

Gambling and Collegiate Sport

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INTRODUCTION

Gambling or wagering among youth and college age adults is a popular form of recreation. The use of the Internet is predicted to measurably increase gambling among these age groups. Gambling is illegal in all states except Nevada and Oregon (Kindt & Asmar, 2002). Although collegiate sports gambling is legal only in Nevada, the Las Vegas line (point spread) is published in newspapers throughout the United States.

In spite of the fact that gambling on collegiate sport competitions is legal in only one state, college sport administrators, including NCAA officials, view gambling on collegiate sports as one of their most serious problems. In 1992, Congress backed amateur sport groups in banning gambling on sports in all states but Nevada; Nevada was grandfathered in. Now, amateur sport groups want Congress to remove the grandfather clause and make gambling on amateur sport illegal in Nevada as well.

This article examines the issues that prompted gambling reform legislation and the results of research, court cases, and legislative hearings that serve as the basis for the legislation currently being sought. The motivation for reforming gambling legislation, especially legislation targeting collegiate gambling, will then be examined. The paper concludes with recommendations for reforming the problem of collegiate gambling, including analysis of a system of criminal sanctions, similar to those used in insider trading.

GAMBLING IN CONTEMPORARY SOCIETY

While contemporary society views gambling or gaming as a "new" and popular entertainment option, gambling has actually been in existence for

centuries (Roberts, 1997). "The ancient Egyptians, Chinese, Japanese, Greeks, Romans, and Germanic tribes all engaged in games of skill and chance for amusement" (Roberts, p. 582). Europeans also brought a rich history of gaming to the United States. Lotteries, a form of voluntary taxation, financed many aspects of Colonization. The lotteries, sponsored by leaders like Ben Franklin, John Hancock, and George Washington, raised funds for the colonies and for the colonies' first institutions of higher education. Harvard, Dartmouth, Yale, and Columbia are reported to have been financed, in part, by lottery monies. The American Revolution also received funds from a lottery (Roberts).

Advocates for gaming stress that it is a form of recreation, a profitable industry, and a means for the government to raise resources for schools and other social benefits. The negative elements of gaming include problems associated with compulsive gambling and the potential for athletes to be influenced by the needs of odds makers when making competitive sport decisions.

According to research conducted by Harrah Entertainment, 53.2 million Americans, 27% of the U. S. population over age 21, visited a casino in 1995. Some made as many as six trips in that year (Harrah's Entertainment, 1996). In 1998, the University of Chicago National Opinion Research Center found that 88% of the men in the U. S. reported having gambled, this was up from the 75% in 1975. Eighty three percent of the women in the same study reported gambling, up from 61% in 1975 (National Gambling Impact Study Commission, 1999, p. 8). The increasing popularity of gambling is also confirmed by increased gambling revenues. The gaming industry realized over \$72 billion in revenues in 2003 (Christiansen Capital Advisors, 2004), including \$5.7 billion in revenues from Internet gambling alone (American Gaming Association, 2004).

EARLY GAMBLING SCANDALS IN COLLEGIATE ATHLETICS

The first reported collegiate gambling scandal involved 32 athletes from seven different institutions that had fixed 86 basketball games. They included players who had led the University of Kentucky to the NCAA Championships in 1948 and 1949 (Hearing before the Committee on the Judiciary House of Representatives, 2000). In 1945, Brooklyn College basketball players admitted to accepting money to throw a game against the University of Akron while in 1951, three City College of New York basketball players were arrested for point shaving (Udovicic, 1998).

A more recent example of fixing game outcomes is the *Burke* case (United States v. *Burke, et al.*, 1983). Despite numerous reported incidents of sports bribery, point shaving, and game fixing, *Burke* (1983) is one of the few court decisions available for review. The Perla brothers, Anthony and Roco, dreamed up a plan to enlist Kuhn, a Boston College basketball player, in rigging a number of Boston College games in the 1978-1979 season. Mazzei, a local friend of the Perla brothers known to have influence within New York gambling circles, and Burke, a reputed underworld "Boss," played key roles in the betting syndicate (*Burke v. United States*, 1983). The first game did not work according to the plan so a second Boston College basketball player, Henry Hill, was successfully recruited to participate with Kuhn in the scheme. The point shaving system was working very well until Hill was indicted on drug charges and while being questioned on the drug charges revealed his participation in the Boston College point shaving scheme. He offered the information for a guarantee of full immunity on the drug charges.

A grand jury indicted and convicted all of the participants of violating the Racketeer Influence and Corrupt Organizations Act (RICO) (18 U.S.C. §1961 et. seq., 2004). The conspiracy was sports bribery (*United States v. Burke, et al.*, 1983). The defendants appealed. The United States Court of Appeals for the Second Circuit affirmed the trial court's decision (*Burke*, 1983, pgs. 73 & 85). Burke's appeal to the United States Supreme Court was denied (*Burke*, 1983). In a second case, Mazzei, the person who orchestrated the Boston College point shaving scheme, was sentenced to ten years in prison for conspiracy to commit sports bribery (*United States v. Mazzei*, 1983).

PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT (PASPA)

The scandals in college athletics, the increase of gambling in the United States, and the emerging threat to the integrity of sport prompted Congress to investigate and control the impact of gambling on sport. Dennis DeConcini, a Senator from Arizona, introduced legislation to curb gambling in sport. In 1992, President George H. W. Bush signed the Professional and Amateur Sports Protection Act (PASPA) into law (28 U.S.C. §§3701-3704, 2004). PASPA was created "to stop the spread of state-authorized gambling and to protect the integrity of sporting events" (Roberts, 1997). Nevada, the only state at that time which had legal sports gambling, was granted immunity from the Act.

The Professional and Amateur Sports Protection Act of 1992 states that it shall be unlawful for:

(1) a government entity to sponsor, operate, advertise, promote, license, or authorize by law or compact,

(2) or a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games (28 U.S.C. §3702, 2004).

Under Section 3703 of the Act, an injunction to stop the behaviors described above may be brought by an Attorney General or by a sports organization whose competitive game is alleged to be the basis of the violation (28 U.S.C. §3703, 2004). PSAPA does not apply to those who were engaged in the prohibited acts prior to the creation of this law (28 U.S.C. §3704, 2004).

RESEARCH FOLLOWING PASPA

Studies and the monitoring of scandals in collegiate athletics suggest that the PASPA has not been successful. Among the studies was Stinchfield's (1998) work with nearly two hundred thousand Minnesota 6th, 9th, and 12th grade students, 122,700 in 1992 and 75,900 in 1995. He found that 80% of the boys and 50% of the girls were identified as having gambled at least once during the past year (Stinchfield, 1998). Twenty percent of the boys and 5% of the girls reported gambling at least once a week (Stinchfield). Older students tended to gamble more often than the younger students (Stinchfield).

Two studies that have had an impact on collegiate sport are the Michigan (Cross & Vollano, 1999) and Cincinnati (Slavin, 2002) investigations. Cross and Vollano (1999) found that 45% of the male athletes admitted to betting on sporting events despite the current NCAA regulations prohibiting such behavior. "Over 5% of the male student athletes betted on games in which they participated, provided inside information for gambling purposes or fixed a game in which they participated" (Cross & Vollano).

Of the NCAA Division I basketball and football player surveys returned in the Cincinnati study, 4% said they had bet on games in which they played and three had received money not to perform well (Slavin, 2002). Twenty six percent reported gambling on collegiate sporting events.

The 1996 National Gambling Impact Study Commission decided to investigate the social and economic impact of gambling in the United States. Results of their charge, conducted by the staff of the University of Chicago National Opinion Research Center, Rachel Volberg of Germini Research, and

Henrich Harwood and Adam Tucker of the Lewin Group was the 1999 Gambling Impact and Behavior Study. The study found that youth 16 and 17 years of age gambled less, for smaller sums of money, and selected different patterns of gaming than those persons much older. Youth favored sports and instant lottery tickets.

SCANDALS FOLLOWING PASPA

Despite the optimism that the PASPA legislation provided in combating gambling in collegiate sport, the scandals continued. In 1992, the University of Maine suspended 19 athletes from the football and basketball teams for gambling which reportedly involved \$10,000 per week (Kindt & Asmar, 2002). An investigation of sports betting at Northwestern University in 1994 resulted in Dennis Lundy pleading guilty to a federal perjury charge stemming from fixing football games. He had fumbled intentionally in a University of Iowa game to win a bet of \$400 and had won \$500 on an Ohio State game. He admitted to betting on a total of five games (Slavin, 2002). Northwestern University experienced a second scandal in 1998, this time in basketball when Kenneth Dion Lee and Dewey Williams were indicted for point-shaving in games against Penn State University, the University of Wisconsin, and the University of Michigan. Ken Pendergest, a graduate of Notre Dame, was the master mind of this incident. The games were fixed in the 1995 season. Pendergest recruited Lee because he knew he had a gambling problem (Udovicic, 1998).

Steven Smith, a point guard at Arizona State University, enlisted a teammate, Burton, a free throw specialist, to help in his point-shaving plan. Smith had engaged in gambling on professional teams and was in need of money. Bookmakers in Nevada discovered that the betting pattern on Arizona State University had changed tremendously in a short period of time and called the FBI. Unbeknownst to the basketball players, a federal investigation of Arizona State's 1993-1994 basketball season was conducted. Later, Smith and Burton admitted to taking money and pleaded guilty to charges of conspiracy to commit sports bribery. Burton was sentenced to two months in jail, an \$8,000 fine, three years of probation, and six months of home detention (Slavin, 2002).

