THE SPORTS BRIBERY ACT: A LAW AND ECONOMICS APPROACH

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ABSTRACT

Sports bribery and match-fixing have become a part of the on-going sports news cycle. European and Asian match-fixing scandals in soccer, cricket and tennis have rocked the sports world recently. The 1919 Black Sox World Series scandal and the 1970’s Boston College point shaving incidents have illustrated that the manipulation of sporting events is a global scourge. This paper examines the corruption cases that led to the 1964 passage of the Sports Bribery Act (18 U.S.C. § 224). We discuss the scope of the statute, its operation with complementary and ancillary federal and state laws, and the reported instances of the statute’s application. The economic discussion focuses on Becker’s model for optimal deterrence, its application to the Sports Bribery Act, and an examination of the implications regarding the utility for would-be match-fixers. The paper concludes with a discussion of the challenges facing a policy change, including the complexity of regulating both professional and amateur sport, methods of detection, and jurisdictional issues raised by the global nature of match-fixing.

I. INTRODUCTION

The spread of match fixing has become part of the news cycle in most parts of the world. Asian and European match-fixing scandals have shocked the sports world.¹ League officials openly discuss the increasing corruption in European

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¹ In December 2013, 6 people were arrested in the United Kingdom, including a member of the Blackburn Rovers of the country’s premier soccer league. See Simon Hart, DJ Campbell arrested in connection with football fixing, THE TELEGRAPH (Dec. 9, 2013, 9:03 PM), http://www.telegraph.co.uk/sport/football/10505343/DJ-Campbell-arrested-in-connection-with-football-fixing.html. In September 2013, an Indian cricket bowler was banned from the sport for life at the behest of gambling interests. See Sreesanth: Former India bowler banned for life for spot-fixing, BBC (Sep. 13, 2013), http://www.bbc.com/sport/0/cricket/24076409. In 2013, Lebanese soccer players received bans for fixing games in a World Cup qualifying game, See Steve Crossman, Lebanon head coach reveals anger over match fixing, BBC (Mar. 8, 2013), http://www.bbc.com/sport/0/football/21718034. In 2011, Turkish police arrested more than 60 people suspected of being involved in fixed soccer matches. See AP, Turkish court charges 15 more in Fenerbahce match-fixing scandal, THE GUARDIAN (July 7, 2011), http://www.theguardian.com/football/2011/jul/07/turkey-match-fixing. Corruption in Chinese soccer leagues was found to be so rampant that it has been credited with collapsing entire leagues
and Asian sport as being a major concern for league administrators. North American sport has also suffered at the hand of match-fixers. The 1919 World Series Black Sox scandal nearly destroyed baseball. However, in the years that have followed, there has been little discussion of a public nature regarding the possibility that North American sports remain susceptible to match-fixing at the hands of gamblers. Some have suggested that North American professional sports are not susceptible to match-fixing because the leagues’ players command such high salaries that no gambler could possibly see an economic gain from bribing these players. The proposition that North American professional athletes are immune to match-fixing threats is likely false, given the fact that gambling interests often motivate match-fixing. Match-fixers’ association with organized crime may indicate that if the carrot approach of using bribery to achieve a desired result is ineffective, the match-fixer may resort to using the stick, meaning blackmail or extortion. North America has not been free from match-fixing scandals—they simply have not caused the widespread concern of an epidemic, as has been the case in Europe and Asia. While the present state of

2. FIFA president, Sepp Blatter, has spoken out on multiple occasions detailing the threat match-fixing poses to global soccer. See Sportmail Reporter, Matching Fixing is a serious scourge to football, warns worried FIFA chief Blatter, DAILYMAIL (Mar. 22, 2012), http://www.dailymail.co.uk/sport/football/article-2118642/Sepp-Blatter-warns-match-fixing-great-problem-football.html; see also Kevin Baxter, Sepp Blatter says FIFA has dealt with match-fixing, LA TIMES (Feb. 7, 2013), http://articles.latimes.com/2013/feb/07/sports/la-sp-sn-sepp-blatter-match-fixing-20130207. Various cricket organizations have also spoken publicly regarding the steps their organizations have taken to prevent match-fixing. See generally AP, Cricket NZ take measures to stop T20 corruption, TV NEW ZEALAND (Oct. 25, 2014), http://tvnz.co.nz/cricket-news/nz-take-measures-stop-t20-corruption-6116684.


5. In addition to gambling motivations, there is also a documented motivation of corrupt players to fix games for a competitive advantage at some later time. See Hein Verbruggen, Integrity in Sport, Understanding and Preventing Match-Fixing, SPORT ACCORD (White Paper) (2012).

6. In March 2013, Brandon Johnson, a former basketball player for the University of San Diego, was sentenced for his role in a point-shaving scheme during the 2009 – 2010 season. See Matt Norlander, FBI: San Diego game-fixing scandal brought in more than $120K, CBS SPORTS (May 22, 2013, 1:14 PM), http://www.cbsnews.com/眼-on-college-basketball/basketball/san-diego-game-fixing-scandal-brought-in-more-than-120k. In 2009, six former members of the University of Toledo men’s basketball and football teams were indicted on charges of conspiracy to commit sports bribery. See Mike Fish, Six ex-players charged with conspiracy, ESPN (May 6, 2009: 7:53PM), http://sports.espn.go.com/ncaa/news/story?id=4146980. Northwestern University basketball player Kenneth Lee, pled guilty to accepting money to shave points during the 1995 season. See Ira Berkow, College Basketball: Caught in Gambling’s Grip: A Promising Career Unravels at
match-fixing in the United States garners scant coverage, in the early 1960’s Congress feared that organized crime would attempt to corrupt sport. In response, legislators passed the Bribery in Sporting Contests Act (commonly referred to as the “Sports Bribery Act”). This paper examines the seldom used Sports Bribery Act, exploring its origins and limited use before examining the flawed economic logic, which has doomed this statute to the obscurity of law review footnotes, and proposes a better, more contemporary approach, which will be more likely to assist in deterring and punishing match-fixing.

