

Preventing Game-Fixing: Sports Books as Information Markets

Adam Hosmer-Henner
Harvard Law School

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I. Introduction.

The threat of game-fixing has been a constant worry for professional and amateur sports leagues since the Black Sox scandal of 1919 threatened public confidence in the integrity of baseball.¹ In June 2007, the National Basketball Association was rocked by reports that a referee, Tim Donaghy, was under investigation for unduly influencing the outcome of games and for providing inside information to gamblers. After each scandal, the usual response for the sports leagues is to toughen anti-gambling policies and call on Congress to further prohibit sports gambling. These implorations have succeeded to the extent that Nevada is the only state that currently permits sports betting and policymakers concerned about game-fixing have pressed for a total ban on sports betting.

Although gambling receives the majority of blame for game-fixing, prohibiting sports betting in Nevada is not only an ineffective way to reduce game-fixing but also counterproductive.

Gambling does create the incentives to fix games, but less than one percent of sports bets placed by Americans are wagered legally in Nevada.² The remainder of bets are placed with illegal bookies or over the internet, thus, potential game-fixers would not be prevented from betting upon the contests they rig. Worse, prohibiting sports betting in Nevada would eliminate the most effective method of detecting game-fixing. Nevada sports books have been instrumental in uncovering game-fixing scandals when irregular betting patterns raised suspicions. Nevada sports books share a mutual interest with law enforcement and the sports leagues in combating

¹ Jason Pollack, *Note: Take My Arbitrator, Please: Commissioner "Best Interests" Disciplinary Authority in Professional Sports*, 67 *FORDHAM L. REV.* 1645, 1645 (1999).

² See, e.g., John Warren Kindt & Asmar, Thomas, *College and Amateur Sports Gambling: Gambling Away Our Youth?* *VILL. SPORTS & ENT. L.J.* 221, 237 (2002).

game-fixing because they are the financial victims of game-fixers. Yet despite the alignment of interest, Congress and the sports leagues have called for the abolition of Nevada's sports books rather than formalizing mutually-beneficial relationships with them.

This paper examines the strategies policymakers can use to reduce game-fixing. Part II sets forth a utility model of game-fixing behavior, specifying the potential variables policymakers can affect. Part III describes the sports betting market and the incentives that it creates for game-fixing. Part IV explains the public and private punishments for game-fixing and the methods for detection. Finally, Part V offers the policy recommendation that the most effective way to reduce game-fixing is to increase the probability of detection by working with legal sports books to analyze betting patterns, rather than eliminating legal betting completely.

II. The Harm of Game-Fixing.

Game-fixing – when players, coaches, or referees improperly influence a sporting contest for the purposes of gambling – is a significant threat to the integrity of sports. The popularity of sporting contests depends upon the uncertainty of the game's outcome and the drama of live competition.³ Game-fixing or the perception thereof reduces the interest of fans who cease believing that the games reflect actual, fair competition and instead believe that the games are staged contests like professional wrestling matches.⁴ Whether players throw games to ensure the other team wins or merely reduce effort to affect the game's final margin (point-shaving), the

³ See Walter Neale, *The Peculiar Economics of Professional Sport*, 78(1) Q.J. OF ECON., 1, 1–14 (1964).

⁴ See Stefan Syzmanski, *The Assessment: The Economics of Sport*, 19:4 OXFORD REV. OF ECON. POL. 467 (2001).

viability of professional and amateur sports is jeopardized when the uncertainty of the game's outcome is completely or partially eliminated.

In an extreme example, corruption crippled the Chinese Super League despite soccer's status as one of the most popular sports in China. After a series of game-fixing scandals, the average television audience dropped by 42% and average match attendance dropped by 38%.⁵ In the United States, game-fixing is under detected, entering the public consciousness only when a major scandal is uncovered. The National Collegiate Athletic Association ("NCAA") conducted an anonymous survey in 2004 that revealed a startling number of student-athletes who had engaged in game-fixing; approximately 2% of Division 1 basketball players reported either accepting money to play poorly or knowing someone who had.⁶ An econometric analysis of Division 1 basketball games supported the survey results and estimated that 6% of games where one team was heavily favored and 1% of all games were tainted by point-shaving.⁷

Game-fixing is also a threat to the financial viability of sports books. A fixed game allows bettors with knowledge of the fix to wager without risk; every dollar these bettors win is a loss for the sports book. Additionally, the demand for sports wagering depends upon the perception among bettors that the contest is fair. After the game-fixing scandals in the Chinese Super

⁵ Nick Mackie, *China's Scandal League Kicks Off Again*, BBC NEWS, Mar. 31, 2005, available at: <http://news.bbc.co.uk/2/hi/business/4397653.stm>.

