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Federal Wire Act

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

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Federal Wire Act

- 1084 (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 or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

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### Federal Wire Act

- 1084 (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 or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

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### Federal Wire Act

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### Federal Wire Act

- Business of Betting or Wagering
  - "...requires the sale of a product or service for a fee involving third parties, i.e., customers and clients, or the performance of "a function which is an integral part of such business --" Baborian

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### Federal Wire Act

- Information Assisting
  - Point Spreads
  - Account Information
  - Odds
  - ... *Information a bookmaker uses to operate their business*

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### Federal Wire Act

- "sporting event or contest"
  - *DOJ View Pre-12/2011*
  - *In re: MasterCard*
  - *Lombardo*
  - *DOJ View 12/2011-12/2018*
  - ...

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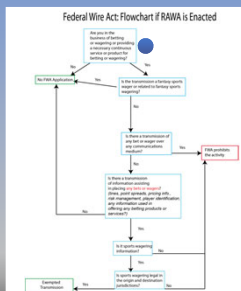
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### Restoration of America's Wire Act

- Removes sporting event or contest from the first prohibition
- Deems all internet traffic to be interstate and foreign transmission whether or not information crosses state lines
- Leaves 1084(b) untouched
- Excludes fantasy sports from the Federal Wire Act prohibitions
- No exclusion for state regulated gambling




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# RAWA - Illegal Conduct

System Supported  
Slot Gaming  
With Remote Server

Are you in the business or wagering?  
YES

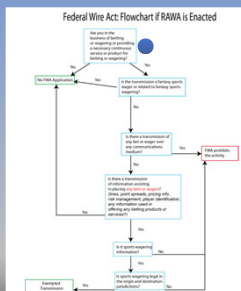
Is it a fantasy sports transmission?  
No (casino gaming)

Is there a transmission of a bet?  
No (just information)

Is the transmission of information used to place bets?  
Yes (terms of wagering)

Is it sports wagering information?  
No (casino gaming)

RAWA FWA prohibited




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# RAWA - Illegal Conduct

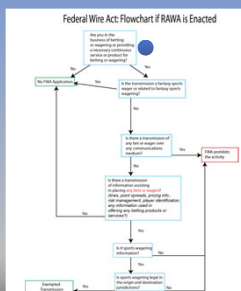
System Based  
Slot Gaming  
With Remote Server

Are you in the business or wagering?  
YES

Is it a fantasy sports transmission?  
No (casino/slot wager)

Is there a transmission of a bet?  
YES

RAWA FWA prohibited




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# RAWA - Illegal Conduct

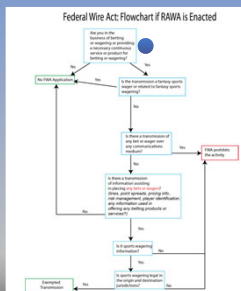
Remote Sports Bets  
In Nevada

Are you in the business or wagering?  
YES

Is it a fantasy sports transmission?  
No (sports wager)

Is there a transmission of a bet?  
YES

RAWA FWA prohibited




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# RAWA - Illegal Conduct

MEGABUCKS

Are you in the business or wagering?  
YES

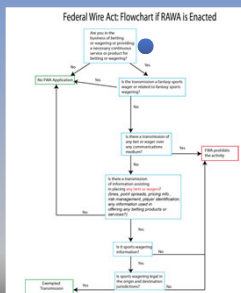
Is it a fantasy sports transmission?  
No (casino gaming)

Is there a transmission of a bet?  
No (just information)

Is the transmission of information used to place bets?  
Yes (informs players of jackpot)

Is it sports wagering information?  
No (casino gaming)

**RAWA FWA prohibited**




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# RAWA - Illegal Conduct

POWERBALL

Are you in the business or wagering?  
YES (MUSL and Lottery Outlets)

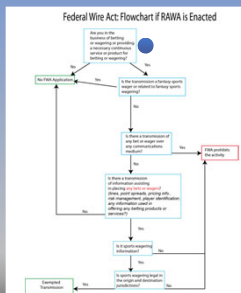
Is it a fantasy sports transmission?  
No (lottery gaming)