II. THE SPORTS BRIBERY ACT’S ORIGINS

The connection between sports and gambling-related corruption emerged into the national consciousness in 1919, when mobster Arnold Rothstein allegedly infiltrated the Chicago White Sox and bribed eight players to intentionally lose the World Series. The players were eventually acquitted of the five charges returned by the grand jury. However, Major League Baseball (“MLB”) decided to implement its own justice system establishing the role of commissioner to protect the integrity of the game. Tarnished by the scandal, the White Sox players implicated were swiftly banned for life from the sport by the inaugural commissioner, Kennesaw Mountain Landis, with the famous statement:

“Regardless of the verdict of juries, no player who throws a ballgame, no player that undertakes or promises to throw a ballgame, no player that sits in conference with a bunch of crooked players and gamblers where the ways and means of throwing a game are discussed and does not promptly tell his club about it, will ever play professional baseball.”

While MLB experienced the most famous instance of gambling-related match-fixing, other cases highlight the broad risk to sport integrity posed by unscrupulous gamblers and opportunists. In 1946, boxer Abe Phillips stood trial for allegedly accepting a bribe to lose a boxing match in the second round. In 1951, five separate college basketball programs dealt with scandals involving


9. See generally Carney, supra note 3.
11. See id. at 10.
point-shaving at the inducement of gamblers. In *State v. Casone*, the defendant was convicted of prearranging the results of boxing matches in order to capitalize on the inside information for gambling purposes. The 1940’s and 50’s were the pinnacle of reported match-fixing in the United States, with gamblers eyeing impressionable and susceptible amateurs as the target for their bribery.

The early 1960’s also saw high-profile match-fixing incidents in the United States. In 1960, Dave Goldberg and Steve Lekometros were indicted on charges that they had attempted to bribe Donald Gallagher of the North Carolina State University men’s basketball team to shave points in games against Duke University and Wake Forest University in exchange for $1,000. Sports bribery scandals also began to spill into vulnerable populations including high school students. In 1961, Stanley Yoshida was convicted of offering a dinner to three high school basketball students in exchange for the students to limit the margin of victory in an upcoming basketball game. This time period also saw St. Joseph’s University stripped of a third place title in the college basketball tournament as a result of a gambling related incident and the biggest American point-shaving ring discovered to date, which implicated 37 players from 22 schools, and was led by former NBA player Jack Molinas.

A. **RICO statutes**

Congress saw the expansion of organized crime as a growing threat in the United States and, in response to the perceived spread and proliferation of organized crime, passed the Racketeer Influenced and Corrupt Organizations (“RICO”) Act. The RICO statute would provide the federal government with broad power to combat organized crime by attacking their revenue generating

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13. Manhattan University had three players arrested for allegedly attempting to manipulate game outcomes. City College of New York had three members arrested for an alleged point shaving scandal. Long Island University had 3 players arrested for allegedly accepting bribes from gamblers. Five Bradley University basketball players were arrested and alleged to have been involved in manipulating games. Three University of Kentucky players were arrested for allegedly accepting bribes of $500 to shave points in a game, which took place at Madison Square Garden in New York. See Ante Z. Udovicic, *Sports and Gambling A Good Mix? Don’t Bet on it*, 8 M ARQ. SPORTS L.J. 401, 424 (1998).


17. See Udovicic, supra note 13.

mechanisms, including sports bookmaking.\textsuperscript{19} The RICO Act itself was passed in 1970. However, in the preceding years, Congress enacted several measures to target organized crime’s growing grip on various aspects of society.\textsuperscript{20} Amongst those statutes enacted prior to the expansive RICO Act was the Sports Bribery Act of 1964.\textsuperscript{21} The text of the Sports Bribery Act states:

(a) 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 any 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.

(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

(c) As used in this section—

(1) The term “scheme in commerce” means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication;

(2) The term “sporting contest” means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence;

(3) The term “person” means any individual and any partnership, corporation, association, or other entity.\textsuperscript{22}

Despite the appearance of growing numbers of match-fixing instances abroad, the Sports Bribery Act, having recently passed its 50\textsuperscript{th} anniversary, has resulted in 16 reported decisions and one known pending indictment.\textsuperscript{23} The vast

\textsuperscript{19} Id. at 1036. In order to combat organized crime’s lucrative bookmaking businesses, Congress enacted the Wire Act in 1961. See 18 U.S.C. § 1084 (1961).

\textsuperscript{20} The RICO Act was introduced to the Senate by John L. McClellan (D-Ar) in 1969, and signed into law by President Richard Nixon on October 15, 1970. See Blakey & Gettings, supra note 18.


\textsuperscript{22} Id.

\textsuperscript{23} For discussion of the numerous reported instances of match-fixing abroad see supra note 1.
majority of the cases prosecuted under the statute have involved attempts to manipulate horse-racing results. While there have been several other sports implicated in reported cases, missing from the U.S. match-fixing case inventory is any instance of a major professional team sports league game being influenced and subsequently prosecuted under the Sports Bribery Act.