⁶ NCAA, *2003 NCAA National Study of Collegiate Sports Wagering and Associated Behavior*. Indianapolis, IN: NCAA (2004).

⁷ Justin Wolfers, *Point Shaving: Corruption in NCAA Basketball*, 280 AEA PAPERS AND PROCEEDINGS 279, 283 (2006).

League, bettors switched to European soccer because it offered a fair game to bet upon.⁸

Consequently, both sports leagues and sports books have tremendous incentives to prevent game-fixing.

A. Modeling Game-Fixing.

Game-fixing is a widespread and serious problem that has the attention of Congress, sports leagues, and sports books. To aid in identifying appropriate policy responses, a model of game-fixing behavior derived by Professor David Forrest and Professor Robert Simmons is adapted below.⁹ It describes, in general terms, the expected utility change for an athlete, coach, or referee participating in a game-fixing conspiracy.

$$E(U^F) = (1 - p) [qU(Y+G)] + (1 - p) [(1 - q)U(Y)] + p [U(Y - F - R)] - U(Y) + U(C) \quad (1)$$

$E(U^F)$ represents the expected utility change from participating in a fix; p is the probability of detection of the fix; q is the probability of a fix being successful; Y is the current wealth of the individual; G is the gain in wealth from an undetected and successful fix; F is the financial penalty incurred if the fix is detected (fines or loss of salary or prize money while suspended); R is the value of the civil and criminal penalties and loss of reputation if found guilty of fixing; and

⁸ Jack Gage, *Cracking Soccer's Great Wall*, FORBES, Apr. 16, 2007, available at: http://www.forbes.com/free_forbes/2007/0416/086.html.

⁹ See David Forrest & Robert Simmons, *Sport and Gambling*, 19:4 OXFORD REV. OF ECON. POL. 598, 607 (2003).

$U(C)$ is the utility linked to the act of cheating itself. The risk-neutral athlete will participate in the fix if $E(U^F) > 0$.¹⁰

To reduce game-fixing, policymakers can affect four variables: G , by reducing the availability of betting opportunities; R , by increasing the attached civil and criminal penalties; F , by increasing fines or salary forfeited; or p , by increasing the probability of detection.

III. The Sports Gambling Market.

Legal gambling receives the bulk of the blame for sports corruption for providing the financial incentives, G , and has been the primary target of Congressional rhetoric and legislation. Seeking to protect the integrity of sports, Congress passed the Professional and Amateur Sports Protection Act (“PASPA”)¹¹ in 1992 to “stop the spread of State-sponsored sports gambling.”¹² PASPA represented a partial compromise because it included a grandfather provision for states that had previously legalized sports wagering or operated a sports wagering scheme.¹³ Currently, sports betting is only legal in Nevada, but this exception is under siege.¹⁴

¹⁰ *Id* at 607.

¹¹ 28 U.S.C. § 3702 (2004) (making it unlawful for a “(1) government entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) 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.”).

¹² S. Rep. No. 102-248, at 4 (1991).

¹³ *Supra* note 3.

¹⁴ *See, e.g.*, S. 2340, 106th Cong. (2000) (proposing to prohibit all legalized gambling on high school, college, and amateur sports).

Congress created the National Gambling Impact Study Commission (“NGISC”) in 1996 and charged it with “conduct[ing] a comprehensive legal and factual study of the social and economic implications of gambling in the United States.”¹⁵ The NGISC’s final report recommended that “betting on collegiate and amateur athletic events that is currently legal be banned altogether.”¹⁶ The NCAA has consistently lobbied for this prohibition,¹⁷ stating that it “opposes all forms of sports gambling because of its potential to undermine the integrity of sports contests while jeopardizing the welfare of the student-athlete and the intercollegiate athletics community.”¹⁸ The National Basketball Association (“NBA”), National Hockey League (“NHL”), Major League Baseball (“MLB”), and National Football League (“NFL”) joined with the NCAA in a letter to Congress stating that “[s]ports betting is incompatible with preserving the integrity of American athletics.”¹⁹ So far, Congress has not acted to further restrict sports gambling, but the legislative debate has revolved around eliminating Nevada’s exception. The High School and College Gambling Prohibition Act,²⁰ the Amateur Sports Integrity Act,²¹ and more recently, the Student Athlete Protection Act²² are just a few of the bills proposed to outlaw gambling on amateur sports throughout the United States.