Is there a transmission of a bet?  
No (just information)

Is the transmission of information used to place bets?  
Yes (informs players of jackpot)

Is it sports wagering information?  
No (casino gaming)

**RAWA FWA prohibited**




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# RAWA - Illegal Conduct

Negotiating Significant Player Agreements via Phone or E-Mail

Are you in the business or wagering?  
YES

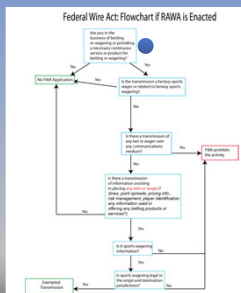
Is it a fantasy sports transmission?  
No (casino gaming)

Is there a transmission of a bet?  
No (just information)

Is the transmission of information used to place bets?  
Yes (terms of wagering)

Is it sports wagering information?  
No (casino gaming)

**RAWA FWA prohibited**




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## Federal Wire Act

- Restoration of America's Wire Act

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## Federal Wire Act

- Restoration of America's Wire Act
  - Hearings are a disaster and the bill dies

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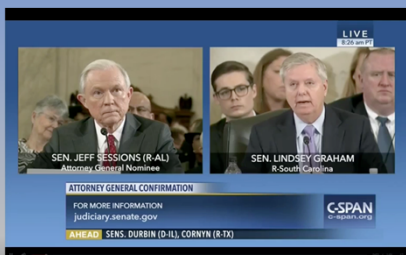
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## Federal Wire Act



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### Federal Wire Act

- January 2019 DOJ Opinion
  - Reinterprets the Federal Wire Act prohibitions again

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### Federal Wire Act

- Evolutionary Interpretation - 2019 Opinion
- States there is no tension between the UIGEA and Federal Wire Act
  - Removes basis for interpreting the Federal Wire Act to not be applicable to intrastate wagering
- Implies NY and IL lotteries must not rely on the 2011 opinion to continue intrastate online lottery product sales

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### Federal Wire Act

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interstate and foreign commerce only impact the first clause

no sporting event after bets or wagers

sporting event or contest only modifies information assisting

a second transmission without reference to interstate or foreign commerce is present in the second clause and no references to sporting event or contest

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Federal Wire Act

- More fallout...

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Federal Wire Act

- New Hampshire District Court Opinion
  - What are the issues?

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Federal Wire Act

- New Hampshire District Court Opinion
  - What are the issues?
    - Whether the Federal Wire Act applies to state actors?
    - Whether the Federal Wire Act prohibitions are limited to sports wagering?

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Federal Wire Act

- New Hampshire District Court Opinion
  - Will the court rely on the Lyon's opinion that issued a jury instruction stating the Federal Wire Act applies to sports wagering only?

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Federal Wire Act

- New Hampshire District Court Opinion
  - Will the court rely on the Lyon's opinion that issued a jury instruction stating the Federal Wire Act applies to sports wagering only?
    - "I cannot defer to the circuit court's unconsidered dictum in Lyons"

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Federal Wire Act

- New Hampshire District Court Opinion
  - In the 2019 Opinion, the DOJ argues the sporting events and contests language only limits the first "information assisting" prohibition to sports wagering and thus the Wire Act's other prohibitions apply to all sports wagering, does the court agree?

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### Federal Wire Act

- New Hampshire District Court Opinion
  - In the 2019 Opinion, the DOJ argues the sporting events and contests language only limits the first "information assisting" prohibition to sports wagering and thus the Wire Act's other prohibitions apply to all sports wagering, does the court agree?
    - As the OLC concluded in 2011, the omission of the interstate-commerce modifier from the second clause "suggests that Congress used shortened phrases in the second clause to refer back to terms spelled out more completely in the first clause." 2011 OLC Opinion at 7. I agree with the 2011 OLC Opinion that this instance of borrowing by the drafters of § 1084(a) gives textual support for similarly importing the sports-gambling modifier into the second clause.

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### Federal Wire Act

- New Hampshire District Court Opinion
  - New Hampshire District Court Opinion
    - Many states filed Amicus briefs. Did the court extend its holding beyond New Hampshire and its vendors?

