

An Analysis Of Ticket Scalping Practices In Professional Sports

Rob Ammon Jr.
Morrow Fieldhouse #116
Slippery Rock University
Slippery Rock, PA 16057
412-738-2967

Aaron L. Mulrooney
Kent State University

INTRODUCTION

The scalping of tickets is a growing trend not limited to professional sports. Entertainment events and intercollegiate sports are also inundated by individuals who purchase large numbers of tickets with the intention of selling them for more than face value. The sale of scalped tickets reduces the availability of tickets for the average buyer and may cause a scarcity of tickets. Since facility and box office managers are in the business of providing a service to their patrons this lack of tickets becomes a very real concern. Therefore, some states and local municipalities have attempted to regulate the sale of scalped tickets. Ticket brokers and scalpers recognizing a threat to their existence have fought back to legally curtail the scalping regulations. In recent years the challenges to anti-scalping legislation have been based on violations of First Amendment rights as well as infringement of the 14th Amendment pertaining to property rights, deprivation of due process and violation of the Equal Protection Clause.

On the positive side, ticket scalpers provide an economic service to a variety of people in our society who wouldn't normally be able to attend the event. Due to hectic schedules, many individuals don't have time to stand in line to purchase tickets. Also, since many events sell out quickly a majority of interested fans can't attend. Therefore, scalpers provide an opportunity, in both instances, for interested parties to purchase otherwise unavailable tickets. In

addition, the location of the scalpers tickets oftentimes is of better quality than is available from the box office (Criscuolo, 1995).

The presence of scalpers, however, causes problems to occur as well. Due to inflated prices, individuals purchasing tickets don't usually spend as much money on concessions and merchandise, thus promoters and athletic team owners don't realize their full profit potential. Scalpers also purchase large quantities of tickets that otherwise would be available to the general public. Many individuals can't afford the scalpers prices, thus these fans can't attend the event. In addition due to their aggressive sales techniques the presence of scalpers outside the facility oftentimes may distract or harass the arriving spectators, thus generating public relations concerns (Criscuolo, 1995).

JUDICIAL AND LEGISLATIVE HISTORY INFLUENCING SCALPING PRACTICES

Early Cases

The dilemma of ticket scalping is by no means a current problem. A North Carolina court in 1885 ruled in favor of a theater who refused admission to anyone purchasing tickets from ticket brokers (Curtis, 1996). The traditional response, however, was in favor of the scalper. The courts recognized the reselling of tickets as being private, therefore stopping the scalpers was not justified as a legitimate exer-

cise of police powers (Zankel, 1992).

Several rulings demonstrated the accommodating view of the courts in the early 20th century. In the 1920's New York State statutes made it illegal to resell any tickets for more than fifty cents above the price printed on the ticket. In Tyson & Brothers- United Theater Ticket Offices v. Banton the US Supreme Court stated that entertainment was a private industry. The courts continued ruling that state statutes could only regulate prices when the business had a public interest and therefore was not applicable in this specific situation. Twenty years later the Indiana State Supreme Court used a two prong test in Kirtley v. State based on state police power, not on the "Public Interest" theory espoused in Tyson. Indiana's statute was different from New York's because it prohibited the sale of tickets for more or less than face value. The test stated that: 1) the questioned activity must present a threat to public health, morality, safety or welfare of the society and 2) the state ordinance or regulation must serve to reduce that threat. The Supreme Court ruled that since this specific statute arbitrarily interfered with personal liberty and property rights of the ticket owners it was not a legitimate exercise of the states police powers (Zankel, 1992).

However, not all courts followed the same line of thinking. In 1942, a New York Court held in Levine v. Brooklyn National League Baseball Club that the Brooklyn Dodgers could refuse admission to any fan who bought a ticket from a scalper. The court emphasized the importance of the language on the back of the ticket that prohibited its resale and the option to refuse admission to any purchaser of scalped tickets held by the Major League Baseball franchise (Curtis, 1996).

Following the Tyson decision, U.S. Supreme Court decisions began to erode the "Public Interest" standard. In Nebbia v. New York (1934) the Supreme Court expanded the governments authority to regulate economic rights that the state may deem reasonable (Criscuolo, 1995). Additionally, in Gold v. DiCarlo a New York State anti-scalping statute was upheld by the U. S. District Court. The statute prohibited the sale of tickets for more than one dollar and fifty cents

above face value. The court's decision stated that the Tyson standard was "regarded as a relic for constitutional historians" (Zankel, 1992, p.133). The court further mentioned that the statute would be upheld if the regulation bears a rational relationship to a constitutional permissible objective (Zankel, 1992; Criscuolo, 1995).

