Extraditing Peter Dicks

On September 29, 2006 New York Governor Pataki, apparently working together with New York Attorney General Spitzer, declined to sign a warrant extraditing Peter Dicks, the former non-executive chairman of Sportingbet PLC to Louisiana. Sportingbet is a major Internet wagering firm based in the United Kingdom. It has billed itself as the “The World's Leading Online Gambling Company.” Sportingbet had profits of approximately 103 million pounds for the fiscal year ending on July 31, 2006. For the prior fiscal year, Sportingbet’s profits were 60.5 million pounds. The number of sports and gaming bets in the 2006 fiscal year went up 41.8% to 566.9 million. After the passage of legislation aimed at curtailing Indian gaming in the United States, Sportingbet sold its entire United States operations for $1 to a firm named Jazzette Enterprise Inc, located in Antigua.

Dicks had stopped off in New York on Wednesday September 6, 2006 at Kennedy International Airport. Customs officials conducting a routine check found that he had an outstanding warrant issued by the Louisiana State Police Gaming Enforcement Division in May of 2006. Mr. Dicks was charged with gambling by computer, a felony punishable by up to five years in prison and a $25,000 fine. Based on this warrant, Dicks was taken into custody in Queens, New York.

Mr. Dicks, who was arrested by the Port Authority Police Department, was later freed on $50,000 (£ 26,000) bail provided he remained within the five boroughs of New York. Initially, on September 14, 2006, Governor Pataki refused to extradite Mr. Dicks. Mr. Dicks was allowed to return to the United Kingdom but ordered to return to New York for a September 28 hearing.

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1 Daniel Pimlott and Andrew Ward, “Dicks Hearing on Extradition Resumes Today,” Financial Times, September 29, 2006 Pg. 22. The Daily Mail had said of Mr. Dicks, “To all intents and purposes Dicks is a City grandee, sitting on the boards of several investment trusts with a background in stockbroking. His presence on the Sportingbet board is no more than a respectable adornment. So his arrest sends an intimidating message.” Alex Brummer, “Betting on a False Premise, Daily Mail, September 8, 2006. The Daily Telegraph quoted a banker stating “I'm very surprised that they are going after the non-executive chairman. He doesn't run the business and he's not a big shareholder.” Alistair Osborne, David Litterick and Russell Hotten, “Sportingbet Hit by US Arrest of Chairman Dicks,” Daily Telegraph, September 8, 2006 Pg. 1.
4 http://www.sportingbetplc.com/pages/1/Home.htm
After the September 28 hearing, the Governor decided that there was no basis to extradite Mr. Dicks, and Mr. Dicks quickly returned to the United Kingdom. Despite the New York ruling, Louisiana authorities were still seeking the extradition of Mr. Dicks.7

No official press release or statement was issued by the New York State authorities in conjunction with the release of Mr. Dicks. A spokesperson for the State’s Division of Criminal Justice Services stated, “While the Governor supports efforts to restrict illegal off-shore gaming, he does not have the legal authority to order the extradition of Mr. Dicks,”8

This has led to international the media speculating on a variety of rationales for the governor’s decision not to extradite. For example, the Financial Times wrote, “New York refused to hand him over to Louisiana, arguing that it could not extradite someone who was in another country at the time of the alleged crime.”9 Earlier the Financial Times had written, “Mr. Pataki rejected Louisiana’s request for custody because, for extradition to be granted, Mr. Dicks had to have been in either New York or Louisiana when the alleged crime - an illegal bet placed by Louisiana police agents on the Sportingbet website - took place.”10 The London Times wrote, “He eventually escaped being extradited across state lines to Louisiana only because of the pragmatism of George Pataki, the New York Governor, who chose to let him return home on a technicality.”11 The Times had further written “that state law permitted extradition only if the accused person was physically present in the place where he is accused of breaking the law.”12 The Associated Press similarly wrote “Gov. George Pataki said the state law only permitted extradition if the accused person was physically present in the place where he is accused of breaking the law.”13 The Daily Telegraph wrote “The New York Governor, George Pataki, ruled that Mr. Dicks had not committed a crime while physically in either New York or Louisiana. And, as online gambling was not outlawed in the State of New

