

**GAME, SET, MATCH-FIXING:
WILL INTERNATIONAL ANTI-DOPING
INITIATIVES PAVE THE WAY FOR SIMILAR
REFORM FOR CORRUPT BETTING IN
TENNIS?**

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I. INTRODUCTION

“People don’t seem to understand that it’s a damn war out there.”¹

- Jimmy Connors, former world number-one tennis player²

The international tennis community watched closely over the past year as its sport drew heightened media attention of an unwanted variety.³ Allegations of corrupt betting practices and match-fixing flooded the sport sections of newspapers worldwide.⁴ Tennis betting currently ranks third in betting volume on one of the world’s largest betting exchanges, trailing

1. PAUL FEIN, YOU CAN QUOTE ME ON THAT: GREATEST TENNIS QUIPS, INSIGHTS AND ZINGERS 1 (2005).

2. Bud Collins, *Jimmy Connors: ATP Legend Profile*, <http://www.atpworldtour.com/Tennis/Players/Co/J/Jimmy-Connors.aspx> (last visited Oct. 14, 2009).

3. See, e.g., Christopher Clarey, *In Australia, An Aggressive Stance on Gambling*, N.Y. TIMES, Jan. 15, 2008, at D1 (stating that there is “an atypical amount of interest in the news conferences” in tennis following the match between Nikolay Davydenko and Martin Vassallo Arguello).

4. See, e.g., Joe Drape, *Report Urges Tennis Match Fixing Investigation*, N.Y. TIMES, May 20, 2008, at D1 (discussing the possibility of widespread corruption and match-fixing in tennis); Jerry Crowe & Lisa Dillman, *Tennis Betting Scandal Not Coming Out of the Blue*, L.A. TIMES, Aug. 8, 2007, at D3.

behind only horse racing and soccer.⁵ Despite the increasing volume of tennis bets, tennis betting flew under the radar until it was thrust to the forefront after a controversial match in Poland in August 2007.⁶

Efforts have been made by a number of groups to remedy the problem of corrupt betting and match-fixing and to save the integrity of the sport.⁷ However, a wide variety of issues, including limited investigation and availability of evidence, make the process of proving involvement in match-fixing a difficult one.⁸ Furthermore, tennis is highly susceptible to corruption and match-fixing because only one person usually needs to be swayed to affect the final results of the match.⁹ For example, a player who wishes to lose can not only choose to play poorly, but can also retire early in the match for reasons of illness or injury.¹⁰ In addition, payoffs to a player to fix a match can be high because the bribe will likely only be spent on that one player.¹¹ As the rules and structure currently stand, and without further involvement from the international community, tennis will likely continue to face the issues of corrupt betting and match-fixing. In the wake of the recent advancements in international anti-doping,¹² some argue that a similar

5. John Barr & William Weinbaum, *Evidence Shows Something Terribly Corrupt in Infamous Match*, ESPN, Feb. 7, 2008, <http://sports.espn.go.com/sports/tennis/news/story?id=3235411>.

6. Chris Lehourites, *Panel Move to Investigate 45 'Suspicious' Matches*, INDEPENDENT (LONDON), May 20, 2008, at Sport 49; *see also infra* Part II.A (describing the controversial match between Nikolay Davydenko and Martin Vassallo Arguello).

7. *See infra* Part II.C (describing the current sources of enforcement for corrupt betting and match-fixing).

8. *See infra* Part III (discussing the problems with current methods of enforcement).

9. *See* Joe Drape, *Talk of Efforts to Fix Matches Rattles the Pro Tennis Circuit*, N.Y. TIMES, Nov. 25, 2007, at D1 [hereinafter *Talk of Efforts to Fix Matches*] (stating that tennis, as an individual-based competition, creates ample room for manipulation).

10. *Cf.* 2008 ATP OFFICIAL RULEBOOK 121 (2008) (stating that players that retire during the match for reasons of injury or illness face fines of at least \$10,000 if they are not examined by a designated tournament doctor on-site).

11. BEN GUNN & JEFF REES, ENVIRONMENTAL REVIEW OF INTEGRITY IN PROFESSIONAL TENNIS 10 (2008), *available at* http://www.itftennis.com/shared/medialibrary/pdf/original/IO_32705_original.PDF.

12. *See generally infra* Part IV.A–B (discussing the anti-doping framework and its

framework should be crafted to attack corrupt betting practices in international sports.¹³

In Part II, this Comment first will illustrate the existence of corrupt betting in international tennis and will give a brief overview of the current structure of governance and methods of enforcement. Part III of this Comment will address the problems that exist with those current means of enforcement. Lastly, Part IV of this Comment will briefly review the international anti-doping framework as a guiding tool and will suggest possible methods for international reform of corrupt betting in tennis.

II. THE CURRENT STATE OF CORRUPTION IN TENNIS

It is difficult to craft a suggested solution to a problem without first understanding the current situation. This part of the Comment will begin with a brief overview of the match that brought corrupt betting and match-fixing to the forefront in tennis. Then, it will attempt to address the current structure of the international tennis governance community. Finally, this part of the Comment will lay out the current means for enforcement in the area of corruption in tennis.

A. *The “Most Notorious Match in Tennis History”*

On August 2, 2007, the tennis world watched what is now called by some the “most notorious match in tennis history.”¹⁴ Then-4th-ranked Nikolay Davydenko retired in a match against then-87th-ranked Martin Vassallo Arguello at an ATP Tour, Inc. (“ATP”)-governed tournament in Poland.¹⁵ Davydenko was the heavy favorite in the match.¹⁶ He claimed an injury as the

possible use in reforming corruption).

13. See Michael Herborn, *Betting Industry Leader Calls for Sport World Anti-Corruption Agency*, Apr. 8, 2008, http://www.playthegame.org/Home/News/Up_To_Date/Betting_industry_leader_calls_for_sport_world_anti_corruption_agency_08040001.aspx (noting that a world anti-corruption agency could operate similar to the well-established World Anti-Doping Agency (WADA)).

14. Barr & Weinbaum, *supra* note 5.

15. *Report Urges Tennis Match Fixing Investigation*, *supra* note 4.

16. Joe Drape, *Inquiry into Betting Clears Davydenko*, N.Y. TIMES, Sept. 13, 2008, at D1.

reason for retiring.¹⁷ While it is not uncommon for a player to retire from a match for an injury or illness, this particular instance sparked questions in the minds of savvy tennis gamblers who noticed that something was out of the ordinary.¹⁸ After the first set, which Davydenko won, bets started pouring in *against* him.¹⁹ The savvy gamblers knew that someone had inside information.²⁰

Betfair,²¹ one of the world's largest online betting "exchanges,"²² also noticed irregular betting patterns during the match.²³ Overall, nine Russian Betfair accounts stood to win \$1.5 million if Davydenko lost the match.²⁴ Betfair has an agreement with the ATP to share information about suspicious betting practices, in accordance with the ATP's anti-corruption program.²⁵ As a result, Betfair notified the ATP of the occurrence.²⁶ In addition to notifying the ATP, Betfair made the decision to void all betting transactions made for the match, which totaled over \$7 million, because of the irregular patterns.²⁷ Thereafter, the ATP launched an investigation into the matter.²⁸

17. *Talk of Efforts to Fix Matches*, *supra* note 9.

18. See Barr & Weinbaum, *supra* note 5 (noting that Davydenko should have been the clear favorite in the match, but that the odds did not reflect that expected outcome).

19. *Id.*

20. *Id.*

21. Betfair.com, <http://content.betfair.com/aboutus/> (last visited Mar. 10, 2009).

22. Betfair's betting "exchange" concept is different from the traditional notion of a bookie, who sets odds and sells them to customers. Barr & Weinbaum, *supra* note 5. Instead, Betfair matches those who are willing to offer odds with those who are willing to accept them. *Id.* Betfair's managing director, Mark Davies, described Betfair "like a stock exchange for bets." *Id.*

23. *Id.* For example, one Russian Betfair user, who had averaged bets of only \$814 over the two years prior to the match, wagered \$253,833 in favor of Arguello when the match was still even. *Id.* Another Russian Betfair account wagered \$368,036 on Arguello after he lost the first set. *Id.*

24. *Talk of Efforts to Fix Matches*, *supra* note 9.

25. Barr & Weinbaum, *supra* note 5. For an interesting discussion of the results investigation undertaken by Betfair and the ATP, see *id.*

26. *Talk of Efforts to Fix Matches*, *supra* note 9.

27. *Id.*

28. *Id.*

The ATP's investigation into Davydenko's involvement in the alleged match-fixing incident lasted for over a year.²⁹ The ATP encountered some difficulty when it requested to review telephone records of Davydenko's wife and brother, who refused and appealed the request to an independent hearing officer.³⁰ By the time Davydenko's wife and brother lost the appeal, the telephone records were destroyed by the phone company in accordance with local German data protection laws.³¹ In the end, Davydenko was cleared after a finding of no evidence of wrongdoing,³² but not before a number of other professional tennis players stepped forward with stories of other instances where offers were made to "throw matches."³³

Since the investigation into Davydenko's actions, at least a dozen players have stated that they had been approached to throw matches for money.³⁴ For example, a Belgian player reported being offered over \$100,000 to lose a match at an early round in Wimbledon.³⁵ A Czech player, ranked 156th in the world at the time, admitted that he received an anonymous phone call to his hotel room asking if he would "sell his game."³⁶ However, of the players that have recently come forward with

29. See *Inquiry into Betting Clears Davydenko*, *supra* note 16 (noting that the investigation lasted from August 2007 until September 2008).

30. *Id.* Under the ATP rules, the player must consent to delivery of his telephone records, internet records, computers, etc. upon the demand of the ATP in the wake of an anti-corruption investigation. 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 142–43. If the player refuses the demand, that player may appeal to an independent hearing officer. *Id.* at 143. In this case, Davydenko released his own telephone records to the ATP without refusal. Barr & Weinbaum, *supra* note 5.

31. *Inquiry into Betting Clears Davydenko*, *supra* note 16.

32. *Id.* It is important to note that Davydenko was not disciplined in any way in connection with the August 2, 2007 tennis match because there was no finding of any wrongdoing. *Id.* Davydenko was later fined \$2,000 by the ATP for "lack of best effort" in a match where he double faulted ten times in the last two sets. Gennady Fyodorov, *Davydenko Fined for Lack of Effort*, REUTERS UK, Oct. 26, 2007 <http://www.uk.reuters.com/article/oddlyEnoughNews/idUKFY064002220071026>.

