ORIGINAL

In the

Supreme Court of the United States

VINCENT R. PERRIN, JR., Petitioner,	:	
v.	:	No. 78-959
UNITED STATES OF AMERICA, Respondent.	:	

Washington, D. C.
October 3, 1979

Pages 1 thru 48

Hoover Reporting Co., Inc.
Official Reporters
Washington, D. C.
546-6666

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v.	:	No. 78-959
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Wednesday, October 3, 1979
Washington, D. C.

The above-entitled matter came on for argument at 11:50 o'clock a.m.

BEFORE

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice
JOHN PAUL STEVENS, Associate Justice

APPEARANCES:

LEONARD B. BOUDIN, ESQ., Rabinowitz, Boudin, Standard Krinsky & Lieberman, 30 East 42nd Street, New York, N.Y. 10017; on behalf of the Petitioner.

STEPHEN M. SHAPIRO, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C. 20530; on behalf of the Respondent.

C O N T E N T S

ORAL ARGUMENT OF:	PAGE
LEONARD B. BOUDIN, ESQ., on behalf of the Petitioner	3
STEPHEN M. SHAPIRO, ESQ., on behalf of the Respondent	18
REBUTTAL ARGUMENT OF:	
LEONARD B. BOUDIN, ESQ., on behalf of the Petitioner	43

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 78-959, Perrin v. United States.

Mr. Boudin, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF LEONARD B. BOUDIN, ESQ.,

ON BEHALF OF THE PETITIONER

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

The issue in this case, one of statutory construction with constitutional implications, is whether Congress, in using the term "bribery" in 18 USC 1952, the Travel Act, intended to refer to bribery of public officials, as used in the common law, or whether included the term, commercial bribery, under--which is involved solely in this case.

The Travel Act, as this Court will recall, insofar as relevant here, makes it a crime, a felony, punishable by $5,000 or five years in prison--$10,000--to use interstate commerce, including the mails, for the purpose of facilitating an unlawful activity.

And one of the unlawful activities described here is bribery. The facts not being before this Court, in view of the limited certiorari, it is sufficient for me to say that the petitioner is a private consulting geologist, who was convicted after a juxy trial, charged with participating in

the bribery of a private employee of a private concern; and that there appear to be two telephone calls and one interstate shipment; none incriminating data involved in this case.

Now, in construing the statute--and it's a most interesting problem of statutory construction we have here--the problem is to determine what Congress, and only Congress, intended in the bribery act; not to determine what a state intended, or as Nardello--to which I will refer later--points out, what a state label was.

What did Congress intend? In considering the intent of Congress, we have the familiar but controlling and important canons of construction in a case of this kind.

First, of course, is whether the term "bribery" has plain meaning. And I must say that the government's arguments that bribery is not to be considered as a common law formulation but is to be determined by the Oxford Dictionary--or Webster's--does not seem persuasive, particularly when one realizes that if one turns to the legal dictionaries, like Bouvier or Black, one finds that they use the term--including the most recent edition of Black--in the technical, common law sense.

Just to take one example of Black, I'll just read the first few lines: "The offering, giving, receiving, or soliciting of anything of value to influence actions as official, or in discharge of legal or public duty...."

In contrasting these two definitions, one has to remember Mr. Justice Holmes' statement, which I read recently in Justice Frankfurter's Cardoza lectures many years ago, that Congress is presumed to have intended to use familiar legal expressions in their familiar, legal sense.

So I would say that on balance we probably come out better in our conception.

But let us turn to the legislative history. As Mr. Justice Marshall pointed out in the Lewis case, it is a very meager or limited legislative history.

The hearings clearly indicate, as Nardello says and Lewis says, that this was an attempt by Attorney General Kennedy to give a package of organized crime legislation to the Congress. And there are statements made, particularly in the course of testimony before the Committee, by Attorney General Kennedy himself, and in a supplementary letter to Congressman Celler, signed by Deputy Attorney General, now Mr. Justice White, indicating that this was an organized crime statute, and that shakedowns were used by organized crime.

The interesting thing is that there is no testimony in the record, no claim by Attorney General Kennedy or by his assistant, Mr. Miller of the criminal division, that organized crime ever used commercial bribery. And what there is in this record are two or three very interesting statements, which we've quoted in our brief, of Attorney General Kennedy

in which the subject of bribery, the only times when it is mentioned in the course of the Senate and House hearings, is always with reference to the bribery of government officials.

QUESTION: Mr. Boudin?

MR. BOUDIN: Yes, Your Honor.

QUESTION: Do you feel that the old decisions of this Court, Justice Storey, Hudson, Goodwin and so forth, help you or hinder you when they say there is no federal common law of crime?

MR. BOUDIN: I don't think they have any help or hindrance. They are merely statements that the Federal Code does include common law crimes. But they are not a reason why Congress does not turn to the common law definition, and why the courts don't look to common law definitions to determine what Congress had in mind.

And I think, actually, that was done to some extent in the Dunn case. But I will come to that, Your Honor.

As I say--sorry, Your Honor.

QUESTION: In the legislative history, is there any reference to labor racketeering and bribery of labor officials?

MR. BOUDIN: Yes, I noticed the government, in its brief, made reference to some problems of labor corruption. But the Court will note, which I have reg rettably not noted in my reply brief, that that referred to a different bill, a different bill dealing with immunity, which was before the

Congress, and which referred to labor and the Taft-Hartley law.

It never--there was never any reference to discussing this bill, to labor racketeering. I hope the Court will read that record to see that I am correct.

Now, the government says, by referring to current books, that labor unions, or labor--sorry, that organized crime now does use commercial bribery.

It's a little hard to take a book written in 1972 or 1973, and to draw the conclusion that this Congress, in '61, and these committees, were considering a subject they never discussed, namely, the use of commercial bribery by organized crime.

