

# Anemic Appetite For Using Wire Act To Prosecute Sports Betting

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Following the U.S. Supreme Court's decision to lift a ban on sports betting, the federal government is unlikely to enforce the Wire Act aggressively to crack down on states which choose to legalize and regulate wagers on games, a former U.S. Department of Justice official said on Thursday.

"I would say that the bottom line is it's going to be a pretty anemic appetite (to prosecute states under the Wire Act)," said James Trusty, who was chief of the Justice Department's organized crime and gangs section for about seven years beginning in 2011 and recently joined the Ifrah law firm in Washington, D.C.

Speaking during a webinar sponsored by the Cozen O'Connor law firm in Philadelphia, Trusty said all gambling cases came through his section at the Justice Department and there were only "a handful."

"It was very rare to see federal gambling prosecutions," Trusty said.

Recent efforts by New Jersey and [Pennsylvania](#) to make their sports-betting regulations comply with the Wire Act make federal prosecution "even less attractive," Trusty said.

"They certainly help deflate the interest of a prosecutor in going forward," Trusty said.

Nevertheless, the Wire Act still applies despite the conciliatory actions taken by New Jersey and Pennsylvania, according to Stephen A. Miller, vice chair of criminal and internal investigations at Cozen O'Connor.

"The states ... know that the Wire Act is a problem here. They know that it's an impediment," Miller said.

"I think it's something that all these states are going to have to grapple with, especially as they do the mobile betting."

Behnam Dayanim, a gaming attorney with the Paul Hastings firm in Washington, D.C., agreed with Trusty that Wire Act prosecutions for sports betting are unlikely.

"I just find it hard to conceive of the federal government prosecuting a state-licensed actor for doing something the state has expressly authorized," Dayanim said.

Dayanim compared sports betting to the sale of marijuana in states where it is legal.

"No licensed cannabis distributor or retailer has been prosecuted federally as long as it has been complying with state law," Dayanim said.

Federal gambling laws are intended "to support, not contradict or undermine" state gambling laws, he said.

The Wire Act, he said, "may or may not actually support that proposition."

Barry Boss, who is co-chair of criminal defense and internal investigations at Cozen O'Connor, said the Wire Act "appears to be the sole potential criminal penalty for engaging in sports betting in states where it is legal."

Trusty said there are other federal gambling statutes, such as the [Unlawful Internet Gambling Enforcement Act](#) of 2006, which could be triggered by sports betting if the wagering is considered interstate commerce.

In a controversial [memo released on December 23, 2011](#), the Justice Department concluded that sports betting is the only form of online gambling prohibited by the Wire Act, which Congress passed in 1961.

The memo "is not binding law," Trusty said, "It's a statement of policy."

"The fact that you got to the point that the Office of Legal Counsel was actually coming up with this opinion is partly reflective of the fact that there wasn't a whole lot of helpful case law out there, and there still isn't when it comes to the Wire Act," Trusty said.

Out of thousands of Justice Department employees, two long-time veterans of the organized crime section who were familiar with gambling prosecutions and the drafting of the Wire Act were primarily responsible for the research for the 2011 memo, according to Trusty.

“The legislative intent for the Wire Act was all about the Mafia,” Trusty said.

“The belief at that time ... was that the Mafia had kind of cornered the sports-betting market, and this would be a tool that would help states go after the Mafia,” he said. “I think we all know that time has changed dramatically when it comes to sports betting.”

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