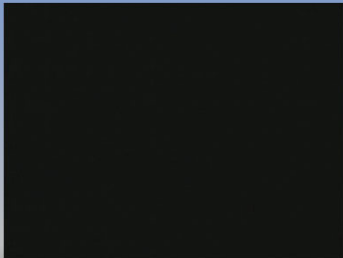


HISTORY

- By 1970, organized crime was still a significant issue for law enforcement.
 - Calls were made by law enforcement for stronger efforts by the federal government to assist states in enforcing their laws with regard to illegal gambling.
 - The following FBI training movie from 1971 highlights the issue of the time...

HISTORY

<https://www.youtube.com/watch?v=083rOj8J>



HISTORY

- In response, Congress enacted the Organized Crime Act of 1970 that included the Illegal Gambling Business Act.

ILLEGAL GAMBLING BUSINESS ACT

- 18 U.S.C. §1955 the Statute
- (a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both

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ILLEGAL GAMBLING BUSINESS ACT

- 18 U.S.C. §1955 the Statute
- (b) As used in this section—
 - (1) "illegal gambling business" means a gambling business which—
 - (i) is a violation of the law of a State or political subdivision in which it is conducted;
 - (ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and
 - (iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of \$2,000 in any single day.

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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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ILLEGAL GAMBLING BUSINESS ACT

- 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 bettors?

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ILLEGAL GAMBLING BUSINESS ACT

- Owns?

11

ILLEGAL GAMBLING BUSINESS ACT

- Directs?

12

ILLEGAL GAMBLING BUSINESS ACT

- Supervises?

13

ILLEGAL GAMBLING BUSINESS ACT

- Manages?

14

ILLEGAL GAMBLING BUSINESS ACT

- Finances?

15

ILLEGAL GAMBLING BUSINESS ACT

- Conducts?

16

ILLEGAL GAMBLING BUSINESS ACT

- The Box Opinion
- Facts
 - Box owns a billiard parlor
 - FBI agents visit the billiard parlor
 - Bookmaker 1 testifies that he never laid off bets to Box
 - Bookmaker 2 admitted to occasionally laying off bets to Box, but he always considered Box to be a bettor
 - Bookmaker 3 testifies that Box was also his customer

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ILLEGAL GAMBLING BUSINESS ACT

- The Box Opinion
- What is a layoff bet?

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ILLEGAL GAMBLING BUSINESS ACT

- What is a layoff bet?
 - Bookmaker A's customers bet \$100,000 on Denver (-2.5) and \$50,000 on Seattle (+2.5) in the Super Bowl last week.
 - Bookmaker A currently has collected \$15,000 of vig (10% of all wagers).
 - If Denver wins by 3 or more he is out \$35,000 above the vig the bookmaker collected.

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ILLEGAL GAMBLING BUSINESS ACT

- What is a layoff bet?
 - Bookmaker A doesn't have \$35,000 laying around to pay off the bets if Denver wins by 3 or more.

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ILLEGAL GAMBLING BUSINESS ACT

- What is a layoff bet?
 - Bookmaker A doesn't have \$35,000 laying around to pay off the bets if Denver wins.
 - What can he do?

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ILLEGAL GAMBLING BUSINESS ACT

- What is a layoff bet?
 - Bookmaker A doesn't have \$35,000 laying around to pay off the bets if Denver wins.
 - What can he do?
 - What if Customer B calls to place a \$50,000 wager on Denver?

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ILLEGAL GAMBLING BUSINESS ACT

- What is a layoff bet?
 - The solution is a layoff bet.
 - He bets \$50,000 on Denver with a bigger bookmaker.
 - He entices Customer B to bet on Seattle (which is essentially the same taking Denver with another book)

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ILLEGAL GAMBLING BUSINESS ACT

- The Box Opinion
- What is the governments position regarding Box?
 - He is a bookmaker because he was involved in laying off bets which by its definition is a transaction between bookmakers.

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ILLEGAL GAMBLING BUSINESS ACT

- The Box Opinion
- How does the court address the "lay off" bets are always between bookmakers argument?
- It seems clear, however, that the individual accepting a lay off bet from a bookmaker need not be another bookmaker. That individual could be part of a professional "lay off" operation, an organization dealing only with bookmakers rather than with retail customers, and having sufficient capital so that risk-taking at 11 to 10 odds posed little problem. On the other hand, the individual could be a mere bettor who wanted to bet \$4000 on Dallas \$ 6, but was told by his bookmaker that no more such bets were being taken and was invited by the bookmaker to accept instead a wager in which the bettor received 11 to 10 odds for agreeing to bet on Pittsburgh. The point of all this is that a "lay off" bet should be defined solely in relation to the occupation and the purpose of the person making the bet-the occupation and motives of the person accepting the bet are irrelevant to the definition.

