Congress employed the con-

10. 105 S. Ct. at 2181-87. In a five to four decision, the Supreme Court rejected both the prior criminal conviction and racketeering injury requirements. The majority found the Second Circuit's restrictions unwarranted by RICO's language and legislative history.

11. *Id.* at 3285 n.14; see *infra* note 18 (defining pattern of racketeering activity).

12. RICO was enacted as Title IX of OCCA, Pub. L. No. 91-452, 84 Stat. 922, 941 (1970).

13. "One of the most perplexing problems in the field of organized crime is presented by the fact that criminals and racketeers are using the profits of organized crime to buy up and operate legitimate business enterprises." S. REP. NO. 141, 82d Cong., 1st Sess. 33 (1951).

14. See S. REP. NO. 617, 91st Cong., 1st Sess. 77 (1969). Organized crime's ability to persist in the face of existing sanctions concerned Congress as well. *Id.* at 78.

15. See Pub. L. No. 91-452, 84 Stat. 922, 923 (1970) (purpose of RICO is "the eradication of organized crime."). To this end, RICO includes a forfeiture provision, 18 U.S.C.A. § 1963(a) (Supp. 1985), designed to attack organized crime's economic base. See S. REP. NO. 617, 91st Cong., 1st Sess. 79 (1969). RICO's criminal provisions permit a fine of \$25,000 and/or a prison term of up to twenty years, and forfeiture of any interest in an enterprise "acquired or maintained" through a pattern of racketeering activity. 18 U.S.C.A. § 1963(a).

RICO also includes a civil treble damage provision, see *supra* note 2, to augment the prosecutorial attack on organized criminal activity by encouraging private enforcement. S. REP. NO. 617, 91st Cong., 1st Sess. 79, 82 (1969).

The conduct of organized criminals proved difficult to define, and in Congress' view, necessitated a statute with broad scope. See 116 CONG. REC. 18,940 (1970) (remarks of Sen. McClellan) (noting the "impossibility" of effectively reaching the commercial activities of organized crime, without including "offenses commonly committed by persons outside organized crime as well"); see also Comment, *Sedima v. Imrex: Civil Immunity for Unprosecuted RICO Violators?*, 85 COLUM. L. REV. 419, 422-425 (1985) (discussing RICO's objectives).

16. See S. REP. NO. 617, 91st Cong., 1st Sess. 158 (1969) ("The target of [RICO] is thus not sporadic activity."); see also 116 CONG. REC. 35,193 (1970) ("[RICO] is not aimed at the isolated offender and it does not use mild remedies.")

17. See 116 CONG. REC. 35,193 (1970).

cepts of a “pattern”¹⁸ and an “enterprise.”¹⁹ Thus, RICO prohibits the acquisition, maintenance, or operation of an *enterprise* through a *pattern* of racketeering activity.²⁰

Congress struggled to define a “pattern” of racketeering activity. Section 1961(5), RICO’s definitional section, states that a pattern “requires” the commission of at least two acts of racketeering activity within a ten-year period.²¹ A few courts find the use of the word “requires” instead of “means” to be insignificant. These courts deem the pattern requirement satisfied by an allegation that meets the literal quantitative and temporal criteria of section 1961(5).²² Most courts, however, believe that by stating what a pattern *requires*, Congress merely limited the “pattern” requirement, leaving to the courts the task of determining what a “pattern” *means*.²³

Judicial interpretations of the term “pattern” rely on two notions drawn from RICO’s legislative history: continuity and relationship.²⁴

18. Section 1961(5) provides in pertinent part: “A pattern of racketeering activity requires at least two acts of racketeering activity . . . the last of which occurred within ten years after the commission of a prior act of racketeering activity.” 18 U.S.C.A. § 1961(5) (1984).

19. Section 1961(4) defines “enterprise” to include “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.A. § 1961(4) (1984); *see also* United States v. Turkette, 452 U.S. 576, 584 (1981) (RICO is intended to reach both the infiltration by organized crime of legitimate businesses, and the investment in and operation of wholly illegal enterprises).

