



Race Track Industry Program

## TUESDAY, DECEMBER 7, 2004 RACING AND GAMING SUMMIT

### Morning Session 1

### LEGISLATED FOR SUCCESS

**Moderator:**

**Charles Anderer**, Director of Product Development, Ascend Media Gaming Group

**Speakers:**

**Steve Geller**, Florida State Senator (D)

**Bennett Liebman**, Coordinator, Racing and Gaming Law Program, Government Law Center, Albany Law School

**I. Nelson Rose**, Professor of Law, Whittier Law School

**MR. CHARLES ANDERER:** Good morning. My name is Charles Anderer, I'm with Ascend Media Group; we're the co-presenters along with the University of Arizona Race Track Industry Program at this Third Racing and Gaming Summit. This is the first session, "Legislated for Success."

We're going to talk about the political process, such as it is, some of the votes that took place last month, and also the quality of legislation that's affecting the racino segment.

It was a very busy month last month at the polls. I don't think I've ever heard Mo Udall's famous quote quite so often. If you remember, he was the Arizona senator who, upon finishing second to Jimmy Carter in the 1976 New Hampshire Democratic primary said, "The people have spoken, the bastards."

**(Chuckles)**

But the gaming industry did enjoy a fair bit of success for all that at the polls last month. As the seasoned professionals who are in this room know, having a successful initiative or passing a law is really only the beginning of the battle. So we're going to talk about all of the issues that relate to the topic of legislation and the political process.

We have three excellent speakers to take us through this. I'll be introducing them in the order that they speak.

Steve Geller is our first presenter. He's a Florida State Senator since 1998, and he's the incoming Democratic Senate leader for the 2006-2008 session. All told he's spent over 15 years as Florida state legislator.

As a Broward County-based Senator Geller worked for passage of Amendment 4, an initiative that allows the counties of Dade and Broward to hold a referendum on the issue of adding slot machines to seven pari-mutuel facilities.

And many of you also know Steve for the superb work he's done for the National Council of Legislators from Gaming States where he is president.

Please welcome Steve Geller.

**(Applause)**

**MR. STEVE T. GELLER:** Good morning, boys and girls. So pleasant to see you bright and smiling faces so early in the morning. My problem is trying to condense this hour and a half speech to the 45 minutes that they told me that I had, but I'll do my best.

Just kidding, Charlie.

I'm going to talk about three things here. First I'm going to talk about overcoming political barriers and politics and public policy in general, then I'm going to discuss this specifically in a pari-mutuel context, and finally I'm going to discuss the Florida laws.

First of all, in overcoming political barriers in general, you need to understand how a bill becomes law, and how difficult it is to ever pass anything. I mean, it's a fundamental thing that a lot of people don't understand.

In order for legislation to become law it has to start off with a bill in the House and a bill in the Senate. Each bill has to go through typically four, five or six committees; then both the House and the Senate have to pass an identical bill.

Say the House passes a bill, gets sent over to the Senate. The Senate has to pass it, or the Senate passes the bill, sends it over and the House, they have to pass it, and then the Governor has to approve it.

That means along the way if you've got five or six committee chairs and the speaker, president, any one person can kill the bill, but in order to pass it it has to pass through 12 or 15 people. So it's much more difficult to pass legislation than it is to kill legislation. It's easy to kill it, it's hard to pass it. And that's something a lot of folks don't really understand. We have to look at the competing goals here, and basically competing masters that we each serve.

As a politician, we answer to the public, the bastards, or whatever was just said.

Our goal is to try and carry out the will of our constituents, which is difficult because our constituents never agree on anything. But one thing that they all agree on is they want as much money as possible and they want somebody else to pay it; somebody else. A good source of revenue is typically, I think, the gambling industry.

You all answer to a different master. Many of you work for publicly traded corporations. Your goals are, you're answering to stockholders. If you're owning your own business, then your goal is to maximize the profit for your company, which is again very different from the goals that we in public policy have.

Now, I know you're going to be hearing a little later today from Gene Christiansen, and he has spoken at one of our NCLGS. I've looked at what he's speaking on so I don't think I'll be stealing his thunder just to use an example that he gave at of our meetings.

One of the big public policy issues that people have to determine is what type of gambling they want. And Gene — I'm going to mangle his example — but pointed out that the tax rate that you have determines what kind of gambling you're going to get.

You can have a 10 percent tax rate on gambling and you'll end up with a Bellagio; you can have a 40 percent tax rate on gambling and you'll end up at a nice Loews hotel. You can have a 70 percent tax rate on gambling and still sometimes make money, but it's going to be slots at Magic Marts or convenience stores. The tax rate that you have determines the type of gambling that you end up with, and there's different advantages to each.

If you want to be a destination resort, if you want to create a large number of jobs, then you have a lower tax rate. If the goal is to wring every dime that you possibly can in tax revenues, then you go with the higher tax rate, understanding that there are points of diminishing returns.

But when you go with the higher tax rate you lose the construction jobs, you lose the other high-pay jobs that come with the gambling industry; because again, at a higher tax rate you can't afford any of these other issues and you end up like I said, basically with slot machines at convenience stores or at laundromats, because that's the only way that you can effectively make money at a 70 percent tax rate; although I guess we'll see what happens in New York and Illinois now.

And understand that whatever tax rate you set, it's going to go up. I mean, whatever — and that's typically the case. Because you will hardly ever find legislators reducing your tax rate; although we did in Florida — when pari-mutuels came into hard times we did reduce our tax rates from time to time.

But one of the things that you'll find, whenever the economy goes bad it's easier to raise taxes on cigarettes, alcohol and gambling, the so-called sin taxes, than it is on anything else.

So understand, whatever you're setting your tax rate, if the economy hits a hard patch, those tax rates may go up.