B. Sports Bribery Act Cases

The most high profile prosecutions under the Sports Bribery Act involved the activities of an organized crime family associate and inspiration for the film Goodfellas, Henry Hill. Hill and other organized crime associates orchestrated a point shaving scheme at Boston College whereby, in exchange for payments, men’s basketball players would ensure that Boston College would not win by a predetermined amount. Hill would even go on to detail in Sports Illustrated how, in exchange for payments of approximately $10,000, the Boston College players would shave points, benefitting not only Hill, but the betting syndicate with whom Hill was affiliated.

Following an arrest on drug charges, Hill entered into an agreement to turn over information on his prior activities to federal authorities in exchange for being allowed to enter the witness protection program. Amongst the testimony Hill would give, was the basis for two Sports Bribery Act cases related to the point-shaving scheme at Boston College. Paul Mazzei’s prosecution centered on his being the “middleman” who had concocted the point-shaving scheme and acted as the go-between for Rocco Perla. It was Perla who approached the


28. See U.S. v. Mazzei, 700 F.2d 85 (2d Cir. 1983); See also U.S. v. Burke, 700 F.2d 70 (2d Cir. 1983).

29. See Mazzei id. at 87.
Boston College players and was an associate of Hill and James Burke, who facilitated the betting operations and provided protection for the other conspirators.31

Burke, Richard Kuhn, Rocco, and Anthony Perla were all indicted for their involvement in the point-shaving scheme, with Burke being seen as the organizer.32 Kuhn, a player on the Boston College team who was the initial target of the bribery, later induced other players into the scheme. The Perla brothers provided the introductions by virtue of Rocco having attended high school with Kuhn.33

In 2005, boxer Thomas Williams and boxing promoter Robert Mitchell were convicted under the Sports Bribery Act of fixing various boxing matches in Nevada.34 Mitchell was convicted of fixing eleven fights between the years 1995-2000, including a fight that was on the undercard to an Evander Holyfield fight.35 The Department of Justice alleged that Mitchell had been successful in paying fighters more than $70,000 to lose fights intentionally.36

The most recent prosecution under the Sports Bribery Act centered on Detroit businessman Ghazi Manni.37 Manni is alleged to have bribed several University of Toledo athletes to shave points in both basketball and football games from 2004 to 2006.38 Manni pled guilty to the Sports Bribery Act charges in December 2014.39

There is at least one additional indictment under the Sports Bribery Act. The indictment stems from the 2002 Salt Lake City Winter Olympics. Alimzhan Tokhtakhounov is alleged to have fixed the ice dancing competition, as well as another Olympic figure skating competition, by bribing judges and officials to influence the results.40 In exchange for voting for the Russian ice dancing pair,

31. See id.
32. See Burke, supra note 29, at 74.
33. Id. at 73-74.
35. Id. The undercard consists of a series of fights that occur prior to the main event, which generally features the most celebrated and well-known fighters.
36. Id.
38. See Phil Mushnick, Media ignores game-fixing scandal, N.Y. POST (Feb. 10, 2013, 5:00 AM), http://nypost.com/2013/02/10/media-ignores-game-fixing-scandal/.
40. The indictment of Tokhtakhounov was a rare instance where the reported bribery does not appear to have been related to gambling. See Nick Zaccardi, Man indicted for fixing 2002 Olympic figure skating has life of luxury, NBC SPORTS (Jan. 29, 2014, 8:10 AM), http://olympictalk.nbcsports.com/2014/01/29/alimzhan-tokhtakhounov-2002-olympics-pairs-figure-skating-scandal/ The case involving Williams and Mitchell, also does not appear to have been motivated by gambling interests. See Department of Justice, supra note 34.
during the competition at the Olympics, Tokhtakhounov allegedly guaranteed to French figure skating officials that a French figure skater would win a medal in another figure skating event.\footnote{See Zaccardi, supra note 40.} In light of the French judge coming forward after the event, the Olympic organizing committee decided to award medals to both the Russian team and the Canadian team, which was deprived of the gold medal as a result of the French judge’s scores.\footnote{Id.} Despite various U.S. and international warrants, Tokhtakhounov has yet to be arrested by American authorities.\footnote{Andrew E. Kramer & James Glanz, In Russia, Living the High Life; in America, a Wanted Man, N.Y. TIMES (June 1, 2013), http://www.nytimes.com/2013/06/02/world/europe/tokhtakhounov-says-criminal-charges-are-just-a-misunderstanding.html?pagewanted=all.}