Since the 1940's both state and federal courts have held that anti-scalping legislation does not violate constitutional guarantees of free enterprise. In addition during the past 45 years most anti-scalping regulations and ordinances have been upheld by the courts as legitimate exercises of police power (Zankel, 1992). However, constitutional challenges to anti-scalping ordinances in the United States have continued and usually are brought under claims pertaining to invasion of property rights, violation of the Equal Protection Clause of the 14th Amendment, or violation of the Due Process Clause of the 14th Amendment.

Property Rights

Two cases from the 1970's illustrate the courts findings regarding tickets as a property right. In California a male was convicted of offering to sell three football tickets at face value on the grounds of the LA Memorial Coliseum. The defendant argued, in People v. Shepherd, that his First Amendment rights and property rights were violated as a result of his conviction. The court, however, asserted that precedent did not support his contention that offering his tickets for sale was protected speech under the First Amendment. In addition the court noted that the ordinance in question did not prohibit the sale of his tickets, he was only prohibited from selling them on Coliseum property.

Two years later in State v. Major the Georgia State Supreme Court debated over an ordinance that prohibited tickets to be resold for more than a one dollar service charge. The court deemed the statute to be constitutional and that the regulation was reasonably related to a proper legislative objective, similar to the findings in Gold v. DiCarlo (Criscuolo, 1995).

Equal Protection Clause

Opponents to anti-scalping legislation have

used the 14th Amendment in an attempt to demonstrate that ticket scalpers' rights have been violated under the equal protection of the law. These individuals contended that the owners of the property, where sport and entertainment events occur, have an unfair advantage to sell tickets at a higher price than what is normally permitted. The courts have determined as long as the economic regulations bear reasonable relationships to a proper legislative purpose and are not arbitrary or capricious they are constitutional. These findings reflected similar decisions in State v. Major and Gold v. DiCarlo. The majority of judicial decisions have determined anti-scalping legislation to be legitimate and designed to be accomplished in a fair and reasonable manner (Criscuolo, 1995).

An additional case witnessed a defendant in an Oregon case, State v. Youker, contending that a Portland City ordinance violated the Equal Protection Clause because it prohibited scalping on municipally owned facility property, but not on privately owned property. The court replied that the purpose of the distinction was to allow tickets to be made available to the taxpayers who supported and helped pay for the municipal facilities (Zankel, 1992).

As mentioned the preponderance of judicial decisions, since 1940, have been in favor of anti-scalping legislation. One of the few exceptions to this trend was Estell v. Birmingham. In this case, Bobby Estell was arrested for scalping his 1967 Alabama v. Auburn football tickets. After four years of litigation Estell won his suit when the Federal Court of Appeals threw out the Birmingham anti-scalping ordinance (Blount, 1979). The court stated that the ordinance constituted an arbitrary imposition on a lawful activity. The court's decision compared brokering tickets to brokering grain and stated that the public was not coerced into paying the higher prices, they voluntarily chose to do so. This ordinance was unique because it focused on scalping at the specific event rather than the public policy of scalping (Zankel, 1992).

Due Process

The constitutionality of anti-scalping legislation as it pertains to due process has been pre-

viously discussed in the rulings handed down in Nebbia v. New York, State v. Major, and Gold v. DiCarlo. The landmark decision in this area was handed down in New Jersey Ass'n of Ticket Brokers v. Ticketron. The plaintiffs claimed that resale ticket agents provided an economic and social function to the public, meeting the needs of those unable to stand in line. Without this convenience agents customers would be forced to buy from unlawful scalpers (Criscuolo, 1995). The plaintiffs argued that the statute in question imposed restrictions on resale agents and had almost completely wiped out their business. The court, using the standards adopted in Nebbia, stated that the legislation had been enacted to control the resale of tickets and the abuses normally associated therein (Zankel, 1992).

STATE AND FEDERAL LEGISLATION

Despite the arguments regarding the economic merits of ticket scalpers, over 26 states and the District of Columbia presently regulate scalping. In addition most municipalities that host professional sport franchisees have some sort of scalping ordinances (Happel & Jennings, 1995). Some states such as Pennsylvania have legislation that imposes a \$5,000 fine or two years in jail on convicted ticket scalpers (In praise of touts, 1991). However, several states have begun to decriminalize scalping. This has happened within the past two years in California, Illinois, Indiana and New Jersey (Seligman, 1995). Interestingly enough California's legislation of imposing a fine of \$1,000 or a year in jail was recently enacted in 1991.

