

guess what a state court would do; a plaintiff starts his case off on the wrong foot by choosing a judge who does not want to hear this type of case.

How does a state court, or a federal court acting like a state court, decide whether local public policy will prevent enforcement of a gambling debt that is legal where made?

Even before the voters of New Jersey approved legal casinos, one prescient and observant judge saw the third wave of legal gambling had changed public opinion in that state. Faced with a defendant who admitted running up a big gambling tab at the Caribe Hilton of San Juan, Puerto Rico, and stopping payment on the checks, Judge Mountain of the New Jersey Supreme Court asked, "Should New Jersey any longer remain a privileged sanctuary for those who would play but will not pay?" *Caribe Hilton Hotel v. Toland*, 63 N.J. 301, 307 A.2d 85 (1973). Judge Mountain looked at the changing laws of New Jersey and the attitude of the citizens toward legalized gambling and decided, "The fact that wagering in various different ways is now authorized demonstrated that our public policy no longer can be said to condemn gambling *per se*."

The question often comes down to whether the principles of the Statute of Anne are still valid. That statute, remember, outlawed legal as well as illegal gambling debts.

Gambling in the United States today is big business, with publicly owned multinational corporations investing hundreds of millions of dollars in licensed casino resorts. Is it possible that a law passed to protect a semi-feudal aristocracy of the late Middle Ages still is the law of the United States?

Absolutely.

On August 5, 1983, a federal judge, sitting in the United States District Court in Richmond, Virginia, ruled that Resorts International Hotel, Inc., could not collect on a \$10,000 promissory note signed by one Joseph J. Agresta, because Mr. Agresta had lost the money gambling. Although gambling is legal in Atlantic City and gambling debts are collectible under the statutory law of New Jersey, this lawsuit was being brought in Virginia, and Virginia law has adopted both the letter and spirit of the Statute of Anne—gambling debts, even legal ones, are not collectible in Virginia.

What made the case even more unusual is that the defendant, Mr. Agresta, didn't even show up; he failed to plead or otherwise defend against the complaint. Resorts International thought it was going to get an easy default judgment; instead, it found its lawsuit dismissed.

The court cited a Virginia case from 1851 proving that it has been the public policy of that Commonwealth for the past 250 years to consider all gambling contracts as void. The court was also able to point to a statute passed in 1919 and a 1980 Virginia Supreme Court case, *Kennedy v. Annandale Boys Club, Inc.*, 272 S.E.2d 38 (Va. 1980). In that case the plaintiff, Eva M. Kennedy, claimed that she had won a bingo game but the charity refused to pay. Mrs. Kennedy was thrown out of court despite

the fact that the bingo game was legal under the laws of Virginia—gambling debts are not collectible, at least in Virginia.

An interesting twist is that the federal judge admitted that another federal judge, sitting in the exact same court, had ruled the other way, allowing the casino to collect. Both judges were trying to guess what a state court in Virginia would do; but, Virginia state courts had never had to decide a case involving a legal casino bet. The second judge was more familiar with the law of Virginia, or maybe the first casino's lawyers did a better job. The law is not supposed to lead to such radically different results, particularly not in identical cases decided in the same court.

A California resident used to be able to run up a big debt at a Nevada casino and then stop payment on his checks or otherwise refuse to pay and the casino could do nothing about it, other than to cut off the player's credit. California courts had always thrown out gambling debt collection cases brought by Nevada casinos. The California courts did not have to look to the public policy of California like the Virginia federal court looked to the public policy of Virginia in the Resorts case. The California courts had a much simpler argument: if a Nevada court would not enforce a gambling debt made in Nevada a California court certainly wasn't going to enforce it either.

But the law of Nevada has now been changed. A Nevada court will enforce a gambling debt, but only if that debt is owed to a casino and is in writing.

Someday soon a California gambler will refuse to pay off a gambling debt and the casino will sue in a California court. California, for the first time, will have to decide whether it will enforce Nevada gambling debts owed to the casino. Perhaps the court will find that a statute that only allows the casino to sue, and not the player, is repugnant to California public policy. And, for the first time, a California court will have to decide whether gambling in general is against the public policy of the state, despite California's horse racing, bingo, card rooms and new state lottery.

The Nevada State Legislature has created a situation that will soon force California to decide whether the Statute of Anne of 1710 is still good law, and whether legal gambling debts are enforceable in 1986 America.

More interesting is the case of Nevada itself. The courts of Nevada have consistently declared for over a century that the Statute of Anne is still the law of that state, and gambling is against public policy. That was the reason the state Legislature had to pass a statute to make casino markers collectible. But that did not necessarily change the public policy of the state. Will a Nevada court refuse to enforce an Atlantic City casino marker against a Nevada defendant on the ground that gambling is still against the public policy of Nevada?

You may have wondered what one of these cases actually looks like. The court files would take up a number of file folders for what are known as pleadings, the documents that form the framework for the case and inform the court what is going on. Remember, however, that in our adversary system the judge will not look at these

documents until called upon to render a decision, usually after months or years of work by the lawyers. The court clerks stamp every document and file it in the proper file, but the judges do not wander down to the file room to see the hundreds of new cases filed each day.

The lawyers' files will be much thicker than the courts. There will be copies of all correspondence, any documents turned over by the client or produced by the other side, research memos including photocopies of cases, and documents created during the life of the case that have not been filed with the court.

The heart of the files are the pleadings, starting with a summons and complaint, which tells the defendant he has been sued and lays out the plaintiff's basic case. There is some form of return of service to let the court know that the summons and complaint have been served.

After being served the defendant has a very short time, usually 20 days, to do something. If you have been sued you must immediately go to a lawyer; once the lawyer has your file almost anything that goes wrong is his fault, not yours, which is the reason lawyers have malpractice insurance. Defendant's lawyer will usually call up plaintiff's lawyer and ask for more time to prepare a response; 20 days is a short time to research the facts and law and lawyers tend to put everything off to the last minute anyway.

Defendant's lawyer will now serve some documents in return. Standard responses are to move to dismiss for some defect in the plaintiff's case; in some states we call that a demurrer. Defects can be anything from technicalities, such as the process server who left the papers was underage, to problems that go to the basic foundations of the case. Typical of the latter in a gambling debt case would be a motion to dismiss a complaint for failure to state a claim; the defendant would file a memorandum citing statutes and cases that show that gambling debts are not collectible under the laws of this state.

Often the defendant will file an answer first. The answer can include all of the defects in plaintiff's case and also contain denials of plaintiff's allegations of facts. This gives the defendant more time to prepare his motions to dismiss.

Another common defense action is to file a counterclaim. In a gambling debt case the player may sue the casino, claiming the casino used unfair collection practices. Counterclaims are often filed for bargaining purposes, but you must not file such a claim unless you have a good faith basis in believing it is true. Defendants also look around for other parties to drag in and share any possible loss; we call these new claims third-party complaints. Naturally, any counterclaim or third-party complaint starts a whole new chain of responses from the opposing parties.

After these initial documents there usually is a short flurry of discovery. The parties ask each other for relevant documents, for example copies of cancelled checks and credit markers. A party can send written interrogatories, questions that must

be answered under oath. Depositions are common; they involve questioning a person under oath while a stenographer takes down every word said. Discovery comes and goes in short bursts of activity followed by months of quiet.

At some point a party will try to find a way to resolve the case without having to go to trial. Settlement is one way, motions are another. A standard motion by either party is a motion for summary judgment. This is like the motion to dismiss for failure to state a claim but allows the parties to tell the judge about additional facts. If the judge decides that there are no facts in dispute and that the moving party is entitled to win as a matter of law there is no need to have a trial; the judge will enter judgment right then and there.

The overwhelming majority, something like 97% of civil cases, do not go to trial. The costs of a full trial are so great that even a party with a winning case has a strong incentive to settle for less than the full amount possible.

I have discussed a number of gambling law cases throughout this book. I have included a typical decision to show what a reported case looks like, and how judges make their decisions.

This case is from the *Southern Reporter*, part of the system set up by West Publishing Company. West is by far the leading publisher of court cases; it tries, and almost succeeds, in publishing every reported decision anywhere in the country. West has also developed a Key Number System that allows a lawyer to find a case dealing with a similar issue in any of West's cases or digests for any place in any year. The little key tells you that this case has been analyzed and indexed by West and is part of that system.

The name of the case tells you who the parties are, at least on appeal. Since the hotel is the appellant you can assume it lost in the court below. Most of the cases studied by lawyers are appellate cases, only in the federal courts with important cases do you usually get written published opinions from the trial judge.

The court issuing the opinion comes next. This tells you who is bound by this decision. Courts outside of Florida will not consider this case as binding precedent. Since this was not the state Supreme Court, it is possible that courts of appeal in other parts of the state might differ, but that is very unlikely. The date is the date the decision was issued by this court.

The one paragraph summary is written by West. It tells you what happened in the trial court below and what this court had to say. As you can see, a Puerto Rico casino sued a Florida resident, in Okaloosa County, to collect a gambling debt. The trial judge granted a summary final judgment against the casino; this means there were no questions of fact in dispute and the defendant was able to convince the trial judge that under Florida law the plaintiff cannot recover. We do not have any of the actual papers coming out of the trial court, just whatever this appellate court wants to tell

Collecting Gambling Debts Across State Lines



DORADO BEACH HOTEL CORPORATION,
a Delaware corporation, Appellant,

v.
W. A. JERNIGAN, Appellee.
No. 1-354.

District Court of Appeal of Florida,
First District.
Sept. 12, 1967.

Action by Puerto Rico casino against Florida resident to collect gambling debt. The Circuit Court of Okaloosa County, Charles A. Wade, J., granted summary final judgment against the casino and the casino appealed. The District Court of Appeal, Rawls, J., held that Puerto Rico casino could not enforce gambling obligation incurred by Florida resident even though obligation was valid in Puerto Rico.

Affirmed.

1. Gaming ¶2

Gambling obligation although valid in place where created cannot be enforced in Florida because enforcement would be contrary to public policy. F.S.A. § 849.26.

2. Gaming ¶1

Public policy of Florida permits a restricted type of gambling which is incidental to spectator sport. F.S.A. § 849.26.

3. Gaming ¶25

Florida will not lend its judicial arm to collection of monies wagered in enterprises not authorized by the law of Florida. F.S.A. § 849.26.

4. Gaming ¶2, 25

Puerto Rico casino could not enforce gambling obligation incurred by Florida resident even though obligation was valid in Puerto Rico. F.S.A. § 849.26.

Williams, Salomon & Kenney, Miami,
for appellant.

Gillis E. Powell, Crestview, for appellee.

RAWLS, Judge

Dorado Beach Hotel Corporation has appealed from a summary final judgment denying it the right to collect a gambling debt in Florida. The sole question is, Can a gambling obligation valid in Puerto Rico where created be enforced in Florida?

[1] W. A. Jernigan, a Florida resident, while in Puerto Rico where casino gambling is legal, gambled in Appellant's licensed casino, lost money and gave Appellant a check for \$6,000.00 to pay for his losses. Jernigan then stopped payment on the check, and the Hotel brought this action in Florida. The trial judge entered summary final judgment for defendant on the grounds that the debt was uncollectable

by virtue of Section 849.26, Florida Statutes, F.S.A. We are in accord with the pronouncement in *Young v. Sands, Inc.*, 122 So.2d 618 (Fla.App.3d, 1960), to the effect that a gambling obligation although valid in the state where created cannot be enforced in Florida because it is contrary to public policy, and therefore affirm.

[2-4] The public policy of this State is that the forms of gambling made legal are contests staged for those seeking pleasure in the State—primarily tourists. These contests are staged between men, horses or dogs, and part of the entertainment afforded to the spectators is the State's permission to wager on the outcome of these restricted events provided the State receives its "cut of the take". In essence the public policy of the State of Florida is established to permit a restricted type of gambling which is incidental to spectator sports. This State has consistently refused to permit gambling on non-spectator sports such as bookie parlors, football parlors, et cetera. Thus, the public policy of the State of Florida is well established that the State will condone certain selected forms of gambling, but it has likewise been established that the State will not lend its judicial arm to the collection of monies wagered in such enterprises not authorized by the law of the State of Florida. Although many efforts have been made to obtain legal sanction for wagering at gaming tables, such authorization has never been given; and should a citizen of the State of Florida lose at a gaming table in the State, clearly the operator could not collect through the judicial processes. It is our conclusion that this forum will not extend its judicial arm to aid in the collection of this type gambling debt whether the transaction giving rise to the loss arose in Nevada, Puerto Rico or Monte Carlo.

Affirmed.

WIGGINTON, C. J., and SPECTOR, J.,
concur.

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us. The District Court of Appeal agreed with the trial court, that the casino could not collect, so the judgment was affirmed.

The four numbered paragraphs are written by West and put the reader into the West Key Numbering System. West has developed headings for every area of the law; gambling law cases in general come under "Gaming." Gaming key numbers 1 through 50 will have any case holding relating to "Gambling Contracts and Transactions." Key number 1 is "Wagers in General" and number 2 is "What Law Governs." Key number 25 is under the subtopic of "Rights and Remedies of Parties"

to a gambling contract; specifically, "Parties to Bet or Game, Enforcement of Contract." Lottery cases are indexed under the separate heading "Lotteries;" while horse racing cases, for historical reasons, fall within "Theaters and Shows." West tries to have a key number for every possible topic and subtopic. With gambling they cover everything from "Cheating or Fraudulent Practice," key number 16, to specific games: "Keeping or Exhibiting Gaming Table, Device, or Implements; Crap Table," key number 74(4). If you want to know whether the courts of Hawaii have decided any cases on the crime of having a crap table you can go to Gaming key number 74(4) in the Hawaii or Pacific Digests and find all the reported cases in which a crap table was involved.

The paragraphs summarize what this case had to say about each key number topic.

The citation "F.S.A. Section 849.26" refers to the Florida statute discussed by the court. That statute is Florida's version of the Statute of Anne, making all gambling contracts void, except for parimutuel bets.

Next come the names of the lawyers. If you like what a lawyer did in a reported case you can contact him to handle your problem.

Rawls, Judge, is the judge who wrote the opinion. Cases taken up on appeal are usually heard before panels made up of three judges, although only one usually writes and signs the opinion. The names of the other two judges are at the bottom of the case.

Everything from here on was written by the judge, except the numbers in brackets. Those numbers relate to the key number paragraphs at the beginning of the case. Say you are a Florida resident who owes money to a Puerto Rico casino, the only thing that interests you is key number 4. You can go directly to the part of the case that discusses that key number by finding [4]. Opinions can run for dozens of pages and cover many different points of law, the key number references can save you from reading cases that seem to be on point but are not.

A good court opinion will start with a summary of the pertinent facts and law. Here we quickly find out what happened in the court below and what the legal question is that the judges now have to decide. We also find out the facts.

There is no dispute that Jernigan gambled and lost in a licensed casino in Puerto Rico, that he gave the casino a check for \$6,000 for his gambling losses, and that he stopped payment on the check when he returned to Florida. The casino sued Jernigan in Florida and the trial court entered summary judgment for the defendant on the ground this gambling debt was uncollectible under Florida statute. The question is whether the trial court was correct.

The court of appeals quickly states that the statute and another Florida case indicate that gambling debts are not enforceable in Florida, even if legal where created, because it is contrary to Florida's public policy. The court now has to give its reasoning for this conclusion.

The court was immediately faced with the problem of the existence of widespread

gambling throughout the state of Florida. The judge could not pretend that gambling is illegal in his state; he knew that there are horse races, dog races and jai alai, which attract thousands of bettors. But he wanted to uphold the law as he saw it, to continue to make gambling debts uncollectible. He therefore had to distinguish casino gambling from the type of gambling common in Florida.

He did this by saying that Florida gambling is primarily for tourists. Furthermore, these are contests, and the betting is "incidental to spectator sports." He pointed out that Florida had considered casino gambling but had rejected it. Therefore, unless the bet was on a form of gambling authorized by Florida law, the courts will not help the winner collect.

There are a number of ways to read this decision. On the surface we now know what the law of Florida is with regard to casino bets from Puerto Rico, with strong references to Nevada and Monte Carlo. This will be the law until it is changed by a later court or the Florida Legislature. If gambling increases dramatically, particularly if casinos come to Miami, the rationale behind this decision will be gone.

On another level the case helps answer the question about when and how public policy can be used by one state to block the laws of another. Puerto Rico is part of the United States, and it is only the strongest public policy of Florida that would allow a Florida judge to disregard the laws of its sister commonwealth.

Who determines what is the public policy of a state? Apparently the judges felt they were in a position to do so. How do they decide what that public policy is? They looked to statutes passed and defeated by the state legislature and tried to determine what is behind what they observed happening outside their courthouse doors.

One of the interesting twists to this decision is that the conclusion reached does not follow automatically from the arguments given. Change some of the language a little, emphasize the amount of gambling in Florida rather than the spectator nature of the sports and this opinion could have been in favor of the casino. Courts in New York dealing with similar facts reached exactly the opposite conclusion: they felt that there was so much gambling, on spectator sports, that the public policy was in favor of gambling, all forms of gambling.

It is also interesting to speculate as to why the court reached the decision it did. I find the tourist argument hard to buy, after all Puerto Rican casinos are limited to tourist hotels, while most people who go to Florida tracks are Florida citizens. In fact, at the time this decision was rendered Puerto Rico explicitly prohibited its casinos from offering their facilities to the Puerto Rican public. But perhaps the judges truly believed there was something fundamentally different about casino gambling.

If it is not too cynical I would offer another suggestion. Always look at who the parties are and what they are asking the court to do. Here we have a Puerto Rican casino suing a resident of Florida in a Florida state court. There was no reason for the court to mention so prominently that Jernigan was a Florida resident; the result

would, or at least *should* have been exactly the same regardless of where the defendant resides, so long as he was properly served under Florida law. But state courts protect their own citizens, sometimes more than they protect out-of-staters. Puerto Rico is close geographically to Florida and there must be large numbers of Florida residents who gamble on the island. What benefit would there be to Florida (other than supporting the law) for Florida to open its courts to suits by Puerto Rican casinos against its residents? It would be a drain on the court system, and a drain on the pocketbooks of the state's residents, with nothing to show for it but hard feelings toward the judges.

Until Florida itself has casinos that want to collect on unpaid markers from out of state players, Florida courts are going to find that public policy supports the tracks and jai alai, but casinos are out of luck.

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Gambling and the Criminal Law

Gambling was not a crime under the ancient common law. Even today, in every jurisdiction, state or federal, gambling is not illegal, unless there is a statute that makes the specific act a crime.

Since we are dealing with statutes, a person accused of a crime, or someone who just wants to see whether what they are doing is illegal, must first look up the actual words of the statute as passed by the state legislature or federal Congress. The statute will state what is illegal; if some activity is not covered by a statute it is legal. It will also become necessary to look up court cases that have construed the particular statute to find out what activities the courts think the legislature intended to be covered by the law.

Nowhere is the nation's ambivalent feelings about gambling more evident than with the criminal laws. On their face the criminal laws look pretty tough; almost all forms of public or commercial gambling are illegal, except those specifically licensed. Even most forms of private gambling are criminal, although there has been a great relaxation in the laws against purely social betting. But despite the tough appearance of the laws, the reality is something far different.

Look at a typical, hypothetical East Coast state. Many forms of gambling flourish here; some are legal and actively promoted, while others are illegal but tolerated. This jurisdiction has a state lottery requiring constant advertising. It was created with the promise of diverting large sums of money from the illegal "numbers" rackets into the state's coffers. The numbers games, however, remain.

An old established horse racing industry enables players to place parimutuel bets at the tracks. There have been occasional scandals, but the major discussion among horsemen has been the declining patronage and perceived competition from neighboring states, particularly a nearby state's off-track betting (OTB) operation and the state lottery. There is considerable interest in instituting an OTB operation within the jurisdiction, but the track owners want a guaranteed percentage from the state to cover any

loss in attendance. Bookies, operating quietly and illegally, are already around to take phoned-in bets from gamblers.

In addition, the attention drawn to the Atlantic City experiment has created pressure from the local tourist industry to legalize casinos. Some urban legislators see casinos as a unique tool for redeveloping the inner city, others see it as a way of helping the resorts while raising tax revenue. But Atlantic City's problems have scared them off for the moment. While discussion of legalization continues, the police have slowed down their already low level of activity against illegal gambling. The cops, including the top brass, consider it hypocritical to arrest people for illegal gambling, when gambling is legal across the street. As the deputy coordinator for criminal justice in the New York Mayor's office admitted, "Once gambling is legalized, we'd have to reevaluate our law enforcement policy regarding illegal casinos." *N.Y. Times*, Mar. 27, 1979, at B1.

Other legal and quasi-legal forms of gambling abound, sometimes not recognized as such. Bingo or one of its variations is allowed for charity, and a considerable industry has developed around the regularly scheduled games. Commercial contests and sweepstakes are accepted as ordinary business practices.

The legislature will decriminalize social gambling when it gets around to it; the statute is hardly ever enforced, anyway, except for purposes of harassment. The police recognize that the laws against social gambling are primarily a legacy of Puritan times and are now merely a symbolic gesture against sin. The prohibitions against social gambling, particularly private games, are neither enforced nor enforceable.

The piecemeal expansion of legalized gambling has been accompanied by a relaxation in the enforcement of those statutory prohibitions still in effect. The true meaning of gambling laws and the effect they have on restricting gambling activities are determined less by what the law says than by how local police and prosecutors conduct their daily affairs. Crime enforcement in this state reflects the national trend, a steady and substantial decline in gambling arrests.

The few arrests that are made almost always result in dismissals, findings of not guilty, or the imposition of a minor fine. This is not a sign that illegal gambling has died out; it flourishes. Bookies do a large business in illegal bets on single sports events and sports cards. The customers are typically solid middle class: mostly white males over the age of 18 with a college degree and a high income.

The numbers racket, "policy," also flourishes, but with a different clientele. The numbers bettor is black, Italian or Spanish-speaking, and lives within the large urban area of the biggest city in the state. The amount of money bet on the numbers increases with the increased income of the players up to the \$15,000 per year level of income.

Off-track bets on the horses with bookies; card and dice games; and other forms of illegal gambling occur to a lesser extent. Additionally, about 20 percent of the population break the law every year even though limiting their gambling to social

bets between friends. A total of 61 percent of the adult population participate in gambling each year, 48 percent in some form of legal or illegal commercial enterprise.

Two parallel, marginally competitive markets thus exist. One is an area of expanding legal gambling enterprises. The other is a thriving illegal gambling trade that law enforcement officials, prosecutors, judges and the public are either unable or unwilling to eradicate. This imposition of minimal burdens by local officials on the operators and bettors of illegal games has led to an unofficial policy of benign prohibition. Benign prohibition is characterized by the following factors:

- 1) Law enforcement agencies lack the resources to conduct thorough gambling investigations;
- 2) Gambling is considered a low priority offense;
- 3) Gambling-related corruption of police is widespread and weakens law enforcement;
- 4) Many law enforcement officials believe that gaming laws are unenforceable and thus they ignore violations;
- 5) Penalties for gambling offenses are relatively light.

The problems of benign prohibition, particularly corruption, arise from the uncontrolled discretion the police and prosecutors have at their command. Police discretion ranges from a cop on the beat ignoring the illegal acts he sees to officers committing crimes themselves.

The police are assuming a role they were not meant to assume when they have complete discretion as to who will be arrested and when. Red light districts develop when the police decide that the only way they can control prostitution and other vices is to allow them to exist only in certain areas. The police have no official power to pass zoning laws; they certainly have no power to nullify the law wherever they see fit.

Officially the police are supposed to enforce the law against all those who break it. Cops know this is impossible; they do not arrest every one who jaywalks or starts a fight. If they did make an arrest every time they saw the law being violated they would soon have the community up in arms: the jails would be full, the court system would break down, and they would be in court constantly testifying and defending against suits for harassment and violations of civil rights. There are not enough resources to arrest everyone, and choices have to be made every day. The New York City police are so overworked that they have allowed wide-open drug selling in Greenwich Village so they can spend their time going after crimes of violence.

The cop on the beat and even those higher up in the law enforcement structure are given no guidelines, or conflicting impressions, as to how to behave toward violators of the criminal gambling code. An officer making the gambling arrests he is told to make would receive no support from the department, the public or the judicial system. The result is that the officers realize that gambling arrests are considered unimportant, although gambling is prohibited by statute.

The public plays an important role in creating the moral context in which the laws are to be enforced. The public has a double standard of morality in dealing with gambling, prostitution, liquor and similar matters; there is a desire to outlaw in the abstract but not to enforce strictly.

The law has always had trouble with consensual, victimless crimes. Should the law prohibit what most people want to do? Illegal gambling clearly does lead to severe problems for a small part of the population, perhaps as much as three percent of the public are compulsive gamblers. If the activity is harmful, should the law protect people from themselves? Some people claim that gambling undermines the American work ethic, seducing people into believing that they can get something for nothing. Should the majority be able to impose their views on the minority? What if the majority is correct? Should the criminal law be limited to a list of prohibitions that everyone agrees upon and that society can enforce (murder and arson)? Or should the law exhort the people into doing what is right by laying down moral guidelines, even when it knows the law will not be obeyed (Prohibition and anti-gambling laws)?

A significant segment of the population is opposed to legalized gambling and wants the laws on the books enforced. But the majority of voters feel the gambling laws are of the lowest priority, below prostitution, drug and liquor laws, pornography and all crimes of violence against people and property. Many of these voters want the laws left on the books, but are unwilling to devote the resources for law enforcement. A sizeable majority surveyed stated they would not actively help police in their gambling enforcement efforts. Legislatures have found it convenient to avoid facing the problems by allowing discretion to float throughout the system among police, prosecutors and judges. Thus, the value of the statutory scheme becomes less sacrosanct; the officer sees himself called upon to enforce laws nobody wants enforced. It is easy for an officer in such a position to fall into venality and corruption.

America has a tradition of individuals making their own decisions about law enforcement. A person feels free to violate the law if the law has become disputable on moral grounds and the particular act involved does not violate the individual's concept of morality. This attitude would naturally strengthen the rule of law when a statute prohibits conduct which is generally regarded as immoral, but breeds disrespect when the act forbidden is not generally considered a violation of an inner moral code.

Unlike any other criminal business a successful illegal gambling operation requires a freedom to operate in a routine and scheduled manner. Some bookies are quite hidden in their daily operations, with sophisticated telephone equipment to forward calls so that almost no face to face meetings occur. Arrests here require detailed ground work and a considerable diversion of police resources from other crimes: infiltration by the police and court ordered wiretaps. On the other extreme are illegal slot

machines, which must be out in the open where they can be seen and played. Any cop walking a beat could make an arrest in a bar by opening his eyes and ears.

A patrolman will not make gaming arrests if not pressured to do so. The arrests require great efforts to meet evidentiary requirements while observing the defendants' constitutional rights and produce little feeling of accomplishment.

The police, however, do not want to gain a reputation of being indifferent to lawbreakers. Often a policy of selective enforcement and quotas is the compromise worked out. Such a system will lead to corruption since the gambling operators are dependent on the police for the continued survival of their enterprise, and will take every opportunity to ensure noninterference. An individual officer involved in such a corrupt system loses respect for his superiors and the laws he was meant to enforce.

