

1 CHAIRPERSON JAMES: Mr. Rose.

2 MR. ROSE: Yes. Thank you, Madame Chairwoman.

3 I want to thank you for inviting me here today. My
4 name is I. Nelson Rose. I'm a professor of law at Whittier Law
5 School in Costa Mesa, California. As a professor of law, by the
6 way, I have to respond and say my testimony here today are my
7 personal opinions based upon my research over the last 22 years.
8 I will be giving some facts which I believe from reliable
9 sources.

10 What I also want to do is try to tie together the
11 prior two presentations, both in terms of the law and public
12 perception but on much larger scale both historically and
13 geographically. In fact I thank Tom Coates for talking about
14 what the mood in the country is toward credit which I think is an
15 important factor.

16 I would like to focus on what the mood in the country
17 is and has been toward gambling. And what I want to do is start
18 with a quick history of how gambling is perceived because it is
19 important to know how people feel about gambling so we can know
20 what the laws are.

21 Changes in laws always follow changes in society.
22 The law is reactive not proactive. And in fact we, it's a
23 wonderful time for someone like me who studies the law because
24 we're going through this major change where gambling is becoming
25 more accepted and the law is trying to catch up.

26 The present law of credit gambling is bizarre but it
27 can be explained by understanding the history of legal gambling.

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1 We are in what I have called the 3rd wave of legal
2 gambling. This is the third time in American history that
3 gambling has spread throughout the nation. Each of the prior two
4 waves has come crashing down in scandal in prohibition leaving
5 legal debris, statutes and cases which are still on the books.

6 The first wave started before there was even a
7 country. The colonies, many of the colonies were founded by
8 lotteries in England. It said that it was easier to buy a
9 lottery in George Washington's time than it is to buy a
10 California lottery ticket today. That first wave came crashing
11 down in the 1820' and '30's through scandals. The scandals by
12 the way were that the operators of these private lotteries simply
13 never had the drawings. They kept saying we haven't sold enough
14 tickets and then they would run off with the loot.

15 The people of the time were so outraged that they
16 said we will never have lotteries again. And so they wrote it
17 into their state constitutions. Of course, constitutions can be
18 amended later.

19 The second wave started with the opening of the
20 western frontier because there is always gambling in a frontier
21 society, and the Civil War which devastated the south.

22 The second wave came crashing down with victorian
23 morality and once again scandals. The biggest scandal being the
24 Louisiana lottery scandal. The legal debris from the second wave
25 are state statutes dealing with the technology of the times
26 anti-book making statutes, prohibitions on slot machines but also
27 the states were unable to prevent the legal Louisiana lottery
28 from selling tickets within their boundaries so they asked and

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1 the federal government for the first time responded by passing
2 anti-gambling statutes.

3 The third wave started when Nevada re-legalized
4 casinos in 1931 during the depression. States re-opened their
5 race tracks. New Hampshire rediscovered the state lottery. I
6 personally put the prime date for this current third wave as
7 April 1st, 1991. That was the day that Iowa launched its very
8 picturesque riverboats, which were covered on every TV network
9 throughout the nation.

10 What happened was people, especially legislatures,
11 figured that well if Iowa can do it and Iowa is known as the
12 center of conservatism of this country then it must be safe and
13 an easy way to raise money.

14 What has happened in Iowa, and of course we can see
15 from the whole explosion of gambling across the country, is that
16 there have been major changes in the public perceptions toward
17 gambling. Four hundred years ago gambling was seen as a sin. In
18 fact the gambler means a crooked gamester from 400 years ago.

19 If gambling is a sin well there is not going to be
20 even the discussion about credit. I mean, it would be like
21 asking a licensed prostitute whether she accepts MasterCard.

22 In the 18th century gambling began to be seen as a
23 vice. This means that it can be legalized. It will be strictly
24 controlled and limited. This is the majority view of the law
25 today. If you notice that the casinos that have been legalized
26 are put on mountain tops or in the middle of rivers kind of
27 surrounded by holy water to sanitize them.

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1 The present law of gambling debts was created during
2 this era when gambling was seen as a vice. Queen Anne of England
3 in 1710 signed a statute which is known as the Statute of Anne
4 which made gambling debts, even legal gambling debts,
5 uncollectible. This is still part of the common law of virtually
6 every part of the English speaking world including Nevada.
7 Nevada is bound by this 288 year old statute.

8 The third wave or the third change in the way
9 gambling is viewed started with the state lotteries and has been
10 jumped on by the casinos which is that gambling is merely another
11 form of entertainment.

12 The legal ramifications of this are tremendous. If
13 gambling is a vice well we certainly, we may legalize it but
14 we're not going to allow it to advertise. If gambling is merely
15 another form of entertainment it can be allowed to advertise.

16 A gambling debt is a contract. Under the well
17 established law of contracts, if gambling is a vice well we don't
18 enforce contracts to vices. In fact the court leaves the parties
19 as they find them. This is still the majority law in the United
20 States. This means if a gambler owes money to someone who has
21 lent them money to gamble and he hasn't repaid the loan, he
22 doesn't have to. It is not enforceable in a court of law unless
23 the legislature has changed that. But also because the courts
24 leave the parties as they find them, it means that if he has paid
25 back the loan well he can't sue and try and get the money back.

