CHAIRPERSON JAMES: Mr. Rose.

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

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

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

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

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

The present law of credit gambling is bizarre but it can be explained by understanding the history of legal gambling.
We are in what I have called the 3rd wave of legal gambling. This is the third time in American history that gambling has spread throughout the nation. Each of the prior two waves has come crashing down in scandal in prohibition leaving legal debris, statutes and cases which are still on the books.

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

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

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

The second wave came crashing down with victorian morality and once again scandals. The biggest scandal being the Louisiana lottery scandal. The legal debris from the second wave are state statutes dealing with the technology of the times anti-book making statutes, prohibitions on slot machines but also the states were unable to prevent the legal Louisiana lottery from selling tickets within their boundaries so they asked and
the federal government for the first time responded by passing anti-gambling statutes.

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

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

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

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

In the 18th century gambling began to be seen as a vice. This means that it can be legalized. It will be strictly controlled and limited. This is the majority view of the law today. If you notice that the casinos that have been legalized are put on mountain tops or in the middle of rivers kind of surrounded by holy water to sanitize them.
The present law of gambling debts was created during this era when gambling was seen as a vice. Queen Anne of England in 1710 signed a statute which is known as the Statute of Anne which made gambling debts, even legal gambling debts, uncollectible. This is still part of the common law of virtually every part of the English speaking world including Nevada. Nevada is bound by this 288 year old statute.

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

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

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

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

NEAL R. GROSS
COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3711
www.nealrgross.com
important questions when dealing with gambling on credit is what is the public policy of the state.

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

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

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

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

There also has been a change in our perceptions about people who gamble to excess. 304 years ago when gambling was a sin, well someone who gambles to excess is a sinner and they go to hell, literally.
When gambling became viewed as a vice, a person who gambled to excess was seen as morally weak. This means that they are responsible for their actions. In 1980 the American Psychiatric Association declared pathological gambling an official mental disease or disorder. This has tremendous legal ramifications. We don't punish people for being sick. We also forgive people for being sick. For example, there is a very recent bankruptcy case where a gambler ran up thousands of dollars on a credit card, on her credit cards at an ATM at a casino, declared bankruptcy, and the court decided that she did not commit fraud on the credit card because she had an actual though mistaken belief that she was going to win enough to pay it all back.

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

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

In 1980 the Nevada Supreme Court said it would be up to the legislature to change the Statute of Anne and in fact in 1983 the Nevada legislature responded by giving casinos the right to sue although players cannot. Now players are not without rights. Players can file complaints with the Gaming Control
Board which has the power to take away a casino's licenses if it refuses to pay.

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

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

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

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

It seems that from anecdotal evidence that the big problem is cash advances from credit cards. We just don't have
the numbers really to back that up. They may be out there but nobody really has gathered it.

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

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

Thank you.

CHAIRPERSON JAMES: Thank you.