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## Rutgers Journal of Law & Public Policy

VOLUME 10 SPRING 2013 ISSUE 2

# The Second Annual Sports and Entertainment Law Society Symposium



## **Rutgers Journal of Law & Public Policy**

VOLUME 10 **SPRING 2013** 

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### The Second Annual Sports and Entertainment Law Symposium

Tuesday, October 23, 2012

Rutgers University School of Law - Camden 216 North Fifth Street Camden, NJ 08102

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Christopher Gulla: All right guys, can I have everybody's attention? I'm Chris Gulla, President of the Sports and Entertainment Law Society. First, I would just like to welcome everybody here to the Rutgers Camden Sports Entertainment Law Society's Second Annual Sports Law Symposium. SELS has been planning this event for about four months now, so it's very exciting for all of us to finally see this coming to fruition. For those of you who don't know and did not get a chance to pick up a brochure out in the hallway, the symposium is going to be broken up in to two separate sessions; the first session, which we're set up for now, is on the resolution and consequences of the NBA lockout. The session will last for about an hour. There will be a panel discussion from 5:30 until 6:15, and then right after that we'll accept audience questions directed at either our entire panel or to an individual panelists, from 6:15 until 6:30. Once this session is concluded, we'll break for 15 minutes, give everybody a chance to mingle, maybe enjoy some food and drink in the back, and then we'll reconvene about 6:45 and we'll get started on our second session, which will be on the legal issues behind New Jersey sports gambling law.

Sitting up here, we have our panelists for our first session, on the resolution and consequences of the NBA lockout. I'll start a brief introduction; starting on my left, we

have Stephen Pina, who is an agent licensed with the National Basketball Players Association, who is employed with ASM Sports Management. Right next to him, we have Yared Alula, who is currently employed as associate counsel for the National Basketball Players Association. Next to him, we have Hal Biagas, who is the executive vice president of Wasserman Media Group. And finally, but not least, we have Tim Legler, who some of you may recognize as an ESPN NBA analyst and an ex-NBA player. And also seated up here, to my left, is Dean Andrews, who will be our moderator for this first session. Dean Camille Andrews teaches Sports Law here at Rutgers Camden and she also serves as the Dean of Enrollment. Now that everyone has been introduced, I'll hand the mic over to Dean Andrews and our panel discussion will begin. Thank you.

**Dean Camille Andrews**: Thank you. You're all interested in listening to everyone's role in the lockout, but just to briefly bring everybody up to speed on the lockout. Basically, on July 1<sup>st</sup> of 2011 at 12:01, midnight, we started a 161-day lockout, which basically ended up canceling about six weeks of games. There was about 150 hours of negotiations, screaming, they'll probably say ultimatums. But, at the end of the day, they did end up reaching a CBA that everybody could agree with, a collective bargaining

agreement. So I thought maybe somebody on the panel could just jump in and describe to people what the main issues were besides revenue, revenue, revenue that were basically being thought about in the CBA. And then, if you could just explain what your role was or how the lockout actually impacted your area of expertise, okay?

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Yared Alula: I'd just like to say before we start here thank you for having me. The biggest issue during the lockout was revenue, how we split the dollars. After that, it really came down to competition amongst the teams, not allowing one market to be able to completely outspend another market. Everybody knew that the Lakers were going to sign a local TV rights deal that was going to exponentially change their financial picture and that they would be able to spend on players in a way that had never been anticipated before. So that was the second primary concern of the NBA. And to some extent, there was an element of swinging the pendulum to something that they thought was more balanced. Obviously, we didn't agree with that, but they were under the impression that it had gotten too far out of whack and owners would not be able to profit, which of course ties back in to the question. My role during the lockout was sort of crafting and executing our strategy, organizing players, manipulating and moderating financial

| 1  | information, and organizing press conferences, the large       |
|----|--|
| 2  | ones that you see on TV, as well as the smaller ones that      |
| 3  | weren't broadcast, but happened pretty often.                  |
| 4  |  |
| 5  | Dean Camille Andrews: On the revenue side, what did            |
| 6  | you think was the largest sticking point for the players?      |
| 7  |  |
| 8  | Yared Alula: It was inconsequential that there were losses     |
| 9  | amongst the owners. The question was what degree of            |
| 10 | losses.  |
| 11 |  |
| 12 | Dean Camille Andrews: They were arguing that it was            |
| 13 | \$300 million the prior year                                   |
| 14 |  |
| 15 | Yared Alula: Correct, and we were arguing something that       |
| 16 | was much different. The owners also were under the             |
| 17 | impression that there had to be guaranteed profits at the end  |
| 18 | of each fiscal year.   |
| 19 |  |
| 20 | <b>Dean Camille Andrews</b> : Would somebody else like to talk |
| 21 | about what they saw as some of the key issues in the lockout?  |
| 22 |  |
| 23 | Hal Biagas: Sure, I'll give the perspective of the agency      |
| 24 | side. We represented about 52 active NBA players ranging       |
| 25 | from superstars like Derrick Rose and Pau Gasol to             |
|    |  |

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journeyman players who have more limited salary and contract. Players have very different degrees of interest, and different things that are important to them. At the end of the day though, revenue is the critical issue for most players, but corresponding with that is player movement: the ability of a player to have a marketplace for their services. Teams are competing for that player's services. Salary, contract length, contract guarantees, those sort of things that, if you have a restricted marketplace, it is very difficult for a player to go out and get their market value because there's only one or two teams bidding for you. It's hard for you to go out and find your true value, and find the situation that might be most advantageous to you for that contract as well as the next contract. So, from the agency perspective, one of the critical issues was not only as much money in the pot as possible because the revenue share is what yields the salary cap which is what gets the players paid, but also to keep flexibility in the system. To keep exceptions to the salary cap that allows teams to spend below a certain level, to limit the harshness of the luxury tax where there is effectively now a hard ceiling against which teams can't spend money. With dire consequences for spending beyond those levels, teams aren't going to spend so players aren't going to get contracts and there's going to be fewer teams on the marketplace and that makes it much harder for players to move through that situation or get a contract with the amount of money they would like in it.

So that, from the agency perspective and because we take our guidance from our players, that was very important to them. We spoke to the union as often as possible, as did our players, and to the extent that we have relationships with the owners and people in the league office we would also work with them to try to craft a system that was fair in at least some respects. The owners' initial proposals were beyond egregious. They were looking to cut salaries beyond any normal level that they ever had been before, by tens of millions of dollars, and also to have a system in which basically players would not be able to move between teams, effectively everyone would be subject to restricted free agency because as a practical matter because other teams wouldn't have room or have the inclination to sign a player their away from prior team.

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**Dean Camille Andrews**: Could you just very quickly describe what some of those caps are? It used to be dollar for dollar, teams had basically a soft cap last year. Now they have still a sort of soft cap, but could you describe some of the penalties so we could see how it really is.

24

25

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Hal Biagas: I don't want to mischaracterize anything, but

| 1  | as you said it could be a dollar for dollar cap above a certain |
|----|---|
| 2  | level.  |
| 3  |   |
| 4  | Dean Camille Andrews: It was like \$58 million last             |
| 5  | year.   |
| 6  |   |
| 7  | Hal Biagas: I think the cap last year was \$58 million.         |
| 8  | Right?  |
| 9  |   |
| 10 | Yared Alula: Right  |
| 11 |   |
| 12 | <b>Dean Camille Andrews</b> : Right.                            |
| 13 |   |
| 14 | Hal Biagas: But this year is like 64 [million]. (looking to     |
| 15 | his left to Yared Alula to check the numbers)                   |
| 16 |   |
| 17 | Dean Camille Andrews: Right.                                    |
| 18 |   |
| 19 | Yared Alula: No, it's higher than that.                         |
| 20 |   |
| 21 | Hal Biagas: Oh, \$67 [million]. Anyway so the tax began         |
| 22 | at 63% of BRI. The cap  |
| 23 |   |
| 24 | <b>Dean Camille Andrews</b> : Does everyone know what the       |
| 25 | cap BRI is?   |
|    |   |

| 1  |  |
|----|--|
| 2  | Hal Biagas: The BRI is "Basketball Related Income."            |
| 3  | It's the measure of the revenue                                |
| 4  |  |
| 5  | <b>Dean Camille Andrews</b> : It's the jerseys.                |
| 6  |  |
| 7  | Audience: [Laughter.]  |
| 8  |  |
| 9  | Hal Biagas: Yeah. It's everything It's basically               |
| 10 | everything   |
| 11 |  |
| 12 | Tim Legler: The whole pie (laughs).                            |
| 13 |  |
| 14 | Hal Biagas: Well, it would be nice if it was the whole         |
| 15 | pie. And actually, that is a good point. Thanks for bringing   |
| 16 | it up. It's basically everything related to the performance of |
| 17 | the players during an NBA game. So it's everything from the    |
| 18 | ticket sales to sponsorship money, television money, jersey    |
| 19 | sales. Well actually, jersey sales are in a separate category. |
| 20 | Those come in under the licensing agreement, which is a        |
| 21 | separate thing, but there are things that are excluded from    |
| 22 | the revenue climb, the biggest one being money that the        |
| 23 | teams get from the scale of the franchising. So, in talking    |

about a true partnership, the players should also get some

special ownership of the franchise and get the appreciation

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[now] only paid to the franchise. We used to see multiple owners of popular franchises from the eighties and nineties paying from \$10 million to \$100 million and franchises now sell for as much as \$400 million dollars. I'm sure if some of the larger franchises, like the Lakers, or the Clippers, or the Bulls, or the Knicks, were sold, we would see franchise values of \$1 billion, much like what we started to see in baseball. So, it's all about the ability to leverage your team in other ways. You see it now where teams are building an arena and getting other entertainment centers built along with, in conjunction with, the arena. The Nets play in Brooklyn; this is a classic example of that. The Lakers and the Staples [Center] and Anschutz Entertainment Group, they rely on all the revenues that they have generated from building that arena and having the Lakers and the Clippers play there. So there are lots of revenues that don't get factored into the pie and actually I didn't really answer your question ...

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#### **Dean Camille Andrews**: That's ok.

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**Hal Biagas:** But the tax effectively went from a dollar for dollar to a multiple of that. It starts at two fifty to a dollar, two seventy-five above the threshold and escalates every \$5 million from there. And teams that are taxpayers for three years out of five are capped at that number going

forward. So, in some instances, the tax is much harsher and in some instances it would become effectively a hard cap.

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#### **Dean Camille Andrews**: Thank you.

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**Stephen Pina**: I'm dealing with it from the agent's perspective, and a lot of what Hal said was, is pretty much it. And how we handle both, and myself represent a large number of players in the NBA so from our standpoint what we were able to do was essentially ... I guess both firms had a lot of support from our players because we had a lot of players and being that they weren't actually part of the union, both companies I guess our voices were...we both had loud voices and there was a lot of things that went on from the negotiating standpoints behind the scenes and these certifications some of these other points, that I'm sure you'll bring up, were out of line. But for the most part, from my standpoint, what we did for that process, I mostly dealt with the rookies and because there were rookie players who were not basically afforded some of the entry, the entry opportunities, i.e. the rookie transition programs, summer league and so forth so from that standpoint. So while all that was going on we are also dealing with handling rookies and, other things as well.

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**Dean Camille Andrews:** Thank you. Tim [Legler], how about you?

