

ORIGINAL

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PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

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WASHINGTON, D.C. 20543

DKT/CASE NO. 84-5108  
TITLE FRANK LIPAROTA, Petitioner v. UNITED STATES  
PLACE Washington, D. C.  
DATE March 19, 1985  
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IN THE SUPREME COURT OF THE UNITED STATES

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FRANK LIPAROTA,	:
	:
Petitioner	:
	:
v.	: No. 84-5108
	:
UNITED STATES	:
	:
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Washington, D.C.

Tuesday, March 19, 1985

The above-entitled matter came on for oral argument at 12:59 p.m., before the Supreme Court of the United States.

APPEARANCES:

WILLIAM THOMAS HUYCK, ESQ., Chicago, Illinois; on behalf of the Petitioner.

CHARLES A. ROTHFELD, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; on behalf of the Respondent.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We'll hear arguments this afternoon in Liparota against the United States.

Mr. Huyck, you may proceed whenever you're ready.

ORAL ARGUMENT OF WILLIAM THOMAS HUYCK, ESQ.,  
ON BEHALF OF THE PETITIONER

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

This case presents the Court with a question of interpretation of the language of a federal criminal statute. The statute at issue, Section 2024(b) of Title VII is one of a common type of criminal statute appended to a statute of Congress establishing a program -- in this case the food stamp program -- and providing for criminal prosecution for fraud, and stating in relevant part that whoever knowingly acquires food stamps in any manner not authorized by this chapter is guilty of an offense.

And the issue that's presented as to the wording of this statute is, taking the phrase, again in relevant part, acquires coupons in any manner not authorized by the chapter, since Congress has chosen to use the word "knowingly," does the word "knowingly" apply to that entire phrase; or, as argued by the

1 Government, does it apply to only a portion of the  
2 phrase, namely "acquires coupons"; that in other words,  
3 the offender knew he was acquiring coupons, but that he  
4 need not know it was in any manner in violation of the  
5 statute.

6 The facts of this case can be stated very  
7 briefly. The petitioner and his brother ran a small  
8 sandwich shop in a poor neighborhood in Chicago which  
9 was not a member of the food stamp program. There was  
10 quite a bit of evidence in the record about the  
11 enforcement of the food stamp regulations against food  
12 stores and other participants in the food stamp program  
13 which in essence establishes a tremendous amount of  
14 notice and warning prior to undercover criminal  
15 investigation. None of this applied to the sandwich  
16 shop that petitioner and his brother ran.

17 An undercover agent with a secret tape  
18 recorder came into their sandwich shop, having gone to a  
19 food store that she was investigating, the food store  
20 having told them that they would not buy food stamps  
21 from her, and then she went to -- but told her try the  
22 sandwich shop down the street, whereupon she sent into  
23 the sandwich shop, offered to sell food stamps at a  
24 discount to petitioner and his brother, and did so on  
25 three occasions, whereupon they were prosecuted.

1           The issue that is before this Court was raised  
2 in the jury instruction contents. The trial counsel,  
3 myself, offered a specific intent jury instruction, the  
4 standard specific intent jury instruction, that he had  
5 to be purposefully intending to violate the law.

6           The Government objected, and the judge agreed,  
7 that this was a strict liability offense as to the  
8 element of knowledge of violating the law, and  
9 thereupon, the judge's instruction to the jury told the  
10 jury in essence there were three elements of the  
11 offense, and he divided the action element from the  
12 knowledge element. He said that they had to find first  
13 that the defendant acquired and possessed food stamp  
14 coupons for cash in a manner not authorized by federal  
15 statute, the act; and then he said second, they have to  
16 find the defendant knowingly and willfully acquired the  
17 food stamps, but not that it was in a manner in  
18 violation of the regulations.

19           QUESTION: In your view did that mean the jury  
20 need only find that the defendant knew that the food  
21 stamps were food stamps and not postcards, so to speak?

22           MR. HUYCK: Yes, exactly. And that -- there  
23 was a colloquy with the court, and in fact the colloquy  
24 went so far as my asking the court can I argue to the  
25 jury -- my client had testified in this case that he was

1 not familiar with the food stamp regulations, and that  
2 he did not know that it violated any regulations for him  
3 to be buying these food stamps from this undercover  
4 agent. And this was virtually the only defense that he  
5 had other than entrapment, which was also a defense. So  
6 this took me by surprise that this was going to be  
7 interpreted not as a specific intent crime, and so there  
8 was a colloquy, and I asked the judge can I argue that  
9 to the jury, and the judge said no, you cannot argue  
10 ignorance of the law in this case to the jury.

11 QUESTION: Do you think Congress was concerned  
12 about acts or attitudes?

13 MR. HUYCK: I think that Congress in drafting  
14 the statute used the word "knowingly" for some purpose,  
15 and I think that they -- this is a statute where the  
16 element of it being in violation of the statute is  
17 written right into the words of the statute. And so I  
18 think that by using the phrase "knowingly acquires food  
19 stamps in any manner not permitted by this chapter, that  
20 that is the plain meaning of Congress.

21 QUESTION: You don't think it means that  
22 Congress was concerned about whether he knew what he was  
23 doing?

24 MR. HUYCK: No. That's precisely my point.  
25 They did not use the word "knowingly" --

1                   QUESTION: And don't you think this  
2 instruction that was given submitted that issue to the  
3 jury fairly?

4                   MR. HUYCK: It submitted the issue as far as  
5 "knowingly" goes. He carefully did this. He submitted  
6 the issue whether defendant knowingly and willfully  
7 acquired the food stamps, period. And in view of the  
8 colloquy that we had, he was clearly intending to leave  
9 out that he knew it was in a manner violated by the  
10 statute.

11                   But I want to emphasize that this is not a  
12 case where I am arguing for any kind of an ignorance of  
13 the law defense to a crime of this kind, and I'm not  
14 even arguing for the specific intent instruction that I  
15 offered at trial. That was done -- this issue came up  
16 hastily at the end of the trial, and I think that fairly  
17 -- it fairly raised the issue. But the issue that I'm  
18 arguing here is exactly the one that was pointed out, if  
19 I can quote some language from Justice Brennan's opinion  
20 in United States v. Freed, a concurring opinion, "The  
21 definition of the crime as written by Congress requires  
22 proof of circumstances that involve the legal element."

23                   In other words, this is not a general  
24 ignorance of the law defense. This is a statute where  
25 there's a legal element that is an attendant



1       circumstance, as you will, of the crime. The definition  
2       of this offense has an element of an act, acquiring food  
3       stamps, and an element of an attendant circumstance,  
4       namely that that acquisition is not in any manner  
5       authorized by the statute.

6                 And you have, I think, in the Model Penal Code  
7       a much more reasonable basis for interpreting criminal  
8       statutes of this kind than to quibble about the way that  
9       modifying language can be phrased in the English  
10      language. And as I tried to make an example in my reply  
11      brief, the results should not just turn on the  
12      fortuitous way that a phrase is turned.

13                Judge Magruder in the St. Johnsbury Trucking  
14      case that I cited used the example of adulterated milk.  
15      If you have a statute that says whoever knowingly sells  
16      adulterated milk, people would assume that that means  
17      that you have to know it was adulterated as well as  
18      knowing that it was milk. But if you phrased it this  
19      way, "milk which had been adulterated," using a phrase  
20      instead of an adverb, an adjective, you should have the  
21      same result.