The actual goal of the police is to achieve some control over gambling, not full enforcement. Few police administrators will openly admit that they exercise any discretion over enforcement of the criminal laws; however, they recognize that police objectives go beyond mere enforcement of the gambling laws. The police state their objectives concerning enforcement of the gambling laws as including fighting organized crime, maintaining a favorable public image, keeping undesirables out and maintaining public order. Is it any wonder that police raid alley crap games and large scale bookie operations more than other forms of illegal gambling?

Since administrators will not admit the existence of discretion, the lower ranking officers are left in an ambiguous situation, and the new officer's position is even worse. The new cop is strictly on his own. He has been told that gambling arrests are just as important as other arrests but he does not know how to make such an arrest. The result is that all knowledge of vice work is acquired from colleagues, who have no incentive to rock the boat.

What are the effects of uncontrolled discretion and corruption? One obvious result is public disrespect for police and the law. Another is fewer arrests and more widespread illegal gambling. Of the estimated 9 million arrests made for all offenses in the U.S. in 1974, only 61,900 people, seven-tenths of one percent, were arrested for gambling violations. Between 1960 and 1974 arrests for all offenses rose 33 percent; gambling arrests dropped 67.7 percent.

Even if gambling is not harmful to individuals or society, a dubious proposition, the widespread illegal gambling has come about as the result of officials openly disregarding their duty, not through legalization. The officials thus become susceptible to further corruption; the corruptor has gained some control over the corrupted. Corrupt cops begin to think in terms of clean money, gambling bribes, as opposed to dirty money, murder payoffs. The distinction between the two sometimes begins to fade. The Knapp Commission found New York cops involved in burglaries, prostitution, and even contract killings.

Widespread illegal gambling also leads to the formation of criminal organizations.

Illegal gambling has traditionally been the major revenue source for organized crime; it is possible that drug money now is on top. Whether or not the mafia image of organized crime is true, or organized crime being linked to illegal gambling is correct today on a national scale, history has shown that widespread illegal gambling leads to a domination by organizations willing to use violence to eliminate their competition. Such organizations can become extremely powerful on the local level, controlling not only the police, but judges, prosecutors and elected officials as well.

Uncontrolled discretion need not be limited to the police. Many of the factors leading to the nonenforcement of gambling laws by the police also affect prosecutors and judges, even if uncorrupted. If the police make an arrest they are likely to find the case dismissed or only a light penalty given, thus reinforcing the cop's view as to the low priority of the gambling laws. There were 2,096 arrests for felonious gambling in New York state in 1969, yet only 281 were indicted, resulting in but 15 convictions. None of the 333 defendants convicted of felonious bookmaking in California in 1973 were sentenced to prison.

Prosecutors generally do not recommend penalties that would act as deterrents, nor are they held accountable, due to the lack of record keeping on prosecutorial decisions. Judges often complain that law enforcement authorities are wasting the resources of the criminal justice system by going after gamblers while muggers and rapists roam free. A connection with organized crime is rarely established.

What is the effect on society of the present system of benign prohibition, of having two coexisting gambling arrays, one legal and highly publicized and the other technically illegal but almost as actively promoted? When an enterprise as universally accepted as the Irish Sweepstakes is forced to set up a massive worldwide smuggling network, second only to narcotics in size, there are reasons to believe the laws do not reflect the will of the people.

Given the haphazard enforcement of the criminal gambling laws it is important for both the amateur and professional gambler, on both sides of the tables, to know if what they are doing is legal. Although most bookmakers treat getting arrested as an occupational hazard and the usual fine as a tax for staying in business, courts have been known to impose jail sentences, particularly for repeat offenders or where the defendant has ties with organized crime.

If you have any doubt as to the legality of what you are doing you must contact a lawyer immediately. The lawyer is bound by the attorney-client privilege and cannot reveal what you tell him to the police, or to anyone else for that matter. To show you how strong that privilege is, the American Bar Association recently debated whether a lawyer could be subject to punishment for revealing enough information to protect an intended victim from a client's planned act of physical violence.

You cannot rely on the fact that somebody has given you a license. A city business or tax license does not allow you to conduct a business that is illegal. The same is

true of a city license to run a particular game. The City of Los Angeles once issued a license to operate a carnival game near the beach; the operators were arrested, and convicted for having a gambling device in violation of state law. When the operators cried foul, the court said that the City had no power to override a state statute. Of course if the state itself gives you the license you should be protected from prosecution, so long as you obey the requirements of the license. There are a few cases holding that even a state license is no guarantee that a gambling device won't be confiscated, but the question seems to come down to whether it was a general tax license or a license to operate a specific machine.

Ordinarily it is the people running the game, not the players, who are criminally liable. Again, you have to check the wording of the statute. There are a few, rarely used, isolated statutes that make it a crime to *play or bet* card games where alcohol is sold. Under a law this broad you can be convicted without even making a bet. Of course, no cop should arrest people for just playing cards, but if a bar has a big money poker game you could find yourself swept up in the raid. A spectator at a cock fight could be guilty, without even placing a bet, under statutes that makes it illegal to pay admission to see an illegal game or to encourage or promote gambling.

Normally the criminal law is limited to individuals who have an interest in the premises; almost every state has a law against keeping a "gaming house," or "permitting or conducting gaming." This includes anyone who shares in the profits, whether or not physically present. The actual operators of the games are also liable, including employees.

Often the question of whether operating a game or device is a crime follows the common law definition of gambling, discussed in Chapter Six. The three elements must be present: consideration, chance and prize. A free drawing to all comers lacks consideration and is legal. A game of skill rather than luck lacks chance and is legal. If the player can only win something that has no value in the eyes of the law, such as free replays in some jurisdictions, the game lacks a prize and is legal.

There have been a number of interesting cases involving the money found inside of slot machines. The slot machines are obviously gambling devices, usually *per se*, and are forfeited and destroyed by the state. But what about the coins inside the machines? Are those coins gambling devices too, or can the slot operator get the money back?

The courts are split on the question of money found in slot machines. Some hold that the money is an integral part of the machine, others hold exactly the opposite. Even those courts that say it is part of a gambling device have a significant exception: if the money has been taken out of the machine and is clearly the exclusive possession of the operator it is no longer part of the device and thus is not subject to forfeiture.

The same rule holds true for other games. Money that is still in play can be con-

fiscated; money that definitely belongs to a player or the house is not part of a gambling device and must be returned to whoever owns it. Thus money seized from a numbers operation or bookie joint can be confiscated because the cash is subject to future claims by possible winners. Money on a crap table is treated the same way. However, cash found in the pocket of a dice player is different. The dice determine the payout on each roll, so the player is free to walk out with the money in his pocket at any time. Be careful, though; some courts have said that the money in the hands of the craps players is in play and therefore can be seized and forfeited to the government.

Some states and the federal government have passed special statutes to try and make all money found in an illegal gambling operation subject to forfeiture. Even here a player can get his money back if it is in his pocket and clearly withdrawn from the game.

Although the only way to know whether what you are doing is illegal is to check the statutes, in general, the law is what common sense tells you it is. There is a difference between being a bookie and being a bettor. Playing in a poker game is different from running the game; and running a game, taking a cut out of each hand to pay for chips and beer is different from charging admission or taking a cut that leads to a substantial profit. Playing in a private home among friends is different from playing in a public bar, even if you know all the players' names. The game of craps is different from the game of backgammon, even though both involve dice.

Criminal laws are different from civil lawsuits in a number of ways. The most important is that in the criminal case the entire power of the government is directed against the individual, with the potential outcome being some form of punishment. In a civil lawsuit we like to pretend that the plaintiff and defendant are equal; no such illusion exists in the criminal case. It is for that reason that the defendant is given some extra protections not available to the prosecutor.

The prosecutor must prove each and every element of the crime beyond a reasonable doubt, a difficult standard to meet. The phrase "innocent until proven guilty" has tremendous weight in the law; a defendant need not take the stand, or put on any evidence at all. The burden is entirely on the prosecutor.

Well, not exactly. Criminal law has created what are known as affirmative defenses. Sometimes the charge is relatively simple to prove and the burden is on the defendant to come up with the affirmative defense. For example, in some states all forms of non-licensed gambling are illegal and social gambling is an affirmative defense. The prosecutor need only prove that a player was gambling to get a conviction. The burden is now on the defendant to prove that it was a mere social game. A New Jersey statute makes the unlawful promotion of gambling a crime; however, it also provides an affirmative defense, if the defendant can prove by clear and convincing evidence that he was a mere player.

Another important difference between criminal laws and civil lawsuits is the strict construction given the criminal statutes. Suits between two individuals are based on laws that are constantly shifting; the common law develops from a court having to decide how to apply conflicting precedents and still do justice between the parties. Criminal law is much more rigid. It is not up to the judges to decide what should be a crime, that decision is left up to the legislature. The judges must interpret the words of the legislatures, but will resolve doubts in favor of the defendants. And they will look at every word.

An important federal statute makes it a felony, \$20,000 fine and up to five years in prison, for anyone who "conducts, finances, manages, supervises, directs, or won all or part of an illegal gambling business." "Illegal gambling business" is defined to mean a gambling business which 1) is a violation of a state law, 2) is in business for over 30 days or has a gross revenue of \$2,000 in any single day, and 3) "involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business." 18 U.S.C. Section 1955. An entire body of law has developed over the meaning of the last requirement: when the law says there must be five or more persons the courts are constantly having to decide who to count as part of the minimum quorum to make the illegal gambling business a federal offense.

The general rule for counting to five under Section 1955, is that all participants in the operation of the gambling business, other than customers and bettors, may be counted. To reach the minimum of five, the prosecutors have had to drag in runners, telephone clerks, independent contractors, watchmen, dealers, collectors, and bookkeepers. One court counted in the five employees who served food and drinks to gamblers and who cleaned up and had acted as security guards. Another court held that waitresses did not fall within the count because their activity does not meet the status of "conductors."

Lay-off men have caused some problems with the five-count under Section 1955. A lay-off man does not work solely for one bookmaking operation; he acts as a safety valve, taking bets from several different bookies when the bookies have too much money from their customers bet on one side of a game. Lay-off men are sometimes included in the five-count, sometimes not. A federal Court of Appeals held that a person who accepts layoff bets can be counted if it is shown that he 1) provided a regular market for a high volume of layoff bets or held himself out as available to take such bets from bookies; 2) performed any other substantial service for bookies; or 3) conducted his own illegal gambling operation and regularly exchanged layoff bets with other bookies. If there are only occasional bets it is possible that the individual is only a bettor and will not be counted as part of the five who conduct the illegal game.

You can see how the law works. We start out with a general idea: Congress wanted to fight large, interstate illegal gambling rings. So it created criteria for the courts

to follow, as it had to. A criminal law that said "Large illegal gambling rings are a federal offense" would have been struck down as unconstitutionally vague. The criteria makes sense, a minimum of five people operating for at least 30 days or \$2,000; but, now the burden is on the prosecutor to prove every element spelled out by the statute. In many cases there are clearly more than five involved, but in many more there is a real question as to whether that criteria can be met. What does the court do about a lay-off man for a small bookie joint? The court now has to create another level of new criteria to see whether the lay-off man will be counted, for if he is not counted there is no federal crime. The fight now shifts to whether the prosecutor can prove the lay-off man meets the new criteria; and so it goes.

Criminal law usually requires a subjective mental element not found in civil lawsuits. If you manufacture a defective product, like a lawnmower, you are liable for the injuries it causes in normal use, even if you have done everything reasonable to make the product safe. In a typical car accident the injured party does not claim the other side intentionally hit his car, just that the defendant was negligent. But in gambling crimes the defendant must know and intend the action. This does not mean that you have to know what you are doing is a crime, but rather that you purposely and knowingly participated in whatever was going on.

The burden is on the prosecutor to prove your intent. He can do this through your own statements, as in a confession, or from the testimony of your partners or players. The court can also find intent through your actions and circumstantial evidence; taking cuts from a poker game far larger than are necessary to pay for refreshments shows your intent to run the game for a profit.

What do you do if you are busted? The answer is amazingly simply, once you realize what the prosecution has to prove. How can the prosecutor prove that you intended to do something, or that there were five people involved in the illegal gambling business for over 30 days?

Many gambling cases involve wiretaps and informers, but the procedural law is so complicated and changing so quickly that there is literally not a person alive who knows all the rules, not the U.S. Supreme Court and certainly not the police who obtained the evidence. To play the game of criminal procedure right and win has become an almost impossible job for the police; some law enforcement units receive daily reports on what they can and cannot do depending upon the most recent court decisions. But law enforcement does not have to rely entirely upon wiretaps and informers. More often than not the defendants make the prosecutor's case simply by talking.

The first rule when you are arrested is not to talk to anybody. This especially includes your co-defendants. Do you think the cops are so dumb that they won't bug your room or the patrol car?

This also includes your lawyer, if your lawyer is dumb enough to start asking you

questions over the phone. Yes, you should call your lawyer immediately, but if he asks you what happened fire him and get yourself a lawyer who knows how to handle a criminal case. Criminal law is a specialty, like real estate law. You would not ask a criminal lawyer to arrange a housing subdivision and you should not ask a real estate lawyer to represent you if you're in jail.

Who should you call? The best would be a private practitioner, a lawyer who specializes in criminal cases, who has years of experience. Many of the best criminal lawyers started out as public defenders or assistant district attorneys, building up a working knowledge of the system by handling hundreds of cases. The best would be a lawyer who knows gambling law as well, so that you do not have to pay for his initial education. Private criminal lawyers want cash; up front, \$10,000 would be the minimum for routine, major crime. It is not uncommon for criminal defendants to mortgage their houses and borrow their parents' life savings to come up with the retainer.

If you cannot afford a criminal defense specialist your next best bet is probably the public defender. They are extremely competent, because of the vast volume of cases they handle, but also so overworked that they can mangle your case. If you know a good lawyer, or even a not-so-good lawyer, and have learned from this book not to say anything to anybody, you can probably call him to at least get you out of jail. And then go look for an experienced criminal lawyer.

One more thing about not saying anything. It is sometimes very hard to keep quiet. You can be badgered by reporters, enticed by friendly cops, threatened by mean cops, receive a phone call from your wife, induced to trade stories with amiable cellmates, and be told that if you are innocent you would deny the charges. You must not say anything to anybody; it can and will be used against you. Believe it.

One of the favorite tricks for getting statements is the prisoner's dilemma, aptly named. Say you and your partner are arrested. If both of you remain silent the case will probably eventually be dismissed for lack of evidence. But if either one of you talk the prosecution can make the case. The prisoner's dilemma is created by an inducement from the police or prosecutors; they tell you that if you talk first you will get a reduced sentence and they tell you your partner is being offered the same deal in another room. You now have a real problem: do you trust your partner to remain silent? If he does you are both safe, but if he talks first he will get the minimum while you get the maximum. If you talk first you may needlessly convict yourself, if your partner is remaining silent.

Often both partners talk, particularly when the police interrogators tell each one that the other has begun to talk. Since you are not allowed to talk to your partner once in custody, in a prisoner's dilemma interrogation, you have to rely on him to keep silent.

Buy him a copy of this book, before you both go to jail.

14

Licensing— The Other Side of the Tables

One of the booming areas in gambling law for lawyers is the field of regulation and licensing. Everything that a legal gambling business does, from hiring garbage collectors to comping high rollers, can be, and often is regulated by a state or local administrative body. Failure to obey the administrative rules can result in severe penalties.

The most severe penalty, of course, is loss of the license to operate. But minor sanctions are imposed all of the time, without making the newspapers.

In a typical case, pending at the time this is written, the New Jersey Casino Control Commission (NJCCC) is considering fining Resorts International \$100,000 and suspending for one week two senior employees. Resorts violated the rules by allowing a Japanese businessman to double down in blackjack after the third card was dealt, for accepting \$100,000 in travelers checks from his associate in the baccarat pit instead of at the cashier's cage, and for failing to verify the checks.

Lawyers are involved in every stage of regulated gambling: in drawing up the regulations, in enforcing them for state and local governments, in finding out what the rules are and counseling their clients who want licenses or who have licenses and want to keep them, in lobbying the various commissions whenever a casino wants a rule changed, in assisting companies and individuals applying for licenses, and in arguing cases before the regulators' hearing officers and sometimes in court.

The current hot issue in gambling regulation is the issue of junkets. In theory, junket operators are as regulated as any other part of the casino industry. The junket license applicants have to fill out the same detailed multitude of forms required of other casino license applicants. In Nevada, for example, junket representatives have to file the following forms:

- 1) Report of Arrangements, Gaming Control Board (GCB) Form 25. A separate form for each casino involved, with information about the junket rep, including names and

addresses of everyone connected with the operation, employees and individuals owning five percent of a company, and whether the rep is required to guarantee payment due the casino from players and whether the rep will collect credit due the casino.

2) Personal History Record, GCB 63, in duplicate. Eight pages of detailed questions, including all work history and all business involvement since age 18, addresses for the last 25 years, and, of course, criminal record.

3) Fingerprint Cards, in duplicate.

4) A copy of all proposed agreements between casinos and the rep.

5) Invested Capital Questionnaire, if the rep agrees to guarantee any payment due to the casino from any junket player. The gaming authorities would prefer that the rep not guarantee credit, but if that is the arrangement, then a detailed financial statement of the rep must be filed.

6) Irrevocable Appointment of Agent for Service of Process. The rep must submit to the jurisdiction of the State of Nevada by designating the secretary of state as his agent for service of process.

All forms must be fully executed, signed, and notarized.

In addition, the rep must register with the Las Vegas Metropolitan Police Department or the Washoe County Sheriff's Department (Reno).

Although the forms are a great barrier to the openly corrupt or incompetent, and the gaming authorities of both Nevada and New Jersey have succeeded in screening out many undesireables, in practice, junkets are the least regulated area of this highly regulated business. And thus open to misuse, abuse, and the hint of scandal.

Rumors that organized crime controls many junket operations have surfaced, in as newsworthy a forum as the President's Commission on Organized Crime. Of course, rumors of organized crime infiltration always arise whenever law enforcement talks about commercial gambling; still, the criticism has hit home. The fear is both of criminal infiltration of casino operations and of over-reaction by the state legislatures; there has been talk of abolishing junkets completely. Both New Jersey and Nevada regulators are moving to strengthen their controls over the junket representatives, mainly by adding to the manpower investigating applicants and licensees.

Gambling regulation is not always as complicated as with casino junket reps.; regulation can be as relaxed as the North Dakota charity blackjack scheme or as complete as the New Jersey casino system. North Dakota requires a simple form and a small fee with no other government oversight. New Jersey does, in fact, require a casino service license for garbagemen. Since casino gambling is the most highly regulated of legal gambling I will focus on casinos to show you how licensing works.

For casino gambling, three quite independent models of control have developed: the Nevada "free enterprise" model, Atlantic City and Puerto Rico's "resort development" model, and England's "club" model.

The Nevada system developed rather haphazardly over the decades since casinos

were first made legal in 1931. Prior to World War II gambling was small-scale, and subject to almost zero governmental control. Gangster Benjamin "Bugsy" Siegal and the "fabulous Flamingo," the first large casino/hotel resort, changed all that. Other large resorts followed, featuring spacious hotels and grounds, gourmet restaurants and 24-hour coffee shops, spectacular shows, and, of course, casinos. Slot machines blanketed the state, from the airport lounges, to supermarkets, to the state prison.

At first, the state and local governments were primarily interested in taxing the growing businesses. As the state's economy became more heavily dependent on gambling and the tourist dollar, and repeated scandals threatened to bring intervention from the federal government, the state slowly began to establish a system of controls.

The philosophy of the state did not change. The Nevada Gaming Control Act explicitly declares that it is the public policy of the state that the economy of Nevada and the general welfare of the state's inhabitants depend on the gambling industry. To ensure public confidence in the gaming industry Nevada relies on a system of strict regulation of licensed activities and regular audits.

Who has to be licensed? The Nevada Gaming Control Act is written in the negative. Instead of saying who must have a license it states "It is unlawful for any person" to do certain things without a license. Those definitely required to be licensed are anyone who owns, leases, runs, or maintains any gambling game or slot machine. Also covered are those, including lenders and lessors, who supply any property used in a game, if the supplier has an interest in the money played. In fact, anyone who supplies services or property to a casino must be licensed if their payments are determined by a share of the game; fixed payment leases and sales are exempt. Slot machines are given special treatment: suppliers of slot machines are required to be licensed, no matter if they retain an interest or not.

All gaming employees must have a work permit issued by the state or county. Key employees and owners are subject to stricter licensing scrutiny. The Gaming Commission decides whether a person has the power to exercise a significant influence over the casino and may require him to apply for a license. These key employee licenses have created the most controversy. The employee has to pay the costs of the government's investigation; in some cases investigators have traveled to Japan and the East Coast and the licensing process has cost the applicant over \$100,000.

Prior to 1967 corporations could not hold gaming licenses in Nevada, unless every stockholder was individually licensed. This effectively prevented corporate ownership of casinos. Today the agencies decide which stockholders must be licensed; there is a working presumption that control begins when a person owns at least five percent of a company.

The gaming control agencies have unlimited discretion to decide who else they want to license, from lenders, including banks and bondholders to nongaming employees. The regulators can put restrictions on licensees, such as limiting the number of in-

vestors a company may have or the stock it may sell. In practice Nevada regulators have neither the resources, nor the funding, to license or investigate very many people beyond those directly involved in gambling or the running of a casino corporation.

One individual who was chosen for special consideration was Fred J. Glusman. Glusman owned Fredde's Dress Shops, retail clothing stores, inside the Las Vegas Hilton and Stardust hotels. The regulators decided that Glusman had to apply for a license, not a gaming license, but to see whether he was suitable to conduct business on the same premises as a casino. The Nevada Supreme Court upheld the right of the regulators to investigate anyone they wished for whatever reasons, so long as the individual chose to operate a business on casino ground. However, the Court struck down as unfair the requirement that Glusman pay the costs of the investigations since he was in a different position from a person asking for a license to run a game.

The Nevada regulatory scheme consists of three agencies: the Gaming Policy Commission, the Nevada Gaming Commission, and the State Gaming Control Board. The Gaming Policy Commission is comprised of eight part-time members with the Governor acting as chairman. This body discusses matters of gaming policy, but its recommendations are only advisory.

The real power rests with the Gaming Commission and the Board. The Commission has five full-time members appointed by the Governor. It has the final authority to require, issue, deny, suspend or revoke a gambling license, and may adopt gaming regulations and invoke disciplinary action. The Board has three full-time members, also appointed by the Governor. The Board is organized into three separate divisions: administrative, fiscal and surveillance. These divisions are the workhorses of the Nevada system: collecting taxes, auditing licensees, enforcing the laws and rules, and investigating everyone within its jurisdiction, from casino employees to slot machine winners.

The gaming authorities in Nevada have almost unlimited discretion in granting, withholding or revoking a license. By statute they are exempt from Nevada's Administrative Procedure Act, so their meetings could be held in secret without standard procedures. The Nevada Supreme Court has ruled them exempt from the requirements of the United States Constitution; although, other courts think that is going a little too far.

The Nevada system's success in preventing corruption has been mixed. Incidents of skimming, the taking of unreported casino revenue, and hidden criminal ownership have lessened over the years, but still pop up from time to time; much to the embarrassment of local regulators.

On the other hand the state has been extremely successful in ensuring competence throughout the industry. Casino gambling has become respectable enough to attract large corporations and legitimate financing. The takeover by Howard Hughes and publicly traded corporations and the rise of a professional management class in the

legal casinos have made it more difficult for thieves to steal from the casino either internally or through raids from the outside.

Professor Jerome H. Skolnick conducted a detailed study of the Nevada regulatory system and revealed a number of weaknesses in the licensing control scheme, including the vagueness of the gaming control statutes, and the casual disregard by officials of Nevada's Open Meeting Law and of principles of due process.

I feel that of greater concern is the mixing of functions: only in the world of gambling control would you find the same administrative body bringing the initial charges, conducting the investigation, prosecuting the complaint, making the rules for the hearing, judging the hearing, ruling on the case, hearing the appeal of the ruling, deciding on the punishment, and enforcing the decision. The gaming boards in Nevada are more than judge and jury, they are judge, jury, prosecutor, police, appellate court and executioner.

A fundamental weakness with the entire system is Nevada's complete disregard for potential side effects. The state puts only minimum restrictions on the construction and operation of casinos once the applicant has proven his worth morally and financially. Slots are everywhere, a "restricted" licensee can have up to 15 slot machines, and the gaming authorities just voted to expand the list of available sites to include laundromats. No provisions are made for setting odds, rates of payout, minimum and maximum betting limits, hours of casino operation or other factors directly related to the impact a casino will have on the people it is designed to attract. The Nevada authorities believe that the competition created by the free enterprise system ensures that the public will be treated fairly. This may be true for sophisticated gamblers who know and care about whether a casino offers single, double or triple odds on craps. But it is no protection to the amateur, nor to the compulsive.

The Nevada model has been partially successful in expanding the range of choices available to its citizens. Not everyone can gamble in Nevada legally, but the most common restrictions on age and economic access are identical to those placed on other controlled activities nationwide, such as drinking. The Gaming Commission has the power to exclude individuals from gambling, the so-called "black book," but the list is limited to organized crime figures and never exceeds a dozen names.

Although almost everyone can play, not everyone can own a casino. The main barrier is an economic one: obtaining a license through a comprehensive background check and meeting the requirements of financial security are simply beyond the means of all but a handful of individuals; although, a restricted license is within the range of most small businessmen.

The case which gave rise to the notion that there are no federal rights in legal gambling in Nevada is entitled *State v. Rosenthal*, 93 Nev. 36, 559 P.2d 830, decided in 1977. Frank Rosenthal was executive consultant to the Chairman of Argent Corporation, which owned three major hotel/casinos in Las Vegas, including the much

troubled Stardust. He was actually in charge of the Nevada operations; the Nevada Gaming Commission decided that he must submit an application for a gaming license as a key employee.

Under Nevada's two tier system of control, Rosenthal's application was heard first on January 14, 1976 by the Gaming Control Board, which voted unanimously to recommend denial of the license. The Gaming Commission heard the matter a week later and voted unanimously to deny the application.

The Commission found Rosenthal was unfit for licensing because of a North Carolina conviction for conspiring to bribe an amateur athlete; testimony in the Senate that he had attempted to bribe an athlete in 1960; statements by police officers to the Senate that Rosenthal had admitted to corrupting public officials in return for protection; and the fact that he had been barred from racetracks in Florida. Rosenthal appealed on the grounds the decision of the Commission violated constitutional provisions, was in excess of its jurisdiction, was made upon unlawful procedures, was unsupported by any evidence, and was arbitrary and capricious and otherwise not in accordance with law.

From a purely legal approach, his case seemed to have merit; the Commission's decision against Rosenthal came almost entirely from hearsay evidence, statements made outside of the hearing and not subject to challenge or cross examination. It is sometimes hard for a non-lawyer to see why anyone would be bothered by the technicalities of the rules of evidence; after all, you might say, Rosenthal was clearly a rotten character and should not have a casino license. But how do you know he is a rotten character? What if he was not rotten at all; what if everything said about him was untrue? Without some sort of standard for what a decision maker can hear, or at least an opportunity for the person on trial to rebut the damning testimony, there is always the fear that an innocent man can be destroyed by the legal machinery that is suppose to protect him.

The District Court threw the Commission's decision out, and along with it the Nevada statute setting up the licensing provisions of the Gaming Control Act. The lower court found the system was unconstitutional, because it completely lacked standards for making licensing decisions.