QUESTION: Well, Mr. Boudin--

MR. BOUDIN: Yes, Your Honor.

QUESTION: --what is the occasion for a Court to delve deeply into the legislative history, unless it is assumed that the word bribery is ambiguous?

MR. BOUDIN: Yes. Well, I think that I must say that the word bribery here--I would prefer to say that the word bribery has an absolutely clear meaning, and should be considered in its common law definition.

But as I balance the dictionaries, and as I realize the history of bribery for so many years, and the use in penal codes, and the use by the draftsmen, to which I will

refer in a few minutes, you see that bribery has a very special limited official connotation.

If one, for example, were to look at the Federal criminal code as it existed in 1961, one would see that Chapter XI refers to bribery, graft and conflict of interest. And the one section there entitled "Bribery," deals with--Section 201--with the bribery of government officials.

I would like to be able to say that the situation is absolutely clear. There is no dispute what the word "bribery" means. But candor requires that we assess the situation to say, yes, this term, as used in the statute, is ambiguous; and that's why we turn to the legislative history, and to the other canons to which I will refer.

Now, just to continue for a moment, if I may, Mr. Chief Justice, with respect to legislative history, as I said I don't think that given that the--that a book written currently, or even a book written earlier, which was not before the committee, and which it didn't consider, is very persuasive evidence as to the meaning of the word bribery.

And I prefer, if I may say so, the words of Judge Gerfein who wrote the Brecht opinion on which we relied in the Second Circuit. And it describes--

MR. CHIEF JUSTICE BURGER: We will resume there at 1:00 o'clock, Mr. Boudin.

MR. BOUDIN: I can finish the phrase later.

[Whereupon, at 12:00 o'clock, p.m., the Court recessed, to reconvene at 1:00 o'clock p.m.]

AFTERNOON SESSION

[1:00 p.m.]

MR. CHIEF JUSTICE BURGER: You may continue, Mr. Boudin.

ORAL ARGUMENT OF LEONARD B. BOUDIN, ESQ.,

ON BEHALF OF THE PETITIONER (CONT'D)

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

My reference when we ended to Judge Gerfein in the Brecht case had in mind his long history as a prosecutor of organized crime in the labor racketeering field. And I give some weight, as against some of these books that are mentioned by the government, to his statement that organized crime does not usually use commercial bribery as a component, and he described it as an establishment crime.

But more important than what a Judge--

QUESTION: Where did Judge Gerfein do that? Is that--

MR. BOUDIN: In Brecht, sir.

QUESTION: In the Brecht case?

MR. BOUDIN: It's in the Brecht case.

QUESTION: Well, was that an essential element of the offense?

MR. BOUDIN: No, it is not, Your Honor.

QUESTION: Did we take judicial notice of--

MR. BOUDIN: It is not. But the question is, what did Congress intend. And the government says, and we deny,

that organized crime, according to the legislative history, used commercial bribery. Whereas, as we have pointed out, the government, in its brief, in Nardello, and the view expressed by--adopted by this Court in footnote 11, page 293, said, bribery has traditionally focused on corrupt activities by public officials.

Now, if I may turn to the next principle on which I rely, it is that of the common law definition assumed to be that of Congress. I touched on it in an answer to a question put by Justice Rehnquist, and I want to leave that by simply referring this Court to its decisions in Turley and in Morrisett?, particularly to Mr. Justice Jackson's comment in Morrisett, that when Congress borrows terms of art, which are accumulated legal tradition meanings of centuries, it normally intends to adopt those views.

Turning next to the federal complex of statutes and state statutes, I treat them briefly, because all they are are guideposts. And the significant aspects, if Congress looked at the state statutes and said, what is considered bribery?, the significant aspects are, in contrast to Nardello--which again I will touch on, or fully--there is a clear line of demarcation between the state statutes dealing with bribery and called bribery, although the name is not critical--it's the line of demarcation that's important--and state statutes dealing with commercial bribery or various variations.

And this line of demarcation is followed by the codifiers, by those who prepare--the American Law Institute people--who prepare the model penal codes; by the working papers of the Brown Commission; and indeed, by the very legislation now pending before the Congress, the current new criminal code, in which a distinction is recognized, as it is in the textbooks, like Perkins and others, to which the government refers, between crimes against sovereignty, and crimes against property.

I have in our brief delineated the examples of that.

Now, I want--sorry, Your Honor.

QUESTION: Is there a clear differentiation within the complex of state statutes, and which side of the line would a statute prohibiting the bribery of a professional athlete fall?

MR. BOUDIN: I suppose--

QUESTION: Would it be commercial bribery or regular bribery?

MR. BOUDIN: It's very hard--it's a sort of sport, if I may use the expression. It's a special kind of situation in which you have so many state bribery statutes involving sports. If I had to categorize them, I would say it's a variety of commercial bribery, or perhaps it reflects the special concern of the American legislators, and people, for that particular

aspect, which was a national scandal, I think, in about 1962 or '3, after this statute.

QUESTION: Would even the practice--excuse me. I'm sorry.

QUESTION: Would it make any difference whether it was a football player on a state-supported, state university football team, or a professional team, as to whether it was public or private?

MR. BOUDIN: I don't think so. I think the real question is what Congress had in mind in passing this statute. And Congress did not have in mind, if I may say, despite Senator Keating's passing observations, and the other congressional hearings, with respect to its sports bribery statutes.

To me, the critical problem which we face here before the Court is that on which the government takes issue with us. And that is, what is the meaning of Nardello?

I already said what the Court said in Nardello with respect to bribery. But why did the Court decide Nardello as it did?

It would be very strange if the Court expanded bribery in this case--this Court expanded bribery in this case, or used the term broadly; I don't want to beg the question--when the broad definition of extortion in Nardello was based on the government's argument in Nardello that this

broad definition of extortion was required because there was a narrow conception of bribery.

