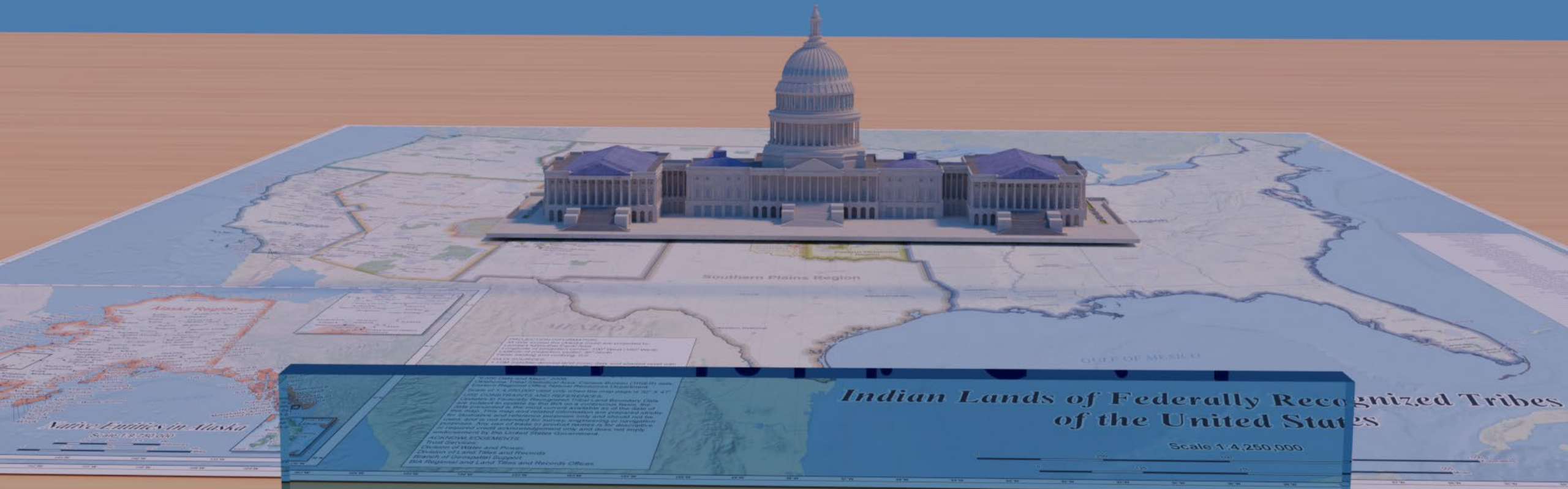


Federal & Indian Gaming Law



Federal Wire Act Part 1

with Greg Gemignani

Post War America

- WWII ended in October 1945
- Prior to WWII
 - The U.S. was primarily isolationist
 - The U.S. had the 19th largest army in the world (ahead of Bulgaria but behind Portugal)
 - The U.S. had the second largest navy, but it was divided between two oceans and featured many antiquated ships
 - U.S. airpower lagged behind many other countries and adoption of mono-wing planes was slower than many European nations or Japan

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Post War America

- WWII ended in October 1945
- Post WWII
 - The U.S. is the world's first nuclear super-power
 - It has the largest navy in the world
 - It has one of the best equipped army in the world
 - It has the largest strategic bombing core in the world and the most sophisticated piston aircraft in the world

Post War America

- But threats remained...

