

# BOXING IN THE UNITED STATES: REFORM, ABOLITION OR FEDERAL CONTROL? A NEW JERSEY CASE STUDY

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## I. INTRODUCTION

Since the inception of legalized gambling in Atlantic City in

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1978,<sup>1</sup> casino executives have attempted to provide suitable mass entertainment attractions to lure gamblers to their establishments.<sup>2</sup> As a result, New Jersey's boxing industry has experienced unprecedented growth along with corresponding problems.<sup>3</sup> The New Jersey State Commission of Investigation<sup>4</sup> (SCI) noted in a 1984 report that "[t]he expansion of the boxing industry in New Jersey has precipitated increasingly serious problems caused by inadequate . . . regulation. These problems have been exacerbated by the utilization of prizefighting as a gambling casino business promotion."<sup>5</sup> Thus, in 1985, the SCI recommended the abolition of boxing in New Jersey.<sup>6</sup>

In an effort to make boxing safer and more reputable within the state, the New Jersey Legislature has recently introduced legislation seeking reform.<sup>7</sup> This article will review those proposed bills and enacted legislation in New Jersey and compare ongoing

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<sup>1</sup> N.J. STAT. ANN. §§ 5:12-1 to -5 (West 1988).

<sup>2</sup> Berger, *High Rollers Attracted By Major Fights*, N.Y. Times, Jul. 23, 1987, at B9, col. 1.

<sup>3</sup> In 1976 there were 11 professional boxing cards presented in New Jersey. *Boxing Reform: Hearings on H.R. 1778 before the Subcomm. on Commerce, Transp. and Tourism of the House of Reps. Comm. on Energy and Commerce*, 98th Cong., 1st Sess. 81 (1983) (Statement of Robert W. Lee, Deputy Comm'r, N.J. State Athletic Comm'n). This number rose to 55 in 1980. *Id.* By 1982 there were 163 boxing cards in New Jersey which helped the state surpass Nevada as the country's number one state for presenting boxing matches. *Id.* at 37. See also Sterling, *Jersey Packs a Wallop*, Star-Ledger, Mar. 13, 1983, § 1, at 24-25, col 1 (documenting New Jersey's emergence as the boxing capital of the nation).

In describing the environment that created the need for boxing reform in New Jersey, Assemblyman William P. Schuber noted that:

Before the first card was dealt or the first wheel spun in Atlantic City virtually every aspect of casino gambling was discussed by the Legislature. . . . Unfortunately, professional boxing did not get the same scrutiny and the sport literally sprouted overnight. . . . The effect of poorly controlled bouts has taken its toll on the public, on the state and on the sport's participants, the boxers. The fault lies with obsolete legislation controlling boxing.

Schuber, *And In This Corner . . . Boxing Rules Need Revamping*, N.Y. Times, May 20, 1984, at N.J. 26, col. 1.

<sup>4</sup> The New Jersey State Commission of Investigation was created in the late 1960s as part of the state's effort to control organized crime. Weissman, *The SCI's Shift In Strategy*, Star Ledger, Aug. 25, 1985, at 1, col. 1.

<sup>5</sup> *Interim Report and Recommendations of the State of New Jersey Commission of Investigation on the Inadequate Regulation of Boxing*, State of New Jersey Commission of Investigation (March 1, 1984) at 1 [hereinafter *SCI Interim Report*].

<sup>6</sup> See *Organized Crime in Boxing, Final Boxing Report of the State of New Jersey Commission of Investigation*, State of New Jersey Commission of Investigation (Dec. 16, 1985) at 127-31 [hereinafter *SCI Final Report*]. The report recommended the abolition of boxing due to the risk of brain damage, the recommendation of the AMA to ban boxing, and the goal of the participants to intentionally inflict injury. *Id.*

<sup>7</sup> See *infra* notes 111 to 158 and accompanying text.

efforts with national reforms. This review will demonstrate that New Jersey has developed high standards for boxing that will serve as a model for other states across the country. Nevertheless, this article concludes that without federal legislation there can be no truly effective regulation of boxing within the state.

## II. THE STATUS OF BOXING IN THE UNITED STATES

One critic has noted that “[i]f boxing is a sport, it is the most tragic of sports.”<sup>8</sup> While such an assessment may be extreme, it is undoubtedly true that boxing is a sport that arouses much passion among both supporters and opponents. As one 1984 New York Times editorial observed:

No modern society would tolerate gladiators fighting to death; ours forbids even dog fighting. Boxing appeals to the same instincts but is condoned because damage seems slight—only a handful of deaths each year as a result of the blood and violence spectators pay to see. What no one sees until too late is the lasting damage to boxers’ brains. . . . It’s brain damage that needs banning; boxing can survive without it.<sup>9</sup>

Controversy involving the sport is not new. In recent times, especially during the 1980s, boxing has sustained attacks in two major areas.<sup>10</sup> First, from within its ranks, boxing has been criticized for the manner in which it crowns champions and ranks boxers and for its excessive number of sanctioning bodies.<sup>11</sup> Second, external criticism has been levied against boxing because of its brutality and inherent health risks<sup>12</sup> as well as its alleged links to organized

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<sup>8</sup> Oates, *On Boxing*, N.Y. Times, June 16, 1985, § 6 (Magazine), at 30. See also *Heavyweight Looks At Boxing*, N.Y. Times, Mar. 4, 1987, at A16, col. 1.

<sup>9</sup> *Save Boxing From Barbarism*, N.Y. Times, Oct. 13, 1984, at A30, col. 1.

<sup>10</sup> See *SCI Interim Report*, *supra* note 5; *SCI Final Report*, *supra* note 6 and accompanying text.

<sup>11</sup> See Katz, *State of Boxing: From Boom To Malaise*, N.Y. Times, Oct. 24, 1984, at B11, col. 1. Boxing promoter Bob Arum has noted that “[b]oxing is in a tremendous decline. It’s an absolute travesty. The whole business smells.” *Id.* Boxer Marvin Hagler commented: “Whoever heard of three heavyweight champions of the world? The public can’t keep up with it; this guy was champ last week, but he ain’t champ this week.” *Id.* Similarly, Bobby Goodman who has worked in promoter Don King’s organization as a matchmaker noted that, “[i]t’s gotten to the point where even the professionals can’t keep up with all the champions.” *Id.* at B15. See also Neumann, *Suggestions in the Search for Credible Bouts*, N.Y. Times, Mar. 21, 1982, § 5, at 2, col. 1.

<sup>12</sup> See Trumbull, *A.M.A., Citing Danger, Asks Abolition of Boxing*, N.Y. Times, Dec. 6, 1984, at A1, col. 4. The American Medical Association (AMA) called for the abolition of boxing through the adoption of a resolution citing “the dangerous effects of boxing on the health of the participants.” *Id.* Dr. Joseph R. Boyle, President of the AMA, noted that the British and Australian medical associations had taken similar

crime.<sup>13</sup>

### A. *The Medical Issues*

In April 1985, Dr. Robert O. Voy, the United States Olympic Committee's Chief Medical Officer, announced that Johns Hopkins School of Public Health would conduct a four-year study on the effects of boxing on amateur and Olympic competitors:

Olympic boxing is one of the most popular of the Olympic sports and a cornerstone of the Olympic movement. A number of critics have stated that amateur boxers often sustain irreversible and serious injuries, particularly to the brain. No data exists to support or refute these claims. This study will provide answers . . . .<sup>14</sup>

Boxing's inherently brutal nature is the fundamental reason for seeking its abolition. The longstanding concern of the American Medical Association (AMA) regarding medical complications has led it to call repeatedly for a ban on the sport.<sup>15</sup> At the 1984 convention

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stands against boxing. *Id.* at B3, col. 5. See also Lundberg, *Boxing Should Be Banned In Civilized Countries*, 249 J. A.M.A. 250 (Jan. 14, 1983).

Dr. Nelson Richards, president of the American Academy of Neurology, also called for a ban on boxing after observing Muhammad Ali on television seeking treatment for Parkinsonism. *Assault on Boxing*, N.Y. Times, Oct. 8, 1984, at 18, col. 1. Dr. Richards noted that "[e]ven on TV it was apparent to me that he had some kind of neurological damage." *Id.* Dr. David B. Horner, president of the California Medical Association, similarly stated that boxing has "an extraordinary potential for brain damage." *Id.* He concluded that "[t]he best way to reduce the risk of serious brain injury or death in the ring is not to step into the ring at all." *Id.*

In 1984 the New York State Athletic Commission began a study of brain damage in 50 boxers. Katz, *Brain Study on Knocked Out Fighters Under Way*, N.Y. Times, Oct. 16, 1984, at B18, col. 2. Although he initially did not discover evidence of brain damage, Dr. Bennett M. Derby, Professor of Neurology at New York University noted that "[i]f you really want to know about dementia you probably have to follow [the boxers] around for a quarter-century." *Id.*

<sup>13</sup> See *infra* note 28 and accompanying text.

<sup>14</sup> *Four-Year, \$1 Million Study To Be Done On Amateur Boxing*, THE OLYMPIAN, at 44 (April 1985). The national governing body for Olympic amateur boxing, USA Amateur Boxing Federation (USA/ABF) contracted for the \$1 million study which was partially funded through a \$320,383 grant from the U.S. Olympic Foundation. *Id.* Walter Stewart, Ph.D., assistant professor of epidemiology at Johns Hopkins stated:

We plan to determine whether damage to the central nervous system occurs and whether it is temporary or permanent. If abnormalities or excessive risks are found, we want to know if they are more common in boxers when compared to other athletes and to identify early warning signs of permanent injury.

*Id.*

<sup>15</sup> See *supra* note 12 and accompanying text. Robert O. Voy, M.D., Director of the USA/ABF's Division of Sports Medicine & Science, has attacked the AMA's position on boxing:

of the AMA, Dr. Joseph R. Boyle noted that medical research indicates that acute and long-term brain injury results from even minimal exposure to boxing.<sup>16</sup> Accordingly, he encouraged physicians to engage in a national effort to ban the sport.<sup>17</sup>

In New Jersey, the safety concerns raised about boxing were at least partially linked to the expansion of the industry in the state. In 1982, when boxing generated \$8 million in television contracts and \$2.5 million in purses, the Governor's office conducted a boxing safety seminar in Atlantic City.<sup>18</sup> Commenting on the importance of boxing to the state's economy, New Jersey Consumer Affairs Director, James Barry, stated that boxing is one of only a few industries in the nation which has grown by more than 100% in one year.<sup>19</sup>

In 1983, however, New Jersey Governor Thomas Kean pointed out that economic factors alone cannot take precedence over safety and medical concerns. Governor Kean had commented that in recent years, New Jersey has become the boxing capital of the nation.<sup>20</sup> He maintained that New Jersey must be committed to improving the safety of boxing within the state.<sup>21</sup> Based on these concerns, and "[b]ecause of the urgency of assuring the physical safety of boxers at a time when the demand for fighters is outpacing the supply,"<sup>22</sup> the SCI made the following minimum recommendations for medical improvements for boxing in New Jersey: pre-li-

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Boxing and the AMA — when I hear those two words together it brings to mind a picture similar to David and Goliath. Boxing, both amateur and professional, is an imperfect but positive "little guy" in our society while the American Medical Association is currently acting like the big giant, throwing its weight around. . . .

I have always questioned the logic of the ban. The thought immediately brings several key questions to mind: 1) will it eliminate or lead to less injury; 2) haven't bans been historically counter productive and unworkable in the long run? 3) is it in the best interests of the profession to dictate the rights of individuals to pursue whatever risks they desire; and 4) is the action based on scientific fact and logic or emotion and personal taste?

Address of Robert O. Voy, M.D., World Congress of Boxing Conference (May 1986) (available in the files of the *Seton Hall Law Review*).

<sup>16</sup> Trumbull, *AMA, Citing Danger, Asks Abolition of Boxing*, N.Y. Times, Dec. 6, 1984, at A1, col. 4.

<sup>17</sup> *Id.*

<sup>18</sup> Weissman, *Seminar Targets Safety In the Ring*, Star-Ledger, Mar. 6, 1983, § 1, at 31, col. 1.

<sup>19</sup> *Id.* New Jersey hosted 163 boxing matches in 1982, and state revenues from boxing increased from \$232,000 to over \$440,000 in that year. *Id.*

<sup>20</sup> Jenkins, *Kean Stresses Safety At Seminar On Boxing*, Star-Ledger Mar. 9, 1983, at 33, col. 1.

<sup>21</sup> *Id.*

<sup>22</sup> *SCI Interim Report*, *supra* note 5, at 71.

cense physicals; periodic physical examinations; pre-fight physicals; standards for passing the pre-fight physical; urinalysis; post-fight physical examinations; and mandatory suspensions.<sup>23</sup> These proposals were adopted and are discussed in Section III of this article.

Many of these proposals were not original. Indeed, the AMA had made some of the same suggestions at congressional hearings on boxing.<sup>24</sup> In a 1983 report to then Representative James J. Florio (presently Governor of New Jersey), Neurosurgical Associ-

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<sup>23</sup> More specifically, the proposal reads as follows:

*Pre-license physicals* must be conducted only by an agency-designated physician. No fighter should be allowed into the ring unless this examination has been conducted, the results of all tests have been received and the physician has certified his fitness to participate. No agency official should have the power to waive any medical requirements.

*Periodic physical examinations* should be required in addition to the less intensive pre-fight tests. Dr. Doggett has suggested in his testimony that these examinations be conducted every two years but in his written proposals has recommended an annual test.

*Pre-fight physicals* should be conducted privately. The regulations should be strengthened to buttress a physician's right to disqualify a boxer for any medical reason.

*Standards for passing the pre-fight physical* should empower a physician to exclude a fighter who, although able to meet all customary requirements of medical fitness, nonetheless appears unable to endure the physical stress of a contest. The examining doctor should also have authority to exclude a fighter if he suspects drug use, particularly if circumstances do not enable him to resolve the issue prior to the fight.

*A urinalysis* should be required to detect drug abuse among fighters in connection with the pre-fight physical. Since the technology apparently now exists to permit urine testing in a matter of minutes, a system of random testing should at least be attempted.

*Post-fight physical examinations:* Fighters who have suffered knockouts and technical knockouts should be obligated to follow the instructions of agency physicians regarding post-fight medical procedures such as checking into a hospital for observation or undergoing specified medical examinations, or suffer license suspension or revocation. Medical suspension or revocation would be solely within the discretion of the attending agency physician, subject to later review by the medical board.

*Mandatory suspensions* for specified periods of time following knockouts or technical knockouts should be fixed by the medical board. Such suspensions should remain in effect until an agency physician authorized reinstatement after conducting a complete physical examination, including an EEG and, when indicated thereby, a CAT scan.

