

ARTICLE: KNOW WHEN TO HOLD 'EM, KNOW WHEN TO RUN: THE BALLAD OF BILLY WALTERS

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Text

[*141] Introduction

If you love a rags-to-riches story or, for those with higher levels of schadenfreude, a rags-to-riches-to-rags story, the Ballad of Billy Walters has something for you. Rising from modern-day street urchin to prominence as [*142] the "most feared man in the history of sports betting,"¹ he fell because he ignored a common poker mantra: "play the man, not the cards."² In fairness, "the man" was the United States government and, as we'll see, it didn't exactly play by the rules.³

The Ballad of Billy Walters is a complicated tune, with even more complex harmonies. It has three distinct movements, beginning with his disadvantaged youth in Mundfordville, Kentucky, progressing through his gambling success in the world of sports-betting, and culminating in his conviction on insider trading charges in 2017.⁴ This final movement is particularly challenging, because it requires telling two separate and dissonant stories about the criminal conspiracy that landed Walters in prison for five years.⁵ The first is the story that has legal weight, the story told by the government and accepted by the jury, the district court, and the Second

¹ *Billy Walters - A Legend in Sports Betting History*, USA SPORTSBOOK SITES (Sep. 21, 2015) [hereinafter *Legend*], <https://www.usasportsbooksites.com/articles/billy-waltersbio.html>.

² *E.g.*, "Play the Man, Not the Cards" *Why It Pays to Be Like Harvey Specter*, CATLANT (Oct. 1, 2014), <https://gocatalant.com/blog/play-the-man-not-the-cards-why-it-pays-to-be-like-harvey-specter/>. Other variations are "play the man, not the odds" or "play the man, not the cards," but the idea is the same.

³ Cue I Fought the Law and the Law Won, by the Bobby Fuller Four (1966). See BOBBY FULLER FOUR, I FOUGHT THE LAW (Mustang Records) (1965), <https://www.youtube.com/watch?v=OgtQj8O92el>. Or, if you prefer the more recent version by the Clash (1979), see THE CLASH, I FOUGHT THE LAW (Columbia Records) (1979), <https://www.youtube.com/watch?v=AL8chWFuM-s>.

⁴ *Legend*, *supra* note 1; Mike Fish, *Billy Walters on His Conviction, Gambling - and Ex-Friend Lefty*, ESPN (Mar. 28, 2018), <https://www.espn.com/espn/ot/story/id/22946649/world-best-most-feared-sports-gambler-game-us-supreme-court-considers-legalizing-craft-espn>.

⁵ Fish, *supra* note 4.

[*143] Circuit. ⁶The second story is the one told by Walters and his lawyers (and obviously discounted by the jury).

Of course, most criminal cases have an alternative story told by the accused, but Walters' alternative tale deserves airing for a number of reasons. First, there were legitimate concerns of misconduct by the government, concerns that were dismissed with some hand-waving by the Second Circuit but are deserving of illumination, given their seriousness. Second, the prosecution's case involves a pivotal role for something referred to as "the bat-phone," and related plausible claims of perjury. Third, Walters' tale, if true, makes Walters the most incompetent and economically illiterate insider trader in history.

These dissonant harmonies are even more intriguing by their place as the third movement in this composition, coming at the end. The first movement is melancholy and often repetitive, describing poverty, bad choices, but also a determination for the future. The second movement is jubilant, but with a sinister subtext, as Walters becomes "the most dangerous man in sports betting." The Ballad then ends with Walters' bridge from gambling to capital markets and the descent to federal prison.

I. First Movement: From Street Urchin to Failed Gambler

William T. Walters began his time on earth in Munfordville, Kentucky, a small city off Interstate 65 in central Kentucky. ⁷He was born into poverty, and things quickly went from bad to worse, as his father died before Walters turned 2 and his mother left shortly thereafter. ⁸ **[*144]** He lived with his grandmother, and that relationship was as complicated as many other areas of his life would become. She worked two jobs while trying to provide for seven children in a house with no running water or indoor plumbing. ⁹Walters later said that his grandmother was a role model for him, ¹⁰but she left Walters largely in the care of his uncle, who ran a local pool hall and promptly put young Billy to work. ¹¹

His time in the pool hall established the two harmonies of Walters' early life--hard work and gambling. Starting work at such a young age certainly helped Walters develop a work ethic, and he engaged in a number of entrepreneurial ventures as a child. With the help of his grandmother and a \$ 40 loan, he started a lawnmowing business at the age of seven. ¹²At the age of nine, he started a paper route with a \$ 90 loan. Over the course of his early years, he worked any number of jobs--newspaper boy, shoeshine boy, baker, tobacco worker, gas station attendant, painter, foundry worker, and more--but he always considered gambling his true vocation. ¹³

⁶ United States v. Walters, 910 F.3d 11 (2d. Cir. 2018), *cert. denied*, No. 18-1393 (U.S. Oct. 7, 2019).

