

The Status of Sports Wagering

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On June 24, 2013, Gaming Law Review and Economics held a roundtable discussion on the status of sports wagering.

Steven Zweig (Moderator) (SZ): We are about to begin our telephone symposium on sports wagering and related topics. Let us start by providing a brief overview of the current U.S. legal framework for sports betting.

Griffin Finan (GF): Effectively, we have two federal laws that govern sports betting. There is the Federal Wire Act and the Professional and Amateur Sports Betting Act of 1992, which is better known as PASPA. PASPA prohibits state-sponsored sports betting. The Wire Act, which is 18 U.S.C. § 1084, prohibits the use of a wire communications facility for the transmission of information that assists in the placement of bets or wagering on sporting events. These two laws effectively prevent sports betting in the U.S.

PASPA has a grandfathering clause in it for states which had sports betting schemes in place during the time period before PASPA was enacted in 1992—I believe the grandfathering period was from 1976 to 1990. If states had a sports betting scheme in place during that time period, they would be grandfathered in to the extent of their sports betting scheme. Nevada has effectively developed a monopoly through that, because they are the only state that had single-game sports betting in place before PASPA was enacted. Because of that,

they are the only state currently able to offer single-game sports betting.

SZ: What was the impetus for this very draconian regulatory policy? Why was sports betting effectively banned but for Nevada?

Ryan Rodenberg (RR): The impetus for PASPA, which was ultimately passed in late 1992—the first President Bush signed the legislation slightly before leaving office—was not to effectively ban sports betting. The exact language was that it was to stop the spread of state-sponsored sports wagering, with emphasis on the word “spread,” which is a slight difference, in that it captures that grandfathering portion that Griffin mentioned earlier.

I have gone back and looked at the legislative history for PASPA, and there was a fairly robust discussion among the committee members, as well as a vast number of witnesses that testified. Bill Bradley, at that time a senator from New Jersey, was the lead sponsor. As a result, PASPA is sometimes called the Bradley Act. Bradley gave his own personal recommendation and advice. Members of various sports leagues, the commissioners, and top lawyers also gave their recommendations.

PASPA passed fairly easily at the Senate level. I think there were only five dissenting votes at the U.S. Senate. It passed by a simple voice vote in the House of Representatives. There was certainly some discussion opposing PASPA, but it was not as strong as the sports leagues’ and Senator Bradley’s support for the bill.

SZ: Ryan has just mentioned the background of PASPA. As he pointed out, it was not so much to ban sports betting outright, but to stop it from spreading further, beyond the boundaries where it had existed at the time. Why were people worried about the spread of sports betting? What harm did they believe was going to happen if sports betting spread?

RR: At the time, a number of states had budgetary issues, and they saw the relative success of the

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regulation and taxation scheme that Nevada had implemented as something to consider emulating. Accordingly, some states looked at sports betting as an additional way to add revenue to their state coffers, and they wanted the ability to do that.

Congress, primarily Senator Bradley, as well as the sports leagues therefore saw the potential for a growing trend of sports betting. There were some anecdotal examples in the previous years of this happening, most notably in the state of Oregon, which had a scratch-off game that directly involved NFL [National Football League] and NBA [National Basketball Association] games. There was also a kind of a percolating, parlay-type gambling scheme that Delaware had off-and-on since the 1970s, and Montana had a very, very small gambling scheme that involved sports. So there were a few examples of sports-related betting expanding beyond Nevada.

I lived in the state of Oregon in the late 1980s, when the state had regulated sports gambling. It was fairly widespread, but it certainly was not balancing the state budget by any stretch of the imagination. But it was nonetheless fairly popular, and I think that Senator Bradley, as well as sports leagues commissioners and other senators, saw a risk of other states following this lead, absent some sort of federal ban to stop the spread of state-sponsored sports betting.

But it is useful to note, in no way was PASPA—or any other statute, for that matter—specifically targeting illegal sports betting. So pre-Internet, that was your neighborhood bookie, and neighborhood bookies, of course, continued to operate. Shortly after PASPA, of course, we saw the explosion of Internet gambling. PASPA does not address any aspects in terms of reining in illegal gambling. It only prohibits the spread of state-sponsored sports gambling.

SZ: Was the worry that if more states took up sports gambling, that it would lead to corruption in sports, or match fixing?

RR: Sports leagues commissioners at the time—Paul Tagliabue of the NFL, David Stern of the NBA—raised exactly that concern, in terms of match fixing and the perception of match fixing. An increased level of gambling, they felt, would only increase the specter of those type of nefarious acts taking place in connection with the games that they organized and put on.

