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THE TRAVEL ACT: ITS LIMITATION BY THE SEVENTH CIRCUIT WITHIN THE CONTEXT OF LOCAL POLITICAL CORRUPTION

We believe that in cases of local political corruption, the concept of federalism should be used as a sword. By so stating, we do not mean to imply that our system of federalism should be applied with blind deference to a concern for national supremacy. However, in a constitutional system in which there is a sensitivity to the legitimate interests of both state and federal governments, it should be recognized that local concerns are furthered by the federal government’s attempt to use its resources to assist in excising the malignancy of local political corruption.¹

Official corruption has been prosecuted in the Seventh Circuit with increasing success in recent years. Federal jurisdiction over largely intrastate activity has been invoked under a variety of sections of the United States Criminal and Internal Revenue Codes,² resulting in convictions of public officials.³ The federal government has justified its prosecution of such activity by asserting that the states need its aid where, due to political considerations, local states’ attorneys display a reluctance to prosecute and punish influential wrongdoers.⁴

³. United States v. Isaacs, 493 F.2d 1124 (7th Cir.), cert. denied, 417 U.S. 976 (1974) (conviction of Seventh Circuit Court of Appeals Judge who was a former Illinois governor and conviction of former Illinois Director of State Department of Revenue); United States v. Bush, 522 F.2d 641 (7th Cir. 1975) (press secretary of the Mayor of the City of Chicago); United States v. Barrett, 505 F.2d 1091 (7th Cir.), cert. denied, 43 U.S.L.W. 3675 (1975) (former Cook County Illinois Clerk. Another Cook County Clerk, Matthew Danaher, died while under indictment, United States v. Danaher, No. 74 CR 306 (N.D. Ill., filed April 10, 1974)); United States v. Staszczuk, 502 F.2d 875 (7th Cir.), reh. denied, 517 F.2d 53 (1975) (en banc) (alderman Chicago City Council); United States v. Potempa, No. 73 Cr. 736 (N.D. Ill., filed Oct. 12, 1973) (guilty plea) (alderman Chicago City Council); United States v. Wigoda, 521 F.2d 1221 (7th Cir. 1975) (alderman Chicago City Council); United States v. Jambrone, No. 72 Cr. 805 (N.D. Ill., filed Oct. 25, 1972) (alderman Chicago City Council); United States v. Hubbard, 71 Cr. 796 (N.D. Ill., filed Aug. 11, 1971) (guilty plea) (alderman Chicago City Council); United States v. Keane, 522 F.2d 534 (7th Cir. 1975) (alderman Chicago City Council); United States v. DeMet, 486 F.2d 816 (7th Cir.), cert. denied, 416 U.S. 969 (1974) (Chicago police officer); United States v. Braasch, 505 F.2d 139 (7th Cir.), cert. denied, 43 U.S.L.W. 3551 (1975) (19 police officers—not a complete list, over 50 Chicago police have been convicted or pleaded guilty).
⁴. Various sources have voiced the necessity for the government’s intervention into such local matters. See, e.g., NATIONAL COMMISSION ON REFORM OF FEDERAL
One method by which the federal government has exerted such control is through its regulation of the instrumentalities of interstate commerce. An act which falls within the scope of such regulation is the Travel Act. Its purpose is to deny use of the facilities of interstate commerce for certain enumerated unlawful activities. Exertion of jurisdiction under such an act within the context of our system of federalism poses peculiar problems in its drafting and construction. On the one hand, the federal government desires to assist local governments in combating pernicious activities which cross state lines or affect interstate commerce. On the other, it is reluctant to alter federal-state relationships by escalating minor state crimes into federal felonies. Further, the federal government does not wish to strain limited federal police resources by extending jurisdiction to areas which have traditionally been limited to the states.

Mindful of these ends, the Seventh Circuit Court of Appeals has engrafted onto the statute a condition that prior to the invocation of the Act a substantial and integral use of interstate facilities must be demonstrated. This note will discuss whether invocation of the Travel Act should in fact depend upon substantial use of interstate facilities, especially in cases of local political corruption.

Criminal Laws, Working Papers 54 (1970); Comment, 24 U. Chi. L. Rev. 361, 367 (1957): "(W)here prosecutors owe their positions to the patronage of local officials, their interest in shielding the errant ways of their colleagues may sterilize the criminal law;" Brief for Appellee at 57-58, United States v. Staszcuk, 502 F.2d 875 (7th Cir.), reh. denied, 517 F.2d 53 (1975) (en banc).


Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or
(2) commit any crime of violence to further any unlawful activity; or
(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

NOTES AND COMMENTS

LEGISLATIVE HISTORY OF THE TRAVEL ACT

The Travel Act was introduced in the Senate April 18, 1961 on the recommendation of Attorney General Robert F. Kennedy,\(^8\) as part of his program to combat organized crime.\(^9\) As originally drafted by the Justice Department, the Act was designed to make a federal felony out of travel in interstate commerce to further unlawful business enterprises involving gambling, narcotics, prostitution and liquor offenses, crimes typically committed by organized racketeers. It was also designed to proscribe travel to further extortion or bribery not necessarily involving a business enterprise.

The Senate changed the bill in two significant ways. First, on the recommendation of New York Senator Kenneth B. Keating, it extended the bill's proscription to interstate transportation as well as travel. Second, it added as a requirement that the traveler perform some act in furtherance of the unlawful activity subsequent to his travel.\(^10\) The addition of this requirement was affected on the urging of North Carolina Senator Sam J. Ervin who feared the Act as drafted would have punished for nothing more than having a criminal "intent."\(^11\) The Senate passed the bill July 28, 1961.\(^12\)

The House limited the bill in two ways. First, it limited the extortion and bribery sections to extortion and bribery arising out of narcotics, prostitution, gambling and liquor violations. Second, it combined the Keating

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\(^8\) S. REP. No. 644, 87th Cong., 1st Sess. (1961). The bill was introduced by Mississippi Senator James O. Eastland, Chairman of the Senate Judiciary Committee.

\(^9\) See KENNEDY, THE ENEMY WITHIN 265 (1960), "If we do not on a national scale attack organized criminals with weapons and techniques as effective as their own, they will destroy us;" Kennedy, The Program of the Department of Justice on Organized Crime, 38 N.D. LAWYER 637 (1963).

\(^10\) S. REP. No. 644, 87th Cong., 1st Sess. (1961). The Senate also amended the bill to limit business enterprises involving liquor to those enterprises on which the Federal excise tax had not been paid "so as not to involve the Federal Government in petty offenses at the State or local level which may involve the sale of liquor." Id. at 2.