To date, there has been no prosecution under the Sports Bribery Act involving the four major North American professional sports leagues. There are at least three explanations for why there are no prosecutions of match-fixing at the most elite levels of North American sport. First, there is no bribery-induced match-fixing in such leagues. Second, the sports leagues themselves employ their own security teams who may keep any findings internal and out of the hands of law enforcement.\footnote{In-depth discussion of this subject is beyond the scope of this paper; however, the sports leagues claim that a match-fixing scandal would irreparably harm the leagues. See David Purdum, More gambling doesn’t up fixing, ESPN (Nov. 14, 2014), http://espn.go.com/college/story/_/id/11874940/betting-why-legalizing-gambling-increase-match-fixing. The NFL, NBA, NHL and MLB all employ league security departments that not only provide traditional security functions, but additionally, in some instances, have been known to conduct investigations, and even orchestrate action movie style extractions in foreign jurisdictions. See generally Kent Babb & Adam Goldman, NFL’s elaborate security network is supposed to protect league from trouble, WASHINGTON POST (Sept. 13 2014), http://www.washingtonpost.com/sports/redskins/nfls-elaborate-security-network-is-supposed-to-protect-league-from-trouble/2014/09/13/795949aa-3b4a-11e4-8601-97b4ba8884fd_story.html; see also Tim Elfrink & Gus Garcia-Roberts, Blood Sport, Alex Rodriguez, Biogenesis, and the Quest to End Baseball’s Steroid Era, 218-220. Dutton Books (2014).} Third, the Sports Bribery Act does not encompass the likely scenario that the most efficient way to manipulate a professional sporting event is through extortion and/or blackmail as opposed to bribery.\footnote{Additionally, athletes could still be susceptible to extortion. There is anecdotal evidence to suggest that attempts have been made to extort athletes into fixing games. One famous story is that of “Dr. Boudreaux.” Tom Tolbert, a former NBA basketball player, told the story to Jim Rome, a nationally syndicated radio host, that the FBI ran a program for athletes where they warned them of a person known as Dr. Boudreaux. Dr. Boudreaux would befriend athletes, drug them and take pictures of them in compromising positions, and then threaten to reveal the photographs to family or girlfriends if the athletes did not pay him. See Craig Marine, Sports Talk, S.F. EXAMINER (Aug. 20, 2000, 4:00 AM), http://www.sfgate.com/magazine/article/SPORTS-TALK-3051698.php.}

C. The Harm

The harm caused by match-fixing is considerable because of the potential to affect large subsets of people including: players, coaches, owners, referees, team employees, fans, league executives, stadium personnel, sponsors, local vendors
and advertisers. The commercial viability of sport is at least somewhat dependent on the uncertainty of outcome. Unlike professional wrestling, which is choreographed, competitive sport is supposedly unscripted, leaving open the possibility of an unexpected outcome. The organizers of professional sporting events have repeatedly claimed that the integrity of their brands will be irreparably harmed by the legalization of sports gambling, because fans will have an increased suspicion that the players are being manipulated for gambling purposes.

Match-fixing is not limited to one team intentionally losing a game. There are many instances where instead of losing, the team involved attempts to win by less than the gambling point-spread, a practice known as point-shaving. There are also variations of match-fixing, whereby new forms of in-match gambling opportunities allow for what has been referred to as spot-fixing, whereby a player manipulates a certain event (e.g. a red card in soccer) or intentionally loses a seemingly insignificant point (in the context of the overall match itself). However, by virtue of in-game wagering, nearly all events or points can be considered relevant given the high liquidity of the betting market.


48. All five major North American sports leagues (the NCAA, the NFL, the NBA, the NHL, and MLB) have stated that legalized gambling will lead to harm to the integrity of their reputation. These declarations were made in conjunction with the case of NCAA v. Governor of New Jersey, 730 F.3d 208 (3d Cir. 2013) cert denied, 730 F.3d 208 (2014); see also John T. Holden, North American Sports Leagues and Gambling Policy: A Comparative Analysis, 14 INT. SPORTS L. J. 232 (2014).

49. For example, teams and players can collude for purposes of increasing gambling profits or enhancing the entertainment value of a sporting event for pecuniary or non-pecuniary reasons.

50. The point-spread is the margin of victory estimated by the gambling market by which the favored team is expected to win by, therefore point shaving is the practice of results falling within the difference between the predicted margin of victory and the lowest possible margin of victory. See Justin Wolfers, Exposing Cheating and Corruption, Point Shaving: Corruption in NCAA Basketball, American Economic Review Papers and Proceedings 279 (2006), available at http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=9AFC3E28486517E19340B5A502112C6?doi=10.1.1.101.9834&rep=rep1&type=pdf.

51. In-game wagering is the process of placing wagers as a given contest is taking place. This type of betting incorporates specific events that occur during a match, as opposed to the end result. Detecting in-game spot fixing is extremely difficult. See Ryan M. Rodenberg & Elihu Feustel, Forensic Sports Analytics: Detecting and Predicting Match-Fixing in Tennis, 8 J. of Prediction Markets 77 at n. 9 (2014).
III. THEORETICAL BACKGROUND: LAW AND ECONOMICS APPROACH

In his seminal 1968 article, *Crime and Punishment: An Economic Approach*, Nobel Prize winner Gary Becker derived the optimal theory for enforcement of legislation by asking the question, “what determines the amount and type of resources and punishments used to enforce a piece of legislation?”\textsuperscript{52} Becker posits that eliminating all crime may be beneficial for some, but the cost associated with achieving that end is too high.\textsuperscript{53} Instead, there is an optimal level of enforcement, which should be the target for legislation.\textsuperscript{54} Sports bribery presents an interesting predicament for the application of a deterrence model because bribery, by nature, is a voluntary transaction that affects private gambling contracts, and while it may have ancillary public effects, the harm created by sports bribery is largely of private concern.\textsuperscript{55}

The research on bribery has centered primarily on the bribery of public officials, and has largely neglected the private instances of bribery, which have only ancillary effects on the public. Rose-Ackerman has examined the economic nature of the incentives for private actors to bribe public officials, in addition to the social costs associated with such bribery.\textsuperscript{56} Goel and Rich, also expanded on the nature of public bribery as rent-seeking behavior with public officials seeking a form of profit maximization prior to making an official decision.\textsuperscript{57} While the economic literature on bribery and extortion of private individuals is less developed, it is important to address the incentive scheme in sports bribery due to the vast size of the gambling market and the implications that match-fixing has for the reputational integrity of the governing bodies which organize sporting events.

