Supreme Court of the United States

OCTOBER TERM 1970

In the Matter of:

Docket No. 557

THE UNITED STATES OF AMERICA,

Appellant

vs

INTERNATIONAL MINERALS & CHEMICAL CORPORATION,

Appellee

Place Washington D.C.

Date April 26, 1971

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

NA 8-2345

NHAM

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1970

THE UNITED STATES OF AMERICA, Appellant	)	
vs	)	No. 557
INTERNATIONAL MINERALS & CHEMICAL CORPORATION, Appellee	)	

The above-entitled matter came on for argument at 11:30 o'clock a.m. on Monday, April 26, 1971.

BEFORE:

WARREN E. BURGER, Chief Justice
HUGO L. BLACK, Associate Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice

APPEARANCES:

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On behalf of Appellee

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in Number 557: United States against International Minerals and Chemical Corporation.

Mr. Dienelt, you may proceed whenever you are ready.

ORAL ARGUMENT BY JOHN F. DIENELT, ESQ.

ON BEHALF OF APPELLANT

MR. DIENELT: Mr. Chief Justice and may it please the Court:

This case is here on direct appeal from the District Court in the Southern District of Ohio. The District Court dismissed a five-count information alleging violations of Section 834, Title XVIII, which deals wit' transportation of explosives and other dangerous substances.

Section 834, which is set forth in part on page 3 of our brief, provides that whoever knowingly violates regulations formulated for the safe transportationof hazardous materials, shall be fined up to a thousand dollars or imprisoned for not more than a year.

The information in this case charged the Appellee, which is a corporation engaged primarily in the manufacturing and shipping of chemicals and fertilizers with violations of the regulations, which is also set forth on page 3, dealing with the contents of shipping papers.

The regulation requires that the shippers state on

shipping paper designated names and classifications of those substances which he is shipping. In this case, for example: the shipper was shipping sulphuric acid and the regulations require him to state sulphuric acid on the shipping papers, which is the name, and "corrosive liquid," which is the classification.

This safety requirement serves essentially two purposes. First it indicates to the carrier what kind of labels he should put on the packages and what kind of placards should he put on his truck.

And secondly, the shipping paper itself, which is kept in the cab of the truck with the driver, enables the driver or anybody else who might be involved in an emergency, such as an accident or a fire to quickly identify what the substance is and to take whatever appropriate steps, such as clearing the area might be necessary.

The five counts in this information each allege similar conduct. Three of them allege a knowing failure to state the required classification; that is: corrosive liquid on the shipping pages and two allege knowing failure to state both the required classification and the required name of the substance being shipped.

The District Court granted the Appellee's motion to dismiss.this information on the ground that it did not state an essential element of the offense, and that essential element,

in the Court's language, was knowledge of violating the regulation.

As we read that ruling the District Court held that the Government has to allege and prove, not only that the Appellee knew it was shipping a dangerous article without stating its full name and proper classification on the shipping papers, which we alleged in the information, but also that it knew the terms of the regulation forbidding that conduct and specifically intended to violate that regulation.

Whereas the District Court put it: an added ingredient of consciousness that it's illegal not to do the act.

So, the question in this case --

Q Who was the judge in this case; there is no judge named Pate. It appears on page 8 of the transcript.

A Well --

Q Was that Judge Porter?

A Yes, it was, Your Honor. I thought it was; I did not know.

The question in the case then is a simple one: it is whether a defendant can be convicted under this statute for intentionally engaging in conduct that is prohibited, even though he doesn't know that the law prohibits it.

We believe that a shipper or carrier can be convicted under these circumstances. Our position is simply that

proof of knowledge of the pertinent facts is what is essential and that proof of knowledge of the law is not, as the defendant is presumed to know the regulations governing transportation of dangerous articles, and that he's charged with that knowledge under the fundamental principle that ignorance of the law does not excuse its violation by one who intentionally engages in conduct which the law forbids.

Charging shippers and carriers with dangerous substances with knowledge of regulations regarding their transport seems to be a perfectly reasonable thing to do. In the first place, these substances are dangerous, and that alone would signal the possibilities of the existence of a regulatory scheme regarding transportation.