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**Tim Legler:** Well I think that from my perspective, it's that I'm a little unique because in 1999, the last time we went through this, I was a player, and I was finishing up my career. I sat in on a lot of those negotiations in New York. I saw a lot of interesting things take place in that room. Hal [Biagas] was [he chuckles] in there for a lot of those as well, working with the player's union at the time. And now, being an analyst and looking at it differently, it's interesting because we are partners with the league at ESPN, but at the same time I am always going to think like a player - and know what the players are looking for and why they are looking for it – and it's interesting to see the way the media is used by both sides, throughout the process to try to get the court of public opinion on your side. I saw the owners really doing that a lot and it's so easy to jump on their side because you see what athletes are making and you see the thresholds that the basketball players are making and it's so easy to immediately jump onto the owners' side with the old label of greedy athletes, where enough is enough. But the truth of the matter is, when you have an industry that is generating this kind of revenue and you start talking about percentages, where the players were getting 57% of that BRI and now you

are talking about the owners offering proposals initially that are 40%, when you start talking about 17% of that amount of money, you can really see the impact that it is going to have and how this whole thing starts moving in the other direction. And that is what the players fought initially. I think all along, the players understood that there was definitely going to be a decrease in the amount of BRI that they were going to be getting and they were willing to do that, but when David Stern comes out and starts giving drop-dead dates and saying take it or leave it when offering proposals, that's when it started to shift a little bit and people started to sympathize a little bit more with the players in this process and ultimately they came close to a 50-50 split. It's going to be somewhere in the 49-51 range either way over the course of this deal. I think we can live with that.

The biggest thing from a player's perspective in covering it, that I knew that the players really had to have, was to continue to have an amount of flexibility so that veteran players could find places to go play for teams that maybe don't want to pay the luxury tax. Do you still have exceptions to sign a veteran player that is going to make a certain amount of money? Is there still a roster spot for me? The flexibility had to be there, and I think ultimately, there still is a lot of that. I think the luxury tax clearly is much more punitive and it is going to restrict some teams from ever

wanting to go into that realm. But, I think the teams that win in this league, the teams that have the great local TV deals and have a little bit more money to spend, those teams are always going to spend it for an opportunity to win and some of the smaller market teams that haven't spent it in the past, never will, regardless of how punitive the new luxury taxes are.

**Dean Camille Andrews**: Can I ask one question real quick? So a lot of people blame all of that free agency huge move, on the lockout, so they used that as the reason that the lockout became necessary. Do you agree with that?

**Tim Legler**: Well, no I don't. I think there is always going to be...

**Dean Camille Andrews**: But you read that...I mean, there is a lot of commentary...

**Tim Legler**: Of course, of course, you hear it and I screamed enough at Skip Bayless through the process trying to make that exact point, because, I was there, kind of taking a player's perspective on it, and I remember back in '99, there were scapegoats then too. Kevin Garnett, was, at that time and a big, big point of emphasis from the owners was,

we have to max what the top player salaries are going to be. It was the first time you heard about that, a max contract. Because Michael Jordan prior to that had signed a couple of one year, \$30 million plus deals to come back to Chicago. And so, the owners said enough's enough, there is going to be other guys demanding that max contract. So that elite player, those guys, they were vilified during the '99 lockout. That's what this is all about, these guys don't want to give up the ability to make \$25 million and up and be categorized as a max player. So those guys were vilified. And it's never really is accurate when a certain group of players or a certain name is thrown out there. The owners want to make that guy the face of it. And I'm telling you, a lot of what goes on, and being in the media now, a lot of it really is a PR ploy and it's all about utilizing the media the best you can to try get people on your side and understand your point of view a little bit better.

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**Yared Alula**: I just want to touch base with the idea of the new punitive tax. Yes, it is more punitive, it is 1:1, which I think is a bit lower than ... I think it's a \$1.50 for the first 5 million and then...

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**Dean Camille Andrews**: It goes in increments every 5 million and then it eventually goes to 3 percent.

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**Yared Alula**: Yeah, so it's not that punitive and when you look at that, you have to look at it in the context of the entire deal. The luxury tax, even at the 1:1 rate, 80 percent of teams were not going over it. Actually, a significant majority of teams stayed right at the luxury tax line, even at 1:1. And that was in the context of a totally different revenue environment. With the new TV deals, the local TV deals are now increasing 50, 60, 70 percent. I mean, the Lakers now are looking at a local TV deal that is worth \$250 million alone. On one team \$250 million in just their local TV fees. I mean, these are astronomical numbers that are going to put the Lakers at a distinct advantage over teams like Atlanta or Memphis who aren't going to get these, their TV deals ultimately are going to be increasing dramatically but they were never going to get a TV deal worth \$250 million. So, that's a little bit of the emphasis behind the tax. I mean, we understood the principle that it is better for the league if everybody competes but at the same time some markets are going to see revenues that are very different than other markets.

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**Dean Camille Andrews:** Let me just shift gears for just a minute. What were some of the fallout or the effects of the lockout on the actual season-so there were sixty some

games left to play, what were the downsides and what was the upside? Some people say that the upside was that fans had a really exciting very short season. Some people say you lost some of them. And there's a lot of questions about whether or not people got injured—and whether they got injured because people were playing so many games and there's questions about whether or not maybe because veteran players were a little bit older, younger teams ended up getting into the playoffs—maybe even making it to the finals that wouldn't have gotten there at all. So there's a lot of questions about what real consequences you have from a

lockout.

Tim Legler: Well I'll just touch on it first I think real quick—having gone through '99, we settled much later, we had a fifty-game season. As it turned out on average, the number of games per week, was slightly higher in '99 than it was this year. On average you might play two and a half to three games per week typically, now teams are up at that three, three and a half range on average so obviously they're coming at you at a much faster pace—you had teams playing five games in seven nights.

I remember '99 clearly, we had an older team that year in Washington, and it absolutely affected us that year out of the gate. You only had two weeks to prepare; we were going

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three times a day which was Bernie Bickerstaff's brilliant idea that year to go three times a day for two weeks and basically all of his guards had hamstring and groin injuries for the first month of the season and we got out of the gate incredibly slow. And then we had more major injuries down the road. Was it tied to that? I don't know. You roll an ankle; things like that happened that year that can happen at any time. But, there's probably some correlation and it seemed like this year there were bigger names that were affected late in the year and into the playoffs—it seemed that way. If we went back and actually did the research and looked at it maybe it would come out that it wasn't-it just seemed that way this year in terms of covering it. I felt like going into the playoffs there were a lot of teams we were talking about that had guys banged up, big name players that were out. In terms of, though, the overall package, I think fans liked the fast pace. They liked the fact that every game meant more. It got to seem like we were in the playoffs that fast. And there's always that middle of the season, January-February lull in the NBA, we even feel it as broadcasters and as players. Fans feel it too and I don't think that was really there this year because it was a sprint to the finish line. Ratings, as it turned out, were up. They were up at ABC. They were up at ESPN. And they were up at TNT. So from that standpoint it really wasn't an impact in terms the worry th di re H ar pl th Bu te sa

that people are going to go away from the game and be disgruntled about this lockout and not come back. We didn't really feel it. The NBA's a very niche product, I think. Hardcore basketball fans are going to get their basketball and when they came back, ratings were great, and we had a phenomenal postseason. Lebron [James] what he went through, getting his first title, contributed to that greatly. But overall, I think the product really wasn't affected in terms of how the fans knew the game at all, and some people say let's keep it at sixty-six every year. I've heard a lot of that out there from people I've talked to on the street—just fans in general, they seem to like the quick pace of the season.

Hal Biagas: Just on the injury issue, when you have a shortened season, players feel the need to try and get back as quickly as possible so I think it's harder to convince a player to stay out longer and wait that extra two or three days before they return and so you increase the risk of injury by coming back too soon. So I think that was a factor in the shortened season. Tim's point about the ratings and the fan return, I think, was good—it was great this year and it contrasted with 1999 because in '99, the players were really vilified. They were seen as the villains in the lockout, they were being greedy, they were trying to hold onto a system that was unfair. I think that the public perception this time,

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you all may know differently, but people that I talked to generally I think felt that the owners were being a little greedy this time and that the players were taking reasonable positions and were just trying to keep a system that was fair and the owners were pushing for an unfair system. So I think fans were not as turned off by the players as they had been in '99 so they were quicker to come back to the game. And, I mean, other than the revenue diminution from sixteen fewer games, I think basically all the other measures were very good. It was an exciting season. It was fast-paced. There was a game on all the time, and there were a lot of good storylines, which continued into the playoffs. And you asked initially about Lebron James and the free agency thing, in the NBA every time there is a labor negotiation they create a stalking horse, and that was this year's stalking horse. But I think Lebron moving to Miami with joining [Chris] Bosh and [Dwyane] Wade and some of the other teams, that were also... it started years before that with the Celtics with [Paul] Pierce, when [Kevin] Garnett and [Ray] Allen joined Paul Pierce. You're always going have players who want to play with other players and create these socalled super teams and super teams don't always win, but it does create interest generally throughout the league and I think that's a positive. With free agency you can have a bad team, you get a good player and suddenly you're a better

team. Free agency benefits teams and benefits sports because it keeps fans engaged and there's always new excitement every year because you've got new free agents, new rookies; there's a new look that's out there, you get people excited about the product.

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**Stephen Pina:** I think about that from two perspectives. First of all, for 1999, I was still in law school so I wasn't around for the first blackout, from that perspective. However as a fan, as a law student, I do remember thinking that the players were unreasonable. I think that one of the things that has happened with technology in recent years is that a lot of the outlets that the players had access to in this recent lockout weren't available in 1999. From Twitter to Facebook to all these other different ways, people were able to create an environment that the fans got to hear the players' side of the story and it wasn't so much controlled exclusively by the media, so I think that also helped keep fan-generated interest at a high level because it wasn't so much basketball players are greedy. ASM [Sports Management | represents Kevin Garnett and obviously again I wasn't around when that process [happened], but I remember hearing some of the things that Kevin brings as a league player. What I did notice was that the rookies, in my opinion and I don't know if Tim [Legler] could weigh in on

this, it looks like the rookies missed out on a lot. One of things that I think is very, very important for the fan base is watching the draft and watching these new rookies come in and seeing which rookies perform well for the team. I do think that the rookies really missed out on a lot. I think that the rookie transition program is huge, as is the summer Summer league is a first introduction that these players have to real live basketball, and, as Tim [Legler] will tell you the speed of the game changes. It's totally different from college. I noticed that a lot of the rookies that people expected to have early success did not and I think that also did play a lot into it. Another thing too is that one of the things that you lost in this part is the vets. Yeah there were the Lebron James, and there are a lot of veterans, like Kenyon Martin and a lot of players who were free agents, who had to play overseas to be able to stay in shape, as a way to make money. I don't think that the overseas markets afforded them the same amount of healthcare, training, a lot of the special things that come from playing in the NBA. So, I'm actually curious to see if you kind of agree with that.

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**Dean Camille Andrews:** Before you answer that, can somebody else pick up on his draft comment and one thing that I was curious about is what if you have a whole season cancelled like the NHL, how would you run the draft?

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**Tim Legler:** That's great, it's funny you say that because we had that discussion many times ESPN. It finally dawned on us, like what happens if there is no season, how do you work out the lottery next year?

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#### **Dean Camille Andrews:** Right.

