

BETTING ON INTEGRITY

If the game is affected negatively by gambling, the sport loses integrity and then everything becomes professional wrestling with a predetermined outcome.¹

– EDWARD A. MALLOY, President, Notre Dame University

On May 12, 2004, the National Collegiate Athletics Association (NCAA) dropped a bombshell on America's sports enthusiasts by releasing the results of a study on collegiate student-athletes and their gambling habits. The study—"National Study on Collegiate Sports Wagering and Associated Health Risks"—surveyed 21,000 student-athletes and reported that 35 percent of male and 10 percent of female student-athletes gambled on college sports last year, and most disturbingly, 25 football players and two men's basketball players took money to play poorly in a game.² For innocent sports fans who clung to collegiate athletics as the last bastion of purity in an area increasingly overrun by commercialization, greed and commodification, the report's findings sounded the death knell for an idealized vision of *amateur* athletics. A closer examination, however, reveals that the begged question is not "Why is student-athlete involvement with gambling so pervasive?"; but rather, "Why is student-athlete involvement with gambling *not more* pervasive?"

Given the immeasurable appeal of sports gambling to college-age youth, the accessibility of offshore gambling sites on the Internet, and the legitimization of sports gambling, the unsightly mix of collegiate athletics and gambling provide the recipe for a scandal of unimaginable proportions. However, the law's largely hands-off approach to gambling stands in sharp contrast to its stringent enforcement of the drug trade—another activity that could be construed as a transaction between two willing

(though not exactly voluntary) participants. In 1960, police arrested nearly 123,000 people for illegal gambling activities, and just 27,000 for drug offenses. In 1999, police arrested just 15,000 for gambling offenses, constituting less than 0.1% of all arrests; while the number of drug arrests have sky rocketed to well over 1 million, or more than 8% of total arrests.³ In 1993, the amount of illegal sports betting was estimated at \$84 billion; while the value of the illegal drug trade in the same year was \$49 billion.⁴

This paper examines the history and consequences of sports gambling, compares the harms of gambling with the harms of the drug trade and proposes an immediate prohibition of gambling on amateur athletics. Part 1 examines the history of sports wagering and the law's response. Part 2 explores the harms of sports gambling through the lives of a professional gambler, a college dropout, and a bookmaker—harms that bear haunting parallels to those afflicting drug addicts and dealers. Part 3 traces the rise of Internet sports gambling and its accessibility to youth. Part 4 offers the reasoning and arguments in support of my proposals to criminalize wagering on amateur athletics.

SOARING AMIDST SCANDAL

The echoes of gambling have been inextricably tied with American sports since sports began captivating the nation's imagination around the turn of the century. And every once in a while, those echoes remind us just how tight gambling's vise grip is. In 1919, the baseball franchise Chicago White Sox (better known as the Black Sox) intentionally lost the World Series after receiving payments from a gambler. In 1966, the National Football League suspended two of its most popular players for gambling on their own games. Major League Baseball's all-time hit leader Pete Rose is still serving a lifetime suspension from baseball for his involvement with gambling.⁵

Despite its shadowy presence around sports, however, the public generally considered sports gambling to be a victimless crime—until its ties with the Mafia were discovered in 1950 when Tennessee Senator Estes Kefauver held public hearings on the influence of organized crime. Mob-affiliated individuals testified before a massive television audience⁶ and told America that the Mafia derived its main source of income from offering sports betting operations.⁷ Despite this newfound awareness, Americans gambled even more on sports.

Much of the rise in popularity can be traced to the invention of the point spread, a betting system based on a determined disparity in points between the two teams.⁸ The point spread line proved to be much more effective in drawing the bettors' attention and, more importantly, their

wallets. The point spread and Nevada's legalization of gambling triggered an influx of mom-and-pop sports books in Las Vegas in the 1950s.⁹ But when Nevada drastically slashed the sports betting tax—first from 10 percent to 2 percent in 1974; and then to 0.25% in the early 1980s—the sports gambling industry blossomed like never before.¹⁰ The tax reduction allowed large hotels to open sports books onsite, initially as a tool to keep patrons from leaving the property, but eventually as profitable destination spots.¹¹ The explosion in popularity of sports gambling is evident in the numbers: The legally wagered amount in Las Vegas' sports books increased from \$13 million to \$2.6 billion, or \$811 million in 1975 dollars, between 1975 and 2000.¹²

Despite its immense popularity in Las Vegas, sports gambling remained largely inaccessible to America's youth until the 1990s. The Kefauver Hearings led lawmakers to an inescapable conclusion: "Big-time bookmaking operations, largely monopolized by big mobsters, cannot be carried on without the rapid transmission of racing information and information about other sporting events."¹³ This led to the enactment of the 1961 Wire Act, which, in essence, prevents gambling entities from using wire communications to transmit interstate bets or wagers.¹⁴ Out-of-state gamblers, therefore, could not legally access and place bets with licensed sports books in Nevada via the telephone, or any other transmission device.¹⁵

