

Federal & Indian Gaming Law



Federal Wire Act Part 2

with Greg Gemignani

CONTEXT - TIMING

- ▶ WWII Ends. The USA entered WWII as a great nation among many and emerged as the dominant nation on the globe.
- ▶ Two threats remain
 - ▶ Communism
 - ▶ ...

CONTEXT - TIMING

- ▶ <https://youtu.be/0AMI4RN7B38>
- ▶ <https://youtu.be/-Od6P-e-mfM>

CONTEXT - TIMING

- ▶ 1961 only 16 years after the end of WWII
- ▶ Congress holds hearings on organized crime that link organized crime to interstate gambling rackets
- ▶ Eisenhower cuts off diplomatic ties **with Cuba**
- ▶ January 20, 1961, John F. Kennedy is sworn in as President
- ▶ January 21, 1961, John F. Kennedy appoints his brother Robert F. Kennedy as Attorney General
- ▶ RFK takes up the fight against organized crime in earnest

Federal Wire Act

- 18 USC §1084
 - (a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

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What do you think it means to be in the
“BUSINESS OF BETTING OR WAGERING?”

Federal Wire Act

- Business of Betting or Wagering – The Barborian Opinion
 - As I see it, the legislative language indicates that “being engaged in the business of betting or wagering” requires the sale of a product or service for a fee involving third parties, i.e., customers and clients, or the performance of “a function which is an integral part of such business.” The defendant need not be exclusively engaged in such business. If he is an agent or employee of the business he need not share in the profits or losses of the business or receive compensation for his services, but “the function he performs must provide a regular and essential contribution to the (overall operation of) that business. If an individual performs only an occasional or nonessential service or is a mere bettor or customer, (regardless of the amount bet,) he cannot properly be said to engage in the business.” There must be a “continuing course of conduct,” and if associated with another, their joint conduct must be to achieve a common objective and purpose. U. S. v. Scavo, 593 F.2d 837, 842-43 (8th Cir. 1979)

?

Federal Wire Act

- DISCUSSION

- Do you think any of the following qualifies as being in the business of betting or wagering?
 - Accepting and booking wagers on football?
 - Setting lines for football games?
 - Handicapping baseball games?
 - Providing a publication that compares odds of different bookmakers on common events?
 - Placing wagers with a bookie for your friends at work?
 - Offering an online sportsbook in Nevada?
 - Providing a service to let bettors bet amongst each other?

Federal Wire Act

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Federal Wire Act

- U.S. v. Yaquinta
 - Facts

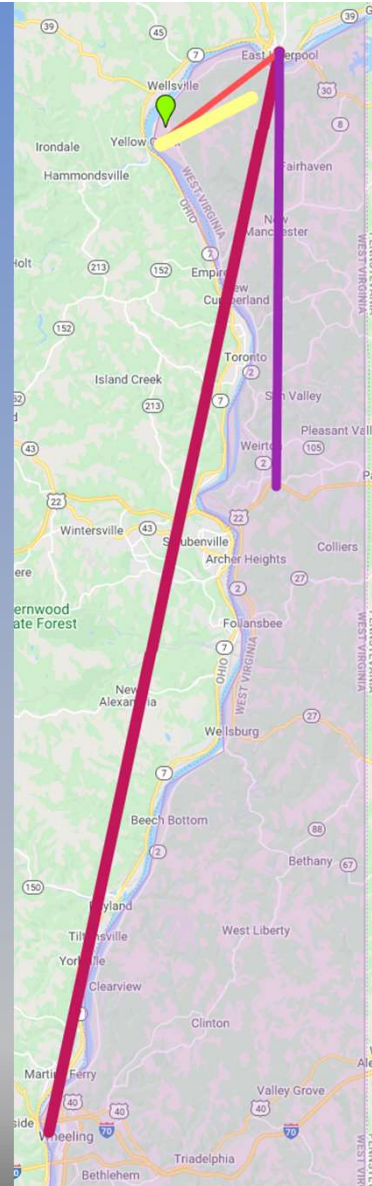
Federal Wire Act

- U.S. v. Yaquinta

- Facts

- Allen and Downing operate a bookmaking shop for off-track betting in Wheeling, WVA
 - Vukovich and Gresko conduct a similar shop in Weirton, WVA
 - Both took wagers on races at Waterford Park, near Chester WVA
 - Hankish attended the races and broadcast them to Yaquinta via walkie talkie.
 - Yaquinta, stationed in a trailer in Arroyo WV near the track, related them to Wierton and Wheeling via long distance telephone.
 - Defendants knew phone lines went through East Liverpool, OH

Federal Wire Act



Federal Wire Act

- U.S. v. Yaquinta
 - What is the issue?