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ILLEGAL GAMBLING BUSINESS ACT

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- As explained above, we reject the premise of this argument-a lay off bet is one placed by a bookmaker, but the individual accepting the bet need not be a bookmaker.

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ILLEGAL GAMBLING BUSINESS ACT

- The Box Opinion
- How does the court address whether Box is a bookmaker?
- Having established that Box cannot be labeled a bookmaker, we have not yet shown him to be within an unassailable hypothesis of innocence, because 1955 clearly was meant to proscribe some bookmaking-related activities of individuals who were not themselves bookmakers. The legislative history indicates that 1955 applies generally to persons who participate in the ownership, management, or conduct of an illegal gambling business. The term "conducts" refers both to high level bosses and street level employees.

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ILLEGAL GAMBLING BUSINESS ACT

- The Sox Opinion
- How does the court address whether Sox is a bookmaker?
 - ...one who accepts lay off bets can be convicted if any of the following factors is also present: evidence that the individual provided a regular market for a high volume of such bets, or held himself out to be available for such bets whenever bookmakers needed to make them; evidence that the individual performed any other substantial service for the bookmaker's operation, as, for example, in the supply of line information; or evidence that the individual was conducting his own illegal gambling operation and was regularly exchanging lay off bets with the other bookmakers.

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ILLEGAL GAMBLING BUSINESS ACT

- Discussion
 - Are bettors subject to the Illegal Gambling Business Act prohibits as bettors?
 - When does one become more than a mere bettor?

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
 - Facts
 - Merrell is a janitor and waiter in a gambling house in Detroit
 - In 1979 and 1980 FBI agents undertook surveillance of the gambling house
 - In April 1980, the gambling house was raiding and Merrell was arrested
 - Merrell found guilty of violating 1955

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
- Merrell's argument
 - Based on an earlier 10th circuit opinion that stated waitresses whose sole function was to serve drinks both to dance hall patrons and to gamblers in an adjacent room were not subject to prosecution under section 1955 because only conduct strictly necessary to the gambling operations was reached by the statute and serving drinks wasn't necessary.
 - Likewise, a janitor and waiter are not necessary to the gambling operations, unlike dealers, runners, guards and the like.

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
- Merrell's argument – THE BOSS OPINION
 - Boss sublets the front portion of a building for a restaurant from Davidson
 - Davidson retains the back room for dice games
 - The waitresses from the restaurant serve both the restaurant and dice game participants.
 - Davidson only hired one employee to work in the dice game room (a stick man), and hires two bouncers to guard the door.
 - Davidson and the two bouncers plead out, leaving Boss to be tried alone.
 - Boss appeals his conviction Under the IGBA based on an argument that there were less than 5 people conducting the illegal gambling.
 - The Government argues any two of the three waitresses or the bartender hired by Boss can be used to reach the jurisdictional three.

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
- Merrell's argument – THE BOSS OPINION
 - Boss argues that only three people, in addition to himself were conducting the activity
 - Because this adds up to four people, there was no violation of the IGBA.
 - The federal prosecutor argues that the bar tender who stationed when wagering was about to begin, the bar tender that poured drinks, and particularly any of these waitresses could be used to reach the jurisdictional 5, even though none was charged.
 - As explained further in Part 10, this case focuses particularly on the three waitresses and we conclude that their activities in these circumstances do not bring them within the reach of § 1955 as conductors or the like of the illegal gambling business. It is true that in some cases there is more substantial showing made of the relationship of waitresses to a gambling business than they were counted on participants. We would agree that waitresses acting as security guards who identify customers for admission as well as serving drinks and food to gamblers, as in Colorado, could be "conductors" performing a necessary function for the illegal gambling business. We do not agree, however, with the statutory interpretation which includes waitresses or others because their activity may be merely helpful to the illegal gambling business.

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
- Court's View of Merrell's Argument
 - The major flaw in appellant's argument is that the strict necessity test has only been adopted by the Boss court. The prevailing rule is that one "conducts" a gambling business if that person performs any act, duty or function which is necessary or helpful in operating the enterprise.

