I think that satisfies the prima facie case of the corpus delicti and also of the offense.

Mr. Marks: I will submit it, your Honor.

The Court: So the motion to strike will be denied.

351 The Government has rested.

Mr. Farber: The Government has rested, your Honor.

Mr. Marks: I thought the Government always had the chance to argue first, your Honor.

The Clerk: Are you resting?

Defense Rests

Mr. Marks: The defense rests. I am sorry. I thought that was—

The Court: You may proceed.

Mr. Farber: Thank you, your Honor.

Argument on Behalf of the Plaintiff

Mr. Farber: Your Honor, in this case we respectfully submit that the evidence as represented by the exhibits and the testimony of the expert establishes, 1, that calls were placed in interstate commerce between both Los Angeles and two cities, Boston, Massachusetts, and Miami.

The exhibits which back up this statement, of course, are Exhibits 1 through 6, the transcripts, wherein we actually have a transcription of Mr. Katz telling the operator, "I want Boston, Massachusetts," such-and-such a number, or "I want Miami," such-and-such a number.

Then we have Exhibit 7 which are the exhibits of the telephone company. They dovetail in with the transcriptions. Those business records of the telephone company also, as Mrs. Cuningham testified from the stand, indicate the calls were placed to either Boston or Miami.

352 Now, the second element is were there bets placed?

We have the testimony of the expert. I think I will just take one transcription, Exhibit 6, for demonstration purposes.

The testimony of the expert is that, yes, indeed, on certain occasions there were bets placed.

It is pretty obvious that he is correct if we look at the transcriptions. For instance, on Exhibit 6 on the first page there is the comment by Mr. Katz, "Bet a nickel." And

once we know what the nickel system is as explained by the expert, it is obvious that there were wagers being placed.

In addition, on every occasion, if I am not mistaken, the defendant Katz caused the line to be read to him by asking for it. He asked for the line. The person in Miami read it to him.

In addition, on the 19th Mr. Katz further gave information to, I believe it was, Boston when he set up information to establish his credit line for future betting.

So, indeed, there was both in this case transmission of wagers as charged in the indictment and transmission of information in assisting in the business of wagering.

Now, finally, the third element that remained is was Mr. Katz in the business of wagering? What evidence do we have to that effect? A. Well, No. 1, we have his handicap sheets. They are quite voluminous. They indicate
353 that he was a handicapper.

We then have above and beyond that the owe sheets which were taken from his person, the line sheets which are recordations of wagers showing that he used these handicap sheets for his own purposes, that is, betting.

We have the testimony of the expert who says from the line sheet, from the owe sheets, and from the conversations —because, of course, they are very important on each date—we can tell that Mr. Katz is involved not only in handicapping but actually in betting; that he was able to tell that because Mr. Katz was a professional bettor. He bet for others for consideration.

Finally, and certainly not to be overlooked, is Mr. Katz' admission on not one but two occasions, once to Mr. Leo LaRue of the Federal Bureau of Investigation, and on the second occasion to Mr. Donovan of the Federal Bureau of Investigation, at which times, on separate days, Mr. Katz admitted he was in the business of handicapping and betting.

As a matter of fact, I think it was to Mr. Donovan that he went so far as to say, "If you give my records back I will be betting tomorrow." So clearly that is Mr. Katz' business.

He was engaged in the business of wagering. He used the interstate wire facilities, and he placed wagers to the

two cities mentioned, plus also giving information
354 and causing information to be transmitted in connection with the business of wagering.

Argument on Behalf of the Defendant

Mr. Marks: If the court please, I think the issues that we deal with here are, No. 1, the interpretation of a criminal statute. We have to start interpreting these statutes, I believe, quite strictly.

And the authorities for that are cited in the memorandum of points and authorities in support of the motion to dismiss.

The evidence here—the question—as I say, we are dealing now with a very peculiar statute which has no definitions in it which states that in the first place to be guilty of this offense a person engaged in the business of betting or wagering must do certain things in interstate commerce.

No. 1, he either must place a bet or he must assist in the transmission of information concerning betting or wagering.

Now, I am trying to think of the case, and perhaps it is cited. It dealt with, I believe, 1952—Section 1952. That's U. S. v. Bergland, which is a 318 F. 2d 159 case, where they talk about whether or not the past-posting applied in situations quite similar. That was information about a
past-posting bet. The question was, I believe,
355 whether or not this was wagering information. My recollection—Mr. Farber can correct me if I am wrong—is that this was not betting or wagering information as that statute was to be construed because you assume it is going to be on a wager which has already—which is ready to be transmitted.

Now, if we take the transcription of February 19, 1965, the primary conversation of Mr. Katz dealt with a wager which had already been placed and there was an attempt to settle it. Using a strict construction of the statute, this transmission of information was not a transmission or assisting in the transmission of wagering information whatsoever.

There is a question as to the statement, "He gave me, an extension oh good he will give me credit for eleven and I can owe twenty," as to whether or not this is wagering

information or talking about credit. But if you apply the strict standard of definition and give the benefit of doubt to the defendant, it must be seen that this is also not assisting in the transmission of wagering information.

Now, as I understand the reading of the statute, and we are going to read it from the defense standpoint to interpret what Congress meant, the person who is betting or on one end of the line must transmit wagering information or assist in transmitting wagering information. So a great deal of the transcripts deal with not his, Mr. Katz
356 assisting in transmitting wagering information, but in receiving wagering information.

Because the way the statute reads it is "knowingly using—uses a wire communication facility for the transmission in interstate commerce of bets or wagers or information assisting in the placing of bets or wagers."

Now, I submit to the court if you read these transcripts, about 80 per cent of them do not fall within the purview of that statute. There are, concededly, bets placed. We can't argue that. The amount of the bets placed may or may not be subject to argument, depending on whether the expert's testimony is that a nickel means five hundred, whether that is accurate or not. That is the court's purview.

However, this does not establish that Mr. Katz was in the business of betting or wagering.

