
Public Hearing

before

SENATE WAGERING, TOURISM AND HISTORIC PRESERVATION COMMITTEE

“Testimony on the issue of Internet gambling”

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Committee Room 10
Trenton, New Jersey

DATE: February 28, 2005
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Barbara Buono, Chair
Senator Ellen Karcher, Vice Chair
Senator Joseph F. Vitale
Senator Nicholas Asselta
Senator William L. Gormley



ALSO PRESENT:

Gina Marie Winters
Office of Legislative Services
Committee Aide

Linda Schwimmer
Senate Majority
Committee Aide

Olga Betz
Senate Republican
Committee Aide

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SENATOR BARBARA BUONO (Chair): Good morning.

I'm Senator Barbara Buono, and this is the Senate Committee on Wagering, Tourism and Historic Preservation.

Welcome, Senator Gormley. We know that Senator Asselta is in the building, and Senator Vitale, and they will be with us.

But I thought, in deference to all of you who have traveled such a great distance to be here, we thought we would start promptly. And actually, we have to end promptly, because we're having-- You probably have heard, if you turn on the radio, we're having a session today on Pay-to-Play. It's the issue of the moment in New Jersey. So we are going to, hopefully, end well within the amount of time we need to get to our 12:00 quorum call.

I also wanted to welcome Linda Schwimmer, who is sitting to my left. Linda has just recently been assigned to the Committee from the Senate Democratic staff, and she's wonderful. I want just to introduce her to all of you who don't know her. And Gina Winters is taking over for Karlis, who left and went to the CRDA. I don't know -- he was stolen from us. But Gina is wonderful, and welcome Gina.

And again, thank all of you for coming today and testifying. I think it's going to be a very fascinating Committee.

As you all know, Internet gambling is a multi-billion dollar, burgeoning industry. It crosses state and international borders, and it's available to anyone with access to a computer or even a cell phone. Unfortunately, at the present time, the legal boundaries of this growing industry are unclear. And so we would like to discuss those issues -- the legal issues, the economic issues, the societal impact of this phenomenon. And even

though this is a complex area, I'm hoping that today we can at least begin the discussion and move forward. And we have four panels, toward that end, to testify today, who are going to offer their views on some of the issues surrounding Internet gambling.

I also wanted you all to know that you should be advised that the Office of Legislative Services is recording the hearing and will be preparing a written transcript of the proceedings.

So without further ado, I would like to welcome our first panel of experts: Professor Robert Stumberg, welcome; Sean Hewens -- both of Georgetown University Law Center. Both of Georgetown?

ROBERT STUMBERG: Yes.

SENATOR BUONO: Okay. And Peter Riggs, from the Forum-- Is Peter going to come up with them or-- Okay. Well, okay, we'll have them. And if you want to introduce the women to your left. Are they with you as well?

MS. BROKAW (OLS Hearing Reporter): We're recording, Madam Chair.

SENATOR BUONO: Oh, okay. And well, why don't you introduce yourselves. I don't know you. (laughter)

MS. BROKAW: Linda Brokaw, from OLS.

SENATOR BUONO: Okay.

MS. ROBBINS (OLS Editor/Proofreader): Barbara Robbins, from OLS.

SENATOR BUONO: Okay. Well, thank you for being here. Okay. Let's begin.

MR. STUMBERG: Good morning, Madam Chair.

As you said, I am Bob Stumberg from Georgetown Law School. I'm on the faculty there. And with me is Sean Hewens. Sean is a policy analyst with my program, which is called the Harrison Institute for Public Law.

We have studied Internet gambling, and particularly the WTO's recent decision on Internet gambling, in a project for a nonprofit called the Forum on Democracy and Trade. Peter Riggs, whom you earlier acknowledged, is the Director of the Forum on Democracy and Trade.

The purpose of our work is to support the state officials and Legislatures, Offices of Attorney General, and elsewhere, in their efforts to provide effective oversight over trade negotiations and trade disputes that might directly effect state authority. So that's why we're here.

If I may use a game metaphor, the United States trade negotiators think that this WTO case is about Internet gambling. We think it's about a different game. We think it's more like chess, in which this case and this decision is one in a series of moves that are being taken by very sophisticated players; and their aim is to restructure, potentially, the U.S. gambling market. So we hope you listen to what we have to say in the context that this is a chess game, and that the state governments, particularly the legislators, ought to be players in that game.

SENATOR BUONO: And we're waiting-- It's on appeal -- the World Trade -- the court's decision, correct?

MR. STUMBERG: Correct.

Sean is going to explain to you the status of that appeal. But first, Sean is going to begin with a few facts to give you the economic context of the

gambling market. And introducing Sean, I might say that he probably looks to you like a very normal person. I want to assure you that is not the case. Sean is a man obsessed with Internet gambling, and he will now share just a little bit of his knowledge with you.

S E A N H E W E N S: Good morning. I'd like to start things -- I'm originally from Hunterdon County. So it's nice to be back in my home state.

Before we get started with the actual Antigua case, I'm going to give you a bit of background on Internet gambling. We had a handout. I'm not sure if you guys got it. But I'd like to direct your attention, at this point, to Chart 1 in the handout, which just shows you the rise in profits in the gambling industry over the Internet in the last -- it's 2003, 2004, and projected through 2010. You can see, in 2003, it was worth \$5.7 billion. Last year, 2004, it was worth 7.5 billion. It's estimated to approach 10 billion in this year, 2005. And by 2010, it's supposed to be close to \$20 billion. So it's some serious dollars that we're talking about here.

MR. STUMBERG: I'd like to interject. That's in a market in which Internet gambling is supposed to be illegal.

SENATOR BUONO: I was just thinking that.

MR. HEWENS: And I just wanted to clarify my terms. When I'm talking about Internet gambling here, there's basically three major forms of it. There's your traditional casino games that have been converted to the Internet form, such as roulette or slots. Second, there's sports betting -- placing a bet, for example, on an NBA game via the Internet. And the third category are the online card rooms. There's been explosive growth in this industry recently, based upon the rise of Texas Hold'em form of poker, easily

translatable to the Internet, because people match up with partners from around the world -- play nine or 10 people at a virtual table. So that's the type of gambling that we're talking about.

There's currently 2,100 Internet gambling Web sites around the world. We're just talking English language Web sites here. If you get into the Chinese language Web sites and everything else, it's too numerous to count at this point.

To direct your attention to Chart 2 that I gave you, that gives you a sense of where these Internet sites are licensed out of. Antigua and Barbuda, that's the country that we're going to talk about in a minute, that filed the WTO claim against the United States.

There's Costa Rica. And it should be noted that Costa Rica is a country that's soon to be involved in the Caribbean-American Free Trade Agreement, which will give its investors increased access to the U.S. market and the potential of filing for their gambling claims.

There's also Canada. It's on a native Indian tribe up there called the Kahnawake, and they license almost 20 percent of all Internet gambling sites.

And finally, it's just worth noting that -- it's estimated there's approximately 15 million Internet gamblers at this time. Just under half, or approximately half, 7.4 million Americans, make up that 15 million number. So despite the fact that it's illegal, America makes up 50 percent of the Internet gambling market.

SENATOR BUONO: Can I interject? Have you determined state by state where that participation is? Do we know what New Jersey's participation is?

MR. HEWENS: I haven't seen that determination, and I'm not sure-- With Internet technology, it's hard for me to know--

SENATOR BUONO: Right.

MR. HEWENS: --exactly if they can trace if it's a New Jersey customer versus a Pennsylvania customer. But I could certainly attempt to get that information.

SENATOR BUONO: Okay. Thank you.

MR. HEWENS: And just real quick, I just want to discuss why Internet gambling is growing at the rapid rate that it is. First is advances in technologies. Increased broadband technology -- things are getting faster, more and more people are getting dial-- They're trading in their dial-up and getting DSL or cable modems, and it increases everything.

Wireless capability, as you alluded to in the introduction. Especially in Europe, people are beginning to be able to place bets via their wireless phones, specifically in the sports gambling context. That's a major breakthrough.

Finally, security -- as wireless becomes more secure, as broadband becomes more secure, people become more comfortable in placing large sums of money via the Internet.

The second is the rise in popularity of poker. Quite frankly, you turn on ESPN or the TV at any point, and you can see Texas Hold'em being played. It's created a huge growth on the Internet. It's estimated that just in

the last year alone it's gone from approximately 50 sites to approximately 266 sites exclusively dedicated to poker. The top 19 sites, poker sites that is, make approximately \$3 million a day in profits. Party Poker, the largest Internet poker Web site, is expected to take in revenues of \$1 billion this year. So this is a huge, huge industry.

And finally, the lack of overhead in establishing an Internet gambling site. It's pretty obvious that you don't have to actually establish the hotel or the casino that goes along with it. Instead, you just use the Internet facilities to handle it.

And that concludes my presentation on, at least, the background of Internet gambling.

SENATOR BUONO: Okay. Thank you.

MR. STUMBERG: Some of the examples of companies that have been engaged in this growth spurt are legally significant. I want to mention just one -- the Kahnawake tribe -- and then ask Sean to give you just a couple more examples. The Kahnawake First Nation is just 12 miles from Montreal. It is, in essence, a very small reservation which hosts one of the largest nodes of the Internet gambling industry on the planet. It has world class T1 capabilities for Internet transmissions right into the United States. And it has issued licenses to some of the world's largest gambling operators, previously based in the UK or other locations.

Legally it's important, because the Kahnawake tribe is part of Canada, which is part of the North American Free Trade Agreement. So while today we'll be talking mostly about the WTO's decision, which is a trade dispute between the country of Antigua and the United States, NAFTA

permits, through its Chapter 11, individual foreign investors and their enterprises to bring claims for compensation against the United States, on grounds that are somewhat similar to the trade dispute.

So we have two different gameboards in terms of this game of chess I was talking about, or if you will, two different levels of chess going on. And as Sean will explain a little bit further, it looks as though some of the major players in the industry are positioning their pieces in the countries with which the United States has investor rights agreements, as well as the trade agreements that we're talking about today.