In 2010, Hosmer-Henner proposed a model of game fixing behavior adapted from the work of Forrest and Simmons, highlighting the utility change for a

\begin{itemize}
  \item \textsuperscript{53} Id.
  \item \textsuperscript{54} See id.
  \item \textsuperscript{55} For this context, it is assumed that the purpose of sports bribery is for gambling purposes, though there are rare instances of non-gambling related corruption. The 2002 Olympic figure skating bribery scandal appears to have been motivated by nationalistic pride versus gambling interests. Richard Posner provides an interesting discussion on this type of bribery by discussing the bribery of head waiters at New York restaurants, which differentiates private bribery from the bribery of public officials. See Richard Posner, *Economics of Corruption – Posner, THE BECKER-POSNER BLOG* (Aug. 28, 2005, 11:01 PM), http://www.becker-posner-blog.com/2005/08/economics-of-corruption--posner.html.
\end{itemize}
player, coach, or referee participating in a match-fixing conspiracy. The 
Hosmer-Henner model is as follows:

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

\( E(U^f) \) = expected utility change for participating in the match-
fixing
\( p \) = the probability of detection of the fixed match
\( q \) = the probability of the fixed match being successful
\( Y \) = the current wealth of the individual
\( G \) = the gain in wealth from an undetected and successful fixed 
match
\( F \) = the financial penalty associated with being caught
\( R \) = the value of civil, criminal and reputational penalties if 
caught
\( U(C) \) = the utility linked to the act of cheating itself.

Hosmer-Henner posits that a risk-neutral actor will participate in match-
fixing if \( E(U^f) > 0 \). However, the Hosmer-Henner model does not capture 
extortion-related match-fixing; the model is limited to bribery. In the event that 
the extortion involves physical, familial or reputational harm to induce an 
individual to fix a match, then there is the implication that the individual will fix 
the match with a much higher probability than in the bribery-only model. The 
expected utility gain would almost certainly be positive because \( p, Y, G, F, \) and \( R \) 
would no longer factor into the actor’s decision-making. Extortion style match-
fixing eliminates all considerations for the extorted match-fixer except for the 
probability of a fix being successful.

In determining whether a risk neutral actor will participate in extortion-based 
match-fixing, the following model provides a more thorough examination:

\[ E(U) = \frac{(1 - p) [(H + R)q]}{i} \]

\( E(U) \) = the expected utility gained from participating in the fixed 
game

58. See Hosmer-Henner, supra note 47, at 32; as adapted from David Forrest & Robert 
Simmons, Sport and Gambling, 19 OXFORD R. OF ECON POL. 598 (2003).
59. Hosmer-Henner, supra note 47.
60. Id.
p = the probability of the fix being detected prior to completion

H = The expected severity of harm to be suffered as a result of the fix not taking place

R = The probability that the harm will be administered

q = The probability that the match will be successfully fixed

i = The probability that the victim can successfully gain access to some form of intervention

The greater the expected utility (E(U)) from participating in the fix and returning to the status quo, the more likely an actor will participate in the extortion scheme.

Researcher Declan Hill has noted, through undercover investigations and interviews, that match-fixers use a variety of tactics to ensure a desired result. Hill has observed that match-fixers utilize both a carrot and stick approach in combination, often inducing match-fixing behavior using bribery as the carrot and then ensuring success of the fix with the stick–threats of physical harm. In the context of deterring match-fixing, Hill establishes three criteria, which contribute to the presence of environments ripe for match-fixing. The first criterion is that there are large illegal gambling networks. The second is poor wages paid to players, coaches or referees. The third condition fostering corruption in sports leagues is the perception that the league is corrupt, thereby creating an expectation of corruption.

In 1999, the U.S. illegal gambling market was estimated to be as large as $380 billion. In 2014, the international market for legal and illegal sports gambling was estimated to be between $250-$650 billion. The size of the legal sports gambling market in the United States, which is essentially limited to the state of Nevada, saw a handle of $3.45 billion in 2012. This vast disparity

61. See Declan Hill, How Gambling Corrupters Fix Football Matches, 9 EUR. SPORTS MARKETING Q. 411 (2009); see also Declan Hill, To Fix or Not to Fix? How Corruptors Decide to Fix Football Matches, 10 GLOBAL CRIME 157 (2009) [hereinafter To Fix or Not to Fix].
62. See To Fix or Not to Fix, supra note 61, at 176.
64. Id. at 226.
65. Id. at 227-228.
66. Id. at 228-229.
69. The legality of sports gambling in the United States has been largely constrained by the 1992 Professional and Amateur Sports Protection Act ("PASPA"), which restricted sports betting to only Nevada and a small number of other states. Of these states, only Nevada offers full-scale sports betting. See AM. GAMING ASS’N, SPORTS WAGERING, 1 (2012), available at
would seemingly satisfy Hill’s first criteria for an environment that would foster an illegal sports gambling market.

The second criteria, which Hill sets forth as one that contributes to the appearance of match-fixing, are poor wages. The professional leagues in North America, do not fall into the category of poorly paying their players and coaches.\textsuperscript{70} College sports in North America, however, have no wages, outside of tuition and room and board paid to athletes, making them potentially vulnerable to manipulation.\textsuperscript{71} Likewise, the salaries paid to college football and college basketball referees is low.\textsuperscript{72} North American professional athletes may also have another proclivity towards behavior that may be a substitute to Hill’s poor wages that of drug use, both recreational and performance enhancing.\textsuperscript{73} While drug use amongst players has been viewed by the North American sports leagues as a scourge in and of itself, the drug use may further serve to make professional and amateur athletes vulnerable to extortion or blackmail from match-fixers by virtue of either the threat of revealing the drug use or to satisfy a drug related debt.\textsuperscript{74}
The third criterion, perception of corruption, remains unknown. No known studies exist with respect to the perception of corruption amongst the major North American sports leagues.\(^75\) Anecdotal evidence would suggest that there are emerging trends of dissatisfaction amongst the public with how sports leagues are handling themselves in various high profile instances.\(^76\) While there is no known public evidence to support a conclusion that match-fixing is as prevalent in North American professional ranks as in other parts of the world, there is some support for the contention that the North American environment is ripe for would-be match-fixers.

