

ILLEGAL GAMBLING BUSINESS ACT

- 18 U.S.C. §1955 the Statute
- (2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.
- (3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

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- 18 U.S.C. §1955 the Statute
- What do you think the phrase "conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business" means?
Does it cover bartend?

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- The Box Opinion

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- The Box Opinion
 - The IGBA doesn't apply to mere bettors
 - Taking an occasional bet encouraged by a bookie is does not cross the line from being a mere bettor to being in the business

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- Merrell Opinion
 - Sweeping floors, stacking chairs and occasionally servig coffee = conducting

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- Merrell Opinion
 - Conducting = providing anything necessary or helpful

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- Mick Opinion
 - Even line service subscriptions can be deemed to be conducting

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- The Follin Opinion
 - You don't need to be employed or be paid to be conducting

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FWA & IGBA

- Both require being in the business of betting or wagering.
- How do they differ in determining whether one is in the business of betting or wagering?

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FWA & IGBA

- BARBORIAN

...in enacting § 1955, Congress did not intend to make all gambling businesses subject to federal prosecution; rather the statute was intended to reach only those persons who prey systematically upon our citizens and whose syndicated operations are so continuous and substantial as to be of national concern.

In regard to § 1084(a), however, there is nothing to indicate that Congress intended only to punish large-scale gambling businesses. The basis of federal jurisdiction underlying § 1084(a) is the use of interstate communications facilities, which is wholly distinct from the connection between large-scale gambling businesses and the flow of commerce, which provides the jurisdictional basis for § 1955. Thus, the necessary showing of interdependence between individuals involved in an illegal gambling business under § 1955 is not required under § 1084(a). Moreover, § 1084(a) is not limited to persons who are exclusively engaged in the business of betting or wagering and the statute does not distinguish between persons engaged in such business on their own behalf and those engaged in the business on behalf of others.

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- The Truesdale Opinion
- Cannot be convicted under the IGBA if not charged with a crime that was actually committed under state law

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- The Poker Indictments

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ILLEGAL GAMBLING BUSINESS ACT

- The Poker Indictments

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

ESAI SCHINDLER,
RAYMOND STEIN,
SCOTT TOM,
BRANDY WAGNER,
WILLIAM WATKINS,
PAUL TATE,
DAVE LAM,
BRADLEY FRANKEL,
IRA WENZEL,
DAN KILM,
CHAD KILM,
JOHN CARROLL,

Defendants.

DOCKET ONE

(1) United States District Court Southern District of New York

The grand jury charges:

Introduction

1. From at least in or about November 2004, and continuing through in or about March 2011, the three leading internet poker companies doing business in the United States were PokerStars, Full Tilt Poker and Absolute Poker/William Hill collectively the "poker companies". Because United States banks were largely unwilling to process payments for an illegal activity such as internet gambling, the three poker companies used fraudulent schemes to avoid these restrictions and to

