

Supreme Court of the United States

OCTOBER TERM 1970

In the Matter of:

JAMES WINTFORD REWIS AND MARY
WILLIAMS,

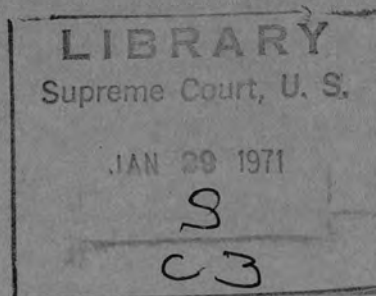
Petitioners,

vs.

UNITED STATES,

Respondent.

Docket No. 5342



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Place Washington, D. C.

Date January 19, 1971

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C O N T E N T S

ARGUMENT OF:

PAGE:

ALBERT J. DATZ, ESQ.
On behalf of Petitioners

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SIDNEY M. GLAZER, ESQ.
On behalf of Respondent

24

FURTHER ARGUMENT OF:

ALBERT J. DATZ, ESQ.
On behalf of Petitioners

42

1 IN THE SUPREME COURT OF THE UNITED STATES

2 OCTOBER TERM, 1970

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4 -----
5 JAMES WINTFORD REWIS AND MARY
6 WILLIAMS,

7 Petitioners

8 vs.

No. 5342

9
10
11 UNITED STATES

12 Respondent
13 -----

14 Washington, D.C,
15 Tuesday, January 19, 1971

16 The above entitled matter came on for discussion
17 at 2:00 o'clock p.m.

18 BEFORE:

19 WARREN E. BURGER, Chief Justice
20 HUGO L. BLACK, Associate Justice
21 WILLIAM O. DOUGLAS, Associate Justice
22 JOHN M. HARLAN, Associate Justice
23 WILLIAM J. BRENNAN, JR., Associate Justice
24 POTTER STEWART, Associate Justice
25 BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HENRY BLACKMUN, Associate Justice

1 APPEARANCES:

2 ALBERT J. DATZESQ.
3 Jacksonville, Florida
4 On Behalf of Petitioners

5 SIDNEY M. GLAZER, ESQ.
6 Criminal Division
7 Department of Justice
Washington, D.C.
8 On Behalf of Respondent

9 *****
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1 P R O C E E D I N G S

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3 MR. CHIEF JUSTICE BURGER: We'll hear arguments
4 next in No. 5342, Wintford Rewis and Williams against the
5 United States.

6 ARGUMENT OF ALBERT J. DATZ, ESQ.

7 ON BEHALF OF PETITIONERS

8 MR. DATZ: Mr. Chief Justice, and may it please
9 the Court.

10 The issue here is whether or not travel in interstate
11 commerce is necessary for guilt, whether or not re-travel in
12 interstate commerce is necessary for guilt under 18 United
13 States Code 1952, known as the Travel Act, is supplied by the
14 fact that the gambling players , or customers cross a state line.

15 The Petitioners here are James Wintford Rewis,---

16 Q Mr. Datz.

17 A Yes, sir.

18 Q You stated the issue, and as you understand it
19 and submit it to the Court today , is it purely a question of
20 statutory construction, or are there any constitutional ques-
21 tions?

22 A I believe it's purely statutory construction.

23 Q You don't question the power of the Congress under
24 the commerce laws?

25 A Not in that---

1 Q ---the statute that could have made travel by
2 the gamblers sufficient to make your clients guilty of a fed-
3 eral criminal offense?

4 A This is not involved here, Your Honor, I'm
5 aware of the fact that Congress has just recently passed such
6 a statute---

7 Q Well, in other words if we disagree with you
8 as to the statutory construction, it could be involved. We could
9 say yes, the statute was we read it does mean that the travel
10 by the players from Georgia into Florida is sufficient to make
11 your clients guilty of an offense under the statute as it's
12 written.

13 Then there it becomes a question, well did Congress
14 have the constitutional power under the commerce clause to
15 do so?

16 You don't go that far---

17 A We don't go that far---

18 Q You just rest your argument on the words of the
19 statute.

20 A Yes, Your Honor.

21 Q Is that correct?

22 A Yes, Your Honor.

23 Q Plus---

24 A I might point out tangentially that in the re-
25 cently passed act, Congress did declare that gambling was a

1 matter of interstate commerce per se. That it affected inter-
2 state commerce and attempted to regulate.

3 I submit, and this is not in the briefs, nobody had
4 raised it, that that might even be additional factors to
5 consider a comparison with that statute and the Travel Act is
6 what Congress could have done if it had wanted to.

7 Q Well you assume, in any event, your argument is
8 based exclusively on the language of the statute and its legis-
9 lative history?

10 A Yes, Your Honor.

11 Q Merely a statutory argument.

12 A Yes, Your Honor.

13 The Petitioners, James Rewis and Mary Willaims were
14 taken in the middle district of Florida of the crime involved
15 in the violation of 18 United States Code 1952, known as
16 the Travel Act. That is, of traveling and causing travel in inter-
17 state commerce with intent to promote, manage, establish, carry
18 on and to facilitate the promotion, management establishment,
19 and carrying on of a gambling activity.

20 Now the gambling activity involved was a lottery,
21 known as "Cuba". And in this particular case, Cuba is called
22 Cuba because at that time the winning number was picked through
23 the national lottery in Cuba. It was picked around 2:00 p.m.
24 on Saturday afternoon each week, and the people in the state
25 of Florida who were actually violating the laws of the state of

1 Florida in running this Cuba activity would wait and get the
2 winning number from Cuba and that, of course, would determine
3 the winning number of everybody who had played.

4 Now this lottery, so far as this case is concerned,
5 was operated from the home of Mary Williams, at a small com-
6 munity between Jacksonville, Florida and Fernandina Beach,
7 Florida, known as Yulee.