8 Janet Whitman, “Sportingbet Exec Freed,” New York Post, September 30, 2006 Pg. 22. The spokesperson, Jessica Scaperotti, also said that the governor would be asking regulators to update New York law on extraditions. A wire service account stated,” Pataki called for an overhaul of the state's extradition laws, which were crafted in the 1930s, saying through a spokeswoman that they needed updating to reflect 'the modern high-tech world in which we live.” AFX News, “NY Judge Won't Hold Gambling Exec”, September 29, 2006.
10 Roger Blitz, Daniel Pimlott and Andrew Ward, “Louisiana Refuses to Fold as Gambling Bill Seems to Have Hit the Buffers,” Financial Times, September 30, 2006 Pg. 18. See also James Gill, “Teachers, There Are casinos Here at Home,” New Orleans Times-Picayune, October 18, 2006 Pg. 7.
11 Tom Baldwin, “Contradictory Approach on Casinos Adds to Betting Confusion,” Times, October 3, 2006 Pg. 44.
12 Dominic Walsh, “FormerInternet Gambling Boss Freed by Judge,” Times, September 30, 2006 Pg. 56.
York, he had no choice but to release him.” 14 Newsday wrote “that the governor had declined because the offense must be a crime in New York and the state seeking extradition - and the accused person must be present in the place where he is accused of breaking the law.”15 The Daily Mail noted that “offshore Internet gambling is not a crime in New York.”

Thus, the reasons given for not extraditing Mr. Dicks by the media included (a) Mr. Dicks was outside the United States at the time of the crime, (b) a technicality, (c) he was not in Louisiana or New York at the time of the crime, (d) he was not in Louisiana at the time of the crime, (e) he was not accused of conduct that was a crime in New York State, (f) a combination of (e) and the fact that he was absent from either: the United States (See a), Louisiana or New York (See c), or Louisiana (See d) at the time the crime was committed.

The purpose of this article is to review federal law and New York’s law governing extradition to determine whether the governor’s actions in refusing extradition was correct and if the governor’s actions were correct, which of the above-stated rationales would validate the governor’s actions.

Federal Law

Extradition is covered by clause 2, of section 2 of article 4 of the United States Constitution. The provision states, “A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.” This provision was traditionally considered not self-executing,17 but there are federal statutes making the extradition of fugitives from justice mandatory.18 18 USC Section 3182 provides the basic law governing extraditions. Under this provision, when the executive authority of state from which the fugitive from justice has fled provides the executive authority of the state to which the prisoner has fled with proper notice, the executive authority of the state to which the fugitive has fled shall “cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.”

14 Harry Wallop, Gambling Former Sportingbet Chairman 'Free to Go,’” Daily Telegraph, September 30, 2006 Pg. 29.
18 18 USC Sections 3182 - 3195.
The most significant concept of federally mandated extradition is that the defendant needs to have fled from justice from the state which is demanding his return. This has been interpreted as requiring that the defendant needs to have physically present in the demanding state at the time that the crime was committed. In People ex rel Corkran v. Hyatt,19 the New York Court of Appeals found, “There seems to be substantial unanimity in all the authorities on one proposition, that to be a fugitive from justice a person must have been corporeally present in the demanding state at the time of the commission of the alleged crime.”20 Constructive presence in the demanding state is not sufficient to make a person a fugitive from justice under the federal constitution.21

The decision of the New York Court of Appeals in the Hyatt case was later affirmed by the United States Supreme Court. The Supreme Court similarly found that constructive presence – rather than actual presence - by the defendant in the demanding state was not sufficient for extradition under federal law.22 Since the defendant was never in the demanding state of Tennessee at any time when the acts in the indictment were committed, “he was not a fugitive from justice within the meaning of the Federal statute upon that subject.” 23 The federal case law since the Hyatt case has not changes. A fugitive from justice must be a person who was present in the demanding state at the time the crime was committed.24

In the Sportingbet case, there is no allegation that Mr. Dicks was in the state of Louisiana at the time the crime was committed. Accordingly, the federal provisions governing extradition do not apply. Mr. Dicks is not a fugitive from justice under the United States Constitution. Mr. Dicks could only have been extradited from New York to Louisiana if New York State law specifically permitted his extradition.