MR. HEWENS: And specifically, what Bob's referring to is Yahoo. I'm sure you've all heard of it -- a major American company based out of California. Recently they bowed to pressure from the U.S. Justice Department and stopped listing all advertisements for Internet gambling Web sites. Google and Yahoo took those advertisements out of their Web engines.

At the same time, Yahoo is involved in opening an Internet casino in the UK. They are going to be focusing on the Irish and the UK gambling constituency. So you can see that this is an American company that, on the one hand, is bowing to pressure from the Federal Government, while at the same time aggressively pursuing Internet profits in a gambling context abroad.

SENATOR BUONO: But will the bets be limited to intra -- within that particular-- No. So it will cross borders into the United States anyway.

MR. HEWENS: Yes. And one would hope that in terms of -- financially speaking, they'd be able to limit funds coming from the United States. But certainly in terms of accessing the Web site, there's no reason that American consumers couldn't access the British and the Irish Web sites.

SENATOR BUONO: Well, if that's the case, and maybe we're getting ahead of ourselves, then what's Antigua so worried about? If we can't regulate it, if we can't really prohibit it, if we can't stem the flow of money, why is Antigua so concerned that the United States is banning it or prohibiting it?

MR. STUMBERG: Antigua tried to create one of the first regulated markets for Internet gambling. And in doing so, they were responding to pressure from the United States law enforcement officials, both Federal and state, knowing full well that there were effective bans or explicit bans on Internet gambling, hoping to change the legal and political climate for their industry. It was an island economy which had fared poorly after hurricanes affected their sugar cane industry and other tropical crops. They made their play at competing for tourism dollars, but again their geographic location, their surrounding competition, and the impact of hurricanes and other disasters had set their economy back.

So like lots of other places, including the Kahnawake First Nation, they saw Internet gambling as a way to approach an environmentally clean, high-tech, fast-growth industry which would catapult their economy by geometric measures, several times the rate of employment. And indeed, they built up an employment base of approximately 5,000 people in a country of just 90,000. And these are jobs for computer engineers and lawyers and accountants, not just the people that manage the buildings that house their Internet technology. So for them it was a very important economic development strategy, as it is for lots of other countries in the region.

So when U.S. law enforcement officials began to crack down on them, it had a significant and dramatic impact on their revenues and their capacity to retain these countries.

SENATOR BUONO: Well, I just thought-- I mean, maybe I'm wrong. I thought that it was debatable whether or not Federal law did prescribe it. Has it really been determined whether or not the Federal statute does apply?

MR. HEWENS: No. I mean the only thing that's clear is that the Federal statute prevents persons from placing sports bets via the telephone.

SENATOR BUONO: Right.

MR. HEWENS: The courts have been willing to, pretty regularly, to extend that to the Internet. You can't place a sports bet via the Internet. It's still a question up for challenge, which varies around the country, whether or not playing poker online and/or participating in a virtual slot machine, something like that, is illegal.

MR. STUMBERG: But the electronic technology for transferring money, for handling your bet, is a function of financial service enterprises such as American banks. So today you have an expert witness from a bank, who I assume will talk to you about the impact of law enforcement on his industry. But in terms of prosecutorial discretion, there seems to be little doubt that Federal law enforcement officials, with the full support of the state law enforcement officials, sought to clamp down on the ability of banks and credit card companies to process these transactions. And as I said, it had a dramatic impact on Antigua's economy.

To some extent, the businesses that were originally attracted to Antigua moved on in what appears to be a race to the bottom, in terms of regulatory structures. And so they moved to other countries like Costa Rica that have absolute minimum regulation of that industry. Does that answer your question?

SENATOR BUONO: Yes. Yes, it does.

Are you going to talk a little bit about the World--

MR. STUMBERG: Yes.

MR. HEWENS: Yes.

SENATOR BUONO: Okay.

MR. STUMBERG: Well, that's a good segue to get into the WTO case. So we've sworn to ourselves that we would try to summarize this in five minutes, or less, by responding to six basic points about the case. The first one is -- I phrase as the question whether this truly is a case of David versus Goliath. David being Antigua in this case, Goliath meaning the United States.

MR. HEWENS: In a sense, if you compare the GDPs or the populations of the two countries, it's absurd. In comparison, 70,000 persons is the population of Antigua -- what, 293 million I believe is the current population of the United States. So it's not even a close comparison. The flip side of that is that Antigua was supported by the very powerful international gaming interests. In filing its claim, it had top legal representation, both from the United States and also from the UK. And in a sense, this case was certainly a test case. They put Antigua out there because it had a lot to gain, very little to lose, and depending on how this case is decided will have

ramifications for much larger companies possibly filing subsequent claims, and also much larger countries possibly filing subsequent claims.

MR. STUMBERG: The gameboard for this part of the chess game is provided by the World Trade Organization, the WTO. And the trade agreement that applies to Internet gambling is called GATS, the General Agreement on Trade and Services. GATS is one of 18 trade agreements that the WTO manages. And in particular, there is one rule in the GATS called market access-- The thing about this trade rule I want to emphasize is this has nothing to do with discrimination. Most folks think about cross-border trade being a matter of tariffs or prohibiting discrimination against foreign firms, but the market access rule goes to the heart of domestic regulation. And it simply says, "Thou shalt not impose quantitative limits on the number of service providers, or the number of service operations, or the legal structure that your company takes to provide the service," among other types of rules.

So you can see, under this trade rule, it's not a matter of whether the United States treats domestic companies that would like to provide Internet gambling any different from foreign companies. The trade rule only goes to whether the United States or the state governments impose quantitative limits on the number of service suppliers.

SENATOR BUONO: Or banning it, obviously, would be -- fall within that.

MR. STUMBERG: And in effect, what Antigua argued and what the WTO panel accepted was that this ban, in effect, amounted to a zero quota, thus meeting the terms of this trade rule.

The big issue in the case, or one of the two big other issues in the case, was whether the United States ever made a commitment in the first place with respect to this service sector.

MR. HEWENS: And actually, what the WTO panel found was that the U.S. made a specific commitment to gambling and betting services. This is noteworthy because there's no mention of Internet here. The commitment goes to gambling and betting services. Antigua's claim in this case pertains to the Internet--

SENATOR BUONO: Right.

MR. HEWENS: --because that's the medium by which they provide gambling services. But in the future, if the lower panel's decision is upheld on appeal, this opens the door for a land-based company wishing to gain access to a place like Atlantic City to file a claim. So it's important that this commitment goes to all modes of delivery, not just the Internet.

MR. STUMBERG: One of the other big issues on appeal will be the panel's decision that the United States is not able to take advantage of an exception that relates to public morals.

MR. HEWENS: Basically, there's an exception to the GATS, which says that even if a law or regulation violates the GATS trade agreement, if it's necessary to protect public morals, that regulation or that law can stand.

SENATOR BUONO: Well, it is pretty hard to prevent some -- an underage individual from using this sort of means of gambling, I would think.

MR. HEWENS: Yes, exactly. And that's exactly what the United States argued. And the panel actually agreed with the U.S., that underage gambling was a problem uniquely presented by Internet gambling. They also

talked about organized crime. They talked about money laundering. But basically what the panel said was, "Look, we agree with you that these are issues. These are public laws issues," but that -- "your solution to this problem, an outright ban on Internet gambling, is not lease/trade restrictive."

SENATOR BUONO: Goes too far.

MR. HEWENS: They basically concluded that, "Look, you need to consider other alternatives, some kind of bi-nation or multi-nation approach to dealing with the problem." Antigua presented evidence that they had come to the United States a couple years back and then, like, "Look, let's meet up and let's talk about this. Let's come up with a multi-national approach to the problem." The U.S. said, "No. We're not. It's illegal. We're not dealing with it." So that was the crux of why the public morals exception could not apply in this case.

MR. STUMBERG: So the final decision on this appellate body, a decision from the World Trade Organization, is April 7. And the appellate body may come down in one of any of a number of places.

SENATOR BUONO: Well, I understand that most of the time they reverse it partly, on appeal, and affirm part -- is that generally the case?

MR. HEWENS: Yes. Well, if you look at Chart 3 in your-- I've broken it down in the-- This goes through 2003, so it doesn't reflect what happened in 2004. But you can see approximately two-thirds of the time the appellate body partially upholds and partially alters the lower panel decision. Basically, the appellate body has the option of completely upholding, completely overturning, or overturning any portion of the lower panel's

holding. What this chart does say, though -- in that approximately 90 percent of the time, at least some portion of the lower panel's decision is upheld.

In this case, what that means is that the appellate body could overturn the lower panel's decision regarding public morals. They could overturn it and agree that the U.S. has very legitimate reasons for banning Internet gambling.

SENATOR BUONO: But couldn't you really -- couldn't you say that we fall within the exception, but we still -- our response to that is a bit-- It goes too far; that we really can't-- Even though we fall within the exception, we still can't ban it outright. We can regulate it.

MR. HEWENS: Right.

SENATOR BUONO: Which in and of itself presents enormous challenges, but that's--

MR. HEWENS: Exactly. Exactly. It could also conclude that in terms of Internet gambling our response is valid. But remember, we have a commitment to all gambling and betting services. So almost all of the arguments that the U.S. made were specific to Internet gambling. But that doesn't mean-- I mean, the appellate body could decide that we still have a commitment to land-based gambling, so that wouldn't prevent future claims -- again, people looking for access to places like Atlantic City and Las Vegas.

SENATOR BUONO: So what's the best that we can hope for on appeal, short of just outright reversal, which probably isn't going to happen?

MR. STUMBERG: That would be the best.

SENATOR BUONO: Yes.

MR. STUMBERG: So one extreme is that the appellate body would overrule the panel on the issue of whether the United States ever made a commitment in the first place. And in addition to that, that the public morals exception covers an outright ban on Internet gambling, even though we don't ban other forms of gambling that have some of the same nasty outcomes as Internet gambling might have. Now that's the best outcome.

What Sean was basically saying is that the worst outcome is that we lose everything -- and that happens in about 25 percent of the time, historically, before the World Trade Organization.

