



**WEDNESDAY, DECEMBER 7, 2005**

**INTERNATIONAL AND INTERSTATE  
COMMERCE ISSUES FOR RACING**

**Sponsors:**

**Panel Session:** U.S. Off-Track

**Moderator/Speaker:**

**Bennett Liebman**, Coordinator; Albany Law School, Government Law Center

**Speakers:**

**Greg Avioli**, Executive Vice President for Legislation & Corporate Planning; National Thoroughbred Racing Association

**Mark Mendel**, Attorney; Mendel • Blumfield, LLP (representing Antigua at the World Trade Organization)

**MR. STEVE BARHAM:** Probably most everybody knows Bennett Liebman so I'll refrain from going through all of his past experience and just turn it over to him.

**MR. BENNETT LIEBMAN:** Thank you, Steve. Before I introduce the two distinguished panelists let me establish two ground rules; one, please turn your cell phones off, it's distracting to the panel and it's discourteous to the members of the audience. Second, if you're asking a question, and we certainly encourage your questions, please give your name so that the transcription people can provide us with an accurate, permanent record of today's proceedings.

Beyond that, as a product of thoroughbred racing, I am currently in no position to lecture anyone anywhere about anything in horse racing.

Today's topics are significant and important to everyone in the racing industry. I think we have two top people that could possibly speak to these issues. Let's say you're running a racetrack. The horsemen love you. Your fans love you. Your creditors love you. Even the state legislature loves you. There are no natural disasters affecting your track. Is everything frozen peaches and cream? Not necessarily.

And one of the reasons can be summed up in two words, fair trade. And this is not an issue that can be solved by your good relationships. It stems from sources beyond your control. The first one is the United States Constitution, specifically Article 1, Section 8, Clause 3, which gives the federal government the power to regulate commerce among the several states.

Part of this Commerce Clause power is a negative injunction that runs against the individual states. It's known generally as the Dormant Commerce Clause. This Dormant Commerce Clause prevents states from discriminating against interstate commerce. States can't create internal tariffs and block out-of-state goods from competing against in-state goods.

Look at it this way, in New York we know we have the best dairy cows, the best apples and the best potatoes, but the Dormant Commerce Clause prevents New York State from passing legislation that would prohibit Vermont milk, Idaho potatoes and Washington apples being sold in New York. It would prevent New York from passing a law barring margarine from being sold in New York in order to protect New York dairy farms.

In the most recent Commerce Clause case, the Supreme Court in May in the case of *Granholm v. Heald* found that a law that allowed Michigan residents to purchase by direct mail from in-state wineries but not from out-of-state wineries violated the Dormant Commerce Clause. You can't discriminate against out-of-state commerce. But that's exactly what some states do with account wagering.

New Yorkers, New Jerseyites can only bet with in-state account wagering providers. The TVGs and Youbets of this world can't take bets from New Yorkers, but isn't this the same fact pattern as *Granholm* against *Heald*? If Michigan can't block out-of-state wineries from selling mail order wine to Michigan residents, how can New York or New Jersey under the Dormant Commerce Clause possibly block out-of-state account wagering firms?

Now, as complicated as Commerce Clause jurisprudence can be, it pales in difficulty with the world trade issue. Internet gambling, according to Christensen Capital, is now a worldwide \$12 billion business with half of that coming from United States consumers, but the United States government believes that most Internet gambling is illegal under the Wire Act and it's successfully prosecuted a guy named Jay Cohen who had established a sports — a gambling site, the World Sports Exchange in Antigua.

Cohen's conviction clearly damaged Antigua's position as a leader in Internet gaming, so Antigua and Barbuda brought a case in 2003 before the World Trade Organization. This one is based — and here it starts getting complicated, and I'm hardly an expert, Mark on this panel is — but this was based on a commitment made by the United States under the General Agreement in Trade in Services generally known as GATS.

As part of GATS the members of the World Trade Organization made commitments to each other regarding the cross-border supply of services, including recreational services. One country could not treat another country less favorably than it treated its own suppliers of a like service.

So this sets the stage for what every media outlet in this country in the world set for battle between the David of Antigua and the Goliath of the United States in what was the first e-commerce dispute before the World Trade Organization.

A World Trade Organization panel in 2004, just like the Bible, gave a big victory to David. The panel ruled that the prohibition against U.S. citizens betting into Antiguan casinos was unfair trade barrier. Since the United States allowed Internet wagers under the Interstate Horseracing Act, GATS was violated. The United States could not prevent Antigua from offering remote wagering to U.S. citizens.

The U.S. appealed the decision. On April 9th, 2005, the appellate body reached its decision. It found for Antigua but suggested that the United States could justify a gambling ban based on the public morals exception to GATS. The appellate body did find, however, that the Interstate Horseracing Act discriminated between foreign and domestic suppliers.

Both sides to this dispute then spun this determination as best as they could. The United States claimed victory saying that the appellate body found that the public can be protected from the evils of Internet gambling. The restrictions on Internet gambling could be maintained so long as the laws were changed to stop Internet gambling on horse racing.

Antigua claimed that the initial decision was affirmed and it had the right to offer Internet gaming to American citizens under GATS. The United States now has until April of 2006 to act on the decision.

That brings us to our panelists who are — I'll introduce both of them now — who are, I don't think we could get better panelists. To my far left is Greg Avioli. I'm sure most of you in the audience know Greg. He is the executive vice president for legislative and corporate planning for the National Thoroughbred Racing Association. He spearheads horse racing. He is really thoroughbred racing's man in Washington.

He spearheads racing's legislative agenda and lobbying initiatives at the federal level, and these efforts have included past legislation, legislation to expand the reach of U.S. racing interests by eliminating the withholding tax on pari-mutuel winnings by foreign nationals and successfully protecting the industry's position in face of efforts to curb Internet gambling.

Under his leadership, the Congressional Horse Caucus was established and has since grown to include more than 60 members and the industry's first broad-based political action committee, Horse PAC, was created. Greg also serves as NTRA's

chief negotiator and dealmaker on matters, including television sponsorship negotiations, membership agreements and mergers and acquisitions.

Greg graduated from UNC Chapel Hill and UNC Law School where he was on the Law Review.

To the right of Greg is Mark Mendel. He's a partner in the law firm Mendel-Blumenfeld. He has practiced law in El Paso since 1981, mainly in the areas of business, tax and financial law. His business practice is focused on financing matters, including registered public offerings of debt and equities securities, private placements of offering of small and large businesses, securities, limiting transactions and large offshore offerings of securities.

Since 1998 Mark has devoted a substantial part of his practice to representing Internet gaming companies, culminating with his representation of Antigua and Barbuda in his WTO dispute over cross-border gambling services with the United States.

Mark graduated magna cum laude with honors in politics from Washington and Lee University where he was elected to Phi Beta Kappa and cum laude from Texas Tech School of Law where he was elected to the Order of the Coif.

Mark must be the only attorney anywhere who splits his working time between his office in El Paso and his office in Cork, Ireland.

We'll have Mark speak first followed by Greg, and hopefully you will be able to ask these guys a ton of questions. Thank you.

