

Cutting The Wire: Gaming Prohibition And The Internet

By David G. Schwartz

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Today, any person looking to test their luck and skill in a game of chance may do so as long as they have access to a computer and an Internet hook-up. As has been the case historically, gamblers and bookmakers utilize new technology faster than specific regulatory legislation can keep up. This juxtaposition between the American penchant for gambling and state and federal desires to control it is a common theme throughout the history of gambling in the United States. In an attempt to curtail the numerous Internet gaming websites emerging offering poker, blackjack and sports betting, federal authorities have found a tool to regulate this burgeoning industry in an unlikely place: Robert F. Kennedy's Wire Act of 1961 (the "Wire Act"). While the original intentions of the Wire Act have since fallen by the wayside, it has taken on new importance in the age of Internet gambling.

Author David G. Schwartz is the director of the Center for Gaming Research at the University of Nevada, Las Vegas. His previous book, *Suburban Xanadu: The Casino Resort on the Las Vegas Strip and Beyond* examined the world of the Las Vegas Casino and its place in American culture. As a director of the Center for Gaming Research, Schwartz possesses a knowledge of American gambling - its history, societal and political impacts - that is readily observable in this book. While the book contains a preface, seven chapters and an epilogue, it effectively breaks into three sections: the

history of gaming from the colonial period to the present, from the vantage points of both gaming and anti-gaming advocates, with a focus on crime and corruption; federal legislative efforts to regulate gaming culminating in the crux of the book, the 1961 Wire Act¹, which Robert Kennedy pushed through Congress as Attorney General; and the application of the Wire Act as a contemporary tool against Internet gambling, highlighted by the 2000 conviction of Jay Cohen², president of the World Sports Exchange³, for violation of the Wire Act.

Schwartz begins by examining the American proclivity for gaming beginning in the colonial period. As gaming flourished before and after the American Revolution, state attempts to control gaming fluctuated intermittently with periods of state sanctioned gaming. This “wide-open/reform/wide-open pattern” of gambling becomes a major theme throughout the book because it reflects the very real concerns (continuing presently) of both anti-gaming advocates and lawmakers that no matter how strictly enforced gaming is, it will perpetuate itself as one of America’s pastimes. This “push-pull” scenario between the public desire to gamble and the intent of both state and federal government to curtail the detrimental effects of gambling figures prominently into Schwartz’s analysis of the federal government’s crackdown on gaming featured in the second section of the book.

Next, Schwartz provides a detailed analysis of the ills bred by gambling, particularly corruption and crime. While he pays perfunctory lip service to other

¹ See 18 U.S.C. § 1084 (2005)

² See U.S. v. Cohen, 260 F.3d 68 (2d Cir. 2001) (upholding conviction of Cohen).

³ The World Sports Exchange was co-founded by Jay Cohen in 1996. The business was located in Antigua, and targeted clientele in the United States. Its principal business involved bookmaking on American sporting events, and was patterned after New York’s Off-Track Betting Corporation, which involves the legal betting on horse racing from off track inside New York. See David G. Schwartz, *Cutting the Wire: Gaming Prohibition and the Internet* 201-209 (University of Nevada Press) (2005).

underlying justifications for anti-gambling advocates, i.e., the argument that gambling is immoral and an unnecessary waste of unproductive time and the argument that gambling lends itself to social concerns of the state in supporting the public charge who has lost everything because of a gambling addiction, Schwartz focuses mainly on the impact that corruption and organized crime had upon the gaming industry. In doing this, he seamlessly weaves his analysis with descriptions of the different games and ways in which Americans gambled and how corruption and crime influenced each.

In the next section Schwartz describes the various state regulations and laws, and their deficiencies, enacted to combat the rise of corruption and crime that he discussed in the previous section. As technology developed, bookmakers and organized crime leaders learned how to harness it for gambling purposes, and nation-wide syndicates began to evolve. Clearly, localized regulations were insufficient to deal effectively with this larger problem. As Schwartz details the problems that plagued the states, he offers numerous examples, which run from violent (the attempted murder of a wire distributor by a drive by shooting, riddling his car with bullet holes, and his eventual death by poisoning as he recovered in the hospital) to humorous (as police raided a back room bookie office, several employees jumped from a second story window, but several others were caught when a corpulent employee got stuck in a window while trying to jump, thus blocking their escape) that keep the analysis entertaining. His description of gambling up to the 1950s leaves the reader with an understanding of the public's fear of a gambling and organized crime pandemic. This public fear leads the reader into the reasons behind Congress's eventual push to resolve these concerns.