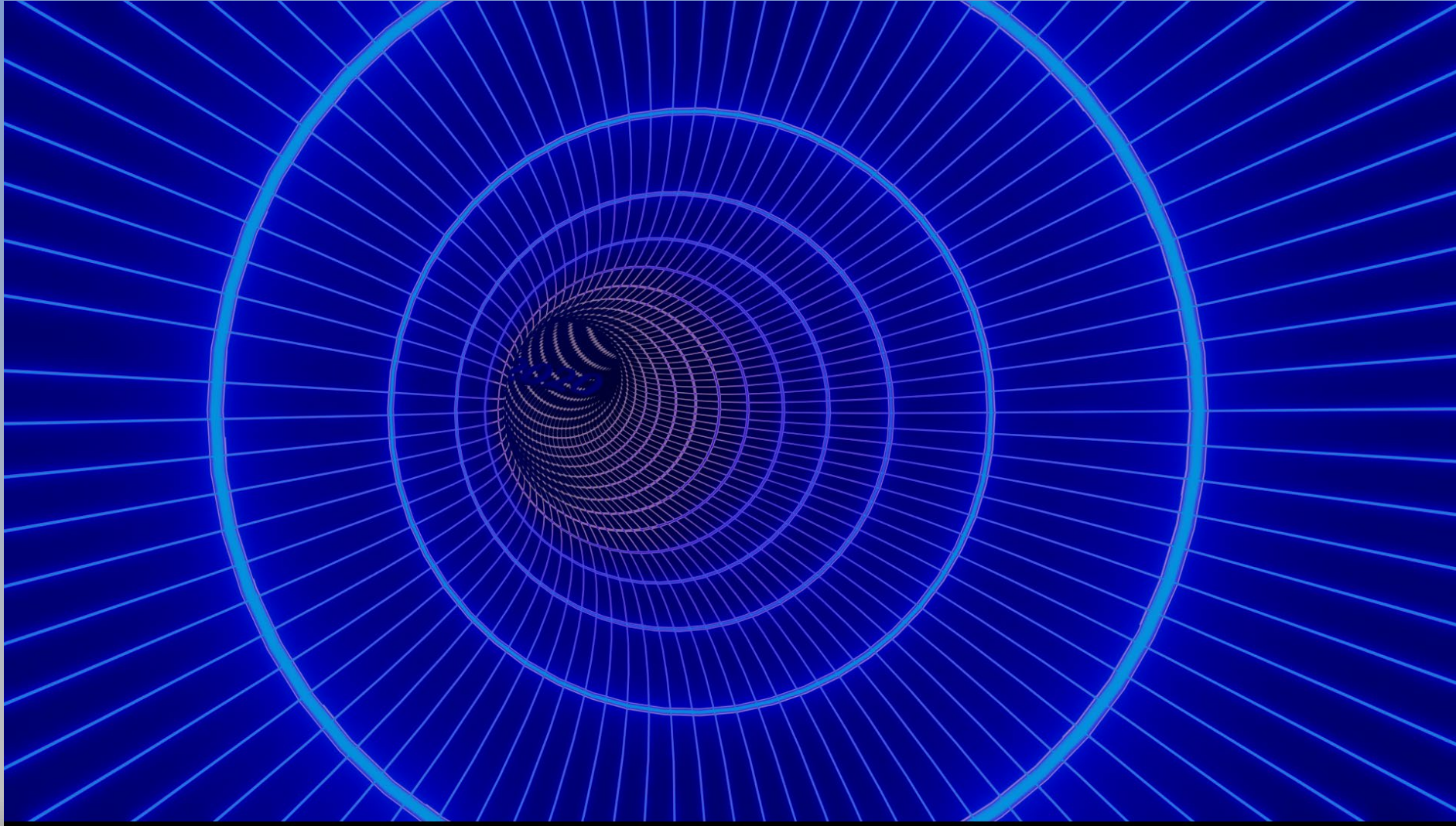
Post War America

- But threats remained...

Post War America

- But threats remained...
 - Communism
 - Organized Crime

Post War America



Post War America

- The Kefauver Commission was impactful...

Post War America



https://www.youtube.com/watch?v=-RtrOQ_fs4A

Post War America

- Following the Kefauver hearings, the McClellan Committee hearings on labor rackets((1957-1959) also addressed gambling ties to organized crime.

Post War America

McClellan Committee

Robert F. Kennedy - Committee Counsel

James R. Hoffa - Witness

Post War America

- 1961
 - January 3, 1961 - Eisenhower end relations with Cuba
 - January 20, 1961 - John F. Kennedy sworn in as the 35th President of the United States
 - January 21, 1961 - Robert F. Kennedy confirmed as U.S. Attorney General
 - May 17, 1961 - Robert F. Kennedy testifies before the House Committee on the Judiciary to call for enactment of the Wire Act (HR 7039)

Federal Wire Act

- HISTORY - Purpose
 - The purpose of the bill is to assist the various States and the District of Columbia in the enforcement of their laws pertaining to gambling, bookmaking, and like offenses and to aid in the suppression of organized gambling activities by prohibiting the use of wire communication facilities which are or will be used for the transmission of bets or wagers and gambling information in interstate and foreign commerce.