⁷ Fish, *supra* note 4.

⁸ Jamie Lareau, *Billy Walters: Done Gambling, Still Dealing*, AUTOMOTIVE NEWS (July 9, 2016), <https://www.autonews.com/article/20160709/RETAIL07/307119920/billy-walters-done-gambling-still-dealing>.

⁹ Fish, *supra* note 4; Lareau, *supra* note 8.

¹⁰ Lareau, *supra* note 8. Walter's grandmother died when Walters was thirteen, which led to his reconnecting with his mother and moving in with her in Louisville, Kentucky. See Fish, *supra* note 4.

¹¹ Ian Thomsen, *The Story of the Computer Group*, offshore bettor.com/computer.php. Some stories of his childhood say that his grandmother began charging him rent upon learning that he was working for his uncle. *Id.* A more charitable interpretation of events is that, having the ability to help alleviate the indigent circumstances of his grandmother, Walters pitched in at an early age.

¹² Lareau, *supra* note 8.

¹³ Thomsen, *supra* note 11.

His passion for gambling, however, was not matched by an equivalent skill. Nine-year-old Walters **[*145]** lost all of his paper-route money when he wagered it all on the 1955 Yankees to win the World Series.¹⁴ This and other early failures did not deter his devotion to gambling, however, and he lost everything he owned at least fifteen times.¹⁵ In one poignant example he came home with the distressing news that he and his second wife would have to move because he had lost his house "pitching nickels," a game where participants throw coins at a wall, with the closest coin winning.¹⁶ The winner agreed not to take the house but did require Walters to mortgage the house and turn over the proceeds.¹⁷ From pre-teen pool hustle to teenage poker games at "Billy's Lounge," to later, more serious gambles, Walters never achieved any form of financial success with gambling. As a car dealer, earning (by his own estimate) the 1960s equivalent of \$ 400,000 to \$ 500,000 a year, he "never accumulated one dollar."¹⁸ His second marriage eventually ended because he had, once again, lost everything in a gamble.¹⁹

II. Second Movement: Gambler Extraordinaire

The second movement of *The Ballad of Billy Walters* begins in 1982, when he abandoned all pretense and moved to Las Vegas with his third wife to commit himself fully to gambling.²⁰ He enjoyed some success as a stand-alone gambler, but his big break came after making friends with Dr. Ivan Midlin and joining "the **[*146]** Computer Group,"²¹ meaning that the *Ballad's* second movement has an underlying techno beat.²²

The Computer Group had three basic components: (1) the algorithm; (2) the gambler; and (3) the public face. Just as a great harmony arises from multiple notes being played at once, the "music" of the Computer Group arose from the combination of these three elements, allowing them to achieve collectively what none of them were likely to achieve individually.²³

Michael Kent was the source of the algorithm, which he initially developed as an engineer for Westinghouse to predict the outcomes of games in Westinghouse's intramural softball league.²⁴ When he realized the potential of his algorithm beyond intramural softball, he moved to Las Vegas and expanded the algorithm to a wide range of collegiate and professional sports.²⁵ Unfortunately for Kent, gambling requires more than simply

¹⁴ *Legend, supra* note 1.

¹⁵ *Id.*

¹⁶ Thomsen, *supra* note 11.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ He was married at 17 and a father by 18, but the marriage didn't last long. *Legend, supra* note 1.

²⁰ Thomsen, *supra* note 11.

²¹ *Id.*

²² A personal preference of the author's is Blue, by Eiffel 65. EIFFEL 65, BLUE (DA BA DEE) (Bliss Corporation) (2011), <https://www.youtube.com/watch?v=zA52uNzx7Y4>.

²³ Thomsen, *supra* note 11.

