



Race Track Industry Program

**33rd ANNUAL  
SYMPOSIUM ON RACING & GAMING**

**TUESDAY, DECEMBER 5, 2006**

**INTERNET GAMBLING-NEW REALITIES?**

**Moderator/Speaker:**

**Jay Hickey**, President, American Horse Council

**Speakers:**

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

**Sue Schneider**, CEO, President, The River City Group

**Maury Wolff**, Economist and horseplayer

**MR. STEVE BARHAM:** Okay, if you can all take a seat we will get started. Also, please turn off all your cell phones so they don't ring and interrupt the panel.

I'd like to thank the sponsor for this panel session, U.S. Off-Track. Also for the keynote luncheon, International Game Technology. We could not put this on without sponsors, and we really do appreciate it.

Probably everybody knows one of our newest award winners, Jay Hickey. Jay has been the president of the American Horse Council since 1993, and AHC represents the horse industry in Washington, D.C., before Congress, and the federal regulatory agencies. I'm not going to spend a lot of time telling you what you probably already know. I'm going to turn it over to Jay who is going to be the moderator and the speaker on the panel.

**MR. JAY HICKEY:** Thank you. I have to admit I'm still a little shook up, so bear with me. When you start getting awards you start getting old. I'm not as old as Stan Bergstein though, I just want you to know that.

This panel, we haven't practiced so I don't know what's going to come out. And I'm going to try to give a little different talk, and I haven't practiced it either. So we'll see what's going to happen.

I'm going to start off and give a little background on the racing issues, the Internet gambling bill which passed. I want to go over a little bit of the 10-year

process that went into it, explain how it would apply to racing, and what it does and does not do.

And then we'll have our distinguished Professor Nelson Rose who is going to talk about the bill, how it was passed, some of the broader implications of it and the legal issues going to the WTO.

And Maury Wolff, the only person on the panel that works for a living, will talk about some of the consumer issues, gambler issues, some of the problems banks might have, and how operators might try to avoid the prohibitions.

And Sue Schneider will clean up and offer a broader perspective about what the offshore operators think and sorting out between private and public companies. I'd like to try to keep questions to the end. Somebody may answer a question or it may raise another question, then we will all try to respond to it. But we'd appreciate that.

I want to thank Doug Reed and the Race Track Industry Program for inviting me to moderate and participate in this. And I want to start off with a question: Can somebody tell me what happened on December 20, 1995? Anybody have any idea? Mr. Powell? Anybody? Mr. Haggerty? What?

December 21, 1995, was when the first Internet bill was introduced. It was 11 years ago. About a three-and-a-half page paragraph in the Crime Prevention Act of 1995 introduced by Senator Jon Kyl, has been consistent throughout this, Orrin Hatch and Mike DeWine from Ohio. Senator Kyl has been re-elected, Mr. Hatch is still ranking Republican on the new Judiciary Committee and Mike DeWine was just defeated.

It would have closed racetracks, stopped all betting on horse racing in the way it was introduced. It went to the Judiciary Committee and thankfully expired in that form. I still remember sitting in my office getting a call saying, "Do you know about this three-page item in the Crime Prevention Act introduced by Senator Hatch?"

Being a good Washington person I said, "Of course I do. We have to watch out for that. Send me information." I hung up the phone and found out what is Internet gambling? Why does it affect horse racing?

But as I say, it would have closed racetracks because of the way it was drafted. Since that time, five Congresses ago, legislation has been introduced in every Congress. It's involved probably several hundred drafts, gone to over 50 pages, passed the House twice, the Senate twice, if you include the last time, three times. Never in the same form until the very last time. Been the subject of 30 hearings and 10 markups before six different committees.

It's involved the entire horse industry. It's been the principal focus of the National Thoroughbred Racing Association since they were formed a number of

years ago; and they put in a great deal of time, money, and effort on it. But it's involved everybody in this room, everybody in the industry. The American Quarter Horse Association, United States Trotting Association, Jockey Club, etcetera. And you can never tell what makes a bill pass or not pass or what's the final straw that moves something in one direction other another.

I remember one time before the Judiciary Committee we were having a great deal of problems — and this is not necessarily something the press has to put down on paper — with Representative Sensenbrenner. Who the heck knew him? He was from Wisconsin and we found out his child's dentist owned standardbreds. We got a standardbred person in Virginia to talk to him and explain to him about this bill, and that was the first foundation for his continued support.

So that's how this process works in everything. I want to try to give you a couple background things to put this in perspective since it's passed now. I don't think it's over. It's not an issue that's going away.

Senator Jon Kyl, Congressman Bob Goodlatte have been stand-up strong supporters of the racing provisions from the very, very, beginning. And later Congressman Jim Leach, who actually lost this time out. Not because of Party Poker, he lost for various other reasons. Those three have been most involved.

In 1995 when the bill was introduced, racing was the only form of gambling that did legal, state-licensed, state-regulated interstate wagering through simulcasting and telephone betting which had been done for many, many years. Since that time to right now, we are still the only form of gambling that does state-licensed, regulated, legal interstate wagering through simulcasting and through advance deposit wagering.

We've grown, obviously. I forget how many states had legalized home betting or advanced deposit wagering in '95, but it's up to 19 or 20 now. Simulcasting, account wagering is close to 90 percent of our business. We had to have some sort of language that carved us out, exempted us, grandfathered us — whatever words you want to use — and we were doing it so anything that passed would not have only prohibited us from expanding, it would have rolled us back, unlike casinos or Native Americans or lotteries or whatever.

When I say lotteries, they have multistate lotteries. But you don't bet in one state on the multistate lottery with another operator. You bet with your own people in your own state, even though it's several states. So we needed some sort of language.

We sat with Senator Kyl and with Mr. Goodlatte and explained the situation, and to a person they said, "We are not out to try to rollback or prevent what racing is doing legally now."

And that has been their position through the entire process. Senator Mitch McConnell and Senator Jim Bunning were important supporters and were very strong, particularly Senator McConnell.