In 1992, legislators further tightened their grip around sports gambling by enacting the Professional and Amateur Sports Protection Act (Protection Act), which prevented any state that did not already offer sports betting from doing so in the future.¹⁶ The grandfather clause exempted the four states—Nevada, Oregon, Delaware and Montana—that had pre-existing statutes authorizing forms of sports gambling. However, neither Delaware nor Montana offers sports gambling, and Oregon only offers a state lottery game based on professional football games.¹⁷ In the end, then, Nevada is the lone state that continues to offer traditional sports wagering. New Jersey Senator Bill Bradley—a former professional basketball player—succinctly summarized the purposes of the Protection Act, "I am not prepared to risk the values that sports instill in youth just to add a few more dollars to state coffers. State-sanctioned sports betting conveys the message that sports are more about money than personal achievement and sportsmanship...[S]ports betting threatens the integrity of and public confidence in professional and amateur team sports, converting sports from wholesome athletic entertainment into a vehicle for gambling."¹⁸

IN SEARCH OF THEIR OWN RESPECT

The long-standing moral objection to gambling is that the concept of getting something for nothing directly opposes the capitalistic mantra that wealth should be acquired through hard work.¹⁹ However, gambling has become so ingrained in a society where risk-taking is applauded that the moral argument against gambling no longer carries much force.²⁰ The question then turns to harm: What exactly is the *harm* of sports gambling in particular? Why is the under-aged population particularly vulnerable to those harms? Laying aside the sociological and clinical data for the moment, I will explore the harms of the sports-gaming industry in Las Vegas through an anecdotal account. In Chad Millman's *The Odds: One Season, Three Gamblers and the Death of Their Las Vegas*, the former *Sports Illustrated* writer follows the lives of Alan Boston, an established professional gambler, Jim Korona, an up-and-coming bookmaker, and Rodney Bosnich, a dropout from Indiana University looking to make it as a professional in Las Vegas, through the peaks of the sports gambling season.

Having recently read Phillippe Bourgeois's provocative account of drug dealers and the culture of drugs in New York titled *In Search of Respect: Selling Crack in El Barrio*, I was immediately struck by the parallels between the main characters in Millman's work and the drug-dealing protagonists of Bourgeois' work. I hope the comparison that follows will reveal that the harms of crack cocaine and sports gambling are strikingly similar. Both habits create unimaginable depths of addiction, isolate the victims from rest of society, and create characters only capable of gaining respect from others within their own isolated spheres.

Depth of Addiction

The physically addictive qualities of crack cocaine are well-known, and the account of Caesar, a drug peddler and user, of his addiction is illustrative: "The only reason I get high is because I love it. The first blast is the best'est one. It's like a Ruffles potato chip. You just can't have one ...It's a brain thing. It's thick. Once you take that first blast, then the whole night is going to be a total adventure into madness. It's just a thing, you have to have more."²¹ Indeed, one's inability to control drug addiction, and utter disregard for surrounding circumstances while in search of a "fix" is a pervasive theme in Bourgeois' work. From Primo robbing a sleeping man of his prized ring to feed his habit, to mothers parading to the crackhouse with their infant daughters,²² the depths of cocaine addiction were painfully evident.²³ Millman's account, however, reveals that the addiction of sports gambling leads to effects that are equally striking and heartbreaking.

Alan, a professional gambler who specializes on betting college basketball games, devotes all of his waking hours in the weeks immediately prior to the start of the season to researching teams—their makeup, strengths, and weaknesses. He admits that “as soon as the first college basketball preview came out, I started getting horny.”²⁴ When the season begins, Alan bets between \$1,000 and \$20,000 on nearly *every* college game played. He laments that “I have to bet a lot... because it’s the only time I feel anything.”²⁵ Before the start of the season, Alan had devised a strategy for managing his bankroll. It was not long, however, before he abandoned that strategy. When Alan heard that one of the books offered games between little-known colleges that no other books offered, all discretion was shoved aside. “[I] tried to avoid the degenerate stuff, but I didn’t know MGM had the add-on games, now I’m horny and the discipline goes out the window.”²⁶

The author vividly captures the depths to which some gamblers sink in one of the most memorable passages of the book. A homeless gambler had just walked into Stardust’s sports book and fatally shot another patron because of a personal vendetta. The book’s manager, Joe Lupo describes the ensuing scene: “One guy who was standing at the counter when the shots went off... turned back around as if nothing had happened. He wanted to make a bet and had to lean over the counter, shouting at the ticket writers who were still on the floor, ‘So that parlay I wanted.’”²⁷ Sadly, that bettor was not alone in being entirely oblivious to his surroundings in the midst of a gambling kick. After the shooting, the book suspended betting for the next few hours while police secured the scene and conducted investigations. The bettors, however, didn’t leave. Millman observed, “The inhabitants of the sports book seemed lost. They’d walk up to the counter out of instinct, then walk back to their desk, then go to the food stand, then sit at their desk. Without bets to make, they were directionless and befuddled.”²⁸