20. 18 U.S.C.A. § 1962(a)-(d) (1984). Section 1961(1) (A)-(D) enumerates the offenses that qualify as acts of racketeering activity. 18 U.S.C. § 1961(1)(A)-(D) (Supp. 1985).

21. 18 U.S.C.A. § 1961(5) (1984); *see supra* note 19. “The concept of ‘pattern’ is essential to the operation of the statute.” S. REP. NO. 617, 91st Cong., 1st Sess. 158 (1969). The Senate Report also stressed that “[o]ne isolated racketeering activity [is] insufficient to trigger the remedies provided under the proposed chapter, largely because the net would be too large and the remedies disproportionate to the gravity of the offense.” *Id.*

Congress revised the “pattern” definition twice during the course of the debates on the OCCA. The original definition of a pattern provided: “The term ‘pattern of racketeering activity’ includes at least one act occurring after the effective date of this chapter.” S. REP. NO. 617, 91st Cong., 1st Sess. 122 (1969) (emphasis added). To avoid sanctioning isolated activity, Congress made the following revision: “The term ‘pattern of racketeering activity’ means at least two acts, one of which occurred after the effective date of this chapter.” *Id.* (emphasis added). The version of § 1961(5) ultimately enacted provides that a pattern of racketeering activity “requires at least two acts.” 18 U.S.C.A. § 1961(5) (1984) (emphasis added). *See* Tarlow, *Rico Revisited*, 17 GA. L. REV. 291, 346 (1983) (calling “pattern” the most “nebulous” term in RICO).

22. *See, e.g.*, United States v. Dean, 647 F.2d 779, 791 (8th Cir. 1981) (upholding RICO conviction despite jury instruction providing that: “‘Pattern’ . . . means two acts. . .”) (emphasis added).

23. *See, e.g.*, United States v. DePalma, 461 F. Supp. 778, 783 (S.D.N.Y. 1978) (“ . . . the pattern definition states a minimum but not necessarily an exclusive definition.”).

24. The Senate Report provides: “The target of [RICO] is . . . not sporadic activity. The

In *United States v. Elliott*,²⁵ the United States Court of Appeals for the Fifth Circuit stated that a RICO pattern requires "a type of relatedness" as well as two acts committed within ten years.²⁶ Because RICO prohibits the operation of an enterprise's affairs through a pattern of racketeering activity, the court reasoned that a nexus between the acts and the enterprise provides the requisite relationship.²⁷ If the acts of racketeering activity are linked to a common enterprise, the *Elliott* court concluded, they need not otherwise be related to each other.²⁸

The court in *United States v. Stofsky*²⁹ contended that a RICO pattern contemplates two relationships: an enterprise relationship and a "com-

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." S. REP. NO. 617, 91st Cong., 1st Sess. 158 (1969) (emphasis added). Senator McClellan, the sponsor of the Senate bill, also pointed out that "[t]he term 'pattern' itself requires the showing of a relationship. . . . So, therefore, proof of two acts of racketeering activity, without more, does not establish a pattern. . . ." 116 CONG. REC. 18,940 (1970). The House did not define "pattern" but noted at least that it meant "not isolated." *Organized Crime Control: Hearings on S. 30 before Subcomm. No. 5 of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. 664-65 (1970).

The Supreme Court discussed RICO's pattern requirement in *United States v. Turkette*, 452 U.S. 576 (1981). In *Turkette*, the Court briefly described the pattern requirement in strictly statutory terms. The Court stated that a pattern of racketeering activity "is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise." *Id.* at 583.

25. 571 F.2d 880 (5th Cir.), *cert. denied sub nom.* Delph v. United States, 439 U.S. 953 (1978). The court in *Elliott* confronted an illegal enterprise or "myriopod criminal network" engaged in diverse racketeering activities including arson, car theft, fencing, narcotics dealing, and the murder of a key government witness. Conceding that RICO does not aim at sporadic activity, the court observed that Congress had characterized organized crime as a "highly sophisticated, diversified and widespread activity," and intended RICO to reach enterprises "nefarious enough to diversify their criminal activity." *Id.* at 899 (quoting the preamble to OCCA, Pub. L. No. 91-452, § 1, 84 Stat. 922 (1970)).

