The U.S. Supreme court opinion regarding liability of outside accounting firms, and by extrapolation, other outside professionals outside a business under the Racketeering Act. The Act was originally meant to provide a tool for the taking civil action against organized crime. However, in its early days, because of extremely broad drafting, many civil disputes changed from suits on the particular issue to RICO actions. This case continues the Court's trend of narrowing the applicability of RICO to civil disputes. In this case, which at its heart appears to be an accounting malpractice case, the plaintiff's chose RICO. This is quite understandable since RICO provides for treble damages as well as attorney's fees, which may not be recoverable in a normal civil action. The accounting firm's response to a RICO suit is that as outside professionals they were not "participants" who "conducted " the illegal acts which the defendants contend occurred. This case is thus important for various outside professionals like attorneys, actuaries and accountants. It is also one of the longest cases to ever parse and dissect the word "conduct." */

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

REVES et al. v. ERNST & YOUNG
certiorari to the united states court of appeals for
the eighth circuit
No. 91-886. Argued October 13, 1992-Decided March 3, 1993

A provision of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U. S. C. 1962(c), makes it unlawful ``for any person employed by or associated with [an interstate] enterprise . . . to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ."

After respondent's predecessor, the accounting firm of Arthur Young and Company, engaged in certain activities relating to valuation of a gasohol plant on the yearly audits and financial statements of a farming cooperative, the cooperative filed for

bankruptcy, and the bankruptcy trustee brought suit, alleging, inter alia, that the activities in question rendered Arthur Young civilly liable under 1962(c) to petitioner holders of certain of the cooperative's notes.

Among other things, the District Court applied Circuit precedent requiring, in order for such liability to attach, ``some participation in the operation or management of the enterprise

itself''; ruled that Arthur Young's activities failed to satisfy this test; and granted summary judgment in its favor on the RICO claim. Agreeing with the lower court's analysis, the Court of Appeals affirmed in this regard.

Held: One must participate in the operation or management of the enterprise itself in order to be subject to 1962(c) liability. Pp. 6-16.

(a) Examination of the statutory language in the light of pertinent dictionary definitions and the context of 1962(c) brings the section's meaning unambiguously into focus. Once it is understood that the word "conduct" requires some degree of direction, and that the word "participate" requires some part in that direction, it is clear that one must have some part in directing an enterprise's affairs in order to "participate, directly or indirectly, in the conduct of such . . . affairs." The -operation or management- test expresses this requirement in a formulation that is easy to apply. Pp. 6-9.

(b) The "operation or management" test finds further support in 1962's legislative history. Pp. 9-13.

(c) RICO's "liberal construction" clause-which specifies that the "provisions of this title shall be liberally construed to effectuate its remedial purposes" -does not require rejection of the "operation or management" test. The clause obviously seeks to ensure that Congress' intent is not frustrated by an overly narrow reading of the statute, but it is not an invitation to apply RICO to new purposes that Congress never intended. It is clear from the statute's language and legislative history that Congress did not intend to extend 1962(c) liability beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity. Pp. 13-14.

(d) The "operation or management" test is consistent with the proposition that liability under 1962(c) is not limited to upper management. ``Outsiders'' having no official position with the

enterprise may be liable under 1962(c) if they are "associated with" the enterprise and participate in the operation or management of the enterprise. Pp. 14-15.

(e) This Court will not overturn the lower courts' findings that respondent was entitled to summary judgment upon application of the "operation or management" test to the facts of this case. The failure to tell the cooperative's board that the gasohol plant should have been valued in a particular way is an insufficient basis for concluding that Arthur Young participated in the operation or management of the cooperative itself. Pp. 15-16. 937 F. 2d 1310, affirmed.

Blackmun, J., delivered the opinion of the Court, in which Rehnquist, C. J., and Stevens, O'Connor, and Kennedy, JJ., joined, and in all but Part IV-A of which Scalia and Thomas, JJ., joined. Souter, J., filed a dissenting opinion, in which White, J., joined.

No. 91-886

BOB REVES, et al., PETITIONERS v.
ERNST & YOUNG
on writ of certiorari to the united states court of appeals for the eighth circuit
[March 3, 1993]

Justice Blackmun delivered the opinion of the Court.

This case requires us once again to interpret the provisions of the Racketeer Influenced and Corrupt Organizations (RICO) chapter of the Organized Crime Control Act of 1970, Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U. S. C. 1961-1968 (1988 ed. and Supp. II). Section 1962(c) makes it 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 . . . . The question presented is whether one must participate in the operation or management of the enterprise itself to be subject to liability under this provision.