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### Federal Wire Act

- New Hampshire District Court Opinion
  - New Hampshire District Court Opinion
    - Many states filed Amicus briefs. Did the court extend its holding beyond New Hampshire and its vendors?
      - The parties nevertheless disagree as to whether a declaratory judgment should be limited to the parties or have universal effect.<sup>15</sup> The plaintiffs maintain that declaratory relief "necessarily extends beyond the [Commission] itself" Doc. No. 58 at 21. The Government contends that any declaratory relief must apply only to the parties to the case. I agree with the Government.

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## Federal Wire Act

- New Hampshire District Court Opinion
    - New Hampshire District Court Opinion
- The judgment provides the Lottery Commission and NeoPollard complete relief. No more is needed.

### III. CONCLUSION

In summary, I deny the Government's motion to dismiss for lack of jurisdiction (Doc. No. 45) because the plaintiffs have established standing, and the Government has not met its burden to show that the case is moot. I grant the plaintiffs' motions for summary judgment (Doc. Nos. 2 & 10) and deny the Government's cross-motion for summary judgment (Doc. No. 45). I hereby declare that § 1084(a) of the Wire Act, 18 U.S.C. § 1084(a), applies only to transmissions related to bets or wagers on a sporting event or contest. The 2018 OLC Opinion is set aside. SO ORDERED

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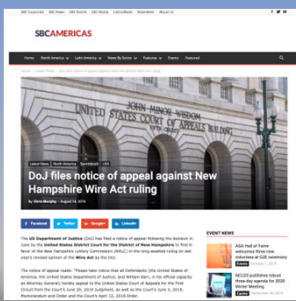
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## Federal Wire Act

- New Hampshire District Court Opinion
  - In August 2019 the DOJ Appeals




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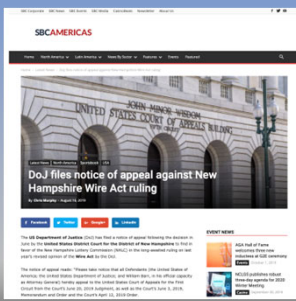
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## Federal Wire Act

- New Hampshire District Court Opinion
  - In August 2019 the DOJ Appeals




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### Federal Wire Act




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### Federal Wire Act

- IGT Files for Declaratory Relief in Rhode Island.




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### Federal Wire Act

- DOJ needs more time to respond

### DOJ Needs Extra 30 Days to Respond to IGT's Wire Act Lawsuit

US gaming attorneys say extension likely a nothingburger, but there is also a chance Biden DOJ could be close to clarifying position on Wire Act.