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**Tim Legler:** And I don't know that they ever did figure out what they were going to do with that. Because we certainly never got wind of it. But the point you made about coming into the league, getting your feet wet, having that time, the training camp you have about a month before the season starts and you're there working out with your team for six weeks prior to training camp. And I remember as a rookie going in there and you're talking about ten weeks of NBA coaches, NBA strength and conditioning, playing against NBA players for the first time getting you ready for the opening night; you feel prepared. What happened this time with a two week turnaround: deal's done, signed, ratified, ok let's go in two weeks we're playing NBA games. lot of We're asked to make a predictions prognostications at ESPN. Immediately we started going around what teams don't need rookies to help, they're the teams that are going to benefit this season. They're the

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teams that are going to do well this season. Deep veteran teams that have guys that understand how to pace themselves and have a deep roster that you can go to guy eleven or guy twelve on a given night to get production because you have guys that are tired and banged up because of this pace and rookies that aren't comfortable to step in yet and play the game, and that's an excellent point. absolutely makes a big, big difference for a young player coming out. I'm curious to know, I haven't really heard much about it, but if I was coming out of the draft at that time, during the lockout, it definitely is going to cross my mind: "what if there's no season, do I want to come out right now, do I want to go overseas, what do I want to do." There's a lot of things going through your head that normally typically wouldn't. If you're getting ready to be a drafted player, you're getting ready for that draft and hoping to get chosen as high as you can, but when there's the threat of there not being a season, I am curious to know the anxiety that some of those guys probably suffered, and some of the decision making, and how it was impacted based on it.

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Yared Alula: You saw it in the market too, right, because guys did not come out. I think the most recent draft estimate is one of the deepest we had in years, so I think you saw guys take that into the calculus when deciding whether

to come out.

**Hal Biagas**: The other thing that was impacted was, in a lockout- that short of a season- is the inability to practice with your team. Because you are playing games so often you are not getting practice time either, so it's very difficult to integrate ...

**Dean Camille Andrews**: Which practically then would give an advantage to the seasoned players who had already gelled together.

Hal Biagas: Exactly.

#### **Dean Camille Andrews**: Right?

Hal Biagas: And plus the rookies typically play in the Vegas summer league or the Atlanta summer league and that gives them confidence and helps them in their development process. They're getting coaching, for the first time probably, by the NBA coaches on their team and they're learning a new system. So there's a reason that rookies are definitely negatively impacted by a lockout and the system actually makes it harder too because, if you lose [months], in your rookie season you don't get an opportunity to play

| 1 | much and teams now are making decisions about whether or     |
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| 2 | not to renew your contract and exercise their options after  |
| 3 | that year, and again after that second year, so, actually it |
| 4 | changes  |
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| 6 | Yared Alula: Yeah.   |

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**Hal Biagas**: So yeah, now it's the first or second [year], it used to be after the first year, but so you have less opportunity to improve yourself to be an NBA player and to continue your path.

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**Dean Camille Andrews**: Sounds like the solution are the people that should have ended up in the playoffs were teams with deep vet roosters, and young players who have played together before. Am I right?

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**Tim Legler**: When you take a look at the teams that went deep though, the other thing they had is they were the best teams so that kind of helps you, like Oklahoma City and San Antonio and Boston, is the same way, get to a conference final. They are deep vet teams but they are also the best teams, so it kind of turned out the same way that I think it would have.

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**Dean Camille Andrews**: So, I want to open this up for some questions in just a few minutes. But let me just ask you about the NHL lockout, and what I want to ask you is: do you think that that foreshadows anything for 2017 in the NBA, what's going on with the National Hockey League?

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Yared Alula: Well, well I'll say that I talk to guys from NHLPA [NHL Players Association], probably two or three times a week, we have a fantastic relationship with them, and baseball and football, and obviously they are going through something right now that we went through not a year ago and not only that, but the same law firms that represent the owners on the NHL side represented the NBA in our dispute, they represented the NFL owners in their dispute. playbook doesn't really change that much, they just wait you out. A billionaire can wait out a millionaire much longer, and that's really what the overall strategy is. communicate with them regularly. In terms of 2016 - '17, I think a lockout is probably- I wouldn't say likely, but I'd go with probable, just because both sides will evaluate where they stand and one side will think that they can get more and they won't renew the deal and then we'll be right back to where we were. I mean...

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**Dean Camille Andrews**: Do you find it odd that we



really switched from strikes to complete lockouts? I mean the owners were shutting out the players.

**Hal Biagas**: Well part of that is the owners are making a choice. They have the quicker ability and earlier opportunity to initiate a labor stoppage then the players. There are thirty owners, they've made their decision well in advance of the expiration of the agreement.

**Dean Camille Andrews**: Basically in January, 2010 was when they first noticed here and of course the contract didn't expire until July of 2011.

Hal Biagas: So from their perspective, and I don't know that it really changes that much of the dynamic, I mean at the end of the day the sides have to reach an agreement, there is some procedural advantages to being the party that initiates it but otherwise I don't think it's that meaningful, as a strategy. The thing about labor negotiations, the owners, the owners in each sport see what their contemporaries on the other sport are doing and how their labor agreements are working out and what's beneficial and what's detrimental so each time there is an agreement they are looking to take the favorable things from the agreement from another sport and transfer it over to their sport. So, I think there will be an

| impact from the NHL labor negations I think there was an |
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| impact from 2004 past negotiations.                      |
| Dean Camille Andrews: Probably to the detriment to       |

the players.

Hal Biagas: Well, for the last 20 years, things have been to the detriment of the players. I think the first 20 years of labor negotiation that started with the formation of the unions in the late 60's early 70's, were mostly about players' gains. Players went from having very few basic rights. Most sports had limited or no free agency, players didn't get a per diems when they traveled, there were just a lot of things to change: health insurance, other benefits, retirement plans, things like that. But from the mid 90's to the early 2000's, the agreements have gone the other way. Every agreement in every sport has seen the owners take something significant thing back from the players.

**Dean Camille Andrews**: Let's open this up to questions. Questions?

**Audience Question**: Are players taught financial management? And, do agents have any say in the financial decisions of the players, can they say you should put some of

your salary in trust or do what Allen Iverson's friend and agent did for him which was put money away for when his career was over that he would get it at a certain age?

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**Stephen Pina:** It is. During the rookie transition program, these players are told pretty much everything they need to do as players to help them save money down the line. One of the things that as agents we don't do is handle their money. We do refer them to financial advisors, financial advisors are just a big a part of this game as agents and trainers are. I remember talking to a colleague of mine and he said, "how long do you think the lockout is going to last?" And I said, "I promise you, right before Christmas this is going to be over." This was before anything ever happened. Because I took into consideration what Yared [Alula] made a point that, billionaires can wait out millionaires. And I knew that at a certain point the players, it sounds crazy but with Christmas coming up and the holidays, the players would want something to happen. Allen Iverson, and some of these other guys, that have oodles and oodles of money, and this isn't a white or black thing but it's an athlete thing. And I don't know if you had the chance to see the ESPN Documentary "Broke". You might say to yourself I can live on \$200,000 dollars. But the reality is, your mom is not going to ask you to pay her salary and your brother isn't

going to ask you to pay his way through college off \$200,000 a year. And forget what you think, these are some real life scenarios that come into play. You hear Bernie Kosar's dad basically saying "I am going to cut you off if you don't give me x amount of money." It's a lot of pressure for kids, black or white, who come from these situations where people are basically waiting for you to take care of them. So, they are taught financial management and they do have financial advisors but there are certain things that are out of their control. I'm not going to put all the blame on everyone else and not the players, but I am going to say that there are always unique circumstances. It is a lot of money for a short period of time. As law students you are going to be lawyers for the next 25-30 years. As a basketball player, what's the average life span of a basketball player?

**Hal Biagas:** Four years.

**Stephen Pina**: Four years. So, you can just kind of figure it out. Obviously they get pensions down the line and things of that nature but it's not as black and white as people might think it is.

Yared Alula: Not only is there a rookie transition program where they are taught financial management, but

every single year they have to go to two mandatory financial management classes, the union offers free audits of their financial advisors—they probably go through a hundred of those a year—after that, they also get a pension—which is an anachronism nowadays—they also get a hundred fifty percent match on their 401Ks. So we put in place every single thing we can do stop guys from losing all their money. We negotiated during this most recent CBA that one percent of the salary is going to be held back for a bridge annuity program so that from age 30 to age 50, where the pension kicks in, they will actually get an annuity based on how many years they worked. One percent of the BRIs will be put in there every year, so this year 34 million is put in there, next year 43 million. So you can see that we put together all the programs and provide all the financial services that we can offer, and all the financial management tools. To some extent, guys still fall through the cracks, but from the union side, we do as much as we can.

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## Dean Camille Andrews: Next question...

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**Audience Question**: Along the same lines, you said it was going to wrap up around Christmas because players are going to start feeling the pinch with holidays coming up, and things like that. Would you say that there was more pressure

from the players to get a deal done as time wore on? And if there was, do you think that they ended up maybe taking the deal that you didn't want in the first place...like settling?

Yared Alula: Yeah, I mean every player was dead set against taking any deal when the lockout first started. The second the first paycheck was missed, everybody's attitude changed. Obviously over time, some guys were more strident and other guys weren't. In the end, the deal they took was voted 190 in favor, 29 not in favor. There was overwhelming support of the deal.

**Hal Biagas**: I want to point out that 200 players didn't vote. So, I think there's something to be said about that as well.

Tim Legler: Along those lines, I can remember in 1999 and being on conference calls as the lockout started, and the same thing starts in July, and, listen, in July and August, you're kind of on vacation anyway—you're not really in the season working out yet, it's in the distant future, I'm communicating with my agent once in a while and saying hey let me know what's going on. We had periodic conference calls, letters coming out, that sort of thing. And I was feeling like guys were being kind of in tune. You don't really start to

get serious about what's happening until you start to get into September and you realize now, wait a second, I'm not allowed into the facility, training camp isn't starting on time, the first paycheck is not coming until November 15th? Now it starts to really hit home. But I did feel in '99, I knew in conference calls we had, I know I participated personally in conference calls with 400 plus players in the league, 300 plus on the phones—and I felt that they were dialed in more to the issue. I did not think personally that the players were as involved to the extent that they were in 1999, for whatever reason. And I think the fact that you have 200 players—and I didn't realize that to be honest with you—but that's almost half the league didn't even vote on the deal. They didn't talk about things that had far-reaching effects on you financially in terms of you building and changing a lot of things. It's always technical. It's always hard to read through. If you go online and look-up the agreement, good luck getting through it. I mean - it's very detailed, very technical. Maybe that has something to do with it, I'm not really sure. But I just really felt that as a union we were much more involved in the process in '99 and moving as a body.

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**Hal Biagas**: I think one of the key differences between '99 and 2012 is the league has gotten younger. The age limit now restricts players coming directly from high school. But

| 1  | in '99, I think there were only one or two players who had       |
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| 2  | come directly from high school. Most players went through        |
| 3  | two, three, or even four years of college, and are a little more |
| 4  | learned, a little more sophisticated to the ways of the world,   |
| 5  | and I think that does make a difference.                         |
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| 7  | <b>Dean Camille Andrews</b> : Now it's one and done, right?      |
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| 9  | Hal Biagas: Yeah, for a lot of players.                          |
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| 11 | Dean Camille Andrews: You have to be at least one                |
| 12 | year out of high school.   |
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| 14 | Audience Question: Hal [Biagas], you mentioned                   |
| 15 | earlier about the direction of the league and the super teams.   |
| 16 | Is there anything in this new CBA that would prevent that, or    |
| 17 | is it just the future of the league where there are four or five |
| 18 | teams in the hunt?   |
| 19 |  |
| 20 | Hal Biagas: I think there are a lot of things in the CBA         |
| 21 | that over time will lessen the likelihood of super teams being   |
| 22 | assembled. I mean you can do it the old fashioned way and        |
| 23 | do a draft like Oklahoma City did with drafting Kevin            |

Durant, being fortunate enough that Portland took the

decision out of their hands and took Greg Oden. A few years

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later, Sam Presti recognizes that Russell Westbrook is one of the steals from draft and drafts him so as to get some other players who are more highly touted. And, you've got a few other players that fit the team mold and you get the right coach and the right system. And so, I think that you'll still see situations like that, but this CBA I think is going make it much harder for teams continue to assemble superstar lineups, notwithstanding what the Lakers did this past off-season. The Lakers will always be able to afford to pay the luxury tax. Not many other teams will be able to pay in the numbers what the Lakers and what we used to see in the past, what the Knicks, Portland, used to spend in the 90-100 million dollar ranges. They wouldn't be able to continue to afford to do that.