I

The Farmer's Cooperative of Arkansas and Oklahoma, Inc. (the

Co-Op), began operating in western Arkansas and eastern Oklahoma in 1946. To raise money for operating expenses, the Co-Op sold promissory notes payable to the holder on demand. Each year, Co-Op members were elected to serve on its board. The board met monthly but delegated actual management of the Co-Op to a general manager. In 1952, the board appointed Jack White as general manager.

In January 1980, White began taking loans from the Co-Op to finance the construction of a gasohol plant by his company, White Flame Fuels, Inc. By the end of 1980, White's debts to the Co-Op totaled approximately $4 million. In September of that year, White and Gene Kuykendall, who served as the accountant for both the Co-Op and White Flame, were indicted for federal tax fraud. At a board meeting on November 12, 1980, White proposed that the Co-Op purchase White Flame. The board agreed. One month later, however, the Co-Op filed a declaratory action against White and White Flame in Arkansas state court alleging that White actually had sold White Flame to the Co-Op in February 1980. The complaint was drafted by White's attorneys and led to a consent decree relieving White of his debts and providing that the Co-Op had owned White Flame since February 15, 1980.

/* A fairly unusual point. A suit in name only as the parties agreed to the result before filing. */

White and Kuykendall were convicted of tax fraud in January 1981. See United States v. White, 671 F. 2d 1126 (CA8 1982) (affirming their convictions). Harry Erwin, the managing partner of Russell Brown and Company, an Arkansas accounting firm, testified for White, and shortly thereafter the Co-Op retained Russell Brown to perform its 1981 financial audit. Joe Drozal, a partner in the Brown firm, was put in charge of the audit and Joe Cabaniss was selected to assist him. On January 2, 1982, Russell Brown and Company merged with Arthur Young and Company, which later became respondent Ernst & Young.

One of Drozal's first tasks in the audit was to determine White Flame's fixed-asset value. After consulting with White and reviewing White Flame's books (which Kuykendall had prepared), Drozal concluded that the plant's value at the end of 1980 was $4,393,242.66, the figure Kuykendall had employed. Using this figure as a base, Drozal factored in the 1981 construction costs and capitalized expenses and concluded that White Flame's 1981 fixed-asset value was approximately $4.5 million. Drozal then had to determine how that value should be treated for accounting purposes. If the Co-Op had owned White Flame from the beginning

of construction in 1979, White Flame's value for accounting purposes would be its fixed-asset value of $4.5 million. If, however, the Co-Op had purchased White Flame from White, White Flame would have to be given its fair market value at the time of purchase, which was somewhere between $444,000 and $1.5 million. If White Flame were valued at less than $1.5 million, the Co-Op was insolvent. Drozal concluded that the Co-Op had owned White Flame from the start and that the plant should be valued at $4.5 million on its books.

/* No comment here from the court. However, from reading this opinion one can come to the conclusion that this is an unusual. */

On April 22, 1982, Arthur Young presented its 1981 audit report to the Co-Op's board. In that audit's Note 9, Arthur Young expressed doubt whether the investment in White Flame could ever be recovered. Note 9 also observed that White Flame was sustaining operating losses averaging $100,000 per month. See Arthur Young & Co. v. Reves, 937 F. 2d 1310, 1318 (CA8 1991). Arthur Young did not tell the board of its conclusion that the Co-Op always had owned White Flame or that without that conclusion the Co-Op was insolvent.

On May 27, the Co-Op held its 1982 annual meeting. At that meeting, the Co-Op, through Harry C. Erwin, a partner in Arthur Young, distributed to the members condensed financial statements. These included White Flame's $4.5 million asset value among its total assets but omitted the information contained in the audit's Note 9. See 937 F. 2d, at 1318-1319. Cabaniss was also present. Erwin saw the condensed financial statement for the first time when he arrived at the meeting. In a 5-minute presentation, he told his audience that the statements were condensed and that copies of the full audit were available at the Co-Op's office. In response to questions, Erwin explained that the Co-Op owned White Flame and that the plant had incurred approximately $1.2 million in losses but he revealed no other information relevant to the Co-Op's true financial health.

/* The statement made by the accountant is a true one. However, it again appears that the Court is pointing this out to show that this is perhaps irregular. */

The Co-Op hired Arthur Young also to perform its 1982 audit. The 1982 report, presented to the board on March 7, 1983, was similar to the 1981 report and restated (this time in its Note 8) Arthur Young's doubt whether the investment in White Flame was

recoverable. See 937 F. 2d, at 1320. The gasohol plant again was valued at approximately $4.5 million and was responsible for the Co-Op's showing a positive net worth. The condensed financial statement distributed at the annual meeting on March 24, 1983, omitted the information in Note 8. This time, Arthur Young reviewed the condensed statement in advance but did not act to remove its name from the statement. Cabaniss, in a 3-minute presentation at the meeting, gave the financial report. He informed the members that the full audit was available at the Co-Op's office but did not tell them about Note 8 or that the Co-Op was in financial difficulty if White Flame were written down to its fair market value. Ibid.