THE NCAA RESPONDS TO THE PROBLEM OF COLLEGIATE GAMBLING

Problems involving the University of Maine, Northwestern, and Arizona State, and the results of Minnesota (Stinchfield, 1998), Michigan (Cross & Vollano, 1999), and Cincinnati (Slavin, 2002) investigations convinced the NCAA to institute Bylaw 10.3 (2003). NCAA Bylaw 10.3 prohibits athletic department staff members and student-athletes from engaging in gambling activities as they relate to intercollegiate and professional sport events. It stipulates that staff members of the athletic department of a member institution and student-athletes shall not knowingly:

- (a) Provide information to individuals involved in organized gambling activities concerning intercollegiate athletics competition;
- (b) Solicit a bet on any intercollegiate team;
- (c) Accept a bet on any team representing the institution;
- (d) Solicit or accept a bet on any intercollegiate competition for any item (e.g., cash, shirt, dinner) that has tangible value; or
- (e) Participate in any gambling activity that involves intercollegiate athletics or professional athletics, through a bookmaker, a parlay card or any method employed by organized gambling (NCAA, 2003a).

The National Collegiate Athletic Association (NCAAb) National Study on Collegiate Sports Wagering sampled 2,003 teams at 1,032 member institutions. Over 20,739 surveys were returned. Forty five percent were from Division I, 23% from Division II, and 32% from Division III. Seventeen percent of the males and 6% of the females in Division I reported wagering on collegiate sport. In Division II, the percentages were 21% and 5.8%; Division II reported 24% and 5.3% respectively. "Within male sports the highest proportion of respondents wagering on *collegiate sports* were found in golf (30.3%), lacrosse (29.3%), wrestling (27.7%), and football (23.8%)... Females reported the highest within-sport proportions in golf (8.4%), lacrosse (8.2%), basketball (8.2%), and field hockey (7.7%)" (NCAA, 2003b, p. 4). A little over 1% of the football players admitted to taking money for playing poorly in a game; the number was slightly less for male basketball players. Over 2% of the men's basketball and football players were asked to affect the outcome of a game. When asked about knowledge of NCAA rules, males were more likely than females to know the rules, Division I males knew the rules at a far higher rate than did Division II or III athletes (NCAA, 2003b).

PROPOSED LEGISLATION TO PROHIBIT GAMBLING ON AMATEUR SPORTS

Recently, Congress has examined two Acts, the Student Athlete Protection Act (2000) and the Amateur Sports Integrity Act (2003) in an effort to control gaming in all areas of amateur sport; scholastic, collegiate and Olympic.

The purpose of the Student Athlete Protection Act, introduced by Congressmen Graham of South Carolina, Roemer and McIntosh of Indiana, and Greenwood of Pennsylvania, was "To prohibit high school and college sports gambling in all States including States where such gambling was permitted prior to 1991" (Student Athlete Protection Act, 2000). This Act would remove the exemption that Nevada received in the 1992 Act. The Act would amend the Professional and Amateur Sports Protection Act (PASPA) by adding the following:

(1) Section 3702 shall apply to a lottery, sweepstakes or other betting, gambling, or wagering scheme based, indirectly or indirectly, on—

(A)(i) one or more competitive games in which high school or college athletes participate; or

(ii) one or more performances of high school or college athletes in competitive games; or

(B) one or more competitive games at the Summer or Winter Olympics. . . . (H.R. 3575, 106th Cong., 2000, p. 9).

Among the presentations in the hearings for PASPA was testimony by Senator Conyers of Michigan, who emphasized three points: "gambling threatens the integrity of amateur sports, . . . puts student athletes in potentially harmful positions by providing undue incentives to 'fix' the outcome of games. . . and can lead individuals, particularly young people, down the path to more addictive and destructive behavior" (Hearings on H. R. 3575, 2000 p. 15). These three themes perhaps best summarize why the problem of collegiate sports gambling must continue to be part of the discourse in college athletics reform.

Echoing the same concerns as Senator Conyers, Graham Spanier, Chair of the NCAA Board of Directors and Pennsylvania State University President, pointed out that all types of gambling on all forms of amateur sport was a problem that could best be remedied by "closing the loophole that exempts the State of Nevada from the Federal ban on gambling on college sports" (Hearings on H.R. 3575, 2000, p. 44). Further, he went on to state that

When it comes to college sports gambling, whether a wager is placed on the internet, with a neighborhood bookie, or in the most highly regulated casino in the world, the result is the same. There remains a potential for the integrity of the contest to be jeopardized. Opponents of this legislation say that the problem is not with legal sports gambling but illegal sports gambling. We say there is a problem with both (Hearings on H. R. 3575, p. 45).

Others felt that increased law enforcement would solve the spread of illegal gambling. Representative Berkley proposed a bill to "boost law enforcement's efforts to crack down on illegal betting operations, hitting hard at the illegal bookmaking rings" (Hearings on H. R. 3575, 2000, p. 102). Similarly, Governor Gibbons of Nevada appealed to the committee to retain the 1992 Professional and Amateur Sports Protection Act as it was originally conceived until Congress can better understand why law enforcement can not control illegal gambling and the nation's newspapers' role in publishing point spreads (Hearings on H. R. 3575, p. 119). Further, he noted that legal wagering on sports in Nevada is under 3% of all wagering on sports in the U.S. and that it was Nevada's law enforcement agency that detected "unusual betting patterns that led to illegal activity at Arizona State University (p. 121).