So this case, in that sense is similar to United States against Freed, which this Court decided this month. And in that case the Court ruled and specific intent or knowledge that guns were unregistered was not an essential element in the crime of possessing an unregistered firearm.

In effect, it ruled that the individual could be presumed to know, or charged with knowledge of the registration requirements.

In this case and in numerous regulatory areas there is another factor which makes it particularly appropriate to charge the people engaged in forbidden conduct with knowledge of the regulations, and that was that this Appellee and most of

the people who are brought under a prosecution under this statute are in the business of shipping dangerous substances.

So, our fundamental position is that there is no basis in this case for making the exception to the principle that ignorance of the law is no excuse.

We would like to emphasize three points in that connection. We would like to discuss the language of the statute, the effect of this Court's decision in Boyce Motor Lines against the United States some 20 years ago in 342 U.S., and the history of the statute.

The first point deals with the language. The statute says: knowingly violates regulations. This is a typical regulatory pattern in numerous areas where Congress simply can't fill out the details of the statute it sets forth a general prohibition and leaves to the administrative agency the responsibility of filling in the details and designating the specific conduct that's forbidden.

And this language "knowingly violates regulations" is standard terminology that's used in numerous statutes. We have cited some of them in footnote 7 of our brief at page 13.

We submit that if Congress in these various regulatory areas had set forth the prohibited conduct in the statute itself there wouldn't be any question but that the Government's only obligation would be to prove knowledge of the facts and not knowledge of the law.

For example: in this case the Congress had written a statute that says "Whoever knowingly ships sulphuric acid without stating on the shipping papers that it is sulphuric acid and that it is a corrosive liquid, shall be punished." I submit in that situation there wouldn't be any question that our burden of proof would be what we have alleged in the information here: "knowing conduct."

Similarly, if Congress had written, as it would have had to in regulatory statutes; as it likely would and as it has in cases where it has set forth conduct that is prohibited in the statute itself, set forth a number of different kinds of conduct and then had one provision that says: "Whoever knowingly violates the statute or the statutory provisions, shall be punished." We submit the same result would obtain, that we would have to prove knowledge of the facts and not knowledge of the law.

We don't think the results would be any different because Congress adopted a convenient shorthand in this case as a means of delegating responsibility to the administrative agency, in this case the Department of Transportation, and for incorporating all the various prohibitions that are involved.

We realize it's possible to read the language "knowingly violate regulations" to suggest that you have to know what the regulation is. But we think that the position which evidently is the Appellee's position and which was the position

stated in a concurring opinion by Judge Magruder in the St. JOhnsbury Trucking case, which was a leading early Court of Appeals decision on this matter, that the use of that language justifies a distinction. We don't believe that that, if that's a proper reading it places too much emphasis in the abstract on semantics. The -- of the practical reality which we feel makes it perfectly clear that the use of the phrase "knowingly violates regulations" in this case is simply a shorthand. In fact, there are some cases in which Congress has, on rare occasions, indicated that an ignorance of the regulations or lack of knowledge of the regulations would be an excuse. It would be an affirmative defense and it stated that quite plainly in the statute in language quite different from the language here.

We have cited two similar cases in footnote 11 of our brief on page 16.

Now, turning specifically to the judicial and legislative considerations of the statute, our second point is that this Court's decision in the Boyce case involved this same statute, does not require the Government to prove knowledge of the regulations. The Boyce decision didn't hold that; it really didn't reach that issue. It didn't specifically adjust itself to it. The Court there assumed, as did the parties, that the shipper, the carrier in that case, knew the regulations and proceeded to examine factual circumstances, not the question

of knowledge of the law.

The issue in Boyce is whether a regulation is vague and the regulation involved dealt with the routing of trucks through congested areas and it required that the trucks be routed "so far as practicable," and that was the key language in that case as far as the vagueness is concerned. "As far as practicable to avoid congested areas," such as tunnels and the defendant in that case had routed its trucks through the Holland Tunnel in New York.