In February 1984, the Co-Op experienced a slight run on its demand notes. On February 23, when it was unable to secure further financing, the Co-Op filed for bankruptcy. As a result, the demand notes were frozen in the bankruptcy estate and were no longer redeemable at will by the noteholders.

II

On February 14, 1985, the trustee in bankruptcy filed suit against 40 individuals and entities, including Arthur Young, on behalf of the Co-Op and certain noteholders. The District Court certified a class of noteholders, petitioners here, consisting of persons who had purchased demand notes between February 15, 1980, and February 23, 1984. Petitioners settled with all defendants except Arthur Young. The District Court determined before trial that the demand notes were securities under both federal and state law. See Robertson v. White, 635 F. Supp. 851, 865 (WD Ark. 1986). The court then granted summary judgment in favor of Arthur Young on the RICO claim. See Robertson v. White, Nos. 85-2044, 85-2096, 85-2155, and 85-2259 (WD Ark. Oct. 15, 1986), App. 198-200. The District Court applied the test established by the Eighth Circuit in Bennett v. Berg, 710 F. 2d 1361, 1364 (en banc), cert. denied, sub nom. Prudential Ins. Co. of America v. Bennett, 464 U. S. 1008 (1983), that 1962(c) requires some participation in the operation or management of the enterprise itself. App. 198. The court ruled: "Plaintiffs have failed to show anything more than that the accountants reviewed a series of completed transactions, and certified the Co-Op's records as fairly portraying its financial status as of a date three or four months preceding the meetings of the directors and the shareholders at which they presented their reports." We do not hesitate to declare that such activities fail to satisfy the degree of management required by Bennett v. Berg. Id., at 199-200. The case went to trial on the state and federal

securities fraud claims. The jury found that Arthur Young had committed both state and federal securities fraud and awarded approximately $6.1 million in damages. The Court of Appeals reversed, concluding that the demand notes were not securities under federal or state law. See Arthur Young & Co. v. Reves, 856 F. 2d 52, 55 (1988). On writ of certiorari, this Court ruled that the notes were securities within the meaning of 3(a)(10) of the Securities Exchange Act of 1934, 48 Stat. 882, as amended, 15 U. S. C. 78c(a)(10). Reves v. Ernst & Young, 494 U. S. 56, 70 (1990).

/* It's hard to see what the Court of appeals could have been thinking about as such promissory notes are garden variety securities. Any payment of money, which the return thereon is contingent on the management of others is a security. Notes for a co-op of this source are clearly securities. */

On remand, the Court of Appeals affirmed the judgment of the District Court in all major respects except the damages award, which it reversed and remanded for a new trial. See 937 F. 2d, at 1339-1340. The only part of the Court of Appeals' decision that is at issue here is its affirmance of summary judgment in favor of Arthur Young on the RICO claim. Like the District Court, the Court of Appeals applied the operation or management test articulated in Bennett v. Berg and held that Arthur Young's conduct did not rise to the level of participation in the management or operation of the Co-op. See 937 F. 2d, at 1324. The Court of Appeals for the District of Columbia Circuit also has adopted an operation or management test. See Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639, 286 U. S. App. D.C. 182, 188, 913 F. 2d 948, 954 (1990) (en banc), cert. denied, 501 U. S. ___ (1991). We granted certiorari, 502 U. S. ___ (1992), to resolve the conflict between these cases and Bank of America National Trust & Savings Assn. v. Touche Ross & Co., 782 F. 2d 966, 970 (CA11 1986) (rejecting requirement that a defendant participate in the operation or management of an enterprise).

III

In determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of `a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.' United States v. Turkette, 452 U. S. 576, 580 (1981), quoting Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U. S. 102, 108 (1980). See also Russello v. United

States, 464 U. S. 16, 20 (1983). Section 1962(c) makes it unlawful for any person employed by or associated with any enterprise . . . "to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity . . . ." The narrow question in this case is the meaning of the phrase "to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs." The word conduct is used twice, and it seems reasonable to give each use a similar construction. See Sorenson v. Secretary of the Treasury, 475 U. S. 851, 860 (1986). As a verb, conduct means to lead, run, manage, or direct. Webster's Third New International Dictionary 474 (1976). Petitioners urge us to read conduct as "carry on", Brief for Petitioners 23, so that almost any involvement in the affairs of an enterprise would satisfy the conduct or participate requirement. But context is important, and in the context of the phrase "to conduct . . . [an] enterprise's affairs", the word indicates some degree of direction.