Federal Wire Act

- HISTORY - Background
 - H.R. 7039 was introduced by the chairman of the Committee on the Judiciary on May 15, 1961, after a communication from the Attorney General dated April 6, 1961. H.R. 7039 is identical to S. 1656 as introduced in the Senate. S.1656, with amendments, passed the Senate on July 28, 1961, and was referred to the Committee on the Judiciary. Your committee considered S. 1656 as passed by the Senate and, with two amendments, recommends that it do pass.

Federal Wire Act

- HISTORY – Act Statement

- Testimony before the Committee on the Judiciary revealed that modern bookmaking depends in large measure on the rapid transmission of gambling information by wire communication facilities. For example, at present the immediate receipt of information as to results of a horserace permits a bettor to place a wager on a successive race. Likewise, bookmakers are dependent upon telephone service for the placing of bets and for layoff betting on all sporting events. The availability of wire communication facilities affords opportunity for the making of bets or wagers and the exchange of related information almost to the very minute that a particular sporting event begins.

Federal Wire Act

- HISTORY – Sectional Analysis
 - The first section of the bill amends section 1081 of title 18, United States Code, by adding to that section of the chapter on gambling a new definition. The definition is that of ‘wire communication facility’ and as defined is similar to the definition of ‘wire communication’ or ‘communication by wire’ as defined in section 153 of title 47, United States Code– the Communications Act.

Federal Wire Act

- HISTORY – Sectional Analysis

- Section 2 of the bill amends chapter 50 of title 18, United States Code, by adding a new section designated 'Section 1084. Transmission of wagering information; penalties.'
- Subsection (a) of the new section prohibits those persons who are engaged in the business of betting or wagering from knowingly using a wire communication facility for the transmission of bets or wagers or information assisting in the placing of bets or wagers in interstate or foreign commerce on any sporting event or contest. It also prohibits the transmission of a wire communication which entitles the recipient to receive money or credit as a result of a bet or wager or for information assisting in the placing of bets or wagers. A penalty of \$10,000 or imprisonment not more than 2 years, or both, is placed upon such transmission.

Federal Wire Act

- HISTORY – Sectional Analysis
 - Subsection (b) contains an exemption from the prohibitions of subsection
 - (a) for bona fide news reporting of sporting events or contests. A further exemption is contained in subsection

Federal Wire Act

- HISTORY – Sectional Analysis

- Subsection (b) contains an exemption from the prohibitions of subsection
- And, (b) which exempts the transmission of gambling information from a State where the placing of bets and wagers on a sporting event is legal, to a State where betting on that particular event is legal. Phrased differently, the transmission of gambling information on a horserace from a State where betting on that horserace is legal to a state where betting on the same horserace is legal is not within the prohibitions of the bill. Since Nevada is the only State which has legalized offtrack betting, this exemption will only be applicable to it. For example, in New York State parimutuel betting at a racetrack is authorized by State law. Only in Nevada is it lawful to make and accept bets on the race held in the State of New York where parimutuel betting at a racetrack is authorized by law. Therefore, the exemption will permit the transmission of information assisting in the placing of bets and wagers from New York to Nevada. On the other hand, it is unlawful to make and accept bets in New York State on a race being run in Nevada. Therefore, the transmission of information assisting in the placing of bets and wagers from Nevada to New York would be contrary to the provisions of the bill. **Nothing in the exemption, however, will permit the transmission of bets and wagers or money by wire as a result of a bet or wager from or to any State whether betting is legal in that State or not.**

Federal Wire Act

- HISTORY – Sectional Analysis
 - ROBERT F. KENNEDY, Attorney General.

Federal Wire Act

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

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What do you think it means to be in the
“BUSINESS OF BETTING OR WAGERING?”

Federal Wire Act

- The Barborian Opinion
 - Facts?.

Federal Wire Act

- The Barborian Opinion
 - Bettor and bookmaker charged under the wire act
 - Barborian was placing bets with co-defendant Lauro
 - Barborian was betting \$800-\$1000 per day on sports events
 - At least 8 calls were intercepted in which Barborian placed bets by calling Lauro
 - At least once Barborian called his father to place bets with Lauro on his behalf

Federal Wire Act

- The Barborian Opinion
 - What is the issue?