**Dean Camille Andrews**: The new CBA definitely encourages fiscal responsibility.

**Audience Question**: This question is for Tim [Legler]. It's a two-part question. One: Amongst analysts, fans, players, how do you think the value of a championship for LeBron [James] was diminished because of the lockout? And also, two: If you were a coach, including current and former players, how would you put together your dream starting five? [Laughter from all.] Not naming yourself as a

| 1  | star.   |
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| 2  |   |
| 3  | Tim Legler: Of all time, or now? [Laughter.]                      |
| 4  |   |
| 5  | Audience Question: Including former and current                   |
| 6  | players.  |
| 7  |   |
| 8  | Tim Legler: I would put together my top five dream                |
| 9  | team?   |
| 10 |   |
| 11 | Audience Question: Your dream team.                               |
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| 13 | Tim Legler: Wow. [Pause. Laughter from audience.]                 |
| 14 |   |
| 15 | <b>Tim Legler</b> : I have to think about that one for a sec. The |
| 16 | first part, no, I don't think it was diminished, honestly,        |
| 17 | because to me, the only thing that you can say slightly           |
| 18 | diminished it, was the fact that he did not have to go through    |
| 19 | a fully healthy Chicago Bulls team. That might be the one         |
| 20 | thing. The fact that he still had to get through Boston, that     |
| 21 | he still had to play a team that I personally thought was         |
| 22 | going to beat the Miami Heat and finally Oklahoma City. I         |

don't think it diminishes it. I really don't. There were 66

games in that period of time. For me, the reason it's not

diminished at all is because, and I felt it for the last three or

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four years, the biggest obstacle that Lebron James had to overcome was what was going on between his ears in pressure situations, and he found a way to conquer that, whatever it was. And I said after they lost, the year before, against Dallas, I said he should take a chunk of money, whatever he likes to spend his money, discretionary income on, and he should hire a live-in sports psychologist to stay with him for the next nine months and try to figure out, because I witnessed something I'd never seen before, a player of that caliber in the finals the year before. And I sat there, courtside, watching, so I know nobody can tell me he just had an off series. So for him to go from that to whatever he went through, in terms of maturing and being able to handle that situation, and come through with his perimeter shooting, which was really where he fell off in years past, because that's where you feel the pressure most, the freethrow line and deep jumpers, he started to make those shots. He figured out a way to calm whatever was in his mind and that alone speaks volumes about his ability to break through, so he can't be diminished for what he accomplished. He beat quality teams to do it, and he got his first ring. I give the guy a tremendous amount credit for turning it around, because all of us were kind of waiting for some sort of train wreck to take place this year when the playoffs started, and he handled a lot of critics, none more so than at ESPN, and Skip

| 1   | Bayless, who I mentioned earlier. My all time five, wow,  |
|---|---|
| 2   | that's tough. I would probably go, see I'm a little bit biased,   |
| 3   | because I'd kind of go with more guys that I watched growing  |
| 4   | up and I played against, probably. Clearly, I would put   |
| 5   | Michael Jordan at the two. I'd put Larry Byrd at the three.   |
| 6   | I'd put Magic [Johnson] at the point. Let's start with that.  |
| 7   | Probably go Kareem Abdul Jabar at center, [Charles] Barkley   |
| 8   | at the four. He's my boy, sorry.  |
| 9   |   |
| 10  | [Laughter from all.]  |
| 11  |   |
| 12  | Dean Camille Andrews: Let's hear everybody else's   |
|   |   |
| 13  | dream team.   |
| 13<br>14  | dream team.   |
|   | dream team.  Hal Biagas: Michael [Jordan], Magic [Johnson], I'd   |
| 14  |   |
| 14<br>15  | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd  |
| 14<br>15<br>16  | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd probably go [Karl] Malone at the four. Center is tough. I  |
| <ul><li>14</li><li>15</li><li>16</li><li>17</li></ul> | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd probably go [Karl] Malone at the four. Center is tough. I mean, Kareem [Abdul Jabar], probably. I think Shaq   |
| 14<br>15<br>16<br>17<br>18                            | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd probably go [Karl] Malone at the four. Center is tough. I mean, Kareem [Abdul Jabar], probably. I think Shaq [Shaquille O'Neal] certainly is in the mix, just because he is  |
| 14<br>15<br>16<br>17<br>18<br>19                      | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd probably go [Karl] Malone at the four. Center is tough. I mean, Kareem [Abdul Jabar], probably. I think Shaq [Shaquille O'Neal] certainly is in the mix, just because he is the most indomitable force to ever play. And then to three,                                |
| 14<br>15<br>16<br>17<br>18<br>19<br>20                | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd probably go [Karl] Malone at the four. Center is tough. I mean, Kareem [Abdul Jabar], probably. I think Shaq [Shaquille O'Neal] certainly is in the mix, just because he is the most indomitable force to ever play. And then to three,                                |
| 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21          | Hal Biagas: Michael [Jordan], Magic [Johnson], I'd probably go [Karl] Malone at the four. Center is tough. I mean, Kareem [Abdul Jabar], probably. I think Shaq [Shaquille O'Neal] certainly is in the mix, just because he is the most indomitable force to ever play. And then to three, you had [Larry] Bird to three? |

| 1  | Hal Biagas: Actually, I'm going to put LeBron [James]         |
|----|---|
| 2  | at the three.   |
| 3  |   |
| 4  | <b>Tim Legler</b> : We're not full court pressing anybody.    |
| 5  |   |
| 6  | [Laugher.]  |
| 7  |   |
| 8  | Tim Legler: But have fun guarding us.                         |
| 9  |   |
| 10 | Yared Alula: I'd go with what he had, I'm going to go         |
| 11 | Michael [Jordan], Magic [Johnson], LeBron [James]. I'm        |
| 12 | going to go Shaq [Shaquille O'Neal] at the five, and then, at |
| 13 | the four, I'm going to go with, what's my guy from            |
| 14 | Philadelphia? Moses [Malone].                                 |
| 15 |   |
| 16 | Stephen Pina: My man! I'm a Philly guy, so there you          |
| 17 | go! I'm not a Lebron [James] fan, so I wouldn't put Lebron    |
| 18 | [James] in there but that's just me personally. I'm going to  |
| 19 | go Kareem [Abdul Jabar]. My power forward I would do          |
| 20 | Tim Duncan. Some people don't think he would bring that       |
| 21 | wow factor, but I'm just a big fan of Tim Duncan. But         |
| 22 | Kareem [Abdul Jabar], [Tim] Duncan, [Larry] Bird Can I        |
| 23 | take off [Larry] Bird and put Kobe [Bryant] at the 3? Ok, so  |
|    |   |

Kobe [Bryant] at the 3...at the 2 and Magic [Johnson] will get

the 1. I like [Larry] Bird too, but I knew Kobe [Bryant]

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growing up in high school because I'm from Philly.

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**Tim Legler**: And I got to give a little bit of a notation to my five too. Larry Bird literally changed the entire course of my life. I was a baseball player I was drafted to play baseball in high school; that was my sport. Larry Bird got to the Boston Celtics at exactly the time I was entering high school. I was living in Richmond, Virginia so I was a Bullets fan growing up, but the way that they played in that group and just his toughness and his clutch shot and all those things... it literally changed the course of what I wanted to do. I put baseball secondary and basketball became my life primarily because I was watching the Celtics in the 80's and Larry Bird particularly. So Bird will always be on my top five no matter how many years from now it is or how many things Lebron [James] might accomplish. It is always personal when we make these lists and that is definitely a personal influence on my life.

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**Audience Question**: Measures have been taken to promote comparison between the NFL and NHL and there has been success in terms of how the league is viewed nationally, but there is a prevailing wisdom about the NBA that a certain couple markets always making the finals is more advantageous for the league. Why do you think that

opinion exists and do you think that it is true?

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**Dean Camille Andrews**: Is it just TV revenues?

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**Hal Biagas**: I don't think it is just TV. In sports, you are always looking for the casual fan to come and play because that then pushes everything beyond the traditional boundaries. Golf was a niche sport until Tiger [Woods] came along. In basketball we really have Magic [Johnson] and Larry [Bird] who took the sport to a place it had never been before. But then Michael Jordan came along and captured the imagination of the public and basketball became much more relevant to a lot more people. So when you have a team like the Lakers or the Celtics or the Heat where there is a lot of attention about them, the casual fans know who they They know about Kobe [Bryant], they know about are. Lebron [James], they know about the Big 3 in Boston during those years. The NBA is a star driven league; their market is a star driven league. The players are much more identifiable to the average fans. They're not wearing helmets, or hats, or visors. They are out there for everyone to see. It is hard to appreciate hitting a 95-mile per hour fastball; you don't know how difficult that is because most people have never done it. But everyone has shot a basketball in a hoop, so I think that it is a more relevant sport and I think that when

| you have those teams people don't care about San Antonio,       |
|---|
| they are a great team and they have been a great team for       |
| years, but when they are in their final or their playoff series |
| they don't do well.   |
|   |
| Tim Legler: Just to touch on that. Having worked at             |
| ESPN now for twelve years like I said, I go on air for the      |

season for the first time tomorrow and I'm sure they are

going to ask me who the MVP is, it's just what ESPN does!

## **Dean Camille Andrews**: Who is the MVP?

**Tim Legler**: Well I picked [Kevin] Durant last year. I really thought he was going to do it so I will stick with him, he's due. It's going to be one of these years.

**Dean Andrews**: Who do you think will be in the final four?

**Tim Legler**: Right now I'm going to stick with the Heat. It is going to be the Heat and the Lakers. I will be shocked if anybody outside of them [makes it]. This is what can be irritating about my job, you would love to say something crazy like what happens in the NFL or Major League Baseball or NHL, that some team is going to come out of nowhere and

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make the running. It's not going to happen; it's either going to be the Miami Heat, the Los Angeles Lakers, or the Oklahoma City Thunder are winning the championship. I will bet my paycheck on it for the whole season. One of those three teams will win the championship this year. Now I know what the league would love to have is more competitive battles. Is anyone here from Milwaukee? Ok, I can say this then. Milwaukee is never going to get a big time free agent to go there. I'll say it and I'm on record to say it. There are about seven or eight teams [that will never get a big time free agent]: we talk about these teams and these cities and these markets all the time. You could give them a special clause in the CBA statement saying "you guys can spend 30% more than everybody else and get the same player" and they [those players are still not going there. And so there are certain markets that are just never going to be able to compete. Now, you can get free agents. But, you're not getting elite free agents. There's a handful of markets to be in. Those that guys want to play in, want to go to, to get a better chance of winning, more endorsement prospects and all of those things, other players already there. They're great for the same reasons. So that's one of the reasons that almost a third of the league honestly is just one of those teams that we talk about early. We joke about it at ESPN. We hope that the Pistons get off to a great December so we can talk about

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them one night because typically we're talking about five or six teams most of the season. So we look for those five straight winning streaks that the Timberwolves go on and give them their love tonight because we know we might not talk about them again for a long time. That's maybe a bad example because they're actually a young exciting team, but you know what I mean. So we go through that a lot on ESPN. Typically, it has been a very top-heavy league. Our ratings continue to go up. It doesn't seem to be hurting us But I know from my from what people are watching. standpoint I would love new stories. We were talking before we started, it would be fun to see the Knicks being relevant again. Brooklyn, I think, is going to be certainly a contender team in the Eastern Conference. Indiana and Philly last year, what they did. Getting on Minnesota; up and coming although they don't have [Kevin] Love and [Ricky] Rubio right now. The Clippers. Teams like that. Last year one of the things I loved about the lockout was, we joke about it all the time, I came in there sometimes over the last eleven years, on a Wednesday in the middle of January saying, "what's the slate of games tonight?" And the best you're coming up with is Sacramento at Cleveland or something. That's our game of the night. That didn't happen last year. Every night, because of the pace of the schedule, there were great games. Every single night of the season we had a

| marquee game to talk about. And now the season's               |
|--|
| expanded again but there are more relevant teams that          |
| actually are going to be exciting and fun to watch. So I think |
| it's going to be the best NBA season we've ever had in terms   |
| of all the coverage.   |

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**Yared Alula:** And all of that is basically booming talent. There's just significantly more talent for each team as far as what they can work with. Even if they don't have a good prospect of a league championship, they will have a good chance.