The dissent agrees that, when conduct is used as a verb, it is plausible to find in it a suggestion of control. Post, at 2. The dissent prefers to focus on conduct as a noun, as in the phrase participate, directly or indirectly, in the conduct of [an] enterprise's affairs. But unless one reads conduct to include an element of direction when used as a noun in this phrase, the word becomes superfluous. Congress could easily have written participate, directly or indirectly, in [an] enterprise's affairs, but it chose to repeat the word conduct. We conclude, therefore, that as both a noun and a verb in this subsection conduct requires an element of direction.

The more difficult question is what to make of the word participate. This Court previously has characterized this word "as a ter[m] . . . of breadth." Russello, 464 U. S., at 21-22. Petitioners argue that Congress used participate as a synonym for aid and abet. Brief for Petitioners 26. That would be a term of breadth indeed, for aid and abet comprehends all assistance rendered by words, acts, encouragement, support, or presence. Black's Law Dictionary 68 (6th ed. 1990). But within the context of 1962(c), participate appears to have a narrower meaning. We may mark the limits of what the term might mean by looking again at what Congress did not say. On the one hand, to participate . . . in the conduct of . . . affairs must be broader than to conduct affairs or the participate phrase would be superfluous. On the other hand, as we already have noted, to participate . . . in the conduct of . . . affairs must be narrower than to participate in affairs or Congress' repetition

of the word conduct would serve no purpose. It seems that Congress chose a middle ground, consistent with a common understanding of the word participate-- to take part in. Webster's Third New International Dictionary 1646 (1976). Once we understand the word conduct to require some degree of direction and the word participate to require some part in that direction, the meaning of 1962(c) comes into focus. In order to participate, directly or indirectly, in the conduct of such enterprise's affairs, one must have some part in directing those affairs. Of course, the word participate makes clear that RICO liability is not limited to those with primary responsibility for the enterprise's affairs, just as the phrase directly or indirectly makes clear that RICO liability is not limited to those with a formal position in the enterprise, but some part in directing the enterprise's affairs is required. The operation or management test expresses this requirement in a formulation that is easy to apply.

IV

A

This test finds further support in the legislative history of 1962. The basic structure of 1962 took shape in the spring of 1969. On March 20 of that year, Senator Hruska introduced S. 1623, 91st Cong., 1st Sess., which combined his previous legislative proposals. See Lynch, RICO: The Crime of Being a Criminal, Parts I & II, 87 Colum. L. Rev. 661, 676 (1987); Blakey & Gettings, Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts Criminal and Civil Remedies, 53 Temp. L. Q. 1009, 1017 (1980). S. 1623 was titled the "Criminal Activities Profits Act" and was directed solely at the investment of proceeds derived from criminal activity. It was 2(a) of this bill that ultimately became 1962(a). On April 18, Senators McClellan and Hruska introduced S. 1861, 91st Cong., 1st Sess., which recast S. 1623 and added provisions that became 1962(b) and (c). See Blakey, The RICO Civil Fraud Action in Context: Reflections on Bennett v. Berg, 58 Notre Dame L. Rev. 237, 264, n. 76 (1982). The first line of S. 1861 reflected its expanded purpose: to prohibit the infiltration or management of legitimate organizations by racketeering activity or the proceeds of racketeering activity.

On June 3, Assistant Attorney General Will Wilson presented the views of the Department of Justice on a number of bills relating to organized crime, including S.1623 and S. 1861, to the Subcommittee on Criminal Laws and Procedures of the Senate

Committee on the Judiciary. Wilson criticized S. 1623 on the ground "that it is too narrow in that it merely prohibits the investment of prohibited funds in a business, but fails to prohibit the control or operation of such a business by means of prohibited racketeering activities." Measures Related to Organized Crime: Hearings before the Subcommittee on Criminal Laws and Procedures of the Senate Committee on the Judiciary, 91st Cong., 1st Sess., 387 (1969) (emphasis added). He praised S. 1861 because the "criminal provisions of the bill contained in Section 1962 are broad enough to cover most of the methods by which ownership, control and operation of business concerns are acquired." Ibid. See Blakey, supra, at 258, n. 59.