**Uniform State Laws on Extradition**

Almost all states do permit extradition of a defendant to a demanding state where the defendant is not technically a fugitive from justice under the federal provisions. Forty-eight states have enacted some version of the Uniform Criminal Extradition Act.25 The holdouts against adoption of this law are Mississippi, South Dakota, and the District of Columbia. Each of these jurisdictions has “an extradition statute which subjects the person sought to greater discretionary treatment under their respective extradition procedures.”26

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19 172 NY 176 (1902), aff’d 188 US 691 (1903)  See also People ex rel. Hadley v. Peck, 4 Misc. 2d 529, 531 (Sup. Ct. Jefferson County 1955)
20 Id. at 183.
21 Id. See Scott on Interstate Rendition, Section 50 1917 Pg. 68.
22 188 US 691 at 718.
23 Id. at 719.
26 Id.
The uniform law has its origins in the early 1920’s. “The Commissioners on Uniform State Laws commenced their work on a draft of a Uniform Extradition Act in 1921, and adopted such a draft in 1926 for submission to the various state legislatures.” 27 A revised Uniform Criminal Extradition Act, based on the 1926 proposal “was approved by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1936.”28 The 1936 Act has in turn “been superseded by the Uniform Extradition and Rendition Act (1980) which was proposed by the National Conference of Commissioners of Uniform State Laws.”29 Only one state, North Dakota, however, is utilizing the 1980 provisions.30

The provision governing the extradition of defendants who are not fugitives from justice is Section 6 of the 1936 Uniform Extradition Act. Section 6 is largely unmodified from a 1932 amendment to the Uniform Act.31 The original Section 6 adopted in 1926 first established the concept of permitting extradition from states when the defendant was not a fugitive from justice. In the 1926 Uniform Act, the Conference “wisely appreciated the practical need of extraditing criminals who cannot technically be called fugitives. The Conference has realized the common sense of providing for the extradition of from New York to Ohio of a person whose act in New York had criminal consequences in Ohio.”32 “While the Constitution requires that fugitives shall be extradited, it does not prohibit states from endeavoring to enforce the criminal law by the extradition of those other persons who have violated the law of the demanding state but cannot be called fugitives from that state.”33

The 1926 Uniform Act gave the governor of the asylum state the discretion to extradite a defendant who had committed a crime charged on indictment in the demanding state when the defendant allegedly committed the acts while present in the asylum state.34 Thus, if someone while located in New York committed a crime in Louisiana, the governor of New York, upon demand from Louisiana, would have the discretion to extradite the defendant to Louisiana.

It was eventually believed that this 1926 provision did not go far enough in permitting extraditions of individuals who were not fugitives.35 Specifically, it did not allow extradition where the defendant’s act that caused the crime in State A, was

29 Id.
30 Id.
32 Id. at 399.
33 Id. at 400.
34 Id. at 397.
35 Id. at 76.
committed in State B, and the defendant relocated to State C. The defendant under the 1926 Uniform Act could not be extradited from State C.

As a delegate to the 1932 conference of the Commissioners on Uniform State Law explained:

“Section 6 makes it possible to extradite from Maryland a man who has acted there with the result that he has offended against the laws of Virginia. He is not a fugitive from Virginia, but it is possible under the provision of Section 6 to extradite him from Maryland to Virginia. If now he moves from Maryland to Pennsylvania, he cannot be extradited under Section 6... We submit that all of the practical reasons for adopting Section 6 and making it possible to extradite this man from Maryland with criminal consequences to Virginia call for making it possible to extradite him also when he has fled from a state in which he acted to a third state, and that the criminal should not have that immunity which he now has under this act by passing out of the state in which he acted.”

The amended Section 6 was passed by the conference of the Commissioners on Uniform State Law, and the amendment read as follows:

“The governor of this State may also surrender on demand of the Executive Authority of any other state, any person in this state charged in such other state in the manner provided in Section 5 with committing an act in this state, or a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand; and the provisions of this act not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom.”