Let me give you a clue on dealing with legislators and how to understand legislators. And let me emphasize, since I see we have a court reporter here and a TV, I'm talking about other legislators. None of these things I'm about to tell you apply to me.

**(Chuckles)**

Except for this one. One of the reasons — after I met my wife people commented on how well suited we were. And the reason for that is prior to our getting married, she professionally worked with emotionally disturbed children.

**(Chuckles)**

And if you understand that you'll understand basically how to work with the members of your legislature. The —

**(Chuckles)**

The problem that a lot of us have is you take — again not me, okay? You take somebody that's normally a schoolteacher, a small business owner, a person that has some prestige, saying that advisedly, and then you elect them to the legislature. Suddenly everybody in the world, people that would never take our phone calls before, suddenly they're all our best friends. Suddenly people that we never knew are offering to buy you a drink or laughing at your jokes, even when they're not funny.

Just the treatment, it's a different treatment that members get. And they become convinced that suddenly upon election they're smarter and better looking than they were before they were elected.

And you may say, "That's ridiculous. Why should we put up with these arrogant fools?"

Well, if you want legislation, you'll have to. And let me give you — I mean, most politicians, most legislators I've found assume that we know more about any topic than we actually do.

We are also likely going to believe what some of the lobbyists that we're friendly with have told us — and again, people talk about lobbyists as some terrible thing, but actually they're very useful in providing information.

But we all know lobbyists that we're more friendly with, and some legislators obviously tend to believe the lobbyists that they're friends with more.

Let me give you some rules about how to lobby us. First of all, understand it's a year around job. If you come to us only when you need something, only in the middle of the legislative session when we have 20 people waiting to see us and 15 minutes to see people, you'll get two minutes if you get any time at all, and it's just not very effective.

Lobbying your legislators is a year around job, you need to understand that. Be friendly to your legislator. I won't — my notes say "suck up," question mark, but I won't say that.

**(Chuckles)**

You have to understand that we have — I mean, there's a lot of people pulling on us for attention. And I think it makes sense: You know, we're humans, we like to deal with people that we're friendly with. So, you know, just try and be friendly.

I'll tell you again, one of the issues that a lot of legislators running for reelection fortunately — well, unfortunately I'm now term-limited, so I've started my last four-year term, so I'm not running for re-election ever again.

But when your local elected officials ask for help in their reelection and their campaigns and their charities and stuff like that, you know, you're going to write checks.

You may not write checks, but I'll tell you, if you want to be successful that is one of the things that you probably ought to be doing. I'll give you a warning on that; if you're an incumbent — and I know a lot of people try and they get angry at an incumbent for ways they voted, so they decide they'll make a statement and they'll write a campaign check to that incumbent's opponent.

It's the old story about taking a shot at the king. Don't take a shot at the king unless you know you're going to hit him.

There's a friend of mine, good friend of mine, a lobbyist in Florida that apologized deeply but his clients wanted to make a point on an insurance issue, an insurance company, because I had voted against the industry. So they made a substantial contribution to my opponent's campaign and also to several of the other legislators in the leadership.

After they had done this, this lobbyist might as well have gone playing tennis the entire legislative session because he was completely useless in Tallahassee because his clients wanted to make a point. Well they did, and the point that they made was that their legislative agenda was essentially completely nonexistent.

Never ever, ever, ever, ever be condescending or rude to legislators, even if you disagree with them. Never, ever, ever, ever be rude; because again, we think we know much better than you about everything; and again, we do have our finger on the button.

And if you lie to a politician you can do so once, that's it. Because anybody that's ever lied to me has never been allowed back in my office. I mean, we rely on the lobbying community for information. I understand there's different ways of looking at issues. You lie to us once and don't bother coming back.

There's a lot of opponents of gambling. First of all, you have a lot of politicians that are looking for a cause, you know, a populist issue. Sometimes they don't really even believe it but they do it.

I've had one politician friend of mine in north Florida say, "You know, Steve, of course I'm going to stand up and speak and yell against the — against slot machines; and of course I'm going to vote for them myself. I recognize we need to have them. But my constituents won't understand it."

You also have people that are looking for a cause that do believe it. You've got a lot of religious moral opponents to gambling and so you have this problem. One of the problems you're going to have is on existing gambling.

When we passed legislation in Florida, for example, we just passed Amendment 4, one of the things that we found out was that the main group funding the opposition to Amendment 4 were the Indian casinos. I mean, they came out with all of these moral ads; "Oh, this is terrible, gambling is terrible. We don't want it in Florida."

And after the election when the financial report came out, it turned out that the people that were so opposed to gambling in Florida were the people that were already gambling in Florida. I know you're shocked by this, but —

**(Chuckles)**

Some of the other opponents are the existing restaurants and some of the entertainment facilities. I served as chair of the Public Sector Gambling Study Commission — I see Ben Nolt from Pennsylvania who was one of our commissioners; it was a great commission, was an all-public sector study commission. One of the things that we determined was that in smaller towns there is a positive economic impact in gambling; in some the larger towns, however, there's not really any discernable effect, and some of your existing entertainment facilities will feel threatened by the advent of gambling.

We've also discovered that there is not really — and I think a lot of people are now starting to notice this — you have the red states versus blue state issue; the moral, you know, conservative, religious fundamentalists.

There is no such thing as a red state-blue state issue. Turns out that it's actually red community versus blue community. In the same state in U.S. urban areas it's very likely to be blue, while you have a rural area in what they call the exurbs, which are the outside suburbs, they're going to be red. So even in your own state, whatever state you're from, and in most cases there's going to be blue portions and red portions.

And the people from the red portions typically are going to be against you and the people from the blue areas typically are going to be supportive of you; although that's not always the case.

One of the things — again I'm a Democrat — I have found is that the Republic Party in my state, which typically would have a lot of people against it, because of the amount of money involved in this, will want to leave the legislation because they think it'll be a good source for campaign finances.