A second act, the Amateur Sport Integrity Act (S. 1002, 2004), primarily addressed performance enhancing drugs and would amend the Olympic and Amateur Sports Act "to make it unlawful to sponsor, operate, advertise, promote, license, or authorize a betting, gambling, or wagering scheme based on a competitive game at the Summer or Winter Olympics or in which high school or college athletes participate" (S. 1002). The significance of this Act would be the placement of the topic of gambling on amateur sport into the Ted Stevens Olympic and Amateur Sports Act (2000), the seminal piece of legislation on amateur sport in the United States.

WHAT WILL INTERNET GAMBLING DO TO COLLEGIATE SPORT?

The research, scandals, and legislation, proposed and accepted, paint a picture of the past and attempt to identify the current status of the problem of how gambling threatens the integrity of collegiate sport. However, the legal landscape is rapidly changing, given the explosion in Internet gambling. While much of the legal discussion and reform thus far has focused on regulating gambling in person, increased attention is now focused on regulating gambling over the Internet. The rapid growth of Internet gambling will undoubtedly have an impact on those who gamble on collegiate sports, including college students and student athletes, given findings that sports

gambling by college students is a major problem (Cross & Vollano, 1999). In addition, it is only logical to assume that today's tech-savvy college students will see gambling over the Internet as a popular, yet potentially dangerous, (and possibly illegal) form of entertainment.

Recent estimates suggest that there are at least 1,800 Internet gaming websites currently in operation (American Gaming Association, 2003). In addition, according to research done by Christiansen Capital Advisors, revenues from Internet gambling are projected to triple by 2009 (American Gaming Association). Internet gambling perhaps poses a much greater threat than traditional gambling because it "produces very few economic benefits, yet creates tremendous social costs by maximizing the 'availability' and 'accessibility' of gambling" (Kindt & Asmar, p. 242). Echoing these grave concerns, Howard J. Schaffer, director of addiction studies at Harvard Medical School, summarized, "As smoking crack cocaine changed the cocaine experience, I think electronics is going to change the way gambling is experienced" (National Gambling Impact Study Commission, 1999b, p. 5-5).

As growth of Internet gambling has increased, the position of the Las Vegas gaming industry has taken a rather dramatic shift. While initially opposed to Internet gambling, the Las Vegas gaming industry has recently discontinued lobbying against it in an effort to capitalize on the growth of Internet gambling and to be well positioned if online gambling is legalized in the near future (Miller & Claussen, 2001). Furthermore, it can be argued that the MGM Mirage and Harrah's Entertainment have embraced the practice of Internet gambling by entering into partnership and/or promotional deals with companies that offer Internet gambling (Miller & Claussen). Consequently, the gaming industry's position toward Internet gambling has experienced a significant shift, despite continued resistance from the U.S. government and other relevant stakeholders, such as the NCAA.

The emergence of Internet gambling has raised several legal issues that are now being addressed using a multi-pronged approach to reform. In addition, several of the practical and legal concerns raised in the context of in-person gambling are now surfacing again in the context of the Internet. Some of these issues can be dealt with using a similar approach to reform while others may require additional scrutiny, given the complexity of the legal issues associated with use of the Internet, such as the privacy rights of Internet users.

KEY DEVELOPMENTS IN COMBATING INTERNET GAMBLING

Four key developments in combating Internet gambling have set the stage for future reform efforts. These developments include legislative reform, the

U.S. Department of Justice's position regarding the illegality of Internet gambling, use of the Wire Act to prosecute Internet gambling web site operators, and restricting the use of credit cards in Internet gambling (Manter, 2003).

The first major development in regulating Internet gambling has been through revising existing laws or passing new laws. Two key pieces of legislation that had been historically applied to regulate gambling (in person) are the Gaming Devices Act of 1951 (also referred to as the Johnson Act) (15 U.S.C. §1175, 2000) as well as the 1961 Wire Communications Act (Wire Act) (18 U.S.C. §1084(a), 2000). The Johnson Act gave the federal government, specifically the FBI, its first real jurisdiction over illegal gambling by making it a crime to transport gambling devices across state lines to locations not specifically exempted by local or state law (15 U.S.C. §1175, 2000). The Wire Act, meanwhile, was "part of an omnibus crime bill that recognized the need for independent federal action to combat interstate gambling operations" (*Martin v. United States*, 1968, p. 898). The Wire Act prohibits the use of wire communications by persons or organizations engaged in the business of wagering, to transmit bets or wagers, or information that assists in the placing of bets or wagers on sporting events (18 U.S.C. §1084(a)).