The Nevada Supreme Court reversed. In upholding the actions of the Nevada Gaming Commission the high Court made a number of important rulings, besides finding there was no room for constitutional rights in legal gambling.

The *Rosenthal* decision is the most important case in Nevada history on the regulation of casinos. The Nevada Supreme Court made broad, sweeping rulings about every stage of the licensing process and severely restricted the judicial branch's power to review decisions from the gaming control agencies. Like most court decisions, the Supreme Court pointed to prior decisions to show that this latest ruling was consistent with established law. If it had been merely a restatement of the law, there would

have been no need to publish the opinion; however, the Court implies that it is applying the legal standards proclaimed in previous cases to a new set of facts. A careful reading of prior Nevada Supreme Court cases indicates that *Rosenthal* is a radical break from established law; in the past the Court had had no trouble reviewing decisions of the gaming control agencies.

The Court held that gambling is a privilege, not a right; and went on to make a distinction between the gaming business and "useful trades," which are not subject to such heavy governmental control. The state may regulate gambling as it sees fit under its "police power" without interfering with any constitutional rights. Licensing requires special knowledge and expertise. The power of the control boards are comprehensive, while the court's power to review the boards' decisions is greatly limited.

Whether or not licensing standards are required was left undecided, because in Nevada the Legislature and regulators have expressed standards. The Court held that vague, broad standards are okay. In Nevada the basic legislative standard is "to protect the public health, safety, morals, good order and general welfare . . . and to preserve the competitive economy and the policies of free competition." NRS 463.130. The administrative standards are

"No license . . . shall be granted unless and until the applicant has satisfied the Commission that the applicant: a) Is a person of good character, honesty, and integrity; b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and c) Has adequate business competence and experience . . . "

Regulation 3.090.

Standards used by the control boards need not be uniform. The boards have wide discretion to do what they wish. The burden of proof is on the applicant to show that he is qualified; the boards do not have to prove that he is not qualified. The Gaming Commission has full power to deny any application for any cause deemed reasonable.

About the only bright spot for the applicant is that the Court made a distinction between applying for a license initially, and having a license taken away. Once you have a license you have a form of property, and there are some constitutional rights and procedures, including due process, that must be granted before the state can take away your property.

Does the Nevada Supreme Court mean what it says? Does a license applicant really have no constitutional rights? The Court seems to mean it; there is no indication of any softening since *Rosenthal* of this extreme "state's rights" position by the Nevada Supreme Court. Other courts have disagreed, including a federal court and the New Jersey Supreme Court. However, it was just reported that a lower state court in Nevada

recently expanded upon *Rosenthal*, holding that a person having a limited gaming license, one that allows 15 slot machines maximum and no games, does not even have a property right in his license and, therefore, has no due process rights at all. The decision was not appealed and so stands as a stark reminder that Nevada state courts really do feel there is no room for federal constitutional rights in legal gambling.

What does it mean to have no federal constitutional rights? It means that, unless there is a state constitutional or statutory protection, there are no limits to what the regulators can theoretically do. In Nevada, the only limitation imposed by the state Legislature is that the Gaming Commission action be “reasonable” in light of the vague public policies stated above. If the regulators don’t like your looks, or your name, or your race, they can deny you a license, so long as they deem it reasonable. The Fifth Amendment right against self-incrimination is gone; the boards will tell you that you have the right not to tell them about your past and they have the right to turn down your application for not telling them.

There is an even broader federal constitutional right to privacy, to avoid disclosure of personal matters. Also gone.

The First Amendment right to freedom of association is undermined both by refusal to license individuals on the basis of their past associations, and by putting restrictions on who they can associate with in the future. The U.S. Supreme Court has recognized the substantive due process right of a man to earn a living and engage in his chosen occupation, a right that cannot be taken away without a compelling state interest, except apparently in Nevada casino licensing.

The major federal constitutional right lost is the right to procedural due process. Without notice and the opportunity to be heard none of the other rights mean a thing. In denying an application for a license the Nevada regulators do not have to abide by established procedures; they can hear whatever evidence they want to hear, even if unreliable, and exclude evidence from the applicant. They can also make their decision without any standards, for whatever arbitrary reason they have, or for no reason at all.

The Nevada Supreme Court is undoubtedly wrong; the Supremacy Clause and 14th Amendment in the United States Constitution do not allow a state government to deny federally created civil rights. However, the U.S. Supreme Court refused to hear the case on appeal.

Although it does not appear that the Nevada casino regulators have abused applicants, the *Rosenthal* case is the epitome of the treatment licensed gamblers have received across the country. No other jurisdiction has gone as far as Nevada, but it is common to find courts stating that a gambling license is a privilege, not a right. A gambling license is treated differently than a driver’s license, or even the right to purchase liquor in common with the rest of the citizenry. As a privilege in an area where there is a compelling state interest in maintaining tight controls, the ap-

plicant for the gambling license has only a few, very weak constitutional protections. A federal court of appeals, for example, ruled that New Hampshire officials could deny a greyhound racing license without a hearing; there is no state or federal right to have an ownership interest in a racetrack; therefore, there is no due process protection at all for the potential owner.

The New Jersey Supreme Court appears to disagree with *Rosenthal*; it has heard arguments that the Casino Control Act and regulations violate the federal constitution. The Court, in fact, did require the NJCCC to keep license records confidential, because of the federal constitutional protections on privacy. And the Court extended the right to freedom of association beyond the rulings of the U.S. Supreme Court. In another recent case a lower court in New Jersey held a license applicant was entitled to due process. However, when it came to the question of what process is due, the court held it was okay for the Division of Gaming Enforcement to take the applicant's deposition without his attorney present.

The philosophy behind the New Jersey and Puerto Rico resort development models is radically different from Nevada's free enterprise model. The resort development models have taken Nevada's system of licenses and audits and added another layer of control by tying licenses to the growth of targeted tourist areas. The hope is to restore a state's resort industry. In New Jersey, for example, casinos are limited to Atlantic City and must be connected to an approved hotel of at least 500 sleeping units.

New Jersey has adopted Nevada's idea of a two-tier system. The government agencies are the Casino Control Commission and the Division of Gaming Enforcement. The Commission is authorized to hear and decide applications for licenses, to conduct hearings pertaining to civil violations, to collect all license fees and taxes and to police the operation of casinos. The Division is authorized to investigate applicants for licenses, conduct continuing reviews of casino operations through on-site inspections and conduct audits of casino operations.

Puerto Rico and New Jersey have set out some objective criteria for denial of gaming licenses as an additional layer of control, while maintaining Nevada's style of vague, subjective standards. Gaming authorities are required to deny licenses to anyone convicted of a felony or high misdemeanor. But they have discretion under loosely defined standards as well. In New Jersey, for example, applicants must establish by clear and convincing evidence their "good reputation for honesty and integrity." Regulators have used these tests to reject applicants in the name of maintaining public confidence in legalized gambling.

New Jersey requires much more extensive licensing than Nevada. Virtually everyone even remotely connected with a casino, or its hotel, or its suppliers, or the unions that work for the suppliers, must be licensed. Exemptions are allowed for companies that are regulated by other public agencies, or that provide an insignificant amount of goods or services.

One case went all the way to the U.S. Supreme Court when the NJCCC required Local 54 of the Hotel and Restaurant Employees and Bartenders International Union to kick out their union leader or face sanctions. The union claimed the federal government had preempted the field of labor law, leaving no room for state action. The U.S. Supreme Court did not buy the argument, stating that legal gambling is within the power of the individual states. The states can do whatever is necessary to maintain control, within limits, including requiring licenses for the unions that service the hotel/casinos.

The philosophical differences between New Jersey's resort development model and Nevada's free enterprise model can be seen at every level of the law and operation of the two jurisdictions. Of course, New Jersey had the benefit of Nevada's trial and error development. The New Jersey statutory requirement that casinos be housed in hotels "is designed to assure that the existing nature and tone of the hospitality industry in . . . Atlantic City is preserved and that the casino rooms licensed . . . are always offered and maintained as an integral element of such hospitality facilities, rather than as the industry unto themselves that they have become in other jurisdictions." The number of hotel/casinos, gambling hours, advertising, and junkets are strictly limited.

The regulatory pressure is kept on the casino operators in New Jersey, much more so than Nevada. New Jersey casinos are complaining about over-regulation while Nevada officials are scrambling to find the funds to police the entire state. Nevada has a budget that is miniscule compared to New Jersey's, despite the fact that Nevada has hundreds of licensees and thousands of square miles to cover while New Jersey is limited to eleven casinos in Atlantic City.

Part of the problem is funding. Nevada funds its gambling regulators out of the state's general fund. New Jersey funds its Casino Control Commission out of fees charged directly to the casinos.

It is fascinating to see how the industry has developed, given the goals and restrictions of the New Jersey system. Potential casino operators face extraordinarily costly entry barriers: a company may have to spend \$300 million in building its hotel/casino, with no guarantee that a license will be issued. Playboy was a partner in such a venture, and refused to accede to the Casino Control Commission's directive to force out the major stockholder, Hugh Hefner. Playboy was able to sell its share, and thus escaped becoming the co-owner of an extremely costly and worthless non-casino/hotel.

In the short run, the cost of opening a casino allowed the first successful casino applicant, Resorts International Hotel, Inc., to have a legal monopoly in Atlantic City, and thus to operate the only legal casino on the entire East Coast. Atlantic City is within an easy one-day drive for half the population of the country. People stood in lines for hours to get to \$25 minimum blackjack and craps tables.

In the long run, there have been severe restrictions on the number of successful

casino applicants, with less than a dozen operating in Atlantic City and an equal number in Puerto Rico. The monopoly is now an oligopoly, a few sellers supply all of the legal casino goods to East Coast market.

So far the goal of revitalizing Atlantic City has proven more elusive. Atlantic City was, and is, a bombed out ruins. Magnificent hotel/casino complexes of steel and glass rise like mirages out of a wasteland of empty lots, boarded up hovels and burned out shells. There are actually fewer restaurants in Atlantic City today than there were before the first casino opened. Poor planning has allowed the hotel/casinos to develop into isolated islands; no one who goes to gamble sees any reason for leaving the hotel, except, perhaps, to go to another casino. If anything, New Jersey has been less successful than Nevada in preventing casinos from becoming an "industry unto themselves."

Casinos were supposed to improve Atlantic City's desperate housing crisis, instead they have made the situation worse by raising property valuations. The casinos cannot be blamed for the continuing mess, except to the extent that they have looked solely to their own individual interests. The rebirth of this dying resort was supposed to come as a spin-off of legalized gambling and it was up to the government regulators to plan how that would take place.

The government regulators have allowed Atlantic City to slip far from its dreams. The most surprising development has been the mass of bus people, day-trippers, descending on the casinos each day. The casinos have every economic motive to set up bus programs, where players, mostly the poor and elderly, pay a small amount to come from Philadelphia or New York to play the slot machines. The number of day visitors has soared into the millions each year; Atlantic City has more people visiting for less than one day than any other spot on Earth.

If the government had really wanted to assure that the casino rooms did not become an "industry unto themselves" it could have eliminated slot machines, or prohibited the bus tours, or even put in a 48-hour rule like the English clubs. The 48-hour rule requires that a player sign up, in person, 48 hours in advance of the time he wants to gamble in a casino. Can you imagine the effect on Atlantic City if every player had to wait in the resort for two days before playing? On the other hand, having seen Atlantic City, this might be considered cruel and unusual punishment.

The New Jersey regulators have not been successful in maintaining an image of integrity. The very first licensee, Resorts International, had scandals ranging from missing money to bribery of a judge, but got the license anyway. The regulators have actually done a relatively good job in keeping the operators clean, considering the unbelievable amounts of cash floating among the ten casinos.

Nevada and New Jersey both tax the gaming *win*, the amount lost by players. Casinos report the *win*, and two other figures: the *drop* and the *hold*. The *drop* is the amount of chips bought; it tells us the total amount of the players' bankrolls. The *hold* is

simply the percentage of the *drop* that the house wins. The *drop* and *win* tell the casino how much money is being bet and lost, the *hold* allows the casinos to compare games for profitability regardless of dollar volumes. Using these reported figures *Gaming Business* magazine estimated the nine casinos then open in Atlantic City handled more than \$40 billion in 1982—which means each casino handled over \$4,444,000,000 that year. With that amount of money around, much of it in untraceable cash and chips, it is surprising there are not more scandals.

For the casino the biggest problem is cheating and theft. Licensing can only do so much when there is so much temptation. The dealers are watched as closely as the players. The regulators are also concerned about employee theft; a dealer who is stealing will sometimes cheat players so that his table does not show unusual losses.

The most common ploys are for a dealer to slip a black chip (\$100) inside or under his watch or shoe or secret pocket. A dealer can slip a black chip under a pile of smaller chips to a confederate, or simply pay off a winning hand as if he had lost. One scam that worked for quite a while was a hollowed out cup made out of chips that the crooked dealer used to slide over black chips at a crap table. Supervisors are constantly watching, and catching, such thievery from the floor or the eye-in-the-sky one-way mirrors in the ceiling.

For the regulators theft by employees is important, but secondary to theft by the casino itself. Skimming threatens the entire industry; tax money is lost, secret underworld influence is uncovered, and the image of integrity, so vital to public approval, can be severely damaged.

The NJCCC has devised a unique means of dealing with corporate executives that are, well, problems. A corporation can still be approved for a casino license, despite having senior executives or major stockholders with ties to organized crime—all the corporation has to do is get rid of the suspects in its midst. Professor Richard Gruner of Whittier College School of Law has called this policy “professional banishment.” It is a policy of corporate control that has almost never been used outside the field of legal gambling and it presents serious legal and practical problems.

The idea seems to be that if prior corporate misconduct is the result of a single individual’s actions, all that is necessary is to exclude the individual from having anything to do with the casino; the corporation as a whole should not be denied a license for the misdeeds of one person.

The federal government has used disqualification as a means of punishment and to keep out undesirables from entire industries; the best known is the federal statute preventing union officials convicted of serious felonies from holding union office for five years; President Richard Nixon put similar conditions on the pardon he granted former Teamster President Jimmy Hoffa. But the New Jersey policy is not one of punishment of individuals, it is an attempt to cleanse the corporation of problem in-

dividuals so that the corporation can then be licensed. In effect, the NJCCC feels it can clean out the rotten apple so that the barrel can be sold as untainted.

The problem with the theory, if I am not straining the metaphor, is that rotten apples have worms that spread throughout the entire barrel. The idea that the individual who started, owned and ran a company can be bought out leaving a pristine, ethical business enterprise is naive at best. Nevada, which licenses corporations and individuals with spotless records, has still had trouble preventing secret underworld ownership of casinos. What self-respecting gangster would walk away from the company, without at least first hand-picking his successors and arranging for secret control?

The idea of corporate banishment was developed out of expediency. Boardwalk Regency Corporation had built a hundred million dollar hotel/casino and was operating the casino under a temporary license. The NJCCC determined that Stuart Z. Perlman and Clifford S. Perlman had not met their burden of proving they were fit to be granted permanent licenses as key employees.

The major problem for the Perlmans was Clifford's relationship with Alvin I. Malnik, an alleged business associate of underworld treasurer, Meyer Lansky. Clifford continued to have dealings with Malnik after being warned by the Nevada gaming authorities.

The problem for the NJCCC was that the Perlmans had built the company out of nothing; the two owned 18% of Caesars World, Inc., which owned 86% of Caesars New Jersey, Inc., which in turn owned 100% of the Boardwalk Regency. They also held titles of chairman of the board, chief executive officer and vice-chairman of the board of Caesars World.

The NJCCC was faced with the problem of denying a permanent license to a corporation it had initially approved as fit. Denial of the permanent license would not only have been embarrassing, it would have forced the creation of a difficult and expensive conservatorship, a forced sale by the corporation, and possibly even the closing of a casino that was operating and making money, and paying taxes.

The NJCCC came up with the idea that getting rid of the tainted individuals would solve the problem; sort of like destroying the evidence eliminates the crime.

The Perlmans appealed the Commission's decision to the courts. Judge Fritz of the New Jersey Superior Court, Appellate Division, wrote a decision that contains a comprehensive description of the standard review courts must use when reviewing findings of law and fact from administrative agencies. Unfortunately, Judge Fritz came up with an idea that was even worse than the NJCCC's professional banishment; he ruled that the Boardwalk Regency could get its license and the Perlmans could stay with the company, so long as they had nothing to do with New Jersey gambling.

The idea that a tainted individual could remain with the company, but be told not to have anything to do with the corporate subdivision that runs the casino is simply ridiculous. What organized crime figure would resist the opportunity to exercise secret

control? In practice, the idea is unworkable; should the semi-banished president of a corporation not talk to the vice president in charge of casino operations? Maybe the NJCCC would want to limit their conversations to their kids and the weather.

The New Jersey Supreme Court modified Judge Fritz's decision to return to the Commission's original idea; the Court allowed Boardwalk to be licensed on the condition that the company buy out the Perlmans and exclude them from any further management roles. As you can imagine, the company's board of directors, hand-picked by the Perlmans, paid a very handsome sum for their stock. How handsome? The company originally agreed to pay the Perlmans \$99 million. Not bad for being refused a license. Unhappy shareholders sued over this buyout and the Perlmans eventually agreed to reduce their take by \$7 million.

Playboy International was subjected to a more extreme application of the policy of corporate banishment. The NJCCC disqualified company founder, chairman and majority stockholder Hugh Hefner primarily for a minor crime he confessed to nearly ten years earlier. In the early 1960's Hefner agreed to pay a bribe to the Commissioner of the New York State Liquor Authority and the Chairman of the Republican Party of New York state to assure the issuance of a liquor license for the Playboy Club of New York City. Hefner cooperated fully in the investigations of this corruption. Playboy's other problem areas, such as its troubles with the English casino authorities, did not seem to implicate Hefner himself in any wrongdoing. In fact, three of the five NJCCC Commissioners voted to give him a license; unfortunately for Playboy, four votes are required. Four of the Commissioners would have given Playboy a license if Hefner had severed his ties with the company. Playboy, actually Hefner himself, was willing to risk financial disaster, the loss of the company's investment in a multi-million dollar hotel/casino rather than be forced out of his own company.

Bally Manufacturing Company was faced with similar conditions and complied in order to open Bally's Park Place casino. William T. O'Donnell was forced to resign as president, chairman of the board, employee, and director of Bally Manufacturing and all subsidiary companies; to sell all of his stock; and to agree to have no further influence on this company. The NJCCC was greatly concerned about O'Donnell's association with known gangsters. He and another major stockholder were bought out at great expense by the corporation. How much did O'Donnell get from his successors at Bally? He received a total of \$17,999,045 for his stock, which was \$2,813,048 above market value, plus another \$2,112,000 to settle his employment contract, a total of over \$20 million for being refused a license. Lawsuits by unhappy shareowners have been filed.

Casinos in Great Britain were legalized for purposes far different from those behind legalization in Nevada or New Jersey. In England, gambling is seen as a social evil to be controlled, not a means of raising revenue for the state. In addition to a system

of licensing and continuing supervision through on-site surveillance and audits, England adds a superstructure of controls, paternalistic in their design, that completely overwhelm the basic system. The emphasis is consistently on limiting gambling and its perceived adverse side effects. The gaming board would feel it had done its job if gambling were to completely disappear.

When the Arabs came in the late 1970's, oozing oil money, the casinos lost sight of the regulators' goal. By catering to these super high rollers many casinos lost their licenses.

Casino gambling is regulated by the Gaming Board for Great Britain (Board). The Board is empowered to grant licenses and supervise gaming operations. Its power is as great as the power of regulators in the States, although some review by courts is available.

Casino gambling is limited to private clubs which must be certified by the Board. Only members of the club or their guests may enter a club to gamble. Players must give notice, in writing, in person, of their intention to gamble 48 hours in advance. Slot machines are limited to two per club and detailed rules are set forth concerning the play of each game. No credit is allowed.

A casino license may not be granted to a foreign corporation; Hugh Hefner may have dug his own grave when he fired his English management, proving ultimate control was in the hands of an American corporation.

An applicant must have a good character, reputation and financial standing. The Board has wide discretion to take other factors into account. But in a striking departure from American casino licensing, the most important factor for deciding the fate of an English license lies not with the applicant but with the community.

The Board must find that a substantial demand for casino gambling exists in the community on the part of prospective players. If the Board finds all criteria are met the local licensing authority must either recommend or deny the application.

A casino employee is required to obtain a certificate of approval if his duties involve operating or handling any apparatus, cards, tokens or other articles used in gaming; issuing, receiving or recording cash or tokens, or acting in any supervisory capacity.

Although the Board has been successful in controlling the adverse side effects of the casino, the price has been very high, at least as viewed from American law. The entire system is infused with paternalism and concern for the slightest detail of operation; casinos in New Jersey complain about over regulation, yet, compared with the tight, constant, oppressive English control Atlantic City appears deregulated. No government agency in the United States has the complete statutory discretion exercised by the Board. The Star Chamber sat without a jury and was noted for its arbitrary methods and severe punishments, until it was abolished in 1641. The British Gaming Board is the modern day equivalent of the Star Chamber in the casino industry.

The Board may decide the number of clubs in general or the suitability of an applicant to operate a particular club. Each applicant must obtain a certificate of consent from the Board before proceeding further and there is no right of appeal. The Board need not defend its conclusions and all Board hearings are conducted in total secrecy. It is highly unlikely that any jurisdiction in the United States could withstand the political controversy surrounding the imposition of such a system, even if it could overcome the legal challenges to such uncontrolled discretion.

Symbolic of the differences among the three systems is the question of the “revolving door” policy for casino regulators. A New Jersey regulator must wait two or four years after the time he quits regulating casinos before he can take a job on the other side of the fence. Nevada has no such rule to preserve arm’s length control, perhaps because gambling is the major business of the entire state. Where else but with a casino can a regulator go if he wants to stay in Nevada? In a recent, well publicized incident, Patricia Becker, Nevada’s first woman regulator, resigned in the middle of her four-year term on the Gaming Control Board to take a job with Harrah’s West. The English regulators were appalled, particularly since they had just given her confidential information about rival companies. When an English casino regulator was asked what they did about the “revolving door,” he replied that there was no formal rule, but added, “It just wasn’t done.”

15

Regulating Card Counters

Blackjack is a game of skill, it can be beaten by card counters. Next to cheats, card counters pose the greatest threat to the financial health of a casino.

The casinos may view card counters as a danger akin to cheaters, but the view from the other side of the tables is much different. A card counter sees nothing wrong in playing by the rules and winning. To bar counters is equivalent to a casino saying, "Come, play, bet your money, but only if you aren't very good at the game." To the card counters, barring people who have a chance at winning looks unfair; the casino is discriminating against good players.

The casino's right to bar card counters should also be of interest to non-counters. Many players are upset at the idea that the casinos only want losers; it tarnishes the resort's atmosphere of hospitality. Of more practical concern, there is no way for the casino to be sure whether a player is counting at blackjack. In their own self interest casinos have been excluding players who they suspect to be counters, players who make unusual bets, or even players who happen to be winning. Imagine yourself playing blackjack. You hit a hot streak of cards, start winning big, increase your bets, double down and split everything on whims. And you continue to win, the chips mounting up and spilling over. The dealer starts shuffling after each hand. But you continue to win, betting and playing with abandon. Suddenly, you feel a hand on your shoulder. You find yourself hauled into a back room by two burly security guards, harshly questioned, and then kicked out the front door—and you were not counting cards. It has happened to non-counters.

Casinos operate on very slim profit margins. The house has an advantage of approximately one-half to one and one-half percent over the average blackjack player on every hand played. Of course, a casino in Atlantic City handles over \$8 billion a year, so even a one percent advantage can lead to substantial profits.

It is important to understand how the house makes its money. You will occasional-

ly hear statements like "The casino always wins." That is ridiculous on its face; if the house always won no one would play. In fact, a large percentage of players leave as winners on any one visit, sometimes as very large winners. The house does not win every hand, nor every table, nor every day, nor against every player. What it does win is a small percentage of the billions of individual bets made each year.

If you flip a fair coin there is a 50/50 chance of it landing heads up. Flip it ten times and you might easily see only three heads and seven tails. But flip it a billion times and you will come very close to 500 million heads and an equal number of tails; although still not divided exactly evenly.

Now let's put a tiny weight on the tail side so that there is a 51% chance of it landing heads up; 49% chance of tails up. For ten flips you could still easily come up with three heads and seven tails. True, heads should show up a little more often, but ten flips is a very small sample. And with such a small weight you would not bet your house on heads showing up on the next flip. But flip the weighted coin a billion times and you will see close to 510,000,000 heads and 490,000,000 tails; a difference of 20 million results in favor of heads. Maybe there will be only 10 million more heads than tails, maybe 30 million; but enough to make a significant difference if you are always betting on heads.

The house does just that, it bets with a coin weighted in its favor a billion times a year. It may lose on any single bet, but every pull of a slot machine handle and every deal of a blackjack hand is another bet; and games like craps and roulette may have dozens of bets riding on each throw of the dice and spin of the wheel. The more players and the faster the games the more sure the house is that it will come out on top at the end of the year, assuming it has the capital to ride out any short term losing streak.

A state lottery does the same thing, only on a grander scale. It is easy to visualize the casino's advantage in a game like roulette: if you bet on red or black the zero or double zero is a stark reminder that the house is not paying off at full odds. With a state lottery, it is much harder to picture the house's take. For anyone still considering betting on a state lottery picture to yourself a roulette table with 9 black numbers and 9 red numbers and 18 zeros; that's what a 50 percent take means.

Parimutuel betting does not operate the same way, because the track is not betting against the player. Player's bet against each other, the track simply charges for its services in putting on the race and being the stakeholder. If there were no overhead a track could make money with two bettors, it takes its percentage off the top and returns what is left to the winner.

So what is the danger of card counters to the casino? If the rules are right and the card counter is very good the house is now betting against a player using a coin weighted in the player's favor. The more games, the more bets by expert card counters, the more sure it becomes that the house will lose in the end.

There are still people who believe that blackjack is a game of chance, or that it cannot be beaten. Given the right rules I would bet on a skilled counter every time. A counter keeps track of the cards played to determine how to play the next hand. They vary their bets so that they are risking the least amount when their chances of winning are slightest. They vary their play so that they maximize the chances of beating the dealer on any individual hand. With perfect card counting and perfect rules, such as a single deck dealt down to the last card and the unlimited right to vary the size of bets, it becomes a statistical certainty that the player, not the house, will win in the long run, if the player has enough money to last through short term losing streaks.

Casinos have the same warm feelings toward card counters as they have for cheaters, for the same reason. A skillful cheat, who takes five percent of all the money bet, has completely eliminated the house's advantage. If allowed to continue unmolested, in the end the cheat will have taken everything.

But card counting is not cheating, in the eyes of the law. The Supreme Court of Nevada recently made that clear in a case involving blackjack. Jesse Avery Martin was playing blackjack at the Boomtown casino in Verdi, Nevada. He was seated to the left of a known card crimper, Dennis Wayne Petersen. A card crimper bends the cards, often the corners, so that he can tell what value or suit the card is from the back.

Nevada has two state statutes that make it a crime to cheat and to conspire to cheat. The anti-cheating statute makes it "unlawful for any person, whether he is an owner or employee of or a player in an establishment, to cheat at any gambling game." NRS 465.083. Cheating is defined to mean "to alter the selection of criteria which determine: (a) The result of a game; or (b) The amount or frequency of payment in a game." NRS 465.015. Did Martin commit the crime of cheating? At his preliminary hearing the following facts were shown.