The image of mindless addicts wondering around the sports book begs an examination of what exactly is so appealing about sports gambling, and what sets it apart from most other forms of gambling. Unlike most gamblers who sit down in front of a slot machine or a blackjack table, sports gamblers are not seeking an escape from the drudgeries of life—they’re “action gamblers” seeking intellectual competition.²⁹ “Action gamblers” are, almost without exception, young, educated and competitive. The attraction of the game is not that it offers a diversion, but rather that it is beatable. Any self-respecting sports fan thinks that s/he knows the game, and therefore, s/he perceives sports gambling as a bargain. Howard Shaffer, Director of the Division on Addiction at Harvard Medical School,

observes that sports gamblers “think it requires a skill of some sort, and they all think that sports betting is the skill they have. That is what gives them the illusion of control.”³⁰ That thrill of beating the system is the reason why so many youth are hooked into sports gambling; it is why Alan Boston cannot pull himself away from the betting window; and it is why Stardust regulars are left “directionless and befuddled” after the betting windows close.

Instrument of Isolation

In perhaps one of the most heart-wrenching passages in *In Search of Respect*, Bourgeois describes “the horror of seeing mothers inside crack-houses dragging their infants through the agony of their desperate searches for ecstasy.”³¹ Bourgeois noted that expectant mothers were “profoundly ambivalent” toward their future babies and about their roles as mothers. Whether that profound ambivalence stems from cocaine or from societal definitions of patriarchy (as Bourgeois suggests), the mother’s addiction destroys the most meaningful of relationships.³² There is no more visceral illustration of that than Philippe’s discovery of Angel and Manny, his 2 favorite kids from El Barrio, sitting in the dark, scraping the last corners of peanut butter out of an empty jar, while their mother lays in bed, passed out from a cocaine binge.³³

The isolating effects of a gambling addiction similarly destroy any ties that addicts may have to “normal” human relationships. At no time is this more apparent than Christmas Eve at the Stardust sports book, when dozens of regulars stay put. They have nowhere else to go. Without any constructive familial relationships, the regulars make the sports book their family.³⁴ During the holidays, instead of turning to their families, the regulars turn to those at the sports book.³⁵ When he is badly in need of company, Rodney—the fresh-faced rookie to Las Vegas—heads to Stardust because that’s the only place where he knows people.³⁶ According to Alan, (who has never been married), “A lot of gamblers say the action replaces sex, but I really think they mean it replaces relationships and a fear of socializing. We are all outcasts and gambling occupies our time...”³⁷ Even gamblers realize how far the typical book crowd lies outside the spectrum of normalcy. Long-time gambler Dave Malinsky admits, “We are not dealing with a country club set here. Walk through the book and there are a lot of degenerates. I mean we are really one or two levels away from being subhuman. We’re damn close to being circus freaks.”³⁸ Millman’s exploration of the Stardust clientele reveals a collection of individuals—detached from the realities of life,³⁹ torn from familial relationships or close friendships due to their addiction, searching for cheap thrills amongst

other “degenerates” seeking the same, and unable to return to any sense of normalcy. Indeed, this pattern of life may not be too many levels away from “subhuman,” and it certainly bears a haunting resemblance to the Primo’s crackhouse clientele.

Even beyond the striking similarity of the clientele, the most shocking parallel between the sports book and the crack house is the desensitization of the managers/sellers to the addiction of their patrons. The surreal account of Benzie chanting to incoming customers — “That’s right, mah’ man! Come on! Keep on killing yourself; bring me that money; smoke yourself to death; make me rich!”⁴⁰— finds its Stardust parallel in Bob Scucci, the assistant manager, treating his customers as human cash registers, “They are making horrible bets and that’s when I get cocky and look’em in the eye and say, “What do you want? Anything at all, tell me how much you want to bet.”⁴¹ This is not the storeowner welcoming his customers with open arms; this is the storeowner watching his customers wither away emotionally and physically before his eyes with complete emotional detachment. This is the environment created by the addiction.

Search for Legitimacy and Respect

Perhaps the central theme, (and certainly the title theme), of Bourgeois’s work is the characters’ search for respect in the “legitimate” world, and inability to gain respect, followed by a retreat into their own world, where they are immune to disrespect. Whether it is Primo’s boss calling him illiterate and Primo not understanding the insult until he looked up the word in the dictionary;⁴² or Philippe asking Ray to read an article that he could not read;⁴³ or Primo unable to obtain a dishwashing job currently held by a mentally-handicapped individual;⁴⁴ the central characters have mostly failed in their efforts to enter the legitimate world. The central disconnect between relative success in the illegitimate world and inability to penetrate the legitimate one seems to be created by an incommensurability of skills between the two worlds. Ray’s mastery of manipulation and discipline made him a respected administrator in the drug world, but an incompetent Neanderthal to others.⁴⁵ Even after repeated rejections, however, the characters always found solace and respect in the companionship of those in their “home” world. Primo can be certain that he wouldn’t be called “illiterate”; and Ray can always climb back into his Mercedes to validate his worth. This pattern is alarmingly repeated in Millman’s world of “circus freaks” and “degenerates”.

