CHAIRMAN BIBLE: Why don’t we talk about enforcement mechanisms. And we, Valerie has done a paper and if I can just have you maybe run over some of the high points of your paper, that would be helpful. Can I ask you to identify yourself for the record before you get going.

MS. RICE: Valerie Rice, I am on the staff of the National Gambling Impact Study Commission.

CHAIRMAN BIBLE: And Dr. Moore, you should have a paper entitled Prohibition Enforcement Mechanisms, if you’ve organized your papers. And it looks like you have.

MS. RICE: This was a document that I prepared. It just pretty much dryly lists what are some of, it’s not exhaustive, of suggested mechanisms of enforcement for prohibiting Internet gambling through legislation or other means. Specific areas are the Kyl Bill, credit card companies, the movement that has happened there specifically with Visa.

And Western Union which has hurt and occurred throughout the states but we have heard from Florida so I focused on Florida. We’ll start with the Kyl Bill and the Kyl Bill went after a lot of different ways to enforce prohibiting Internet gambling last year. And in its final amended version which actually passed the Senate 90 to 10, but it was not taken up by the House, due to other obligations in the House at that time.

But the first provision was to have fines against the individual Internet gambler. And those found gambling would incur either the total amount that that person wagered in a fine, the total amount of their winnings or $500.00. And then they also could face incarceration, imprisonment for not more than
three months. So it could either be a combination of fines, just
imprisonment or, you know, both.

They also went after the Internet gambling business
operators. They said that they were to fine them either the
total amount that they received wagered or $20,000.00. And they
also had an imprisonment provision in there and it could be the
same thing. It was one, the other or both. The Kyl Bill also
had different forms of injunctive and temporary restraining
orders that included once a gambling operation was convicted of
offering an illegal gambling service, it could be, the Courts
could enter, the Department of Justice could enforce them to
enter a permanent injunction against this illegal activity.

And after providing notice the, you know, it could
have a temporary restraining order against any person who’s going
to probably violate this illegal provision to probably, the
intent to provide an illegal gambling operation. So it wasn’t
just if they’ve already offered it, it’s also the probable. The
had a provision in there specifically addressing the Native
American community and the violations on Indian lands.

And specifically they said that it would defer to the
limitations already provided under the Indian Gaming Regulatory
Act, IGRA. And any applicable, sorry.

MR. MCCARTHY: What did you understand that to mean?

MS. RICE: I understood it to mean politically
correct at the time, I guess. I think that, that because, you
know, I don’t have a vast knowledge of IGRA. I have a brief
understanding of it. And I would say that the --

CHAIRMAN BIBLE: Whereabouts is that in your --
MS. RICE: Oh, on Page 2. I also brought with me a copy of that Kyl Bill, if you want to take a look at it at some point. But you know, if Internet gambling is illegal, I guess the jurisdictional questions come into play with both the Indian lands and their sovereignty as well as offshore. But if it’s illegal and they deem that placing a bet from somewhere within the United States, are you not on Indian lands assuming that it’s, you know, just from your house.

That if you’re placing a bet, whether it’s on Indian lands or it’s overseas, if they’re going to go after you for placing that bet anyway, then that would be illegal as well, for the individual bettor. I don’t know what they would do in terms of going after the Native American community that was offering this, the particular Tribe that was offering the service. I don’t know what they would do. But I know that if they are going after the individual bettor, that they have jurisdiction over that.

I think they were trying to show jurisdiction over different parts of the Internet, because it is so difficult to show jurisdiction obviously. Seeing as how you can send a message from here and it can go overseas and back in a flash and you’ll have never have known that, that you’re particular message even went overseas. And my message can go to California and end up around the corner and I wouldn’t have even have known that.

So to show jurisdiction, I guess, they initially probably would go after the individual bettor. I don’t know.

MR. MCCARTHY: Regarding any Internet betting from Indian lands, were they saying that the USDOG would have no role?
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MS. RICE: I wouldn’t say that they were saying that.
I think that they were not clarifying it. I don’t know why.
That’s probably something to look into. I don’t know.

CHAIRMAN BIBLE: I read the statement to mean that if
it were included within a compact then it would be an allowable
activity. I don’t know if that was the real interpretation.
That’s how I read this sentence.

MS. RICE: In the Bill offered by Goodlatte which was
the House Bill which was then reintroduced by Representative
McCollum, they handled it very differently. And so that if you
bet from within a state that’s legal to a state that offers legal
gambling, that they passed legislation saying that they would
regulate legal, you know, Internet gambling, then that wouldn’t
be a problem.