When the Conference of Commissioners on Uniform State Law met in 1936, it determined to amend the Uniform Criminal Extradition Act. Most of the changes made in the act were minor in nature, and the act was passed unanimously at the Conference. The only change to Section 6 was minor. The reference to Section 5 in the 1932 amendment was changed to Article 3.

As amended, Section 6 read as follows:

“The governor of this State may also surrender on demand of the Executive Authority of any other state, any person in this state charged in such other state in the manner provided in Section 3 with committing an act in this state, or a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand; and the provisions

36 Remarks of Mr. Robert S. Stevens, Id. at 77.
37 Id. at 82.
38 Id. at 398.
39 Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings, Pg. 319 1936.
40 Id. at 155.
of this act not otherwise inconsistent shall apply to such cases, notwithstanding that the accused was not in that state at the time of the commission of the crime and has not fled therefrom."\(^{41}\)

The 1936 Act was not changed until it was superseded in 1980 by the Uniform Extradition and Rendition Act.\(^{42}\) The belief was that 1936 Act had become too cumbersome in nature and that social changes required an overhaul of the act.\(^{43}\) Nonetheless, the states have largely rejected the new uniform act, and only North Dakota in 1985 had adopted it.\(^{44}\) The other states have, by and large, stuck with the provisions of the 1936 Act.

New York State and the Uniform Criminal Extradition Act

New York State has enjoyed an interesting relationship with the Uniform Criminal Extradition Act. Soon after the Uniform Act was first agreed to in 1926 the New York State legislature passed its own uniform extradition act in 1930. It, however, was vetoed by Governor Roosevelt. The governor found that while the essentials of a uniform extradition act should be adopted by all states, “two provisions which are so opposed to our usual administrative procedure in this state that they make the bill too objectionable to be part of our law.”\(^{45}\) Governor Roosevelt found that the bill unnecessarily permitted authorities in other states to harass a person in New York without bringing the proceedings to a conclusion.\(^{46}\) He also found that the bill was defective in requiring police authorities to secure warrants in New York State in non-capital cases in order to arrest a defendant sought by another state. He believed that the warrant requirement would handicap the criminal justice process in the face of emergencies.\(^{47}\)

While the legislature proceeded in 1931 to pass an amended uniform act which met Governor Roosevelt’s complaints, the governor again vetoed the measure. Governor Roosevelt found that there were “some administrative and procedural difficulties”\(^{48}\) with the bill. He similarly found that “the provisions as to the furnishing of bail and the forfeiture of bail do not conform with the accepted practice and would lead to uncertainty and confusion.”\(^{49}\)

\(^{41}\) Id at 322.
\(^{42}\) Uniform Laws Annotated supra note 25 at 291.
\(^{43}\) Id. at 88.
\(^{44}\) 1985 Ch. 364.
\(^{45}\) Veto Message of Governor Franklin D. Roosevelt, April 30, 1930 contained in report of Law Revision Commission supra at note 27 Pg. 139.
\(^{46}\) Id.
\(^{47}\) Id.
\(^{48}\) Veto Message of Governor Franklin D. Roosevelt, April 25, 1931 contained in report of Law Revision Commission supra at note 27 Pg. 143
\(^{49}\) Id.
In 1935, the newly formed Law Revision Commission\(^{50}\) in its first annual report issued a report on criminal extradition. Upon the request of the New York Commissioners on Uniform state Laws, it reviewed the Uniform Criminal Extradition Act and the measures vetoed by Governor Roosevelt in 1930 and 1931.\(^{51}\) This review and the extradition issue had received significant publicity in 1934 especially in regard to the extradition of defendant Bruno Richard Hauptmann from New York to New Jersey in the famed Lindbergh baby kidnapping case.\(^{52}\) Hauptmann made the unsuccessful effort to resist extradition based on the premise that he had not been in New Jersey at the time the crime was committed.\(^{53}\) The Law Revision Commission recommended passage of the Uniform Criminal Extradition Act which was supplemented with the views of Professor Robert S. Stevens of Cornell Law School on allowing extradition of individuals who had involuntarily left the demanding state.\(^{54}\) The commission recommended that the 1932 amendment to the Uniform Act allowing for the extradition of individuals who had not fled from the demanding state be enacted in New York.\(^{55}\)