²⁴ Tomas Rios, *The Godfathers of Sports Betting*, DAILY BEAST (Apr. 13, 2017), <https://www.thedailybeast.com/the-godfathers-of-sports-betting>.

²⁵ *Id.* In an entertaining twist, Kent learned about the business of gambling from the book, *Theory of Gambling and Statistical Logic*, by Richard A. Epstein. Thomsen, *supra* note 11. As intriguing as that sounds at first glance, however, the book was not written by law professor Richard Allen Epstein, but Richard Arnold Epstein, a physicist-turned-game theorist.

understanding the odds of a particular outcome; it requires knowing when those odds are greater or less than those predicted by the official oddsmaker. ²⁶And, making it big requires betting big, **[*147]** which requires carrying large amounts of cash around, something Kent was reluctant to do. Kent therefore struggled before he met Dr. Midlin and supplied his algorithm to the Computer Group. ²⁷

Walters was the gambler. His responsibility was to identify which of the games predicted by Kent's algorithm presented opportunities for profit. ²⁸Walters then made sure that the appropriate bets were placed in various places around the country. Given the notoriety that the Group eventually achieved, Walters eventually was forced to stop placing bets, and eventually ceased most bets by any direct employees of the Group. ²⁹Instead, they were placed by proxies, or "beards" as they are known in the trade. ³⁰

Dr. Midlin was the founder and public face of the Group. The Group needed a public face so that the algorithm could remain secret and the actual gambling could operate with anonymity. If the betting public knew how the Group was betting, others would follow, the odds might shift unfavorably, and profit opportunities would be prematurely exhausted.

The secrecy of the Group foreshadows, in a number of ways, the third movement of The Ballad of **[*148]** Billy Walters, in which Walters moved into capital markets and eventually was convicted of insider trading. ³¹For example, the Group looks a lot like the sports-betting equivalent of a hedge fund. Other gamblers and the various bookmakers across the country knew that the Computer Group were good, and that they were using data analytics to gain an advantage over the rest of the industry. ³²Importantly, however, no one outside the group knew how their algorithm worked, just that it did. ³³As a result, the Group developed not only a reputation for winning, but a mystique that made everyone want to know what the Group was bidding on.

To preserve the Group's ability to profit, Walters normally limited how the predictions were disseminated. ³⁴On occasion, however, the Group's mystique could be exploited to manipulate the rest of the industry. If the spread on a particular game was slightly too narrow to fit within the Group's comfort range, Walters might authorize a bet to be made by someone with known ties to the Group. ³⁵Word would spread and, wanting to get in on the Group's action, others would bet in the same direction, changing the spread in a way that would allow Walters

²⁶ C.f., Wilson Lee, *Lessons from Billy Walters, the Most Successful Sports Betting Gambler*, HUAT WITH ME (Dec. 4, 2011), available at <https://huatwithme.wordpress.com/2011/12/04/lessons-from-billy-walters-the-most-successful-sports-betting-gambler/>.

²⁷ Rios, *supra* note 24.

²⁸ Thomsen, *supra* note 11. Without getting overly technical, profit opportunities can arise when an underdog wins, when the winning team or participant by a larger margin than predicted (the "spread"), or when the combined score for both teams is lower or higher than predicted (the "over/under"). *See generally, Betting Glossary of Terms*, ESPN (Sep. 4 2014) https://www.espn.com/chalk/story/_id/11457015/betting-glossary-common-betting-terms.

²⁹ Thomsen, *supra* note 11. Eventually, most sports books began refusing to take Walters' bets. *Legend, supra* note 1.

³⁰ It is rumored that Walters has used celebrities like Ashton Kutcher, Bruce Willis, and Floyd Mayweather as beards. *Legend, supra* note 1.

³¹ *United States v. Walters*, 910 F.3d 11 (2d. Cir. 2018).