26. 571 F.2d at 899 n.23.

27. *Id.* The court asserted that the gravamen of a RICO offense is the conduct of an enterprise through a pattern of racketeering acts. *Id.* Therefore, the acts need only relate to the enterprise, and not directly to each other. *Id.* See Blakey & Goldstock, "On the Waterfront": RICO and Labor Racketeering, 17 AM. CRIM. L. REV. 341, 354-55 (1980) (approving *Elliot*).

28. 571 F.2d at 899 n.23; see also *United States v. DePalma*, 461 F. Supp. 778, 782-84 (S.D.N.Y. 1980).

Even when courts agree that the enterprise-nexus supplies a sufficient relationship to constitute a RICO pattern, they require differing degrees of relationship between the acts and the enterprise. Compare *United States v. Ladmer*, 429 F. Supp. 1231, 1244 (E.D.N.Y. 1977) (racketeering acts must relate to the "essential functions" of the enterprise) with *United States v. Cauble*, 706 F.2d 1322, 1333 n.24 (5th Cir. 1983) (acts need only affect the enterprise in some fashion) and *United States v. Bright*, 630 F.2d 804, 830-31 (5th Cir. 1981) (requiring merely "a link" to the enterprise's affairs).

29. 409 F. Supp. 609 (S.D.N.Y. 1973), *aff'd*, 527 F.2d 237 (2d Cir. 1975), *cert. denied sub nom.* Hoff v. United States, 429 U.S. 819 (1976).

mon scheme, plan or motive" connecting the racketeering acts to each other.³⁰ Thus, isolated criminal acts committed in the conduct of a common enterprise could not constitute a pattern.³¹ Drawing upon *Stofsky's* common-scheme analysis, the Seventh Circuit in *United States v. Weatherspoon*³² held that five separate mailings arising out of a single mail fraud scheme constituted a pattern. The court reasoned that RICO proscribes a pattern of interrelated *acts* and does not require multiple schemes.³³

Some courts have found RICO patterns even when interrelated acts occur in such close proximity that they appear to be elements of a single transaction or criminal episode.³⁴ In *United States v. Moeller*,³⁵ for example, the defendants were charged with violating RICO for burning down a manufacturing plant and kidnapping several employees of the

30. *Id.* at 614. The court identified three factors supporting this construction. First, it noted that 18 U.S.C. § 3575(e) (1982), enacted as part of Title X of OCCA and simultaneously with RICO, defines a "pattern of criminal conduct" as "criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated events." The court asserted that statutes enacted simultaneously and employing the same terms should be construed together. 409 F. Supp. at 614. Second, the court asserted that despite the "quantitative" language of § 1961(5), Congress' major concern in enacting RICO was the "special danger to legitimate business of a continuity of racketeering activity." *Id.* Third, the court asserted that in light of RICO's severe penalties, *see supra* note 15, Congress intended a pattern interrelationship requirement to limit the statute's scope. *Id.*

31. *Id.* Although *United States v. Elliott*, 571 F.2d 880 (5th Cir. 1978), overruled *Stofsky's* "common scheme" approach, numerous courts subsequently relied on *Stofsky*. *See, e.g.*, *United States v. Brooklier*, 685 F.2d 1208, 1222 (9th Cir. 1982) (offenses must be connected by a "scheme"); *United States v. Starnes*, 644 F.2d 673, 678 (7th Cir. 1981) (two or more acts connected in some logical manner constitute a pattern); *Beth Israel Medical Center v. Smith*, 576 F. Supp. 1061, 1066 (S.D.N.Y. 1983) (separate acts of mail and wire fraud arising out of a "common nucleus of facts" constitute a pattern); *United States v. Chovanec*, 467 F. Supp. 41, 44 (S.D.N.Y. 1979) (acts with similar purposes, results, participants, victims or methods of commission exhibit the required interrelationship).