The extradition bill recommended by the Law Revision Commission in 1935 passed the legislature. It was, however, vetoed by Governor Lehman. The bill had been opposed by organized labor which objected to the possibility that section 6 of the Uniform Law might be used as a weapon to extradite New Yorkers in labor disputes arising in other states.\(^{56}\) The Governor in his veto message wrote, “I fear that the section is open to the strong possibility of serious misuse and abuse. It might readily curtail freedom of speech and of the press and be the basis of persecution.”\(^{57}\) The governor suggested that the problem should be studied, and that with proper safeguards, a bill should be passed at the next legislative session.\(^{58}\)

The Law Revision Commission again reviewed the subject of extradition this time “with a view to obviating the danger pointed out by Governor Lehman.”\(^{59}\) The Commission made two changes in Section 6 of the Uniform Act to satisfy the governor. Extradition of non-fugitives could only be authorized if the act for which the defendant is charged “would be punishable in this state if the results complained of by the demanding state had occurred, geographically, in this state.”\(^{60}\) Additionally, the governor in New York State would be given authority to make extradition conditional upon an agreement

\(^{50}\) L. 194, Ch. 597.
\(^{54}\) ISee note 27 supra at 93. Professor Stevens’ views were the basis for the changes made in the 1936 Uniform Act discussed at note 39 supra.
\(^{55}\) Id. at 94.
\(^{57}\) Public Papers of Governor Herbert H. Lehman, 244 May 8, 1935.
\(^{58}\) Id.
\(^{60}\) Id. at 41
with the governor in the demanding state that “no prosecution of the extradited person shall be made except upon the specific charge for which he is extradited.”

The provision as suggested by the Law Revision Commission amended the Code of Criminal Procedure to read as follows

Section 834 The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in section eight hundred and thirty with committing an act in this state or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, when the acts for which extradition is sought would be punishable by the laws of this state, if the consequences claimed to have resulted therefrom in the demanding state had taken effect in this state; and the provisions of this article not otherwise inconsistent, shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom; provided, however, that the governor of this state may, in his discretion, make any such surrender conditional upon agreement by the executive authority of the demanding state, that the person so surrendered will be held to answer no criminal charges of any nature except those set forth in the requisition upon which such person is so surrendered, at least until such person has been given reasonable opportunity to return to this state after his acquittal, if he shall be acquitted, or if he shall be convicted, after he shall be released from confinement. [Emphasis added to reflect the changes from the 1935 vetoed legislation]

The legislation that was introduced at the behest of the Law Revision Commission passed the Senate. It was forwarded to the Assembly which amended the legislation by adding one sentence at the end of the section. The added sentence states, “Nothing in this section shall apply to the crime of libel.” The Senate concurred in the amendments made by the Assembly, and Governor Lehman signed the bill without issuing an approval message.

Since 1936, there have been no substantive changes in this provision. The one procedural change came in 1970 when the Code of Criminal Procedure was revised as part of the comprehensive review of criminal procedures which established the Criminal Procedure Law. The Uniform Criminal Extradition Act became Article 570 of the Criminal Procedure Law, and the section on extraditing non-fugitives from justice which was Section 834 of the Code of Criminal Procedure is now Section 570.16 of the Criminal Procedure Law. The one change in this section over the past seventy years is that the original reference to Section 830 of the Code of Criminal Procedure now refers to Section 570.08 of the Criminal Procedure Law.

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61 Id.
62 Id. at 40 -41.
63 Senate Introductory No. 382., 1936,
64 See Ch. 892, L. 1936.
65 Id. Only Rhode Island has an extradition provision requiring that discretionary extradition can only occur if the acts alleged to have been committed are a crime in the asylum state. R.I. Gen. Laws § 12-9-8.
Applying the Law to Peter Dicks

Section 570.16, as applied to Peter Dicks, gives the governor total discretion over whether or not to indict the defendant. Governor Pataki, could with or without any stated rationale, refuse to extradite Peter Dicks to Louisiana.