So then they held that true to be as well for the
Native American community. So if a Tribe was offering Internet
gambling and you were, say, in Nevada and Nevada allowed Internet
gambling, you could place that wager to a Tribal community. So
they handled it differently. I’m not positive on what Kyl, the
Kyl Bill intended to do with this. But we can find out.

MR. MCCARTHY: We might pose these
questions to the author.

CHAIRMAN BIBLE: Well, he’s got a substantial
revision that he’s been working on so it’s probably moot at this
point.

MR. MCCARTHY: Can you get a look at the most
available current draft from whoever on Senator Kyl’s staff is
working on this?
MS. RICE: I know that they are going to make it public, I believe, next week. I understand that they will be introducing that Bill next week and we can look at it then.

MR. MCCARTHY: All right.

MS. RICE: The next party included in the language of the Kyl Bill was the Internet Service Providers. And here again they offer temporary restraining order and injunctions against interactive computer services. And these orders and injunctions could go after the Internet Service Providers that host the web pages and force them to terminate service to those operations.

Now this brings up an interesting point because if you’re, most of these gambling operations are happening offshore. And if a domestic Internet Service Provider is hosting that offshore gambling site, they can take it down. However, most of these web pages are with Internet Service Providers that are physically located in those offshore communities. And so this would not necessarily, well I don’t know how they would have a jurisdiction over them.

That was something that I thought was interesting, because all of this discussion was focusing on domestic Internet gambling and most of the Internet gambling is happening offshore. So that becomes a technical problem. So the Internet Service Providers would also be required to terminate Internet accounts for individuals that were placing or receiving bets. So if an individual gambler was found to be placing, gambling on the Internet, that that person’s account, their Internet account would be terminated.

And of course it included certain language in terms of technical feasibility for doing all of this and reasonable
effectiveness. And should prevent access to lawful material that is already offered on line. And it also made specific mention of the burden of this offshore Internet gambling problem. And it provided for expiration of temporary restraining orders.

And also mentioned that these Internet Service Providers were not obligated to monitor use of their service except when ordered by a Court. There was prior notice included in the language for the restraining orders against the Internet gambling operators that they offered in those penalties, but not for the Internet Service Providers taking down.

MR. MCCARTHY: That was in the Goodlatte Bill?

MS. RICE: No, that’s in the Kyl Bill. In the Kyl Bill there was prior notice for, you know, if you were going to enter a restraining order or injunction against an Internet gambling operator. But not for the Internet Service Providers taking down that particular site. That was to be hammered out, I guess, in the courts.

And then the last thing that the Kyl Bill did was require the Department of Justice, the Commerce Department and the U.S. Attorney General to report to Congress on the enforcement and costs of the statute, including filtering and screening technologies, effective restraining orders and injunctions on interactive computer services. And the financial costs and societal costs on illegal gambling on the Internet and the effects of restraining orders and injunctions on the Internet.

The next area that is an interesting way of enforcing is through credit card companies. I actually spoke with an attorney today, so there is an update on this memo. But one
thing that happened was Visa knows that this is happening, that people are using their credit card directly to place wagers. That they don’t even necessarily set up accounts. At some sites they are directly gambling instantaneously through their credit cards.

But at most sites you are setting up an account using your credit card. And neither with a bank or with the Internet gambling operation, most of the time with an offshore bank. And sometimes those banks actually own the Internet gambling operation. That’s starting to happen that there are these mergers between the two or that they have a hand in each other’s pockets.

But they were treating these on line gambling merchants, they are now treating these on line gambling merchants as high risk telemarketing merchants. Which puts them in an entirely different classification. And there was a memo which outlined what that meant. And it required that the on line gambling merchants show verification of a valid license in that jurisdiction.

So if they had a license in Antigua or Australia, where right now they are offering Internet gambling licenses, that they would have to show the acquirers, the people who are offering the Visa service, that they would have to show, those banks they would have to, those banks would have to determine that they are a licensed Internet gambling operation.

CHAIRMAN BIBLE: But only in the originating physical location, not in the location where the services, where the wager is taking place? It’s just the --
MS. RICE: It’s the bank where the card is being used. So if I, if I have a credit card and I want to wager with my credit card and my credit card happens to be a member of a particular bank, I guess that that bank would have to show — I’m sorry, that’s incorrect. If I was a bank and I had an operation where I was setting up accounts for an Internet gambling operation, if I wanted to operate, set up these accounts, I would have to show that, I would have to ask this Internet gambling operation to show its license.

CHAIRMAN BIBLE: Show their license?