**MR. MARK MENDEL:** Hello. I thank you for the introduction. Since I didn't know Mr. Liebman was going to give my entire presentation, so I'm just going to open it up for questions because I think he's pretty much said everything about the case you need to know.

**MR. LIEBMAN:** I don't think so.

**MR. MENDEL:** All right. I want to thank the University of Arizona for inviting me to this. I'm going to take the opportunity to sit down because I just indeed got in from Ireland late last night and feeling a little bit jet lagged so I think it's going to be better for me to sit down.

I am the lawyer that brought the case at the WTO against the United States on behalf of Antigua and Barbuda. I know that your interest is probably a little more focused than the wide scope of the case. I'm going to give you a little bit of background and tell you a little bit about the case itself and then explain to you how I think there might be some opportunities here for Antigua and for the horse racing industry based upon this decision.

First, I want to start with a little bit of history. Antigua is a very small island state, less than a 100,000 population, located in the eastern Caribbean Sea. It's a very small island; has very little in the way of natural resources. Up until the 1960s their economy was dominated by sugar, and once sugar ceased to be subsidized, or significantly subsidized, the sugar market collapsed, leaving the island with virtually nothing to export.

Since that time the island has focused on tourism, it's a lovely spot, beautiful beaches and everything else, but tourism is seasonal, of course, it's fickle, subject to hurricanes, global economic factors and it's fundamentally limited in the opportunities that it can provide your citizens.

So really primarily on the basis of pushes from developed countries such as the United States and the United Kingdom, starting in the late 1990s, Antigua sought to develop trade and services. These kinds of services that they were encouraged by people, including the United States, to pursue were tax free international business companies, financial, offshore financial institutions and in the mid-1990s the then brand new offering of Internet gaming.

From the beginning, this is something that I can't stress enough and we stressed to the WTO, and I'll stress to you all today, from the very beginning Antigua has sought responsibility and international credibility in its gaming industry. There are jurisdictions out there which we consider to be cowboy or rogue-type jurisdictions with their concern primarily simply about employment and the financial opportunities that it can bring to the country.

Antigua has distinguished itself over the past five to 10 years in its single-minded kind of drive to create the cleanest Internet gaming industry that it possibly could. It first developed rudimentary regulations under which the first Antiguan sports book operators came into the business in about 1996, 1997.

The government sought extensive assistance from experts in the following years to refine and strengthen the regulatory scheme. This included two comprehensive reevaluation, reassessments of their regulatory scheme between 1997 and 2000. Critically, Antigua's efforts included outreach to the United States government.

People are typically surprised to hear that in 1997 the then director of Antiguan gaming made a trip to Washington, D.C., at which she met with top U.S. government officials, including members from the Justice Department, the State Department and the White House at which — and we retained the minutes from those meetings — at which the United States government expressed their concern about making sure that the industry was fair to players, that it was clean, that it was responsible and didn't involve money laundering and other financial type crime.

So really as late as 1997, and not only do we have those series of meetings to support this, but we also had speeches on behalf of the Department of Justice and the United States trade representative in which they said that this type of activity was not within the scope of the United States laws.

So as late as 1997, and this is something that gets lost in the shuffle here, the United States government's position on this issue was that Internet gaming was lawful, it was not subject to any type of interference by the United States government.

Then in 1998, a year later, things changed dramatically and the U.S. government's position changed. There may be some people who know why that happened, and unfortunately we're not one of them, but change it did.

What resulted from this unilateral unannounced 180-degree shift in U.S. policy? Well, as Mr. Liebman referenced, in 1998 the number of American citizens who had gone offshore to operate these sports books were indicted by the federal government for violating the Wire Act. One of them, I'm sure, in hindsight, unfortunately, decided to come back to America to contest the charges, and during the course of his trial he was actually denied the right to testify as to the facts on which he based his conclusion that he could lawfully operate one of these casinos offshore, including statements from U.S. government officials during the course of the early to mid-1990s.

And for his trouble he went to prison in, of all places, Las Vegas, Nevada, for doing something that you could — everything that he was convicted for was completely lawful right at the strip in front of him in the 18 — or however long he was there.

The U.S. government, by and large unsuccessful in stopping the industry through this criminal prosecution, then set out to find different ways at stopping the industry. The primary way, which they started really in 1999, continues to this day, are informal attempts to shut down the industry through — coercion may be too strong of a word — but threats against advertiser service providers, anything from magazines, radio stations, even hardware service, computer hardware sellers and service providers to try to prevent them from doing business with the industry.

Around the 2000 time frame, I think, maybe 2001, Elliot Spitzer in New York successfully got Citibank, some of the larger banks, PayPal, to cease doing business with the industry. They got the credit card companies to assign a separate coding for gaming transactions, all designed to kind of shut off the business from the backside.

In the meantime, of course, efforts began in Congress which continue to this day and are completely unsuccessful efforts, I might add, to actually prohibit Internet gaming, to make it clear that it's unlawful or as the current kind of approach is to make financial transactions related to Internet gaming illegal.

What kind of the ironic end result of that is, these efforts by the United States government, although they have not put most of these Internet gaming companies out of business, they have made it more difficult for them to transact business, more expensive, and what is particularly ironic, given the concerns about terrorist financing and money laundering, what they have effectively done is driven a lot of

these payment systems underground or through mechanisms that are not quite as transparent as otherwise, as good businessmen these offshore operators would like them to be.

So the effect of all this on Antigua, these various efforts had been around the late 1900s, with over a hundred licensed sports books, now they are down to, I don't know, the mid-twenties or something like that. Thousands of young Antiguanans who actually had good-paying, lots of them high tech jobs, computer technicians, network supervisors, management supervisors, now lots of these folks are literally back on the beaches selling trinkets to tourists.

Then meanwhile gambling in America flourishes. Forty-eight of the 50 states have legalized gambling in one form or another. States use gambling which is fundamentally, of course, an economic opportunity as an alternative form of taxation. Really kind of skewing the market through monopolies and disproportionate ways of doing business.

As I'll discuss a little bit later, and as many of you know, even remote gaming in the United States exists. Maybe it's not as widespread as bricks and mortar kind of gaming but particularly in the horse racing field there is what is fundamentally remote, again, by any stretch of the imagination.

In that connection I would like to offer a little anecdote, and that is as part of our research in determining how much remote gaming really exists in the United States, one day I just happened to go to the Web page for the Massachusetts State Lottery and I saw on the home page it said, "Call up and buy your lottery tickets." And I had to assume that you had to be a Massachusetts resident to even do that.

So I was trying to find somebody who knew somebody in Massachusetts, and so my law partner, who lives in El Paso, Texas, said, "I'll just call them up myself."

So he rang them up from our office in El Paso, gave them his credit card, gave them his address in El Paso and, by God, they mailed him \$350 worth of lottery tickets, and he continues actually to receive his paltry winnings. He gets a \$5 check every month or two that shockingly is mailed to him in El Paso, Texas; has his name and address on it, funded with his credit card, they never looked him in the eye, they never talked to him, he's not a Massachusetts resident, never even stepped foot in the state. So that kind of hypocrisy, if I may say so, is part of what motivated this case.