*Id.*

<sup>24</sup> See *Hearings on H.R. 1778*, *supra* note 3, at 43-80 (statements of Russel H. Patterson, Jr., M.D.; George D. Lundberg, M.D., on behalf of AMA; and Lonnie Ham-margren, M.D., Neurosurgical Assoc. of Nev.). The AMA proposed that at minimum, the following regulations should be enacted:

ates of Nevada echoed the AMA's call for stricter medical monitor-

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- that requirements for medical evaluations of boxers be upgraded, standardized and strictly enforced;
  - that use of safety equipment, such as plastic safety mats and padded corner posts, be mandated; and
  - that all safety measures be applied to sparring partners.

Frequent medical training seminars should be conducted for all ring personnel. We also recommend that the ring physician be authorized to stop any bout in progress, at any time, to examine a contestant and, when indicated, to terminate a bout that might, in the physician's opinion, result in serious injury. Finally, to minimize the severity of an injury that may occur we recommend that boxing bouts not be permitted unless:

- a) the contest is held in an area where adequate neurosurgical facilities are immediately available for skilled emergency treatment of an injured boxer;
- b) advanced life support systems are available at ringside; and
- c) a comprehensive evacuation plan for the removal of any seriously injured boxer to hospital facilities is ready.

*Id.* at 49-50.

At that time, the AMA was calling for reform of boxing. Its later decision to call for a ban on boxing was based on its own study, *see* Lundberg, *Boxing Should Be Banned in Civilized Countries*, 249 J. A.M.A. 250 (January 14, 1983), as well as additional reports. *See* Ross, Cole, Thompson & Kyung, *Boxers-Computed Tomography, EEG, and Neurological Evaluation*, 249 J. A.M.A. 211 (Jan. 14, 1983) [hereinafter *Boxers-Computed Tomography*]; Kaste, Vilkki, Sainio, Kuurne, Katevuo & Meurala *Is Chronic Brain Damage In Boxing A Hazard of The Past?*, THE LANCET at 1186 (Nov. 27, 1982). A third report, adopted by the AMA, concluded that:

Boxing is a dangerous sport and can result in death or long-term brain injury. However, other sports may also result in accidental death or brain injury for participants.

Amateur boxing is fairly well supervised in this country through several national organizations. Professional boxing is less well controlled since the supervision of the sport is carried out worldwide through numerous uncoordinated national, state, and local boxing commissions. Therefore, it is difficult to determine the medical chronology of injuries in boxers.

No reliable test exists to identify boxers at risk for sudden death or impending brain injury. To reduce this risk, central administrative regulations and strict medical supervision should be required for boxing.

*Brain Injury in Boxing*, 249 J. A.M.A. 254-256 (Jan. 14, 1983). One study noted that during the last three years, 40 ex-boxers were examined to determine the effects of boxing in regard to their neurological status and the computed tomographic (CT) appearance of the brain. Thirty-eight of these patients had a CT scan of the brain, and 24 had a complete neurological examination including an EEG. The results demonstrate a significant relationship between the number of bouts fought and CT changes indicating cerebral atrophy. Positive neurological findings were not significantly correlated with the number of bouts. Electroencephalographic abnormalities were significantly correlated with the number of bouts fought. Computed tomography and EEG of the brain should be considered as part of a regular neurological examination for active boxers and, if possible, before and after each match, to detect not only the effects of acute life-threatening brain trauma such as subdural hematomas and brain hemorrhages, but the more subtle and debilitating long term

ing of boxers emphasizing the need for federal regulation of boxing.<sup>25</sup> The World Boxing Council (WBC), a sanctioning body for professional boxing matches, adopted mandatory medical examination requirements at its 1980 world convention in Mexico.<sup>26</sup> The

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changes of cerebral atrophy. See *Boxers-Computed Tomography, supra*, at 211. Another report found that:

Three hundred and thirty-five deaths occurred among amateur and professional boxers worldwide during the 35-year period between 1945 and 1979. Calculation of mortality rates for the sport is imprecise, since the exact number of amateur and professional boxers in the world is unknown. However, the fatality rate for boxing has been calculated as 0.13 deaths per 1,000 participants. The following are calculated fatality rates per 1,000 participants for other sports during the same period: college football, 0.3; motorcycle racing, 0.7; scuba diving, 1.1; mountaineering, 5.1; hang gliding, 5.6; sky diving, 12.3; and horse racing (jockeys and sulky drivers), 12.8. The advisory panel had no information on how these statistics were compiled, and cannot attest to their validity or reliability.

*Brain Injury in Boxing, supra*, at 255.

<sup>25</sup> See *Report from Neurological Assoc's. of Am. to Rep. James Florio* (Feb. 15, 1983), reprinted in *Hearings on H.R. 1778, supra* note 3, at 71. The report stated that boxing should be federally regulated so that:

1) Medical information regarding the condition of boxers would be quickly available in a standardized manner by computer to insure that fight applicants are not under a medical restriction.

2) Research on the cause of boxing injuries would be greatly enhanced by the availability of the standardized information in the data pool with the medical and ring history of the boxer. The federal authority to requisition information, such as the television tapes of a fight, would allow scientific analysis of impact versus injury studies. We could then be able to identify the most dangerous aspects of the sport.

3) National standards would encourage the utilization of state of the art electronic monitoring with instant computer read electroencephalograms. Medical monitoring can be adapted to protective mouthpieces or even headgear between rounds to give immediate information on the cerebral status of boxers.

4) Standards can survive the political appointments variations of local boards. This is especially true of states with infrequent bouts and inactive, if any, medical advisory boards.

5) Uniform medical standards for the United States is the only hope to counter the influence of special interest groups such as promoters, competing boxing associations, competing networks, and even competing state commissions.

*Id.*

<sup>26</sup> *World Boxing Council Medical Safety Measures Taken in World Conventions* (1975 to 1982), reprinted in *Hearings on H.R. 1778, supra* note 3, at 184. The WBC had instituted the following medical requirements:

Mandatory Medical Examination:

- A. To extend boxing licenses.
- B. Annual renewal of licenses.
- C. After every knockout: 1) Catscan; 2) Neurological explora-



broadcast industry has expressed similar concerns.<sup>27</sup>

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tion; 3) Eye fondi; 4) EEG for comparison with prior EEG tests; 5) Electro-nistamography.

D. To travel to fight outside with at least 4 weeks before a world title fight: 1) Ophthalmology, perfect vision, eye fondi, campimentria; 2) Neurology, osteondinose reflexes, romberg, nistagemus; 3) Maxilar, teeth abnormalities to avoid inferior maxilar fractures; 4) Weight, blood pressure, heart rate.

E. Eye examination before and after fights to boxers successfully operated for retina detachments and who have been authorized to fight. The WBC does not favor a boxer with such operation to continue boxing.

F. Pre- and post-fight exams (during weigh-in and at dressing rooms after every fight regardless of result).

G. Fat tissue lab exams for approval of boxers who object to move up to heavier weights.

H. Medical supervision during training periods with a basic part of such exams being the analytical control of weight, blood pressure, heart rate, blood and urinalysis tests.

I. Any exam ordered by Commission doctors when necessary.

The above Medical Certificate must be presented plus updated yearly exam to the Medical Board where the world title is to be promoted.

*Id.* at 185. The WBC advocated Creation of the WBC Medical Card to require medical examinations for issuing licenses to professional boxers. All boxers must carry this and present it before fights, attached to other international passport. The medical card would contain all relevant medical information. Boxers who fail to comply are removed from the world ratings. *Id.* at 184.

<sup>27</sup> *Hearings on H.R. 1778, supra* note 3, at 156 (prepared statement of James McKenna, Vice President and Director, Finance Planning CBS Sports). In 1983, CBS Sports proposed the following outline for a Uniform Boxing Code:

1) *Medical Approvals*. Required medical approval, based on examinations, prior to the licensing of fighters. Examinations would include, but not necessarily be limited to, blood work, EKG's, CAT scans and urinalysis. Specific medical approval, based on pre-fight examinations, would also be required before each fight. Boxers would be certified at the specified weight - or near it - at the time contracts for a fight are signed.

2) *Suspensions*. Automatic suspensions, universally recognized, for 90 days for a fighter suffering a knockout, and 60 days for a fighter after a TKO. A new medical exam would be required prior to the resumption of boxing.

3) *Passport Licenses*. Each licensed fighter would be issued a passport, which would have his medical history, list all of his fights and have a picture and thumbprint or other means of positive identification.

4) *Uniform Ring Sizes*. Each ring would be a minimum of 18' square with a maximum of 20'. The apron would be a minimum of two feet wide. There would be one course of ensulite padding underneath.

5) *On-Site Medical Procedures*. To include (a) providing doctors' access to the ring at all times; (b) knowledge of the proximity and

*B. Corruption Issues*

While most parties agree that medical and safety procedures need to be strengthened and enforced, they differ considerably regarding the degree of corruption in the industry. Several government investigations have revealed a pervasive influence by organized crime in the sport. In December 1985, the SCI noted that:

Despite memory lapses that seemed to occur only when interrogation touched on organized crime and despite a posture of childlike innocence, the testimony of hard-bitten promoters, managers, trainers and other boxing specialists before the SCI corroborated the penetration of boxing in this state by mobsters and mob associates. Although . . . the probe findings offer no conclusive proof that any particular boxer is a mob pawn or that organized crime has "fixed" prize fights, nonetheless the inquiry provides ample confirmation of underworld intrusion.<sup>28</sup>

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quality of care available at the local hospital; (c) ambulances and paramedical unit on hand.

6) *Licensing*. Standard licensing of managers, trainers and promoters.

7) *Standing 8 count*.

8) *Judging Standards*. Uniform standards for judging a fight including a 10-point must system.

9) *Three Knockdown rule*.

10) *Standard length of time between rounds*.

11) *Reciprocity among states which have adopted the Code*.

*Id.* at 160. The CBS Sports' proposal was developed as an alternative to H.R. 1778 and was designed to be implemented as a uniform statute. *Id.* at 158. McKenna noted in his March 18, 1983 testimony that "CBS does not believe that such a Federal Commission is the appropriate means to regulating boxing. The proposed legislation would inject the federal government into an area which traditionally has been left to the States." *Id.* at 154.

<sup>28</sup> *SCI Final Report, supra* note 6, at 2-3. The report also stated that:

The SCI noted earlier the difficulties of achieving an effective exposure of organized crime's machinations. No intelligent reader needs to be lectured about the sinister impact of the mob's strongarm gluttony on various facets of the construction, shipping, trucking, waste collection and other essential industries despite decades of investigations at every government level. Law enforcement monitoring of organized crime's presence in boxing, however, has been sporadic at best and mob interest in the sport since its revival in New Jersey as a casino gaming industry promotional gimmick easily kept pace with increased opportunities for profit, organized crime's life-blood. As for the difficulty exposing organized crime's incursion into boxing in this state, the SCI's record of executive session interrogations shows that out of 70 witnesses who appeared to testify under subpoena, 17 exercised their Constitutional privilege to remain silent. Of those who invoked their Fifth Amendment right, the Commission granted immu-

Corruption and mismanagement, however, remain the major concerns to state boxing commissions, legislatures and the boxing industry.

### C. Administration Problems

The administration of the boxing industry is two-tiered. On one level, state athletic commissions regulate the profession within their respective jurisdictions.<sup>29</sup> On another level, various governing bodies of the sport rank boxers within their organization and sanction boxing matches that involve title fights for the organization's championship.

Generally, a state athletic commission is a statutorily-created state agency which regulates a sport as designated by its charters.<sup>30</sup> Occasionally, these commissions will regulate several related sports such as boxing, wrestling and the martial arts.<sup>31</sup> These commissions are responsible for issuing boxing licenses and often consider "personal conduct, character, physical condi-

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nity (after consultation with appropriate prosecutorial authorities) to 12, and testimony, much of it evasive, subsequently was extracted from them.

*Id.* at 2.

The SCI's Executive Director, James J. Morley, testified in June 1985 before the President's Commission on Organized Crime and stated that "[o]ur Commission regards boxing as an extremely brutal sport. Perhaps this explains its attraction for organized crime as a money making vehicle. . . . [T]he SCI strongly recommends that the federal government assume—in cooperation with the states—primarily regulatory responsibility." *President's Commission on Organized Crime* at 12 (New York, June 25, 1985).

The federal government began to investigate the possible links between boxing and organized crime in the 1960's. In 1960, former Senator Estes Kefauver held the first hearings on boxing reform. Senator Kefauver's concern was the criminal control of boxing. Underworld domination of professional boxing was the subject of extensive hearings before the Senate Antitrust and Monopoly Subcommittee in June and December, 23 years ago. . . . A reading of the transcript demonstrates significant evidence of a sport in disarray. Monopoly control, mismatches, poor safety considerations for fighters, and fighter exploitation were all questions raised in the 1960 hearings. *Hearings on H.R. 1778, supra* note 3, at 140 (statement of Rep. Pat Williams).

<sup>29</sup> In 1983, the House Committee on Energy and Commerce issued its recommendations on H.R. 2498, legislation designed to create the Congressional Advisory Commission on Boxing. *House Comm. on Energy and Commerce, Congressional Advisory Comm'n on Boxing*, H. R. REP. NO. 188, 98th Cong., 1st Sess. (1983). The report noted that "43 states have athletic commissions which regulate both amateur and professional boxing. Two states, Florida and Ohio, regulate boxing through county commissioners. Five states, Georgia, Oklahoma, South Carolina, Wyoming, and Colorado do not have any form of boxing regulations." *Id.* at 3.

<sup>30</sup> BERRY AND WONG, *THE LAW AND BUSINESS OF THE SPORTS INDUSTRIES*, VOL. II, § 1.22-4, at 31 (1986).

<sup>31</sup> *Id.*

tion, criminal record, and (primarily for promoters) financial condition" before a license will be granted.<sup>32</sup> In 1983, it was estimated that there were approximately 5,000 licensed professional boxers in the United States who were governed by state boxing regulations.<sup>33</sup>

Many authorities believe that the problems of professional boxing in the United States are largely due to the varying degrees of authority exerted by state athletic commissions. In a Congressional hearing, Representative Florio described the regulation of boxing by individual states as a non-system. Each state determines the extent to which it will regulate boxing.<sup>34</sup> This regulatory scheme has been allowed to function without federal regulation because Congress has generally avoided regulating sports which "have developed mechanisms which perform[] a self-regulating function."<sup>35</sup> The problem with such a system is that promoters who find one state's regulations too restrictive move on to a more permissive environment.<sup>36</sup>

In addition to concerns about the effectiveness of state athletic commissions, severe criticism has been leveled at the World Boxing Association (WBA) and the United States Boxing Association (USBA), two of professional boxing's sanctioning bodies.<sup>37</sup> Rarely are these competing governing organizations in agreement, since each organization believes its system is superior and more effective than the other. In 1983, Jose Sulaiman, President of the WBC, stated that "the WBC believes that we have the most reliable voting system in the world today. The Ratings Committee consists of the leading, most recognized sports writers on five continents, as well as a commission representative from each of

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<sup>32</sup> *Id.* The authors explain: "Because state athletic commissions are statutorily created state agencies, they are considered to be acting under color of state action and thus must meet constitutional requirements of due process." *Id.*

<sup>33</sup> *Brain Injury in Boxing*, *supra* note 24, at 255. There are also approximately 15,000 ten to fifteen year olds who participate in the National Amateur Athletic Union (AAU) Junior Olympic boxing program and 12,500 boxers who are involved in the Golden Gloves Association of America program. *Id.* at 254.