22                But the Government could make the same  
23      analysis of that language that it's making here. It  
24      could say that you have "knowingly" modifying the verb  
25      "sell", and then "milk" is the object of "sell", and the

1 phrase "which has been adulterated" is a separate phrase  
2 modifying the verb "sell" and that --

3 QUESTION: Of course, there's some bit of  
4 difference, it seems to me, because if you're talking  
5 about a prohibition against the sale of milk, milk is  
6 ordinarily an article of commerce, and you simply  
7 wouldn't expect its ordinary milk sale to be  
8 prohibited. But food stamps are not really an article  
9 of commerce. It seems to me that perhaps a potential  
10 defendant may be on some notice when someone comes to  
11 him with food stamps whether or not they can be  
12 acquired. This is not an ordinary commodity that  
13 someone comes into your store and offers to sell.

14 MR. HUYCK: Well, that's correct, Your Honor,  
15 and I certainly am not offering up milk. I'm offering  
16 this an example of phraseology in the English language,  
17 and the bottom line being I think you ought to use, for  
18 instance, the Model Penal Code rule of construction that  
19 if a word such as "knowingly" appears in front of a  
20 statute, that you assume that it applies to every  
21 element of the offense stated in the statute, unless the  
22 contrary point intent plainly appears. But other --

23 QUESTION: Is there any way of purchasing food  
24 stamps?

25 MR. HUYCK: Is there any -- no, there is no

1 legal way of purchasing food stamps, that's correct.

2 QUESTION: So he starts off -- he knew he was  
3 doing something wrong when he purchased.

4 MR. HUYCK: He told the jury that he didn't.

5 QUESTION: Hmm?

6 MR. HUYCK: But I admit he had a tough case.  
7 But he told the jury that he didn't. And, of course,  
8 we're talking about a statute here that applies to the  
9 entire chapter and all of the regulations issued there  
10 under. We're not just talking about trafficking  
11 violations.

12 But I certainly agree with you, Your Honor,  
13 that this was a tough case for the defendant, because  
14 purchasing food stamps, there is no legal way of doing  
15 it, that's correct. And --

16 QUESTION: Like purchasing drugs, like  
17 purchasing opium, isn't it?

18 MR. HUYCK: Well, no, I don't think that it  
19 necessarily is the same as that. I think that --

20 QUESTION: You mean it isn't as clearly.

21 MR. HUYCK: I think that when you're trying to  
22 draw a line as to which limited -- and in the U.S.  
23 Gypsum case the Court said there are very limited  
24 circumstances where in the absence of a term defining  
25 the mental state, you will imply that Congress meant

1 strict liability as to that element, very limited  
2 circumstances. And one of them is this line of  
3 dangerous instrumentality cases -- firearms, drugs and  
4 so on -- where the Court's analysis has been that  
5 Congress probably intended strict liability as that  
6 element because of the very nature of the items. And I  
7 do not think that food stamps are such an item.

8 QUESTION: Under your analysis, the Government  
9 would have to prove beyond a reasonable doubt not only  
10 that the defendant knowingly acquired food stamps, but  
11 that he knew that his acquisition was not authorized by  
12 law, is that correct?

13 MR. HUYCK: That's correct.

14 QUESTION: How would the Government prove that  
15 second element?

16 MR. HUYCK: Well, it was argued to the jury  
17 very effectively by the prosecutor in this case  
18 incidentally, enough the judge told her that she didn't  
19 have to, they said -- she said these transactions took  
20 place in the back room. Whenever she came around to  
21 sell food stamps, he said come in the back room and do  
22 it. On one occasion he said to her my brother doesn't  
23 want me dealing in these food stamps. He's scared.  
24 They were bought at a discount. They had warnings  
25 printed on the books.

1 My contention here is that the proof of the  
2 so-called criminal intent of the defendant in this case  
3 is no more difficult for the Government than in any  
4 other criminal case. You're always making arguments to  
5 the jury that the circumstances of the offense show a  
6 consciousness on the part of the defendant that he knew  
7 he was doing wrong. And this case was no different than  
8 the other cases. And --

9 QUESTION: Well, do you think it's a fair  
10 argument to say that in most of the cases, the vast  
11 majority of the cases like this, the defendant would  
12 know, he'd actually know that he was doing something  
13 wrong?

14 MR. HUYCK: I think so. I think so. As long  
15 as --

16 QUESTION: And the Government says well, so  
17 why should we put the prosecutor up to have him prove it  
18 in every single case. And so you're saying you would  
19 concede that if it were clear that Congress intended  
20 this to be a nonspecific intent case that you wouldn't  
21 have any leg to stand on.

22 MR. HUYCK: Oh, certainly in interpreting a  
23 federal criminal statute if the meaning is plain, that  
24 ends it. I don't think that this is a case where the  
25 meaning is plain, and I think that it's an ambiguous --

1 at the very least it's an ambiguous statute to which you  
2 should apply the rule of leniety.

3 But I -- but think of all the -- I put one  
4 example in my brief. This statute can be used not only  
5 to prosecute trafficking. I agree that a trafficking  
6 prosecution is no difficulty for the Government. The  
7 Government doesn't need strict liability because  
8 Congress intended that they use these undercover agents  
9 to go to grocery stores, and that's what they do for the  
10 most part, and the grocery stores are on notice. There  
11 would be no difficulty at all proving actual knowledge  
12 on behalf of any grocery store because they have all of  
13 these warnings.

14 QUESTION: Do you think it's accurate to call  
15 this a strict liability case?

16 MR. HUYCK: Well, strict --

17 QUESTION: That the Government -- if the  
18 Government wins, do you think it's a strict liability  
19 case?

20 MR. HUYCK: No. Strict liability as to this  
21 element of the offense. I think that we have to be  
22 careful in --

23 QUESTION: Yeah, I agree.

24 MR. HUYCK: -- using words like "strict  
25 liability" --

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QUESTION: I agree with you.

MR. HUYCK: -- to talk about that we're recognizing that there are different elements in an offense, and we're talking about this particular element.

But to go back to an earlier question, why -- it seems to me clear that Congress did not use the word "knowingly" here just to say that you couldn't prosecute someone who did not actually know that what they had was a food stamp. And that is not, I submit, a very common use of the word "knowingly" or "willfully" in criminal statutes. And there's no reason to believe that that was the reason Congress put the word "knowingly" in here.

Now, the Government points to the following section, subsection (c), and also that this was almost the sole reliance of the Seventh Circuit in holding that they could divine Congress' intent, because subsection (c) was worded in a different way.

Subsection (c) is a two-actor offense. The offense -- the statute is directed against whoever presents coupons for redemption, namely a grocery stores who's redeeming coupons; and that that person who's knowing that he's presented coupons for redemption, knows that those coupons were received, transferred or used in a manner in violation of the chapter, which could be a different person.

1                   So in other words, you're saying the person  
2 presenting the coupons knew that, if it was another  
3 person, that other person got the food stamps in an  
4 illegal manner. That is, to me, the pure answer of why  
5 the word "knowingly" appears in a different place in  
6 that section than in subsection (b). It's a --

7                   QUESTION: Is it agreed that (c) does require  
8 proof of specific intent?

9                   MR. HUYCK: It requires the -- yes. It  
10 requires the knowledge that's specifically stated there;  
11 in other words, knowledge that these stamps were  
12 received in --

13                  QUESTION: Well, you read that as meaning  
14 specific intent.

15                  MR. HUYCK: As to that only -- no, no, no,  
16 no. That -- well, yes, right; that specific intent,  
17 that element has to be proved, namely that the person  
18 presenting the stamps for redemption has to know that  
19 those stamps were received by somebody in violation of  
20 the statute.

21                  But in subsection (c) they don't say whoever  
22 knowingly presents food stamps for redemption. Congress  
23 in that section did not feel that they had to use the  
24 word "knowingly" to prevent the prosecution of a grocer  
25 who's handing in something that he doesn't know are food



1 stamps.

2 QUESTION: Well, is it entirely accurate to  
3 equate the term "knowingly" and speak of that as a  
4 specific intent? I mean an intent is something -- is  
5 the intent with which you do an act, and knowingly has  
6 always struck me as something a little bit different, or  
7 either less or more inclusive than the intention.