With alterations not relevant here, S. 1861 became Title IX of S. 30. The House and Senate Reports that accompanied S. 30 described the three-part structure of 1962: (1) making unlawful the receipt or use of income from `racketeering activity' or its proceeds by a principal in commission of the activity to acquire an interest in or establish an enterprise engaged in interstate commerce; (2) prohibiting the acquisition of any enterprise engaged in interstate commerce through a `pattern' of `racketeering activity;' and (3) proscribing the operation of any enterprise engaged in interstate commerce through a `pattern' of `racketeering activity.' H.R. Rep. No. 91-1549, p. 35 (1970); S. Rep. No. 91-617, p. 34 (1969) (emphasis added). In their comments on the floor, members of Congress consistently referred to subsection (c) as prohibiting the operation of an enterprise through a pattern of racketeering activity and to subsections (a) and (b) as prohibiting the acquisition of an enterprise. Representative Cellar, who was Chairman of the House Judiciary Committee that voted RICO out in 1970, described 1962(c) as proscribing the "conduct of the affairs of a business by a person acting in a managerial capacity, through racketeering activity." 116 Cong. Rec. 35196 (1970) (emphasis added).

Of course, the fact that members of Congress understood 1962(c) to prohibit the operation or management of an enterprise through a pattern of racketeering activity does not necessarily mean that they understood 1962(c) to be limited to the operation or management of an enterprise. Cf. Turkette, 452 U. S., at 591 (references to the infiltration of legitimate organizations do not "requir[e] the negative inference that [RICO] did not reach the activities of enterprises organized and existing for criminal purposes." It is clear from other remarks, however, that Congress did not intend RICO to extend beyond the acquisition or operation of an enterprise. While S. 30 was being considered, critics of the bill raised concerns that racketeering activity

was defined so broadly that RICO would reach many crimes not necessarily typical of organized crime. See 116 Cong. Rec. 18912-18914, 18939-18940 (1970) (remarks of Sen. McClellan). Senator McClellan reassured the bill's critics that the critical limitation was not to be found in 1961(1)'s list of predicate crimes but in the statute's other requirements, including those of 1962:

> The danger that commission of such offenses by other individuals would subject them to proceedings under title IX [RICO] is even smaller than any such danger under title III of the 1968 [Safe Streets] [A]ct, since commission of a crime listed under title IX provides only one element of title IX's prohibitions. Unless an individual not only commits such a crime but engages in a pattern of such violations, and uses that pattern to obtain or operate an interest in an interstate business, he is not made subject to proceedings under title IX. 116 Cong. Rec., at 18940.

Thus, the legislative history confirms what we have already deduced from the language of 1962(c) that one is not liable under that provision unless one has participated in the operation or management of the enterprise itself.

B

RICO's liberal construction clause does not require rejection of the operation or management test. Congress directed, by 904(a) of Pub. L. 91-452, 84 Stat. 947, see note following 18 U. S. C. 1961, p. 438, that the provisions of this title shall be liberally construed to effectuate its remedial purposes. This clause obviously seeks to ensure that Congress' intent is not frustrated by an overly narrow reading of the statute, but it is not an invitation to apply RICO to new purposes that Congress never intended. Nor does the clause help us to determine what purposes Congress had in mind. Those must be gleaned from the statute through the normal means of interpretation. The clause 'only serves as an aid for resolving an ambiguity; it is not to be used to beget one.' Sedima, S. P. R. L. v. Imrex Co., 473 U. S. 479, 492, n. 10 (1985), quoting Callanan v. United States, 364 U. S. 587, 596 (1961). In this case it is clear that Congress did not intend to extend RICO liability under 1962(c) beyond those who participate in the operation or management of an enterprise through a pattern of racketeering activity.

V

Petitioners argue that the "operation or management" test is flawed because liability under 1962(c) is not limited to upper management but may extend to "any person employed by or associated with [the] enterprise." Brief for Petitioners 37-40. We agree that liability under 1962(c) is not limited to upper management, but we disagree that the operation or management test is inconsistent with this proposition. An enterprise is operated not just by upper management but also by lower-rung participants in the enterprise who are under the direction of upper management. An enterprise also might be operated or managed by others associated with the enterprise who exert control over it as, for example, by bribery.