The Wire Act, Section 1084 of the United States Code, is ambiguous with what it prohibits with respect to interstate wagering. There's a Fifth Circuit Court decision that says it doesn't apply to casino games. It's not even clear whether this bill would even prevent casino games. It would not outlaw it. That's one thing they didn't go after in 1084. Ultimately, it was the funding process.

It was ambiguous then, it's ambiguous now. We have a controversy that's gotten stronger or highlighted or understood more in the public between our position on the Interstate Horseracing Act and 1084 and the Department of Justice. That was there then and it's there now.

This legislation was introduced to ban, prohibit, and limit Internet gaming. That's its sole function. Our job was to maintain our ability and keep our opportunities open. We were dealing with legislation over the last decade plus one that was intended to stop what we want to continue to do. It made it very difficult on occasion. It was a difficult juggling act often.

The interests involved in this were much, much, much broader than are usually involved in horse legislation. Reducing the capital gains holding period from 24 months to 12 months does not generate a lot of activity in other industries. Most don't particularly care one-way or the other. It's a much broader job. We had the Department of Justice involved, Federal Bureau of Investigation, all the banking associations and lobbies in Washington, because they ultimately ended up being the enforcement arm. The casino industry, dog racing, there are members here and they did a good job. Native American gambling, lotteries, the convenience stores.

Convenience stores, what do they have to do with Internet gambling? They don't want people staying at home buying the lottery tickets on the Web. They want people coming to the 7-Eleven, or 6-12, or whatever and buying from them. So the convenience stores. And they were extremely important about six years ago when Mr. Goodlatte was trying to get something done. Professional sports, NHL, NCAA, baseball, they were there right from the beginning working actively and right there at the end pushing this. And the fact it passed is a testament to them, or a testament against them, depending on what you think about the legislation.

Off-store operators, religious groups, antigambling organizations all were involved. We also had scandal involved. With the superlobbyist, Jack Abramoff, and Tom DeLay who stopped this bill from passing maybe six years ago when it went to the House floor and was already to go and at the very last second, they were able to get people to change their mind.

I would like to know how much money has been spent on lobbying this bill or studies on the bill or involved with this bill. It's more than a cottage industry. It's got to be at least \$100 million. That's something people don't think about. It was

always necessary that racing's position be reasonable, understandable, and responsible in dealing with the realities of this legislation.

Again, we get back to — antigambling people are trying to pass legislation to do what we are doing. We have to fit it within that. The fact we are all farmers and we have a \$40 billion agribusiness is important. We were able to convince many people of that. The fact that we stayed with the people that introduced this bill and supported them along the way is important. We were the ones that most of them relied upon. And when you stick with members of Congress and trust them that something can be fixed — and I don't mean fixed in that sense — can be changed. If we can get past this, that's important. There's only one form of gambling that has a federal law that promotes that form of gambling on an interstate basis. That's the Interstate Horseracing Act. It fosters — if you read the findings and purpose — it is to promote interstate wagering on horse racing.

We thought we might need a little clarification of that fostering, and we were able to get that done through Senator McConnell and Congressman Hal Rogers of Kentucky. The planets were aligned in 2000 when we passed legislation that said interstate wagering includes pari-mutuel bets from one state to another over any electronic media provided it's legal in both states. And also applied to common pool wagering. That amendment was extremely important from 2000 on. We built on that to make our argument that differentiating horse racing from other forms of gambling was the Congressional intent and should be done.

The Department of Justice, as I said, consistently maintained we were violating 1084 through simulcasting and account wagering. We disagree. Many lawyers, not only lawyers that represent the horse industry, disagree. States apparently disagree because they have been legalizing this form of wagering for many years now and regulating it.

Despite that, during the many hearings, racing and its language was the poster boy, the whipping boy, the poster person, whipping person of those who either opposed expanding gambling. They made the arguments that our wagering expanded gambling. We disagreed. It was a rallying point for other forms of gambling that wanted the same language we had, that wanted to continue operating. And by those who just opposed the bill as simply saying, look, when you are doing for horse racing, justice says it's wrong, therefore, you should vote against it.

We had to fight that. I want to give you a feel. We were able to maintain the language right through September 30 at 1:12 in the morning, and it was a Saturday.

Even then, in the last week, it was alive, dead, like every Congress for the last five years. Senator Kyl would always try to bring it up. In this case it was Senator Frist. And the one regret I have — well, you always have regrets. I was pretty sure on Friday afternoon about two that it was going to be passed by the House. We added the Port Security Bill, which was a must-pass. You had to pass.

Once you get it on, it can't be taken out. I wish I shorted some of those offshore companies. But I didn't do that and we all lost. I lost a fortune by not being able to do that. That's not insider information, it's just market information.

But again, after 11 years it finally passed. The House passed their bill this summer. And then it went to the Senate. And we come to the end of the session, before they are leaving for the Congressional elections, and Senator Frist took a great interest, and Speaker Hastert, and they put it into the Port Security Bill. Senator Kyl never introduced his bill in this Congress. There was never a Senate bill introduced. They took the House bill and patched a couple of things together. And perhaps Professor Rose will talk about this so I don't want to.

It was declared dead on several occasions. It finally passed. It's called the Unlawful Internet Gambling Enforcement Act, and it includes racing provisions that were in the House-passed bill this summer. It maintains the status quo. Again, Senator Kyl, Senator McConnell, Senator Bunning, Congressman Goodlatte, Mike Oxley, and Mr. Leach from Iowa were important. The final bill does not amend the Federal Wire Act, Section 1084.

It goes to the credit provision and credit is broadly defined. It became politically impossible to amend the Wire Act. They came up with the idea to go after the banks and credit card companies that make this process work, and that's what was finally passed. It applies to financial institutions and banks, and they are the ones that will have to enforce it. It only applies to credit extended on unlawful Internet gambling. And unlawful Internet gambling involves the use of the Internet. That could be a telephone, in the future it could be all transactions involving the Internet, and all communications involving the Internet, which is unlawful under applicable Federal or state law in the state or tribal lands where the bet is received, initiated, or otherwise made.