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
- Court's View of Merrell's Argument
 - Merrell's actions clearly aided the gambling operation involved here. By serving coffee, appellant helped the bettors to continue wagering without interruption. By cleaning up and preparing the gambling area for future sessions, appellant helped to provide an attractive place for bettors to congregate in order to wager. In light of the authorities from the fifth, seventh and eighth circuits, we hold that persons who regularly aid gambling enterprises should be subject to prosecution under section 1955 even though their conduct may not be strictly necessary to the success of such businesses.

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ILLEGAL GAMBLING BUSINESS ACT

- Merrell Opinion
- Court's View of Merrell's Argument
 - *Since the Boss case ruled to the contrary, we decline to follow it.*

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ILLEGAL GAMBLING BUSINESS ACT

- Discussion
- Where should the line be drawn for conducting an illegal gambling business?
- For an illegal online gambling business, discuss whether the following activities could be or should be considered conducting an illegal gambling business:
 - Providing credit card services
 - Providing funds transfer services
 - Acting to place advertisements for the online site
 - Taking and running advertising for an online sportsbook
 - Purchasing publicly traded stock in an online sportsbook operating out of the U.K.
 - Providing software for an online sportsbook
 - Providing accounting software for an online sportsbook

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ILLEGAL GAMBLING BUSINESS ACT

- Mick Opinion

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ILLEGAL GAMBLING BUSINESS ACT

- Mick Opinion - Facts
 - Robert Mick convicted of violating 18 USC 1955
 - Mick was a bookie and bar owner from 1984-1997 in Alliance, Ohio
 - Mick sold the bar in 1997 and lived solely off of book making income
 - Mick had a friend, Cheryl Stolber, install a call forwarding number from Louisville KY to expand his business
 - Mick ran the business with his girlfriend Harriet Brodzinski
 - Mick had a subscription to Don Best sports for live odds.
 - Mick also had an arrangement with a tavern and tavern owner to distribute and collect parlay cards.
 - Mick had an arrangement with a car wash owner/better.

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ILLEGAL GAMBLING BUSINESS ACT

• Mick Opinion – Mick’s Defense

- At trial, Mick admitted to being a bookmaker. His primary defense was a challenge to the government’s evidence on a key element of a § 1955 conviction—the requirement that the gambling business “involve[] five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business.” [18 U.S.C. § 1955\(a\)\(1\)\(a\)](#)
- Mick ...challenges the sufficiency of the evidence supporting the jury’s conclusion that his activities constituted an “illegal gambling business” pursuant to [18 U.S.C. § 1955](#).
- Mick claims that there was insufficient proof to show, beyond a reasonable doubt, that his business “involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business.”

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ILLEGAL GAMBLING BUSINESS ACT

• Mick Opinion – Court Analysis

- In considering whether a person’s involvement constitutes sufficient “conduct” to be counted as one of the five people required to satisfy § 1955, this court has held that “Congress intended the word conduct to refer to both high level bosses and street level employees.” *Martucci*, 502 F.2d at 858 (counting the doorman in a gambling club as one of the jurisdictional five) [internal quotation marks omitted]. The Fifth Circuit has even gone so far as counting a line service, similar to the one provided by Don Best Sports, as one of the jurisdictional five. See *United States v. Heacock*, 31 F.3d 249, 252 (5th Cir.1994).

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ILLEGAL GAMBLING BUSINESS ACT

• Mick Opinion – Court Analysis

- Based on this court’s interpretation of the degree of “conduct” necessary to be counted in the jurisdictional requirement of five participants, there is overwhelming evidence to support the jury’s conclusion that § 1955 was satisfied. Mick does not dispute that he, Brodzinski, and at least one of his sons can be counted towards the jurisdictional five. There was also abundant evidence supporting the jury’s conclusion that bookmakers such as Frank Birch, Richard Gotth, Andrew Schneider, and Eugene Smith, placed regular layoff bets with Mick. Furthermore, Mick’s arrangements with Gambark (who distributed parlay sheets for Mick) and Stolber (who allowed Mick to utilize a telephone line out of her house) were sufficiently regular and helpful to his gambling business to permit the jury to count them as well. Indeed, the summary above is actually an incomplete listing of all the people who regularly aided Mick’s gambling enterprise. We therefore find no merit in Mick’s challenge to the jury’s conclusion that his activities constituted an “illegal gambling business” pursuant to [18 U.S.C. § 1955](#).

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ILLEGAL GAMBLING BUSINESS ACT

- Discussion
- Marty and Pete, college roommates, decide to run an online poker site from their dorm room at UNLV.
- Pete's friends John and Mike are CS majors and help by writing the poker software and user interface.
- Marty's friend Bill, a finance major that works at Valley Bank, helps them get a merchant Visa/MC credit card account for the site.
- For the first semester, things are great and Marty and Pete clear \$50,000, enough for tuition, books, room, food and lots of beer.
- Just before spring break they throw a party, and they invite all their friends.
- The party is interrupted when campus security stops by along with an FBI agent.