Federal Wire Act

- U.S. v. Yaquinta
 - What is the issue?
 - Whether the Defendants were engaged in the transmission of bets or wagers or information assisting in the placement of bets or wagers in interstate or foreign commerce?

Federal Wire Act

- U.S. v. Yaquinta
 - What are the Defendant's arguments?

Federal Wire Act

- U.S. v. Yaquinta
 - What are the Defendant's arguments?
 - The defendants contend that the congressional intent expressed in the statute was not to make criminal the use of an interstate wire transmission facility to carry messages emanating from a point in West Virginia to receiving points, also in West Virginia, no matter how many other States the electrical impulses, carried by the wires, traversed.

Federal Wire Act

- U.S. v. Yaquinta
 - How does the court decide the issue?

Federal Wire Act

- U.S. v. Yaquinta
 - How does the court decide the issue?
 - ...the intermediate crossing of a State line provides enough of a peg of interstate commerce to serve as a resting place for the congressional hat, if that will serve the congressional purpose. The congressional purpose here is very frankly elucidated in the Attorney General's letter to the branches of the Congress, dated April 6, 1961, in which he says,
 - "The purpose of this legislation is to assist the various States in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of certain gambling information in interstate commerce.
 - ...
 - Both the congressional committees which reported this legislation favorably and the Attorney General's office which sponsored it have made it abundantly clear that the evil under attack is illegal gambling, and that the legislative purpose is to assist the States in the enforcement of their laws. The use of the commerce clause is the occasion rather than the reason for invoking federal jurisdiction. West Virginia needs just as much help in the enforcement of its anti-gambling statutes when the information which assists their violation comes from another point in West Virginia, as it does when that information comes from an adjoining or distant State.

Federal Wire Act

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Federal Wire Act

- DISCUSSION

- Does a Nevada book run the risk of violating the federal wire act if the book takes telephone wagers from in-state bettors?

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Federal Wire Act

- Information Assisting in the Placing of Bets or Wagers
 - What do you think qualifies as “Information Assisting”?

Federal Wire Act

- Information Assisting In the Placement of a Bet or Wager– Scavo Opinion
- Facts

Federal Wire Act

- Information Assisting In the Placement of a Bet or Wager– Scavo Opinion
- Facts
 - Scavo convicted under the federal wire act
 - In 1976 a wire tap on his telephone lines was authorized
 - Investigation centered on Dwight Mezo
 - Mezo and 8 others pleaded guilty
 - Scavo's trial moved to Nevada, where he was residing
 - Scavo's guilty plea was rejected by the court
 - Scavo entered a nolo plea and the case was sent back to Minnesota

Federal Wire Act

- Information Assisting In the Placement of a Bet or Wager– Scavo Opinion
- Facts
 - Scavo lived in Las Vegas and provided Mezo with betting line information over the telephone
 - Odds and point spreads

Federal Wire Act

- Information Assisting In the Placement of a Bet or Wager– Scavo Opinion
- Facts
 - What is Scavo's argument that he should not be convicted under the Federal Wire Act?

Federal Wire Act

- Information Assisting In the Placement of a Bet or Wager– Scavo Opinion
- Facts
 - What is Scavo's argument that he should not be convicted under the Federal Wire Act?
 - 1. He is not in the business of betting or wagering
 - He argues using the 18 USC 1955 statute
 - He also argues that he **merely provided information** which is not being in the business of betting or wagering

Federal Wire Act

- Information Assisting In the Placement of a Bet or Wager– Scavo Opinion
- Court Holding?
 - Although we reject appellant's blanket assertion that suppliers of line information are outside the scope of s 1084(a), we must nevertheless determine whether the government introduced evidence sufficient to show that appellant was “engaged in the business of betting and wagering.” At trial, the government proceeded on the theory that appellant was part of Mezo's bookmaking business and on this aspect of the case the authorities relied upon by appellant are relevant to a prosecution under s 1084(a). They are not controlling, however, because the evidence adduced showed more than a mere occasional exchange of line information between appellant and Mezo.
 - Viewed in the light most favorable to the government, the evidence showed that appellant furnished line information to Mezo on a regular basis; that Mezo relied on this information; that some sort of financial arrangement existed between appellant and Mezo; that appellant was fully aware of Mezo's bookmaking operation; and that accurate and up-to-date line information is of critical importance to any bookmaking operation.