32. 581 F.2d 595, 601-02 (7th Cir. 1978). The defendant in *Weatherspoon* operated a cosmetology college for tuition-paying students. *Id.* at 597. The prosecutor alleged that defendant had used the mails on five separate occasions to submit false certifications of student enrollment to receive Veterans Administration reimbursements to which defendant was not otherwise entitled. *Id.* at 598.

33. *Id.* at 602. The defendant argued that the mailings were all part of a single scheme to defraud the VA and that she had committed only one "act," a fraud of the VA, insufficient to form a pattern. *Id.* at 601. The court rejected the defendant's contention that a pattern requires multiple schemes. *Id.* Observing that the acts in a RICO pattern must be connected by a common scheme, plan or motive, the court argued that requiring two *separate* schemes for a pattern ignores the relationship requirement. *Id.* at 601 n.2.

34. *See, e.g.*, *Moss v. Morgan Stanley Inc.*, 719 F.2d 5, 18 (2d Cir. 1983) (two acts of securities fraud as part of a single stock transaction may comprise a pattern); *Lopez v. Richards*, 594 F. Supp. 488 (S.D. Miss. 1984) (defendants' mailing of a fraudulent investment contract and wiring of plaintiff's deposit as part of fraudulent real estate transaction constituted a pattern); *Harper v. New Japan*

plant as part of a single scheme to defraud the plant's insurer.³⁶ Although the kidnapping and arson occurred "at the same place on the same day in the course of the same criminal episode," the court nonetheless held that the acts constituted a pattern of racketeering activity.³⁷

Acts in single-transaction "patterns" such as in *Moeller* display the requisite interrelationship but lack continuity, the other important facet of a RICO pattern.³⁸ In *Teleprompter of Erie, Inc. v. Erie*,³⁹ the court declined to find a pattern based on a city councilman's acceptance of several bribes during one evening. Although each bribe related to a single fraudulent scheme to influence the award of a franchise, the court emphasized the absence of a "continuous, ongoing series" of illegal acts.⁴⁰ Conceding that the existence of two independent schemes was unnecessary, the court nonetheless limited RICO's reach to activities constituting "a continuous course of unlawful conduct."⁴¹

In *Sedima, S.P.R.L. v. Imrex Co.*,⁴² the Supreme Court examined for

Sec. Int'l, Inc., 545 F. Supp. 1002, 1004 (C.D. Cal. 1982) (numerous acts arising out of the same episode may comprise a pattern).

The validity of single-transaction patterns is often an issue when plaintiffs allege RICO claims in the context of securities or common-law fraud. Plaintiffs are able, in effect, to bring securities fraud claims under RICO, because "fraud in the sale of securities" is one of the enumerated racketeering activities, see 18 U.S.C.A. § 1961(1) (1984 & Supp. 1985), and the issuance, purchase or sale of a security usually entails the use of an enterprise. Similarly, the inclusion of mail and wire fraud as racketeering activities makes a RICO claim possible whenever commercial fraud involves use of the mail or telephone services.

35. 402 F. Supp. 49 (D. Conn. 1975).

36. *Id.* at 57.

37. *Id.* at 58. The *Moeller* court found a pattern, but voiced its concern that the multiple acts/single transaction approach ignored RICO's emphasis on continuing activity. *Id.* at 57-58. Acknowledging that the statutory definition established that "a pattern can consist of only two acts," the *Moeller* court still thought the commonsense understanding of pattern implied acts occurring in "different criminal episodes, . . . somewhat separated in time and place yet . . . demonstrat[ing] a continuity of activity." *Id.* at 57.

38. Other courts have also suggested that a RICO pattern must evidence continuity. See, e.g., *United States v. Webster*, 639 F.2d 174 (4th Cir.) (RICO's proscription against "conduct of an enterprise" focuses on continuing activity), cert. denied, 454 U.S. 857 (1981), rev'd on other grounds, 669 F.2d 185 (4th Cir. 1982); *United States v. Field*, 432 F. Supp. 55, 59 (S.D.N.Y. 1977) (RICO "clearly contemplates a prolonged course of conduct"), aff'd, 578 F.2d 1371 (2d Cir. 1978); *United States v. Ladmer*, 429 F. Supp. 1231, 1244 (E.D.N.Y. 1977) (RICO not concerned with "irregularities" deviating from otherwise lawful conduct).