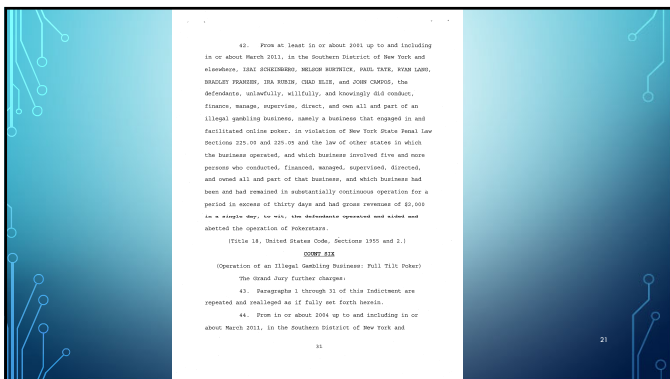
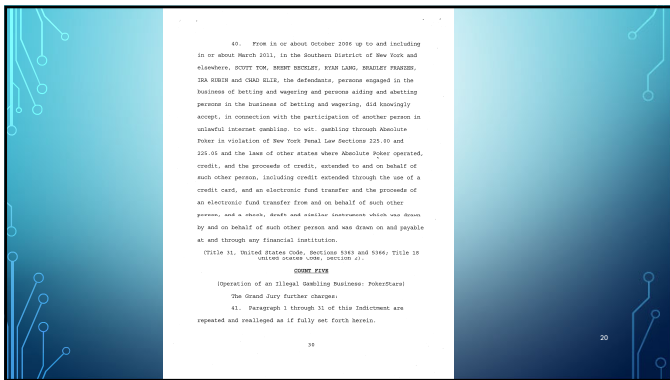
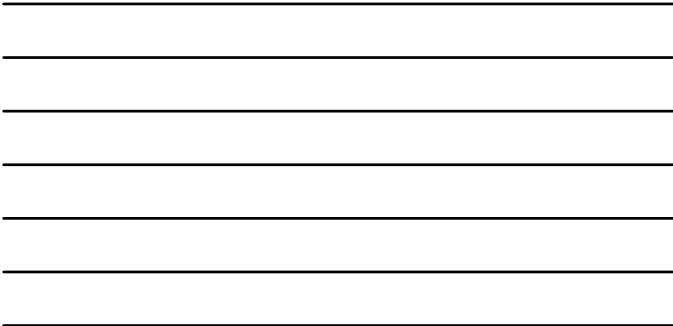
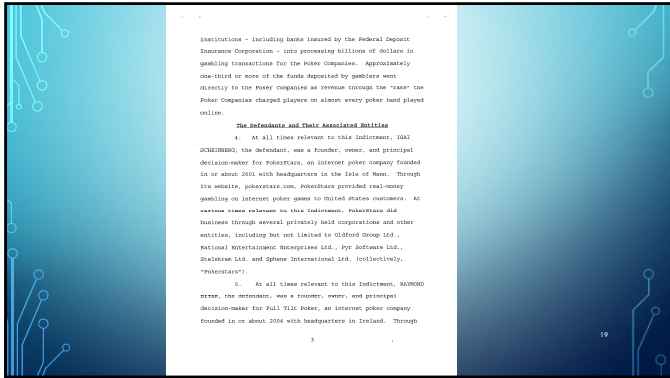
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receive billions of dollars from United States residents who gambled through the poker companies. The principals of the poker companies, including defendants ESAI SCHINDLER and SCOTT TOM of PokerStars, SCOTT TOM and RAYMOND STEIN of Absolute Poker, and RAYMOND STEIN and WILLIAM WATKINS of Full Tilt Poker, devised or directed others to deceive United States banks and financial institutions into processing billions of dollars in payments for the poker companies, by, among other things, attempting for the money received from United States gamblers to be deposited as payments to hundreds of non-existent online merchants and other non-gambling businesses.

2. To accomplish this deceit, ESAI SCHINDLER, RAYMOND STEIN, BRANDY WAGNER, WILLIAM WATKINS and DAN KILM, the defendants, relied on highly compensated third party payment processors (the "poker processors") who lied to United States banks about the nature of the financial transactions they were processing and covered up those lies through the creation of shell corporations and websites to disguise payments to the poker companies. These poker processors included, among others, RYAN LAM, BRADLEY FRANKEL, IRA WENZEL, and DAN KILM, the defendants, who, at various times relevant to this indictment, processed and origin structured payments on behalf of our three poker companies.

3. Working together, the poker companies and poker processors deceived United States banks and financial

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U.S. v. Schrimberg et al., 1:23-cr-0166

Defendant	Citizenship	Residence	Age
ISAAC SCHRIMBERG	Canada (Israel)	Talk of Man	44 (44:1)
BRANDON RITVA	United States	California	39
JOEY TOM	United States	Coast Rica	31
BRADY WICKLEY	United States	Coast Rica	31
WILSON HOFFMICK	Canada	Canada	40
JOHN KEMP	Canada	Talk of Man	36
ISAAC LANG	Canada	Canada	36
BRANDY PRANSKY	United States	California	30
ISAAC BROWN	United States	Coast Rica	32
ISAAC RICE	United States	Canada	31
JOHN CAMPBELL	United States	Utah	37

Count	Charge	Defendants	Maximum Penalties
1	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release
2	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release

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Count	Charge	Defendants	Maximum Penalties
3	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	BRANDON RITVA, WILSON HOFFMICK, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release
4	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release
5	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release
6	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release
7	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release