³² Thomsen, *supra* note 11.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

to take full advantage of the algorithm's predictions. ³⁶Walters would anonymously bet against his original public bet, losing a little on the latter to make real money on the former. ³⁷

The Group made a lot of money--approximately \$ 5 million in profits during 1983-84 college and professional football seasons alone. ³⁸Importantly for the final movement of the Ballad, far more was likely made **[*149]** by friends and family who were given tips on where to place their bets. ³⁹The success of the Group also raised a lot of eyebrows, with many observers believing that the level of success they enjoyed was not obtainable without an unfair advantage. One claim was that Walters was friends with many college coaches, and that he received inside tips regarding the status of certain key players. ⁴⁰Observers also suspected--correctly--that the Group used its reputation to influence the line on games, as discussed above, opening up possibilities for profit where none existed before. ⁴¹

At this point, a sinister melody can be heard in the background--think The Imperial March, commonly known as Vader's Theme ⁴²--as both the FBI and the IRS turn their attention to the Group. The IRS believed that the Group was guilty of tax evasion and the FBI believed that the Group was making book ⁴³--a legal violation--rather than simply placing wagers. ⁴⁴Each investigation included the creation of a fake gambling enterprise and, unfortunately, the two agencies never consulted with each other. If they had, they might have avoided a scene worthy of the keystone cops, ⁴⁵where FBI agents raided the Marcus Spans Service, a barely-disguised gambling operation that was, in fact, the IRS sting operation. ⁴⁶While no IRS agents were arrested by the FBI, the IRS **[*150]** sting operation was quickly closed when real gamblers--with real guns--showed up to collect their winnings. ⁴⁷

Walters was eventually indicted--four separate times--but never convicted. ⁴⁸The indictments and corresponding breakup of the Group, ⁴⁹however, likely began the bridge to the third movement of the Ballad.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Thomsen, *supra* note 11.

³⁹ *Id.*

⁴⁰ *Legend, supra* note 1.

⁴¹ *Supra* notes 34-37 and accompanying text.

⁴² See LONDON SYMPHONY ORCHESTRA, THE IMPERIAL MARCH (Walt Disney Records) (2018), <https://www.youtube.com/watch?v=s3SZ5sIMY6o>. Or, if your tastes are for a little more metal, you can listen to the rage mix: <https://www.youtube.com/watch?v=DeK5YimF4vg>.

⁴³ See *Betting Glossary of Terms, supra* note 27.

⁴⁴ Thomsen, *supra* note 11.

⁴⁵ See, e.g., *Keystone Cops*, WIKIPEDIA (Mar. 11, 2020), https://en.wikipedia.org/wiki/Keystone_Cops.

⁴⁶ Thomsen, *supra* note 11.

⁴⁷ *Id.*

⁴⁸ Lareau, *supra* note 8.

⁴⁹ The FBI investigation and criminal prosecution of the Group may not have resulted in convictions, but it created sufficient distrust between Kent and Midlin that the Group ceased to function. Rios, *supra* note 24. Tellingly, only Walters was able to maintain the level of success he had achieved with the Group. Kent and Midlin largely faded from public life. It also apparently

While Walters never gave up on gambling, he began to diversify his portfolio, to include land development, auto sales, and securities markets. ⁵⁰

III. Third Movement: Legitimate Businessman and Investor or Inside Trader?

As Walters began new ventures, certain aspects of his prior reputation would follow him, continuing themes from the second movement and even a few from the first movement. On the positive side, Walters returned to the auto industry, which had played an important part in his earlier life. ⁵¹Walters had been in auto sales in Kentucky until he left for Las Vegas in 1982 and returned to the industry in 2004 with a passive investment in a Ford-Lincoln dealership. ⁵²In 2009, he started his own auto group in California and, in 2012, the business added **[*151]** dealerships in Kentucky and Georgia. ⁵³Negative themes also continued, with allegations of corruption and cheating.

In developing a number of golf courses, Walters received what his detractors have described as sweetheart deals from Las Vegas politicians. ⁵⁴Most notably, then-Deputy City Attorney Thomas Green stated that the 1999 sale of 160 acres to Walters for construction of the Royal Links Golf Club was "[T]he Walters Group receiving the property free from the city, together with additional \$ 900,000 in free water." ⁵⁵When Walters later offered \$ 7.2 million to lift the deed restrictions on the land--action that would have increased the value of the land by \$ 24 to \$ 28 million--the deal was first approved then rescinded after public controversy. ⁵⁶An investigation found "likely criminal" behavior by the Public Works Director in giving Walters an advantage in the bidding process but that the statute of limitations had run so no charges could be brought. ⁵⁷The investigation also concluded that the request for removal of the deed restrictions was not improper. ⁵⁸

On May 19, 2016, Walters was indicted on charges of insider trading, ⁵⁹and this is where the Ballad gets **[*152]** really complicated. There are two competing melodies vying for dominance in the third movement. The first, a simple tune composed by the government. In it, Walters cultivated a friendship with the CEO of Dean Foods Co., Tom Davis, and received inside information from Davis that allowed him to make millions in profits. ⁶⁰During his gambling days, many had suspected Walters of this kind of behavior, obtaining inside information from his

had a lasting impact on Walters, who stated that "[the] passion I had with gambling has faded. I got burned out on it." Lareau, *supra* note 8.