Running way behind. Okay. Skip. Skip. Arguments against. Racetrack Gambling Policy. I'm on part two but I promise I'll go faster now.

The traditional things that racetracks have argued about, racing dates, tax rates, regulations, simulcasting, all of the issues that every of you have fought over in the past, these are largely going away these days. And they're being subsumed by the big fight over racinos.

Now there's arguments, public policy arguments on racinos either way. Our position, which I supported in Florida, is I said, "Look, you're saying we don't want slot machines in Florida. We've got the Indian casinos, we've got the cruises to nowhere."

We have the some groups that are like — they have what are called "spinners" where they're basically slot machines, but for prizes instead. They got the machines at the veterans halls, we have the cruises, we have them here. The question is whether you're going to have taxed and regulated gambling or untaxed and unregulated gambling.

And I think that in Florida we were successful in pointing out that it should be taxed and regulated, although it was narrow.

There's a question some people raise whether any state should have had racinos ever. I understand competition has made some states have them. Now that some states have them, I believe states that do not have them will see the end of their pari-mutuel industries. It is not possible to be competitive, your athletes are your thoroughbreds, or in some cases your greyhounds, you can't be competitive if you're in a state that does not have the racinos.

And I think there's a lot of public policy reasons to argue in favor of keeping your pari-mutuel industry alive. It's part of the historic framework of Florida — excuse

me — of our states. It creates a lot of jobs. I think there's a lot of good public policy reasons for keeping our pari-mutuel industry involved.

Going as quickly as I can. Okay. Let me give you one issue on the pari-mutuels and the same thing will apply to Florida, which I'll get to next.

Number one, since I told you it was so easy to kill a bill, if your pari-mutuel industry is what it always is, which is at war with each other, and that's always been the case as long as I can remember, your chances of passing legislation are slim. Because it's just too easy to kill a bill.

The second thing is, surprisingly, if you think you have one great champion, the speaker of the House, the president of the Senate or the governor, that can sometimes work against you. Because if the president makes it known that this is a top priority, the president of the Senate, then the speaker will hold that bill until the very end and try and get all of his legislation passed.

And if he doesn't get all of his legislation passed he won't pass the speaker's top priority, which is the pari-mutuel; or the president's or the governor's. It's the governor's top priority then the legislature will always say, "Aha, we have the governor over a barrel."

So you need to be careful not to have your champion too strongly identified with your bill, if it's the speaker, the president or the governor, because the other two will use that as bargaining leverage.

Let me close in talking on Florida, and this should take no more than another 20 minutes.

**(Chuckles)**

Just kidding, okay.

First of all, it was not required, constitutionally-required for us to go on the ballot to have VLTs at tracks. The reason we did it is the legislature kept turning it down. Basically we could have passed it through the legislature, we did once. But our governors — one governor vetoed it, Governor Childs, and Governor Bush always said he'd veto it.

The referendum is only for two counties, that's Dade and Broward County; Miami and Fort Lauderdale are the two big cities there.

Now, you run into a bunch of problems; first of all it has to now pass a separate referendum in each county, and the cities and the counties are saying if they don't get some tax money from it they're either not going to put it on the ballot or they'll campaign against it. There's a feeding frenzy in the local governments.

The problem is that the wording of the referendum says that any taxes raised may only go for statewide education. So how do you deal with that?

I filed a bill, I'm referring to the local government money as a licensing fee, a one percent licensing fee, not a tax. Well see how that fares.

There's two lawsuits pending, one alleging fraud in the signatures, the other alleging fraud in late-counted ballots. Now, the late counted ballots, the people that did our voting machines, God bless them, there was a software glitch. Once you reach 38,000; 37,998, 37,999, 38,000, the next vote took you back to 37,999, 37,998. Once it reached 38,000 votes it started counting backwards.

So they found another, I believe it was 90,000 votes, which put it over the top. And of course the anti people are assuming that there were huge problems. And so they're alleging fraud; that is a stone cold loser for them. On the fraud in signatures I can't tell you.

What about the rest of the industry? Well, the Indians opposed the referendum the first time around, what are they going to do now? I'm not sure, I'm not an expert on IGRA.

I don't know if the state is authorized slot machines by referendum but none of them have passed it by referendum, does that entitle the Indians to the Class Three gaming? I don't know how that works. But if the Indians think they can kill it and beat it, and now get full slot machines instead of VLTs, and be the only game in town, I presume they'll do their best to kill it.

There's seven pari-mutuels; five pari-mutuels bankrolled the entire thing. The other two pari-mutuels sat out and didn't contribute a dime in the enacting legislation.

What happens now? Are those two going to try and help control the legislation? Who knows? Will the other pari-mutuels around the rest of the state, there's, I think, 27, 28 pari-mutuels in Florida. Are they going to sit by and let these seven, meaning will the other 20 let these seven get it? I don't think so.

They're talking about wanting to see revenue sharing perhaps. They're talking about wanting to see statewide slot machines. The legislation we passed mandated it in Dade and Broward but didn't prohibit it anywhere else.

I think that the last issue is what will our governor do? Well, Governor Bush, Jeb Bush has opposed gambling of all types at all times. I suspect — he's in his last two years now. Unfortunately, his brother was reelected. I'm saying, "unfortunately," ignoring politics, I'm only talking on Florida gambling.

If his brother had been defeated, Jeb would have been an outgoing lame duck. Now he may be outgoing governor, but he's the brother of the president. So because "W" was reelected there's now no chance of overriding a gubernatorial veto, so I think he will oppose it.

I mean, he'll go with the will of the people, but at the end of the day my guess is he will insist on a tax rate of like 101 percent; for every dollar you make you have to pay \$1.01, or something, you know.