33. *Inquiry into Betting Clears Davydenko*, *supra* note 16.

34. *Id.*

35. Lehourites, *supra* note 6. The Belgian player, Gilles Elseneer, reportedly turned down this offer before a match against Potito Starace of Italy in 2005. *Id.*

36. *Talk of Efforts to Fix Matches*, *supra* note 9. Jan Hernych, who received this anonymous phone call, was one of two Czech players to come forward and publicly announce instances of attempted match-fixing in Russia. *Id.*

this information, none admitted to actually accepting any offers.³⁷ Furthermore, none have publicly identified the alleged bribers, making the task of enforcement more difficult.³⁸

However, as a result of the attention created by this talk of corrupt betting in tennis, a number of international tennis governing bodies jointly commissioned an independent investigation into seventy-three matches over the past five years.³⁹ Of those matches, forty-five required additional review because of suspicious betting patterns.⁴⁰ The report of the investigation's findings, titled the *Environmental Review of Integrity in Professional Tennis*, was presented to the international tennis authorities for review in May 2008.⁴¹ A closer look at the authority and reach of these international governing bodies may help determine the best possible actions to take for reform.

B. Structure of Governance in International Tennis

International tennis is governed and regulated by a number of different organizations.⁴² The International Tennis Federation ("ITF") is the governing body of world tennis and determines the Rules of Tennis.⁴³ It was also created to help preserve the integrity of tennis as a sport.⁴⁴ In addition, the ITF oversees and operates certain international tournaments, such as the ITF Team Championships for Men (The Davis Cup), the

37. *Id.*

38. *Id.*

39. Lehourites, *supra* note 6.

40. *Id.*

41. GUNN & REES, *supra* note 11, at 2 (recommending "agreement by the International Tennis Authorities on a uniform Anti-Corruption Program[]").

42. *See id.* at 6–7 (listing the organizations that oversee and regulate the rules of tennis).

43. INTERNATIONAL TENNIS FEDERATION, THE CONSTITUTION OF ITF LIMITED 2009, MEMORANDUM, ARTICLES OF ASSOCIATION AND BY-LAWS OF ITF LIMITED 1, (2009), available at http://www.itftennis.com/shared/medialibrary/pdf/original/IO_30572_original.pdf [hereinafter ITF Organizational Documents].

44. *Id.* at 2.

ITF Team Championships for Women (The Federation Cup), and the Olympic Tennis Event.⁴⁵

Three separate subgroups regulate the remainder of the international tennis activities.⁴⁶ ATP is charged with the task of arranging and operating the men's tour and challenger events worldwide.⁴⁷ The Women's Tennis Association ("WTA") operates and regulates fifty-eight women's events worldwide.⁴⁸ Finally, the Grand Slam Committee is responsible for all aspects of development, regulation, and control for the four Grand Slam tournaments.⁴⁹ This committee is comprised of the president of the ITF and the chairmen of the four Grand Slams.⁵⁰ Each organization promulgates its own set of rules of conduct for its player members.⁵¹ Regulation by these different governing bodies and differences in the enforcement and penalty provisions within each set of rules creates difficulty in uniform enforcement.⁵²

C. Current Methods of Enforcement

Under the current framework, there are two methods of action against a player suspected of match-fixing or corrupt betting practices.⁵³ First, disciplinary actions against a player or player representatives may be brought under the rules of conduct promulgated by a tennis governing body, such as the

45. GUNN & REES, *supra* note 11, at 6–7.

46. *Id.* at 6.

47. *Id.*

48. *Id.*

49. *Id.* at 7. These four Grand Slam tournaments are the Australian Open, the U.S. Open, the French Championships, and the Lawn Tennis Championships (Wimbledon). ITF Organizational Documents, *supra* note 43, at 34.

50. Gunn & Rees, *supra* note 11, at 6.

51. See 2008 ATP OFFICIAL RULEBOOK, *supra* note 10 (setting forth the rules for the men's tour under regulation by the ATP); SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK (2008) (setting forth the rules for the women's tour under regulation by the WTA).

52. See Gunn & Rees, *supra* note 11, at 7 (noting that uniformity of rules and decision making is an important goal when addressing integrity issues).

53. See *id.* at 31 (differentiating between the disciplinary approach taken by the international tennis governing bodies and the legal approach of enforcing a criminal offense in the respective jurisdiction).

ATP.⁵⁴ The ATP, the WTA, and the ITF established anti-corruption programs and incorporated them into their rules.⁵⁵ In order to circumvent redundancy, and because the two programs are relatively similar, only the ATP Anti-Corruption Program will be examined in this Comment. Second, action may be taken through the legal process in the jurisdiction, if the jurisdiction recognizes a criminal offense or authorizes some cause of action related to match-fixing or corrupt betting.⁵⁶

1. *The ATP Anti-Corruption Program*

A disciplinary action may be brought under the Tennis Anti-Corruption Program of the ATP Player Code of Conduct (the “Code”).⁵⁷ Within the Code, the ATP established a Tennis Anti-Corruption Program with the goals of maintaining the integrity of tennis and protecting against corrupt betting practices and match-fixing.⁵⁸ The Anti-Corruption Program attempts to meet these goals by enacting broad-sweeping reporting requirements and sanctions for corruption offenses.⁵⁹

2. *Coverage*

The Anti-Corruption Program covers and binds both players and player support personnel.⁶⁰ The program defines player support personnel as “any coach, trainer, manager, agent, family

54. See 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 139–48 (setting forth corruption offenses and related sanctions created by the ATP’s Tennis Anti-Corruption Program).

55. *Id.*; see also SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 239–42 (setting forth the wagering and corruption rules and penalties applicable to players and player representatives in the WTA); OFFICIAL GRAND SLAM RULE BOOK 46 (2009), available at http://www.itftennis.com/shared/medialibrary/pdf/original/IO_38630_original.PDF (stating the rules and sanctions related to corrupt betting applicable to all professional tennis events under the governance of the ITF).

56. See Gunn & Rees, *supra* note 11, at 31 (stating that betting corruption is a criminal offense in most jurisdictions and is a matter for police).

57. 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 117–48.

58. *Id.* at 139.

59. See *id.* at 140–42, 146–47 (detailing the instances which require reporting to a ATP representative and noting the sanctions for failure to comply with the requirements).

60. *Id.* at 139.

member, tournament guest or other affiliate or associate of any player.”⁶¹ Therefore, any person that is affiliated with the player in any way falls within the provisions of player support personnel and should be bound by the terms of the Anti-Corruption Program.⁶² Furthermore, the program covers all tennis matches and other tennis competitions.⁶³ No distinction is made between men’s or women’s matches.⁶⁴ As a result, the provisions of the Anti-Corruption Program apply to the men who qualify as “players” under the ATP definition, without regard to the type of tennis match or competition being played.⁶⁵

3. *Corruption Offenses*

The Code first delineates the actions that constitute “corruption offenses.”⁶⁶ One example of a corruption offense is for a player or player support personnel to wager or attempt to wager on the outcome of any international tennis event.⁶⁷ This provision simply makes it an offense for any player to bet on tennis, without regard to whether the player is involved with the match.⁶⁸ Another example of a corruption offense, which is more aligned with match-fixing, is the player’s receipt of or agreement to receive consideration (i) to alter the player’s efforts in any event or (ii) to “otherwise bring the [p]layer, the [o]ther [p]layer or the game of tennis into disrepute.”⁶⁹

In addition to these corruption offenses, the Anti-Corruption Program requires that players and their support personnel report instances of suspected corruption to an on-site ATP supervisor before disclosing the incident to any other person,

61. *Id.*

62. *See id.* (noting that any “affiliate or associate” of the player is considered player support personnel, without exception).

63. *Id.*

64. *Id.*

65. *See id.* (stating that all international tennis events are covered by the provisions of the Anti-Corruption Program).

66. *Id.*

67. *Id.*

68. *See id.* (noting that the term “event” in the Anti-Corruption Program refers to any international tennis match, whether men’s or women’s).

69. *Id.* at 140.

other than the player's personal counsel.⁷⁰ This reporting requirement is triggered (i) when any player is approached by a person who is attempting to commit corrupt betting practices or (ii) when any player is aware of another player's violation of the Anti-Corruption Program.⁷¹ In all such cases, the reporting must be made to the ATP representative no later than forty-eight hours after the incident.⁷² Moreover, the player must provide all facts related to the incident in his report to the ATP representative.⁷³ Furthermore, when the Anti-Corruption Program was initiated, players were obligated to report past incidents of corrupt betting or match-fixing to the ATP as well.⁷⁴ However, the ATP allows a defense for any such prohibited conduct if the player promptly notifies the ATP of the conduct and shows a reasonable belief of a threat to his or his family's safety related to the conduct.⁷⁵

4. *Sanctions*

Sanctions for corruption offenses under the Anti-Corruption Program can be severe for the player but are much less severe for player support personnel.⁷⁶ The program places a much higher burden on the player to uphold the provisions of the Code and holds the player responsible for any violations committed by support personnel when the player had knowledge of or otherwise assisted in such prohibited conduct.⁷⁷ When a player commits a corruption offense, he faces penalty in the form of a fine of up to \$100,000 plus any amounts received in connection with any corrupt betting practice.⁷⁸ Furthermore, the player becomes ineligible to compete in any ATP event for a period of

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* at 141.

75. *Id.*

76. *See id.* at 146 (noting the disparity between sanctions for players, which can include significant fines and ineligibility, and sanctions for player support personnel, which basically relate to revocation of credentials and access).

77. *Id.* at 141.

78. *Id.* at 146.

up to three years.⁷⁹ However, if the player is found to commit a corruption offense related to match-fixing, the result can be permanent ineligibility.⁸⁰ Support personnel, on the other hand, who commit a corruption offense may face sanctions in the form of suspension of credentials and access to ATP events for a period not less than one year.⁸¹

5. *Consent to Investigation*

ATP players and their support personnel consent to the investigation of certain records and information the player may have that relate to a suspected corruption offense.⁸² Unless the player objects to the scope of such investigation or appeals the demand to produce such information, he must produce the information within seven days of the written request.⁸³ The demand by the ATP for such information must be “(i) fair and reasonably tailored to obtain evidence relevant to the alleged [c]orruption [o]ffense and (ii) consistent with applicable law.”⁸⁴ Failure to produce such information can lead to ineligibility for the player or loss of credentials and access for the support personnel.⁸⁵

6. *Hearings and Appeals*

Certain decisions made by the ATP may be appealed to the Court of Arbitration for Sport (“CAS”).⁸⁶ Such appeals may be brought by the player, support personnel, or the ATP.⁸⁷ Furthermore, in all actions against a player or support

79. *Id.*

80. *See id.* (noting that corruption offenses related to the player’s involvement in any effort to contrive the outcome of a tennis event or to produce anything other than the player’s best efforts in a match is punishable by permanent ineligibility).