Now taking Nardello on the merits, Nardello was based on a legislative history in which Attorney General Kennedy said that organized crime used extortion; it was based upon the blending by legislation and judicial decision of extortion and blackmail, unlike our line of demarcation here; it was based upon the fact that, as the government pointed out so well in its Nardello brief, upon which most of my knowledge comes here, that extortion by legislators alone was inconsistent with a statute directed at extortion by organized crime.

And finally the Court said, and obviously we refer to that, have no problem with it, that labels of blackmail could not obscure the fact that Nardello was engaged in extortionate conduct even under state law.

Now, I want to suggest also to the Court, as we have in the last pages of our brief, that an expansive interpretation of the term "bribery" would, under Lewis and many other decisions of the Court, alter sensitive federal and state relationships, by transforming minor offenses into federal felonies.

And I think that as the Court said in Bass--I think it was Mr. Justice Marshall who wrote the opinion there--unless Congress conveys its purpose clearly--I'm using the Justice's

words--then this kind of restructuring to take care of minor crimes is impermissible. And indeed, this restructuring is a rather strange thing, because it is an anachronism even in the federal system. Thus, for example, 29 USC 186(a), which deals with gratuities to trade union officials, is a misdemeanor. Section 215 of 18 USC refers to gratuities received by a banking official; it's a misdemeanor.

This statute, which would make a telephone call to a banking official, or from him, or a telephone call by a labor union agent, a felony. I think, therefore, that you have a problem with respect to the restructuring of the federal system as well as the states.

Now this is, in my view, if I may suggest it, exactly the kind of case with which this Court dealt in discussing the principle of lenity. It is a case where, in the words of Batchelder and Culbert, words do not plainly impose meaning.

We don't which dictionary definition was chosen, even in the Oxford, to take the government's example. We don't know whether the common law should be disregarded. We don't know whether the principle of Wiltberger?, namely, that you construe penal laws narrowly, should be disregarded.

You take all of those considerations, and it calls here for a principle of lenity, which this Court, I think, in the Dunn case, pointed out has a constitutional basis, in ex post facto principles, and--

QUESTION: Was that raised as a constitutional question in the courts below?

MR. BOUDIN: Yes. The issue of notice was raised in the court below at page 192 to 192 of the transcript.

QUESTION: The constitutional question?

MR. BOUDIN: Yes, the constitutional issue of notice.

But I don't think that is really the problem here. I think the problem here is the construction of a statute, and that construction of a statute, whether the issue had been raised below or not, calls for the principle of lenity, particularly where you have here a very minor--I think a small fish, I'm paraphrasing, was the word used by Judge Rubin dissenting in the court below in this case.

I would also urge the Court, in considering this problem, to note that this is probably the third case in 18 years involving the applications to commercial bribery of Section 1252. At least, we have not been able to find any. And of course we know in Brecht, in Brecht the Court came to a different conclusion.

So we are left here with a Pomponio, and Mr. Perrin's situation. This is clearly the kind of case where we cannot say what was said in Scarborough, that there is a clear history. It's the kind of a case in which we--the history is on our side.

And I think the construction of the words, bearing in

mind its long history, is on our side.

Now, to conclude, at least for the moment, let me suggest to the Court what it is asked by the government to do. It is asked by the government to define a criminal statute which is at best ambiguous; which has been enforced against the defendant twice--or group of defendants twice--in 18 years.

It is asked to construe it differently from the common law; broadly rather than strictly, although it's a penal statute; under a definition which, among others, may be found in popular dictionaries, or even learned dictionaries like Oxford; under a definition which is contrary to all legal dictionaries that I've seen; which when they use the term "commercial bribery," use it as a separate heading.

It is asked to construe it contrary to legislative history, of which there is very little, but whatever is on our side. It is asked to construe it contrary--contrary--to the views expressed to this Court by the Solicitor General of the United States in Nardello, in the passage to which I have referred Your Honors, in the original brief.

And I submit my very high regard for that office, and I'm sure the courts, of course, leads us to conclude that the Solicitor General did not suggest that bribery had a narrow definition--if I can call it narrow--limited to public officials for strategic reasons in Nardello, but had stated its view in Nardello with reason and with thoughtfulness, and with a

knowledge of legal history.

I'll reserve my time, if I may.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Boudin.

Mr. Shapiro?

ORAL ARGUMENT OF STEPHEN M. SHAPIRO, ESQ.,

ON BEHALF OF THE RESPONDENT.

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

The government contends that the Travel Act prohibits the use of interstate facilities to promote all forms of bribery illegal under state or federal law, including commercial bribery.

In establishing that proposition, we rely on the text of the Travel Act, the contemporary meaning of the words used in the Act, and the Act's legislative history.

In addition, we rely on this Court's decision in the case of United States again Nardello, which provides the rule of statutory interpretation which we believe is controlling here.

I would like now to take up each of these points separately.

The literal terms of the Travel Act extend to bribery in violation of the laws of the United States, or the state in which the crime is committed. Unlike other federal criminal statutes, such as the official bribery statute, the

Travel Act does not limit its coverage to a particular kind of bribery. Without any limiting modifier, the term "bribery" has a generic meaning; that is, the giving or the receipt of something of value in order to corrupt the judgment or the action of someone in a position of trust.

The ordinary meaning of the word "bribery" includes official corruption, but it's not limited to official corruption, as Webster's dictionary reminds.

Counsel has nonetheless contended that the weight of authority in legal dictionaries is different from the weight of authority in the Oxford English Dictionary, and in Webster's dictionary.

QUESTION: But Mr. Shapiro, wouldn't one expect, in view of the very specific language in--about the payment of federal excise tax in 1026, that the bribery, if it be federal bribery here, be a violation of a specific bribery statute, and not just of some generic concept of bribery?