Martin consistently asked Petersen, the known card crimper, how he should play his cards. Petersen watched the deck closely as the cards were dealt, frequently standing up to do so. While Petersen played a single hand at \$5 to \$10 per hand, Martin was betting about \$100 per hand. Petersen hit his hand in an unusual pattern, until the deck was changed. When a new deck was brought in Petersen stopped watching the cards and began to play two hands, while Martin's bets dropped to about \$25 per hand.

Petersen was observed crimping cards in the new deck for about ten to fifteen minutes. The two players then went back to their old betting styles, Petersen playing a single hand and Martin betting \$100 per hand. Petersen was seen touching a particular stack of chips to indicate to Martin when he should hit. They were ahead several hundred dollars when they were arrested. Petersen jumped bail.

Martin claimed the anti-cheating statute was unconstitutionally vague. The U.S.

Constitution requires that a criminal statute must give fair warning so that a person of ordinary intelligence has a reasonable opportunity to know what is prohibited. Of course, there are very few crooks who bother to look up the statutes before they break the law, but the vagueness standard is a safeguard against arbitrary punishment. The Nevada Legislature had tried to prohibit all forms of cheating, to avoid loopholes of previous statutes that had been too specific. The question was whether they had gotten too general. Did Martin have a fair warning that what he was doing was criminal?

We all know that card crimping is cheating, but is it criminal under the Nevada anti-cheating statute? Whenever you deal with a criminal code you must look at the actual words. Here, the statute says cheating means “to alter the selection of criteria which determine” the outcome of the game. The Court had little trouble finding that changing the characteristics which make up the game of blackjack is cheating. These include the physical characteristics of the cards and the rules of the game.

The Court went on to find that the crime of cheating requires a fraudulent intent; cheating is closely related to fraud. Petersen crimped the cards, it was alleged, with the intent of making them readable from the back so that he could take the casino’s money. This altered a crucial characteristic of the game, under the rules of the game none of the players are allowed to read the cards from the back.

The Court then went on to make an interesting statement:

“By way of contrast, a card counter—one who uses a point system to keep track of the cards that have been played—does not alter any of the basic features of the game. He merely uses his mental skills to take advantage of the same information that is available to all players.” *Sheriff of Washoe County v. Martin*, 662 P.2d 634, 638 (Nev. 1983).

The card counter is playing by the rules of the games, as set up by the casino regulators and the casinos themselves. The cheater is breaking the law because the rules do not allow crimping of the cards, changing the criteria that define the game of blackjack.

Since the card counter is winning within the rules, the casinos decided to change the rules.

On June 29, 1975, at approximately 6:00 p.m., two security guards approached a man quietly playing blackjack in the Flamingo Hilton Hotel. The player was Kenneth Uston, one of the world’s best blackjack players. Uston’s offense was that he was winning.

Ken Uston went to school across the river from me, at the B-School, as we used to say at the Law School, Harvard’s Graduate School of Business. Following Harvard, he had a successful, if boring, career as Vice President of the Pacific Stock Exchange. A brilliant man, he discovered that he could do something that other peo-

ple only dream of, he could win consistently at the casinos. If only they would let him play.

The Flamingo guards escorted Uston to the hotel's entrance, where they read him the Nevada trespass statute. That was done so that he was now on notice that he had no right to remain. Trespass is a difficult crime to prove when you are running a business that is open to the public twenty-four hours a day, unless you specifically tell the individual to leave.

Uston left. He said the guards asked him to leave because he is a "better than average blackjack player."

Uston filed suit in federal court in Nevada, alleging violations of his federal civil rights, conspiracy to deprive him of equal protection of the laws, assault, false imprisonment, intentional infliction of emotional harm, and violation of the state public accommodation law. The defendants included Hilton Hotels Corporation and its subsidiary, Hilton Casino, Inc.

The court considered the federal civil rights claim the most serious, Uston alleged that the defendants had deprived him of the rights, privileges and immunities granted him by the United States Constitution. The problem is that there are no such Constitutional rights against the actions of private citizens.

We often say to someone "You can't do that, that's unconstitutional." Often what we think is unconstitutional is not. It may be a tort, a wrong that you can sue on, or even a crime. But that does not mean it is a right covered by the Constitution. For the most part the Constitution is only concerned with the actions of governments, not individuals.

To win his suit for deprivation of constitutional rights, Uston had to prove that his injuries were brought about by state action, not by private individuals. The trouble was these were private individuals, private security guards and a corporation. Not even a Las Vegas policeman was involved. So how can he prove state action?

Uston's lawyer made a good attempt. He asserted that the state of Nevada was involved because casino gambling is so heavily state regulated, and because the state gaming boards, which have the duty to enforce the gambling law, had refused to prohibit the discrimination against card counters.

The federal Court did not buy his arguments. The Court held that mere regulation, no matter how comprehensive, is not enough to make the state a partner of a private company. There was no evidence that the state of Nevada had actively participated, through licensing, regulation or otherwise, in the discrimination against card counters.

The Court also did not buy the idea that the gaming board had an obligation to force casinos to allow card counters to play blackjack. There is a statute that requires the Nevada Gaming Commission to create a black book, a list of persons that are not allowed in casinos. The black book, which never has more than a dozen names

in it, is limited to criminals and other undesirables; but not card counters. Uston's lawyer argued that since the state required casinos to exclude a small number of people for specific reasons, it had the duty to tell the casinos to admit everyone else who was not on the list.

The Court found the Commission's failure to act against the casinos did not amount to approval of the casino's actions. This makes sense, and reflects the general law. Governments on all levels are notorious for their sloppy handling of complaints, ignoring problems, and overall bureaucratic inertia. A government's failure to act does not mean the government approves of what is going on as much as it indicates the proper committee has not gotten around to studying the problem yet.

The Court also found that Uston did not state a good claim for conspiracy to deprive him of equal protection of the laws. The U.S. Supreme Court has limited such claims to actions founded on racial or other class discriminations. Card counters are not a protected class and there is no constitutional right to gamble.

What about the claims of assault, false imprisonment, intentional infliction of emotional harm, and violation of the state public accommodation law? Having found the claims of violations of constitutional civil rights were no good, the Court was left with a real problem. The judge appeared to be sympathetic to Uston; however, federal courts do not have the power to hear all cases. They are courts of limited jurisdiction, meaning they can only hear certain limited types of cases, usually those that involved the Constitution, a federal law, or suits between citizens of different states. But Uston's constitutional claims got thrown out. He was left with the argument that the federal court should hear the suit because citizens of different states were involved.

In one of the freaky coincidences that can change the law and society, it turns out that Uston lived in San Francisco and Hilton Hotels Corporation, which owns the Flamingo, has its principal place of business in Los Angeles. Of all the casinos that Uston had played in, the one that excluded him and that he chose to sue in federal court was owned by a company that was a citizen of his home state of California.

The law of Nevada on excluding card counters is unclear to this day because the federal judge could not hear the case. Nevada casinos have continued to kick out card counters whenever they find them.

Uston did try at least one more time. He had been excluded from another casino for card counting, and brought a similar claim in federal court. In an unpublished opinion the Ninth Circuit Court of Appeals affirmed dismissal of his complaint against Airport Casino, Inc., for lack of state action.

Uston shifted his action to Atlantic City and had no further interest in fighting any more expensive, losing battles in Nevada; at least until recently.

Ken Uston is one of the few players with the money, time and perseverance to fight a protracted court battle against a major casino. The casinos are not about to roll over and play dead, they will fight and appeal the right to exclude card counters to

the highest court that will hear the case. A lawsuit of this magnitude could take four or five years and cost \$100,000 in costs and attorney's fees, with little hope of getting one cent back even if the player eventually wins.

The development of the law often depends on finding a private individual who is willing to go through the expense and pain of a major lawsuit. Without someone like Ken Uston to pay for and fight the battle, it looked like card counters would continue to be excluded whenever the casinos found them. And then another case arose.

Mark Estes, another expert card counter, was playing blackjack at the Las Vegas Hilton casino on November 26, 1976, when he was forcibly evicted from the casino, solely because he was card counting. The local police arrived and arrested Estes for trespassing. Apparently, the Hilton casino has a policy of excluding card counters and of routinely having them arrested for trespassing. Estes sued.

This lawsuit was different from Uston's in two fundamental ways. First, it was brought in Nevada state court. Unlike federal courts, state courts are courts of general jurisdiction, meaning they can hear any type of case. The state court cannot dismiss the lawsuit like the federal court did; it has the power to decide the issues.

Second, Estes had been arrested. Uston's problem had been trying to prove there was state action, that the state was involved in the actual removal and discrimination against card counters. Uston had never been arrested, he was removed by private security guards. Estes, on the other hand, had been arrested by police officers working for the government. The police were enforcing a state law of trespass. To make it clear that there was state action involved, Estes sued not only the casino but also the state of Nevada, the Nevada Gaming Commission, the Nevada Gaming Control Board, and the Las Vegas Metropolitan Police Department.

And yet, Estes lost on the trial court level. The trial judge granted summary judgment for the defendants, holding that a casino has the right to exclude card counters virtually at will.

In ancient times, a property owner could kick off his land anyone for any reason, or even without a reason. The Court declared that this ancient common law right still exists in Nevada today, and that casino owners could exclude anyone they wanted since casinos were technically private property.

Estes appealed to the Nevada Supreme Court. His lawyers pointed to both the state and federal law to support his claim. Nevada statutes and regulations require free competition among casinos. The state black book law was brought up to show the state government did not want casinos to exclude individuals at their own whim. The federal law was similar to the arguments Uston made, with the additional advantage that the casino had called upon the police to enforce its policy of excluding card counters.

What followed can only be considered an embarrassment to the legal system of

Nevada. In a short, two page Order, the Nevada Supreme Court dismissed Estes's approval. Nevada's public accommodation law prohibits discrimination "on the ground of race, color, religion, national origin or physical or visual handicap," NRS 651.070, and the Court refused to follow other modern courts in protecting anyone else but these special classes from discrimination. The Court went on to throw out the remainder of the claims, including the claim of violations of federal civil rights, on technicalities of faulty pleading. *Estes v. State*, Sp.Ct.Nev. No. 10420 (Mar. 13, 1980).

It is significant to note that this Nevada Supreme Court Order was *not* published. When a court opinion, such as this, is not published there are two important consequences: first, it is very difficult for anyone to find out exactly what the court has done; and, second, the opinion has no legal precedential value.

Apparently, the Nevada Supreme Court did not want to go on public record as siding with the casinos on the dubious claim that casinos can discriminate against whomever they wish. And rightly so. Following the Civil Rights cases of the 1950s and '60s, no modern court would say that property owners can discriminate as they wish, with only certain named groups being protected. The dangers are even greater when the state is so involved, as in the heavily regulated area of legal gambling. As the Attorney General of New Jersey wrote in his brief to that state's Supreme Court:

"The potential for abuse inherent in this practice of expulsion is enormous. A serious risk is created that successful patrons who are not in fact card counters may be intentionally or unintentionally expelled. Equally disturbing is the lack of any protection against arbitrary action on the part of the casinos. Their judgment, in each instance, remains insulated from . . . review, leading to the anomalous result that while 'undesireables' excluded from a casino hotel facility . . . are afforded statutory rights to test that determination . . . no such remedy inures to the successful patron mistakenly identified as a card counter. As a result, public confidence in the credibility, integrity and fairness of casino operations . . . suffers to an intolerable degree." Brief of Amicus Curiae, *Uston v. Resorts International Hotel*, Sp.Ct.N.J.No. 18,595 (filed 9/30/81) at 22.

Since there was no published decisions in the *Estes* case, once again the law of Nevada remains unclear. The law awaits a properly pleaded complaint and lawyers willing to force the Nevada courts to take public positions on the issue of discrimination.

Card counters continue to be told quietly, but forcefully, to leave and not return, upon pain of arrest for trespass. This is called "reading them the Riot Act." There have been very few players indeed who have been willing to face the consequences of remaining on the premises after being warned away. Those who have remained, or have gotten into fights with casino security personnel, have, in fact, been arrested for trespassing.

And this is where it gets interesting.

From what I can tell, not a single card counter has even been convicted in Nevada of trespassing when the only basis for the casino calling the police was the player's counting cards.

Even more interesting, there apparently have been a small number of lawsuits like Estes's, where the excluded player felt he had been treated too rough and sued for assault, false imprisonment, and the like. And every one of those lawsuits have ended in settlement.

I believe all of these settlements involved the casino paying some amount of money to the player bringing the suit. In exchange, the player agreed to drop the case against the casino and also agreed never to disclose the terms of the settlement.

Since secrecy is an essential part of the settlement of these suits by card counters it is impossible to say precisely what is going on. However, it appears that the Nevada casinos have been told by their lawyers not to fight these card counter cases through the court system, because the lawyers feel the courts will eventually decide that the casino does not have the right to bar counters. By agreeing to pay off the counters who sue, and by swearing them to secrecy, the casinos can continue to bar other counters by threatening to arrest them for trespassing.

As a lawyer I cannot advise you to break the law, particularly, in a case like this, where it is unclear whether you will win at trial or on appeal. If Nevada casino tells you to leave or you will be arrested, you should leave. If you are willing to fight, get a lawyer to file a civil suit on your behalf.

There is, of course, one other alternative—you can try your skill in Atlantic City. The rights of card counters to play blackjack on the East Coast are far different from the laws of Nevada.

The latest word on Nevada is that Ken Uston is back.

Uston is again preparing to do battle with the casinos, the Nevada Gaming Commission, State Gaming Control Board, and the state of Nevada over the right to count cards. Apparently, Uston's relationships with the Nevada casinos over the last few years can be viewed as sort of a cease-fire truce in a guerrilla war; there were a few skirmishes but both sides remained stiffly polite to each other. No formal action was instituted by either side, in part because Uston had shifted his attention away from the Las Vegas blackjack tables into teaching and other endeavors. But after having been recently expelled from a Tahoe casino, Uston is once again ready to initiate formal legal proceedings. He has asked for a hearing from the Nevada Board, and is prepared to once again take the case through the courts.

On June 20, 1985, the Nevada Gaming Commission held a hearing in Las Vegas to consider adoption of a resolution proposed by Uston that would have prohibited casinos from barring card counters. Uston argued, "Blackjack is a game of skill and

anyone who has the mathematical abilities to keep track of the cards is not a cheater but simply possesses a certain skill.”

Robert Faiss, an attorney representing the Nevada resort Association, countered that the casinos historically had the right to determine what clientele they would allow.

The Commission did not exactly throw Uston out on his ear, but it did not give him what he wanted, either. The Commission, with support from Nevada casinos, took the position that the whole card counting controversy was outside of its jurisdiction and was an issue that would be better left to the courts to decide.

Now that Uston has returned to Nevada, there seems little doubt that he will take the Commission at its word and pursue the matter in the courts.

What was Uston doing for the last few years? Besides teaching blackjack and organizing card counter teams, he was fighting the same battles in New Jersey, with more success.

Uston first played blackjack at the Resorts International casino in Atlantic City in November, 1978. Resorts knew who he was, but did not try to keep him out because they thought he could not do the casino much harm. This may have been an underestimation of Uston's ability, but it had some basis in fact, at the time. The New Jersey Casino Control Commission (NJCCC) had promulgated a rule requiring casinos to play with multiple decks and to reshuffle fairly early. The casino figured the counters could keep track of the cards played but did not have an advantage because so many cards were left undealt.

The casinos were finding that too much time was spent shuffling so they lobbied the regulators, and on January 5, 1979, the NJCCC changed the rules. Decks could not be reshuffled until most of the cards had been played. There was more action for the house, more bets per hour by average players, but also a distinct advantage to the card counter.

The casinos now cried that the counters were bankrupting them. They showed significant losses in blackjack revenue and therefore a loss in state tax revenue. The figures are subject to question, but there is no doubt that the card counters could now beat the house.

On January 30, 1979, Resorts excluded Ken Uston from the blackjack tables, solely for the reason that he was a professional card counter. He was allowed to play any other game the casino offered, just not blackjack. The casino adopted a general policy to exclude persons it believed to be card counters.

The casino had first checked with the NJCCC and was told that there was no law prohibiting it from barring card counters. When Uston appealed Resorts' actions to the NJCCC he was told the same thing, that a casino has a common law right to exclude any person it chose for whatever reason it chose.

Uston appealed the NJCCC decision to the courts. And he won. The New Jersey courts disagreed with the NJCCC, but not for the reason commonly believed. Most

gamblers who have heard of the New Jersey card counting cases think the court ruled that the NJCCC cannot exclude card counters. That was definitely not the decision of either court that decided this case.

The lower court held that there is no common law right to exclude everyone from a public place, prior court decisions limited the exclusion to undesirables. The court also held that since the NJCCC has the sole power to designate persons to be excluded from the casinos, New Jersey's black book, a casino does not have the power to exclude persons not on the list. Only the NJCCC has the power to exclude card counters, since it did not do so the casinos cannot exclude them.

Resorts appealed to the New Jersey Supreme Court. The Supreme Court affirmed, in a fairly long decision. The decision is important for what it said, what it did not say, and what it said between the lines.

What the Supreme Court said was the NJCCC has exclusive authority to set the rules of the game. No changes, including excluding card counters, can be made by the casino. The NJCCC alone has the authority to exclude patrons based on their playing strategies. A casino has no right to exclude someone on the grounds that they are winning under the rules.

The Court did not say card counters could not be excluded, only that the NJCCC had not made a rule allowing for their exclusion. "Because the Commission has not exercised its exclusive authority to determine whether card counters should be excluded, we do not decide whether such an exclusion would be lawful." *Uston v. Resorts International Hotel, Inc.*, 89 N.J. 163, 445 A.2d 370, 371 (1982). "We expressly decline to decide whether the Casino Control Act empowers the Commission to exclude card counters." 445 A.2d at 375.

What the Court said between the lines is of great interest to card counters. I believe it told the NJCCC that even though it had the power to make a rule excluding card counters, it better not do so. It is very rare to see a court give an advisory opinion, in the federal system a court cannot constitutionally rule on an issue unless it is dealing with an active case. Yet, the Supreme Court of New Jersey starts Section IV of its opinion as follows: "If the Commission decides to consider promulgating a rule banning card counters, it should review the statutory mandates regarding both the public policy of this State and rules of licensed games." 445 A.2d at 375.

The Court emphasizes that rules are supposed to be made to assure the vitality of casino operations and fair odds to and maximum participation by casino patrons. The Court reminds the NJCCC that casino regulation depends upon an image of integrity. It comes right out and says that the public is going to believe that the casinos, and the regulators, are unfair when they exclude people solely because they play the games well. Worse than that would be the accidental exclusion of non-counters. The Court said, again between the lines, that the NJCCC could change the rules to ensure the house has an advantage, but not to exclude counters.

In a somewhat bizarre ending, the Court allowed the NJCCC 90 days to come up with its new rules, while continuing the exclusion of Uston. Only Uston was mentioned by name, so all other card counters were allowed to play. Even Uston could play blackjack, once the 90 days were up and the new rules went into effect.

That is the way the law stands today. The new rules allow the dealer to shuffle whenever he thinks a player is counting, nicknamed the "shuffle at will" rule. The rule also restricts the maximum amount that a player can bet on one hand in certain situations. Only the very best card counters, working in teams, can now beat the casino. But while Nevada casinos continue to exclude everyone they believe to be card counters, Atlantic City casinos cannot exclude them at all.

This does not mean the casinos will sit quietly by and watch the card counter teams win millions of dollars. Although it annoys non-counting players, since blackjack is played with a six- or eight-deck shoe, the dealers will be told by their supervisors to shuffle whenever the supervisor spots a counter. One shuffle is usually enough.

There are other, less friendly ways of getting card counters to leave. On the evening of May 20, 1981, David Prinz was playing blackjack at Greate Bay Casino Corporation's casino, the Sands in Atlantic City. He was told to leave or he would be arrested, since he was a card counter. This took place before the New Jersey Supreme Court decision, at a time when it was unclear whether a casino could exclude card counters. Today a casino could not have a person arrested merely for playing blackjack; they would have to say that the player was drunk or obnoxious or somehow disrupting the game.

What happened next is unclear. A jury found that employees of Greate Bay escorted Prinz toward the exit, a scuffle broke out and Prinz was knocked to the floor, handcuffed, and removed to a detention cell in the premises. He was arrested and held in the police station for approximately 20 hours. A public defender told him to plead guilty to the charges of defiant trespassing, so that he could pay a \$25 fine and go home.

Prinz sued the casino for assault and battery and false imprisonment. A jury awarded him a total of \$105,000: \$5,000 for compensation and \$100,000 as punitives as a lesson for the casino. The casino successfully appealed on the grounds that Prinz's pleading guilty to the criminal charges of defiant trespassing prevented him from saying there was a false arrest. Prinz lost \$105,000 because the public defender told him to plead guilty; this bum legal advice cost Prinz a little bit more than a \$25 fine.

What will happen to the law of card counting in the future? Uston's Nevada case is a long way from a final decision, for at least a few years Nevada casinos will continue to bar suspected card counters at will. Atlantic City seems stable, at the moment. The casinos can live with the present situation since dealing with six-decks and the "shuffle at will" rule stop all but the best team counters. For suspected counters the casinos make life uncomfortable, by constant shuffling and possibly stronger measures.

Atlantic City still has a monopoly on the East Coast, so market pressures have not had much of an effect on the games. The individual casinos actually do have quite a bit of freedom in how they play the games, but the NJCCC has set standards that are so biased against the players, that individual variations are insignificant. For example, the regulations require six deck minimum shoes for blackjack, some casinos use eight deck. Dealing blackjack with six decks may stop the counters, but it also hurts the average player, eight decks is even worse. Since all of the casinos have to play by the same rules, players have to live with it. But if there were other convenient casinos, players would desert the Atlantic City six-deck games for games with rules that were more fair.

I can envision a scenario where New York, Pennsylvania and Miami have legal gambling and patronage at Atlantic City casinos drops like a rock. Casinos would then put great pressure on the NJCCC to loosen the rules to attract more players, and to pass a rule excluding card counters.

I do not believe this will happen soon. Until that day counters and non-counters can play blackjack to their heart's content in Atlantic City, knowing that it is truly the only game in town.

16

Current Issues in Gambling Laws

As with almost all areas of the law, the laws relating to gambling are undergoing rapid and radical change in America. The spread of legalized gambling has forced states to look at archaic laws against commercial gambling, while a general weakening of moral barriers has led to the repeal or non-enforcement of many criminal statutes.

As the most stark example, it seems incredible that multi-billion dollar international corporations, regulated by federal and state government agencies, with stock traded on national exchanges, are viewed as outside of the law's protection when it comes to gambling debts or the right to advertise. The heritage of gambling as a grey market, distinct from the respected businesses of the community, lingers despite the economic and social reality. It is one thing to outlaw gambling, the government has the right to do that within constitutional limits. It is also proper to subject legal gambling to strict regulation and reasonable limits, no one doubts that this activity with its history of corruption and tremendous unaccountable cash flow requires the strictest of controls. But it is quite another thing to make gambling legal and then treat it as if it were still illegal. Hypocrisy in the law breeds disrespect and evasion.

Similarly, it is extremely dangerous to keep gambling illegal and treat it as if it were legal. The remaining laws against social gambling are under strong attack and will soon fall. But the greater danger lies with those areas of gambling that remain illegal, such as bets on sports events handled by bookies. Non-enforcement of the laws leads to all of the hazards of Prohibition: corruption of the police, a general disrespect for the law by the public, and the rise of organized criminal operations willing to use violence to eliminate their competition.

There is a tremendous pressure to legalize sports betting, and some changes will be seen in the near future. It is doubtful, however, if the professional and collegiate sports organizations will ever give their full approval of gambling on their games.

Look for more cases where creative entrepreneurs attempt to circumvent the roadblocks of the sports organizations.

There will be more efforts to spread the third wave of legalized gambling to new areas, and not just geographically. Racetracks have attempted to compete against state lotteries by running their own disguised lotteries, just as Pick 6, where the prize money continues from day to day until someone picks the winning 6 numbers. The state lottery movement picked up four new states in 1984, including the big prize, California. Half the states still do not have state lotteries, mostly in the South and Midwest. All of the economic and social factors described in Chapter One will cause many of the remaining states to fall like dominoes.

But the economic and social factors also affect the states that already have one form of legal gambling. All of the New England states now have lotteries, and have no competitive edge over the rest of the country. A movement is afoot to create a New England regional lottery, with the various states to share the proceeds. The first tri-state lottery, involving Maine, Vermont and New Hampshire, started in 1985 in an attempt to compete directly with the huge Massachusetts lottery. There are other attempts across the nation by the smaller states to link together to compete for the lottery dollar against their bigger neighbors. Some states are also aggressively pursuing the possibilities of mail order lottery subscriptions. The federal laws against broadcasting and mailing lottery information across state lines would have to be changed by Congress for these to succeed, or those archaic anti-lottery laws could be declared invalid by the courts.

There is also talk every year of a national lottery. It is very unlikely that Congress would ever approve a lottery run by the federal government. Gambling has not gotten that respectable; look at the trouble the casinos and state lotteries have had trying to win the right to advertise. I also do not believe the state lotteries would sit idly by and allow a super competitor to enter their domains.

As the legal gambling games hit the downturns of the "J curve," described in Chapter One, pressure for more forms of legal gambling will increase. State lotteries will try every variation imaginable, including video machines that are nothing more than slot machines. There will be repeated efforts to bring in off-track betting and casinos; but few of these will succeed.

Tournament gambling will continue to spread, it is now the fastest growing form of gaming in Nevada, but watch for federal and state intervention. The tournaments are boosted by two economic forces. The first, and most obvious, is the same factor that feeds state lotteries: the possibility of the really big prize. While the World Series of Poker requires \$10,000 buy-ins to enter that tournament, with a potential prize close to a million dollars, other casinos and card rooms are offering tournaments with entry fees as low as \$50 and with prizes in the multi-thousand dollar range.

But the second factor behind the spread of tournaments comes from the govern-

ment itself. As I pointed out in the Case Study in Chapter Five, the Federal Communications Commission thinks that virtually every form of gambling is a lottery and thus prohibited from advertising over the broadcast media. The same prohibition on "lottery" information can be found in the U.S. Mail statutes. Although the U.S. Postal Service has never ruled that casinos are "lotteries," there is always the chance that this federal bureaucracy might someday agree with the other federal bureaucracy, the FCC. However, the FCC also believes that tournaments, even slot machine tournaments, involve skill, and are not "lotteries." The commercial gambling businesses have been quick to pick up on this interpretation and freely advertise their tournaments in whatever media will run their ads.

Since it is the interpretation by the FCC that has helped create tournaments by making it one of the only forms of legal gambling that can advertise, it is natural to assume that the FCC or some other government body will start to crack down on the tournaments, once they realize what they have done.

Another area that is ripe for regulation is fishing contests. Through a freak in the law, fishing contests are the only "lottery" that is free to advertise and use the mails. The result has been an outrageous growth of these contests, with prizes reaching into the hundreds of thousands of dollars. Naturally, there have been attempts to cheat as well. Some of the winning fish are surprisingly cold to the touch, as if they had just come out of an ice chest.