The District Court dismissed the case, rather three counts of an indictment there on the grounds that it was unconstitutionally vague. The Court of Appeals reversed and this Court affirmed and in affirming the decision this Court indicated that the fact that the defendant was required knowingly to violate the regulations, was crucial. And it stated what it meant by that requirement in a passage that we have set forth on page 10 of our brief. It said: "The Government must prove not only that there was, in fact, a preferable route but also that the defendant knew of such a route, but nevertheless took a more dangerous one.

While alternatively that the defendant willfully neglected to inquire whether there was such a route. The comparable requirement to that proof in this case we submit, is that not only did the defendant ship a dangerous commodity without stating its nature on the shipping papers, but also that

it knew what he was doing or that he willfully neglected to ascertain what the facts were.

There is nothing in Boyce, and we submit there is nothing here to suggest that knowledge of the law was also an element of the Government's proof. Now, the regulation in Boyce was more complex. As a result of that the defendant, as the Court suggested in Boyce, might very well, by showing a good faith compliance with the regulation, by showing that he chose a route and he tried to choose the safest route, that that might provide a defense and that the jury in that case might acquit on such a basis. But still the point was that it was factual circumstances that the regulation made pertinent and not the knowledge of the regulation itself that was critical.

And we don't suggest here that a showing by the defendant at a trial that he didn't know what he was shipping or that he made some other inadvertent conduct would not be a defense. This was dismissal of an information; we don't have a record; we don't know what the defense of the Appellee would be. We submit that there are genuine issues which in some cases may arise and that those should properly be determined at a trial.

Finally, we would like briefly to turn to the legislative history of this statute.

Q Let me ask you a hypothetical question.

A Yes, sir.

Q Suppose by some coincidence the man

engaged in manufacturing and handling sulphuric acid also had a division which handled olive oil, and by sheer inadvertence of the employees, got the sulphuric acid in the olive oil tank cars. What impact would that have on a criminal charge for failing to label sulphuric acid accurately?

A I think it wouldebe a defense, Your Honor. That would be a claim: "I didn't know what I was shipping," and I think it would be a question for the jury as to whether to believe that. These cases usually are based on largely on documentary evidence so you would have the shipping paper and be able to see what he put on the shipping paper and he had a very strong case if he had olive oil written on the shipping paper; that that's what he thought it was. It would be a hard case for us to prove although we might not indict in such a situation.

I was advised very recentlythere was a case where the Government decided not to prosecute in which the employee had gotten a wrong number on the truck. He had hitched his cab up to 1191 instead of 1157 or something like that and the Government decided they wouldn't indict.

Situations like that might very well provide defenses at trial. But we don't believe that has anything to bear on the nature of the elements that the Government must allege in the indictment.

There isn't any legislative history in the very

early provisions dating back to around 1908 regarding what Congress meant by using "knowingly" in the statute. In 1960, however, when Congress made other changes in the statute it did consider changing the "knowingly" requirement.

The Interstate Commerce Commission wanted to make this a statute imposing absolute liability. In other words, that defense of: "I thought I was shipping olive oil"would not be a good defense; that the shipper would be absolutely liable for what was in that truck, regardless of what he thought it was. This was suggested to both the Senate and the House. They both rejected that position but the Senate did -- a bill was introduced in the Senate which would have taken "knowingly" out of the statute and substituted for it the phrase: "Whoever being aware that the ICC had formulated regulations for safe transportation for explosives and other dangerous articles."

The House then deleted that phrase and put "knowingly" back in. And it said in its report that it intended to retain the present law. It made reference to judicial pronouncements as to the standards of conduct under the law. It didn't say what cases it was referring to and it didn't say what its interpretation of those judicial pronouncements were, was.

Q There was a reference somewhere in there in the legislative history, however, to the controlling opinion in the First Circuit.

A That's true.

Q The St. Johnsbury case, was there not?

A There was. The justification which the ICC had submitted and which was used by the Senate in its proposal had made reference to that. That was the source of concern, as we believe from reading the cases: Boyce, as well as the St. Johnsbury, which was really the other leading case. Judge Magruder's opinion was the only one which really addressed itself to the point that I referred to earlier: "For knowing violation of the regulations," and it had no regulation.