¹⁵ NGISC Final Report, at Executive Summary.

¹⁶ *Id.* at 3-18.

¹⁷ Anthony Cabot & Faiss, Robert, *GAMING LAW SYMPOSIUM: Sports Gambling in the Cyberspace Era*, 5 CHAP. L. REV. 1, 7 (2002).

¹⁸ William Saum, *Written Testimony before the Subcommittee on Technology, Terrorism and Government Information Senate Judiciary*, Mar. 3 1999, available at: http://www.ncaa.org/gambling/19990324_testimony.html.

¹⁹ Letter from NCAA, MLB, NHL, NBA, and NFL to Members of Congress (Jul. 30, 2007).

²⁰ S. 2021, 106th Cong. (2000).

²¹ S. 2267, 106th Cong. (2000).

²² H.R. 1422, 109th Cong. (2005).

Doing away with Nevada's sports books may be a symbolic victory for opponents of sports gambling, but it will not affect game-fixing. The profit from game-fixing comes from collecting winning bets placed upon the rigged contest. This requires the existence of sports books willing to accept sizable bets or the ability to spread out bets among multiple sports books. Despite being the public face of gambling, Nevada sports books represent only a small fraction of the overall betting market. Although gambling is a cause of game-fixing in that it provides the source of the potential gains, *G*, the prohibition of legal sports betting is an indirect and ineffective strategy because the incentives to fix games do not arise significantly from legal betting. Even if betting was outlawed in Nevada, the betting opportunities of potential game-fixers would be largely unaffected as illegal, internet, and international sports books are more than sufficient markets.

A. Domestic Sports Gambling.

Nevada is the only state permitting sports books and it has done so since 1931.²³ The highly regulated sports books²⁴ accept bets on a variety of professional and amateur sports, taking in an

²³ Richard O. Davies & Abram, Richard G., *BETTING THE LINE: SPORTS WAGERING IN AMERICAN LIFE*, Ohio State University Press, 2000, p. 115.

²⁴ Each sports book and every key employee must obtain a license, and bettors must be physically present in the state and show up in person to place a bet at an approved betting station. Bettors wagering over \$3000 must provide identifying information to the sports books and all wagers over \$10000 or aggregate wagers totaling over \$10000 within 24 hours must be reported to the Gaming Control Board.; Nev. Rev. Stat. § 22.020 (2007); Nev. Rev. Stat. § 22.035 (2007); *See, e.g.*, Jeffrey Rodefer & Sloan, Daurean G., *Feature: Nevada's Proposal to Strengthen its Collegiate Sports Betting Regulations & the NCAA's Push for a Congressional Ban*, 9 *NEVADA LAWYER* 10, 13 (2001).

estimated handle – or amount wagered – of \$2.4 billion.²⁵ The amount wagered in Nevada pales in comparison to illegal wagers, estimated at between \$80 billion and \$380 billion,²⁶ that are placed with one of the estimated 250,000 professional or semi-professional bookies in the country.²⁷ Legal wagers, therefore, constitute only between 1% and 2% of the total amount wagered within the United States. Both legal and illegal wagers, however, are increasingly overshadowed by the popularity of internet sports betting, further reducing the market share of Nevada's sports books.

B. Internet Sports Gambling.

Even if the legal and illegal domestic markets were shut down, potential game-fixers could still wager online. In 2004, internet sports books took in an estimated handle of \$76.6 billion – thirty times Nevada's handle,²⁸ and approximately 70% of this total amount was wagered by bettors within the United States.²⁹ Internet sports books are growing at a tremendous rate and already support bets large enough to provide lucrative returns for game-fixers. It is also a simple matter to spread out bets among different websites or multiple accounts.

²⁵ NGISC Final Report, at 3-9.

²⁶ NGISC Final report, Executive Summary.

²⁷ *Supra* note 23, at 93.

²⁸ See Matt Youmans, *GAMING NEWS Sports Betting: Guess Where Big Bettors Spend Their Money?*, CASINO CITY TIMES, Sept. 12, 2005, available at: <http://www.casinocitytimes.com/news/article.cfm?contentID=153385>.