\(^11\) Hearings on the Attorney General's Program to Curb Organized Crime and Racketeering Before the Senate Comm. on the Judiciary, 87th Cong., 1st Sess. at 258 (1961) [hereinafter cited as Senate Hearings]:

Senator Ervin: As a legislator, I have very considerable misgivings for passing any law which would subject a man to criminal punishment in the absence of any corpus delecti merely because of some mental intent, fundamentally some mental intent, he may entertain but never carries out, and allows a man no place for repentance.

Senator Kefauver: As I understand it, Senator Ervin, you would want to require—and I think there is a good deal of logic in it—that not only there be an unlawful business activity in New York, but that the man who went from New York to Florida must not only go there with the intent, but he must actually do something after he gets there, to the State of Florida.

Senator Ervin: I would say that there ought to be additional evidence. There ought to be a burden on the State to show that he did something besides merely having a mental intent, plus the fact that he has crossed a State line.

I think at least there ought to be some evidence that he attempted to commit a crime or that he is guilty of some overt act in furtherance of the crime.

\(^12\) 107 CONG. REC. 13,942 (1961).
amendment with the first section.\footnote{13} Although the House reported that in making the combination, it made "no substantive change in the provisions of the bill," the addition of the "any facility in interstate commerce" language in the new section appears to have greatly broadened its scope.\footnote{14} The bill passed the House as amended August 21, 1961.\footnote{15}

The Department of Justice was opposed to the change made to the extortion and bribery sections of the Act.\footnote{16} Deputy Attorney General Byron R. White wrote in a letter to the chairman of the House Judiciary Committee that the change eliminated other crimes committed by organized criminals, such as loan sharking and labor extortions.\footnote{17}

Following the passing of the bill by the House, the Senate asked for a conference. The conference issued a report on September 11, 1961 outlining compromises reached by it.\footnote{18} The House agreed to not limit the extortion and bribery sections of the bill in connection with gambling, liquor, narcotics or prostitution. The Senate conferees agreed to accept the House combination of the first section relating to travel and the second section, prohibiting transportation in interstate commerce, apparently not recognizing the resultant broadened scope of the bill.\footnote{19} On September 13, 1961, 18 U.S.C. § 1952, "Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises" became law.\footnote{20}

As adopted, the Act had three elements. First, the government must prove interstate travel or any use of an interstate facility to distribute proceeds of, commit crimes of violence to further, or otherwise promote or manage one of the enumerated unlawful activities. Second, an intent to engage in one of the activities must be proven. Third, a performance or an attempt

\begin{itemize}
  \item \footnote{13} H.R. REP. No. 966, 87th Cong., 1st Sess. 2 (1961).
  \item \footnote{14} The Keating amendment read, in part, "Whoever uses any facility for transportation in interstate or foreign commerce, including the mail, with intent to . . . ." S. REP. No. 644, 87th Cong., 1st Sess. (1961). The House change read: "Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to . . . ." H.R. REP. No. 966, supra note 13, at 1. For a discussion of the extent of the change, see United States v. Archer, 486 F.2d 670, 679-80 (2d Cir. 1973); Pollner, Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering, 28 BROOKLYN L. REV. 37, 40 n.22 (1961). "Therefore, if one travels or uses any facility in commerce including the mails, telegraph, cable, telephone, etc., to distribute the proceeds, commit a crime of violence, or otherwise facilitate, the defined unlawful activity, and thereafter performs or attempts to perform any of those acts, he is encompassed by this measure, and commits a federal felony. This indeed is a far reaching amendment."
  \item \footnote{15} 107 CONG. REC. 16,540 (1961).
  \item \footnote{17} Id.
  \item \footnote{18} See H.R. REP. No. 1161, 87th Cong., 1st Sess. 3, 4 (1961), for a discussion of the amendments by the Managers of the bill for the House.
  \item \footnote{19} Id. at 3. The House Managers also agreed to the Senate limitation of the liquor violation.
  \item \footnote{20} Act of Sept. 13, 1961, Pub. L. No. 87-228, 75 Stat. 498.
\end{itemize}
to perform one of the activities after the travel or use of an interstate facility must be demonstrated. The unlawful activities were divided into two groups. The Act defined the first group as any business enterprise involving gambling, narcotics, prostitution, or liquor upon which the federal excise tax had not been paid. The second group of activities was defined as extortion or bribery.\textsuperscript{21}

In drafting the bill, the goal of the Department of Justice and Congress was to deny the facilities of interstate commerce to organized racketeers. The bill was expressly designed to defeat the machinations of organized racketeers "living in one State and controlling the rackets and reaping the profits from these rackets located in another State."\textsuperscript{22} The consensus of the testimony at the congressional hearings concerning its adoption acknowledged that the bill was designed specifically to combat organized crime.\textsuperscript{23} Attorney General Kennedy testified before the Senate Judiciary Committee that only the federal government could stop organized racketeers' interstate distribution of the proceeds of their activities.\textsuperscript{24}

The bill attempted to reach organized crime by its definition of unlawful activities proscribed under the Act. The first group of unlawful activity constituted business activity involving gambling, narcotics, liquor on which federal excise tax had not been paid, or prostitution offenses. The Attorney General told the Senate committee that only travel to further an activity where there was sufficient conduct to characterize it as a business enterprise was forbidden. The Act did not ban travel to further sporadic or casual involvement in such offenses.\textsuperscript{25} Social gamblers would not be prosecuted under the Act, for example, since a social poker game violative of the laws of a given state would not involve sufficient activity to be considered part of a "business enterprise."\textsuperscript{26} This requirement was not necessary where the underlying offense was extortion, bribery or arson.

The addition of the "thereafter" requirement was the most significant change made by Congress in light of the bill's subsequent judicial construc-

\textsuperscript{21} The Act was later amended to proscribe interstate travel or transportation to commit arson. Act of July 7, 1965, Pub. L. No. 89-68, 79 Stat. 212. Arson was included in the second group of activities.

\textsuperscript{22} H.R. REP. No. 966, 87th Cong., 1st Sess. 2 (1961).


\textsuperscript{24} Senate Hearings, supra note 11, at 16.

\textsuperscript{25} Id. See also Pollner, Attorney General Robert F. Kennedy's Legislative Program to Curt Organized Crime and Racketeering, 28 BROOKLYN L. REV. 37, 39 n.13 (1961).