Q Had the Boyce case been decided?

A The Boyce case had been decided and so had St. Johnsbury.

Q Right.

A And we would argue that we don't believe the Boyce case reached the point of deciding whether knowledge of the law was an excuse. We believe that the most consistent reading of that case, the best reading of that case is that it assume and it presumed that the shipper would have that knowledge and that lack of that knowledge would not be a defense.

The St. Johnsbury case, in the concurring opinion, as I have said, Judge Magruder did indicate that knowledge of the regulations would -- lack of knowledge of the regulations would be a defense or that the regulations would have to be

proved. But the majority opinion in that case, even though in the legislative history in some statements by interested agencies it was interpreted to hold that knowledge of the law had to be alleged by the Government. But the opinion is not that clear. The facts in the case -- it was a case very similar to this one. It involved the shipping paper requirement, which at that time required the shipper to attach or designate a label which would then be put on the dangerous commodity on the shipping papers. And the proof at trial, according to the Court of Appeals opinion was that the rating clerk, who was the only person in the operation responsible for this, either negligently failed to do it or else clipped it onto a paper clip and the paper clip fell off and the papers got separated and as a result of that the shipping paper didn't show the classification and the truck wasn't properly placketed.

The Court discussed the Boyce opinion and made some general references with respect to the knowledge of the law, but critical holding in which it so paraphrased Boyce is that the Government must prove that the defendant -- I'm quoting from the case now: "Aware of the dangerous nature of the commodity, deliberately chose to transport it without placketing its trucks or labeling its shipping papers or that the defendant willfully neglected to take proper precautions.

Now, that's what we feel we have alleged here.

That's what we believe we can prove at trial. I have pointed out the legislative history of the revisions of the 1960 Act, as we have stated in our reply brief. It's basically that it's neutral. It just doesn't tell us enough in one way or another as to what Congress intended and in that context we feel that it would not be appropriate to impute to Congress an intent to bring about an exception to a fundamental principle which, as least by extension would apply to make any statute which says "knowingly violates regulations" one which the Government must prove; that people who are engaging in the forbidden conduct, often people in the business, know the regulations.

Q This -- we don't deal here, however, with a regulated industry itself, do we?

A Not as such. It's carriers and shippers.

Q The carriers are regulated, but a shipper might be anybody. You or I might be a shipper, a casual shipper; any member of the public.

A That's correct. As far as -- so in that sense we have to rely, as far as justifying the presumption of knowledge of the law or in general principles and on the fact that these are dangerous commodities which ought to signal to somebody the fact that they may be regulated and would justify the Government imposing upon them requirements of charging them with --

Q What you are saying is that anybody

in the sulphuric acid business is bound to know that it is a dangerous substance.

A Precisely, and is bound to know the regulations regarding transport of a dangerous substance. So that if it fails to follow those regulations knowingly it can be convicted under this statute.

And for that reason we think that this Court should find that the information did sufficiently allege all the essential elements of the crime in this case and that the case should be remanded for a trial.

I would like to reserve the rest of my time.

MR. CHIEF JUSTICE BURGER: Very well.

Mr. Spencer.

ORAL ARGUMENT BY HAROLD E. SPENCER, ESQ.

ON BEHALF OF APPELLEE

MR. SPENCER: Mr. Chief Justice and may it please the Court:

The sole issue in this case is the sufficiency of the information to state an offense against the United States under Section 834(f) of Title XVIII.

Our position with respect to that issue can be very briefly stated in three propositions: first, the involved statute punishes only one who knowingly violates the regulation. Second, to state an offense under the statute the defendant must be charged with knowingly violating the

regulation; and third: the information here does not charge the defendant with knowingly violating the regulation. Therefore the Court properly dismissed the information. That was the sole reasoning of the Court and I submit that its reasoning was correct. The Court didn't go any further than that. There has been trial, no evidence submitted. The Court simply dismissed the information.

The first proposition is, I submit, self-evident from the wording of the statute. The statute does not punish an unknowing violation whether or not the defendant intended to do the act that he did. It only punishes a knowing violation.