Anastasios Kaburakis (AK): Ryan and I have written about this. Congress concluded that sports wagering was undermining public confidence in

the character of professional and amateur sports, as well as promoting gambling among the nation's young people. The congressional report right before PASPA was passed mentioned that sports gambling was a problem of legitimate federal concern, for which a federal solution was warranted.

They stated that they wanted to keep sports clean, and so there were efforts to have complete confidence in the honesty of the play.

We talked about the states that were grandfathered in. New Jersey has a case that is being litigated right now before the Third Circuit. New Jersey, having had that one-year window from the enactment of PASPA to introduce sports-wagering legislation (a window which elapsed without legislative activity), is a fascinating case, and 20-plus years later, it keeps providing a lot of work for us all.

The other senator from New Jersey—not Bill Bradley, but Robert Torricelli—in conjunction with lobbying from the state casinos, preserved that one-year window. However, that one-year window elapsed without New Jersey actually passing legislation, which they belatedly did 20 years later; this is what has led to this litigation. There is quite a bit of political history behind what was going on at that time in New Jersey and why New Jersey did not pass that legislation during that window.

SZ: Staying for the moment on the subject of the risk of corruption or match fixing, one question would be, does it appear this represents a legitimate concern, or is it being overhyped?

RR: I can speak to that solely in connection with the United States. Prior to PASPA being passed in 1992, 28 years earlier, Congress had previously passed a statute called the Sports Bribery Act of 1964. That statute was specifically focused on bribery influencing the outcome of sporting events, and it carried with it as penalties both prison time and a fine.

My review of the Sports Bribery Act legislative history, as well as the subsequent legal cases that have been decided under it, was revealing in that there has been only a small number of cases that have actually gone to trial, in which individuals have been found guilty—most recently, the career-leading scorer for the University of San Diego basketball team pled guilty to violating the Sports Bribery Act.

But over the course of the close to 50 years since this statute had been enacted, I have not come across a single incident, outside of professional boxing, of

any professional sport—including professional basketball, football, baseball, and hockey—of any referee, player, coach, or team executive having been charged under the Sports Bribery Act of 1964. It has solely been focused on horse racing, boxing, and college sports. So in American college sports, where the athletes who are participating are not paid a market-value rate, there have been numerous cases of them being involved in gambling-related sports bribery, but no cases—at least that I came across—outside of boxing and horse racing, involving professional athletes.

SZ: Looping back to something mentioned before: there have been challenges to PASPA, both previously and currently. Could somebody briefly summarize the prior challenges, before moving on to what is currently before the courts?

GF: There have been three prior challenges to PASPA in federal court. In 2007, there was Flagler versus the U.S. Attorney for the District of New Jersey. A *pro se* plaintiff brought a case claiming that PASPA violated the Tenth Amendment. The court dismissed the complaint, saying that the plaintiff lacked standing: he could not show any harm, or offer the court any explanation of how his right to gamble on professional or amateur sports could be seen as a legally protected interest.

In 2009, there was Interactive Media Entertainment and Gaming Association versus Holder. Three groups from New Jersey's state horse racing industry and, I believe, the then-president of the New Jersey Senate brought the case; New Jersey Governor Chris Christie was given the opportunity to intervene, but chose not to. The plaintiffs brought a case in federal court, which was also dismissed for lack of standing.

The court in that case said that even if the plaintiff had alleged sufficiently concrete injury to show standing, New Jersey law at the time prohibited sports gambling; therefore, a finding that PASPA was unconstitutional would not redress the plaintiff's alleged injury.

Later, there was the Office of the Commissioner of Baseball versus Markell, where the four major professional sports leagues and the NCAA [National Collegiate Athletic Association] filed suit to stop Delaware from moving forward with legislation that would authorize single-game sports betting in the state. Earlier, both Ryan and I touched on the grandfathering clause. Delaware had a game which had been grandfathered-in prior to PASPA,

which offered NFL parlay bets only. The case was about whether PASPA's language grandfathered in all betting schemes that were contemplated, or only those that were actually in use at the time.

Delaware had the NFL parlay betting system in use at the time, but wanted to add additional betting schemes, including single-game sports betting. The NFL, the other leagues, and the NCAA sued and ultimately prevailed in the Third Circuit. The court held that the PASPA exemption only applied to the extent that the betting scheme was actually conducted by the state at the time PASPA became effective; because of that, Delaware could not go beyond their game that offered NFL parlay bets.

Those are the three federal cases challenging PASPA in the past, before the current litigation right now in the Third Circuit.

SZ: Let us talk about that current litigation. Please describe that case, provide some background on it, identify the legal theory(ies) it is proceeding under, and summarize where it currently stands.