<sup>34</sup> *Hearings on H.R. 1778*, *supra* note 3, at 1. Many states do not even have such statewide governing bodies. *Id.*

<sup>35</sup> *Id.* The hearings revealed that "[w]ith the recent increase in television coverage of boxing events, boxing's nonsystem has been strained to the breaking point. State authorities, unable to cope with the increase in the workload, have permitted some fights to take place without thorough background checks and health examinations being completed . . . ." *Id.* at 2.

<sup>36</sup> *Id.*

<sup>37</sup> *Suggestions in the Search for Some Credible Bouts*, N.Y. Times, Mar. 21, 1982, § 5, at 2, col. 1.

the five federations in the world."<sup>38</sup> In defending his organization, Sulaiman stated that the WBC must have a world-wide outlook and that, "[i]t [was his] very firm belief that it would be unfair if one country undertook the responsibility for rating boxers throughout the world. The dangers in doing so are highly evident."<sup>39</sup>

The sanctioning groups have more than their quota of critics. Former world heavyweight champion Floyd Patterson has testified that, "I would not like to see boxing abolished. I think if you cleaned up some of the people outside the ring, like promoters, matchmakers, people that bring . . . bouts together, I think you will have better fights."<sup>40</sup> Sig Rogich, Chairman of the Nevada State Athletic Commission, stated in 1983 that, "I have always advocated that the rating system should be taken out of the hands of the organizations, the WBC and the WBA, for that matter the USBA . . . . I think that then you take it away from the backrooms, you take it away from the general aspersions that have come forth with regard to certain boxers being ranked and others not being ranked."<sup>41</sup>

#### D. Ethical Problems

Professional boxing has always had its share of unethical promoters and managers willing to take advantage of uneducated and naive boxers. As the AMA's Council Report noted, "[t]he large sums of money involved in professional boxing encourage accusations of fraud and corruption."<sup>42</sup> In *Tilelli v. Christenberry*,<sup>43</sup> a New York court reached a similar conclusion:

The Legislature was plainly apprehensive of the unwholesome influence exerted by gamblers, criminals and other disreputable persons who dominated professional boxing. Since it featured violence, the sport attracted full-blooded patrons who

<sup>38</sup> *Hearings on H.R. 1778*, *supra* note 3, at 181 (prepared statement of Jose Sulaiman, President, World Boxing Council).

<sup>39</sup> *Id.* at 182. At least one authority, broadcast analyst Howard Cosell, disagreed, stating:

[Y]ou would find in short order that if we had our own national rating system and if we paid no attention to them and created our own system for the development of world champions, you would find that the WBC and the WBA would shortly perish. The WBA is a joke to begin with, with the WBC not much above it.

*Id.* at 15.

<sup>40</sup> *Id.* at 16 (statement of Floyd Patterson, N.Y. State Athletic Comm'n).

<sup>41</sup> *Id.* at 94 (statement of Sig Rogich, Chairman, Nev. State Athletic Comm'n).

<sup>42</sup> *Id.* at 59 (citing *Brain Injury in Boxing*, *supra* note 24, at 255).

<sup>43</sup> 1 Misc. 2d 139, 120 N.Y.S.2d 697 (Spec. Term 1953).

bet heavily on the outcome of the bouts. And . . . many were not adverse to "fixing" fights at the behest of professional gamblers.<sup>44</sup>

Many authorities agree that the major ethical problems in the sport today stem from the "monopolistic" control by major promoters. This occurs when one promoter controls all the top fighters in one weight classification and dictates the fighters, the location of the event, and what broadcaster is granted the rights to telecast the fight.

In 1986, for example, Tim Witherspoon was scheduled to defend his WBC heavyweight title against Tony Tubbs.<sup>45</sup> When Tubbs withdrew because of an alleged injury, Witherspoon's manager, Carl King, agreed that Witherspoon would fight James "Bonecrusher" Smith.<sup>46</sup> Don King, Carl King's father, promoted the fight.<sup>47</sup> Witherspoon lost his crown when Smith knocked him out in the first round.<sup>48</sup>

Witherspoon had attempted to cancel the fight before his loss, contending that Carl King was not authorized to agree to a switch of opponents.<sup>49</sup> He was unsuccessful, however, because New York regulations permit managers to effectuate such substitutions. It was later revealed that Carl King was also a co-manager for Smith which violated a New York State Athletic Commission rule barring managers from having two fighters on the same card without special permission.<sup>50</sup> As New York state's Inspector General, Joseph A. Spinelli queried, "Can a manager negotiate properly for his fighter when he is also managing that fighter's opponent? And can the manager of both fighters negotiate properly on their behalf when the promoter is a relative of his? These are some of the questions we want to answer."<sup>51</sup> New York State Athletic Commissioner Jose Torres stated that, "[t]he Commission was never notified that Carl King was involved in the management of Bonecrusher Smith."<sup>52</sup> Given the magnitude of the fight and Witherspoon's pre-fight objections, it is hard to fathom how such an important fact could be overlooked.

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<sup>44</sup> *Id.* at 143, 120 N.Y.S.2d at 700.

<sup>45</sup> *State Inquiry On Title Bout*, N.Y. Times, Dec. 26, 1986, at D9, col. 1.

<sup>46</sup> *Witherspoon Is Cleared On Tests*, Boston Globe, Dec. 20, 1986, at 37, col. 1.

<sup>47</sup> *See supra* note 45.

<sup>48</sup> *Id.*

<sup>49</sup> *See supra* note 46.

<sup>50</sup> *See supra* note 45.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

Matters became more confused when Witherspoon was suspended from further competition when his post-fight urinalysis exam tested positive for marijuana.<sup>53</sup> The suspension was lifted a few days later when Witherspoon demonstrated that a mixup had occurred and that he had actually passed the test.<sup>54</sup> Torres announced that "[i]t was a clerical error. Somebody made a critical error in putting 'positive' when it should have been 'negative'. . . . We made a mistake. Witherspoon passed both tests."<sup>55</sup> Witherspoon's response was that: "I knew this was going to happen (the drug positive). Don King's trying to blackball me."<sup>56</sup>

As a result of administrative errors in his office, New York State Athletic Commission Chairman Jose Torres asked three of the Commission's employees to resign over the Witherspoon incident in January 1986.<sup>57</sup>

### III. NEW JERSEY'S ATTEMPT TO LEGISLATE BOXING REFORM

#### A. *Impetus for Reform*

As late as March 1983, there was little negative publicity about boxing regulation in New Jersey. In the five years preceding 1984, the state had emerged as the "professional prize fighting capital of the nation."<sup>58</sup> The number of boxing cards were at an all-time high. Cable television had rediscovered the profitability of staging fights to fill programming time. Purses awarded for fights were skyrocketing.<sup>59</sup>

Symptomatic of a developing problem was the perception that "[t]he state is very flexible in meeting the needs of the industry. . . . We like New Jersey because it's convenient, its boxing commission is fair, it wants the exposure . . . ."<sup>60</sup> Within weeks of that statement, the first reports began to surface that the SCI was probing the regulation of boxing in the state and paying particularly close attention to the relationship between promoters and the state athletic commission.<sup>61</sup>

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<sup>53</sup> See *supra* note 46.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* See also King *Aloof In Financial Fuss*, N.Y. Times, Dec. 17, 1986, at D25, col.

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<sup>57</sup> Berger, *Boxing Changes Sought*, N.Y. Times, Jan. 23, 1987, at 47, col. 3.

<sup>58</sup> *Jersey Packs a Wallop*, *supra* note 3.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 24 (statement of Don King Productions spokesperson).

<sup>61</sup> Piserchia, *SCI Studies Promotion of Atlantic City Boxing*, Star Ledger, Mar. 22, 1983, at 21, col. 1.

While the SCI's investigation may have focused public attention on abuses in the system, a reform movement already existed within the state legislature. In January 1983, prior to the SCI's involvement, the New Jersey Assembly Independent Authorities and Commissions Committee began to evaluate boxing reform measures.<sup>62</sup> Initially, reform measures centered on medical and safety issues but later expanded to embrace a whole spectrum of boxing reform issues.<sup>63</sup>

The impetus for reform in New Jersey involved medical and safety concerns over boxing. The committee chairman testified about these subjects at Congressional hearings in 1983.<sup>64</sup> He categorized three areas of concern: "Concerns regarding the health of fighters before they step into the ring, . . . concerns regard[ing] improved safety of fighters during a boxing match, [and] . . . concerns . . . aimed at better organization of boxing models in the industry as a whole."<sup>65</sup> From the testimony presented in Congress, it was evident that many New Jersey state legislators were worried that too much reform could stifle the resurgence of the boxing industry in the state.<sup>66</sup>

Although segments of the federal bill covered safety concerns, the legislation ultimately introduced was much broader than that originally contemplated during the hearings. This was due, in part, to the abuses and irregularities of boxing regulations in New Jersey uncovered by the SCI investigation.<sup>67</sup>

### B. *SCI Interim Report*

The *SCI Interim Report*,<sup>68</sup> issued on March 1, 1984 to New Jersey Governor Thomas Kean and the Legislature, focused primarily on the operation of the Office of State Athletic Commis-

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<sup>62</sup> See *Public Hearing Before Assembly Independent Authorities and Commissions Committee on the Promotion and Conduct of Boxing Matches in New Jersey* (Jan. 19, 1983); *Public Hearing Before Assembly Independent Authorities and Commissions Committee on "Medical Examinations of Boxers"* (July 27, 1983).

<sup>63</sup> See *Public Meeting before Assembly Independent and Regional Authorities Committee on Testimony on Status of and Possible Reform to Boxing in the State of New Jersey* (May 19, 1986).

<sup>64</sup> *Hearings on H.R. 1778*, *supra* note 3, at 38-40.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 41.

<sup>67</sup> See *SCI Interim Report*, *supra* note 5, at 3.

<sup>68</sup> *SCI Interim Report*, *supra* note 5. See *Jersey State Panel Finds Inadequacies In Boxing Controls*, N.Y. Times, Mar. 20, 1984, § 2, at B17, col. 5; Sullivan, *Boxing Catches Jersey Flat-Footed*, N.Y. Times, Apr. 29, 1984, at E6, col. 3.



sion (OSAC) although it also addressed issues such as taxation and medical safety. The introduction set the tone for the report:

So intense has become the demand for boxers that many with even less than minimal physical and professional eligibility are crowding the fight scene throughout the state. As a result boxing contests no longer can be conducted in this state without breaking the law at worst or bending the rules at best — all at high cost to the integrity of the industry.<sup>69</sup>

The report characterized the OSAC, which New Jersey had established in 1931, as “a single-commissioner office to regulate the conduct and taxation of professional and amateur boxing, wrestling and ‘sparring’ exhibitions and performances.”<sup>70</sup> Noting that the OSAC Commissioner potentially wielded great power, the report stated that “[h]is regulatory control is practically absolute and his rule-making powers are restrained only by a requirement that they be consistent with the OSAC statute.”<sup>71</sup> The operation of the OSAC was complex and involved multiple tasks.

[It] overs[aw] professional boxing, amateur boxing and professional wrestling. [It] . . . license[d] all of the participants . . . the matchmaker, the promoter, the seconds, the managers, the boxers and doormen, the box office employees. . . . [It] review[ed] their applications. . . . [It] collect[ed] a fee from them, depending upon what they ha[d] applied for. . . . The fees [were] set forth by [the] rules and regulations. . . . If someone want[ed] to put on an amateur boxing event, they first [had to] receive permission through the commissioner. . . . Once that [was] done [it] sent an inspector to collect the taxes and assist the doctor in what he [had] to do.<sup>72</sup>

The SCI concluded that the existing OSAC system was unable to effectively regulate boxing in New Jersey,<sup>73</sup> noting that OSAC regulations were routinely ignored.<sup>74</sup> The most egregious violations were found in the area of licensing in which boxers and pro-

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<sup>69</sup> *SCI Interim Report*, *supra* note 5, at 1.

<sup>70</sup> *Id.* at 3.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 4.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 5. The SCI noted in its interim report that:

[V]iolations of OSAC's regulations were and still are commonplace. Some rules are bypassed merely because OSAC believes they serve no purpose or unduly inhibit accepted if inappropriate practices, others because of carelessness or failure to follow businesslike procedures. As a result, licenses are issued on the basis of applications that are incomplete or falsified and permits to perform various duties critical to the integrity of the sport are granted without ques-

motors ignored even minimal standards.<sup>75</sup> Beyond licensing, the SCI was concerned about boxing's sanctioning bodies.<sup>76</sup> The SCI feared that these groups (WBC, WBA, USBA, etc.) had failed to carry out effectively their designated purposes such as establishing weight classifications, setting minimum standards for rating fighters, and keeping accurate records.<sup>77</sup> Most disturbing, however, were the interrelations between the prizefight sanctioning groups and various state boxing regulators.<sup>78</sup> For example, the OSAC Deputy Commissioner also served as president of the USBA.<sup>79</sup> In its interim report, the SCI lambasted these sanctioning bodies and their so-called regulatory function. The SCI concluded that "the boxing organizations . . . adversely affect state regulatory efforts,"<sup>80</sup> and that since "[t]heir rules take precedence over state law . . . their relationships with state agencies breed conflicts of interest."<sup>81</sup>

The *SCI Interim Report* also raised concerns about the amounts and methods of collecting tax revenues from boxing matches held in New Jersey.<sup>82</sup> The SCI noted that:

New Jersey's OSAC is not collecting gate and television taxes in the manner and form required by its enabling law. Some tax payments are illegally delayed. Improper "expense" deductions are permitted which reduce tax revenues. False or incomplete reports accompany some tax payments. The full

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tion. Background inquiries, particularly criminal record checks, are sparse and superficial if made at all.

*Id.*

<sup>75</sup> *Id.* The *SCI Interim Report* stated that:

Lax licensing procedures have been a particularly flagrant example of inept administration. Even conceding the agency's personnel limitations, the statutory and regulatory violations that are condoned in order to assure that scheduled events take place are inexcusable. Further, not even the most minimal modern business practices are followed, such as establishing job qualifications, performance criteria or personal conduct standards for the entire range of boxing activities requiring licensure.