MR. SHAPIRO: We think that Congress deliberately selected a general word without reference to a particular kind of bribery, because it meant to embrace various federal and various state bribery statutes, and it didn't wish to include a long enumeration of those statutes, or state arson or extortion statutes.

It would be quite a lengthy and a cumbersome statute if each one of the specific offenses was enumerated.

QUESTION: And what federal bribery statute do you contend was violated here?

MR. SHAPIRO: We contend that it was a state bribery statute that was violated through use of interstate facilities, giving rise to a violation of the Travel Act.

QUESTION: So we needn't worry about actual federal bribery statutes on the books, because you need, in order to succeed, in order to show that the Louisiana commercial bribery statute was violated?

MR. SHAPIRO: That's correct, Your Honor. We depend on a violation of a Louisiana statute facilitated through the use of interstate facilities.

Counsel has contended for a common law definition of the word "bribery," pointing to the legal dictionaries, which he contends are different from the popular dictionaries. But Black's law dictionary defines a bribe, bribery, as the offering or soliciting of anything of value to influence action as an official, or in discharge of legal duty. And it gives as examples common law bribery and commercial bribery.

The same is true in Wharton's Law Lexicon which defines a bribe as a gift to any person, office, or holding a position of trust, with the object of inducing him to disregard his official duty or betray his trust. Again, the examples that are given are official bribery and bribery of agents and employees.

The legal dictionaries use the term the same way Webster's dictionary and the Oxford dictionary uses the word, as a generic designation covering both official and non-official bribery.

Instead of designating a particular kind of bribery, such as official bribery, the statute refers to bribery offenses prohibited under the laws of Congress or the laws of the states. Because the scope of the Act is delineated by reference to state or federal bribery law, we believe that it is most significant that a large number of state and federal bribery laws have prior to the enactment of the Travel Act, explicitly extended to non-official bribery.

This pattern of statutes confirms that in contemporary legal usage, in 1961, the term bribery had a far broader meaning than official bribery. Prior to enactment of the Travel Act, Congress prescribed non-official bribery in a variety of different criminal laws.

For example, Congress prohibited bribery in the sale of liquor; bribery in the procurement of interstate transportation; and bribery of contestants appearing in television quiz shows.

The situation in the states was similar. By 1961, 43 states had adopted criminal laws prohibiting various forms of non-official bribery, including bribery of employees, of agents, bribery of workers in particular kinds of industries,

bribery of labor union officials, and bribery of athletes participating in sporting events.

Because this statute's coverage is defined by reference to state and federal bribery law, the widespread existence of statutes forbidding commercial and other forms of non-official bribery is a strong indication that the Travel Act should have a co-extensive reach.

We submit that it would be highly inappropriate to assume that Congress was unaware of the fact that most of the states in the union had enacted criminal laws forbidding non-official corruption. And it would be even more extraordinary to assume that Congress was unaware of its own criminal legislation making commercial bribery a crime.

Although the legislative history of the statute is limited, the hearings show that the proponents of this statute understood the contemporary generic meaning of the word "bribery."

QUESTION: If Congress has made commercial bribery a crime, why do you have to rely on Louisiana statutes?

MR. SHAPIRO: Congress' commercial bribery statutes refer to particular industries where the problem was felt to be especially acute, for example, bribery in interestate transportation; bribery in the sale of liquor.

QUESTION: You couldn't convict under those statutes here, then?

MR. SHAPIRO: That's correct, Your Honor. You need the Louisiana statute as a predicate.

Senator Keating, who was a proponent of this statute, and who participated in its drafting, stated specifically that he understood that the Travel Act would apply to bribery in sporting events. This shows pretty clearly that Congress did not envision the statute as applying only to official bribery.

No contrary views were ever expressed during the hearings. And during the hearings on this bill and a companion bill, which were heard altogether in a package, several of the witnesses, as well as the Attorney General, stated the view that various forms of non-official corruption were bribery; for example, bribery of labor union officials and bribery--bribery in sporting events.

No Congressman or representative from the Department of Justice ever suggested that the Act should be limited to official bribery.

The legislative history also shows that the dominant purpose of the Travel Act was to cut off the flow of profits to organized criminals by depriving them of the use of interstate facilities to carry on their illegal activities. For this reason the statute prohibits arson and extortion, both of which are used by criminals to play on honest business firms, and to increase illicit revenues.

Commercial bribery is likewise used by organized

crime to increase the flow of money which Congress meant to cut off.

Congressional hearings, both before and after enactment of this statute, confirm the extent to which criminals make use of commercial bribery to infiltrate honest business. Organized crime uses commercial bribery to steal securities from brokerage houses; to pledge them with banks and other lending institutions, who sell worthless or fraudulent stock to institutional investors; and to steal valuable cargoes through the connivance of bribed workers.

QUESTION: I suppose organized crimes--crime uses various other--or offends various other local laws that concededly are not covered by the Travel Act, too?

MR. SHAPIRO: Well, that's quite correct, Your Honor. We contend, though, that treatment of commercial bribery as a subspecies of the offenses of bribery would promote the congressional purpose to cut off the flow of money--

QUESTION: Well, so would inclusion of a lot of other crimes that are local crimes that are not--that are concededly not covered by the Travel Act.

MR. SHAPIRO: That's quite true. If they don't fall under the word "bribery"--

QUESTION: So that's the question: Is it covered or isn't it covered?

MR. SHAPIRO: Well, that's true.

QUESTION: Not whether organized crime uses these various things.

MR. SHAPIRO: And for the purpose--the reasons that we gave, we think the literal meaning of the word "bribery" extends generically to different varieties of bribery, including commercial bribery.

QUESTION: Mr. Shapiro, counsel indicated that this was a rare prosecution, or at least was an early one. Do you agree?

MR. SHAPIRO: There have been relatively few commercial bribery prosecutions under the statute, due in part to the difficulties in detecting these offenses. But there have been some.