**IV. DISCUSSION**

The Sports Bribery Act had two primary objectives. The first was to combat the practice of manipulation of sporting events, and the second was to provide a mechanism to combat organized crime’s role in game-fixing.\(^77\) In comparison to other countries, there has been a relatively low number of reported incidents of match-fixing in North America since 1964. However, tracking the deterrence effect of the statute based on reported incidents is inherently flawed because reported instances reflect only a fraction of the actual incidence of crime taking place.\(^78\) Expanding on Hill’s criteria for environments that are exploitable for match-fixers, North America’s professional and collegiate sports environment, when accounting for the likelihood of extortion and blackmail, is possibly underestimating the ripeness of the environment for manipulation in professional sports.

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\(^76\) See Purdum, supra note 44


\(^78\) In order to accurately detect deterrence one would need to know of all the crimes that have actually been committed, not only those reported. See generally Steven D. Levitt, *Why Do Increased Arrest Rates Appear to Reduce Crime: Deterrence, Incapacitation, or Measurement Error?*, 36 ECONOMIC INQUIRY 353 (1998).
Justin Wolfers, in a study of point-shaving in collegiate basketball, posited that the rate of point-shaving in college basketball is likely much higher than conventional wisdom would suggest. Professional sports have not seen any prosecutions under the Sports Bribery Act. However, high profile gambling scandals including that of Tim Donaghy, an NBA referee, who pled guilty to gambling charges, may have been manipulating results for his own gambling interests given his reported success betting on his own games. Similarly, professional baseball’s all-time hits leader, Pete Rose, was banned for life for betting on the game. While Rose has claimed that he only bet on his team to win, his gambling debts and his betting activities may have provided information for other gamblers to exploit. The few reported incidents of gambling-related corruption in American professional sports may not capture all actual gambling-related corruption amongst the professional ranks of North American sport. Whatever the prevalence, the Sports Bribery Act may be under equipped to deter the practice.

There are several key challenges facing the combatting of match-fixing in the United States. First, bribery appears to be the only criminal element punished by the Sports Bribery Act, the statute does not appear to capture blackmail or extortion. Second, detection of match-fixing is difficult. While several mechanisms exist for the detection of suspicious betting-line movements, these methods only provide prima facie evidence of match-fixing. Third, jurisdictional issues complicate adjudication of match-fixers. The international nature of sports gambling creates challenges to enforcement, related to international cooperation and extradition of match-fixers. The Sports Bribery Act, as its name suggests, likely only criminalizes bribery-related to influencing a sporting event. The effect of only criminalizing bribery likely limits the scope of the statute to application in instances where athletes are not highly paid. With high salaries, the expected cost of bribing a professional player would be cost prohibitive. Instead, a more effective mechanism would recognize the other factors that may induce an individual to fix a sporting event, including, extortion and blackmail.

Black’s Law Dictionary defines extortion as “The act or practice of obtaining something or compelling some action by illegal means, as by force or

79. See Wolfers, supra note 50
80. Donaghy has stated that he did not manipulate games for his own benefit, however, records indicate that he was an unsuccessful gambler when betting on games that he did not officiate. See SEAN PATRICK GRIFFIN, GAMING THE GAME: THE STORY BEHIND THE NBA BETTING SCANDAL AND THE GAMBLER MADE IT HAPPEN (2011).
82. While other means for punishment do exist, the Sports Bribery Act, is the only statute in the United States which specifically addresses match-fixing. See Sports Bribery Act, supra note 8.
83. See Sports Bribery Act, supra note 8.
84. See Brian Schactman, Here’s Why Soccer Match-Fixing is Not a U.S. Problem, CNBC (Feb. 3, 2013 6:02 PM), http://www.cnbc.com/id/100436884.
However, the federal statutes that would potentially serve as alternative prosecution mechanisms for extortion related match-fixing are largely restrictive in their definition to obtaining property and neglect to incorporate the performance of an action, as opposed to obtaining property, under duress. Carson has noted the issues related to the federal definitions of bribery and extortion in the context of the Foreign Corrupt Practices Act, noting that the text of the statute is problematic with respect to how it conceptualizes bribery versus extortion. The failure to incorporate any scenario other than bribery in the Sports Bribery Act leaves open significant questions as to whether some extortion related match-fixing is prohibited under any federal statute.

The challenge of detecting match-fixing is compounded by the fact that the most cost effective mechanism, monitoring of betting-lines, takes place largely in illegal markets. Gambling markets can serve to act as information markets capable of detecting unnatural betting patterns. The use of gambling markets to detect match-fixing in North American sports is problematic at present because the only large scale betting market is in Nevada, and the vast majority of wagering is known to take place illegally. This would likely be a limiting factor in the effectiveness of the Nevada markets serving as an information market.