I submit the following consideration to the court. We have no information, outside information supplied by the Government as to what Mr. Katz does or does not do. We do know that he was on the one day on which we had surveillance, fortunately or unfortunately, depending upon the way the case comes out, of plaintiff Katz' activities. We see a man lounging around the pool receiving some phone calls, and not too many, during the course of a day in which some of them there is conversation about
357 bets he may or may not have placed, or at least conversation, as far as I can determine, about sporting events in general.

But there is nothing to indicate from this full day's activities, which apparently was a betting day, that he was engaged in that business or any other business. The only evidence we have is that he placed bets.

We don't know what his business is. I submit that a business man, a person engaged in any other endeavor, real estate, grocery store, what-have-you, could still devote some time to a hobby or, call it what you want, his own penchant, fetish for betting, and not be in the business of betting.

The statute is designed primarily, I assume, to catch those persons who actually make a business of it, who earn their living or make their livelihood from it. That's my understanding of what the Internal Revenue—how the Internal Revenue defines the word business.

And I say that the expert himself made in testimony, gave in testimony about the business of Mr. Katz. He testified as to what in his opinion the activities that Mr. Katz was engaged in. And the activity that he stated that he thought Mr. Katz was engaged in was placing wagers for others and receiving some commission from it, as I recall, some percentage or a consideration. That was the exact word. This does not mean that that was Mr. Katz' business.

358 So what we have here is a vacuum, a supposition or an inference that it may have been his business. But I don't think that an inference is sufficient to convict a person beyond a reasonable doubt.

The next situation again is that that goes to reasonable doubt. The exhibits, a portion of them were blown up for the court's consideration, were used by Mr. Gunn to determine his basic conclusions on and they were hampered in that some were printed and had handwriting on them. Nowhere did the Government bring forth any person to express his opinion that this handwriting was the handwriting of Mr. Katz. Therefore, the mere fact that Mr. Katz was in possession of these—what do you call them? line sheets, owe sheets, betting markers, does not, contrary to the expert's opinion, explain that he did or did not make the bet or these were recordations of his bets or anybody else's bets.

The expert assumed that the notations on the markers were Mr. Katz'. There is no evidence to that effect.

His opinion must be a bit blurred by what—his assumption was, naturally, and he stated on the stand so, that if Mr. Katz owned them, they were his.

So I submit to the court that the FBI is a rather thorough-going organization. They book people in. They get handwriting exhibits. The court has seen, I am
359 sure, numerous cases where the FBI experts have got up and have compared handwriting exhibits and said, "Yes, this is the handwriting of the defendant."

But they didn't choose to do this for some reason. Perhaps the reason they chose not to do it was because it is not in the handwriting of Mr. Katz.

If you look at the telephone records I submit that the fact that the telephone records show a long-distance call and a charge for a long-distance call does not prove that in fact a long-distance call was made unless the person who actually dialed that call were here to testify that such a call was made.

There is a hiatus in the proof of the Government that there was transmission in interstate commerce, again going to the fact, first, that before we can use any statements allegedly by Mr. Katz made on the telephone that in fact there was first placed a call to a point across the state line.

I don't think that the telephone records showed it. I think that there is a contradiction between the statements of the FBI agents as to the number that they saw on the booth that Mr. Katz was in and the number which the call, if it was made, was charged to.

Now, the inference that Mr. Farber tried to express was that Mr. Katz was lying to the operator.
360 Well, that isn't the only inference that you can arrive at when he stated the number he was calling from. There is no inference that he was lying whatsoever.

So there is an equal inference that he was at the booth that the FBI agents say he was at, or he was at some other number, or it wasn't him making the call. There is an element of doubt.

Count 1 charges that on February 19th at approximately 8:43 a.m. that he, Mr. Katz, committed such an act. As I construe Exhibit 1 there is nothing in there prohibited by statute. I don't believe there was a bet nor was there any assistance in the placing of wagering information.

Count 2 alleges that he on the same date at approximately 8:54 p.m. did make a telephone call. I think there is no evidence whatsoever to sustain Count 2 that there was a call made at 8:54 p.m.

The next is February 20th at 8.31 p.m.—excuse me—a.m. There is a telephone call in which the expert testified that there was a bet made.

Count 4, 9:31 a.m. "Give me Duquesne for a dime." Assuming that you feel that the evidence was sufficient that Mr. Katz was in the business, I would assume that he made a bet assuming that you believe that there was a call made across state lines and you believe
361 it beyond a reasonable doubt.

Count 5 is the February 23rd conversation. I don't believe on February 23rd you can find any betting information given, nor do I believe that you can find a bet placed.

Count 6 is February 24th, 8:56 a.m. There is, according to the expert, a bet placed.

February 25th at 8:46 a.m. there are the words, "Bet a nickel," which I assume can be construed as a bet. I believe there are two bets on that date. Two different phone calls which would also go to February—Count 8.

Again—your Honor, the only thing I can say is that the case is extremely weak. It is especially weak when you deal with the question of the business of Mr. Katz. I sincerely believe that it is so weak that without the extrajudicial statements of Mr. Katz you would never be able on the evidence to produce before the court, the external evidence, have a corpus delicti sufficient to admit the other statements.

You certainly can't use the statements to build up a corpus delicti where it did not exist. And nowhere, even the statement of Mr. Katz, "You would take me out of business. I am a handicapper"—the expert for the Government said that you can be a handicapper and that could be your business and not have betting as your busi-
362 ness.

I again say it is a question of probably semantics. But today in the law we deal very largely in semantics, because a person if he doesn't do what the law prohibits, or in income tax it is the difference between evasion and avoidance, he has to be strictly prohibited from doing a certain act.

And I submit to the court if a person is a handicapper and that is his business, and let's say he is being paid for handicapping, and the way he is being paid for handicapping and making good handicapping is by somebody else paying him on the bets that somebody else makes, that the man's business is not that of betting or wagering; the betting or wagering is incidental to his business of handicapping for somebody, and he is being paid for his handicapping, if that is the case, and he is not in the business of betting or wagering even under the Government's most favorable testimony, then the court should acquit him on all counts.

Thank you.

Closing Argument on Behalf of the Plaintiff

Mr. Farber: Just a few things, your Honor.

With respect to Bergland v. United States, which is found in 318 F. 2d, I believe that counsel is in error.