*Id.*

<sup>76</sup> *Id.* at 16.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 18.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 21. In 1984 the New Jersey admission tax on OSAC licensed events was 10% of the gross, except for championship bouts where the tax was lowered (as an inducement to stage the bout in the state) to 5%. *Id.* at 23. In that year, New Jersey also had a 5% tax on revenues received for the sale or lease of television on radio tapes for transmissions received or exhibited in New Jersey. *Id.* at 26.

tax rate imposed by statute is not enforced.<sup>83</sup>

The SCI also examined medical and safety problems within the sport, reasoning that “[n]o effort to promote the integrity and stability of professional boxing can make progress without reducing the physical hazards to boxers.”<sup>84</sup> The SCI found regulatory deficiencies in the OSAC’s implementation of safety and medical measures. It also found that the OSAC’s frequent disregard of statutory and regulatory requirements exhibited in other areas carried over to safety and medical issues.<sup>85</sup> The SCI identified an “ineffective enforcement system”<sup>86</sup> as a major problem. It blamed this ineffectiveness on a lack of manpower, a resulting failure to review record keeping, to inspect training facilities and to identify the participants in training sessions.<sup>87</sup> The report also mentioned insufficient funding for thorough medical examinations<sup>88</sup> along with potential drug use by boxers competing in matches<sup>89</sup> and the quality and professionalism of many ringside support personnel, e.g., “cut men.”<sup>90</sup>

Finally, the *SCI Interim Report* documented numerous conflicts of interest.<sup>91</sup> It observed that “the dialogue between the SCI and the OSAC officials and licensees strongly suggests that . . . the discretionary power of the boxing commissioner to permit exceptions to . . . the rules provides a particularly vulnerable area for misconduct.”<sup>92</sup> The SCI noted that boxing promoters were making gifts to OSAC officials, such as free hotel rooms and meals as well as financial donations to conventions for boxing groups that served the interests of OSAC officials.<sup>93</sup>

The SCI made a number of interim recommendations to the governor and legislature while its investigation continued, hoping to spur instant legislative re-structuring of OSAC.<sup>94</sup> The SCI recommended that:

control of all policy issues [be transferred] from a single administrator to a body of overseers who would determine the operational pattern. A professional manager should be ap-

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<sup>83</sup> *Id.* at 21.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 44.

<sup>86</sup> *Id.* at 47.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 49.

<sup>89</sup> *Id.* at 56.

<sup>90</sup> *Id.* at 57.

<sup>91</sup> *Id.* at 60.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 65-66.

<sup>94</sup> *Id.* at 68.

pointed to implement policy decisions. Such an executive must recognize that his primary obligation is not to promote solely the economic aspects of boxing but to develop and maintain its integrity as a professional sport.<sup>95</sup>

The SCI further recommended:

- retaining the revised operation within the Attorney General's jurisdiction;<sup>96</sup>
- financing the new operation from the revenues generated from license fees and taxes;<sup>97</sup>
- instituting controls so that regulations are not routinely bypassed;<sup>98</sup>
- staffing;<sup>99</sup>

<sup>95</sup> *Id.* at 69.

<sup>96</sup> The SCI reasoned:

The revised regulatory process should remain in the Attorney General's department. However, it should have stronger legal guidance than in the past. As befits an agency attached to the state's chief law enforcement officer, it should be motivated—prodded, if necessary—to enforce its own law and related regulations. If it is to remain with the Division of Consumer Affairs, a much greater degree of managerial oversight must ensue than has been the practice.

*Id.*

<sup>97</sup> *Id.* The SCI stated:

The cost of administering an expanded regulatory program should be paid out of the control agency's revenues from license fees and taxes. The agency for the first time should have its own budget so it can more effectively fulfill its fiscal requirements. Taxes and fees should be collected in a timely fashion and to the full extent of the law, with no exceptions, exemptions or other exclusions not permitted by law. If need be, taxes and fees should be increased to finance certain medical safety proposals that the SCI believes are essential to the welfare of boxers.

*Id.*

<sup>98</sup> *Id.* The SCI advised:

A revised administrative process should eliminate certain questionable practices that have become part of its day-by-day conduct of the sport. Instant licensing should be banned. No 11th hour substitutions of boxers (or managers, seconds, etc.) should be permitted without prior confirmed qualification and identification. Rules requiring advance notice of fight cards should be enforced rather than ignored and should be buttressed by strong penalty provisions against violations.

*Id.*

<sup>99</sup> *Id.* The SCI stated:

Agency staff duties and responsibilities should be defined by more effective personnel guidelines than now exist. Additional back-up officials should be employed to maintain regulatory stability in emergencies. Antiquated pay-scales must be replaced by more realistic compensation.

*Id.*

- record keeping;<sup>100</sup>
- taxation;<sup>101</sup>
- enforcement of medical and safety regulations;<sup>102</sup> and
- establishment of a strict code of ethics to govern conflicts of interests.<sup>103</sup>

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<sup>100</sup> *Id.* at 70. The SCI stressed:

New Jersey should set an example for computerized recordkeeping, particularly on boxers who are state residents or to whom the agency has otherwise easy access. No boxer, from any state, should be permitted to fight without complying with requirements for advance submission of his career record, medical data, and personal background that determine his eligibility. As noted earlier in this report, federal registration of boxers may be the only appropriate solution to the sport's recordkeeping chaos.

<sup>101</sup> *Id.* The SCI reasoned: "Various classes of taxation should be eliminated," and not be on any sliding scale based on the perceived importance of a fight. In addition, the SCI called for "[a] collection system to assure the integrity and timeliness of the tax collection . . ." *Id.*

<sup>102</sup> *Id.* With respect to medical and safety concerns, the SCI stated:

The SCI subscribes to lawmaker Schuber's proposal to establish a medical board. However, such a board should have more than only an advisory responsibility. Its rulings should have the force of law. In matters involving complex medical issues, no regulatory official should have the discretionary authority to dismiss the expert judgment of medical professionals. As this report has demonstrated, safety precautions have frequently been skirted in efforts to make boxing in New Jersey more lucrative to promoters. A truly effective medical board should have the authority to promulgate regulations defining not only the scope of physical examinations but also the standards for passing them. Members of such a board would, of course, include specialists in cardiology, neurosurgery, orthopedics and ophthalmology.

*Id.*

<sup>103</sup> *Id.* at 72. The SCI explained:

There may be good reasons why a New Jersey boxing representative should be a member of one or more of the national or international sanctioning bodies. Nonetheless, their purposes and interests are so at odds with those of the state's regulatory system as to require an absolute prohibition on officeholding in such organizations by any agency official or employee.

The sanctioning bodies should not be allowed any role whatsoever in the selection of ring officials for exhibitions in New Jersey. Similarly, no control agency regulation should ever be modified or waived to conform with a conflicting provision of a sanctioning body.

Compensation to all agency licensed officials including judges, referees and timekeepers, should be paid directly by the agency. Agency-licensed doormen and box office employees should be appointed by the agency rather than by a casino or other party against whom state gate taxes are to be assessed.

Lastly, OSAC must adopt a strict code of ethics, including a provision barring its officials and employees from accepting free meals, rooms or other gratuities from promoters or other licensees or any other entity participating in the sponsoring of an event. Also, officials, employees and appointees and their families (spouses, parents, chil-

The legislature's reaction to the *SCI Interim Report* was generally positive.<sup>104</sup> The Committee Chairman agreed with many of the SCI's recommendations and indicated that he favored the New York model of "a body of overseers rather than a single commissioner."<sup>105</sup> He noted that financing a new regulatory body would be very important since without sufficient funding, stringent rule-making and safety standards would not be enforceable.<sup>106</sup> He further emphasized that:

If we are to prevent the injury-producing mismatches caused by last-minute substitution on fight cards, if we are to prevent the injury-producing neglect and inadequacy that often characterize medical examinations; and if we are to prevent our boxing industry from becoming a show, then we must provide our commission with adequate numbers of personnel to enforce the regulations we all agree are necessary.<sup>107</sup>

In enacting new procedures, the Chairman explained that no weight should be given to the economic impact of regulation or the number of fights which would be held in the state.<sup>108</sup>

The *SCI Interim Report*, in contrast to the final report, was praised as a thorough review of the state of the boxing industry in New Jersey. One editorial provided that "[t]he SCI has conducted a useful investigation that brings to light a deplorable situation that might not otherwise have attracted public attention. As for the fight game, it should clean up its act voluntarily without waiting for regulatory reform."<sup>109</sup> It was now up to the legislature to revamp the

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dren) should be barred from having any financial interest or contractual relationship with any person or entity operating in a capacity subject to licensure by the agency.

*Id.*

<sup>104</sup> See *Assembly Majority News* (Mar. 21, 1984). The statement noted that "the Chairman of the Assembly committee which acts on legislation regulating boxing in New Jersey said he welcomes the State Commission of Investigation's recommendations as a ringing endorsement for the changes I have sought in order to give New Jersey a healthy and honest fight industry." *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 2.

<sup>108</sup> *Id.*

<sup>109</sup> *Sucker Punch*, *Star Ledger*, Mar. 23, 1984, at 20, col. 1. Not all reactions to the SCI's report as proposed legislation were favorable. Dan Duva, promoter for Main Event, stated:

The state put the commission in this position. They don't give the commission the money and the staff, then they criticize the commission.

Boxing is the traditional whipping boy of politicians. Why? Be-

regulatory system for professional boxing in New Jersey.<sup>110</sup>

### C. Initial Legislative Proposals and Enactments

In 1984 Assemblyman Fortunato, Chairman of the Independent Authorities and Commissions Committee, introduced two bills addressing boxing reform.<sup>111</sup> The first bill mandated the development of a new regulatory body, the State Athletic Control Board (SACB), consisting of three members appointed by the Governor and confirmed by the Senate.<sup>112</sup> The members would have power to "exercise sole discretion, management, control and supervision over all public boxing."<sup>113</sup> SACB was empowered to appoint all necessary deputy commissioners, inspectors, judges, referees, physicians, and other personnel in order to effectively regulate boxing in New Jersey.<sup>114</sup>

In addition, the board and all its employees were prohibited from (1) accepting gratuities from members of the boxing industry,<sup>115</sup> (2) gambling in any of New Jersey's casinos,<sup>116</sup> (3) ruling on any action before the board involving a spouse or other family member,<sup>117</sup> and (4) having any direct financial or other business interest with any boxer, promoter or other individual regulated by the board.<sup>118</sup>

cause of the stereotypes that it involves the lower socio-economic classes and because it doesn't have the prestige.

There are just as many knockouts in a football game as in boxing. A football player gets knocked cold in the first quarter of a game. He gets revived and comes back in the third quarter. He has suffered a concussion. But is that regulated? No.

Could you imagine if a politician said a football player that was knocked out had to be suspended for 60 days, which is the rule for boxing. Can you imagine the grief that politicians would receive?

Bontempo, *Politicians Repeat Boxing People With Legislation Call*, Atlantic City Press, Apr. 3, 1984, at 21, 30, col. 1.

<sup>110</sup> The OSAC attempted internal reform after the release of the *SCI Interim Report* although its efforts came too late to avoid legislative scrutiny. In December 1984 (six months after issuance of the *SCI Interim Report*) the OSAC proposed extensive changes in its regulatory system for boxing, especially in relation to health and safety issues. Piserchia, *State Seeks to Ensure Boxers' Safety, Health*, Star Ledger, Sept. 2, 1984, § 1, at 24, col. 1.

<sup>111</sup> See A. 2353, 201st Leg., 1st Sess. (July 30, 1984); A. 2468, 201st Leg., 1st Sess (Sept. 20, 1984).

<sup>112</sup> A. 2353 § 3a.

<sup>113</sup> *Id.* § 4.

<sup>114</sup> *Id.* § 5b & c.

<sup>115</sup> *Id.* § 6a.

<sup>116</sup> *Id.* § 6b.

<sup>117</sup> *Id.* § 6c. & d.

<sup>118</sup> *Id.* § 6e.

The bill also established New Jersey's first State Athletic Control Board Medical Advisory Council empowered to develop "regulations, rules and standards of examinations" necessary to protect boxers' physical welfare<sup>119</sup> and to develop a medical education program for physicians employed by the board.<sup>120</sup> It was also charged with reviewing annually the credentials and performances of physicians employed by the board<sup>121</sup> and with advising the board on "any study of equipment, procedures or personnel which . . . [would] promote the safety of participants."<sup>122</sup>

The legislation also instituted strict new licensing procedures for "promoters, boxers, . . . their managers, scorers and trainers [and] . . . any officials."<sup>123</sup> No individual without a license could conduct or perform in a boxing match in the state.<sup>124</sup> The legislation granted the board wide powers for reviewing and investigating all licenses.<sup>125</sup> Under its investigative powers, the board could examine individuals under oath,<sup>126</sup> subpoena witnesses or records,<sup>127</sup> suspend licenses through the Attorney General's office,<sup>128</sup> grant immunity,<sup>129</sup> and levy civil penalties for violations.<sup>130</sup> The board was under the mandate that no license should be granted to individuals, "who do not possess good character, honesty, integrity and responsibility."<sup>131</sup>

Under the legislation, all licensed boxers would be required to carry a passport book containing "an accurate history of all matches that the boxer has engaged in since becoming a professional, . . . the matches won and lost and the matches in which there was a technical knockout or a knockout."<sup>132</sup> Boxers who did not comply with the mandate faced the possibility of having

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<sup>119</sup> *Id.* § 8b. The Medical Advisory Council would have seven members appointed by the Governor and would represent the fields of dentistry, cardiology, neurology, ophthalmology and orthopedics. *Id.* § 8a.

<sup>120</sup> *Id.* § 8c.

<sup>121</sup> *Id.* § 8d.

<sup>122</sup> *Id.* § 8f.

<sup>123</sup> *Id.* § 14b.

<sup>124</sup> *Id.* § 14a.

<sup>125</sup> *Id.* § 9.

<sup>126</sup> *Id.* § 9c.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* § 9e.

<sup>129</sup> *Id.* § 10.

<sup>130</sup> *Id.* § 11. The board could levy a "civil penalty of not less than \$250 and not more than \$25,000 for the first offense and not less than \$500 and not more than \$50,000 for the second and each subsequent offense." *Id.*

<sup>131</sup> *Id.* § 15a.

<sup>132</sup> *Id.* § 15f.



their licenses suspended after a hearing.<sup>133</sup> The bill also required all promoters to obtain a permit from the SACB before staging a match or selling admission to a closed circuit telecast or radio broadcast of a boxing event and further mandated that the board be notified of any transmission of a boxing match originating in New Jersey.<sup>134</sup>

Strict provisions, designed to enforce the collection of tax monies owed to the state, required box office reports for all ticket sales and complimentary ticket distributions.<sup>135</sup> The Attorney General's office would prosecute any non-payments.<sup>136</sup>

Finally, the legislation mandated:

- the board to study the use of thumbless gloves as a safety precaution;<sup>137</sup>
- judges to score boxing matches at the end of each round of the fight and report the scores to the board's representative at the match;<sup>138</sup>
- promoters to have no financial dealings with the manager or boxer who was participating in the promoter's boxing event;<sup>139</sup>
- officials to take no cash payments at boxing matches;<sup>140</sup>
- the establishment of a "New Jersey Commission to Study Benefits to be Provided To Professional Boxers" to study possible pension plans for boxers; and<sup>141</sup>
- the board to conduct inspections of training facilities in the state.<sup>142</sup>

The General Assembly approved this legislation on December 6, 1984, by a unanimous vote,<sup>143</sup> and two months later the New Jersey Senate voted its approval.<sup>144</sup> Governor Thomas Kean signed the measure into law on March 15, 1985.<sup>145</sup>

Moving through the legislature during the same period was As-

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* § 18a-c.