Acknowledging that there would be difficulty in applying the existing laws to the Internet, the U.S. Congress began to examine how best to "modernize" the existing laws so that they would also apply to Internet gambling. Given the difficulty in using the Wire Act to prosecute individuals who placed illegal sports bets over the Internet, Senators Jon Kyl and Richard Bryan introduced the Internet Gambling Prohibition Act of 1999 (S. 692, 1999). The bill made it unlawful for people engaged in a gambling business to utilize the Internet or any other interactive computer service as a means to place, receive, or otherwise make a bet or wager, or to send, receive, or invite information assisting in the placing of a bet or wager. This bill also attempted to close the loophole found in the Wire Act (Kindt & Asmar, 2002). Sponsors of the bill also suggested that it "provided a better deterrent toward placing bets over the Internet" (Kindt & Asmar, p. 243).

A second bill aimed at modernizing the Wire Act (18 U.S.C. §1084) was the Combating Illegal Gambling Reform and Modernization Act (H.R. 3215, 2001). This bill attempted to envelope all communications, by wire or other technologies, under the Wire Act. In the bill, the term "wire communication" from the original legislation was re-worded as "communication," given that some communications were currently not being sent by wire communication but through other methods, including the Internet (Friedrich, 2003). However,

the bill did not pass in the House of Representatives. If passed, the bill would have banned gaming over the Internet and via other related technologies (Howland, 2004).

A third bill to regulate Internet gambling was the Internet Gambling Enforcement Act, passed in the House of Representatives in 2002, but never voted on in the Senate (H.R. 556, 2002). The bill aimed to limit U.S. access to Internet gambling sites hosted on offshore servers by prohibiting Internet gambling businesses from accepting credit, electronic funds transfers, checks or drafts from would-be U.S. Internet gamblers (H.R. 556, §3). Additionally, the bill would have implicated financial institutions that may knowingly act as intermediate agents between gamblers and the Internet gaming business. (§3(e)).

Sponsors of the Internet Gambling Enforcement Act recognized the potential for Internet gambling to have far more negative societal consequences. This is due to the fact that unlike brick and mortar casinos which have safeguards in place to combat against gambling addiction and underage gambling, gambling over the Internet has no such safeguards, given that Internet gamblers often remain anonymous and use credit cards to facilitate their transactions (Manter, 2003).

A second key development was the position taken by the United States Department of Justice regarding the legality of Internet gambling in the United States. The Department of Justice asserted that federal law prohibits all forms of gambling over the Internet, including casino-style gambling (U.S. Department of Justice, 2002). This position is consistent with that taken by the U.S. Department of Justice under the Clinton Administration (American Gaming Association, 2004). An initial step in reaching this conclusion was first determining where the gambling occurred, given that gamblers and gambling website operations are often in different jurisdictions (Manter, 2003). In interpreting the scope of the Wire Act, the Department of Justice determined that gambling occurs in both the gambler's jurisdiction and the gambling business's jurisdiction (U.S. Department of Justice, 2002).

However, in the case of *In re MasterCard International, Inc. Internet Gambling Litigation* (2002) the U.S. Court of Appeals for the Fifth Circuit interpreted the Wire Act differently. Plaintiffs attempted to use the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. §1962, 2004) to avoid gambling debts they incurred through the use of their credit cards to purchase credits, or "chips," for use at on-line casinos (*Internet Gambling Litigation*, p. 260-261). The thrust of plaintiff's RICO claim was that the credit card companies, along with Internet casinos, "created and operate a "worldwide gambling enterprise" that facilitates illegal gambling on the

Internet through the use of credit cards" (p. 260). Plaintiffs went on to argue that the credit card companies facilitate the gambling enterprise by authorizing the Internet casinos "to accept credit cards, by making credit available to gamblers, by encouraging the use of that credit through the placement of their logos on the websites, and by processing the 'gambling debts' resulting from the extension of credit" (p. 260). In addition, Plaintiffs contended that the banks that issued the credit cards participated in the enterprise by collecting the gambling debts (p. 260). The Fifth Circuit affirmed the district court's finding that plaintiffs did not allege facts to show a pattern of racketeering activity or the collection of an unlawful debt; a RICO enterprise; or participation in the management of the enterprise, all prerequisites for a RICO claim (p. 261).

The *In re Mastercard Internet Gambling Litigation* decision is a pivotal case in the determination of the legality of Internet gambling. In addition to the bizarre attempt to seek protection using the RICO statute, the plaintiffs also sought a declaratory judgment that their gambling debts were unenforceable because they were illegal (*Internet Gambling Litigation*, 2002, p. 260-261). On this issue, the Court of Appeals for the Fifth Circuit affirmed the district ruling finding Internet *sports betting* to be illegal under federal law, but finding Internet *casino games* to be legal (*Internet Gambling Litigation*, p. 262). The district court based their conclusion on "[A] plain reading of the statutory language [of the Wire Act] [which] clearly requires that the object of the gambling be a sporting event or contest" (*Internet Gambling Litigation*, 2001, p. 480). Consequently, the U.S. Department of Justice and the U.S. courts are in disagreement over whether it is only sports betting that is illegal or whether all forms of Internet gambling are illegal in the United States (American Gaming Association, 2003).