363 In that case the court did find that past posting came within the confines of Section 1952, and in so doing they reversed the lower court decision.

But, quite frankly, I don't think that has anything to do with this case.

Now, what is our evidence that these records are indeed the records of the defendant? What is the evidence that these records that were found on Defendant Katz' person and in his room are his records? It is true that the FBI could have come in here with a handwriting expert, but to do so would be an unnecessary act and a waste of the court's time plus the Government's money. It seems a little unusual and kind of silly.

In view of the evidence we would respectfully submit that it would be unnecessary to bring in such a handwriting expert.

What evidence do we have that the records were Defendant Katz's? One was found on his person, the rest were found in his room. The records correlate and interrelate pretty definitely with the conversations so that an expert is able to trace a bet which was transcribed in the

transcripts that the court has to the very records that are found on Defendant Katz's person. So I don't think there is much doubt that those records are Mr. Katz' even
364 though we didn't perform the unnecessary act of having a handwriting expert.

There are many ways of proving that a man has or has not made certain records. In this case we have done it by good, strong circumstantial evidence.

Now, with respect to the question of business was Mr. Katz in the business of betting and wagering? We have his admission, that's for certain.

Again, contrary to counsel's assertion concerning corpus delicti, I think his argument of corpus delicti is somewhat misplaced. But contrary to his assertion, in this Circuit and, as a matter of fact, in all the federal courts of the United States the statement itself can be used to establish corpus delicti as long as the statement plus the other evidence shows beyond a reasonable doubt that that's what we are talking about, the admission is reasonably true, it appears reasonably that the administration is true. That's all that the federal courts demand.

So, therefore, to establish that Mr. Katz was in the business of betting we have his admission that he was in the business of betting.

What did he say? He said if the records were taken from him he couldn't earn a living any place else and couldn't earn, I think, $60 a week, something on that
365 order.

But, in addition to that, let's assume for just an instant that Mr. Katz has three other jobs plus being in the business of wagering over the telephone in interstate commerce. The mere fact that Mr. Katz might also be a butcher or baker or an accountant would not—and I would reemphasize that, your Honor—would not proscribe him or limit him from having two businesses.

For instance, there are attorneys who also are in real estate. And for income tax purposes, which I think is a good analogy, under the income tax law if an attorney who practices law during most of the week sells certain

amounts of real estate which he has invested in this real estate is taxed not as capital gain but as ordinary income because he is "in the business of selling real estate."

So a man can have any number of businesses. Certainly in this case, disregarding Mr. Katz' admissions that he was in the business, and assuming, though, there is no evidence to that effect, that Mr. Katz was an accountant, he is still in the business of wagering and betting.

Comments and Finding of the Court

The Court: Well, gentlemen, I was just checking each of the counts against the memoranda that were in the file here, Government's Exhibits 1 through 6, and it
366 is my opinion that the evidence shows beyond a reasonable doubt that the defendant was engaged in the business of wagering, and that as such on each occasion indicated by the counts in the Indictment he did transmit in interstate commerce information pertaining to wagers or did in fact place bets.

The court is entitled, I think, to draw certain inferences here that seem apparent in view of the fact that there is no evidence to the contrary.

These markers found in the possession of the defendant would indicate that they were his. He has not explained away their being in his possession. We will assume, therefore, that they are his.

The volume of business being done as seems to appear from the exhibits would indicate that this more than a casual, incidental occupation of the defendant. This court can well draw the inference, and the court does find, that it was a business and the defendant was engaged therein as a person.

The court finds the defendant guilty on all counts as charged.

Mr. Marks: Your Honor, I don't know whether it was a typographical error, but Count 2 does state 8:54 p.m., and

I believe there was an absolute lack of evidence on any night calls.

367 The Court: Well, I take it that where the Indictment alleges that certain things occurred at approximately 8:45—

Mr. Farber: It is 8:54 p.m., your Honor. That would be a typographical error.

The Court: —that the fact that the Government doesn't prove that it happened exactly at this time is not important.

Mr. Marks: Well, what I am—

The Court: On or about that time and that date this conversation took place.

Mr. Marks: That is what Count 1 says, your Honor. You see, both Count 1 and Count 2 are both on the 19th.

The Court: Yes.

Mr. Marks: One alleges a call in the a.m. and the other alleges a call in the p.m.

The Court: But the transcript shows two conversations on that date.

Mr. Marks: In the morning.

The Court: In the morning. And the mere fact that the time does not concur with that in the night and that the time here is not an essential element of the crime seems to me to be of no consequence. It is sufficiently near to conform to the allegations in the counts.

368 Mr. Marks: Does the court wish to have a probation report, pre-sentence report?

The Court: Upon the court's finding the defendant, of course, stands convicted of the offenses charged in all eight counts.

The matter will be referred to the probation office for investigation and report, and a hearing upon the report will be set for June 21st at 2:00 o'clock in this room.

Mr. Marks: May the defendant remain out on bail?

The Court: Yes, the defendant may remain on bail.

Mr. Marks: And, your Honor, I will file the formal papers to set a motion for new trial for the same date.

The Court: Very well.

Mr. Marks: Thank you.

Mr. Farber: I gather, so that we don't have a problem of jurisdiction, that the defendant is being given an extension of the five-day period.

Mr. Marks: I will file it within the five days.

The Court: He will file it within the five days.

369 Mr. Marks: And notice it for the 21st.

The Court: There being nothing further, we stand adjourned.

(Whereupon, at 3:30 o'clock p.m., Thursday, May 20, 1965, an adjournment was taken.)

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370 Reporter's Certificate to foregoing transcript
(Omitted in printing.)

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371 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715-CD

Commissioner's Docket No. 42

Case No. 129

Motion for a New Trial and for a Judgment of Acquittal Points and Authorities in Support Thereof—Filed May 24, 1965

The defendant moves the court to grant him a new trial for the following reasons:

1) The evidence received against the defendant was the result of an unlawful search and seizure or seizures, and was improperly admitted over objection of the defendant.

2) The statute under which the defendant was convicted is void on its face and as applied in violation of Amendments One and Five to the United States Constitution.