²⁹ Megan E. Frese, *Rolling the Dice: Are Online Gambling Advertisers "Aiding and Abetting" Criminal Activity or Exercising First Amendment-Protected Commercial Speech?*, 15 FORD. INTELL. PROP. MEDIA & ENT. L.J. 547, 549-50 (2005).

Online sports books have been surprisingly successful at eluding law enforcement and regulation. Internet sports books operate outside of the jurisdiction of the United States to avoid prosecution under the Interstate Wire Act of 1961 (“Wire Act”).³⁰ The more recent Unlawful Internet Gambling Enforcement Act of 2006 (“UIGEA”)^{Mark} attempted to reduce internet gambling by limiting the financial transfer mechanisms of the internet sports books. The UIGEA’s efficacy is highly suspect for two reasons. First, the UIGEA exempted financial institutions from monitoring check transactions so both electronic and paper checks can be used to fund online gambling accounts.³¹ Second, the UIGEA cannot easily prevent the use of third party “e-wallet” companies incorporated in foreign countries.³² These “e-wallets” allow players to fund their accounts indirectly by sending an electronic transfer from their bank to a third party “e-wallet” and then use that account to send funds to the gambling site.³³ Third, neither the Wire Act nor the UIGEA reaches the bettor, so no additional deterrent is imposed upon the individual.³⁴ Therefore, potential game-fixers are not deterred from betting online when there are no additional criminal penalties for betting and the burden of setting up an “e-wallet” to circumvent the UIGEA is slight compared to the potential gains.

C. International Sports Gambling.

³⁰ 18 U.S.C. § 1084(a) (2006).

³¹ Peter Paul Shaker, *Note: America’s Bad Bet: How the Unlawful Internet Gambling Enforcement Act of 2006 Will Hurt the House*, 12 FORDHAM J. CORP. & FIN. L. 1183, 1195 (2007).

³² *Id.*

³³ *Id.*

³⁴ *United States v. Baborian*, 528 F. Supp. 324, 328-29 (1981)(holding that the Wire Act only reaches those engaged in the “business of betting or wagering” and not to “mere bettors”); *See, e.g.*, Lori K. Miller & Cathryn L. Claussen, *Online Sports Gambling – Regulation or Prohibition?*, 11 J. LEGAL ASPECTS SPORT 99, 114-115, 118 (2001).

Even if potential game-fixers could not place bets within the United States or online, the international popularity of American sports and the popularity of betting on American sports still renders the contests vulnerable to cross-border game-fixing.³⁵ In Mexico for example, soccer is watched more often than football but the reverse is true for betting because the perceived integrity of the NFL makes it a more popular betting option than Mexican soccer.³⁶ This in turn drives the popularity of the NFL in Mexico as bettors watch the games and become fans.³⁷ But it also creates the risk that Mexican bettors will have sufficient incentives to influence the outcome of American sporting contests.

A similar risk was realized when an Asian gambling syndicate used electrical devices to sabotage the lighting systems of English soccer stadiums.³⁸ When the score of the game was favorable to the syndicate, the devices were triggered to shut off the lights, forcing the abandonment of the game and resulting in an estimated \$60 million in profits for the syndicate.³⁹ Such elaborate, technological schemes are rare but other syndicates have bribed players in other countries to directly influence a game's outcome.⁴⁰ As long as a sufficient amount can be wagered on the outcome of a contest, betting syndicates will have an incentive to fix matches.

³⁵ See, e.g., Chris Hawley, *Mexico loves NFL gambling even if it's tepid toward Cardinals*, USA TODAY, Sept. 29, 2005, available at: http://www.usatoday.com/sports/football/nfl/2005-09-29-mexico-city-nfl-scene_x.htm.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Man guilty of floodlight plot*, BBC NEWS, Aug. 20, 1999, available at: http://news.bbc.co.uk/2/hi/uk_news/426092.stm.

³⁹ *Id.*

⁴⁰ Peter Robinson, *Hansie Offered Me \$15 000, Says Gibbs*, CRICINFO NEWS, available at: <http://content-uk.cricinfo.com/ci/content/story/89572.html>.