SENATOR BUONO: Really.

MR. STUMBERG: But more than half the time, the appellate body upholds at least a portion of the lower panel decision. And our reading of the legal arguments in this case and the kind of positions taken by other countries, including the European Union, Canada, and Japan, is that the least likely part to be overturned is the holding by the panel that the United States did make a commitment to this entire sector of gambling, both Internet and land-based gambling.

SENATOR BUONO: That's the least likely to be overturned?

MR. STUMBERG: It's the least likely to be overturned, we feel.

The public morals issue is before the appellate body for the first time in the history of the WTO. So this is new ground, and they will be making law whichever way they decide the case.

SENATOR BUONO: So if we lose the appeal -- completely lose it -- what does New Jersey have to be worried about in terms of collateral attacks on gambling within the state?

MR. STUMBERG: Let's start with what the WTO cannot do to New Jersey. The WTO has no police. There is no automatic effect on State or Federal law. So your law will remain in place, and Federal -- the Wire Act -- will remain in place as well. What the WTO can do is authorize a country that wins a case before the WTO, to impose trade sanctions in the form of punitive tariffs. That's the teeth in the WTO dispute process.

Now, as Sean pointed out, because of the size of Antigua's economy, that would be less than a flea bite. So the threat of trade sanctions in this case are practically nonexistent. That's not what the United States has to worry about.

The other enforcement mechanisms available to the United States, available to enforce trade rules, are partially domestic. So regardless of the outcome of a WTO dispute and regardless of whether another country wants to bring sanctions, keep in mind that the implementing legislation that the U.S. Congress passed authorizes the Executive Branch of the United States Government, when it chooses, to enforce trade rules by preempting state law -- they have to go through Federal courts. But -- by asking a court to preempt state law, or to use the other mechanisms available to the Federal Government to encourage state compliance. For example, withholding Federal funding under certain conditions if states don't get with the program. That is not a likely scenario in this case either, because the United States trade representative has promised essentially to make the Internet gambling problem go away one way or another. So I'll ask Sean to summarize what the promise is from the trade negotiators.

MR. HEWENS: Basically, they've indicated that we're going to categorically withdraw our Internet gambling commitment. And there's a process for doing this within the WTO. It's called the Article 21 Renegotiation Process.

SENATOR BUONO: To just change your mind, basically. You can renegotiate. Okay.

MR. HEWENS: Except we've never attempted it before. This would be a first.

SENATOR BUONO: It explicitly says that you can renegotiate?

MR. STUMBERG: Yes.

MR. HEWENS: Well, but here's the thing. You can renegotiate, but you have to figure out the value of whatever the trade commitment is that you're pulling back from the table, and you have to give other trade concessions in different areas equaling the value. Now, as I talked to you right at the beginning, with the value of the Internet gambling market, it's -- what -- supposed to be close to \$10 billion this year. It's very difficult to value, especially if you consider that it's worth close to \$10 billion and it's technically illegal at this time. It's safe to say, though, that whatever it is that the U.S. is forced to give up in trade negotiations, in order to pull our Internet gambling commitment back from the table, it will be fairly substantial.

MR. STUMBERG: And back to the chess game. What Antigua will have accomplished as of that stage, the next stage of this process will be to bring in all 148 members of the World Trade Organization into the negotiating process. So it's no longer Antigua being David and the United States being Goliath. In some ways, the roles are the reversed. It's the United States,

potentially, against any other country in the World Trade Organization that wants a piece of us with respect to this gambling market. And this takes place at the very time when the broader negotiations on trade and services are approaching a deadline, which is May 1 of this year. So, in effect, Antigua has positioned itself, with help from its friends, to alter the course of trade negotiations across the board with respect to trading services. And the trade-offs that it might take for the United States to bargain its way out of this may affect service sectors other than gambling, sectors which the European Union has requested that we open up. For example--

SENATOR BUONO: Like what?

MR. STUMBERG: --municipal water services. Electricity trade, including wholesale trade and electricity, are services ancillary to transmission where several major European countries are active in the Northeast and the Midwest, here in the United States.

SENATOR BUONO: I mean, if the ramifications can be this broad and this far-reaching, how come nobody has really, kind of, focused on this yet? Legislatures really haven't-- You don't hear people talking about it that much, and it really seems to be something pretty significant that's on the horizon.

MR. STUMBERG: Well, a good question. It's complicated, and it's not exactly in the interest of the United States trade negotiators to advertise the mistakes that their predecessors made 12 or 15 years ago, nor to essentially put up a big billboard and say to the rest of the world, "Sue us, we're vulnerable now." So since the states are having to learn this on their own and it's very complicated, and since the Federal Government perceives a real

risk in advertising its vulnerability to future trade challenges, I think you can see why it's not getting more play. But inevitably, the chickens come home to roost. I apologize for throwing in one too many metaphors.

MR. HEWENS: And the one other thing that I wanted to add is, we've been talking about negotiating our way out of our Internet gambling commitment; but as I mentioned before, the commitment actually goes to all forms of delivering the service of gambling. So that if the U.S. goes to the table and is attempting to negotiate our way out of Internet gambling, it might make sense for us at the same time to attempt to negotiate our way out of a gambling commitment in general.

On Chart 4 of the--

SENATOR BUONO: Give me an example, if you would. I understand the Internet gambling issue, but how -- what is this threat, for example, that Atlantic City faces, if you could explain that?

MR. HEWENS: Okay. Check out Chart 4.

Do you want to explain that?

MR. STUMBERG: Go for it.

MR. HEWENS: We've listed here the types of regulations that New Jersey does have or other states might have that restrict or prohibit certain forms of land-based gambling. An example would be limitations that New Jersey places that casinos have to be operated in the Atlantic City area or the City of Atlantic City. That is a violation of the market access provision because it places a limitation--

SENATOR BUONO: That overrides our State Constitution?

MR. STUMBERG: It doesn't override it. It doesn't make your Constitution go away. It simply means that if you want to keep your Constitution in place, you have to withstand the slings and arrows of the trade regime, which means that foreign governments, should they win a case, can impose punitive tariffs on goods and services coming from the United States. Now they may choose to pick on industries that are based in New Jersey. For example--

SENATOR BUONO: Our trade deficit is high enough as it is, right?

MR. STUMBERG: Well, what's interesting is, for example, pharmaceuticals. The sanctions don't have to be applied to the industry that's the subject of the dispute. They can be applied to any industry where the complaining country can get a source of leverage to bring the United States into compliance. I refer to this as the legal equivalent of hostage taking. Imagine if Congress passed a law that said if a citizen or a company in New Jersey violates a law, the Federal Government can impose a fine or perhaps even threaten some other sanction to citizens in California, or vice versa. I mean, that's unheard of in the system, and yet that is the premise for enforcing trade rules.

MR. HEWENS: As you can see, the other sources, the other types of violations that would come into conflict with the GATS -- requirements that New Jersey has, that the office for the casino be located in the casino facility. A requirement that the casino must bank in the state. I mean -- I'm sorry. Yes, the casinos in New Jersey must bank in New Jersey. That, again, would possibly run afoul. Employees must reside in the state where the casino is

operated. Again, these casinos, hypothetically, that would be filing the claim, would be operated by some multi-national company located in the UK or in Australia, and therefore they would make the argument that it's completely inconvenient that they would have to -- their employees would have to live in New Jersey. That would be a basis for a claim.

SENATOR BUONO: I hate to cut it short, but we have three more panels.

Welcome Senators Vitale and Karcher.

Thank you once again. Are you going to stick around so, in case questions arise as the other individuals testify, and you need to-- I know that you have a ways to go back and you want to miss our storm that supposedly--

MR. STUMBERG: Sean is going to stay. I have to catch a train.

We would just like to thank you for this opportunity, and point out, as our handout suggests, this is an issue that one state cannot take on all by itself. These are global trade agreements, and the United States fashions its negotiating strategy based on input from lots of businesses. And in this case, it would take input from lots of states. The NCSL, the National Conference of State Legislatures, is looking at this issue very clearly, but--

SENATOR BUONO: They filed an amicus brief, didn't they?

MR. STUMBERG: No.

SENATOR BUONO: Or they were going to. I just was in a conference on gaming. It was the National Conference of State Legislatures -- gaming states -- in Florida, in January, and they said they were going to -- they never did file an amicus brief?

MR. STUMBERG: Well, that's a different network. The NCSL is distinct from that particular network of gambling-state legislators.

SENATOR BUONO: The gaming states. Oh, I thought it was part of the same organization.

MR. STUMBERG: Right. But it's NCSL, the National Conference of State Legislatures, that maintains an ongoing dialogue with the trade negotiators. And what I was going to say is that no single state has stepped up yet to work as the leader of NCSL's activity on this area.

Also, there is a nonprofit organization called the Forum on Democracy and Trade, which is directed by Peter Riggs, our colleague, which is designed to facilitate communication between the states on issues like this.

Thank you again for this opportunity.

SENATOR BUONO: Well, we thank you for coming. We really appreciate your time and your input.

MR. HEWENS: Thank you so much.

SENATOR BUONO: Peter Riggs, Forum on Democracy and Trade. Come on up.

PETER RIGGS: (speaking from audience) No, we're all set.

SENATOR BUONO: Oh, you have nothing you wanted to add?

MR. RIGGS: Just to underline that Professor Stumberg's comments -- that the Forum looks forward to working with--

SENATOR BUONO: Could you just -- they wanted to record your comments, if you don't mind?

MR. RIGGS: Thank you very much. I'm Peter Riggs, with the Forum on Democracy and Trade.

I just wanted to say a little bit about the Forum and indicate how we could work with New Jersey on these issues. As Professor Stumberg and Sean have gone through the case, you can see a number of potential areas where New Jersey lawmaking may be affected. And listed on the handout are potential State responses. One is clearly to assess the options for resolving the Internet conflict, as was described; assess the potential for future challenges to state gaming measures and how New Jersey can protect itself; identify safeguards for preserving State authority; and connecting with other states and with the National Conference of State Legislatures to communicate with USCR and Congress.