Why are we excluded? Because excluded from the definition, defined out of unlawful Internet gambling, are wagers pursuant to the Interstate Horseracing Act of 1978, as amended. We are excluded out of unlawful Internet wagering so we are not covered. A little wrinkle.

When we went to the Judiciary Committee this summer the Department of Justice really stepped up their noise and concerns about our language. In an effort to try to appease them or make sure we did not get our language taken out by the Judiciary Committee, which happened twice before, we put in language which expressed a sense of Congress. And there's language that says nothing in this act is intended to resolve any existing disagreements over how to interpret the relationship between the Interstate Horseracing Act and other federal statutes.

Once that sense of Congress language was put in, the Department of Justice supported it, including our exemption. And that was important in getting a favorable vote in the House Judiciary Committee, which we got, and going to the floor and getting that language, maintaining the language in the bill that passed the

House. We were very concerned it could have been taken out. A number of people were still opposed.

Other forms of wagering were opposed to our language because they didn't get the same thing we did. The law also requires the Treasury Department and Federal Reserve Board in consultation with the Attorney General to write regulations in the next nine months regarding what this means for banks, financial service companies, people involved in transacting the money exchange. And after it passed the House the lawyers looked at it and said, "Wait a second. We're a little worried. We have the Attorney General, the Department of Justice involved in this in writing the legislation. Perhaps they could write regulations which excludes, defines us out, and puts us back to unlawful Internet wagering."

Between the summer and when Senator Frist and the Senate decided to push it a new provision was added which basically says that the regulations written under this act regarding the financial transactions cannot exclude to redefine unlawful interstate wagering to prohibit racing activities. That was an important thing to get in. Who do we have to thank? Senator McConnell and Senator Bunning.

Senator McConnell was the majority whip in the last Congress and minority leader in the next. The language that passed ensures the status quo not only in the legal part but also in the regulatory process, and that's important. We have to be very careful as they write the regulations to see what they say, make sure they don't do something to make it more difficult for us to continue account wagering.

Through June, 270 days is June, it's not unusual for the 270-day period to slip somewhat, as you might expect. Where are we?

I'm reminded there were two brothers, not particularly popular. One passed away, three years later the second passed away. He is lying in the coffin and the preacher says, "Who would like to say something nice about Ralph?"

And no one says anything.

"Surely someone must say something nice about Ralph."

In the back somebody yells out, "He wasn't as bad as his brother!"

Where are we under the legislation? We're not as bad as the other forms of gambling. We're the only form of gambling that can continue to operate and expand under our Federal law, the Interstate Horseracing Act.

Native American casinos, lotteries, etcetera, sports betting, already banned. They are out under this bill. We are still alive. It's actually good language when you take all that into consideration. It doesn't amend the federal Wire Act. We still have the issue with the Department of Justice as to whether our amendment trumps the federal wire statute, which was written in 1961, 55 years ago, to deal with organized, crime not state-licensed state-regulated gambling. It does not

resolve the dispute we have with the World Trade Organization, and that will continue to be there.

Prior to September 30 we had several issues: The dispute with the Department of Justice, the WTO issue, and we had the very real possibility that a federal law could be passed prohibiting racing and all forms of gambling from doing interstate Internet wagering.

The third factor is gone and we are allowed to operate. What could stop that? Congress could stop it. No one can predict what Congress can do. It would be very difficult to get a bill through Congress that would prohibit interstate wagering or rollback the Interstate Horseracing Act. The Department of Justice could bring a lawsuit against an operator saying it violates the wire statute. Again, most involved in this think we have good arguments. I've seen briefs prepared. They think we would win that.

The new legislation protects or allows us to continue operating. Protects the status quo, and all things considered, a wise man once said, "Success in Washington is not always measured by what you get done but what you prevent from getting done to you."

Clearly, in this instance all the parties involved have done a very good job to protect our opportunities.

Our next speaker is Professor Rose. Those of you that heard him speak, he has interesting and thought-provoking ideas. He is an internationally known scholar, writer, and public speaker. He spoke at the TRA and HTA meeting in Las Vegas, and is recognized as one of the world's leading authorities on gaming law. He graduated from Harvard Law School and is a tenured professor at Whittier Law School in Costa Mesa, California.

His most recent book, co-authored last year, is "Internet Gaming Law."

Will you be signing copies? Commercial here. Internet Gaming Law. He is co-author of "Gaming Law Cases and Material," the first case book on gaming law. He is best known for his columns in the landmark 1986 book "Gambling and The Law."

He has testified as an expert witness, acted as consultant to government and industry, including major law firms, casinos, tracks, tribes, local and state governments, Arizona, Florida, Illinois, Michigan, New Jersey, Ontario in Canada, and Mexico. He just came from the gaming law attorneys meeting in New Orleans.

Is that correct?

And he may have reports there. We look forward to hearing from Professor Rose. Thank you.

(Applause)

**MR. I. NELSON ROSE:** Thank you, Jay. Doug, thank you.

I did bring copies of the books. I also want to thank Doug Reed and the University of Arizona, the whole racing program, the whole racing industry.

When I first started writing in this area, 1979, I was five years old. The racing industry didn't want to be associated in any way with gaming, wagering even. Over the years I'm finding more and more people are reading my stuff, which is great. And thanks for asking me. Because you are involved with gaming as the Internet Act shows.

First of all, administrative, I did do an analysis of this new statute which I decided to call "Prohibition 2.0" since we had a Prohibition 1. There's not enough copies. If you would like a copy, there's a copy on my Web site, [www.gamblingandthelaw](http://www.gamblingandthelaw), all four words spelled out in whole and run together. You can send me an e-mail.

I do a syndicated monthly column. Two days after the bill passed I sent my analysis to everybody on my mailing list. And now it's been picked up by Wikipedia, and my whole opinion of Wikipedia has changed. There's a link to my Web site. I wouldn't even let my students cite it, now they are going to be required.