8 MR. HUYCK: Well, here again, I think that the  
9 Model Penal Code offers guidance, because the definition  
10 of "knowingly" there as to an act is different than  
11 "knowingly" as to a circumstance. We're talking about a  
12 circumstance here, and I think the definition is very  
13 straightforward, that he knows that such facts exist.  
14 And here the circumstance is that they were acquired in  
15 a manner in violation of the statute. He knows that  
16 that fact exists, that that was the manner in which they  
17 were acquired. So I think that "knowingly" is a very  
18 accurate term.

19 I think that this Court's Bailey decision,  
20 United States v. Bailey, I think has been -- had a very  
21 salutary effect in eliminating in many criminal trials  
22 this same specific intent instruction that I submitted  
23 in this case. And pointing out that it would be much  
24 more useful to a jury for a judge to specifically  
25 address the mental element that is required for each

1 specific element in the offense. And a federal judge is  
2 at a disadvantage over a state judge, and I have cited  
3 an Illinois case, the Valley Steel case, as an  
4 illustration of how much easier this job is for a judge  
5 in a state that's adopted the Model Penal Code where you  
6 can look at the rules of construction and find, if it's  
7 not expressly put in there by the legislature, find what  
8 the mental element is as to each element of the offense.

9 QUESTION: Assume the law was as you suggest,  
10 that the Government must establish that proof. If on  
11 the whole record it is perfectly clear that that  
12 knowledge was possessed by the defendant, then would not  
13 the absence of the instruction you request be a harmless  
14 error?

15 MR. HUYCK: Well, I think that question is  
16 particularly raised in this case because of what I  
17 pointed out in my reply brief, that in fact, his  
18 knowledge was argued to the jury, even though the judge  
19 said that I couldn't argue it, the prosecutor argued it  
20 even though she didn't have to, and then I argued it  
21 responding to the prosecutor. And so I think that --

22 QUESTION: Then the jury --

23 MR. HUYCK: -- on that point, it clearly  
24 presents this question: is it sufficient to say that  
25 the jury must have decided that in the absence of an

1 instruction, and I say no. I think that it's a very  
2 important principle to uphold, that the jury listens  
3 particularly to the instruction of the judge, and may  
4 discard or not pay attention to the arguments of the  
5 lawyers, and look to the judge for the instruction on  
6 the law.

7 And I think that sometimes it seems that it's  
8 harsh to reverse a criminal conviction and have a new  
9 trial because of instructions, but I think that here you  
10 certainly don't have a harmless misinstruction, if it is  
11 a misinstruction. It's very crucial.

12 QUESTION: Well, if on the whole record it's  
13 perfectly clear that he did have the knowledge that you  
14 say should be shown, isn't that enough?

15 MR. HUYCK: No, because the jury when they got  
16 back to deliberate, they were looking at this  
17 instruction, they found that they did not have to find  
18 that he knew that it was in a manner in violation of the  
19 statute. And the colloquy makes clear that the judge  
20 was clearly trying to make that distinction in these  
21 instructions.

22 I want to say something about the Yermian  
23 case. The Government has pinned its argument very  
24 closely to this Court's decision last term in Yermian,  
25 trying to say that this statute is similar to Yermian,

1 and the case should be decided in the same manner.

2 The text is different from the text, and the  
3 circumstances are different, and the case is not  
4 governed by the Yermian decision. Yermian involved  
5 Section 1001, and you had the making of a false  
6 statement, and then the phrase "in any matter in a  
7 jurisdiction of a federal agency."

8 In that statute the phrase "in any matter"  
9 came at the beginning of the sentence before the word  
10 "knowingly." That's a difference.

11 The previous statute, which the Court also  
12 said in a footnote also has a clear meaning that it  
13 doesn't apply to that phrase, the phrase did follow the  
14 word "knowingly," but they were separated by a comma.

15 I think that -- and even the statute where it  
16 came at the beginning, four members of this Court felt  
17 that it wasn't clear it was Congress' meaning that the  
18 word "knowingly" did not apply to that phrase "in any  
19 matter."

20 But I think more importantly, the background  
21 of this case makes it crucially different. There's two  
22 steps involved here to the Government's argument, and  
23 they don't really follow through on the second step.  
24 It's one thing to say did Congress mean the word  
25 "knowingly" to apply to this phrase "in any manner," but

1 if you agree with them that it doesn't, then you have  
2 the next question: what mental state should be applied  
3 to that element of this offense?

4 And this Court has clearly stated on several  
5 occasions -- in the Bailey case, in the United States  
6 Gypsum case, and in the Morissette case -- that the mere  
7 omission of a word defining the mental intent does not  
8 mean that it's strict liability. It does not answer the  
9 question just to say there isn't any word there defining  
10 the mental element. And I think that it's --

11 Well, so the Yermian court then went on and  
12 relied on a couple of elements that are not present in  
13 this case, the first being that it was a jurisdictional  
14 element. And the Court clearly stated that  
15 jurisdictional language need not contain the same  
16 culpability requirement as other elements of the  
17 offense, quoting this Court's opinion in Feola. And the  
18 fact that that was a jurisdictional element in Yermian  
19 clearly was a point of distinction for this Court in  
20 trying to discern the meaning of Congress in the statute.

21 Secondly, Yermian had a particular -- the  
22 statute had a particular legislative history which was  
23 debated at length in both the majority and dissenting  
24 opinions, which we do not have here -- a dissenting  
25 opinion where the statute originally made it clear that

1 it was only a defendant that knew he was defrauding the  
2 United States could be convicted, and then during --  
3 because of the vicissitudes of that statute, that  
4 language had been taken out, the issue being how much of  
5 the language had been taken out.

6 So that the analysis -- in other words, my  
7 central point is the analysis doesn't stop once you say  
8 that Congress didn't mean "knowingly" to apply to this  
9 phrase "in any manner." The analysis does not stop  
10 there. Then you have to look to other principles and --  
11 principles of construction, the background of the  
12 statute, and so forth.

13 Now --

14 QUESTION: Again, Mr. Huyck, do you -- does  
15 one who presents coupons, a violation of (c), is he  
16 somebody who has acquired or possessed coupons in  
17 violation also of (b)?

18 MR. HUYCK: It could be the same person, and  
19 it could be different persons.

20 QUESTION: Well, and if (c) requires a  
21 specific intent and (b) does not, then why would the  
22 Government ever prosecute under (c)? Why wouldn't it  
23 always prosecute under (b)?

24 MR. HUYCK: Well, I think that that's true,  
25 that you could -- if there were a grocer presenting

1 coupons, he would be -- he would by definition violate  
2 both sections certainly. He's acquired them.

3 QUESTION: Well, then the Government -- if  
4 that's so, the Government could prosecute all these  
5 cases under (b) because it doesn't require proof of  
6 specific intent. Then they'd never have to prove  
7 specific intent at all, would they? They'd never  
8 prosecute under (c).

9 MR. HUYCK: I think that would be a  
10 possibility. I imagine that --

11 QUESTION: Only a possibility?

12 MR. HUYCK: You might imagine some situations,  
13 but I certainly cannot offhand imagine a situation where  
14 a grocer presenting coupons under (c) who wouldn't be  
15 guilty of violating (b) because he acquired the coupons.

16 QUESTION: Could your client have been  
17 prosecuted for -- under the second provision?

18 MR. HUYCK: The subsection (c)?

19 QUESTION: Yes.

20 MR. HUYCK: No. There's -- actually, there's  
21 nothing in the record about what my client did with  
22 these food stamps.

