

March 17, 1999 N.G.I.S.C. Subcommittee on Regulation,
Enforcement and the Internet, Washington, DC

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UNITED STATES OF AMERICA

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NATIONAL GAMBLING IMPACT STUDY COMMISSION

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SUBCOMMITTEE ON REGULATION, ENFORCEMENT

AND THE INTERNET

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MEETING

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WEDNESDAY

MARCH 17, 1999

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The Subcommittee met in the Potomac I Room at the
Windham Bristol Hotel, 2430 Pennsylvania Avenue, Washington,
D.C., at 4:00 p.m., William Bible, Chairman of the Subcommittee,
presiding.

PRESENT:

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|---------------|--------------|
| WILLIAM BIBLE | Chairman |
| LEO MCCARTHY | Commissioner |
| PAUL MOORE | Commissioner |

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Enforcement and the Internet, Washington, DC

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1 CHAIRMAN BIBLE: This is a meeting of the Regulation,
2 Enforcement and Internet Subcommittee of the National Gambling
3 Impact Study Commission.

4 We've met on a number of previous occasions. The
5 last occasion we met, which was at our meeting in Virginia Beach,
6 we decided that we were going to recommend to the full Commission
7 a condition of supporting a banner of prohibition against
8 Internet wagering versus some of the aggregate groups who had
9 recommended a variety of other approaches to Internet gambling
10 and probably the final approach was that we regulate it and we
11 rejected that particular approach.

12 We indicated that we would flush out that particular
13 recommendation at a future meeting and this to a great extent is
14 that future meeting. And because it is kind of warm in here it
15 might be in everybody's interest if you want to take off your
16 jackets. I don't believe they have the air conditioner on yet in
17 the hotel. But it is fairly hot.

18 And I want to proceed in this manner. We really have
19 two separate issues to talk about today. One of the issues
20 involving the Internet and the other issue is involving
21 regulation. And they are two separate and distinct issues. I
22 thought I would proceed first with talking about the Internet and
23 I want to talk in this order. One is about the applicability of
24 our recommendation to prohibit wagering on the Internet.

25 I know we had quite a bit of correspondence and some
26 contact with various interest groups who expressed some concern
27 about that particular recommendation. And then take a look at
28 some of the potential enforcement options that we could recommend
29 in terms of a final report to the full Commission. In terms of

1 the applicability issues that we've received quite a bit of
2 testimony and quite a bit of correspondence from a number of
3 groups, as I indicated previously.

4 One group who has been fairly active has been the
5 American Horse Council. Mr. Hickey has supplied us with quite a
6 bit of information. I don't know if you want to run through that
7 briefly or if you want to just let the record stand with what you
8 previously provided?

9 MR. HICKEY: As long you all read it, just try to
10 distinguish --

11 CHAIRMAN BIBLE: Well, we all read it, but again you
12 are assuming we all understand it.

13 MR. HICKEY: Well, what we were suggesting --

14 CHAIRMAN BIBLE: And I understand the --

15 MR. MCCARTHY: At the appropriate time, Mr. Chairman,
16 I'll have one or two questions that I want to pose to Mr. Hickey.

17 MR. HICKEY: Did you want to come up here?

18 CHAIRMAN BIBLE: Sure, sure, no, why don't you?

19 MR. HICKEY: Well, I wasn't prepared to, I don't have
20 all my stuff here.

21 MR. MCCARTHY: Good. Well, we'll ask you questions
22 about the stuff you don't have.

23 (Laughter.)

24 CHAIRMAN BIBLE: First, why don't you tell us what
25 you don't have and we'll just --

26 MR. HICKEY: I don't have the answers to your
27 questions. What we've tried to do over the last 18 months is,
28 with respect to Internet gambling, is distinguish what the horse
29 racing industry has been doing for 20 years in some cases with

1 respect to telephone wagering, account wagering in seven or eight
2 states, where it has been specifically legalized, from what might
3 be called off-shore Internet virtual casino-type stuff.

4 We've tried to make the case that, with respect to
5 horse racing at least, whether you can regulate the Internet or
6 not, clearly you can regulate horse racing because the tracks and
7 the facilities are in the states and the racing commissions and
8 the legislatures have authority over it. We do several things.
9 Information on the Internet, simulcasting on private computer
10 systems and telephone wager. And we try to distinguish that from
11 --

12 CHAIRMAN BIBLE: But no one at least at this point to
13 my knowledge is taking wagers via the Internet, are they?

14 MR. HICKEY: No, to my knowledge I don't think that's
15 true either.

16 MR. MCCARTHY: I thought there was a marketing that
17 Churchill Downs and TVG had done marketing for --

18 MR. HICKEY: That's a good question. No, TVG is
19 using a cable box --

20 MR. MCCARTHY: Right.

21 MR. HICKEY: -- on top of their --

22 MR. MCCARTHY: Oh, I'm sorry.

23 MR. HICKEY: And that's a closed, I mean I would
24 think that that's --

25 MR. MCCARTHY: That's not the Internet?

26 MR. HICKEY: No. That's about as closed as you can
27 get. Also TVG is not operating, I mean other than in Kentucky.

28 CHAIRMAN BIBLE: They're on a trial basis there,
29 aren't they?

1 MR. HICKEY: Yes. It is a grand, it is a grand idea
2 -- I want to say grandiose. It's a grand idea and they are going
3 to start operating in, this summer. Now that has been pushed
4 back a number of times and it is going to be a 24-hour
5 racing/entertainment channel that will allow wagering in those
6 states where it is specifically legal. So TVG is not using the
7 Internet.