Federal Wire Act

- The Barborian Opinion
 - The major question presented is whether or not the activities of the defendant Baborian constituted the “business of betting or wagering.”

Federal Wire Act

- The Barborian Opinion
 - What are the arguments that Barborian is in the BUSINESS OF BETTING OR WAGERING?

Federal Wire Act

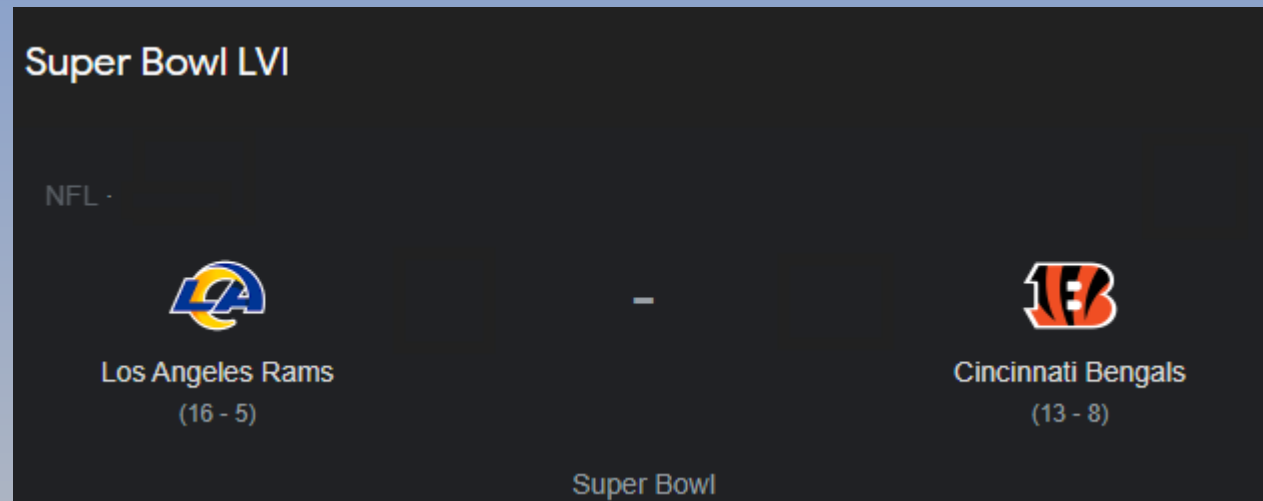
- The Barborian Opinion
 - Is the issue resolved by the plain language of the statute?
 - Where does the court look for guidance?

Federal Wire Act

- The Barborian Opinion
 - How does the court approach the “professional” gambler issue
 - Does the court believe that the statute encompasses discussions between friends regarding their opinions about the outcome of sporting events?
 - What is a “lay off” bet?