Antigua decides to level its challenge. As a result of an offhand conversation I had with somebody who is involved in the Internet gaming industry, I — and as you heard, I'm historically a finance and securities type lawyer — I decided to look up international trade agreements and see if there was, see if anything that the United States was doing might violate these agreements.

I'll have to be honest, this is before I got involved in this case, I had never even read a single WTO agreement. But after reading them and looking at it, and

surprisingly to myself as well, I realized that what the United States was doing did violate this General Agreement on Trade and Services.

Literally, what I did was I developed the case, the legal background for it and I approached the Antiguan government myself, never having had a relationship with them. Had a series of meetings with high level officials. I told them that I thought that it might be a good idea if we got a very experienced international trade firm to assess my work and my conclusions to see if they thought I was right or if I was wrong.

And so we went out and hired a huge UK international firm who came back a few weeks later with kind of not only "yes" but, "hell, yes," kind of response saying that they really, they thought the position was even stronger than I did. And so I convinced the Antiguan government to hire my little four-man law firm to take this case to the WTO.

This next little headline I have here is called the complex world of the WTO agreement, and it is a complex world. It's something that I've noticed in my couple debates that I have had over the past year with American lawyers, particularly gambling lawyers, American gambling law just doesn't really fit the WTO concept, and the WTO agreements are very European-oriented and European law is significantly different in approach and outlook than American law.

And I think that's why there's been so much controversy over the actual effect of the final WTO ruling because a lot of American legal experts and analysts are solely American kind of mind-set and it just doesn't fit which is something I've learned over the past two to three years.

That being said, I don't think many of you are probably that interested in the actual nitty-gritty details of the case and how, what the various legal arguments were and how they all panned out. If anybody wants to have a 10-hour discussion about that after the session, that's great, because that's about how long it would take.

Let's just say we convinced the WTO panel that we were correct, and back in 2004 they ruled in favor of Antigua saying the U.S. laws that prohibit the provision of Internet gaming services from Antigua to the United States violated the GATS.

The kind of clarity of the win and loss situation was — well, what is clear from the panel report, it was unambiguous although the reasoning was kind of odd and convoluted, the result was very clear and even the United States could understand that. But the United States, of course, having in their mind, anyway, little to lose, they appealed the case and the clearness of the panel's report has been clouded by the results of the appellate panel decision.

In substance, and it's interesting because when I got the appellate body report, we literally flew to Geneva, myself and an American lawyer, waited in the office of the appellate body secretary and they literally handed us this 140-page copy of the

140-page report, and we all flipped through it like madmen to see who had won and I was like did we win or did we lose.

It was kind of unclear and there were some, even ambiguities that leapt off the page at me and I went back to my hotel and read through it and I got a call from the press very soon thereafter and I said, "you know what, I've read this thing and we win, we just win in a way that's going to make it harder for me to explain to people why we win, but the fact is we still won."

That was my instinct, that was my kind of gut reaction back then and that's what I believe today. It does take and it has taken me longer to explain it to people, but we're in the same spot.

Let me explain — and I'm not running too long, am I?

**MR. LIEBMAN:** Of course not.

**MR. MENDEL:** Let me explain a few things that are very clear from both decisions at the WTO that are fundamentally — that are of fundamental importance that the United States hasn't tried to explain away. They have tried to focus on other issues. And number one is that a U.S. law that prohibits or interferes with, actually, the provision of gaming services via the Internet from Antigua to United States consumers violates the GATS. Also that the U.S. made unrestricted commitment to the provision of these services.

That was a hard-fought issue, but actually intellectually that was the easiest issue of all. Also, interestingly, most experts thought that we were certainly going to lose on that one. That's the one I had the least concern about but it's critical because the way that these agreements are construed, it depends upon your schedule of services and what you commit to offer, any limitations you can put on them.

The United States, whether they did it through oversight, negligence, stupidity, whatever it was, they made an unrestricted commitment to Antigua to provide these services. And by unrestricted I mean unrestricted, because in your schedule you are given the opportunity when you devise your schedule to put restrictions on there which many, many countries do, and the United States does that, for example, in the area of provision of insurance services, legal services, financial institutions.

You go through the U.S. schedule and there are all kinds of subject to state law this and subject to state law that and licensing requirements, all that. In this particular part of the U.S. schedule they put no restriction. So there are literally absolutely no restrictions on the provision of these services from Antigua to the United States.

Because the WTO held that any law that prohibits or interferes with the provision of these services violates the GATS, then any law that says that, whether it's a state law or a federal law, does that. And one of the things the U.S. crowed about was the fact that the appellate panel threw out our challenge against various state laws.

The only reason they threw out the challenge was a very procedural and I actually think an erroneous approach to how much evidence of those laws we put on.

But the fundamental conclusion is there. If you prohibit it or you interfere with our ability to provide it, it violates the GATS. So every state law out there that would seek to impose a licensing scheme upon Antiguan operators, a domestic, a bricks and mortar requirement, all of those laws really are in violation of the U.S. agreements under the GATS.

Now, I'll come briefly to the issue that the United States asserts that it won, and that is this morals issue. Although it's unclear and convoluted in the presentation, U.S. ultimately argued, okay, and of course they never conceded this, but if indeed they made the commitments and these laws violate the GATS they could take advantage of this Article 14 defense in the GATS which says that — basically says that notwithstanding everything else, if a law is necessary to protect the health and morals of its population, then you can violate the GATS to cover these essential public needs.

And again, it was really convoluted and really hard to understand what the United States was saying in this regard. It ultimately developed that they were saying remote gaming is bad and evil, and bricks and mortar gaming is not bad and evil, so they were saying it was essential to prohibit remote gaming because of things like you couldn't protect against children gaming, you couldn't protect against people with problems.

They actually asserted the point that if you go into a Las Vegas casino, there's somebody watching you over your shoulder constantly to make sure you aren't a drunk or a gambling addict or anything else. And everybody takes your name, they check your suitcase to make sure you haven't engaged in terrorist financing and all that kind of stuff, and we pointed out with reams and reams of evidence that if you look at the record, just thousands of incidents, anecdotal incidents of money laundering at U.S. casinos, children gambling in Massachusetts, 80 percent, supposedly, of teenagers that bought a lottery ticket in Massachusetts, which in hindsight does not surprise me, but there are all kinds of gaming problems associated with the gaming industry in America.

And clearly the American government, the American people have made the decision that they can tolerate it. There's a level of bad things that happen in any kind of economic opportunity, you just try to deal with them, limit them as much as possible.

What the United States said was that remote gaming is so uncontrollable and so awful that it just cannot be supervised, it cannot be regulated, it must be prohibited altogether.

Interestingly enough, during the course of the entire thing the United States did not present one single example of a child gambling over the Internet, of a terrorist gambling over the Internet, of actual money laundering occurring over the Internet.

They didn't refute any of our evidence of the efficacy of the Antiguan regulatory scheme. Absolutely nothing.

Nonetheless, and what I considered to be kind of a sop to the United States government, a political statement — well, not statement, but it's a very difficult thing there at the WTO with these big governments and the little governments, the appellate body decided that, by God, these laws were necessary to protect against the evils of this remote gaming, and so they conceded to the United States that remote gaming apparently has evils that other kinds of gaming does not.