8 CHAIRMAN BIBLE: Now the eight states that authorize
9 account wagering, how many of those states allow it or restrict
10 it to intrastate and how many also allow interstate wagering?

11 MR. HICKEY: Three of them, I don't know how many, I
12 know that Kentucky restricts it to intrastate. Pennsylvania,
13 Connecticut and New York allow interstate, into the state. And
14 that has been approved by the legislature.

15 MR. MCCARTHY: Kentucky, Indiana --

16 MR. HICKEY: Kentucky, Pennsylvania and New York. I
17 believe that's accurate. And New York, for example, has been
18 doing it for over 20 years, including by a state agency, New York
19 City Off Track Betting, which is operated by the state. But in
20 terms of distinction --

21 CHAIRMAN BIBLE: Do we know if the Justice Department
22 has ever ruled on the applicability of the Wire Act to that kind
23 of activity?

24 MR. HICKEY: No, they have, to my knowledge they have
25 not. With respect to simulcasting, they did go in with --
26 simulcasting is track-to-track, track-to-off track betting
27 facility where you merge the pools. The racing industry in
28 California went into the Department of Justice about 15 years ago
29 and said we want to do common pool wagering across state lines.

1 CHAIRMAN BIBLE: A completely different issue.

2 MR. HICKEY: Okay.

3 CHAIRMAN BIBLE: Totally different issue.

4 MR. HICKEY: Then that's the only, and Justice said
5 no, we don't issue opinions like the FCC or something like that.
6 So as far as I know, the Justice has not stated their position on
7 it, or have any enforcement actions been brought under 1084.

8 CHAIRMAN BIBLE: Well current pooling gets a
9 specific, I won't say endorsement but it looks like it is very
10 permissive language in the Horse Racing Act.

11 MR. HICKEY: I would think so too.

12 CHAIRMAN BIBLE: Which would not be shared by some of
13 your, some of the other groups that have major pull. I'm
14 thinking of the dog people and the jai alai people.

15 MR. HICKEY: Correct. So in any event, we have tried
16 to distinguish, you know, it's, you bet on a race, it's a live
17 event, it's handicapped, you know the results of it, it's
18 regulated in the states, it's licensed, to try to distinguish us
19 from the so-called Internet gambling.

20 CHAIRMAN BIBLE: And common pooling to some extent
21 may involve systems that would be similar to the Internet? Or
22 maybe methods of transmission --

23 MR. HICKEY: Well, I don't know whether --

24 CHAIRMAN BIBLE: -- technology?

25 MR. HICKEY: -- I wouldn't think that they're similar
26 to the -- they are computer systems certainly. They are hooked
27 up by computer across the country.

28 MR. PUTSAVAGE: They would not be in the sense that
29 they are not using URL's.

1 CHAIRMAN BIBLE: So you are not asking for any kind
2 of an exemption in the Kyl legislation in terms of that
3 particular activity, in terms of --

4 MR. HICKEY: We're just asking for clarification of
5 the, in the federal legislation that common pool wagering has
6 been --

7 CHAIRMAN BIBLE: If you're asking for endorsement
8 then it's okay.

9 MR. HICKEY: Yes. That it has been --

10 CHAIRMAN BIBLE: You want an affirming statement that
11 says this doesn't apply to --

12 MR. HICKEY: We think it come under 1084-B which is
13 information. That's simulcasting.

14 CHAIRMAN BIBLE: But it's all wagering information.

15 MR. HICKEY: It's all, yeah, which is, as long as it
16 is legal in both states.

17 CHAIRMAN BIBLE: Yeah. Okay.

18 MR. MCCARTHY: Just for clarification, Mr. Chairman,
19 Kentucky, Pennsylvania and New York all allow betting from home?

20 MR. HICKEY: Yes. There are actually, Oregon --

21 MR. MCCARTHY: By phone, by phone?

22 MR. HICKEY: By phone. And now Kentucky says by
23 phone, by telephone or interactive computer service, something
24 like that. It doesn't say interactive computer service, but
25 other electronic means. By phone, though, yes. And also Oregon
26 has authorized it. Nebraska has authorized it but it is not up
27 yet.

1 MR. MCCARTHY: And by what other means, in addition
2 to phone, how do they allow betting, by what other means, be
3 specific?

4 MR. HICKEY: Kentucky would say by, I don't know what
5 it says, electronic, I don't exactly what the term it. But it is
6 more than just telephone.

7 MR. PUTSAVAGE: But what the Commission has expressly
8 authorized there, in this TVG test market, is cable?

9 CHAIRMAN BIBLE: Well they are transmitting the data
10 over the cable and it's hooked to a --

11 MR. PUTSAVAGE: And it's on street.

12 MR. MCCARTHY: And before TVG, any other means of
13 placing bets?

14 MR. HICKEY: Before TVG, which started I think five
15 years ago, there was a gentleman and Kentucky allowed him to
16 take telephone bets about 20 years ago for a short period of
17 time. I don't know that for sure, in Kentucky. He's, you know,
18 one of these old Colonel, Colonel Joe Johnson or something like
19 that. But that has been going on, one of those old timers.