Federal Wire Act

- Line information and point spreads are common forms of “information that assists in placing a wager”
- What other forms of information do you think are critical for book operations that would be “information that assists in placing a wager?”

Federal Wire Act

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Federal Wire Act

- In re: Mastercard – District Court
 - Facts

Federal Wire Act

- In re: Mastercard – District Court
 - Facts
 - Bettors lose money playing on off-shore online casinos
 - Bettors use credit cards to fund gaming transactions
 - Credit card companies make money from each credit card transaction
 - Therefore, Bettors argue that credit card companies are part of a racketeering organization in interstate and foreign commerce
 - To prove their claim, they must assert that other federal laws were being broken in such a racketeering activity
 - They claim online gambling is a criminal activity under the Federal Wire Act

Federal Wire Act

- How does the credit card industry work?

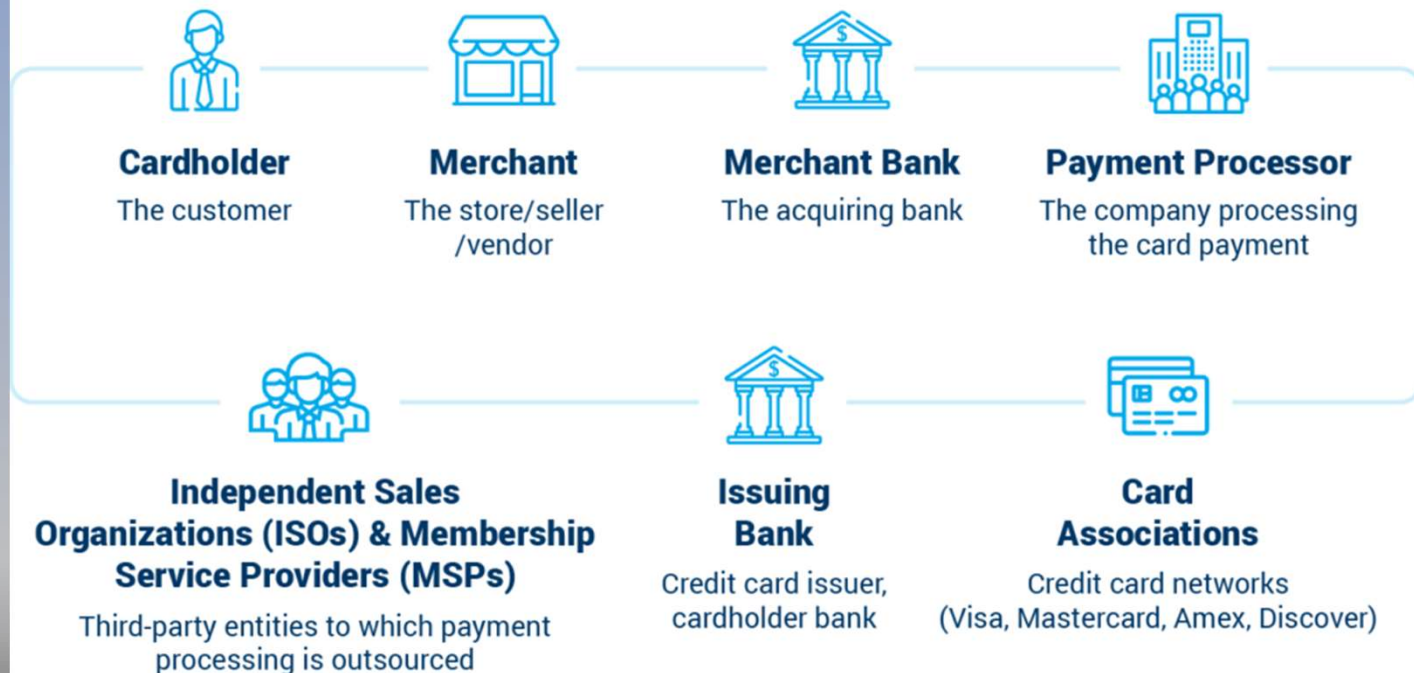
Federal Wire Act



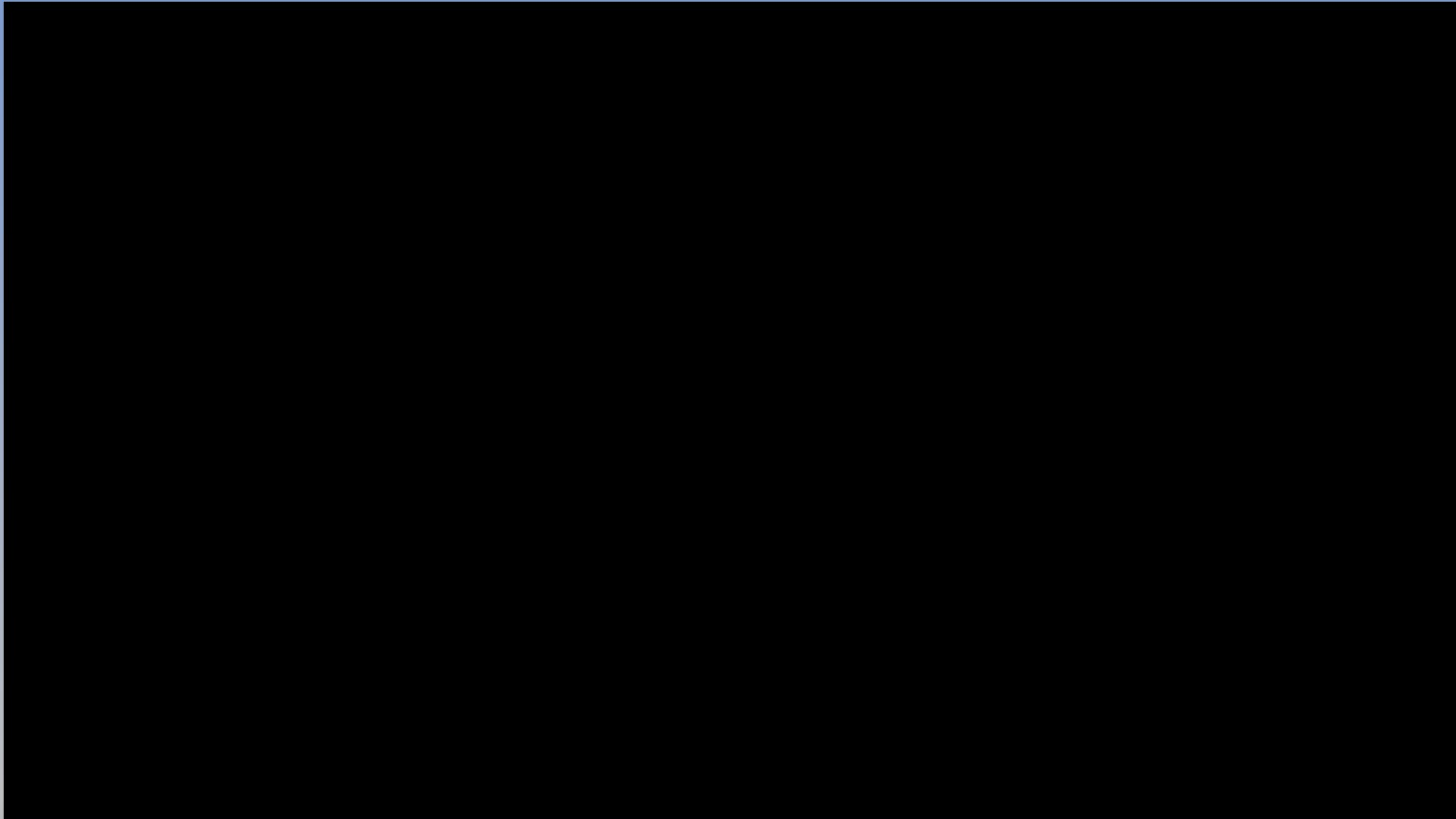
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Federal Wire Act

Who's involved in credit card processing?



Federal Wire Act



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Federal Wire Act



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Federal Wire Act

- In re: Mastercard – District Court
 - If you were MC/Visa/Discover/Amex what would you do?