23 QUESTION: There's no charge that he  
24 presented. He was charged with acquiring.

25 MR. HUYCK: Acquiring, that's it. No, there's

1 no --

2 QUESTION: Your complaint is lack of your  
3 instruction? Is that your only complaint?

4 MR. HUYCK: Yes, although I would -- if it was  
5 sent back for a new trial, I would certainly be content  
6 for an instruction specifically addressed to this  
7 element; that the jury be instructed that the defendant  
8 had to know that it was --

9 QUESTION: You didn't ask for that, did you?

10 MR. HUYCK: In other words, I don't think I  
11 would offer my specific intent instruction on a  
12 retrial. On a retrial, having more time to consider it,  
13 I would have a more precise instruction.

14 QUESTION: You'd want more.

15 MR. HUYCK: Yes.

16 QUESTION: I thought --

17 MR. HUYCK: Thank you.

18 CHIEF JUSTICE BURGER: Mr. Rothfeld.

19 ORAL ARGUMENT OF CHARLES A. ROTHFELD, ESQ.,

20 ON BEHALF OF THE RESPONDENT

21 MR. ROTHFELD: Mr. Chief Justice, and may it  
22 please the Court:

23 As one of Justice White's questions suggested,  
24 the dispute in this case is not about whether Section  
25 2024(b) contains a scienter element of some sort.



1 Neither of the proposed readings of the statute would  
2 impose strict or absolute liability. Under either  
3 reading the prosecution will have to prove that the  
4 defendant knew that he was handling food stamps and was  
5 aware of the nature of his activities. Neither reading  
6 of the statute would permit a defendant to be convicted  
7 for accidental or inadvertent conduct. And this is a  
8 significant limitation on the reach of Section 2024(b),  
9 because it means that only defendants who were aware  
10 that they were engaging in certain types of foodstamp  
11 transactions, which is the type of activity that almost  
12 everyone realizes is subject to some sort of federal  
13 regulation, only a defendant of that sort would be  
14 subject to conviction.

15 So the dispute here is a narrower one:  
16 whether in addition to these other limitations in the  
17 statute, Congress wanted to take the further very  
18 unusual step of excusing a defendant whenever the  
19 Government is unable to establish its familiarity with  
20 the law.

21 QUESTION: Mr. Rothfeld, in light of the  
22 comment you just made, under (b), someone who deals in  
23 food stamps knowing that they're food stamps, okay, can  
24 be convicted, can't he? He doesn't really have to know  
25 much more about it.

1 MR. ROTHFELD: That's correct, Your Honor. He  
2 would have to be aware that he was aware of the nature  
3 of his action and what he was doing, that he was using  
4 or acquiring it, and that they were food stamps.

5 QUESTION: Now, you say he would have to be  
6 aware of the nature of his action. Really all he has to  
7 be aware of is that he was acquiring -- the things he  
8 was acquiring were food stamps.

9 MR. ROTHFELD: That's correct, Justice  
10 Rehnquist.

11 QUESTION: Any more awareness required?

12 MR. ROTHFELD: Simply that he was conscious of  
13 his activity with that, and so that any accidental  
14 conduct would not fall within the scope of the statute.  
15 But basically I think what you've described is correct.

16 QUESTION: Well, if someone sent it to him in  
17 the mail and he opened the mail and found the food  
18 stamp, he probably wouldn't be guilty of anything, would  
19 he?

20 MR. ROTHFELD: I think in the situation that  
21 you describe the language of the verbs in the statute  
22 impose some type of limitation as well. It's not clear  
23 that person would have acquired a stamp within the  
24 meaning of Section 2024(b).

25 QUESTION: Why not? I don't understand that.

1 If you get a letter, and you open it, and you take the  
2 contents out, you've acquired the contents, haven't  
3 you? Why wouldn't that violate the statute?

4 MR. ROTHFELD: Well, it's conceivable that it  
5 would, Your Honor.

6 QUESTION: I mean you say that's not an  
7 acquisition?

8 MR. ROTHFELD: Well, there is little  
9 intepretation of the verbs in the statute. I think  
10 someone who obtains a stamp as you describe it and keeps  
11 it, has acquired the stamp. It is in his possession,  
12 and he has acquired it. I think someone who picks a  
13 stamp up on the street or finds it in his pocket and  
14 throws it away or gives it to the Department of  
15 Agriculture perhaps does not acquire the stamp.

16 QUESTION: If he throws it away, he violates  
17 the regulation, doesn't he?

18 MR. ROTHFELD: Excuse me, Your Honor.

19 QUESTION: If he throws it away, doesn't that  
20 violate a regulation?

21 MR. ROTHFELD: If he --

22 QUESTION: Disposes of them in any way. If he  
23 tears them up, it violates the regulation, doesn't it?  
24 Alters them in any way?

25 MR. ROTHFELD: That would be true, Your Honor.

1 QUESTION: If he got an envelope with stamps  
2 in them and tore them up and threw them in the  
3 wastebasket, under your view he'd commit the crime, I  
4 think.

5 MR. ROTHFELD: That's true, Your Honor. But I  
6 should add that that might also very well be true under  
7 the petitioner's proposed reading of the statute, so  
8 long as --

9 QUESTION: Yes, but he wouldn't commit a crime  
10 if he didn't -- the envelope comes in the mail; he  
11 doesn't open the envelope.

12 MR. ROTHFELD: Then he would not have  
13 committed a crime.

14 QUESTION: He just tears it up.

15 MR. ROTHFELD: That's right.

16 QUESTION: He says this is junk mail; I'll  
17 tear it up. He just happens to be tearing up food  
18 stamps.

19 MR. ROTHFELD: That's correct. But he would  
20 not know that he was doing it to food stamps, which is  
21 an element of the statute under either reading.

22 QUESTION: But if he opened the envelope and  
23 tore them up, then he would be doing it.

24 MR. ROTHFELD: If he -- if he --

25 QUESTION: If he knew they were food stamps.

1 MR. ROTHFELD: -- knew they were food stamps,  
2 Justice Rehnquist. If he simply looked -- if it didn't  
3 register on him that they were food stamps, or he hadn't  
4 seen food stamps and didn't know what they were, he  
5 would not be subject to conviction.

6 QUESTION: Well, he could probably -- and you  
7 might have a tough time proving that he intended or  
8 knowingly received food stamps, if all he did was get it  
9 in the mail and open the envelope.

10 MR. ROTHFELD: I think that's correct, Justice  
11 White. And again, to the extent that such a person  
12 could be prosecuted, it is likely that -- well, there is  
13 some possibility that he would be subject to prosecution  
14 under either reading so long as he was aware -- if he  
15 happened to be familiar with the food stamp regulations,  
16 but did not know that it was a crime to tear up an  
17 excess food stamp, he would nevertheless, under the  
18 petitioner's reading, be subject to prosecution, because  
19 the line that would be drawn under the petitioner's  
20 reading is not one between people who are in some sense  
21 morally culpable and people who are not. It's simply a  
22 line between people who are familiar, happen to be  
23 familiar with the contents of food stamps.

24 QUESTION: Well, in this case it'd be a line  
25 between somebody who doesn't know it's wrong to tear up

1 the food stamps and somebody who does. I bet there are  
2 a lot of people who don't know it's wrong to throw away  
3 food stamps, who haven't dealt with them regularly. I'm  
4 not sure everyone knows that.

5 MR. ROTHFELD: Well, I'm not sure that  
6 situation arises with any frequency, Justice Stevens.

7 QUESTION: But that's the kind of thing you  
8 want to cover. You want to cover the people who do not  
9 know that what they're doing is unlawful.

10 MR. ROTHFELD: We want to cover, I think, the  
11 situation --

12 QUESTION: Or people you can't prove that they  
13 knew it was unlawful.

14 MR. ROTHFELD: That's correct, Justice  
15 Stevens. And I think the situation in this case is an  
16 example of the type of people who realistically would  
17 fall within the reach of our interpretation of the  
18 statute.