81. *Id.*

82. *Id.* at 142–43.

83. *Id.* at 142.

84. *Id.* at 143.

85. *Id.*

86. *Id.* at 147. The types of decisions that can be appealed to CAS are decisions: (i) that a corruption offense has been committed; (ii) that no corruption offense has been committed; (iii) imposing sanctions for a corruption offense; (iv) relating to the scope of an investigative demand; and (v) that the ATP lacks jurisdiction on the matter. *Id.*

87. *Id.*

personnel, the ATP has the burden of establishing the corruption offense by a preponderance of the evidence.⁸⁸ However, evidence introduced against the player in a disciplinary action must only be related to the corruption offense and “established by any reliable means.”⁸⁹ This means that the ATP is not bound by any judicial rules relating to the admissibility of evidence.⁹⁰ Lastly, the Anti-Corruption Program contains a statute of limitations by requiring that the ATP bring a disciplinary action against a player within eight years from the date the corruption offense is committed.⁹¹

7. *Overview*

Overall, the Anti-Corruption Program promulgated by the ATP is a broadly sweeping tool for enforcement against players and their support personnel.⁹² However, while the ATP retains the right to report corruption offenses to the judicial authorities,⁹³ action under the program is solely a disciplinary one.⁹⁴ Furthermore, it limits the disciplinary actions to those players and support personnel connected in some way with the ATP.⁹⁵ Therefore, to fully understand the current shortfalls of the international enforcement scheme, legal action under the international judicial system will be reviewed briefly.

8. *Legal Action Under the International Judicial System*

Players and others involved in match-fixing scandals or corrupt betting practices may face criminal charges in addition

88. *Id.* at 146.

89. *Id.*

90. *Id.*

91. *Id.* at 147.

92. *See id.* at 139–41 (stating the breadth of coverage of the program and describing the wide range of corruption offenses).

93. *Id.* at 147.

94. *See id.* at 146–47 (limiting sanctions to fines paid to the ATP and to ineligibility to participate in future ATP events).

95. *See id.* at 139 (implying that participants in corrupt betting practices outside of players and their support personnel are not covered under the Anti-Corruption Program).

to the respective governing bodies' disciplinary actions.⁹⁶ Corrupt betting, which includes match-fixing, is a criminal offense in most jurisdictions and, as such, is a matter that should be handled by the police.⁹⁷ When the level of corruption rises to the point that discipline under the enacted anti-corruption programs is not enough, these matters should be referred to law enforcement.⁹⁸

Corrupt betting offenses vary between international jurisdictions.⁹⁹ As such, this Comment will focus solely on the laws of one country for the sake of analysis. Due to the fact that Betfair—one of the world's largest betting exchanges¹⁰⁰ and the betting company that played an integral part in the Davydenko investigation¹⁰¹—is based in the United Kingdom,¹⁰² the laws of the United Kingdom will be evaluated here.

In 2005, the United Kingdom passed a new Gambling Act (“Act”).¹⁰³ In the Act, the United Kingdom recognizes a criminal offense for corrupt betting practices.¹⁰⁴ The Act provides for a criminal offense if a person (i) cheats at gambling or (ii) enables or assists another person in cheating at gambling.¹⁰⁵ Therefore, this criminal offense applies to both those who place bets illegally and those who assist in a match-fixing scheme.¹⁰⁶

96. See Gunn & Rees, *supra* note 11, at 41–42 (stating that investigations into suspect matches may have criminal consequences in addition to disciplinary actions under the governing bodies).

97. *Id.* at 42. However, some investigators argue that police in certain jurisdictions do not treat corrupt betting in sports as a priority because the allegations typically are difficult to prosecute. *Id.*

98. *Id.*

99. See *id.* (noting that “different legal provisions and operational practices apply in different parts of the world”).

100. See *supra* note 22 and accompanying text.

101. See *supra* Part II.A (stating that Betfair reported irregular betting patterns to the tennis governing bodies in the August 2007 match between Nikolay Davydenko and Martin Vassallo Arguello).

102. Betfair.com, *supra* note 27. Betfair provides its betting exchange in the United Kingdom. *Id.* Furthermore, Betfair is a licensed gambling operator in the United Kingdom, Australia, Malta, Italy, Austria, and Germany. *Id.*

103. GAMBLING ACT, 2005, c. 19 (Eng.). This act was passed on April 7, 2005. *Id.*

104. *Id.* § 42.

105. *Id.* § 42(1).

106. See *id.* (stating that the cheating offense applies to those who cheat at

Furthermore, the Act makes the outcome of the person's actions immaterial.¹⁰⁷ In addition to the general definition of the cheating offense, the Act specifically mentions that corrupt betting may consist of "actual or attempted deception or interference in connection with" a sporting event to which the gambling relates.¹⁰⁸

Punishment for the corrupt betting offense can be quite severe under the Act.¹⁰⁹ A person who is convicted for corrupt betting under the Act may face a maximum prison sentence of two years as well as a fine.¹¹⁰ However, the scope of the Act's provisions is not limited to criminal offenses for corrupt bettors.¹¹¹ Instead, the United Kingdom's gambling statute also reaches the betting exchanges that provide a medium for corrupt betting.¹¹²

The Gambling Act authorizes the Gambling Commission to issue operating licenses in accordance with the provisions of the Act.¹¹³ Such licenses authorize the licensees to provide facilities for general betting and to act as betting intermediaries.¹¹⁴ These licenses may lapse upon the occurrence of certain events, such as when the operator goes bankrupt or ceases to exist.¹¹⁵

Moreover, the Act enables the Gambling Commission to place specific conditions upon individual operating licenses or

gambling as well as to those "enabling or assisting" another with corrupt betting practices).

107. *Id.* § 42(2) (stating that it is immaterial whether the person's chances of winning are improved by his actions or whether the person wins anything as a consequence of his actions).

108. *Id.* § 42(3)(b).

109. *See* GAMBLING ACT, § 42(4) (listing the maximum punishment for cheating in betting as imprisonment and a fine).

110. *Id.* § 42(4)(a).

111. *See, e.g., id.* § 75 (imposing conditions on operating licenses for operators of betting facilities).

112. *See id.* § 65(1)–(2) (stating that the Gambling Commission may issue licenses to operate betting facilities). In particular, the Gambling Act authorizes the Gambling Commission to issue operating licenses for general betting and for acting as a betting intermediary. *Id.* § 65(2). Online gambling providers and betting exchanges would likely fall under one of these categories.

113. *Id.* § 65(1).

114. *Id.* § 65(2).

115. GAMBLING ACT, *id.* § 114(2).

upon classes of operating licenses.¹¹⁶ Such conditions may also be imposed by the Secretary of State through regulatory measures.¹¹⁷ The Act empowers the Gambling Commission to make conditions related to a wide variety of issues.¹¹⁸ For example, the commission may impose a condition that requires the licensee to establish and record the identity of users of the facilities.¹¹⁹ Additionally, the commission may impose conditions on internet-based betting sites by restricting the methods of communications used to conduct the licensed activities.¹²⁰ Another important power given to the Gambling Commission is the power to impose a condition requiring licensees to maintain a reserve for potential future liability arising from operation of its betting facilities.¹²¹

The Act contains a provision that specifically relates to corrupt betting in international sports.¹²² The commission may attach a condition to an operating license that requires a person to provide any information that may relate to a commission of an offense under the Act or to a breach of a rule applied by a sporting body.¹²³ Furthermore, the Gambling Commission may suspend or revoke this license if the licensee breaches a condition placed on the license, such as failing to provide required information about suspected offenses.¹²⁴ In addition to suspension or revocation, the commission may impose a financial penalty for breach of a condition.¹²⁵

Therefore, by utilizing the licensing system and the related conditions for betting operators based in the United Kingdom, the government can more effectively investigate suspicious

116. *Id.* § 75(1).

117. *Id.* § 78(1).

118. *See generally id.* § 79 (listing the scope of powers to attach conditions to operating licenses).

119. *Id.* § 79(9)(a)–(b).

120. *Id.* § 79(6).

121. GAMBLING ACT, *id.* § 79(5).

122. *See id.* § 88(2)(b) (noting the requirement to provide information related to a breach of a rule applied by a sporting body).

123. *Id.* § 88(2)(b)(i)–(ii).

124. *Id.* § 120.

125. *Id.* § 121(1).

betting transactions. The government then obtains leverage over the betting operators to provide information about suspected corruption in sports events.¹²⁶

III. PROBLEMS WITH THE CURRENT MEANS OF ENFORCEMENT

The current methods of enforcement are lacking in a number of ways.¹²⁷ As previously noted, tennis is a relatively easy game to manipulate.¹²⁸ As such, it is important that sports organizations and governments take special measures to prevent this manipulation through corrupt betting and match-fixing. In order to improve prevention measures, it is important to analyze problems in the current means of enforcement.

A. *Insufficient Sanctions*

Deterrence is one of the typical, recognized goals of punishment.¹²⁹ However, when the level of punishment is low, the actor is less likely to be deterred.¹³⁰ The current sanctions available in the ATP's Anti-Corruption Program may be sufficiently damaging to the player as to deter the player from engaging in match-fixing.¹³¹ Permanent ATP ineligibility, which is a possible sanction for a player's involvement in match-fixing, would likely end the player's career and capacity to earn money

126. See *id.* § 88(2)(b). Consequently, by enacting its anti-corruption program, the ITF has created a specific sporting rule related to corrupt betting and match-fixing. See *id.* Therefore, the Gambling Commission could conceivably require the licensed betting operators to supply any information related to a suspected breach of the ITF anti-corruption program. *Id.*

127. See *infra* Part III.A–C (discussing the lack of uniformity, barriers to investigation, and insufficiency of sanctions imposed on players, support personnel, and tournaments).

128. *Talk of Efforts to Fix Matches*, *supra* note 9.

129. See, e.g., JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 34–35 (4th ed. 2007) (citing KENT GREENAWALT, *Punishment*, in 3 ENCYCLOPEDIA OF CRIME AND JUSTICE 1282, 1286–87 (Joshua Dressler ed., 2d ed. 2002) (stating that general and individual deterrence are some of the most important beneficial consequences that can be achieved by punishment)).