Federal Wire Act

- In re: Mastercard – District Court
 - Civil Procedure – 12(b)(6) motion?

Federal Wire Act

- In re: Mastercard – District Court
 - What do the credit card companies argue?

Federal Wire Act

- In re: Mastercard – District Court
 - What do the credit card companies argue?
 - The Federal Wire Act only applies to SPORTS wagering and Plaintiffs have not alleged any losses for sports wagers; therefore, the court cannot grant relief on their claims
 - “The defendants argue that plaintiffs' failure to allege sports gambling is a fatal defect with respect to their Wire Act claims...”

Federal Wire Act

- In re: Mastercard – District Court
 - What do the Plaintiff's argue?

Federal Wire Act

- In re: Mastercard – District Court
 - What do the Plaintiff's argue?
 - "...plaintiffs strenuously argue that the Wire Act does not require sporting events or contests to be the object of gambling"

Federal Wire Act

- In re: Mastercard – District Court
 - What is the court's initial impression?

Federal Wire Act

- In re: Mastercard – District Court
 - What is the court's initial impression?
 - ... “a plain reading of the statutory language clearly requires that the object of the gambling be a sporting event or contest. Both the rule and the exception to the rule expressly qualify the nature of the gambling activity as that related to a “sporting event or contest.” See 18 U.S.C. §§ 1084(a) & (b).”

Federal Wire Act

- In re: Mastercard – District Court
 - How does the court handle plaintiff's argument that the legislative history does not require sports wagering to be the object of gambling?

Federal Wire Act

- In re: Mastercard – District Court
 - As the plain language of the statute and case law interpreting the statute are clear, there is no need to look to the legislative history of the Act as argued by plaintiffs. See In re Abbott Laboratories, 51 F.3d 524, 528 (5th Cir.1995). However, even a summary glance at the recent legislative history of internet gambling legislation reinforces the Court's determination that internet gambling on a game of chance is not prohibited conduct under 18 U.S.C. § 1084. Recent legislative attempts have sought to amend the Wire Act to encompass “contests] of chance or a future contingent event not under the control or influence of [the bettor]” while exempting from the reach of the statute data transmitted “for use in the new reporting of any activity, event or contest upon which bets or wagers are based.” See S.474, 105th Congress (1997). Similar legislation was introduced the 106th Congress in the form of the “Internet Gambling Prohibition Act of 1999.” See, S. 692, 106th Congress (1999). That act sought to amend Title 18 to prohibit the use of the internet to place a bet or wager upon “a contest of others, a sporting event, or a game of chance...” Id. As to the legislative intent at the time the Wire Act was enacted, the House Judiciary Committed Chairman explained that “this particular bill involves the transmission of wagers or bets and layoffs on horse racing and other sporting events.” See 107 Cong. Rec. 16533 (Aug. 21, 1961). Comparing the face of the Wire Act and the history surrounding its enactment with the recently proposed legislation, it becomes more certain that the Wire Act's prohibition of gambling activities is restricted to the types of events enumerated in the statute, sporting events or contests. Plaintiffs' argument flies in the face of the clear wording of the Wire Act and is more appropriately directed to the legislative branch than this Court.

Federal Wire Act

- So the matter is dismissed.
- What would you do if you were representing the plaintiffs?

Federal Wire Act

- In re: Mastercard – 5th Circuit Court of Appeals
 - What is the standard of review?

Federal Wire Act

- In re: Mastercard – 5th Circuit Court of Appeals
 - What is the standard of review?
 - We review a district court's grant of a Rule 12(b)(6) motion de novo, applying the same standard used below. “In so doing, we accept the facts alleged in the complaint as true and construe the allegations in the light most favorable to the plaintiffs.” But “conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.”

Federal Wire Act

- In re: Mastercard – 5th Circuit Court of Appeals
 - What did the appeals court think of the district court's conclusion that the Wire Act only concerns gambling on sporting events?

Federal Wire Act

- In re: Mastercard – 5th Circuit Court of Appeals
 - The district court concluded that the Wire Act concerns gambling on sporting events or contests and that the Plaintiffs had failed to allege that they had engaged in internet sports gambling. We agree with the district court's statutory interpretation, its reading of the relevant case law, its summary of the relevant legislative history, and its conclusion. The Plaintiffs may not rely on the Wire Act as a predicate offense here.

QUESTIONS