The second proposition naturally follows from the first one, and I don't believe there can be any argument about that. Under the well-known rule that the information must charge all the essential elements of the offense; it must charge the defendant with the knowing violation.

So we come to the crucial question put here: did the information charge the defendant with a knowing violation. Well, it didn't do so in express terms. It charges a knowing act which happens to be in violationof the regulations. But that is not the offense which is punishable by the statute.

The Government doesn't really --

Q On page 4 of the Government's brief, Mr. Spencer, which contains one of the counts of the information as representative and I suppose you would concede that this is

accurate --

A Yes, six, Your Honor.

Q -- a reproductionand that it is representative. And it does allege that the defendant did knowingly fail to show on the shipping papers the proper name: sulphuric acid and so on, in violation of 49 C.F.R. 173.427.

A That's correct. It charges that the defendant knowingly did an act which happens to be in violation of the regulations.

Q Which was in violation.

A Which was in violation of the regulations, but our position is that the statutory offense and the only offense is a knowing violation of the regulations.

Q And what would -- what do you say should have been included or added to this count of the information to have knowledge.

A We should have been charged that the defendant knowingly violated the regulation by doing whatever acts they allegel.

Q So, if it had said, "in knowing violation of 49 C.F.R."it would have been --

A Yes; that makes a very vital difference, Your Honor.

Q What does the statute say?

A The statute says: "Whoever knowingly

violates the --

Q "Knowingly violates."

A Yes, Your Honor. Whoever knowingly violates --

Q And you say that automatically means that a person has to know aboutthe regulation before he can knowingly violate it?

A I said he must be charged with a knowing violation. Now, I don't come to the question of proof; I don't come to the question yet of what truth would be sufficient to show a knowing violation. My only point here and the only point involved here is the sufficiency of the information and it is our contention that he must be charged with a knowing violation of the regulations.

Now, the Government argument deals with the meaning of the term "knowingly." They have a long argument in their brief about the scienter requirements of the word "knowingly."

Q I know, but if they are right the indictment is sufficient.

A I'm sorry, Your Honor; I don't understand your question.

Q I mean if knowing violation just means knowingly doing an act which happens to be a violation of t he statute the indictment is sufficient then?

A Yes; that is correct, if that's all the

punishes, but that isn't what the statute punishes.

Q Well, that's what the argument is about; isn't it?

A That's what the argument is about; yes.

Now, the District Court didn't ever consider any of the questions, as I say. There was no evidence submitted and I would agree that it -- what constitutes knowing violations should only be decided upon a trial of the issues.

Q Your argument, of necessity, assumes a man could deal in sulphuric acid, doesn't it, and now know that it's such a dangerous substance that it's regulated by a lot of statutes and rules about handling; doesn't it?

A Not necessarily.

Q Well, take the first part. Isn't anybody in the sulphuric acid business bound to know its chemical properties?

A Yes, but that doesn't have anything to do with the violation of this particular argument --

Q Well, if we take it one step at a time, what's the answer to that question?

A I don't think necessarily that he is bound to know.

Q Doesn't he provide in his own handling of it a lot of very special kinds of containers?

A I think if you got to a question of proof

that that would certainly be an issue as to whether or not he negligently failed to be aware of the regulations.

Q That's what the Government is complaining about here is they never had a chance to get into the proofs, even though the charge follows, tracks the statute.

A Well, no; the charge does not track the statute, Mr. Chief Justice. That is not correct.

Q I thought Justice White's observation made that pretty clear.

A I don't believe so, Your Honor, and certainly the decision in the St. Johnsbury case makes it clear; the necessary implication of the voice tape makes it clear; Mr. Justice Brennan's concurring opinion in the Freed case, I believe it was, makes it clear that there is a distinction between the terms.

Q What about what Justice Holmes and Judge Magruder and Justice Jackson had to say on the same subject?

A They didn't address themselves to that subject.

Q Yes, they did.