RR: On August 7th, 2012, the four major North American sports leagues—the NFL, NBA, Major League Baseball, and the NHL [National Hockey League]—along with the NCAA, the governing body for college sports, filed a federal lawsuit against the Governor of New Jersey, as well as against several state-appointed public officials who were apparently charged with enforcing and regulating the new gambling protocol which New Jersey residents had passed the previous year.

The initial lawsuit had five plaintiffs. PASPA is a unique statute in that enforcement of the statute is given to both the Department of Justice—which makes sense, since they are the federal lawyers—as well as to the individual sports leagues involved in games that may be implicated in a state-sponsored sports gambling scheme. The sports leagues filed suit seeking a permanent injunction to prevent New Jersey from moving forward with its state-level sports gambling. Several months after the sports leagues filed their suit, and after a fair degree of pleading and motion practice between the parties, the Department of Justice intervened—as they have the right to—in the lawsuit, essentially on the side of the sports leagues.

That is where the case currently is. One state senator in New Jersey as well as the New Jersey Thoroughbred Horse Racing Association have intervened on the side of the defendant. There are thus multiple parties in this matter. The case has

resulted in a lot of motions and briefs being filed among the parties. It is currently at the Third Circuit Court of Appeals, after the District Court judge, Judge Michael Shipp, entered a ruling on February 28, 2013 in favor of the sports leagues, granting them their injunction and rejecting the constitutional arguments that New Jersey had put forward challenging PASPA.

SZ: What constitutional arguments has New Jersey put forward?

GF: They put forward a theory that it violates the anti-commandeering principle, which prohibits the federal government from imposing duties on state legislators or executive officials to carry out federal initiatives. They also questioned whether the leagues had standing to bring the case and whether Congress had the power to regulate sports betting under the Commerce Clause; in addition, they raised due process and equal protection issues under the Fifth Amendment.

SZ: Do we have any predictions about what is going to happen at the appellate level?

GF: I do not think it was unusual that the district court decided to uphold a 21-year-old federal statute. However, I think there are certainly some compelling arguments that New Jersey can make governing the constitutionality of the statute. Ultimately, this might be an issue for the Supreme Court. It raises some very interesting constitutional issues that I think the Supreme Court may be interested in hearing. So we still may have some time from a final resolution.

RR: I would largely agree. I was not surprised by the individual judge at the district court level upholding the constitutionality of PASPA. The Third Circuit Court of Appeals, which consists of three judges as opposed to one, will be hearing the appeal. The chances of a partial or full overrule are certainly greater at this stage than they had been previously, with a single judge at the district court level.

One interesting aspect that occurred last month is that four other states filed what is called an *amicus* brief on behalf of Governor Christie of New Jersey. This brief took no position on the wisdom of state-sponsored sports gambling, but rather raised a number of very important issues in terms of state rights *vis-à-vis* the federal government. To the extent that the Tenth Amendment is implicated, I think that this presents New Jersey's strongest argument. I think it is also the argument that would garner the interest of the U.S. Supreme Court. At that level, where there

are nine justices as opposed to one or three judges, the divergence of opinion in terms of federalism is much greater than the much narrower Third Circuit or district court levels.

SZ: If PASPA is ultimately overruled, whether at the appellate or the Supreme Court level, New Jersey will go ahead with sports betting. In that case, though, what do you think will happen on a national level: do you believe that a number of other states will follow New Jersey's lead?

RR: The answer to that is almost certainly yes. New Jersey is doing a lot of the legwork and incurring a lot of expense on behalf of other states that are interested in sports gambling. Two are notable in that regard, California and Minnesota, have actually drafted bills that have yet to be passed. Those bills are waiting in the wings pending an outcome in New Jersey's case. I recall one state senator from California acknowledging that the bill that he was involved in was pending how the New Jersey case resolved. If the case ends up being decided favorably for New Jersey, other states would then have the right to enter the market.

A possible wild card in this drama: Nevada, which currently has a quasi-monopoly in terms of regulated, licensed sports gambling in the United States, has not taken a position yet. However, I could see them, much like what Delaware did in other litigation years ago, making some efforts to preserve what is a fairly lucrative market for them now.

Declan Hill (DH): I have been listening to the experts here from North America, and have been struck that debate showcases splendid isolationism. There are many cultural gaps between the United States and the rest of the world, and I cannot think of one better than sports, and in particular sports gambling. I cannot believe the level of this conversation, in contrast to what I see in Europe and the rest of the world in terms of sports gambling. I will address that in a little bit.

First, though, I wanted to ask a very specific question as an outsider, somebody who is not familiar with the United States. Why New Jersey? Why do I keep hearing the words "New Jersey" in all these different cases? What is it about New Jersey that makes it a leader in trying to overturn sports gambling legislation in this country?