Federal legislation however is not as ambiguous. The "Interstate Ticket Resale Prohibition Act of 1994" was introduced to "prohibit resale profiteering in or affecting interstate commerce (Cruz, 1995, p. 15). The federal legislation arose because of the belief that interstate commerce may be detrimentally affected by ticket scalping. An additional House Bill (4995) was introduced three months later that requires any seller or re-seller of sports or entertainment tickets to explain all service charges above the

face value of the ticket, before the ticket is sold (Cruz, 1995).

INDUSTRY PRACTICES

Scalpers and ticket brokers are risk takers and not all make inordinate amounts of money. They tempt the rules of supply and demand and, if the demand diminishes, the scalper may lose a large investment. While some individuals benefit from those who sell tickets for more than face value, many in the sport and entertainment industry fervently want to thwart scalpers, whenever possible. Recently in Detroit, facility managers placed newspaper ads next to those of the ticket brokers that stated "Don't buy from them, buy from us" (Zoltak, 1996, p. 13).

Several entertainers have decided to do more than just talk about the problem. They have become involved in establishing policies to allow their regular fans the opportunity to buy quality tickets. Ticketmaster in conjunction with Eric Clapton's agent created a plan in 1994 where Clapton fans could purchase, over the phone, a maximum of two tickets per customer for \$30.00 each. To receive a voucher for the tickets in the mail, the fans had to be at least 21 years of age. To acquire the tickets the fans took the voucher, a credit card, a drivers license and a social security card to the club on the night of the show. After verifying that the name on the voucher matched the name on the other forms of identification the fans immediately entered the facility. Clapton felt that this process would ensure that his fans were able to purchase tickets and eliminate the majority of scalpers (Borzillo, 1994).

Service charges and scalper prices were responsible for a complaint filed with the Justice departments Anti-trust Division, by the band "Pearl Jam" before their 1994 summer tour. Though the complaint was later dismissed by the Justice Department, it initiated a cheaper ticket distribution system by the bands management. The new system circumvented the added service charges and outrageous scalper prices.

"Hootie and the Blowfish" also have attempted to impede various ticket broker schemes. A recent investigation by the bands management discovered that a New York pro-

moter had pulled the first ten rows of tickets from the main batch and sold them to a ticket broker. After voiding the original 534 scalped tickets the band sold newly printed ones for a discounted price of \$25.00 (Morrow, 1996).

While bands search for methods to beat the scalpers at least one NBA team found a way to monitor the scalpers sales. Due to high levels of scalping and the ensuing traffic congestion outside of America West Arena, the Phoenix city council passed an ordinance in 1995 allowing scalping to take place, without a license, in a designated area across the street from the facility's main entrance. The city police recognizing the difficulty in curtailing the problem were in favor of the new scalping zone, though they were apprehensive about potential fights breaking out. The new open market presented predictable results. Competition created free enterprise, the laws of supply and demand took over, and the prices became more reasonable (Happel & Jennings, 1995).

As the controversy over scalping rages back and forth in the United States, other countries are facing different challenges emanating from similar circumstances. "Ticket touts", the term for scalpers in England, do not have the same legislative restrictions as their brethren in the United States. English consumer law states that the seller should be honest with the customer, but says nothing about profit. The "ticket touts" have enough autonomy that prosecution has not been successful under current British law (Bailey, 1993).

Though counterfeit and bogus tickets exist for virtually every U. S. sport and entertainment event, these incidents have not caused many serious problems. In addition there have been no reports that these problems or those caused by scalping have lead to major crowd management disasters. However, ticket misfortunes do occur at other facilities throughout the world. In October 1996 a stampede at a Guatemalan stadium, before a World Cup soccer qualifying match, killed nearly 80 fans and injured an additional 150. The stampede resulted when the entrances were sealed to the stadium due to an overflow crowd. Many of the fans inside had purchased scalped tickets, which turned out to

be counterfeit. The legitimate fans outside the stadium forced open the gates and rushed inside, crushing those already present. Officials estimate that 10,00 extra tickets were sold for the event (Evans, 1996).

It was therefore, the purpose of this study to determine if a ticket scalping problem exists in professional sport and its' persuasiveness if a problem was identified.

METHODOLOGY

Process

Data was collected by mailing a preliminary survey to all 113 professional teams in the National Football League (NFL), Major League Baseball (MLB), National Hockey League (NHL) and National Basketball Association (NBA). The survey, developed by the investigators, consisted of five items addressing demographic and ticket information items. Subjects were ticket managers at each teams home facility. The subjects responded to the ticket information items by indicating the degree to which the ticket or scalping situation posed a problem to their organization. A seven point Likert-type scale was used to identify their responses, a score of one designated a "low" response, while a seven demonstrated a "high" response. The subjects answered the demographic information by filling in the required data in the blanks provided.