<sup>135</sup> *Id.* §§ 19a-d and 20a & b.

<sup>136</sup> *Id.* § 20e.

<sup>137</sup> *Id.* § 25.

<sup>138</sup> *Id.* § 26.

<sup>139</sup> *Id.* § 27.

<sup>140</sup> *Id.* § 28.

<sup>141</sup> *Id.* § 30.

<sup>142</sup> *Id.* § 29.

<sup>143</sup> N.J. STAT. ANN. § 5:2A-1 (West 1988); see Piserchia, *Sweeping Reforms For The Boxing Industry Sail Through the Assembly*, Star Ledger, Dec. 7, 1984, at 47, col. 1.

<sup>144</sup> 72 N.J. Leg. Index A55 (1984-1985).

<sup>145</sup> *Id.* See 1985 N.J. Sess. Law Serv. 83 (codified at N.J. STAT. ANN. § 5:2A-1 to -31 (West 1988)).

semblyman Fortunato's second piece of legislation.<sup>146</sup> This bill was designed to make New Jersey's tax on boxing matches more competitive with other states, notably Nevada and New York, so that New Jersey could attract more lucrative and prestigious title fights.<sup>147</sup> Before enactment of the legislation, New Jersey taxed the sale of tickets to boxing matches at five to ten percent of gross receipts depending upon whether the match was a title bout.<sup>148</sup>

Fortunato contended that New Jersey was not attracting more title bouts because the promoters "were being taxed to the point where they were losing money by promoting fights in New Jersey."<sup>149</sup> The bill changed the formula, taxing box office receipts on a sliding scale starting with three percent on the first \$25,000, four percent on the next \$50,000, five percent on the next \$125,000, six percent on any amount exceeding \$200,000, with no match being assessed more than \$100,000 in gross receipts taxes.<sup>150</sup> The tax on televised bouts was also revised by taxing ticket sales at five percent for the first \$50,000 in ticket sales, three percent for the next \$100,000, two percent for the next \$100,000 and one percent for any amount in excess of \$250,000.<sup>151</sup>

The SCI was asked to assess the impact of the Fortunato bill on tax revenues as well as that of its companion bill, introduced in the Senate by Senator Richard J. Codey.<sup>152</sup> The SCI was particularly concerned with how the reduction of tax revenues would affect the funding of the SACB.<sup>153</sup>

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<sup>146</sup> See *supra* note 111.

<sup>147</sup> Piserchia, *Title Bout Lure Goes To Kean*, *Star Ledger*, Dec. 7, 1984, at 47, col. 6. See also Note, *Boxing, Wrestling, and Combative Sports*, 10 SETON HALL LEG. J. 327, 329-30 (1987).

<sup>148</sup> 1984 N.J. Sess. Law Serv. 248, at 504 (Assembly Revenue, Finance and Appropriations Committee statement).

<sup>149</sup> See *supra* note 147.

<sup>150</sup> See *supra* note 111.

<sup>151</sup> *Id.*

<sup>152</sup> Letter from Arthur S. Lane, Chairman, State of New Jersey Commission of Investigation to Hon. Richard J. Codey and Hon. Buddy Fortunato (Oct. 9, 1984) (discussing Senate No. 2184, Assembly No. 2468) (available in the files of the *Seton Hall Law Review*).

<sup>153</sup> *Id.* Chairman Lane noted in his correspondence that:

In regard to the rate schedule for live gate revenues, the amendment would result in a 70% reduction in revenue from most events held in this state. And, while tickets to these events are not subject to the general sales tax (*N.J.S.A.* 54:32B-3), ticket sales grossing up to \$200,00 would be taxed at less than the 6% general sales tax rate. Furthermore, the rates under this schedule would be substantially less than the average of the rates imposed in other major boxing states, according to a 1983 survey conducted by Deputy Commissioner Lee. The rate schedule for broadcast revenues is identical to that proposed

The General Assembly passed the second Fortunato bill on November 19, 1984 by a vote of 72-2<sup>154</sup> and the Senate approved it on December 6, 1984, without debate, by a 32-1 vote.<sup>155</sup> Governor Thomas Kean signed the measure into law on January 7, 1985.<sup>156</sup>

Since its implementation, promoters have criticized the legislation for taxing revenues from ticket sales in out-of-state venues.<sup>157</sup> As one author noted, "if ninety percent (90%) of the spectators are viewing the event from outside the state limits, then only ten percent (10%) of the broadcast revenues should be taxable under the law."<sup>158</sup>

#### D. *Investigative Probes of Boxing*

While the New Jersey Legislature was enacting regulatory reforms, the SCI continued to probe the boxing industry within the state. The SCI probe ran parallel to efforts by the New Jersey State Police, the Attorney General's Division of Gaming Enforcement, and federal criminal investigators who were also interested in boxing's ties to organized crime.<sup>159</sup> Then-Deputy Superintendent of the New Jersey State Police, Lt. Col. Justin Dentino, believed that criminal elements were present in the state's boxing industry. Dentino noted that, "[w]e've been keeping close tabs on the situation for more than a year now and if one thing is for certain, organized crime is involved."<sup>160</sup> James Flanagan, Deputy Director of the Division of Gaming Enforcement (DGE) noted that, "[d]uring the course of our investigation we have discovered some questionable associations involving promoters."<sup>161</sup>

The boxing promoters vigorously denounced these charges.

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by Mr. Lee as a result of the 1983 survey and was apparently designed to put New Jersey in a position to compete with other states. Due to the confusing language of the present statute and the unorthodox manner in which it was enforced, it is impossible to make any useful comparison with the proposed schedule.

*Id.*

<sup>154</sup> 72 New Jersey Leg. Index A57 (1984-1985).

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* See *Taxation - Boxing, Wrestling, and Sparring Exhibits and Performances*, 1984 N.J. Sess. Law Serv. 248 (West) (codified at N.J. STAT. ANN. §§ 5:2A-1 to - 31 (West 1988)). The Act became effective on January 7, 1985. *Id.*

<sup>157</sup> See Piserchia, *supra* note 147, at 330.

<sup>158</sup> *Id.*

<sup>159</sup> Piserchia, *State Spars with Boxing Industry On Mob Ties to Boardwalk Fights*, *Star Ledger*, Apr. 22, 1984, § 1, at 1, 24, col. 1.

<sup>160</sup> *Id.* See also Rudolph & Piserchia, *U.S. Probing Graft In New Jersey Boxing*, *Star Ledger*, Jun. 23, 1984, at 1, 4, col. 4; *Inquiry Reported On Jersey Boxing*, *N.Y. Times*, Jun. 9, 1984, at C5, col. 1.

<sup>161</sup> See *supra* note 159, at 24.

Bob Arum of Top Rank, Inc. charged that “[t]hey say, they have numerous examples of prominent boxing promoters consorting with known organized crime figures. We are the prominent promoters; we are the ones the world sees on national television from Atlantic City and we are challenging them to name names.”<sup>162</sup>

During the SCI's investigations, the New Jersey boxing community was embroiled in a controversy involving one of its long time regulators, Robert W. Lee.<sup>163</sup> In its interim report, the SCI raised questions concerning the propriety of Lee serving as both Deputy Commissioner of the OSAC and as president of the USBA, a boxing sanctioning group that Lee was supposed to regulate in his state position.<sup>164</sup> Further investigation of this dual position led to Lee's dismissal from the state regulatory agency.

Initially, Lee was slated to succeed to the position of state athletic commissioner when that position opened in February 1984 upon “Jersey Joe” Walcott's resignation.<sup>165</sup> Governor Kean nominated Lee for the commissioner's position which he assumed in an acting capacity while the Senate considered his permanent confirmation.<sup>166</sup> This all occurred before the *SCI Interim Report* was issued. In March 1984, however, the New Jersey Executive Committee on Ethical Standards began an investigation of the SCI's conflict-of-interest accusations and other charges including:

- alleged payment of expenses for trips taken by Deputy Commissioner Lee by promoter Butch Lewis;
- improper use of complimentary tickets; and,
- improper deductions which Lee allowed promoters to take on gross television revenues.<sup>167</sup>

The New Jersey ethics law prohibits state officials from accepting directly or indirectly, “any gift, favor, service, or other thing of value” from anyone offering it with the intent to influence that official.<sup>168</sup> In addition to prohibiting gifts, the law also forbids officials from having “any interest, financial or otherwise,

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<sup>162</sup> Sterling & Jenkins, *Fight Promoters Counter State On Mob Claims*, *Star Ledger*, Apr. 27, 1984, at 1, 16, col. 1.

<sup>163</sup> *Id.*

<sup>164</sup> Piserchia, *Acting Boxing Chief Admits 'Election' Gifts Amid Ethics Probe*, *Star Ledger*, Jun. 28, 1984, at 21, col. 1.

<sup>165</sup> *SCI Interim Report*, *supra* note 5, at 18.

<sup>166</sup> *Nomination Criticized*, *N.Y. Times*, Mar. 24, 1984, at A46, col. 4.

<sup>167</sup> See Piseichia, *supra* note 159, at 24.

<sup>168</sup> N.J. STAT. ANN. § 52:13D-23(e)(6) (West Cum. Supp. 1989).

direct or indirect, or engag[ing] in any business or transaction or professional activity, which is in substantial conflict with the proper discharge of his [or her] duties in the public interest."<sup>169</sup>

In June 1984, Lee admitted that he had accepted contributions from individuals for the president's post of the WBA and for his unsuccessful attempt at winning the USBA presidency.<sup>170</sup> On July 9, 1984, the Attorney General's office assumed the daily operations of the State Athletic Commissioner's Office pending the outcome of the various state and federal investigations.<sup>171</sup> On August 15, 1984, the Ethics Commission charged Lee with nine counts of state ethics violations.<sup>172</sup> Governor Kean withdrew Lee's nomination for the post of commissioner on August 16, stating that, "I do not intend to submit a nomination to the Senate until the charges against Mr. Lee are resolved."<sup>173</sup>

On October 3, 1984, the Executive Commission on Ethical Standards sent the charges filed against Lee to the Office of Administrative Law for a hearing.<sup>174</sup> In December 1984, investigators determined that the evidence supporting several of the charges against Lee were insufficient to press charges.<sup>175</sup>

Nearly one year later, Lee, who was still serving as acting

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<sup>169</sup> *Id.* § 52:130-23(e)(1).

<sup>170</sup> *Jersey's Law Office Takes Over Boxing*, N.Y. Times, July 10, 1984, at B10, col. 5.

<sup>171</sup> *Id.*

<sup>172</sup> Katz, *Ethics Panel Acts In Lee Case*, N.Y. Times, Aug. 16, 1984, at B19, col. 4. The charges that were announced against Lee included that the Commissioner:

1. Accepted money from Don King at a 1982 WBA function.
2. Accepted contributions of \$5,000 each from promoters Butch Lewis and Dan Duva for WBA president's campaign.
3. Accepted additional contribution from Duva, Lewis and Russel Peltz at 1982 WBA convention.
4. Accepted \$6,700 photocopying machine from promoter Bob Arum for IBF headquarters in Newark.
5. Accepted \$4,400 contribution from Don King for IBF function.
6. Accepted \$1,470 contribution from Butch Lewis for IBF function.
7. Solicited funds for IBF function from promoter Lou Falligno.
8. Solicited and accepted \$14,000 loan from Butch Lewis for the IBF.
9. Solicited Atlantic City Casinos and other promoters for other contributions.

*Id.* See also Katz, *Jersey Ethics Inquiry Faults Boxing Aide*, N.Y. Times, July 20, 1984, at A19, 22, col. 1.

<sup>173</sup> Katz, *Ethics Panel Acts in Lee Case*, *supra* note 172, at B19, col. 4.

<sup>174</sup> Piserchia, *Ethics Panel Forwards Case Against Athletic Chief*, Star Ledger, Oct. 4, 1984, at 44, col. 3.

<sup>175</sup> Piserchia, *Ethics Probers Decline To Charge State Boxing Officer On Fund-Raiser*, Star Ledger, Dec. 25, 1984, at 40, col. 2.

commissioner, was given a one-month suspension and fined \$600 for the remaining ethics violations.<sup>176</sup> Administrative Law Judge David Mowyek found that Lee committed six violations of the ethics code,<sup>177</sup> and gave Lee the option of either resigning his post with the state or with the USBA.<sup>178</sup> Lee opted to resign his state post and Governor Kean promptly appointed Larry Hazzard to succeed him.<sup>179</sup> Hazzard assumed his duties as acting commissioner on December 2, 1985, and was sworn in on February 2, 1986.<sup>180</sup>

#### E. Final SCI Report

Following the issuance of the *Interim SCI Report*, the new SACB attempted to reform New Jersey's boxing operations. In January and June of 1985 the SACB, under direction of the Attorney General's office, issued regulations tightening safety and licensing standards.<sup>181</sup> According to the Attorney General, the safety reforms exceeded "the recommendations made by the SCI and also completely revised the regulations dealing with the ring and boxing equipment."<sup>182</sup> The regulations required pre-fight and post-fight physicals and increased the ringside physician's authority over equipment and stopping a fight based on medical concerns.<sup>183</sup>

The new regulations required boxers to furnish proof of age and/or identity in order to be licensed to fight in New Jersey.<sup>184</sup> In addition, the regulations required boxer-manager contracts be filed with the Athletic Commission.<sup>185</sup> Further, ethical standards were instituted to avoid conflicts of interests, such as restrictions on promoters and their family members from having any financial interests in an athlete.<sup>186</sup> The SACB's efforts, however, were

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<sup>176</sup> *Lee Suspended*, N.Y. Times, Aug. 23, 1985, at A18, col. 1; See also Piserchia, *Ethics Vote On Lee Is Questioned*, Star Ledger, Aug. 23, 1985, at 20, col. 3.

<sup>177</sup> *In the Matter of Robert W. Lee, Acting State Athletic Commissioner*, Office of Administrative Law, Docket No. ETH 7895-84 (Jul. 26, 1985).

<sup>178</sup> *Id.*

<sup>179</sup> Piserchia, *Larry Hazard Named Acting State Athletic Chief*, Star Ledger, Nov. 27, 1985, at 26, col. 2.

