



Race Track Industry Program

34th ANNUAL SYMPOSIUM ON RACING & GAMING

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Racing's Labor Force

Moderator:

Jay Hickey, President, American Horse Council

Speakers:

Charles Baesler, Esq., Attorney, Stoll, Keenon and Ogden

Will Velie, Attorney, Velie & Velie

MS. WENDY DAVIS: So I think as people outside the door here realize we're getting started, we'll get more people in the room. "Racing's Labor Force," doesn't sound like a really sexy topic, does it, it doesn't sound like it's that important to all of us until you're the person who walks into your business and you don't have anybody working for you? I found that out, the hard way. It is a really important topic and I think as the days and weeks go by, it's becoming more and more important and there's going to be a lot of terrific information that is shared here today.

Jay Hickey, president of the American Horse Council, is going to be the moderator today and I would like to give thanks to Jay because he's really pulled this panel together for us. Who better to know what the issues are and who to get the best speakers up here than Jay. So not only is he going to be your host for this panel session, but he's done all the leg-work on it, so, Jay, again, thank you, I certainly appreciate it. Jay will also make some remarks so I am going to turn it over to him to get started.

MR. JAY HICKEY: Thank you, Wendy. It is always nice to come out to the University of Arizona Race Track Industry Program. And actually, for the first time I am going to take a little time and go up and look at the Grand Canyon and a couple other things, maybe even make it up to Monument Valley and look for John Wayne.

I actually think this is kind of a sexy topic, so I guess that shows how bad off I am. This is an extremely important topic. For the last 10 years or so, racing's labor force, we've had to rely on more and more alien workers. It's not going to change in the foreseeable future. And we bring them in each year, H-2As and H-2Bs. In addition, an awful lot of our workers on farms, with trainers, on backstretches are what might be called undocumented workers. So when comprehensive immigration reform and amnesty is brought up, it concerns the horse industry because we have an awful lot of workers who have all of the sudden forced out of the country that would be a devastating impact on our industry. At the same time, as our need for alien workers has increased, after September 11th, the government has stepped up enforcement and made it much more difficult to bring workers into the country, in some cases slowing down the process so that grooms and hot walkers come in after a race meet has begun. So for this reason the industry is sort of caught in the crosshairs on this, a Catch 22.

But we are not alone, if misery loves company; our industry, like many others, has this problem. I sometimes think that people don't understand how important alien workers are, it affects not just the farms and the trainers, it affects the entire industry. If a breeding farm can't get enough workers to take care of their mares and stallions, instead of having five mares and two stallions, it will have three mares and one stallion. If a trainer can't get enough grooms or hot walkers, and the rule of thumb, I'm told is one groom or hot walker per a couple horses, then there are less horses in his barn. If there are less horses, then less need for veterinarians, less need for farriers, less need for jockeys and if you read some of the articles about some of the tracks, there was concern that there wasn't going to be enough horses stabled at those tracks. If there are less horses, less horses running, less betting opportunities, as well all know, bettors like a lot of horses in races because the opportunities are better. So this is not something that simply affects those directly affected, those who directly employ the workers.

We need some improvements; we need a way to streamline the process of bringing the alien workers in. It's cumbersome, it's expensive, it's time consuming, we have problems with what's considered seasonal or temporary. Our workers really, even though they come in — in the 'H' category, which are considered unskilled, they're not. If you saw the video, I shouldn't say that, the documentary, the First Saturday in May, it gave you an idea of how taking care of these horses requires someone with a skill, not someone who simply likes horses. So this is a problem that we expect to continue, we need to get legislation done, that's going to be an awfully difficult thing to do. But again, as I said, there are going to be an awful lot of industries, agricultural industries, resorts, contractors, landscapers, they all have labor problems. So this is something that many industries are concerned about.

Today we have two very knowledgeable attorneys who practice in this area. They are going to tell us what kind of workers we need, how we bring them in, what the responsibilities are and then talk about some potential solutions or suggestions for the future, do a little discussion on the no match rule that was brought up. Both of them are very experienced and we just had breakfast and

there is an awful lot of information in their heads and we want to try to get it out in some sort of an orderly fashion but if we don't get it out in an orderly fashion, we'll get it out in a disorderly fashion, but a lot of good ideas and some interesting things on the horizon.

I'm going to introduce both of them now rather than when they speak. The first is Will Velie who's with Velie and Velie, and Horseman Labor Solutions. He's an immigration attorney in Oklahoma. He represents several horsemen's groups, in fact was out with one very late last night, but he has recovered now. He's been working with the Groom Elite Program, which is bringing in alien workers as H-3 trainees, a very new idea. Graduated from the University of California-Berkeley and Oxford University, then went back to Oklahoma and graduated from the University of Oklahoma Law School. He is on my far left.

In the center is Charles Baesler who is a partner with Stoll, Keenon and Ogden in Lexington, Kentucky. He's the chair of the firm's immigration practice and he's chair of the American Immigration Lawyers Association, mid-south chapter. He also represents many farms and employers in the horse industry with respect to alien workers. He graduated from the University of Kentucky and is a member of the Kentucky and American Bar Association.