19 QUESTION: May I ask you to comment? I hadn't  
20 really thought much about it before Mr. Huyck's  
21 argument, but he cited the Gypsum case -- you remember  
22 the antitrust case -- with no word of knowing anything  
23 in it at all. And the Court held that in the criminal  
24 context, the general rule is you have presumed some kind  
25 of mens rea requirement.

1                   Why isn't that case dispositive?

2                   MR. ROTHFELD: Well, I think there are several  
3 responses to that, Justice Stevens. First, the type of  
4 thing that the Court was doing in Gypsum was preventing  
5 the offense from really being almost a true strict  
6 liability offense. The Court in Gypsum did not require  
7 that the defendants be aware that their activities were  
8 a violation of law. It simply required that they be  
9 aware that their activities would have the prohibited  
10 effect of inhibiting competition, which is analogous to  
11 the type of requirement we are contending for, that the  
12 defendant be aware that he is engaging in transactions  
13 involving food stamps.

14                   I think Gypsum did not and the court of  
15 appeals in this case did not take the further step of  
16 requiring proof of familiarity with the requirements of  
17 the statutory scheme, which would be a very unusual  
18 thing for the court to do. As the Court put it in the  
19 International Minerals case, which is probably the case  
20 most similar to this involving interpretation of a  
21 similar statute, that the general principle to be  
22 applied, termed a rule in the International Minerals  
23 case, is ignorance of the law does not excuse  
24 misconduct. And that is the type of requirement that  
25 the petitioner's contending for: knowledge of the

1 existence of regulations and what those regulations  
2 provide.

3 QUESTION: Well, you don't get into all of  
4 these isolated cases like the Sullivan law in New York,  
5 which is absolute liability for possessing a weapon, and  
6 they've lived with that for 30, 40, 50 years.

7 MR. ROTHFELD: Absolutely.

8 QUESTION: And nobody's had too much trouble  
9 with that.

10 MR. ROTHFELD: I think the Court has  
11 repeatedly upheld the --

12 QUESTION: It's been upheld, and I'm talking  
13 appreciably in New York nobody raises any question about  
14 it.

15 MR. ROTHFELD: I think --

16 QUESTION: And some people are completely  
17 innocent. In one case a woman picked up the gun on a  
18 subway, and she just put it in a paper bag and carried  
19 it to the precinct. And the sergeant said wait a  
20 minute, locked up. She got out.

21 MR. ROTHFELD: I think that the Court's cases  
22 have consistently upheld the validity of statutes such  
23 as the one you've described in which knowledge --  
24 certainly knowledge of wrongdoing and in some cases  
25 knowledge really of any sort is not required.



1 QUESTION: Well, may I ask, if you prevailed  
2 today, I gather there'd be no reason for you to bring  
3 any more prosecutions under (c), will there?

4 MR. ROTHFELD: No, that's not correct, Justice  
5 Brennan. Subsection (c) is aimed at --

6 QUESTION: I know what it's aimed at, but if  
7 one presents food stamps for redemption, hasn't one  
8 acquired or possessed them?

9 MR. ROTHFELD: Certainly they have acquired or  
10 possessed them, but it would not necessarily be in a  
11 manner not authorized by law. And to give you an  
12 example, if a grocer operates a large grocery store with  
13 many clerks who are taking food stamps, the clerk takes  
14 the food stamp in exchange for an item that he knows is  
15 an improper one, so he has committed a violation. But  
16 the proprietor of the store, the person who is actually  
17 going to present the stamp for redemption, would have no  
18 idea that the stamp had been accepted in improper  
19 manners. So far as he knows, it's collected in the  
20 normal course of business.

21 QUESTION: Well, that would be -- that would  
22 give him a defense under (c).

23 MR. ROTHFELD: Under (c), that's correct.

24 QUESTION: But it would not give him a defense  
25 under (b), under your view --

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MR. ROTHFELD: Well, he was not --

QUESTION: -- would it?

MR. ROTHFELD: I think it would, Your Honor, because he would not be the individual -- we don't contend that subsection (b) implies respondeat superior liability on the proprietor of the food store who does not himself accept the stamp. It has to be someone who knowingly accepted the stamp, and I think that is the grocer who accepts it.

The proprietor who then finds the stamp in his possession --

QUESTION: Let me back up. Now, the proprietor -- I know you're not talking about respondeat superior. But I own a grocery store. One of my clerks violates the law and gets the stamps. He gives them to me, and I don't know he's done anything wrong, but I am not authorized to have them, and I now pass them on to the government for money. I have not violated (c) because I didn't know they were acquired illegally, but I have violated the regulation under (b), have I not?

MR. ROTHFELD: I'm not -- I don't think that's correct, Justice Stevens.

QUESTION: I have knowingly transferred the coupon. That's what -- I didn't know it was not authorized by law. But I knowingly -- I knew it was a

1 food stamp. I came right within the square language as  
2 you read it.

3 MR. ROTHFELD: Well, the transaction between  
4 you, you as the owner of the food store, and your clerk  
5 is one that is authorized by law. I think it would be  
6 the same thing, a clerk who accepted a food stamp from  
7 someone who had stolen it, for example, and then went  
8 into a food store and engaged in a permissible  
9 transaction, that clerk would not be subject to  
10 liability because the manner of the transaction was an  
11 authorized one. It would be the individual who acquired  
12 the food stamp in the improper way who would be subject  
13 to prosecution.

14 QUESTION: Let me just ask you, supposing one  
15 of my clerks is in some kind of a counterfeit  
16 operation. He gives me a whole bundle of legitimate  
17 food stamps, but they've either been stolen or acquired  
18 in an illegal way. Do the regulations authorize me to  
19 turn those into money? Would I violate a regulation if  
20 I turned them in, or could I just go ahead and sell them  
21 and keep the money?

22 MR. ROTHFELD: Well, you certainly couldn't go  
23 ahead and sell them if you --

24 QUESTION: Because the regulations prohibit me  
25 from selling them, isn't that right? Otherwise, why

1 can't I keep the money?

2 MR. ROTHFELD: Well, I -- the manner in which  
3 the grocer is redeeming them -- he has accepted them in  
4 the normal course of business and is presenting them to  
5 an institution which is authorized to redeem them for  
6 him, and this is all in a manner that is authorized by  
7 law.

8 QUESTION: Then why can't he keep the money?

9 MR. ROTHFELD: Well, I'm not sure actually in  
10 that case, Justice Stevens, what the remedy would be,  
11 whether the remedy would recognize the grocer --

12 QUESTION: The remedy would be, under your  
13 interpretation of the statute, he'd go to jail. That's  
14 as I read it. Under your interpretation of (b).

15 MR. ROTHFELD: Well, no. Under our  
16 interpretation, the grocer would not go to jail. People  
17 who improperly acquired the food stamps in the first  
18 place would go to jail. And I think that in fact that  
19 the structure of subsection (b) and (c) provides  
20 significant support to our interpretation of the  
21 statutes. Congress obviously intended there to be some  
22 sort of distinction between the reach of the two  
23 statutes. The two statutes are written at the same  
24 time, and both are obviously addressed to the misuse of  
25 food stamps.

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QUESTION: Let me change my question.

Supposing my grocer has this big bundle of illegally acquired food stamps. He's got them in his desk drawer. He thinks they're perfectly lawful. Is he now violating the statute? Somebody walks in on him. They find the food stamps there, and they got to him through his subordinate who had gotten them illegally. He gave them to the boss. The boss has them in his desk. He possesses them. Is he in violation of (b) or not?

I ask you first before the man tells him, and then later on a man comes in and tells him by the way, they're all stolen. Does that make any difference on his liability?