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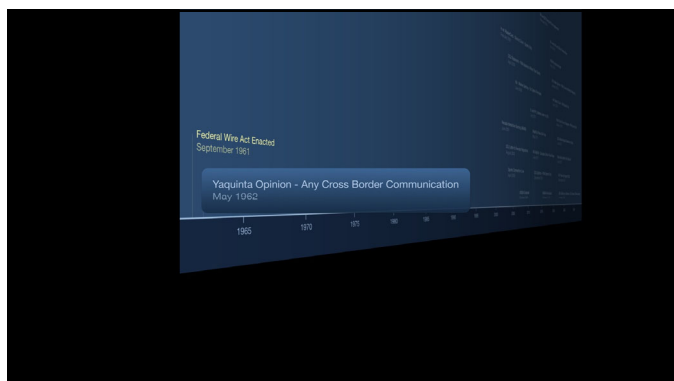
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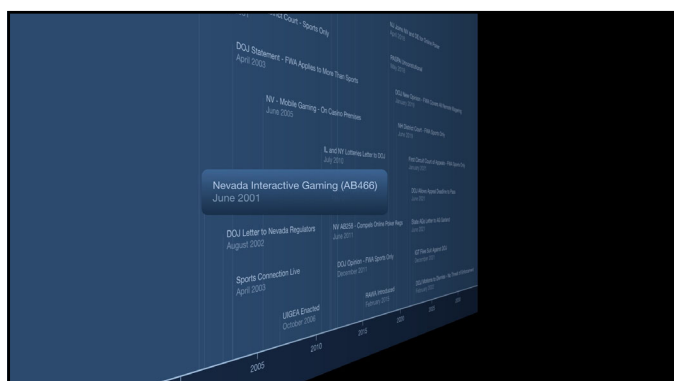
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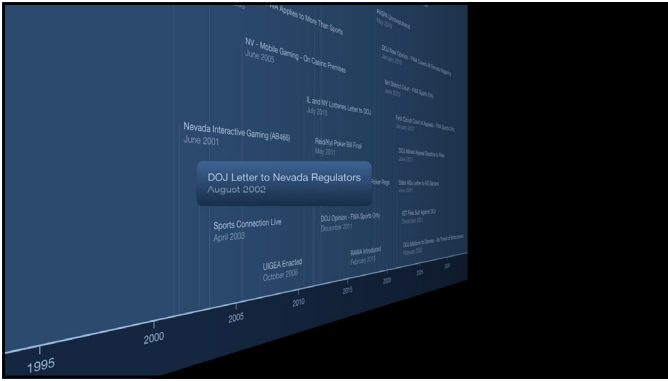
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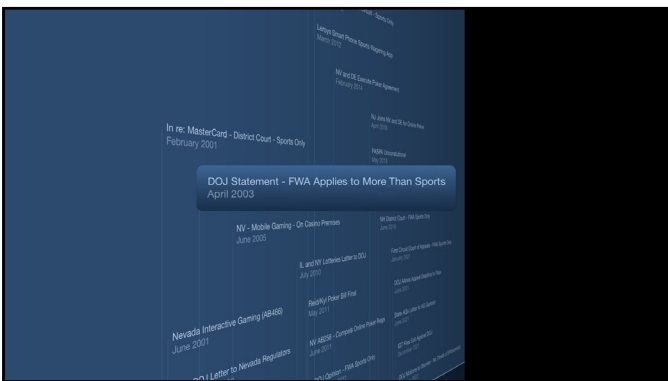
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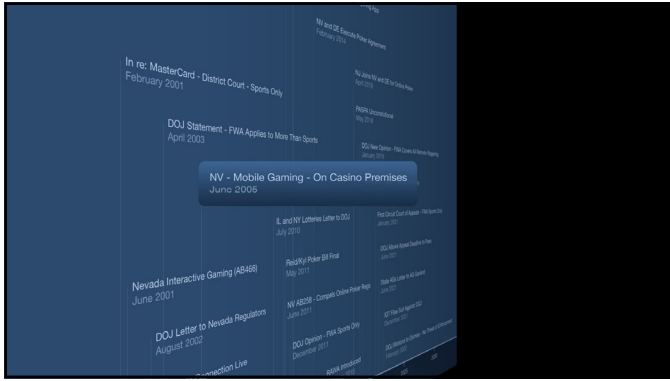