3) The verdict was not supported by substantial evidence.

4) The finding or verdict of guilty as to all counts is defective in that only one offense, if any, was committed by the defendant.

5) The indictment was defective in alleging in multiple counts a single violation of statute.

This motion will be argued to the court on June 21, 1965.

B. MARKS

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372 **Points and Authorities in Support of Motion**

1) Defendant incorporates herein by reference all points and authorities heretofore submitted to the court in support of the motion to suppress evidence and the motion to dismiss the indictment.

2) It is respectfully submitted that the offense denounced by § 1084 is a "continuing offense" and separate acts constituting a single offense cannot be separately charged in the indictment or separately construed as a violation of the statute.

In *Bell* vs. *U.S.*, 349 U.S. 81, 99 Law Ed. 905, the defendant had transported two women across state line on the same trip and in the same vehicle. In an opinion written by Mr. Justice Frankfurter, the question was "once more it becomes necessary to determine 'what Congress has made the allowable unit of prosecution' . . ."

Section 1084 purportedly punishes the person engaged in the business of betting or wagering for using a wire facility. Nothing in the statute indicates that a separate telephone call is a separate offense for each use of the wire. In fact, by the nature of the statute, it contemplates a continued use of the wire facilities since it would be used by a person "in the business."

In the *Bell* case, the court stated:

> "When Congress has the will it has no difficulty in expressing it—when it has the will, that is, of de-

fining when it desires to make the unit of prosecution and, more particularly to make each stick in a faggot a single criminal unit. When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in
373 favor of lenity. And this not out of any sentimental consideration, or for want of sympathy with the purpose of Congress in proscribing evil or antisocial conduct. It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a penal code against the imposition of a harsher punishment. This in no wise implies that language used in criminal statutes should not be read with the saving grace of oommon sense with which other enactments, not cast in technical language, are to be read. Nor does it assume that offenders against the law carefully read the penal code before they embark on crime. It merely means that if Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses . . .''

Respectfully submitted,

/s/ B. Marks
Burton Marks

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374 **Proof of Service by Mail**

(Omitted in printing)

(File endorsement omitted)

375 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715-JWC-CD

(Title omitted)

Opposition to Defendant's Motion for Judgment of Acquittal, and in the Alternative, for New Trial—Filed June 3, 1965

The United States of America opposes defendant Charles Katz's Motion for a New Trial and for a Judgment of Acquittal, on the grounds that defendant Katz is not legally entitled to such relief.

This opposition is based on all the Court's records pertaining to the above-entitled case and on the attached Memorandum of Points and Authorities.

Respectfully submitted,

MANUEL L. REAL
United States Attorney

JOHN K. VAN DE KAMP
Assistant U.S. Attorney
Chief, Criminal Section

/s/ BENJAMIN S. FARBER
Benjamin S. Farber
Assistant U.S. Attorney

Attorneys for Plaintiff
United States of America

376 **Memorandum of Points and Authorities**

I

Defendant Charles Katz is not entitled to a judgment of acquittal in this case.

The Ninth Circuit stated the rule which governs the granting of a Motion for Judgment of Acquittal in *Las Vegas Merchant Plumbers Ass.* v. *United States,* 210 F.2d 732 (9 Cir. 1954) at page 742:

> "The verdict of a jury will be sustained if there is any substantial evidence in the record to support it. In determining whether the evidence is sufficient to support the verdict, we must consider the evidence in the light most favorable to the Government. Glasser v. U.S., 1942, 315 U.S. 60, 69, 62 S.Ct. 457, 86 L.Ed 680; Woodward Laboratories, Inc., v. U.S., 9 Cir. 1952, 198 F.2d 995."

See also *Schoppel* v. *United States,* 270 F.2d 413 (4th Cir. 1959).

In *Las Vegas Merchant Plumbers Ass., supra,* the trier of the fact was the jury. It is respectfully submitted the circumstance is not different merely because the trier of fact is the Court.

In answer to the other points raised by defendant Charles Katz, it is respectfully submitted that they have been already considered at great length by this Court.

Furthermore, we do not see how the case *Lamont* v. *the Postmaster General of the United States,* cited by defendant Katz in his letter to this Court assists Katz with respect to the question presented by this case. Frankly, we do not see how it is relevant.

II

Defendant Charles Katz is not entitled to an order granting him a new trial. A motion for a new trial is addressed to the sound discretion of the trial court, *Johnson* v. *United States,* 265 F.2d 496 (4th Cir. 1959), but motion for
377 a new trial is not favored. *United States* v. *Costello,* 225 F.2d 876 (2nd Cir. 1958).

The test for whether or not a motion for a new trial should be granted appears to be contained in *United States* v. *Wilson,* 178 F. Supp. 881 (D.C. D.C. 1959) in which case Judge Holtzoff pointed out at page 884:

> ". . . 'It [motion for a new trial or order granting new trial] should be invoked only in exceptional cases in which the evidence preponderates heavily against the verdict.' "

It is respectfully submitted that there was substantial evidence upon which this Court could base its verdict, and this Court should not commit any error which was prejudicial to defendant Katz.

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378 **Certificate of Service by Mail**

(Omitted in printing)

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379 IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF CALIFORNIA,
CENTRAL DIVISION

No. 34715-Criminal

UNITED STATES OF AMERICA

v.

CHARLES KATZ

On this 21st day of June, 1965 came the attorney for the government and the defendant appeared in person and by counsel, Burton Marks.

Judgment—June 21, 1965

IT IS ADJUDGED that the defendant has been convicted upon his plea of not guilty and a finding of guilty of the offense of being engaged in the business of betting and

wagering, knowingly using a wire communication facility for the transmission in interstate commerce of information assisting in the placing of bets and wagers, in violation of Title 18, United States Code, Section 1084, as charged in Counts 1, 2, 3, 4, 5, 6, 7, and 8 of the Indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant pay a fine unto the United States of America in the amount of $300.00 on each of Counts 1, 2, 3, 4, 5, 6, 7, and 8, to begin and run concurrently. (Total fine $300.00).

IT IS ORDERED that the defendant stand committed until the fine is paid, or until he is otherwise discharged as provided by law.