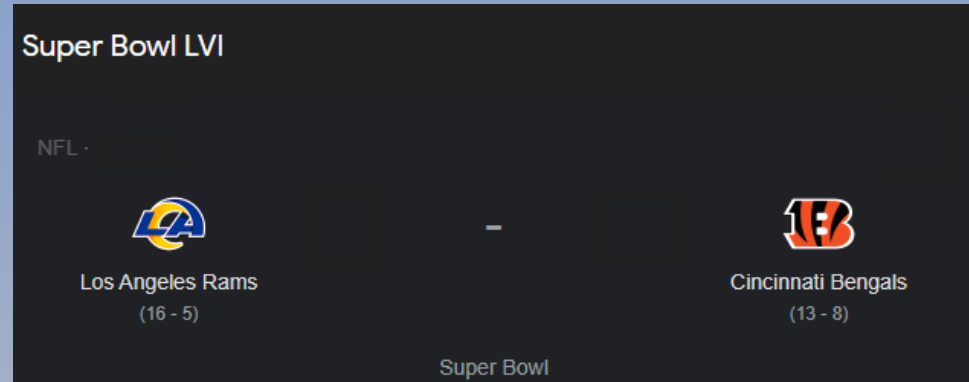
Federal Wire Act

- LAYOFF BET ----



Federal Wire Act

- LAYOFF BET ----

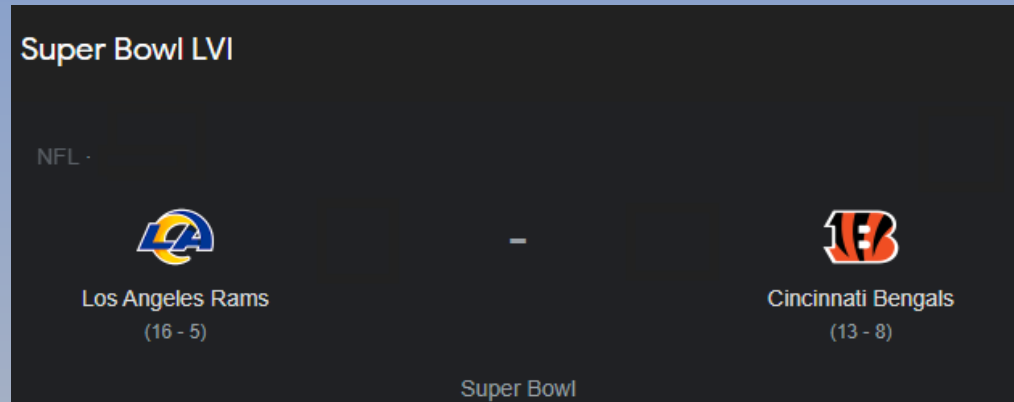


Everyone has \$1000 to bet on this game.

- The Rams are favored by 4 points
- The Rams are playing in their home field
- The Bengals have never won a Super Bowl

Federal Wire Act

- LAYOFF BET ----



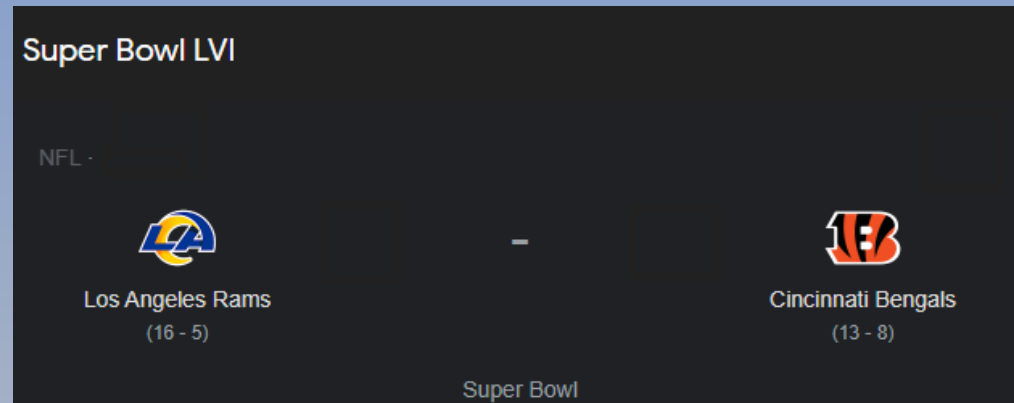
A bookmaker in LA, home of the Rams takes wagers on the Rams vs. Bengals game

He takes \$500,000 in bets on the Rams(-4) and
He takes \$500 in bets on the Bengals (+4)

What is the problem for the bookmaker?

Federal Wire Act

- LAYOFF BET ----

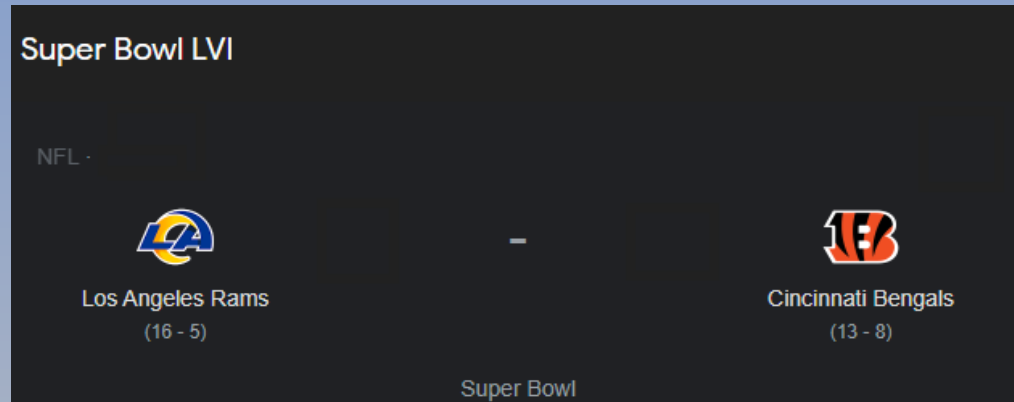


If the bookmaker is at risk of losing \$499,500 if the Rams win
(actually \$499,450 with the vig)