MR. ROTHFELD: Well, I'm not sure that he would be liable under -- certainly in your first instance our position is that you would not be liable under (b), because the manner in which he had acquired them was an acceptable transaction.

QUESTION: He got them from a subordinate who'd stolen them and brought them into the boss and said here are a bunch of food stamps, and he possesses them. That's the charge now. He possesses. Is he possessing them illegally?

MR. ROTHFELD: Well, let --

QUESTION: And if he's not, does he start to

1 possess them illegally when somebody tells him they're  
2 all stolen, you know?

3 MR. ROTHFELD: If the -- well, I think to  
4 answer your second question first, yes, I think he would  
5 be at that point, because he would know that he was  
6 possessing them.

7 QUESTION: Illegally. Now, before he was  
8 told, all he knew was that he possessed them, but that's  
9 not illegal, you say.

10 MR. ROTHFELD: Well --

11 QUESTION: It seems to me the critical  
12 difference in your view is his knowledge.

13 MR. ROTHFELD: No. Well, I don't think that's  
14 so, Justice Stevens. I think the critical phase from  
15 our perspective is acquisition in a manner not  
16 authorized by law. And to the extent that the grocer  
17 accepted the food stamps --

18 QUESTION: Not just acquisition. It's  
19 possesses, possesses.

20 MR. ROTHFELD: I think that either of those --

21 QUESTION: And I'm asking you: a) whether the  
22 possession is unlawful when there are a bunch of stolen  
23 food stamps in his desk that he doesn't know are stolen;  
24 and b) does it become unlawful when he's advised that  
25 they're stolen food stamps? And I really don't know

1 your position.

2 MR. ROTHFELD: Well, I think in the instance  
3 in which he has no knowledge of any sort except that he  
4 has food stamps --

5 QUESTION: He knows they're food stamps, and  
6 he knows he possesses them.

7 MR. ROTHFELD: And he knows that he possesses  
8 them. I think he would not be liable under subsection  
9 (b) under our analysis of the statute, because again I  
10 return to the phrase he has accepted them in a manner  
11 authorized by law, which is --

12 QUESTION: How would it help you if you used  
13 stolen money orders in place of the food stamps in  
14 Justice Stevens' question?

15 MR. ROTHFELD: Well, I'm not sure there is a  
16 federal statute which would --

17 QUESTION: A federal statute of having stolen  
18 money orders? You know of no such statute?

19 MR. ROTHFELD: Certainly, Justice.

20 QUESTION: You'd better hurry up and pass one.

21 MR. ROTHFELD: I think actually your  
22 hypothetical demonstrates our point. If he knew that  
23 they were stolen food stamps, there certainly is a  
24 statute which makes known possession of stolen property  
25 illegal; and if he knew that they had been stolen, then

1 he would be guilty under the statute.

2 QUESTION: Well, all they were were money  
3 orders. Nobody told him they were stolen.

4 MR. ROTHFELD: If he had no --

5 QUESTION: Nobody told him they were stolen.

6 MR. ROTHFELD: In that case, Your Honor, he  
7 would not be, so far as I know, guilty under any federal  
8 statute if he had possession of a property having no  
9 knowledge that it was stolen. And I think the  
10 difference in the language of that sort of statute and  
11 the language of subsection 2024(b) is the knowledge  
12 element in the statute Justice Marshall has used as an  
13 example and 2024(c), in each case explicitly makes  
14 knowledge of impropriety the key to conviction.

15 The knowledge element in section 2024(b) which  
16 precedes the prohibited conduct but does not precede the  
17 "in any manner" phrase, in obvious contrast to 2024(c),  
18 does not make that type of distinction. And I think  
19 that when Congress wrote the two statutes -- there's  
20 very little discussion in the legislative history,  
21 Justice Stevens, that addresses the problem we've been  
22 discussing, so it's not clear to me that Congress  
23 focused on --

24 QUESTION: This brings us back to the colloquy  
25 earlier in the argument about the difference between



1 drugs or guns or things. I mean you can see that if you  
2 just possess drugs, that's a crime. You don't have to  
3 know there's a law against possessing drugs, but from  
4 the nature of the item. But people can possess food  
5 stamps and not have any idea that they're doing anything  
6 unlawful. But under your reading of the statute, they'd  
7 go to jail.

8 MR. ROTHFELD: Well, it's -- where we differ  
9 with you, Justice Stevens, is the suggestion that they  
10 would not have any idea that they were doing some  
11 unlawful.

12 QUESTION: Our hypothetical was the clerk in  
13 the grocery store was the crook, and he delivered the  
14 stuff to the boss. That's how you differentiated  
15 between (b) and (c).

16 MR. ROTHFELD: But in that situation the boss  
17 --

18 QUESTION: Knows he possesses food stamps, but  
19 he doesn't know it's in violation of any regulation.  
20 And is not that the classic example of what you say the  
21 statute applies to?

22 MR. ROTHFELD: I think the classic example of  
23 what we say the statute applies to is a situation such  
24 as the one here where someone -- and I think --

25 QUESTION: Yes, if it modifies "acquisition,"

1 it also modifies "possesses" in the same way. You can't  
2 --

3 MR. ROTHFELD: But I think the difference is a  
4 significant one, because your hypothetical is  
5 concentrated on a grocer who is a participant in the  
6 food stamp program who has authorized methods of  
7 acquiring food stamps and has acquired the stamps that  
8 you hypothesized have been stolen in the court --

9 QUESTION: That's exactly the person I'd be  
10 concerned with. That's the reason for having a mens rea  
11 requirement in criminal law is to be sure you don't get  
12 innocent people sent to jail. They should know they're  
13 doing something wrong before you send them to jail.

14 MR. ROTHFELD: And that is why, Justice  
15 Stevens, we think that Congress made the distinction  
16 between 2024(b) and 2024(c). In the situation you  
17 hypothesize the grocer who has acquired the food stamps  
18 would be made liable really under respondeat superior  
19 theory. It would be strict liability, because he would  
20 have acted in the normal course of events in an  
21 authorized manner, which is acquiring these food stamps  
22 from a clerk who has presented them to the grocer. That  
23 is authorized by the regulation, and he has done that.  
24 He has acted in an authorized manner.

25 QUESTION: Yes, but you keep avoiding the

1 point, would you not agree that he would possess them in  
2 violation of a regulation under those facts?

3 MR. ROTHFELD: Well, I'm not sure that he  
4 would, Your Honor, because possession is a strange word  
5 within the group of words in the statute. There is no  
6 -- really no authorized manner in the statute defining  
7 how to possess a food stamp. There are descriptions of  
8 how to apply for food stamps, how to use food stamps.  
9 But it's difficult to say that someone, once having  
10 acquired a food stamp, is possessing it in a manner that  
11 is or is not authorized by law. And that, I think, is  
12 the problem is why your grocer hypothetical presents a  
13 difficulty.

14 I think that your suggestion that someone  
15 should not go to jail for something that they had no  
16 control over is taken care of in most examples under  
17 section 2024(b). Someone who acquires a food stamp in  
18 whatever manner, say to use the facts of this case as an  
19 illustration, someone offers to sell a food stamp to a  
20 nonparticipant in the food stamp program or to a  
21 participant in the food stamp program. That person,  
22 even if the nonparticipant has no detailed awareness of  
23 the requirements of the Food Stamp Act, nevertheless, I  
24 think it was the congressional view, and it certainly  
25 seems a reasonable view, that person would have some

1 suspicion that food stamps are to be used by low income  
2 families and acquired by low income families for certain  
3 purposes.

4 Certainly any reasonable person would realize  
5 that there is some doubt about the propriety of  
6 acquisition of a food stamp in that manner, which is not  
7 true of the grocer you hypothesized, because he has  
8 accepted it in a manner which is authorized by law. He  
9 has accepted it from his employee.