Rodney—the budding professional in his early 20s—dropped out of Indiana University and sought out Las Vegas because the only thing he enjoyed doing at Indiana was being a campus bookmaker. After a successful

first few months in Vegas, where he netted \$30,000, he returned home to Muncie, Ind. and had dinner with his girlfriend Missy's family. After Rodney told Missy's uncle twice that he gambled for a living, (the first was greeted with laughter), he was shunned from conversation for the rest of the night.⁴⁶ Rodney remembered that "I could see in their eyes what they thought of my livelihood. Loser. Scum of the earth. That's fine. I'm still making money."⁴⁷ For Rodney, who had returned to Muncie and contemplated leaving Las Vegas for good, the exchange cemented his decision to return to Las Vegas and its world of gamblers and bookmakers. Even his attempt to obtain a job on the fringes of legitimacy—a bookmaker—fails because his brashness, boldness, and confidence—the same traits that make him a successful gambler—infuriate the interviewer.⁴⁸ A later interview with another sports book also ends without fruition, or apologies from Rodney, "I don't know why I bother. I bet, that is what I do."⁴⁹

Similarly, Alan—the established professional—recognizes that "I have no other way of earning money, which scares me." This is why Alan enjoys the respect he gets in the gambling underworld. He loves it when bookmakers adjust their lines after he bets; he loves it that casinos treat his father to the most extravagant suite available when he visits; he loves it that he can get a corner table reservation at the most popular restaurant in Vegas while billionaires in town for the Comdex Convention still wait for tables at the bar.⁵⁰ This disparity in respect accorded to gamblers becomes a self-reinforcing mechanism that prevents them from gaining legitimacy, and traps them in their chosen profession—a theme all-too-familiar for readers of *In Search of Respect*.

THE COCAINE OF GAMBLING

The aforementioned individuated harms of sports gambling are significant in and of themselves, but such potential harms take on additional urgency in the age of the Internet. And no story better captures the rise of sports gambling on the Internet than the plight of Jay Cohen, a young trader on the precipice of a successful financial career when he suddenly decided to move from San Francisco to the tiny island nation of Antigua.⁵¹ In 1995, Cohen and partners Haden Ware and Steve Schillinger seized an opportunity to establish a sports gambling Internet site featuring options trading in teams. The trio moved to Antigua, purchased a sports-gaming license from the state government and set up operations as the World Sports Exchange (WSE).⁵² WSE targeted U.S. customers through radio, newspaper and television advertising.⁵³ By 1999, the company accepted \$200 million in wagers, with 95 percent of that total coming from clients in the United States.⁵⁴ Cohen's ascent on the island, however, did not go

unnoticed by those on the mainland. On March 4, 1998, then-Attorney General Janet Reno announced the indictment of 14 offshore bookmakers, including Cohen and Schillinger, for violating the Wire Act.

While Schillinger stayed a fugitive in Antigua, Cohen, either bravely or dumbly, returned to the States to be tried.⁵⁵ The prosecution's theory was a simple one: Cohen was a universally-accessible bookmaker for 270 million Americans. A not-guilty verdict would send the ball rolling down the slippery slope for all illicit activity on the Internet.⁵⁶ The jury agreed, and convicted Cohen on all eight counts of the indictment; the judge sentenced him to 21 months' imprisonment.⁵⁷ A subsequent appeal to the Sixth Circuit on the applicability of the Wire Act to Internet gaming failed.⁵⁸

Cohen's prosecution and conviction and the U.S. government's continued efforts at regulation, however, did not slow the momentum of Internet gaming. In 1996, there were 2 Internet sites that offered sports wagering online; by 2000, there were nearly 500.⁵⁹ The money wagered online has increased from \$60 million in 1996, to an estimated \$6 billion today.⁶⁰ According to independent researcher Eric James, 15 to 35 percent of that \$6 billion comes from college students.⁶¹ Schillinger offers an explanation for the government's inability to curtail the growth of Internet gaming: It is just too easy to get around government regulation.⁶² "There really is no slowing us down. There's no stopping us."