The Forum's role is to work with state legislators and others, to pull together multi-state working groups to ensure that a broader coalition of states is involved and is able to communicate, both to their congressional delegations and also directly with U.S. trade negotiators. And through that multi-state forum, we find that we get a more powerful hearing and more opportunities to interact.

SENATOR BUONO: What other states are involved in that now? I bet Florida, because Senator Geller -- I think his name is -- is very, very involved in the issue.

MR. RIGGS: We are just beginning to work this through. And we'd be delighted to work with New Jersey as a leader in the field, and look forward to further communications on that.

SENATOR BUONO: What is it -- April? When is it? April 7 is looming.

MR. RIGGS: Yes, indeed. And we very much look forward to the opportunity to communicate at the time of the appellate decision and figure out where we go from here.

SENATOR BUONO: Thank you so much, once again--

MR. RIGGS: Thank you very much.

SENATOR BUONO: --and we'll be in touch with you for sure.

MR. RIGGS: Thank you.

SENATOR BUONO: Okay.

Next we have our State regulators forum, with Linda Kassekert, Chair of the New Jersey Casino Control Commission; and Tom Auriemma, I see here as well, Director of the Division of Gaming Enforcement.

Welcome.

LINDA M. KASSEKERT: Thank you, Madam Chair. Thank you. Good morning.

I want to thank you first for the opportunity to testify here today on the issue of Internet gambling. And as you know and as you've just heard, despite the current Federal prohibitions, it appears that Internet gambling will continue to have an impact in the United States. A number of countries allow it and several, including Australia and The Isle of Man, just to mention two, have developed systems in attempts to regulate it. However, it is up to you and the people of the State to decide whether supporting the legalization of Internet gambling would be good public policy for New Jersey. What I would like to do today is to give you the benefit of our analysis on the issue and provide suggestions on what you need to keep in mind as you consider it.

Since many proposals involve allowing Atlantic City casino operators to offer online gambling, I would suggest that you consider the industry's interest in this issue. I know that, for example, the American Gaming Association has expressed reservations about Internet gambling. The association has indicated that it does not believe the appropriate regulatory and law enforcement oversight presently exists with regard to Internet gambling to properly protect the integrity of the games, and the security and legality of financial transactions. It has also expressed concerns about the potentially harmful effects of underage and pathological gambling, which I'll talk -- later in my remarks.

If this Committee ever did decide to pursue legislation supporting the legalization of Internet gambling, I would suggest three areas for consideration: Number one, is Internet gambling legal? Number two, can Internet gambling be regulated? And Number three, do the positive impacts of legalizing Internet gambling outweigh the negative impacts?

First, with respect to the question of, is -- whether Internet gambling is legal. The U.S. Department of Justice -- under both the Bush and Clinton administrations -- have taken positions that Internet gambling is illegal under the Wire Act of 1961. In August of 2002, then assistant U.S. Attorney General Michael Chertoff informed Nevada regulators that it was the justice's opinion that, "Federal law prohibits gambling over the Internet, including casino-style gambling." The Second Circuit's decision in *United States v. Cohen* confirmed that the Federal Judiciary is willing to use the 1961 Wire Act as a basis for conviction in the prosecution of Internet gambling sites, even if they are operated offshore. However, the Fifth Circuit Court of Appeals -- and

that's where we come into the difference -- in New Orleans determined that the Wire Act applied only to wagering on sports. And as you've just heard, the nations of Antigua and Barbuda in recent years filed a complaint against the United States with the World Trade Organization, alleging that the U.S.'s ban on Internet gambling violated the terms of their respective trade agreements.

The World Trade Organization, as you also heard, issued a preliminary ruling in November in favor of Antigua and Barbuda. And even though the appeal is still pending, it is important that the State Legislature have an understanding of the issues, should additional steps need to be taken.

As recently as December of 2004, the Council of Ministers of The Isle of Man reversed its policy and announced that as of January 1 it would allow online casinos based there to accept bets from U.S. customers. The Isle of Man's policy change affects only wagers placed on casino games and in poker rooms. The island will continue to discourage casinos located there from accepting sports bets placed from the United States. The island determined that a distinction could be drawn, because U.S. law clearly prohibits sports betting online, but not casino wagering -- again, picking up on the difference in the courts. They appear to capitalize on the distinctions drawn by the Fifth Circuit Court of Appeals, notwithstanding the Department of Justice's opinion that casino games are also prohibited under Federal law.

Analysts report that some \$7.6 billion was lost in wagers over the Internet, with about half of that amount being lost by U.S. residents. Undoubtedly, distinctions will continue to be drawn, and the number of online casinos openly accepting wagers from U.S. customers will only increase.

Secondly, and probably most important from Tom's and my perspective, can Internet gambling be regulated? And this is probably the biggest question to be answered. Can appropriate regulatory measures be drafted and adopted to ensure that the games are honest and fair? Can software be developed to ensure that minors can't play and that problem gamblers don't get in over their heads?

Probably the answer to those questions, sooner or later, will be yes. Some day we will be able to regulate online gambling. As a regulator, do I think we're there yet? No. Absolutely not. Recent events only reinforce the fluidity of Internet security systems. Just recently, some people were able to gain access to vast amounts of highly personal information at ChoicePoint -- bank information, credit histories, Social Security numbers, criminal records, and other data. And this company thought that they had a highly secure system.

Certainly we can investigate and license owners and operators the same way we currently do land-based operators. However, before regulators could issue any licenses to operate Internet gambling, they must be able to conclude that the games can be properly operated and done in compliance with Federal law.

SENATOR BUONO: Could I just interrupt you for a second, right there?

MS. KASSEKERT: Sure.

SENATOR BUONO: I mean, how can we insist that someone offshore -- that we regulate and license somebody offshore?

MS. KASSEKERT: Well, and again, that's where all these discussions -- if the Federal prohibition goes away. State law, we can, I guess, say anything we want to say and then see what the courts do. But I think, at a minimum, we have to try to go that route to try to ensure that--

SENATOR BUONO: Well, we would have to change the Constitution first.

MS. KASSEKERT: Oh, yes. Absolutely. Definitely. None of this could happen without a change to the Constitution, because specifically the Constitution says gaming can only be in Atlantic City and for certain articulated purposes.

SENATOR BUONO: Okay, thanks.

MS. KASSEKERT: Even the American Gaming Association has said that, "appropriate regulatory and law enforcement oversight does not presently exist with regard to Internet gaming to properly protect the integrity of the games, the security and legality of financial transactions, and against the potentially harmful effects of underage and pathological gambling."

Third, would the positive impacts of Internet gambling outweigh the negative impacts? And that's a pretty tough call, because we don't know what the benefits of online gambling are going to be. If our casinos were permitted to operate online wagering, they certainly would make it easier for people in New Jersey to wager. But what I don't know is if it would result in significant increase in casino revenues, or if the number of visitors to Atlantic City would decline as people turn to their computers to gamble.

But I do know why New Jersey legalized casinos in the first place. When voters in New Jersey approved casinos, they were promised it would

rebuild Atlantic City, create jobs, and generate taxes, and so on. And if you look at Atlantic City today, you can see the casino companies have invested more than \$9 billion there, that they employ more than 45,000 people with a payroll in excess of \$1 billion, and that their economic impact ripples throughout the State's economy. Last year, for example, casinos and their subcontractors spent \$1.9 billion buying goods and services here in New Jersey. Businesses in every single county, more than 2,700 in all, do business with the casinos. In fact, Chair Buono, from Middlesex County, over \$217 million of that business went to companies in your county alone. What would the impact of Internet gambling be on New Jersey? Well, obviously, if it resulted in increased gambling revenues, it would generate tax revenues, if you could take it.

SENATOR BUONO: If we could, but--

MS. KASSEKERT: Right. But would Internet casinos build new hotel rooms, would they spend millions of dollars buying goods and services from companies in Middlesex County and around New Jersey? I seriously doubt it. Would online gambling create jobs for New Jersey residents? And I doubt that as well. It does not take that very many people to run a gambling site on a computer.

Will it exacerbate underage and pathological gambling problems? Perhaps. Operators in online gambling institutes will tell you that they have virtually foolproof ways of keeping anyone from -- under 21 from wagering. They will tell you that with tracking or with loss limits, they can limit the harm that pathological gamblers can inflict on themselves. Perhaps they can, and we would certainly hope so. But as long as we keep reading stories of ChoicePoint

and other hackers, and about people who have hacked their way into these most secure sites, I guess I'll have some reservations about how effective and foolproof these systems really are.

In conclusion, let me say that we are not advocating or opposing the legalization of online wagering. That's a call for the Legislature and the people of this state to make. If they want it, as regulators we will do everything in our power to implement a system of licensing and control, and to protect the public interest to ensure that the games are fair and that the State gets its appropriate amount of tax revenue.

And with that, Madam Chair, I'll conclude my official remarks and be happy to answer any questions you might have.

SENATOR BUONO: You know, I'm one of the those people that really was -- I had a hard time with computers for a long time. I really didn't e-mail. Now I'm pretty good at using them in many different facets. But short of turning back the hands of time, are we really just kind of talking into the wind here? I mean, is this eventually-- I mean, it's here.

MS. KASSEKERT: It is here. It is here.

SENATOR BUONO: We can't deny that it is--

MS. KASSEKERT: And especially with younger people. I'm the same as you. I'm not that great on a computer. I can do my e-mail and that's about it. But kids that--

SENATOR BUONO: It doesn't matter.

MS. KASSEKERT: --have grown up with that. Right. They can get right into these sites.

SENATOR BUONO: Nobody's waiting for us. (laughter)

Mr. Auriemma.

T H O M A S N. A U R I E M M A: Good morning, Madam Chair, Madam Vice Chair, members of the Committee.

As a representative of the Attorney General of New Jersey and Director of the Division of Gaming Enforcement, one of the State agencies responsible for regulation of the casino industry in New Jersey, I thank you for the opportunity to appear before you today to address the legality and current status of Internet gambling in New Jersey.