In May, 1985, Alva W. Anding of Baton Rouge was arrested and charged with theft by fraud. An official of the Louisiana Bass Casters Association found four bass in a wire fish basket tied to a tree, and another bass on a stringer attached to the basket. Officials marked the bass. One of the marked fish, a 4.31-pounder, was later turned in by Anding as having been caught during the tournament. First prize in the contest was \$105,000. Anding was released on a \$3,000 bond, after becoming the first person in Louisiana history to be charged with a felony for a fish story.

The fish contest organizers have countered the more mundane cheating by requiring that the fish be alive when weighed. I am looking forward to more ingenious ways of cheating, such as having a scuba diver attach previously caught fish to a contestant's line.

Charity gambling is sure to come under more scrutiny. Bingo has spread throughout the country with very few controls. There are sure to be many scandals, including skimming by operators. One factor, that so far has been hidden, is the tremendous impact bingo has on the players, particularly the working poor.

A study done in Los Angeles in 1983 found the average bingo player was an older woman; married, divorced or widowed; living on a limited fixed income. None of that was unexpected. What was surprising was the fact that the average player spends over \$4,500 a year on the game. The median income of a bingo player is \$21,500, which means the average player is losing over 20 percent of her pre-tax income each

year gambling on bingo. The loss rate is rising with the general acceptance of bingo pull-tabs. The players pay \$1.00 to buy a paper slot machine to see if they have won a jackpot. If they lose they buy another. It is not unusual to see players spend \$300 a night on pull-tabs.

When you realize how many thousands of players there are it is not hard to see how bingo has become a large scale commercial operation. I am sure that local, and eventually state, governments will begin to crack down on the large charity bingo parlors.

Gambling operators are some of the most innovative entrepreneurs around. They have to be, their business is money and the competition is fierce. Legalized gambling is viewed, sometimes with justification, as a money machine and everybody wants a piece of the action. The laws outlawing or restricting gambling are viewed as obstacles that have to be overcome so that the operator can supply the public's high demand. The lawmakers of the land have much less incentive than the entrepreneurs to keep their eyes open to the many ways ingenious individuals have of getting around the intent of the law.

Indian Bingo. It is possible to spend an exciting evening gambling, making \$5.00 bets in the hopes of winning \$50,000 jackpots, in large, air-conditioned casinos—in California. And in Arizona. And New Mexico. And Wisconsin. And North Carolina.

Casinos in Wisconsin and North Carolina? Yes, and completely legal.

The Cherokee Indian Tribe has taken over a former textile factory in the western part of North Carolina and converted the building into a legal casino. Twice a month buses bring in as many as 3,800 players from as far as Alabama and Canada to gamble in all-night sessions. The entry fee is \$250 per person. The prizes include a \$50,000 jackpot and an \$18,000 Cadillac. And the game is bingo.

Legalized gambling has become the biggest growth industry of the 1980s on the nation's Indian reservations. At least 100 of the 283 Indian tribes in the United States are considering setting up bingo games on tribal land. The Rincon Indian Tribe is the third tribe in San Diego County to set up high-stakes gambling. The tribe, with only 500 members, is building a bingo hall that will seat 1,000. The Seminole Tribe in Florida reported that its bingo operation grossed more than \$20 million in 1982, resulting in a net profit of \$2.7 million for the tribe's 1,500 members. Similar operations have been set up in Maine, Minnesota and Washington.

At least one Indian tribe in California has expanded into other areas of legalized gambling. The Cabazon Band of Mission Indians has opened a round-the-clock poker parlor next door to its Bingo Palace. The Bingo Palace seats 500, and is often full, as are the 24 green felt poker tables. The Cabazon Reservation lies alongside Interstate 10, the main road out from Los Angeles. Over a million cars have driven by the brightly lit sign that reads, "INDIAN BINGO."

How did this all come about? Why is bingo becoming such big business on Indian

reservations? Will the future see more legalized gambling on tribal land? Although it is impossible to predict the future, the past, in this case, is probably a good guide.

Indian tribes are unique in American law. The federal government's attitude toward Indians has shifted radically over time, and not just from the friendly image of the first Thanksgiving to the bloody wars like General Custer's Last Stand. The United States has made treaties with the Indian tribes, treating them as separate nations. The government has taken their land, then given it back; abolished tribal governments, then re-established them; tried to assimilate the Indians into the rest of American society, then attempted to revive their independence.

Today, Indian tribes are considered dependent sovereigns of the United States. Two hundred years of treaties, acts of Congress, Presidential orders, judicial decisions and unwritten public policy have made the Indian tribes different from anything else in America. The tribes are distinct entities with powers that are at least as great, and sometimes greater, than the states in which they live.

For example, the states seemed powerless to deal with crimes committed on Indian reservations. So Congress passed a federal statute in 1953, which gave the six states with the largest Indian populations criminal jurisdiction over reservations. This means when California, for example, makes gambling a crime, it is also a crime to gamble on any Indian reservation within that state.

The California voters in 1976 approved amending the state Constitution to permit non-profit organizations to run bingo games. The California state legislature passed complementary legislation limiting bingo jackpots to \$250 maximum. The purpose was clear: no longer would a charity have to worry about a police raid on its church basement bingo game.

The Indians are subject to the state's criminal laws, so if bingo is now legal in California then it is now legal on Indian reservations as well. But what about the \$250 maximum jackpot? That, the Indians argued, is not part of any *criminal* jurisdiction; if the states want to limit their charities to \$250 they can do so as part of their *civil* jurisdiction; however, Indian tribes are sovereigns and not subject to the state's *civil* jurisdiction. So the tribes set up games with up to \$50,000 jackpots.

Naturally, the case went to court. The breakthrough decision came in 1981 in the case entitled *Seminole Indians v. Butterworth*, 658 F.2d 310. The federal Fifth Circuit Court of Appeals ruled that the Indians could operate their bingo games, unregulated by the state of Florida. In 1982, the Ninth Circuit Court of Appeals, deciding the law for all of the western United States, agreed. In *Barona Group of Capital Grande Band of Mission Indians v. Duffy*, 694 F.2d 1185, the Court held that California had the power to make bingo legal or illegal everywhere in the state, including on Indian reservations, but once the game was made legal the state had no power to regulate the game on Indian land.

What does this mean for the future? Will Indian Bingo be followed by Indian Poker?

In fact, it already has, in those states with the largest Indian populations, where poker is legal. California has legal draw poker, low-ball and panguingue. A federal judge recently ruled that Riverside County could not close down the Cabazon's card room.

Will Indian Bingo and Indian Poker be followed by Indian Horse Racing? The answer is yes, if the Indian tribes can overcome the high costs of setting up tracks and attracting breeders. The Court ruled in the *Seminole* case that horse racing was legal in Florida, therefore the Seminole Tribe could compete against the state's monopoly, if it wished.

Will there be Indian Craps and Indian Blackjack? Once more, the answer is it has already been tried; but this time with less success. The Puyallup Indians opened an extremely profitable casino on reservation land within one mile of Tacoma and 25 miles of Seattle, Washington. The casino featured blackjack, poker and dice games. In 1980 the Ninth Circuit Court held that the state of Washington could not enforce its gambling laws against the Puyallups on their reservations; however, the state could prevent non-Indians from gambling, even on the reservation. And the Court went on to hold that a federal law, the Organized Crime Control Act of 1970, could be used to shut down casino gambling between Indians.

Much to the relief of Las Vegas (can you imagine what casinos within a one hour drive of L.A. would do to competition?) Las Vegas style games are not at all likely. The rule, remember, is that the state first has to legalize the game, and casino games are not about to come to California, at least not within the foreseeable future. It will be interesting to see what develops on Indian reservations in states where blackjack is legal, such as Nevada and North Dakota.

Will Indian gambling fade away? Very unlikely. The Indian tribes offer high-stakes games which are hurting their competitors, the regulated charity games. Although there is political pressure to outlaw the games, the states probably cannot do so without outlawing church bingo. The federal government has the power to outlaw Indian gambling, but legal gambling has brought in much needed money. Unemployment on some reservations was running at 75%.

The greatest danger is that the United States Supreme Court will decide to hear the case; although, the Court has avoided the issue for five years and appears willing to let many more years go by before it reviews the lower courts' decisions. The two appellate courts that have decided the issue so far have been, quite frankly, wrong—it is a crime in California to run a bingo game with prizes over \$250. The tribes are sovereigns, but they are still subject to the state's criminal laws.

Should the Supreme Court decide to hear the case it might rule that Indian Bingo and all the other games are illegal. Such a ruling would be a victory for the rule of law, but would put an end to an interesting experiment in legalized gambling in America.

Pennsylvania's Accidental Casinos. Never underestimate the ingenuity of the gam-

bling entrepreneurs. Getting around the spirit of the law can be relatively easy, especially when the lawmakers are asleep at the switch. The commercialization of charity bingo is one example, Pennsylvania's accidental casinos are another.

In 1984 Pennsylvania legalized casino gambling, accidentally. Both houses of the state Legislature voted for the bill, without knowing what exactly they were voting for. Governor Richard L. Thornburgh, Republican, who says he is unalterably opposed to legalized gambling in his state, signed the bill allowing wide-open poker and blackjack.

The law went into effect on January 2nd of 1985. For two wild months unlicensed, unregulated casinos flourished throughout the state. The unplanned and unexpected experiment came to a sudden end this March when Governor Thornburgh signed a bill repealing the law.

The rise and fall of Pennsylvania's accidental casinos is a lesson, repeated throughout history, on how *not* to make law.

In the case of the Pennsylvania casinos seemingly innocuous language was added to an unimportant law regulating liquor licenses. Regardless of what they thought they were voting for, the bill's language on its face allowed casino gambling. Either the gambling operators had hoodwinked the state Legislature and the governor, or the loophole really was accidental, but sharp operators were quick to capitalize on the lawmakers' mistake.

The law legalizing casinos in Pennsylvania was Act No. 1984-54, S.B. No 730, entitled, innocently enough, "Liquor Code—Amendment." And amend the Liquor Code it did. The Act of April 12, 1951, 47 P.S. Section 4, was amended by adding the following new Section:

"Section 476. Sporting Tournaments—

(a) Any distiller, manufacturer or retail or club licensee, either alone or in combination, may sponsor, hold or permit to be held, on the licensed premises or on premises contiguous and adjacent thereto, a dart, billiard, bowling, shuffleboard, rings or card tournament or contest without having to obtain any permits therefore.

(b) The distiller, manufacturer or retail or club licensee may directly or indirectly advertise a dart, billiard, bowling, shuffleboard, rings or card tournament or contest and may directly or indirectly advertise, offer, award or permit the award, on the licensed premises, of trophies, prizes or premiums therefor.

(c) Cash moneys or negotiable instruments of any type or kind, or trophies, prizes or premiums may be offered or awarded, traded or received by any person at such dart, billiard, bowling, shuffleboard, rings or card tournament or contest.

Gambling and the Law

(d) Alcoholic beverages may be served, sold, serviced or delivered and the same shall be permitted in or within the area in which such . . . contest is held . . .”

What the Pennsylvania state Legislature apparently intended to do was to allow dart boards and dart contests in local bars. The original bill reads exactly as printed above, with one significant exception. A Republican state representative, Frank J. O’Connell Jr., who represents the Pocono Mountains resort area and also happens to be a former bar owner, inserted a single new word, *card*, into the bill. It is unclear what his intent was; the rest of the Legislature ignored the small addition. The bill was passed and signed by the governor. *Card tournaments* were made legal in every bar in the state.

The wonderful thing about this new law from the bar owners’ point of view was that it explicitly allowed them to run poker and blackjack tournaments for money. As an extra fringe benefit the law specifically said that the games could not be regulated; state and local government had no power to police these games or set any standards whatsoever. The house could run the game any way it saw fit, and milk the players for everything it could. And the state was not collecting a penny.

One bar had so many card games going that it had to hire 20 dealers. Five hundred dollar pots were common, in fact they were fairly small shakes. Since the state had legalized card game tournaments the operators were quick to put into place legal blackjack and poker tables and organize continuous tournaments.

To keep the game a tournament, players were required to pay a flat fee, ranging from \$10 to \$500, to buy a set number of chips. At the end of a pre-arranged number of hands the two players with the most chips were paid cash prizes. A typical game would have seven players chipping in \$100 each for their chips. A house dealer, to prevent cheating, would deal ten games. After the tenth hand was finished the two players with the most chips would split \$500, with \$200 going to the house. Since there was no regulation, the house was free to take whatever the market would bear, in most cases the house kept up to one-third of the money bet.

In an ironic twist, the new casinos of Pennsylvania began advertising in Atlantic City and succeeded in attracting a select group of customers, casino dealers. By law New Jersey’s licensed employees are not allowed to gamble in Atlantic City, but there was nothing stopping them from driving over to Philadelphia to play in a legal game. The New Jersey Casino Control Commission finally had to order the licensed casino employees under its control to stay out of the Pennsylvania casinos.

The Pennsylvania Legislature, embarrassed by the publicity surrounding the new card tournaments, once again outlawed casino gambling. The unfortunate lesson for the bar operators was that their very success spelled their demise.

Legal blackjack had started the same way in Alberta, Canada. Section 190(1)(c)

of the Criminal Code of Canada allows a "lottery scheme" if run by a "charitable or religious organization" and if the money goes for a "charitable or religious object or purpose." The law was probably meant to allow charities to conduct raffles. No one seems to know exactly who started it, but someone in the Canadian government was talked into accepting casino gambling as a "lottery scheme." Charities blossomed like weeds, there are now 450 casino licenses issued each year; in 1983 the Alberta Gaming Commission reported the legal charity casinos had gross receipts of \$79,700,000. Casino games in Alberta were made legal accidentally through a small change in the law. After a while it became an accepted part of life in Calgary and Edmonton; until today it would be difficult to eliminate the casinos if the Canadian government even wanted to try.

What killed the Pennsylvania card games was their very success. If they could have been a little quieter the bar owners probably would have remained free to go about their business. Eventually, the card games would have become so entrenched that they could not have been outlawed.

Which all goes to show that sometimes it doesn't pay to let everyone know that you have found a winning game.

Casino Licensing—Entertainers and Partners. One of the most important financial issues currently hitting licensed casinos is the spread of licensing requirements. The legal gambling trade papers have carried numerous stories about the threat of the New Jersey Casino Control Commission to license Frank Sinatra and other performers. Less well known is the growing conflict between the casino industry's creative financing and the government agency's desire to keep control.

The legal issues over licensing performers are fairly clear cut. No one really cares about the small stars, but when you get to superstar status you are dealing with people who can, conceivably, influence the way the casino does business. Some of the superstars command so much money per show that the casinos have begun to offer them pieces of the profit of the casino, and sharing of the profits is a prime criteria for licensing. The lawyers representing performers argue strongly against putting their clients through the costly, and possibly embarrassing, ordeal of licensing. Sinatra's lawyer said the superstars would not put up with an investigation and if the regulators wanted to look at control they should license the agents, not the stars.

Should Sinatra be subject to a licensing investigation? If he has enough influence to control the way the casino does business he should be licensed like any other key personnel. Major suppliers of other services are licensed, the fact that his service is entertainment rather than slot machines or towels, should not make any difference. On the other hand, the regulators have the power to license all suppliers and others who share in the casino's profit, but they do not go after the supplier of towels on a regular basis. Just on the basis of fairness alone, there should be some indication

of kick-backs or undue influence to single out a performer or any other supplier of goods and services for licensing.

A similar problem has developed with the casino's need for more funds to expand. Since legalized gambling has become respectable, more sources of money have opened, including large private cashboxes. There is no trouble now in going through the licensing processes to float a stock or bond offering or to obtain a bank loan. The casino regulators are allowed to do a very limited inspection and rely on the in-depth investigations conducted by the state and federal bank and securities regulators. But problems arise when it is an individual making the investment.

Hotel/casinos can easily cost \$300 million to build, before one cent is earned. That can actually be good news for a wealthy individual seeking a tax shelter. Invest \$100,000 or \$1,000,000 and take the losses off until the cash flow starts. The best vehicle for such an investment is a limited partnership; the investor becomes the limited partner and gets all of the tax benefits with none of the risk. Some hotel/casinos are now selling limited partnership shares, or even individual rooms.

The next step is already being taken, a proposal to make a condominium/hotel/casino. The guests and players would not know the difference, because the investor will sign management contract so that the hotel/casino will operate the business. But the individual hotel rooms will be owned by separate individuals, who lease them back to the hotel/casino.

The problem is that under the law a person who owns a separate hotel room is still a part owner of the hotel/casino. A complete licensing investigation could cost the investor more than his entire investment. So far the regulators have used their discretion to permit these limited partners to avoid full licensing. But troubles are sure to continue as creative financing runs up against the strictest system of regulation in the country.

Casino Star Warriors. From the house side of the tables, the hot legal issues are the new currency reporting regulations discussed in the Chapter that follows, collectibility of casino gambling debts, the exclusion of card counters, and cheats. It is going to take some time before the various individual states drop their grip on laws from the Middle Ages and make legal gambling debts collectible. A state Legislator in Virginia, for example, does not win votes by allowing his constituents to be sued by New Jersey casinos. However, the casinos will soon be using their state's long arm statutes in force to obtain default judgments that can be collected in the player's home state.

As for card counters, as I stated in the Case Study in Chapter Fifteen, something is going to happen relatively soon over the issue of card counting in Nevada. Ken Uston appears ready to fight this time to the bitter end, and if Uston is willing to fight, the casinos have no choice but to defend. How the case will end is anyone's guess. The Nevada Supreme Court says that gambling is beyond federal constitutional rights,

but here we have a privately owned state licensed casino denying access to a man who is playing by the rules set up by the state.

Cheating is a much more immediate concern. The casinos are cracking down hard, with the help of state authorities and the FBI, on rings of cheaters taking the casinos for fortunes every week. Slot machines seem particularly susceptible; the slot manufacturers spend thousands of dollars advertising their latest security improvements. But as with every new defense someone eventually invents a new way to break the system. In June, 1985, United States District Judge Edward Reed sentenced William Cushing to seven years in prison for rigging \$1.6 million in jackpots in Nevada and New Jersey casinos.

A different, quieter fight, is looming over the issue of computers that aid the player in winning at blackjack and other games. Can anyone who keeps track of cards, without otherwise cheating, be barred from a casino or even prosecuted for playing the game of blackjack? A partial answer came unexpectedly on May 30, 1985, when Nevada suddenly changed the law.

The controversy over card counting took an interesting twist in the last few years with the development of new technology. Individuals and teams have been fighting a mostly hidden battle using "star wars" weapons to gain an advantage over the casino.

Winning at card counting is a difficult skill to master, particularly if the casino has taken counter measures. If the rules are unfavorable, even a small mistake in play can turn a winning game into a loser. Card counters accept that as one of the challenges of the game.

But what if the small mistake could be eliminated? What if the player always knew what was the perfect play to make? In other words, what if the player used a computer?

The answer from the casinos' point of view is easy. Since they do not want card counters to have the right to play, they are certainly opposed to any artificial means, such as a computer, to aid the counter.

Ironically, most players, including counters, are in agreement with the casinos, at least when it comes to computers. Counting cards to oneself is seen as no different than simply remembering and playing by the rules, like any other blackjack player. In blackjack, as in bridge, no self respecting player would use a paper and pencil to keep track of cards. Of course, the casino would quickly put a stop to a player who did attempt to keep track mechanically of the cards played. If using pencil and paper is an extremely questionable way to play the game, using a secret computer is seen as not acceptable at all.

There is something about using a computer that smacks of cheating. Perhaps it is that by taking the human element out of the game, by forcing the human casino dealer to play against the unbeatable machine, we see *ourselves* in the unequal fight. Beating a dealer by skill is a challenge, beating a dealer by the use of a machine is somehow not fair.

There is a gut feeling among players that the machines are illegal; no one has walked into a casino with a hand held device and sat down at a table. What the players do instead is rig up elaborate devices, such as keys that can be played by wiggling the toes, to feed in information as the cards are dealt. The computer gives the player feedback on the best strategy to follow through minute electric shocks.

The question is fast arising over whether these devices are illegal.

Cheating in Nevada requires changing the criteria of the game. It appears doubtful under that definition whether use of a computer is cheating, all of the information fed into the computer is available to every player. It would be difficult to argue that the use of enhanced intelligence is changing the criteria; counters like Ken Uston can make the same calculations in their heads. There remains the fact that the aid here is artificial. Would the casino allow a player to use a pad and pencil to keep track of the cards played?

Casinos have begun putting up signs stating that the use of a card counting computer is grounds for trespass. Under the trespass law of Nevada the sign has little legal significance. However, once a player has been told to leave it is a criminal trespass for him to remain or return. But that is the way the casinos now treat all counters, not just those with computers.

Although there have been reported arrests for players using hidden computers, I was able to find no legal authority in Nevada backing up what everyone takes for granted, that use of hidden computers in a casino is illegal.

The New Jersey Casino Control Commission has issued a regulation on the issue of computers. The regulation reads as follows:

“Electronic, electrical and mechanical devices prohibited. Except as specifically permitted by the commission, no person shall possess with the intent to use, or actually use, at any table game, either by himself or in concert with others, any calculator, computer, or other electronic, electrical or mechanical device to assist in projecting an outcome at any table game or in keeping track of or analyzing the cards having been dealt, the changing probabilities of any table game, or the playing strategies to be utilized.” 19 N.J.Admin.Reg. 47-8.1.

Nevada had no similar regulation and there were no reported cases. Apparently, every team that was caught using a computer ended up pleading guilty to some charge, such as trespassing, or left town never to return under threat of prosecution.

The fact that there were so few cases reported, and none appealed, could mean that there were very few teams working the casinos; or, that there were more than a few teams but that they were very good and were not getting caught; or, that they were getting caught but the casinos were concerned about giving others any ideas and were sitting hard on any adverse publicity.

My personal opinion is that there were not very many teams around; it is too hard to try and stifle publicity about something as newsworthy as hidden computers beating a casino, and the fact that some teams were caught shows that the systems are not fool proof. But the main reason I think there were not many "casino star warriors" is that the technology is expensive, difficult to master and tricky to operate under playing conditions.

A recently reported case shows you how complex one of these "star wars" operations can be. The team's inside man was equipped with a belt buckle camera, a tiny transmitter, and a concealed receiver. Using the camera, the inside man focused the zoom lens on the dealer's hole card, transmitting a video image to his confederates waiting outside in a van. The men in the van would feed the information into a computer to calculate the most advantageous play. The computer's decision would then be transmitted back to the inside man. I am not sure how the inside man was told of the computer's decision; he either had to wear a dangerously conspicuous earplug or receive small electric shocks telling him to hit, stand, etc. The transmissions were detected during a routine sweep for bugging devices in the casinos.

Although the actual numbers of individuals involved may have been small, the casinos were justifiably concerned over their potential impact. John Schreiber, FBI agent in charge of Nevada, recently revealed a new investigation into a major casino cheating operation. The gang was taking in more than \$600,000 *per day!*

In what may have been overkill, the Nevada Legislature reacted. I do not think that it was coincidence that the decision to outlaw casino "star wars" devices came at a time of renewed interest in the rights of card counters and the publication of *The Eudaemonic Pie*. Ken Uston, after winning the right to play in Atlantic City, is fighting for the right to count cards in Nevada. He has asked the Nevada Gaming Commission to issue a regulation prohibiting casinos from barring card counters. It appears likely that the Commission will not give him satisfaction and he will have to pursue the case in court.

Of possibly more significance is the new book, *The Eudaemonic Pie*, which tells the true story of how a group of bright young scientists built a series of computers that they used to beat the house in roulette. Professor Edward O. Thorp and others had theorized that roulette could be beaten; this book shows how it was actually done.

Imagine the faces of the casino executives, and the thoughts that must have been racing through their heads. "If roulette can be beaten then *everything mechanical* can be beaten; certainly the Big Six and Money Wheels, which are just like a roulette wheel on its side, and maybe even craps or (horrors!) slot machines. Something has to be done."

What the casinos did was to push through a bill outlawing everything they could think of. Although it seemed clear that the use of hidden devices was illegal, there were no reported cases and no firm criminal statute defining the crime. The defini-

tion of cheating in Nevada is defined to mean “to alter the selection of criteria which determine: (a) The result of a game; or (b) The amount or frequency of payment in a game.” N.R.S. 465.015. It is possible that a judge, faced with this criminal statute, might find that the team that used the belt buckle camera and computers was not “cheating,” because they did not mark the cards or change the game in any other way.

Rather than take the chance, the Legislature rammed through an anti-device bill. The history of the bill is informative because it was enacted as law within only one month of its introduction, and was put into effect immediately as an emergency measure. Someone was worried about something.

The bill makes it a felony “to use, or possess with the intent to use, any device to assist:

1. In projecting the outcome of the game;
2. In keeping track of the cards played;
3. In analyzing the probability of the occurrence of an event relating to the game; or
4. In analyzing the strategy for playing or betting to be used in the game.”

Senate Bill 467.

The interesting cases will come with defining “any device.” My guess is that it has to be outside of the person’s mind and body, but beyond that the casinos are free to argue that everything is a device. I doubt whether any judge will convict someone for counting on their fingers. I am less sure about using buttons on clothing or piles of chips. Pencils and paper are definitely out, even if the casino management gives the player the pencil.

We will probably see a rise in selective enforcement. The casinos will not want to stop system players from keeping track of the results in roulette, but they may arrest anybody who looks at their digital watch too often.

It is very possible that this statute is unconstitutional for vagueness; a criminal law must give the average person notice of what acts are forbidden. But until the law is tested in the courts the casinos will breathe a little easier, and any one with a great new invention for beating the house faces 1 to 10 years in prison.

17

New Currency Reporting Regulations

The most important current issue in gambling law, for both the house and the player, are the new requirements that casinos report large cash and credit transactions. The reach of these new regulations into the private affairs of individual players illustrates how easy it is for government to crack down on legal gambling in the name of crime control.

Casinos face potentially severe new problems: to comply with the new laws a gambling establishment is going to have to spend tens of thousands of dollars in unwanted extra paperwork, besides having to harass almost all of their best customers. But for a casino to ignore the new requirements can lead to criminal fines and imprisonment.

High rollers, and even middle size bettors, are not going to be happy to find their games interrupted to fill out forms so that the casino can turn their names over to the IRS or to other government authorities.

It is important for the casino executives to know what is required of them. Already, there are reports of casinos asking personal questions of players when no inquiry was required, and other casinos failing to fill out the forms that are now required.

For the player it is important to know what the new law requires. There are perfectly legal ways to get around the filing requirements, and nobody should have their names and private financial information turned over to the government unless it is required by law.

To understand what the law requires, it is first necessary to understand the history and purpose of the law.

In 1970 Congress passed a law entitled The Bank Secrecy Act. This Act is one of the greatest intrusions on an American citizen's right to privacy ever undertaken by our Government. Congress gave the Secretary of the Treasury the right to set standards for the recording and reporting of the financial transactions of every person in the United States.

Form **4789**
 (Rev. December 1982)
 Department of the Treasury
 Internal Revenue Service

Currency Transaction Report

File a separate report for each transaction
 (Complete all applicable parts—see instructions)

OMB No. 1545-0183
 Expires 12-31-85

Part I Identity of individual who conducted this transaction with the financial institution

Name (Last)	First	Middle Initial	Social Security Number
Number and Street			Business, occupation, or profession
City	State	ZIP code	Country (if not U.S.)