There's a special affinity between sports gaming and the Internet, which helps to explain why sports betting comprises 40 percent of the revenues generated from Internet gaming, compared with less than 5 percent of the revenues at a typical casino.⁶³ The common-wisdom explanation is that while bettors are certain of the results of internet sports bets, since the outcome is dictated by sources outside the control of the Internet site, the same cannot be said for standard casino games offered by the same site. The more colorful explanation is offered by Chuck DiRocco, publisher of *Gaming Today*, "To be honest, the only chance of betting that has any chance on the Internet is sports betting. Anyone who goes and bets poker on-line, where some geek has a chance to write some program that determines the outcome, they deserve to get clipped."⁶⁴

The explosion of Internet gambling has made sports wagering that much more accessible to youth. Instead of having to go to Las Vegas, or track down a local bookmaker, any adolescent with a credit card can log on to one of the hundreds of sites on the Internet and wager away the day. In essence, the advent of Internet wagering has changed the face of sports gambling from a gruff 50-year-old with a permanent cough and a scotch in hand at the sports book, to a college kid with a gym shorts and flip-flops

sitting in front of his laptop. This transformation certainly poses ominous consequences for both the integrity of collegiate athletics, and the well-being of America's youth. Shaffer linked Internet gambling with narcotics in his oft-quoted comparison: "As crack cocaine changed the cocaine experience, I think electronics and the Internet is going to change the way gambling is experienced."⁶⁵

A SYMBOLIC PROHIBITION

With the explosive growth of Internet gaming, and the threatened—and present—harms to the integrity of collegiate athletics, there has never been a more urgent time to consider the prohibition of gambling on collegiate and amateur athletics. Because of the potentially devastating harms to individuals, the exposure of an entirely new age group to those harms via the Internet, and the ticking time bomb potential of a major gambling scandal, I recommend the immediate prohibition of gambling on collegiate athletics. Conceding that a prohibition is unlikely to eliminate the practice of gambling on collegiate athletics, it will still stigmatize the activity, delegitimize the publicity, and chill the interest in the unholy marriage of college athletics and gambling.

Past and Present Efforts

The proposal to prohibit gambling on collegiate athletics isn't a new one. Following a two-year study, the National Gambling Impact Study Commission (NGISC), a commissioned study by Congress, recommended a ban on all legalized gambling on college and amateur athletics—the only recommendation in the entire report that was not couched in safe words like "should" or "urges".⁶⁶ The findings prompted the introduction of several Congressional bills. Within two months in early 2000, three separate bills were introduced in Congress seeking to eliminate the Nevada exception in the Sports Protection Act of 1992 and prohibit gambling on high school, college and amateur athletics.⁶⁷ None of the bills, however, gained passage. Undeterred, Senator John McCain introduced the Amateur Sports Integrity Act of 2003 on May 6, 2003.⁶⁸ The Act—which would prohibit gambling on Olympic, college or high school sports—sits in Committee.⁶⁹

McCain's fellow senator from Arizona, John Kyl, has led concurrent efforts to curtail the growth of Internet gaming. Kyl authored the Internet Gambling Funding Prohibition Act, which currently sits in committee in the Senate after passing the House by a vote of 319 to 104.⁷⁰ The Act prevents the use of certain payment instruments, credit cards and fund transfers for Internet gambling.⁷¹ The Act, if passed, and the 1961 Wire Act

would effectively render illegal the facilitation *and* consummation of Internet wagering. However, the legislation received a noteworthy setback two months ago when the World Trade Organization (WTO) ruled that U.S. policy prohibiting online gambling violates international trade law.⁷² The decision, issued on March 24, 2004, originated from a complaint brought by Antigua and Barbados, who argued that U.S. trade policy does not prohibit cross-border gambling operations. The Bush administration has vowed to appeal the decision.⁷³

Focus on Collegiate Athletics

The threshold question is why limit the scope of criminalization to gambling on collegiate athletics, rather than expanding it to include all sports gambling, or even all forms of gambling. The focus on gambling on collegiate athletics is a product of two thoughts: one, the vulnerability of the under-aged population to the temptations of sports gambling; and two, the collateral effects of legalized gambling on collegiate athletics.

Approaching the inquiry from a strictly individual harm perspective, an important question to ask is which segment of the population is most likely to fall prey to the dangers of sports gambling detailed in Millman's work. The answer seems frighteningly obvious: young, probably under-aged college students eager to take a crack at something that seems imminently beatable. Sports betting attracts the individual who craves action and intellectual competition, a profile that fits college-age youth to a tee. Indeed, sports gambling initiates many youths to the addiction of gambling.⁷⁴ Opponents of gambling restrictions often argue that the existence of a small percentage of addicts should not trump the rights of the majority to gamble, just as the potential for alcohol abuse by a small minority do not trump the right of adult social drinkers to purchase and consume alcohol. However, the analogy is flawed; sports gambling equates to an alcoholic drink that is especially appealing to under-aged individuals (illegal users) and causes potentially devastating addictive harms to those individuals. What then? What if that alcoholic drink can be delivered through a channel where the under-aged user can completely bypass the usual means of age verification? What if that channel is widely available to the under-aged population? With the prevalence of Internet sports gaming, this is precisely the question presented. At this juncture, then, the proposal to criminalize sports gaming can no longer be easily dismissed. Sports gaming is not an arguably harmless drug like marijuana; in Shaffer's words, it is the cocaine of the gambling experience.