I appreciated the futurist speaker. I considered myself a futurist, partly because any decent lawyer has to make predictions. When you give a legal opinion it's really, what would a court say? And when you give legal advice it's, if you do this, you won't have to find out what a court has said. You'll stay out of trouble.

I've dealt specifically with gambling since I started writing in the 1970s and I predicted there would be a whole expansion of gambling. Unlike the speaker at lunch, I think we should make predictions. It's a way of testing our hypotheses. I'm going to make some predictions about what's going to happen with the Internet in particular, and also about the World Trade Organization.

Let me start with this statute. The racing industry owes a tremendous debt to Jay Hickey and the lobbyists working with the racing industry. The language that is in that bill, it's almost a fluke that it got in because this bill was not the result of all those decades, decade plus one year of study and millions of dollars spent. It was basically one person's ambition to be President and he figured he could score some points with the religious far right. It was Bill Frist, the majority leader of the United States Senate. He wanted to run for President. He talked to Jim Leach, considered a powerful party in Congress from Iowa. He went to speak in Iowa. Leach said come out against Internet gambling. He did. And the rumor in Washington is that Leach wanted this bill passed before the election because the House might change. Which, in fact, did happen.

So, by the way, in terms of the stock market and making predictions, I often talk to people who are investing in the Internet gaming stocks. They are mutual funds in Europe who put in. I have a guy with over \$500 million invested in Internet gaming stocks in Europe. On that Friday morning he asked me, "What's going to happen?"

The Leach bill passed the House and I said, "It would have to pass the Senate and the banks are against it and there's changes and it would still to go back to the House." And I said there was about a five percent chance it will pass.

And he said, "Why five percent? Everybody else says zero."

And I said, "Because Bill Frist is in favor of a ban on Internet gambling and you can't underestimate the majority leader."

I called him on Monday, and I — he called me to talk more about what would happen now. And I said, "How did you do? You have \$500 million."

And he said, "Because you told me there was a five percent chance I shorted Party Gaming and went long. I did fine."

Other people lost \$7 billion. Wiped out instantly on the London Stock Exchange. It was run through by Bill Frist, he took pieces of bills out there, Goodlatte, Leach, other language, and included stuff that some people knew about, kept out other stuff. The racing language got in, which is kind of a miracle.

I have the paper and you can read through that. Basically, it's an enforcement act, not a new prohibition. It says if you are illegal then these things happen, but it by the definition of illegal means it violates some other federal or state law. You are left with the big question that's been out there: Does Internet poker violate any state or federal law? The publicly traded companies, like Party Gaming, panic; but also they are worried about stockholder suits so they are out of the business.

I often work with people who aren't publicly traded. They are unhappy because they can't go public. They planned to be billionaires. On the other hand, it's like manufacturing cars and finding General Motors and Toyota just announced they are going out of business. They are making hundreds of millions of dollars more that would have gone to Party Poker.

So what's going to happen? I'll make some predictions. There will be a study now that the Democrats are in control. Bill Frist will not be President, having blown control of the Senate. Jim Leach is not even going to have a vote. He was defeated.

I used to run political campaigns. There actually is a chance, the green felt revolution, that a few hundred votes got swayed. A few hundred people got mad. They've done studies. Ten percent of the people said they would be more likely to

vote for Jim Leach in his district because of his position banning Internet gambling. Fifteen percent said they were more likely not to. I think he was defeated because of Internet gambling. The exceptions are just amazing.

I have to thank Bill Frist. This has been a wonderful month for me. I've done legal opinions on questions like: Is interstate horse racing still legal? Can we open up poker intrastate? What about skill games? What about games where there's no purchase necessary? And how about just, did it criminalize any activity that was legal at the time the bill passed? Which it did not. And I gave a legal opinion on that.

From all over the world. We're going to see an explosion of intrastate gaming. California will legalize poker within the next couple years, which has a population greater than Canada. And big operators are looking how to get into this.

The tie-in with the World Trade Organization is not very strong. Basically, Congress doesn't care about the fact that the United States lost the decision in the WTO. What the WTO ruled was because we have an Interstate Horseracing Act and not international the U.S. is violating it's treaty obligations. The Department of Justice has taken the somewhat bizarre position that no, there isn't any Interstate Horseracing Act in effect. All interstate wagers are illegal.

In the latest papers that they just filed with the World Trade Organization I finally figured out their position. The Department of Justice's position on interstate horse racing is it legalized bets on races that were taking place in another state, but you must physically be in the same state where your bet is accepted. Californians can bet with advanced deposit wagering with California operators only. That's the position of the Department of Justice. That's what they are going to want written into the regs, by the way, is that you can't do any interstate wagering. The race might be somewhere else, but you have to make your bet with an operator in your own state.

I was asked whether that position is true. I have interstate operators who are taking bets from other states, even other countries. The Breeders Cup was held in Canada. I actually almost never go against an attorney general's opinion, but I was almost willing to give a formal legal opinion that in fact the Interstate Horseracing Act legalized interstate horse racing. I think the Department of Justice is wrong, and I think they are going to lose again in the World Trade Organization.

The question is, what's going to happen? At the moment Antigua is the plaintiff and the penalties will be only limited to Antigua. They came up with an interesting remedy, which is to allow Antigua to be exempt from all U.S. copyright and trademark laws so that Antigua can be a free market, able to manufacturer U.S. DVDs of movies and songs and sell them legally anywhere in the world. They are hoping to attract the U.S. attention that way. Even if that happens, the U.S. will say, "Here's a couple hundred million dollars, go away."

The danger for the United States is the rest of the world. Very soon, within the next few years, some other country is going to file a complaint with the World Trade Organization, and it won't be Antigua — probably not England, maybe Australia — where their Internet gambling is clearly illegal in the U.S. and they will say that violates the treaty. And then the United States has to do something.