A third key development was the action taken by the major credit card companies prohibiting the use of their cards in online gaming transactions (Punch, 2002, p. 14). The credit card industry chose self regulation with regard to the use of credit cards in online gambling given the "uncertain legal climate of the industry" (Punch, p. 14). Furthermore, the use of credit cards in Internet gambling was raising eyebrows at the New York state attorney general's office which had already accused Citibank of knowingly profiting from illegal activity (p. 14). No prosecution was ultimately pursued against Citibank (Punch).

The fourth key development deals with the decision in *U.S. v. Cohen* (2001) to apply the Wire Act to Internet gambling. The facts of *Cohen* shed some light on why previous attempts at Internet gambling regulation using existing U.S. laws have been difficult. Cohen, an offshore bookmaker, started

World Sports Exchange, a sports-betting company located in Antigua (*Cohen*, 2001, p. 70). World Sports Exchange specifically targeted American customers through T.V., newspaper, and radio advertisements (*Cohen*, p. 70). Cohen was charged with violating provisions of the Wire Act which made taking bets over telephone lines or other wired devices illegal (18 U.S.C. §1084(a)-(b), 2004). Cohen was convicted (*Cohen*, p. 71) but appealed his conviction on the grounds that the jury was improperly told to disregard the Wire Act's safe harbor provision (18 U.S.C. §1084(b)). For the safe harbor provision to apply, the betting must be legal in both the origin and destination of the transmission and the transmission has to be limited to information that merely assists in the placing of bets (18 U.S.C. §1084(b)). The Court of Appeals for the 2nd Circuit first concluded that betting was illegal in New York (*Cohen*, 2001, p. 73) and then went on to uphold the district court in finding that the safe-harbor provision did not apply because neither of the two conditions existed in the case of WSE's transmissions (*Cohen*, p. 76). Cohen was trying to argue that the actual placing of bets was taking place in Antigua, not New York (p. 74). The court of appeals disagreed with Cohen's interpretation (p. 75). The *Cohen* decision suggests that the federal judiciary is willing to use the 1961 Wire Act to prosecute Internet gambling sites, even when they are operated offshore (p. 78). Furthermore, the *Cohen* decision makes it clear that offshore sports betting firms may be found criminally liable in a U.S. court if they accept bets transmitted from U.S. customers (Manter, 2003).

The regulation of Internet gambling will not be an easy task. However, given the U.S. Department of Justice's commitment to the enforcement of new and existing laws aimed at targeting Internet gambling as well as the continued attention on new developments affecting college gambling by the NCAA, Congress and the gaming industry, true reform may be realized. For example, former U.S. Attorney General Janet Reno warned Internet gamblers that "the Internet is not an electronic sanctuary for illegal betting" (Bedell, 1999, p. 5). Despite the fact that the nature of the Internet may be an obstacle in enforcing existing U.S. anti-gambling laws (Kindt & Asmar, 2002), continued attention to address the problem may prove successful in stifling the negative consequences of Internet gambling.

RECOMMENDATIONS FOR REFORM

Given the existing and proposed legislation, key court decisions, and responses to gambling scandals discussed thus far, recommendations from the various parties have been proffered to stop collegiate gambling. These

recommendations can be categorized in three groups: the recommendations of researchers, the recommendations of the NCAA, and the recommendations of the American Gaming Association.

Researchers on gambling stress education and awareness as the keys to reform. Specifically, they recommend taking the following actions: study the gaming habits of coaches and referees; educate students on the dangers of gambling; educate coaches and administrators on the prevalence of student gambling; encourage the NCAA to develop a high level of awareness and intolerance toward gambling; encourage the NCAA to use real punishment for failure to meet NCAA rules (Cross & Vollano, 1999). Additionally, these researchers stress that education about gambling must not start in college but rather should start in elementary and middle school (Stinchfield, 1998). It is also recommended that sport gambling be discussed with youth as studies have shown they prefer gambling on sport to other forms of wagering (National Gambling Impact Study Commission, 1999). Finally, based on the findings from the National Gambling Impact Study (1999), researchers recommend that Congress ban wagering on all collegiate athletics.

The NCAA supports a ban on all collegiate sport gambling and recognizes that college athletes are betting on sports other than basketball; such sports as golf, wrestling, and lacrosse (NCAA, 2003b, p.3). The NCAA also realizes that athletes do not know NCAA rules (NCAA, p. 4), mirroring researcher's recommendations for increased education and awareness, especially for student athletes. The NCAA also continues to emphasize its zero tolerance policy in sports gambling (Hearings on H. R. 3575, 2000, p. 11).