8 This home is about a half a mile from a highway, US17
9 which led to Georgia. Georgia was about 15 miles north of Yulee.
10 The game was a relatively small game, as was pointed out in
11 the briefs. I believe the take on the particular Saturday on
12 which it was raided was about \$125, although concededly, Rewis
13 who was the pick up man or operator of the game had over \$1500
14 in his pocket.

15 But significantly, the winning number fell on a Sat-
16 urday afternoon and most of the players would pick their numbers
17 on Friday night and Saturday morning. Undoubtedly, Mary Williams
18 who was operating a selling establishment there from her home
19 was a seller of the numbers.

20 Rewis was the central figure who picked up the numbers
21 each Saturday around noon before the winning number would fall.

22 Now the issue of the trial has here, was whether or
23 not travel by some customers who were from Georgia, at least
24 15 miles to the north, invested the operation with this travel
25 in interstate commerce required by the Travel Act.

1 However, the theory of the government at the trial
2 and the theory in the Appellate Courts is different. At the
3 trial the government contended and the District Judge agreed
4 that the travel of the customers themselves invested this illegal
5 activity with the interstate character necessary for conviction,
6 and the customers themselves, or bettors could be convicted,
7 under the Travel Act.

8 Now after the conviction the Fifth Circuit disagreed
9 with that concept. Originally there were 11 people indicted.
10 One was Lewis' wife who was excused because of illness. Four
11 had directed motions for judgement of acquittal granted by the
12 trial judge. Two were acquitted by the jury, and finally two
13 who were convicted, their convictions were reversed by the
14 Court of Appeals for the Fifth Circuit, on the theory that the
15 only evidence against them was that they were the bettors, the
16 customers, and that the Travel Act itself did not proscribe the
17 conduct of the bettor, only the operation of the business enter-
18 prise as defined by the statute itself, subsection B of the stat-
19 ute, Section 1952, describes the unlawful activity as "a busi-
20 ness enterprise" and a short look at the legislative history of
21 this statute shows without any doubt that the intent of Congress
22 was to proscribe the activities of the business enterprise,
23 and we submit that the reverse is true, that it did not intend
24 to proscribe the activities of the bettor.

25 Now the government has not contended otherwise here,

1 but the Fifth Circuit in reversing as to the two customers af-
2 firmed the conviction as to Rewis and Williams, the last two
3 remaining defendants, on the theory that by placing this game,
4 this lottery within 15 miles of the Georgia border, that they
5 had attracted, sort of an attracted nuisance theory, they had
6 attracted these bettors from the state of Georgia to Florida,
7 and this the interstate character was bestowed on this gambling
8 operation.

9 Q What would you say if the gambling establishment
10 had been 15 feet inside the line from Georgia?

11 A I would say the same thing, that it did not---

12 Q I see.

13 A ---violate the statute. This particular Travel
14 Act, anyhow, now we might get into another area, another question
15 of use of interstate facilities, to promote, manage, et cetera,
16 the use of a gambling operation, because as an example, suppose
17 they put up a big billboard right at the border and say "Come
18 on over to Florida and participate in our gambling operation",
19 then there would be some question of interstate facility, but
20 not travel.

21 Q Wouldn't it be different if they had a sign---

22 A I don't believe so.

23 Q ---the other way, saying come in, have fun,
24 just before you leave Florida?

25 A If the operators had traveled in interstate com-

1 merce to put that sign up, and they would have had to do that,
2 either themselves or through some agent, then of course they
3 would be guilty because they are the operators.

4 They are promoting, establishing, maintaining, and
5 carrying on this operation, the exact words the statute used
6 to condemn.

7 But the mere placing of the sign at the border would
8 not be sufficient. Or placing the game 15 feet from the border
9 would not be sufficient.

10 But here we have 15 miles and the Court of Appeals
11 said that this attracted the players across the state line and
12 invested the game with the interstate character necessary for
13 conviction.

14 Q ---to what attracted the players.

15 A I'm sorry Your Honor, I didn't---

16 Q I guess you wouldn't say that the Court of Appeals
17 is wrong in saying that within 15 miles of the border on those
18 good roads that that would have attracted the players.

19 A I would tend to agree, Your Honor, that it might
20 have had some attraction, although, and we might discuss this at
21 this moment, the government says that the predominant people
22 involved were from Georgia, we submit the record would show
23 otherwise, that these people came from Georgia for several
24 reasons.

25 One of the witnesses was bringing sewing to the Mary

1 Williams house, her mother was ill and she would bring sewing
2 back and forth. Other witnesses would come down to Jacksonville
3 to buy fish to peddle up in Georgia, and stop by the game to
4 bet a number.

5 Q And others came down to gamble, right?

6 A Yes, sir, others came for the specific purpose
7 of gambling. But it wasn't the predominant travel, this is an
8 example. There were 14 different successive Saturdays involved
9 in the government surveillance of this Mary Williams home. They
10 made a count in the indictment for each one of those Saturdays
11 claiming interstate travel.

12 Now they joined Mary Williams and Rewis in each of
13 those counts and then they would say that one or more people
14 from Georgia would travel on those particular Saturdays.

15 This is alleged, now, even though the trial judge
16 directed a judgement of acquittal as to 4 of these people,
17 and the jury acquitted 2 on the theory that they weren't even
18 customers, because at that time the trial judges theory was, and
19 the governments theory was that if they were customers they
20 were guilty.

21 But on 5 Saturdays they say one person came from Geor-
22 gia. On 3 Saturdays they say 2 people came from Georgia. On 4
23 Saturdays they say that 3 people came from Georgian and on 2
24 Saturdays they said that 4 people came from Georgia.

25 Q Didn't any more people than that come from 15

1 down in Florida?