IV. Deterring Game-Fixing: Penalties and Detection.

Game-fixing can be directly combated by a combination of public and private penalties. In the utility model, (1), the threat of civil and criminal penalties, R , and the fines and loss of salary, F , act as deterrents to potential game-fixers. The public regulatory framework determines the level of civil and criminal penalties for game-fixers while the sports leagues determine the private penalties that apply to each league's athletes, coaches, and referees. These penalties are severe but for any of these penalties to attach, the game-fixing must first be detected. Moreover, the probability of detection must be high enough for the penalties to serve as a credible deterrent.

A. Penalties for Game-Fixing.

Game-fixers are subject to punishment under multiple provisions of federal law. Under 18 USC § 224(a), anyone who influences, attempts to influence, or conspires to influence the outcome of a sporting contest by bribery is punishable by up to five years imprisonment or a fine of up to \$10,000 or both.⁴¹ Section 224(a) is broad in scope, covering both sporting contestants and non-contestants.⁴² Game-fixers also can be prosecuted under federal statutes prohibiting the

⁴¹ 18 USC § 224(a) (2006) (“Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery and sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.”).

⁴² *United States v. Walsh*, 544 F.2d 156 (4th Cir. 1976).

transmission of wagering information across state lines,⁴³ interstate travel with the intent to commit sports bribery,⁴⁴ or wire fraud.⁴⁵ These offenses qualify as predicate offenses under the Racketeering Influenced and Criminal Organization Act (“RICO”).⁴⁶ If the additional requirements of RICO liability are met – such as the pattern and enterprise requirements – game-fixers can face up to 20 years imprisonment and additional fines.⁴⁷ There are also specific state statutes that criminalize game-fixing.⁴⁸ Game-fixers are subject to a comprehensive public regulatory scheme establishing serious penalties for all participants in a game-fixing conspiracy.

Athletes, coaches, or referees who fix games are also subject to penalties from the private regulatory bodies of the sports leagues. The major sports leagues prohibit wagering by any athlete, coach, or referee upon their own sport.⁴⁹ Violators face a lifetime ban from the sport as well as financial penalties such as salary forfeiture.⁵⁰ Individuals found to have fixed games are subject to these penalties as well as to additional claims for restitution, damage caused to the

⁴³ 18 U.S.C. § 1084(a) (2006) (“Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.”).

⁴⁴ 18 U.S.C. § 1952 (2006); *see also United States v. Mazzei*, 700 F.2d 85 (2nd Cir. 1983).

⁴⁵ 18 U.S.C. § 1343 (2006) (“Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both.”).

⁴⁶ 18 U.S.C. § 1961 et. seq. (2006).

⁴⁷ 18 U.S.C. § 1963 (2006); *see also Mazzei*, 700 F.2d at 85 (applying RICO to punish a game-fixer for an additional ten years of imprisonment); *United States v. Burke*, 700 F.2d 70 (2d Cir. 1983).

⁴⁸ NY CLS Penal § 180.40 (2007).

⁴⁹ NGISC Final Report, at 3-11.

⁵⁰ *See supra* note 3, at 234.

league, or specific contractual violations. The NCAA prohibits student-athletes and athletic department staff members from knowingly participating in “sports wagering activities or provid[ing] information to individuals involved in or associated with any type of sports wagering activities.”⁵¹ Student-athletes who violate this rule lose at least one season of athletic eligibility and a second violation permanently results in the loss of all eligibility for all sports.⁵² The punishment – immediate and permanent loss of eligibility in all sports – is even more severe for student-athletes who engage “in activities designed to influence the outcome of an intercollegiate contest or in an effort to affect win-loss margins (“point shaving”) or who participate[] in any sports wagering activity involving the student-athlete’s institution.”⁵³ Moreover, student-athletes found to have fixed games are unlikely to be deemed suitable for employment in professional sports leagues, creating an additional deterrent.

The utility model, (1), indicates that the greater the financial loss, F , that a player risks, the lesser the likelihood that the player will participate in a game-fixing conspiracy. Although the professional sports leagues are able to raise salaries to increase F , this would have little relative effect given the size of modern athletes’ salaries. In contrast, the student-athletes of the NCAA are most susceptible to engage in game-fixing because they receive no salary at all. Although paying student-athletes would likely result in a significant reduction in collegiate game-fixing, this policy option and its implications are outside the scope of this paper. The response to any level of penalty, however, is affected by the probability of being caught.

⁵¹ NCAA, *2007-08 NCAA Division I Manual*, Bylaw 10.3 Indianapolis, IN: NCAA (2008).

⁵² *Id.* at 10.3.2(b).