⁵⁰ Fish, *supra* note 5.

⁵¹ Lareau, *supra* note 8.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Reuters, *Judge rejects bid to dismiss insider trading case against Las Vegas sports bettor Bill Walters*, LAS VEGAS REVIEW-JOURNAL (Mar. 2, 2017, <https://www.reviewjournal.com/news/nation-and-world/judge-rejects-bid-to-dismiss-insider-trading-case-against-las-vegas-sports-bettor-bill-walters/>).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Steve Kanigher, *Investigation may take several more months*, LAS VEGAS SUN (Feb. 19, 2006), <https://lasvegassun.com/news/2006/feb/19/investigation-may-take-several-more-months/>.

⁵⁸ *Id.*

⁵⁹ Press Release, Securities and Exchange Commission, SEC Announces Insider Trading Charges in Case Involving Sports Gambler and Board Member (May 19, 2016), <https://www.sec.gov/news/pressrelease/2016-92.html>.

⁶⁰ *See id.*

friends who were coaches of various sports teams. ⁶¹It might be a stretch to call a CEO the "coach" of a corporation, but the story is simple enough that the melody evokes a sense of familiarity from the second movement.

The second competing melody is more complex, composed by Walters and his lawyers. In it, there is no insider trading, but there is gross government misconduct, including intentional leaking of grand jury testimony by an FBI agent, Davis lying to avoid government harassment, suborning of perjury by government lawyers, and abandonment by Phil Mickelson, Walters' former friend. Some allegations were contested by the government, others were not, and the jury preferred the first, more simple melody to this more complicated one, finding Walters guilty on all counts. ⁶²

Walters was sentenced to 5 years in federal prison, ordered to forfeit \$ 25,352,490 in illegal profits and pay \$ 10 million in fines, and pay restitution to Dean Foods in the amount of \$ 8,890,969.33. ⁶³District Court Judge Castel called the scheme "amateurishly simple" and chastised Walters directly, calling him "a cheater and a criminal, and not a very clever one." ⁶⁴On appeal, **[*153]** Walters' prison sentence, fine, and disgorgement were all upheld, though the case was remanded for retrial on the amount of restitution. ⁶⁵The third movement of the Ballad ends with the denial of Walters' petition for certiorari, but a true music lover will always want to spend some time enjoying and, possibly, breaking down a complex composition.

IV. Reprise: A Closer Look at the Competing Movements

Although the two melodies inspired by the insider trading scheme of Tom Davis and Billy Walters compete during most of the third movement, they could not be more different. The first melody is simple and repeats throughout, while the second melody is longer and far more active. Both, however, have many elements to entertain the listener. The first melody, for example, includes the theme from the classic TV show, Batman. ⁶⁶The second recalls corrupt-cop dramas of nearly every age of cinema and television.

According to the government Davis began feeding Walters inside information in 2008 and continued doing so until approximately 2014. ⁶⁷The information was largely about earnings reports or major announcements from Dean Foods, a prominent producer of dairy products, as well as a single announcement from Darden Restaurants. ⁶⁸By trading on that information, the government estimated that Walters realized \$ 32 million in profits and avoided \$ 11 million in losses. ⁶⁹Davis **[*154]** testified that, beginning in 2011, the information was passed on by way of a burner phone--Davis testified that the two of them called it the "Bat Phone"--that Walters had purchased for precisely this reason. ⁷⁰Walters would call and talk about getting coffee, which was a signal for Davis to call back on the Bat Phone to relay the inside information. ⁷¹Walters would then trade on the information and,

⁶¹ *Supra*, notes 26-29 and accompanying text.

⁶² United States v. Walters, 910 F.3d 11, 21 (2d Cir. 2018).

⁶³ *Id.*

⁶⁴ Mike Calia, *Gambler Billy Walters sentenced to 5 years in insider-trading scheme*, CNBC (Jul. 27, 2017), <https://www.cnbc.com/2017/07/27/gambler-billy-walters-sentenced-to-5-years-in-insider-trading-scheme.html>.