\textsuperscript{26} See comments of Herbert J. Miller, Assistant Attorney General in Charge of the Criminal Division of the Department of Justice, House Hearings, supra note 23, at 336-348. See also Miller's colloquy with Senators Ervin and Keating, Senate Hearings, supra note 11, at 255; United States v. Gooding, 473 F.2d 425, 427 (5th Cir.), cert. denied, 412 U.S. 928 (1973).
tion. It was originally designed to proscribe the crossing of a state line with intent to do certain of the enumerated unlawful activities. As Senator Erwin pointed out, the Act as originally drafted provided that a person could have been prosecuted under the Act for the condition of his mind coupled with interstate travel. Harris B. Steinberg, President of the National Association of Defense Lawyers, told the House subcommittee that the Act represented a form of thought control. He noted that the criminal law had traditionally required that a man externalize his criminal intent with some act in order to be liable under a statute.\textsuperscript{27} Thus, the addition of the requirement was intended to assure that prosecution would not be conducted for merely entertaining an intent without some subsequent act. In a later case, the Seventh Circuit pointed to this addition as proof that Congress intended to limit the scope of the Act to substantial or integral use of interstate facilities.\textsuperscript{28} In adding this requirement to the Act, Congress was not concerned with what extent the facilities in interstate commerce should be used to justify its invocation.

In summary, the bill was drafted to combat organized crime. From its inception, legislators and Justice Department officials viewed it as an instrumentality by which the growing menace of organized criminal "syndicates" could be fought. The "business enterprise" requirement limited the application of the statute to only those situations where sufficient unlawful underlying activity was demonstrated to be sufficiently large so as to exclude social gambling and other such situations. An underlying "business enterprise" was not required for prosecution of travel in furtherance of extortion or bribery, however. The requirement that some showing of subsequent activity be demonstrated after the travel was added by the Senate out of concern that the bill as originally drafted represented a kind of thought control, punishing for a mere state of mind.

**Judicial Interpretation**

Since enactment, the Act has withstood constitutional challenges and has been extended to a broad area of criminal activities. In spite of overwhelming evidence that the Act was designed to combat organized racketeers, courts have extended it to areas where the criminal ventures were not perpetrated by such individuals. Although the Act has been broadly interpreted, it has not been extended beyond the plain meaning of its language.

The court noted in United States v. Roselli\textsuperscript{29} that the words of the Act did not limit its application to organized racketeers. Acknowledging that

\textsuperscript{27} House Hearings, supra note 23, at 145. See also Report of the National Association of Defense Lawyers in Criminal Cases—Report on Proposed Federal Antiracketeering Legislation, House Hearings, id. at 162; Supplementary Statement of American Civil Liberties Union on Antiracketeering Bills, Senate Hearings, supra note 11, at 51.

\textsuperscript{28} United States v. Altobella, 442 F.2d 310 (7th Cir. 1971).

\textsuperscript{29} 432 F.2d 879 (9th Cir.), cert. denied, 401 U.S. 924 (1971).
Congress intended to reach the activities of such persons through its enactment, the court held that the words of the section were general, making no restrictions to particular individuals or activities. Similarly, in United States v. Archer,\(^{30}\) the court held that if Congress had intended the Act to apply strictly to organized crime it would have included a definition of "organized crime" in the statute.\(^{31}\) The words of the statute, however, do not limit its application to organized crime.

Despite warnings that the Act as drafted was constitutionally vague\(^ {32}\) or represented an infringement on the freedom to travel,\(^ {33}\) the Act was upheld on constitutional grounds.\(^ {34}\) Further, its purpose was held to extend to a broad area of criminal activities. The Supreme Court in United States v. Nardello noted: "The Travel Act [is] primarily designed to stem the 'clandestine flow of profits' and to be of 'material assistance to the States in combatting pernicious undertakings which cross State lines . . . .'"\(^ {35}\) In United States v. Wechsler, the court held that a "manifest purpose of the statute is to deny the use of facilities in interstate commerce to those who would effect a wrong on the people by corrupting public officials."\(^ {36}\)

In Rewis v. United States,\(^ {37}\) the Supreme Court considered the extent to which the Travel Act was applicable. In Rewis, the defendants operated an illegal lottery in a small Florida town, fifteen miles south of the Georgia border. They were indicted under the Act for interstate travel to the lottery


\(^{32}\) See testimony of Harris B. Steinberg, House Hearings, supra note 23, at 146.

\(^{33}\) Supplementary Statement of American Civil Liberties Union on Antiracketeering Bills, Senate Hearings, supra note 11, at 49-51.


\(^{35}\) 393 U.S. 286, 292 (1969). See also Erlenbaugh v. United States, 409 U.S. 239, 246 (1972); United States v. Zirpalo, 288 F. Supp. 993, 1008 (D.N.J. 1968), rev'd on other grounds, 450 F.2d 424 (3rd Cir. 1971): "It is true, no doubt, that the main purpose in enacting Section 1952 was to attempt to curb the pollution of interstate commerce by elements of organized crime. However, neither the title of this Section nor its legislative history can be relied upon to limit the coverage of the explicit language of its text."


by some of their customers who were Georgia residents. No evidence was
offered at trial that the defendants committed any interstate acts. In
holding the mere conducting of such a gambling operation frequented by out-of-
state bettors by itself did not violate the Act, the Court noted:

Given the ease with which citizens of our Nation are able to travel
and the existence of many multi-state metropolitan areas, substan-
tial amounts of criminal activity, traditionally subject to state regula-
tion, are patronized by out-of-state customers. In such a context,
Congress would certainly recognize that an expansive Travel Act
would alter sensitive federal-state relationships, could overextend
limited federal police resources, and might well produce situations
in which the geographic origin of customers, a matter of happen-
stance, would transform relatively minor state offenses into federal
felonies.

Mr. Justice Marshall, writing for the Court, rejected the alternative argument
by the government that since the interstate travel by the customers was
reasonably foreseeable, the defendants were liable under the Act, noting that
it would almost always be foreseeable that some customers of an establish-
ment come from out-of-state. The Court left open the question of whether
active encouragement or solicitation would fall within the ambit of the Act.

Rewis dealt with a situation where the words of the statute did not meet
the factual situation proved at trial. The actions of the defendants were
purely intrastate. Given this fact, the Supreme Court was obliged not to
extend the Act beyond the scope of its literal language.

The significance of Rewis lies in the recognition that under the Travel
Act there should be a limitation to its extension. In situations where the facts
of the case clearly show the defendant has not traveled in interstate commerce
or used any facilities in interstate commerce to further the unlawful enter-
prise proscribed by the statute, Rewis would dictate the Act would not be
applicable. Rewis has been cited, as will be discussed below, in situations
where the acts of the defendants factually fall within the plain meaning of
the statute, however.