⁵³ *Id.* at 10.3.2(a).

B. Detecting Game-Fixing.

Before game-fixers can be subject to either public or private penalties, their illegal activity must first be detected. One prosecutor explained that the task of detecting and prosecuting of game-fixing is “innately difficult . . . because of the individual nature of what the athletes do” and because determining whether an athlete accepted a bribe requires looking into the athlete’s head.⁵⁴ Analyzing game film for evidence of game-fixing is a snipe hunt due to the inherent subjectivity of officiating decisions and the impossibility of determining whether an athlete missed a shot on purpose or was merely having a poor shooting night.

Detecting game-fixing is difficult because of a lack of resources devoted to the task. Combating illegal sports gambling and game-fixing are currently not high priorities for law enforcement.⁵⁵ This was not always the case as during the heyday of organized crime, these activities received considerable attention because law enforcement believed that they were primary sources of revenue for the mafia.⁵⁶ Even today, the Federal Bureau of Investigation still maintains a Sports Bribery Program within its Organized Crime Division. As the threat of organized crime has diminished, however, the attention devoted to stopping illegal gambling has correspondingly

⁵⁴ Carri Geer Thevenot, *Boxer Sentenced in Fight Fix*, Feb. 19, 2005, available at: http://www.reviewjournal.com/lvrj_home/2005/Feb-19-Sat-2005/sports/25899052.html.

⁵⁵ NGISC Final Report, at 3-9.

⁵⁶ *Supra* note 23, at 76, 78.

declined, from almost 123,000 arrests in 1960,⁵⁷ to only 11,200 arrests in 2005.⁵⁸ The lack of attention devoted to illegal gambling results in fewer informants or tip-offs to game-fixing and the consequent low risk of detection has not posed a substantial deterrent to potential game-fixers as the evidence of widespread point-shaving indicates.⁵⁹ The most successful detection technique has not involved traditional law enforcement methods, but has relied upon the statistical expertise of the Nevada sports books.

1. Detection Through Information Markets.

Like the stock market reflects all publicly available information about the value of a company,⁶⁰ the betting market reflects all publicly available information about the outcome of a game.⁶¹ The efficient market hypothesis applies to point spreads as it does to stock prices because the bookmakers must incorporate all possible information into the point spread or savvy bettors could exploit the excluded information.⁶² If a star basketball player was hurt and the betting line did not reflect this information, then the bettor could gain an advantage by wagering on the other team. As more money was placed on that team, the “price” of the bet would rise as sports books

⁵⁷ Dan McGraw, *The National Bet*, U.S. NEWS & WORLD REP., Apr. 7, 1997, at 50.

⁵⁸ C. Puzanchera, Adams, B., Snyder, H., and Kang, W., *Easy Access to FBI Arrest Statistics 1994-2005*, 2007, available at: <http://ojjdp.ncjrs.gov/ojstatbb/ezaucr/>.

⁵⁹ *Supra* note 7.

⁶⁰ See e.g., *Basic Inc. v. Levinson*, 485 U.S. 224, 241 (1988) (accepting the “hypothesis that, in an open and developed securities market, the price of a company’s stock is determined by the available material information regarding the company and its business.”).

⁶¹ See, e.g., R. Alexander, Hetherington, *Betting Against Efficiency: Behavioral Finance in an NFL Gambling Exchange*, March 26, 2006, available at: <http://ssrn.com/abstract=881514>.

⁶² *Id.*

adjusted the betting line in the opposite direction to reduce risk.⁶³ Game-fixers are similar to insider traders in that they place bets using information that is unavailable to the public or the sports books.

In order to identify potentially rigged contests, the sports books can look to one of several sources of evidence. First, a red flag could be raised if a disproportionate volume of bets – outside of historical norms – is placed on a game or a team without apparent explanation.⁶⁴ In 2004, the chief oddsmaker at Las Vegas Sports Consultants noticed irregular, heavy betting on the University of Toledo football team.⁶⁵ He then reported his suspicions to the Nevada Gaming Control Board and the NCAA, tipping off law enforcement to the existence of a point-shaving conspiracy.⁶⁶ Second, a disproportionate volume of bets placed upon one side in a single game could also raise suspicions.⁶⁷ The point spread is an equilibrium price intended to generate equal action on each side of a game. When one side receives a vast majority of the action, unexplained by causes such as home-team or favorite-longshot bias,⁶⁸ inside information may be responsible. Jimmy Vaccaro, the bookmaker for the Mirage in Las Vegas, noticed the existence of irregular betting patterns on the opponents of the Arizona State basketball team in the mid-1990s. Consequently, the Mirage stopped accepting bets on Arizona State games and alerted law

⁶³ *Supra* note 23, at 2.