MS. RICE: Right, exactly. They also are responsible for ensuring that the on line gambling merchants do not directly credit winnings to Visa cards of on line gamblers. What this means is that they did not want, once a gambler won, that the winnings from that bank go directly to the Visa card. They said if a gambler wins, Visa is not going to credit them. That has to go through another means and they suggested things like wire services. Also, they wanted these banks to establish minimum financial guarantees from on line gambling operators.

This is all financial ways to protect them because they’ve seen some serious problems in the Courts here already. Reviewing the collateral to on line gambling operators regularly. Encouraging the use of encryption technologies so that people can’t use their banking data. Informing third party processors of special requirements. So if I’m a bank and I’m using yet another party to do this kind of transaction, I would have to inform them of all these kinds of new rules that apply.

And monitoring the transaction activities of on line gamblers. Which I guess they want them to become almost like an
auditor, to make sure they are going to get paid, these credit cards.

MR. MCCARTHY: How much of any of this is in the Kyl Bill?

MS. RICE: None. None. The Kyl Bill did not address banking methods. So --

CHAIRMAN BIBLE: The business I came from, I was just following the money.

MR. MCCARTHY: That’s exactly right.

MR. MOORE: I’m figuring out how we’re going to catch these people betting illegally. All of them are going to win and they are not going to report their income and the IRS is going to get them for invasion of taxes. How does that sound?

CHAIRMAN BIBLE: You’re whistling Dixie.

MS. RICE: Sounds like the IRS is going to have a lot of auditing. So all Internet gambling operations must, that use Visa, Visa will now provide this field showing a notification that these transactions are occurring over Internet and security conditions for those transactions. i.e., when you go on the Internet and you place a financial transaction right now, you usually get a notification that says, this is, you know, using such and such encryption so that other people can’t read it.

Do you want this notice to appear again? You know, I tend to say yes, because that way I know every time I send a financial information across that I know that it’s encrypted and I’m feeling safe. So that’s a requirement now. The other interesting thing happening with Visa right now is a law suit that’s occurring in California. There was a, there was a person
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in California, her name is Cynthia Haines, and she had incurred
over $70,000.00 of gambling debts.

And the banks of which, she held these 12 credit
cards that she had incurred these debts upon, had brought her,
had sued her in California Superior Court. And she had
counter-sued against these banks. And I have spoken with her
attorney and her attorney actually today told me that there was a
court date set for October 20th of this year. Until then, they
are kind of going through these motions to dismiss. And there
was even, let’s see if I can find my notes, I was speaking with
him today.

First USA had tried to compel arbitration and the
Judge denied it. So now there’s a court date and I guess it’s
moving forward.

MR. MOORE: Now the reason the bank is being sued is
they allowed her to go over her limit?

MS. RICE: Well, this is where it becomes
interesting. When she filed the suit, Haines, this is in the law
suit. It says, she wants, her goal is to or the law suit’s goal
is to prevent these credit card companies from permitting their
credit cards from being used or accepted on web sites that accept
illegal bets from the residents of the state of California. So
her --

CHAIRMAN BIBLE: She’s asserting the gaming debt
isn’t enforceable because it is for an illegal activity.

MS. RICE: Exactly. And I believe in California,
you’re not allowed to place a wager on credit cards, that you’re
not allowed to use your credit card to place a wager?
CHAIRMAN BIBLE: I would doubt the California Code addresses that, I don’t know.

MS. RICE: I think that there’s something about collecting.

MR. MOORE: Is the bet in Nevada?

MS. RICE: I know that, I know that there, yeah, there are provisions throughout different states in their different regulatory models in which you are not allowed to directly place a gambling wager. So --

CHAIRMAN BIBLE: No states other than New Jersey allow you to directly place a wager with a credit card domestically.

MS. RICE: Okay. So, see now we have to go international.

CHAIRMAN BIBLE: And illegally, nobody even addresses.

MS. RICE: Right. So according to the attorney, the credit card companies knew or should have known that the numerous on line casinos using their credit cards for illegal gambling transactions that she played, they should have known this was happening. Visa and Mastercard often, whether it’s with their consent or not, have direct links attached to some of these Internet gambling sites where you can just, I mean they are advertised on there to use it and you can just click on it and you can, and it will bring you to the forms to fill out.

CHAIRMAN BIBLE: Visa sites too?

MS. RICE: I understand, from my understanding evidently. I’ve seen it myself. I don’t know if anything, I haven’t seen it since the high risk. But they had direct links,
and sometimes they are placed by the gambling operators. They are not necessarily with Visa’s knowledge, but they are there.