Method of verifying identification:

Driver's permit (State) (Number) Alien ID card (Country) (Number)

Passport (Country) (Number) Other (specify) _____

Part II Individual or organization for whom this transaction was completed (Complete only if different from Part I)

Name	Identifying number		
Number and Street	Business, occupation, or profession		
City	State	ZIP code	Country (if not U.S.)

Part III Customer's account number

Savings account (Number) Share account (Number) Safety deposit box (Number)

Checking account (Number) Loan account (Number) Other (specify) _____

Part IV Description of transaction. If more space is needed, attach a separate schedule and check this box

1. Nature of transaction (check the applicable boxes)

Deposit Check Cashed Currency Exchange

Withdrawal Check Purchased Mail/Night Deposit

Other (specify) _____ See item 6 below Other (specify) _____

2. Total amount of currency transaction (in U.S. dollars) 3. Amount in denominations of \$100 or higher 4. Date of transaction (Month, day, and year)

5. If other than U.S. currency is involved, please furnish the following information:

Currency name	Country	Total amount of each foreign currency (in U.S. dollars)
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6. If a check was involved in this transaction, please furnish the following information (See Instructions):

Date of check	Amount of check (in U.S. dollars)	Payee
Drawer of check		Drawee bank and City

Part V Financial institution reporting the financial transaction

Name and Address	Identifying number (EIN or SSN)
Business activity	

Sign here _____ (Authorized Signature) _____ (Title) _____ (Date)

Type or print name of authorized signer _____
 For Paperwork Reduction Act Notice, see the back of this page.

General Instructions

Paperwork Reduction Act Notice.—The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us.

The requested information is useful in criminal, tax, and regulatory investigations. In addition to directing the Federal Government's attention to unusual or questionable transactions, the reporting requirement discourages the use of currency in illegal transactions. Financial institutions are required to provide the information under 31 CFR 103.22, 103.25, and 103.26.

Who Must File.—Each financial institution must file a Form 4789 for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to that financial institution, which involves a transaction in currency of more than \$10,000. Multiple transactions by or for any person which in any one day total more than \$10,000 should be treated as a single transaction, if the financial institution is aware of them.

Exceptions.—Banks do not have to file Form 4789 for transactions with Federal Reserve Banks, Federal Home Loan Banks, or other domestic banks.

Banks do not have to file Form 4789 for the following transactions if the amounts involved are reasonable and customary in the course of the customer's business or activities:

- (1) deposits or withdrawals of currency from an existing account by an established depositor who is a U.S. resident and who—
 - (a) operates a retail business in the United States (except automobile, boat, or airplane dealerships), or
 - (b) operates a sports arena, race track, amusement park, bar, restaurant, hotel, licensed check cashing service, vending machine company, or theater;
- (2) deposits or withdrawals, exchanges of currency, or other payments and transfers by local, state, or Federal government agencies;
- (3) withdrawals for payroll purposes from an existing account by an established depositor who is a U.S. resident and who operates a firm that regularly withdraws more than \$10,000 to pay employees in currency.

Banks must keep a record of customers whose transactions are not reported because of exceptions (1) through (3) above. (See 31 CFR, section 103.22 for details about what to include in this record.)

Nonbank financial institutions do not have to report transactions with commercial banks.

When and Where to File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service, Odgen, UT 84201, or hand carry it to your local IRS office. Keep a copy of each Form 4789 for 5 years from the date you file it.

Identifying Number.—For individuals this is the social security number. For others it is the Federal employer identification number (9 digits).

Identification Required.—Before completing a transaction, a financial institution must verify and record (1) the name

and address of the individual making the transaction and (2) the identity, account number, and taxpayer identifying number (if any) of the individual or organization for whose account the transaction is being made. Use a passport or other official document showing nationality to verify the identity of an alien or nonresident of the United States. Use a document like a driver's license, etc., normally accepted as a means of identification when cashing checks, to verify the identity of anyone else. In each case, record on this form the method of identification used.

Penalties.—Civil and criminal penalties (up to \$500,000) are provided for failure to file a report or to supply information, and for filing a false or fraudulent report. See 31 CFR, sections 103.47 and 103.49.

Specific Instructions

Part I.—

- (1) In the address section, enter the permanent street address of the individual conducting the transaction. If the currency was received or shipped through the U.S. Postal Service, write in "U.S. Mail." If the currency was received in a night deposit box, write in "Night Deposit." If the currency was received or shipped through an armored car service, licensed by a state or local government, provide only the service's name and address.
- (2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.
- (3) Check the appropriate box and enter the number of the document used to verify the identity of the individual making the transaction. When the name of an individual is not required to be given, it is not necessary to describe the method of verifying identification.

Part II.—

- (1) For individuals, enter last name, first name, and middle initial, if any, in the name block in that order. For all others, enter the complete organization name.
- (2) In the identifying number block, enter the social security number or employer identification number.

Part III.—

Check the appropriate box and enter the appropriate customer's account number. If there is no account relationship, check Other and write in "None."

Part IV, line 1.—

If the transaction being reported was the sale or purchase of foreign currency, check Other and write in "sale of foreign currency" or "purchase of foreign currency," whichever applies.

Part IV, line 6.—

Complete this line if a check is cashed or a bank check is purchased with currency.

Part V.—

Institutions may also enter in the name and address block other identifying information.

Signature.—This report must be signed by an authorized individual. Also type or print the name of the authorized signer.

Definitions

Bank.—Each agent, agency, branch, or office in the United States of a foreign bank and each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below:

- (1) a commercial bank or trust company organized under the laws of any state or of the United States;
- (2) a private bank;
- (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;
- (4) an insured institution as defined in section 401 of the National Housing Act;
- (5) a savings bank, industrial bank, or other thrift institution;
- (6) a credit union organized under the laws of any state or of the United States; and
- (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Currency.—The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Financial Institution.—Each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below:

- (1) a bank;
- (2) a broker or dealer in securities, registered or required to be registered with SEC under the Securities Exchange Act of 1934;
- (3) a person who engages as a business in dealing in or exchanging currency (for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks);
- (4) a person who engages as a business in issuing, selling, or redeeming traveler's checks, money orders, or similar instruments, except one who does so as a selling agent exclusively, or as an incidental part of another business;
- (5) a licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities.

Transaction in Currency.—A transaction involving the physical transfer of currency from one person to another. A transaction in currency does not include a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency.

And the Department of the Treasury has used its power, almost without limit.

The Treasury has the power, under the Act, to require that every check in the United States be photocopied. It has chosen to limit the requirement to checks over \$100; which means every bank, savings and loan, etc., is required to photograph and retain copies of the front and back of the billions of checks drawn for over \$100. The Treasury Department has further required these financial institutions to keep separate records which would enable the government to trace each \$100-plus check, whenever the government so desired. These check copies and other documents must be kept for five years.

"Financial institutions," as defined by the Bank Secrecy Act, are required to keep records on large cash transactions as well as on \$100 checks, and to file reports with the IRS. Under regulations promulgated by the Treasury, every financial institution has to file a Form 4789 within 15 days of each transaction involving over \$10,000 in cash.

Form 4789 requires that the person depositing, withdrawing, or transferring cash over \$10,000 submit identification, including his social security number. This required reporting is the reason there are so many cash transactions at \$9,999; although, the banks are supposed to report any cash activity they find suspicious or that totals over \$10,000 in a single day. The instructions for the Form give this example: "the following series of transactions would be reportable as a single currency transaction: redemption of a \$2,000 time deposit, \$2,000 withdrawal from savings, \$2,000 MasterCard advance, \$2,000 loan proceeds, \$3,000 check cashed."

Financial institutions are allowed to make exceptions for businesses that deal in large amounts of cash on a regular basis, like restaurants, hotels, super markets, and vending machine companies. Race tracks that deposit and withdraw currency from their own bank accounts are specifically listed as an exemption; banks do not have to file a Form 4789 every time a race track does business. On the other hand, car, boat and plane dealerships cannot be exempted, no matter how regular their large cash deposits are with the bank. The government realizes that cars, boats and planes are natural purchases for someone with a large amount of cash.

Enormous amounts of record keeping are required under the Act. In a lawsuit filed in 1972 one bank alone reported spending \$392,000 in one year to comply with microfilming requirements. Who pays for all this new record keeping? Banks learned how to pass the costs of the extra clerks, photocopiers and microfiches on to their customers.

Anyone who knowingly makes any false statement in any report under the Act can be fined \$10,000 and imprisoned for up to five years. Wilful violations of any requirement of the Act can lead to a civil penalty of \$1,000 for each day and each place of business at which a violation occurs.

The purpose of all this record keeping was supposedly to catch drug traffickers and other criminals, by making it easier for government prosecutors to make their cases. All a prosecutor has to do is obtain the documents that have been neatly col-

lected by its unwilling partners, the financial institutions, and the government can trace any money from hand to hand. Usually the prosecutor will have to get a subpoena to get the documents, which would at least require that a judge or magistrate believe that there is probable cause to believe a crime has been committed and these documents are necessary to prove the case. Of course, when reports, such as Form 4789, are filed directly with the IRS, the IRS is free to use that information or turn it over to any other government agency without having to first get the approval of a court, it simply looks into its own files to find whatever incriminating documents it needs.

The United States Supreme Court held the Act constitutional in the case of *California Bankers Association v. Schultz*, 416 U.S. 21 (1974). The Court agreed with the Treasury Department that the Act has "a high degree of usefulness in criminal, tax or regulatory investigations or proceedings."

In a ringing dissent Justice Douglas pointed out that not everybody in the United States is a crook, and made clear the dangerous road the government had begun to tread:

"It would be highly useful to governmental espionage to have like reports from all our bookstores, all our hardware and retail stores, all our drugstores. These records too might be 'useful' in criminal investigations . . . A mandatory recording of all telephone conversations would be better than the recording of checks under the Bank Secrecy Act, if Big Brother is to have his way." 416 U.S. 21, 84 (Douglas, J., dissenting).

The Reagan Administration has taken the invasion of privacy allowed under the Act a giant step further. Ronald Reagan ran for president, and was re-elected, on a promise to get the government off our backs. The reality has been far different.

Reagan's Administration has attempted to do more to find out what its citizens are doing, and to tell them what they should be doing, than any other in history. The government of the United States under Reagan knows more about its own citizens than did the governments of Germany under Hitler or Russia under Stalin.

As merely two examples, that should be of great interest to players and anyone else involved in the legal gambling industry, President Reagan is attempting to obtain reports on all large cash transactions, everywhere.

The "Tax Reform Act of 1984" added a new section to the Internal Revenue Code, Section 6050I, which now provides special reporting requirements for any person receiving more than \$10,000 in cash in connection with a trade or business. This new reporting requirement went into effect on December 1, 1984, and covers anyone who receives over \$10,000 in cash, whether in the form of a lump sum, installment payments, or a series of related transactions. Transactions are "related" if they occur within a 24-hour period, or if the person receiving the cash "knows or has reason

Form **8300** (Rev.)
(Rev. January 1985)
Department of the Treasury
Internal Revenue Service

**Report of Cash Payments Over \$10,000
Received in a Trade or Business**

OMB No. 1545-0892
Expires 12-31-85

Part I Individual or Organization for Whom This Transaction Was Completed

Individual's last name		First name		M.I.	Social security number	
Name of organization		Employer identification number		Passport number	Country	
Number and street		Business or occupation		Alien registration number	Country	
City	State	ZIP code	Country (if not U.S.)	Other identifying data (Specify)		

Part II Identity of Individual Conducting the Transaction (Complete only if an agent conducts a transaction for the person in Part I)

Last name		First name		M.I.	Social security number	
Number and street		Passport number	Country	Alien registration number	Country	
City	State	ZIP code	Country (if not U.S.)	Other identifying data (Specify)		

Part III Description of Transaction and Method of Payment

1 Amount of cash received \$	2 Amount in item 1 in \$100 bills \$
3 Nature of transaction	Description of property or service
a <input type="checkbox"/> personal property purchased b <input type="checkbox"/> real property purchased c <input type="checkbox"/> personal services provided d <input type="checkbox"/> business services provided e <input type="checkbox"/> intangible property purchased f <input type="checkbox"/> debt obligation paid g <input type="checkbox"/> exchange of cash h <input type="checkbox"/> escrow or trust funds i <input type="checkbox"/> other (specify) ▶	_____ _____ _____ _____ _____ _____ _____ _____ _____ _____
4 Method of payment by customer	5 Date paid
a <input type="checkbox"/> paid with U.S. currency or coin b <input type="checkbox"/> paid with foreign currency (describe) _____ _____ _____	_____

Part IV Business Reporting This Transaction

Name of reporting business			Identification number (EIN or SSN)
Street address			Nature of your business
City	State	ZIP code	

Under penalties of perjury, I declare that the information I have furnished above, to the best of my knowledge, is true, correct, and complete.

SIGN
HERE ▶

(Authorized Signature—See Instructions)

(Title)

(Date)

For Paperwork Reduction Act Notice, see page 2.

Form **8300** (Rev. 1-85)

General Instructions

Paperwork Reduction Act Notice.—The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you are required to provide it to us. The requested information is useful in criminal, tax, and regulatory investigations. In addition to directing the Federal Government's attention to unusual or questionable transactions, the reporting requirement discourages the use of currency in illegal transactions. Any person engaged in a trade or business is required to provide the information under Section 6050 I of the Internal Revenue Code.

Who Must File.—Each person engaged in a trade or business who, in the course of such trade or business, receives more than \$10,000 in cash in one transaction (or two or more related transactions) must file Form 8300. For example, multiple receipts of cash from any person which in any one day total more than \$10,000 should be treated as a single receipt (and therefore reportable).

Certain precious metals dealers, precious stones dealers, jewelry dealers, pawnbrokers, loan or finance companies, insurance companies and travel agencies are not excepted and must file Form 8300 when they have reportable cash transactions. To the extent that the Assistant Secretary of the Treasury (Enforcement and Operations) requires these financial institutions to file Form 4789, Currency Transaction Report, Form 8300 is not required to be filed for the same transaction(s).

Exemptions.—Financial institutions who are required to file IRS Form 4789 under Section 5312(a)(2)(A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of Title 31, U.S.C., are exempted from filing Form 8300. These financial institutions include each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below.

- (1) a bank (see Definitions),
- (2) a broker or dealer in securities, registered or required to be registered with SEC under the Securities Exchange Act of 1934,
- (3) a person who engages as a business in dealing in or exchanging currency (for example, a dealer in foreign exchange or a person engaged primarily in the cashing of checks),
- (4) a person who engages as a business issuing, selling, or redeeming traveler's checks, money orders, or similar instruments, except one who does so as a selling agent exclusively, or as an incidental part of another business,
- (5) a licensed transmitter of funds, or other person engaged in the business of transmitting funds abroad for others.

Transactions entirely occurring outside the United States are exempted from these reporting requirements, except to the extent regulations provide otherwise. The United States includes the 50 states and the District of Columbia.

When and Where to File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service Data Center, P.O. Box 32621, Detroit, MI 48232. ATTN: RCP or hand carry it to your local IRS office. Keep a copy of each Form 8300 for 5 years from the date you file it.

Identifying Number.—For individuals this is the social security number. For others it is the Federal employer identification number (EIN),

which has 9 digits. For aliens or other non-U.S. individuals use the passport number or alien registration number and indicate the country.

Penalties.—Civil and criminal penalties are provided for failure to file a report or to supply information, and for filing a false or fraudulent report.

Statement to be provided.—A written statement must be provided to each person named in this form. The statement must be provided on or before January 31 of the year following the calendar year in which this report is made. The statement must show the name and address of the business receiving the cash and the total amount of cash received during the year from the payer and that the information is being furnished to the IRS. Keep a copy for your records. A copy of the Form 8300 that was filed with the Internal Revenue Service may be used as the statement if the payer had a single transaction for the year.

Specific Instructions

Part I

- (1) For individuals, enter last name, first name, and middle initial, if any, in the name block in that order. For other than an individual, enter the complete organization name, address, and employer identification number in the boxes provided.
- (2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.
- (3) If the individual is an alien or foreign national, enter the alien registration number or passport number and country or other official documents evidencing nationality or residence in the boxes provided.
- (4) Complete the "Other identifying data" box for individuals other than aliens and foreign nationals. Other identifying information includes documents normally acceptable as a means of identification when cashing checks (e.g., a driver's license or credit card number may be entered in the "Other identifying data" box provided).

Part II

- (1) In the address section, enter the permanent street address of the individual agent of the person in Part I conducting the transaction.
- (2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.
- (3) If the individual is an alien or foreign national, enter the alien registration number or passport number and country or other official documents evidencing nationality or residence in the boxes provided.
- (4) Complete the "Other identifying data" box for individuals other than aliens and foreign nationals. Other identifying information includes documents normally acceptable as a means of identification when cashing checks (e.g., a driver's license or credit card number may be entered in the "Other identifying data" box provided).

Part III

Enter in item 2 the amount of U.S. currency included in item 1 that is in \$100 bills or higher. (For example, if the amount in item 1 is \$30,000, and \$25,000 of it was paid in \$100 bills, enter \$25,000 in item 2.)

Check the applicable boxes that describe the nature of the transaction. Briefly describe the kind of property or service for which the customer paid cash.

If the aggregate amount of cash received in 2 or more installment payments exceeds \$10,000, the date entered in item 5 should be the date the payment is made that causes the aggregate amount of cash to exceed \$10,000.

Part IV

Signature.—This report must be signed by an authorized individual. Also type or print the name of the authorized signer below the signature.

Definitions

Bank.—Each agent, agency, branch, or office in the United States of a foreign bank and each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below.

- (1) a commercial bank or trust company organized under the laws of any state or of the United States,
- (2) a private bank,
- (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States,
- (4) an insured institution as defined in section 401 of the National Housing Act,
- (5) a savings bank, industrial bank, or other thrift institution,
- (6) a credit union organized under the laws of any state or of the United States, and
- (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities, including organizations that are exempt from tax.

Cash.—The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks, traveler's checks, or other negotiable or monetary instruments customarily accepted as money.

Transaction in Cash.—A transaction involving the physical receipt of cash from a person. A transaction in cash does not include a receipt of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of cash.

Transaction.—The purchase of goods, services, personal or real property, and intangible property by a customer, a debt obligation paid for with cash, the receipt and conversion of cash to a negotiable instrument (for instance, a receipt of cash from a person in exchange for a check), and the receipt of cash to be held in escrow or trust.

to know that each transaction is one of a series of connected transactions." *Reg. Section 1-60501-1, A-10.*

Reagan's Treasury Department has declared that after January 1, 1985, this section will apply to all small casinos—those having gross annual gaming revenues of \$1,000,000 or less. The Form is 8300 and it must be filed with the IRS. The Treasury department has also stated, "The reporting requirement also applies to all non-casino businesses at hotel/casinos and resorts, such as shops, restaurants and hotels." 50 Fed. Reg. no. 25, Feb. 6, 1985.

On its face, this new law would also require lawyers to turn in a report, this Form 8300, to the IRS on their own clients. The small problem of the attorney-client privilege seems to have been forgotten.

As another small part of this Administration's invasion of its citizens' privacy, the Treasury Department wants to call all large casinos "financial institutions" and require these casinos to maintain records and file reports with the IRS on all large cash transactions, just like banks.

The Treasury Department says that its real target is drug traffickers, who deal in large amounts of cash. The Reagan Administration says it is concerned about the drug dealer who launders cash through the casino, changing large bundles of street money (\$1 and \$5 bills) into small bundles of clean money (\$50 and \$100 bills). Someone in the Treasury Department figured out that casinos also deal in large amounts of cash. Therefore, if you follow their logic, the casinos are a good place to catch drug traffickers.

Of course, if the Reagan Administration really cared about laundering drug money they would have made laundering drug money a crime. It is illegal to join a criminal conspiracy to sell drugs, and there are some tough new laws that allow the government to trace down all the proceeds of a drug sell and confiscate the property bought with the illegal profits, but it was not until 1985 that the Reagan Administration proposed making money laundering itself a federal crime. Some states, like Florida and Georgia, have acted far faster in cracking down on the underground bankers who make it possible for criminals to spend their illegally obtained cash.

There have been a few incidents where it appears licensed casinos were involved in laundering drug money, but the incidents have been very few indeed. Some of the incidents used by the federal government to support the imposition of these harsh new reporting requirements were not laundering incidents at all. It was reported, for example, that "Antonio Cruz Vasquez, a major heroin distributor in the New York-New Jersey area, lost almost \$3 million at the gambling tables during a two-year period that ended in December, 1977. Testimony at his trial showed that he had a \$700,000 line of credit at Caesars Palace in Las Vegas and brought large amounts of cash into the casino?" *L.A. Times*, Dec. 17, 1983, Part I, p.18, col.1. Losing \$3 million shows that he was gambling; a money launderer only makes token bets to

cover his exchange of dirty money for clean. A similar story was Jimmy Chagra, "a convicted San Antonio narcotics dealer," who once used cash to pay off a gambling debt of \$915,000. *Id.* Paying off a gambling debt is not laundering money.

There have been a few incidents that seem to involve real laundering of money and the active participation of the casinos. The *Los Angeles Times* reported that five persons, including two officials of the Royal Casino in Las Vegas, were charged with using the Royal Casino and foreign bank accounts to hide \$16 million in illicit narcotic profit. *Id.* Note the criminal charge was made under existing laws, not these new casino currency regulations.

The IRS, which is part of the Treasury Department, has recently been hit by a wave of adverse publicity, embarrassing problems with computer foul-ups, late checks and destroyed letters. In what looks like an attempt to recover its lost public esteem, and to justify these new casino reporting requirements, there have been newspaper headlines about hearings and a federal grand jury indicting a New York City lawyer, Anthony Castelbuono, and eight others for allegedly laundering money through Atlantic City casinos. None of the casinos were charged.

There is actually a legal gambling connection with the laundering of drug money, but it is not the casinos; it's the lotteries. In Puerto Rico, for example, there are people known as *acaparadores*, who seek out lottery winners and buy their winning tickets at a price higher than the prize. The *acaparadores* then earn a commission of 10% to 13% by reselling the winning ticket to drug dealers and other tax evaders. Everyone wins, except the U.S. government: the original purchaser of the lottery ticket wins even more than he expected, the *acaparadores* get a commission, and the tax evaders have a good explanation as to how they came into a large amount of money.

Clearly, the Treasury Department is not telling the truth; the turning in of high rollers is not designed to catch drug traffickers. There may have been one or two, or even dozens, of drug traffickers using casinos as banks, but the great majority of criminals do not need casinos when there are thousands of real banks available. The President's Commission on Organized Crime estimates the amount of money laundering related to drugs at between \$5 billion and \$15 billion per year, too much for casinos to handle but easily within the means of the nation's banks.

The Treasury Department has been embarrassingly inept in keeping track of banks; where the casinos are allegedly mishandling hundreds of thousands of dollars, banks are violating the law to the tune of hundreds of millions of dollars, each. The First National Bank of Boston failed to report \$1.23 billion in cash and foreign currency transactions, including large cash deposits from a mob family. The Bank was fined \$500,000. A recent sting operation in Puerto Rico netted 17 people, including the present and former executive of two Puerto Rican banks, four savings and loans and two branches of Citibank. Senator William V. Roth Jr., hearing testimony on money

laundering, said the Bank of Boston violations "pale in comparison to what apparently has been going on in Puerto Rico." *L.A. Times*, June 7, 1985, Part I, p.15, col.1.

Where has the Treasury Department been? In U.S. Senate hearings on how banks may have been misused by organized crime, a Republican senator said, "the record of enforcement for this act has been nothing short of abysmal." Sen. Warren B. Rudman, *L.A. Times*, March 13, 1985, Part I, p.10, col.2. The Comptroller of the Currency, C.T. Conover, admitted only that bank examiners needed more training. "You say this is a lack of training," Rudman asked Conover, "I say this is gross negligence. It's a sorry performance." *Id.*

The Treasury finally decided to send a letter to the chief executive of every bank in the United States reminding them that they were supposed to report large cash and foreign transactions. Banks began to voluntarily come forward, to avoid large fines. Chase Manhattan Bank admitted that it failed to report 1,442 transactions totaling more than \$852 million. The Bank was fined \$360,000; no one went to jail.

Why would a drug dealer bother with a casino where the money would be even more noticed? Even if the drug dealer could exchange his pile of small bills for larger ones, he still would have to find some bank or other financial institution to take his bundles of bigger bills. And if the drug money was converted into a check, the law already requires that those checks be photocopied. It is, of course, already a crime for a casino employee to conspire to violate the laws against money laundering.

No, the Treasury Department is not forcing the casinos to spend millions of dollars tracking every large cash transaction to get drug traffickers. The Treasury Department seems to have two goals in mind: to catch the high rollers who are not paying taxes, and, if possible, to destroy legal casinos. The Treasury was going to require extensive record keeping for all casino extensions of credit over \$500, including check cashing accounts. Only extensive lobbying by the casino industry prevented this and other attempts to hamper legal gambling, from going into effect.

Since this is an administrative rule it is not subject to direct review by either Congress or the voters.

It is not only the high rollers who should be concerned about the proposal to report large cash transactions—even the smallest player will help foot the bill for all the new record keeping. Barton Jacka, Chairman of the Nevada Gaming Control Board, says he needs an increase of \$534,500 to hire 50 more agents, to oversee the new regulations. And if the small stakes gambler happens to win big he will find his privacy invaded to an extent never anticipated by the founders of our democracy. Although the extra costs to casinos will be created by their high rollers, it is extremely unlikely that the casinos will hit the big spenders for additional fees. It will be the little guy who will make up the lost profits.

The issue has become something of a fight over state's rights, with Nevada proposing, and winning the right, to impose its own regulations for reporting of large casino

cash transactions. The Treasury Department agreed that a state, such as Nevada, that had its own currency reporting requirements for casinos, would not have to follow the federal regulations; technically, the Secretary of the Treasury granted Nevada an exemption from the federal currency reporting regulations. New Jersey and Puerto Rico have not, as of this writing, prepared their own regulations. Therefore, a high roller, and casino, will face different rules in different locales. I will attempt to spell out the rules, including the differences, so that you will know what is required under the Treasury regulations (for New Jersey and Puerto Rico) and their counterparts in Nevada.

The first, and most obvious difference is that the reports of large cash transactions filed by Atlantic City and Puerto Rican casinos go directly to the IRS; Nevada casinos report to the state.

Nevada casinos naturally feel this is a significant difference, and it may be so, at least for psychological reasons. But legally the differences are slight. The Treasury Department has required that the Nevada gaming officials turn over all reports made by Nevada casinos within 15 days of receipt by the state, and further, that Nevada require that all records maintained by the casinos be available to the feds within 30 days of a request. No subpoena is necessary for the IRS to get from Nevada casinos all that it gets automatically from casinos in Atlantic City.

The state must undertake an investigation of a casino's cash transactions if the Treasury requests and provide the Treasury with reports; and if the state cannot conduct its own investigation the federal Treasury agents have the right to conduct the investigation.

Possibly a more significant difference is the reporting of credit transactions. The Treasury regs require that a record be made of all extensions of credit of \$2,500 or more. The Nevada regs have what they call a "wash" transaction, that need not be reported to any government body, and need not even generate any records for the casino to maintain. No records maintained means there is nothing for the IRS to get when it makes its request for records.