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Audience Question: Quick question for Mr. Alula. Was the KG incident true and if so did it influence how you scowl across the table? And did that influence how . . .

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Yared Alula: Yeah I mean a lot of that stuff was true. That Dwyane Wade thing happened. KG [Kevin Garnett] is very intense in negotiations. Telling jokes around a dinner table—he's very intense about that. Very intense about everything he does. So that stuff happens. But, the owners are on the other side, they've negotiated in all types of settings. It's just KG [Kevin Garnett]. He's that person who's going to have an impact on them.

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**Audience Question**: When you guys discussed the effect on the draft this year, do you expect a mass influx this incoming year? Or what other effects do you expect it to have on the draft?

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**Hal Biagas**: The influx was this past season because players that might have otherwise come out, stayed through that last college season so they came out this past June. So I think in this draft you'll see players continue to come out after one year. I think there's a proven model now that works - you come into the system. The reality is, [even though] people talk about staying in college to become a better player, I don't think that really happens. I think with the coaching, and the level of competition, and the ability to practice without limitations like they have in college, players become much better playing in the NBA. I mean, we all like college basketball I'm sure, and we all want to see it continue to thrive. But the reality, if you're good enough, if you're an NBA player, the sooner you are in the league, the better it is for you in terms of your development, and, economically, you're going to play that much longer and make that much more money.

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**Stephen Pina**: Typically in basketball, we say in any given year, we say it's deep, and it's not deep. One of the

things that I think is helping with the draft is guys are training at a much more intensive level, starting off at ten, eleven years old now. I don't know when you were coming up if it was the same. I always hear stories about people playing two or three sports. I have a ten-year old son. He's considered a good basketball player. He goes to all these camps. All he does is play basketball all year round. I don't know if it's good for him or if it's bad for him, but it's making him stronger, a lot faster. I think that when these kids get to college, they're much more physically prepared. remember when I was coming out of high school, you would see these guys coming into college and these guys were string beans. But now they're coming straight out of high school. I remember they showed a picture of LeBron James' draft class—LeBron [James], Carmelo [Anthony], and Dwyane Wade—and the caption was, "Guess which one of these kids didn't go to college?" Because you had Lebron [James], looking like a man and Dwyane Wade, and Chris Paul, and was Chris Paul in the draft class? No, he wasn't? So it was Darko [Milicic], I'm sorry. I do think the draft has a lot more talent because it has to do with them being much more ready when they come out.

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**Audience Question**: Just a quick follow up question, how does that affect the D-League?

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Stephen Pina: In terms of?

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**Audience Question:** In terms of people who offered to go to the D-League instead of being offered an NBA contract, or what the progression is there because of the lockout?

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Yared Alula: Nobody opted to go to the D-League.

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**Hal Biagas**: The D-League has a separate draft. The NBA has a two round draft and then if you are not drafted by the NBA, then there is a separate D-League draft that is held. I think the biggest difference in the D-League is one of the things thats in the CBA, is that players can go down to the D-League an unlimited amount of times. In the past it was three times back and forth. Now, they can send that player down on a Tuesday, just because there is a D-League game. Also now, teams have direct affiliations with D-League teams. So they have their coaches there, they have their systems there. So, it is a lot more of an opportunity for your player to develop. If you know he is not going to play on a Tuesday night, but there is a D-league game that same night, you send him down and he can be back the next day to practice with the NBA team. There was a really interesting story, I don't remember where it was but if you Google it, the

Warriors were talking about their purchase, they bought a D-League team and moved them from Reno to Santa Clara, which is 45 minutes away. They are going to have their guys go back and forth all of the time.

Stephen Pina: Which I think helps the players an awful lot. If you are not a top 5 pick, it might not be great for their ego, but I still think these players need to have an opportunity to play. I think a lot of times in the league, you have players sitting the bench coming out of Kentucky and Florida and all of these big time programs and they are not mentally prepared for the grind. They think it is going to be easy. So I actually think the D-League really helps them, especially with the changes in the bargaining agreement.

Tim Legler: Well, last point on that, I can speak from a players perspective. You are allowed to have a CBA today, a collective bargaining agreement, but the other CBA, the Continental Basketball Association, was in existence prior to the D-League. The biggest difference now is that the team has your rights. They have a vested interest in making sure you succeed. So when they send you down to get you opportunities to play, they really want to see you improve. So then they show people here is a guy we have chosen, we handpicked, we are developing him and to one day have that

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guy step on the court and help you it's important to the organization. When you were in the CBA [Continental Basketball Association], you didn't belong to one team, any team could pick you up, so nobody had a vested interest in your success. So I think it is better now how the D-League operates in conjunction with the NBA in having those affiliations with those teams; it is a tremendous opportunity for these guys. Now, if you are good enough, there is no excuse for you not to make it, whereas before, I think there were some opportunity issues in the past. Now, if you are good enough and a team has your rights, they are going to make sure you have enough to develop just like the NBA players are, in terms of the conditioning, what you are exposed to.

Hal Biagas: It also helps that other scouts are watching these D-League games too, so even if your own team has doubts about you, or you are not going to get another opportunity with the team that has your rights, another team can see you and give you a chance as well. Other teams get to watch you and route for you.

**Christopher Gulla**: Ok guys, unfortunately we are out of time. One last thank you to all of our panelists. The panelists will be sticking around, feel free to get some food in

the back and we will reconvene at 6:50.

**RECESS** 

Christopher Gulla: All right guys, can everyone please take a seat. We are about to get started here. Thank you. All right so our second session here tonight is going to be on the issues behind New Jersey's push to legalize sports gambling. The panel discussion will last from 6:45, now 6:50, we will make it 6:50, to 7:35 and then our audience once again will be allowed to ask questions. Those questions will last from about 7:35 to about 7:55.

Now, up here seated at our table we have the panelists for our second session. First we have Thomas Auriemma who is a current member of the Penn National Gaming and Finance Committee and a member of the board of directors of Revel in Atlantic City. Next to him we have Joseph Asher who is the Chief Executive Officer of William Hill U.S., which is one of the world's leading gaming and betting companies. Also we have our moderator for tonight right seated right here to my left, which is Professor Stephen Schrier. Stephen is the head of the Gaming Law Department at Blank Rome LLP in Philadelphia. He is also an adjunct professor here at Rutgers Camden, and he served as a past chair of the NJ SBA Gaming Law Sector.

I know a lot of people were expecting Senator Lesniak unfortunately he was unable to make it here tonight. He was on our panel all along, unfortunately today he ran into a medical issue and he could not make it. But, trust me the only one more upset is me, but the show must go on and we have other panelists here who are more than capable of handling it. With that being said, I will hand the mic to our moderator, Stephen Schrier, and our panel discussion will begin. Thank you.

## [Applause.]

Stephen Schrier: Thanks, Chris. I want to wish everyone a good evening. And I want to thank Chris and the Sports and Entertainment Law Society here at Rutgers to have us here tonight and giving us the opportunity to discuss this topic of Sports Betting. I also want to thank Dean Andrews, and Dean of the law school and faculty for supporting this sort of program here at the law school which I think is very useful and goes outside the box a little bit in the kinds of things the law school offers not only in the curriculum but in a program like this. I am honored to be a participant in it.

So, our topic tonight is wagering on sports. That is hardly a new topic here in the world. As many of you probably can imagine wagering on sports probably began when mankind began. You know, "I'm faster than you are" or "my horse is faster than your horse." Those are the kinds of things we think about in term of when we start thinking about when people began wagering on the outcome of some activity that might involve them or whether their gladiator would be able to win at the Coliseum that weekend. At this point in our society, like many things, sports wagering has become something some people believe is a good thing, some people believe is an entertaining thing, and some members of the society believe that is may be offensive or that it may be evil. So tonight we are going to talk about New Jersey's venture into sports betting and maybe enlighten you a little more as to what New Jersey is trying to accomplish and why, so you that can think about the issues yourself and make determinations about sports wagering in the U.S. and here in New Jersey. So I'd like to start out with a question to our esteemed panel. Who are your top 5 for basketball?

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[Laughter.]

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**Thomas Auriemma**: I can think of Wilt Chamberlain and Elgin Baylor.

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**Stephen Schrier**: For purposes of our sports betting,



many people here may not know that there is a law that prohibits sports wagering here, and it has the acronym PASPA, but maybe, Tom you could enlighten us as to what that is all about and why it exists.

Thomas Auriemma: Yes, that is the Professional and Amateur Sports Protection Act. It's a Federal statute enacted in 1992. It can found in 26 U.S. Code Annotated Section 3701 Et Seq. And, I'll explain what it is in one second. But first, I want to emphasize tonight what we are talking about tonight in New Jersey, is sports betting land based casinos and race tracks in New Jersey. There are twelve casinos in Atlantic City. There are four race tracks in New Jersey. We are not talking about, although we can certainly answer questions about it, we are not talking about internet gambling, gambling games on the internet, we are not talking about mobile gaming; we are talking about land based sports wagering.

So, I'll to give you a little history on the Professional and Amateur Sports Protection Act. New Jersey had a U.S. Senator named Bill Bradley, who was a three-time U.S. Senator, a Democratic Senator from the State, very well known, Princeton Grad, star basketball player for his university, longtime player for the New York Knicks, then became an elected official from New Jersey and also

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unsuccessfully ran for president. A very moralistic individual, very well intentioned, he had a number of issues with respect to sports wagering in Nevada and elsewhere. And I must say I do think he was well intentioned, although I just think some of his viewpoints perhaps were misguided. But I went back and I looked at some of the comments that he had made in the early 90's, just prior to the enactment of the Professional and Amateur Sports Protection Act, which he was one of the sponsors of in Congress and sheparded it really through the legislative processes. He said that "Sports betting was a corrupting influence; it corrupted the integrity of and was destroying the public confidence in American Sports was becoming more about money than sports. achievement and sportsmanship, and thus he felt there was a need to protect the integrity of both collegiate and professional sports from this kind of evil, sinful type of activity. So he was able to shepherd through congress this particular statute, and it essentially prohibits any state or Indian tribe from offering sports betting, however the act grandfathered in all existing forms of any sports wagering. There was, however, a one-year period of time where a state like New Jersey could have enacted sports wagering and could have occurred in Atlantic City Casinos or race tracks. That period ran for one year, from January 1, 1993 to January 1, 1994. For a variety of reasons, New Jersey did not

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enact sports wagering at that time. And to do it, it would have required a constitutional amendment to the New Jersey Constitution. New Jersey has a long history of banning gambling unless otherwise authorized by voters of its state. And that is how we've gotten over time horse racing, lotteries, casinos, simulcasting, by specific amendments to the New Jersey State Condition. So New Jersey had an opportunity, in 1993, to enact sports wagering, to put it to the voters of the state that November. Now, if Senator Lesniak was here he could perhaps give you a political take on it. I was a casino regulator at that time in Atlantic City, and my take on it was that was a gubernatorial election year, Christine Todd Whitman defeated ultimately Jim Florio, who was the present governor of the time. But, there may be other reasons, but certainly it did not get in front of voters of the state. So, New Jersey was barred, by this particular statute, from having sports wagering.