Realistically, I think he'll do what New York or Illinois-style tax rate, or maybe he'll come up with a restriction on the number of machines; or more likely what I suspect is he will — when we did card rooms he said, "Fine, I'll permit card rooms but only during days that you have live racing and only 12 hours a day. Noon to midnight on those days."

My guess is he's going to do the same thing on this and say, "Well, we'll let you have slot machines but only 12 hours a day and only on days that there's live racing."

I think all of you know it is impossible to do that.

They told me I could make one quick plug. I am the national president of NCLGS, the National Council of Legislators from Gaming States. I'd like to invite everybody to our next conference which is in the Keys January 14th, 15th, 16th.

If you're interested contact us, look at our Web site, [www.NCLGS.org](http://www.NCLGS.org), National Council of Legislators of Gaming States, NCLGS.org.

Sorry to take so long. It's been a pleasure.

**(Applause)**

**MR. ANDERER:** I'd just like to tell our fellow panelists; that wasn't my cell phone, that was Steve's speaker alarm.

**(Chuckles)**

**MR. GELLER:** If you'd told me that I'd have stopped earlier

**MR. ANDERER:** No. Thank you, Steve. And we look forward to posing a few questions afterwards.

Our next speaker is I. Nelson Rose. Few people can boast the breadth and depth of knowledge of gaming law as Mr. Rose.

Nelson has worked on legal issues involving this industry for over 20 years. Way back in 1986 when few people were thinking about gaming, he authored a landmark book called "Gambling and the Law." He has served as an expert witness and legal consultant in jurisdictions across the country.

He was most recently involved as an advisor to the card clubs and racetracks in California for the ill-fated Proposition 68, a chapter which again proved the point

that Steve made in his presentation, that nobody will spend more, no single entity will spend more warning about the spread of gaming than existing gaming operators.

Nelson will speak to Proposition 68 and to a range of other issue involving gambling and the law. Thank you.

**(Applause)**

**MR. I. NELSON ROSE:** Thank you very much.

First I have to thank Steve. This was — I have not heard anybody put it so succinctly. I worked for an assemblyman before I went to law school, and he used to send us back drafts where he would find a comma was missing and he'd take a red pen and go through the whole thing. And this was before computers.

So then you would type the whole thing over again and it would take another week and — and I asked him why he did that. And here's the quote: "Because I can do everything better than anyone else."

**(Laughter)**

Fortunately he is no longer in the state legislature; he is a judge.

**(Laughter)**

And then the quick point on IGRA. I am an expert on IGRA. In fact, I co-authored the first casebook on gaming law, and I did the Indian law section, and the answer is: Absolutely.

The tribes can have slot machines now even if the cities and counties vote it down. The problem is that the U.S. Supreme Court has said that the governor doesn't have to talk to the tribes, and there's no remedy; nobody knows what happens when the governor doesn't want to talk, so they've got the right but no remedy.

What I am going to talk about quickly, here we go, is going to take about 300 years of history, a couple countries, bring it down to not only today and California, but look into the future.

And I'm going to focus on California, but first I want to say how we got where we are today, which helps explain what's going to happen in the future.

I do have a Web site which is [www.gamblingandthelaw](http://www.gamblingandthelaw), and I do a monthly column called "Gambling and the Law." If anybody wants to get that before you see it in one of the publications where it's syndicated, send me your e-mail and I'll put you on my mailing list.

In fact I just did — I spent weeks on this. I just did an update on every state and territory of the United States. And it's going to be a special insert to Casino Enterprise Management in about a month. I haven't decided whether I'm going to send that to people in advance yet because they may not like that.

What I want to talk about is how we got here; and anybody who's heard me speak — I do a lot of public speaking and writing — knows that I say, I have said now for 20 years, that we're in what I call the third wave of legal gambling. Third time in American history that gambling has spread everywhere. It started before there was even a country. When the lotteries funded the Colonial expansion, it was — it's said it was easier to buy a lottery in George Washington's time than it is, say, to buy a California lottery today.

Maybe true, because there were no banks. Came down crashing in scandal and ruin in the 1830s and people were so against it, they said, "There will never be lotteries again, and to make sure we're going to write it in our constitution."

This is the reason that today when you do — say you want to put riverboats in Missouri, the question is, "Well, gee, can you do that when the constitution says you can't have lotteries? Is a riverboat casino a lottery? And is racing a lottery?"

I mean, there's cases from the '30s, there's cases from today, and the courts are split on, "What did they mean 150 years ago when they outlawed lotteries?"

Second wave started with the Civil War; the south was devastated and needed an easy way to raise money. The frontier in the West; well, you've always got gambling when you have a frontier. Sometimes it's legal, sometimes they're just bribed.

Came crashing down at the turn of the 19th century. Victorian morality came in to the point that in 1909 the territories of Arizona and New Mexico were told if they wanted to become states they had to outlaw their casinos.

Nevada, which had casinos, outlawed its casinos. And everywhere all the lotteries were shut down. And there were only three states that had had racing. And then in 1910 New York actually closed its tracks. Then came the Prohibition that we all know about, which was prohibition on alcoholic beverages.

There was a prohibition on gambling. We are coming out of an era of prohibition state by state. Which is why you see some crazy things happening. Because it's up to the individual states, sometimes with constitutional prohibitions, and you know, as Steve said, if it's hard to pass bills in the legislature imagine what it's like trying to get voters to do it.

What we are seeing though is this tremendous expansion, no step back on gambling. This is what the third wave of legal gambling looks like.

I used lotteries because it's easier than, say, Indian gambling; with Indian gambling you have to have a number of Indian tribes.

Started in New Hampshire, it was a failure. But 80 percent of their customers came from New York, Massachusetts, and Connecticut, so New York was second. It was a failure. New Jersey got it right. New Jersey said, we'll have the drawing not twice a year but once a week, every day, every five minutes, instant. And they started making a lot of money.