There have been three reported decisions in the Courts of Appeals, involving commercial bribery prosecutions. There have been two reported decisions in the district courts, and four other cases are referred to, unreported opinions, at the District Court level.

The Department, at present, has investigations pending into widespread commercial bribery which may, in the future, result in additional prosecutions.

QUESTION: One of the reasons is you have to show interstate commerce.

MR. SHAPIRO: That's correct; that's correct, Your Honor.

QUESTION: That's a problem, too.

MR. SHAPIRO: That's often a problem.

QUESTION: Is Brecht, Pomponio , in this case--

MR. SHAPIRO: And Grimm. Those are the three Court of Appeals decisions on this point.

QUESTION: And in each case I suppose you would have to show all of the substantive elements of the state statute involved?

MR. SHAPIRO: We would have to prove that interstate commerce was used for the purpose of facilitating an offense under state bribery law.

QUESTION: But you would have to also--don't you also have to prove that the offense under state bribery law was committed?

MR. SHAPIRO: You don't have to show that it was consummated. The case law is uniform to that effect. You just have to show that interstate facilities were used to promote that offense, and that an overt act occurred after the use of the interstate facilities.

QUESTION: Well, what does it mean to promote an offense?

MR. SHAPIRO: Well, to--for example, in this case to make--to make easier the payment of bribery proceeds to the bribed employee, even if those proceed s were not, in fact, given to the employee.

QUESTION: Well, what if under the state of Louisiana holdings, the person in question, whom you prosecuted, had been held by the Supreme Court of Louisiana not to be an employee?

MR. SHAPIRO: Well, if it would be impossible to commit the offense under Louisiana law, then the use of interstate facilities would not be in aid of a violation of the state's statute, and there would be no Travel Act violation.

We would emphasize that if petitioner's proposed interpretation of this statute were accepted, syndicated members based, for example, in New York City, could operate a scheme to bribe the workers in a brokerage house in Chicago, or the employees of a bank in Houston or in Los Angeles, causing serious financial losses and enriching organized crime. Due to the interstate nature of the offense, local authorities would not be in a position to effectively investigate and prosecute the offenders.

Considering the generic text of this statute, and its broad corrective purposes, such an unnaturally narrow interpretation would be inconsistent, we submit, with the statutory design.

QUESTION: Is your strongest legislative history the passage you quoted from Senator Keating?

MR. SHAPIRO: That is indeed, Your Honor; the passage from Senator Keating is the strongest piece of history. We all labor under the difficulty here of a very

limited legislative history.

QUESTION: You're suggesting that--you're suggesting that that would be an example, that sports would be an example of commercial bribery?

MR. SHAPIRO: Of unofficial bribery. It shows that the interpretation--

QUESTION: Unofficial bribery?

MR. SHAPIRO: Right. It shows that the interpretation that's being advanced by petitioner isn't the correct interpretation. Congress did not envision a limitation of the Act to official bribery?

QUESTION: Didn't Attorney General Kennedy refer to union corruption as a form of bribery?

MR. SHAPIRO: He did indeed, Your HOnor, and he also referred to bribery--

QUESTION: Were these hearings on the same legislation, or on related legislation?

MR. SHAPIRO: Companion bills that were considered in a package. And we think that these references by the Attorney General, and the other Congressmen who participated in the hearings, show that these Congressmen understood the contemporary generic meaning of the word "bribery."

Because Congress prohibited bribery under the Act in general terms, without limitation to a particular king of bribery, and because the legislative history supports a generic reading

of the statute, in our view, the Court of Appeals correctly concluded that this Court's decision in United States against Nardello provides the applicable rule of statutory interpretation.

In Nardello, this Court held that the word "extortion," which appears in the same portion of the Act as the word "bribery," should be given a generic meaning, and should not be limited to acts of extortion involving public officials.

QUESTION: What about the footnote in Nardello that your opponent relies upon?

MR. SHAPIRO: The Court did, indeed, point out that bribery has traditionally focused on corruption of public officials. But the Court did not undertake a comprehensive review of the offense.

If it had gone into the details of the development of this offense, it would have seen that by 1906, commercial bribery was a criminal offense in Great Britain, and that by the turn of the century, Congress had enacted criminal laws forbidding commercial bribery, and the states had as well.

I think the Court's footnote statement is a fair generalization, but it doesn't purport to exhaust the subject.

QUESTION: How about your brief in that case?

MR. SHAPIRO: I don't think our brief goes any further than that footnote. I think it simply says that traditionally--traditionally, that offense is referred to

public officials. But as a matter of fact, by 1906, it had gone quite beyond that in Great Britain, and shortly after, it had gone far beyond that both at the federal level and in the states.

In Nardello, the Court found no language in the Travel Act, or its history, which would confine the Act to official misconduct. And the Court noted that extortion is generally understood to include threats by private persons. And--

QUESTION: May I go back for a moment to the footnotes? I just want to be sure I understand the whole thing.

What was the purpose of the government pointing out in the Nardello brief, and in this footnote, that bribery was traditionally narrowly limited to public officials unless it was the government's view that bribery was so limited under the statute?

MR. SHAPIRO: I think that the brief speaks in generalities, and that it meant only to indicate that, at common law, that this was the traditional focus of the offense of bribery.

I don't think it purported to go into a detailed analysis of the development of the offense.

QUESTION: No, but wasn't it--wouldn't it have been a fair reading of the brief to interpret it as indicating that

the Solicitor General thought that the term "bribery" in the statute was also limited to its traditional meaning? Otherwise, I don't understand why he would have made the argument.

MR. SHAPIRO: Well, I think that that was the general thrust of--

QUESTION: I see.

MR. SHAPIRO: --that remark. But I don't think it was a remark made in light of the full history of the development of this offense. Because when that review is undertaken, it's as clear as it possibly can be that bribery applied by 1906 to commercial bribery.