2 A That's all that the record shows Your Honor,
3 except for---

4 Q How many were coming from Florida? I don't
5 see---

6 A A lot. Well, now this is the point. The---you'd
7 have to see the movies which were introduced at the trial to
8 know this, and for this reason I hesitate to take advantage of
9 the government, but there were a lot of people from Florida.

10 This was not a predominantly Georgia type of operation,
11 and this may become significant in connection with the theory
12 that the government offers for the purpose of the travel.

13 Q You say there were movies introduced in evidence?

14 A Yes, Your Honor.

15 Q Of the activity going on around the house. And
16 I suppose they're in the original record which is logged in the
17 Court, are they?

18 A Yes, sir. A certain example. They would take the
19 surveillance from 9:00 Saturday morning until 1:00 Saturday
20 afternoon, they would then, the FBI testified, they only took
21 movies of those people they thought pertinent to the inves-
22 tigation, and this was late in the investigation where they
23 were concentrating on Georgia people.

24 On one Saturday 4 hours of surveillance produced 3
25 minutes of movies. On another Saturday it produced 8 minutes of

1 movies, on the next 9, and on the last, 7 minutes of movies out
2 of over 4 hours of surveillance.

3 Q What would be your position if the record showed
4 that 60% of all the people who came there were from Georgia?

5 A I would say that it would be no different, Your
6 Honor, if 100% came from Georgia.

7 Q Then why emphasize the minimal number, if the
8 number is irrelevant?

9 A Becuase simply that the government takes the po-
10 sition that we can expound a new theory here, and in spite of
11 the language of the statute which says that the travel must be
12 to promote the game, that the defendants could be guilty if
13 you applied a combination of the mail fraud statute and the
14 Mann Act, and say that if the defendants reasonably expected
15 out of state people to travel to their game for the specific
16 purpose of participating in that gambling operation, then, the
17 government says, we can now, based on this case, hold them
18 guilty of the offense.

19 We submit that that would be contrary to the intent
20 of Congress from a simple reading of the statute much less a
21 study of the legislative history involved.

22 Q Mr. Cox, help me out in one respect. I take it
23 the government seeks now and that this Circuit held that the
24 statute has no application to the interstate traveler who crosses
25 the state line merely to place a bet.

1 A I believe that's correct.

2 Q Suppose that this circuit were wrong, consti-
3 tutionally, and that the statute---

4 A Then---

5 Q Does your case go out?

6 A Yes, it would.

7 Q Would you mind telling me again as briefly as
8 possible what you understand be the difference between your
9 position and the other ones. I don't quite get it in the briefs
10 or the argument in this case.

11 A Our position, if it please the Court, is that
12 travel required by the statute cannot be imputed under any
13 circumstances by the simple travel of a customer to a gambling
14 game.

15 The government maintains that it can be imputed to the
16 gambling game if the operator could reasonably foresee that a
17 bettor would come to the game and cross state lines in doing
18 so.

19 And they carry it further. A bettor would do so for
20 the specific purpose of gambling in that game. Now the reason
21 for that limitation is this. Otherwise, and we submit that even
22 if that theory is accepted, the whole expanse of the Travel Act
23 would be broadened to the point where the FBI and the federal
24 government would be in the minor police court case business.

25 Every---this case simply was a game 15 miles from Geor-

1 gia because as the Fifth Circuit said the operator should have
2 reasonably anticipated that people would come from Georgia to
3 play.

4 But what of the tourist resort, where people are
5 crossing state lines all the time, Miami, Los Angeles, New York?
6 Certainly every hotel operator can look at his register and see
7 people come across state lines. Does the back room ---card game
8 come within federal jurisdiction, then?

9 Does the prostitute who entertains a guest knowing
10 that he comes across the state line come within federal juris-
11 diction? The vast number of case increase would be fantastic,
12 to accept the governments theory under these circumstances.

13 Q Is the governments theory anybody who travels
14 along the highway which happens to cross a state line, and wants
15 to go to a gambling house subject to jurisdiction of the fed-
16 eral government to try for gambling?

17 A Not the person who traveled on the highway,
18 but the man who runs the house would be subject to federal
19 jurisdiction. The man who runs the gambling house would then
20 be subject to federal jurisdiction.

21 Q Is that the only basis for jurisdiction?

22 A I submit that it is. They have tried to limit
23 it in what we submit is not a very pragmatic way and say the
24 traveler must have traveled for the specific purpose of gambling
25 or participating in the unlawful activity.

1 Q Well what would that have to do with the guilt
2 of the man who owned the gambling house?

3 A I submit that it would not, Your Honor.

4 And certainly under---

5 Q You mean the governments theory is that the
6 operator of the establishment in this circumstance where he
7 has reason to expect people will come across state lines to
8 his establishment for the purpose of gambling is himself "travel-
9 ing in interstate commerce".?

10 A Yes, Your Honor.

11 Q That's the governments theory?

12 A That's the governments theory as I understand it.

13 Now this attraction theory as limited to the facts
14 of this case, however, becomes even more expansive, because
15 here we have a game that the only attraction is the fact that
16 it's 15 miles from the state line.

17 Q Well, now---

18 A Every border town then, automatically comes under
19 federal jurisdiction if we accept---

20 Q Isn't the governments theory a little broader
21 than that? I think your response to Justice Brennans question is
22 that the statute says whoever travels interstate commerce, in
23 the disjunctive, or foreign commerce, or uses any facility in
24 interstate commerce. Including the mail---

25 Q Yes.

1 Q ---with intent to do the following things.

2 A That is correct.

3 Q Doesn't that broaden it a little bit?

4 A No, Your Honor, because in this case there was
5 no allegation of use of facilities in interstate commerce.

6 That was eliminated from this case. The only allegation
7 in the indictment was the travel. Now there was an allegation in
8 the conspiracy count that a violation of Section 1953, which
9 is carrying gambling paraphernalia, but that was stricken by
10 the trial judge because there was no evidence of it.