A No, Your Honor; they did not. The Government's argument necessarily comes down to this proposition that there is no difference between the statute which says: whosoever knowingly doesn't act in violation of the regulation is guilty of an offense and a statute which says: whosoever

knowingly violates the regulation is guilty of an offense. The Government says that this is typical language; that it's standard language. It isn't typically standard at all. The language of 834 is different from what Congress used in 832 and 833 of the same statute. That's the language that the Government wants and the Congress knew what it was doing when it made that distinction. It read the scienter requirements different in Section 834 from the requirements in 832 and 833. And it certainly knew exactly what it was doing when it did that.

The thing that the Government wants to do is: they want to take the word "knowingly" out of the place in the statute where Congress put it and put it somewhere else, which completely changes the meaning of the statute.

The Government -- it isn't a question of proving -- I think the Government is well aware of the fact that if the statute means what it says and they have to charge a knowing violation they probably can't prove it in this case.

Now, with respect to -- I also have the three points which Mr. Dienelt had with respect to the argument: the meaning of the words; the judicial interpretations and the legislative intent.

As I have pointed out this is not a typical statute; this is not standard terminology. Congress itself knew the distinction between the meaning of the word "knowingly"

as they used it in Section 834 and as they used it in Sections 832 and 833.

In the Boyce Motor Lines case this Court said that that statute --

MR. CHIEF JUSTICE BURGER: I think we will suspend for lunch now, Mr. Spencer.

(Whereupon, at 12:00 o'clock p.m. the argument in the above-entitled matter was recessed to be resumed at 1:00 o'clock p.m. this day.)

1:00 o'clock p.m.

MR. CHIEF JUSTICE BURGER: Mr. Spencer, you may continue.

MR. SPENCER: Mr. Chief Justice and may it please the Court:

I had just finished discussing the wording of the statute. Before I get into the legislative history I would like to spend a few minutes with respect to the Boyce case and the St. Johnsbury case.

In the Boyce Motor Lines case they held that the statute in question punishes only those who knowingly violate the regulations. The Court said that the presence of a culpable intent is a necessary element of the offense. Government says that the Court did not discuss the question of knowledge, which is true, because that question was not involved in the case. However, the presence of a culpable intent cannot be squared with the wording of the information which the Government wants to us in this case.

Q When you take that position, Mr. Spencer, you are now getting into the merits of what the jury might do with it, are you not?

A Only to the --

Q Can't the jury find intent from conduct and circumstances?

A Yes, I think --

Q The jury, for example could conclude that a man that's engaged or the company that's engaged in the manufacturing process of sulphuric acid knows that it's an inherently dangerous substance and infer from that all the necessary elements of a criminal act?

A That is correct. That is a question for the trial, but that does not mean that the Government does not have to show the offense set forth in the statute and to confine its proof to the offense set forth in the statute.

Now, in the St. Johnsbury case the Court of Appeals for the First Circuit reversed the District Court's finding of guilty under this statute and said that the Court had erred because it found that there was no element of culpable intent necessary. And in Chief Judge Magruder's concurring opinion in that case he took up this very point and he explained the difference between an act knowingly done which happened to be in violation of the regulations and the knowing violation of the regulations and he made that very clear and says it depends on how the offense is defined by Congress because it just makes it hard for the Government to prosecute the cases. It's up to Congress to fix it because they can define the offense.

Now, I think if those cases are not the answer to this, the legislative history to the 1960 Amendments is conclusive because a commission, which at that time had

jurisdiction over these regulations. They have since been transferred to the Department of Transportation, but at that time the Interstsate Commerce Commission had jurisdiction and they took Judge Magruder's suggestion and they requested in the 85th Congress, they requested the passage of a bill making various amendments to this act and among them was an amendment to delete the word "knowingly" from what was then Section 835. It is the same section which is now 834.

The Senate in the 85th Congress noted that deletion of the word "knowingly" would create an absolute liability for a violation of the section, and the Senate said: We don't want to go that far; so they substituted the language written as follows:

"Any person who, being aware that the Interstate Commerce Commission has formulated regulations for the safe transportation of explosives and other dangerous articles," now I'm paraphasing this -- would be guilty of an offense if there was a noncompliance with the regulation.