10 I keep returning to that --

11 QUESTION: So all you're proving, all you're  
12 suggesting is that in the appropriate case it's easy to  
13 prove the requisite intent, and it's hard to prove it in  
14 a case such as the one I hypothesized. That's exactly  
15 why Congress would probably impose an intent requirement.

16 I've taken too much of your time.

17 MR. ROTHFELD: Well, I think that your  
18 questions lead to an important point, which is the  
19 question of will people have any idea that what they're  
20 doing is wrong, what they're doing is potentially  
21 punishable or subject to federal regulation. And I  
22 think that the vast majority of cases in which our  
23 interpretation of the statute will apply, I think in  
24 probably all cases that will be true, certainly for a  
25 huge portion of people who come in contact with food

1 stamps, which are the participants in the food stamp  
2 program, people who accept food stamps. They have been  
3 informed by the Department of Agriculture, by statute  
4 and regulation they must be informed of all the  
5 requirements of the food stamp program. So all these  
6 people presumptively are aware of the proper means for  
7 acquiring food stamps and are aware if they acquire them  
8 in a manner that is not authorized by law.

9 And as for nonparticipants, it would be  
10 extremely surprising to find that anyone has any doubts,  
11 anyone walking along the street who's offered food  
12 stamps, any similar situation that that person has any  
13 doubts that the acquisition of food stamps may well be  
14 suspect and is certainly likely to be subject to some  
15 sort of federal regulation. And to the extent that  
16 anyone has any doubts about that, the stamps themselves  
17 have enough tangible reminders to, I think, make anyone  
18 hesitate before engaging in a food stamp transaction.  
19 They are marked nontransferrable. Food stamp booklets  
20 carry the warning that improper use is a felony. Food  
21 stores by statute are required to post signs warning  
22 against food stamp abuse.

23 And I think given all of these circumstances,  
24 it is reasonable to treat a person who actually acquires  
25 a food stamp in some manner that's not authorized by law

1 as being on notice that his activities might be  
2 regulated and might be suspect.

3 And I think I'd return to a point that was  
4 alluded to earlier, the question if misignorance of the  
5 law excusing this conduct. And the Court has repeatedly  
6 suggested, as Justice Marshall's question indicated,  
7 that knowledge of the existence of a regulation, as in  
8 International Minerals --

9 QUESTION: Isn't there something to the your  
10 opponent's contention at least that isn't completely  
11 disposed of by saying it's an ignorance of the law  
12 defense; that there the statute itself in one of its  
13 clauses speaks of awareness or what have you and the  
14 fact that it's not permitted?

15 MR. ROTHFELD: There's no doubt that Congress  
16 can and has made awareness either of the law or of some  
17 legal attendant circumstance an element of a defense,  
18 and I think Congress did that, for example, in 2024(c)  
19 where it made knowledge of some type of impropriety.  
20 But generally when Congress does that it signals its  
21 intention explicitly. We cite a number of examples in  
22 our brief at page 17 where Congress has either expressly  
23 made ignorance of the existence of some body of  
24 regulations a defense to a criminal charge, or other  
25 statutes when Congress has wanted to make possession or

1 acquisition of a certain type of property turn on  
2 knowledge of the law or knowledge of the legal status of  
3 the property. It has generally done so by using --  
4 either making intent to defraud an element of the crime  
5 or, as in 2024(c), by making explicit the requirement  
6 that the prosecution prove the defendant's knowledge of  
7 the type of property he was dealing with.

8 But section 2024(b) does none of those  
9 things. It's simply a flat declaration that knowing  
10 conduct, if not authorized somewhere in the food stamp  
11 laws or in the implementing regulations, is a violation  
12 of law.

13 QUESTION: Well, but don't you think that, the  
14 language you're just talking about is -- when you add to  
15 it the language "in any manner not authorized by this  
16 chapter" is quite different than just a flat prohibition  
17 that "whoever knowingly uses, transfers, acquires,  
18 alters or possesses coupons or authorization cards in  
19 any manner," period. I mean there you do have strict  
20 liability regardless of any knowledge. But when you add  
21 to it the language "not authorized by this chapter of  
22 the regulations," you've certainly brought in some kind  
23 of additional element.

24 MR. ROTHFELD: Well, there is no doubt that  
25 some type of knowledge has been made an element of the

1 offense, but I think the language of 2024(b), if  
2 construed the way petitioner suggests, would lead to  
3 peculiar consequences, given its use of the "any manner  
4 not authorized by law" phrase, which is sort of an  
5 open-ended phrase. It would require the prosecution to  
6 prove, if the requirement is taken literally, that the  
7 defendant knew that his actions were not authorized by  
8 any existing provision of the Food Stamp Act or of the  
9 implementing regulations.

10 And has been suggested in some circumstances,  
11 some cases, the defendant will have acted in such a  
12 suspicious or furtive way that the jury will be able to  
13 infer circumstantially that what he must have known what  
14 he was doing was wrong. But that will not always be the  
15 case, and the facts here where the defendant seriously  
16 contended that he was unaware of the requirements of the  
17 food stamp law illustrate what can happen if a knowing  
18 illegality element is read into the statute given this  
19 open-ended language.

20 And here the defendant was involved,  
21 concededly involved in purchases of large quantities of  
22 food stamps for a substantial discount. That is  
23 undoubtedly the type of action that most people would  
24 suspect to be of questionable propriety, but it would  
25 not be enough for conviction if there is a knowing



1 illegality element in the statute that a reasonable  
2 person would have doubted the -- had doubts about the  
3 legality of the defendant's action or that the defendant  
4 himself had doubts. The Government would still be  
5 required, so long as the defendant could credibly claim  
6 that he had never read the food stamp laws or been told  
7 of their contents, the Government might well not have  
8 met its burden of proving that the defendant knew that  
9 no provision of law or regulation authorized his  
10 activities.

11 That is a very peculiar burden to place on the  
12 Government, and the court of appeals decision by  
13 declining to read such a requirement into the statute  
14 essentially has simply made it impossible for  
15 individuals who engage in these questionable food stamp  
16 transactions to be able to immunize themselves from  
17 liability by remaining ignorant of the nature of the  
18 food stamp law in the implementing regulations.

19 And I should add one very brief point which I  
20 think strongly supports the court of appeals decision,  
21 and that is the nature of the Food Stamp Act as a whole,  
22 and the other provisions of the Food Stamp Act which  
23 impose an enormously strict series of requirements and  
24 potential penalties on everyone who can be expected to  
25 come in contact with stamps to prevent every conceivable

1 misuse of food stamps.

2 We set out in our brief this very  
3 fantastically complex and burdensome series of  
4 requirements, and it's very difficult to believe that  
5 Congress would have imposed these burdens on everyone  
6 who might possibly have any legitimate reason to come  
7 into contact with a stamp, and then allowed someone to  
8 engage in what everyone would realize to be a doubtful  
9 transaction and be able to avoid liability because he  
10 never bothered to learn the elements of the food stamp  
11 laws or its implementing regulations.

12 The nature of the Food Stamp Act I think also  
13 gives 2024(b) the characteristics that the Court has  
14 said repeatedly are typical of statutes in which  
15 Congress has not included a knowing illegality element.  
16 And I think this responds to your basic point, Justice  
17 Stevens, about the danger of putting someone in prison  
18 who doesn't know what he was doing was wrong.