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Count	Charge	Defendants	Maximum Penalties
8	Obstruction of Justice: Witness (18 USC 873(a)(1)) Performance Act (18 USC 873(b)) Witness (18 USC 873(c))	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	5 years in prison, fine of \$250,000 or twice the gross estate supervised release
9	Money Laundering (18 USC 853)	ISAAC SCHRIMBERG, BRANDON RITVA, JOEY TOM, BRADY WICKLEY, WILSON HOFFMICK, ISAAC LANG, JOHN KEMP, ISAAC BROWN, JOHN CAMPBELL	20 years in prison, fine of \$500,000 or twice the gross estate supervised release

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- Questions

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WAGERING PARAPHERNALIA ACT

18 U.S.C. §1953 the Statute
Interstate transportation of wagering paraphernalia

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both.

WAGERING PARAPHERNALIA ACT

18 U.S.C. §1953 the Statute
Interstate transportation of wagering paraphernalia

(b) This section shall not apply to

- (1) parimutuel betting equipment, parimutuel tickets, where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or
- (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or
- (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or
- (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law, or
- (5) the transportation in foreign commerce to a destination in a foreign country of equipment, tickets, or materials designed to be used within that foreign country in a lottery which is authorized by the laws of that foreign country.

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion

Basic Facts

- Mendelsohn and Bentsen developed an accounting program called SOAP
- SOAP is tailored with features useful for bookmakers
 - Computerized methods for analyzing sports bets
 - Game schedules
 - Point spreads
 - Odds calculator
 - Quick erase feature
 - Recovery program available

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion

- Basic Facts
 - They sell the program to Felix, an undercover policeman posing as a bookmaker
- They send Felix the SOAP installation disk by mail from Nevada to California
- They are convicted under the WPA

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion

What are Defendants' arguments?

- The disk is protected speech
- The statute is overbroad
- The disk qualifies as news paper or similar publication for an exemption
- The software is not a device nor is the disk
- No intent to violate the law
- Reliance on a legal opinion

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion
 What does the court think of the arguments?

- The disk is protected speech.
 - SOAP is too instrumental in and intertwined with the performance of criminal activity to retain first amendment protection.
- The Statute is too broad.
 - We will not invalidate this statute simply because "there are marginal applications in which... [it] would infringe on First Amendment values."
- The disk qualifies as news paper or similar publication for an exemption
 - SOAP did not bring the bookmaker any news of the betting world. It contained no information about races, games, bets, or even betting strategy. Rather, SOAP helped computerize the bookmaker's system of keeping records and making bets. Classifying SOAP as a publication similar to a newspaper requires a stretch of the statutory language beyond the possible intention of Congress.

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion
 What does the court think of the defenses?

The software is not a device nor is the disk.

- Although Congress heard testimony regarding items used to record bets, such as blank lottery tickets, bookmaker's records, and flash paper, it did not limit § 1953 to those or similar items. On the contrary, Congress employed broad language to "permit law enforcement to keep pace with the latest developments ..." because organized crime has shown "great ingenuity in avoiding the law."
- Whatever merit the defendants' argument may have with regard to such generic items as pencils, it does not encompass their computer program that was far more narrowly targeted for use in bookmaking. The few, if any, legal uses of SOAP by large bettors do not immunize SOAP's major, illegal use from the reach of § 1953.

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion
 What does the court think of the defenses?

No intent to violate the law

- "Knowing" usually connotes a general intent crime, especially when the words "willfully" or "with intent to" are absent. Consequently, the only court to face this issue held that a violation of §1953 does not require specific intent to violate the law.
- The defendants knew quite well what SOAP contained, because they designed it, marketed it, and instructed others on its use. They may or may not have known that selling SOAP outside of Nevada was illegal, but the statute does not require that knowledge.

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion

What does the court think of the defenses?

Reliance on a Legal Opinion

- Mendelsohn told Detective Felix that his attorney said that selling SOAP was legal. He later told Felix that his attorney said he did not know what would happen if Mendelsohn sold SOAP interstate. Over defendants' objections, the district court found a limited waiver of the attorney/client privilege and permitted Mendelsohn's former attorney, Raby, to testify. Raby testified that he told Mendelsohn that sending SOAP outside Nevada violated federal law.

WAGERING PARAPHERNALIA ACT

Mendelsohn Opinion

Thoughts?

GENERAL FEDERAL CRIMINAL GAMING LAWS

Run through