The United States also argues that the operation or management test is not consistent with 1962(c) because it limits the liability of outsiders who have no official position within the enterprise. Brief for United States as Amicus Curiae 12 and 15. The United States correctly points out that RICO's major purpose was to attack the "infiltration of organized crime and racketeering into legitimate organizations," S. Rep. No. 91-617, at 76, but its argument fails on several counts. First, it ignores the fact that 1962 has four subsections. Infiltration of legitimate organizations by outsiders is clearly addressed in subsections (a) and (b), and the operation or management test that applies under subsection (c) in no way limits the application of subsections (a) and (b) to outsiders. Second, 1962(c) is limited to persons "employed by or associated with an enterprise," suggesting a more limited reach than subsections (a) and (b), which do not contain such a restriction. Third, 1962(c) cannot be interpreted to reach complete outsiders because liability depends on showing that the defendants conducted or participated in the conduct of the enterprise's affairs, not just their own affairs. Of course, outsiders may be liable under 1962(c) if they are associated with an enterprise and participate in the conduct of its affairs that is, participate in the operation or management of the enterprise itself but it would be consistent with neither the language nor the legislative history of 1962(c) to interpret it as broadly as petitioners and the United States urge.

In sum, we hold that "to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs," 1962(c), one must participate in the operation or management of the enterprise itself.

VI

Both the District Court and the Court of Appeals applied the standard we adopt today to the facts of this case, and both found that respondent was entitled to summary judgment. Neither petitioners nor the United States have argued that these courts misapplied the "operation or management" test. The dissent argues that by creating the Co-Op's financial statements Arthur Young participated in the management of the Co-Op because `financial statements are management's responsibility.' Post, at 5, quoting 1 CCH AICPA Professional Standards, SAS No. 1, 110.02 (1982). Although the professional standards adopted by the accounting profession may be relevant, they do not define what constitutes management of an enterprise for the purposes of 1962(c).

In this case, it is undisputed that Arthur Young relied upon existing Co-Op records in preparing the 1981 and 1982 audit reports. The AICPA's professional standards state that an auditor may draft financial statements in whole or in part based on information from management's accounting system. See 1 CCH AICPA Professional Standards, SAS No. 1, 110.02 (1982). It is also undisputed that Arthur Young's audit reports revealed to the Co-Op's board that the value of the gasohol plant had been calculated based on the Co-Op's investment in the plant. See App. in No. 87-1726 (CA8), pp. 250-251, 272-273. Thus, we only could conclude that Arthur Young participated in the operation or management of the Co-Op itself if Arthur Young's failure to tell the Co-Op's board that the plant should have been given its fair market value constituted such participation. We think that Arthur Young's failure in this respect is not sufficient to give rise to liability under 1962(c).

The judgment of the Court of Appeals is affirmed.

It is so ordered.

In the word conduct, the Court today finds a clear congressional mandate to limit RICO liability under 18 U. S. C. 1962(c) to participants in the operation or management of a RICO enterprise. Ante, at 6-9. What strikes the Court as clear, however, looks at the very least hazy to me, and I accordingly find the statute's liberal construction provision not irrelevant, but dispositive. But even if I were to assume, with the majority, that the word conduct clearly imports some degree of direction or control into 1962(c), I would have to say that the majority misapplies its own "operation or management" test to the

facts presented here. I therefore respectfully dissent.

The word conduct occurs twice in 1962(c), first as a verb, then as a noun.

> 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. 18 U. S. C. 1962(c).

Although the Court is surely correct that the cognates should receive consistent readings, see ante, at 7, and correct again that context is important in coming to understand the sense of the terms intended by Congress, ibid., the majority goes astray in quoting only the verb form of conduct in its statement of the context for divining a meaning that must fit the noun usage as well.

Thus, the majority reaches its pivotal conclusion that in the context of the phrase `to conduct . . . [an] enterprise's affairs,' the word indicates some degree of direction. Ibid. (footnote omitted). To be sure, if the statutory setting is so abbreviated as to limit consideration to the word as a verb, it is plausible to find in it a suggestion of control, as in the phrase "to conduct an orchestra."

(Even so, the suggestion is less than emphatic, since even when -conduct- is used as a verb, [t]he notion of direction or leadership is often obscured or lost; e.g. an investigation is conducted by all those who take part in it. 3 Oxford English Dictionary 691 (2d ed. 1989) (emphasis in original).)

In any event, the context is not so limited, and several features of the full subsection at issue support a more inclusive construction of -conduct.- The term, when used as a noun, is defined by the majority's chosen dictionary as, for example, -carrying forward- or -carrying out,- Webster's Third New International Dictionary 473 (1976), phrases without any implication of direction or control. The suggestion of control is diminished further by the fact that 1962(c) covers not just those -employed by- an enterprise, but those merely -associated with- it, as well. And associates (like employees) are prohibited

not merely from conducting the affairs of an enterprise through a pattern of racketeering, not merely from participating directly in such unlawful conduct, but even from indirect participation in the conduct of an enterprise's affairs in such a manner. The very breadth of this prohibition renders the majority's reading of -conduct- rather awkward, for it is hard to imagine how the -operation or management- test would leave the statute with the capacity to reach the indirect participation of someone merely associated with an enterprise. I think, then, that this contextual examination shows -conduct- to have a long arm, unlimited by any requirement to prove that the activity includes an element of direction. But at the very least, the full context is enough to defeat the majority's conviction that the more restrictive interpretation of the word -conduct- is clearly the one intended.