QUESTION: You're just saying that whatever--if the Solicitor General meant to give that opinion, he was wrong, then?

MR. SHAPIRO: Well, if he meant that to be an absolute assertion, it's historically incorrect.

QUESTION: Because your argument was in that case, as I get it from reading the opinion, that if you construed extortion--the extortion statute the way it was urged by the defendant in that case, that it--the two statutes would be--one of them would be superfluous.

MR. SHAPIRO: Exactly.

QUESTION: Either the bribery or the extortion.

MR. SHAPIRO: That's correct.

QUESTION: So you said that you have to construe the

extortion statute broadly to keep it from being superfluous, to the bribery statute.

MR. SHAPIRO: That's quite correct. And I think that that was the--

QUESTION: Now, you're just suggesting that that argument, looking at it now, wasn't a very good one?

MR. SHAPIRO: Well, I think that as a general proposition, it's correct. But it's not correct--

QUESTION: Why not just call it a dictum?

MR. SHAPIRO: I think it's fairly described as a dictum in both the opinion and the brief, and that further research into the development of this offense shows that there is more to the story than that brief summary.

In contending for a limitation of the Act to official bribery, petitioner argues, of course, that in common law the term "bribery" was limited to various forms of official corruption; and that the Travel Act should be limited to that same scope.

In our view, the Nardello case really is a sufficient answer to that assertion. Nardello declined to adopt the common law definition of the word "extortion," concluding that the modern generic interpretation was better suited to serving Congress' purposes.

In addition, as we've discussed in our brief, the common law definition of the word "bribery" is not a useful

standard reference in construing the Act. The common law definition was subject to continuous change in evolution. It was a compound offsense, developing both through statutory enactment and through common law development.

By the 19th Century, it extended not only to judges, which was the original offense, but also extended to various other public officials and certain private persons, such as voters. And by 1906, by statutory enactment--

QUESTION: How about a person, when carrying on public duties, to voters and jurors and people like that?

MR. SHAPIRO: That's quite correct. And by 1906, Great Britain had concluded that persons in a position of private trust were vested with a position of importance to the public, and prohibited commercial bribery.

We think it would be highly arbitrary to select the common law prior to 1906 as the standard of reference in construing the statute. It doesn't say, bribery illegal under common law prior to 1906. It says, bribery illegal under the laws of Congress and the laws of the 50 states, which is far different from the common law definition, as we have previously discussed.

QUESTION: Judge Gerfein in the Brecht opinion said, as I remember it, that at the time of the enactment of this federal law, there were only some 13 states, is my recollection, that had--that made commercial bribery a criminal thing.

MR. SHAPIRO: Well--

QUESTION: And he further added, somewhere in his opinion, that in some of the states they don't even--those offenses don't even use the word "bribery."

MR. SHAPIRO: In our appendix to our brief--

QUESTION: Is that incorrect?

MR. SHAPIRO: That's indeed what the Judge said.

QUESTION: A, is my memory correct, and B, if my memory's correct, is his statement?

MR. SHAPIRO: His statement is incorrect, but your memory is quite correct. In 1961 13 states had general statutes making commercial bribery a criminal offense. An additional 12 states had narrower statutes focusing on particular persons in particular lines of industry. These were more specific commercial bribery laws. Thirty-two states had criminal laws forbidding bribery in sporting events, which is quite a departure from the common law; there was not common law offense of bribery of athletes.

Additional states had statutes making it a criminal offense to bribe persons such as architects and labor union officials.

In all, by 1961, 43 states had statutes prohibiting non-official bribery, going beyond the common law definition. Great Britain had a statute prohibiting commercial bribery. Congress had several of them.

At present, 49 states have statutes forbidding non-official bribery going beyond the common law definition.

QUESTION: How about Judge Gerfein's point that at least some of these state criminal statutes, in prohibiting this sort of non-common-law activity didn't even use the word "bribery"?

MR. SHAPIRO: Well---

QUESTION: Is that correct?

MR. SHAPIRO: That is correct. Some of the states do not; they use synonyms such as corruption.

QUESTION: Well, my query: Is it a synonym?

MR. SHAPIRO: In our appendix, we only cite state statutes that use the word "bribery." We base our argument on statutes that do that. But we believe that if the state law prohibits the payment or the receipt of money to affect the judgment of someone in a position of trust, it falls within the generic definition of the word "bribery," just the way blackmail fell within the generic definition of the word "extortion" in Nardello. It was embraced within the generic definition.

And we think on similar principles those laws would be included as well, although we didn't cite them. We constructed that chart in a conservative way.

QUESTION: You're not suggesting that the meaning of the Travel Act expands after it was passed because more

and more States passed commercial bribery statutes, are you?

MR. SHAPIRO: We do, indeed. If a state such as Idaho, which now has no--is the only state that now has no commercial bribery legislation, if it adopted a statute making it illegal to bribe a doctor, that would be bribery in violation of a state law; it would be embraced under the Travel Act.

QUESTION: Yes, but would it be a generic bribe? You need two elements under the Travel Act: You need bribery generically, and you need a violation of the state statute.

MR. SHAPIRO: Correct.

QUESTION: Would you say that Idaho's statute, enlarged the generic meaning of the word "bribery"?

MR. SHAPIRO: No, Your Honor, we don't. We only would contend that this would be another subspecies within the generic definition of bribery that would fall under the ban of the statute because the state has enacted it.

Bribery of architects or bribery of lawyers are examples of new kinds of bribery that the states could prevent, but which would fall within the generic defintion of the word "bribery" as used by Congress.

Congress meant to leave the definition open-ended. It referred to bribery generally, and left the definition or the particularization to the state statutes. But your initial point was quite correct that you need a two-step analysis: Is

it within the generic definition of bribery, one; and two, is it forbidden by state law?