So with that I will turn it over to Will Velie. We have a manageable group here, if someone says something and you have a question, just raise your hand, but we will certainly have time for questions at the end.

Again, thank you for being here.

Will, you're on.

MR. WILL VELIE: Thank you for the introduction, Jay. I appreciate you pointing out that I went out last night with Tom Azopardi, if you know him, just say no if he asks to take you out.

When we were trying to frame the debate on, frame the issues that we want to talk about today, we decided that we wanted to focus primarily on the solutions than the problem. However, we would be lacking in our duty not to talk about the stepped up enforcement that is facing all employers today, but particularly the horsemen's industry. Where I practice in Oklahoma, similar to Arizona and Colorado, we're on the front lines of the immigration crackdown. They've passed state laws there which don't target the undocumented workers, they target the employers. In Oklahoma, if you are convicted of employing even a single undocumented worker, then you are convicted of a felony, and as you all know if you have a felony, you cannot get a license to enter a backside of a track and that can effectively end your career with the racing industry. It is very important that you know what your obligations are and how to protect yourself from an immigration visit if they want to come and make sure that your workforce is legitimate and authorized to be working. So we put together a PowerPoint to talk about the enforcement and we'll go over that quickly, but I wanted to let you know

that there is a lot of information that we put on this PowerPoint and Charles and I have linked it to the University of Arizona's Web site for the Symposium, then you can link into that and download the PowerPoint and it has some very good details on how to stay within compliance for the documentary obligations that you have as an employer.

I just started out by doing a quick Google search and think I must have come up with hundreds of hits for just one day and it shows the amazing amount of confusion that's out there right now with the social security mismatch regulations, the proposals that have been blocked and the general disarray of 11 million undocumented workers in the United States. Employers that have severe labor needs in skilled and unskilled labor positions and people that are giving them documents that on the face may look legitimate but they don't know, and is this going to cause me a problem, am I going to be arrested, and so, I just pulled that to illustrate that?

ICE, which is Immigration, Customs and Enforcement, they really like their acronym, they put their big bold letters on their jacket and they wear them around when they come visit you and sometimes toting guns and surround your business sometimes. They have stepped up enforcement by a factor of 10 in the last year. If you see right here, this is their graph that they put out, and they have stepped up to 4,000 from 400 in just three years what their arrests are and civil penalties. So they are making a very strong statement. I think in some ways the administration is trying to show that since you wouldn't let us affect comprehensive immigration reform then we are just going to do the enforcement part. It's serious and it's something that you have to be mindful of when you're in the industry that everybody here is. If you see the fines are substantial, and the prison sentences can be substantial, and like they got Al Capone through money laundering, that's the same way that they try and get employers, if they can't get you one way then perhaps they can find another way to link you to some kind of criminal conspiracy.

So that being said, there are some ways to protect yourself. The I-9 is the form that we all know whenever we hire somebody we have to fill out, and it is very important. I tell the employers that I work with that you must have your I-9s as tightly controlled as you can. And it's not that difficult, it's just a one-page document. It's a little bit confusing because the documents that you're presented are fairly substantial, so you're not sure if this one fits. But there is one thing to keep in mind once you do have the documents, these are the lists of documents that you can satisfy with, is that there is another side to I-9 compliance, you cannot discriminate against the employees that are coming to work for you, and as long as you keep in mind that if you are presented with a document that on its face looks legitimate, then you have complied with the law.

If you can see unfair documentary practice during the Form I-9 process, that's called document abuse and the federal government hands out \$10,000 or \$100,000 fines regularly to employers who go beyond their level of requirement and in actuality, in effect deputize themselves to be immigration enforcement, so it's a little bit confusing, but if the document, it's right here, you must examine the

documents and if they appear on their face to be genuine then you cannot go beyond that, it's an unfair labor practice and you can expect a lawsuit.

Now, that's actually a safe harbor that you can rest easy with because you've done your duty as soon as you've looked at the document, you've written down the information, you don't have to make a photocopy, I suggest do not make a photocopy. If you make one then you have to make it for everybody. So you write down the documents, you've done your duty. As long as you do not have knowledge that those documents are fake, then I would say that you've reached the safe harbor.

I've done all this, we've put this all together and like I've said, it's on the PowerPoint, so I'll just skip over most of it. If they do come to visit, you've got three days to produce your documents; you don't have to make photocopies for them. Just make sure that there is one person that knows how to handle the visit and don't let anybody else talk to them, because they might say things that they don't have actual knowledge of.

Mismatch, Charles, do you want to talk about mismatch?**Other terms, concepts and keywords contained in the balance of this transcript are:** I-9 forms, immigration, eVerify, Basic Pilot, visas, H-2A, H-2B, H-3, Department of Labor, Immigration, State Department, Kentucky, Arizona, pro forma, I-129, Save Our Small Business Act, Barbara Mikulski, Agricultural Job Opportunities Benefit and Securities Act of 2007, Strive Act, Senate Comprehensive Immigration Reform, American Horse Council, Groom Elite, Reid McClellan, training visa, international trends..... If you desire a full transcript contact bprewitt@ag.arizona.edu