The argument above, of course, is not an argument to just criminalize gambling on collegiate athletics—it is an argument to criminalize sports

gambling entirely. Certainly, there are practical concerns that counsel against criminalizing an activity in which many Americans participate.⁷⁵ Additionally, the addictive appeal of a product may not be a legally relevant distinction. However, there is a legally relevant distinction that applies to gambling on college athletics versus sports gambling: the line between the public and the private. While the law has no obligation to care about someone like Rodney who drops out of college to begin a life as a professional gambler, the law does have an obligation to care about the nearly 30 athletes that reportedly took money to play poorly. In other words, knowing gamblers who bet in their private lives may not attract law's attention; but when the tentacles of gambling affect athletic contests in the public sphere, the law takes notice. College student-athletes, most of whom are under 21, constitute perhaps the most vulnerable group to the dangers of sports gaming. They are driven to competition, more craving of action than even the average college student, and often operate in tenuous financial straits. The NCAA finding that student-athletes gamble on college sports in substantial numbers is by no means a surprising finding.⁷⁶ Their vulnerability is compounded by their participation in, and therefore, capability of impacting the outcomes of games. Within the last decade, officials have uncovered major point-shaving scandals at Northwestern University and Arizona State University.⁷⁷ The recent NCAA study merely jolts the consciousness into realizing that game-fixing is not merely a possibility that rears its ugly head once in a while—it is an ominous and ubiquitous presence in college athletics.⁷⁸ This presence, then, is the public manifestation of a private, perhaps legally inconsequential, harm—providing the adequate justification for criminalization.

Purposes of Criminalization

Two related arguments advanced against a prohibition of gambling on collegiate athletics are the seemingly contradictory complaints of superfluousness and futility. The argument is that the prohibition is unnecessary because gambling on sports outside of Nevada is already illegal. Since the overwhelming majority of sports gambling takes place illegally outside of Nevada, criminalizing sports gambling seems at once wonderfully unnecessary and practically ineffective.⁷⁹ Certainly, criminalizing gambling on collegiate athletics will not stop people from gambling on collegiate athletics. Instead, I believe the primary effect of criminalization will be the stigmatization and de-legitimization of the practice of gambling on college athletics.

The government sends a confusing message regarding sports gaming. While it is illegal in 49 states, it is legal in Nevada, where the sports books

roll out the proverbial red carpet for prospective bettors. Someone who considers making an illegal wager on the Internet may convince him/herself that there is nothing wrong with doing something that would be legal in Las Vegas. If the practice is criminalized, it gives someone pause before deciding whether to make a bet. It eviscerates the “Well, it is legal in Vegas” justification to gamble on the Internet. Most importantly, criminalization could have a substantial effect on the willingness of newspapers to publish point spreads on games—currently a widespread practice.⁸⁰ Newspapers and other media outlets can justify publishing point spreads because its readers could conceivably bet legally in Nevada. However, by criminalizing gambling on collegiate athletics in every state, the publishing of point spreads could be construed as an effort to aid and abet an illegal transaction. This taint of illegality is likely to dissuade media outlets from publishing point spreads, even those outlets who currently claim to do so due to reader interest.⁸¹ Without their ubiquitous presence in newspapers and other informational sources, the public will not be served constant reminders of gambling’s ties to amateur athletics. The public will no longer be tempted to compare their prognostication skills with that of the oddsmaker. Similarly, criminalization is likely to eliminate the radio and television shows devoted to offering advice to sports gamblers. In effect, the goals of criminalization are wholesale stigmatization and deterrence of public dissemination of gambling information. The symbolic significance of criminalizing the practice in Nevada cannot be understated. Take the example of Kevin Pendergast, who masterminded the 1995 point-shaving scandal at Northwestern University. Pendergast accepted all the blame of the scandal, but with one significant caveat: “Without Nevada, this would not have happened.”⁸²

Those in the profession of law thoroughly scrutinize laws serving primarily a symbolic purpose, with good reason. For example, an unenforced sodomy statute that stigmatizes the homosexual lifestyle obviously fails constitutional muster. However, the proposed “symbolic” prohibition stigmatizes those who gamble on collegiate athletics with rational justifications beyond the mere expression of moral disapproval. The prohibition acts to preserve the integrity of amateur athletics; and prevents a particularly vulnerable class of youth from falling prey to a dangerous addiction. The prohibition does not primarily intrude upon a protected private act (indeed, it is not a protected private act in every state except one). Rather, it serves to prevent a public harm to the integrity of our games, and to prevent our youth from turning into the “circus freaks” and “degenerates” of Millman’s Las Vegas.

SUMMATION

The comparison of El Barrio cocaine dealers and Las Vegas sports gamblers reveals chilling similarities between the effects of addiction to drugs and gambling. It is easy to point to the supposed externalities of the drug trade—i.e. drug-related homicides, drug-motivated robberies, “crack babies”—as a reason for law’s heightened emphasis on drugs. However, as the externalities of gambling on collegiate athletics—i.e. tarnished integrity of athletics, a young generation of addicted gamblers—become apparent, it is time to reconsider whether this activity is truly a victimless crime unworthy of the law’s attention.