IT IS ORDERED that the execution of the payment of the fine is stayed for a period of twenty four hours.

IT IS ORDERED that the bond of the defendant is exonerated.

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

JESSE W. CURTIS,
United States District Judge.

L. BROSNAN
by L. A. Brosnan,
Deputy Clerk.

FILED: June 21, 1965

JOHN A. CHILDRESS,
Clerk

380 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715 Criminal

(Title omitted)

Minutes of the Court—June 21, 1965

At: Los Angeles, Calif.
PRESENT: Hon. JESSE W. CURTIS, District Judge.
Deputy Clerk: Leonard Brosnan.
Reporter: Jack Ellis.
U.S. Atty, by Assistant U.S. Atty: Robert Talcott.
Defendant: on bond.
Counsel: Burton Marks.
PROCEEDINGS: SENTENCE—all 8 counts—finding of guilty by Court. Statements by court, counsel and defendant.
IT IS ORDERED that the motion for new trial is denied.
Court sentences defendant to pay a fine unto the United States of America in the amount of $300.00 on each of Counts 1 through 8, to begin and run concurrently. (Total fine $300.00)
Defendant is ordered to stand committed until fine is paid. Court further orders defendant granted 24 hours stay for payment of fine.
Bond of defendant is exonerated.

JOHN A. CHILDRESS,
Clerk

By L. BROSNAN
Leonard Brosnan
Deputy Clerk

(File endorsement omitted)

381 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715-CD

(Title omitted)

Notice of Appeal—Filed June 28, 1965

To the Clerk of the Above Entitled Court:

Please Take Notice that the defendant Charles Katz hereby and herewith appeals from the judgment of conviction rendered for violation of Title 18, U.S.C. § 1084 and the sentence of a fine of $300.00 pronounced against him June 21, 1965, the Honorable Jesse W. Curtis, Jr., Presiding, to the Circuit Court of Appeals for the Ninth Circuit.

Dated: June 24, 1965.

/s/ Burton Marks
Attorney for Defendant

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382 **Proof of Service by Mail**

(Omitted in printing)

(File endorsement omitted)

383 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715-CD

(Title omitted)

**Appellant's Designation of Record on Appeal—
Filed June 30, 1965**

TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO THE RESPONDENT UNITED STATES OF AMERICA AND ITS ATTORNEYS:

PLEASE TAKE NOTICE that appeallant hereby and herewith designates the following record to be transmitted to the Court of Appeals:

1) The reporter's transcript of the proceedings had at the motion to suppress the evidence and of the proceedings had at the time of trial.

2) In the clerk's transcript:

a) The clerk's docket sheet.

b) All minute orders of the clerk.

c) Appellant's motion to suppress the evidence and to return evidence, and his motion to dismiss.

d) Respondent's opposition and any points and authorities filed therewith.

e) Any supplementary points and authorities filed
384 by appellant with respect to any motions directed to the Court.

f) Appellant's notice of motion and motion for new trial and points and authorities and supplementary authorities.

g) The notice of appeal.

h) This designation of record on appeal.

DATED: June 29, 1965.

/s/ BURTON MARKS
Attorney for Appellant

385 **Proof of Service by Mail**

(Omitted in printing)

(File endorsement omitted)

386 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715-CD

(Title omitted)

Appellee's Counterdesignation of Record on Appeal—Filed July 6, 1965

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE APPELLANT AND HIS ATTORNEY:

The United States of America counterdesignates in the above-entitled case:

1) As part of the record on appeal all the exhibits which were received in evidence, and also

2) United States of America's Opposition to defendant-appellant's Motion for Judgment of Acquittal, or in the Alternative, Motion for New Trial.

Dated: July 6, 1965.

MANUEL L. REAL
United States Attorney

JOHN K. VAN DE KAMP
Assistant U.S. Attorney
Chief, Criminal Section

BENJAMIN S. FARBER
Assistant U.S. Attorney

/S/ BENJAMIN S. FARBER
Benjamin S. Farber
Assistant U.S. Attorney

Attorneys for Plaintiff
United States of America

387 **Certificate of Service by Mail**

(Omitted in printing)

(File endorsement omitted)

388 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

No. 34715-CD

(Title omitted)

Application for Extension of Time to File Reporter's Transcript on Appeal and Order—Filed September 29, 1965

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

BURTON MARKS, being duly sworn, deposes and says:

That he is an attorney at law duly authorized to practice in all the courts of this state, and is attorney for appellant Charles Katz in the instant case.

That the appellant Charles Katz has been unable to obtain the necessary funds for ordering the transcript on appeal. That said funds have now been obtained and have been forwarded to the reporter and said transcript is being prepared.

WHEREFORE, declarant respectfully prays that an order be made enlarging the time for the filing of the reporter's transcript on appeal to and including October 25, 1965.

I certify under penalty of perjury the foregoing statements to be true and correct.

Executed at Beverly Hills, California this 24th
389 day of September, 1965.

/s/ BURTON MARKS

Order

Petitioner is granted an addition of time for filing the reporter's transcript on appeal to and including October 25, 1965.

PICASOS W. HULL
Judge

390 **Proof of Service by Mail**

(Omitted in printing)

(File endorsement omitted)

391 IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. ————————

(Undocketed)

CHARLES KATZ, *Appellant,*

v.

UNITED STATES OF AMERICA, *Respondent*

Appellant's Statement of Points and Designation of Record—Filed January 12, 1966

TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO THE RESPONDENT UNITED STATES OF AMERICA AND ITS ATTORNEYS:

PLEASE TAKE NOTICE that Appellant hereby designates the following Record on Appeal in the above entitled cause:

(1) The Clerk's Transcript on Appeal.

(2) The Reporter's Transcript on Appeal.

(3) Appellant designates the following points to be raised on appeal:

A. The conviction of Defendant and Appellant was based on evidence seized in violation of Amendment IV to the United States Constitution.

B. The statutes under which Defendant and Appellant was convicted are unconstitutionally vague.

C. As a matter of law, Defendant and Appellant committed no crime.

D. The statutes under which Defendant and Ap-
392 pellant was convicted are unconstitutional in viola- of Amendments I and V to the United States Constitution.