20 CHAIRMAN BIBLE: Well, and if I understand the
21 situation is, so we have eight states that have a kind of
22 wagering. Three of those states will do it on an interstate
23 basis, the others are simply allowed on an intrastate basis --

24 MR. HICKEY: Correct.

25 CHAIRMAN BIBLE: -- and they apparently developed or
26 are trying to develop some kind of mechanism to police where
27 those phone calls are coming from.

28 MR. HICKEY: Well, and I think that you can, the
29 phones, I think you can do that now.

1 CHAIRMAN BIBLE: Well, maybe. I mean I think the
2 technology is there if you marry the phone to a GPS or something
3 like that or you can do something like that.

4 MR. MCCARTHY: On this issue, looking at your letter,
5 Mr. Hickey, with respect to account wagering on horse racing, the
6 Commission might recommend safeguards to be considered by a state
7 in making any decision to authorize licensed account wagering.
8 And then, but we know from other communications, I think you
9 refer to a bit by Mr. Putsavage, that there are a series of
10 safeguards proposed by Churchill Downs and TVG's.

11 Use of a smart card to try to prevent people under
12 age. No direct use of a credit card for wagering. A cooling off
13 period before deposited funds could be accessed and so on.
14 There's a little bit of a contradiction in my mind about
15 recommending the Federal Government -- these are federal laws
16 that have to be amended to permit this to happen. And I take it
17 it would, it would require some further clarification on federal
18 law for all states to want to do what's proposed here.

19 MR. HICKEY: It would also take more states to
20 specifically approve it, too.

21 MR. MCCARTHY: Sure. But the other states don't have
22 safeguards. And we don't know whether they ever will have
23 safeguards. We don't know whether they will show what the
24 combination proposing this program in Kentucky showed.

25 MR. HICKEY: Yeah, what I was trying to do there was
26 that if you distinguish telephone account wagering and horse
27 racing from Internet gambling and it would be wonderful if you
28 would recommend that every state would adopt telephone account
29 wagering, but I don't think that is possible. But in considering

1 whether you should, what position you might take, we suggested
2 that there are some safeguards that could be built into any
3 system that you might suggest a state consider if they were to
4 adopt that.

5 MR. MOORE: Let me make just a simple comparison
6 here. Whether this is wagering by Internet or whether it is
7 wagering by the telephone or whatever, basically each of those
8 would go into the home. That's what you're advocating. That we
9 will be able to wager from the home, right?

10 MR. HICKEY: What I'm advocating is that every state
11 be given the opportunity, if they wish, to
12 decide that for themselves.

13 MR. MOORE: To gamble from the home? To place a bet
14 from the home?

15 MR. HICKEY: If they wish to do that, yes.

16 MR. MOORE: So that would be comparable, on a simple
17 way of, it comes down to an issue, well, do we want to recommend
18 that gambling enters every home. I mean you could, you could go
19 to the market and buy a gasoline engine or buy a diesel engine
20 and each one of them would get you to the market. So to me the
21 issue is not particularly Internet, even though it just scares me
22 to death because it's out there for everyone.

23 The issue is though, to me personally and I'd like to
24 state that. I mean is the gaming into the home. And you're
25 going to say, well it's already there, we've been doing it for 20
26 years, someone said. Just because we've been doing it for 20
27 years -- I practiced medicine for 20 years and then lo and behold
28 the government stepped in. So, and maybe they did good by it, I
29 don't know. But this is really is true to the issue. And I

1 won't interrupt you anymore other than me trying to understand
2 the technology.

3 Technology has gotten ahead of all of us. Technology
4 has gotten ahead of -- there's some gurus out there I guess. But
5 they are all up there at Microsoft and we're trying to break them
6 up. But technology is so far ahead of us, it just scares me to
7 death. It's ahead of me in my field.

8 MR. HICKEY: Well with respect to that, we're not,
9 we're not asking or suggesting that you recommend that states
10 allow gambling in the home. What we're trying to do is clarify
11 and distinguish us from the prohibition of Internet gambling.

12 CHAIRMAN BIBLE: But you're trying to preserve the
13 exemption for account wagering from the home.

14 MR. HICKEY: Well, I'm not sure that there isn't --

15 CHAIRMAN BIBLE: Well, maybe not an exemption, but
16 you're trying to preserve account wagering at least in these
17 eight states and expand upon that to become a state option to --

18 MR. HICKEY: We're trying to keep the states rights
19 at the states rights position that if they, if those states, for
20 example New Jersey is considering it now. If they wish to go to
21 account wagering in the home for horse racing, then let the
22 states decide what they want to do. That's the, our position.

23 CHAIRMAN BIBLE: So you in effect are advocating what
24 you call wagering up to the authority of the states?

25 MR. HICKEY: As gambling -- yes, as gambling has
26 always been regulated. And as 1084-B has right now with respect
27 to information, provided it's legal in both states. Just leave
28 the ultimate decision to the states as to what they might want to
29 legalize with respect to parimutuel racing.

1 MR. PUTSAVAGE: Just to elaborate also in response to
2 the points about the controls on an accounts system, might be in
3 effect the second level of policy recommendation that the
4 Commission might choose to undertake. To say that we've looked
5 at this issue and assuming you agree to the position that that
6 remains a state decision, at your observations I want what you
7 might see as a suitably protective system for those states still
8 considering venturing into that.