38. See Rewis v. United States, 418 F.2d 1218, 1221 (5th Cir.), rev'd on other
39. 401 U.S. at 812. This argument formed the substantial part of the defendant's
There is a second principle supporting today's result: unless Congress conveys
its purpose clearly, it will not be deemed to have significantly changed the fed-
eral-state balance. Congress has traditionally been reluctant to define as a fed-
eral crime conduct readily denounced as criminal by the States. This congres-
sional policy is rooted in the same concepts of American federalism that have
provided the basis for judge-made doctrines. (citation omitted). As this court
emphasized only last Term in Rewis v. United States, supra, we will not be
quick to assume that Congress has meant to effect a significant change in the
sensitive relation between federal and state criminal jurisdiction.

Bass, however, was not a Travel Act case.
Based upon its words, the Act has been upheld both constitutionally and in a general conformity with its three-pronged requirement for invocation. In *Rewis*, the court considered a factual situation which called for an extension of the meaning of the statute beyond the meaning of its words. The case expressed the desirability of limiting the federal police power where the intent of Congress was not clear. Finally, in spite of overwhelming and unambiguous legislative history which indicated the Act was intended for organized racketeers, it has been extended to a broad area of criminal activity. This extension was justified by the plain words of the Act.

In contrast, when called upon to limit the statute by requiring a substantial or integral use of interstate facilities, the Seventh Circuit had neither overwhelming legislative history nor the plain meaning of the words of the statute upon which to rely. Nowhere in the legislative history was a reference made to substantial or integral use of interstate facilities. The words of the statute make no such distinctions. In a situation where the plain meaning of the statute conflicts with clear legislative history, as was the case in *Roselli*, the courts have construed it in consonance with its plain words.

**The Seventh Circuit: The Substantial Use of Interstate Facilities**

The Seventh Circuit has required that as a condition precedent to the invocation of the Travel Act, a substantial use of interstate facilities be demonstrated. In doing so, the court has ignored the plain language of the statute, relying on the authority of nonexistent or misinterpreted legislative history.

The court first formulated its requirement in *United States v. Altobella.* In *Altobella*, two men had extorted $100 from an out-of-state man. The defendants photographed the victim in a compromising position with a woman who participated in the plot. The extortion money was obtained by the victim's cashing of a check at a Chicago hotel which was sent through the chain of collection for payment by a Philadelphia bank.

At the outset, the court conceded that the literal terms of the Act applied to the factual situation presented by the case: “Although the ‘Travel Act’ can be read to cover this case, we have concluded that this prosecution is beyond the limits of the criminal jurisdiction which Congress intended to confer on the federal courts.” It is well settled that where a court has determined that a particular act’s meaning was clear, it cannot interpret it in order to realize a more desirable result.

41. 442 F.2d 310 (7th Cir. 1971).
42. Id. at 311.
43. See Caminetti v. United States, 242 U.S. 470, 485 (1917): “Where the language [of a statute] is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no
In spite of this, the court noted the purpose of the Act was to attack organized crime by denying the use of interstate commerce to organized criminals operating beyond the borders of a state. The court then stated: "That Congress did not intend to exercise its full constitutional powers in the area of local law enforcement is demonstrated by the wording of the Act and specifically by the use of the word 'thereafter.'"44 As previously noted,45 the inclusion of the word "thereafter" arose out of a desire to avoid punishing for a mere mental state coupled with interstate travel. The word "thereafter" was not added to signify that use of interstate facilities had to be "significant" or "integral" before invocation of the Act.

The court concluded: "To warrant federal intervention we believe the statute requires a more significant use of a facility of interstate commerce in aid of the defendants' unlawful activity than is reflected on this record."46 The court reached its conclusion in part on the proposition that the case's particular factual situation did not require the need for the supplementing of state police power. "(W)hen both the use of the interstate facility and the subsequent act are as minimal and incidental as in this case, we do not believe a federal crime has been committed."47

The court overturned the conviction of the two defendants in Altobella discussion;" Gemsco, Inc. v. Walling, 324 U.S. 244, 260 (1945): "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction;" Ex Parte Collet, 337 U.S. 55, 61 (1949); Harris v. Commissioner, 178 F.2d 861, 864 (2d Cir.), rev'd on other grounds, 340 U.S. 106 (1950), in which Judge Learned Hand noted, "It is always a dangerous business to fill in the text of a statute from its purposes, and, although it is a duty often unavoidable, it is utterly unwarranted unless the omission from, or corruption of, the text is plain;" Anderson v. Wilson, 289 U.S. 20, 27 (1933), in which Mr. Justice Cardozo pointed out: "We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take the statute as we find it;" Frankfurter, Some Reflections on the Reading of Statutes, 47 COLUM. L. REv. 527, 533 (1947): "A judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. He must not read out except to avoid patent nonsense or internal contradiction."

44. 442 F.2d at 314.
45. See text following note 26 supra.
46. 442 F.2d at 314. In support of this statement, the court cited United States v. Hawthorne, 356 F.2d 740 (4th Cir.), cert. denied, 384 U.S. 908 (1966). In Hawthorne, the defendant traveled from his home in Indiana to West Virginia where he subsequently set up a supper club which provided gambling facilities in violation of local law. Not considering the issue of whether the travel was an integral part of his gambling operation, the court held the purpose of the trip was "not sufficiently related to his gambling enterprise . . . . It is not the intent of the statute to make it a crime per se for one who operates a gambling establishment to travel interstate." Id. at 741-2. Hawthorne held that the purpose of the travel must be to further the unlawful enterprise. Lacking such a purpose, the statute clearly does not apply. It did not hold that the travel had to be a substantial part of that enterprise.
47. 442 F.2d at 315.
because it "believed" that essentially a crime of state, and not federal, interest had been committed. In reaching such a conclusion, it ignored a well settled rule that judicial statutory construction is "utterly unwarranted unless the omission from, or corruption of, the text is plain." Further, it relied on the addition of the word "thereafter" in the statute as proof of the congressional intent to limit the statute. The word "thereafter" was added for a different purpose.