The attorney, Ira Rothkin, had to come up with his own enforcement suggestions which were to require the cooperation of financial institutions through injunctive relief. I guess much like we had seen with the Internet Service Providers and the like. And prohibit credit card companies and banks from acting as a conduit to Internet gambling operations or setting up financial accounts for the sole purpose of Internet gambling.

Provide for injunctive relief for credit card companies and go to federal court to get this relief. Prohibit the collection of credit card debts accrued through Internet gambling. Prohibit digital cash mechanisms from acting as a conduit to aid and abet Internet gambling. Now, and also provide injunctive relief. There are other forms, as you know, of money used on the Internet or ways to send your financial information.

And that is through things like smart cards and digital cash and e-cash.

CHAIRMAN BIBLE: What is e-cash?

MS. RICE: Think of it almost like if you went and bought chips at a casino. You can go and put your money down through this company, I think actually there’s a company out --

CHAIRMAN BIBLE: Kind of like a phone card, pre-paid phone card.

MS. RICE: Like a pre-paid phone card. And you can spend it on anything.

CHAIRMAN BIBLE: Okay, I understand.

MS. RICE: I mean you can go on line to any --
CHAIRMAN BIBLE: No one is using e-cash at this point, from what I understand.

MS. RICE: If, I mean I imagine I guess if you say that credit card companies --

CHAIRMAN BIBLE: Everybody will use it if you go after the credit cards.

MS. RICE: Exactly. But the difference is it is harder, I guess, to track because you’ve created that third party to go through already.

CHAIRMAN BIBLE: Correct. You can go buy a phone card at Cosco.

MS. RICE: And there’s no way to tell what it’s being spent on. It’s like spending money. It’s just sent immediately. As opposed to a credit card in which you get the bill for afterwards. It’s just debited. And then he talked about if it was legalized within the states, which really doesn’t pertain to us, I guess, since we’re a Subcommittee to prohibit it.

The next area was Western Union. And Western Union in conjunction with the state of Florida and their Attorney General there has agreed to cut off all money transfers to 40 offshore Internet gambling sites. And most of them were, I think all 40 of them were sports gambling operations that the Attorney General had located that were accepting this wire transfer.

There are two --

CHAIRMAN BIBLE: Before you go on, we probably have two versions of this, of your paper.

MR. MCCARTHY: March 6th.

MS. RICE: Oh, you know why, when I sent it via e-mail.
CHAIRMAN BIBLE: I took your’s off e-mail.

MS. RICE: Right. I think it’s just the page numbering is different, there’s not a word change or anything. So the page numbering would be different. Your cover page would be Page 1.

CHAIRMAN BIBLE: Oh see, I downloaded mine. I took it off e-mail. All right, that’s fine, I’ve got it.

MS. RICE: So Western Union has two forms, well has this one form, it’s quick. It’s quick payor, quick collect, that’s often used. And you can go, some of these gambling operations had direct, and some still do, I guess, have direct links to the quick pay, quick collect forms. So that you can go directly and fill it out and send it even on line. But you can go down to a Western Union office and fill out as well.

And they have not given us the specifics of their agreement, but they did, every time that they are notified, Western Union has said that they will shut down, if there’s a direct link that they will not send it. And if they know that the money is going to an Internet gambling account, they won’t send it.

MR. MCCARTHY: Isn’t their language in an existing federal law or in the Kyl Bill that would address this specific issue?

MS. RICE: No. Western Union, wire transfers as well as the credit card companies were not addressed in the Kyl Bill.

MR. MCCARTHY: In this instance there was a remedy, the Attorney General had some leverage to put pressure on to get Western Union to change what it was doing.

MS. RICE: Right.
MR. MCCARTHY: But it may be that the hands of the
U.S. Department of Justice and state --

CHAIRMAN BIBLE: If you remember the testimony, we
had testimony both from the Deputy Attorney General via telephone
and at one point, I believe, from the Attorney General, not from
the Attorney General himself, but just from the Deputy Attorney
General. And he indicated that he called them into his office
and they had, they came to an understanding.

MS. RICE: Right. That was Gary Betts.

MR. MCCARTHY: And we don’t know what might have
happened?

CHAIRMAN BIBLE: He indicated he did not threaten
them.

MS. RICE: And the attorney, Adam Coyle, who was
talking to us that evening from Western Union, has mentioned that
other states has done this as well.

CHAIRMAN BIBLE: Yeah.

MS. RICE: So this is an effort, another effort on
part of all the Attorney Generals throughout the United States to
go after Internet gambling.