What, then, if we call it a tie on the contextual analysis? The answer is that Congress has given courts faced with uncertain meaning a clear tie-breaker in RICO's liberal construction clause, which directs that "the provisions of this title shall be liberally construed to effectuate its remedial purposes." Pub. L. 91-452, 904(a), 84 Stat. 947, note following 18 U. S. C. 1961. We have relied before on this express admonition to read RICO provisions broadly, see Sedima, S. P. R. L. v. Imrex Co., 473 U. S. 479, 497-498 (1985), and in this instance, the liberal construction clause plays its intended part, directing us to recognize the more inclusive definition of the word conduct, free of any restricting element of direction or control. Because the Court of Appeals employed a narrower reading, I would reverse.

Even if I were to adopt the majority's view of 1962(c), however, I still could not join the judgment, which seems to me unsupportable under the very "operation or management" test the Court announces. If Arthur Young had confined itself in this case to the role traditionally performed by an outside auditor, I could agree with the majority that Arthur Young took no part in the management or operation of the Co-op.

/* Useful in the future for attorney's defending RICO claims that "the role of an outside auditor" is not within RICO's scope, according to all of the justices. */

But the record on summary judgment, viewed most favorably to Reves, shows that Arthur Young created the very financial statements it was hired, and purported, to audit. Most importantly, Reves adduced evidence that Arthur Young took on management responsibilities by deciding, in the first instance,

what value to assign to the Co-op's most important fixed asset, the White Flame gasohol plant, and Arthur Young itself conceded below that the alleged activity went beyond traditional auditing. Because I find, then, that even under the majority's "operation or management test" the Court of Appeals erroneously affirmed the summary judgment for Arthur Young, I would (again) reverse.

For our purposes, the line between managing and auditing is fairly clear. In describing the respective responsibilities of management and auditor, Arthur Young points to the Code of Professional Conduct developed by the American Institute of Certified Public Accountants (AICPA). Brief for Respondent 31. This auditors' code points up management's ultimate responsibility for the content of financial statements: "The financial statements are management's responsibility. The auditor's responsibility is to express an opinion on the financial statements. Management is responsible for adopting sound accounting policies and for establishing and maintaining an internal control structure that will, among other things, record, process, summarize, and report financial data that is consistent with management's assertions embodied in the financial statements. . . . The independent auditor may make suggestions about the form or content of the financial statements or draft them, in whole or in part, based on information from management's accounting system." 1 CCH AICPA Professional Standards, SAS No. 1, 110.02 (1982). In short, management chooses the assertions to appear in financial statements; the auditor "simply expresses an opinion on the client's financial statements." Brief for Respondent 30. These standards leave no doubt that an accountant can in no sense independently audit financial records when he has selected their substance himself. See In re Thomas P. Reynolds Securities, Ltd., Exchange Act Release No. 29689, 1991 SEC Lexis 1855, *6-*7 (Sept. 16, 1991) (A company may, of course, rely on an outside firm to prepare its books of account and financial statements. However, once an accounting firm performs those functions, it has become identified with management and may not perform an audit).

The evidence on summary judgment, read favorably to Reves, indicates that Arthur Young did indeed step out of its auditing shoes and into those of management, in creating the financial record on which the Co-op's solvency was erroneously predicated. The Co-op's 1980 financial statement gave no fixed asset value for the White Flame gasohol plant (although the statement did say that the Co-op had advanced the plant $4.1 million during 1980, App. in No. 87-1726 (CA8), pp. 291, 295), and there is no indication that a valuation statement occurred anywhere else in

the Co-op's records at that time. When Arthur Young accepted the job of preparing the Co-op's financial statement for 1981, the value to be given the plant was a matter of obvious moment. Instead of declaring the plant's valuation to be the Co-op's responsibility, and instead even of turning to management for more reliable information about the plant's value, Arthur Young basically set out to answer its own questions and to come up with its own figure for White Flame's fixed asset value. In doing so, it repeatedly made choices calling for the exercise of a judgment that belonged to the Co-op's management in the first instance.