⁶⁵ *Walters*, 910 F.3d at 30.

⁶⁶ NEIL HEFTI, BATMAN THEME (RCA Victor 1966), <https://www.youtube.com/watch?v=VSaDPc1Cs5U>.

⁶⁷ United States v. Walters, 2017 WL 6811950, *12-16 (2d Cir.) (Brief for Appellee) [hereinafter "Appellee Brief"].

⁶⁸ *Walters*, 910 F.3d at 21.

⁶⁹ United States v. Walters, 2016 WL 8678111, *7 (S.D.N.Y.) (Indictment).

⁷⁰ Appellee Brief at *16.

in some cases, pass on to golfer and friend Phil Mickelson, who allegedly used the profits to pay down gambling debts to Walters. ⁷²

In support of the allegations, the government presented testimony from brokers who had worked with Walters during the relevant time period, as well as Walters' trading history and phone records. Together, phone records and trading patterns established a circumstantial story of insider trading, but very little hard evidence existed without Davis' testimony. Davis testified for five days, describing clandestine phone calls, code words (such as calling Dean Foods "the Dallas Cowboys"), and the gift of the Bat Phone. ⁷³

As for why Davis would agree to this proposition, the government had multiple possible explanations. Davis and Walters had maintained a business relationship since at least 2007, and Davis found it more difficult than expected to pay back the approximately \$ 1 million that he ended up borrowing from Walters. ⁷⁴Davis **[*155]** testified that he gave the tips because he was "enamored" of Walters, or because he wanted gambling tips. ⁷⁵

Walters and his lawyers wove their second melody in, among, and through the first melody, raising concerns about the government's case, as well as specific government actions before and during trial. Walters pointed out that many of the alleged instances of insider trading where the timeline indicated no inappropriate conduct, such as when Walters allegedly purchased stock based on a tip from Davis regarding a November 2008 earnings report. The purchase occurred on November 5, 2008 but the earnings report had been released on November 4 and the alleged conversation occurred after the purchase. ⁷⁶In other instances, the government's allegations included instances where Walters' behavior ran counter to insider trading strategies, such as when Walters purchased over \$ 25 million in Dean Foods stock after allegedly being tipped by Davis that Dean Foods would report earnings *below* its estimated range. ⁷⁷Walters' alleged insider trading also included, apparently, occasions when a tip was made and Walters left money on the table, as when Davis allegedly tipped Walters in September 2008 that earnings would be up and Walters made no stock purchases. ⁷⁸

[*156] The second melody also included a truly sinister element, that of gross government misconduct. Special Agent David Chaves, in charge of the investigation--which began with suspicion that Walters was involved in a conspiracy with Carl Icahn and Mickelson to trade on inside information regarding an Icahn takeover bid of Clorox ⁷⁹—systematically disclosed grand jury testimony to the media. According to Walters, Chaves' illegal behavior

⁷¹ *Id.* at *17.

⁷² Cue, perhaps, DAVE LOGGINS, AUGUSTA (Leeds Music/Patchwork Music) (1981). To listen, see <https://www.youtube.com/watch?v=exhuih70tPo>. Mickelson denied that he received any tips from Walters but refused to testify at trial and agreed to return all trading profits tied to Dean Foods. Fish, *supra* note 5. Walters blames his conviction on Mickelson's refusal to testify. *Id.*

⁷³ Appellee Brief at *16.

⁷⁴ United States v. Walters, 2017 WL 2880843, *1 (S.D.N.Y.).

⁷⁵ *Id.*

⁷⁶ United States v. Davis, 2017 WL 5495588, *22 (2d Cir.) (Brief for Appellant) [hereinafter Appellant Brief].

⁷⁷ *Id.* at *23.

⁷⁸ *Id.* at *22.

⁷⁹ United States v. Walters, 910 F.3d 11, 16-17 (2d Cir. 2018). Professor Stephen Bainbridge points out that, as an insider trading investigation, the Walters-Icahn-Mickelson investigation was absurd from the beginning, since none of the participants were insiders and Icahn had not taken the necessary steps towards a tender offer for Rule 14e-3 to apply. See Stephen Bainbridge, *The Absurd Insider Trading Case Against Phil Mickelson*, PROFESSORBAINBRIDGE.COM (May 31, 2014), <https://www.professorbainbridge.com/professorbainbridge.com/2014/05/the-absurd-insider-trading-case-against-phil-mickelson.html>.