19 I think the presumption the Court has applied  
20 in cases like Gypsum and Morissette, when Congress has  
21 legislated against the background of common law offense,  
22 it is understood, unless it signals its intentions to  
23 the contrary, that it did not mean to direct the statute  
24 at anyone other than blameworthy defendants. But that  
25 is not necessarily the presumption of statutes that have

1 no common law analog, that, as Justice Blackmun along  
2 the court of appeals termed are statutes of prohibition  
3 rather than statutes of punishment that are designed to  
4 prevent some significant regulatory injury, and of  
5 particular importance, that operate in an area such as  
6 the food stamp area where certainly anyone who comes  
7 into contact with a stamp has a good idea that there is  
8 regulation. These are not, as Justice Rehnquist  
9 suggested, these are not normal articles of commerce  
10 that everyone comes across every day, and they should be  
11 on their guard.

12 Now, given the nature of the Food Stamp Act,  
13 which allocates with as much precision as possible the  
14 necessary number of coupons to individuals in need, any  
15 violation of the Act's requirements, whether intentional  
16 or whether or not the person knew he was violating the  
17 Act's requirements, will detract from the achievement of  
18 the congressional purpose by necessarily detracting from  
19 the assistance being provided to the recipient household.

20 QUESTION: But you do agree that subsection  
21 (c) requires specific intent.

22 MR. ROTHFELD: Well, specific intent I think  
23 is a confusing phrase.

24 QUESTION: Or whatever -- mens rea, at least  
25 knowledge of wrongdoing.

1 MR. ROTHFELD: Knowledge that the stamps were  
2 acquired in the manner described. He may not know that  
3 his redemption of the stamps acquired in that manner  
4 subjects him to criminal penalties. But we certainly  
5 acknowledge that, because we think Congress was  
6 concerned with precisely the point that we discussed at  
7 length before. It did not want someone who had no  
8 reason to be on notice that his actions were suspect to  
9 be able to be subjected to criminal liability.

10 I think it hardly seems unfair in the vast  
11 majority of imaginable cases that someone who is  
12 engaging in questionable food stamp transactions could  
13 be subjected to criminal penalties. And given the  
14 enormous complexity of the Food Stamp Act and the  
15 congressional purposes, on the crucial question of the  
16 case, which is congressional intent, there is no reason  
17 to think that Congress would have wanted someone who  
18 engaged in a harmful food stamp transaction that he  
19 should have suspected to be of questionable validity to  
20 be able to escape punishment by remaining ignorant of  
21 the requirements of the law and the implementing  
22 regulations.

23 Thank you.

24 CHIEF JUSTICE BURGER: You have four minutes,  
25 five minutes remaining, Mr. Huyck.

1 ORAL ARGUMENT OF WILLIAM THOMAS HUYUCK, ESQ.,  
2 ON BEHALF OF THE PETITIONER -- REBUTTAL

3 MR. HUYUCK: Thank you, Your Honor.

4 I do not agree, of course, with the Government  
5 that Congress has put a tremendous burden on the  
6 Government in proving a case that they would have to  
7 prove knowledge of complex regulations. What the  
8 Government has to prove is that the defendant knew that  
9 what he was doing was unauthorized, was in a manner  
10 nonauthorized. That doesn't mean that he has to -- it's  
11 no more difficult than proving criminal intent in any  
12 other case.

13 And the Government answers its own argument  
14 when it then, in response to the examples that were  
15 given about the possible reach of their interpretation,  
16 keeps coming back with the argument that reasonable  
17 people would have some suspicions in a case like this.  
18 That precisely makes my point.

19 In any kind of case that the Government has  
20 any business bringing under this criminal provision, you  
21 have a situation -- basic fairness dictates that you  
22 would have a situation where people would agree a  
23 reasonable person should have some suspicions, should  
24 have known that there was something wrong. And in  
25 addition, you have the particular circumstance here of

1 an enforcement program that gives extensive notice. You  
2 have visits, warning letters, et cetera, et cetera. So  
3 that it's particularly true in this case that wherever  
4 the Government is reasonably directing enforcement, this  
5 is not a tremendous burden to prove knowledge that  
6 they're violating the statute.

7 The questioning about the grocer just points  
8 out what the possible breadth of reach of the  
9 Government's interpretation is, and the regulations are  
10 very thick indeed, and the statute is very complex. I,  
11 searching for an example, on page 25 of my brief I put  
12 in an example about a particularly complex regulation  
13 about an elderly person receiving an allotment because  
14 he was a separate household from people that he was  
15 living with. And that's the same example. If he didn't  
16 meet those criteria, he would be acquiring his food  
17 stamps in a manner not authorized by the statute.

18 The Government probably reasonably wouldn't  
19 prosecute such a person; but I think that we've got to  
20 give a reading to the statute that wouldn't allow such --

21 QUESTION: How does that affect your client?

22 MR. HUYCK: Pardon me?

23 QUESTION: Did your client get those  
24 regulations?

25 MR. HUYCK: No. That's --

1 QUESTION: Of course not. He wasn't  
2 interested in them, was he?

3 MR. HUYCK: That's an example of someone who  
4 could be prosecuted under the Government's example --  
5 reading of the statute; however, they probably never  
6 would. But I think that the statute should be given the  
7 reading that Congress intended, reasonable requirement  
8 of proof by the Government that people --

9 QUESTION: Mr. Huyck, in your view would an  
10 instruction by the court in this case telling the jury  
11 that if the defendant had reason to know the stamps were  
12 unlawfully acquired, would that have been sufficient in  
13 your view?

14 MR. HUYCK: Yes. That would meet -- I think  
15 here again is a place where the Model Penal Code is  
16 useful.

17 QUESTION: So you don't think that it requires  
18 actual knowledge. You think it should be read as though  
19 it said having reason to know is sufficient.

20 MR. HUYCK: Yes. I would commend to the trial  
21 judge the Model Penal Code's definitions here where they  
22 make allowance for that kind of knowledge.

23 QUESTION: Of course, you're dealing with a  
24 statute where the adverb is "knowingly." It seems to me  
25 you can very reasonably read the word "knowingly" into

1 the second clause of the statute, or you can say there  
2 is no intent requirement, because "knowingly" isn't  
3 found in this. But how you can say their having reason  
4 to know, which is nowhere found in the statute, I don't  
5 know.

6 MR. HUYCK: Well, here again, if we're going  
7 to have an era where federal trial courts are going to  
8 more precisely instruct juries on mental intent than  
9 they have with this boilerplate instruction I used in  
10 this case, probably there's going to have to be some  
11 guidance. And I think that in many states in this  
12 Union, I think 38 of them, they use the Model Penal  
13 Code. We don't have a federal criminal code that does  
14 that.

15 But I think that this is a very good example  
16 of how using the considered opinion of the American Law  
17 Institute would bring about a good definition for a case  
18 of this type.

19 The question was asked whether United States  
20 Gypsum is dispositive here. What I would like to point  
21 out about United States Gypsum is it's one of three  
22 cases -- the Bailey case, the U.S. Gypsum case, and the  
23 Freed case -- where this Court has addressed statutes  
24 where no intent term is set forth and has adopted the  
25 very reasonable positions of the Model Penal Code on



1 what kind of mental elements should be reasonably found  
2 in a statute.

3 And I think that certainly the U.S. Gypsum  
4 case stands for the proposition that if it's a felony,  
5 and cites the Model Penal Code for this, you ought not  
6 to be sending unknowing persons to prison for a felony  
7 except in very limited circumstances. And I think it's  
8 very clear that the only limited circumstances this  
9 Court has ever recognized are cases such as Yermian  
10 where you're talking about a jurisdiction, and the  
11 dangerous instrumentality cases.

12 Thank you.

13 CHIEF JUSTICE BURGER: Thank you, gentlemen.

14 The case is submitted.

15 We'll hear arguments next in Commodity Futures  
16 Trading Commission against Weintraub.

17 (Whereupon, at 1:59 p.m., the case in the  
18 above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:  
#84-5108 - FRANK LIPAROTA, Petitioner v. UNITED STATES

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BY Paul A. Richardson

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