130. See *id.* at 35 (noting that a penalty should be severe enough to outweigh the benefits of committing the crime).

131. See 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146 (noting that sanctions related to match-fixing betting corruption include permanent ineligibility for the player).

by playing tennis.¹³² However, lesser sanctions for other offenses may not be sufficient enough to deter players and support personnel.¹³³

These sanctions should not just be a “slap on the wrist” for the participants in these corrupt betting schemes. Fines and temporary ineligibility of a player are notable sanctions, but considering the current risk of being caught, they may not weigh heavily against the rewards of wagering on tennis with inside information.¹³⁴ Even by deeming a player permanently ineligible to compete in ATP events, the then-former player could still function in competitive tennis as a trainer or coach of another player governed by a separate body, such as the WTA, and could still access inside information for corrupt betting purposes.¹³⁵

Sanctions for player support personnel are even less severe.¹³⁶ The ATP’s Anti-Corruption Program imposes no fines on support personnel for involvement in a corruption offense.¹³⁷ Therefore, a coach or trainer could be involved in corrupt betting practices with no greater consequence than revocation of ATP credentials and access to ATP events.¹³⁸ And while a coach or trainer may be adversely affected by the inability to access ATP events, other support personnel, such as family members, tournament guests, and others, would not likely be sufficiently

132. *Id.*

133. *See id.* (stating that for all other defined offenses, not including corruption related to match-fixing, the player’s sanction is limited to a fine and three-year ineligibility, and the support personnel’s sanction is limited to at least a one-year suspension of ATP credentials and access to ATP events).

134. *See* Gunn & Rees, *supra* note 11, at 8 (noting that disciplinary cases worldwide for corrupt betting over the five-year period prior to the report are limited to five cases, and no such criminal charges were made over the same period).

135. *See* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146–47 (stating that permanent ineligibility prevents the player from participating in any capacity at any ATP tournament, but does not prohibit the training or coaching of any other player under a separate governing body).

136. *See id.* (defining the sanctions for support personnel as suspension or permanent revocation of ATP credentials and access, as opposed to fines and longer periods of ineligibility for the player).

137. *See id.*

138. *Id.*

affected by this sanction when compared to the possible rewards of corrupt betting with inside information.¹³⁹

B. Barriers to Investigation

The investigation into Nikolay Davydenko's involvement in the August 2007 match against Martin Vassallo Arguello¹⁴⁰ was hampered when investigators requested to review telephone records of Davydenko's wife and brother.¹⁴¹ The requested records were never obtained by the ATP investigators because they were destroyed by the phone company in Germany, which was following German data protection laws.¹⁴² This instance is one example of how local laws can create barriers to investigation of corrupt betting practices.¹⁴³

Ben Gunn and Jeff Rees identified five primary avenues for gathering evidence in corrupt betting and match-fixing matters.¹⁴⁴ These five avenues include: (i) betting evidence; (ii) first-hand knowledge from watching the match; (iii) telecommunications data; (iv) evidence from interviews; and (v) expert analytical evidence.¹⁴⁵ As the Davydenko investigation illustrates, obtaining telecommunications data can prove to be difficult in differing jurisdictions.¹⁴⁶

The European Union recently issued a directive concerning the retention of data stemming from electronic or telephone

139. *See id.* at 139 (stating that family members, tournament guests, and agents can all be considered player support personnel under the ATP Anti-Corruption Program).

140. *Supra* Part II.A.

141. *Inquiry into Betting Clears Davydenko*, *supra* note 22. On the other hand, Nikolay Davydenko voluntarily submitted his telephone records to the ATP for the investigation. Barr & Weinbaum, *supra* note 5. The ATP Anti-Corruption Code requires that the players submit information upon an investigation by the ATP for corruption-related offenses. *Supra* note 36 and accompanying text.

142. *Inquiry into Betting Clears Davydenko*, *supra* note 22.

143. *See id.* (noting that the telephone records were first withheld during an ATP appeal and were then destroyed under German data protection laws).

144. Gunn & Rees, *supra* note 11, at 9.

145. *Id.*

146. *Id.*

communication services.¹⁴⁷ In this directive, the European Union attempts to harmonize the member states' laws concerning data retention in order to ensure that the data are available for investigation into serious crimes.¹⁴⁸ Member states must ensure that certain data related to the communications are retained for a period not less than six months and not more than two years from the date of the communication.¹⁴⁹

While this directive could be beneficial to investigators in corrupt betting cases because of the lengthened data retention periods, it could also hamper investigations if such corrupt betting offenses are not classified as serious crimes under each member state's laws.¹⁵⁰ The directive fails to define "serious crime" and instead allows each member state to formulate its own definition.¹⁵¹ Therefore, if a member state chooses to treat corruption offenses as serious crimes under that state's laws, access to the data by investigators may be facilitated by the directive.¹⁵² On the other hand, if a member state does not

147. Council Directive 2006/24, 2006 O.J. (L 105) (EC) [hereinafter Directive 2006/24/EC].

148. *Id.* art. 1, at 56.

149. *Id.* art. 6, at 58.

150. *See id.* pmbl., art. 1, at 56 (noting that the purpose of the data retention is to investigate, detect, and prosecute "serious crime[s], as defined by each Member State in its national law"). Certain member states, such as the United Kingdom, have requested that the European Union more particularly define the vague term "serious crimes" in other contexts. *See Dispute Between U.K. Government and E.U. Over the Use of PNR*, EDRI-GRAM, Aug. 27, 2008, <http://www.edri.org/edriagram/number6.16/uk-eu-pnr> (describing the United Kingdom's request that the European Union implement a comprehensive list of offenses that would constitute "serious crimes" under a European Union proposal concerning access to passenger name records held by airlines).

151. Directive 2006/24/EC, *supra* note 147, pmbl., art. 1, at 56. *See, e.g.*, U.K. HOME OFFICE, A CONSULTATION PAPER: TRANSPOSITION OF DIRECTIVE 2006/24/EC, 2008, 3, available at <http://www.homeoffice.gov.uk/documents/cons-2008-transposition-dir/cons-2008-transposition?view=Binary> (noting the United Kingdom defined "serious crimes" to include cases where (i) a person over twenty-one years of age with no previous convictions could reasonably be expected to be sentenced to prison for three years or more or (ii) the conduct involves the use of violence, results in substantial financial gain, or is undertaken by a large group of people in pursuit of a common purpose). Arguably, investigation into communications data may be allowed for corrupt betting offenses in certain cases. *See id.*

152. *See* Directive 2006/24/EC, *supra* note 147, art. 4, at 57 (stating that member states shall adopt measures to provide retained data only to certain national authorities

consider corruption offenses to be serious crimes, investigators may be barred from obtaining important communications information.¹⁵³

C. Lack of Uniformity

Following a recommendation by investigators Ben Gunn and Jeff Rees in their *Environmental Review of Integrity in Professional Tennis*,¹⁵⁴ the tennis governing bodies decided to enact a uniform anti-corruption program.¹⁵⁵ One purpose of this uniform anti-corruption program was to establish a consistent set of rules and sanctions.¹⁵⁶ Furthermore, these rules and sanctions were meant to be applied to all professional tennis events and to all governing bodies.¹⁵⁷ However, the anti-corruption programs enacted by each individual governing body are not identical.¹⁵⁸

While the anti-corruption programs implemented by the ATP and the WTA are similar, there are still some significant differences between them.¹⁵⁹ One difference is the inclusion of tournaments and tournament support personnel under the anti-corruption provisions of the WTA's Code of Conduct.¹⁶⁰ The WTA's anti-corruption program contains provisions that place the burden of informing tournament support personnel of the rules relating to wagering on the tournament.¹⁶¹ Moreover, the

“in specific cases and in accordance with national law”).

153. *See id.*

154. *See Gunn & Rees, supra* note 11, at 7 (recommending that the tennis governing authorities agree to a uniform anti-corruption program).

155. *See Lehourites, supra* note 6 (stating that the ITF, the ATP, the WTA, and the Grand Slam Committee agreed to all recommendations made by Gunn and Rees after corruption investigations, including the enactment of a uniform anti-corruption program).

156. OFFICIAL GRAND SLAM RULE BOOK, *supra* note 55, at 46.

157. *Id.*

158. *Compare* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 139, *with* SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 239 (differing with respect various provisions, such as sanctions imposed on tournaments).

159. *Id.*

160. *See* SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 240–41 (defining responsibilities and related sanctions placed on tournaments).

161. *Id.* at 240.

WTA program holds the individual tournaments responsible for any offenses committed by its tournament support personnel.¹⁶²

The penalty for an offense by a WTA tournament or its support personnel can be quite severe.¹⁶³ The individual tournament, if found to be in violation of an anti-corruption offense, may be subject to a fine of up to \$100,000 plus any amount received in connection with the violation.¹⁶⁴ Furthermore, the tournament may lose its membership status with the WTA and forfeit all amounts previously paid to the WTA.¹⁶⁵ On the other hand, the ATP Anti-Corruption Program contains no such express provisions defining offenses or imposing sanctions on ATP tournaments or tournament support personnel.¹⁶⁶

Another difference between the anti-corruption programs is the player's obligation to report known instances of match-fixing or corrupt betting practices.¹⁶⁷ Under the ATP's Anti-Corruption Program, a player must report any known instances of conduct by other players or individuals that violate the provisions of the program.¹⁶⁸ This failure to report is an express offense under the ATP's program for which sanctions may apply.¹⁶⁹ However, the WTA's related program does not expressly state that its players must report any known instances of violations by other players.¹⁷⁰

162. *Id.*

163. *See id.* at 241 (noting the steep penalties imposed on tournaments for offenses by the tournament or its support personnel).

164. *Id.*

165. *Id.*

166. *See* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 139–41, 146 (defining the scope of offenses under the program and the related sanctions for violations of the program's provisions).

167. *Compare* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 140 (requiring the player to report any known instances of conduct that violate the program's provisions within forty-eight hours of the incident), *with* SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 239–40 (defining the offenses under the WTA's program, none of which include the failure to report a known corruption incident).

168. 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 140.

169. *See id.* at 139–40 (listing a violation of a reporting obligation as an offense under the ATP program).