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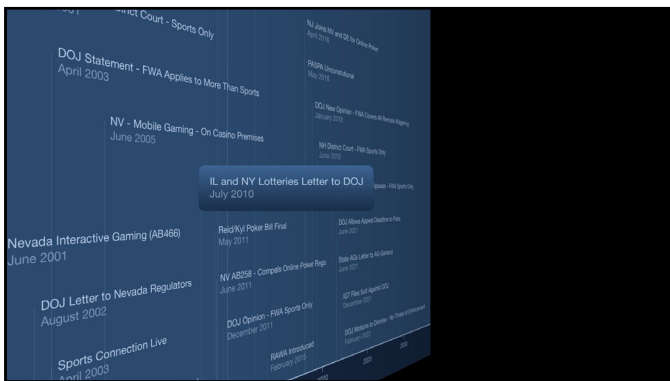
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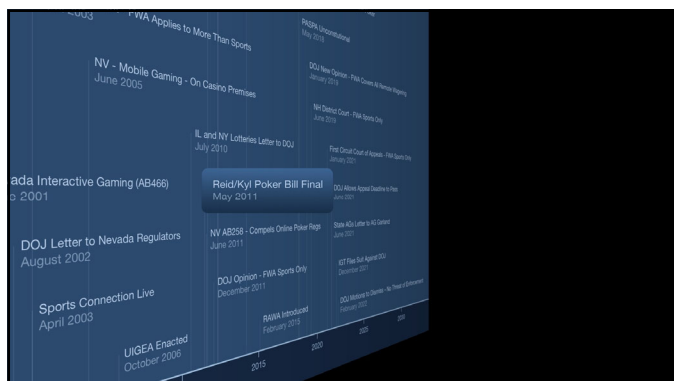
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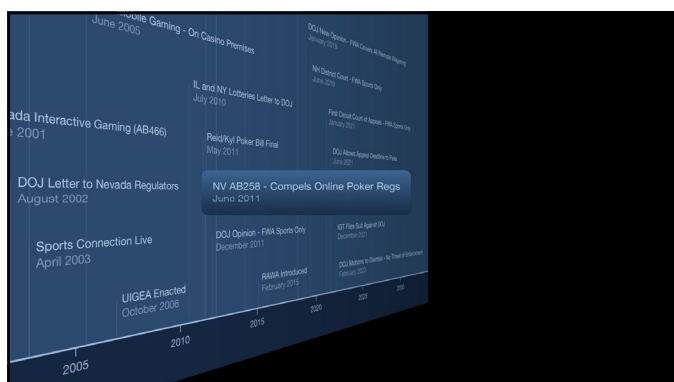
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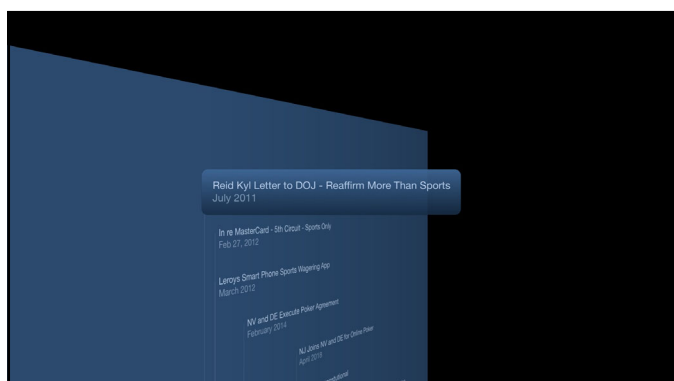
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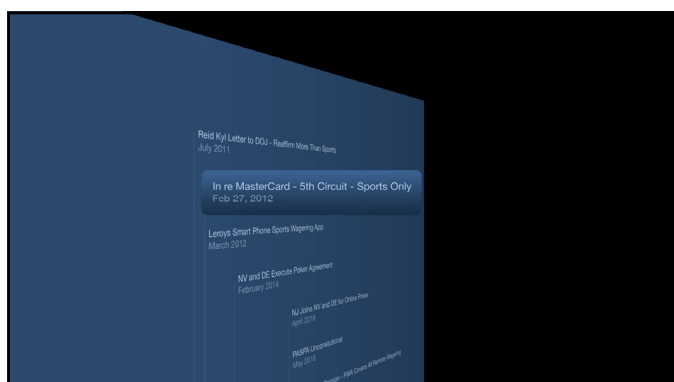
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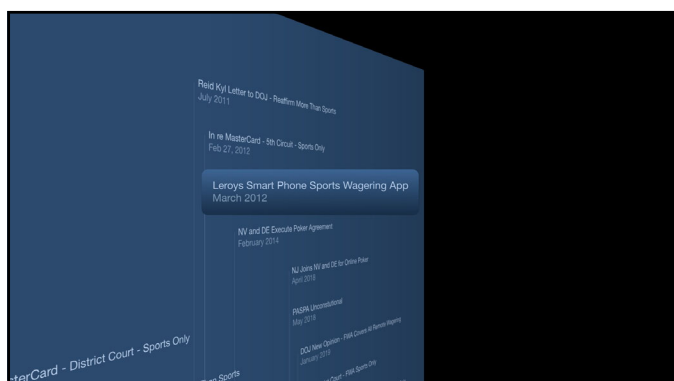