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ILLEGAL GAMBLING BUSINESS ACT

- Discussion
- Lester from Gaming Data Services has called asking for you to write web site terms and conditions for his company's new web site.
- The new web site will offer annual subscriptions to data concerning real time odds on sporting events, along with historical trends and statistical analysis of the events.
- He asks for site terms that will ensure that there is no problem offering the information on the site.

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ILLEGAL GAMBLING BUSINESS ACT

- Discussion
- Marty and Pete, former investment bankers, move to Nevada and decide to form an LLC to open an online site to let people bet on news items such as the weekly unemployment rate.
- They hire a software company in India to develop the software and operate the servers.
- They hire a web developer in San Francisco to develop the web site.
- They go live and make \$800,000 profit in the first 6 months.
- They move to Vancouver Canada after hearing about legal risks in the U.S. and transfer the Nevada LLC assets to a newly formed Canadian corporation.
- A year later with profits exceeding \$1.9 million, they go public on the Toronto stock exchange.
- Valley Bank sees their stock on the rise and invests in \$300,000 purchasing their stock for Valley Bank Trust department clients.

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ILLEGAL GAMBLING BUSINESS ACT

- Discussion
- Jack and Steve are repair technicians for Sammy's Amusements in Waimanalo, Hawaii.
- At one of their stops to fix a vintage Pac Man machine at a bar, Dave the bar owner asks if they can fix a video poker machine in the back that is flickering. They oblige and don't charge for the fix.
- Sammy returns with the video game machines to various store and bar owners and closes the business. To those that purchased video game machines he provides Jack's number and Steve's number for maintenance calls.
- Jack and Steve get another call from Dave who informs them that he has the same problem with a video poker machine at another one of his bars.
- Soon they are regularly servicing video poker machines for Dave as well as servicing the traditional video games originally sold by Sammy to other businesses.
- While fixing one of the video poker machines in the back of Dave's bar in Pearl City, Jack is arrested with the bar manager, and staff in a raid.

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ILLEGAL GAMBLING BUSINESS ACT

- Hypo for class:
- Big Action poker is an online site operated from the Kahnawake nation in Canada
- Big Action allows all players to play for real money, but they include a "void where prohibited" clause in their terms and conditions.
- Big Action has several professional poker players that sponsor and promote the site, including Paul "the Player" Hornung and Max "the Madman" McGee who both live in Nevada.
- Paul and Max recently learned that there may be a sealed indictment pending against Big Action.
- What are their risks and defenses?

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ILLEGAL GAMBLING BUSINESS ACT

- The Follin Opinion
- Facts
 - FBI Officer observes 4 men operating an illegal casino in Mississippi
 - Also present was Follin.
 - ...Follin did not operate a gambling table, and she was not a paid employee. She was observed, however, serving drinks, cooking steaks, wiping off kitchen counters, and examining the dice. On several occasions she wagered bets.
 - Follin convicted under Section 1955.
 - Follin appeals.

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ILLEGAL GAMBLING BUSINESS ACT

- The Follin Opinion
 - What is Follin's Argument?
 - The appellants maintain that Follin's activities were no different from those of the other bettors. All patrons, it is argued, would get each other drinks, cook steaks, and examine the dice should they fall nearest that person; as a mere bettor Follin cannot be used to trigger the jurisdictional requirements of the statute since she did not conduct or direct the illegal gambling operation.

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ILLEGAL GAMBLING BUSINESS ACT

- The Follin Opinion
 - In light of Follin's arguments, what did the court identify as the central issue?
 - The central issue involved in this appeal is whether the jury could have found, under the facts presented, that Follin was not a mere bettor, but in fact was helpful to gambling operations.

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ILLEGAL GAMBLING BUSINESS ACT

- The Follin Opinion
 - What was the government's response?
 - The government's response is that Follin, unlike other bettors, was present at the casino from its inauguration until its operations were terminated. The Government further contends that any individual, regardless of the standard practice in the game room at the time, who consistently performs duties so as to facilitate the gambling operation is subject to prosecution under § 1955.