Notice that when you have a breakthrough in an area, the states around it then say, "My God, look at those hundreds of millions of dollars of our taxpayers' money going across the state line. And Florida's legalized it and it didn't break off into the sea. Well, I guess it's okay then."

Now you've got some southern states falling. What we're getting to right now, this is where we were when the National Conference — excuse me — the National Gambling Impact Study Commission, which Congress enacted, said, "Okay, let's look at gambling in the United States."

Their recommendation was a moratorium; no new gambling.

Well it's a little late. You know?

**(Chuckles)**

Although I've got to tell you, you know, Georgia would have been very happy if there had been no gambling. In 1998 the only two incumbent Republican governors who were defeated were in Alabama and South Carolina, and they were both defeated by Democrats who said, "Let's bring in a state lottery for education."

So it looked like we knew what was going to happen.

Then this is the beginning of the anti's getting organized. Special election, low turnout, conservatives show up — and I'm sorry, my contact just dropped.

And what happened is they organized; they came on down and they actually defeated the special initiative for a state lottery. But then we ended up with South Carolina voting it in, and in the most recent election, we see or — a couple years ago, Tennessee.

Now there are only two states in the country that don't have legal commercial gambling. And then in the most recent election now finally Oklahoma, the racing interests have basically given up or been bought out by the Indian gambling.

This is California. This is the problem. You can see the problem that the casinos in Nevada are having. Fortunately for them, the population is along the coast, and there really are very few tribes — that's Sacramento — very few tribes that are

close to urban centers, so it hasn't completely cut off the flow of money, but it's getting there.

And of course Las Vegas keeps reinventing itself, so they can survive. But you can see what sort of impact it could have.

To give you the numbers, I still remember — giving away my age — I remember when New York was the most populous state. California is now almost twice as big. It also shows you, by the way, why Nevada does so well. It used to get 40 percent of its customers from Arizona and California. In terms of the money, Gray Davis did the state a terrible disservice because he didn't require the tribes — the governor didn't require the tribes to report.

So the best estimate is they're making about \$6 billion a year, they pay no federal or state taxes because they're governments.

To put that in perspective, you can see, depending on how you write it, they could be considered the largest gaming market in the country. Not quite fair because Nevada has been broken up into the Strip and Reno and downtown.

But to show you what Nevada is like, they're at least half as big as Nevada, and of course Nevada casinos do pay federal and state taxes.

If you don't mind I'm going to take a second and put my contact in because I can't read that. Okay, this is going to look strange but — can somebody read that first line to me?

Got it, thank you. What happened is I did — and this is the reason I haven't memorized it, I did it last night. I went through and figured out how much money is actually being raised and spent by the tribes. And this will give you some idea of the tremendous impact that legal gambling has had on politics in California.

Because — and I was surprised, money really does talk. I'll just put the numbers up, because they're fairly self-explanatory. The anti's in Prop. 5 were the Nevada casinos. They were able to put together \$25 million, it wasn't really a whole lot of money compared to what the tribes can do, because they'd been up and operating for years making literally billions of dollars a year and not paying federal or state taxes. Tried again, Prop. 50 was declared unconstitutional.

And by the way, one of the best decisions ever decided by a state supreme court, wonderful decision. I don't care about the merits, but they quoted my book all over the place.

**(Laughter)**

Great decision. So the tribes then said, "Oh, it violates the state constitution we'll amend the state constitution."

But Nevada gave up. They saw they couldn't possibly put up enough money and the tribes didn't have to put up a quarter of a million — \$25 million, kind of peanuts.

What we're seeing is in campaign after campaign, the tribes have got all this money, and there really is nobody who can fight it. In the most recent election, Prop. 68 was the card clubs wanting to have slot machines and tracks; Prop. 70 was a couple of the tribes: they wanted to have no limits for 99 years.

The tribes were able to come up with, one tribe could write a check for more than all the racetracks and card clubs in California together could raise. And to put it in perspective; you can see the tribes basically can now spend more than a presidential campaign, if they want to, in one state.

What's going to happen? The tribes want slot machines. Actually, they've got slot machines, excuse me. There's a 2,000 limit on slot machines, so they want to put in video lottery terminals. They've already got them up and operating. The interesting question is, what happens if they win?

Because their argument is, "We can do it because somebody in the state can do it. The state lottery itself can do it." Well, if the state lottery can put in machines will the state lottery put in machines?

The racetracks want to put in machines and the big question is going to be, how can they do it? In some states — like I've worked with tracks in Alabama to get the constitution amended and a local ordinance and they've got bingo machines.

California state constitution won't allow putting in bingo machines like that, probably. Well, you have to be a charity. Lottery, video lottery terminals. Only the lottery can have it; although in New York it doesn't seem to matter if only the lottery can have it. So I'm not sure there's any way that the tracks can get their machines.

The card clubs want at least parity. You've got Harrah's and other big casino corporations running tribal casinos, but the card clubs are not allowed to have — even to incorporate and get outside companies to help them.

I think that will finally go through. They want to be able — there's some strange laws. They can't play "21" so they play "22," you know. They'd like to have true banking games. They can't do that but maybe they can put together this idea of a players' pool; so get all the player money together and call it "Player Pool" and not "Banking Game," and it may fly, may not fly, I don't know.

The interesting idea, and this is what I think we're going to see, you'll notice on the prior chart that the racetracks and card clubs have money left over, they gave up. They saw the writing on the wall and they stopped when they had \$4 million left, so they still can do another initiative.

And what they want to do is counter the tremendous money that the tribes have. And so what they're saying is, "No contributions at all, period. No campaign contributions by the tribes."

Well, the tribes will say that discriminates. So they'll say, "Okay, we don't have to give in either," which they would love to not have to be able to give money.