Taking a different approach to reform than the NCAA, Governor Gibbons of Nevada and members of the American Gaming Association support keeping PASPA (28 U.S.C. 3701-04, 2000) until Congress can better understand the problems (Hearings on H. R. 3575, 2000, p. 119).

The authors support requests for increased education about gambling beginning at an early age, as well as the maintenance of controls on gambling on sport. They also favor a comprehensive examination of criminal penalties for game fixing, point shaving, and sports bribery. A system of criminal sanctions for contest fixing must be created and tailored explicitly to sport. Although sports bribery, under RICO statutes, allowed Mazzei to be sentenced to ten years of imprisonment for the Boston College scandals, other examples where criminal sanctions have been imposed are few and far between. Hopefully, sanctions similar to those found in insider trading will become common place in sport contest fixing and point shaving and will be enforced. Further, a clear distinction must be made between those who bribe athletes, officials, and others to point shave or throw games and those who carry out the

requests. Sanctions now exist for those who bribe athletes and others, although these statutes are rarely enforced. However, a system of new criminal sanctions needs to be created to stop those college athletes who point shave and/or throw games. This new system, patterned after insider trading sanctions, must award severe criminal penalties to those found to be altering sport competitions or throwing games. Substantial prison sentences and monetary penalties will bring the importance of these actions to the attention of the public. The athlete who alters the level playing field should be the most culpable, despite the absence of any specific criminal laws on the subject of point shaving or throwing of games. With specific criminal sanctions and the requisite enforcement, only then can the integrity of collegiate sport be maintained.

CONCLUSION

In response to the changing habits of college students, the NCAA instituted Bylaw 10.3 and worked closely with Congress to pass the Professional and Amateur Sports Protection Act of 1992 (PASPA). However, recent incidents among college athletes suggest that PASPA and NCAA Bylaw 10.3 are insufficient in maintaining control of gambling among student athletes. Reaction to these incidents has also raised the need for a Congressional ban on all collegiate and scholastic gambling. While the gaming industry opposes such a ban, the NCAA demands the change in order to curb the epidemic that currently exists on today's college campuses.

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REFERENCES

- Amateur Sports Integrity Act, S. 1002, 108th Cong. (2003).
- American Gaming Association. (2003). *Fact sheet: Internet gambling*. Washington, D.C.: American Gaming Association. Retrieved January 21, 2005, from http://www.americangaming.org/industry/factsheets/issues_detail.cfv?id=17.
- Bedell, D. (1999, Nov. 29). Web has tangled laws written for earlier, less-connected world. *Chicago Tribune*, 4.
- Burke v. United States, 464 U.S. 816 (1983).
- Christiansen Capital Advisors. (2004). *Gaming revenue: Current year data*. Washington, D.C.: American Gaming Association. Retrieved January 21, 2005, from http://www.americangaming.org/Industry/factsheets/statistics_detail.cfv?id=7.
- Combating Illegal Gambling Reform and Modernization Act, H.R. 3215, 107th Cong. (2001).
- Cross, M. E. & Vollano, A. G. (1999). *The extent and nature of gambling among college student athletes*. Ann Arbor, MI: University of Michigan Athletic Department. Retrieved January 21, 2005, from www.umich.edu/~mgoblue/compliance/gambling/discussion.html.
- Dunstan, R. (1997). *Gambling in California*. Sacramento, CA: California Research Bureau, California State Library. Retrieved January 21, 2005, from <http://www.library.ca.gov/CRB/97/03/97003a.pdf>.
- Friedrich, J. (2003). Internet casino gambling: The nightmare of lawmaking, jurisdiction, enforcement & the dangers of prohibition. *CommLaw Conspectus*, 11, 369-388.
- Gaming Devices Act of 1951, 15 U.S.C. §1175 (2000).
- Harrah's Entertainment, Inc. (1996). *Harrah's survey of casino entertainment*. Memphis, TN: Harrah's Marketing Communications.
- Hearing before the Committee on the Judiciary House of Representatives. (2000). *Student Athlete Protection Act*. 106 Congress, Second Session, H. R. 3575, Serial No. 112.