E. As a matter of fact and law the evidence was insufficient to sustain the conviction of Defendant and Appellant.

Respectfully submitted,

/s/ B. MARKS
BURTON MARKS,
Attorney for Appellant

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393 **Proof of Service by Mail**

(Omitted in printing)

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395 IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Before: CHAMBERS and BARNES, Circuit Judges, and
POWELL, District Judge

Minute Entry of Order of Argument and Submission—October 7, 1966

This cause coming on for hearing, Burton Marks, argued for the appellant, and Robert L. Brosio, Asst. United States Attorney, argued for the appellee, thereupon the Court ordered the cause submitted for consideration and decision.

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396 IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Before: CHAMBERS and BARNES, Circuit Judges, and
POWELL, District Judge

Minute Entry of Order Directing Filing of Opinion and Filing and Recording of Judgment—November 17, 1966

ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the Clerk and that a judgment to be filed and recorded in the minutes of this Court in accordance with the opinion rendered.

397 IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20,648

CHARLES KATZ, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Southern District of California, Central Division

Opinion—November 17, 1966

Before: CHAMBERS and BARNES, Circuit Judges and POWELL, District Judge

POWELL, District Judge:

The appellant was charged in each count of an eight count indictment with a violation of Title 18 USC 1084.[1] That statute proscribes the interstate transmission by wire communication of bets or wagers, or information as-
398 sisting in the placing of bets or wagers by a person engaged in the business of betting or wagering. Each count involved a violation on a different date or at different times on the same date. Appellant waived a jury. The district judge found appellant guilty on all counts.

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[1] The pertinent part of 18 USC 1084 is as follows:

"(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined not more than $10,000 or imprisoned not more than two years, or both.
"(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State where betting on that sporting event or contest is legal into a State in which such betting is legal."

The appellant moved to suppress evidence in the possession of the government and for the return of the evidence and the dismissal of the indictment. Following a hearing, the motions were denied. On the motion to suppress the evidence was substantially as follows:

In February of 1965 the appellant was seen placing calls from a bank of three public telephone booths during certain hours and on an almost daily basis. He was never observed in any other telephone booth.

In the period of February 19 to February 25, 1965, at set hours, Special Agents of the Federal Bureau of Investigation placed microphones on the tops of two of the public telephone booths normally used by the appellant. The other phone was placed out of order by the telephone company. The microphones were attached to the outside of the telephone booths with tape. There was no physical penetration inside of the booths. The microphones were activated only while appellant was approaching and actually in the booth. Wires led from microphones to a wire recorder on top of one of the booths. Thus the F.B.I. obtained a record of appellant's end of a series of telephone calls.

A study of the transcripts of the recordings made of the appellant's end of the conversations revealed that the conversations had to do with the placing of bets and the obtaining of gambling information by the appellant.

On February 23, 1965, F.B.I. Agent Allen Frei rented a room next to the appellant's apartment residence. He listened to conversations through the common wall without the aid of any electronic device. He overheard the appellant's end of a series of telephone conversations and took notes on them. These notes and the tapes made from the telephone booth recordings were the basis of a search warrant which was obtained to search appellant's apartment. The search warrant called for "* * * bookmaking records, wagering paraphernalia, including but not limited
399 to, bet slips, betting markers, run-down sheets, schedule sheets indicating the lines, adding machines, money, telephones, telephone address listings * * *". (See N. 4). The articles seized are described in the return (C.T. 20-22). They are all related to the categories described in the warrant.

During the conversations overheard by Agent Frei, the appellant made numerous comments to the effect that "I have Northwestern minus 7", and "Oregon plus 3." Also, there was a statement by the appellant such as, "Don't worry about the line. I have phoned Boston three times about it today."

At the trial evidence was introduced to show that from February 19 to February 25, 1965, inclusive, the appellant placed calls from two telephone booths located in the 8200 block of Sunset Boulevard in Los Angeles. The conversations were overheard and recorded every day except February 22. The transcripts of the recordings and the normal business records of the telephone company were used to determine that the calls went to Boston, Massachusetts, and Miami, Florida.

The testimony of Joseph Gunn of the Administrative Vice Division of the Los Angeles Police Department, who was the expert called by the government in the area of bookmaking, was that the transcripts of the conversations showed that bets were made and information assisting in the placing of bets was transmitted on the dates and at the times alleged in the indictment. Bets were recorded like "Give me Duquesne minus 7 for a nickel."[2] Information relating to the line and the acquiring of credit was also transmitted.

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[2] A. Mr. Katz is paying for somebody else and getting a percentage out of it. When he says he is only getting a dollar, this would mean that on a thousand dollar bet he would be getting a hundred dollars in this instance.

Q. Is he using what is called the nickel system?

A. Yes, sir.

Q. In referring to his bets?

A. Yes.

Q. What is the nickel system?

A. The nickel system is terminology in which a $500 bet would be called a nickel, a $1,000 bet would be called a dime. The $100 bets are usually referred to as a dollar or two dollars.

Also when you record on the nickel system you omit to the right of the decimal point so that $2,500 would be written 25 and two small zeros rather than writing four decimal point zero zero." (RT 240).

400 In correlating the transcript of the telephone conversations and line sheets and markers found in appellant's residence during the search pursuant to the warrant, Officer Gunn concluded that appellant was placing wagers with a bookmaker for another person for a consideration.

On February 25, 1965, the appellant was arrested. He was advised by a Special Agent of the F.B.I., Emmett Doherty, that he had a right to remain silent, he had a right to consult counsel, and that any statements he made could be used against him in a court of law. The appellant was arrested on the street. He was later present in his apartment where another agent of the F.B.I. was involved in the search authorized by the search warrant. Appellant asked when he could have his records back. He stated that without them he was out of business and that he knew no other trade. During this exchange, in response to a question about interstate betting, the appellant said that he could not bet locally because the bookmakers would not pay off.