So I think what we're going to see is an initiative that is going to be very hard for the tribes to beat, even with endless amounts of money. I mean, how do you justify it?

The card clubs and racetracks are going to say, "Nobody in legal gaming can give any money period." It's going to be a tough one to beat.

I want to thank you. I apologize for having my contact drop out in the middle of this, but I'm leaving time for questions. And I will be around, in fact, all day today.

Thank you very much.

**(Applause)**

**MR. ANDERER:** It's tough duty up here.

Our next speaker is Bennett Liebman, and I feel a little bit — it's almost inappropriate to do a speaker introduction for Bennett Liebman, because if you've moderated, he does the best speaker introductions in the business. There's only one other person, Bennett, who's as good in my view, it's Mike Pollock.

In fact, we could do an entire session I think, just having Mike Pollock and Bennett Liebman talk about other people in the industry.

Bennett Liebman is coordinator of the program on Racing and Gaming Law at Albany Law School's Government Law Center. Prior to joining academia full time Liebman served as a commissioner on the New York State Racing and Wagering Board from 1988 to 2000, a position which give him a front row seat to the many twists and turns that have marked the course of gaming in the Empire State, some would say a front row seat in the sausage factory.

A graduate of NYU School of Law, Liebman's credentials include the Race Track Industry Program's Distinguished Service Award, received in 1997.

Please welcome Bennett Liebman.

**(Applause)**

**MR. BENNETT LIEBMAN:** Thank you. An expert is someone best known for frequently giving his opinions, and not for how frequently he's right about his opinions.

That's certainly not true for Professor Rose, who has done more than anyone to establish the study of gambling law as a serious academic pursuit. But it does explain my presence on this panel.

But no matter how I got here, I'm honored to be part of this program and this panel. I'm supposed to provide some notion of what's happened in gambling in the northeast, with a special emphasis on New York State. I find, however, that I can't come up with the words to construct a proper analogy for New York State's relationship with gambling.

But there are two canons that apply to most everything involving the state legislature in New York. One, somewhat echoing Steve Geller's remarks, the status quo is always 4-5. And two, somewhat like the old GE slogan: "Rumor is our most important product." In fact, it's often our only product.

Applying those canons to New York, gambling legislation is close to trench warfare in World War I. There the troops sat in the trenches for months, there'd be a few days of attacks with tremendous casualties and you'd go back to the trenches.

In New York you pass a bill in two days in 2001 and basically nothing happens for three years. Everybody fiddles and diddles. It looks like a Seinfeld episode.

We passed and negotiated a gambling bill in October of 2001 in two days; we're still waiting in the trenches to see what happens next.

Here's where we are in New York. We've authorized six Indian casinos; three in the Catskills and three in western New York for the Seneca Indians, and there are racinos at all state harness tracks and at two thoroughbred tracks, Aqueduct and Finger Lakes, those are the ones that have been authorized.

Originally the racing industry was to get a maximum of 25 percent of the net proceeds, basically evenly split with the horsemen and the tracks. In 2002 the percentage given to the track went to 17.5 percent. In 2003 the legislature, over Governor Pataki's veto, raised the amount to the racing industry to a grand total of 29 percent, with the track given the right to get the horsemen to lower their share.

The legislation basically guarantees the tracks at least 20 percent of revenues for the first few years. Nothing has changed thus far in 2004. The question from everybody, basically this type of audience, is, "Why did the racing industry fare so badly?"

Well, there's one basic reason; they didn't write the bill.

The counsels to the legislative leaders wrote it and they had three concerns. They wanted the money for the states' needs, they were concerned that a high rate of payment to the tracks for a commission would violate the constitutional requirement that the net proceeds from a lottery would go to education.

In fact, the original draft of the VLT bill prepared by the governor's office allocated a total of 12 percent to the racing industry and three — sorry Stan, they didn't trust the harness tracks.

If you talked to the top legislative staff in 2001, the best you might hear them say about harness tracks was, "Whining babies," the rest would be unprintable. This simply was not the industry's VLT bill.

Now three years later we have two open Indian casinos by the Senecas in western New York but none in the Catskills. We have four open VLT parlors with mixed results. Four authorized outlets have yet to open.

I don't know how many of you were here last year for the New York panel for this program with Ron Sultemeier from Delaware North; Ron Sultemeier was almost totally prescient. At two of the facilities they managed it's been okay. At Finger Lakes and at Saratoga Gaming the revenue per machine is over \$180 per day.

Unfortunately at their other facility, Buffalo Raceway, the revenue is less than \$100 per machine and at Monticello, not run by Delaware North, it's also about \$100 per day.

Now, Buffalo was expected. It's an old facility in an area with a lots of gambling opportunities. The Monticello number is a bad one. It's the closest open VLT or slots facility, if you wish, to New York City, and it's not attracting anything other than a mostly local audience.

But apart from Monticello, the state really has gotten what it bargained for. It's received decent revenue, it's helped the quality of racing and it certainly hasn't overly enriched the tracks.

The four that haven't opened include NYRA at Aqueduct. NYRA's willing but it's not able to offer VLTs; its franchise expires in 2007 and its partner, MGM needs some sort of guarantee that VLTs will continue beyond that day. Yonkers, which is the 800-pound gorilla in this group, with a desire to have up to 7,500 machines, would like a better slot deal and is unwilling to go forward until there's some definitive ruling on the law's constitutionality.

Batavia Downs, which is owned by Western OTB, has been financially troubled and they're projecting a very optimistic start date of March 2005. Vernon Downs, it's a story in itself.

Again, if you were here last year for the New York panel you might have heard about its imminent opening. Everything that was said at that time turned out to be untrue. The place is the equivalent of Chinatown from the Jack Nicholson movie.

Due diligence at that track is much like peeling an onion; you've got layers and layers of scandals. But as much as I'd like to bet on the status quo, that nothing

will change, in New York it has to change. There are too many problems developing in the trenches.