170. *See* SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 239–40 (listing the type of conduct that is considered an offense under the WTA

While some differences between the programs, their scopes, and their related disciplinary measures may be insignificant, it is important that the various sets of rules be uniform. In particular, it is especially important that uniformity exists in compliance and enforcement provisions.¹⁷¹

IV. A POSSIBLE MEANS FOR REFORM

*“The idea that corruption must be rooted out is uncontentious. The question is simply how we do it.”*¹⁷²

- Mark Davies, managing director of Betfair

In light of the problems with current enforcement outlined above,¹⁷³ the sporting and betting community has introduced suggestions for possible means of reform.¹⁷⁴ The momentum for this reform is strong because betting corruption proves to be a world-wide threat to the sport of tennis.¹⁷⁵ To combat the issues

program).

171. Gunn & Rees, *supra* note 11, at 7.

172. Michael Donaldson, *Match-fixing Won't Go Away: Bet on It, Says Troubleshooter*, SUNDAY STAR TIMES (N.Z.), Apr. 6, 2008, <http://www.stuff.co.nz/sundaystartimes/4466267a6444.html>.

173. See *supra* Parts III.A–C (outlining some problems with the current methods of enforcement used to fight corrupt betting practices).

174. See Jens Sejer Andersen, *Towards a Global Coalition for Good Governance in Sport*, Nov. 1, 2007, http://www.playthegame.org/Home/Knowledge%20Bank/Articles/Towards_a_global_coalition_for_good_governance_in_sport.aspx (calling for an international anti-corruption agency, structured similarly to the World Anti-Doping Agency, with authority to define minimum standards in anti-corruption codes, monitor those standards, and mandate investigations into cases that appear to involve corruption); see also Kirsten Sparre, *WADA President Believes that the Sports World Should Consider Coalition Against Corruption*, Nov. 1, 2007, http://www.playthegame.org/Home/News/Up_To_Date/WADA_president_believes_that_the_sports_world_should_consider_coalition_against_corruption_01111321.aspx (noting that a former president of the World Anti-Doping Agency, Richard Pound, thinks that a coalition against corruption in sport is now warranted); Donaldson, *supra* note 172 (describing an idea by Mark Davies, the managing director of Betfair, to expand the World Anti-Doping Agency to cover corruption in sports); Herborn, *supra* note 13 (noting that a world anti-corruption agency could operate similar to the World Anti-Doping Agency).

175. See Lehourites, *supra* note 6 (quoting Jeff Rees, one of the authors of the *Environmental Review of Integrity in Professional Tennis*, as saying that ridding the sport of tennis from corruption is “fundamental to the reputation and future standing of

facing the international tennis community, one must review the current problems.¹⁷⁶

The arms of enforcement need to reach all of those involved in the alleged corrupt betting practices and not just the players and coaches.¹⁷⁷ In addition, sanctions for offenses involving corrupt betting and match-fixing must be great enough to deter *all* of those involved from committing the offenses, and such sanctions and criminal punishment must extend beyond the sphere of the tennis governing bodies' reach.¹⁷⁸ To extend this reach, the international governmental community must get more involved in the investigation and enforcement of corrupt betting instances.¹⁷⁹ Furthermore, the rules, as well as the enforcement of those rules, must be uniform throughout the various tennis governing bodies and governments to ensure similar treatment in such a highly international sport.¹⁸⁰

The international sports community recently faced a similar problem with doping.¹⁸¹ After identifying areas of much-needed reform, various entities came together to produce a plan to combat the world doping issue with record speed.¹⁸² Since then,

the game”).

176. See *supra* Part III.A–C (discussing problems with current enforcement of corrupt betting and match-fixing cases).

177. See *supra* note 95 and accompanying text.

178. See *supra* Part III.A (describing the limited sanctions applicable to player support personnel); Gunn & Rees, *supra* note 11, at 42 (noting the difficulties in criminally prosecuting those involved in corrupt betting practices).

179. See *supra* Part III.B (discussing the difficulties in investigating suspected instances of corrupt betting).

180. See *supra* Part III.C (describing the lack of uniformity in tennis anti-corruption programs).

181. See ELISE PARHAM, AUSTRALIA AND THE WORLD ANTI-DOPING CODE, 1999–2008 13–14 (2008), available at http://www.wada-ama.org/rtecontent/document/Australia_and_the_World_Anti_Doping_Code_1999_2008.pdf (providing a background of the problem faced by the international sports community with respect to steroids and doping). “Doping” is defined as the occurrence of one or more anti-doping rule violations, which includes presence of a prohibited substance in an athlete’s sample and use or attempted use of a prohibited substance. WORLD ANTI-DOPING CODE 18–25, 2009, available at http://www.wada-ama.org/rtecontent/document/code_v2009_En.pdf [hereinafter WORLD ANTI-DOPING CODE 2009].

182. See World Anti-Doping Agency, *UNESCO International Convention Against Doping in Sport: Overview*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=273> (last visited Mar. 10, 2009) (stating that the drafting of the UNESCO

the plan was put into action and has flourished. It has gained the support of governments and sports organizations worldwide.¹⁸³ Because of its swift and sweeping success in the fight against doping, this Comment will evaluate in more detail the framework used to combat the issue of doping.¹⁸⁴

A. A Brief Examination of the Anti-Doping Framework

Governments and sports organizations came together in February 1999 to discuss and tackle the looming issue of doping in sports.¹⁸⁵ They understood it would take more than one party to tackle the issue of doping.¹⁸⁶ At that time, the International Olympic Committee (“IOC”) held the first World Conference on Doping in Sport in Lausanne, Switzerland, and the attendees included members of the sports movement and governments of the world.¹⁸⁷ The result of the conference was the creation of the World Anti-Doping Agency, an independent organization incorporated under Swiss law.¹⁸⁸

1. World Anti-Doping Agency (WADA)

WADA is a hybrid organization that is governed and funded equally by sports and government organizations.¹⁸⁹ Its stated objectives include: (i) promotion and coordination of the fight against doping in international sports through cooperation with intergovernmental organizations, governments, and private bodies; (ii) promotion of harmonized rules, sanctions, and disciplinary procedures related to doping in sports; and (iii)

Convention was completed in two years, which is a world record for international treaties).

183. See World Anti-Doping Agency, *World Anti-Doping Code: Code Acceptance*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=270> (last visited Mar. 10, 2009) (listing the hundreds of sports and government organizations that have accepted the World Anti-Doping Code).

184. *Infra* Part IV.A.

185. World Anti-Doping Agency, *Governments: Overview*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=251> (last visited Mar. 10, 2009).

186. *Id.*

187. World Anti-Doping Agency, *Resources: Q&A's*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=684> (last visited Mar. 10, 2009).

188. *Id.*

189. *Id.*

promotion and coordination of education and research in the field of doping in sports.¹⁹⁰ Prior to the creation of WADA, sports organizations were major players in the fight against doping in sport.¹⁹¹ However, with WADA now in place, this dynamic in the fight has changed.

WADA is composed of a Foundation Board, an Executive Committee, and several other committees.¹⁹² The Foundation Board is the primary decision making body.¹⁹³ Its membership is limited to forty board members.¹⁹⁴ WADA aims to have half of its membership appointed by the Olympic Movement and the other half of its membership appointed by public authorities, which include governments and intergovernmental organizations.¹⁹⁵ On the other hand, the Executive Committee is WADA's primary policy making body and consists of only twelve members.¹⁹⁶ The Executive Committee is charged with the task of managing WADA, performing all activities, and administering WADA's assets.¹⁹⁷ This branch of WADA is also comprised of an equal mix of members appointed by the Olympic Movement and public authorities.¹⁹⁸ Therefore, all decisions and policies made by WADA involve the equal input of sports organizations and governments of the world.¹⁹⁹

WADA is not only managed by equal representation between

190. CONSTITUTIVE INSTRUMENT OF FOUNDATION OF THE WORLD ANTI-DOPING AGENCY, art. 4, at 1–2, *available at* http://www.wada-ama.org/rtecontent/document/constitutive_instrument_foundation.pdf [hereinafter WADA Foundational Document].

191. World Anti-Doping Agency, *Resources: Q&A's*, *supra* note 187.

192. World Anti-Doping Agency, *Governance: Introduction*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=258> (last visited Mar. 10, 2009).

193. *Id.*

194. WADA Foundational Document, *supra* note 190, art. 6, at 3. At the time that this Comment was written, the Foundation Board contained thirty-eight members. World Anti-Doping Agency, *Governance*, *supra* note 192. Half of the members were appointed by the Olympic Movement, and half of the members were appointed by the public authorities. *Id.*

195. WADA Foundational Document, *supra* note 190, art. 6, at 3.

196. World Anti-Doping Agency, *Governance*, *supra* note 192.

197. WADA Foundational Document, *supra* note 196, art. 11, at 6–7.

198. World Anti-Doping Agency, *Governance, Introduction*, *supra* note 198.

199. *See id.* (noting that the Foundation Board and the Executive Committee, which are responsible for all decision making and policy making, respectively, are comprised of an equal share of government and sports organization members).

sports organizations and governments, but is also financed equally between the two groups.²⁰⁰ However, this equal funding is not mandated directly through WADA's foundational documents, as is the case with its board and committee compositions.²⁰¹ Instead, WADA statutes state that the funding must be equal in order to receive equal representation on WADA boards and committees.²⁰²

The IOC initiated a dollar-for-dollar matching system with the governments, but only after the governments have made their payments.²⁰³ This matching system helps ensure that the funding remains equal and, in turn, that the representation within WADA remains equal.²⁰⁴ The governments also collectively agreed to its fifty percent share of funding at a meeting of the International Intergovernmental Consultative Group on Anti-Doping in Sport (IICGADS) in Cape Town, South Africa.²⁰⁵

At the IICGADS meeting, the governments also agreed to the allocation of funding between the five Olympic regions of the world.²⁰⁶ These five Olympic regions are Africa, the Americas, Asia, Europe, and Oceania, and the percentage of governmental funding paid by each region is 0.5%, 29%, 20.46%, 47.5%, and

200. World Anti-Doping Agency, *Finance*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=259> (last visited Mar. 10, 2009). However, during its first two years in existence, WADA was funded entirely by the Olympic Movement. *Id.* The IOC agreed to undertake this funding to give the governments time to allocate and budget the necessary funds. World Anti-Doping Agency, *Governments: Funding*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=401> (last visited Mar. 10, 2009).

201. See WADA Foundational Document, *supra* note 196, art. 5, at 3 (allowing for contributions from all natural or legal persons, as well as intergovernmental and government organizations, without a mandated equal sharing arrangement).