11 So---

12 Q Did you not assert here that the government does
13 have the authority to make gambling a crime in a state?

14 A We do not assert that---we do not take a position
15 one way or the other, Your Honor, because as was indicated,
16 there's some new legislation that Congress just passed a month
17 or so ago, which attempts to do that and which has a declared
18 purpose that gambling has an effect on interstate commerce.

19 I think it would be improper for me to try to antici-
20 pate a ruling that is certainly going to come under that stat-
21 ute in this case here.

22 Q Did that legislation pass?

23 A Yes, sir.

24 Q Both houses?

25 A Yes, sir.

1 But I might add that even in that legislation they
2 don't make all gambling come under federal jurisdiction, only
3 what they consider big games and they define what big games
4 are, there has to be a certain amount of money involved, which
5 doesn't happen.

6 Even under the new act, we wouldn't be under federal
7 jurisdiction in this case.

8 Q Your client is the owner?

9 A My client is Rewis, was the man who would go
10 by Mary Williams home and gather the money in and figure out
11 who was entitled to what. The reason I dodge Your Honors' ques-
12 tion slightly is because the record doesn't really show who
13 the owner is. He is merely a pick up man.

14 Q He's kind of a secret.

15 A Yes, sir.

16 Now the government attempts to bring an agency pro-
17 position here under Section--Title 18 Section 2B which says that
18 whoever wilfully causes an act to be performed which is directly
19 performed by him and another, could be an offense against the
20 United States as punishable as a principle.

21 But we submit that once you assume that the bettor is
22 not a traveler under the statute, then Rewis himself, the oper-
23 ator cannot incur criminality, simply because---even if he
24 caused the bettor to cross the line, because that would be
25 creating a new offense.

1 Now the government attempts to analogize the Mann
2 Act violation where a woman is inticed into interstate com-
3 merce for the purpose of prostitution.

4 Q Excuse me, Mr. Datz. I 'm looking at the Court
5 of Appeals opinion page 57, at the conclusion. "We think that
6 the gambler operators of the gambling establishment are re-
7 sponsible under the terms of this statute for the use as inter-
8 state facilities by way of interstate travel, for those whose
9 participation is vital to the suscess of his business."

10 Now do you suggest that that addresses itself to an
11 issue not in the case?

12 A Yes, sir.

13 Q I gather you would concede, would you, that
14 had your clients in fact been indicted under the using of any
15 facilities, you might not be here?

16 A I don't know, Your Honor, I think that there it
17 becomes a close question what would the interstate facility be?
18 Would it happen to be the highway, and that would be the only
19 interstate facility which was used---

20 Q Well, in any event, what you're telling me is
21 you might still be here---

22 A Yes.

23 Q ---but you're saying that you were not in fact
24 indicted for using any facility which apparently what the Court
25 of Appeals---

1 A They---

2 Q Apparently affirmed that language---

3 A I submit that language was thrown in there.

4 Q I see.

5 A I---

6 Q So our question is a statutory construction one,
7 but only as to what travel means. Not whether the statute
8 generally could have covered the state of facts.

9 A That's correct.

10 Q It's a very narrow question.

11 A I would submit that it is, if it please Your
12 Honor, I would say that---

13 Q This is sort of a Thompson Louisville kind of
14 thing, no evidence of travel?

15 A There's no evidence of travel other than---

16 Q By your clients, I mean.

17 A No, that's right. There's no dispute.

18 Q And that you can't construe this statute as
19 making travelers out of your clients merely because customers
20 come from Georgia to your establishment.

21 A That's right.

22 Q Is there any law of this kind that you know of,
23 federal or relating to gambling in Nevada, about those who go
24 on planes?

25 A No, Your Honor, the way the statute avoids that

1 is it defines the "unlawful activity" as any business enterprise
2 which is unlawful in the state where it occurs. And since
3 gambling is lawful in Nevada, this wouldn't apply.

4 To touch very briefly, the government seeks to analogize under the Mann Act and the language of Congress there was
5 specifically condemning whoever would persuade, induce, entice,
6 or coerce a woman to travel in interstate commerce for the
7 purpose of prostitution.

8 And when you compare that statute with the Travel Act,
9 you can see that if Congress had intended that the result
10 was what the Fifth Circuit reached it could certainly easily
11 have said so.

12 Likewise they analogize in the---with the mail fraud
13 statutes and say well the victim can supply the mailing under
14 those circumstances, the statutes are entirely different.

15 The mailing there simply must be reasonably foreseeable
16 in furtherance of execution of the scheme to defraud. All mailing
17 in furtherance of that scheme would then be proscribed by
18 the statute. But here, not all travel is proscribed by the statute.
19 Only that travel traveled to promote the business enterprise.
20

21
22 Q Does the legislative history indicate what---

23 A Yes, it did, Your Honor, and it's quite extensive and the purpose was to fight organized crime.
24

25 Q Organized crime?

1 a Yes.

2 Q What about gamblers?

3 A Gambling is specifically one of the state crimes
4 included within the definition of an unlawful activity.

5 Q State crimes?

6 A Yes, sir.

7 Q What counts were they convicted on?

8 A They were convicted on a conspiracy count, and---

9 Q What about Rewis, what was he convicted on?

10 A Rewis was convicted on the conspiracy count and--

11 Q That's count one.

12 A Sir?

13 Q That's count one.

14 A Yes, sir. And counts five, I don't remember
15 all of them. He was convicted on 8 of the counts, there were
16 2 of them that they skipped when they threw it.