The solution is fairly easy. We'll have a study for a couple years, then proposals for Internet gambling. These things tend to pass in even numbered years. So it's 2010 before another Internet Gambling bill, might be 2012. What they will do eventually, I predict, is they will say, look, the states are competent to decide for themselves whether people can bet from their homes on horse races. Why not on dog races, unless horses are honest and dogs cheat. It's a states rights issue. If California, Nevada, and New Jersey want to let their licensed operators operate poker online and have players from those three states, why should Utah care? Why should the federal government care? And to handle the WTO, let's throw in Antigua and any other country with a licensed operating system that meets our standards.

Obviously, that's the easy way to handle the WTO decision on horse racing. You just change the Interstate Horseracing Act to make it international. But the operators have to be licensed by the other countries and meet our standards, and one of the standards is you can never have accepted bets from the U.S. illegally. All the present operators will be in trouble.

Where we're going to go, that's the short range. Actually, that's about six years. That's where my future prediction is. Somebody reminded me I did say all gambling would be outlawed in the year 2029. I may switch that to 2035. We're cresting, we'll see that. I'm going to stick around to see if it's true. Thank you, and I'm available for questions, too.

**(Applause)**

**MR. HICKEY:** I hesitate to disagree with the professor. He said thank certain people for this to be done. There's a whole bunch of people to thank: National Thoroughbred Association, blah blah, and also many of the operators. YouBet has been in Washington, D.C., TVG, Magna, Churchill, the industry as a whole, they had the wisdom and good sense to get involved at a high level and they did.

As I say, our next speaker is the only one that works for a living. Maury Wolff. A lot of people know him. He is a protégé of Stan Bergstein as are 30 or 40 percent of the people in this room. He bets on horses for his livelihood. He was with Stan Bergstein at HTA, worked as a racing consultant for many years, writes articles for a variety of publications including The Wall Street Journal, Daily Racing Form, and Gaming & Wagering Business.

He has been a speaker and moderator at numerous gatherings. He lives right outside Washington in Alexandria, I believe. And it's always — I love to talk

to Maury Wolff. He is an intellectual and has interesting ideas on everything. It's a pleasure to have Maury Wolff here.

**MR. MAURY WOLFF:** Thanks, Jay. Thanks to Doug. My dad wanted me to be a lawyer and was disappointed with the path I chose. As you can tell from what Nelson said, dad had the right idea. Lawyers are never going to go out of in this work as long as Congress is passing bills.

In preparation for this, I read the law and I talked to a lawyer or two and read opinions on the Internet. And I have to say; I'm more confused today than I was when I started. So if you want legal opinions on this, we're fortunate to have Nelson Rose here to answer them.

The bill itself was in some sense obvious. From Congress's standpoint you have the problem of widespread dispersed users who they could not go against. You have offshore operators that seem to be out of the reach of justice. So the question is, how do you stop this business? You have to go through the pipelines. There were two of them, ISPs, and try to stop them from connecting the bettor to the operator, or go through banks and try to stop the financing through the banking system.

They chose the banking system, and that's where we are today. Nelson, they read the terms of the language of the bill. When the bill was passed the question of what would happen was answered quickly in the publicly traded gaming stocks on the London Stock Exchange. As Nelson said, they went down \$7 billion. Since then, I checked before I came out here, and a couple of companies the stocks have actually gone down since the initial sell-off. A number of companies in Europe announced they would no longer take bets from the U.S. customers. Those companies include Party Poker, WWTS, Bowman's, Canbet, BetOnSports, and I'm sure there's others. I was curious why. The obvious answer was there was some prominent arrests. One of David Carruthers of BetOnSports. There was another in Louisiana on a state charge that focused people's minds.

The Enron case interestingly got people's attention. In that case they were investment bankers in England extradited to the U.S. to faces charges on the Enron debacle.

And, again, people suddenly were looking around and saying, this may be a more dangerous environment than we appreciated. Those were two concerns. And I don't want to underestimate them, but there's another one that surprised me quite a bit. The people I talked to said they were getting unbelievable pressure from major European banks. Banks essentially told them, without the promulgation of regulations from the Fed or Treasury, it was dictated to the companies by their banks, if you continue to take bets from U.S. customers, we won't do business with you.

For these companies it was a major threat. They have international businesses. They are looking at a whole system that they evolved of which the

banking component is significant. Some of those companies looked at this. I asked them, how is the bank going to enforce? They said, "Some of them audit our books. Others of them it's easy to check this sort of thing by having U.S.-based people see if they can open an account. And we aren't going to go around and try to fool our banks."

So essentially decided very quickly to get out of the U.S., sell their U.S. operations. And there's a level of nervousness that surprised me. It wasn't just these companies either. Neteller is an extremely important intermediary in the Internet gambling world. Neteller, it's a bank. I believe it's licensed in the Isle of Man. Neteller enables you to store money with them. You can then transfer the money to a whole array of Internet betting shops that accept Neteller transactions. This means you don't need deposits on account with every company you want to place a bet with. Once you have an account at Neteller you can get money into an account and pick up a bet extremely quickly. For gamblers who like to shop various sites, Neteller is an important intermediary in the process.

And Neteller, because it's licensed outside the United States of America, there was a question of whether they would abide by the law or not. They issued a press release that said, Neteller, a company registered outside the U.S., would comply with the Act and its related regulations as if it was subject to the Act's jurisdictions. Another one, FirePay, also withdrew from the market.

So what you have here is companies sort of looking at the risks of being on the bad side of the United States government, banks concerned about being disapproved by the U.S. Banking system and saying we're just not going to allow you as companies to be engaged in this business. The companies, again, looking from their view, the risk, the European customer base they are servicing now, and saying, we'll forego our U.S. business.

There are cases of software companies informing companies they would no longer service. These are publicly traded companies, now. A number of sites have their own proprietary software unaffected by this. It was another level of threats that the U.S. government indirectly was able to apply almost instantly.

If you are a bettor based in the U.S., none of this is terribly good. A lot of these companies are publicly traded, more transparent. The gold standard of reliability in this business, and you like dealing with them because they are based in Europe, and if you are betting U.S. sports, they might be a better place to shop. The market gets a little bit less efficient as you cross the Atlantic. Bettors are unlikely to be more aware than a Las Vegas operator of the ways rules in sports work. When you get further away you have less experienced people and they can make mistakes.