One month after the Altobella decision, the court applied the same rationale to the interstate mailing of a small quantity of newspapers containing advertisements for salesmen for an illegal Indiana lottery in United States v. McCormick. The court held the role played by the mailings was "minimal and incidental" and "a matter of happenstance" to the lottery, citing Rewis and Altobella. The interstate element, the court noted, was supplied by the acts of others than the defendant and was not actively sought by him. The "defendant neither 'used' nor 'caused to be used' any interstate facility as an instrumental part of his illegal operations." McCormick is fundamentally different from Altobella in that there was no showing in McCormick that the defendant used or caused to be used facilities in interstate commerce. In Altobella, the defendants clearly caused the use of the interstate facilities. In that sense, McCormick can be distinguished from Altobella, and its progeny, United States v. Isaacs.

In Isaacs, the negotiation of three checks designed to deliver the proceeds of a bribe was held to be an insufficient use of interstate facilities to justify invocation of jurisdiction. The defendants deposited the checks in Illinois banks, but as a result of the proximity of the drawee bank to the Federal Reserve Bank in St. Louis, Missouri, they were processed outside the state. Relying on Altobella, McCormick and the dictum in Rewis, the Seventh Circuit reversed the defendants' convictions on the Travel Act counts. In reaching this result, the court noted initially it was necessary to determine "the scope of an ambiguous criminal statute such as § 1952 ...." The court has thus taken a step forward from Altobella by announcing the ambiguity of the statute and the necessity to determine its meaning. In Altobella, the court recognized that the Act's literal terms applied to the factual situation but reversed the convictions because it "believed" the Act should not apply. The Isaacs court announced the statute's ambiguity apparently on the basis that since Altobella had limited it, then it of necessity was ambiguous.

49. 442 F.2d 316 (7th Cir. 1971) (per curiam).
50. Id. at 318.
52. Id. at 1147.
It pointed to no particular words or phrases in the statute that were ambiguous, however.

Further, the authority for the court's statement that "More than minimal interstate travel incidental to the alleged criminal activity was contemplated by Congress before federal intervention would be warranted" does not stand up to close scrutiny. In support of this statement, the court cited two sources of authority: the Senate report and United States v. Zizzo. Aside from a portion of the Attorney General's testimony on June 6, 1961 reprinted in the report which refers to sufficient activity to constitute a business enterprise, no reference was made in the Senate report to a requirement contemplated by Congress that for invocation of the Act more than "minimal interstate travel" be demonstrated. The reference to United States v. Zizzo concerned a "business enterprise" as well. Unlike criminal instances in which gambling, prostitution, narcotics, or liquor violations supply the underlying criminal activity, a conviction for travel or use of a facility in interstate commerce to further extortion or bribery does not require a showing of a business enterprise.

Aside from the persuasiveness of Altobella and McCormick, it should be noted that the court had no authority for ruling in the manner it did. The Senate report which the court quoted contained no reference to a requirement that the interstate travel or use of facilities in interstate commerce be more than minimal. Rather, the Senate report made reference to the Attorney General's assertion that the underlying activity could not be sporadic or casual for the establishment of the business enterprise requirement of the Act. The cited case similarly dealt with a gambling enterprise and the amount of activity necessary to establish it as a "business enterprise."

53. Id.
55. 338 F.2d 577 (7th Cir.), cert. denied, 381 U.S. 915 (1965).
57. 338 F.2d at 580.
59. The Isaacs court cited the Senate Report as reprinted at 1961 U.S. CODE CONG. & AD. NEWS 2664, 493 F.2d at 1147. The House Report, not the Senate Report, is reprinted in that volume. If the Isaacs court had intended to cite the House Report, there would still be no authority for its position. As noted above, the position the House took in relation to the extortion and bribery sections of the Act were later revised by the Senate. See text following note 12 supra. Further, the House Report contains no reference to "minimal interstate travel" in relation to extortion or bribery. At one point in the report, reference was made to the use of the term "business enterprise."

The use of the term "business enterprise" requires that the activity be a continuous course of conduct. Thus, individual or isolated violations would not come within the scope of this bill since they do not constitute a continuous course of conduct so as to be a business enterprise.

Based upon such an inaccurate reading of the legislative history, the court therefore undermined the authority of Altobella, stating that it was because of such a Congressional expression that the convictions of the defendants in Altobella had to be reversed. Clearly the Congress made no such "expression." Based on this, the Isaacs court held:

These same considerations apply with equal force to the three checks forming the basis for the § 1952 counts here. They, too, were incidental to the scheme; checks which would have cleared through Chicago, rather than through St. Louis could just as easily have been utilized.60

In both Isaacs and Altobella, the court eschewed the doctrine that criminal statutes must be strictly construed where their meaning is clear. The government argued alternatively that the Travel Act should be upheld because the bribery of public officials was a more serious crime than at issue in Altobella—essentially suggesting that another exception be engrafted onto the statute. The Court declined to make such an exception. In rejecting the argument, the court relied on strict statutory construction:

The government, nevertheless, argues that the present case is distinguishable since the interstate activity here was in furtherance of a far more "serious" offense than the extortion scheme in Altobella. But although bribery involving state officials conceded is a more "serious" crime, the legislative history and § 1952 itself draw no distinctions between serious and insubstantial state offenses. Rather, the test for application of § 1952 is the nature and degree of interstate activity in furtherance of the state crime.61

In light of its willingness to add a condition to the Act concerning substantial use of interstate facilities, which was not contained in its words, the reliance on the words of the statute and absence of pertinent legislative history to distinguish away the government's final contention was utterly inconsistent.62

Altobella and Isaacs involved factual situations where there was proof of use of interstate facilities with intent to promote an unlawful bribery or extortion with some subsequent act "thereafter." In order to prevent application of the Act, the Seventh Circuit was compelled to create a requirement which did not appear in the wording of the statute. Further, prior to

60. 493 F.2d at 1148.
61. Id.
62. It is noted that none of the commentators who have discussed the Act expressed any requirement of substantial use of interstate facilities for its application. See Pollner, Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering, 28 BROOKLYN L. REV. 37 (1961); Miller, The "Travel Act": A New Statutory Approach to Organized Crime in the United States, 1 DUQUESNE L. REV. 181 (1963); Comment, 20 N.Y.L.F. 177, 182-3 (1974), "The wording of the statute is clear . . . . There is no mention in either the statute or the Congressional debates that there must be 'extensive use' of interstate facilities to violate the law . . . ."
Altobella, there was no authority in either the case law or legislative history to support such a position.63

The words of the statute did not justify the court's position in either Isaacs or Altobella. The legislative history in fact revealed no congressional desire to limit the application of the bill to only situations where the use of the interstate facility has been substantial. Only the dictum of Rewis, a case which considered extending the Act beyond the clear scope of its words, was correctly cited in support of the court's position in Isaacs.