39. 537 F. Supp. 6 (W.D. Pa. 1981).

40. *Id.* at 12-13.

41. *Id.* at 12.

42. 105 S. Ct. 3275 (1985) (5-4). Prior to *Sedima*, the Supreme Court had considered only two other RICO cases, both involving criminal RICO charges. See *Russello v. United States*, 464 U.S. 16 (1983); *United States v. Turkette*, 452 U.S. 576 (1981).

the first time the scope of private civil RICO. Justice White, writing for the majority, found that neither the statute nor its legislative history indicated the severe restrictions imposed by the Second Circuit on the use of civil RICO.⁴³ Justice White conceded that civil RICO frequently reached “respected businesses” instead of “the archetypal, intimidating mobster.”⁴⁴ However, Justice White identified the failure of Congress and the courts to develop a meaningful concept of a “pattern” as a principal cause of civil RICO’s unintended applications.⁴⁵

The Court suggested in a footnote that a RICO pattern must exhibit “*continuity plus relationship*.”⁴⁶ Two acts of racketeering activity committed within ten years are necessary, but not necessarily sufficient to constitute a pattern.⁴⁷ Two or more acts may be sufficiently interrelated, for example, if they have “similar purposes, results, participants, victims, or methods of commission . . . and are not isolated events.”⁴⁸

Although Justice Powell strongly dissented from the majority’s broad reading of RICO, he agreed with the majority’s narrow pattern interpretation, finding it consistent with Congress’ “unequivocal intent” to direct

43. 105 S. Ct. at 3285. The Court rejected both the prior criminal conviction and the racketeering injury requirements. *Id.* at 3281-87.

44. *Id.* at 3287.

45. *Id.* Acknowledging that at least in its civil applications RICO is developing into “something quite different from the original conception of its enactors,” Justice White asserted that this “defect—if defect it is” is inherent in the statutory language. *Id.* Justice White left the correction of the statute to Congress, but suggested that judicial development of a more restrictive RICO pattern was possible in the existing statutory framework and could operate to limit RICO’s extraordinary applications. *Id.*

Congress is currently considering two bills which would alter the pattern definition. Both bills would require that at least one of the racketeering acts in any RICO pattern be an offense other than mail or wire fraud. In addition, one of the bills, H.R. 2517, would require that the racketeering acts be “interrelated by a common scheme, plan, or motive” and not be “isolated events.” H.R. 2517, 99th Cong., 2d Sess. (1985).

Congress is also currently considering an amendment to RICO that would require criminal conviction for the predicate offenses prior to the instigation of a civil action. H.R. 2943, 99th Cong., 2d Sess. 1985. See also Note, *RICO’s New Community of Racketeers: The Need for a Prior Criminal Conviction Requirement*, 64 WASH. U.L.Q. 229 (1986) (advocating an amendment to RICO that would require a prior criminal RICO conviction of the defendant).

46. 105 S. Ct. at 3285 n.14 (Court’s emphasis).

47. *Id.* Justice White found that Congress’ use of the word “requires” in § 1961(5) left room for further elaboration of the pattern requirement. *Id.* See *supra* notes 21-23 and accompanying text.

48. 105 S. Ct. at 3285 n.14. Justice White observed that the definition of a “pattern of criminal activity” found in 18 U.S.C. § 3575(e) (1982), enacted simultaneously with RICO as part of the OCCA, might be helpful in construing the meaning of “pattern” in RICO. *Id.* See *supra* note 30.

Justice White declined to apply his observations on the RICO pattern to the facts of *Sedima* because, in his view, the issue was not before the Court. *Id.* at 3287.