<sup>180</sup> Interview with State Athletic Control Board, Trenton, New Jersey (Oct. 1, 1987).

<sup>181</sup> Schwaneberg, *Jersey Takes Offense With 'Most Comprehensive' Boxing Reforms*, Star Ledger, June 20, 1985, at 40, col. 1.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

not enough to dent the criticism that the SCI would deliver in its final report.

After concluding its investigation, the SCI issued its final report on May 1, 1984, entitled *Organized Crime in Boxing—Final Boxing Report of the State of New Jersey Commission of Investigation*.<sup>187</sup> As the title suggests, the report focused heavily on the SCI's perception that organized crime had deeply penetrated the operation of boxing within the state.<sup>188</sup>

The SCI's report created controversy not only because of its view on organized crime, but more so because the SCI advocated the abolition of boxing as a sport.<sup>189</sup> The SCI stated that "[t]he presence of organized crime in boxing . . . warrants aggressive official reaction. . . . [N]o human endeavor so brutal, so susceptible to fraud and so generally degrading should be accorded any societal standing."<sup>190</sup> The SCI argued that "a further assessment of the industry has convinced the Commission that . . . the inherent problems of professional boxing—and most particularly its constant threat of bodily destruction, mentally and physically—cannot be effectively resolved at any governmental level."<sup>191</sup>

The SCI identified several factors influencing its decision. These included the risk of brain damage,<sup>192</sup> the AMA's call for a ban on boxing,<sup>193</sup> and the underlying concern that intentional in-

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<sup>187</sup> *SCI Final Report*, *supra* note 6.

<sup>188</sup> *Id.* at 3.

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 127.

<sup>192</sup> *Id.* SCI stated that:

Perhaps the single most pivotal factor in the Commission's determination that boxing should be abolished is its investigative conclusion that not even the sturdiest of statutory controls will reduce the brutality of the sport to any significant degree. In addition, the Commission believes that no truly viable social or economic benefits can be derived from such legal savagery. Too many boxers retire as physical or mental derelicts. Indeed, the long-term brain damage caused by hundreds of blows to the head has been verified by numerous authoritative medical studies. As a result, the most renowned specialists have publicly urged either that boxing be permitted only if cerebral attacks can be prevented (which is improbable) or that the sport be outlawed in totality. George Vecsey of the *New York Times* several years ago questioned the moral and social validity of boxing as a sport in a column about a title bout that was so lopsided that he portrayed the defeated boxer as the victim of a "sanctioned mugging." Vecsey's conclusions on that occasion coincide with the Commission's views.

*Id.*

<sup>193</sup> *Id.* at 128. The SCI viewed the AMA call for a ban on boxing as significant. The SCI report noted that "[t]he American Medical Association has been in the

jury was the objective of those who participated in the sport.<sup>194</sup> The SCI concluded that none of the "arguments put forth by proponents of boxing have effectively countered the factor most pivotal in shaping the Commission's call for abolition—the certainty of critical brain and/or visual damage."<sup>195</sup>

In the event boxing was not banned, the SCI provided alternate recommendations including the following:

1. no sanctioning body;
2. background checks of all state licensed positions;
3. casino vendor licensure;
4. enforce licensing requirements;
5. medical council powers;
6. ban head blows;
7. require headgear;
8. require safer gloves;
9. ambulance availability;
10. medical insurance;
11. two physicians at ringside;
12. post-fight examinations; and
13. time lapse between bouts (30 day minimum, 60 days in cases of knockouts).<sup>196</sup>

The SCI stated that such "[a]lternative recommendations are submitted with the admonition that they should be swiftly enacted or promulgated, strictly enforced and be kept free of exceptions and other efforts to compromise their objectives."<sup>197</sup> The SCI doubted, however, that any regulation could be effective in the boxing profession without federal regulation.<sup>198</sup>

The SCI's call for a ban on boxing received a predictably cool response. Dan Duva, one of the leading boxing promoters in New Jersey, contested alleged links between boxing and organized crime. Duva swore that "no individual or group of individuals allegedly linked to organized crime has exerted any influence whatsoever over the conduct of professional boxing in New Jersey."<sup>199</sup> Bob Arum labeled the SCI's final report as "McCarthyism" and stated that,

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forefront of the campaign to abolish boxing ever since the 1982 ring-injury death of Korean boxer Duk Koo Kim. The *Journal of the American Medical Association* first urged a nationwide ban in January, 1983, in an editorial which also suggested the potential problem of enforcing a prohibition of the sport." *Id.*

<sup>194</sup> *Id.* at 129.

<sup>195</sup> *Id.* at 130-31.

<sup>196</sup> *Id.* at 131-34.

<sup>197</sup> *Id.* at 131.

<sup>198</sup> *Id.*

<sup>199</sup> Thomas, *Jersey Boxing Ban Criticized*, N.Y. Times, Dec. 12, 1985, at B27, col. 1.



“[i]n all the years we’ve been in business we’ve never . . . had any contact with organized crime figures.”<sup>200</sup> Lee, who was previously removed from the Athletic Commission but who retained his role as president of the International Boxing Federation, asserted that a ban on boxing would “drive the sport underground where there would be no controls.”<sup>201</sup> Jose Torres, was particularly critical of the SCI’s conclusions and alleged that “the reports [were] done superficially . . . just to get some publicity.”<sup>202</sup>

The media reacted to the SCI’s call for a ban on boxing as overly extensive and pre-mature. Experts agreed that boxing needed reform, but believed that a ban should only be considered if reform measures failed. An editorial response from WOR-TV in New Jersey stated that:

The commission insists that in addition to subjecting fighters to brain damage and possible death, the boxing world is inhabited by underworld figures. And no matter how stringently the state tries to regulate the industry, organized crime stays firmly entrenched. So, the commission’s answer is ban professional boxing. They may be right. But, we believe professional boxing deserves a chance to clean up its act. Last year, some fairly comprehensive reforms became law in New Jersey. We believe more time is needed to test their effectiveness . . . .<sup>203</sup>

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<sup>200</sup> *Id.*

<sup>201</sup> *Id.* Marvin Kohn, a deputy New York State Athletic Commissioner, noted that a study of boxing in New York State during 1917-20, when boxing was banned in the state, indicated that 34 boxers died during that time span from participating in unsupervised, illegal bouts. *Id.* Bob Arum, Chairman of Top Rank, Inc., has stated that:

The abolition of boxing may even be dangerous. After all, in boxing, contestants are of a comparable weight. If aggressive kids go out and fight each other on an unsupervised basis, the extent of injuries can be greater. In certain Latin countries, where amateur boxing programs aren’t strong, kids go to the beach and punch the hell out of each other. At least in boxing, there is discipline and strict training.

*Report on the Seventh International Sport Summit, “Status Report: Boxing—AMA vs. Top Rank—The Great Debate—Should Boxing Be Outlawed?”* New York, New York (1985).

<sup>202</sup> *Torres Criticizes Jersey Study*, N.Y. Times, Dec. 13, 1985, at D23, col. 4.

<sup>203</sup> *Don’t Ban Boxing Yet*, E-572, WOR-TV Editorial, Secaucus, N.J. (Jan. 9-15, 1986). The editorial further stated that:

The safety of the fighters must be our first priority. Thumbless gloves are being tested in New Jersey now. We’d like to see protective headgear used too. Headgear won’t prevent a well-placed knock-out punch. But it may help protect against the kind of repetitious blows that cause a fighter to end up “punchdrunk.” And we want even stronger rules to prevent the kind of mismatches that can do so much physical damage.

We believe the emphasis in professional fights must be shifted from knockout power, to style, form and points. If that causes fight

*F. Further New Jersey Legislative Proposals for Control and Reform of Boxing*

On March 6, 1986 Assemblyman Schuber introduced A. 2204, *An Act Concerning Boxing, Wrestling, Kick Boxing and the Combative Sports*.<sup>204</sup> The bill was designed to implement "the recommendations of the SCI concerning boxing in the State, and apply those recommendations to kick boxing, combative sports, and wrestling."<sup>205</sup>

Schuber's new legislation was aimed at enhancing safety and addressing the ethical concerns raised by the SCI. The bill defined the role of the State Athletic Control Board Medical Advisory Council and recommended regulations and standards for the medical examination of all boxing participants.<sup>206</sup> Those recommendations included pre-fight and post-fight examinations, periodic comprehensive examinations and an extensive medical examination prior to the issuance or renewal of any licenses.<sup>207</sup> The legislation envisioned the Council advising the Athletic Board on "equipment, procedures or personnel which [would] . . . promote the safety of participants."<sup>208</sup>

Schuber's bill also required: (1) two licensed physicians in attendance at all boxing matches;<sup>209</sup> (2) a 30-day hiatus between fights extending to 60 days if the fighter suffered a knockout in his previous bout;<sup>210</sup> (3) post-fight medical examinations;<sup>211</sup> and (4) medical insurance provided by promoters.<sup>212</sup> The bill authorized the council to study the use of protective headgear during fights,<sup>213</sup> and to develop and institute a fighter's passport book for use in New Jersey.<sup>214</sup>

Additionally, the legislation required background investigations of all state-licensed boxing promoters<sup>215</sup> and approval of

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fans to lose interest in the sport, we won't need to ban boxing, it'll die a natural death.

*Id.*

<sup>204</sup> A. 2204, 203d Leg., 1st Sess. (March 6, 1986).

<sup>205</sup> *Id.* at 6 (statement accompanying bill).

<sup>206</sup> *Id.* § 8a.

<sup>207</sup> *Id.* 8b.

<sup>208</sup> *Id.* § 8f.

<sup>209</sup> *Id.* § 7.

<sup>210</sup> *Id.* § 9.

<sup>211</sup> *Id.* § 8.

<sup>212</sup> *Id.* § 10.

<sup>213</sup> *Id.* § 3.

<sup>214</sup> *Id.* § 2(f).

<sup>215</sup> A. 2204 § 2 c-d.

any promoter conducting bouts in Atlantic City casinos under strict state casino regulations.<sup>216</sup> It prohibited involvement in the leadership of the boxing sanctioning groups by State Athletic Control Board members or employees.<sup>217</sup> On October 20, 1986, the New Jersey Assembly approved the bill.<sup>218</sup>

Reaction to the proposed legislation was mixed. One controversial provision concerned whether the Medical Advisory Council should be an advisory group as originally intended under the 1985 legislation or whether it should become a rule-making body. In testimony before the Assembly Independent and Regional Authorities Committee, the SCI Commissioner urged that the Medical Council be given power to promulgate binding rules and regulations.<sup>219</sup>

*G. New Jersey State Athletic Control Board Regulation of Boxing: Suggestions for Further Reform*

It is still unclear how successful the revamped New Jersey State Athletic Control Board (SACB) will be in its governance of boxing in New Jersey. Adequate funding remains a concern and will affect the board's success over the next few years. Effective implementation of new reforms will be difficult without proper financing.

Finding qualified personnel to operate the board might also pose a problem. Management should not be limited to only those individuals who have "hands-on" experience in the boxing world, because personnel with sport management backgrounds and degrees are available today. Administrative qualifications should be given preference in hiring personnel for the board while experience within the boxing profession should remain an important qualification.

The SACB, of course, may promulgate its own regulations<sup>220</sup> or accept proposals from other state agencies. For instance, the Attorney General's office, to which the SACB reports, might sug-

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<sup>216</sup> A. 2204 § 5.

<sup>217</sup> A. 2204 § 4.

<sup>218</sup> See 76 N.J. Leg. Index (1988-89). The bill preceded an identical bill, A. 508. *Id.* The Assembly passed A. 508 on January 25, 1988, the Senate approved it on March 28, 1988 and the Governor signed the bill into law on May 4, 1988. *Id.* See N.J. STAT. ANN. § 5:2A-8 (West Cum. Supp. 1989).

<sup>219</sup> See generally Remington, *Assembly Panel Hears Split 'Decision' on Boxing Reforms*, Star Ledger, Apr. 30, 1986, at 10, col. 1.

<sup>220</sup> See, e.g., N.J. ADMIN. CODE 13:46-8.19.

gest a regulation.<sup>221</sup> Press releases, which are often distributed after such regulations are implemented, inform concerned parties and the general public that reform is taking place in the industry.

Further efforts are needed to ensure that those involved in boxing, especially the boxers, are made aware of SACB rules and regulations. The numerous SACB rules and regulations should be codified in a handbook. Moreover, the SACB should also develop a manual, in an understandable format, containing pertinent information affecting boxers. Boxers would then understand that SACB is an advocate of the fighters' economic, medical, and safety-related rights.

#### IV. FEDERAL LEGISLATIVE PROPOSALS TO REFORM BOXING

##### A. *Historical Attempts To Regulate and Reform Boxing*

Federal attempts to regulate professional boxing began in 1960 when the Senate Subcommittee on Antitrust and Monopoly investigated the sport.<sup>222</sup> The subcommittee's four-year investigation focused on the inadequacy of states' control of the boxing industry and the presence of organized crime in the sport.<sup>223</sup> Legislation introduced by the Senate in 1961 and 1963 would have established an Office of United States Boxing Commissioner within the Department of Justice.<sup>224</sup> The Office would have been authorized to establish rules and regulations in all areas of the sport, including (1) contracts (television included) between parties, (2) physical examination of boxers, (3) centralized data collection of statistics on each fighter and their fights, and (4) license issuance, suspension and revocation.<sup>225</sup> Provisions in each bill allowed for judicial review of the commissioner's actions as well as criminal penalties for violation of the law and regulations.<sup>226</sup>

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<sup>221</sup> For example, in a letter dated June 20, 1984, from Irwin I. Kimmelman, Attorney General, to Robert W. Lee, Deputy Commissioner of the State Athletic Commission, the Attorney General suggested that the Commission (predecessor of the SACB) review its rules involving boxing gloves (available in the files of the *Seton Hall Law Review*).

<sup>222</sup> *Hearings on S. 1474 Before the Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, United States Senate, 87th Cong., 1st Sess.* (1961).

<sup>223</sup> See H.R. REP. NO. 188, 88th Cong., 1st Sess., pt. 2, at 5 (1963).

<sup>224</sup> *Id.*

<sup>225</sup> See S. 1474, 87th Cong., 1st Sess. (1961); S. 1182, 88th Cong., 1st Sess. (1963).