- 1 TEDDY GREENSTEIN, *Sports Betting Alarms NCAA: Study Reveals a Grim Trend Among Student-Athletes*, CHI. TRIB., May 13, 2004, at C8.
- 2 NCAA 2003 National Study on Collegiate Sports Wagering and Associated Health Risks (Executive Summary), available at <http://www.ncaa.org/gambling/2003NationalStudy/executiveSummary.pdf>. The encroachment of gambling onto the integrity of collegiate athletics seems most evident in football, where 1.1 percent of players reported taking money for poor performance, 2.3 percent were asked to influence games due to gambling debts, and 1.4 percent acknowledged altering their performance to change the outcome of the game.
- 3 *Id.* at 40.
- 4 *Id.*
- 5 CHAD MILLMAN, *The Odds: One Season, Three Gamblers and the Death of their Las Vegas* 38 (2001).
- 6 *Id.* at 36. “At times, 100 percent of the television viewers on the 108 local stations throughout the country were watching the Kefauver hearings.”
- 7 *Id.* at xiii.
- 8 MILLMAN, *supra* note 5, at xv. A typical point-spread line reads: IND -3.5 DET. This line indicates that Indiana is favored by 3.5 points over Detroit, meaning a bet on Indiana only wins if Indiana defeats Detroit by 4 points or more, while a bet on Detroit wins if Detroit wins, or loses by 3 points or less.
- 9 *Id.* at xvii.
- 10 *Id.* at 34.
- 11 *Id.* See, also *Id.* at xviii. Arnie Lang, a former host of Stardust Line radio show—a weekly show from the most renowned sports book in Las Vegas—said, “What casinos did was bring sports betting to the masses in a way the mom-and-pop books along the strip couldn’t do.”
- 12 *Id.* at 34.
- 13 *Id.* at 35.
- 14 18 U.S.C. § 1084 (2004).
- 15 MILLMAN, *supra* note 5, at 18.
- 16 28 U.S.C. § 3702 (2004).
- 17 JOHN WARREN KINDT & THOMAS ASMAR, *College and Amateur Sports Gambling: Gambling Away Our Youth*, 8 VILL. SPORTS & ENT. L. FORUM 221, 231-32 (2002).
- 18 MILLMAN, *supra* note 5, at 34–35.
- 19 MIKAL AASVED, *The Sociology of Gambling* 6-9 (2003). The summation of the traditional moral view: “To the guardians of public morality, gambling is Gambling and Wrong; so labeled it has been filed safely away, along with Drugs and Homosexuality, under the headings of ‘Vice’ and ‘Deviance.’”
- 20 See, National Opinion Research Center, *Gambling Impact and Behavior Study*, Report to the National Gambling Impact Study Commission, April 1, 1999, at 6. Research found 86 percent of Americans report to having gambled at least once during their lives, and 68 percent report having gambled once in the past year. See, also MILLMAN, *supra* note 5, at 66. Millman cites PAUL WEILER’s *Leveling the Playing Field* for the finding that 85 percent of college students gamble and 23 percent do so at least once a week.

Gambling

- 21 PHILIPPE BOURGEOIS, *In Search of Respect: Selling Crack in El Barrio* 80 (2nd ed. 2003).
- 22 *Id.* at 281
- 23 *Id.* at 79. Primo: “I was in my own habit world. I didn’t give a f — about anything.”
- 24 MILLMAN, *supra* note 5, at 73.
- 25 *Id.* at 76.
- 26 *Id.* at 88. Professional gamblers like Alan are intrigued by lines on small-college games because they consider those games to present direct confrontational challenges with the bookmaker. Without the reassuring affirmation of lines by other experts, a bookmaker who sets a line on a game with no national interest and little regional interest essentially lays down the gauntlet for professional gamblers. Of course, professional gamblers never back away from a challenge.
- 27 *Id.* at 194.
- 28 *Id.*
- 29 *Id.* at 30.
- 30 *Id.* at 112.
- 31 BOURGEOIS, *supra* note 21, at 281.
- 32 *Id.* at 285–86.
- 33 *Id.* at 263.
- 34 MILLMAN, *supra* note 5, at 125. Sports book manager Joe Lupo says, “I actually can’t believe they are here. There are a lot of lonely people out there and this is their life, their family. The sports book is all they know...”
- 35 *Id.* at 125. A week before Christmas, a bettor asked the sports book manager whether he could take them to lunch. The managers were a bit puzzled, “[W]e had no idea who this guy was. Joe finally asked him his name.”
- 36 *Id.* at 165.
- 37 *Id.* at 1.
- 38 *Id.* at 113.
- 39 *Id.* at 13. Among the sports book patrons are a group of individuals called “runners” who essentially make bets for high-rollers who could not be bothered to leave their homes. Some of these runners spend so much of their time in the sports book that they’re disconnected from the rest of the world.
- 40 BOURGEOIS, *supra* note 21, at 85.
- 41 MILLMAN, *supra* note 5, at 135.
- 42 BOURGEOIS, *supra* note 21, at 144.
- 43 *Id.* at 21.
- 44 *Id.* at 123.
- 45 *Id.* at 135.
- 46 MILLMAN, *supra* note 5, at 139.
- 47 *Id.* at 139–140.
- 48 *Id.* at 49. The full recount of Rodney’s job interviewing is ironically humorous.
Scucci: “So, why do you want to work in a book?”
Rodney: “I spend most of my time here, and I can make numbers.”