THE SECOND CIRCUIT: United States v. Archer

The Second Circuit Court of Appeals has faced the issue in a series of cases culminating in United States v. Archer,64 but it has not held directly that as a condition precedent to the Act's invocation a substantial or integral use of interstate facilities be demonstrated. Rather, it has formulated the requirement that the use of interstate facilities must be more than "a casual and incidental occurrence"65 for its invocation. Archer has not settled the issue in the circuit, however.

Certain cases before Archer considered the question under dissimilar factual situations. In United States v. Corallo,66 defendants were indicted for conspiracy to violate the Travel Act7 in a scheme to bribe the New York City Water Commissioner. The jurisdictional element was supplied by phone calls from the home of one of the conspirators in Greenwich, Connecticut.

63. In another recent political corruption case in the Seventh Circuit, conviction under the Travel Act was challenged on the grounds that the use of interstate facilities was insufficient. See United States v. Rauhoff, No. 75-1207 (7th Cir., Nov. 11, 1975). The defendant was convicted on a twenty-one count indictment in federal district court for the Northern District of Illinois, for his part in a scheme designed to bribe then Secretary of State of Illinois Paul Powell and his chief purchasing agent. The goal of the scheme was to induce Powell to award a state license plate contract to an Arkansas manufacturing firm. The defendant and his co-conspirators promised Powell that if the Arkansas firm received the contract, Powell would be paid $50,000 for each year the license contract was awarded. The payment money was sent by mail to a Chicago corporation which "laundered" the funds and delivered them to Powell. Since Powell demanded to be paid in cash, the checks from the Arkansas firm had to be cashed in Chicago. Following negotiation there, they were placed in the stream of collection, crossing state lines for payment in Arkansas. The travel of the nine checks across state lines was the basis on which federal jurisdiction was founded for the Travel Act counts of the indictment. The defendant argued that the cashing of such checks was an "insubstantial" use of interstate facilities amounting to a "mere happenstance." The Seventh Circuit upheld the conviction applying the Isaacs test, noting that "there was significant use of interstate facilities, and 'thereafter', to use the statutory term, significant unlawful activity took place." Id. at 7.
64. 486 F.2d 670 (2d Cir.), reh. denied, 486 F.2d 683 (1973) (per curiam).
66. Id.
The court deemed the calls sufficient for the Act's invocation. In *United States v. Marquez*, the defendants conducted an illicit gambling activity in New York while one of them was a resident of New Jersey. The court deemed his travel from his home to the unlawful activity sufficient in spite of the fact he argued that the travel was not essential to nor a substantial part of the scheme.

In *United States v. Kahn*, three trips were made between New York and Johnstown, Pennsylvania in furtherance of a scheme to pay off the mayor and two city council members of Johnstown for their securing a cable television contract. The defendants contended the transactions were isolated and not connected with a comprehensive scheme of racketeering and hence should have been overturned, citing *Rewis* and the Seventh Circuit decisions. The court distinguished *Altobella* and *Rewis* factually. It noted in *Rewis*, the gambling operation was local. In *Altobella*, the victim's activity supplied the requisite use of interstate facilities. In *McCormick*, a newspaper shipped out-of-state supplied the requirement. "The common thread through each of these decisions is that the defendants themselves engaged in no interstate activities, and that the total interstate travel aspect of the enterprises was either marginal or unforeseen." The court noted that *Rewis* cited with approval cases where agents or employees of defendants crossed state lines to further unlawful activities.

In *Archer*, the court directly considered the issue under an unfortunate factual situation. The federal government, in an apparently overzealous attempt to clean up the New York criminal justice system, arranged a scheme whereby a government undercover agent would be falsely arrested and charged for a gun violation. Later, according to their plan, he would attempt to have the charges against him dropped by offering bribes to law enforcement officials. The plan involved perjury before a grand jury and New York jurists as well as lying to police by a government agent. The government apparently believed that such behavior would result in ferreting out malefactors in the Queens district attorney's office. The interstate requirement was supplied by three phone calls: by a government agent to a defendant from Paris, France; by a defendant to New Jersey to two government agents who had traveled there for the sole purpose of receiving the call in order to supply the interstate requirements; and by one of the defendants to Las Vegas, Nevada in an unsuccessful attempt to get in touch with an undercover agent.

Two of the calls were easily disposed of: the calls made to New Jersey were manufactured by the government and "Whatever Congress may have

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68. For other situations where the Travel Act was invoked, see *United States v. Desapio*, 435 F.2d 272 (2d Cir.), *cert. denied*, 402 U.S. 999 (1971); *United States v. Cassino*, 467 F.2d 610 (2d Cir.), *cert. denied*, 410 U.S. 928 (1973).
70. *Id.* at 240.
72. *Id.* at 285.
meant by § 1952(a)(3), it certainly did not intend to include a telephone call manufactured by the Government for the precise purpose of transforming a local bribery offense into a federal crime." The second, the calls to Las Vegas, represented a government plant and further, no actual use of interstate facilities was demonstrated. The court then addressed the problem of the third call from Paris by a government agent. The court pointed out that the call was not planted as the Newark call was, nor was the agent sent abroad for the sole purpose of making it. The call, however, "served no purpose that would not have been equally served by a call from New York." That the call was being placed from Paris was "a matter of indifference" to the defendants. The court concluded that the Paris call was a "casual and incidental occurrence" as in Corallo amounting to a mere "happenstance" in Rewis. On petition for rehearing, the court appeared to limit its ruling to the strict factual setting presented by the case:

While the Government professes alarm at the precedential effect of our decision, we in fact went no further than to hold that when the federal element in a prosecution under the Travel Act is furnished solely by undercover agents, a stricter standard is applicable than when the interstate or foreign activities are those of the defendants themselves and that this was not met here. We adhere to that holding and leave the task of further line-drawing to the future.

The court's opinion on the petition for a rehearing retreated from its original opinion in overturning the convictions. The court no longer relied on a "significantly meaningful" use of interstate activities as grounds for overturning the convictions. Rather, the court held the presence of an undercover agent demanded a stricter standard for invocation of the Act. Such a ruling would have little precedential value in an Isaacs or Altobella factual situation where no undercover agent is involved.

73. 486 F.2d at 681.
74. Id. at 683.
75. Id. at 685-6.