9 CHAIRMAN BIBLE: But some of the account wagering
10 systems have some of the same characteristics as the Internet, I
11 think, that concern us. And I would imagine a resident in Utah
12 can figure out how to establish an account and set up an account
13 with either a track in Pennsylvania, Kentucky or New York and
14 place a wager where that activity may be illegal in the state of
15 Utah.

16 MR. HICKEY: You'd have to go to an awful lot of
17 trouble.

18 MR. PUTSAVAGE: And let me clarify for a second --

19 CHAIRMAN BIBLE: Well, I think a lot of people, well
20 call forwarding is a pretty simply device nowadays that I think
21 it has become fairly common place. In fact I dealt with trying
22 to regulate accounts for a number of years.

23 MR. HICKEY: But then that's why you try to get the,
24 you know, the Social Security Number, the credit information,
25 find out where the person's residence is so that if he's from a
26 state where it's not legal you would not take that bet. And let
27 me just say one other thing. We're not advocating that every,
28 even if a state legalizes --

29 CHAIRMAN BIBLE: Oh, I'm, I'm --

1 MR. HICKEY: No, no, no, I just want clarify. We're
2 not saying that, for example, everybody in Pennsylvania should be
3 able to gamble from their home. You have to do an affirmative
4 action. You have to go to a race track, open up an account, put
5 money there and then decide whether you want to have that
6 activity. It's not going to be --

7 CHAIRMAN BIBLE: You don't need to go to a race
8 track. You can call them up and establish a credit line through
9 your credit card.

10 MR. HICKEY: All right. Well you have to, but it's
11 not going to go into your home without you asking for it. Same
12 with TVG.

13 MR. MOORE: Now who, was it TVG that has the 24-hour
14 racing channel or is advocating or what?

15 MR. HICKEY: No, they are, they are going to
16 hopefully start a 24-hour entertainment racing and wagering in
17 those states where it is legal.

18 MR. MOORE: Umm hmm.

19 MR. HICKEY: A channel. But it's going to be a show
20 about horse racing. It's going to be about jockeys, it's going
21 to be about the horses, it's going to be the fun of horse racing.
22 The idea is not going to be just totally wagering. They are only
23 going to show four races an hour and you can only wager in those
24 states where it would be legal. They will not facilitate the
25 ability in the other states.

26 MR. PUTSAVAGE: It would be like the golf channel.

27 MR. HICKEY: Yeah, it would be like the golf channel
28 or Home Shopping Network or whatever.

1 CHAIRMAN BIBLE: Or ESPN had on two hours of horse
2 racing this afternoon.

3 MR. MOORE: But you didn't bet on it though, did you?

4 MR. HICKEY: What they are trying to do is

5 CHAIRMAN BIBLE: They didn't take any action over
6 here at Friday's.

7 MR. HICKEY: -- as you heard at the last meeting,
8 we're down to seven percent of the wagering dollar with the idea
9 of the racing channel. And there are a number of others who are
10 trying to get racing on television. We missed the television
11 boat, you know, when the NFL and baseball have been on it and
12 we're trying to get back on the boat now. To build our fan base
13 so that people will see on television, hopefully take an interest
14 in it and if they wish, come out to the track and enjoy
15 themselves.

16 MR. MOORE: You know all this is interesting. About
17 the first or second week after I was appointed to this Commission
18 and I had a call from this young lady who was covering racing in
19 Virginia. I have no idea who her name is and I really don't know
20 who she was working for, I don't really care. But she tried to
21 sell me on the idea that when we deliberated that in Virginia
22 that horse racing was not gambling or gaming it was a family and
23 fun activity. I said, well you know, that's strange.

24 Other than us as kids riding horses and mules out on
25 the farm, I'd never been to a horse race where they didn't have a
26 place that you could bet. And so what it all comes down to is
27 all this gambling has accelerated all of you in the states.
28 That's why this Commission is in existence, I guess. One of them

1 is to study the effects of social and economic because of the
2 acceleration of gaming.

3 And it's taken, as you just said, it's taken, people
4 have decided, well, maybe shooting craps is more exciting than
5 watching a horse race. Or maybe, you know, they'd rather go to
6 the Indian Reservation or they'd rather do this. And so it's
7 really all coming back adding more gaming to really I'd have to
8 go back and agree with this young lady a little bit.

9 In the beginning this probably was more of a social
10 than it was to go and think that you were going to fill your
11 pockets full of money. And there you are just sort of betting
12 against each other. I mean in the house you're not putting up
13 much money on a horse race. You're just betting against
14 yourself. But now we're trying to change that concept a little
15 bit and it's for survival, as you were saying.

16 MR. HICKEY: I would take issue that there are a lot
17 of people who still go to the races on a daily basis. All those
18 people in the infield at the Derby or the Preakness.

19 CHAIRMAN BIBLE: Well your at home, your annual
20 figures at least for on track have, are showing decline. I think
21 your attendance figures for on track are showing decline.