<sup>226</sup> *Id.*

While neither of the bills totally preempted state regulation of boxing, both would have established minimum national standards for the states to model. Senator Clair Engle, a co-sponsor of *S. 1182*, stated that states had failed to regulate the profession because of their lack of regulatory power and control over the interstate aspects of the business.<sup>227</sup> Neither bill introduced received congressional action. In 1964, however, Congress enacted a law which made bribery in connection with a sporting event a federal crime, thus addressing one of the concerns of the failed legislation.<sup>228</sup>

In 1965, the House of Representatives endorsed legislation creating a Federal Boxing Commission.<sup>229</sup> The bill, *H.R. 8635*, would have established an independent three-member Federal Boxing Commission "authorized to license boxers, managers, agencies, promoters, matchmakers, referees, judges or any other person or business connected with the broadcast or telecast of boxing matches across interstate lines or into foreign countries."<sup>230</sup> The Commission would have had the power to prevent the telecast or broadcast of any boxing event determined to be affected by bribery, collusion or racketeering.<sup>231</sup> Despite strong support, the Senate failed to pass the bill, primarily due to the untimely death of Senator Kefauver, the bill's primary proponent.<sup>232</sup>

Between 1965 and 1977, Congress did not address the issue of professional boxing reform. Then, in 1977 the Subcommittee on Communications of the House Committee on Interstate and Foreign Commerce conducted oversight hearings on network sports practices.<sup>233</sup> The Committee focused on the business relationship between Don King Productions and the American Broadcast Company regarding their joint production of the *U.S. Boxing Championships*.<sup>234</sup> The Committee had three basic concerns:

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<sup>227</sup> Cong. Rec. S5,031 (daily ed. March 28, 1963) (statement of Senator Engle).

<sup>228</sup> *Id.*

<sup>229</sup> See *H.R. 8635*, 89th Cong., 1st Sess. (1965).

<sup>230</sup> *Id.*

<sup>231</sup> *Id.*

<sup>232</sup> See *Hearings on H.R. 2726 on the Creation of a Federal Boxing Board Before the Subcomm. on Labor Standards of the Committee on Education and Labor, House of Representatives*, 96th Cong., 1st Sess., 24 (1979) (statement of Congressman Edward P. Beard).

<sup>233</sup> See generally *Oversight Hearings Before the Subcomm. on Comm. of the House Committee on Interstate and Foreign Commerce, Hearings on Network Sports Practices*, 95th Cong., 1st Sess., 95-223 (1977).

<sup>234</sup> *Id.*

“consumer fraud, misrepresentation of a sporting event in the media, and potential for conflicts of interest when a television network purchases the exclusive television rights to a particular fighter.”<sup>235</sup>

In 1979, the Subcommittee on Labor Standards of the House Committee on Education and Labor held hearings on *The Federal Boxing Control Act of 1979*, which proposed the creation of a Federal Boxing Control Board within the Department of Labor.<sup>236</sup> The bill would have created a three-member Federal Boxing Board with the authority to prescribe and enforce labor standards applicable to the conduct of boxing and to inquire into other requirements relating to the sport.<sup>237</sup> The “Findings and Policy” section of the bill stated that Congress believed that it advanced the interest of both the public and the boxing profession for the federal government to oversee the regulation of professional boxing due to the inadequacy of existing federal and state regulatory efforts.<sup>238</sup> Under the legislation, the board would have had the power to prohibit a boxing match which might be “affected by . . . bribery, collusion, intentional losing, racketeering, extortion, or the use of unlawful threats, coercion, intimidation, or violence.”<sup>239</sup> The board would have possessed broad subpoena powers and the ability to hold investigatory hearings.<sup>240</sup> Failure to obey the board’s subpoena order would have brought the action under the jurisdiction of the United States District Courts.<sup>241</sup>

The bill required all “boxing matches and boxers participating in such matches” to be registered with the Federal Boxing Board.<sup>242</sup> No match would be allowed nor would a boxer be allowed to fight in a match without board registration.<sup>243</sup> This sweeping rule would have served to alleviate the chronic complaints regarding centralized data on fighters and the lack of a definite rating system. Additionally, since a boxer’s registration would be suspended for thirty days after a knockout or technical knockout, the process would have provided more safety meas-

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<sup>235</sup> *Id.*

<sup>236</sup> H.R. 2726, 96th Cong., 1st Sess. (1979).

<sup>237</sup> *Id.* § 4(a).

<sup>238</sup> *Id.* § 2(a)(1),(2),(3).

<sup>239</sup> *Id.* § 7(a)(3).

<sup>240</sup> *Id.* § 9(a)-(f).

<sup>241</sup> *Id.* § 9(e)-(f).

<sup>242</sup> *Id.* § 5(a).

<sup>243</sup> *Id.* § 5(b).

ures for boxers.<sup>244</sup>

In contrast with similar bills introduced at later congressional sessions,<sup>245</sup> *H.R. 2726* did not contain a provision directing the board to prescribe regulations governing minimum standards for equipment and facilities to ensure the physical safety of professional boxers participating in registered boxing matches. The bill directed the board to prescribe: (1) fair labor standard regulations for minimum rates of compensation or other consideration; (2) minimum environmental standards to be met at the sites of registered boxing matches; and (3) minimum standards for availability of medical services and facilities.<sup>246</sup>

As its final provision the bill disclaimed any attempt to prohibit state agencies or instrumentalities from exercising their regulatory powers over professional boxing except to the extent that it did not conflict with *H.R. 2726*.<sup>247</sup> Comments elicited during the 1979 hearings indicated Congress' disinclination to interfere in an area traditionally controlled and monitored by the states. John Condon, representing Madison Square Garden Corporation, suggested an alternative to a Federal Boxing Board in a Uniform Boxing Control Act to be adopted by each state which would prescribe consistent standards for the promotion and presentation of boxing bouts throughout the nation.<sup>248</sup> Mr. Condon stressed that his suggestion would not only promote uniformity of regulation but would also reserve for each state, control of basically local concerns.<sup>249</sup>

The subcommittee took no further action on *H.R. 2726* beyond the hearings held in March and April. The measure languished for the duration of the congressional session and federal legislative attempts at boxing reform again fell short of their mark.

#### *B. Recent Federal Efforts To Regulate and Reform Boxing*

During the 1980s, several attempts were made to reform and regulate boxing. These efforts have been led largely by Repre-

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<sup>244</sup> *Id.*

<sup>245</sup> *See, e.g.*, *H.R. 1751*, 98th Cong., 1st Sess. (1983); *H.R. 134*, 100th Cong., 1st Sess. (1987).

<sup>246</sup> *H.R. 2726*, 96th Cong., 1st Sess. § 8 (1)-(6) (1979).

<sup>247</sup> *Id.* § 15.

<sup>248</sup> *Hearings on H.R. 2726*, *supra* note 232, at 90-92 (statement of Mr. John Condon).

<sup>249</sup> *Id.*

sentatives Florio, Williams, and Richardson, who introduced legislation concerning boxing reform.

In 1983, two House subcommittees held hearings on separate bills affecting professional boxing.<sup>250</sup> The House Subcommittee on Commerce, Transportation and Tourism held hearings on *H.R. 1778*, introduced by Florio, which would have established a Congressional Advisory Commission on Boxing to study and "make . . . recommendations to the Congress . . . on . . . the establishment of uniform Federal standards for professional boxing events held in the United States."<sup>251</sup> The Commission would address "licensing requirements including proficiency standards and evaluation, for boxers, promoters, . . . and all other ring officials; health and medical requirements, . . . safety requirements and performance standards for equipment and facilities, . . . bonding requirements, . . . insurance requirements, . . . and fines and penalties [for failure to comply with the regulations]."<sup>252</sup>

The Committee argued that a Federal Boxing Commission with broad authority over all aspects of boxing might not be the only viable alternative.<sup>253</sup> For instance, it advised assessing the ability of each state to implement and enforce uniform standards as promulgated at the federal level.<sup>254</sup>

The Advisory Commission would have consisted of ten members comprised of individuals from State Athletic Commissions, promoters of professional boxing events, physicians, media representatives, professional boxers and persons with special interest or experience in professional boxing.<sup>255</sup> The Speaker of the House of Representatives and Senate Majority Leader were to appoint members in a prescribed rotation.<sup>256</sup> The members would have been required to issue a report within nine months of its organizational meeting detailing its findings, conclusions and recommendations for legislation.<sup>257</sup> The Commission would have been directed to focus on the establishment of classification and ranking guidelines and to collect and maintain related data in addition to health and medical data on boxers.<sup>258</sup>

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<sup>250</sup> See *H.R. 1778*, 98th Cong., 1st Sess. (1983); *H.R. 2498*, 98th Cong., 1st Sess. (1983).

<sup>251</sup> *H.R. 1778*, 98 Cong., 1st Sess., § 3 (1983).

<sup>252</sup> *Id.* § 7(1)-(11).

<sup>253</sup> *Hearing on H.R. 1778*, *supra* note 3, at 223.

<sup>254</sup> *Id.* at 221.

<sup>255</sup> *H.R. 1778*, 98th Cong., 1st Sess., § 4 (a) (1983).

<sup>256</sup> *Id.*

<sup>257</sup> *Id.* § 7.

<sup>258</sup> *Id.* § 7(8)-(9).



On April 12, 1983 after hearings on *H.R. 1778*, Representative Richardson introduced a very similar bill, *H.R. 2498*.<sup>259</sup> The bill differed from Representative Florio's bill only with respect to the proposed membership of the Commission. Representative Richardson's bill would have included a specific provision calling for the appointment of two physicians "with special knowledge or expertise with respect to the health and medical dangers associated with professional boxing."<sup>260</sup> Representative Florio's bill, alternatively, would only have required appointment of two Commission members "from a list of six submitted jointly by the American Medical Association and the Association of Ringside Physicians."<sup>261</sup> In all other aspects, however, the two bills, as originally introduced, were identical.

*H.R. 2498* was referred to the Committee on Education and Labor.<sup>262</sup> Representative Williams sponsored amendments redesignating the study Commission as the Congressional Advisory Panel on Boxer Safety. The amended version reworded the section regarding the panel membership. Rather than stipulating that one member would represent the media, the revised section allowed for two members to be appointed from among "individuals not involved in the presentation or regulation of professional boxing events."<sup>263</sup> The Committee Report reinforced this position by stating that for "purposes of this section, . . . representatives of the media shall not be considered to be involved in the presentation or regulation of boxing."<sup>264</sup> The Committee reported favorably on the bill and recommended passage of the amended version.<sup>265</sup>

Section seven of the bill, originally identical to the corresponding section of *H.R. 1778*, Representative Florio's bill, was revised and reworked.<sup>266</sup> As evidence of this revision, the panel was directed to recommend "whether . . . professional boxing should be abolished."<sup>267</sup> Indeed, the original subcommittee had heard medically documented testimony calling for a ban on boxing.<sup>268</sup>

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<sup>259</sup> See *H.R. 2498*, 98th Cong., 1st Sess. (1983).

<sup>260</sup> *Id.* § 4.

<sup>261</sup> *H.R. 1778*, 98th Cong., 1st Sess. § 4 (a)(1) (1983).

<sup>262</sup> *H.R. REP. NO. 188*, 98th Cong., 1st Sess. 1 (1983).

<sup>263</sup> See *H.R. 2498*, 98th Cong., 1st Sess. § 4(a) (1983).

<sup>264</sup> *Id.*

<sup>265</sup> *H.R. REP. NO. 188*, 98th Cong., 1st Sess. 2 (1983).

<sup>266</sup> See *H.R. 2498*, 98th Cong., 1st Sess. § 7 (1983).

<sup>267</sup> *Id.*

<sup>268</sup> *Hearings on H.R. 1778*, *supra* note 3, at 51, 62. George D. Lundberg, M.D., in a

As compared with *H.R. 1778*, *H.R. 2498* included issues not previously addressed under Representative Florio's proposed legislation. For instance, the committee suggested that officials register professional boxing matches and collect information on the outcome of each fight in a central data bank in addition to collecting such data on boxers, promoters, officials, and other personnel connected with the sport.<sup>269</sup> Bills introduced in later congressional sessions expanded and clarified these data collection procedures.<sup>270</sup>

The committee's report on *H.R. 2498* also included those minority views which criticized the involvement of the federal government in an area previously regulated only by professional leagues and associations.<sup>271</sup> Advocates of the minority view urged members not to support the bill.<sup>272</sup> Representative Florio later stated that the bill establishing the advisory entity was defeated when opponents erroneously claimed that it would open the door to federal regulation of all professional sports.<sup>273</sup>

Proponents of the measure consistently point to the lack of "self policing" inherent within the industry of professional boxing. The sport, however, unlike other professional sports, has usually been regulated by state authorities or commissions. For no apparent reason other than state regulatory involvement, professional boxing has never had a strong professional association to regulate the entire sport in the United States. Heavy influence of international organizations and personnel contributed to the fragmentation of professional boxing since neither the states nor the federal government have jurisdiction over foreign matches held outside of the United States.

At the same time that Representatives Florio and Richardson were promoting their respective bills, Representative Williams introduced *H.R. 1751* on March 2, 1983.<sup>274</sup> The bill would have

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prepared statement referred to an editorial he had written calling for a ban on boxing. The editorial, entitled *Boxing Should be Banned in Civilized Countries*, had been published in *The Journal of the American Medical Association*. See 249 J. A.M.A. 250 (Jan. 14, 1983).

<sup>269</sup> H.R. 2498, 98th Cong., 1st Sess. § 7 (1983).

<sup>270</sup> See H.R. 1689, 99th Cong., 1st Sess. § 5(c) (1985); H.R. 2127, 99th Cong., 1st Sess. § 3 (1985).

<sup>271</sup> H.R. REP. NO. 2498, 98th Cong., 1st Sess. 19 (1983).

<sup>272</sup> *Id.*

<sup>273</sup> *Hearings before the Subcommittee on Commerce, Transportation, and Tourism of the Committee on Energy and Commerce, House of Representatives*, 99th Cong., 1st Sess., 241 (1985) (statement of Representative Florio).

<sup>274</sup> See H.R. 1751, 99th Cong., 1st Sess. (1983).

established a Federal Boxing Commission within the Department of Labor with the power to "establish and enforce uniform standards relating to compensation, working conditions, safety of boxing equipment and facilities and other factors involved in the conduct of professional boxing."<sup>275</sup>

The bill, entitled the *Federal Boxing Protection Act of 1983*,<sup>276</sup> stated that it was in the best interests of the public and professional boxing to subject the sport to governmental oversight since state and federal rules and regulations did not provide adequate protection.<sup>277</sup> Under the bill, the Boxing Commission would have consisted of five citizen-members appointed by the Secretary of Labor.<sup>278</sup> Since this commission differed from the legislative study commission advocated by Representatives Florio and Richardson, there was no need for the House Speaker or Senate Majority Leader to appoint members.

While similar to *H.R. 2726*, the newer bill granted slightly more power to the Commission, authorizing it to set minimum standards for "equipment and facilities necessary to reasonably ensure the physical safety of professional boxers participating in registered boxing matches."<sup>279</sup> This particular aspect had been missing in the 1979 version. The Commission was expanded from three to five members and would act as a national screening and control board for the registration of boxers, boxing matches, boxing contracts and agreements, and the establishment of medical and safety standards. *H.R. 1751* and *H.R. 2726* were identical in that boxers could not participate in a match unless the match and each boxer was registered pursuant to the requirements set forth in each bill.<sup>280</sup>

The bill would have immediately allowed the federal government to regulate many important aspects of professional boxing as opposed to establishing a commission to act in an advisory capacity. Representative Williams' bill mandated establishment of a Boxing Commission fully empowered to regulate professional boxing. Once again, however, Congress took no final action regarding passage of a boxing bill.