In a competitive environment where people put up all kinds of interesting wagers, you can't imagine what's available to bet on on the Internet and the varied considerations that people offer. They are very creative. If you are a bettor, the

more unusual and oddball offerings, the more chances that someone is going to make a mistake.

I fool around a bit in sports with partners overseas, and we checked the things we bet and we found that an inordinate number of our plays actually were in Europe. It's not like the companies are going to stop dealing these bets, but the volume is going to be down. And from their standpoint who are the people most likely to figure out ways to circumvent the fact you are shutting them off? And the answer is not the guy that wants to bet a hundred on the Giants and Cowboys. It's people whose business it is to look for opportunities. My guess would be there's going to be fewer interesting bets after next year, even though they continue to deal them, than there are this year.

What's been bad for Europe seems to be is good for the Caribbean. Online, Casino City traced poker activity after the passage of the law. And just in terms of peak users, overall usage is down; but the sites still open have had spikes in business, and companies that have stopped serving U.S. customers have significant declines. Money is migrating to where people will take it.

The question about the Caribbean is, again, how clearly nothing is going to happen there. Doesn't look like it until the Treasury and the Fed promulgate their regulations.

It's impossible for me to say what it's going to be like. But if the regulations are effective, you have the question of whether the Caribbean banks who have been dealing with the Caribbean offshore institutions want to continue in the business or not. And if they don't, whether the Caribbean companies will find ways to circumvent the U.S. law preventing financial transactions coming from the U.S.

This is a big business. Gene Christiansen has the numbers for online gaming last year, \$4 billion in revenues. I saw an estimate which preceded the passing of the law that said it will exceed \$5 billion this year. So there's plenty of motivation for the companies to devise ways around these laws. How they are going to do it is beyond my expertise. I imagine they are certainly going to try to do that.

The overall change, if you are a player, and I'm dealing with sports, the poker issue is so complicated I cannot ascertain from reading the opinions whether it's legal or illegal. Whether poker companies should have dropped out or should not drop out of the U.S. market, it's too difficult an issue for me to get my hands around. But in terms of sports, what's likely to happen here?

One thing that's going to happen. Almost certainly, if you stop the normal flow of business as it's been occurring, and it's unbelievably easy to place a wager right now with an Internet sports book, it's just not a hard transaction to do, if the law is indeed applied in the kinds of ways, applied as far as European companies are concerned, you raise the bar, you're going to lose players and those ones are exactly the people these businesses don't want to lose. You lose some regular Joes where it's not worth the trouble. This is a convenience-based product and if you

can't do it out of your house, at five minutes to one to bet an NFL game you might not do it.

They are also going to lose a desirable group of players that like keeping a low profile. There are people that bet gigantic money on sports. There's a classic New Yorker cartoon, "On the Internet, no one knows you are a dog." It's also true on the Internet no one knows you like betting a lot of money on football games. If you don't have the ability to do it anonymously, some people in the position, where they have real careers and public profiles are important, are going to have to think twice about this.

Remember the firestorm when it was learned that William Bennett, the former secretary of education, liked betting a lot of money at Atlantic City? When that became public information it was not good for his career, exposed him as a bit of a hypocrite. It certainly probably didn't help the sales of the "Book of Virtue," which he was the author of.

People in those kinds of positions might like betting but don't like people knowing about it. And these guys — if you are a wiseguy — these guys may be the people on the other side of your transactions. And to the extent that those people are no longer comfortable betting, it's going to hurt everybody. It will hurt the books and hurt players.

I have been told — this is anecdotal, but gives a sense of how it might work. I've been told of a couple of incidents of people getting calls from the banks asking who the wires are going to and from. If my bank calls me, I don't care. But if you are in a different line of work perhaps, some people in this room would not be that thrilled to be getting a call from their bank about their transactions. It's ratcheting up the fear.

There's going to be some small concern about the safety of your money. Again, this is partly if you are no longer dealing with the publicly traded companies, you are moving down a little. There's Internet companies with golden reputations and it's not a problem, but thinking that introduces the thought that your money might not be as safe isn't good. One of the aspects of bookmaking that doesn't get much attention, but a lot of you will appreciate it. What a terrific business the cash management side is. Zero percent for deposits and you have lots of money you can get at short-term rates. It doesn't take a Harvard MBA to make money with that financing scheme.

And, again, to the extent that people no longer feel as safe with their money on deposit, that side of the business will take a small hit. This is marginal. This is not a big deal, but something to think about. The composition of players is probably going to change for the worst, that their financing is not as good as it was before.

From a playing standpoint, fewer competitors is never good. You will see fewer promotional offers of the type companies have been running for ages.

You may see a rise in the pricing system. The Internet is a phenomenally priced market. A friend of mine who does this seriously said, if you really are careful and want to shop around, at this point you can get the margin, the vig on bets down to virtually nothing by continually getting the best price. This is not the sort of thing that a guy that wants to bet a hundred dollars on Saturday on a football game cares about, but it's certainly something that people in the business care about. And there may be — it's probably not going to be as good a world as it was before this law passed.

One thing mentioned to me. There may be a change in business operations. Let's suppose that the Caribbean banks follow suit with some of the European banks and say we're not going to accept the business. What's the business model? There's an old fashioned one that's been time-tested and worked for years. It's basically, now you just have an Internet version. You bet on the Internet. That reduces your legal exposure to wiretaps, but you pay and collect in cash on the streets. The way it was done when I was a kid and the way that was commonplace until 10 to 15 years ago. That's a business model that works. It's not nearly as good a business model, it's expensive, you have more exposure, people have to waste time meeting up with the guy he is paying, but it's a way to circumvent the law.