The next day, which was February 26, 1965, Agent Donovan of the F.B.I. met appellant in the lobby of his apartment building to return two personal items which had been taken at the time of the search. Donovan had been with Agent Doherty the day before when Doherty advised the appellant of his rights with respect to statements made to the Federal Agents. Appellant again asked why he could not have his records back. He stated without them he was out of business and that he had been a handicapper and a bettor most of his life. He suggested that if he got his records back he would continue to bet.[3]

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[3] "THE WITNESS: I returned to Mr. Katz a nail file and a key chain. Upon his taking them he said, 'I can replace these for 35 cents. Why can't I have my records? Without my records I am out of business. I have been a handicapper and a bettor most of my life, and it has taken hours and hours of compilation to prepare these records.'

"Mr. Katz continued as to the time factor in the records, and then suggested that if he could have his records back he would continue betting. And he facetiously made the comment, 'Then I can lead you to the big ones.' " (RT 219, 220).

From all of the evidence in the case the court found the volume of business being done by the appellant indicated that it was not a casual incidental occupation of the
401 appellant. The court found that he was engaged in the business of betting or wagering at the time of the telephone conversations which were transmitted and recorded. (RT 316, 317).

I. *Recording of Phone Booth Conversations.*

The appellant argues that the evidence obtained at the time of the recording of the appellant's end of the conversations in the phone booth constituted an illegal search and seizure in violation of the Fourth Amendment to the United States Constitution. Appellant urges this on authority of *Silverman v. United States,* 365 U.S. 505 (1961), which he says expresses the current attitude of the Supreme Court.

In the Silverman case the agents used a spike microphone which was driven into a party wall. It contacted a heating duct of the house occupied by the petitioners. This enabled the agents to hear conversations in the entire house, including conversations on the telephone. The case was reversed because of the invasion into a "constitutionally protected area." The court said, "the officers overheard the petitioner's conversation only by usurping part of the petitioner's house or office." (365 U.S. at 511). It was held to be a violation of the petitioner's Fourth Amendment rights.

Appellant cites cases which we have considered. In *People of the State of California v. Hurst,* 325 F. 2d 891 (9 Cir. 1963), there was an unlawful invasion of premises used as a residence. We do not consider *Lopez v. United States,* 373 U.S. 427 (1963), as authority sustaining appellant's position as that case sustained the right to record a conversation between a government agent and the suspect. *United States v. Paroutian,* 299 F. 2d 486 (2 Cir. 1962), was reversed because a search of an apartment without a warrant produced evidence later used to search the same apartment after the defendant's right to possession had terminated. This last case would apply only if

we found that the evidence obtained by the recording of the phone conversations here was in violation of appellant's Fourth Amendment rights. This we decline to do.

The public phone booth was used by appellant, who argues that when he occupied it for the purpose of engaging in a personal conversation and closed the door to
402 the booth, he is in effect in his own residence. By invitation from the telephone company and the payment of the toll he says he is entitled to consider the booth protected from intrusion by the Fourth Amendment. In *Smayda v. United States,* 352 F. 2d 251 (9 Cir. 1965), police officers observed events in a stall in a public toilet through a camouflaged hole in the ceiling. The court held that this was not a violation of the Fourth Amendment rights of the defendants on two grounds, 1) the appellants impliedly consented to the search when they carried on their illegal acts in a public toilet, and 2) there was no unreasonable search within the meaning of the amendment. 352 F. 2d at 253, 256.

In *Olmstead v. United States,* 277 U.S. 438 (1928), evidence was introduced which was obtained by tapping the wires of the telephones used by petitioners. It was held that the use of the evidence did not violate the Fourth Amendment rights of defendants.

In *Goldman v. United States,* 316 U.S. 129 (1942), federal agents were permitted to testify to conversations overheard by the use of a detectaphone applied to the walls of a room adjoining the office of the defendant. This is similar to the instant case. It was held not to be an invasion of defendant's office.

In the recent case of *Corngold v. United States,* .... F. 2d .... (9 Cir. Sept. 29, 1966), the appellant objected to the evidence obtained by the use of a "scintillator", an instrument sensitive to radiation. Customs agents saw appellant carrying packages into his apartment. The officers observed the appellant and two other men carrying packages from the apartment to the appellant's car. They followed the appellant as he drove to the Los Angeles International Airport. The scintillator, when used outside of the appellant's apartment, and while following appellant's car, reacted so as to indicate that there was a

radioactive substance in the possession of the appellant. The court there said:

> "Appellant contends that the walls of his apartment were 'penetrated' and his apartment was searched by means of the scintillation detector in violation of his Fourth Amendment rights, and that it was error to admit evidence obtained in this way.
>
> "The agents entered the apartment building through an unlocked public entrance. They employed the
> 403 scintillator in public hallways outside appellant's apartment. Goldman v. United States, 316 U.S. 129 (1942), is controlling authority that appellant's Fourth Amendment rights were not violated. See also On Lee v. United States, 343 U. S. 747, 752-54 (1952)."

The Corngold case sustains the government in the use of the evidence obtained by microphones and tape recordings of the telephone conversations of the appellant in this case. There was no physical entrance into the area occupied by appellant. The Corngold case was reversed on the ground that the agents were not authorized to search the packages in the airport terminal without a search warrant. Here a search warrant was obtained and executed.

II. *The Search Warrant.*

The search warrant described the items to be seized which were instrumentalities of the offense.[4] It is our conclusion that the search warrant does adequately describe the property to be seized. It was not general nor did it described mere evidentiary matter.

In *Gilbert v. United States,* 291 F. 2d 586 (9 Cir. 1961), this court held that the search was unreasonable when

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[4] "* * * there is now being concealed certain property, namely bookmaking records, wagering paraphernalia, including but not limited to, bet slips, betting markers, run down sheets, schedule sheets indicating the lines, adding machines, money, telephones, telephone address listings which are designed and intended for use as the means of committing criminal offenses in violation of Title 18, United States Code Section 1084, and violations of 441, 4412 and Section 7203 of the Internal Revenue Code. * * *" (Vol. 1. CT 17).

government agents allegedly maneuvered to make the arrest of the defendant in his home. No offense was committed in the presence of the arresting officer. The crime charged was the forgery of a check which the government had in its possession. The items seized were checks and income tax returns which were evidentiary only and not instrumentalities of the crime charged.