There are certain conditions that have to be met, however, before the governor could permissibly extradite Mr. Dicks. First of all, Mr. Dicks has to be charged with committing an act in New York “or in a third state, intentionally resulting in a crime” in Louisiana. For purposes of the Uniform Criminal Extradition Act, a state “when referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.” The allegedly criminal acts must have taken place in the United States and not in a foreign country.

Secondly, the acts charged by the demanding state must be punishable under New York law if the consequences of the acts had taken place in New York. This is not a mere technicality. The New York Court of Appeals has stated that the “decisive question then is whether the act alleged would have been a crime in this State if it had had its effect here.” In People v. Hinton, the Court of Appeals was faced with the issue of whether a non-fugitive could be extradited to California for violation of a non-support statute. The Court blocked the extradition attempt. Section 570.16 is “the policy of this State expressed by statute and it means that there must, at least, be some showing of an evidentiary nature establishing every element required under the relevant New York penal statute.” In the Hinton case, the authorities seeking to extradite Hinton did not show anything to establish he “had the ability to furnish support out of his financial resources or by means of his earning capacity.” Financial resource requirement was an element of the New York penal law, and since this requirement was not established in the proceeding, Hinton could not be extradited.

Subsequent cases in New York State all follow the Hinton rationale. In order for a non-fugitive extradition in New York to be permissible, there must be a prima facie showing that all the elements of the relevant New York penal statute have been met. The cases of People ex rel Allen v. Dooley, two “bad check” prosecutions establish the manner in which the Hinton case is to be interpreted. In the Dooley cases, Georgia sought to extradite a husband and wife for issuing bad checks. Extradition of the wife was denied.

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67 Lawrence N. Gray, ”Extradition,” New York State Division of Criminal Justice Service, Office of Legal Services, Revised February 1995 Pg. 23.
68 Criminal Procedure Law Section 570.16
69 Criminal Procedure Law, Section 570.04.3
70 See note 68 supra.
71 People v. Hinton, 40 N.Y.2d 345, 352 (N.Y. 1976)
72 Id. at 353.
73 Id at 354.
where the evidence established that the defendant had sufficient funds in the account at the time the check was issued. This evidence overcame the presumption that the defendant knew that her checking account was insufficient to cover the check. The extradition of the husband, however, was upheld where it was clear that the husband “knew that there were insufficient funds to cover the subject checks at the time of utterance.” Other cases have upheld non-fugitive extradition where a prima facie showing was made that all the elements of the New York crime had been established.

The Physical Location of Peter Dicks

The attorneys for Peter Dicks maintained that Mr. Dicks was in the United Kingdom at the time the alleged criminal acts took place. The bets placed by the Louisiana state police had been accepted by Sportingbet in the United Kingdom. Under these conditions, New York law would prohibit the extradition of Mr. Dicks to Louisiana. He was not a fugitive from justice. He was not in New York or any other state when the alleged crime was committed. Under the terms of Section 570.16 of the Criminal Procedure Law, Mr. Dicks could not have been extradited to Louisiana.

If Mr. Dicks had been in Louisiana when the crime was committed, extradition would have been mandatory. If Mr. Dicks had been in New York or any other state at the time the crime was committed, then the governor would have had the discretion to extradite Mr. Dicks to Louisiana.

If New York had joined North Dakota as a state that had adopted the Uniform Extradition and Rendition Act, the governor would have had the authority to extradite Mr. Dicks. That act simply permits extradition where a person “is charged with a crime in the demanding state.”

Was It a Crime in New York?