17 Q Well, some of these counts say that Rewis tra-
18 veled and caused to be traveled.

19 A I think most---

20 Q Caused to travel.

21 A Yes.

22 Q Do you think that's an allegation of use, or---

23 A I submit that it's not Your Honor, because, the
24 statute doesn't use the word cause, like the mail fraud statute.

25 Q Yes.

1 A ---used the word cause. We've only come into
2 cause under Section 2 B of Title 18,---

3 Q Yes.

4 A ---which is the aider and abbetor statute.
5 But here again, that statute specifically says that it only
6 applies to the acts of a person who causes another to do an
7 act, which if he himself had done would be a crime.

8 But here, the travel to place a bet, even if Rewis
9 himself had done it, would not be a crime unless you want to ta
10 take the anomolous position that he has caused---he is placing
11 a bet with himself.

12 Q I notice, I haven't read it that carefully, but
13 the instructions to the jury seem to have been of a conspiracy
14 generally, to violate the statute which the Court read in full
15 to the jury. Can the instructions make the distinction that you
16 suggested based on the indictment?

17 A No, sir, --- only to the extent that the statute
18 was read, but there was not---

19 Q Well---

20 A fine---

21 Q The reading of it included the using of a facil-
22 ity.

23 A Right.

24 Q Was there any objection to that?

25 A I don't recall. I do believe that there was. There

1 was not attempt to define.

2 Q To including the use part of it as a variance
3 for the indictment?

4 A Yes sir.

5 q Well was that error preserved in the Court of
6 Appeals?

7 A It---I really don't remember whether it was
8 raised in the Court of Appeals, but I know the Court of Appeals
9 didn't discuss it.

10 Q No, as a matter of fact they---

11 A In their language they didn't---facility.

12 Q Yes. Thank you. Mr. Glazer?

13 ARGUMENT OF SIDNEY M. GLAZER, ESQ.

14 ON BEHALF OF RESPONDENTS

15 MR. GLAZER: Mr. Chief Justice and may it please
16 the Court.

17 The issue in this case is whether there is sufficient
18 evidence to show that Petitioners caused other people not them-
19 selves to travel in interstate commerce with intent to promote
20 their gambling establishment, whether the people who traveled
21 were runners or customers.

22 The issue as we see it will involve the construction
23 of 18 USC 1952 and also 18 USC 2, turns in large part on the
24 facts.

25 Now let me just restate some of the salient facts.

1 Q What do these indictments charge? Which is the
2 offense, the charge, traveling in interstate commerce or using
3 any facility in interstate commerce?

4 A We construe the indictment as charging traveling
5 in interstate commerce.

6 Q Not using any facility.

7 A And causing to travel.

8 Q Yes. Not using any facility. You don't construe
9 the indictment as charging that?

10 A No.

11 Q But the Court of Appeals apparently turned the
12 affirmance of the conviction under that use of interstate
13 facility.

14 A I think the Court of Appeals read the statute as---
15 construed the statute as meaning that when you travel a car is
16 traveled, that includes the use of interstate facilities.

17 Q I see.

18 A In other words, I think they use, consider the
19 term "travel" to embrace the use of interstate facilities.

20 Q In that sense redundant, you mean?

21 A Right.

22 Q They charge the same offense.

23 A Right. In other words they consider the word
24 travel embraces the use of interstate facilities such as inter-
25 state roads.

1 Q Why would Congress have made the distinction?

2 A Well,---

3 Q ---using the telephone or something.

4 A Right, using the telephone. Right.

5 If you go on the history of the statute, the history
6 shows that use of interstate facilities was added to the bill
7 after it was initially introduced to broaden the bill and to
8 cover---

9 Q Travel would include use, but in some circum-
10 stances, but there are others not included---

11 A Right.

12 Q ---in the problem that it might reach,---

13 A Right.

14 Q ---is that it?

15 A That's correct.

16 Q I see.

17 A As I recall the initial bill was just a travel
18 bill that went on either one of the committees, either the
19 Senate or the House committed, added the use of interstate
20 facilities to the bill that was introduced by the Department
21 of Justice.

22 Q Mr. Glazer, according to Petitioner, they admit
23 they were running a lottery operation. Am I correct that the
24 only way they could escape being indicted under this statute
25 would be that everybody that drove up with a Georgia license,

1 they'd say "hold it"?

2 A Well, it---let me just go over fast, if I answer
3 the facts, relate the facts, I think it becomes a little easier
4 for the Court to answer that question, and answer it in the
5 abstract.

6 Now the business that was operated in this case,
7 was operated in a private home of Petitioner Williams. It was
8 a private home in a small town in a cluster of 5 private
9 homes. In other words, the location was such that an interstate
10 traveler wouldn't just go there by happenstance, a person would
11 only be able to go to the Williams house, and enter the Williams
12 house for gambling purposes, if he in fact knew gambling was
13 going on there and if he in fact, if the people knew that he
14 was the type of person whom they could let in.

15 Now as a matter of fact, this---there is a little
16 misconception in this case. There wasn't a whole group of peo-
17 ple that went to the Williams house on the Saturday mornings
18 in which the travel occurred. It was just a small group of
19 people who traveled each Saturday. And it's generally the same
20 8 or 9 people who travel, and the evidences showed the people
21 who traveled are repeaters.

22 In other words, the same people would come each week.
23 And some of the people who came, the evidence showed, they didn't
24 just go and buy a ticket in the Williams house, they came with
25 a wad of paper and with money and the evidence shows that at

1 least one of them put the money in a cigar box, and the cigar
2 box was the place for the lottery tickets and the money was
3 kept there.