⁶⁴ Telephone Interview with RJ Bell, Founder of Pregame.com (Apr. 4th, 2008).

⁶⁵ Mike Fish & Tanber, George, *As summer ends, heat is on in Toledo point-shaving case*, ESPN.COM, Aug. 29, 2007, available at: <http://sports.espn.go.com/espn/print?id=2988714&type=story>.

⁶⁶ *Id.*

⁶⁷ *Supra* note 64.

⁶⁸ See generally, Michael Cain et. al., *The Favourite-Longshot Bias, Bookmaker Margins and Insider Trading in a Variety of Betting Markets*, 55 BULLETIN OF ECON. RESEARCH 263 (2003).

enforcement, resulting in the exposure of a major game-fixing conspiracy.⁶⁹ Third, unusual timing of bets can tip off bookmakers. In 2007, an internet sports book, BetFair, voided all bets on a tennis match between Nicholas Davydenko and Martin Vassallo Arguello after noticing suspiciously timed bets.⁷⁰ After Davydenko won the first set in a three set match, large bets were placed on his opponent who won by default when Davydenko allegedly suffered an injury and withdrew. The timing of bets is generally less probative than other methods because only a small amount of betting occurs in-game.⁷¹ Anytime there is a variation from expectation though, suspicions are heightened just as if it was revealed that an insider sold stock immediately prior to negative corporate publicity or a drop in the stock's price.

2. Nevada's Ability to Detect Game-Fixing.

The Nevada sports books – through detailed recordkeeping of bets and analysis of betting trends – are the only legal information market for sports gambling in the United States. This function is critical to preventing game-fixing as the crime can create a traceable record in the sports books, usable for detection of illegal activity. Nevada requires that its sports books keep detailed records of all bets over \$10,000, including the name and personal information of the bettor.⁷² Sports books also have taken it upon themselves, for their own protection, to keep detailed

⁶⁹ *Vegas Helps Uncover the Toledo Betting Scandal*, SPORTSMEMO, Apr. 17, 2007, available at, <http://www.sportsmemo.com/handicappers/tes/articles/1108/?PHPSESSID=b94ddaffca4f049ba>

⁷⁰ *Davydenko betting mess*, The Daily Telegraph, Aug. 4, 2007, available at: <http://www.news.com.au/dailytelegraph/story/0,22049,22188280-5001023,00.html>

⁷¹ *Supra* note 64.

⁷² Nev. Rev. Stat. § 22.061 (2007).

records of most if not all bets.⁷³ Sports books stand to lose financially when bettors have inside information so the sports books are very conscious of the need to track suspicious betting patterns.

Nevada sports books not only have a financial incentive to identify game-fixers, they have a statutory obligation to do so. Nevada sports books may not accept bets on athletic events from or on behalf of a coach or participant in that event and have an obligation to take reasonable steps to ensure compliance.⁷⁴ There is also a legal duty to inform the Nevada Gaming Control Board of suspicious wagers.⁷⁵ Anytime a sports book knows or has reason to suspect that a wager was placed in violation or as part of a plan to evade federal, state, or local law⁷⁶ or was placed without a lawful purpose,⁷⁷ it must file a report if the amount in question is over \$3000 but may file a report regardless of the amount.⁷⁸ These obligations ensure that the sports books in Nevada work together with authorities to uncover game-fixing, however, even without these regulations the sports books would almost certainly still report suspicions of game-fixing to authorities to ensure public trust in the contests and deter potential game-fixers from victimizing the sports books.

⁷³ *Supra* note 17, at 18.

⁷⁴ Nev. Rev. Stat. § 22.120(b) (2007).

⁷⁵ Nev. Rev. Stat. § 22.121 (2007).

⁷⁶ Nev. Rev. Stat. § 22.121(1)(a) (2007).

⁷⁷ Nev. Rev. Stat. § 22.121(1)(c) (2007).

⁷⁸ Nev. Rev. Stat. § 22.121(2) (2007).