Scucci: “Do you like sports?”

Rodney: “Yeah.”

Scucci: “Do you work well with people?”

Rodney: “I can.”

Scucci: “Why did you leave your job as a security guard?”

Rodney: “They were f—ing with me.”

Scucci: “You said you’re in here a lot. Do you gamble?”

Rodney: “F— yeah, I got \$600 of your money in my pocket right now.”

49 *Id.* at 213.

50 *Id.* at 78.

51 STEVEN CRIST, *All Bets are Off*, Sports Illustrated, Jan. 26, 1998, at 82.

52 *Id.*

53 *United States v. Cohen*, 260 F.3d 68, 70 (6th Cir. 2001).

54 MILLMAN, *supra* note 5, at 101.

55 *Id.* at 105. See, also Crist, *supra* note 50. Cohen’s brashness may have been due to his belief that there’s really nothing wrong with Internet gambling, at least in comparison with his previous profession. “I came from the stock market. If that’s not gambling, I don’t know what is. You can’t tell me that when someone buys a stock on Monday and sells it on Tuesday that that’s investing. That’s gambling Internet gambling is the same as my last career, except the folks I work with now are less sleazy.”

56 MILLMAN, *supra* note 5, at 201.

57 Cohen, 260 F.3d at 71.

58 *Id.*

59 MILLMAN, *supra* note 5, at 99.

60 MATTHEW KEVES, “College Students Fueling Online Gambling Trend,” *The Lantern*, March 4, 2004.

61 *Id.*

62 MILLMAN, *supra* note 5, at 201.

63 *Id.* at 34.

64 *Id.* at 101.

65 *Id.* at 101.

66 RONALD J. RYCHLAK, *A Bad Bet: Federal Criminalization of Nevada’s Collegiate Sports Books*, 4 NEV. L.J. 320, 324 (2003).

67 *Id.* The bills were titled the Amateur Sports Integrity Act, the Student Athletic Protection Act, and High School and College Sports Gambling Prohibition Act.

68 “McCain Reintroduces Bill to Ban Gambling on Amateur Sports,” *Capital Hill Press Releases*, May 6, 2003. In support of the Act, McCain said, “Congress must take action to close the loophole in current law that allows just a handful of states to serve as national clearinghouses for betting on our youth... I believe this ban will send a clear message that gambling on amateur athletics is wrong.”

69 S. 1002, 108th Cong. (2003).

70 S. 627, 108th Cong. (2003).

71 *Id.*

Gambling

- 72 MARK RICHEL, "Trade Group Says U.S. Ban on Net Gambling Violates Global Law," *N.Y. Times*, Mar. 26, 2004, at C5.
- 73 *Id.*
- 74 HOWARD J. SHAFFER *et al.*, "Youth and Gambling: Creating a Legacy of Risk," in *Futures at Stake* 1,8 (Howard J. Shaffer, ed., 2003).
- 75 STEVE SPRINGER & LANCE PUGMIRE, "Removing Gambling from Curriculum? Congress is Pushing for Legislation that Would Ban Betting on College Sports," *L.A. Times*, April 2, 2003, at Sports 1. Estimates place the amount of illegal sports betting at \$280 billion per year. The amount of money bet legally through the Nevada sports book total approximately \$2 billion.
- 76 *Id.* A 1999 University of Michigan surveyed revealed that 72% of basketball and football players questioned reported gambling in college; with 5.2% of male athletes admitted that they either fixed or bet on a game they played in, or provided inside information for gambling purposes.
- 77 *Id.*
- 78 Admittedly, game-fixing is also a present danger in professional sports. However, professional athletes, due to their income, are simply much less susceptible to the temptations of game-fixing. In addition, criminalizing gambling on all sports may be such a drastic measure whose benefits are substantially outweighed by the potential dangers of massive bookmaking operations and the possible re-emergence of organized crime into the sports betting scene.
- 79 RYCHLAK, *supra* note 65, at 327.
- 80 *Id.* Even RYCHLAK, the author of the anti-prohibition article, admits that "there is no doubt that the publication of point spreads contributes to the popularity of sports wagering."
- 81 *Id.* at 328. A gaming attorney explains that "the demand for lines on games exists for reasons beyond gambling alone... It is part of sports reporting in American and is of great interest to the reader." This argument is convincing, *unless* the item of great interest to the reader is also an item that is suggestive of criminalized activity in *every* jurisdiction.
- 82 MILLMAN, *supra* note 5, at 188–89.