The other circuits have not considered the question within the context of Altobella, Archer, and Isaacs. In United States v. Barrow, 363 F.2d 62 (3d Cir. 1966), cert. denied, 385 U.S. 1001 (1967), the court adopted a broad application of the statute. Responding to the defendants' argument that the government was required to prove that the interstate travel was an integral part and essential to their gambling operation, the court held:

The enactment prohibits in the broadest terms interstate travel with the requisite intent followed by the performance or attempts to perform any of the acts specified in subparagraphs (a)(3), supra. There is nothing therein which limits its application to interstate travel essential to the unlawful activity.

363 F.2d at 65.

The issue has not been raised in the Fifth Circuit, but see United States v. Ippolito, 438 F.2d 417 (5th Cir.), cert. denied, 402 U.S. 953 (1971). There, the defendant used a wire facility to carry on an unlawful gambling enterprise. The proof showed the facility was used on four different occasions within a twelve day period.

Nor has the Sixth Circuit faced the issue, but see United States v. Compton, 355
NOTES AND COMMENTS

STRICT STATUTORY INTERPRETATION: THE FOURTH CIRCUIT

The Fourth Circuit has not required that substantial use of interstate facilities be demonstrated for invocation of the Travel Act. It has flatly rejected the Seventh Circuit rule. Noting there is no reference in the statute itself to substantial or integral use of interstate facilities, that court has refused to imply such a distinction. It has held that to do so would be beyond the scope of judicial authority.

In United States v. Wechsler, the court upheld a Travel Act conviction of a local zoning board official. Jurisdiction was based on an out-of-state check he received as a bribe. The court noted: “When one deposits a check, there would seem to be little doubt that he is using a facility in interstate commerce.”

In United States v. Salsbury, a Maryland gambling operator used a local druggist as a money order and check cashing service. The money orders and checks represented payment of gambling debts of the defendant’s customers. Some of the checks were drawn on out-of-state banks, thereby supplying the jurisdictional element for assertion of the Act. Neither the fact that the defendant received cash before they cleared out-of-state banks, nor the fact that the druggist, not the defendant, started the chain of collection was deemed sufficient to defeat jurisdiction.

The defendant argued that the legislative history indicated that a check drawn on an out-of-state bank did not fall within the proscription of section

F.2d 872 (6th Cir.), cert. denied, 384 U.S. 951 (1966), where the defendant set up a gambling casino in Tennessee one month after moving there from Arkansas. “The actual change of his residence to another State was only incidental to the accomplishment of this purpose and thus falls within the purview of Title 18, U.S.C., Section 1952.” Id. at 875. United States v. Chambers, 382 F.2d 910 (6th Cir. 1967); United States v. Barnes, 383 F.2d 287 (6th Cir. 1967), cert. denied, 389 U.S. 1040 (1968). The issue has not been expressly considered in the Ninth Circuit. But see United States v. Mahler, 442 F.2d 1172 (9th Cir.), cert. denied, 404 U.S. 993 (1971); Marshall v. United States, 355 F.2d 999 (9th Cir.), cert. denied, 385 U.S. 815 (1966).

79. The issue was first considered in the Fourth Circuit in United States v. Gerhart, 275 F. Supp. 443 (S.D.W.Va. 1967) in which operators of a local gambling casino were indicted for the interstate negotiation of checks drawn on out-of-state banks. The checks represented payments of gambling debts. The defendant claimed not to come within the wording of the statute since, he contended, Congress clearly did not intend the Act to cover such a local situation. The court replied:

(R)egardless of the thought culminating in the genesis of § 1952 defendant comes clearly within the wording of the statute as enacted. . . . Where there is no expression of an intent by Congress to narrow the application of a statute beyond the common understanding of the scope of its language, I would not, even if I could, engraft one.

275 F. Supp. at 455. Relying on the plain meaning of the words of the statute, the court held the Act covered the defendant’s activities.

80. 392 F.2d at 347, n.3.
81. 430 F.2d 1045 (4th Cir. 1970).
1952. The court responded that an examination of the legislative history revealed no situation in which a gambler could avail himself of interstate facilities to clear checks representing the proceeds of his unlawful activities. "Nor does it matter that the use of interstate facilities was tangential to the major part of Salsbury's gambling operation, since § 1952 requires only that the use 'carry on or facilitate the carrying on' of the illicit enterprise."\(^{82}\)

The defendants in *United States v. LeFaivre*,\(^{83}\) were indicted under the Act for their participation in a Baltimore gambling operation. Jurisdiction was established by introduction of fourteen out-of-state checks which crossed state lines in the process of collection. The checks represented payment of outstanding gambling debts of the operation's customers. Citing the Seventh Circuit cases, the defendants argued that their gambling enterprise was local and their use of interstate facilities was merely incidental to their scheme. They contended *Wechsler* and *Salsbury* were rendered inapplicable by *Rewis*.

Although the defendants raised no constitutional objections to the Act, they argued at the outset that the Congress ought not to make laws which primarily affect local activities. The court responded: "We think the argument is addressed to the wrong forum and that it is not for the courts to interpose restraints so long as the Congress has acted within the proper scope of its powers."\(^{84}\)

The *LeFaivre* court rejected the defendants' argument that use of interstate facilities had to be shown to be substantial on the basis that the plain language of the Act dictated application.

The Congress chose to trigger application of the Travel Act by the use of "any facility in interstate or foreign commerce." It did not provide that such use must be "substantial" nor, so far as we can ascertain, has it ever done so in any other federal criminal statute pegged to the use of interstate facilities. The Congress did not exclude from application of the statute the use of facilities in commerce that might be termed "minimal and incidental," nor has the Supreme Court done so, we think, in *Rewis*.\(^{85}\)

The court noted that the facts of *Rewis* did not meet the literal requirements of the statute.\(^{86}\) Only after this was determined did Mr. Justice Marshall consider the legislative history and aspects of federalism.\(^{87}\) In the situation presented by *Rewis*, the court observed, it is appropriate to examine legislative history in order to determine whether extension of the statute would further the purpose of Congress.

When, however, a statute clearly covers a given activity, the court "should accept the statute as written and avoid plunging into the murky

\(^{82}\) Id. at 1048.
\(^{83}\) 507 F.2d 1288 (4th Cir.), cert. denied, 95 S. Ct. 1446 (1975).
\(^{84}\) Id. at 1290.
\(^{85}\) Id. at 1294.
\(^{87}\) 507 F.2d at 1295.
waters of legislative history" to determine whether Congress attempted in fact to reach it. The words clearly covered the activity presented to the court and therefore no inquiry was made into the legislative history to determine the meaning Congress intended the words to have. If the words of the statute had been unclear, the court's approach would necessarily have been different.