Which was to my bitter disappointment given the facts that I just related to you of how the actual — the two industries operate. And where we ultimately won, the appellate body said that to assert this defense there are two prongs to it and any American criminal lawyer knows this, if you have a defense — well, even a civil lawyer — if you have a defense that has certain elements, you have to meet all three of them, all four of them, whatever it is, or your defense fails.

Where the United States defense failed and therefore they did not get the benefit of the defense, is that they could not establish that they applied these laws in a non-discriminatory fashion. It was their burden of proof to establish that, okay, these laws are necessary but also we want to prove, we will prove to you that we don't apply these laws in a discriminatory fashion.

And that's kind of where in my understanding your group comes in because the peg that the WTO hung their hat on in this regard is the Interstate Horseracing Act, and during our entire — during the WTO proceedings, and I have had six to 10 face-to-face meetings with the U.S. government and the Justice Department, their position was that the Interstate Horseracing Act did not legalize remote gaming on horse betting and, of course, we pointed out to them that there is significant horse betting remotely in the United States; that the language of the Interstate Horseracing Act pretty much clearly seems to allow it and there have been no prosecutions in this area.

And fairly disingenuously the United States, throughout all these meetings, hearings and sessions, they said, "well, it's the position of the Department of Justice that indeed what horse racing is doing with respect to remote gaming is illegal, but we cannot comment on the status of any possible pending investigations," which I guess since my first meeting with the United States was back in 2002, I guess it's been going on now for three years.

But that was their official position that remote gaming on horses was not lawful in America as well. The WTO panel thankfully saw differently and they could not make any kind of intellectual distinction between what we were doing and what the United States was doing in terms of horse racing and so they said the United States had failed to meet that prong of the test.

Because they failed to meet it, the defense failed, therefore Antigua is free to offer Internet gaming to citizens of the United States, regardless of what type it is, regardless of how it's offered and that includes gaming on horse racing.

Now, I said earlier that Antigua — this is one of the reasons why I was attracted to Antigua as a jurisdiction and attracted to this case — Antigua wants to be a world leader in responsible gaming. In fact, we tried to negotiate with the United States government and we said, you know what, we will — we believe in our regulatory scheme but we'll let you come in here and look at our scheme and tell us how we can improve it.

Not only that but we'll go a little bit further, we'll even agree to joint regulate. If you want to set up some kind of international gaming supervision body between Antigua and the United States that will address whatever legitimate concerns you have, we're willing to do it.

Not only that, if you were worried about revenues, we will do whatever these sports books in the casinos in America do, we will 1099, you know, successful gamblers. We'll cooperate with you in however you want so that you can insure that your consumers are treated fairly; that there is no money laundering or any other nefarious activities going on in the Antiguan industry.

And that's where I see — and as I've confessed to people today, I know very little about horse racing. I'm not — I was asking somebody at breakfast today about what jockeys do on the back of a horse, so I don't know that much about horse racing but I do see here an opportunity for horse racing and Antigua based upon this decision because this decision gives Antigua, as I said before, it gives Antigua the right to offer whatever gaming services it wants to in the United States.

And even under the United States' interpretation, until such time as the United States government prohibits, repeals IHA or prohibits remote gaming on horse racing, there can be no doubt in anybody's mind it legitimizes the ability of Antigua to offer services on horse racing into the United States.

And given, as I said, Antigua's desire to be a responsible kind of industry leader in this area, I think that there is considerable interest in the Antiguan government, and in certain Antiguan operators, to work with the horse racing industry to develop an offshore market that can give access to literally millions of consumers that the horse racing industry really doesn't have access to today.

The databases of some of these Antiguan companies and their stable of bettors who are not currently really betting on horse racing, are not really efficiently betting on horse racing, that market is there. Not only is it there in their existing client base but also many of these companies have developed the ability to market into Europe, which I don't know, I'm sure you all know this, but horse racing, particularly in the UK and Ireland, is a phenomenal industry, there are many bettors over there right now who are placing their wagers at Betfair and places where the U.S. industry does not see any benefit from it whatsoever.

So there are — what I see is advantageous here to this group and to Antigua is the ability to work with the Antiguan government, Antiguan operators, to forge a relationship, a cooperative relationship where the U.S. companies and the racetracks can get something in return, fair in return for the ability to reach this massive database of bettors, both domestic and European.

How that happens? I don't know. I know that there are some people who are undertaking initiatives to pursue that, but that's where I see the future of this decision and this industry.

I think that's about it. If you have any questions, I'd love to take them and I'll be around all day. So if anybody wants to talk to me, that's great. Thank you.

**MR. GREG AVIOLI:** You all got that I hope. We'll have questions of the audience later on to make sure you understood exactly what he said.

One of my favorite sayings is fortune favors a prepared mind, and Mark and his legal team really put together an excellent lawsuit and they won and they deserved to win, but I'm not sure exactly what they won.

This is such a bloody complicated area, but I'm going to try to give you all some broad context about what the U.S. government's position is in this area and how it affects, mostly how it affects everybody in this room.

Gaming has always historically been regulated by the states. The states authorize what type of gaming occurs within their borders. The federal government generally doesn't have too much to say about the area of gaming other than back during the Kennedy administration they passed a Wire Act which was intended to attack organized crime, which obviously everybody knows a big part of organized crime is illegal gambling.

So we have one federal law on the books, and you're going to hear a lot about the Wire Act in what I say. I'm also going to tie in by way of introduction the Supreme Court wine case that Bennett talked about earlier. The traditional form of regulating gaming kind of goes out the window when you have the Internet because anyone who is in the casino industry try opening up a new casino without any regulation by the states. It's not possible.

In fact, you will go through years and years of regulation in casinos and background checks, and it's very difficult. We tend to regulate gaming very closely. Actually, more closely than I would say any other activity in this country.

Now, if it's online and you can't regulate it, that poses a real problem for the government, for the state government and the federal government. Not only integrity issues but in revenue issues and tax issues. So it's understandable the federal and the state governments' position that we take it very seriously what the

people in our states and our country can gamble on, when they gamble, where they gamble.

We're not going to abdicate that authority, and we don't believe we ever did. One point that Mark mentioned I want to stress, the U.S. made a glaring error when it joined GATS. It did not except gaming. It actually didn't join for gaming per se; joined for recreation services and the definition of that included gaming, and no one in the United States trade representative's office caught that. That's where my fortune favors a prepared mind remark. Mark saw that. No one else knew about that until he came up with that theory, but it was a mistake.

I'll tell you how big of a mistake it is. My understanding, we're the only country of 147 countries that joined GATS that has unlimited access for gaming.

The federal government doesn't like to make mistakes and they sure don't like to own up to them, and in this case where we are in heated agreement, we argued up and down the U.S. government that Internet gambling is illegal throughout this country, it's completely illegal and Mark pointed out, wait a minute, you have this Interstate Horseracing Act that specifically authorizes Internet gambling.

And the government kept saying, that's criminally illegal, we just haven't gotten around to prosecuting it yet. And Mark got up there and listed, look, you have these publicly traded companies, TVG, Youbet, XpressBet that are doing not hundreds or thousands but billions of dollars of transactions aboveboard in your country right now, it's not criminally illegal, and the Justice Department said, yes, it is, and he said, no, it's not, and the panel correctly ruled that it's not. That's a good thing.