THIS IS A BIG PROBLEM FOR THE LA BOOKMAKER

Federal Wire Act

- LAYOFF BET ----



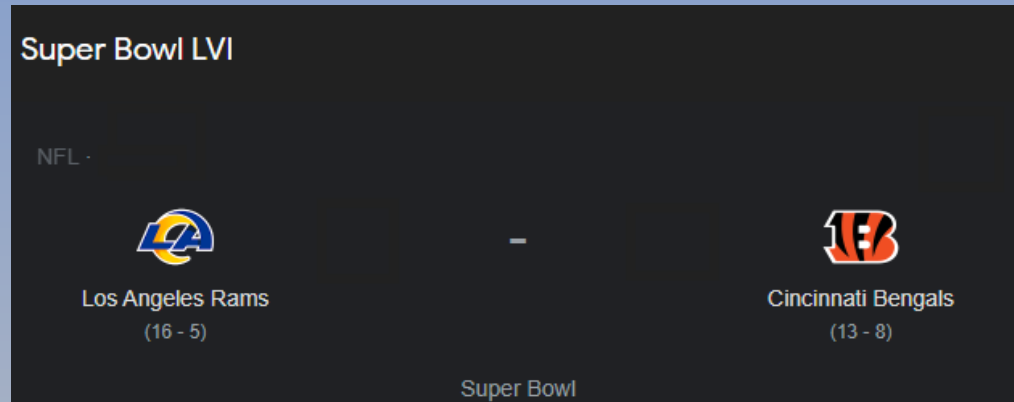
A bookmaker in Cincinnati has taken wagers on this game as well

This bookmaker has taken \$300,000 on the Bengals (+4) and \$500 on the Rams.

This bookmaker has a similar problem

Federal Wire Act

- LAYOFF BET ----



If the LA Bookmaker can place a \$300,000 wager with the Cincinnati Bookmaker, both bookmakers manage their exposure (risk).

In essence the bookmakers are “laying off” their risk by placing a bet amongst themselves as bookmakers.

THIS IS A LAYOFF BET – A bet made to lay off risk for a bookmaker

Federal Wire Act

- Business of Betting or Wagering – The Barborian Opinion
 - Discussion Points
 - Must there be a sale of a product or services?
 - Must the person charged be providing an essential function for the business?
 - Can merely providing occasional or nonessential services qualify one as being in the business of betting or wagering?

Federal Wire Act

- Business of Betting or Wagering – The Barborian Opinion
 - As I see it, the legislative language indicates that **“being engaged in the business of betting or wagering”** requires the sale of a product or service for a fee involving third parties, i.e., customers and clients, or the performance of **“a function which is an integral part of such business.”** The defendant need not be exclusively engaged in such business. If he is an agent or employee of the business he need not share in the profits or losses of the business or receive compensation for his services, but **“the function he performs must provide a regular and essential contribution to the (overall operation of) that business.”** If an individual performs only an occasional or nonessential service or is a mere bettor or customer, (regardless of the amount bet,) he cannot properly be said to engage in the business.” There must be a “continuing course of conduct,” and if associated with another, their joint conduct must be to achieve a common objective and purpose. U. S. v. Scavo, 593 F.2d 837, 842-43 (8th Cir. 1979)

Federal Wire Act

- Is Barborian in the business of betting or wagering?

Federal Wire Act

- DISCUSSION

- Do you think any of the following qualifies as being in the business of betting or wagering?
 - Accepting and booking wagers on football?
 - Setting lines for football games?
 - Handicapping baseball games?
 - Providing a publication that compares odds of different bookmakers on common events?
 - Placing wagers with a bookie for your friends at work?
 - Offering an online sportsbook in Nevada?
 - Providing a service to let bettors bet amongst each other?