After describing the origins and extent of the crime/gambling pandemic, the book turns to the steps taken by the federal government to stamp out the organized crime presence in gambling. Schwartz recounts the steps taken by the federal government as early as 1950 to combat organized crime. His focus, however, is on Attorney General Robert F. Kennedy and his role in pushing through Congress legislation that would help stop organized crime by striking at their main source of pecuniary subsistence: illegal gambling. One such piece of legislation was the Wire Act, which made it a federal offense for anyone “who knowingly used a wire communication facility to transmit bets or wagers on sporting events, or information assisting in the placing of such wagers.” The Wire Act also declared that gambling for either money or credit was illegal.⁴

To Schwartz, the venerable Robert Kennedy was the only person who had the drive and persistence to push through this legislation. The Wire Act’s initial intentions were to stop illegal information sent via wire communication, and in the beginning, the Wire Act claimed some success. By the time Kennedy left his post as Attorney General, however, the nature of gambling had changed, and the significance of the Wire Act had waned.

Although the Wire Act may have been pushed to the side, it was not eradicated, and to Schwartz, herein lies its significance and the role Robert Kennedy played in getting it enacted. While original visions of the Wire Act saw it prosecuting illegal interstate wire transfers of horse race results to smash organized crime, contemporary visions see it prosecuting illegal interstate wagers in the Internet age. The point of Schwartz’s dialogue in this section is clearly identifiable: while there were different ways

⁴ Despite the language of the Act, Kennedy made it clear that the federal government would not pursue and prosecute casual games of chance between friends. *See* Schwartz, *supra* note 3, at 100.

to fight organized crime, the underlying theme of the Wire Act was interstate communications and gambling.

Schwartz describes in the previous sections how gamblers and bookmakers, historically, quickly utilized new technology to push their trade over state lines. In this analysis, Schwartz underscores federal and state inability to keep pace with the technology, and he conveys the impression that this pattern continues today with Internet gambling. Here, the reader first gets the sense that in instances where local legislation has been inadequate because of the interstate nature of the technology, Robert Kennedy's legislative vision could be, although perhaps unintentional, a flexible tool utilization of which can be used to undertake the issue of Internet gaming in the absence of a clear federal prohibition.

Following his history and analysis of the Wire Act, Schwartz discusses its impact upon gaming today. However, before he reaches that point, Schwartz has to put the Wire Act in perspective by analyzing the current state of gambling. Following economic decline across the country, and a relatively successful campaign against organized crime in the 1970s, many states chose to follow the lead of Nevada and allow gambling, both on state and Indian reservation land. The advent of legalized centers for gambling across the country in casinos and riverboats resulted in three important factors: increased revenue for states, restrictions upon corruption and crime through stringent control of casinos and riverboats, and legalization of one of America's favorite pastimes.

The advent of legal gambling centers authorized by states is important, according to Schwartz, because as gambling became legal in some states while remaining illegal in others, there was no universality. Due to this lack of universality, federal restrictions still

exist barring the interstate wiring of any gambling bets from one state to another, regardless of a states gambling status. This is the context in which he frames Jay Cohen's conviction.

Schwartz uses the 2000 conviction of Jay Cohen for violation of the Wire Act to illustrate the Wire Act's legacy. Schwartz does an excellent job laying out the background of the case, the arguments presented on both sides, and the rationale behind the conviction. This description leaves the reader with an appreciation of the extent of the Wire Act's reach because of his previous discussion of its potential and the analysis of its application to Cohen. Further, it shows how law enforcement authorities may fill a gap in the law (as there is no straightforward federal statute specifically prohibiting Internet gaming) with legislation whose original intent may have been otherwise. With the conviction of Jay Cohen, the reader clearly sees the contrast between those who wish to gamble, the desire of the state and federal government to control it, and one way in which they can.

In this final section, the reader also gets a sense of Schwartz's sentiment, that, perhaps, the reasons behind the state and federal clamor to regulate Internet gaming is because the states have not found a way to effectively control it. This lack of control, which states currently exercise over live, in-person gambling, deprives the state of revenue. Schwartz leaves the reader with a sense that, in the near future, we can expect the legalization of Internet gaming as soon as the states can find a consensus to regulate and profit from it. This analysis assumes that in so doing, states will find the middle ground, much as they have with legalized casinos and lotteries, between the ever present American desire to gamble, and the desire to control it through regulatory legislation.

This book demonstrates the author's superior knowledge of the history of gaming and the social, political and technological implications that arise from it. The book highlights the constant struggle between the American desire to gamble and state and federal government measures to control this desire in an entertaining and illustrative manner. While Schwartz addresses the Wire Act and its legal implications upon Internet gambling, his survey is more concerned with the effects that Internet gambling may have upon United States culture. As such, I would recommend this book to anyone looking for a qualified analysis of the social and cultural impact of the Internet on gambling. I would also recommend this book for a history of the development of gaming in our culture. Overall, *Cutting The Wire* is a convincing, enjoyable, and well-written book.