I was the one who actually wrote the language for the amendment of the Interstate Horseracing Act in 2000 that very clearly says you can conduct Internet gambling on horse racing. I'll give you some more context about what that means and in this overall discussion.

Internet gambling is far and away the fastest form of revenue growth for this industry. Eugene Christensen will have some stats that no one is absolutely certain of because Internet gambling is a little bit hard to track, but I'm fairly confident of the \$15 billion that's going to be wagered on U.S. racing this year, \$2 billion of it will be on the Internet.

If you talk to them — well, obviously Youbet's all Internet, TVG, vast majority of their wagering is Internet. Most account wagering is on the Internet and will continue to go that way, just like any other business.

That's a good thing at one level because it provides us more access to customers and gives us — we're a modern industry. The problem with Internet gambling is if people bet with the Internet site that's not connected with the horse racing industry, the horse racing industry doesn't get any money.

One of the fictions in this whole area that was pretty amazing as far the Antigua case is the U.S. with your laws you have shut off your market to Antigua. Well, in theory I guess you could argue that the market is shut off, but of that \$2 billion that's wagered on horse racing on the Internet, a billion of it is going to be by companies that are based in the Caribbean. We do this every day.

Although our laws, quote, shut off the market, we actually — it's a wide open market. There's nothing that would stop the Antiguan Web sites from doing a deal with Churchill or Magna and betting right into their pools. RGS does it. IRG does it. The Tonkawa Indians do it. There's lots of offshore or on-reservation gambling, Internet gambling coming into the U.S. pools today.

So it was sort of a difficult position for the United States because here we allow the activity but we claim it's illegal, and where does this all lead? Where this leads is for Antigua to fully prevail, and I say what did they win, what they want the U.S. to do is say essentially we eliminate all our gambling laws, anyone can gamble, and if he uses the word restricted, anyone can gamble anytime anywhere on the Internet so long as the company that you're betting with will take your bets and, frankly, the level of regulation I'm sure Antigua does have strong regulations because I have had other people tell me about it, but if you're sitting, you're in Utah, if you're Orrin Hatch, the senator of Utah and you won't allow, you don't even have a state lottery, are you going to accept the decision that says, Utah, you can regulate what happens within your state fully but if someone gets on the Internet, I'm sorry, we can't have any more state or federal laws that are restrictive because it violates GATS.

That's not going to happen. Which leads me to what is going to happen. There's a date in April, I believe it's April 9th, where the U.S. has to come back to the WTO panel and say this is what we're going to do. Essentially, what the panel said, and this is where Mark knows a lot more than me, but U.S., you need to bring your laws into compliance with GATS, and there's a couple ways that we think what the U.S. could do this.

One of them, which we're on the wall making sure it doesn't happen, you can amend the Interstate Horseracing Act to make it illegal to bet on horse racing on the Internet, and that's an over-our-dead-body-issue and we're fairly confident we have the political strength in Washington to stop that, because this \$40 billion agribusiness now lives and breathes on that revenue, and so we've got friends in Washington, we have this Congressional Horse Caucus, I don't think they can pass a law over our objection today that will outlaw Internet betting on horse racing. So I think option A doesn't work.

Option B is the U.S. can change its federal and, for purposes now they don't have to change the state law, so they can change the federal law. They can — Congress can pass a new law and say it's okay as a matter of federal law to conduct Internet gambling with offshore entities. Not going to happen with this Congress or any Congress in the near future.

Option C, the U.S. can do nothing. What happens if they do nothing? If they do nothing then Antigua can issue trade sanctions against the United States. With respect to Antigua, the U.S. has a similar issue with Europe when EU had the ability to issue trade sanctions against the U.S. over another dispute and they did and it still took the U.S. two years to act and these were five percent going up to 15 percent, tariffs on all U.S. goods being imported to Europe, and we didn't act for two years.

Congress is not going to be overly impressed with trade sanctions issued by the country of Antigua. It's a fact. So I'm fairly certain April is going to come and go and the U.S. is not going to do anything in this area and Antigua is going to either issue trade sanctions to the U.S. or negotiate, hopefully, some other form of economic agreement.

There's a downside, though, because while Antigua might not have the economic might to worry the U.S., the world leader in Internet gambling, which I know you aspire to be, but currently it's the UK. The scary point of this suit is that it's precedent setting. And Mark's a smart guy, he will represent any country around the world and bring basically the same suit against the U.S. and win again.

So now if you have Great Britain issuing trade sanctions against the U.S. that might get Congress's attention.

There's a fourth area that the U.S. could consider that we are actually urging. I think we're on the side of the angels on this one, we're in agreement with all the U.S. states' attorneys general and it's pretty simple. You never intended to join WTO GATS for gaming purposes, withdraw the commitment. That's a great idea. Why don't you think about that already.

Well, there's a problem withdrawing a commitment under the WTO, and the problem is if you take away a good or a service that you joined the WTO for, then you have to give back something, you have to give back a good or a product or a service of equal value, or you essentially have to pay reparations, not just to Antigua but to every country that's a member of GATS who can claim that they have been harmed as a result of taking away the service.

So now, the United States government, you have committed the most lucrative Internet gambling market in the world, free trade. Anyone could take that, if you want to close that market, there's clearly no other service we could offer that has anywhere near that value.

So is the U.S. government — if you say, what would be the value to the U.S. government or to the international community of access to the U.S. Internet gaming market?

I would ask you take a look at some of the public offerings you have seen in the UK to just one Internet gambling company that had \$8 billion — or 8 billion pounds

public offering, so it's pretty clear if you have any economist worth their salt, the value of this market is at least \$50 billion, maybe it's \$500 billion, I don't know.

So you get back to what's Washington going to do? Are the members of Congress going to vote an appropriation of 50 or a hundred or \$500 billion to pay to everyone else in the world so we can withdraw our gaming commitment? No.

I don't know what they are going to do. I really don't. But what we're going to do, the NTRA on behalf of horse racing, is make sure that we preserve the right to conduct Internet gambling on horse racing, because it's the fastest form of revenue growth. And we have already got the law. We did get Congress to pass the law and we're proud of it and we stand behind it.

That leads, if I may just a second, to the Supreme Court; they are related. I went back and talked about the history of regulation in this sport at the state level. And we have a really interesting gray area right now in our business, which is in the account wagering side, which states can you take bets from and which ones can't you take bets from. Because we have 42 states that allow pari-mutuel wagering but at last count, I believe, it's only 19 states that have passed laws that authorize account wagering by the tracks or OTBs within those states.

And then we have most of the other states are pretty much silent on the issue. Some have some specific laws that say — Indiana just passed a law this year, no Internet gambling of any type by Indiana residents. There are a couple states that have that, but for the most part it's silent because these laws were written a long time ago before the Internet.

And then there are some states that have laws that say you can do account wagering but only with entities within this state. The ones that would jump up, the big one there would be New Jersey passed a law in that regard a few years back that says you can do it but you have to do it with the New Jersey tracks.

The U.S. Supreme Court wine case is really directly relevant to the future of this industry because what it talks about is if you're going to allow an activity, essentially cutting right to the chase, if you're going to allow an activity within your state, you have to make that, the ability to conduct that activity and sell that product available to any other company in this country regardless of what state they are in.