202. See *id.* art. 6, at 4 (stating that if either the Olympic Movement or the government organizations fail to provide an equivalent amount of funding, the failure will cause the underpaying party to have at least one less member on the Foundation Board).

203. World Anti-Doping Agency, *Governments, Funding*, *supra* note 200.

204. See *supra* note 202 and accompanying text.

205. CAPE TOWN DECLARATION ON ANTI-DOPING IN SPORT, art. 1, <http://www.wada-ama.org/rtecontent/document/capetowndeclaration.pdf> (last visited Mar. 10, 2009).

206. *Id.*

2.54%, respectively.²⁰⁷ Those regions then determine the amount paid by each government within the region.²⁰⁸

Aside from the completion of the objectives stated above, one of WADA's most important tasks is to monitor the implementation of and compliance with the World Anti-Doping Code (sometimes referred to hereafter as the "Code").²⁰⁹ A closer look at the Code and its impact on the parties involved in the anti-doping movement is beneficial in formulating a plan for reform in corrupt betting in sports.

2. *World Anti-Doping Code*

One of the pivotal instruments in the fight against doping in sport is the World Anti-Doping Code.²¹⁰ It is a part of a broader set of elements that make up the World Anti-Doping Program.²¹¹ The other elements in the World Anti-Doping Program are the International Standards and the Models of Best Practice and Guidelines.²¹²

Since its promulgation, the Code has experienced widespread acceptance among sports organizations and governments.²¹³ One stated purpose of the Code is "[t]o ensure harmonized, coordinated and effective anti-doping programs at the international and national levels . . ."²¹⁴ It has been successful in its undertaking by providing a uniform set of policies, rules, and regulations related to doping in sports.²¹⁵

207. *Id.*

208. *Id.*

209. World Anti-Doping Agency, *Code Compliance & Reporting: Introduction*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=736> (last visited Mar. 10, 2009).

210. World Anti-Doping Agency, *The Code, Introduction*, <http://www.wada-ama.org/en/dynamic.ch2?pageCategory.id=250> (last visited Mar. 10, 2009).

211. WORLD ANTI-DOPING CODE 2009, *supra* note 187, pmb., at 12.

212. *Id.*

213. See World Anti-Doping Agency, *World Anti-Doping Code, Code Acceptance*, *supra* note 189 (noting the large number of organizations that have formally accepted the World Anti-Doping Code and its provisions).

214. WORLD ANTI-DOPING CODE 2009, *supra* note 187, pmb., at 11.

215. World Anti-Doping Agency, *The Code, Introduction*, *supra* note 210.

The World Anti-Doping Code sets forth a fundamental rationale for its existence.²¹⁶ At the center of this rationale is the preservation of the intrinsic value of sport.²¹⁷ This intrinsic value, according to the Code, is often referred to as the “spirit of [the] sport.”²¹⁸ Characteristics of this intrinsic value include: (i) ethics, fair play, and honesty; (ii) excellence in performance; (iii) respect for rules and laws; and (iv) respect for self and other participants.²¹⁹ The Code rightfully claims that doping is “fundamentally contrary” to these values.²²⁰ Corrupt betting and match-fixing are similarly contrary to the “spirit of [the] sport.”²²¹

The World Anti-Doping Code is meant to be a minimum set of rules that apply to all anti-doping organizations responsible for adopting and enforcing anti-doping rules within their respective authorities.²²² It is designed so that some portions of the Code must be incorporated without substantive changes.²²³ However, other portions of the Code serve as guidelines that should be used by anti-doping organizations in formulating their own set of rules.²²⁴ Therefore, while the main provisions of the Code are meant to be uniformly adopted and applied throughout all international organizations, the Code allows the individual anti-doping organizations some latitude in proscribing their own rules.²²⁵

216. WORLD ANTI-DOPING CODE 2009, *supra* note 187, at 14.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. Corrupt betting, and more particularly match-fixing, go against the intrinsic values that are fundamental to the sport. *See id.* (describing the characteristics of the intrinsic values of sport). A player’s failure to use his or her best efforts or to otherwise artificially influence the outcome of a tennis match undermines these intrinsic values. *See* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 129 (noting that a failure to use best efforts constitutes a violation of an ATP rule and is punishable by a fine of up to \$10,000).

222. WORLD ANTI-DOPING CODE 2009, *supra* note 181, part 1, at 16. Anti-doping organizations are defined to include, among others, the IOC, International Federations, major event organizations, and national anti-doping organizations. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

Like the anti-corruption codes, the rules for anti-doping under the World Anti-Doping Code are sport rules.²²⁶ Therefore, players must accept these rules as a condition of playing in governed competitions.²²⁷ Signatories to the Code are bound to ensure that the players under their authority understand and agree to play under the terms of the Code.²²⁸

There are eight major types of offenses under the World Anti-Doping Code.²²⁹ These offenses include, but are not limited to, the following: (i) the presence of a prohibited substance in an athlete's sample; (ii) the use or attempted use of a prohibited substance or method; (iii) refusing or failing without sufficient justification to produce a sample when requested; and (iv) possession of prohibited substances.²³⁰ Many of these defined offenses, such as the offense for presence of a prohibited substance in the athlete's sample, are strict liability offenses.²³¹ On the other hand, the Code does make provisions for offenses that require a showing of intent, such as the offense for attempted use of a prohibited substance or method.²³² In large part, however, strict liability applies.²³³

Once it is determined that the athlete has violated the provisions of the World Anti-Doping Code, the athlete's results in that competition are automatically disqualified.²³⁴ As previously mentioned, it makes no difference why the offense was committed.²³⁵ Such a disqualification may result in a forfeiture of medals, points, or prizes won during the

226. *Id.* part 1, at 17.

227. *Id.*

228. *Id.*

229. *See generally id.* art. 2, at 19–25 (listing the occasions that give rise to a doping violation).

230. *Id.*

231. *See id.* art. 2 cmt., at 19 (stating that the presence of a prohibited substance in an athlete's sample is an offense without regard to whether the athlete had knowledge of its existence or whether its existence was purposeful).

232. *Id.* art. 2 cmt., at 22.

233. *See generally id.* art. 2, at 19–21 (listing the strict liability offenses that require no showing of intent on the part of the athlete).

234. *Id.* art. 9, at 50.

235. *See id.* (stating that any violation automatically triggers disqualification of results for the athlete).

competition.²³⁶ The justification for this treatment is the rationale that an athlete should not be allowed to win a gold medal while violating the Code, without regard to whether the athlete was at fault or simply negligent.²³⁷ This result is only fair to the other “clean” athletes who tested negative for the existence of prohibited, performance-enhancing substances.²³⁸

In addition to disqualification, athletes who violate the Code may be subjected to additional sanctions, such as ineligibility.²³⁹ For example, if the violation consists of (i) possession of a prohibited substance in the athlete’s sample, (ii) use or attempted use of a prohibited substance, or (iii) possession of a prohibited substance, the period of ineligibility is two years.²⁴⁰ However, this period of ineligibility may be increased to up to four years for aggravating circumstances.²⁴¹

Even though strict liability applies for most offenses, and the sanctions for those offenses can be quite steep, the athlete has the opportunity to lessen or even eliminate these sanctions for various reasons.²⁴² However, by applying the strict liability rules with the ability to counteract the sanctions in exceptional circumstances, the Code provides a “reasonable balance” towards efficient enforcement of the anti-doping code.²⁴³

Lastly, the World Anti-Doping Code features a method of obtaining information about other possible violations of the Code.²⁴⁴ An athlete found to be in violation of the Code may

236. *Id.*

237. *Id.* art. 9 cmt., at 50.

238. *Id.*

239. *See id.* art. 10, at 52–54 (describing the periods of ineligibility for differing offenses under the code).

240. *Id.* art. 10, at 52.

241. *Id.* art. 10, at 65.

242. *See id.* art. 10, at 54–55 (stating that an athlete’s showing of lack of intent with corroborating evidence may lessen the period of ineligibility assessed); *see also id.* art. 10, at 56 (allowing for the elimination of the sanction of ineligibility if the athlete can establish that the offense occurred at no fault or negligence of the athlete); *id.* art. 10, at 57 (noting that a reduction of the period of ineligibility may result from a showing of no significant fault or negligence by the athlete).

243. *Id.* art. 2, at 19.

244. *See id.* art. 10, at 58 (stating that an athlete that violates the code may reduce or suspend the sanction of ineligibility by cooperating with the anti-doping organization).

cooperate with the anti-doping organization, the criminal authorities, or a professional disciplinary body by providing information leading to the discovery or establishment of another criminal or disciplinary offense.²⁴⁵ Such reductions or suspensions in ineligibility depend on a number of factors, including the seriousness of the reporting athlete's violation, the seriousness of the violation reported by the athlete, and the number of individuals implicated.²⁴⁶

Although the World Anti-Doping Code provides for a harmonized set of rules and regulations for sport, many of the governments involved in the anti-doping movement could not be legally bound by such a document.²⁴⁷ Therefore, those involved in the anti-doping initiative looked to the auspices of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) to draft a convention that would be legally binding on all governmental signatories involved.²⁴⁸

3. *UNESCO Convention*

The International Convention Against Doping in Sport (the "UNESCO Convention") was adopted on October 19, 2005 with the purpose of preventing, and eventually eliminating, doping in sports.²⁴⁹ The convention was drafted to enter into force and become effective after ratification by thirty countries.²⁵⁰ The last country ratified it in December 2006, and the UNESCO Convention became effective on February 1, 2007.²⁵¹

In order to achieve its purpose, the UNESCO Convention obligates government signatories to adopt measures which are

or others).

245. *Id.*

246. *Id.*; *Id.* art. 10 cmt., at 59.

247. World Anti-Doping Agency, *Governments Overview*, *supra* note 185.

248. *Id.*

249. U.N. Educ., Scientific, & Cultural Org., International Convention Against Doping in Sport, art. 1, Oct. 19, 2005, <http://unesdoc.unesco.org/images/0014/001425/142594m.pdf> [hereinafter UNESCO Convention].

250. *Id.* art. 37.