MR. MCCARTHY: Yeah. It may be that some specific
language on this point, either the Kyl Bill would simply
strengthen the hand of State Attorneys General and the U.S.
Department of Justice. Whenever we’ve got U.S. companies that
are quite willingly and aggressively participating in
international Internet betting, I don’t understand why there
aren’t provisions in the Kyl Bill including the credit card
companies.
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MS. RICE: Well, that’s what the attorney in the Haines case has mentioned was that the reason why he went after these banks is because they are in the United States and he had jurisdiction over them.

MR. MCCARTHY: Yeah.

MS. RICE: But the problem does become a little bit more muddied since it’s hard to tell sometimes if it’s going to an Internet gambling site. You know, they’ve gone to these offshore accounts and then sometimes you can kind of go to an account to go to an account. So for an example, I set up an account in, you know, Iceland, you know, and then I use that account to funnel more money to an account in Antigua where the gambling operation is taking place. It’s difficult.

CHAIRMAN BIBLE: Well, I think if you try hard enough, you can figure out how to transmit money to an Internet wagering site. I think whatever you do, you just make it more difficult.

MS. RICE: Right.

MR. MOORE: What she’s saying is that a lot of these sites, the Internet gambling sites, might not be identifiable as one of those. It may be listed, as you said, the banks enjoin in with them, now they were holding each other’s hands.

MS. RICE: Well, you can tell sometimes when it’s a bank in conjunction with an Internet gambling site, but sometimes it’s difficult to tell if I’m sending money to, you know, England and then from that England site to, you know, another. If you tried hard enough, you know, but you still have to follow the money.
CHAIRMAN BIBLE: Well my thought, just in terms of this particular area, is that we wait, take a look at the Kyl Bill, see what important mechanisms it has. I think it will probably have some of the same traditional enforcement mechanisms that were talked about last time. Not traditional, but traditional in terms of that legislation. And we’ll look to the ISP probably and make it criminalized wagering activity together. I don’t know if that’s appropriate, but I suspect we’ll do that again.

But if anything that we can add to the dialogue to take a look at perhaps one of these other alternatives. And I think you’re looking at a blank, quite frankly.

MR. MOORE: What would be wrong you asking them about is this covered in the Kyl Bill? What would be wrong in putting, hoping that this was or suggesting it be in the Kyl Bill and make it illegal for credit card companies and Western Union and all other money transfer to transfer money to an Internet gaming site?

CHAIRMAN BIBLE: Yeah, I don’t see a problem with that. I think it’s a knowledge requirement as to, you know, how it gets identified.

MR. MOORE: Well --

CHAIRMAN BIBLE: But you know, I don’t, quite frankly I just think you make the credit card debt not enforceable and let the patron who wants to lose their money assert their rights.

MS. RICE: Right. All this might become that case if this case moves forward.

CHAIRMAN BIBLE: It will just drive the money someplace else.
MS. RICE: Exactly.

CHAIRMAN BIBLE: You know, just all the money.

MR. MCCARTHY: Yeah, I think all three of us are looking for provisions that perhaps should logically be in the Kyl Bill that may not be now. But we won’t know that until we see the --

CHAIRMAN BIBLE: So I think probably in terms of that direction why don’t you follow, when the Kyl Bill does get released, take a look at all the enforcement mechanisms and then start exploring those options, particularly in the financial area, that are not included in those enforcement mechanisms. And you may want to contact FINSEN, which is the Financial Enforcement Network and see if they have any particular suggestions as to how to do that.

I can give you the name of the contact person. Because they are involved in that because of the anti-money laundering activities.

MS. RICE: Okay. Any other questions?

CHAIRMAN BIBLE: No. Thank you.

MS. RICE: Thank you.

CHAIRMAN BIBLE: Excellent work product.

MS. RICE: Thank you.

CHAIRMAN BIBLE: Let’s take up on the first item and then we’ll take a brief recess and then come back and talk to Mr. Belletire. My thought in terms of the prohibition is that we ask the staff to start conserving what’s in the body of our transmittal report to more flesh on the recommendations instead of just a straight prohibition. I personally am not overly
concerned with account wagering if it is appropriately controlled and takes place on the telephone.

I don’t think we ought to cross the line in any circumstance and get into endorsement of Internet wagering. Whether it be for horses or dogs or casino games. Let that medium still be prohibited, that account wagering be left to states’ option if they, it was a strong recommendation that they adopt the appropriate safeguards. That’s an area we want to take a look at. I don’t believe we touched common pooling at all.

And that’s, this is the direction I would take. And I don’t know how you feel about that. You may feel a little bit differently because that in effect of course to some aspect home wager. Do you want to kind of flush that out in your report? At this point, why don’t we take a recess for five minutes. We’ll come back and we’ll talk about regulations with Mr. Belletire.