The Seventh Circuit has not concurred with the approach taken by the Fourth Circuit. The court chose to ignore the statement by the Fourth Circuit that the depositing of a check in a bank was use of a facility in interstate commerce. It noted that the statement implied that a check would not have to travel interstate but merely be deposited in a bank which is a facility of interstate commerce for invocation of the Act. The Isaacs court has acknowledged that the language of the Fourth Circuit has recognized a broader interpretation of the statute than it was prepared to give the Act. It noted, however, that the activities in Salsbury would have fallen within the purview of the Act even under the restrictive reading given the statute by the Seventh Circuit.

The LeFaivre court expressly considered the "substantial use" interpretation of the Seventh Circuit. It also considered the Second Circuit view. The court distinguished the cases factually. It noted that in Altobella, the court based its decision in large part on a lack of any significant criminal activity after the use of the interstate facilities—an essential requirement of the Act. In McCormick, the defendant did not use or cause to be used any facility in interstate commerce nor did he employ any salesmen from outside the state of Indiana. In Archer, the court was largely concerned with the government's participation in the unsavory plot and the fact that it instigated the scheme. The facts of LeFaivre contained no such activity and therefore the court considered Archer plainly distinguishable. Although aware of Isaacs, the court did not discuss the case.

Thus, in its discussion of the cases which have considered the issue, LeFaivre pointed out that they could arguably be confined to their own facts. If they could not be so confined, the court expressly declined to follow them and "reject(ed) any narrowly restrictive reading of the Act."
In situations where the criminal activity is intrastate and not dependent on interstate facilities for its commission, the desire of the court to limit federal jurisdiction is understandable. Yet it is outside the scope of judicial authority for courts by strained interpretations to further such policies. Rather, the several United States attorneys have it within their power to simply refuse to prosecute a case when they deem it primarily one of state interest. As Archer noted, responsibility for limiting expanding federal criminal jurisdiction lies first with the United States attorneys "under the active guidance of the Attorney General."94 LeFaivre voiced a similar solution:

How far Congress should extend federal criminal jurisdiction is a matter of interest and concern to the judicial branch. But resolution of the question is not for us. . . .

We think the solution to the problem of expanding federal criminal jurisdiction is not for the courts to deny that the jurisdiction exists and that Congress may implement it but instead for the executive branch to exercise wisely the discretion vested in it by the Congress.95

The study draft of the National Commission on Reform of the Federal Criminal Law96 offered the same recommendation. The fact that Congress has established federal jurisdiction does not mean that it must be exercised to its fullest extent.97

Where the use of interstate facilities is minimal and where the crime is essentially one of state interest, the United States attorney could merely decline prosecution in the federal court under the Act and turn over whatever information that has been gathered to local authorities. Such a solution would not force the courts to go through semantic gymnastics in order to confine a crime essentially of state interest to the state courts.

The alternative, as the LeFaivre court pointed out, is to force courts to delve into the "murky waters of legislative history" when the meaning of an act is quite clear. The result is to make an essentially unambiguous statute extremely unclear, with various conditions precedent engrafted onto it which are not apparent from a mere reading of it. In United States v. Vitich,98 in attempting to determine "the significance of the role of the interstate activity"99 as required by Altobella, the court noted that applying such a standard is extremely difficult, "since there is no measurable standard for

94. 486 F.2d at 678.
95. 507 F.2d at 1296.
97. Id. § 207.
99. Id. at 104.
determining the significance of interstate activity in an unlawful enter-
prise." Aside from the difficulty in applying such a test, the statute's
application will necessarily vary from circuit to circuit, resulting in a lack of
uniformity of federal law.

As LeFaivre and Archer conclude, the several United States Attorneys
are better able to judge policies for prosecuting certain activities and individ-
uals than the courts. Further, enforcing policy considerations, however laud-
able, by way of judicial interpretation represents a possible infringement on
the prosecutorial power of the executive.

CONCLUSION

Two approaches have been taken to application of the Travel Act. One, in the Seventh Circuit and to a certain extent in the Second Circuit,
demands that as a condition precedent to the Act's invocation a substantial
use of interstate facilities be demonstrated. The other, in the Fourth Circuit,
relies on strict statutory construction. The Fourth Circuit, it is submitted,
has adopted the better view.

The Seventh Circuit ignored the plain meaning of the Act in adopting
its test. Further, it misinterpreted legislative history which it was not
required to examine under well settled rules of statutory construction. The
test was created because the court believed a crime of state, and not federal,
interest had been committed. This test is extremely difficult to apply since
"substantial use" of an interstate facility is a subjective standard which can
vary from case to case. The inescapable result of the adoption of such a
standard will be an adventitious application of the statute. The condition,
also, is not apparent on a reading of the statute.

The Fourth Circuit construed the Act on the basis that if an act is clear,
a court may not interpret it to further policy considerations, however sound.
Relying on the plain words of the statute avoids the difficulties of irregular
application, lack of uniformity in the circuits, and the presence of unseen
additions to the statute.

In political corruption cases, where the unique facilities of the federal
government and its law enforcement agencies are more suited to conduct

100. Id.

101. The United States attorney's discretion in bringing prosecutions cannot be in-
terfered with by the judiciary. See United States v. Cox, 342 F.2d 167, 171 (5th Cir.),
cert. denied, 381 U.S. 935 (1965):
Although as a member of the bar, the attorney for the United States is an offi-
cer of the court, he is nevertheless an executive official of the Government,
and it is as an officer of the executive department that he exercises a discretion
as to whether or not there shall be a prosecution in a particular case. It fol-
lows, as an incident of the constitutional separation of powers, that the courts
are not to interfere with the free exercise of the discretionary powers of the
attorneys of the United States in their control over criminal prosecutions.
See also Confiscation Cases, 74 U.S. (7 Wall.) 454, 457 (1868); United States v. Nixon,
prosecutions and where there is sometimes a reluctance on the part of local prosecutors to conduct such cases, such construction of the Travel Act, as well as other federal statutes, is especially egregious. The courts should not hinder the legitimate interest of the federal government in prosecuting such cases:

At a time when the institutions of government, both local and federal, are being subjected to increasing attack and cynicism, those responsible for the enforcement of the law and the administration of justice cannot afford to allow one of the most powerful means of combatting official corruption to be emasculated by an unwarranted, restrictive interpretation.¹⁰²

Although the federal government should clearly not exert control over intrastate activities when not empowered to do so by Congress, prosecution should be permitted when the acts of the defendant fall within a clearly drawn federal statute, such as the Travel Act. Unwarranted judicial construction is especially dangerous in the area of political corruption since often no alternative prosecution is available.

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