QUESTION: Is that a common facet of a criminal statute to leave the definition open-ended?

MR. SHAPIRO: We think it's a necessity in this kind of a situation, where otherwise it would be impossible to list all of the bearings of state law. Arson, for example, or state law extortion, using different words. This is how the Court construed the act in Nardello, in the manner there.

QUESTION: Mr. Shapiro, you don't really mean it's open-ended. You just mean it's a broad category that's not co-extensive with any state statutes. But don't you accept the proposition that whatever the contours of the federal--of the concept of bribery in the Travel Act, they remain constant?

MR. SHAPIRO: Yes, I do; I certainly do.

QUESTION: The meaning doesn't change; it just means--the consequence is, a new area is embraced under the statute.

MR. SHAPIRO: That's quite correct. I only meant to say what the Court said in Nardello, that the word has a generic meaning. The word "open-ended" is a less felicitous description. Generic is the proper term.

QUESTION: And if in 1985, the state of Idaho enacts a law making it a criminal offense to pay money in a commercial transaction to get a benefit that you wouldn't otherwise get, without mentioning the word "bribery," then

somebody who travels into Idaho and violates that statute is guilty of a violation of the TRavel Act; is that right?

MR. SHAPIRO: That's quite correct. We think that's the necessary meaning of the Nardello case.

QUESTION: That's the same, I suppose, if for the first time a state adopted a statute making it a crime to bribe a judge. They never had a judge-bribing statute before; they could adopt one in 1999, and they'd then come within the Travel Act.

MR. SHAPIRO: Absolutely. It's the very same issue.

Petitioners also argued that the Travel Act cannot be applied here because extension of the Act to commercial bribery without a proven association with organized crime would result in the prosecution of insignificant local offenses, and would extend federal jurisdiction over state crimes.

We note in response that the present case is far from an insignificant one, involving as it does a well organized criminal venture intended to exploit stolen geological data showing the location of oil deposits.

And as a general matter, there is no reason to assume that commercial bribery is likely to involve an insignificant offense. Both official and commercial bribery have the clear potential to injure the public; in addition to enriching criminals and inflicting private losses, commercial bribery has the potential to cut off honest competition, and to cause

the distribution of inferior products to the consuming public.

The prosecution of commercial bribery under the Travel Act, like prosecution of official bribery, will naturally involve an exercise of authority over persons who violate state law.

But the Act was clearly intended to have just that effect. It explicitly applies to bribery illegal under federal or state law.

As this Court has repeatedly pointed out, the very purpose of the Act was to aid local law enforcement officials by punishing persons who use interstate facilities to carry on the designated illegal activities.

And there's nothing improper, we submit, about applying substantial penalties to violations of the Act when it's triggered by state law offenses. Congress believed that interstate schemes to carry on bribery in violation of either federal or state law posed a serious national threat.

And where the facilities of interstate commerce are used, it is for Congress to select the means necessary to punish and deter the offenders.

Petitioner's final contention, of course, is that his conviction must be reversed under the rule of lenity. He argues, in this connection, that the statute is vague, and it must therefore be narrowly construed in his favor.

But the Travel Act does not present a vagueness

problem. The statute literally read extends to bribery without limitation on its kind. The literal, dictionary meaning of the word "bribery" is generic.

When the Act was passed, the word "bribery" had been applied repeatedly to commercial corruption in a wide variety of different federal and state criminal laws. The legislative history of the Act, although it's sparse, shows that its proponents viewed the term "bribery" in a contemporary generic sense.

And the dominant statutory purpose, that is, cutting off the flow of money to organized crime, strongly support the view that commercial bribery should be covered.

This is not a case in which the defendant has a plausible claim that he could not have known that his conduct was subject to criminal sanction. He was well aware that his actions were wrongful, as the evidence at trial showed. He had clear notice that his conduct was in violation of the Louisiana criminal statute, which triggered application of the Travel Act.

QUESTION: Have any charges ever been made against this defendant under the Louisiana law?

MR. SHAPIRO: They have not, Your Honor. He was, of course, also on notice from this Court's Nardello decision that the terms of the Act would receive a generic interpretation, and would not be restricted to common law meanings.

QUESTION: But in this prosecution you wouldn't have to have shown a complete violation of the Louisiana statute?

MR. SHAPIRO: That's quite true, Your Honor. But he was on notice that the course he was embarked on would lead to criminal penalties. That's our only point, that this isn't an innocent individual who believed that the actions he was undertaking were lawful.

The only Court of Appeals to have ruled on the precise question presented here had concluded before petitioner became in his scheme--became involved in the scheme to commit bribery that the Travel Act did, in fact, extend to commercial bribery.

That's a unanimous decision in United States against Pomponio. This has not been a case in which the defendant was required to speculate about the illegality of his actions.

As this Court noted in the case of SEC against C.M. Joiner, the rule of strict construction is not violated by permitting the words of the statute to have their full meaning, or the more extended of two meanings, as the broader popular, instead of the more narrow technical one.

QUESTION: Of course if we--that's exactly the approach that was rejected in the Lewis case, isn't it?

MR. SHAPIRO: Well, in Lewis, Your Honor--

QUESTION: A broad, literal meaning of the statute

would have led to the affirmance of the conviction--the convictions in Lewis.

MR. SHAPIRO: Lewis is quite different. Inthat case, there was no proof that the defendants had used interstate facilities to carry on the illegal scheme. And where the government proves that interstate facilities are used, that's an entirely different question. Where interstate facilities are used--

QUESTION: We're talking about now about the approach to which a court should come to this statute.

MR. SHAPIRO: Well, I think the approach that the Court used there was predicated on the absence of interstate commerce. When there's no interstate commerce, then the Federal interest is no longer significant, but the local interest is paramount.