To the extent that you have more credit betting, it's not that good a thing for the overall from the standpoint of problem gambling. Making people post up is a wonderful deterrent to the problem gambling issues. When I was — again, I can remember — sort of the classic situation, guys would be stuck \$1,000, \$2,000, \$3,000, they would bet what it took to get even. The phrase for these now is "problem gamblers." Back then we called them "degenerates." This was a common practice, and with never any thought to what would happen if, God forbid, you didn't cover on Monday night. It's just the way guys were. If you have places which require people to have the money up front you don't have the kind of gambling problem.

As I was looking through this, Nelson was talking about Prohibition. I was curious about this. I went up and read a little bit about Prohibition. One of the things, consumption, there weren't accurate ways to measure consumption so they used proxies. And the proxies they used suggests consumption didn't drop terribly much and then flipped up to where it was before.

The other thing, the toxicity went up. So while you may have had a drop-off in the amount of gallons of alcohol consumed, you didn't have a drop-off in the danger of amount of alcohol consumed. This may have this kind of effect as well.

You have a number of bettors that stop playing or find another way to do it but you also have problem bettors who now find it easier to get in over their heads. I have no idea whether it's going to be devastating or not, it depends on how effective the Treasury's regulations are and how sharp the Caribbean operators are at finding ways to circumvent that. I think Sue will have something to say about that.

Is it a good law? I don't think so. It's such a vague thing what gambling is. I was talking to a friend of mine who is in financial markets and he said, "Have you ever heard of a nondeliverable future contract?"

And I said, "No, but from the sound of it I think I can figure out what it is. It's what it sounds like."

It's a future contract where there's no intention to take delivery on whatever it is that you have a contract on.

Let's say you think that the something is going to go down and I think something is going to go up and we have a contract denominated dollars on what the price of that something will be three months from now. Now that sounds to me an awful lot like gambling, but under the terms of this law it's not gambling, it's a financial transaction. It's the gray area. I don't have any problem with people devising clever ways to build the same kinds of models to predict the outcomes of sporting events and competitions they do to predict currency trades, but one of them is clearly not as well liked as the other.

It's certainly going to be an interesting time. When those regulations come out we'll know more, whether Congress accomplished anything or whether it's a lot of sound and fury and expenditure of a lot of millions of dollars to accomplish nothing.

**MR. HICKEY:** Thank you, Maury Wolff. Your comment about they are going to lose a lot, the big gamblers, it's absolutely true. I know that there's several Congressional staff who have already closed their accounts. And if I could be personal, my son is with a large brokerage firm. He is a bond trader. And they have had a meeting. The compliance people have come down after the bill was passed and said, "All right, guys, and girl, you've got to close your accounts."

Which they have done. All except one. And I think Mr. Powell just left. They still have their Youbet account, I'll say that.

Our next speaker is Sue Schneider, the president of River City Group. She has been — it's a publishing company that offers a wide range of industry-related services, market research, regional international summits, executive placement service, and interactive gaming. She's served as chairman of the Interactive Gaming Council since its inception in 1996, and I remember when it was formed right after the first bill was introduced until 2004. She is a frequent speaker at international gaming conferences and has testified before the Senate, House and the National Gambling Impact Study Commission.

Sue, nice to have you here.

**MS. SUE SCHNEIDER:** If you don't mind, I'll stay seated. I think we are going to morph into questions fairly quickly here.

I want to say from being in a position where we do publications, for a very international audience, people that are doing interactive games around the world, trying to explain what happened in the Senate is a real challenge. You know, when you have things there was no bill introduced. No hearings, no debate, yet at the 11th hour there was something stuck in a must-pass bill.

So my usual advice to people from outside the U.S. in particular: You're being rational, set it aside, we're talking politics here.

It was presidential politics. It seems particularly ironic since this past week Senator Frist announced he was not going to run, so the whole thing seems a little bit for naught in that regard from his standpoint. I guess I'm a skeptic when it comes to looking at public policy. I see many times Congress tends to pass things, but doesn't necessarily look at enforcement. I point to a wonderful bill they passed a few years ago called the CAN-SPAM Act. And I don't know how many of you are e-mailers. You would have to let me know if you have less spam today than you did two years ago when that bill was passed. So, you know, there are situations like that that come into play that I think we have to look at as rationally as possible, keeping in mind we are talking about a political process.

The outcomes as have been discussed were swift. There's been a number of the larger operators that got into Internet gambling early, late '90s, mid-'90s, went public as an exit strategy for themselves, and in that process brought in people from the city, well-respected financiers and people on their board and management. With the arrest this summer of two executives, one CEO of a publicly listed company in London and another nonexecutive chairman, it got their attention and they thought, Whoa! What have we got ourselves into here?

So I think that really drove a lot of decision-making in that regard. I will tell you from knowing some of those entrepreneurs that started out, had they been private, their decision-making process would have been dramatically different. So it would be interesting had that process of going public not happened.

And I point to PokerStars as an example. They were on the cusp of going public when all this went down. They pulled that effort and they are one of the poker companies still staying in. My sister is the gambler in the family, likes to go to Harrah's and was over playing Caribbean Stud last week when the players around the table were commiserating about the Party Poker's accounts being closed and they shared among themselves, you can still go to PokerStars. You can go to Full Tilt. So I have to say, it appears to me that there may not be a real big shift in consumer demand.

As Maury said, what's happened is you've seen the shifting in the revenues and market demand go from public companies to the private companies.

The other point that Maury made that's worth talking about is the long arm of the American banking industry. There are corresponding banking relationships with banks and the world and that is starting to have an effect, where you see

American banks and whether the American banks are imposing it or corresponding banks from outside the U.S. are taking it on themselves. But you are seeing that pressure on the banking side really have an effect on the industry.

So it will be interesting to see how some of that sorts out. I think things will open up, opportunities on the state level. I would be absolutely amazed if two years from now there aren't at least two or four states that have not put their lotteries online. And I think there will be efforts to do things with poker. Even two years ago, North Dakota wanted to do it. Now if they had to do it and they had to be intrastate I'm not sure there's going to be a lot of demand for intrastate poker in North Dakota. But there has been the will in the past with some state legislators to actually legalize something like poker. To do that it means there's going to have to be, and there is, good technology for geolocation to make that the play is within the state and age verification. Those services do exist.