Now, most people think "well, who was grandfathered in?" I have been to several conferences and its Nevada, its Oregon, its Montana, its Delaware. Although, I have done some research on it and there actually are, besides those states, a few other states that had some type of sports wagering before 1992. For example, New Mexico had legal wagering on bicycle races. And, North Dakota had a law that said nonprofits could run sports pools on professional

sporting events. No one ever seems to focus on those other states; everyone seems to believe that it is just the four states that I just mentioned that are grandfathered in. The most significant one, of course, being Nevada, and people referred to that as the "Las Vegas Loophole" because they were permitted to still have sports wagering when other jurisdictions, like New Jersey, were not.

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Fast-forward to today, we still have that federal statute. If you read it, it seems to prevent New Jersey from engaging in sports betting. However, there was an attempt in '93, just prior to the end of that year, to have sports wagering. Most people have forgotten about it today, it seems like ancient history, but I'm sure Schrier, discussed in the gaming law class here and I teach a gaming law class at Rutgers Newark, where we talk about it. There was a rush at the end of that year, in 1993, to the casino control commission down in Atlantic City, to the casinos to say "We don't really need an amendment to the state constitution to have sports betting." The previous amendment permitting casino gambling in Atlantic City 1976 was broad enough to permit sports I disagreed with that, and in fact the casino control commission disagreed with that, and it went to the Appellate Division and the Appellate Division affirmed that commission. And there is a written published opinion, which says: "No, New Jersey in 1976 when they amended its

Constitution to allow casino gambling, it only permitted casino games and did not permit sports wagering." So, over time, that fell away, and over time there have been various calls for sports wagering, all recognizing of course the federal legislation that does exists. However, based on a of variety of political circumstances, including bipartisan support from a Republic Governor and Senator Lesniak who is a Democrat, we had in November of 2011 a referendum before the voters of this state to permit sports wagering. The voters did in fact approve that, the State Construction was amended, and the legislature enacted a law that was signed by the governor in January of this year [2012] to permit sports wagering. The New Jersey Division of Gaming Enforcement, in consultation with the Casino Control Commission and the New Jersey Racing Commission, has now adopted regulations to permit sports wagering, all in the face of the federal ban. I'll leave it at that for the moment.

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**Stephen Schrier**: So what we have now is a law that is passed in New Jersey which is in direct contravention with the federal PAFSA laws that has for years prohibited sports wagering in any state other than those, like Nevada, where it was preexisting. So now that that law has been passed, New Jersey should be gearing up to engage in some type of sports wagering operation which brings along with it, as you might

imagine, a lot of good tourism dollars, a lot of wagering dollars, a lot of excitement, a lot of traffic to these locations. As Tom mentioned, the New Jersey law permits sports wagering at all of the 12 casinos in Atlantic City, and again, also at any of the race tracks. So there are venues here in New Jersey where you can wager on professional sports, and college sports. Having the voters of New Jersey pass that and now having the regulations been authorized by our regulating agencies in New Jersey, why aren't we sports wagering? Why aren't we visiting our casinos this weekend to bet on the Eagles game? So what happened?

**Stephen Schrier**: Joe, maybe you can enlighten us as to that?

Joseph Asher: Well, I think that two things happened. Number one, there's a federal law that says sports venues it's illegal to hold separate gambling sessions that Tom spoke about. There were a few years where they could make themselves an exception. But, Supremacy Clause of the Constitution says that federal law is the law of the land. But in litigating the issue, the sports leagues followed suit in federal court here in New Jersey and the case is now starting to get on a path to the courts on the path that it takes and the time that is unclear. There's a hearing in front of Judge

Shipp in December, it's scheduled. So, it's starting to play out in the courts. And at its crux, the core issue, what ultimately needs to be decided, is whether PASFA is at its If it's constitutional, then obviously core constitutional. there's an issue with the New Jersey statute. A lot of folks have faith that PASFA is unconstitutional; if it's unconstitutional, it's never been litigated on its merits. We'll talk a little bit later about Delaware and the Third Circuit, and the constitutional issue that Delaware has with PASFA. So, ultimately, I think that issue will have to be decided in order for there to be clarity surrounding the issue. If, NJ prevails in the current law suit, on procedural grounds, or if right now if they move to dismiss the case on standing grounds, because they don't have standing, that may be well and good for this particular lawsuit, but it doesn't address the underlying issue and really doesn't provide clarity surrounding the constitutional impasse. So, we can obviously talk about this for a long, long time, but for now, it's very much an unsettled issue.

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**Thomas Auriemma**: A couple things have been going through litigation. Governor of this state said we're moving ahead with it, the regulatory body said we're moving ahead with it. I'm not sure where the justice department is on this, maybe, you know, pretty much kind of silent on this, so is the

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U.S. Attorney's office. In New Jersey, it has been the NCAA and the four professional sports leagues who have instituted this lawsuit in Trenton in Federal Court. There is high profile counsel to assist them in defending this litigation. I think the most significant thing to recognize is that this litigation has a lot of twists and turns that it's going to take over the years, some procedural, and ultimately, hopefully, some substantive. I happen to think the real substantive issue, I've done research on this for years, and so did the staff of the New Jersey Division of Gaming Enforcement, when I was the director there, all sorts of research on this, and it really ultimately comes down to you have a federal statute and the 10th Amendment. The tenth amendment is a reservation of rights to the state, remember, and our federal government, our central government in Washington, is a limited government. We sometimes seem to forget that today, it is a limited government and police powers of the state are reserved to the state by the Tenth Amendment, and that of course means that gambling is a traditional police power type of activity that has been regulated consistently by the states for generations. So the argument that the state is ultimately going to make on the merits, hopefully it will get to a definitive court, which in this case will probably have to be the U.S. Supreme Court, is the Tenth Amendment, does it have some vitality here, is it alive, and does the federal statute, the PASFA statute, does it violate the Tenth Amendment? That, ultimately, in a nutshell is the legal argument that has to be arrived at and resolved.

Stephen Schrier: So, one thing that you mentioned, that's kind of interesting is that currently, the lawsuit that was brought to stop New Jersey from proceeding along with this law was brought by all of the sports leagues (the professional sports leagues and the NCAA). But we have the federal law called "PAFSA," and we heard from Tom that the U.S. Attorney has not taking any action to enforce the federal law. So the question really is, and I'll just throw this out, why are the leagues pursuing this and why is the government not pursuing this?

Joseph Asher: You know it's kind of an interesting situation where New Jersey passed the law and the federal law is still there. And then for a lot of folks who have an interest in this issue, obviously an academic interest, and a commercial interest I'm sure, the question was: "well, what do you do now?" Right, because the federal law is there, you can't pretend it's not. So the question is very much what needs to happen to bring the issue to a head. Is there a need for some sort of declaratory judgment action to try to resolve the issue? And, what's the form for that? And so, I for one

represent the state.

have found it interesting the leagues took the first step and filed suit. That sort of did away with all the conversations about declaratory judgment actions and what needs to happen to get to the matter at issue. And, the ultimate resolution at some point down the line, as Tom's referred to, the State, rather than just defending it in the Attorney General's Office, went out and hired Ted Olsen, one of the most prominent lawyers in America, former Solicitor General, who represented the winning side in the Bush v. Gore litigation. [The State] decided to hire the top lawyer to The leagues also got well-known litigators on their side as well. So, from my prospective, having the lawsuit filed and having the matter at issue, I think it's a positive thing. Because at the end of the day, there has to be clarity around. It's an untenable situation. It's nice to say we're going to go forward, but you know, there's got to be some clarity around it because, you know, there is federal law that still remains on the books. So, gaining clarity on the issue, I think, is something important for anybody really looking at the issue.

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I think another thing that's Thomas Auriemma: important to note is that in two weeks we are going to have a Presidential election, and so I have no inside knowledge, but it could well be that on this particular issue, the Justice

Department and U.S. Attorney's Office in Newark is at this point just laying low. When the election is over, we might see them intervene in this particular litigation. It's not out of the question. I doubt they are going to remain silent for too

long.

Joseph Asher: Into your point about why hasn't anybody, why hasn't the Justice Department done anything? Until somebody takes a bet, there is no violation of the federal law, or even an Article violation. So from my perspective and to weigh in on the Justice Department, they have a lot of things to do you know. While this issue may be important for us, the overall scheme of responsibilities of the Justice Department, and even of the U.S. Attorney's Office, it may not be as highly urgent as it is on ours.

Stephen Schrier: Let's talk for a couple of minutes about the nature of New Jersey's law, and maybe how that compares. What are some of the components of that? How do we know, that by having this law, we are going to be able to operate and carefully regulate something that, today, we talked about that we're not going to discuss online gambling - but, today, the amount of illegal sports wagering that's going on, whether it's underground or online, or wherever it is, is enormous. So what is it about New Jersey's law? What

are they trying to do to protect the state and what are the components of that?

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**Thomas Auriemma**: Well, first of all, regulating sports betting is nothing new.

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**Thomas Auriemma**: Nevada has been doing it and doing it effectively for years. So there is a model out there, and New Jersey has adopted regulations in accordance with the requirements of their statute, and those regulations basically set up a regulatory mechanism to effectively enforce the sports wagering law. It's not that difficult to regulate sports betting. It's actually more difficult to regulate casino gaming. Think about what's happening in a casino every day. Hundreds of thousands, if not millions of dollars, are flowing through a casino in unrecorded financial transactions for the most part. That's why casinos have all sorts of minimum internal controls, all sorts of accounting procedures, surveillance departments, people watching ensuring that there is a segregation people, responsibilities among employees; more difficult in certain respects to regulate a casino. I think Joe can answer this better than I can, I think with regards to sports betting you have situations where you have essentially recorded transactions. You know a definitive outcome of an event.

There really is no dispute, unless you're talking about replacement referees at a Packer football game. But you know what the result is, you know what the bet is, you know who placed the bet, so you know that the player will get the money, the better will get the money or not, once, or not, the result of the event is known. The only concern, and I wish we had Tim back for this one, the only question is, and this is a question whether you have legal or illegal gambling, the only question is, is a game, is an event, being honestly contested and whether that is a football game, whether that's a basketball game, whether that's a tennis match, you face that now, you faced it for generations and the expectation is that any athlete whether amateur of professional who competes is competing to the best of his or her ability and is not in any way compromising that event by taking a bribe, by otherwise associating themselves with organized crime or unsavory individuals, so you have that risk no matter what. Nevada is monitored very carefully, what goes on with regard to gaming and if they see that a particular event is being wagered in a very unusual way they look to see if there is something weird behind that, unusual behind that, and they can act upon it, and they can also bring in other law enforcement parties. New Jersey can do the exact same thing.