But you do have the ability to overlay reasonable regulations designed to protect legitimate state interests. So you can't — so this was the wine case and what they were trying to say is you can't sell wine, I would like to go up to Napa Valley, I like to ship wine back. In this case you couldn't ship wine into Michigan or New York because they said we have to regulate that, all the sales of liquor, it's a very important state interest to us, and the Supreme Court said, well, you can regulate it without them actually being located in New York, you know, feel free to apply any reasonable regulation that you need, take a look at their books, make sure they

have their licenses, you just can't require that they be physically present in your states.

What does that mean for racing? I think what it means for racing is that the states that have laws on their books that allow account wagering but do not allow, purport not to allow companies from out of state, I think those laws are going to be struck down over time. I think the state does have the ability to decide whether they are going to have account wagering or not.

In fact, our basic position on the gray area of states is we take the position the California attorney general espoused a few years back, based on the wording of the IHA amendment, if pari-mutuel wagering is legal in your state and you don't have any laws that outlaw account wagering then it is legal for you to bet from that state into another state that has account wagering.

But that's just our position and it really remains to be seen. Ultimately this decision, this whole area is — I don't see any new federal laws coming down the pike anytime soon. It's going to be decided at the state level. There are states as we speak right now, there are a number of states where the tracks or the OTBs in those states cannot get racing or wagering board approval to conduct account wagering.

Arizona is a great example and they would like to but they can't. At the same time you have multiple out-of-state companies taking bets from Arizona. Well, that puts the Arizona track in a real box. It can't offer the service but it's got out-of-state competitors taking bets in its market, and we hear a lot of from them, where do we get protected, how do we get protected? And our answer is it's ultimately a matter of state law because there's one interesting omission from the Interstate Horseracing Act.

It goes back to when it was first written. It was written in 1978 essentially to protect at the time the people who were putting on the Kentucky Derby, the track and the horse bets. Because bettors in OTBs and bettors in New York were taking bets on those races, it was on TV, they were taking bets, no money was going back to Kentucky.

So the law is pretty simple. It says there's a certain level of consent and authority before you can take interstate bets. You have to get consent of the racetrack putting on the race, you have to get consent of the horsemen who were running at that track and you have to get consent of the racing commission where the tracks, where the racing is being run. That all makes sense.

Then you also have to get consent at the level, at the state level where the bet is being accepted. Back to my New York example. You would have to have consent from the racing commission in New York.

That all worked well in 1978. Now you've got a third state. Now you have Greg Avioli sitting in Arizona who wants to bet through my account in Oregon on a race

going on in Kentucky. The hole of the Interstate Horseracing Act is it doesn't require any level of consent at all by the State of Arizona. And that's essentially what you get down to this gray area, and that ties back into the Supreme Court case, what can the State of Arizona do or not do in this area.

We believe that the State of Arizona has the ability to decide the activity, what wagering activity is allowed in this state. We stand behind the state doctrine that the states have always been responsible for gaming and we think they should be.

So I hope I haven't overly complicated all this but I will tell you that I agree, and the answer is I fully agree that Antigua was right in their case, that it wasn't a fluke, that in fact they did win, but I think there's a great deal of uncertainty as to what it all means. Thanks.

**MR. LIEBMAN:** Question really to Mark based on what Greg has said, which is the United States is likely to do nothing. If the United States came back by April, does nothing, what does Antigua do?

**MR. MENDEL:** Well, we, of course, factored all these kinds of things in before we decided to bring the case, and bringing the theory of the case before people for comment and consideration that was almost the first thing that was left out. Well, if you win, you're a small country, just ignore you and so go ahead and levy trade sanctions, all you're going to do is hurt your own citizens because you have to import 99 percent of everything you consume, so you're just going to drive the cost up and that's going to be biting your own tail.

We took that into consideration and there are some things that we came to grips with early on before we even brought the case. First of all, the United States is the big proponent of this WTO and the whole organization. They have literally dragged small developing countries into the WTO kicking and screaming telling them how great this is going to be for them, how it's going to give them access to these huge markets, it's going to level the playing field, it would be a wonderful thing.

They continue to do this today, try to bring in small countries, perhaps not from completely altruistic perspectives, and we thought, well, you know, we can use that as a sword against them. Here we are, a little tiny country, not only have we been begged to take up trade and services, we joined the WTO, tiny country, we've been begged, not only have we been begged to take up trade and services, but we join the WTO, we played by the rules, we win a case, we do everything we're supposed to do and then the United States is going to stand up in front of the rest of the world, all the other countries that have either had joined or they are asking to join and say, well, you know what, when you guys win one, we're just not going to respect it.

I think that's possible but I think that's bad and I think — not only do I think, I know that we intend to use that threat against the United States in a kind of court of international opinion. Is this a one-way street or is it a two-way street? Is the WTO going to mean anything or is it not? Is it just a way for the United States and

the EU to wrangle concessions out of small countries and exploit them or is it truly — nighttime here — is it truly something that's supposed to be for the benefit of everybody? That's one very important thing.

The second thing is we did our research, and the United States, although they kick and scream and make life difficult for people in complying with judgments they don't like, they have yet to say we're not going to comply with one. In the 20-something that they have lost, many they complied with promptly and many they fought. But we're willing to fight. I mean, we are willing to spend the next three or four years keeping their feet to the fire.

And we just think that the United States has more invested in the WTO, more economic interests saying, there are more and powerful, more powerful economic interests and we need the WTO for the United States and if we disrespect and disregard this dispute resolution system that we basically have used to our advantage in so many areas, the whole thing is going to collapse, and so I think that's actually the strongest fact that we have going for us.

**MR. LIEBMAN:** Could I ask you a question, though? What would you have the United States to do to comply with this ruling? Do you think changing the federal law and allowing Internet gambling is a realistic possibility?

**MR. MENDEL:** No, not right now I don't and that's what makes it, from a lawyer's perspective, a really fascinating thing to be working on, because I know no better than you what's going to happen, but it makes it incredibly interesting and the permutations on what could happen are extremely fascinating.

We tried to convince the United States — let me go back to one more thing. The other aspect of enforcement that we've taken into consideration, and much to our satisfaction we have seen this since, just the strategy in a dispute it has finally won against the United States, and that is a small economy can do a lot when you void intellectual property rights.

And that is a huge sword that just now Brazil has drawn from its sheath but we plan to withdraw it as well, that can have a much greater economic impact than putting a higher tariff on Ford Fiestas.

What was your question again?

**MR. LIEBMAN:** I think you just answered it.

**MR. AVIOLI:** It's really a quandary because there is no chance. We have a conservative president, a conservative Congress. There's no chance they are going to come in and vacate federal criminal gaming laws. Zero. Will never happen.

**MR. MENDEL:** That reminds me of what I was going to say, and that is from the beginning realizing that the Hobson's choice involved in all this, and the difficulties all around, really, we thought that the best strategy for the United States was to

negotiate because Antigua and Antiguan operators are not — oh, they are businessmen — they are not greedy and we kind of understand the whole scope of this thing and the difficulty of this whole issue in the United States.