We have reviewed the authorities cited by the appellant. The case of United States v. Clancy, 276 F. 2d 617 (7 Cir. 1960), (reversed on other grounds in 365 U.S. 404 312), more nearly resembles the fact situation here. The search warrant described the property to be seized as in this case.[5]

In *Leahy v. United States,* 272 F. 2d 487, 491 (9 Cir. 1959), concerning a search, this court stated as follows:

> "* * * The revenue agents in the instant case seized an adding machine, a telephone, record books, receipts, pencils, pens, money and the keys to safety deposit boxes, as well as a number of rifles, shotguns and pistols. It is clear from the items seized that the search was specifically directed to the instrumentalities used in the commission of the crime of unlawfully engaging in the business of wagering. The records of an illicit business are instrumentalities of crime. Marron v. United States, 1927, 275 U. S. 192, 48 S. Ct. 74, 72 L. Ed. 231 (officers incident to arrest may lawfully seize account books and papers used in carrying on the criminal enterprise.) Such were the records obtained in this case. The search was, therefore, a reasonable one."

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[5] "* * * divers records, to wit books, memoranda, tickets, pads, tablets and papers recording the receipt of money from and the money paid out in connection with the operation of a wagering business on said premises, such files, desks, tables and receptacles for the storing of the books, memoranda, tickets, pads, tablets and papers aforesaid, and divers receptacles in the nature of envelopes in which there is kept money won by patrons * * * and divers other tools, instruments, apparatus, United States currency and records * * *' ". (276 F. 2d at 624).

The search warrant was valid and the court was correct in refusing to suppress the evidence obtained on the search.

III. *The Indictment.*

Counsel argues that there was a single violation under the statute, 18 USC 1084. This is not borne out by the record as we view it. Each call was a separate act of the defendant in using the telephone and would constitute a separate and distinct offense.

In construing a related statute to 18 USC 1084, the court in *United States v. Teemer,* 214 F. Supp. 952, 958 (N.D. W.Va. 1963), said:

405 "* * * (T)he 'course of conduct' referred to in the * * * legislative history of section 1952, refers to the nature of the business promoted or facilitated—and not to the essence of the federal offense, which is 'travel'. The phrase seems to refer to the fact that the Act was designed to attack an entrenched operation rather than a sporadic poker game or floating crap game. No act of travel is to be deemed unlawful unless the enterprise is a continuing one; but once the continuity of the enterprise is established, any act or travel * * * is a daily or regular event, and thus, perhaps, a 'continuing' activity. * * *"

Mitchell v. United States, 142 F. 2d 480 (10 Cir. 1944), was an appeal from a conviction of mail fraud. It was held that a continuing scheme once established may support additional charges of violation of the statute. Each act of mailing would constitute a separate and distinct offense once the scheme was established. That woud be the case here, as was found in the Teemer case supra under 18 U.S.C. 1952.

IV. *Constitutionality of 18 USC 1084*

Appellant urges that the statute is unconstitutional in that it is indefinite, vague and uncertain, and therefore violates the Fifth Amendment. In support of his argument

that this statute is void for vagueness, appellant quotes language from the recent case of *Giaccio v. Pennsylvania,* 382 U. S. 399 (1966). The statute involved there was an 1860 law of Pennsylvania that permitted the taxing of costs against a defendant acquitted in a criminal case. A reading of that statute shows that it fixed no standards for its application. It was vague and uncertain.

In *Turf Center, Inc. v. United States,* 325 F. 2d 793, 795 (9 Cir. 1963), this court held 18 USC 1952 as not void for vagueness. That section is similar to and a companion section to 18 USC 1084.

> "A statute meets the standard of certainty required by the Constitution if its language conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices. * * *
> The fact that in some cases it may be difficult to de-
> 406 termine the side of the line on which a particular fact situation falls is not sufficient reason to hold the language too ambiguous to define a criminal offense. * * *"

We do not consider the authorities cited by the appellant as sustaining his position that this statute is void or that it interferes with the right of free speech. The plain and unambiguous language used in the statute is entitled to its ordinary and reasonable interpretation. This statute meets the standard of certainty required by the Constitution.

V. Sufficiency of the Evidence

A complete review of the record has been made. The evidence was detailed and was not substantially disputed. The defendant presented no testimony. We are convinced that there was sufficient evidence to sustain the conviction of the defendant.

The judgment of conviction is affirmed.

407 IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 20,648

CHARLES KATZ, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Judgment—Filed and Entered November 17, 1966

APPEAL from the United States District Court for the Southern District of California, Central Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

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408 Clerk's Certificate to foregoing transcript
(Omitted in printing.)

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409 SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1966

No. 895

CHARLES KATZ, *Petitioner,*

v.

UNITED STATES

Order Allowing Certiorari—March 13, 1967

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted limited to Questions 1 and 2 presented by the petition which read as follows:

"1. Whether evidence obtained by attaching an electronic listening and recording device to the top of a

public telephone booth used and occupied by the Petitioner is obtained in violation of the Fourth Amendment to the United States Constitution.

A. Whether a public telephone booth is a constitutionally protected area so that evidence obtained by attaching an electronic listening recording device to the top of such booth is obtained in violation of the right to privacy of the user of the booth.

B. Whether physical penetration of a constitutionally protected area is necessary before a search and seizure can be said to be violative of the Fourth Amendment to the United States Constitution.

"2. Whether the search warrant used by the Federal officers in the instant case violated the Fourth Amendment to the United States Constitution in that said warrant was (a) not founded on probable cause; (b) an evidentiary search warrant and (c) a general search warrant."

The Court also wishes counsel to brief and present oral argument on the holding in Frank v. United States, 347 F. 2d 486 as it may affect this case.

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411 SUPREME COURT OF THE UNITED STATES

No. 895, October Term, 1966

CHARLES KATZ, *Petitioner,*

v.

UNITED STATES

ON CONSIDERATION OF THE MOTION of the petitioner for leave to proceed further herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

May 22, 1967.

☆ U. S. GOVERNMENT PRINTING OFFICE 1967—256326/P.O. 970