Relying upon Nevada's sports books to detect game-fixing is not a complete solution. Because only 1% of bets are placed in Nevada, there is theoretically only a 1% chance of detecting irregular betting. This percentage could be even smaller as game-fixers have a disincentive to bet in a regulated market like Nevada. Although a greater market share for legal sports books would increase the chance of detection, even a 1% market share can still contribute to the detection of game-fixing. First, game-fixing conspiracies are difficult to keep concealed. There is a tremendous temptation to let other individuals in on the fix because it is nearly costless to the game-fixer. Secondary bettors possessing information or rumors of fixed games may end up wagering in Nevada sports books, leading to the discovery of the actual conspiracy. Second, Nevada sports books may function as a secondary market, where bets placed in other markets can be reflected through the use of layoff bets. A layoff bet is one that a bookie or sports book places with another bookie or sports book to reduce the risk of unbalanced betting.⁷⁹ This creates an echo effect whereby bets placed in other markets can be reflected in Nevada's lines. The existence and prevalence of layoff betting is controversial as Nevada law prohibits bets placed from out-of-state or on behalf of an out-of-state bettor.⁸⁰ But at least on some occasions, illegal bookmakers have placed layoff bets with Nevada casinos.⁸¹

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⁷⁹ *Supra* note 64.

⁸⁰ Nev. Rev. Stat. § 22.140 (2007).

⁸¹ *Supra* note 18.

Sports books can help prevent game-fixing if they are viewed as allies to work with, not enemies to work against. This cooperative framework is neither revolutionary nor anachronistic. One of the earliest commissioners of the NFL had a “special telephone line by which well-placed gamblers and handicappers could call him to report [fixed games.]”⁸² Decades later, in preparation for the 2008 Beijing Games, the International Olympic Committee established a special unit to check for suspicious betting patterns.⁸³ For the first time, the Committee signed agreements with major betting companies to monitor irregular gambling.⁸⁴ The Committee’s president recognized the alignment of interests between sports and sports books stating that “it is [in the sports books’] interest to work with us. It is [in] our interest to work with them because these betting companies definitely also want a clean sport.”⁸⁵ In contrast to the antagonism toward sports books from the NGISC, the English Gambling Commission called upon the sports leagues and sports books to “improve their understanding of how each other’s industry operates and to share information relevant to integrity in sports betting.”⁸⁶ Banning sports betting in Nevada would eliminate the only legal information market in the United States and prevent policymakers from benefiting from a cooperative relationship to detect game-fixing.

The policy choice involves a tradeoff between the additional incentives created for game-fixing by allowing sports betting in Nevada against the additional probability of detection gained by the

⁸² *Supra* note 23, at 102.

⁸³ Stephen Wilson, *IOC to Monitor Betting During Beijing Olympics*, ASSOCIATED PRESS, Jun. 6, 2008, available at: http://ap.google.com/article/ALeqM5gEjlvxXh0N9eoCr-48UjDd_5RaSAD914IUB00.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Gambling Commission, *Integrity in Sports Betting: Policy Position Paper*, Oct. 2007, at 2.4.

Nevada sports books ability to uncover game-fixing conspiracies. Prohibition would affect only a small fraction of the overall betting market and leave game-fixers free to bet illegally, online, or internationally. In contrast, Nevada sports books have alerted law enforcement to multiple game-fixing conspiracies that may never have been uncovered without the sports books' assistance. Setting up a formal relationship of information sharing and investigative collaboration between law enforcement, sports leagues, and sports books would help to prevent game-fixing.

Sports betting itself does not threaten the integrity of sports, it can exist as an independent activity that is completely separate from the games. Harm arises only when sports and gambling become entangled. Maintaining independence between sports and gambling is positive for both sides and can be accomplished through cooperation to eliminate game-fixing. Pete Newell, a Hall of Fame collegiate basketball coach, recognized the value of the Nevada sports books in protecting the integrity of sports, believing that banning betting on college sports would only help the fixers and the point-shavers.⁸⁷ Newell stated “[y]ou never want to trade the devil you know for the devil you don’t . . . it’s more than a coincidence too that Las Vegas is the one that has been able to discern, discover, these irregularities.”⁸⁸ Even if policymakers consider sports gambling “the devil” for other reasons, the Nevada sports books are crucial allies in the prevention of game-fixing.

⁸⁷ ESPN Outside the Lines Transcript, Apr. 1, 2001, *available at*: <http://espn.go.com/page2/tvlistings/show53transcript.html>.

⁸⁸ *Id.*