We thought it made brilliant sense for the United States and Antigua to agree on something, and we in fact in the spring of 2004 we received our favorable judgment but it was not released to the public. And there's, I can't remember, 60 to 90 days during which the reports don't become public, and we agreed with the United States government not to release it to the public so we could have a series of negotiations which we conducted in the summer of 2004.

And we approached the United States government and said, we realize this is bad for you and it's going to be a very difficult thing for you to come to grips with so why don't you agree on a — why don't you agree on a scheme with us, and I'll tell you exactly what we did.

There was a bill pending in Congress at the time that was sponsored by Congressman Conyers which was basically a bill to kind of study the Internet gaming industry, to look at it, figure it out, get your arms around it and then decide, take an intelligent approach to it instead of just saying no.

And so we said, look, let's make Antigua the study case for the Conyers bill. You don't have to repeal the Wire Act, you don't have to change any of your laws, pass this bill that will have a little kind of carve-out for Antigua that can be supervised under conditions you agree with.

We even proposed that there would be a sunset provision. Said, you know what, we think that we're going to come out of this just fine so let's put a three-year term on it, allow us some kind of even limited access to United States gaming market but sanction it to where it would not be considered illegal under U.S. law and let's drive this thing forward and we can show you how it can work and we can show you how it can be regulated and we'll agree to limitation and it will be a good thing for you and for the industry in general.

And they absolutely, unconditionally refused to even think about it. They wouldn't — if some Americans say that dog wouldn't taunt whatsoever so we are left in a position where our official strategy is to continue to pursue them every step of the way, never letting up until hopefully either they see the light of day and are willing to negotiate with us or there's some fundamental change in the United States, in the overall way of looking at this and something happens.

**MR. AVIOLI:** Raises two points to me. The first one is one possible solution that I didn't mention is the U.S. needs to settle this. It could have nothing to do with I-gaming, we could send them X dollars, we could open up a different market. The two countries, kind of like a lawsuit, can settle this at any time and then the proceedings would end.

**MR. MENDEL:** You know what, they actually, they offered something like that, and to be honest, my perspective, even though I'm representing the government, my perspective is more from the industry side and a big fear is then that the United States government would say, well, here's, you know, a hundred million dollars, shut down all these things and you can build yourself a wonderful port or whatever.

And much to their credit, the Antiguan government has refused to consider anything like that. They have been supportive of the industry from the beginning and completely, even though by the way, during the pendency of this thing, the Antiguan government changed for the first time in its history. They had elections and the party that had held the government ever since Antigua became independent was thrown out of office, but the new government continues to support it.

**MR. AVIOLI:** The other, and that as I mentioned has precedent value for this case, anyway, so that's only sort of the short-term solution until the next country that's represented by Mark brings the same suit, but it gets to the long-term solution that if any of you all saw the 60 Minutes show two Sundays ago they did a brief story on Internet gambling and it's sort of got an Alice in Wonderland feel to it because we keep saying it's illegal, we don't want it to do it, \$6 billion will be bet in the U.S. this year on Internet gambling with companies all based offshore, so other than the racing operators I mentioned, and so even in Antigua all the Web sites that are in Antigua right now, they are all taking bets in the United States right now.

So they are silly to open up the market, but they are already here. They are doing it under the threat of criminal indictment if they ever come to the United States, but as we sit here I don't think anyone is arguing that the Antiguans aren't taking bets from the U.S. It just sort of adds a different flavor to it.

Long-term I think we both agree the solution should be for the U.S. government to authorize and regulate Internet gambling because it's not — you know, someone told me the other day, 10 years from now do you think the Internet is going to be any smaller and do you think people are going to stop gambling?

You can see this is all going to continue to grow, but I asked, I asked one of our lobbyists in Washington, I said, this is so frustrating, is there any other example you can give me where an activity is right in the face of the government and they don't do anything about it and they know people are doing it, they don't tax it, regulate it, and he said how much time do you have and he went through a long list of these.

Anyway, just to point that out.

**MR. LIEBMAN:** Any questions? Please state your name, please.

**MR. KEN TUCKER:** Ken Tucker. I'm a lawyer. I represent the horsemen here in Arizona at the racetracks, and a graduate of Syracuse, so a neighbor of yours.

There was almost a suggestion by Mark that one of the solutions for America's interest, at least tracks, might be that we get involved in some sort of agreement with the Internet providers to protect our interests, protect the host's interest so that the host can share what they bet, protect the horses.

Wouldn't that put us then in violation of the laws if we did that just as the magazines advertising their service would be in violation?

**MR. LIEBMAN:** The question I think was basically if Arizona, if Turf Paradise enters an agreement with an Antiguan Internet operator, isn't that a violation of existing law?

**MR. AVIOLI:** Could be.

No, the other interesting part of our kind of outdated statute, the Interstate Horseracing Act, is it's the Interstate Horseracing Act. It's pretty clearly defined what it covers as an activity between two states. It doesn't mention international and we have ongoing discussions with the Justice Department of their views of the law, and they point out to us what is your authority today for taking bets from, I'll give them because they're the biggest, from RGS, an offshore company, show us how you can do that within the statute, and the reality is there's nothing specifically within the statute that authorizes an activity today between the U.S. and an offshore, so the Justice Department will tell you, yes, we think that's criminally illegal.

I thought, I took Mark's point to be that if this deal, if these laws were changed to make Antigua, make this lawful then he thought there would be a deal that you all could do.

**MR. MENDEL:** Of course, we would like to see the law change because then I wouldn't have to spend so much time telling people why they have to do business with us, anyway, but I'm willing to explain it and that is because the WTO is an international body that United States signed on to, they joined it, they approved the GATS, they approved, more importantly, they approved the dispute resolution procedure under the GATS.

In our case they followed it from the beginning to the end and there is legal precedence in the United States; in fact, it's a developing precedent right now that's reflected in a recent criminal case dealing with a Mexican citizen, but there is a developing body of law that we would argue could be used to say, well, if the U.S. is signed on to this procedure and if they followed it and if this is what the result is, then that could be in and of itself a self-executing kind of act under American law; so we would argue that you don't even need to change the laws at all, the decision has been made by the body, you have followed it, you followed the rules of the body, the decision has come down and you need do nothing. It's legal to do business with Antiguan operators today.

**MR. LIEBMAN:** You do that, they can make that deal with Antigua but they couldn't make that same deal with Costa Rica?

**MR. MENDEL:** Right.

**A VOICE:** How is the constitutional provision governing the treaties of the U.S. affected?

**MR. LIEBMAN:** The question is how does the constitutional provision dealing with treaties of the United States affect your answer.

**A VOICE:** It's the law of the United States that makes that treaty?

**MR. MENDEL:** Yes. In essence the WTO agreements were not actually, were not actually formally adopted by a treaty but they were done under this new process that's being used more and more, these Executive-Congressional agreements where you have the president negotiate something and then have Congress adapt enabling legislation that kind of legitimizes the entire thing.

It's our opinion that given the fact that that was done in the United States and all that came after the Wire Act and all the things that the United States is using to try to prohibit this industry, that that in and of itself is sufficient. And if necessary, I mean, we have identified all these arrows and we stuck them in our quiver and we'll take them out one by one and if we have to we'll take that one out.