First, with respect to the legality of Internet gambling under New Jersey and Federal law: Like most states, New Jersey considers any type of unauthorized gambling activity, including casino-style games and sports betting, illegal as a matter of constitutional, civil, and criminal law. Federal law also prohibits wagering on sporting events, except for horse racing, across state and United States borders. The further legalization of sports betting within the United States was effectively precluded in 1992 by the Professional and Amateur Sports Protection Act, which I will get back to later. There are differing opinions on whether interstate or international wagering on casino-style games -- such as slot machines, blackjack, and poker -- is prohibited by existing Federal law.

Next, with respect to the economics of Internet gambling: Despite the legal prohibitions, it is obvious that Internet gambling is widely available and growing. Reports routinely estimate double-digit annual growth for the more than 1,000 gambling Web sites, with worldwide revenues in the billions of dollars. While there are still a lot of fly-by-night operators out there,

Internet gambling has become a mature industry in Europe, with many large and well-run companies.

It has also been estimated that about 50 percent of the customers of Internet gambling are located within the United States, and that 80 percent of the Internet gambling business is based on sports betting. That adds up to a lot of money flowing out of the United States, with none of it coming back. There is no reason to believe that New Jersey residents are not contributing a proportional share.

Just how significant the United States market is to Internet gambling can be demonstrated in two ways: First, two of our own New Jersey licensed casino companies have attempted to enter the Internet gambling business without accepting bets from the United States, and both have subsequently withdrawn. Second, Alderney, which has a credible and effective gambling regulatory structure, was once home to a number of large Internet gambling operations. When Alderney adopted a policy prohibiting its licensees from accepting United States bets, many moved to other jurisdictions that had no such restriction.

SENATOR BUONO: Can I interject?

MR. AURIEMMA: Yes.

SENATOR BUONO: Do we have sites in New Jersey that you are aware of?

MR. AURIEMMA: When you say sites--

SENATOR BUONO: That are accepting bets over the Internet, from New Jersey?

MR. AURIEMMA: Right now, I am not aware of anybody. I'm sure that there are -- I'll get into it, in a minute, actions that we have taken against companies that were, in fact, accepting bets.

Now, Alderney is considering rescinding its policy, as has already been done by The Isle of Man. There is legislation pending in Great Britain now that would license Internet gambling operations. And if it is enacted without any restriction on accepting United States bets, our prohibitions could be effectively nullified.

What's the harm caused by Internet gambling? The harm caused by Internet gambling has been identified many times. Such activity nullifies our public policy on gambling, which has evolved over time to balance moral, legal, and economic considerations. The result is no different than if outsiders had simply come in and opened illegal casinos or sports betting parlors within our borders. It raises a host of consumer and public protection concerns, including the integrity and financial resources of the operators, the fairness of the games, underage gambling, problem gambling, money laundering, and the use of patrons' financial information. It unfairly competes with our well-regulated and legal forms of gambling which, unlike illegal gambling operations, pay taxes, produce jobs and other economic benefits, and help address the social problems accentuated by their existence. And most troublesome of all, it breeds disrespect for the law, which affords a multi-billion dollar windfall to offshore gambling operators who are, by definition, criminals.

The absence of Federal legislation leaves New Jersey with limited options. The failure of the Federal Government either to effectively prohibit or legalize Internet gambling of all varieties has left New Jersey and other states

in the worst possible position as regards the enforcement of existing anti-gambling laws. Deeming it our obligation to enforce the Constitution and laws of New Jersey as they exist, the Division of Gaming Enforcement filed 10 civil actions in 2001 against illegal Internet gambling operations. Each complaint named multiple defendants, including not only owners and operators, but also technical support services, software providers, and other facilitators. These actions produced mixed results. As expected, we encountered difficulties and delays in serving process and obtaining jurisdiction over certain offshore defendants, many of which were located in Caribbean nations.

Utilizing a provision in Federal law, the Division sought and obtained the termination of telephone service to several sports betting operations which were the subject of our complaints. This procedure proved to be of limited effectiveness due to the large number of toll-free telephone service providers, the complex ways in which such service is provided, and the easy transferability of specific toll-free telephone numbers.

A number of defendants upon which New Jersey had effected service of process chose to enter into settlements with the State, rather than litigate the cases. These settlements, most notably with a large and well-known Internet gambling operator, as well as a prominent gambling software provider, afforded New Jersey with the most significant relief we desired -- judicially enforceable agreements by the defendants to make all efforts to prevent the offering of illegal gambling to New Jersey residents on a going-forward basis. The Division periodically monitors the defendants' activities for continued compliance with the terms of the settlements.

The publicity generated by these cases also provided an opportunity for New Jersey to educate its citizens about the illegality and practical dangers inherent in patronizing Internet gambling businesses. We deemed it important to let people know, in the clearest possible terms, that (one), Internet gambling is illegal in New Jersey, notwithstanding any contrary claims by the operators; (two), unlike the situation regarding our land-based casinos, no State agency guarantees the fairness of the games or the integrity and financial resources of the operators; (three), the State could likely not assist in the event of a dispute between a patron and an operator; and (four), the danger of misuse of patrons' financial information by unscrupulous operators is very real and serious. All this information, and more, has been made available to the public on the Division's Web site -- that's *njdge.org*. Although the extent of any deterrent effect is difficult to measure, we hope that over time education and publicity may reduce illegal Internet gambling.

What about potential actions to enforce prohibition? The Division harbors no illusions that civil lawsuits against a handful of Internet gambling Web sites will eliminate the problem of illegal gambling in New Jersey. Nevertheless, there are steps that can be taken to enforce a prohibition, even without the support of Federal legislation and enforcement.

First, it is obvious that in order for an Internet gambling operation to be commercially viable, money must flow from bettors to operators and in the opposite direction. The mechanisms for these transfers are the financial services providers, i.e., credit card companies, banks, and other entities. Control of financial service providers constitute a very effective means of indirectly enforcing the prohibition against illegal Internet gambling.

At one time, a substantial portion of all bets placed at Internet gambling sites involved the use of credit cards. For that reason, Federal and state reports recommended the adoption of legislation which would make credit card debts, incurred for the purpose of illegal gambling, void and uncollectible.

SENATOR BUONO: But apparently there's -- there has been Federal legislation around for a while, and there's no support for it.

MR. AURIEMMA: That's correct.

In 2002, with the assistance of the Division, the Office of the Attorney General drafted and proposed a bill which would have amended New Jersey law to accomplish that result. That bill passed the New Jersey Assembly, but never moved in the Senate. The bill was introduced again in the Senate in 2004, and has not moved.

During the pendency of this legislation, many large credit card companies and banks have taken steps, either on their own or as a result of law enforcement pressure, to restrict the use of credit cards for Internet gambling. However, the growth of third-party payment systems and other forms of money transfer have limited the effect of the credit card ban.

A second possible avenue of enforcing a prohibition would be to target individuals and entities such as software providers, whose assistance is necessary to facilitate Internet gambling operations. A final option would be to attack Internet gambling by pursuing remedies against companies that carry advertising for it. Such advertising may constitute a criminal promotion of illegal gambling or, at the very least, a deceptive trade practice by falsely conveying to the public the impression that the advertised activity is legal. I

can't tell you how many inquiries we receive in our office from New Jersey residents who don't want to be involved in anything illegal, but are confused about Internet gambling because it is advertised everywhere.

In the last few years, the Department of Justice has indicated intent to prosecute advertisers. In fact, as recently as February 15, 2005, a Federal district court in Louisiana has expressly held that advertising for illegal Internet gambling, or advertising that misleadingly suggests that such gambling is legal, does not constitute protected speech under the First Amendment.

Legalization and regulation: Although I have so far addressed prohibition, because Internet gambling remains illegal in New Jersey, persuasive arguments have also been made in favor of legalization, regulation, and taxation. In fact, in their 2000 Joint Report on Computer Crime, both the Attorney General and Commission of Investigation said: "In the event a Federal prohibition of Internet gambling is not enacted," and it has not been, "and State attempts at prohibition prove to be ineffective or contrary to New Jersey interests, the regulation of Internet gambling should expeditiously be reconsidered." Of course, because of overlapping State and Federal jurisdiction, legalization is not as simple as it sounds.

The legalization of Internet gambling on casino-style games currently remains a matter of state law, leaving it open to a state to authorize or permit such gambling on an intrastate basis. In fact, two bills have been previously introduced in the New Jersey Legislature which would have authorized some type of Internet gambling at least on an intrastate basis. Whether such gambling may be offered across state or national boundaries remains a matter to be resolved by Federal law. Conversely, states remain free

to enact or maintain a prohibition on Internet gambling on casino-style games, although it is generally agreed that a prohibition can be effective, if at all, only if enacted and enforced by the Federal Government.

The situation involving sports wagering is much more complex and troublesome. As indicated earlier, the Professional and Amateur Sports Protection Act permits a handful of states, including Nevada, to conduct legalized wagering on sports events, but solely on an intrastate basis. Assuming the validity of this statute, no other state may legalize any type of sports gambling, even on an intrastate basis. I say *assuming* because, as this Committee is aware, there is a bill pending in the Assembly which would authorize a public referendum on sports betting as a precursor to a challenge of the Professional and Amateur Sports Protection Act. Of course, I express no opinion on the merits of this bill or the likelihood of success in challenging that Federal law.

The irony of Federal gambling policy is that the unavailability of legal sports betting opportunities in New Jersey and most states is precisely what fuels the demand being met by offshore sports wagering operations. For that reason, it would be entirely consistent and reasonable for the Federal Government to prohibit all forms of Internet gambling. However, it would not be rational for the Federal Government to legalize Internet gambling only on casino-style games, since that approach would leave the demand for offshore sports wagering unabated. Put another way, any consideration by the Federal Government of the legalization of Internet gambling must necessarily involve a reconsideration of the Professional and Amateur Sports Protection Act and other legislation that currently precludes states from offering regulated sports

gaming to citizens on an equal basis with all other states. This step would not be as dramatic as once perceived, inasmuch as a recent amendment to the Interstate Horse Racing Act authorizes interstate wagering on horse racing where such wagering is legal in both states involved.