22 MR. HICKEY: That's right.

23 CHAIRMAN BIBLE: Your total annual figures are
24 showing --

25 MR. HICKEY: Because of simulcasting.

26 CHAIRMAN BIBLE: -- because of simulcasting and OTB
27 activity.

28 MR. MCCARTHY: I have three ongoing concerns, Mr.
29 Chairman, that I think these gentlemen have heard before. And

1 I'm really trying to address them in my mind and not be
2 inflexible on this. Try to be fair at least and listen carefully
3 to what's being said. The first was home betting. Although the
4 safeguards introduced by what's proposed with Churchill Downs
5 does address that for, for me somewhat to avoid youthful
6 gambling.

7 And it's certainly one of the cleanest approaches to
8 trying to, trying to do something about seriously troubled
9 gamblers, a cooling off period, the other things. And
10 incidentally, I know you've probably seen and been dismayed by
11 the NORC Report showing the -- well as you know NORC did a patron
12 survey and they included horse racing in that.

13 Now, we have to emphasize here it was not a large
14 sample of the total of 530 interviews, all right. So it really,
15 to be, to have legitimacy it would really have to be a much
16 larger sample of horse racing patrons. And I think it had dog
17 racing patrons in that group too, although not much. It showed
18 that horse racing patrons, compared to all other forms of
19 gambling, had a much higher percentage of pathological gambling,
20 which is five or more hits on the diagnostic screen.

21 And that it had a much higher percentage, not as high
22 comparatively, but a higher, as to problem gamblers. If I could
23 just use the term to describe three or four hits, it was 25
24 percent pathological gamblers and 14 percent problem gamblers.
25 Now again, it was a small sample of the part of the 532, but it
26 just, it cut it in half. And if I were the industry I would want
27 to fund, through a totally independent survey or researcher.

28 I would want to fund a sizable patron interview study
29 as quickly as I could put it together. And try to know

1 yourselves what the numbers are, as well as telling the public.
2 But I raise that in connection with the home betting issue. If
3 that's anywhere near true, then shrink it by half. Safeguards
4 about who can bet from home and so on are a very important issue
5 to me.

6 But at least the Churchill Downs TVG thing tends to
7 make some approach to that. You know when you say leave it to
8 the rest of the states, this is a state issue, we're also under
9 Mr. Bible's leadership on this Subcommittee, looking at the
10 regulatory models around different states. And there is wide
11 variety. There are, there are some leadership states that are
12 really doing a good job of regulating, you know, other casinos.

13 But then there are some states that are pretty
14 clearly deficient. So leaving it to the other states is, it
15 doesn't give me a lot of confidence. Now the second concern that
16 I have that I talked -- I don't think I raised it during your
17 Subcommittee Hearing in Las Vegas. I may have talked to the
18 industry folks after the meeting was over. Adding other forms of
19 gambling at the race tracks. Slot machines, card rooms, other
20 things, all in the name of preserving an American tradition,
21 horse racing.

22 And it's true, everybody in the industry is -- Track
23 Owners mainly want this because it goes to the profit line.
24 Thoroughbred people I've talked to and so on, they really,
25 they're not on that wave length. But adding other forms of
26 gambling, I've started thinking if we allow all kinds of betting
27 from home and eventually get to the Internet, is that going to
28 stop at horse races?

1 Or might they be able to plug into video poker screen
2 or some other form of gambling? I've never heard anybody from
3 the industry address that issue. Now admittedly, there are only
4 five race tracks that have other forms of gambling. But there
5 are a number of others that are applying for other forms,
6 including in Kentucky. I read a newspaper article just a few
7 weeks ago. Was it Churchill Downs? I'm trying to remember who
8 it was.

9 MR. HICKEY: No, it was Turfway. The river boat was
10 going up.

11 CHAIRMAN BIBLE: We've got to have more than five
12 race tracks that have other forms of gambling?

13 MR. MCCARTHY: Well, maybe it's five states.

14 CHAIRMAN BIBLE: In California, you know, we have
15 card clubs. So it might be five states, because we have slot
16 machines in them.

17 MR. MCCARTHY: Five states that may include more than
18 one race track that has it, yeah. But I mean this is, it is
19 clear where this pattern is going. They'll each go to their
20 state legislatures and their Governors are saying, gee, this
21 great tradition that has made our state something special is
22 going down the tube. We need you to let us put in slot machines
23 or black jack or whatever it may be.

24 Now when, if we support liberalizing under federal
25 law betting, you know, intranet, Internet, whatever, does that
26 stop just with horse racing or is there some iron clad way we can
27 make sure that betting from home or from wherever or the Internet
28 isn't going to go to other forms other gambling. So I don't know
29 that there's an answer to that right now.

1 Maybe it might not even be fair to even pose it to
2 you because I know you're not thinking about that very much and
3 the industry is clearly not unified on this. And the final point
4 I want to make, Mr. Chairman, is what I raised with these
5 gentlemen -- I know I didn't raise this during your Subcommittee
6 Hearing in Las Vegas, it was after. My belief that, whether it's
7 the Kyl Bill or whatever Bill that's being considered in
8 Congress, any significant exemption you put in will be used as
9 the launching pad for other segments of the gambling industry.
10 Gee, they got it, why can't we gamble over the Internet?

11 Or why can't we get this exemption. So as the night
12 follows day, having spent a little time in Sacramento, I've seen
13 that happen again and again and again and followed it happening
14 in Congress on other issues.