251. World Anti-Doping Agency, *Overview of UNESCO International Convention Against Doping in Sport*, *supra* note 182.

consistent with the World Anti-Doping Code.²⁵² In addition, it requires the government signatories to encourage international cooperation between governments and anti-doping organizations.²⁵³ In particular, the UNESCO Convention requires that the various governments, as means of achieving the convention's goals, cooperate with the World Anti-Doping Agency.²⁵⁴

Arguably, the most important provision of the UNESCO Convention is that it requires all government signatories to commit themselves to the measures of the World Anti-Doping Code by any appropriate measures.²⁵⁵ Such measures, under the terms of the convention, could include the enactment of legislation, regulation, policies, or administrative practices.²⁵⁶

In addition, the parties to the UNESCO Convention are bound to ensure that the provisions of the convention are undertaken domestically.²⁵⁷ One method for ensuring this action is through financial measures.²⁵⁸ State parties are to provide funding to support national testing programs either by direct subsidies or grants.²⁵⁹ Furthermore, parties to the UNESCO Convention are to withhold financial or sport-related support from any individual athlete or sports organization not in compliance with the World Anti-Doping Code or any national legislation implemented in its place.²⁶⁰

International cooperation is another major driving force behind the UNESCO Convention.²⁶¹ As previously stated, the

252. UNESCO Convention, *supra* note 249, art. 3(a).

253. *Id.* art. 3(c).

254. *Id.*

255. *See id.* art. 3(a) (noting that parties to the convention should adopt appropriate measures to ensure that the World Anti-Doping Code is implemented within its own jurisdiction). The adoption of the World Anti-Doping Code by all parties to the UNESCO Convention provides both a minimum layer of anti-doping measures to be introduced in each party's legislation and a uniform set of rules throughout the various jurisdictions internationally. *See* WORLD ANTI-DOPING CODE 2009, *supra* note 181, at 16.

256. UNESCO Convention, *supra* note 249, art. 5.

257. *Id.* art. 7.

258. *Id.* art. 11.

259. *Id.* art. 11(a).

260. *Id.* art. 11(b)–(c).

261. *See id.* art. 13 (noting that cooperation between jurisdictions is important to

government parties agree to support the mission of the WADA.²⁶² In addition, under the UNESCO Convention these government parties formally agree to equally fund WADA with the Olympic Movement.²⁶³ Finally, an important cooperative function facilitated by the convention is the free or efficient transfer of samples and testing teams across borders during investigations or doping control activities.²⁶⁴

Overall, the UNESCO Convention is an important tool in promoting and harmonizing the rules and enforcement measures of the anti-doping movement.²⁶⁵ Furthermore, it can be a useful template when designing much-needed and related anti-corruption reform.

B. A Suggestion for Anti-Corruption Reform

Using the structure and success of the anti-doping initiatives as a guiding tool, reformed enforcement can become a reality for corrupt betting and match-fixing in international tennis.²⁶⁶ However, to get to the point where enforcement is meaningful, international tennis authorities must increase sanctions related to these offenses.²⁶⁷ Furthermore, all involved in the fight against corruption in tennis must work closely with betting organizations to investigate suspected cases of corrupt betting and match-fixing.²⁶⁸ Lastly, to ensure uniformity in rules and enforcement among governments internationally, a UNESCO Convention for anti-corruption that legally binds the

achieving the purpose of the Convention).

262. *Id.* art. 14.

263. *Id.* art. 15.

264. *Id.* art. 16.

265. *See id.* art. 3(a) (noting that government signatories must implement the provisions of the World Anti-Doping Code, which forces these governments to enact legislation related to anti-doping that is similar across jurisdictional lines).

266. *See supra* Part IV.A.2 (describing the widespread acceptance and related success of the World Anti-Doping Code).

267. *See infra* Part IV.B.1 (noting that sanctions should be increased for player support personnel, tournament support staff, and other affiliated persons).

268. *See infra* Part IV.B.2 (suggesting that betting operators be required to provide information to the proper authorities).

various governments to the fight against corruption in sports should be adopted.²⁶⁹

1. *Increased Sanctions*

Mark Davies, the managing director of Betfair, said that sports organizations had to tip the “risk-reward ratio” so that players would not want to take a chance on match-fixing.²⁷⁰ In addition, he said that the anti-doping war was working because of the high-profile athletes who were caught and exposed for doping.²⁷¹ Tennis, as well as other sports, should likewise consider increasing sanctions to deter future corruption.

Sanctions under an anti-corruption code should be imposed equally for both players and support personnel.²⁷² For example, under the ATP Anti-Corruption Program, players may be subjected to a \$100,000 fine for the commission of an offense.²⁷³ However, sanctions for support personnel are limited to disciplinary actions related to credentials and access to tennis events.²⁷⁴ Instead, support personnel should be subjected to a fine for wagering or receiving consideration in relation to betting on a tennis event.

In addition, all sets of anti-corruption codes should impose sanctions upon tournaments and tournament support personnel for violations of the anti-corruption code.²⁷⁵ Unauthorized access to players is a major source of inside information that can be misused for corrupt betting purposes.²⁷⁶ Therefore, tournaments and tournament support personnel should be held liable for

269. See *infra* Part IV.B.3 (suggesting the adoption of a UNESCO convention for corruption in sport).

270. Donaldson, *supra* note 172.

271. *Id.*

272. See *supra* Part III.A (discussing differences in treatment between players and support personnel with respect to sanctions for offenses under the anti-corruption code).

273. See 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146 (noting that a player may be fined in connection with any wager or receipt of consideration by the player or by the player’s support personnel).

274. *Id.*

275. See *supra* Part III.C (describing the lack of uniformity among various anti-corruption codes relating to enforcement measures against tournaments and tournament support personnel).

276. Gunn & Rees, *supra* note 11, at 2.

sanctions under *all* sets of anti-corruption rules for lack of precautionary measures taken.

2. *Close Coordination with Betting Organizations*

One major reason that the current investigations into corrupt betting and match-fixing in tennis are taking place is that Betfair, the online betting exchange, volunteered suspicious betting information to the proper authorities.²⁷⁷ Outside of this voluntary information given by the betting exchange itself, it may be difficult to obtain information relating to the existence of corrupt betting.²⁷⁸

The United Kingdom's Gambling Act of 2005 already employs the aid of the betting operators in discovering corrupt betting practices by the operators' users.²⁷⁹ However, each country should consider such a program to facilitate investigations of corrupt betting and match-fixing. Betting operators stand in the most advantageous position for flagging suspicious transactions because they can easily obtain records of individual transactions.²⁸⁰

Governments that host betting operators could, like the United Kingdom, require that the operators report suspicious betting patterns to the proper authorities for investigation. Any deviation from that requirement should cause the government to revoke the betting operator's right to conduct business under the laws of that government. In addition, it should be a condition of the Olympic Movement and all tennis governing authorities that a country undertake these conditions if that country wishes to host a tennis tournament of any sort.

277. *See Talk of Efforts to Fix Matches, supra* note 9 (describing the difficulty in gathering and assessing evidence through traditional means).

278. Gunn & Rees, *supra* note 11, at 9; *see also supra* Part III.B (noting barriers to investigating and gathering evidence, such as telecommunications data).

279. *See supra* Part II.C.8 (discussing the use of operating licenses with attached conditions that include the reporting of suspicious information to government authorities).

280. *See* Gunn & Rees, *supra* note 11, at 9 (stating that betting patterns give a strong indication that certain account holders are in receipt of inside information).

3. *Adoption of a UNESCO Convention for Anti-Corruption*

In order to facilitate the cooperation of the international community in the fight against corruption in sports, all participating governments must be bound under a single set of rules and sanctions.²⁸¹ The anti-doping movement faced this same dilemma and solved the problem through the UNESCO Convention, which bound all government parties under an internationally recognized legal document.²⁸² The anti-corruption reform could include a similar convention through the auspices of UNESCO.

Using the successful framework of the anti-doping movement as a guide, anti-corruption reform could revolve around the Uniform Anti-Corruption Program²⁸³ as its set of rules, as revised to include increased sanctions stated previously.²⁸⁴ A UNESCO convention, similar to that drafted for anti-doping purposes,²⁸⁵ could require that all signatories adopt, administer, and adhere to the provisions of the Uniform Anti-Corruption Program. In addition, such a convention could require that signatories define corrupt betting and match-fixing as serious crimes under each nation's law for the purposes of facilitating communications data collection and investigation.²⁸⁶ Furthermore, signatories could withhold financial support and operating licenses from those athletes or organizations that fail to comply with the terms of the Uniform Anti-Corruption Program.

281. *See supra* Part IV.A.2 (noting that some governments cannot be legally bound by a document, such as the World Anti-Doping Code). Any uniform anti-corruption code would likely operate in a similar manner as the World Anti-Doping Code, and likely would not be binding on some governments as international law.

282. *See supra* Part IV.A.3 (describing the adoption of the UNESCO Convention).

283. OFFICIAL GRAND SLAM RULE BOOK, *supra* note 55, at 46.

284. *See supra* Part IV.B.1 (noting that sanctions should be increased for support personnel and tournaments).

285. UNESCO Convention, *supra* note 249.

286. *See supra* Part III.B (describing the flexibility given to European Union member states to define serious crimes and the related difficulty in accessing electronic and telephone communications records in corruption investigations).

V. CONCLUSION

Although similar, the fight against corrupt betting practices and match-fixing in tennis is a different fight than that against doping in sport. There is no urine or blood sample test²⁸⁷ that can prove whether a player has cheated or wagered on the sport.²⁸⁸ Furthermore, there can be no real provisions for random testing to prove the commission of an offense. In addition, although this Comment has focused on European Union nations,²⁸⁹ governance problems in corrupt betting practices are not restricted to the European Union or to one sport alone.²⁹⁰

However, by the use of collective measures by the international tennis community, the problems of corrupt betting and match-fixing may be prevented.²⁹¹ The recent success of anti-doping measures, which at times appeared to be an insurmountable hurdle, can provide a working framework on which to build anti-corruption reform.²⁹² Arguably, corrupt betting practices and match-fixing affect the sport much more deeply and broadly than doping.²⁹³ The challenges that the international sport community will face are undoubtedly difficult ones.²⁹⁴ However, as stated by Jens Sejer Anderson,

287. See WORLD ANTI-DOPING CODE 2009, *supra* note 181, art. 3 cmt., at 26 (stating that urine and blood sample tests can be used to establish a doping violation under the Code).

288. Andersen, *supra* note 174.

289. See *supra* Part II.C (describing the United Kingdom's laws with respect to gambling); Part III.B (discussing the effects of German data retention laws on the Davydenko investigation and the directive by the European Union to expand data retention laws in its member states).

290. See Andersen, *supra* note 174 (noting that "challenges are global, and they regard every sport that ever touches money").

291. See *supra* Part IV.A (discussing the international acceptance and success in the similar area of anti-doping reform).

292. See *supra* Part IV.B.3 (suggesting that a UNESCO convention similar to that adopted for anti-doping could be used as possible means for anti-corruption reform).