Unless and until the Federal Government acts on this issue, states such as New Jersey, which seek to proactively enforce a prohibition on Internet gambling, will have very few practical options.

Once again, on behalf of the Attorney General and the Division of Gaming Enforcement, I thank you for the opportunity to address the Committee on this important issue. And I would be glad to answer any questions you may have.

SENATOR BUONO: Thank you.

Any questions? (no response)

Thank you both.

I just put this question out there for anyone who wants to answer; maybe the Professor, because it is more of a legal question. But as I'm listening to the testimony, it almost seems as though it may be -- and I emphasize the word *may*. Given that Internet wagering is illegal, given that it's unregulated, and given that it's burgeoning, it's growing with the inherent risks, maybe the best outcome -- given the court decision, and that it probably isn't going to entirely reverse the lower court decision -- that the best outcome would be to reach an accord, under GAT, that would subject the overseas businesses to regulation. Because right now, we could say we wanted to regulate them, we could wish it, but it's not going to happen. Because unless they want to subject themselves to it voluntarily, we can't regulate them effectively. So perhaps --

and some sort of agreement and accord under the trade agreement would subject -- that would accomplish subjecting them to regulation. Now, I know that assumes a lot, but it's something to think about.

Okay. Thank you.

Next, Edward Looney, Executive Director, Council on Compulsive Gambling.

ED LOONEY: Good morning.

SENATOR BUONO: Good morning.

MR. LOONEY: I made a deal with God, and it's not going to snow until I finish, so-- (laughter) It's good to be with you.

I just wanted to read a quick statement, if I could?

SENATOR BUONO: Sure, please do.

MR. LOONEY: Dear Senators: The Council on Compulsive Gambling of New Jersey is a private, nonprofit, 501C organization that provides information, education, and referral services for people affected by problem and compulsive gambling. The Council started in 1982 at the behest of the New Jersey Health Department. A 1979-80 study conducted by Joann Finley, who was the Health Commissioner, indicated there may be 175,000 compulsives gamblers residing in New Jersey, and no resources for help were available for them. That's how we started.

Internet gambling sites: The first Internet gambling site started in 1995. Today there are more than 2,000 sites -- 700 are basically on sports betting; 200 are poker sites, which is very popular and growing; and another 900 to 1,000 sites with casino gambling, and lottery, and other types of wagering. None of these sites are based in the United States. However, their

customer base comes primarily from United States, Canada, Europe, and Japan.

All forms of Internet gambling are illegal. In spite of being illegal in the United States, the growth of players and money wagered continues to increase each year. Estimates from all forms of Internet gambling will reach approximately \$10 billion this year. In your packet there's some information about the growth of this. A new wave of online gambling in the past nine months is from the poker sites. In the last year, estimates of 150,000 people play every day, generating a \$2 billion win. Poker sites boast of higher profit margins than other types of online venues, such as casino, sports, and lottery sites. Some owners state as much as 60 percent profit margins, which is incredible profit. The leading poker sites are Party Poker, Party (*sic*) Stars, Paradise Poker, *PokerRoom.com*, and Pacific Poker, and Ultimate Bet. More than 60,000 people play poker on these sites daily. Approximately 70 percent of all bettors are from the United States, according to the *PokerPulse.com*, which tracks poker site activity. By the way, in your packet you also have something from *Barron's* that was on this Sunday. There's a copy of it. A lot of good information about very new information on poker sites.

The Council started to receive helpline calls regarding Internet gambling in 1998. In the past five years, calls have risen from 1 percent to last year's high of 8 percent -- from about 30 calls of people who are really in trouble annually to about, last year, 280 directly involved in this kind of gambling. Many of the recent calls are from gamblers under 40 years old of age, mostly in the range of 18-30, who were betting with the poker sites.

One of these things -- I call it a helpline caller -- one of the first calls we received was from June, a 71-year-old woman from Phillipsburg, New Jersey. June was suicidal. She said that she had lived alone, and since her husband died she was very depressed. She went on the Internet and found a site that offered gaming, which was free gambling. She started to play, and at first for fun. A pop-up ad brought her to the site that said if she put up her credit card she could possibly win some money. The first week, playing a casino game called *Jeanie*, she won \$10,000. And she was so excited she said she couldn't sleep. Within the next 14 months, she lost all her savings -- \$112,000 -- and was in debt over \$10,000 on credit cards from other areas, and was suicidal.

She was desperate when she called our helpline -- 1-800-GAMBLER. And again, today, June is stable and not involved in any Internet gambling. We counsel her by phone -- because she's a shut-in and can't get out -- on a regular basis, a weekly basis.

And recently, we had three 19-years-olds -- and I'm just saying, just periodic -- all in one day, one from Bergen County, one from Hudson County, and one from Passaic County. They all called our helpline, all on the same day. All were poker tournament players who had lost everything and wanted help with stopping. Now, these kids were the cream of the crop educationally -- one kid was from Columbia, one kid from Rutgers; another fellow, I don't know where he was from, but he was a bright kid.

Legalizing Internet gambling will worsen the already major adolescent gambling problem. Several states, including New Jersey, show that the addiction rate for young people is twice that of the adult population. Some

of the states that have surveyed adolescent gambling are New York, Connecticut, Minnesota, Delaware, California, and Texas. All have found that the addiction rate was measured twice that of the adult population.

There is no curriculum or lesson plans in New Jersey schools on problem gambling awareness, and the results indicate that we are building a state of young, addicted gamblers.

SENATOR BUONO: Actually, I have a bill in to do that.

MR. LOONEY: I know you do. I'm going to talk about it--

SENATOR BUONO: Okay.

MR. LOONEY: --because next week, on Tuesday, we're having a press conference on that -- that we've developed a K-to-12 program, which we spent a lot of money on, and we're going to offer it free to all schools. Also, a video on this particular Texas Hold'em -- we have, and we're very excited. So where going to have it in the State House, a press conference -- and you are invited, by the way. You should have it in your mail already.

The Council was called into more than 200 schools in the last three years to present programs on gambling awareness. What we found is that young people start gambling on cards and dice -- they play a game called *see-lo*; or betting on sports, particularly football. Students in the junior and senior grades tell us that they buy lottery tickets, bet horses at the racetrack, and some gamble in the casinos. In 2003, 34,000 young people were taken off the New Jersey casino floors and 420 were arrested. And they do a good job, by the way, in the casinos. They watch them, they watch the kids. But in spite of that, that's how many kids are gambling.

Internet gambling for young people starts usually in college when many students get their first credit card. Illegal gambling on college campuses is rampant. Organized crime, traditional bookies, and illegal Internet sites compete for the college gambling dollar.

Legalizing Internet gambling will open the doors for many new players who do not gamble online, because it's illegal. Legalizing this will promote more people into addiction and worsen the problem in New Jersey. Eighty percent of people who wager do so in a social manner, 10 to 15 percent have problems because of their gambling, and about 5 percent become addicted. Without treatment, problem and compulsive gamblers' lives get progressively worse.

The Council has set up an oversight on nine gambling treatment programs which we have in New Jersey, and we have dedicated 250,000 that was spent in 2002, 2004. In this particular year, more money is needed. The State of New Jersey has received more than well over a billion dollars from gambling proceeds and spends, really, only about 800,000 on gambling prevention, education, and treatment.

The Council has worked with and has offered several intervention strategies to online sites. We work with the online people, even though it's illegal. We've given them some information on how they can be cognizant of compulsive gambling people and what they can do. In your packet there are some strategies that we've initiated and given to them.

Any initiative that would legalize Internet gambling should include funding for prevention, education, and treatment, as well as the implementation of Safe Bet programs that document betting limits and do not

offer credit. If gambling is to be considered an entertainment business then more control regarding credit, and wagering frequency, and limitations need to be a major part of any public policy.

In your packet I also got a Safe Bet. I saw a demonstration on that. An excellent way of people who can set up a program, if they're going to go gamble, to stay within betting lines and so forth. But it's something brand new and it's something for your consideration.

SENATOR BUONO: Speaking of brand new, are you aware or are you comfortable with any security system that is currently in existence that would ensure that gamblers on the Internet are of legal age?

MR. LOONEY: Yes. I saw one presentation on it. I think that it's, like, in the embryo stages, but there are some ways that they actually do that. I saw one where they could actually, if they wanted to do it -- each state by state -- wanted to legalize it and stop other constituents, there's a way to do that. Whether that's reality yet, I don't know, but they're moving toward that. All I can tell you, that is a booming business. In spite of it being illegal, people are doing it. I think Legislators have to look at this and say, "Listen, do we want to do this, and legalize it, and tax it, etc., or do we want to make it illegal and just hold the line on that?" I can tell you that we have a major health problem all over America on gambling, and the Internet gambling is the biggest growing venue of all of them. Forget casinos, forget lottery, forget any kind of gambling out there, this is growing in leaps and bounds and more people are doing it.

I just want to tell you a couple of other things that's in there. You have some information about the social course of gambling. We know that, for

a fact, when you bring gambling into an area, within a radius of casinos or racetracks, bankruptcy becomes a major thing. And there's a couple -- good information on that. So there's some silent costs that we don't see when we bring gambling in. We say, "Hey, listen, let's get gambling," and it's nice for some people. We bring in some money for the coffers in the State. But there is a downside to that. We know the addiction rate. We know about that. We know about adolescence.

The two most vulnerable people are your over 55 and under 21. And those people--

SENATOR BUONO: That's everybody, basically, just about.
(laughter)

MR. LOONEY: Well, that's 22 percent of our population are being affected. And I think we have to look at that, too.

But anyway, there's some other good statistics in here that you want to look at. But if you're going to think about legalizing, put in place these programs, at least, that we can help with the problem.

Thank you.

SENATOR BUONO: Thank you, Director Looney.

MR. LOONEY: Thank you.

SENATOR BUONO: Does anyone have any questions?

SENATOR KARCHER: No, I--

SENATOR BUONO: Senator Karcher.

MR. LOONEY: Hi.

