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COLLEGE SPORTS' NEW LEGAL RISKS: PREDICTION MARKETS AND NIL FRAUD

BY ROBERT L. BOONE March 31, 2026 7:00am

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Today's guest columnist is attorney and former federal prosecutor Robert L. Boone.

The United States Department of Justice (DOJ) has shown a willingness to play the role of enforcer in college sports when misconduct crosses criminal lines. Over the past decade, United States Attorney's Offices in New York City, Boston and Philadelphia have charged dozens of individuals in corruption and **fraud** schemes involving college coaches, players and athletic department personnel. The question then is not whether another DOJ college sports scandal will emerge, but which aspect of the industry will be impacted next.

The two most likely areas? **Prediction markets** and name, image and likeness (**NIL**) agreements.

At a gathering just last month, Jay Clayton, the U.S. Attorney for the Southern District of New York, emphasized that prediction markets are "an area that I am looking at" and that a "prediction market doesn't insulate you from fraud."

The "fraud" that federal prosecutors will likely focus on is the use of confidential business information or material nonpublic information to gain an advantage over others. With the advent of NIL deals, many college athletes have agents, lawyers or other business professionals representing them. If an athlete advisor or representative misappropriates information they learned through their employment, that could create criminal liability. This may be especially true in the context of prediction markets.

For example, suppose an employee at a law firm or talent agency that represents a popular athlete places a prediction-market bet on whether that athlete will switch universities in the offseason. If the bet is placed with the benefit of knowing that that athlete will in fact switch universities based on information learned through their job, that could be considered wire fraud.

The federal wire fraud statute makes it illegal for anyone to use or cause the use of "wire, radio or television communication in interstate or foreign commerce" for the

A "scheme to defraud" simply refers to the end game of the alleged defendant. The government must show that the alleged defendant put a plan into motion to wrongfully obtain money or property. Information about the athlete's plans could be considered property of the law firm or talent agency, especially if maintaining the confidentiality of the information was necessary to the firm's reputation.

This principle was perhaps best articulated in the case of *United States v. Grossman*. In *Grossman*, an associate at a New York law firm was convicted at trial of securities fraud and mail fraud, which largely mimics wire fraud, for using confidential information he learned from his employer to make several profitable trades. Specifically, the defendant learned from a client of the law firm about a company's planned recapitalization that would likely result in that company's stock rising dramatically.

On appeal, the defendant argued, among other things, that the information he was charged with misappropriating could not be considered property, because the law firm could not use the information for its commercial value by trading on it. The appellate court rejected this argument, noting that several partners of the law firm had testified that maintaining the confidentiality of the information was of commercial value to the firm, because it would "protect or enhance the firm's reputation, with the result that it would not lose its clients and perhaps would gain more clients."

The same could be said for law firms or agencies in possession of confidential information relating to their college athlete clients. Accordingly, the misuse of such information could create criminal liability for an employee.

Another likely area of focus for DOJ is NIL deals. At their core, NIL agreements are contracts. In a typical NIL agreement, an athlete agrees to allow their name, image and likeness to be used by a third-party company to promote a product in exchange for money, and that agreement is formalized in a written document signed by the athlete and a representative of a company. While violating a contract is not a federal crime, making material misrepresentations, in a contract or otherwise, to fraudulently obtain money can be.

As discussed earlier, the wire fraud statute criminalizes putting a plan into motion to wrongfully obtain money or property. Although not explicitly referenced in the statute, wire fraud must also involve a material misrepresentation of some kind— one capable of influencing the intended victim.

It is not uncommon for wire fraud prosecutions to stem from misrepresentations made in contracts. For example, in a typical investment scheme, a person solicits money from a group of individuals and promises to invest their money in a particular way, such as in crypto or in the stock market. That person usually promises the investor a high rate of return and the ability to pull their money out of the investment within a reasonable amount of time. Such promises are often memorialized in a written agreement and signed by both parties.

If at the time this agreement was reached, the person soliciting money from the investor had no intention of fulfilling the promises he made, that person could be liable for wire fraud. Taking someone's money by deceit is generally not allowed, and the misrepresentations contained in the contract could serve as proof of the alleged fraud.

The same principles apply to NIL agreements. If an athlete signs a NIL deal promising to perform certain tasks in exchange for money, knowing that they have no intention of performing those tasks and potentially lying about having performed those tasks, they could be liable for wire fraud. Conversely, a company contracting with an athlete may be liable for wire fraud if it promised to pay for the athlete's services when it had no intention of doing so and was deceptive about its ability to pay. To prove its case in either scenario, the prosecutors may look to the defendant's text messages or email communications showing their intentions at the time the agreement was made, the defendant's past course of dealings in similar contractual relationships, or the defendant's wherewithal to fulfill its promises.

As the college sports industry continues to evolve, DOJ will look for ways to apply already existing criminal statutes, like the wire fraud statute, to areas susceptible to fraudulent or corrupt conduct. Those areas will likely include, but not be limited to, prediction markets and NIL deals, and DOJ will likely not wait for the **NCAA**, or even a separate federal agency, to establish their own rules regarding those subjects when evidence of criminal conduct already exists.

Robert L. Boone is a partner at the law firm of WilmerHale in New York City. He is a member of the firm's Sports and Gaming and White-Collar Defense practice groups. Prior to joining WilmerHale, he worked as a federal prosecutor for the Southern District of New York where he led an investigation into corruption in college basketball that resulted in the conviction of several NCAA basketball coaches and athlete advisors for bribery and wire fraud.