Arthur Young realized it could not rely on White Flame's 1980 financial statement, which had been prepared by a convicted felon (who also happened to be the Co-op's former accountant), see Arthur Young & Co. v. Reves, 937 F. 2d 1310, 1316-1317 (CA8 1991), and an internal memo that appears in the record shows that Arthur Young had a number of serious questions about White Flame's cost figures for the plant. See App. in No. 87-1726 (CA8), pp. 1189-1191. Nonetheless, Arthur Young essentially invented a cost figure that matched, to the penny, the phony figure that Kuykendall, White Flame's convicted accountant, had created. App. 138-140. With this invented cost figure in hand, Arthur Young then proceeded to decide, again without consulting management, when the Co-op had acquired White Flame. Although the Co-op's 1980 financial statement indicated an acquisition of White Flame in February 1980, as did a local court decree, see App. in No. 87-1726 (CA8), pp. 295, 1212-1214, Arthur Young adopted a blatant fiction-- that the Co-op [had] owned the entire plant at its inception in May, 1979-- in order to justify carrying the asset on [the Co-op's] books at its total cost, as if the Co-op had built it from scratch. App. 137. Apparently, the idea that the Co-op had owned the gasohol plant since 1979 was reflected nowhere in the Co-op's books, and Arthur Young was solely responsible for the Co-op's decision to treat the transaction in this manner.

Relying on this fiction, the unreality of which it never shared with the Co-op's Board of Directors, let alone the membership, Arthur Young prepared the Co-op's 1981 financial statement and listed a fixed asset value of more than $4.5 million for the gasohol plant. App. in No. 87-1726 (CA8), p. 238. Arthur Young listed a similar value for White Flame in the Co-op's financial statement for 1982. Id., at 261. By these actions, Arthur Young took on management responsibilities, for it thereby made assertions about the fixed asset value of White Flame that were derived, not from information or any figure provided by the Co-op's management, but from its own financial analysis.

Thus, the District Court, after reviewing this evidence, concluded that petitioners could show from the record that Arthur Young had -created the Co-op's financial statements.- App. 199. The court also took note of evidence supporting petitioners' allegation that Arthur Young had participated in the creation of condensed financial statements that were handed out each year at the annual meeting of the Co-op. Ibid. Before the Court of Appeals, although Arthur Young disputed petitioners' claim that it had been functioning as the Co-op's de facto chief financial officer, Supplemental Reply Brief on Remand for Appellant in No. 87-1726 (CA8), p. 2, it did not dispute the District Court's conclusion that Reves had presented evidence showing that Arthur Young had created the Co-op's financial statements and had participated in the creation of condensed financial statements. Supplemental Brief on Remand for Appellant in No. 87-1726 (CA8), p. 20. Instead, Arthur Young argued that "[e]ven if, as here, the alleged activity goes beyond traditional auditing, it was neither an integral part of the management of the Co-op's affairs nor part of a dominant, active ownership or managerial role." Id., at 21 (emphasis added).

It was only by ignoring these crucial concessions, and the evidence that obviously prompted them, that the Court of Appeals could describe Arthur Young's involvement with the Co-op as limited to the audits, meetings with the Board of Directors to explain the audits, and presentations at the annual meetings. 937 F. 2d, at 1324. And only then could the court have ruled that, as a matter of law, Arthur Young's involvement with the Co-op did not rise to the level required for a RICO violation, which it described (quoting Bennett v. Berg, 710 F. 2d 1361 (CA8 1983)) as requiring only "some participation in the operation or management of the enterprise itself." Ibid. (internal quotes omitted).

But petitioners' evidence and respondent's concessions of activity going beyond outside auditing can neither be ignored nor declared irrelevant. As the Court explains today, `outsiders' may be liable under 1962(c) if they are `associated with' an enterprise and participate in the conduct of its affairs "that is, participate in the operation or management of the enterprise itself . . . ." Ante, at 15 (emphasis in original). Thus, the question here is whether Arthur Young, which was associated with the Co-op, participated in the Co-op's operation or management. As the Court has noted, participate should be read broadly in this context, see ante, at 8 (citing Russello v. United States, 464 U. S. 16, 21-22 (1983)), since Congress has provided that

even indirect participation will suffice.

Cf. Sedima, S. P. R. L. v. Imrex Co., 473 U. S., at 497-498 (Congress' self-consciously expansive language supports the conclusion that RICO is to be read broadly).

The evidence petitioners presented in opposing the motion for summary judgment demonstrated Arthur Young's participation in this broad sense. By assuming the authority to make key decisions in stating the Co-op's own valuation of its major fixed asset, and by creating financial statements that were the responsibility of the Co-op's management, Arthur Young crossed the line separating outside auditors from inside financial managers. Because the majority, like the Court of Appeals, affirms the grant of summary judgment in spite of this evidence, I believe that it misapplies its own operation or management test, and I therefore respectfully dissent.