15 CHAIRMAN BIBLE: And I agree. The most common
16 phraseology you hear in terms of any regulatory or restrictive
17 type activity is, you know, we want a level playing field with
18 the competition. I think that's what you're hearing from the
19 tracks in a number of places that they want to have a level
20 playing field. Maybe, well we've got a little different spin to
21 the argument because we want to preserve the American tradition
22 of horse racing which may or may not be an American tradition in
23 another 20 or 30 years from now as we increasingly become
24 urbanized and move away from agrarian-based economy.

25 But I think what you do hear and I'm surprised you
26 haven't articulated, but you started to articulate it in terms of
27 market share which is American. And what's happened is they've
28 suffered decreased handles and decreased profitability because of
29 rise principally in lotteries. I mean if you take a look at the

1 data you would see that in states that have introduced lotteries,
2 California being a prime example, there is a rise in lottery
3 revenues on one graph and a decrease in track participation has
4 been one of the fallouts.

5 You know, the argument that you hear in a number of
6 states and you hear it very loudly in California is that because
7 the tribes are operating slot machines. And you hear that in
8 California and you've heard that to a large extent already in New
9 Mexico which has gone one step farther and actually legalized
10 slot machines on tracks, but to keep the playing field level.

11 So it tends to become a great ratchet at least from
12 my perspective as to how you handle these particular issues. I
13 don't think we should make any recommendations that affect common
14 pull income when there has been a widespread practice around the
15 United States for a number of years and I think the existing
16 system seems to take care of that. I think there is some
17 question as to whether dogs and jai alai are indicative of common
18 pooling.

19 And at least my personal opinion, I don't
20 particularly care for dog racing activities, so I don't have, I
21 suppose, a dog in that hunt, at all. So I don't, I don't care
22 for the activity period. But I do think that at least the horse
23 guys should, if you don't want to make any recommendations that
24 affect the common pooling regardless of the methodology of
25 communication.

26 I think in terms of track activities, I don't think
27 you can make any recommendations that are particular, influence
28 account wagering. Recognizing that account wagering goes into
29 the household. But I think it goes into the household and there

1 are methodologies that you can recommend that I think give you
2 more information than you do probably as a patron at the track.

3 I saw the same figures you did in the NORC Survey and
4 was somewhat alarmed by the incidence and prevalence of
5 pathological gambling activities. Although it was a very small
6 sample and probably not particularly valid on which to draw any
7 conclusion. But it is suggesting, as you indicated, perhaps some
8 other difficulty.

9 And that you, and at least if you recommend no
10 changes in account wagering, if you're done with the
11 recommendation that anybody who implements it do such things as
12 safeguards as they've enumerated here, if you have a great deal
13 more information about your patron than you get normally. I
14 think when you get into intrastate account wagering, I think it
15 becomes more problematic. And I'm not altogether convinced at
16 this point that that doesn't violate the Wire Act. I don't think
17 the Department of Justice has looked at it or taken any
18 enforcement action.

19 MR. HICKEY: Well, I mean that is an open legal
20 question and I'm not going to be able convince, until a Judge
21 rules on it, no one knows the answer. But it is similar for me
22 to say horse racing activity would suggest what states utilize it
23 and if they wish to work together. But let me go back to one
24 other thing with the problem of gambling, as you just point out.
25 There are those who are in the problem gambling area who would
26 argue that with those safeguards, particularly the cooling off
27 period, and the fact that you can't put money into an account
28 with a credit card and that you have to wait 24 hours or a day

1 like a check before you can do it, that you can actually control
2 the --

3 CHAIRMAN BIBLE: That's not what you say here. You
4 say no direct use of a credit card for wagering. I assume that
5 you can use a credit card to establish an account balance and
6 wager from that. You just can't call and make an instantaneous
7 wager with a credit card.

8 MR. HICKEY: No, well, no.

9 MR. PUTSAVAGE: You can't wager the same deposit day
10 either.

11 CHAIRMAN BIBLE: What do you mean by no direct use of
12 -- but you can use a credit card to establish a wager intent?

13 MR. PUTSAVAGE: To replenish. Only to replenish.

14 CHAIRMAN BIBLE: Then you're still wagering by credit
15 card. It's just more, it's just interim.

16 MR. HICKEY: I'm not sure that, I don't think TVG is
17 allowing --

18 CHAIRMAN BIBLE: When you say no direct use of a
19 credit card, are you advocating then that you can't use a credit
20 card to either establish or replenish or an account?

21 MR. HICKEY: To establish, yes, because they want to
22 try to get that information to find out who you are, what your
23 age is and all this stuff.

24 CHAIRMAN BIBLE: You can't show up in person?

25 MR. HICKEY: I don't think you have to show up in
26 person at most places, no.

27 CHAIRMAN BIBLE: Just do it over the phone.

28 MR. HICKEY: In the Kentucky --

1 CHAIRMAN BIBLE: In Lybrook, you can call Lybrook
2 right now from this, the Lybrook operation up in Pennsylvania,
3 you can call them and they will send you the information to
4 establish an account.

5 MR. HICKEY: I do want to say, because you mentioned
6 a couple other things. With respect to the Kyl Bill, the
7 exception that was proposed for parimutuel racing was not an
8 exception to allow them to use the Internet. It was an exception
9 and it was specifically spelled out a closed loop subscriber-
10 based service that was much more restricted than the, you know,
11 the so-called worldwide web, the Internet.