Mr. Dicks was charged with a crime under a law that is unique to Louisiana. That is the crime of “gambling by computer.” Gambling by computer is defined as “the intentional conducting, or directly assisting in the conducting as a business of any game, contest, lottery, or contrivance whereby a person risks the loss of anything of value in

75 People ex rel. Allen v. Dooley, 156 A.D.2d 404, 405.
78 See note 9 supra.
79 Criminal Procedure Law, Section 570.06.
80 Criminal Procedure Law, Section 570.16.
81 Uniform Extradition and Rendition Act, Section 3-101(a)(1).
82 La. R.S. 14:90.3.
order to realize a profit when accessing the Internet, World Wide Web, or any part thereof by way of any computer, computer system, computer network, computer software, or any server.83

The crime of gambling by computer is a misdemeanor which brings a fine of $500 or imprisonment for not more than six months or both a fine and imprisonment.84 More significantly, the penalty for the designer, developer, manager, supervisor, or provider of a computer system that offers gambling is a fine of $20,000, a prison sentence of not more than five years, or both.85 This is the crime that Mr. Dicks was accused of.86 The law also contains exemptions for Louisiana’s casino and video poker industries,87 its pari-mutuel racing facilities,88 and for the securities industry.89

New York has no crime that compares to gambling by computer. Instead, New York has a broad overall penal provision covering gambling. Gambling offenses in New York are covered by Article 225 of the Penal Law. The catchall crime is the misdemeanor of promoting gambling in the second degree.90 This crime is defined as when a person “knowingly advances or profits from unlawful gambling activity.”91

Promoting gambling, accordingly, has three elements. The potential defendant has to knowingly advance or profit. The activity must be unlawful and it needs to involve gambling activity. All three elements of the crime are defined in Section 225.00 of the Penal Law.

“A person ‘advances gambling activity’ when, acting other than as a player, he engages in conduct which materially aids any form of gambling activity.”92

“A person ‘profits from gambling activity’ when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity.”93 Unlawful means not “specifically authorized by law,”94 and “a person engages in gambling when he stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he will receive something of value in the event of a certain outcome.”95

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83 La. R.S. 14:90.3.B.
84 La. R.S. 14:90.3.D.
87 La. R.S. 14:90.3.F.
88 La. R.S. 14:90.3.G.
89 La. R.S. 14:90.3.H.
90 Penal Law Section 225.05
91 Id.
92 Penal Law Section 225.00.4
93 Penal Law Section 225.00.5
94 Penal Law Section 225.00.12
95 Penal Law Section 225.00.2
Thus, while individual gamblers playing a game are not guilty of the crime of promoting gambling, the operator of the game is certainly “profiting from gambling activity.” Betting on a sporting event is certainly unauthorized under New York law which limits legalized betting to four categories under the State Constitution. The Constitution authorized legalized wagering on pari-mutuel horse racing, State operated lotteries, bingo run by certain charitable and non-profit organizations, and games of chance run by these charitable and non-profit organizations.96 Moreover, book-making is specifically banned by the Constitution.97 Running a business taking sports bets certainly is unauthorized and would constitute the crime of promoting gambling.

Moreover, Sportingbet certainly operates as a bookmaker. “‘Bookmaking’ means advancing gambling activity by unlawfully accepting bets from members of the public as a business, rather than in a casual or personal fashion, upon the outcomes of future contingent events.”98 Bookmaking in New York certainly constitutes the misdemeanor of promoting gambling in the second degree and is often the basis for promoting gambling in the first degree.99

In the case of People v. World Interactive Gaming Corp,100 a corporation was enjoined from offering Internet betting to residents of New York. The court found that if the person making the bet resided in New York, then the gambling activity occurred in New York. “It is irrelevant that Internet gambling is legal in Antigua. The act of entering the bet and transmitting the information from New York via the Internet is adequate to constitute gambling activity within New York State.”101 The respondents who were offering casino games ‘have violated New York Penal Law which states that a] person is guilty of promoting gambling ... when he knowingly advances or profits from unlawful gambling activity.’”102 Thus, there is case law fining that a firm that offered Internet gambling to New Yorkers was violating the New York’s penal laws.103

The analysis of for purposes of Section 570.26 extradition is whether “the acts for which extradition is sought would be punishable by the laws of this state, if the consequences claimed to have resulted therefrom in the demanding state had taken effect in this state.”

Thus, the analysis is not whether New York has a specific crime on gambling over the Internet, the question is whether a sports bet or a gambling bet placed by a New Yorker with Sportingbet would have been a crime Under World Interactive Gaming and the wording of Section 225.02 of the Penal Law, it would be considered a crime.