RICO at organized criminal activity.⁴⁹ Thus, Justice Powell agreed that a RICO pattern requires “something more” than two acts of racketeering activity. Justice Powell set forth three requirements of a RICO pattern: (1) the racketeering acts must relate to each other, (2) the acts must be part of a common scheme, and (3) the acts must display continuity or a threat of continuing harm.⁵⁰ Justice Powell feared, however, that the majority’s firm rejection of the restrictions imposed by the Second Circuit would make future limitations of RICO through a narrow pattern construction difficult.⁵¹

Although the Court declined to reach the merits of the pattern issue in *Sedima*, the Supreme Court did provide concrete guidance for further judicial refinements of the “pattern” concept. Both the majority opinion and Justice Powell’s dissenting opinion agree that a RICO pattern requires two interrelated acts.⁵² Furthermore, both the majority and Justice Powell agree that the acts must relate to a common scheme.⁵³ Therefore two otherwise isolated acts that exhibit an enterprise nexus will no longer constitute a pattern.⁵⁴ After *Sedima*, courts should also refuse to apply RICO when the alleged acts do not have common goals, perpetrators, victims or methods of commission.⁵⁵

Finally, *Sedima* suggests that continuity is a necessary element of a RICO pattern.⁵⁶ Accordingly, courts should hesitate to apply RICO when the predicate acts are committed in close succession.⁵⁷ The validity of single-transaction patterns, when the acts extend over a longer period

49. 105 S. Ct. at 3288-90.

50. *Id.* at 3290; accord REPORT OF THE AD HOC CIVIL RICO TASK FORCE OF THE ABA SECTION OF CORPORATION, BANKING AND BUSINESS LAW 193-208 (1985).

51. 105 S. Ct. at 3290. In light of the majority’s conclusion that the entire statute should be read in the spirit of the legislative history, Justice Powell doubted whether courts could heed the majority’s suggestion to develop a more “meaningful” and restrictive RICO pattern. *Id.*

52. *Id.* at 3285 n.14 & 3290.

53. *Id.*

54. For a discussion of the enterprise-nexus requirement for a pattern, see *supra* notes 25-28 and accompanying text.

55. For a discussion of the common-scheme analysis of RICO patterns and Justice White’s adoption of this approach, see *supra* notes 32-34 & 48 and accompanying text.

56. Both Justices White and Powell mention continuity as a requirement for a RICO pattern. 105 S. Ct. 3285 n.14 & 3290.

57. For a discussion of single-transaction RICO patterns, see *supra* notes 42-45 and accompanying text.

of time, remains unclear.⁵⁸ The Supreme Court did not indicate how long criminal activity must persist before it is continuous. The Court's failure to develop a continuity standard leaves considerable uncertainty surrounding the meaning of a RICO pattern.⁵⁹

Sedima points the way for courts to develop a narrow pattern definition to preclude certain types of RICO claims. Justice Powell's prediction that the majority opinion goes too far in advocating a broad construction of other RICO provisions to allow a narrow pattern construction may prove correct. However, the Court's implicit disapproval of an enterprise-nexus requirement and single-transaction patterns should nevertheless encourage the development of a more restrictive RICO pattern.

S.J.C.

58. For an argument that single-transaction patterns encompassing longer periods of time evidence continuity and thus survive *Sedima*, see Nat'l L.J., Aug. 26, 1985, at 36, col. 1.

Similarly, *Sedima* fails to resolve the issue of whether the possibility of future criminal activity, as well as previous persistent activity, satisfy the continuity requirement. Justice Powell pointed out that a RICO pattern requires "continuity between the acts or a *threat of continuing criminal activity*." 105 S. Ct. at 3290 (emphasis added). Justice White did not explicitly indicate whether a threat of continuing activity would suffice, but he did cite the Senate Report, which uses the phrase "threat of continuing activity." See *id.* at 3285 n.14.

59. The Court's failure to develop a continuity standard leaves the validity of single-transaction securities or common-law fraud patterns unresolved. Most single-transaction patterns will meet the common-scheme requirement. A finding of continuity, however, is hard to imagine when, for example, two telephone calls made to effect a fraudulent securities sale through material misrepresentation take place in a single day.