That bill passed the Senate, I believe, but failed to pass the House. In the 86th Congress the Commission re-submitted a draft bill and in this c e they took the Senate's language. They submitted a statement of justification in favor of the proposed amendment, a portion of which we have printed in the appendix. The position of the Commission was that the word "knowingly" should be simply deleted from the statute; but

in view of the amendments which the Senate language had made in the 85th Congress the Commission now took the Senate language and said, "This is preferable to we have had."

Now, in the statement of justification the principal reason that they used was the fact that the decision in the Boyce Motor Lines and the St. Johnsbury cases had made prosecutions under this statute very difficult. That's set forth in the memorandum.

The Senate passed the bill and it went to the House. The House Committee on the Judiciary considered it and certain of this report is printed on page 10 of our brief. The House Committee on the Judiciary noted that the Senate's language created an almost absolute liability. The House Committee said, "There are judicial pronouncements as to what constitutes a knowing violation under the present act," and that could not possibly have been anything except a reference to the Boyce and the St. Johnsbury cases.

The House Committee also said that under the Senate language little more than proof that the violation had occurred would be needed. The House said, "In view of the very substantial penalties which are provided under the statute it is our considered that such a substantial departure from the existing law is not warranted. They said: "It is our purpose to retain the present law by providing that a person must knowingly violate the regulations."

Now, the Government said in oral argument and in its brief, that Congress only wanted to preserve traditional scienter requirements of the word "knowingly." That is not correct. Both the Senate and the House Committees in their reports which we refer to in our brief, specifically referred to the fact that under Section 835 a defendant must have the knowledge of violating the regulation under that section in the statute.

Now, it is clear that the SEnate did not want the absolute liability for the Interstate Commerce Commission version.

Q Are you telling us, Mr. Spencer that 834(f) has no impact on this case?

A No; I'm saying that at that time the provision which now appears in 834(f) appeared in 835 and when Congress passed these amendments in 1960 they recodified those two sections which were then 834 and 835 and that specific provision which was then in 835 is now 834(f).

Q Well, then this charge is under 834(f). The language is: "Whoever knowingly violates;" am I correct?

A That is correct.

Now, the Government's position here will impose a more stringent liability than the Senate language and, as I say, the Senate did not want the absolute liability of the Commission version and the House did not want the almost

absolute liability of the Senate version. And I think an illustration would make that clear.

Suppose that a shipper who had never heard of the regulations brought a shipment of sulphuric acid to the carrier and said: "Ship this for me." , and he abbreviated the name sulphuric acid and perhaps didn't put on the proper shipping classifications. Under the Senate version he could not be prosecuted because he had no knowledge of the regulations. Under this version that the Government now espouses he could be prosecuted because that would be what would be required and the same thing is true of the Chief Justice's illustration on the olive oil. I think that if you look at the wording of the information that if there was a mistake, if they actually shipped sulphuric acid and they knowingly failed to put on the shipping papers that it was sulphuric acid --

Q But, I come back to my original question on that: why isn't that a matter for a jury? You have a statute here which the language is: "Who ever knowingly violates;" and an indictment which says: "This defendant did knowingly fail to show on the shipping papers the proper name sulphuric acid.

A Because, Your Honor, when they get to a jury they are going to argue that this particular violation in the wording of the information says: "No element of a culpable intent," as this Court has said in Boyce and as they said

in St. Johnsbury.

Q Well, is that something for us to try to worry about now?

A I should say it is. I see no reason why we should be subjected to a trial on an information that properly doesn't charge a defense under the statute. And it seems to me -- well, one of the things: I don't really quite understand what's so wrong about requiring the Government to charge an offense under the language of the statute. Why is the Government --

Q Mr. Spencer, what language for the indictment would satisfy the position you take? What should this indictment have said?

A It should have said that the defendant did knowingly violate the regulations. "Knowingly violate the regulation;" not "knowingly do an act in violation of the regulation."

Q Mr. Spencer, the information ends up with: "in violation of the regulation."

A Yes, but it is our contention but it is our contention that the defendant does not knowingly violate the regulations. This could happen to be a little phrase that got slipped into the regulations about when the Department of Transportation took over these things from the Commission and they added this requirement of the showing of the classification

on the shipping papers.