⁸⁰was intended to generate public pressure on Davis to confess to tipping Walters. ⁸¹The government had received a FINRA referral on Walters and his trades in Dean Food's stock, ⁸²so Davis' story was not the only evidentiary support for the government's accusations, but the misconduct by Chaves was "deeply troubling" to the Second Circuit, ⁸³even as it affirmed Walters' conviction. ⁸⁴

[*157] Similarly, Walters argued that the government suborned perjury by Davis during trial. Davis had testified that he could not recall exactly when he had been given the Bat Phone, but that it had been in 2011. ⁸⁵He also described, in detail, the meeting at which it had occurred, at an airport near Dallas, when Walters had flown in to meet with some bankers and had asked Davis to meet in order to receive the phone. ⁸⁶This meeting did occur . . . in December 2012, after the series of trades tied to the "White Wave spinoff," when Dean Foods spun off a profitable division. ⁸⁷The government believed that Walters' trading during that time period was motivated by tips from Davis but could not corroborate the theory with phone records. Hence, the importance of the Bat Phone. Davis' certainty regarding the details of the meeting and the impossibility of the meeting fitting the government's narrative is strong evidence that Davis was lying. Walters argued that the government knew that the **[*158]** story was a lie, but the courts and the jury were unconvinced. ⁸⁸

Looking back, there are many unanswered questions regarding the government's story. Why, when there was substantial evidence of Walters' insider trading outside of the Bat-Phone period, did the government feel the need to present Davis' almost-certainly-false testimony? Was it because prosecutors thought that the melody would be incomplete without those notes? Did prosecutors believe that the jury would not choose that melody unless it had such a colorful story to draw the jury's attention? Perhaps prosecutors believed that the traditional, bland insider trading story would seem implausible to the jury, given Walters' penchant for more colorful melodies--gambling, pushing boundaries, possibly breaking the rules, etc. Given the general unreliability of Davis' testimony,

⁸⁰ Rule 6(e) of the Federal Rules of Criminal Procedure makes it illegal to disclose information arising from a grand jury. See FED. R. CRIM. P. 6(e).

⁸¹ Walter Pavio, *FBI Leaker At Center Of Billy Walters' SCOTUS Case*, FORBES (May 15, 2019), available at <https://www.forbes.com/sites/walterpavlo/2019/05/15/fbi-leaker-at-center-of-billy-walters-scotus-case/#2e4c47751bf3>.

⁸² *Walters*, 910 F.3d at 16.

⁸³ *Id.* at 26. The courts took surprisingly little interest in making sure the misconduct was punished or would be avoided in the future. The FBI took a long time to disclose Chaves' actions to the court and allowed internal processes to be the only punishment for Chaves. *Id.* It is therefore doubly distressing that nothing was done, and Chaves is now a paid speaker and consultant, advertised as "a securities fraud subject matter expert," speaking to audiences about, among other things, "compliance" and "best practices." *David Chaves*, JEFF JACOBSON AGENCY, <http://www.jeffjacobsonagency.com/speaker/david-chaves/>.

⁸⁴ *Walters*, 910 F.3d at 30.

⁸⁵ *United States v. Walters*, No. S1 16 Cr. 338 (PKC), 2017 WL 2880843, at *2 (S.D.N.Y. May 19, 2016).

⁸⁶ *Id.*

⁸⁷ *Id.* at *3; *Walters*, 910 F.3d at 5. There were other oddities with the Bat Phone story. The phone was never found, although divers searched where Davis claimed to have discarded the phone. Appellant Brief at 27. It would not be surprising if Davis had disposed of it, but he smirked when he told his wife that the divers would never find the phone. *Id.* Davis could not recall the phone number of the phone, and investigators could not identify any calls in Walters' call record that would correspond to the Bat Phone. *Id.* at 26-27.

⁸⁸ The district court found that any inconsistencies were the result of misremembering, rather than lying. *Walters*, 2017 WL 2880843, at *4. The Second Circuit affirmed, holding that the jury, upon hearing cross examination regarding these inconsistencies, could have reasonably believed Davis' testimony, contradictions and all. *Walters*, 910 F.3d at 40.