RR: I can point to at least two factors. One is that New Jersey is looking to raise revenue while at the same time implementing a state law overwhelmingly

passed by residents as part of a statewide referendum. Second, historically, horse racing and casino-style gambling in New Jersey has been fairly successful. As a result, Atlantic City and the different horse tracks in the state have the infrastructure and the physical facilities to house brick-and-mortar sports books using existing software systems and industry-specific expertise. They have somewhat of a head start over other jurisdictions and may wish to capitalize on that.

My understanding is that with the exception of the Native American tribes that have casino-type gambling (card games, table games, and slots), New Jersey has the longest gambling history outside of Nevada in terms of licensing and regulating gambling within their borders. I therefore think there are fairly strong historical reasons that New Jersey is taking the lead in this initiative.

SZ: I believe that Nevada recently had a bill pending to create entity sports betting. Would anybody like to comment on that?

RR: A few months ago, a state legislator in Nevada did further a bill that was called entity betting. Some people called it hedge fund sports betting. And it was a mechanism to allow larger-scale syndicate betting, in a kind of a Wall Street, corporate format, than what is currently allowed. Current Nevada law is very specific: only individuals can place wagers at Nevada casinos; businesses cannot.

The common term for some of these individuals who run bets for other people is “runners.” Runners are illegal in Nevada: you have to bet using your own funds. But this was a very creative idea that this state senator or state representative had in Nevada, to create this hedge fund or syndicate betting.

A few individuals raised concerns that it may violate the Federal Wire Act. However, the whole idea of this entity betting was not really that novel or new; Declan and Anastasios can speak to this, because they see it over in Europe. There was a sports betting hedge fund based out of London that was created a few years ago with great fanfare, but which experienced liquidity problems and recently became defunct. There is a current hedge fund based out of Australia that is solely focused on sports investing. And certainly, other jurisdictions allow companies or entities to place wagers beyond just individual bettors. So while it was certainly unique to Nevada in the United States, it was not unique elsewhere.

As an interesting side note, in 2006, Mark Cuban, in a much-celebrated interview that got a lot of publicity, floated exactly this idea. He is an Internet billionaire who owns the Dallas Mavericks NBA team. He had the idea that it would be creative, fun, and interesting to create a hedge fund based on sports betting. His idea is there are a lot of inefficient markets out there, and one of the most inefficient markets is the sports gambling market, because people bet based on emotion, as opposed to based on the sort of detached or systematic betting that hedge funds or mutual funds use.

Ultimately, the entity betting bill in Nevada failed, though it certainly could be brought up again. But I think it faces a number of legal challenges, most notably the Federal Wire Act of 1961, which prohibits gambling-related information crossing state lines as part of a formal business. So effectively, that would mean everyone involved in the entity would have to physically be in the state of Nevada, which I think is highly unlikely.

SZ: Let us now talk about Europe. We know that Europe is not monolithic; however, as Declan mentioned, we can still speak to significant cultural differences between the U.S. and Europe in terms of sports betting. Could someone discuss some of those differences, then tell us about what is currently developing in Europe?

DH: I am based over in the UK, where I am phoning into this conference from. I can walk out the door of my house, walk down the street and pass, during the course of a pleasant, ten-minute walk, at least half a dozen betting shops. They are as common on the streets here in the UK as a pub would be in the United States. They are just everywhere. You can bet on almost all ranges of sport. You cannot only bet on individual games, you can place smaller bets within a game, such as: who will score the first goal; how many corner kicks there will be; how many goal kicks; how many caber tosses in the upcoming Scottish Highland Games. It gets down to that level.

You can also place a bet on public events, be it a TV show like *Big Brother*, or who will be the next prime minister, or who will one of the royals marry. It is open season for betting here in the UK.

This differs a bit from the rest of Europe, and there, probably Anastasios would have a better idea than I do. As a generalization, country by country, right across Western Europe, sports gambling has been under the control of the government.

There have been state-run government lotteries, some of which are being run like pools so that you cannot place a bet on one game, but rather could only place a parlay bet on the results of two or three games.

Nonetheless, in many European countries, you can do exactly the same thing as you can do here in the UK and place bets on individual games, on parts of games, on top scorers, even on games happening in different countries, including the United States.

What has happened now is that there have been a number of legal cases brought by Internet-based gambling companies, and also by the big British gambling companies that are currently trying to move as quickly as they can offshore, be that to Malta, Gibraltar, the Isle of Man, or any of these other kind of offshore jurisdictions. They are trying to offer their sports gambling right across the European Union.