The sports leagues presently claim that the integrity of their games is paramount to maintaining value. As a result, the leagues may have an incentive to not cooperate with law enforcement if the perceived gain of such cooperation is sub-optimal gain inducing. The literature on commitment effects may provide a solution to this problem. Abramowicz and Ayers discuss commitment effects, the idea that one will be penalized for failing to comply with an arrangement. An example of commitment effects can be evidenced by the mandatory disclosure requirements of the SEC, which impose penalties for failing to provide

86. A federal statute defines extortion as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.” See 18 U.S.C. § 1951 (b)(2) (2014). Section 41 of the U.S. Code treats extortion as limited to officers or employees of the United States, reserved blackmail for private parties and requires “a demand for money or valuable thing,” something, which may or may not encompass the type of described match-fixing. See 18 U.S.C. §§872-873.
88. This has been suggested by Hosmer-Henner, as a means of combating match-fixing. See Hosmer-Henner, supra note 46.
89. See AM. GAMING ASS’N, SPORTS WAGERING, supra note 67.
90. See NAT’L GAMBLING IMPACT STUDY COMM’N, supra note 67.
91. See generally Holden, supra note 48.
necessary information in a timely manner.\textsuperscript{93} In the context of the sports leagues, there is a need to ensure cooperation with law enforcement. This can be accomplished by requiring greater transparency with law enforcement and the imposition of sufficient penalties to ensure compliance via strict reporting requirements.

The jurisdictional issues that present themselves are two-fold. The first issue is that known match-fixers may operate in locales that do not support extradition to the United States.\textsuperscript{94} Additionally, the global sports-betting environment is vast, and many online sports-betting operations are housed in Costa Rica, Antigua, Curacao or sovereign First Nations communities in Canada.\textsuperscript{95} Overcoming these issues to detect match-fixing would likely require an international treaty, which would possibly see the United States having to take a position in opposition to one that they have previously taken before the World Trade Organization.\textsuperscript{96}

V. POLICY IMPLICATIONS

There are several policy implications for lawmakers as a result of the changing dynamics of match-fixing. The first is a reconsideration of the current policy towards bribery related match-fixing. As can be observed from the relatively few cases that have implicated the Sports Bribery Act, there are problems detecting match-fixing, or, alternatively, that match-fixing does not take place in the United States.\textsuperscript{97} It would be naïve to consider that with the rapid expansion of match-fixing scandals happening abroad, the United States is immune or insulated from match-fixing.\textsuperscript{98} The sports leagues value the integrity of sporting events as being intrinsic to their brands, and as a result may be incentivized to contain any suspicious match-fixing findings internally in order to minimize the perception that the leagues games have been compromised, further complicating the Sports Bribery Act’s reach.

The contradiction is that while the sports leagues desire that there not be match-fixing, they seemingly place a greater value on there not being public


\textsuperscript{94} This has been an issue with Tokhtakhounov. See Kramer & Glanz, supra note 43.


\textsuperscript{96} The United States was sued by Antigua and Barbuda, for violating the General Agreement on Trade in Services (“GATS”) by virtue of not allowing U.S. citizens to place wagers online through the island nations. The U.S. unsuccessfully attempted to argue that this was allowed under a public morals exemption, but the WTO found that the ban was an unjustified restraint on trade. See United States – Measures affecting the Cross-border Supply of Gambling and Betting Services, DS 285 (2005).

\textsuperscript{97} See supra note 24; see also supra note 29.

\textsuperscript{98} See supra note 1.
perception of match-fixing. Akerlof and Yellen, noted the examples of gangs, and the communities in which they live, whereby community members will not cooperate with law enforcement out of fear of gang retaliation. Under this system, gangs will continue to commit crimes until they cross the “cooperation/noncooperation boundary” where community members will cooperate with the police. Increased levels of monitoring and known punishments serve to lower the intersection point of the “cooperation/noncooperation boundary.” Applied to sports match-fixing, this concept of changing norms of cooperation through increased monitoring and communication should lead to increased deterrence. While in the context of match-fixers they may be unlikely to have the type of connection that would enable them to threaten the leagues themselves, increased communication between leagues and law enforcement could serve to create a greater barrier for entry for match-fixers.

It may be advantageous to incentivize the coming forward with information related to match-fixing through a bounty program. In the case of bribery or attempted bribery, the policy makers may be able to combat the corrupt practice by creating immunity for the party that brings forth allegations of the bribery even ex post. Cooter and Garoupa support a similar contention in the context of public bribery, that by creating distrust amongst co-conspirators, through immunity and rewards, bribery can be deterred. While it may seem drastic to reward a fixer who decides to turn state’s evidence, it would likely create a deterrence effect by disincentivizing any future athlete from entering into an arrangement with the fixer, while at the same time aiding in identifying athletes susceptible to corruption. Rose-Ackerman has observed that because bribery, unlike extortion, is a voluntary transaction, it is only necessary to deter one


101. Id. at 10.

102. Id. at 11.

103. Akerlof and Yellen note that increased communication and the police being viewed as partners is essential for lowering the equilibrium in the gang context. Their model suggests that increased sentencing will harm the cooperative programs, but in the context of match-fixing, lenient sentences likely create the disincentive to cooperate and as a result the model is irrelevant to this context. See id. at 19.