**A VOICE:** Most interested in how we protect our home stock, the stock and horsemen putting on events which is the subject of this tremendous commercial venture, how do we protect our site? How do we protect our site? Forget about the hypocrisy of which we all recognize and live with.

**MR. MENDEL:** Well, you know, I could be brutally honest, which I guess I will be, and that is that Antigua could say we don't care about you guys at all. As long as you're running races that our operators can develop a market for and you don't get a penny, we don't care. They could say that, but the great thing about Antigua, what I think makes them attractive, and I don't know, just is their reasonableness, is their understanding that it's better to do business with people with an industry on an accommodating basis because in the long run it makes for a better relationship.

And so that's what I'm saying, that if organizations such as the ones that you are members of or whatever can seek out those kind of opportunities with Antigua, both on a governmental and on a business level, that I think that you will see that kind of interest from Antiguan operators to have a real participating scheme that, as I said, opens up a vast market that you don't have now. And I can tell you because I have been to Costa Rica and I've visited some of those shops, you aren't going to get that from those people and you are definitely not going to get it on a joint business and governmental level like we're talking about here.

**MR. AVIOLI:** I've got to jump in here because this is going on right now every day. They are bookmakers. There's no money coming back to the pools. This is no different from Betfair. That's the double edge-sword of the Internet. They don't have to do — unless they want to come into the pools, and a lot of them don't, they are booking the bet, there's no money is going to come back to Arizona horsemen or the tracks, and I think getting to Betfair, which is the betting exchange which is national, they take bets on U.S. racing every day. They took over a million dollars of bets on the Breeders' Cup. Not a single penny comes back to the U.S. That is the downside of Internet gambling.

Taking it to its absurd, if everyone bet on the Internet with offshore companies, those companies might be great but the racing industry loses a lot of business. So I think it might be a bit of a hollow promise that we'll do some deal, because think of it, what would they give you? They sure wouldn't give you three percent that you get now on gross handle.

It would be a very, very small number, and you're new to the industry, the greatest fear of this industry is losing our betting dollars because that's all we live on. It's a little different than the other sports where you take sports bets where those sports leagues have other revenue sources. Only revenue sources that you have is the betting dollar.

**MR. MENDEL:** I could argue this, I could say that, first of all, although I know that some of these shops are taking bets on horse racing, it's not anywhere near the volume that it could be and that there's not nearly the access to the European market that there could be.

The really important thing to Antigua, to the Antiguan operators, you're right, Antigua companies have been taking bets and continue to, but I can say absolutely honestly what they want is legitimacy, they want to be recognized as a cooperating international jurisdiction. They want to be respected, and with respect comes compromise and because there's so little of that business going through right now, we can say, hey, as Antigua, this is untapped area for us, this is where we can see some area of growth ourselves, we may have to give up a greater percentage of it than we do in our other kind of operation but still our revenue model right now is very good and if we just add a different revenue model to it under a little different parameters, it's still good for us and we, Antigua, as a country and as industry, can do that with the WTO decision on a legitimate basis.

**MR. LIEBMAN:** Michael. Mike Shagen has had more experience in this area than any of us combined. What's your position?

**MR. MICHAEL SHAGEN:** I was going to mention to start with that I was one of the authors of the Interstate Horseracing Act, and my question will be to ask you whether from your judgment a hypothetical would go discriminatory or non-discriminatory under the rules of the WTO.

Let's use Greg's example of a bettor from Arizona. And let's assume that Arizona passes a law or rule that has three prongs.

The three prongs are the citizens from Arizona may make a bet through the Internet on racing if, first of all, the service provider, i.e., the Antigua license, has met minimum regulatory standards that Arizona has approved.

Secondly, that the race that the bet is on is from a track which has minimum regulatory authority to do this through its own commission, etcetera, and meets some standard established by Arizona in its rules and regulations, including that the wager has to go into the pari-mutuel pool of that track and not being a bookmaking bet; and that, thirdly, the revenues from this wager provide, the service providers provide that the revenue from this wager give a minimum five percent, 10 percent, whatever Arizona establishes back to the racing industry of Arizona.

Now, if those three prongs are preconditioned by Arizona for anybody from Arizona to make a bet on the Internet, is that discriminatory or non-discriminatory under the WTO?

**MR. LIEBMAN:** Can I make sure if everybody in the back can catch Mike's question?

**MR. MENDEL:** Could you repeat that again, please?

**MR. AVIOLI:** I think the question is can the State of Arizona put some reasonable requirements on Antigua Web sites in taking bets here.

**MR. LIEBMAN:** Would that be discriminatory on the GATS?

**MR. MENDEL:** I guess the shorthand kind of a cop-out answer is that's a whole new case and that the United States in our case did not try to justify any of their state laws or there's no federal regulatory scheme, but they didn't try to justify the regulatory schemes at all. The GATS schedule itself does not say that these services would be subject to regulation by the various states, so literally under our case as it exists now I think that we in Antigua would be able to say that those requirements are not applicable to us.

Now, under a completely different case where the thrust of the defense by the United States was on the ability of Antigua operators to actually comply with some of these regulatory schemes, again, they didn't even raise them and we didn't feel the need to, of course, but I think that that could be, I think that that could be a possibility.

**MR. AVIOLI:** I would just point out something that you said earlier on, GATS is sort of European-based. They don't, the WTO doesn't look at states rights at all. The U.S. is just one entity, so my understanding is under that decision the State of Arizona has no ability to put any restrictions on, nor does any other state if you took it to a logical conclusion.

**MR. MENDEL:** Unless they expressly wrote it into the agreement, and that's just as an aside, that is truly where the United States if they messed up in entering these WTO agreements, they did, because the rest of the world, to be honest, doesn't have, doesn't really have such a federalist system where there is so much power retained in the underlying entities and it's a foreign concept to most governments, and the WTO agreement expressly states that the host country is responsible for insuring that any other political subdivisions underneath them comply with what applies to the host government. Whether it's a blunder or not, I don't know, but that makes it really problematic. I'm sorry I couldn't answer your question better.

**A VOICE:** Would you be of the view that the WTO ruling essentially insulates an operator, current operator from prosecution under the Wire Act?

**MR. MENDEL:** Yes, I would. That is a logical conclusion. Of course, you won't hear the U.S. government saying that and you have something that ultimately, you know, this will be an unsatisfactory way for the case to develop as far as I'm concerned, but if it gets to that, that's a battle we're willing to fight.

**MR. LIEBMAN:** I think Greg was right. We see everybody is following this, is watching the example of Betfair out there booking bets and rebating money and doing a tremendous value, so the notion that everybody wants to get into the pools anymore might be true in Canada, not necessarily true in the Caribbean.

**MR. MENDEL:** My last point would be if by clever packaging of relationships between the government and the businesses in Antigua some of your businesses, in exploiting the WTO angles, the legal aspect of it and the ability to do business on an unfettered basis, that it can hopefully, ultimately either give you a competitive advantage or at least draw significant numbers of people to your schemes.

**MR. LIEBMAN:** I just want to thank everybody for staying with us for this long. I think our panelists did a fabulous job and I really appreciate their being here today.