- Howland, J.S. (2004). Let's not "spit the bit" in defense of "the law of the horse": The historical and legal development of American thoroughbred racing. *Marquette Sports Law Review*, 14, 473-507.
- Internet Gambling Enforcement Act, H.R. 556, 107th Cong. (2002).
- Internet Gambling Prohibition Act of 1999, S. 692, 106th Cong. (1999).
- In re Mastercard Int'l Internet Gambling Litigation, 132 F. Supp. 2d 468 (E.D. La. 2001), *aff'd*, 313 F.3d 257 (5th Cir. 2002).
- Kindt, J., & Asmar, T. (2002). College and amateur sports gambling: Gambling away our youth? *Villanova Sports & Entertainment Law Journal*, 8, 221-252.
- Manter, G. (2003). The pending determination of the legality of Internet gambling in the United States. *Duke Law & Technology Review*, 16. Retrieved January 22, 2005, from <http://www.law.duke.edu/journals/dltr/articles/2003dltr0016.html>.
- Martin v. United States, 389 F.2d 895 (5th Cir. 1968).
- Miller, L.K., & Claussen, C. (2001). Online sports gambling— Regulation or prohibition? *Journal of Legal Aspects of Sport*, 11, 99-134.
- National Collegiate Athletic Association. (n.d.). *Sports wagering*. Indianapolis, IN: NCAA. Retrieved October, 2004 from <http://www1.ncaa.org/membership/enforcement/gambling/index.html>.
- National Collegiate Athletic Association. (2003a, August 1). 2003-2004 NCAA Division I manual. Indianapolis, IN: NCAA.
- National Collegiate Athletic Association. (2003b). *National study on collegiate sports wagering and associated health risks*. Indianapolis, IN: NCAA.
- National Gambling Impact Study Commission. (1999). *National gambling impact and behavior study*. New York: Christiansen/Cummings Associates.
- National Gambling Impact Study Commission. (1999) *National gambling impact study Committee final report*. NC: Family Policy Council.
- Professional and Amateur Sports Protection Act of 1992, 28 U.S.C. §§3701-04 (2000).
- Punch, L. (2002). Are all bets off for online gambling? *Credit Card Management*, 15(6), 14.
- Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 *et seq.* (2004).

- Roberts, M. (1997). The national gambling debate: Two defining issues. *Whittier Law Review*, 8, 579-609.
- Rychlak, R. J. (2003). Cross-border issues in gaming: A bad bet: Federal criminalization of Nevada's collegiate sports books. *Nevada Law Journal*, 4, 320-336.
- Slavin, A. J. (2002). The "Las Vegas loophole" and the current push in Congress toward a blanket prohibition on collegiate sports gambling. *University of Miami Business & Law Review*, 10, 715-742.
- Stinchfield, R. (1998). Gambling and problem gambling among youth. Paper presented at the *American Psychological Association Annual Convention*, San Francisco, CA.
- Student Athlete Protection Act, H.R. 3575, 106th Cong. (2000).
- Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §220506 (2000).
- Udovicic, A.Z. (1998). Special report: Sports and gambling a good mix: I wouldn't bet on it. *Marquette Sports Law Journal*, 8, 401-427.
- United States v. Burke, et al., 700 F. 2d 70 (2nd Cir. 1983).
- United States v. Cohen, 260 F.3d 68 (2nd Cir. 2001).
- United States v. Mazzei, 700 F. 2d 85 (2nd Cir. 1983).
- U.S. Department of Justice. (2002, Nov. 20). *Statement of John G. Malcolm*. Washington, D.C.: U.S. Department of Justice. Retrieved January 21, 2005, from http://www.usdoj.gov/criminal/cybercrime/JGM_Intgambling.htm.
- Weir, T. (1997, Dec. 23). Foiling the fix, Groups team up to help protect games, athletes. *USA Today*, 1C.
- Welte, J. W., Barnes, G. M., Wiczorek, W. F., Tidwell, M. C., & Parker, J. (2002). Gambling participation in the US – Results from a national survey. *Journal of Gambling Studies*, 18, 313-338.
- Wire Communications Act, 18 U.S.C. §1084 (2000).

The Case for a Minimum 2.0 Standard for NCAA Division I Athletes¹

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INTRODUCTION

As long as sport spectacle has existed on college campuses, scandal borne out of the uneasy relationship between commercial sport entertainment and higher education has existed as well. At its genesis in 1906, the National Collegiate Athletic Association's (NCAA) top priority was taming the rough and tumble game of football, which threatened the health and lives of the young men who competed and called into question the institutions of higher education where those games were played (Falla, 1981; Lester, 1999; Oriard, 2001; Sack & Staurowsky, 1998; Smith, 1988; Watterson, 2000). In retrospect, the NCAA's first attempt at college sport reform seems to have been its most effective and long lasting. Assuaging public concerns about the violence of college football, the NCAA moved on to what would become century long projects to address issues of academic eligibility and institutional accountability for educating athletes. Imperfect and inherently predisposed to undermine the central purposes of academic life, big-time college sport has visited upon the American public the necessity for reform movements seemingly without foreseeable end (Bowen & Levin, 2003; Duderstadt, 2000;

1. Throughout the manuscript, the authors have avoided using the term "student-athlete," electing instead to refer to college athletes simply as athletes. In recent years, a growing number of scholars are calling for a considered and careful use of this term in light of its history. In brief, the term is a legal invention intended to obscure the pay for play system created when the athletic scholarships became one year renewable awards in the 1950s. For an extensive discussion of this see Ellen J. Staurowsky & Allen L. Sack, *Reconsidering the Use of the Term "Student-Athlete" by Academic Researchers*, 19 J. SPORT MGMT. (forthcoming April 2005), reconsidering the use of the term 'student-athlete' by academic researchers. The term appears here only in the context of a direct quote.