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1 **Joseph Asher**: You know so I think it's important, the 2 issue is not whether or not sports betting are going to happen 3 in New Jersey or elsewhere in the United States. The answer 4 is of course it is. It's happening every day, throughout the 5 state, Governor Christy speaks very eloquently about it. The 6 only thing is, currently this is all done illegally, right? They're 7 going to their corner bookie, they're betting on an offshore 8 website, which is clearly acting in violation of Federal law, or, 9 they're getting their betting done somehow. So the question 10 isn't there going to be betting, the answer is of course there 11 is. The only question is, is it going to be regulated, is it going 12 to be taxed? If there are any legal priorities going on, a few 13 years ago there was an issue around a basketball referee 14 named Tim Donaghy who was allegedly wagering on games. He claimed he wasn't officiating the games any differently, 15 16 but he just basically had inside information, was his 17 perspective on it, but nonetheless he was betting on games. 18 There is no indication at all that any bets were placed in Las 19 Vegas where, as Tom said, you have tremendous oversight of 20 it and in our business we'd be the first people to call up the gaming control board, or call up the FBI, if we thought 21 22 something was going wrong, but illegal bookmakers, they're 23 not calling the FBI. That's the last thing in the world they'd 24 So this notion that somehow sports betting or

legalized sports betting, will harm the integrity of the game is

just ridiculous. It's just a ridiculous thing to suggest.

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**Joseph Asher**: And anybody who looks at it logically would certainly not even begin to advocate that somehow legalized sports betting that is regulated and taxed and closely monitored would in any way impair the integrity of the game. One other thing that is kind of interesting from my perspective anyway is if the sports leagues get what they want, so they stop all sports betting, every single corner bookie is put out of business, every college bookie is going to be put out of business, every offshore website is all put out of business, if somehow you really could stop it. It would be a disaster for the NFL. It would be a total disaster. Who would watch the end of the Monday Night Football Game? The only reason you watch is to see if the Lions are going to cover. Its 13 to nothing and there is not chance in the world they will win the game outright, but if they score get touchdown with thirty some seconds left to play, they're going to cover, so you watch. That just highlights the absurdity. If there really weren't any sports betting, nobody would watch that game in the end, and nobody would buy the advertising, especially at the rate that they are paying. So if sports betting really could be stopped, in the United States of America, than the biggest victims of it all or those that would face among the most severe economic consequences

would be the leagues themselves. This is self evident.

Stephen Schrier: Interesting, so that raises and just to play devil's advocate, that raises an interesting question, because the leagues in their lawsuit claim because the leagues in their lawsuit claim that New Jersey's position is hypocritical because New Jersey says there is no harm, there would be no harm if we legalize it. But, notwithstanding that, New Jersey exempted all professional games that would occur in New Jersey, whether they be college games or professional games. So if there is no harm, why did Jersey see fit to exclude its own state's professional and college games?

Thomas Auriemma: Just college. It's just college.

**Stephen Schrier**: Just college. So isn't it hypocritical to say, there is no harm, but we don't want our college athlete's influenced by this?

**Thomas Auriemma**: The actual exception is that there are no bets on any New Jersey college team whether they are playing in New Jersey or outside New Jersey. So if Rutgers or Seton Hall basketball were having a game on campus, there would be no bet on them, or if they were playing

anywhere else, there would be no bet on that particular game. Nevada started the same way, by the way, and now they have changed that and you can bet on UNLV and you can bet on anything, any sports wager whether college or professional in Las Vegas, in Nevada. New Jersey chose to go down a different road. There are political reasons for There are political compromises in any particular referendum or statute. The legislature and the people advocating sports wagering wanted to get it approved in this state, and from a political standpoint, that is what was necessary to get it done. Now, the original proposal, perhaps Senator Lesniak, he's also interested in internet gambling as He wanted to go much further than land based well. wagering, from that respect it wasn't going to go anywhere, there was too much opposition to it. So from a political standpoint, in order to make it palatable, to pass muster, that is the political compromise that was reached. Does it happen elsewhere? Yes, it happens in Nevada, right now, and in fact, what happens every March and early April? NCAA basketball, March Madness, everyone is crazed with office pools and betting etc. You have the president of the United States drawing diagrams on who is going to win. So it is all about the betting.

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**Stephen Schrier**: So at least at this point and I think it

might be useful, many of you have probably never been to a sports betting location. Joe's company is the largest in the world in that arena and they do it all over the world. So tell us a little about, what's the nature of that business? How does that work and as Tom mentioned, ways to protect fraud and protect against fraud and determining the outcome, make sure that somebody's not underage, those kinds of things that we would want to know about if we were allow that to occur in New Jersey?

Joseph Asher: Well, I suppose as a general rule, I mean you can bet on pretty much any sport you can bet of any consequence we'll put up odds on. And you can bet if teams will win games straight up or money line order you know there's a point spread involved. That is like the Bears Lions game last Sunday. And at the end of the day the public actually sets the price. It's very similar to the stock market. You know what is the value of you know of a share of apple stock price? It's really easy, it's really just what a buyer and seller will do a transaction at. It's very similar in sports betting and the points' spreads move as either events happen, you know a player gets hurt, or something else happens or the amount of money bet on one side grows disproportionate. You know just as during the previous panel I was sitting in the back. One of the more popular

forms of betting during football season are parlay cards. Basically, you know, you are picking three or more teams to win and you get a pretty good return if you're right. And in Nevada, and in Delaware, parlay cards basically are distributed to sports folks on Wednesday for games that are going to occur for programs you know Thursday, Sunday, or Monday. One of the one of the tough things to do is, you know, you have to set the points, for us we do it on Tuesday. And knowing that come Sunday or Monday the facts could be different. And so one of the challenges of the business is setting the numbers on the parlay cards. So while the last panel was going on I was sitting in the back of the room on my blackberry, the question was whether or not the 49ers should be a six and half point favorite or a seven and a half point favorite on Monday night.

And you know it's probably somewhere between a half a million and a million dollar decision. You know where you think the number is going to be come game time. You know the public is going to be betting the 49ers. Right, because you know the Cardinals you know aren't looking impressive as of late. The 49ers, you know, on their best day, are a pretty good team but you know what do you make the number? And so it is by no means a pure science, a lot of art and judgment. And you just have to pick a number and hope and hope you are right. So in any ways to talk about each of

these businesses at great length and this is sort of getting away from the legal issues that we have been talking about today. But it just gives you a little flavor for it. At the end of the day we made the 49ers a 6 and a half points spread.

**Stephen Schrier**: Ok, a little inside info for us now. So let's assume that the courts ultimately find in favor, you know we have this clash between the state and the federal government. Or at least it seems on behalf of the federal government. Which seems kind of odd in and of itself. And we're successful here in New Jersey and we win the law suit and PAFSA is you know dismantled. What what's the impact of that on other states? How does that affect how this sports betting might proliferate elsewhere?

Thomas Auriemma: Well I think, assuming that the state of New Jersey is correct I think that it is not going to be ultimately decided at the federal district court level. To me, it's going to have to go up to the third circuit. That is where New Jersey is in. And ultimately, hopefully, ruling from US Supreme Court. Cause this is a clear federal state clash. It is a classic clash of federal power versus state power. To me it'd be the kind of case the U.S. Supreme Court would want to decide. But let's assume we get to that. And let's assume that hypothetically, PASPA is ruled unconstitutional. State

of New Jersey wins. What are other states going to look at? Well I think other states will certainly look at it. I lived for five years recently in the state of Pennsylvania. They are a very aggressive casino gaming state. Started out with just slot machines moved then after a couple years to table games. They have been a very successful state with respect to expanding the market. They have harmed Atlantic City quite dramatically.

Thomas Auriemma: . . . and it would seem to me that Pennsylvania, based on my contacts there, that they will also look at it for sure. I am sure that other states that are starved for revenue will look at sports betting, sports wagering as a possibility, so it wouldn't just be New Jersey, but other states would also have to consider it. Now, every state's different as to whether you need a state Constitutional amendment or not. Some states you do, and some states you may not. Pennsylvania enacted its casino law without a state constitutional amendment. In New Jersey, you needed one. The state of Ohio, which went from no gaming at all to now this huge gaming jurisdiction, they had to amend the state Constitution. It's going to vary from state to state, but I think every state will take a look at it for sure.

**Stephen Schrier**: So, let's talk about what would be the



- how would the legalization on a widespread basis, how do you think that would impact illegal wagering? Maybe there are some examples, I don't know that Nevada, you know, a sort of the criminal code kind of a thing, but how often, is Nevada now, free of illegal sports wagering? Like, everybody goes to sports book and does their thing – is this something

that we think the law, from a personal perspective, we can

really stamp out illegal wagering by legalizing it?

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**Joseph Asher**: I'm not sure you ever entirely, 100% stamp out illegal wagering but you just don't see people betting at illegal bookies in Nevada. You know, people go to sports books, they can bet, you bet on the telephone with a mobile app, on a smart phone, and there's just not, there's just no market that I'm aware of for illegal sports betting in Nevada. If you're a bookmaker, it's just not, you know, not the place to be - there's just too much legal competition. I'm reminded of an opinion piece in the *Philadelphia Daily News* after the third circuit ruled against Delaware in sports betting litigation in 2009. I don't recall the name of the columnist, but he wrote, you know, "the bookies in South Philly are dancing in the streets." [Audible laughter.] You know, it's not far from the truth because, you know, a legal,

regulated market with a reasonable tax scheme is going to greatly impair any sort of illegal market and certainly that coupled with enforcement of illegal market or illegal bookmakers, excuse me, really puts a big crick in any type of illegal market.

Stephen Schrier: So, just as one development recently that has occurred, there have been several, but in the New Jersey case, my understanding is that the judge recently ruled that discovery could be taken, and for those of you that have taken civil procedure and trial ad, you know that you can take depositions of people, you can ask questions, you can get evidence as opposed to just having a purely legal question like the leagues were hoping to accomplish, there are now going to be depositions of league officials to really discuss what their concerns are, what their records show and their statistics and so forth. Since you're in the business of handicapping, I'm wondering if each of you would like to take a stab at handicapping where the New Jersey case ultimately goes.

**Joseph Asher**: Oh, I think there is a very good chance it ultimately goes to the U.S. Supreme Court, whether it is in this particular case or some other case that gets filed if this case is resolved on procedural rather than substantive

grounds, and the fact that the commissioners are actually now going to be deposed on their allegations of harm. I think is obviously indicative that the courts are going to take a look at that issue rather than just accept either a Congressional finding of harm or these conclusory statements in the affidavits.

**Stephen Schrier**: So, I guess my question wasn't phrased that well, but at the end of the day the Supreme Court, assuming we get there, is it this way [Moderator makes "thumbs up" motion] or is it this way [Moderator makes "thumbs down" motion] on the outcome of this case?

Joseph Asher: You know, I'll leave you to kind of waft at the answer but, you know, I really don't know how the Supreme Court's going to, going to rule. Certainly there are a lot of people who think that the recent decision in the healthcare case was a big plus for the arguments that'll be advanced by New Jersey because the Commerce Clause and freezing on the Commerce Clause and folks think this has applicability to this issue and whether or not Congress has the authority under the Commerce Clause to regulate what, as Tom articulated earlier, is traditionally a state, a state issue. So, there's no doubt that the issues that are raised, constitutional issues that are raised, are really, really serious

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**Stephen Schrier**: Would you venture to guess, Tom?

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**Thomas Auriemma**: Yeah, I mean, look, from my perspective, I've always thought the Tenth Amendment had some vitality and I thought in this particular area the Tenth Amendment would, would succeed over federal statute and I'm still of that mind.