4 Q Was it on a true highway?

5 A The Williams house was near a state highway---

6 Q Which one?

7 A What did you say?

8 Q which highway?

9 A State highway 200, or state highway A 1 A, which
10 was two blocks from the center of town---

11 Q Which town?

12 A Yulee. Yulee, Florida, which was on interstate
13 17, and most of the people who came from Georgia---

14 Q That's the one that goes on to Savannah?

15 A This goes on to Jacksonville, I believe.

16 Q Yes. From Savannah to Jacksonville.

17 A I don't know where it started. And most of
18 the people who came from Georgia, came down Interstate 17 and
19 turned on highway 200, and then there's a little access road
20 near the Williams house and they drove up to the Williams house,
21 and stayed a very short time.

22 They would stay about 15 minutes and then they would
23 leave. Now that in itself is significant. The lottery itself---
24 the winner of the lottery wasn't determined until 2:00 p.m., but
25 these people would come there on Saturday morning, stay about

1 15 minutes and leave.

2 Q That's a pretty short time.

3 A Right. It---in other words they would cross the
4 Georgia border into Florida, and immediately stay at the house
5 for a short time, turn around and come right back into Georgia.

6 Q they didn't play any games, any gambling games
7 in the house, did they?

8 A No, there was evidence by a person who worked in
9 the house that on occasion she said she sold tickets to people
10 who came to the house, and she also said that some of the peo-
11 ple that came, these two people that the Court of Appeals found
12 were gamblers and not runners, she testified that those two
13 people, when they came on 4 or 5 occasions, they didn't just
14 simply buy a ticket from her, but that they brought a lot of
15 paper, and one of them at one point brought at least \$80.

16 Q What were the tickets for, just to come into
17 the house?

18 A No, they didn't come with tickets, they came
19 with---

20 Q Well those that brought tickets, what did---

21 A Well the woman who said she sold tickets, and
22 as she said, she sold them a number, they would pick a number,
23 say, 19, and pay any amount say from 50¢ to \$5.00 and if at
24 2:00 in the afternoon, 19 was the number drawn in Cuba then you'd
25 win 60 times what you bet.

1 Q These were conventional lottery tickets, I sup-
2 pose, weren't they?

3 A Well, the tickets were written out in longhand.
4 I mean there was no written ticket, somebody would say "num-
5 ber 19" and---

6 Q Is this really a lottery, or is it a numbers
7 game?

8 A It was really a numbers game, in lottery---but
9 specifically a numbers game.

10 Now the owners, we submit, warrant the conclusion that
11 Petitioners caused the travel of these people, as we said be-
12 fore you just couldn't stumble upon this place, you had to
13 know when to come, on the Saturday morning and this warrants
14 the inference that there was prearrangement.

15 That the people came because they arranged with the
16 operators to come.

17 Q Does the record show how they caused it?

18 A No, there's only circumstantial evidence, there's
19 no direct evidence of any advertisement that anybody said in
20 Georgia, "Come down to Mrs. Williams' house, in Florida and
21 gamble". No, there's no direct evidence.

22 The only---

23 Q what is the evidence, the indirect evidence,
24 outside the fact that the establishment was running, that the
25 people came?

1 A The indirect evidence is the location of the
2 establishment, the fact that the people who went there were
3 habitual travelers, that the people who went there were few
4 in number, it wasn't just that anybody could go, and the fact
5 that they came back over and over again so you can look at the
6 inferences implied in the invitation to come again, and there's
7 also the fact that you had to know what time to go there.

8 In other words, the people generally came on a short
9 period on a Saturday morning, you had to get there before noon.

10 Q Mr. Glazer, suppose somebody told somebody that
11 a lottery was going on in the Williams home. And the guy stopped
12 by on the way back from Georgia, and he hit the lottery that
13 day---

14 A Right.

15 Q ---and he went back to Georgia, and told every-
16 body in Georgia. And everybody in Georgia came down to gamble.
17 Would the Williams' be guilty?

18 A They might be guilty, I would say they would
19 definitely be guilty if after the person came the first time
20 they in essence said come again.

21 Q All right, but that's not in my case.

22 A I think if they could foresee, I think that's a
23 more difficult problem than we have to reach in this case,---

24 Q That's all right, you're going to get to my
25 point eventually.

1 A I would say that---

2 Q You mean they should tell the people, "If you're
3 from Georgia, I don't want your money"? That's the only way
4 you can escape. Is that right?

5 A Well, if a person from Georgia came to this
6 gambling establishment, and the operators didn't know that
7 this particular person came from Georgia, I would say that they
8 didn't violate the statute.

9 But---

10 Q If the man comes in and says, "I'm from Georgia,
11 and I just left Georgia, and I want to play a number.", the
12 only way for him to escape under this statute, as interpreted
13 by you is to say "We take no Georgia money." No money that
14 crosses the state line---

15 A He would take a risk if he took the Georgia
16 money. The Georgia bettor. However, I don't think that's this
17 case. I think in this case the circumstances are such to make
18 it come within 18 USC 2B which makes a person criminally
19 liable who causes an act to be done which if directly performed
20 by him would be a federal offense.

21 In other words, 18 USC 2B was added in 1948 to the
22 Criminal Code to permit deletion of cause or --- from the
23 other criminal statutes. Now, and a revisors note makes clear
24 that the purpose of htis provision was to remove all doubt that
25 when a person causes the commission of an element of the offense

1 causes an innocent person to commit an element of the offense,
2 that constitutes a violation.

3 Q If he---

4 A Right.

5 Q But not from trial.

6 A Right. In other words the easiest illustration
7 of how you can cause somebody to come would be a situation
8 where---suppose a narcotics case, and there's a seller down in
9 Florida, and a purchases in Gerogia, and they make specific
10 arrangements for one person, for the Georgia citizen to travel
11 down to Florida.

12 There---it would be clear that by the prearrangement
13 the seller was causing the person to travel in interstate
14 commerce. The thing becomes complicated becuse generally in
15 a crime for example, this statute makes it a crime to travel
16 in interstate commerce to commit extortion.