There are huge, massive legal battles going on in the European Union as to how sports gambling should be changed and adapted in the next generation. But without doubt, if there are any students or American academics reading this paper, just from point zero, the ground is simply incredibly different here in Europe than it is in the United States. And the baby steps—the very, very early steps being bandied about to make sports gambling legal in the United States—reinforce to a European that it is a completely different world, a completely different market, and a completely different culture.

AK: Indeed, the situation across Europe is fascinating to view in terms of what is going on now in the United States. As mentioned earlier, some U.S. states are waiting to see what will happen with New Jersey's litigation before the Third Circuit and, maybe, ultimately before the Supreme Court. Based on what we have seen in the examples of certain government actors in Europe, some state entities may become key in terms of these types of legislative efforts.

I can go back to the early '90s, where across Europe, the model traditionally was that there would be a single operator which would be a state-run monopoly. For example, I remember growing up in Greece, and even teenagers would go to their neighborhood sport betting shop, which was licensed by the state. The state would grant licenses to operators, who would get their licenses based on meeting certain, very highly regulated, state criteria.

You would see the situation where these state-run monopolies would actually control the supply, and you would therefore obviously have a lot of entanglements in terms of the state-run monopoly...even situations where the state-run monopoly and the key operator would be featured in highly publicized cases of money laundering, with state officials, sports officials, government actors, and sport governing bodies involved in match fixing and scandals.

From the early '90s to now, we have had a history of litigation. We have had a history of efforts across Europe to liberalize the betting market. I think now we have a fragmented situation, where you have a lot of different models in different states.

The European Commission has filed complaints against several states that still function under an exclusive state monopoly, which violates certain fundamental Europe law principles, such as the freedom to provide services, and the freedom to engage in trade across borders. You have a lot of operators that operate across borders in Europe, and there have been a lot of discussion and litigation in terms of whether what matters is simply that an operator has a license from any member state, or whether there also has to be some license from any location from which they gain traffic.

DH: I absolutely agree with Anastasios. Let me bring in another geographical region: Asia. For the purposes of the conversation going forward, I am going to divide up the world into three sections: Asia, Europe, and North America.

The Asian model of sports gambling is revolutionizing and overturning sports gambling around the world. Even in Las Vegas, you are getting the new model, the "Asian model," of sports gambling coming into certain companies. It is based on the Internet. For those who do not know much about gambling, it is the equivalent of the Internet's effect on the music industry or the travel industry, and it is absolutely revolutionizing sports gambling.

Here is one small anecdote to illustrate the power of this model. There is a company based in Manila, the Philippines, that has a gross gambling revenue four times larger than the Adidas sports company. Most of our readers have probably never heard of that particular company, but it is four times larger, in terms of gross annual turnover, than Adidas, a company that they have all heard of.

Now, as we know, gross turnover, of course, is a difficult thing to measure, and this company's profit

margins are very, very small. They are depending on sheer liquidity. So that is number one. Nonetheless, the sports gambling industry has been overturned and revolutionized; it is looking for new opportunities in the same way the music industry is. All the usual paradigms are being overturned.

The second thing is that there is also an accompanying wave of sports corruption, which has really devastated most sports in Asia. It has now landed in Europe, and there is kind of an invisible line of corruption moving westwards. I just returned from Budapest, where 51 of their top players, coaches, and club officials in Hungarian soccer had been arrested. They have been accused of fixing games up until two weeks ago. This is not unusual. Greece, Turkey, Germany, Belgium, Switzerland, and, of course, Italy, where over half the professional soccer teams are under investigation, have also experienced rampant corruption. You are seeing case after case after case—including quite large cases—of sports corruption.

These two phenomena, I think, will come to North American shores, and they will come soon. I know that fixers are very interested in North America. I know the Asian market is interested in North America. How North America will respond, politically, judicially, and commercially to these challenges is, I think, a very interesting question. I do not know the answer going forward, but those two things are, to use a cliché, tsunamis that will hit North American shores sometime in the next five years.

SZ: For those among us who may not be familiar with it, please explain the Asian gambling model: how does it differ from traditional sports gambling?

DH: Well, it is difficult to speak about American sports gambling, because most of it is informal or illegal. And it is also extraordinarily difficult to overstate how powerful the illegal sports gambling industry is in terms of money-making for traditional organized crime. There is a famous scene in *Godfather I* where Marlon Brando's character makes an impassioned monologue for the mob not to get involved in drugs. And you think, "Well, what could they possibly be doing that would give them as much money as drugs? You know, this does not make any sense."

But when you talk to operatives, both current operatives and former operatives of LCN or La Cosa Nostra, or the traditional Jewish-based gambling organizations, across the continental United States and

Canada, they make an extraordinary amount of money from illegal sports gambling. How they will respond to this Asian invasion, I am not entirely sure.