A "wash" occurs when the casino extends credit at the table, not the cashier's cage; the original marker is kept at the table and is returned to the player or destroyed if repaid at the table, and immediately after the game ceases the player repays the credit at the table. There is an additional provision that states the player must repay the credit marker with "net amounts won at the table or pit, or with chips that were given to the patron as part of the extension of credit." This would indicate that only winners could escape having a record made of their credit, although it will be difficult to prevent a losing player from wanting to pay off his markers with cash at the end of each session to avoid having a permanent record made.

New Jersey casinos do not have the option of allowing players non-recorded

Gambling and the Law

CURRENCY TRANSACTION INCIDENCE REPORT

File up to 5 separate transactions on this report. Please type or print.
(Complete all applicable parts -- see instructions)

Incidence # 1:

Trans. date	Trans. time	Trans. amount	Trans. type	Name of employee handling transaction
Name of person attesting to gaming			Evidence of gaming	

Incidence # 2:

Trans. date	Trans. time	Trans. amount	Trans. type	Name of employee handling transaction
Name of person attesting to gaming			Evidence of gaming	

Incidence # 3:

Trans. date	Trans. time	Trans. amount	Trans. type	Name of employee handling transaction
Name of person attesting to gaming			Evidence of gaming	

Incidence # 4:

Trans. date	Trans. time	Trans. amount	Trans. type	Name of employee handling transaction
Name of person attesting to gaming			Evidence of gaming	

Incidence # 5:

Trans. date	Trans. time	Trans. amount	Trans. type	Name of employee handling transaction
Name of person attesting to gaming			Evidence of gaming	

CASINO REPORTING THE FINANCIAL TRANSACTIONS

Name

Number and street

City

State

Zip Code

Sign Here

(Casino employee reviewing this form)

(Title)

(Date)

Nevada Form

New Currency Reporting Regulations

GENERAL INSTRUCTIONS

Who Must File

Any casino with annual gross gaming revenue in excess of \$1 million which is a party to one of the following transactions must document the transaction on this form:

Trans. Type	Description
1	The casino makes a cash payoff on a wager of more than \$10,000. (Regulation 6A.050(1))
2	The casino redeems more than \$10,000 worth of its chips from a patron for cash in any transaction when the casino is reasonably assured that the patron obtained the chips during the course of gaming transactions. (Regulation 6A.050(2))

When and Where to File

This form, along with one copy, must be received by the Gaming Control Board within 15 days of the earliest transaction listed on the form. Send the filings to:

Nevada Gaming Control Board
Audit Division
4220 South Maryland Parkway, Bid. D
Las Vegas, NV 89158

One additional copy of each form submitted to the Board must be retained by the casino for at least five years from the submission date, and should be filed in chronological order.

SPECIFIC INSTRUCTIONS

Up to five separate incidences may be reported on this form. For every incidence required to be reported, the first line of information must be completed to include:

1. Date
2. Time
3. Dollar amount of transaction
4. Transaction type (either "1" or "2" as described above)
5. Name of employee handling transaction

For type "2" transactions only, the following additional information must also be noted:

1. Name of person attesting that the chips were obtained by the patron during the course of gaming.
2. Description of the evidence used to verify that the patron won or wagered the chips.

Prior to sending the form, the full legal name of the casino and the street address of the casino, office, or branch where the actual transactions were conducted must be entered on the form. In addition, a casino employee, preferably from the accounting department, should review the completed form for compliance with Regulation 6A, and must include his/her signature, title, and date of review in the appropriate spaces on the form.

Nevada Form

Gambling and the Law

CURRENCY TRANSACTION REPORT

File a separate report for each transaction. Please type or print.
(Complete all applicable parts -- see instructions)

PART I INDIVIDUAL OR ORGANIZATION FOR WHOM THIS TRANSACTION WAS COMPLETED

Patron's last name (or org. name)	First name	Middle initial	Social Security Number
Number and street	Passport #	Alien Registration #	Issuing country
City	State	Driver's permit (number and state)	
Zip code	Country (if not U.S.)	Method used to identify patron and verify residence	

PART II IDENTITY OF INDIVIDUAL CONDUCTING THE TRANSACTION (complete only if an agent conducts a transaction for the person listed in Part I)

Last name	First name	Middle initial	Social Security Number
Number and street	Passport #	Alien Registration #	Issuing country
City	State	Driver's permit (number and state)	
Zip code	Country (if not U.S.)	Method used to identify patron and verify residence	

PART III DESCRIPTION OF TRANSACTION. If separate schedule is attached, check this box

1. Nature of transaction (check the applicable box):
- a. Redemption by a patron of more than \$10,000 worth of chips for cash, when the casino is not reasonably assured that the patron obtained the chips in the course of a gaming transaction.
 - b. Placing of a wager by a patron of more than \$10,000 in cash at any gaming activity at which chips are not customarily used for wagering (i.e., race book, sports pool, keno, bingo).
 - c. Sale of more than \$10,000 worth of chips to a patron in exchange for cash.
 - d. Deposit of more than \$10,000 in cash by a patron in any transaction for gaming or safe-keeping purposes if the casino has knowledge of the amount of cash deposited.
 - e. Repayment of more than \$10,000 in cash by a patron for credit previously extended.
 - f. Redemption of more than \$1,000 worth of another casino's chips, by a patron, for cash in any transaction.
 - g. Other cash receipts or disbursements of more than \$10,000 not previously listed:
 - (1) Withdrawal of deposit (4) Wire transfer on behalf of patron in exchange for cash
 - (2) Credit advance (5) Other cash out (specify) _____
 - (3) Check cashed (6) Other cash in (specify) _____

2. Trans. date	3. Trans. time	4. Trans. amount	5. Additional transaction information
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PART IV CASINO REPORTING THE FINANCIAL TRANSACTION

Name _____

Number and street _____

City _____ State _____ Zip Code _____

Sign Here	_____ (Casino employee who handled trans.)	_____ (Title)	_____ (Date)
	_____ (Casino employee reviewing this form)	_____ (Title)	_____ (Date)

New Currency Reporting Regulations

GENERAL INSTRUCTIONS

Who Must File

Any casino with annual gross gaming revenue in excess of \$1 million which is a party to one of the seven transactions listed on the front of this form must submit a completed form for each qualifying transaction. Multiple transactions by or for any patron which, in any 24-hour period, total more than \$10,000 should be treated as a single transaction, if the casino is aware of them.

Exceptions

Casinos do not have to file this form for the following transactions:

1. Any transaction with a domestic bank (no report required).
2. When the casino makes a cash payoff on a wager of more than \$10,000 (6A.050 report required).
3. When the casino redeems more than \$10,000 worth of its chips from a patron for cash, and the casino can be reasonably assured that the patron obtained the chips from gaming (6A.050 report required).

When and Where to File

This form, along with one copy, must be received by the Gaming Control Board within 15 days after the date of the transaction. Send the filings to:

Nevada Gaming Control Board
Audit Division
4220 South Maryland Parkway, Building D
Las Vegas, NV 89158

One additional copy of each form submitted to the Board must be retained by the casino for at least five years from the submission date, and should be filed in chronological order.

SPECIFIC INSTRUCTIONS

Part I

This part is to be used in all cases. Record information about patrons and other individuals who conduct transactions in person for their own benefit. If an agent conducts a transaction with the casino for a patron or other person, show in Part I the principal's identity and complete Part II to show the agent's identity.

For transactions 1(a), 1(b), and 1(c) (Regulation 6A.030 transactions), the social security number of the patron must be recorded if obtained from the patron, or if obtainable from the casino's in-house records, the records of any affiliates (as defined in NRC Reg. 15.484.3) located in Nevada, or branch offices of the licensed establishment. For transactions 1(d), 1(e), 1(f), and 1(g) (Regulation 6A.040 transactions), the social security number should be recorded if obtainable from records only. The casino is not required to request the social security number from the patron for the Regulation 6A.040 transactions.

Use a passport, alien ID card, or any other official document showing nationality to verify the identity and residence of a nonresident of the United States. Use a driver's license for all other patrons. If a driver's license is not available, the casino may use an identification document customarily used for check cashing if the procedure is described in the casino's own internal control system submitted to the Board pursuant to Regulation 6.

Part II

Complete this part only when an agent conducts a transaction on behalf of another party. Part I should also be completed to identify the principal.

Part III

- Item 1. - Check the box that describes the exact nature of the transaction.
- Item 4. - Record dollar amount. If amount is an aggregated total, also indicate "M".
- Item 5. - If additional information is needed to fully document the nature of the transaction, include this information in this box. If more space is needed, check the appropriate box on the form and attach a separate schedule.

Part IV

Enter the full legal name of the casino and the street address of the casino, office, or branch where the actual transaction was conducted. The report must be signed by the casino employee or official who handled the transaction, and also by the employee who reviewed the form for compliance with Regulation 6A.

Nevada Form

Form 8362 (January 1985) Department of the Treasury Internal Revenue Service	Currency Transaction Report by Casinos File a separate report for each transaction. Please type or print. (Complete all applicable parts—see instructions)	OMB No 1545-0906 Expires 12-31-87
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Part I Individual or Organization for Whom This Transaction Was Completed

Individual's last name		First name	Middle initial	Social security number	
Name of organization		Employer identification number (EIN)		Passport number	Country
Number and street		Business or Occupation		Alien registration number	Country
City	State	ZIP code	Country (if not U.S.)	Driver's permit (number and state)	

Part II Identity of Individual Conducting the Transaction (Complete only if an agent conducts a transaction for the person in Part I)

Last name		First name	Middle initial	Social security number	
Number and street		Passport number	Country	Alien registration number	Country
City	State	ZIP code	Country (if not U.S.)	Driver's permit (number and state)	

Part III Patron's Account or Receipt Number ▶

Part IV Description of Transaction. If more space is needed, attach a separate schedule and check this box

1 Nature of transaction (check the applicable boxes)

a Currency exchange (currency for currency)

b CASH IN

(1) Deposit (front and safekeeping) (3) Check purchased (see item 6 below) (5) Collection on account

(2) Chips purchased (4) Wire transfer of funds (6) Other cash in (specify)

c CASH OUT

(1) Withdrawal of deposit (front and safekeeping) (3) Chips redeemed (5) Other cash out (specify)

(2) Check cashed (see item 6 below) (4) Credit advance

2 Total amount of currency transaction (in U.S. dollars)	3 Amount in item 2 in \$100 bills or higher	4 Date of transaction (month, day, and year)
\$	\$	

5 If other than U.S. currency is involved, please furnish the following information:

Currency name	Country	Total amount of each foreign currency (in U.S. dollars)
		\$

6 If a check was involved in this transaction, please furnish the following information (See instructions):

Date of check	Amount of check (in U.S. dollars)	Payee of check
	\$	
Maker of check		Drawee bank and city

Part V Casino Reporting the Financial Transaction

Name		Identifying number (EIN)
Number and street		
City	State	ZIP code

Sign Here (Casino employee who handled the transaction) (Title) (Date)
 (Casino official reviewing and approving the Form 8362) (Title) (Date)

For Paperwork Reduction Act Notice, see page 2. Form **8362** (1-85)

General Instructions

Paperwork Reduction Act Notice.—The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how we will use it, and whether you have to give it to us.

The requested information is useful in criminal, tax, and regulatory investigations. In addition to directing the Federal Government's attention to unusual or questionable transactions, the reporting requirement discourages the use of currency in illegal transactions. Casinos are required to provide the information under 31 CFR 103.22, 103.25, and 103.36.

Who Must File.—Each casino must file a Form 8362 for each deposit, withdrawal, exchange of currency or gambling tokens or chips, or other payment or transfer, by, through, or to such casino, which involves a transaction in currency of more than \$10,000. Multiple transactions by or for any person which in any one day total more than \$10,000 should be treated as a single transaction, if the casino is aware of them.

Exceptions.—Casinos do not have to file Form 8362 for transactions with domestic banks.

When and Where to File.—File this form by the 15th day after the date of the transaction with the Internal Revenue Service Data Center, P.O. Box 32621, Detroit, MI 48232, Attn: CTRC, or hand carry it to your local IRS office. Keep a copy of each Form 8362 for 5 years from the date you file it.

Identifying Number.—For individuals this is the social security number. For others it is the Federal employer identification number (9 digits).

Penalties.—Civil and criminal penalties (up to \$500,000) are provided for failure to file a report or to supply information, and for filing a false or fraudulent report. See 31 CFR, sections 103.47 and 103.49.

Specific Instructions

Part I

This part is to be used in all cases. Record information about patrons and other individuals who conduct transactions in person for their own benefit.

If an agent conducts a transaction with the casino for a patron or other person, show in Part I the principal's identity and complete Part II to show the agent's identity.

Use a passport, alien ID card, or other official document showing nationality, to verify the identity of an alien or nonresident of the United States. Use a driver's license or other document, normally accepted as a means of identification when cashing checks, to verify the identity of anyone else. Record the information from the document in the appropriate box.

Part II

Complete this part only when an individual agent conducts a transaction for a patron or other customer of the casino.

The identity of the individual agent must be verified. Use a passport, alien ID card, or other official document showing nationality, to verify the identity of an alien or nonresident of the United States. Use a driver's license or other document, normally accepted as a means of identification when cashing checks, to verify the identity of anyone else.

(1) In the address section, enter the permanent street address of the individual conducting the transaction.

(2) In the social security block, enter the social security number of the individual conducting the transaction. If the individual has no number, write "None" in this block.

Part III

If the patron has an account relationship with the casino, enter the account number. If a receipt has been issued for a front or safekeeping deposit, enter the number.

Part IV

Item 1.—Check the box that describes the exact nature of the transaction.

Item 6.—Complete this if a check is cashed or a check is purchased with currency.

Part V

Enter the full legal name of the casino and the street address of the casino, office, or branch where the actual currency transaction was conducted. Enter the casino's employer identification number (EIN) in the box provided.

Signature.—This report must be signed by the casino employee or official who handled the transaction and also by the casino official who reviewed and approved the Form 8362.

Definitions

Agent.—An individual who conducts a transaction in currency at a casino or gambling casino for or on behalf of another person.

Casino.—An organization licensed as a casino or gambling casino by a State or local government and having gross annual gaming revenue in excess of \$1,000,000. It includes the principal headquarters, branch location, or other place of business of the casino or gambling casino.

Currency.—The coin and currency of the United States or of any other country, which circulate in and are customarily used and accepted as money in the country in which issued. It includes United States silver certificates, United States notes, and Federal Reserve notes, but does not include bank checks or other negotiable instruments not customarily accepted as money.

Domestic Bank.—Each agent, agency, branch, or office in the United States of a foreign bank and each agency, branch, or office in the United States of any person doing business in one or more of the capacities listed below.

- (1) a commercial bank or trust company organized under the laws of any state or of the United States;
- (2) a private bank;
- (3) a savings and loan association or a building and loan association organized under the laws of any state or of the United States;
- (4) an insured institution as defined in section 401 of the National Housing Act;
- (5) a savings bank, industrial bank, or other thrift institution;
- (6) a credit union organized under the laws of any state or of the United States; and
- (7) any other organization chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state.

Patron.—An individual who engages in gaming activities at a casino.

Person.—An individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all entities treated as legal personalities.

Transaction in Currency.—A transaction involving the physical transfer of currency from one person to another. A transaction in currency does not include a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency.

Form for New Jersey and Puerto Rico

“washes” because the New Jersey Casino Control Act does not allow players to redeem markers anywhere but at the cashier’s cage.

There is a third difference between Nevada and the other two casino jurisdictions, which might be the most significant difference of all. The Nevada regulations do not require recording the name of the player who cashes out a big win. Nevada casinos must be reasonably assured that the chips were wagered or won by the player, but the only information that need be recorded is the date and amount of the transaction and the initials of the casino personnel involved; the winning Nevada player can cash in over \$10,000 worth of chips, for cash, and no record of his name will be made. New Jersey and Puerto Rican casinos have to fill out a form with complete player identification for every \$10,000 cash transaction, no exception is made for winners.

The Nevada casinos understood that if the problem is really with the laundering of drug money, there is no reason to report someone who obtained his cash by winning at the tables. The fact that the Treasury Department has failed to exempt winners shows that it is really after tax revenue from players, not drug traffickers.

The Treasury and Nevada regs make a large distinction between “reports,” which are filed with either the IRS or the Nevada Gaming Control Board, and “records,” which are maintained by the casino but not turned over automatically to the government authorities. The IRS does not have the freedom to waltz into a casino and demand to see all the records required by the new regulations. However, in practice the limitations on the IRS’s power is very slight, and it can eventually get every record the casino is required to maintain.

What else do the new regulations require?

The federal regs require that each casino file a report of each deposit, withdrawal, exchange of currency, gambling chips or any other transfer involving currency of more than \$10,000. The reports must be filed with the IRS within 15 days following the day of the transaction. The casino must keep a copy of all reports for five years.

The wise player will ask for a copy of all reports bearing his name. The IRS is going to look at these reports and ask the player two things: where did the money come from and how much did you win or lose over the course of the year. You must know what information has been given to the IRS. For example, if you played at a casino in Atlantic City for \$15,000 in credit; won some, cashed in; took another \$15,000 marker at another casino; lost back your winnings; you will have generated three or more reports that will be filed with the IRS. The fact that you actually broke even, and never touched a penny of your own money, will not be of much consolation unless you can prove those facts to the IRS when they come auditing.

The federal regs also require that the casino maintain a record of the social security number of the player every time a player deposits funds, opens an account or receives a line of credit. The casino violates the regulation if it is unable to obtain all social security numbers, unless it has made reasonable efforts and maintains a list contain-

ing the names and permanent addresses of players who won't give the casino their numbers. The list of names and addresses is, of course, available to the IRS.

The federal regs also require that the casinos retain either the original or a copy of each of the following:

1) A record of each receipt of funds by the casino from a player, including funds held for safekeeping. The record includes the name, address and social security number of the player; non-resident aliens have to show their passports or other government documents. These records only cover funds the casino knows about; a player with over \$10,000 in chips or cash can store the funds in a safe deposit box in the casino without creating any record for the IRS of the amount of funds involved.

2) A record of each bookkeeping entry, either credit or debit, to a player's deposit account or credit account.

3) Each ledger card of each player's deposit account or credit account showing each each transaction.

4) A record of each extension of credit in excess of \$2,500, including terms, player's name, address, social security number, date and amount.

5) A record of each advice, request or instruction received or given by the casino involving a person, account or place outside the U.S., including communications by wire, letter, or telephone.

6) Records prepared or received by the casino in the ordinary course of business which would be needed to reconstruct a player's account with the casino or to trace a check deposited with the casino.

7) All records, documents or manuals required to be maintained by state or local law or regulation.

The Nevada state regulations are more sophisticated than the federal regs, leading to a few more loopholes for the players. There is nothing wrong with purposely planning your financial affairs so that you do not create a paper record for the government to follow, assuming you are not trying to hide drug money.

Nevada prohibits its casinos from exchanging cash for cash or issuing checks to players for cash if the amount involved is over \$2,500. Some players like to play with cash until the end of their trip, then cash in at one casino so that they can safely carry home their winnings. It is now impossible to do that in Nevada, but it is still possible to have each casino write you a check for your chips, under \$2,500, as you cash in at each casino.

A Nevada casino cannot do the following without first obtaining and recording information about the player's name, permanent address, and social security number, and verifying the information with a driver's license or passport, as well as recording the date and amount of the transaction:

1) Redeem more than \$10,000 worth of its chips for cash, unless the casino is reasonably sure the chips represent wagers and winnings. If a player not a winner

tries to turn in more than \$10,000 in chips and won't give the casino his name, address, proof of identity or other information, the casino cannot complete the transaction.

2) Accept more than \$10,000 in cash as a wager at any game at which chips are not customarily used for betting, such as sports bets.

3) Sell more than \$10,000 worth of its chips to a patron for cash.

4) Receive more than \$10,000 in cash from a player as a deposit for gaming or safekeeping if the casino has knowledge of the amount of cash deposited. If a player gives a casino more than \$2,500 in cash the casino is expected to segregate the cash delivered and return only that cash to the player, or to record the denominations and the numbers of bills and return to the player only cash of the same denominations. Again, casinos do not have to know what a player deposits in a safe deposit box.

5) Receive more than \$10,000 in cash from a player as a repayment of credit previously extended. For credit extended prior to May 7, 1985, the date these regulations became effective, a player can make payments, in cash, of \$10,000 or less without generating any additional records.

6) Receive from or disburse to a player more than \$10,000 in cash in any other transaction.

7) Redeem more than \$1,000 worth of another casino's chips from a player for cash. This regulation closes a possible loophole for the money launderer: buying in at one casino for a very large amount and cashing the chips in at other casinos. New Jersey already forbids casinos from accepting the chips of other casinos. There is no such regulation in Nevada, and a player could conceivably take chips to other casinos for chip-for-chip exchanges and then cash in the casino's own chips without there being a recorded cash transaction.

8) Accept a second bet from a player who loses a cash wager of more than \$10,000 at any game at which chips are customarily used who does not provide the casino with the information required. If you lose they take your money, and if you won't tell them your name and social security number they have to bar you from the casino.

In addition, the casino must record all of the information about the player's name, social security number, etc., for each transaction of more than \$2,500 with respect to each deposit of funds, account opened, or line of credit extended or established. As with the federal regs, the Nevada casino must keep the original or a copy of each receipt over \$2,500, including funds for safekeeping or front money; each ledger card; bookkeeping entry; extension of credit of \$2,500; a record of advice, request or instruction affecting overseas transactions; records that would be needed to reconstruct a player's account or to trace a check; and, documents required by state or local laws.

Nevada does allow for paying off winning wagers of more than \$10,000 with cash, but only if the casino recorded the date, amount, and casino employee's initials. The

regulations prohibit a bet that the casino has reason to believe "is one of a series of wagers on which the patron incurred no significant risk of loss;" in other words money launderers cannot team up and divide their cash in two, one betting on Pass and the other on Don't Pass in craps.

As with the federal regs, the Nevada forms must be filed within 15 days and copies of records kept for five years.

Nevada has spelled out in more detail than the federal regs a potential loophole and problem: what they call "multiple transactions." What does the casino do about the player who cashes in for \$3,000 at 8:00 p.m., goes to a show, then cashes in for \$8,000 at 2:00 a.m.? The regs are not clear, and this will be a continuing cause of confusion.

The Nevada casino is required to aggregate all cash transactions "within a 24-hour period" between the casino and a player, or a person who the casino knows is the player's confederate (if you trust your wife enough to give her half your cash, don't stand next to her and call her "Honey"). The limits on what the casino is expected to know are spelled out: knowledge by any single employee of the casino; transactions occurring at the cage; or transactions of over \$2,500 occurring at a table. This means if you, as a player, get comp'ed for bets from one casino host, the host is expected to keep track of your action; all transactions at the cage are put on a temporary record; and, all transactions over \$2,500 at a table are similarly put on a temporary record. This is actually a stricter regulation than the federal, since it would require Nevada casinos to record, at least temporarily, cash buy-ins of between \$2,500 and \$10,000, that Atlantic City casinos will not have to record at all. However, if the Nevada player does not have a total of over \$10,000 in cash transactions "within a 24-hour period" the separate \$2,500 transactions are not permanently recorded.

One problem remains: what is "a 24-hour period?" Does it start new at midnight, or does it start the minute each player walks into the casino? It would obviously be impossible for a casino to keep track of each player for 24 hours; on the other hand, if the clock starts anew at midnight, a player could cash in for \$9,000 in cash at 11:55 p.m. and another \$9,000 in cash at 12:05 a.m. without creating a permanent record.

Nevada casinos are required to create and implement procedures for all of this new record keeping and submit their plans to the state regulators.

In an interesting twist, the Nevada gaming authorities have made the casinos' independent accountants into almost a quasi-enforcement arm; the independent accountants have to report to the Gaming Control Board on the performance of their clients, the casinos. This is a wonderful way of saving money for government: the casino has to hire its own police force to police itself. It is also a wonderful way of making jobs; once a government regulator retires he can go through the revolving door and join an independent accounting firm.

Interesting questions of liability will arise. Does the policing of the independent

accountant shield the casino from its own negligence? Is the accountant liable for the undiscovered, but discoverable, bad acts of the casino? Who goes to jail and who pays? Stay tuned for further development.

In case you were wondering, the casino can still pay off with a check; but even that has been changed. No more checks paid to cash or bearer bonds, or even checks made out to a third party; all payments for a player's winnings must be made payable to the order of the player.

Where will all this lead? Legal gambling is always an easy target. If the IRS needs to rehabilitate itself over its well-publicized incompetence, what better way to do it than to pull a headline grabbing raid on a large, licensed casino. The Treasury Department could pull a sting-like operation: send an undercover agent in with an attempt to bribe a pit boss into not reporting a large cash transaction. If the casino is not careful it might find itself with more than angry players and mountains of paperwork; it might find itself on the wrong end of a criminal prosecution.

On the other hand, most casinos will simply handle the new government regulations as they have the numerous ones that have gone before: the casino will shoulder the extra paperwork, massage the disturbed high rollers, and continue to sit back and watch the money flow in endlessly.

18

Conclusion

A short wrap-up of this complicated field is impossible. Gambling in 20th Century America takes in virtually all aspects of the law, from civil suits between two individuals to administrative regulations, corporate finance and interstate conflicts. The criminal law is just as complex, because it cuts to the heart of how we view what our society should be.

There are entire areas of the law that we could discuss. International law is becoming much more important, with American companies selling slot machines overseas and opening casinos under foreign flags, and aliens coming to America to gamble or to buy a piece of the action. Labor law is becoming intertwined with gambling to the point where the United States Supreme Court had to decide whether the New Jersey Casino Control Commission could require a union to fire its chief. Antitrust law once prevented Howard Hughes from buying a casino that would have given him a near monopoly in Las Vegas. Bankruptcy law is also coming into the spotlight. Casinos are not guaranteed money makers, and somebody is going to be left holding the bag. And players are being driven into bankruptcy, owing money to casinos.

One area that bears watching is the growing role of gambling in everyday law. With the spread of legal gambling there is increased opportunity for problem gamblers to risk, and lose, everything. I expect to see gambling become more a ground for divorce, and a bone of contention in the splitting of marital assets. Gambling losses and debts are already a regularly recurring problem for probate courts when a gambler dies. Should the estate pay off the debt? If the gambler died a winner with unpaid IOUs, do those uncollected gambling debts count as part of the estate? Can the heirs sue and collect?

As gambling spreads throughout the nation you will see more and more creative arguments raised by lawyers trying to get their clients off the hook. A California woman, Toshi Van Blitter, recently argued in federal court that she should not have

to pay the \$350,000 in gambling bills she ran up at Nevada casinos, because she played blackjack so badly. She claimed that the casinos had enticed her to gamble so that they could take advantage of her "mental weakness and lack of understanding of the game of blackjack." The casinos knew, she asserted, from her "established playing pattern" that she lacked the "capacity and capability" to play properly.

Watch for the development of an insanity defense based on compulsive gambling to criminal charges such as embezzlement. So far, courts have rejected that plea, but the number of cases will grow.

Watch also for more disguised gambling offered by large corporations. Insurance and trading in commodity futures were once illegal as forms of gambling; in fact, still today you must have an insurable interest before you take out a policy and some states continue to outlaw commodity futures that are not traded on a national exchange. Today insurance and commodity futures and the recently developed stock indexes are viewed as accepted parts of sound financial planning, rather than the gambling that they really are.