17 Q To travel from state to state.

18 A What?

19 Q To travel from state to state.

20 A Right.

21 Q But this man wasn't engaged in interstate commerce,
22 as I understand it.

23 A No, the statute makes it a crime to travel from
24 state to state with intent to commit extortion. If, for ex-
25 ample,---

1 Q Haven't we sometimes held that restaurants are
2 engaged in interstate commerce because travelers stop?

3 A In the Heart of Atlanta Motel, that was a com-
4 panion case, the Heart of Atlanta Motel, there was a restaurant
5 involved where interstate travelers stopped, and this Court
6 held that that activity would affect commerce and was subject
7 to federal regulation.

8 Q Congress held that people had to eat.

9 A Right.

10 Q I don't suppose this is an eating place, I ga-
11 ther?

12 A No, this isn't---

13 The point I was trying to make---

14 Q ---involved quite a different point. The language
15 of the statute was not an issue there, the question in that
16 case was the power of Congress to enact it.

17 Here what we're involved with is the language of the
18 statute.

19 A And it's our position that the language of this
20 statute and its history shows that it interacts with 18 USC 2.
21 And if, for example, a person commits extortion and by---

22 Q But under 2 the government has the burden of proving
23 that he wilfully caused the people to ---

24 A Right.

25 Q ---come from---

1 Q What was the evidence here, which supported
2 the governments burden on wilfullness ?

3 A Well, it seems to us that the continuous busi-
4 ness conducted at this establishment with awareness that people
5 from Georgia were coming, the same people---

6 Q Was it proved that these Petitioners were aware
7 that their customers were from Georgia?

8 A Yes, sir, I would say that the proof did show
9 that. As to Mrs. Williams, she was related to one of the indivi-
10 duals in travel, and there was another---there were two Williams
11 in the case, and one Williams, Charlotte Williams was a close
12 friend of hers.

13 So she was aware of that. As far as Rewis is concerned,
14 he would arrive at the place at a time when there were a lot of
15 cars parked there including Georgia cars. So I---

16 Q I gather, then, the government isn't arguing
17 that travel, that these Petitioners were travelers because of
18 anything they did, but rather they are caught under traveling
19 because the law, Section 2 provision, causes an act which if
20 performed by another would be an offense, is that it?

21 A That is correct. And under 18 USC 2, three or
22 four Courts of Appeal have held that when an employer of a gamb-
23 ling operation employs individuals who live in another state,
24 and these individuals travel from some state, Illinois to Wis-
25 consin, that that violates the statute.

1 Now I would assume that---

2 Q That being "they" as employees, traveling for
3 that purpose, violate the statute? And their employer who causes
4 them to do that traveling from state to state is therefore a
5 principle under Section 2.

6 A Yes, We would --- that under 2a he would be an
7 aider and abettor. In other words 2a seems to imply a situation
8 where all parties are clearly guilty of a violation. Whereas,
9 2b implies a situation where the jurisdictional element or an
10 element of crime may be committed, may be done by somebody who
11 himself may not be guilty of an offense.

12 Q That in fact is the Bass case and related cases
13 involving problems in Memphis to west Memphis ---

14 A That is correct.

15 Q ---by employees with the employer living in
16 Memphis, as I recall.

17 A Right. The Bass case and the Rizizo case and the
18 Barrow case.

19 Now the problem of causation, as I said before, when
20 you have an extortion case where the extortionist lives in one
21 state and he extorts money from somebody in the other state,
22 and in the course of the extortion that person travels in inter-
23 state commerce or uses an interstate facility, I think it's
24 easy to see that the fear induced by the extortionist causes
25 the jurisdictional element which completes the offense.

1 Q Incidentally, these customers who traveled ac-
2 ross state lines, were they innocent as far as the statute
3 was concerned?

4 A Well, we didn't think they were innocent, as
5 far as, for example, two of them, Flora Nitingale, it was the
6 governments position that they were employees. And the evidence
7 showed that they didn't juâtmerely cross the state line and buy
8 a ticket---

9 Q They were indidted too, weren't they?

10 A Right. They were indicted, convicted and the
11 Court of Appeals---

12 Q Set aside---

13 A Set aside their conviction.

14 Q On what grounds?

15 A On the gounds that the evidence was insufficient
16 to show that---

17 Q That they were innocent.

18 A To show that they were runners. That they were
19 anything more than merebettors.

20 Q Well, merebettors, what? Innocentbettors?
21 Can abettor be guilty if he comes every Saturday, and this was
22 some game wasn't it? \$75 a week. How can you make a federal
23 case out of this, anyway?

24 A I dont think the evidence was \$75 a week, the
25 evidence showed that Rewis had \$1500 in his pocket and I would

1 infer from the evidence that this is just one of the places
2 that Rewis stopped at, and there's also evidence that in the
3 course of the raid they picked up a recapitulation sheet, Ex-
4 hibits 41 C, which indicated that there were three different
5 groups of sellers totalling at least 20 individuals, in addition
6 the runners and pick up men , in this operation.

7 In other words---

8 Q Well, I'm just saying that---

9 A No, I also think that sometimes---

10 Q The largest bet was \$5 and \$153 was the whole
11 works?

12 A Well, that was the largest bet that this indiv-
13 idual said she sold tickets at the house, she said the largest
14 individual bet she took on one nymber was \$5. she said that---

15 Q well, anyway, getting back to 2b---

16 A Right.

17 Q I gather the government doesn't claim that it
18 could prevail if the people who were induced to come across
19 state lines were all innocent. Is that right?

20 A If the people who were induced to come across
21 state lines were all innocent we think we still could prevail
22 under 2 B.

23 Q Well, you have to, don't you, in this case,
24 because they were all innocent?

25 A Well, the Court of Appeals held them so, that's

1 correctt.