SENATOR KARCHER: I just wanted to-- Hi.

MR. LOONEY: I know you.

SENATOR KARCHER: I just wanted to add, actually, and sort of tangentially, I've had mothers, across my district, come to me and tell me how their kids get on the school bus with socks full of change so that they can gamble on the back of the school bus. They're on the bus for a long time in many of the districts in my area. Sometimes they're upwards of 30 minutes, and it's middle schoolers. It was really very surprising to me. I was really torn when I saw, during the holiday season, all these poker games that were advertised, to go out and buy -- poker games and gaming tables and things for your own -- at your own home. I do have a 17-year-old who tells me that it is really a rampant problem when you go to someone's house on Friday night. And it's something I'm very glad that we'll be addressing.

Thank you.

SENATOR BUONO: My son is now in high school. He's a junior. But back when he, and that was a while ago, when he was in middle school, the same thing. That's when it seems to start. They had a fire drill and -- one of his friends was telling me; we were kind of talking -- my son didn't tell me this -- but one of the kids pulled out some dice--

MR. LOONEY: Yes.

SENATOR BUONO: --and they started playing. I don't know --is that see-lo? I have never even heard of see-lo, so--

MR. LOONEY: Yes. This is see-lo. That's the game. It's a hot game that they can play, right. When you're talking about young people, we have a 12-year-old, from down in Middlesex County, that 12-years-old -- buying lottery tickets on a regular basis.

Now, we work with the Lottery Commission. They do a wonderful job with responsible play programs. They put our number on everything. They do a lot of good work on it. But in spite of that, here's a 12-year-old kid being able to go in and gamble and actually get paid off \$85. I mean, the principal was just in awe. We're getting called now to do more sixth or seventh, eighth graders now, because of this. I have never, in 30 years, seen anything about this poker craze that's going on. There's tournaments going up. Many of them are illegal. People don't understand what the legality is of, even on this--

SENATOR BUONO: And you know what? I don't know if you read in the *New York Times*, a few weeks ago on Sunday. It just seems as though certain -- I don't know -- parents have kind of abdicated. They were quoted -- there were parent after parent saying, "Well, it's not so bad. At least they're home and I know what they're doing, and they're not smoking pot or doing drugs out in a parking lot." Well, I think that there's a little area in between one extreme or the other. (laughter) But it's amazing how it's just condoned.

MR. LOONEY: The truth is that even parents need education. Even people involved with addictions, like alcohol and drug counselors, who are experts and have tremendous passion for kids, all of a sudden they find nothing wrong with having casino nights to raise money and having kids get involved in that. Just by talking with them, they say, "Oh, my God, I never knew that gambling can be an addiction also." It's a purely psychological addiction. We know all about addiction. We know that everything happens in the brain. You put drugs in your body, something happens in your brain.

You overeat, people have eating disorders, something happens in their brain. So if the brain chemistry designates what happens-- So we know that some people are predisposed to this, and the bottom line is that compulsive gambling, even though you don't put anything in your body, it's absolutely an addiction. Believe it or not, it's not even recognized as an addiction yet, even though the courts, when we testify on behalf of compulsive gamblers, we use the word *addiction* a lot. But, in essence, it's not even recognized yet.

So we know that we have a long way to go in recognizing that this is a powerful, powerful thing; that when you have laws, when you're bringing more gambling in, you need to be very careful about this. It's a very sensitive subject.

SENATOR BUONO: Thank you so much, Director Looney, for everything you've done and will continue to do.

MR. LOONEY: Thank you.

SENATOR BUONO: And I look forward to working with you.

MR. LOONEY: Great. Thank you so much.

SENATOR BUONO: Okay. All right.

And last -- I've really looked forward to -- we have a financial service provider here, that was taken in vane. Not really, but somebody had raised the question, "What are and what should financial service providers be doing to stem the flow of money being relied upon to place these bets?" So with us, we have, as our last witness today, Gary Selvy, the Executive Vice President of State Government Affairs, MBNA; and Mike O'Connell.

MICHAEL P. O'CONNELL, ESQ.: Yes, that's the easier part. I'm just here to say ta-da, here's Gary. But we do thank you for the invitation here.

We often find that people don't really understand how credit cards work, and the basic kind of nuts and bolts of the little magic plastic that we carry in our wallet or our purse, and what we can and can't do, especially with regard to gambling.

But I will turn it over to Gary.

GARY SELVY: Chairwoman Buono and Senator Karcher, thank you for allowing me to come here today. Again, Gary Selvy, with the MBNA. MBNA is a financial services company, headquartered in Wilmington, Delaware. We're located in 11 states, including New Jersey, and we have operations in Canada, the UK, and Spain.

Our primary product is the issuance of credit through credit cards, but we do a few other types of credit loan products, which is an emerging area for us. We're in the business of extending credit to credit-worthy consumers through general credit cards. The agreements that we have with our customers provides, amongst other things, that cards be used for lawful purposes. The bank does not supervise the purpose for which customers use their cards. Customers determine that purpose for which they use their cards, just as they would determine that for the use of cash.

The bank does not encourage its customers to use credit for gambling purposes. It does not promote gambling or gambling-related activities and does not have agreements with Internet gambling casinos. It's the bank's position that providing general purpose credit cards cannot be

deemed the promotion or the facilitation of gambling, because it's ultimately the customer that decides.

SENATOR BUONO: But how do you determine that somebody's gambling? I mean, other than the Web site, how do you know?

MR. SELVY: Well, let me jump to that. In our industry, we've got kind of the backbone in the industry, the acquired -- which is the associations or the closed loop system outfit. We've got MasterCard, VISA, who have set up a process where they will screen the merchants and allow merchants into the system after they've screened them. And they have decided to establish a coding process whereby every transaction is encoded. It tells you what kind of transaction they have as they sign up Internet gambling casinos, which is legal in offshore bases. They encode those transactions as such. We made the decision, as an issuing bank, which is what MBNA is, five years ago that anything encoded as an Internet gambling purveyor, we don't accept the transaction. It's not accepted at all. Close-loop--

SENATOR BUONO: Is that effective?

MR. SELVY: Is that--

SENATOR BUONO: Is that effective?

MR. SELVY: Yes. We think it's highly effective. More and more issuing banks, although that's not mandated by MasterCard and VISA, are taking that voluntary approach -- is to not accept anything encoded as such. The other two systems -- the close-looped systems, which is AMEX, American Express and Discover Card -- have, a little tighter, who can come into the club at the beginning. They vet the merchant relationship up front. They actually, in some -- many cases, go out and do site visits and enroll merchants only after

they deem them to be a legal entity. In this case, neither organization will sign up Internet gambling casinos.

And then they do periodic audits after they've enrolled these merchants, just to ensure that somebody doesn't come in the back door. The problem in -- particularly in the MasterCard, VISA type, the problem comes when you've got fraudulent vendors and things are miscoded or deceptively coded out there, so that it gets around that system.

Now, as initialing bank, we've established some metrics or algorithms with our own computer system that -- we've got different layers of filters that, even if something may miss the first filter, we try to track some trends that might lead us to believe that we've got some funny activity on somebody's account -- multiple transactions, gradually increasing over a short period of time. If we do spot something that looks funny, we'll put a temporary hold on that account. Many times reach out, contact the cardholder, find out what's going on. The other way we look at this is if we see several transactions from the same vendor that looks funny. We'll then go back to the associations -- MasterCard and VISA -- and ask that they review that particular vendor merchant, and they will.

So we continuously try to build in checks and balances to weed out what we consider to be illegal activity here in the United States. And we're--

SENATOR BUONO: The problem with contacting the person who placed the bet and ask them about this unusual or funny activity is that they're not going to tell you that they're betting if they know it's illegal, right?

MR. SELVY: Well -- but to address the prior speaker, one of the problems is, is sometimes -- or the growing problem sometimes -- the use of

credit cards by underage kids taking mom or dad's card. And, at least, in this case, we're going back to the authorized cardholder -- the parent, asking, "What's going on here?" -- a lot of times flagging the fact that maybe their son or daughter has used their credit card for inappropriate purposes. So -- but you're right. It's difficult contacting the actual cardholder. If they want to be involved in something like Internet gambling, it's -- they're going to do that. We've got ways of questioning, we think sometimes, that can bring forth what activity they're actually involved in.

Again, the other side of it is, if we see several transactions occurring with different customers through a particular merchant or vendor, then we will go back, through MasterCard and VISA, and ask them to question those. Increasingly, this is one of those problems where, as the credit issuing industry and the associations continue to squeeze down and tighten up on peoples' ability to use this in Internet gambling, you've got all kinds of other payment mechanisms that are coming to the forefront.

You've got debit cards. I've just got a list of some of these, here, actually. You've got debit cards, check cards, private label debit cards. You've got online payment providers, like your PayPals and your EasyPays, also known as payment aggregators. These companies send and receive funds electronically for use -- online auctions and purchases. You've got the use of wire transfers increasingly used in this activity. You've got a mechanism called ECash, or digital cash. This method of payment is a digital representation of real money that can be placed on a computer hard drive, or Smart-Card, or other devices with memory, including cellular phones and other electronic

communication devices, or in an online repository. This is a growing area that's used.

And then finally, Internet gambling sites also offer money orders; traveler's checks; bank drafts; cashier's, certified, and personal checks; and a number of other electronic banking systems or processors as payment options. So, again, it's a lot like squeezing a balloon here. We think we're doing our part. We don't -- we agree that Internet gambling is legal (*sic*) activity here in the states. We're doing our part to try to screen out those people using the credit card for that purpose. But we would argue that there is other points in the payment mechanism that are being utilized if somebody is serious about this.

SENATOR BUONO: When you say other points in the payment mechanism -- the ones that you just delineated?

MR. SELVY: That I mentioned. That is correct.

SENATOR BUONO: Now, you had said that American Express, and I think it was Discover Card--

MR. SELVY: Yes.

SENATOR BUONO: --that they have an auditing that they do.

MR. SELVY: Correct.

SENATOR BUONO: Do you also have that as well?