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ILLEGAL GAMBLING BUSINESS ACT

- The Follin Opinion
 - Does the court identify a bright line rule for what is necessary or helpful?
 - No bright line can be drawn as to what is "necessary or helpful" in all instances; such a determination depends on the facts in a given situation and the evidence presented to the jury.
 - Practice Tip - Whether certain behavior is sufficiently "necessary or helpful" to be "conducting" an illegal gambling business is a question of fact and not law; therefore, ...

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ILLEGAL GAMBLING BUSINESS ACT

- The Follin Opinion
 - Does the court identify a bright line rule for what is necessary or helpful?
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 - Practice Tip - Whether certain behavior is sufficiently "necessary or helpful" to be "conducting" an illegal gambling business is a question of fact and not law; therefore, ...

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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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ILLEGAL GAMBLING BUSINESS ACT

- The Truesdale Opinion

- Often cited by online gaming proponents as support for the argument that the IGBA cannot apply to off-shore wagering.

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ILLEGAL GAMBLING BUSINESS ACT

- The Truesdale Opinion

- The Facts

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ILLEGAL GAMBLING BUSINESS ACT

• The Truesdale Opinion

- The Facts
 - Jones was the head of Spectrum or World Sportsbook that operated out of the Dominican Republic, Jamaica, and Dallas.
 - Spectrum and World Sportsbook were licensed in the Dominican Republic and Jamaica to take sports wagers via international phone calls.
 - Bettors could call in bets via an 800 number set up by Spectrum and World Sportsbook.
 - Calls to the Dallas offices only provided information about general payoff information and information on how to set up an account.
 - To set up an account players had to wire in or send deposit by overnight courier.

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ILLEGAL GAMBLING BUSINESS ACT

• The Truesdale Opinion

- The Facts
 - Truesdale and Hamilton were tasked with picking up the wired or couriered funds and depositing them into a bank account.
 - Payouts to winners were from a bank account in Dallas
 - Truesdale and Hamilton also promoted the off shore books

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ILLEGAL GAMBLING BUSINESS ACT

• The Truesdale Opinion

- The Conviction
 - The jury found Truesdale, Hamilton, and Milner not guilty of conspiracy, but guilty on several counts of money laundering and guilty of illegal gambling. Jones was convicted of conspiracy, illegal gambling, and money laundering, but found not guilty on most of the "traveling in aid of racketeering" counts.
 - The IGBA conviction was based on a violation of Texas statutes prohibiting Bookmaking which is defined as:
 - (A) to receive and record or to forward more than five bets or offers to bet in a period of 24 hours;
 - (B) to receive and record or to forward bets or offers to bet totalling more than \$1,000 in a period of 24 hours; or
 - (C) a scheme by three or more persons to receive, record, or forward a bet or an offer to bet."

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ILLEGAL GAMBLING BUSINESS ACT

- The Truesdale Opinion
- The Argument on Appeal
 - Appellants claim that there was insufficient evidence that they engaged in illegal bookmaking in Texas, because the bookmaking portion of their business occurred in Jamaica and the Dominican Republic.
 - They argue that no bets were received, recorded, or forwarded in Texas.

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ILLEGAL GAMBLING BUSINESS ACT

- The Truesdale Opinion
- The Government's Counter Argument on Appeal
 - The government, however, argues that the jury could have inferred that the operation received, recorded, or forwarded bets, and thereby conducted illegal bookmaking, in Texas, and, in the alternative, the government argues that the operation conducted financial transactions related to the gambling operation with bettors in Texas, and, thus, a part of the betting operation's business was transacted in Texas, in violation of Texas law.

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ILLEGAL GAMBLING BUSINESS ACT

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ILLEGAL GAMBLING BUSINESS ACT

- The Truesdale Opinion

- The Court's View

- The Texas bookmaking statute prohibits recording, receiving, and forwarding bets; where and how the money is paid out is irrelevant under section 47.03(a)(2). 5 Becoming a custodian of money that is used to place bets offshore would be a violation of section 47.03(a)(3). However, the indictment did not allege that the appellants violated section 47.03(a)(3) and the jury was not instructed on any such violation. Nor was the case tried on that theory. In short, the government's case and the jury's verdict were focused exclusively on illegal bookmaking, and we cannot affirm the case on a different theory.

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ILLEGAL GAMBLING BUSINESS ACT

- The Truesdale Opinion

- The Aftermath

- Many courts have distinguished Truesdale when addressing online gaming.
 - Ultimately, the Truesdale opinion means that the underlying state offense charged must be consistent with the facts of the case for a conviction. Note, the court went out of its way to state that the defendant's probably violated other Texas gambling prohibitions, but not the prohibition with which they were charged.

65

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66