2 Q Well---

3 A The Court of Appeals---

4 Q The Court of Appeals held them all innocent, but
5 said except Rewis.

6 A The Court of Appeals held them innocent by a
7 ruling that a bettor who traveled in interstate commerce couldn't
8 violate 18 USC 1952.

9 Q All right. If that's so, this speaks of "causes
10 an act to be done which if directly performed by him, or another
11 would be an offense against the United States" so as far as
12 the Court of Appeals is concerned, these bettors did not com-
13 mit any offenses against the United States. Is that right?

14 A Yes, sir.

15 Q Well, then how do you hold Rewis?

16 A We hold Rewis under---when 18 year old see 2B
17 was enacted, the revisors at least thought, and this is set
18 forth on page 12 of our brief that section 2B "removes all doubt
19 that one who puts in motion or assists an illegal enterprise
20 but causes the commission of an indispensable element of the
21 offense by an innocent agent or instrumentality is guilty as
22 principle even though he intentionally refrained from the
23 direct act constituting the completed offense."

24 In other words, even though he did everything but
25 one particular element but you got somebody else; to me the best

1 example of this case is the Kelley case which is cited in our
2 brief.

3 Now the Kelley case involved the use of telephones.
4 And the defendant there made an arrangement whereby the bettors
5 would use the telephones. And the Court of Appeals for the
6 Second Circuit found that that violated the statute. That he
7 caused the use of an interstate facility when the bettors used
8 the telephone.

9 Basically, to sum up, we think that just as if Rewis
10 and Williams had advertised in Georgia, where people would come
11 from Georgia to Florida, and people who read their advertisement
12 came from Georgia to Florida with the specific purpose of bet-
13 ting and they did so on the basis of reading this advertisement
14 come to Florida and bet, that in such circumstances we think
15 Rewis and Williams would bring about the cause to travel of
16 the bettor that that situation is similar to the situation here.

17 But for the conduct of Rewis and Williams in operating
18 this lottery and making it possible for these people to come on
19 a continuous basis to the operation, there would have been no
20 gambling.

21 Q Is that the only lottery place in upper Florida?

22 A I would assume it isn't.

23 Q Well why is this one so unique? And I'm still
24 waiting for any evidence to show that either --- did anything
25 to entice the people to come there. Other than to run a place

1 that was open to everybody.

2 A Well they ran a place. The people that came,
3 circumstantial evidence indicates that the people who came
4 were aware of the fact that in order to participate in this
5 operation you had to get down at a particular time, you had
6 to come to a private house---

7 Q How can you get any of that to them? All you've
8 got is circumstantial evidence with cars with Georgia license
9 plates showed up. How many?

10 A On each Saturday, as I understand it, the average
11 number of people who showed up, from Georgia or Florida
12 were from 8 to 16.

13 Q How many---

14 A Eight, I understand, was the average number.

15 Q From Georgia?

16 A The total number of people who came were, average
17 8.

18 Q And how many from Georgia?

19 A There were, the same people didn't come every
20 week, they came four or five times, but apparently at least 8
21 to 10 of them came from Georgia that they could identify.

22 Q All day?

23 A What?

24 Q They came in all day, or just.---

25 A No, they would come in at a particular time on

1 Saturday morning, they would come Saturday morning, usually
2 from 10 to 12. And they would stay a short time---

3 Q You mean they didn't stay all day?

4 A No, it would just operate on Saturday morning---

5 Q You have no evidence that they caused it to come.

6 A What?

7 Q You have no evidence that they caused it to come,
8 as I understand it. It gets down to the fact that they did
9 come.

10 A Well, they did come, they came on a regular
11 basis, they came at a particular time, they came to a place
12 which was a private home, and they came to a place that only
13 somebody who's aware of the fact that betting was going on,
14 so from that point of view we consider it all prearranged.

15 Q Mr. Datz, would it make any difference to
16 your case or your position if the evidence showed that they did
17 a hundred thousand dollars worth of business every Saturday, or
18 a hundred dollars worth of business every Saturday?

19 A No, sir.

20 Q The volume has nothing to do with the violation
21 does it?

22 A Not under this act. Frankly, under the new act
23 that Congress just passed, it does, but not under this act.

24 Q What sentences did these men get?

25 A Rewis got five years, Mary Williams got three

1 years.

2 Q On each count?

3 A Yes, to run concurrently.

4 Q Concurrently. So if any count is good, it's---

5 A If any conviction is good, it's moot.

6 If I may point out briefly, the significant difference
7 between the government and our position as I see it here, is
8 the interpretation of Section 2B of Title 18. Now whoever
9 causes another to do an act, is limited.

10 Title 18, Section 2B is simply an agency-principle
11 relationship. You can't create a new crime. If John Doe had
12 nothing to do with this case, but caused these people to travel
13 from Georgia to Florida, he wouldn't be convicted, Because
14 the people themselves were not committing crimes.

15 Q Well what about what Mr. Glazer referred to in
16 the legislative history?

17 A But that's only if---

18 Q Or is that the revisors note?

19 A But that doesn't really apply to the factual
20 situation here. Thank you.

21 Q Was there easy evidence from your viewpoint of
22 which it could be found that these people did cause the people
23 to come from Georgia, except that they came?

24 A No, Your Honor.

25 Q Do you think that the fact that they came repeated--

1 ly and were known has probative force?

2 A I don't believe that the record will bear that
3 out, that assumption of facts. Actually, on the 14 Saturdays of
4 surveillance, the most repetition was that one person came on
5 4 different Saturdays.

6 But even if it were so, I submit that it would have
7 no force.

8 Q Thank you gentlemen, the case is submitted.

9 (Whereupon at 3:00 o'clock p.m., argument in
10 the above entitled matter was concluded.)

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