Subjects

The ticket managers received a cover letter asking for their assistance, a survey instrument, and a self-addressed stamped envelope. The cover letter explained that for the purposes of the follow-up survey and associated data that anonymity would not be possible. The ticket managers who had not returned their surveys within four weeks received a phone call soliciting the information. Several subjects (six) returned the survey via fax machine. Twenty-three of the twenty-six NHL teams (88.5%), twenty-six of the twenty-eight MLB teams (92.9%), twenty-seven of the twenty-nine NBA teams (93%), and twenty-five of the thirty NFL teams (83.3%) returned their surveys for a total response rate of 89.4%. Table 1 lists the teams

responding to the survey.

RESULTS AND DISCUSSION

Table 2 shows the pertinent demographic data for the totals provided by the various professional sport teams.

The survey data shows that while the NFL facilities had the largest capacities and thus the highest average paid attendance, they only have the third highest average number of sell-outs (30%). The NBA, however, with the third highest average paid attendance had the highest average number of sell-outs (64%). The NHL with the lowest average paid attendance had the second highest (42%) average number of sell-outs. Major League Baseball, perhaps because of their continual labor problems, had unquestionably the lowest average number of sell-outs (14%), while enjoying the second highest average paid attendance.

It was also noteworthy that while the NFL, NHL, and NBA's average paid attendance was within 9-17% of their average capacity, MLB's average paid attendance was only 48% of their average capacity. This disparity may be due to several factors: most MLB teams play in multi-purpose facilities, in fact only the Rangers, Braves, Orioles, White Sox, Indians and Rockies play in baseball only facilities. Therefore, since most baseball games are played in stadiums that also host football events, the difference in facility size negatively impacts baseballs percentage of average paid attendance. Additionally, due to baseball's recent labor problems, overall attendance has not returned to the pre-strike numbers.

Table 3 shows the preliminary data provided that pertains to ticket information.

As previously discussed the NBA had the highest average number of sell-outs and not surprising the demand for tickets (5.76) is very close to being the highest as well. The scalping problem according to their ticket managers is also the highest (3.74). MLB with the lowest number of sell-outs and the lowest ticket demand (4.27) had the second highest scalping problem (3.65) according to their ticket managers. The NFL was a study in contrasts since they had the highest ticket demand rating

Table 1: Teams Responding to Survey

NBA	NFL	MLB	NHL
Atlanta	Arizona	Atlanta	Buffalo
Boston	Atlanta	Baltimore	Calgary
Charlotte	Buffalo	Boston	Chicago
Chicago	Carolina	California	Colorado
Cleveland	Chicago	Chicago	Dallas
Dallas	Dallas	Cincinnati	Detroit
Denver	Denver	Cleveland	Edmonton
Detroit	Detroit	Colorado	Florida
Golden State	Green Bay	Detroit	Hartford
Houston	Indianapolis	Florida	LA
Indiana	Jacksonville	Houston	Anaheim
LA Clippers	Kansas City	Kansas City	New Jersey
LA Lakers	Miami	LA	NY Islanders
Miami	Minnesota	Milwaukee	NY Rangers
Milwaukee	New England	Minnesota	Ottawa
Minnesota	NY Giants	Montreal	Philadelphia
New Jersey	NY Jets	NY Yankees	Pittsburgh
New York	Oakland	Oakland	St. Louis
Orlando	Philadelphia	Philadelphia	San Jose
Phoenix	Pittsburgh	Pittsburgh	Tampa Bay
Portland	St. Louis	St. Louis	Vancouver
Sacramento	San Diego	San Diego	Washington
San Antonio	San Francisco	San Francisco	Winnipeg
Seattle	Seattle	Seattle	
Toronto	Washington	Texas	
Utah		Toronto	
Washington			

(5.77), while experiencing the lowest scalping problem (2.80). The NHL, however, was a picture of consistency with the third highest ticket demand (5.43) and the third highest scalping problems (3.24).