SZ: Is that then an argument for liberalizing sports gambling, as a way to—hopefully—take money away from organized crime?

DH: I would say that at the moment, the North American model is very close to Prohibition, where an enormous number of people actually do sports gamble, and then pretend that they do not. It just boggles my mind that this would go on.

However, possibly this model is the one that will stop the Asian invasion of corruption in sports. As an outsider, I have to say that your model of making something that most people do illegal is so alien to me that I do not really understand how I can begin to analyze it. This exercise in hypocrisy leaves me scratching my head, such as when you have, during a television broadcast of a sports event, people discussing, quote, "the line and the odds," but sports gambling supposed to be illegal.

AK: In the first phase of the New Jersey litigation, we saw an expert economist who submitted a report that was used on three separate occasions in the district court decision by Judge Shipp. The report stated that there will be an increase in legal betting, which was what New Jersey wants—New Jersey wants to funnel funding that now goes to illegal betting to legal channels.

However, there was something that I wish to point out to law students, business students, and the readers of this symposium article: pay careful attention to how a memo or an expert report would be structured. Essentially, what the expert intended to do in that section of the report was to state that there will be an increase in legal betting, with monies being funneled across from what is now illegal betting.

However, in a summary section of the report, there was a parenthetical that talked about an increase in sports betting. And the parenthetical said "legal and illegal." What the Leagues and Judge Shipp used was that particular section, saying that the state's own expert was admitting that there will be an increase in all sports betting, both legal and illegal. That was something that was mentioned on three different occasions in the first decision.

I think that is a fascinating point, that there is reason to believe—or at least expert support for the proposition—that legalizing sports betting will not simply replace illegal betting with legal, but will rather increase all sports gambling, legal and illegal.

RR: Declan gave a great overview in terms of the scope of the Asian betting market and the vast liquidity that is there. When you compare that to both the legal and illegal markets in the United States, you find that the Asian market simply dwarfs what is going on here.

To have some monetary figures for comparison, the last reasonable estimates in terms of the volume of sports betting in the United States placed the low end of the estimated range at \$90 billion. The high end was at \$380 billion. That was 14 years ago. The federal government commissioned a report, and those are pretty impressive figures, especially when you compare that to the regulated market in Nevada, which had a recent handle of \$3 billion. That gives you some perspective that Nevada, which is the largest sports betting market in the United States, basically only controls one to two percent of the overall American sports gambling handle. But even the overall American handle is miniscule in comparison to the scope and liquidity of what happens in Asia.

When you compare the number of bets you can make in the Asian market, in terms of the monetary limits that individual bookies and websites allow, it is just so wildly different than the low limits that the regulated sports books in Nevada allow. It is unfair to compare the two, because they are just so fundamentally different in terms of scope.

Typically, professional bettors that are American-based will most often avail themselves of the offshore sports books in Costa Rica, Antigua, Curacao, or perhaps in Europe. They do not typically avail themselves of the regulated sports books in Nevada simply because of the low limits that those sports books place on successful professional bettors in terms of the amounts that they are able to wager on games. It is not worth their time to give away their sophisticated information in terms of what side they are taking, or what profit that they are making, in the regulated casinos. It is ironic, that the largest, most consequential sports bettors in the United States typically do not use the regulated sports books in the United States.

And that gets back to Anastasios' comment, as well, in terms of the expert report that was filed on behalf of the New Jersey side in the current litigation. It specifically spoke to increased legal *and* illegal sports betting as what would occur if New Jersey was to allow regulated licensed sports books to operate in their state.

SZ: How much larger is that Asian gambling market believed to be at this point? Are there any estimates of its size?

DH: I do not really like giving these estimates, because most sports gambling in Asia is in the “informal” or “illegal” markets. By its very nature, it is very difficult to provide an estimate of something that is illegal. Many of the people who are providing the estimates have a vested interest in making illegal gambling seem as large as possible. For example, if they are in law enforcement, the larger the industry, the more money and resources they will get to fight it.

Having given that caveat, the World Lottery Association estimates that the Asian sports gambling market, legal and illegal, is roughly \$90 billion. The Hong Kong Jockey Club, which is the largest government-run sports entity anywhere in the world, estimates that their illegal competitors across the rest of Asia are grossing about \$1 trillion a year. Somewhere between those two estimates—a low estimate of \$90 billion from the European-based world lotteries, and a high estimate of \$1 trillion a year from the Hong Kong-based Jockey Club—is the true situation.

SZ: Is there any general consensus for how much of the illegal market might be captured by legalization?