Two bills introduced in 1985 attempted new solutions to old

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<sup>275</sup> *Id.* § 2(b).

<sup>276</sup> *Id.* § 1.

<sup>277</sup> *Id.* § 2(a)(1) & (2).

<sup>278</sup> *Id.* § 4.

<sup>279</sup> *Id.* § 8(1)(D).

<sup>280</sup> Compare *H.R. 1751*, 99th Cong., 1st Sess. (1983) with *H.R. 2726*, 96th Cong., 1st Sess. § 5 (1979).

problems. *H.R. 1689* would have created a non-profit entity entitled the American Boxing Corporation.<sup>281</sup> The objective was to create a mechanism for efficient government oversight of professional boxing and to establish minimum health and safety standards for boxers.<sup>282</sup> The corporation was to: (1) establish model state boxing commission standards and provide financial and technical assistance to states to help them comply with those standards; (2) sanction boxing matches in states implementing the model standards, and (3) establish United States boxing championships.<sup>283</sup>

The model state standards were to be based on fair labor standards, allow for a system for state registration of both boxers and boxing matches and were to apply to contracts, agreements, arrangements and understandings pertaining to the conduct or promotion of any boxing match.<sup>284</sup> The states which chose to join the corporation could apply to it for funding to aid in establishing similar model standards. Member states would be expected to abide by the rules and regulations of the corporation. The corporation's six-member board of directors would be appointed by the President with approval of the Senate.<sup>285</sup> At least three members were required to have been involved in professional boxing previously, and all members were prohibited from engaging in any aspect of the sport while serving on the Board.<sup>286</sup>

The bill also addressed an issue previously debated: whether states could comply with federally mandated standards without any monetary assistance from the federal government. Although the bill did not establish a funding source from which the states could obtain grants, section nine of the bill granted the corporation the power to generate funds much in the same way a private corporation establishes its existence and continues in operation.<sup>287</sup>

Representative Richardson introduced a competing bill, *H.R. 2127*, on April 18, 1985.<sup>288</sup> That bill, as described by Representative Florio, "does not regulate boxing, nor does it in any

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<sup>281</sup> H.R. 1689, 99th Cong., 1st Sess (1985).

<sup>282</sup> *Id.* § 4.

<sup>283</sup> *Id.*

<sup>284</sup> *Id.* § 5(c).

<sup>285</sup> *Id.* § 2(a).

<sup>286</sup> *Id.* § 3(d).

<sup>287</sup> *Id.* § 9.

<sup>288</sup> *See* H.R. 2127, 99th Cong., 1st Sess. (1985).

way affect the ability of states or localities to regulate boxing. Instead, it simply provides a mechanism by which uniform health and safety standards may be developed and provides incentives to comply with those standards."<sup>289</sup> The bill also established a non-profit corporation known as the United States Boxing Commission. The sixteen-member board had twelve voting members appointed by the President and six non-voting members appointed by the Speaker of the House of Representatives. Members included acting State Athletic or Boxing Commissioners, boxers, trainers, promoters, sports-medicine physicians, private citizens with knowledge of or interest in the sport, members of the United States House of Representatives and Senate, and members of the boxing media.<sup>290</sup>

The Boxing Commission would be empowered to "serve as the coordinating body for all efforts in the United States to establish and maintain uniform minimum health and safety standards for professional boxing."<sup>291</sup> The Commission, however, would not control "contracts for the television distribution of boxing events" or "engage in the sanctioning of boxing events or the ranking of professional boxers."<sup>292</sup>

The bill was referred to the House Committee on Energy and Commerce and was considered along with other bills at a hearing before that Committee's Subcommittee on Commerce, Transportation and Tourism on July 30, 1985. Representative Jack Fields supported by Representative Richardson, introduced three major amendments incorporating provisions previously included in different pieces of proposed legislation. These included provisions allowing the Commission to: (1) make grants to states and localities to assist them with their local commissions; (2) add two foreign citizens as non-voting members of the Commission to facilitate cooperation between the new federal entity and international boxing organizations; and (3) to provide a central data bank for background information on managers, cut-men, promoters, etc., in addition to the professional boxer, since the Commission was authorized to certify these individuals.<sup>293</sup>

In October 1986, Representative Richardson introduced a

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<sup>289</sup> See *Hearings on H.R. 2127, supra* note 273, at 241.

<sup>290</sup> H.R. 2127, 99th Cong., 1st Sess. § 5(a) (1985).

<sup>291</sup> *Id.* § 2.

<sup>292</sup> *Id.*

<sup>293</sup> See *Hearings on H.R. 2127, supra* note 273.

compromise bill, *H.R. 5654*, which incorporated basic provisions of earlier bills.<sup>294</sup> The bill would have established a United States Boxing Corporation as a non-profit entity.<sup>295</sup> The compromise bill contained the purposes of prior bills in a centralized, unified format. The language was much stronger than that contained in the preceding versions. In order for a state to receive a grant or technical assistance from the corporation to implement the Model State Boxing Standards as promulgated by the corporation, it would have to demonstrate that it had an "effective plan for meeting the requirements" of establishing or maintaining a state agency.<sup>296</sup>

The corporation's data bank would contain a "list of professional boxers, medical records, win-loss records, size, weight and business associates of such boxers, and information pertinent to the sport of boxing on boxing promoters, matchmakers, managers, trainers, cut-men, referees, physicians and any other personnel" determined by the corporation as having a role in professional boxing.<sup>297</sup> Through the establishment of the corporation, the legislation sought to encourage states to apply for grants and technical assistance, thereby also obtaining corporate certification. Once a state was certified, both boxers and the matches in which they participated would have to receive certification by the corporation.<sup>298</sup> In the event a certified individual participated in a bout in an uncertified state, certification could be withdrawn, making the individual ineligible to participate in boxing events in certified states.<sup>299</sup>

The corporation's board was to consist of twelve members. Nine voting members were to be appointed by the President from a list supplied by the Senate and House.<sup>300</sup> These members were to include two persons from among boxers, trainers, judges, promoters or sports medicine physicians currently active in the sport, two State Athletic or Boxing Commissioners and five persons with an interest in and knowledge of the sport, but with no present financial interest in boxing.<sup>301</sup> The three non-voting members would include one person from the boxing me-

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<sup>294</sup> See *H.R. 5654*, 99th Cong., 2d Sess. (1986).

<sup>295</sup> *Id.* § 1.

<sup>296</sup> *Id.* § 2(b)(A).

<sup>297</sup> *Id.* 2(c).

<sup>298</sup> *Id.*

<sup>299</sup> *Id.* § 3(1) & (2).

<sup>300</sup> *Id.* § 5.

<sup>301</sup> *Id.*

dia, one foreign citizen with an interest in and knowledge of the sport and a representative from the USA Amateur Boxing Federation.<sup>302</sup>

Although *H.R. 5654* received strong support, Representative Richardson's bill was not passed into law. The second session of the 99th Congress was extremely busy and pressure filled as a result of tax-reform legislation. Although the Richardson bill passed in the House, there was no Senate counterpart. Since there was no compromise bill ready to be referred to a conference committee and since there was insufficient time to introduce the House version in the Senate, the bill failed.<sup>303</sup>

Not surprisingly, Representative Dorgan introduced *H.R. 134*, entitled the *Federal Boxer Protection Act of 1987*, on January 6, 1987.<sup>304</sup> The bill was identical to the bills introduced in 1983 and 1985. Surprisingly, however, the new legislation bore little resemblance to the compromise bill, *H.R. 5654*, passed by the House in the previous session. *H.R. 134* placed all control of the sport of boxing within the Department of Labor and was mandatory in its scope; each state had to comply with the legislation.<sup>305</sup> In the early 1980s, Congress avoided legislation imposing additional controls upon an already highly regulated governmental structure. The introduction of the strictly worded *H.R. 134* was viewed as strategic in nature. In the event that a reintroduction of a bill similar to the 99th Congress' *H.R. 5654* was viewed unfavorably by Congress and the boxing community, then *H.R. 134* would already be in place, ready to be promoted for passage. It was in the legislator's best interests to have the mandatory and voluntary bills side by side, ready for discussion, once any hearings were scheduled to consider the merits of each piece of legislation.

A bill identical to the compromise *H.R. 5654* was introduced

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<sup>302</sup> *Id.* § 5(a)(6).

<sup>303</sup> See Letter from Congressman Pat Williams of Montana to Mr. Larry Hazard, Commissioner of the New Jersey State Athletic Control Board (Jan. 21, 1987). Mr. Williams writes:

Unfortunately, passage by the House was secured just a few days before the 99th Congress adjourned, leaving the Senate with no time to consider the measure. . . . Because the Senate did not act upon the measure in the 99th Congress, the boxing legislation now will have to be reintroduced in this new 100th Congress and passed again by the House before it reaches the Senate for consideration.

*Id.* (available in the files of the *Seton Hall Law Review*).

<sup>304</sup> See *H.R. 134*, 100th Cong., 1st Sess. (1987).

<sup>305</sup> *Id.*

May 6, 1987 as *H.R. 2305*.<sup>306</sup> It contained minor technical corrections concerning the first organizational meeting of the Boxing Corporation Board. Additionally, a provision allowed individuals with prior felony records to apply for certification after a hearing on the matter. Both *H.R. 134* and *H.R. 2305* had been referred to the Committees on Educational Labor and Energy and Commerce with hearings scheduled during 1987.

## V. CONCLUSION

Although most states monitor boxing to some extent, there are no established uniform standards of any type in connection with the sport. Since boxing historically has been governed by states, the extent to which the federal government should regulate boxing has always been in issue. Should the government look to enforce mandatory rules and regulations under the guise of fair labor standards, or instead offer voluntary membership in a United States Boxing Corporation? As opponents suggest, regulation of boxing might lead to regulation of other professional sports. Testimony indicates, however, that boxing has never been self-policed in the same manner as other professional sports.

Without federal legislative intervention to formulate uniform health, safety, labor and statistical standards, the problems of the boxing industry will continue. Since 1960, the federal government has recognized a need for intervention in the sport of boxing. Tragic events such as ring-side death of boxers, and data on the health effects of boxing continue to propel the issue of regulation into the public limelight. Minimum national standards must be promulgated especially in the areas of medical treatment, training, equipment, statistical data compilation and enforcement of these standards. In the absence of any affirmative action, there may be a resurgence of those organizations and interest groups, such as the AMA, that seek a complete ban on the sport of boxing. Congress should affirmatively respond to the public, the boxing community and the fight fans by enacting legislation aimed at protecting the fighter who chooses to practice his craft.

Without minimum uniform national standards for boxing regulation, New Jersey's efforts to regulate boxing will be somewhat ineffective since the state can only keep track of boxers,

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<sup>306</sup> *H.R. 2305*, 100th Cong., 1st Sess. (1987).



managers, etc., when they are operating in the state. Once boxers or other regulated individuals leave the state, their activities are difficult to monitor. Regulated individuals are responsible for self-reporting their activities creating an inherently unreliable system. Any of the proposed federal legislation would help solve this problem. New Jersey can now only track the boxers and their fight records for boxing cards held within its boundaries and must rely on the hearsay of the boxer to report results from outside the state. With a national clearinghouse for fight data, New Jersey would be able to update its records using federal data and would be able to detect any inaccuracies in records submitted by the boxer.

The proposed federal regulations, if enacted, would help New Jersey's efforts to reform and regulate the boxing industry. If maximum standards were established on a federal level, it could pose a conflict. Few, however, expect that any federal enactment would match the comprehensiveness of the New Jersey regulation. As long as minimum standards are established by any federal legislation there should be no conflict with New Jersey's regulation of the sport.

New Jersey's efforts to regulate boxing have been laudable. It remains to be seen how effective its efforts will be without the implementation of federal legislation setting minimum national standards. Without federal regulation, loopholes exist to enable unscrupulous managers and boxers to evade some of the reforms instituted by New Jersey. This is particularly troublesome in documenting fight records and injuries to boxers.

New Jersey must decide whether to back its reform efforts with sufficient funding to allow the New Jersey State Athletic Board to effectively institute the new regulations. On one hand, increased funding is not cost justified in relation to the monies brought into the state from taxation of boxing events. That position, however, ignores two factors. First, the highly taxed gaming industry relies heavily on boxing to attract consumers to Atlantic City casinos. Second, New Jersey's reform efforts must be backed with adequate funding to insure that such reforms are implemented and enforced.

As to a ban on boxing in the state, New Jersey officials have wisely ignored those recommendations. While the SCI's efforts were commendable, its call for a ban on boxing was overreaching and unrealistic.

New Jersey is effectively gaining control over boxing and has

set a good standard for other states and the federal government to follow. Due to boxing's importance to the state's economy, New Jersey must continue its efforts to reform the sport. Such reform efforts will ultimately lead to quality boxers, managers and other involved parties and will protect the individual boxer's health, safety, and overall management—which is the underlying justification for any boxing regulation.

The final question is why Congress has not instituted federal regulation of boxing. There seem to be a number of potential reasons for this oversight. First, there are the pressures exerted by groups which would be adversely affected by any regulatory process, no matter how minimal the regulation. These groups include the worldwide sanctioning bodies, the television networks, and the individual boxing promoters and managers.

Second, states which have no existing regulatory process frequently oppose federal regulation which might require institution of their own in-state regulatory program, increasing the state's budget. Many states now attract boxing bouts because they have no regulation. If uniform standards are implemented, unregulated states would risk losing bouts and the resulting economic benefits.

Third, Congress has historically resisted regulating the sports industry. Many legislators worry that boxing would be the first step in a regulatory scheme that could ultimately include all amateur and professional sports. Therefore, some legislators do not support boxing reform no matter how minimal the standards or laudable the goals. Finally, for the last few years, there has been opposition from those who supported the Reagan administration's deregulation policy.

New Jersey has set a standard for the rest of the nation to follow in its regulation of boxing. The federal government must follow suit to make the sport safe for its participants. Only with minimum federal regulation, especially the establishment of boxer passports, can states which want stringent regulation be successful with their programs.

The several federal attempts at regulating boxing have all contained a corporation or commission form of governance that would establish varying forms of unified regulations, rules and certifications. Such an approach should be expected on a federal level, since state regulation varies from non-regulation to a highly regulated situation such as that in New Jersey. Any federal approach would institute at least minimum regulatory standards

for boxing throughout the country and bring a needed sense of order to a sport historically thought of as administratively chaotic. It is time for Congress to implement some form of minimum regulation of the boxing industry to ensure the safety of the participants and the integrity of the sport.