⁸⁹they may have hoped that tales of the Bat Phone would distract the jury, especially as it reprised those earlier melodies.

Exactly how much Walters' gambling background played into the jury's decision to convict is unclear, but it was clearly on the mind of government lawyers, who [*159] represented the verdict in this way: "Today, Billy Walters lost his bet that he could cheat the securities markets on a massive scale and get away with it scot-free."⁹⁰ A good lawyer often has a clever theme for a case, and Walters' past presented a ready-made theme, but the parallels between gambling and securities trading are not entirely negative. It is, perhaps, in those parallels that the Ballad of Billy Walters offers its greatest lesson.

V. Learning from the Ballad of Billy Walters

Apart from the inadvisability of engaging in insider trading if you are a well-known gambler, what lessons can be learned? First and foremost, the strong restrictions in securities markets make trading only slightly less restrictive than gambling, which is largely illegal, though diminishingly so. Those restrictions enable individuals to amass significant market power, and that market power can be exploited to manipulate markets.⁹¹ Just as loosening gambling restrictions would curb the power of organized crime families who run the illegal gambling in many cities, loosening insider trading restrictions would curb the power of high-level insiders to manipulate securities markets.

Second, information is the foundation of both markets, and better information actually *reduces* the ability of individuals to manipulate the market.⁹² Innovations in information accumulation and interpretation improve prices and reduce price spreads, allowing markets to function more efficiently and more [*160] competitively.⁹³ The algorithm used by the Computer Group was likely not as good as the legend but it was an improvement upon the official Vegas line.⁹⁴ Use of the algorithm allowed the Group to engage in arbitrage, and the Group's success revealed weaknesses in the way that sports contests were being analyzed. In the intervening decades, sports analytics have changed team composition and training, as well as sports-betting markets.

Equivalent arbitrage efforts would help securities markets function more efficiently, but securities laws limit the ways in which arbitrage opportunities can be exploited. If Walters was merely using analytics to identify arbitrage opportunities, then his prosecution will deter further efforts and harm our securities markets. It seems odd that, as a society, we have decided that we are willing to let gambling and sports markets be efficient but not securities markets, upon which far more of our economic well-being rests. That choice likely rests on a sense that insider trading is ethically and morally wrong. The Second Circuit worried that allowing Walters to escape punishment because of the significant misbehavior of Chaves would be a "punishment of society"⁹⁵ for the sins of one

⁸⁹ Davis' memory during trial was described as "choppy and vague." Joon H. Kim, acting U.S. Attorney for the Southern District of New York. Kara Scannel, *Billy Walters found guilty in \$ 40m insider-trading case*, Financial Times (Apr. 7, 2017), <https://www.ft.com/content/e50bd70e-1b11-11e7-b-cac-6d03d067f81f>. He also admitted that he stole funds from a battered women's shelter and denied paying for sex before being presented with evidence that he frequented multiple escort services. *Id.* Even prosecutor Dan Goldman described Davis to the jury as "morally corrupt, . . . a womanizer, a bad husband, and he stole money from a charity that he ran. *Id.*

⁹⁰ *Id.*

⁹¹ See George Stigler, *The Concise Encyclopedia of Economics: Monopoly*, LIBR. OF ECON. & LIBERTY (2008), <https://www.econlib.org/library/Enc/Monopoly.html>.

⁹² Joseph E. Stiglitz, *The Concise Encyclopedia of Economics: Information*, LIBR. OF ECON. & LIBERTY (2008), <https://www.econlib.org/library/Enc/Information.html>.

⁹³ *Id.*

⁹⁴ *Legend, supra* note 1.

⁹⁵ *United States v. Walters*, 910 F.3d 11, 25 (citations omitted).

government agent, but that raises other questions. Does insider trading hurt society? Is that a view shared by most Americans, or just those in the judiciary or the Securities and Exchange Commission? Perhaps more importantly, does the public view insider trading as unfavorably as the government misconduct in this case?

VI. Conclusion

What will Billy Walters do when he has paid his debt to society? Will the Ballard continue, or will he just become one more car-sales mogul? Will the unpunished **[*161]** government misconduct in the Ballard's third movement be corrected, or lead to greater violations? Like all good works of art, the Ballard does not answer all questions, leaving much to the imagination of the observer. We do know that William T. "Billy" Walters has led an interesting life, worthy of representation in art, if not worthy of emulation.

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