MR. SELVY: Well, again, it's the difference between an initialing bank-- We typically don't audit the merchant. We don't have merchant relationships. We're issuers to the consumers, the customer. MasterCard and VISA do check merchant relationships, the people they allow into their association. So they do. But the thing that they do that's a little bit different

than American Express and Discover is, VISA and MasterCard haven't shut down completely using credit cards in Internet gambling, because they are international organizations, and there are--

SENATOR BUONO: Sometimes it's permissible.

MR. SELVY: It is permissible--

SENATOR BUONO: Yes, okay.

MR. SELVY: --in 50-plus other jurisdictions outside the United States. They haven't shut it down, but their approach has been to encode those merchant transactions so that we know, when we get those at the point of authorization, whether to accept or reject those.

SENATOR BUONO: Okay. So -- and I have a feeling I'm going to know the answer to this question before I ask it. But do you have any suggestions with respect to any legislation -- no legislation, right -- or regulations that we could enact to assist you and help facilitate this?

MR. SELVY: I think it's a good question. I hadn't really thought about it before coming here. We definitely want to work with you on whatever solutions you think is appropriate. We think that at least some of the industry is doing a good job of self-regulation here. They understand the problem. They understand the harms it creates.

The one thing I didn't mention is that we think the activity of Internet gambling is a bad risk value for us. It's just not worth our time to extend money to people who get involved in this, because it's got a low rate of return. In fact, it's a loss. So we don't think it's a good risk proposition. We don't think any of our competition thinks that -- we think they're thinking the same as us.

SENATOR BUONO: Have you ever experienced where a bettor loses and they contest the charge?

MR. SELVY: Have we personally, or do I know of?

SENATOR BUONO: Okay. Either/or? (laughter)

MR. O'CONNELL: A trick question, Senator. (laughter)

MR. SELVY: I am aware that there has been challenge by customers that have gotten into debt, and it's usually fallen in favor of the customer.

SENATOR BUONO: Great. It would have to -- interesting.

MR. SELVY: Sure.

SENATOR BUONO: Senator Asselta, do you have anything?

SENATOR ASSELTA: Yes, thank you.

Sorry I'm late.

I do know a little bit about this issue, because in the year 2001, we introduced legislation to begin to study this and look towards it.

I have a couple questions, and I don't know if it's applicable to this group, but to the two previous groups of people--

SENATOR BUONO: They're still here.

SENATOR ASSELTA: --if I could just take, really quick-- What is the status of the Nevada legislation right now? Does anybody-- Linda--

SENATOR BUONO: Would anybody know that, anybody here?

MS. KASSEKERT: Which--

SENATOR ASSELTA: For Internet gaming, live remote gaming, from Las Vegas.

SENATOR BUONO: If you're going to speak, could you allow her to sit so-- It's being recorded.

Thank you.

MS. KASSEKERT: I don't think I know at this point, but we can check that out, yes.

SENATOR ASSELTA: Okay.

SENATOR BUONO: And then that-- What does it do, or purports to do?

SENATOR ASSELTA: Well, it was-- I think the issue in 2001, 2002, was Las Vegas was moving towards making it legal in Las Vegas. And our concern here was, if Vegas makes it live remote -- and we're talking about live remote, which there is technology now that you could actually go on your computer in your home and actually be--

SENATOR BUONO: Be in a game.

SENATOR ASSELTA: --in a casino, in Harrah's--

SENATOR BUONO: Right, right.

SENATOR ASSELTA: --and whatever casino -- whoever decides to do that. What is the status of that Nevada legislation? Did it finally get all the way to the finish line? Are they moving forward, and the industry moving forward, in Las Vegas to apply that new law? And the other issue, and I know we have someone here from Harrah's -- what is the position of dual-gaming properties on this issue? Because if you're a single gaming property owner in Atlantic City, you may not want it, or you may want it. If you're a dual-property gaming facility owner in Vegas and Atlantic City, you may want it only in one particular state and not the other. So there's a lot of economic

questions that need to be answered in respect to those properties. I know that there is the technology now. We've had numerous exhibitions over the last few years to show us that.

Madam Chairwoman, maybe at some point in time we could entertain that again, so that the Committee could see the new technology that's developed.

My other concern about the credit card issue -- from what I understand, those credit card holders could establish a ceiling of losses. For instance, a credit limit in gaming, and once that limit is exhausted the computer shuts down. You can't gamble any more. I don't see how that's much different than a credit limit of someone going out and shopping in the mall. I mean, a debt is a debt, whether you're buying too much clothes at Macy's or gambling online at home. So I don't quite understand the relativity to your concern whether the debt is a gambling debt or a clothing debt to you, and the difference.

MR. O'CONNELL: Well, one--

SENATOR BUONO: One's enforceable, one isn't.

SENATOR ASSELTA: Especially in respect that the gambler, or the person at home gaming, can establish a credit limit. And once that limit is exhausted, bang -- they can't gamble anymore.

MR. O'CONNELL: True.

SENATOR ASSELTA: Unlike if -- you can't establish that in Macy's.

MR. O'CONNELL: Well, two things. One is a legal transaction, one is an illegal transaction, in our mind.

SENATOR ASSELTA: Well, yes, to them. Right.

MR. O'CONNELL: And the other is, one has a higher risk proposition than the other. Clearly, we feel that gambling debt, particularly online gambling debt, has a much higher risk value for, say, versus purchasing clothes in a mall somewhere. So I think there is a little bit of a difference there. But the way we're going to deal with it is just not authorize any extension of credit for anybody involved in Internet gambling at this point, if we're aware of it.

SENATOR BUONO: Anyone else? (no response)

Well, thank you very much, Senator Asselta, for your input. It was very--

Oh, yes. Professor, you wanted to-- Come on up to the microphone, if you will.

We're almost right on time. We have to convene for a vote in the Senate.

But we do have time for Professor Stumberg.

MR. STUMBERG: May I respond to the--

SENATOR BUONO: A wrap up. (laughter)

MR. STUMBERG: Well, I'd like to respond to the question you asked earlier. And I was prompted by the Senator's comments about dual-gaming properties. Maybe you can refresh my memory of your question? You were talking about perhaps states moving in the direction of negotiating with the WTO--

SENATOR BUONO: Right.

MR. STUMBERG: --to move towards some international standard that would solve some of the problems associated with Internet gambling. I just wanted to lay out a few ideas about how you would think about that.

SENATOR BUONO: Okay, great.

MR. STUMBERG: First of all, as I was listening to Tom Auriemma describe the importance of Federal legislation -- setting a benchmark or creating a framework for states to participate in either a ban or a regulatory scheme -- I was reminded that that's the traditional way of dealing with problems on a national scale. But from the bottom up, where states are the laboratories of democracy, they experienced the problems first. They take their concerns to Washington. They experiment. If the experiment doesn't work, you go back and redesign the system.

So remember that this process of experimentation that you are inviting us to think about, maybe it's just in the beginning stages. Once you lock yourself into a trade commitment, it's not permanent in the sense that a Constitution is quasi-permanent, but it's almost permanent in the sense that it's very hard to get out of, except for great expense. So just keep that in mind.

One way to give yourself the space to experiment is to ask your trade negotiators to carve out from the World Trade Organization's agreements the entire sector, so that you can experiment, and if necessary, go back and redesign the system without incurring the same problem all over again in the future. It's a question of carving out the space for your experimentation.

Secondly, remember the World Trade Organization is not a problem solver for economic development, or underage gambling, or health, or

anything else. It's only a problem solver in terms of liberalizing markets. So the problem solving is what occurs between the State of New Jersey and the Federal Government, and perhaps some foreign colleagues who are trying to regulate the same industry. But it's a different community of decision makers who have to be involved in that process and that kind of consultation.

My third point is, there's no process yet that's been created for states to initiate their own consultation to the extent that the foreign trade commitments to the United States are concerned. You've not been invited into that process.

SENATOR BUONO: Not yet.

MR. STUMBERG: And perhaps that's not a bad thing, actually. If you could invent your own process, in a way that would be better and more to the liking of state governments. In other words, build your own process and invite the trade negotiators to that.

SENATOR BUONO: We'll wait to see what happens with the court decision first. We may not have to go there, but -- do you know what I'm saying? I mean, I'd rather not give at all on this issue, but-- And I'd rather, personally -- I'm giving my take on it. I think that the ban makes more sense for states like New Jersey anyway. But I don't know that we're going to have the luxury of that.

Now, I did have a question, though. When you talked about carving out that, I know what you mean. But what do you really mean about carving out? Explain a scenario within that carve out.

MR. STUMBERG: Well--

SENATOR BUONO: What a state like New Jersey would be able to do, for example, within the carve out, that would allow us to do anything, or--

MR. STUMBERG: Well, sure. Had the United States done its homework in 1993, which meant had the trade negotiators come and talk to you, you might have said something like, "Please do not make a commitment under this services agreement related to gambling and betting services at all. No commitment, period." And the trade negotiators probably would have said, based on what they said last week, "Okay." So that's what I mean by a carve out. It would mean that there's-- You would have full range of flexibility under your Constitution and the U.S. Constitution. And even if you changed your mind and reregulated or taxed differently or required in-state licenses for Internet gambling services, that kind of dual-facility connection to the jurisdiction of your state, nobody from another country could come back and say, "We're going to complain against you in the World Trade Organization. And if we win the case, you'll be subject to trade sanctions on any other kind of product or services coming out of your country." You wouldn't have that extra layer of legal threat or economic punishment to worry about. And it would also, obviously, make your political job a lot less complex.

So by carve out, I mean make the threat of trade sanctions go away and just leave the field open for you to talk to other states and the Federal Government, and even other countries, with the freedom to experiment.

SENATOR BUONO: Well, I have a lot more questions, but, obviously, we need to stop now and go down and cast a very important vote in the State's Senate.

I want to thank you all, once again, particularly those of you who traveled from great distance. And I think this is really the beginning of a dialogue on this very complex issue. We await April 7, I believe it is, to see what the decision is on appeal, and we'll go from there.

Thank you all very much.

We're in recess.

(HEARING CONCLUDED)