293. Andersen, *supra* note 174.

294. See *supra* Part IV.A (discussing the coordination required to organize the World Anti-Doping Agency and to establish the World Anti-Doping Codes that were ratified by various governments worldwide); Part IV.B (describing the reform that should be undertaken to resolve issues in current corruption enforcement).

director of Play the Game,²⁹⁵ “[t]o let it be, is much more terrifying than any challenge we may face.”²⁹⁶

VI. AFTERWORD

The main text of this Comment was written in response to the framework and rules in existence in 2008. Subsequently, a few significant changes from the prior year’s rulebooks were implemented into the 2009 ATP Official Rulebook and the 2010 Sony Ericsson WTA Tour Official Rulebook.²⁹⁷ While the overarching goal of reform remains unchanged, these recent changes in the rules warrant discussion because they are direct implementations of suggested reform presented in Part IV of this Comment.²⁹⁸ This afterword will discuss the major changes made to the ATP and WTA rulebooks during 2009 and the effect of those changes on the suggested reform contained in the main text of this Comment.

A. Increased Sanctions

In their most recently issued rulebooks, the ATP and the WTA increased the amount that a player may be fined for committing a corruption offense.²⁹⁹ Previously, players were subject to a fine up to \$100,000 plus any amounts received in connection with any corrupt betting practice.³⁰⁰ However, this

295. Play the Game is a global organization that aims to strengthen the ethical values in sport by creating awareness and providing tools to journalists, researchers, and political leaders. Play The Game, Our Goals, <http://www.playthegame.org/about/our-goals.html> (last visited Mar. 10, 2009).

296. Andersen, *supra* note 174.

297. See 2009 ATP OFFICIAL RULEBOOK 155 (2009) (introducing a Uniform Tennis Corruption Program into the 2009 ATP Official Rulebook); see also THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK 260 (2010) (adding reporting obligations for WTA players).

298. See *supra* Part IV.B (recommending increased sanctions for ATP and WTA players who commit corruption offenses).

299. Compare 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146–47, with 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 164–65 (increasing the amount of the fine for a player who commits a corruption offense from \$100,000 to \$250,000); compare SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 241, with THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK, *supra* note 297, at 268 (implementing an identical change in the amount of fine applicable to players).

300. 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146–47; SONY ERICSSON

amount was recently increased to \$250,000 for both ATP and WTA players.³⁰¹

Additionally, the ATP and the WTA strengthened the ineligibility sanction to make players and support personnel that commit corruption offenses ineligible to participate in any event organized or sanctioned by any governing body.³⁰² A “governing body” under the rules refers to the ATP, the WTA, the ITF, and the Grand Slam Committee.³⁰³ In the 2008 rules, the ATP and WTA only made their players ineligible to participate in ATP and WTA events, respectively, upon a finding of a corruption offense.³⁰⁴ This change in the rules closes the loophole that would allow an ineligible ATP player or support personnel to coach and possibly continue to have inside access to WTA players.³⁰⁵

B. ATP Extended Coverage to Include Tournaments and Tournament Support Personnel

In addition to increasing the amount of fines for corruption offenses, the ATP broadened its coverage to include tournaments and tournament support personnel.³⁰⁶ In 2008, the ATP rules did not contain corruption offenses committable by or sanctions chargeable to tournament support personnel.³⁰⁷ However, in the 2009 rules, tournament support personnel are specifically

WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 241.

301. 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 164–65; THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK, *supra* note 297, at 268.

302. 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 164–65; THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK, *supra* note 297, at 268–69.

303. 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 158; THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK, *supra* note 297, at 257.

304. 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146–47; SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 241.

305. *See supra* Part III.A.

306. *Compare* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 139, *with* 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 131–32, 158 (providing for tournament violations for wagering on tennis or onsite gambling and adding tournament support personnel to the list of “covered persons” under the anti-corruption program).

307. *See* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 139, 146–47 (including only players and player support personnel in the list of covered persons that may be subjected to sanctions for corruption offenses).

included in the list of covered persons under the anti-corruption program.³⁰⁸ Tournament support personnel include any tournament directors, owners, operators, employees, or agents.³⁰⁹ Furthermore, these tournament support personnel are now subject to the same sanctions as player support personnel.³¹⁰

The ATP also added provisions outside of the anti-corruption program which impose penalties directly upon tournaments for gambling-related activities.³¹¹ The 2009 ATP rules expressly prohibit the facilitation of onsite gambling, including the placing of electronic wagers, at any ATP tournament.³¹² In addition to other stated fines and penalties provided by the ATP rules, the 2009 ATP rules allow for a fine of up to \$100,000 chargeable to any ATP tournament that engages in prohibited conduct.³¹³

C. Reporting Obligations

In its 2008 rules, the WTA did not expressly require its players or their support personnel to report known incidents of corrupt betting practices.³¹⁴ However, the WTA rules now provide that all covered persons have an obligation to report any known *or suspected* incident by another that would be considered a corruption offense.³¹⁵ Furthermore, it appears from the rules that the covered person's failure to report a known or suspected corruption offense is a corruption offense itself.³¹⁶

308. 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 158.

309. *Id.* at 159.

310. *Id.* at 165.

311. *See id.* at 132 (stating the obligations and related violations imposed on tournaments with respect to onsite gambling and betting on tennis in general).

312. *Id.*

313. *Id.*

314. SONY ERICSSON WTA TOUR 2008 OFFICIAL RULEBOOK, *supra* note 51, at 239–40 (defining the offenses under the WTA's program, none of which include the failure to report a known corruption incident).

315. THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK, *supra* note 297, at 260.

316. *Id.* at 259–60 (stating that violations of reporting obligations are considered corruption offenses).

D. Effect of Rule Changes on Suggested Reform

The major changes implemented since the initial writing of this Comment have strengthened the enforcement mechanisms of the tennis governing bodies—in particular the ATP and the WTA.³¹⁷ The Comment originally addressed three main problems with the enforcement framework then in place.³¹⁸ Those problem areas were (i) insufficient sanctions, (ii) barriers to investigation, and (iii) a lack of uniformity among the governing bodies' rules.³¹⁹ Of those problem areas, the changes made in 2009 only significantly affect the issue of uniformity among the tennis governing bodies' rules.

Barriers to investigation still exist and were not significantly changed by the rule changes implemented in 2009.³²⁰ While the amount of fines chargeable to players for committing corruption offenses increased by \$150,000 and the ineligibility sanction may now be applied across all governing bodies,³²¹ these increased sanctions may still be insufficient. Sanctions for related persons, such as family members, guests, and friends, may still be insufficient to deter those persons from engaging in corrupt betting practices.³²² Furthermore, sanctions for player support personnel, which may have the access to the most inside information, have remained virtually unchanged.³²³

The issue of uniformity among tennis governing bodies has been improved significantly.³²⁴ The most recent ATP and WTA

317. *See supra* Part VI.A–C (discussing additions to the recent ATP and WTA rules with respect to increased sanctions, extended coverage, and reporting obligations).

318. *See supra* Part III.

319. *See id.*

320. *See supra* Part III.B.

321. *See supra* Part VI.A (discussing the recent changes made in the amount of sanctions applicable to ATP and WTA players and in the scope of ineligibility).

322. *See, e.g.*, 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 165 (stating that the sanctions for a corruption offense committed by a related person are limited to suspension or revocation of access and credentials to certain tennis events).

323. *Compare* 2008 ATP OFFICIAL RULEBOOK, *supra* note 10, at 146, *with* 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 165 (providing for tournament violations for wagering on tennis or onsite gambling and adding tournament support personnel to the list of “covered persons” under the anti-corruption program).

324. *See supra* Part VI.A–C (noting that the ATP and WTA now have equal provisions for corruption offenses, sanctions, and reporting obligations).

rules regarding anti-corruption are now, for the most part, identical.³²⁵ However, enforcement by the tennis governing bodies is only one part of the greater enforcement effort needed.³²⁶ While the tennis governing bodies may discipline its players, tournaments, and support personnel, governments must still step in to create uniform laws related to the crime of corruption in betting.³²⁷

E. The Updated State of Corruption in Tennis

Match-fixing and corrupt betting practices continue to be an issue in tennis, despite the recent changes made to the ATP and WTA rules.³²⁸ The Tennis Integrity Unit, the group created by the tennis governing bodies to combat corrupt betting practices internationally, has even issued warnings to player and related persons about divulging information over social networking and media sites, such as Twitter.³²⁹ In a move that one tennis star claimed to be “lame”, tennis authorities have even warned against players posting information on social media sites in their free time away from the court.³³⁰

As tennis authorities continue to focus on corruption and match-fixing, they appear to discover more avenues which will hopefully lead to the dissemination of inside information.³³¹ Furthermore, the tennis governing bodies are attempting to fight this vast international issue with a Tennis Integrity Unit comprised of only two full-time employees as of June 2009.³³²

325. Compare 2009 ATP OFFICIAL RULEBOOK, *supra* note 297, at 158–66, with THE SONY ERICSSON WTA TOUR 2010 OFFICIAL RULEBOOK, *supra* note 297, at 257–70.

326. See *supra* Part IV.B.3 (discussing the need to bind all *governments* in a single set of enforcement rules outside of the tennis governing bodies’ reach).

327. See *supra* Part IV.B.3 (stating that the various governments should adhere to the same set of laws with respect to corrupt betting practices to facilitate investigation and enforcement actions).

328. Russell Goldman, *New Rules of the Game: Watch What You Tweet*, ABC NEWS, Sept. 1, 2009, <http://abcnews.go.com/Technology/story?id=8457223> (discussing the focus on anti-corruption at the 2009 U.S. Open).

329. *Id.*

330. *Id.*

331. See *id.* (noting that numerous sports are “weighing the impact of new modes of communication”).

332. Matt Scott, *Undermanning Undermines Tennis’ Corruption Unit*, THE

This understaffing has caused some to raise serious questions about the tennis governing bodies' commitment to anti-corruption.³³³ Despite these difficulties, the tennis governing bodies and governments internationally must still push forward in their efforts. Like the fight against doping in sport,³³⁴ this fight against corruption in tennis must be made one step at a time.

GUARDIAN U.K., June 25, 2009, <http://www.guardian.co.uk/sport/2009/jun/25/tennis-corruption-digger>.

333. *Id.*

334. *See supra* Part IV.A (describing the anti-doping framework and the measures taken by the international sport community to combat doping in sport).