Now, I grant that that is something that can be shown at the trial, but I think that if the issue at the trial is whether we knowingly violated the regulations, then I see no reason at all why the Government should not be required to elect that we knowingly violated the regulations and to prove that violation.

Q You're not claiming, of course, having been misled or any prejudice at all at this point?

A No; at this point we are not, Your Honor.

Now, throughout all of these cases and a lot of these have been decided here. They run the gamut from common-law crimes which have been taken over by the statute; the public welfare, for instance where this Court said that no such element is required.

But there is one thing that goes to all of these cases and that is that the intent of Congress must govern. Now, Congress has wide latitude in defining this offense. As I have pointed out previously they defined the offense differently in Section 834 than the way they defined it in 832 and 833 and I submit that the intent of Congress must govern. It is very clear that Congress does not intend to subject to these heavy penalties of a thousand dollars for each offense and a year in the Federal Penitentiary for an inadvertent violation of these regulations.

I submit, if the Court please, that the District Court was quite correct in its reasoning: that the information here does not charge an offense under Section 834 and that the judgment of the District Court should be affirmed.

MR. CHIEF JUSTICE BURGER: Thank you Mr. Spencer.

Mr. Dienelt, you have eight minutes left.

REBUTTAL ARGUMENT BY JOHN F. DIENELT, ESQ.

ON BEHALF OF APPELLEE

MR. DIENELT: I only have about two brief points.

First, with respect to this language my point is that it's standard terminology which is used in numerous statutes. We have cited statutes at footnote 7 of our brief, which deal with the Federal Power Commission, the Federal Communications Commission, the Secretary of the Interior's jurisdiction over conservation and there are numberous other acts. And, although we are willing to agree that there may be a certain ambiguity by use of the phrase "knowingly violates regulations," to read it in the abstract, the fact that it's used so frequently means to us that there is no means by which Congress has adopted a shorthand to incorporate regulations that are validly promulgated by an administrative agency.

With respect to Section 823 and 823 of this act, it -- those are situations in which Congress was able, or felt itself able to put in part of the conduct in the statute itself, rather than delegating certain responsibility.

Q What is your view of what --

A Well, that was our second point. Our position is that it just isn't clear enough as to what Congress meant when it revised the statute, that you can't get enough guidance with respect to what Congress intended to impute to them that there was an intent to override what we consider to be a fundamental proposition that ignorance of the law doesn't excuse its violation.

The Interstate Commerce Commission's justification which Mr. Spencer referred to, which is quoted in the appendix to his brief, referred to the Commission's view that the reference to culpable intent had been relied upon by the defense attorneys and to some extent by Courts in requiring establishment of some -- element or affirmative intention to evade the law, in addition to knowledge of the facts.

This, we think, emphasizes that even the Interstate Commerce Commission wasn't absolutely clear on that; it felt that there was a difficulty and it wanted to create absolute liability. I submit that the absolute liability would have been much more helpful to it in terms of eliminating knowledge of the facts. In other words, eliminating the requirement that the defendant had to know that he was shipping sulphuric acid, for example.

And, we think that by the same token it's possible to read the language that the Senate substituted: "Whoever

being aware that the regulations had been formulated," and referring somewhat ironically, perhaps, to knowledge, but not knowledge of the facts.

In other words you have a situation where the Government would, at trial, have to prove a general awareness by the shipper or carrier of knowledge of the regulations, but no knowledge at all, absolute liability with respect to the facts.

And that brings me to the third point and that is: we don't intend to say here that there isn't a defense of a mistake of fact; I think that's for the jury. Our proof, necessarily in these cases, depends to a large extent on inferring from Congress knowledge of a failure to comply with regulations. For example, in this case we have alleged five counts in the indictment. We would proffer at trial 33 other counts and we would ask the jury to infer from that knowledge of the facts.

And in that sense an intent, culpable intent, if you will, to violate the regulations.

If there are no further questions --

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Dienelt. Thank you, Mr. Spencer.

The case is submitted.

(Whereupon, at 1:17 o'clock p.m. the argument in the above-entitled matter was concluded)