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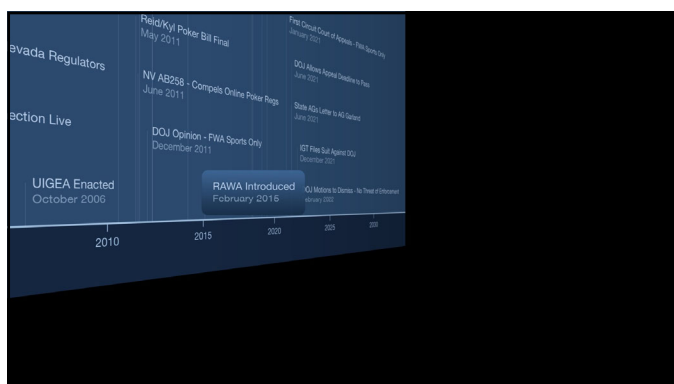
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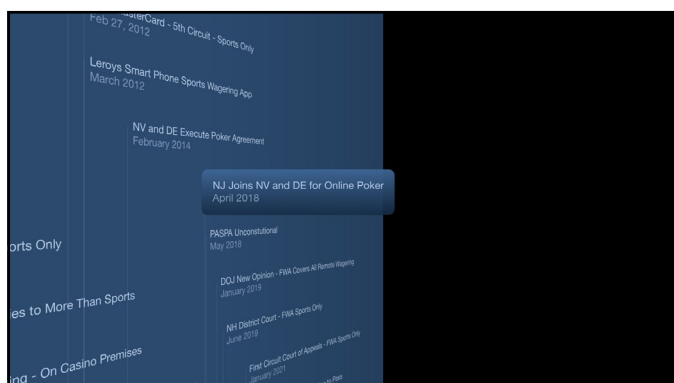
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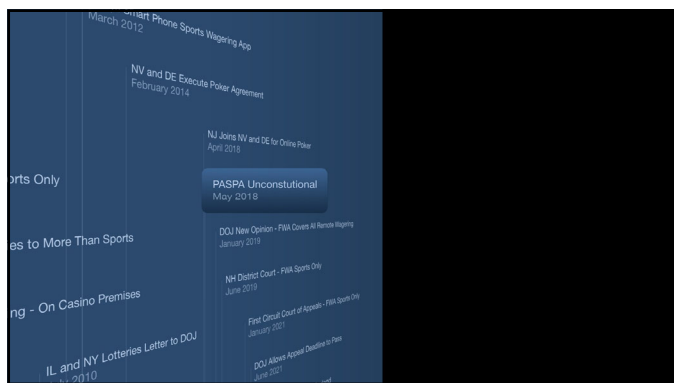
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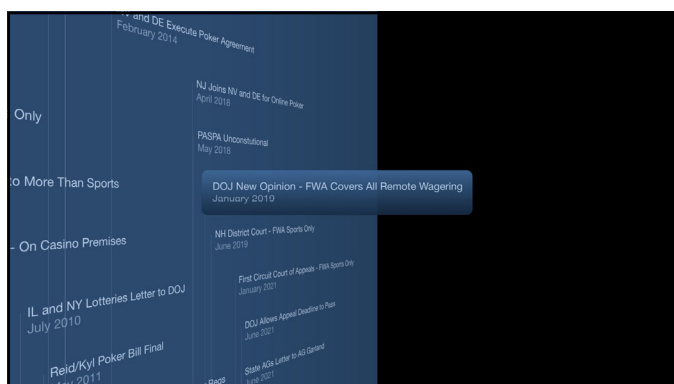
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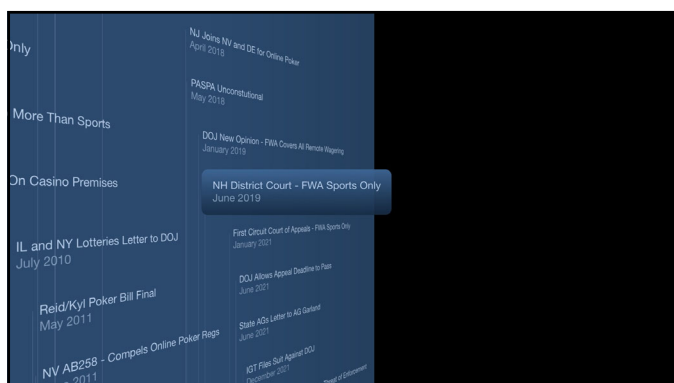