RR: Certainly, New Jersey is taking the position that a transparent, regulated sports gambling industry within their borders would capture some portion of the illegal American sports betting that is currently going on; however, they give no estimate. They have no hypothesis in terms of what percentage they could capture. Even though they have raised that issue in the course of the court proceeding, there has been nothing specific that I am aware of in terms the scope or extent of the substitution effect that would take place between legal and illegal betting.

SZ: Declan had mentioned earlier that there has been a number of corruption cases in Europe. Looking back to something we had talked about earlier, does that suggest that with increased legal sports betting, there would be an increase in sports corruption?

DH: Actually, there is one factor that I neglected to mention: almost all of those corruption cases in the last five years in Europe are linked with the illegal Asian gambling markets. When I spoke about the globalization of sports gambling, we have also

seen the globalization of sports corruption. So now a junior soccer team in Italy will fix their games, and they will make money because of the vast liquidity in the Asian illegal gambling section. They will place their bets literally around the world, but fix their games in their home territory.

When I made the prediction that within five years this phenomenon would be coming to the United States, it is the same thing. It is now possible to bet on almost any professional sports event taking place in the United States, doing so on illegal websites in Asia. As the popularity of US sports grows in Asia, so the liquidity on those sports will grow as well. The question of legal gambling in Europe is therefore, I think, a red herring. In fact, my English colleagues point out that England, whose market has had the most liberal gambling, has had the fewest investigated case of sports corruption.

AK: If I may add a few more points here. Let me start from what Declan just mentioned. You have the model from the UK: a regulated market, with a certain licensing regime and opportunities for operators to receive a license, and a lot of discussion about the tax implications.

You also have the so-called Asian match-fixing rings, which have definitely been very active across Europe, involving all the key actors—athletes, league or sport officials, and governmental actors.

So, for example, in Greece, you have situations where officials, government actors, athletes, and sporting club owners have been involved in money laundering as well as illegal betting schemes.

In the situation here in North America, what would the NBA, NFL, MLB, NHL actually do? Would they invest and collaborate in monitoring systems to deter corruption? The leagues would certainly seem to have the resources to do so. Indeed, given how chronically underfunded government law enforcement and regulatory bodies often are, it is difficult to see any monitoring scheme working without the active collaboration and support of the leagues.

DH: As an example of the isolationism which I spoke about at the beginning, consider that while there are these two enormous waves—Asian sports betting and corruption—which are hitting Asia and Europe, the cultural isolation of the United States has so far prevented them from hitting these own shores. What I mean by that is that people in the United States play and follow sports that no one else in the rest of the world does or cares about.

For example, baseball, for all its vaunted “World Series,” is really played by only a handful of countries—Japan, Taiwan, and a few countries in Latin America. Soccer, by way of contrast, is played by 209 countries around the world. As a result, the betting market is focused mostly on international sports, as opposed to American sports. The main bulwark against these waves of corruption is that the liquidity in the illegal gambling markets is simply not interested in American sports.

But ironically, as America’s sports grow in popularity overseas and globally—the National Basketball Association, for example, is making great inroads into Asia—they are opening themselves up to the problems in the gambling markets, because once the Asian market discovers, say, National Basketball in terms of gambling, the liquidity is just going to go through the roof, and with it the problems that excessive liquidity bring.

Here are some examples. One anecdote involves Japanese sumo wrestling. Depending on who you listen to, the history of Japanese sumo wrestling either goes back 300 or even 900 years.

In any event, the sport goes back centuries. We know that the national championship in sumo wrestling has only been canceled twice. Once was in 1944, when the American Air Force was blitzing the large cities, and it was simply impossible for the sport to carry on and have its annual national championship. The destruction of the Japanese infrastructure was too great.

The second time the sumo national championship was canceled was last year. It was canceled because Japanese media and law enforcement got hold of the extensive phone conversations and texts that were going on between what is called the yakuza—the Japanese mafia—and many of the prominent sumo wrestlers. Effectively, sumo wrestlers were taking orders from the yakuza to win or lose their bouts depending on the gambling market. And the loss of credibility for sumo wrestling was so great that the national championship and the organizers just said, “Look, there is no point in having a national championship. We have got to give this up. We have got to put this on hold.”

In a sport with a hundreds-of-years history that had only been canceled once before—in the middle of the Second World War, when it was logistically impossible to have a competition—the championships were cancelled due to corruption. That is the scale of the effect of the corruption.

Similar things are being seen in Taiwanese baseball, where the league has now declined to four teams from 13, because so many teams have been thrown out due to match fixing. South Korean sports are, frankly, a nightmare. In soccer, they have arrested 55 people. Players have committed suicide. There have been a number of similar incidents in South Korean basketball, volleyball, and even motorboat racing. They are even fixing a sports league that I did not know they had, which is computer games. They even fix some of those matches.