96 New York State Constitution, Article 1, Section 9.
97 Id.
98 Penal Law Section 225.00.9.
100 185 Misc. 2d 852 (Sup. Ct. NY County 1999)
101 Id. at 859 -860.
102 Id. at 861.
103 See also United States v. Cohen, 260 F.3d 68 (2d Cir. 2001) cert denied 536 U.S. 922 (2002).
In short, while the governor had total discretion on whether to extradite Mr. Dicks, the only mandatory reason for not extraditing Mr. Dicks was that he was not in the United States at the time the alleged crime occurred.

**Reviewing the Extradition Law**

Governor Pataki at the time he declined to extradite Mr. Dicks said through a spokeswoman that the state’s extradition laws needed an overhaul. He found “that they needed updating to reflect 'the modern high-tech world in which we live.'”

Yet, the Commissioners on Uniform State Laws had considered the issue of crime committed by a person physically located in one state which constituted a crime in another state. For example in 1932, they had considered the fact that New York “has a provision for the punishment of a crime, any part of which is committed in the State of New York.” “Many states have enacted provisions for the punishment of a crime any part of which is committed in that state.”

In the 1930’s the commissions and the states studying the issue of extradition were already dealing with cases where the defendant was not present in the state prosecuting the crime. There were cases of abandonment where a family or spouse was abandoned outside the state where the family/spouse was domiciled, there was crime that involved use of the mails, and crime committed through use of the telephone. It is hard to envision circumstance under which a bet made by telephone from Louisiana to the United Kingdom differs from a bet made between those two locations through a computer network. The use of the Internet does not change the analysis of defendants under the Uniform Criminal Extradition Act.

Moreover, given the near unanimity of the states utilizing the Uniform Criminal Extradition Act, Governor Pataki’s call may be better aimed at the national Conference of Commissioners on Uniform State Laws. Perhaps this organization should be charged with developing an acceptable alternative to its 1980 Uniform Extradition and Rendition Act which accommodates both technological advances and the traditional practices of the state. This group might also wish to deal with situations raised by Peter Dicks. Should there be extradition of white collar crimes of a corporation where the defendant/board member has limited responsibility for the day-to-day operations of the corporation?

On the New York State specific side, it might be reasonable for New York State to consider placing itself in full compliance with the 1936 Uniform Criminal Extradition Act. Is there any need to retain the language that a non-fugitive, in order to be extradited, needs to have committed a crime in New York State? Shouldn’t the governor’s discretion in determining whether to extradite a non-fugitive be sufficient? Given the governor’s

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104 AFX, British Gambling Exec Gets to Go Home,” September 29, 2006 See generally note 8 supra.
105 See note 31 supra at 399.
106 Id. at 401
discretion, should a governor possess the authority to extradite people who were outside the United States when the crime was committed?

While there may be reasons to revisit the policies affecting extradition, most of the major issues need to be addressed on an interstate basis and not through actions by individual states.

Conclusion

. Assuming that Peter Dicks was not in the United States at the time of the alleged crime in Louisiana, Governor Pataki could not legitimately extradite Peter Dicks to Louisiana under the language of Section 570.16 of the Criminal Procedure Law. Even if Peter Dicks had been in the United States, Governor Pataki certainly would have been acting within his legitimate discretion in determining not to extradite Peter Dicks to Louisiana.107

107 For years, even where there was an apparent obligation under the Extradition Clause mandating the extradition of a fugitive, there was no recourse where the governor of the asylum state refused to extradite the defendant. See [Ky. v. Dennison], 65 U.S. 66 (U.S. 1861) and the instance where Governor Moore of New Jersey refused to extradite to Georgia, Robert Elliot Burns, who was best known as an escapee from a brutal existence on a Georgia chain gang. Associated Press, “Georgia ‘Outraged’ by Burns Decision,” [New York Times], December 23, 1932, Pg. 7. The 1932 motion picture “I Am a Fugitive from a Chain Gang,” was based on Mr. Burns’ autobiography. Ky. v. Dennison, however, was overruled by the Supreme Court in [P.R. v. Branstad], 483 U.S. 219 (U.S. 1987) which found that the demands of the Extradition Clause were mandatory. See note 17 supra.