104. See Robert Cooter & Nuno Garoupa, The Virtuous Circle of Distrust: A Mechanism to Deter Bribes and Other Cooperative Crimes (Berkeley Program in Law and Econ., Working Paper at 3, 2010), http://escholarship.org/uc/item/83c0k3we.
actor.\textsuperscript{105} By creating an incentive for the whistleblowers to come forward, this not only provides incentives to those who previously may have been unwilling to come forward out of fear of prosecution, but it also raises the probability of conviction because it provides law enforcement with a cooperative witness.\textsuperscript{106} Whistleblowing has generally been observed to be a costly endeavor. For the whistleblower, however, under the proper incentive scheme, these costs can be reduced.\textsuperscript{107} In order to lower the cost associated with whistleblowing, the incentive scheme of non-prosecution may serve as an alternative to a bounty program, and additionally aid in reducing the cost associated with monitoring for corruption.\textsuperscript{108} The stigma that sports leagues fear from being victimized by match-fixers may be reduced if it is shown that there are high conviction rates for those accused. Additionally, the imposition of monetary sanctions may further serve as a deterrent to sports related bribery.\textsuperscript{109}

As noted, bribery and extortion are distinct in that bribery involves a voluntary transaction and extortion places the victim under duress. It has been observed by Shavell that the legal framework is sufficient for deterring most conventional forms of extortion.\textsuperscript{110} It is ill-conceived that the Sports Bribery Act,

\begin{thebibliography}{11}
\bibitem{106} Rose-Ackerman notes that whistleblower testimony and evidence, is highly important to obtaining convictions under bribery statutes. \textit{See id.} at 229-33.
\bibitem{107} \textit{See Mauricio G. Villena & Marcelo J. Villena, On the Economics of Whistle-Blowing Behavior: The Role of Incentives}, (MPRA, Paper No. 35971 at 5, 2010),\textit{http://mpra.ub.uni-muenchen.de/35917/}.
\bibitem{109} Theoretically, it may also be advantageous to implement a tiered sentencing structure for match-fixers, whereby sports leagues found not to be cooperating with law enforcement or failing to implement adequate prevention methods will see perpetrators face a lesser sanction, than those leagues that cooperate and monitor. However, given the significant ramifications of tiered sentencing, this is likely impractical. Ben-Shahar & Harel have written about the role victim’s play in facilitating crime, and note that a tiered sentencing structure that rewards those who are proactive in crime prevention by punishing crimes that they are victims of more severely, than crimes committed against those who have taken no preventative action. The incentive is given in order to lower enforcement costs for law enforcement. \textit{See Omri Ben-Shahar & Alon Harel, Blaming the Victim: Optimal Incentives for Private Precautions against Crime}, 11 J. L., Econ. & Org. 434, 435 (1995). One alternative avenue may be to incorporate a provision relating to honest services fraud, which would enable leagues or teams to recover salaries paid to players who engaged in match-fixing. \textit{See Skilling v. United States}, 561 U.S. 358 (2010); \textit{see also} Brette M. Tannenbaum, \textit{Reframing the Right: Using Theories of Intangible Property to Target Honest Services Fraud After Skilling}, 112 Colum. L. Rev. 359 (2012).
\bibitem{110} As has been noted supra, the federal definitions of extortion do not incorporate the type of behavior that would be present in a typical match-fixing related extortion case. Shavell addresses a form of extortion that would not incorporate sports match-fixing in most cases, and therefore it is possible that match-fixing related extortion is not adequately addressed under existing statutes, due
the lone federal statute addressing match-fixing, does not incorporate provisions allowing for prosecution of blackmail and extortion related sport corruption. Both Shavell and Posner reason the distinction between blackmail and extortion, allows a blackmailer to carry out certain threats relatively easily, by virtue of the information already existing.111 This may pose a concern related to deterring individuals already operating within a match-fixing conspiracy. However, the fear of blackmail can possibly be mitigated by whistleblowing protections being added under the existing bribery provisions, which may also be effective in deterring any underlying extortion.

In order to deter match-fixing, it is necessary to be aware of when the activity is taking place. At the present time, the current statutory framework is insufficient to incentivize those with information to come forward. Punishments, associated with both sports-related bribery and sports related extortion, are necessary to protect the perceived integrity threat that the sports leagues fear. Hindriks et al., note that heavy sanctions leveled against extortionists may also contribute to a reduction in bribe-taking, thereby creating and added incentive to severely punish extortionists.112 In demonstrating that match-fixers face harsh sentences, policy makers can limit the perceived costs associated with reporting and cooperating in match-fixing investigations by establishing trust in the sports leagues that match-fixing is a priority for investigation.

When the Sports Bribery Act was enacted more than 50 years ago, it was narrowly tailored to address the known sports-related corruption mechanism, bribery. The evolution of our understanding of sport corruption dictates that the Sports Bribery Act be modernized to better encapsulate the current threats facing sport integrity. A revitalized sports corruption act should expand on the existing Sports Bribery Act by incorporating provisions that protect against the unique threats from blackmail and extortion facing sports leagues. The statute should further address different types of match-fixing, including those that affect seemingly non-significant portions of the games, as well as instances where a lone-wolf match-fixer attempts to manipulate a game. In order to incentivize cooperation between leagues and law enforcement, punishments should be strengthened and prosecution be made a priority. While state level protections provide varying degrees of protection, the interstate and international nature of sport corruption requires tools for enforcement at the federal level.

VI. CONCLUSION

International sports organizations have seen all levels of sport attacked by match-fixers. However, instances of match-fixing in professional team sport has not been seen in North America since the passage of the Sports Bribery Act. The likelihood that United States professional sports leagues are insulated from match-fixers by their high salaries is likely idealistic and almost certainly false. The Sports Bribery Act may provide some level of deterrence, but the statute’s limited scope has rendered its effectiveness suspect. In order to combat the blackmail and extortion-related vulnerability associated with match-fixing, policy makers should re-examine the methods used by match-fixers to target college and professional athletes, their coaches, referees, and team / league executives. To ensure successful deterrence, a system of protection needs to incentivize whistleblowing in order to allow for successful prosecution of the match-fixers. The insider information provided by whistleblowers should enable for greater success in the prosecution of match-fixers.