26 It is up to each state to decide whether it wants to
27 legalize a particular form of gambling and how it wants to handle
28 related issues such as gambling on credit. One of the most

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1 important questions when dealing with gambling on credit is what
2 is the public policy of the state.

3 Although we all know about the explosion of legal
4 gambling, I think it is not well perceived, there is an
5 inter-relationship between state lotteries and casino credit.

6 State lotteries are not allowed to sell lottery
7 tickets on credit, they can't even accept credit cards. But a
8 state lottery is government owed and operated. It is actively
9 prompted by state government. More importantly remember the
10 first wave which left prohibitions on lotteries in state
11 constitutions. This meant for a state lottery to be legalized
12 that you needed a majority vote of the public and this has
13 happened in a couple dozen states.

14 Some courts including the U.S. Supreme Court have
15 looked at state lotteries and said, "Well the public policy
16 toward gambling has changed and the people now believe that
17 gambling is okay, therefore, gambling debts are collectable."

18 The regulation of gambling comes under a state police
19 power. This is the power to protect the health, safety, and
20 welfare of the citizens of the state. It's basically an
21 unlimited power. It's always been local, there's never been any
22 federal involvement here. And it also has been virtually without
23 limitation. Interestingly legal gambling falls under that even
24 though the police power normally is for fire, health safety.

25 There also has been a change in our perceptions about
26 people who gamble to excess. 304 years ago when gambling was a
27 sin, well someone who gambles to excess is a sinner and they go
28 to hell, literally.

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1 When gambling became viewed as a vice, a person who
2 gambled to excess was seen as morally weak. This means that they
3 are responsible for their actions. In 1980 the American
4 Psychiatric Association declared pathological gambling an
5 official mental disease or disorder. This has tremendous legal
6 ramifications. We don't punish people for being sick. We also
7 forgive people for being sick. For example, there is a very
8 recent bankruptcy case where a gambler ran up thousands of
9 dollars on a credit card, on her credit cards at an ATM at a
10 casino, declared bankruptcy, and the court decided that she did
11 not commit fraud on the credit card because she had an actual
12 though mistaken belief that she was going to win enough to pay it
13 all back.

14 In the background material I have given you I've
15 listed some other cases involving these conflicts between the
16 majority view that still exists about gambling being a vice and
17 these emerging views about gambling.

18 It's interesting to look at Nevada, a 100 years, the
19 last 100 years Nevada has, the Supreme Court has consistently
20 said gambling debts are not collectable. Since a debt runs both
21 ways, this means that if a player believes they have won and the
22 casino says no, the player cannot sue. That is still the law of
23 Nevada today. In fact even licensed casinos could not sue.

24 In 1980 the Nevada Supreme Court said it would be up
25 to the legislature to change the Statute of Anne and in fact in
26 1983 the Nevada legislature responded by giving casinos the right
27 to sue although players cannot. Now players are not without
28 rights. Players can file complaints with the Gaming Control

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1 Board which has the power to take away a casino's licenses if it
2 refuses to pay.

3 Commissioner McCarthy asked me to look at some of the
4 numbers and the problem I found was there really are very few
5 statistics out there that you can rely on. New Jersey
6 fortunately does require its casinos to report every financial
7 transaction. The numbers support what Bob Faiss has said about
8 the appropriateness of the casinos' own credit.

9 For example, last year in Atlantic City they had
10 markers which are short term loans or sometimes long term loans,
11 of \$2.13 billion. They collected \$1½ billion before the markers
12 even had to go through the bank system. They expect to collect
13 the rest and in fact they're, of the \$2 billion that was lent
14 they expect \$27.7 million to be uncollectible. That's 1.3
15 percent.

16 And I took another year at random just to see, five
17 years ago the numbers are almost identical, \$2 billions lent,
18 most of it paid back immediately, almost all the rest of it paid
19 back eventually and 1.3 percent written off.

20 What this means to me is that at least from a
21 business point of view the casinos are being responsible in their
22 extension of credit. What we don't have numbers on are what's
23 going on with credit cards. Particularly with credit card
24 transactions that aren't even associated with the casino, let
25 alone on the floor.

26 It seems that from anecdotal evidence that the big
27 problem is cash advances from credit cards. We just don't have

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1 the numbers really to back that up. They may be out there but
2 nobody really has gathered it.

3 My recommendation and I put this in the paper, is
4 that an organization like the National Research Counsel of the
5 National Academy of Sciences be funded to do a long term study of
6 issues involving gambling and credit. At the very least an
7 organization like that which is a permanent body with an adequate
8 budget to research would be able to gather the public information
9 that is available and then we would be able to answer some of the
10 questions.

11 We cannot begin to make intelligent policy decisions
12 until we know the facts.

13 Thank you.

14 CHAIRPERSON JAMES: Thank you.

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