QUESTION: He was travelling from Georgia to Florida, as I remember; concededly.

MR. SHAPIRO: Well, the defendants stayed in Florida.

QUESTION: The patrons of a gambling establishment.

MR. SHAPIRO: An occasional patron went across the state line, but the defendants did not use the facilities of interestate commerce to promote the offense; that's the essential difference in the cases.

As this Court also pointed out in the Scarborough

case, the rule of strict construction is not required, where, unless after seizing everything from which aid can be derived, the statute remains ambiguous.

Here, we think, when the usual rules of statutory interpretation are used, there is no ambiguity, and we accordingly respectfully request that the decision of the Court below be affirmed.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Boudin.

REBUTTAL ARGUMENT OF LEONARD BOUDIN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. BOUDIN: I should like to leave the Court the government's language in its brief in Nardello at page 9.

"Furthermore," said the government, "joined in the same clause with extortion is an offense which has as its normal focus the corruption of public officers: interstate travel to promote 'bribery,' is also forbidden. In this context, reading extortion as confined only to acceptance of unauthorized fees by public officials would render the extortion branch--sorry, would render the extortion branch of the clause practically superfluous."

The government there took the firm position that where corruption is involved, it had to have--at least they would persuade the Court to take a broad definition of extortion, because as it says, the corruption of public

officials was being handled by the bribery provision.

This is not a--

QUESTION: Mr. Boudin, as you read that, that's consistent with the bribery definition being either broad or narrow.

MR. BOUDIN: Except for the--it may be consistent except in one respect: The logic of the government's arguing may be fairly, but the government was very clear in stating there that bribery meant public officials--

QUESTION: Included public officials.

QUESTION: Yes.

QUESTION: But their argument only required it to include, not to be limited to.

MR. BOUDIN: No--

QUESTION: They're objecting to the claim that extortion is limited to public officials, and saying if that's the case, it's overlapped.

MR. BOUDIN: Perhaps I read it too quickly.

QUESTION: I think you did.

MR. BOUDIN: The government said in its brief: "The normal focus"--the normal focus--now you can play around with that phrase, to say that now it only meant that it was a central issue, or that it was 90 percent of time true.

QUESTION: You can also play around with the fact that the present Solicitor General does not take that position.

MR. BOUDIN: Yes, of course. And of course, the Court in Nardello, in its footnote, seemed to accept that position.

Now, if this is a question of a narrow construing, not only of the meaning of the term "bribery," but we're now construing what the government's concession meant, just simply adds another element to the indefiniteness of what we are treating.

The government--and of course I have reference, with all due respect, to then Deputy Attorney General's tying in of the term bribery to the term "official bribery," or limiting it to that. And the same thing was true of the Attorney General Kennedy.

Your Honors will recall what government counsel just said when he was asked about what's the major legislative support that he has for believing that bribery means commercial bribery--means that--commercial bribery. And his answer was, Senator Keating's observation on sports bribery.

If you will look at, if I may suggest it, the hearings in the case, and you will see how the somewhat personalized statement by a single legislator that nobody caught on to, that was passed over, and this is considered the largest legislative support.

I suggest that if we want to see other support for my position that we look at 18 USC 1961. 1961 is a statute

which talks about bribery in one case, refers to section 201 as relating to bribery, and then talks about sections 224 and others relating to bribery, others relating to sports bribery.

At best we have an ambiguity here as to the meaning of the term. The government has referred Your Honors also to references to labor corruption. I touched on it a moment before.

Your Honors will see, at pages 31 to 46 and 272, of the House hearings--I haven't put that in our brief, but perhaps I can shortly in a letter, if Your Honor permits--the government was talking about the Immunity Act. There is not a word--a proposed Immunity Act--there is not a word in dealing with this statute about labor corruption.

The government pulls out now what the Congress must have known about a statute passed in 1906 in Great Britain. Again, if this is how we are to interpret legislation, then I suggest it gives an aura of ambiguity to the statute.

Under dictionaries, I have addressed myself to that. I would urge Your Honors to look at those dictionaries and see whether those dictionaries consistently in my favor, if they are legal dictionaries.

But quite aside from that, all they do really is indicate that there is an ambiguity in the meaning of the word "bribery." And the question is, whether in this case, unlike many others, a penal statute, whether or not the statute is to

be construed broadly or narrowly.

A reference has been made to the open-ended aspect of the statute, as read by the government. And it's been suggested that there are ways out for it. But if you take my construction of the statute, which I think is Congress', and it is only Congress' view, and not what a state law says, and not what one dictionary or another says, it is Congress' view, mine gives a non-open-ended situation, because public bribery, governmental bribery, has a precise meaning.

Under the government's definition, the moment a state passes a statute like Wisconsin, for example, providing for a $25 fine for a gratuity--because of a gratuity paid to a chauffeur--we then have a real open-ended situation.

Did Congress intend to make the $25 gratuity to a chauffeur, or $100 to a lumberman in some other states, did it intend to include that in the term "bribery"? There is no suggestion inthe legislative history that it did.

But if one looks at it, if we can stand aside and say, what could Congress have meant in passing a statute directed at organized crime where it had no evidence that organized crime was using commercial bribery, it had a concrete function and purpose, which a national legislature would have.

There is a very serious crime in the bribery of public officials, the one referred to by Deputy Attorney

General White, by Attorney General Kennedy. Bribery of public officials is a critical matter; deserves their national attention; and is the most reasonable application of the Travel Act.

But to say now that because bribery could be interpreted by some definitions to be broad, when commercial bribery has a line of demarcation that I've indicated before, is also to disregard what a reasonable Congress would have intended in addressing itself to this problem.

Thank you, Your Honors.

MR. CHIEF JUSTICE BURGER: Gentlemen, the case is submitted.

[Whereupon, at 1:49 o'clock, p.m., the case in the above-entitled matter was submitted.]