You are seeing similar circumstances in China, where the president of the Chinese Soccer Association was put in jail. He was replaced—and then they had to jail his replacement. They have jailed team owners, referees, soccer players...over 200 of their prominent sports people have now ended up in jail. Similar circumstances exist in Malaysia, Indonesia, Vietnam, Thailand, Cambodia, Singapore, and Laos. I will not even speak about Indian or Pakistani cricket.

Much of Asian sport is now regarded as without credibility. The vast Asian sports gambling market, the one that I spoke of earlier, somewhere between 90 billion and \$1 trillion a year, has transferred much of its liquidity to European sports. That is why it is now worthwhile for fixing rings to set up alliances with local European criminals. It has affected pretty much every tournament, from the Champions League to national games to national leagues. As I said, more than half the teams in Italy are now under investigation. It is a serious and significant problem to European sport.

And these are not the words of a Canadian, now English, academic. These are the words of Michel Platini, the European Soccer Chief; Sepp Blatter, the World Soccer Chief; and Jacques Rogge, head of the International Olympic Committee. This is the most serious threat to the credibility of their sports that exists. This, sadly, is the situation on the ground over here and in Asia, and I believe that as North American sports grow in popularity, they will be exposed to the same danger.

SZ: On that note, would anybody like to bring us back to North America before we conclude?

RR: Given the breadth of the examples that Declan and Anastasios have provided globally, when you discuss North America, it almost seems trivial. But here in the United States, we do get a glimpse into some of the issues other sports leagues have faced globally. Six years ago, during the sum-

mer of 2007, news broke that a National Basketball Association referee had been betting on numerous NBA games, including those that he officiated. The ensuing scandal made headlines. The Federal Bureau of Investigation, the chief federal law enforcement wing here in the United States, investigated, and it was an interesting turn of events in terms of how the case broke.

The inquiry into the basketball referee occurred only by virtue of an unrelated investigation.

The referee, as well as two co-conspirators, pled guilty, and they all spent time in prison for violating the Federal Wire Act. The Sports Bribery Act was not implicated at all. But the ensuing in-house investigation by the NBA was revealing in terms of what North American sports leagues do and do not do in terms of preventive measures in this respect.

The sports leagues, in furthering their case against the State of New Jersey, have poured out thousands of words in various different briefs and motions and pleadings, arguing the case that state-sponsored sports gambling lends itself to increased levels of corruption, match fixing, spot fixing, and other nefarious deeds related to gambling.

A discussion of corruption is certainly occurring here, but is at such a low, hypothetical level compared to the documented cases over in Europe. Sports corruption in the U.S. is not even remotely close to the level it is in Asia or Europe. The examples here are anecdotal in nature. They are fairly low-level and isolated. Comparing U.S. sports betting and corruption to that in the rest of the world is comparing apples and oranges. At this point, there is simply no comparison.

DH: One point that I think all of our American readers should take to heart: the group that discovered the gambling NBA referee, long before the FBI did, was the mob. Organized crime understood quickly, very quickly, that there was something odd going on with certain sports gamblers. Their success rate was far too high, and as a result, organized crime was able to find out that there was an NBA referee providing somebody with inside information—the two of them were working together. Once the mob discovered them, they extorted those guys to work for them. So the mob, because they controlled gambling, was able to figure out that there was something funny going on long before league officials or the FBI did.

I would suggest then, that if you wanted to put a strong, steady defense against corruption in sport,

you need to have the best monitoring system of a gambling market you possibly can. Unfortunately, if the best gambling monitors currently in the United States are the mob and organized crime guys, you have an inherent problem.

RR: An anecdote illustrative of what Declan just spoke to. The regulated sports books in Nevada, with a \$3 billion handle, they have what they call an early warning detection system. It is a system that interfaces with sports books and the regulators in Nevada. In a recent interview, one of the regulators in Nevada said, “Oh, if we notice something using our early detection system, we let the authorities as well as the sports leagues know.”

Declan mentioned the NBA referee case, which I just discussed. It went on for four years. Off-shore sports books were certainly aware that this

was going on, but at no time, apparently, did the early warning detection system in Nevada pinpoint what was going on. And that is simply a function that this level of sports wagering was not taking place in the regulated sports books. It was taking place elsewhere.

So to the extent that the early warning detection system that they have in place in Nevada can detect things occurring in Nevada, I certainly think that is the case. But there is just such a vast market outside of Nevada that it was not useful in terms of pinpointing, detecting, and preventing this specific example that occurred here in the United States. A relatively small \$3 billion sports wagering handle is simply not that helpful in detecting illegal gambling patterns in a market worth hundreds of billions of dollars globally, involving a vast number of sports and types of bets.