12 And then the one part about the slots at the race
13 track. We're not suggesting that the Commission recommend that
14 all race tracks be permitted to use, install slots or VLT's or
15 other forms of gambling. All we're saying --

16 CHAIRMAN BIBLE: It would probably be tough to get
17 that one on.

18 (Laughter.)

19 MR. HICKEY: -- we're saying --

20 MR. MCCARTHY: We weren't really thinking about that
21 too much actually.

22 MR. HICKEY: Well, then I feel safe on that, to say
23 that. But we were saying that if a state wishes to legalize
24 slots or VLT's, do not just automatically kick out of the mix a
25 potential location as a race track, because it is a race track.
26 As Mr. Bible said, the competition is what's hurt us to a great
27 extent because casinos, for example, can offer all forms of
28 gambling including racing.

1 You know, in the race books. And we can only offer
2 racing. We would like to be considered in the mix if a state
3 wishes to do that. In other words, don't just say because you
4 are a race track, you can't put a slot in. And there are --

5 MR. MCCARTHY: Well, we say that to card rooms too.
6 You can't put roulette tables in. I mean there are many forms of
7 gambling who's limits are defined.

8 MR. HICKEY: I understand that. But we would perhaps
9 disagree, not with the card rooms, but if, with respect to the
10 race track.

11 CHAIRMAN BIBLE: In California you have card rooms at
12 the track.

13 MR. HICKEY: At Hollywood and a couple of other --

14 MR. MOORE: These nice casinos that are being built
15 now, how long do you think it will be before they put a race
16 track in the lobby of them?

17 MR. HICKEY: A thousand years.

18 (Laughter.)

19 MR. MOORE: Why is that?

20 MR. HICKEY: Because they are too expensive and they
21 are not making any money.

22 CHAIRMAN BIBLE: They have to pay two manufacturers
23 to make a simulated horse race.

24 MR. MOORE: Yeah, that's what I was getting to.
25 Won't this get down to what he was talking about before, four
26 races an hour. Of course that's about how many they run at a
27 race track, I guess. It seems like that.

28 MR. HICKEY: I'd say at least about three.

1 MR. MOORE: Maybe, I didn't think maybe four. They
2 are just having simulated races, you know, that these horses are
3 just running all the time.

4 MR. HICKEY: We're proponents of live horse racing.

5 MR. MOORE: Yeah, right. But because you're
6 proponents of it doesn't keep this 24-hour channel from having
7 those. Because if you put your quarter in and there are about 30
8 an hour you make more money. It would sort of be like video
9 poker. A video poker machine, except it would be video horse
10 racing.

11 MR. HICKEY: No, well you could only wager on the
12 races that they show.

13 MR. MOORE: By what you proposed --

14 MR. HICKEY: It's not quarter-by-quarter.

15 MR. MOORE: -- what you're proposing?

16 MR. HICKEY: Right. Or what they're proposing.
17 We're not.

18 MR. MOORE: Yeah, but I'm talking about what they're
19 talking about. What it could come to and what it will come to.

20 CHAIRMAN BIBLE: But it would start out with two or
21 three races per hour and then you'd bring the signal from some
22 other track and get up to six races an hour. I mean there would
23 be a driver always for more revenue, more activity.

24 MR. HICKEY: I can't obviously --

25 CHAIRMAN BIBLE: I watched it in Nevada and they
26 bring in signals from Australia.

27 MR. HICKEY: They're not even operating yet. I just
28 want to make sure you understand that they haven't even started.

1 MR. MOORE: Right, but this is what, if we're looking
2 at the problems in, maybe there's not any problems out there in
3 gambling. That's what we're looking at. And we have to
4 consider, I would have to consider the worst. If we don't, I
5 don't think we're doing much.

6 MR. MCCARTHY: Well, the pattern is pretty clear
7 isn't it, historically, looking at what's happening in the horse
8 racing industry. They stopped coming to the track and there was
9 a decline even before the multitude of other kinds of legal
10 gambling that got situated in many communities. Just a decline,
11 for whatever reason. Maybe they are going to professional
12 basketball games or they were spending their entertainment dollar
13 in some other way.

14 This was even before the plethora of casinos. All
15 right, so then went to state legislatures and the federal
16 government and got the okay on simulcasting and on off track
17 betting parlors and so on, all right. So now, you know, the
18 forward thinking minds are saying, well, we still aren't doing it
19 so now we have to go into the home.

20 We have to go where the people are because we can't
21 get them to come to the race track. It's logical, I guess, but
22 at some point the industry is going to have to make up its mind
23 -- maybe this is the call we've been waiting for -- make up its
24 mind as to, does it want to preserve the tradition of horse
25 racing and try to make enough money so that the purses can be
26 pretty good and, you know, all the other bills to be paid can be
27 taken care of.

28 Or do we want to be in the gambling business like
29 casinos and, you know, card rooms and all the rest of it. Well,

1 it sounds like the kind of stumbling position is, well let's just
2 kind of leave everything open. After all this is states' rights
3 issues and --

4 MR. HICKEY: Well remember, the money from the slot
5 machines and the VLT's is used by, most laws require it for purse
6 money for the horsemen and to update the track. And that money
7 goes back into racing. And the higher the purses, the purses are
8 what drive the racing, the breeding business and the actual event
9 it supports. With respect to the racing channel, and trying to
10 get on television, the whole point of that, one of the express
11 purposes of that, whether -- I see that you are somewhat dubious
12 here -- is to try to bring the enjoyment of horse racing.