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**Stephen Schrier**: Good, do we have some time for questions?

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Christopher Gulla: Yep.

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**Stephen Schrier**: Very good, okay. Yes, I saw something go up in the back so fast that...

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| 2  | Audience Question: Well, with regard to the posture             |
| 3  | of the lawsuit, has there been a stay?                          |
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| 5  | Thomas Auriemma: No, there's been a discovery                   |
| 6  | order.  |
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| 8  | Audience Question: Okay, so there's been a discovery            |
| 9  | order. So, right now, you've got a valid New Jersey statute.    |
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| 11 | Thomas Auriemma: Yeah, right.                                   |
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| 13 | Audience Question: Okay, so given the amount of                 |
| 14 | money that New Jersey is losing on a daily basis by not         |
| 15 | having an ongoing sports book, it might seem to me that         |
| 16 | since there's nothing stopping you—start up your book.          |
| 17 | What's the worst thing that'll happen? They'll come in with     |
| 18 | the TRO and shut you down?                                      |
| 19 |   |
| 20 | Thomas Auriemma: Well, I'll, I'll give it from this             |
| 21 | perspective: I wear, two hats. I'm on the Board of Directors    |
| 22 | of Revel, which is a casino in Atlantic City, which is very     |
| 23 | interested in sports betting, as are other casinos. I've talked |
| 24 | to many of my friends down there and many of them are           |

preparing, thinking about it, which there's a cost involved.

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My suspicion is that those companies will hire out, or contract out, with companies to actually do the sports wagering. But you know, they're not going to spend money at this point until they know that the law is, is valid. Similarly, I work for Penn National Gaming. Penn National Gaming owns Tampa-Freehold Raceway, which is a harness track up in Monmouth County, same thing there. We are prepared to institute sports wagering there, we know exactly where it's going to go in that particular facility. Are we prepared to spend the money today and do it? No—one, because we want to make sure the law is valid—the other thing is, you know, remember about 45 minutes ago I mentioned the U.S. Attorneys' Office and the Federal Government? Well, what happens if all of a sudden we start off sports wagering and they decide to bring a criminal prosecution? I think it's unlikely but, you know, in this world anything is possible. I mean, the Federal Government arrests, you know, internet executives who fly through JFK. Is it possible that, that they could, you know, that they could arrest individuals, indict individuals, even under New Jersey statute? I wouldn't, I wouldn't foreclose that possibility. And until there's a definitive answer, the casinos and the racetracks are going to be thinking about it, preparing for it, but they're not going to do it until they absolutely are assured that, that that federal statute falls.

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| 2  | Audience Question: One follow up question: how long            |
| 3  | do you anticipate the litigation to take?                      |
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| 5  | Thomas Auriemma: If this case is going to the U.S              |
| 6  | Supreme Court, whether they take the case or not, I mean       |
| 7  | you're talking about, I would say, two-and-a-half to four      |
| 8  | years.   |
| 9  |  |
| 10 | Audience Question: I just add up the money                     |
| 11 | [Laughter.]  |
| 12 |  |
| 13 | Stephen Schrier: Yes sir (acknowledging another                |
| 14 | audience member's question).                                   |
| 15 |  |
| 16 | Audience Question: My name is Jordan Hollander                 |
| 17 | I'm a 2L here at school. Thank you for coming. I'm actually    |
| 18 | writing my note for journal this semester on this topic so I'm |
| 19 | very interested to hear what you have to say. I just sort of   |
| 20 | have two related questions: do you think this—New Jersey's     |
| 21 | suit—can distinguish itself enough from the Delaware suit—     |
| 22 | challenge-that was unsuccessful? And, do you think, the        |
| 23 | future of gambling in general in New Jersey, will there even   |

be a casino in Bergen County?

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## [Laughter.]

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**Thomas Auriemma**: I'll take the first part you take the second. The issues that will be at issue in the NJ lawsuit are very different than the Delaware litigation. In the Delaware litigation, what was at issue was the specific carve out that Delaware has under PAFSA. There was no challenge to the underlying constitutionality of the statute. The argument was all about the exemption that Delaware had which was; it was undisputed that Delaware had this exemption; the question is what it would cover. And so the, in that case, in the, the district court denied preliminary injunction, that the leagues had sought, finding that there was no irreparable harm, so I think actually the court's decision on irreparable harm might be something that gets cited in the court in this case. The Third Circuit reversed not on the irreparable harm issue, they just addressed the Delaware exemption on its merits without addressing the irreparable harm procedural issue. So, it's a very different case and I, it's interesting that they're both in the Third Circuit. I guess you could argue that, you know, implicitly at least, the Third Circuit upheld the validity of PAFSA, but it was just not a litigated issue.

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**Stephen Schrier**: Any other questions?

**Joseph Asher**: He had uh, on the second...

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**Stephen Schrier**: On the second part...

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**Joseph Asher**: On the second part, will there ever be a casino in north Jersey? Will that be a slot facility, or a fullscale casino? The answer I think is as follows: first, the present governor has said that you got to give Atlantic City a chance to reinvent itself and it needs at least five years. Now, Atlantic City has been hurt by competition. Mostly from Pennsylvania, certainly from Aqueduct and Yonkers in New York, a little bit from Maryland and Delaware. It helped dramatically. In 2006, gaming revenue in New Jersey was 5.2 billion dollars, last year it declined to 3.3 billion dollars. That's a substantial loss of market share. So, the Revel philosophy, and you can criticize the philosophy, the Revel philosophy is: to change the model. Atlantic City has always been a convenience market because there was no competition from Pennsylvania, there was no competition from Maryland, there was no competition from New York City, and so the only place you could really go was Atlantic City so you didn't concentrate on non-gaming revenue, you didn't concentrate on other amenities, people could go there. That has completely changed. You're in Pennsylvania,

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there's no reason to go to Atlantic City. If you're in north Jersey, it's cheaper and easier to go to Pennsylvania or New York City. If you're in central Jersey, Trenton, you can go right across the Delaware River to Bart's Casino and gamble. No need to come to Atlantic City. So, Atlantic City cannot be a convenience market. So it has to change. Revel has tried to do that. So far, it has struggled. It's a start-up company, but it's trying to change the model. More, you know, conventions, more meetings, more selling of rooms, more food, those kinds of things. And hopefully that model will work. But the present model is not going to work for long term, and if that model doesn't work, Atlantic City is going to have more serious trouble down the line. I think it will work, and I think other casinos will invest, because that's what's absolutely necessary, they will invest, they will modify their properties, there will be more convention space. I read that Harrah's property in Atlantic City now is considering spending over \$100 million on a convention center, so I think there will be some change, but that is years away. Do I think ultimately there might be some kind of slot facility in north Jersey? Whether it be at the Meadowlands? Yeah, I think there might be, but that's at least five years away and it's going to have to be tied into Atlantic City somehow so that an existing licensee in Atlantic City operates it and that, you know, casinos also benefit because they have spent

| 1  | billions of dollars in Atlantic City on their properties and that |
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| 2  | would be harmful to have a casino up in North Jersey taking       |
| 3  | money from Atlantic City. There's ways to do it, but I don't      |
| 4  | think it's on the year term variety.                              |
| 5  |   |
| 6  | Stephen Schrier: Yes?   |
| 7  |   |
| 8  | Audience Question: You mentioned that you believe                 |
| 9  | there is still some stuff that's left in the Tenth Amendment      |
| 10 |   |
| 11 | Joseph Asher: Yes.  |
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| 13 | Audience Question: What particular precedents, if                 |
| 14 | any, do you feel would aid New Jersey in the event that they      |
| 15 | got to the Third Circuit or before the Supreme Court if the       |
| 16 | case may be? Because it seems like in most instances when         |
| 17 | the court has ruled in favor of the state using Tenth             |
| 18 | Amendment it's been about forcing states to actually enforce      |
| 19 | federal statutes and this doesn't seem to apply.                  |
| 20 |   |
| 21 | Joseph Asher: No, I mean I think this is based on the             |
| 22 | true police powers of the state; this is based on the fact that   |
| 23 | gambling is a traditional state authorized or state prohibited    |

**Thomas Auriemma**: . . . event, and what is more relevant than New Jersey authorizing sports wagering? And of course, the other thing is the inconsistency in the federal statute. How could a federal statute pick-and-choose that only a few states can have this particular amenity and not other states? Makes no sense to me. There is an illogic nature to that federal statute.

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**Joseph Asher**: Picking up on this issue of the states' rights and the states getting to decide, you know states get to decide a lot of things, and some do things differently than other states around, you know, gambling. You know, many states have state lotteries. Other states don't have any gambling at all. And we get quite a bit of business at some of our casinos in Nevada, people coming across the borders from Utah, which has no gambling at all. The casinos near the border do pretty well. Similar, there is no sports betting in California, so a good sports book is a place that's near the California line. And so, it's not unusual for different states to do different things on a whole variety of topics, right? And, the notion that this should be treated differently, from that general rule, of states' rights and a government of limited federal power, is something, I think, that a lot of people have difficulty understanding. Why should this be treated differently than the general rule of "states get to decide what happens in the courts."

**Stephen Schrier**: Is there a question? Yes?

**Audience Question**: What about something like the NCAA saying they're going to pull out of New Jersey as a locale for events? Is that something that you see as a serious threat, or is that sort of a . . . . I don't see the Giants or Jets pulling out of New Jersey.

**Thomas Auriemma**: No. I mean, well the NCAA, you know, some might see as hypocritical perhaps. The Governor has protested them in the newspapers. I mean it seems to me that all sorts of sporting events occur in Nevada, and no one seems to care.

Joseph Asher: Yeah, I just don't get it. I mean, I just think it's so inappropriate to take punitive action against college athletes, as a result of public policy decisions made by the duly elected representatives. I mean, look what has happened in New Jersey. The duly authorized representatives of the people have voted to pass a law that they think is of state interest. And in clear retaliation for that, students are going to be punished by the NCAA. I think it is totally inappropriate.

**Audience Question**: I know there has been an effort with the expansion of OTBs like "Winners" in Bayonne, to help with the horse-racing industry in New Jersey, but would this allow sports gambling to take place at these OTB places, or would that require another constitutional amendment?

Thomas Auriemma: Open issue. I think the answer is "no" initially. It has to be at the four racetracks. There is one little provision in the law; former racetrack, as well, can have sports wagering. And there has been debate about what that means. Garden State, former Garden State Racetrack, for example. And there might be some others working around this state, as well. So that has been the subject of conversations. I don't know where that ultimately goes, but right now I think the answer is the four racetracks and the twelve casinos.

**Stephen Schrier**: Anybody else have a question?

Christopher Gulla: All right guys that concludes our second session here, obviously. Again, I'd like to thank all of our panelists here, and present them with a gift bag. [Applause.] Also, we'd like to thank our moderator, who really made this event possible. He's been working with me,

| 1  | despite his busy schedule at Blank Rome from across the         |
|----|---|
| 2  | bridge and really helped me acquire these panelists and the     |
| 3  | rest of the SELS acquire these panelists. And finally, I'd like |
| 4  | to thank all of you for joining us in the audience tonight. We  |
| 5  | hope you found the event beneficial and learned a few things    |
| 6  | throughout the evening. So, thanks again and we hope you        |
| 7  | will support the SELS by attending all of our future events     |
| 8  | We will conclude for now, but the panelists will probably       |
| 9  | stick around for another ten to fifteen minutes if you want to  |
| 10 | go up and ask a few questions. Thank you. [Applause.]           |