New York's highest court will shortly decide whether VLTs and Indian casinos are constitutional. The State's intermediate appeals court, in a decision notable only for its need to display the unanimity of the court, found that Indian casinos were constitutional but VLT legislation was unconstitutional, because revenues from the VLTs were improperly shared by the track with horsemen and breeders.

They weren't vendors and the court didn't think they could properly share in the proceeds. If the court of appeals takes any action against the legislation, there will be a need for amendments.

Two. NYRA's going to need some revenue. It needs a revenue stream to get anywhere near profitability. It desperately needs VLTs.

Three. Governor Pataki has proposed a bill to revamp racing and gaming regulation in New York and allow VLTs at Aqueduct. The Republican-controlled New York State Senate has already passed it and the Democratic-controlled State Assembly has authorized similar, although not identical legislation. Everyone appears to want to change the regulatory status quo.

Four. New York City OTB, the largest of the State's OTBs, is in dire financial straits and is going to need a revenue boost or another revenue source to continue operating.

Five. The Governor is in the process of devising deals with tribes in the state which trade settlement of land claims in return for additional casinos in the Catskills. He's already announced deals with the in-state Cayuga Tribe and the Oklahoma-based Seneca Cayuga. In fact, just yesterday he announced that he wants a total of five casinos in the Catskills. All those arrangements are going to be subject to legislative ratification.

Six. Recent developments in Pennsylvania will require the state to try to become more competitive. We're going to see at least two large slot halls in Philadelphia; one at Philadelphia Park, which is just north of Philadelphia, and probably one or two in Pennsylvania's Lehigh Valley.

All of those locations are about as close to metropolitan New York as the Catskills. One of the existing Seneca casinos is on the Pennsylvania border. Real estate developer Jeff Gural has proposed a harness track in New York's Cayuga County, which is also on the Pennsylvania border.

New York's going to need to do something to compete with Pennsylvania.

Finally, and most importantly, the state is under a court mandate to properly fund public education in New York City. The referees appointed by the court have said

that proper funding means an additional \$5.6 billion per year plus \$9.2 billion in capital expenses to be phased in over five years.

The state and the City of New York are supposed to come up with over \$7 billion per year to fund education. In a world where tax increases that cannot be palmed off as fee increases or can't be passed on to out-of-state rental car operations are just anathema, this has to mean a massive increase in gambling to fund this court mandate.

Governor Pataki in his last budget proposed eight free-standing VLT operations. It's hard to believe that he could propose less this year.

Here are the rumors from Rumors 'R Us headquarters in Albany.

One. Quick passage of gambling reform legislation which at least would let NYRA move ahead with VLTs.

Two. Introduction of a constitutional amendment allowing commercial casino gambling in New York.

Three. Quick ratification of the additional casinos for the Catskills.

Four. Auctioning off of free-standing VLT parlors to the highest bidders.

Five. Giving VLTs to OTBs which ends the OTBs' financial crisis.

Six. Providing additional revenue to the racetracks in the VLT formula. The problem with the racetracks is that even if the state increases the vendor fee, those folks are never going to reach the levels of surrounding states. The problem is price competition in New York.

The OTBs and perhaps even the taverns and bars are willing to take far less than the tracks in return for the right to have VLTs. In the horse racing they might not want a 29 percent share but the OTBs would be glad to take a 29 percent share. It's going to be very difficult to raise that amount considerably in New York.

But as bad as the situation may be for the racetracks in New York, that's about as good as it gets for the Pennsylvania tracks. The Pennsylvania legislation is about as remarkable as it gets in terms of distribution of slot machine revenue.

People often talk about Christmas tree bills, where there are presents for everyone involved in the legislative process. This is the mother of all Christmas tree bills.

Perhaps on this eve of Hanukkah it's the ultimate Hanukkah bush bill and it's going to take more than eight crazy nights to distribute all the presents from this bill.

First of all, it authorizes up to 61,000 slots at 14 sites. Seven go to tracks, the four existing ones plus Mountaineer's proposed Thoroughbred Park in Erie and the

combination of Harrah's and Chester Downs, their harness track near the Delaware border. That's left one open slot with a battle for a harness license in western Pennsylvania.

Then there are two free-standing parlors in Philadelphia, one in Pittsburgh and two in the rest of the state, plus two slots licenses for resorts. Everybody does well. The licensees get to keep 44.7 percent compared to about 20 percent in New York.

Twelve percent goes to horsemen, breeders and the horsemen's organizations themselves. Four percent goes to local government, Five percent to gaming and economic development for an absurd number of possible uses, including a convention center in Philadelphia and a stadium/convention center and airport development in Pittsburgh.

The state tax is 34 percent with most of the money going to property tax relief, but with additional funds to volunteer fire companies, compulsive gambling treatment, local law enforcement, even forest research.

You heard Senator Geller say it's only going to education. Not in Pennsylvania; it goes to everybody, everybody with a special interest. Legislators — no special interest in fact was left behind by this bill. Legislators were allowed to hold one percent of a licensed — of the licensee; licensed suppliers were required to have their principal place of business in Pennsylvania.

Now, there was tons of public resentment against the provisions that appear to let the individual legislators profit from this bill. And as a result of that, the bill was amended a few weeks ago to try to get rid of these excesses but that amendment was vetoed by Governor Rendell. However, Governor Rendell — the legal effect of that veto is uncertain because he referenced an incorrect print number of the bill, so no one quite knows what the situation is. It's just a mess.

To us in New York, the Pennsylvania legislation looks like the bizarre world of Superman Comics. Everything is opposite. The New York racino bill is a few pages, Pennsylvania's is 146. Even the Pennsylvania amendments were 61 pages.

New York's bill gives a lot to the state but only for education. Pennsylvania leaves a lot for the operators but applies the government's funds to every conceivable interest.