13 Explain horse racing, so it's not such a complicated
14 situation and handicapping and looking at the racing form, so
15 that people will take an interest in it and perhaps go back to
16 the track so that there will be more betting. Now there is a
17 strong belief that the baby boomers, one of the problems with
18 horse racing is handicapping. I mean handicapping is an art. A
19 lot of people make their livings handicapping races.

20 It's different than slot machines or other forms of
21 wagering. There's a belief that a lot of the baby boomers are
22 going to have more time. And they are going to hopefully say,
23 well handicapping is not so tough. Maybe I can learn. Maybe
24 it's not so bad sitting around at a race track for an hour or two
25 looking at that sheet and then trying to pick, beat the other
26 people there.

27 So part of the purpose of these racing channels is to
28 get on television again, much like the NFL or like with the trash

1 boards. It's not solely wagering, although wagering is
2 important.

3 MR. MCCARTHY: That makes sense.

4 MR. HICKEY: Because wagering is what, is the handle
5 which is what is divided up between the track, the horsemen and
6 the state.

7 MR. MCCARTHY: Umm hmm.

8 CHAIRMAN BIBLE: Well, because I think the prime
9 economic value of your signal is the wagering activity, not
10 recreation or entertainment activity.

11 MR. HICKEY: Certainly the signal.

12 CHAIRMAN BIBLE: Other questions?

13 MR. MOORE: You know sort of the American way when
14 something goes wrong and the way we solve that is we appropriate
15 more money or try to raise more money and hire more instructors
16 to teach us how to do it better. And whether that's morals or
17 whatever, I mean, we always try to cure everything with money. I
18 mean, you know, you go off to school and you get a Phd and you
19 get you a job at the college teaching and you build you a new
20 house and buy you a new car and a boat and your children can go
21 to hell with more teenage pregnancies and all of that kind of
22 stuff. But the economy is good and you're doing it up.

23 CHAIRMAN BIBLE: Does that mean Old Miss is going to
24 turn around that new federal building?

25 MR. MOORE: Right.

26 (Laughter.)

27 MR. MOORE: So one time or some times we've got to
28 take a stand. Or let it go like Mr. McCarthy said that maybe we
29 suggest just let the states go and let the states do, not

1 suggesting, and let them do what they want to do. And I'm not
2 certain that being from Mississippi I'm probably more anti-
3 government than most people in here. You know we advocate small
4 government unless we can get some of the money. And, some of
5 that federal money and we get our share.

6 (Laughter.)

7 MR. MOORE: But one of these days, as a legacy has
8 implicated, you're going to have to just say, are we going to
9 educate people and make them love to come and watch a horse race.

10 MR. HICKEY: That's what we're trying to do.

11 MR. MOORE: Instead of going on tv and that's good.
12 And I would probably sit there and learn about horse racing and
13 how to raise a horse and things. I don't think I'd bet much.
14 But if you didn't bet, if the people didn't bet, you can bet your
15 bottom dollar that program wouldn't be on too long. Too many
16 people want it just for the information.

17 MR. HICKEY: I wish you could see the program.
18 Because it goes into an awful lot more than --

19 MR. MOORE: That's what I say, I wouldn't look at,
20 probably.

21 MR. HICKEY: You know it goes into the horse that
22 drinks beer. It goes into the, it's even blatant selling of sex,
23 which everyone has been opposed to. I mean they do a short story
24 on one of the grooms in California who is trying to be a star so,
25 you know, you see him in his bathing suit and that sort of stuff.
26 But it is mainly entertainment or, you know, to try to get people
27 interested in the horse.

28 MR. MOORE: Why would we need all that to make you
29 get interested in a horse?

1 MR. HICKEY: Because people don't -- I might risk a
2 little, getting your ire up here, but there are some people who
3 have never been around a horse. Who are so far from the farm and
4 the agrarian society that people don't understand horses. And
5 they don't appreciate, you know, the will to win that the horse
6 has. I mean one of the best stories I've ever heard, the one
7 race that Secretariat lost as a two- year old up in Saratoga.

8 Henny Tweedy who owned Secretariat at that time, when
9 they took Secretariat back to his barn he faced the back of his
10 stall. He usually was out looking at everybody and neighing and
11 everything. He was in the back because he was, and she says
12 because he was so embarrassed and upset that he lost that race.
13 Now that's the story we're trying to get out. The idea of the
14 horses and the jockeys and the trainers.

15 MR. MCCARTHY: I've done the same thing.

16 (Laughter.)

17 MR. HICKEY: I'm going to go do it right now.

18 MR. MOORE: You told us you've never lost.

19 CHAIRMAN BIBLE: Okay, I don't think we have any
20 further questions.

21 MR. HICKEY: Does this mean we don't have to appear
22 tomorrow then?

23 CHAIRMAN BIBLE: Well, your presentation will be
24 tomorrow then.

25 MR. HICKEY: Oh no, I'll just be here.

26 (Laughter.)

CHAIRMAN BIBLE: And since we
27 talked to you today you don't have to anticipate a formal
28 response to your letter.

29 MR. HICKEY: Oh, of course not.

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32

1 CHAIRMAN BIBLE: We do appreciate your input though.

2 Thank you.

3