The authors are currently constructing an additional comprehensive survey to be sent again to all current ticket managers involved in

professional sport. The additional survey will ask more in depth questions regarding the teams philosophy regarding scalping and related legal questions pertaining to local scalping ordinances and enforcement policies. The continuation of the study will hopefully elicit the authors with enough information to develop an industry paradigm regarding scalping. This would provide

Table 2: Demographic Data on Team Facilities

Sport	Average Capacity	Average Number Of Sell-Outs/Per Total Home Games	Adjusted Percentage	Average Paid Attendance
NHL	17,989	17.09/41	41.7%	15,722
MLB	53,536	11.43/81	14.1%	28,297
NBA	19,180	26.25/41	64.0%	15,963
NFL	68,208	4.83/16	30.2%	61,948

useful data for new franchises as well as for the various league offices.

CONCLUSION

One aspect of this dilemma not mentioned often enough pertains to simple economics: the law of supply and demand. As long as a demand exists for the tickets and the consumer is willing to pay a higher cost than face value legislation alone is not a viable answer. Thus ticket scalping joins a list of topics in Sport Management where theory and practical application deviate noticeably. The theorists maintain that ticket scalping can be effectively legislated, and with proper enforcement, reasonably controlled. The practical reality of the situation is that in many of the sport and entertainment markets in the United States scalpers vastly outnumber the law enforcement officials attempting to eliminate the sale of these tickets. Many times the police will make a significant number of arrests, but the scalpers will be back in force for the next event, in some situations the very next day. The scalping business is so lucrative that present penalties do not act as a deterrent for the scalpers. In those markets where there is scalping legislation the ticket brokers will disguise their fees as payment for inclusive meals or for transportation to the event.

ASSOCIATED CASES

- Estell v. Birmingham 286 So. 2d 872 (Ala. 1973)
- Gold v. DiCarlo 235 F. Supp. 817 (S.D. N.Y. 1964)
- Kirtley v. State 84 N.E. 2d 712 (Ind. 1949)
- Levine v. Brooklyn National League Baseball Club 36 N.Y.S. 2d 474 (Sup. Ct. Kings Cty. 1942)
- Nebbia v. New York 291 U.S. 502 (1934)
- New Jersey Ass'n of Ticket Brokers v. Ticketron 543 A.2d 997 (N.J. 1988)
- People v. Shepherd 141 Cal. Repr. 379 (1977)
- State v. Youker 585 P.2d 43 (Ore. App. 1978)
- Tyson & Brothers- United Theater Ticket Offices v. Banton 273 US 418 (1927)

Table 3: Ticket Information

Sport	Ticket Demand Rating (1-7)	Scalping Problem Rating (1-7)
NHL	5.43	3.24
MLB	4.27	3.65
NBA	5.76	3.74
NFL	5.77	2.8

REFERENCES

- Bailey, A. L. (1993, August). London theater, ticket scalpers and agents. <http://www.cs.ucl.ac.uk/misc/uk/london/london-theatres.html>
- Blount, R. (1979, February 5). Hey I got the ducks. *Sports Illustrated*, 50, 32-35.
- Borzillo, C. (1994, November, 19). Ticketmaster sets Clapton club strategy; 2 ticket, credit card rule intended to cut scalping. *Billboard*, 106, 14-15.
- Criscuolo, P. J. (1995). Reassessing the ticket scalping dispute: The application, effects and criticisms of current anti-scalping legislation. *Seton Hall Journal of Law*, 5 (1), 188-221.
- Cruz, Jr., A. (1995, March/April). Congress considers federal ban on ticket scalping. *The Sports Lawyer*, 15.
- Curtis, T. R. (1996, June). The right of facility managers to exclude patrons. *The Sports, Parks & Recreation Law Reporter*, 10, 1, 4-5.
- Evans, R. (1996, October 28- November 3). Bogus tickets blamed for overflow crowd. *Amusement Business*, 15.
- Happel, S. K. & Jennings, M. M. (1995, February 23). Herd them together and scalp them. *The Wall Street Journal*, p. A14.
- In praise of touts. (1991, May 25). *The Economist*, 21.
- Morrow, D. (1996, August 4). Scalping: Gritty hand of a not-so-free market; supply, demand and the big show. *New York Times*, p. F7.
- Seligman, D. (1995, October 30). Scalping lives. *Fortune*, 238-239.
- Zankel, P. L. (1992). Wanted: Tickets- A reassessment of current ticket scalping legislation and the controversy surrounding its enforcement. *Seton Hall Journal of Law*, 2 (1), 129-149.
- Zoltak, J. (1996, October 28- November 3). Thwarting ticket scalpers: PAFAS group offers tips. *Amusement Business*, 11, 14.

*Does Your School
Library Subscribe to
JLAS?*

HELP!

If you have extra copies of Vol. 1, #1, and Vol. 2, #1, please send them to the editor of JLAS. The editor has no more copies of these issues.

Thank you!