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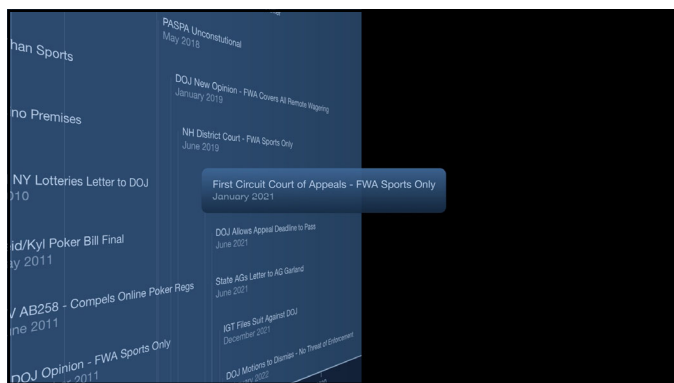
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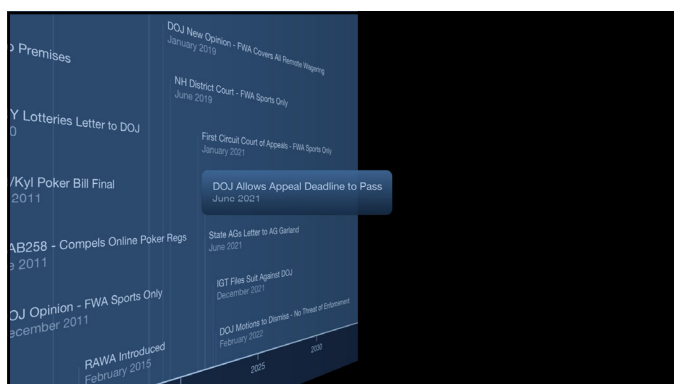
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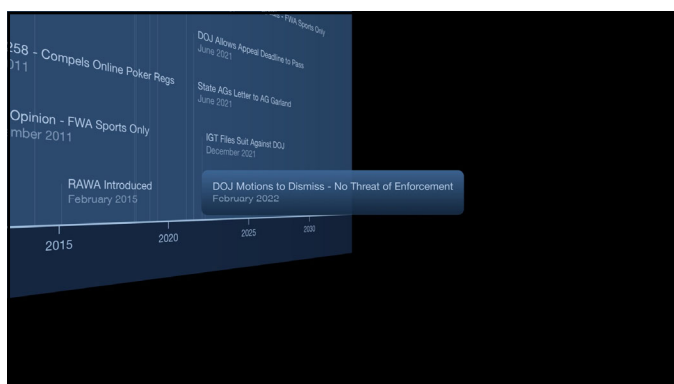
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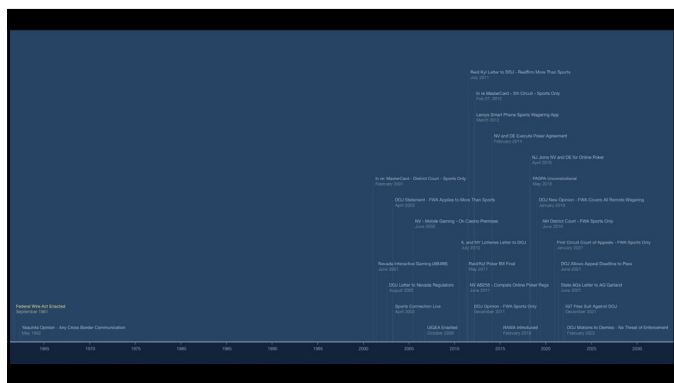
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QUESTIONS

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