New York developed its racino bill largely in private. The Pennsylvania process was open to the world. Penn National is selling its harness track, Pocono Downs, to Mohegan Sun for \$280 million. In New York, nobody other than real estate developer Jeff Gurall, who's trying to open Tioga Park has shown even any interest in the state's last open available harness racing license. New York's legislature was recently ranked as the worst in the nation by the Brandon Center at NYU.

Off this past performance, Pennsylvania must have gone in the money.

**(Chuckles)**

But the Pennsylvania legislation is already shaking up the Mid-East. Delaware is talking about expanding hours and expanding the number of slots. New Governor Codey in New Jersey has proposed slot machines in the Meadowlands, apparently to be run by the Atlantic City casinos. There's a proposal moving in the New Jersey assembly to authorize sports gambling. The governor of West Virginia is about to propose a special session to allow table games at the state's racinos.

There's fuel going to be added pressure in Ohio and Maryland to allow slots. We're already seeing a domino effect from Pennsylvania. Now the domino effect might not have worked during the Vietnam war, but since dominos is an old gambling game it appears to work particularly well in the racino world.

I finally close with a few notes on the 2004 election. It's as if the world of gambling has turned purple on us. You see some of the oddest results; in some counties, say in Florida, Collier and Lee, which are southwest counties, which voted fairly heavily for the president, they went for casino gambling.

You see Oklahoma, which voted for the president by more than 30 points, a major proposal to increase gambling and to open a lottery, major racino proposals wins in all but three of the counties in the entire state.

In Washington, where a private bill basically was lost, most of the counties where it actually was successful were counties that voted for the president.

It's as if the world has turned upside down on gambling and the 2004 results certainly prove it.

Again, thank you for letting me talk to you.

**(Applause)**

**MR. ANDERER:** We're at the end of the session but I would like to ask one question of each of the panelists, and it revolves around the issue of the tribes versus tracks we've seen in seven states in the elections last month where there was some relationship between Indian gaming and the racing industry, whether it was competition, or let's say in the case of a local vote like Kenosha, Wisconsin, and an Indian tribe funded by another Indian tribe getting the "go ahead" to build a casino-style facility at a greyhound track.

So I'd like for each of you — as we have competition or confrontation in the case of California, perhaps financing initiatives, a tribe's ability to finance anti-racino campaigns, etcetera — so I'd like for each of you to just comment on, where is this relationship between, is there a trend or a pattern or is it just one big sort of mess between tribes and tracks?

Is there anything we can point to going forth between this relationship and its impact on the racino business?

**MR. ROSE:** Thank you; I can see again.

I think what we are seeing right now is a change, and maybe a tidal change going underway.

There has always been competition, as Steve said, between existing forms and the new form. So in fact the tracks were the only, sometimes, opponents to the state lotteries coming in. Now it's the existing Indian casinos that don't want the competition, they don't want slots or VLTs in the tracks.

But the tribes have so much money that they're buying tracks. And they're becoming partners. And we're seeing that in Oklahoma. Two of the three tracks are owned by tribes. And now they've got machines and then the tribes can have machines.

So I think that's what we're going to see is, I think we're going to see tribes buying tracks and becoming partners.

**MR. GELLER:** I would tend to disagree a little, although I agree with the main premise here. I think that you will see the tribes and the tracks almost becoming mortal enemies. And the reason that I say that is, I agree with the fundamental issue that the tribes have almost unlimited resources, far more than most pari-mutuels have access to.

I'm not saying whether that's a good issue or a bad issue, I'm stating a fact; that the tribes simply have access to more dollars. But because of the IGRA and because of what's occurred in the states, I think you're going to be seeing, as we've seen in Florida, that the tribes will consistently oppose any additional types of electronic gambling coming into their states.

And since the only major expansion of VLTs, slot machines, that I see going on right now is the racino arguments; I think that you will see in any states that don't have them yet but do have Indian tribes that the Indian tribes will pour millions and millions and even more millions into opposition.

And again, my understanding of IGRA is that you can't take tribal, you can't create new tribal land unless it's adjacent to the existing tribal lands unless there's an agreement with the governor of the state that agrees to take the land into trust.

So I don't see Indians, at least in Florida, buying the pari-mutuels, because the pari-mutuels will be able to offer so much less than the Indians can, I think the Indians' goal would be to put the pari-mutuels out of business, but I don't see them buying it because they can offer more types of gambling at no taxation levels on the Indian reservations.

**MR. LIEBMAN:** While agreeing with all the points that have previously been made, I'd also like to stress the notion that the whole situation is a mess, because in addition to the fights between the tribes and the tracks we're seeing a considerable amount of intertribal fights.

So you have Kenosha, Wisconsin, which is in southern Wisconsin, where one tribe wants the casino but the main opposition is coming from the Potawatomi Tribe in Milwaukee that runs a very successful casino in the area.

You see in California the fights between the tribes that have agreed with the Governor Schwarzenegger and the tribes that haven't. In New York currently you're seeing the in-state tribes, especially Oneida Tribe which runs a very successful casino in Turning Stone outside of Utica, New York fighting the governor's proposal to give a casino to the out-of-state Seneca Cayuga Indian Tribe.

So in addition to the tribes fighting the tracks, we have a lot of intertribal competition as well.

**MR. GELLER:** Same thing has happened in Kansas.

**MR. ROSE:** And just to make it clear, we all agree, I don't want to overstate that, that tribes are going to be buying the tracks, I think in general wherever they are, even if they're existing just because they haven't been closed down.

They'll use the money to prevent any competition — lotteries, getting Keno or VLTs, anything.

**MR. ANDERER:** Thanks. That concludes the session, we'll start up again at 10:00 a.m. In the meantime, please join me in thanking the panelists for their very important presentations.

**(Applause)**

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