And that's really what led to AGA's, American Gaming Association's, change of heart earlier this year about Internet gaming. In the past they've been pretty phobic about it, then they had a couple of members that took a run at trying to do offshore sites. Both MGM and Harrah's did that. They weren't that successful, frankly, because where they have the brand recognition they are not able to take play from the U.S. If you are talking to somebody in France or China they think MGM is a movie company. But unless they've been to Las Vegas they don't know it's a gaming site so they weren't able to leverage their credibility.

Again, the whole situation with AGA was a major shift in terms of how they view it. And they did that because they thought the technology was in place to allow companies like theirs to help develop a regulatory scheme. So we'll see what happens with that. That's part of the future I'll get into.

I want to talk a moment about the rulemaking. I don't know if it was Jay that said that often it takes more than 270 days to do that sort of thing, and I think that may be the case. We got some phone calls because we've had — we do research, and GAO a couple of years ago did a study and they referred Federal Reserve folks to it and they were very forthright. We're trying to figure it out, how people get around this. That's what they are working on in terms of trying to look at what the methods are. It will be interesting to see how it turns out.

I think the banking industry and the financial services industry's viewpoint in this is going to be critical. Shortly after the passage of the bill the independent community bankers, small to mid-size banks, came out and said, look, there's caveats in the law. If it's a burden on us to develop the technology to be the policemen in the process, we don't have to do it. And maybe Nelson or Jay can talk about the provisions. If the heart of the enforcement is the financial services industry and they have a concern about whether they can fulfill that, do you have a real enforceable bill or will it be gutless?

I think the other thing that's interesting to see is if the Department of Justice will do any more enforcement actions. In the past they've gone after grand juries,

advertisers, payment processors. They now have in hand an actual CEO of a Caribbean-based sports book that was listed on the London Stock Exchange. That process will go pretty slow. Carruthers' first evidentiary hearing will be in January. But it will probably be a while before his case actually comes to trial, but I don't know. People that are from the DOJ tell me they have limited resources to have a scattershot approach to go after people. So I think it remains to be seen whether their enforcement actions stay focused on these one or two main cases or go from there.

I think the WTO case is going to be more interesting to watch, especially for the racing industry. My understanding is China and Japan have already signed on the Antigua case. There's talk other licensing jurisdictions, Costa Rica, Malta, may also sign on or bring separate actions. The U.K. — I think people look at the conventional wisdom. Frankly, we don't have a lot of friends out there and if the U.K. comes and brings an action, would we listen to that more closely than Antigua? I don't know the answer. There's mixed impression as to whether the U.K. will bring such an action. They have said, look, we've taken the regulatory approach, we think it's the right approach. We think a prohibition is not going to work. But whether they would turn it into some sort of action through a body like WTO, it's hard to predict.

If you look at the future I think the key is what the payment processors will do. Neteller came out and said, we're going to continue processing until those rules are out there and we'll look and determine then. Some of the processors have already gotten out of it. Some of them have been restricted because of the banking industry's restrictions that they are putting in.

As I mentioned, the AGA, for those of you that may have gone to G2E, Terry Lanni, basically said this AGA is planning to be active on the issue. They are going to reintroduce the study bill to look at a one-year commission to study a regulatory process. They certainly will be in, and given the chairman shifts and the shifts in parties, they probably will get more of a hearing than they have in the past. There may be movement there. Whether it's meaningful or not, it's hard to say.

I think there will be some potential looking at whether — and this is a longshot — is poker a skill game and can it get exemption, or is it something that has to happen on a state by state basis?

And, again, I think for racing it continues to also come down for you to payment processing. There's been struggles in the past with the coding of VISA and MasterCard, you got lumped in with the rest of the Internet gaming industry. And whether or not those challenges will be easier given the exemptions that you have and things like that, it remains to be seen.

The challenge for those people in the racing industry, if you can't move the money, the lifeblood there, then you have to hang it up. Those tend to be the most critical issues.

**(Applause)**

**MR. HICKEY:** We have a couple minutes left if you have questions. Fire away. Yes, sir?

**A VOICE:** I'm sure a lot of people in the room would agree, racing is a lot about public perception. With the passing of this piece of legislation do you think that public perception would be further black-eyed? I guess I'm trying to say, with marketing campaigns geared toward creating new fan base, how much impact will the legislation have on curtailing the ability?

**MR. ROSE:** I'll take a shot. Remember, this bill was written an hour before it passed. Bill Frist would not let the Democrats see it. The Senator from New Jersey asked to read it, and what does the amendment do?

"No."

And he said, "Would you send somebody down to explain it?"

"No. If you don't like it vote against the Safe Ports Act and you'll be depicted as being against port security."

I don't think anyone knows what this thing does. There was a perception of panic with the Internet gaming industries, there seems to be a general perception in the public. When you read a quick report in the paper it says Internet gambling has now been made illegal. But people don't think of advanced deposit wagering as Internet gambling. I don't think it will have any effect.

**MR. HICKEY:** I would agree. The last point, it takes a while to explain to the staff or member of Congress what is advanced deposit wagering. Telephone wagering, even simulcast wagering in our tote machines are affected by this legislation. It gets complicated. If you read the definition of interactive computer service, we fit within that from the tote machine right to the real Internet. I don't think that's going to have a bad effect one way or the other. I think — and I'm not a communications person — the fact that we are excluded to say we are the only game in town, you can bet on us. And actually is an opportunity, not necessarily a downside.

As I said, to get personal they still have their Youbet account.

**MS. SCHNEIDER:** And their Fantasy Sports account.

**MR. HICKEY:** That's right. And the idea of telling traders that they shouldn't gamble goes back to what Maury Wolff said about futures contracts and trading. I don't think it's going to hurt us.

Anybody else out there?

Thank you. You've been a patient audience. It's a tough subject.

**(Applause)**

**Supplied by  
University of Arizona  
RTIP  
Symposium on Racing & Gaming**