The future, however, is with more gambling; more video lotteries, more sweepstakes, more television game shows with phone-in callers. Many national companies seem to be in the "You may already be a winner" lottery business, with whatever product they market as an unimportant sideline at best.

The public's desire to gamble is going to run more and more into barriers in the law set in the 19th century. Somebody is going to remind the FCC and other federal regulators that a lottery is a lottery, whether run by a Las Vegas casino or Disneyland.

My prediction is that the barriers will continue to fall. What happens after that is hard to say, except that there will be more and more gambling.

I will go out on a limb and predict that 100 years from today most of the gambling we see will be once again suppressed, because history flows in cycles. This means, if you are a gambler, have fun while you can, you've only got about a century more to go.

Notes

Introduction

One of the best places to find out what is going on in the field of legal gambling is to subscribe to one of the periodicals listed in the Resources section at the back of this book. *Gambling Times Magazine* covers the field very well from a player's point of view; it also is the home to my monthly column on *Gambling And The Law*. If you are interested in a more academic approach, I suggest reading my article "The Legalization And Control Of Casino Gambling" which appeared in 8 *Fordham Urban L.J.* 245 (1979-1980) and follow up on books listed in Resources. For the casino managers' point of view look to the specialized newsletters and magazines in Resources.

Gaming & Wagering Business (formerly *Gaming Business*) magazine runs an annual survey of both legal and illegal gambling in the United States. For the calendar year 1984 the magazine estimates the total gross wagering handle of all forms of gambling, legal and illegal, at \$177 billion. The estimate for the legal games seems very reliable since it is based primarily on reports filed by licensed casinos, racetracks, and state lotteries. The estimate for illegal gambling, on the other hand, seems underestimated at only \$30 billion. The legal gambling industry has an interest in playing down the extent of illegal gambling, both to show that legal gambling has taken money away from organized crime and to refute the claim that legalizing gambling creates an increase in demand for all forms of gambling, both legal and illegal. The major problem with the *Gaming Business* estimate of illegal gambling, however, is not one of bias. The problem is more one of definition, limiting illegal gambling to the most organized forms, such as bookmaking and numbers, and in basing the estimates on estimates of unreported income from the Internal Revenue Service, highly unreliable and conservative.

That gambling, whether legal or illegal, is big business in the United States can be demonstrated by *Gaming and Wagering Business* magazine's totals based on actual reports filed by legal establishments. Total legal gambling for 1984 is placed at \$147 billion, resulting in the following revenue: total casino win of \$5.0 billion, state lotteries retention of \$4.1 billion, parimutuel betting revenue of \$2.96 billion, card rooms outside Nevada made \$53 million, bingo brought in \$818 million for charity, while other forms of charitable gambling chipped in another \$539 million. These estimates do not include legal gambling, primarily bingo, on Indian reservations, nor commercial sweepstakes and contests. *Gambling and Wagering Business*, vol. 6, no. 7 at 24 (July, 1985) and no. 8 at 1 (August, 1985). By way of comparison, all of the movie theaters of the United States, combined, had total ticket sales in 1984 of just over \$4 billion.

Chapter One

1. For additional information and sources on the spread of legalized gambling see Rose, "The Legalization and Control of Casino Gambling," 8 *Fordham Urban L.J.* 245 (1979-1980). I first outlined my theories on the "third wave," the "J curve," and the "domino theory" in this *Fordham* article. Although I have written about the spread of legalized gambling for periodicals such as *Gambling Times Magazine*, and the *Los Angeles Times*, this is the first time I have given the subject the extended treatment it deserves.

2. The quote from gambling law expert Rufus King on the spread of bookmaking and race tracks is from King, *Gambling and Organized Crime* 26.

3. The Knapp Commission Report found widespread illegal gambling tied to police corruption. The official Report is: Commission to Investigate Allegations of Police Corruption and the City's Anti-Corruption Procedures, *Commission Report* (1972). The quote and the Knapp Commission's findings are also reported in Commission on the Review of the National Policy Toward Gambling, *Gambling in America* (1976) at 40. See also Reuter, "Enforceability of Gambling Laws" in *Gambling in America*, app. 1, at 557; Duncan, "Gambling—Related Corruption" in *Gambling in America*, app. 1, at 574; and, Rubinstein, "Gambling Enforcement and Police Corruption" in *Gambling in America*, app. 1, at 600.

4. The study by Thompson and Dombrink, *The Last Resort: Campaigns For Legalization Of Casino Gambling In American States*, will soon be published in book form. A shorter version is now available in *The Gambling Studies: Proceedings of the Sixth National Conference on Gambling and Risk Taking*, edited by William Eadington (1985).

5. The financial figures on the profitability of Atlantic City casino games are from *Casino Chronicle*, vol. 2, nos. 34, 35, 36, 38, Feb. 4, Feb. 11, Feb. 19, and March 4, 1985.

6. The report of major hotel/casino bankruptcies was given by Jon Joseph, general counsel for Valley Bank of Nevada at the Nevada CPA's annual meeting in 1985 and reported by *Gaming & Wagering Business*, vol. 6, no. 6, June, 1985, at p. 31.

7. My thanks to Vernon G. Kite, Jr., Director of Planning and Economic Research at Harrah's Atlantic City, for the graphs on the Total U.S. Gaming Win. I am, of course, solely responsible for the interpretations of the information which appears in this book.

8. The Colorado Lottery developments and the quote from Director Hickey, are reported in *Public Gaming Magazine*, vol. XII, no. X (Oct. 1984) at p. 21.

9. *Gaming & Wagering Business* magazine conservatively puts the total amount bet illegally at sports books at \$17.6 billion, and at illegal sports cards at \$1.4 billion for 1984. The overwhelming majority of illegal bets are sports related. This compares with a total of \$8.1 billion bet on all the legal state lotteries. *Gaming & Wagering Business* vol. 6, no. 7 at 24 (July 1985).

10. The statistics on gambling arrests by race are from the comprehensive study undertaken by the Commission on the Review of the National Policy Toward Gambling created by Congress; the final report is entitled *Gambling in America* (1976) at p. 37.

11. Resorts International's troubles are described in Attorney General John J. Degnan's recommendation that the company not be given a permanent license, Statement of Exceptions, In Re Casino License Application of Resorts International Hotel, Inc., filed Dec. 4, 1978.

Chapter Two

1. In *Intercontinental Hotels Corp. v. Golden*, 15 N.Y.2d 9, 254 N.Y.S.2d 527 (1964), the highest court of New York held that the legalization of parimutuel betting and bingo games indicated that citizens of New York did not consider legalized gambling a violation of good moral conduct. The court held a gambling obligation validly entered into in Puerto Rico was enforceable in New York. A court of appeals in Florida held exactly the opposite, stating that legalization of parimutuel betting on spectator sports only indicated a public policy against legalized gambling; the Puerto Rican casino could not collect. *Dorado Beach Hotel Corp. v. Jernigan*, 202 So.2d 830 (1967). For a further discussion see Chapter Twelve.

2. New Jersey began its experiment in legalized casinos after a number of false starts. A referendum to make casino gambling legal throughout the state was defeated by the voters on November 2, 1972 by a vote of 1,851,154 to 671,685. *N.Y. Times*, April 21, 1974 at 23, col. 4. A second casino gambling referendum was defeated by a closer margin on November 2, 1974; 1,542,619 to 1,023,849. *N.Y. Times*, November 2, 1974 at 21, col. 1. The third time was the charm with a carefully crafted proposal, limiting casinos to Atlantic City and promising tax relief for the elderly, and an overconfident opposition. The vote on November 2, 1976 was 1,305,800 in favor to 1,015,126 opposed. *N.Y. Times*, Nov. 4, 1976 at 23, col. 1. A vote of the citizens of New Jersey was required because the Legislature could not legalize casinos without amending the state Constitution. N.J. Const. Art. 9, Section 7, and Art. 4, Section 7.

3. The Nevada Constitution specifically prohibits the state Legislature from ever legalizing any lottery. Nev. Const. Art IV, Section 24. The Nevada Legislature made casinos legal without attempting to amend the state Constitution, Act of March 19, 1931 c. 99, Nev. Laws 165, now codified as NRS Sections 463.010 to 463.720.

4. The California Constitution also specifically prohibits the state Legislature from legalizing lotteries. The Constitution was amended 3 times: first to allow horse racing, later to allow charity bingo, and in 1984 to create a state lottery. Cal. Const. Art. IV, Section 19.

5. The Montana Supreme Court majority held that electronic poker is not "poker" under the law legalizing that game, therefore the poker machines were illegal. *Gallatin County v. D & R Music and Vending*, 676 P.2d 779 (1984).

6. The California Constitution reads "Cruel or unusual punishment may not be inflicted . . ." Art. I, Section 17; The U.S. Constitution reads "Excessive bail shall not be required . . . nor cruel and unusual punishments inflicted" Amend. VIII. In an opinion that consists of a creative rewriting of history the California Supreme

Court determined that the drafters of the State Constitution chose the different word on purpose. *People v. Anderson*, 6 Cal.3d 628, 100 Cal. Rptr. 152, 493 P.2d 880 (1972).

7. The *Rosenthal* holding that Nevada casino license applications are exempt from federal constitutional rights was explicitly rejected by the federal District Court in *United States v. Goldfarb*, 464 F.Supp. 565 (E.D. Mich. 1979), and implicitly rejected by the New Jersey Supreme Court cases which have considered constitutional attacks on that state's Casino Control Act, e.g. *Bally Mfg. Corp. v. N.J. Casino Control Comm'n.*, 85 N.J. 325, 426 A.2d 1000 (1981).

8. The casino regulators have the time and expertise the courts lack to decide questions of licensing. On appeal a court will not overturn an agency's decision as to the interpretation of facts if the agency's conclusions seem reasonable and are supported by the record taken as a whole. Technically, the courts are free to ignore the agency's interpretation of the law, but in practice usually give great deference here as well. For a complete description of the standards of review by a court to an agency's decision see *In re Boardwalk Regency Casino License Application*, 80 N.J. Super. 324, 434 A.2d 1111 (1981), *modified*, 90 N.J. 361, 447 A.2d 1335 (1982).

9. George Sternlieb and James W. Hughes, *The Atlantic City Gamble*, (1983). The table on regulatory changes affecting Atlantic City casinos is Table 4 at p. 177.

10. N.J. Stat. Ann. Section 5:12-97(a) states, "No casino shall operate between the hours of 6 a.m. and 10 a.m. on Saturdays, Sundays and State and Federal holidays, or between the hours of 4 a.m. and 10 a.m. on all other days."

Chapter Three

1. The California Gaming Registration Act, which took effect July 1, 1984, takes up 26 sections of the Business and Professions Code, beginning with Section 19800. The Act sets up investigative and registration procedures with the state Attorney General for all legal card clubs; other forms of gambling are not covered by the Act. The Legislature intended that local governments could continue to regulate gaming as well. Cal. Bus. & Prof. Code Section 19801.

For more on poker in California see *Ex Parte Meyer*, 5 Cal. Unrep. 64, 40 P. 953, 954 (1895); *People v. Lim*, 18 Cal.2d 872, 118 P.2d 472 (1941); *In re Hubbard*, 62 Cal.2d 119, 126, 41 Cal. Rptr. 393, 396 P.2d 809 (1964); *Monterey Club v. Superior Court of Los Angeles*, 48 Cal.App.2d 131, 119 P.2d 349 (1941); *People v. Ambrose*, 122 Cal.App.2d Supp. 966, 265 P.2d 191, 194 (1953).

See, also, Rose, "Hold 'Em Poker," parts I, II, and III in *Gambling Times*, January, February, and March 1985.

Chapter Four

1. In the 19th century Congress was able to get federal jurisdiction over lotteries through its power to regulate the U.S. mails. In this century federal jurisdiction over organized illegal gambling rings has been based on a broad view of interstate commerce: "The Congress finds that illegal gambling involves widespread use of, and has an effect upon, interstate commerce and the facilities thereof." Act Oct. 15, 1970, P. L. 91-452, Title VIII, Part A, Section 801, 84 Stat. 936.

Chapter Five

1. The Federal Communications Commission and the Department of Justice have the power to enforce the 18 U.S.C. Section 1304 prohibitions on broadcast information related to lotteries. *Federal Communications Comm'n. v. American Broadcasting Co.*, 347 U.S. 284 (1954). The FCC has issued regulations prohibiting broadcasters from carrying "advertisements of or information concerning any lottery, gift enterprise, or similar scheme" with special rules for state lotteries. 47 C.F.R. Section 73.1211.

The Department of Justice, on the other hand, has publicly stated that it has "serious doubts" about the "enforceability of the lottery statutes as presently written."

For the Department of Justice position that the federal anti-lottery statutes are unconstitutional see "A Bill to Allow Advertising of any State-Sponsored Lottery, Gift Enterprise, or Similar Scheme," Hearing on S. 1876 Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary, 98th Cong., 1st Sess. 31 (1983) (Statement of John C. Keeney, Deputy Assistant Attorney General); and, hearing on H. R. 4020 and H.R. 5097 Before the Subcomm. on Administrative Law and Governmental Relations of the House Judiciary Comm., 98th Cong., 1st Sess. (1983) (statement of John C. Keeney).

2. The Post Office first sought legislation to control lotteries in 1866, S. 148, 39th Cong., 1st Sess. Congress passed the first limitation on state lotteries in 1868. Act of July 27, 1868, c. 246, 15 Stat. 194. The anti-lottery mail prohibitions were upheld by the U.S. Supreme Court in *Ex Parte Jackson*, 96 U.S. 727 (1877), but the Court greatly restricted the government's right to open or seize letters.

There were continuing debates, and minor and major changes in the statutes in 1872 and 1876. Act of June 8, 1872, c. 335, 17 Stat. 283 (change of wording made only illegal lotteries subject to federal law); Act of July 12, 1876, c. 186, Section 2, 19 Stat. 90 (striking the word "illegal").

3. President Harrison's message to Congress regarding the Louisiana Lottery is in

"A Compilation of the Messages and Papers of the Presidents 1789-1897," H.R. Misc. Doc. No. 210, pt. 9, 53rd Cong., Sess. 80-81 (1894) (J. Richardson ed.).

4. For a complete discussion of the history of the anti-lottery statutes, including references to prior bills and the Congressional Record, see National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice, *The Development of the Law of Gambling: 1776-1976* (1977), beginning at 492; see p. 529 for discussion of extension of prohibition to broadcasters.

5. The prohibition on broadcasts of lottery information, 18 U.S.C. Section 1304, was added by the Communications Act of 1934. Act of June 19, 1934, c. 652, 48 Stat. 1064.

6. In Nevada casino gambling was made legal in 1869, Act of March 4, 1869, c. 71, Nev. Laws 119, and not outlawed until 1909, long after Congress passed the anti-lottery statutes. Act of March 24, 1909, c. 210, Nev. Laws 307. Total legalization of casino gambling came back to Nevada in 1931, Act of March 19, 1931, c. 99, Nev. Laws 165. The Nevada Legislature did not legalize lotteries, in fact it could not have made lotteries legal if it had wanted, due to the anti-lottery prohibition of the Nevada Constitution.

7. For New Mexico and Arizona laws see Currie, "The Transformation of the Southwest: Through the Legal Abolition of Gambling," *The Century Magazine*, April 1908, p. 905; Ariz. Laws 1909, c. 92 Section 1.

8. Poker is, of course, one of the ordinary forms of gambling. *Commonwealth v. Kentucky Jockey Club*, 238 Ky. 739, 38 S.W.2d 987, 999 (1931).

9. State Supreme courts that have adopted the definition of lottery as a "widespread pestilence" include Nevada: *Ex parte Pierotti*, 43 Nev. 243, 184 P. 209 (1919); and Florida: *Lee v. Miami*, 163 So. 486 (Fla. 1935).

10. Poker is clearly not a "lottery" under California law. California has had state constitutional and statutory prohibitions against lotteries from the date it became a state, yet California courts and legislatures have allowed other forms of gambling, including poker, to flourish. California's constitutional prohibition on lotteries, Cal. Const. art. IV Section 19(a) (recently amended to allow a state lottery), dates back to the 1849 Constitution, art. IV Section 27. The constitutional provision reads "The Legislature has no power to authorize lotteries and shall prohibit the sale of lottery tickets in the State." The state Penal Code also prohibits lotteries.

California courts have held that the constitutional and statutory prohibitions on lotteries must be broadly construed. *Finster v. Keller*, 18 Cal.App.3d 836, 96 Cal. Rptr. 241 (1971). Yet, poker has been legally played in commercial card rooms since at least 1895. *Ex Parte Meyer*, 5 Cal.Unrep. 64, 40 P. 953 (1895). As the Supreme Court of California said:

“Although the various code sections . . . may include complete regulation of horse racing and prize fighting, and certainly prohibit all forms of lottery and some forms of gaming, they certainly do not prohibit all forms of gambling. Draw poker, in some situations, is expressly left to local option.” *In re Hubbard*, 62 Cal.2d 119, 396 P.2d 809 (1964).

The California Legislature has created a system for regulating and licensing card clubs in the state, despite the constitutional prohibition on lotteries. Cal. Bus. & Prof. Code Sections 19800 et seq. The California State Attorney General has issued a formal Opinion that licensed card clubs can advertise. Op. Atty. Gen. 83-601 (Oct. 14, 1983). Poker is not a lottery in this state.

11. A number of states have ruled on the question of whether poker is a lottery. Some, like Nevada and Ohio, have lottery prohibitions in their constitutions yet have allowed poker to be played. Others, like New York, are faced with the opposite situation: lotteries are legal, yet they have prohibited poker. No state has held poker to be a form of lottery.

The Court of Appeals of Ohio affirmed a judgment that poker is not a lottery. *State ex rel. Gabalac v. New Universal Congregation of Living Souls*, 55 Ohio App.2d 96, 379 N.E.2d 242 (1977). The court rejected the arguments that the word “lottery” included all gambling. “A lottery is a species of gambling. The term ‘gambling’ is broader and encompasses more than the term ‘lottery.’ ” The court held the Ohio state constitution “prohibits only one type of gambling—namely, lotteries.” 379 N.E.2d at 244.

The Supreme Court of Washington recognized the distinction between gambling games and lotteries. *State ex rel. Evans v. Brotherhood of Friends*, 41 Wash.2d 133, 150, 247 P.2d 787 (1952); *State ex rel. Schillberg v. Barnett*, 79 Wash.2d 578, 488 P.2d 255, 257 (1971).

The Attorney General of New York was asked to render a formal opinion whether the state lottery could legally set up video poker machines. He ruled that video poker machines are not lotteries, and that although a lottery was now legal other forms of gambling, including poker, were still illegal. Formal Opinion, Sept. 8, 1981.

The Attorney General of Colorado was faced with the question directly: could the state Legislature authorize poker? Under the state constitution the Legislature was powerless to authorize lotteries. He ruled, however, that poker is not a lottery and that the authorization of poker would not transgress the constitutional prohibitions on lotteries. AG File No. OLS8303247/TL (1983).

12. In determining whether a “tip sheet” game was a “lottery” under the Internal Revenue Code a federal court stated, “There is no inherent feature in this type of game, as there is in poker, dice, or roulette, which requires that the bets, the play-off, and the pay off take place *uno icto* on the same occasion in the presence of all the participants in the play.” *U.S. v. Di Primio*, 209 F.Supp. 137 (W.D.Pa. 1962).

13. Regarding aiding and abetting: "It occurs to us that there should be some legislation to make the purchasers of lottery tickets guilty as a party to the crime as in poker and many other gaming devices." *Wood v. State*, 93 Ga.App. 482, 92 S.E.2d 118 (1956).

14. "Chance" has a limited, special meaning in the anti-lottery statutes. The awarding of prizes must be "by 'lot' or by 'chance,' used in a sense closely related to the meaning of 'lot' rather than by 'chance' as that term is involved in a wager on the uncertain outcome of games of skill, or of a horse race, or of an election, wherein natural forces are determinative." *U.S. v. Rich*, 90 F.Supp. 624 (E.D. Ill. 1950). In the bookmaking schemes in that case the court held "[T]here is always present something more than a mere guess and there is nothing which resembles the distribution of prizes by lot."

Another case holding bookmaking is not a lottery: *People v. Postma*, 69 Cal.App.2d Supp. 814, 160 P.2d 221 (1945).

15. The federal court's "pure chance" doctrine is the minority rule in the United States, most states have held that the element of chance is fulfilled if it is the dominant factor. Of course, all of the other characteristics of a lottery must also be present. Even in those states accepting the "dominant factor" test poker is not a lottery. *Finster v. Keller*, 18 Cal.App.3d 836, 96 Cal. Rptr. 241 (1971).

16. The California Attorney General was faced with a similar problem. The state Penal Code states "Whoever, through invitation or device, prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution, is guilty of a misdemeanor." Cal. Penal Code Section 318. Since this prohibition on advertising, like the federal prohibitions, would be unconstitutional if applied to a licensed card club the Attorney General construed the statute to be limited to illegal gambling. The Attorney General specifically held that a licensed card club can advertise, thus preserving the statute from constitutional attack. Op. Atty. Gen. 83-601 (Oct. 14, 1983).

17. Free speech always involves a balancing of the right to speak against potential harm to society. You cannot yell "Fire" in a crowded theater. *Schenck v. United States*, 249 U.S. 47, 52 (1919).

The first commercial free speech case of major interest to legal gambling is *Bigelow v. Virginia*, 421 U.S. 809 (1975). *Bigelow* involved an advertisement for abortion services available in New York, placed in a Charlottesville, Virginia publication. At the time the ad ran, the Supreme Court had not yet issued its decision legalizing abortions; abortion was an issue left up to the individual states, much the way legal gambling is today. New York had chosen to legalize abortions and was advertising that fact. However, Virginia had not only decided to outlaw abortions, it passed a statute prohibiting the publication of any information about abortions. The Charlottesville publisher was convicted of violating this Virginia state law. The Supreme Court held that the abortion advertisement was protected by the First Amendment.

Although *Bigelow* dealt with a state law, the standard was the First Amendment. There is nothing to indicate that the federal government has any greater power to infringe upon free speech or free press than the states. *Bigelow* indicates that if the federal anti-lottery statutes are read to prohibit legal gambling from advertising they would be unconstitutional.

A second major breakthrough case came in 1976; in that year the Supreme Court for the first time stated explicitly that the First Amendment, as applied to the states through the Fourteenth Amendment, protects commercial speech from unwarranted governmental regulation. *Virginia Pharmacy Board v. Virginia Citizens Consumer Council*, 425 U.S. 748, 761-762 (1976). The case involved attempted state restrictions on price advertising by pharmacists, which the Court struck down as unconstitutional.

Three other cases quickly followed: *Carey v. Population Services International*, 431 U.S. 678 (1977)(ban on advertising of contraceptives unconstitutional); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977)(ban on advertising of lawyer's services unconstitutional); and, *Central Hudson Gas and Electric Corp. v. Public Services Comm'n*, 447 U.S. 557 (1980)(promotional advertising by utilities).

18. Having the legal right to advertise does not mean a casino can force a newspaper or broadcaster to accept ads. Almost all of the cases involving free speech approach the subject from the viewpoint of whether a government can prevent the publication of some information, not on the right of a private party to force the media to publish anything. The First Amendment right to freedom of the press would probably protect the media from an order to publish a specific advertisement. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

The court has something of a double standard in terms of access to the press. Although a newspaper cannot be forced to publish anything, the same does not necessarily hold for a licensed broadcaster. There is a very limited right under the fairness doctrine requiring stations to broadcast opposing views. *Red Lion Broadcasting Co. v. Federal Communications Comm'n.*, 395 U.S. 367 (1969). Radio and television are also seen as more intrusive than newspapers, that children can turn on their sets and be exposed to detrimental subject matter that they would not know about if run in a newspaper. *Federal Communications Comm'n. v. Pacifica Foundation*, 438 U.S. 726, *reh den* 439 U.S. 883 (1978). The distinction might allow a carefully drafted statute or regulation to prohibit broadcast advertisements of legal gambling, at least during those times when children would most likely be exposed to the ads.

Having the legal right to advertise does not necessarily solve a casino's problems, although market forces will probably solve the rest.

19. I want to thank my colleague, Professor David Welkowitz of Whittier College School of Law, for his help in analyzing the commercial free speech aspect of legal gambling. The foreign imports analogy was developed by Professor Welkowitz in his unpublished paper, "Smoke in the Air—Commercial Speech and Broadcasting."

20. All actions by administrative agencies must conform to the agencies' own rules and must also be reasonable and logical, otherwise they are invalid as being "arbitrary and capricious." The FCC's flip-flop on poker is clearly arbitrary and capricious:

"One of the major problems we face with the FCC is that the staff has and will continue to vary its interpretation depending on who is doing the interpreting. Let me give you an example. In the early 1970's, we received the opinion that poker was a game of skill and did not fall under a lottery law violation, and as a consequence, we were able to advertise poker as a matter of course. After a period of time, that stopped of its own accord. Then in the late 1970's, the request for advertising came to us from one of the hotels. Being cautious, we checked with the FCC only to find that it is no longer considered a game of skill in their eyes, and we were no longer allowed to advertise poker."

"A Bill to Allow Advertising of any State-Sponsored Lottery, Gift Enterprise, or Similar Scheme," Hearing on S. 1876 Before the Subcomm. on Criminal Law of the Senate Comm. on the Judiciary, 98th Cong. 1st Sess. 20 (1983)(Statement of Mark Smith).

21. The bills to amend the anti-lottery statutes to allow legal games to advertise: S. 1876 and H. R. 5097, 98th Cong., 1st Sess.; H. R. 4020, 98th Cong., 1st Sess.

22. The United States Supreme Court may soon give some guidance as to the rights of legal gambling enterprises to advertise. An appeal has been taken over the issue of the constitutionality of the Puerto Rican statute prohibiting casinos from advertising. The statute reads, "No gambling room shall be permitted to advertise or otherwise offer their facilities to the public of Puerto Rico." P.R. Laws Ann. tit. 15, section 77 (1972). If that statute is constitutional then every other prohibition in every other state is also constitutional. The Puerto Rican law is so outrageous that the Supreme Court will probably have no trouble declaring it unconstitutional. The case is pending, *Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico*, Docket No. 84-1903, 54 U.S.L.W. 3035 (7/30/85).

Chapter Six

1. For a detailed discussion of the development of the common law of gambling see National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice, *The Development of the Law of Gambling: 1776-1976* (1977).

2. The California Supreme Court decision holding a company liable for allowing its truck to be stolen is *Palma v. U. S. Indus. Fasteners, Inc.*, 36 Cal.3d 171, 203 Cal.Rptr. 626 (1984). Rose Bird, more than most judges, believes in changing the

common law to reflect her personal views of economics and modern society. The *Palma* case shows how an activist court can change common law: the lower courts had thrown this claim out since it seemed ridiculous on its face. The holding reflects the belief of Bird and the majority of the Court that all of society should pay for the injuries caused by modern industry. Since society benefits from having big trucks, if a truck gets stolen and runs over someone we all should pay, rather than just the poor victim, or the poor thief. The easiest way to get society to pay is to make the "deep pockets," corporations and governments, pay; the deep pockets will then pass along the costs through insurance and higher prices. The fact that she has to change common law does not bother her, nor does the fact that she is imposing her ideological views on the rest of society.

A judge can also interpret statutes and constitutions to achieve ideological ends. For example, California has a statute authorizing the death penalty, yet the California Supreme Court has not allowed an execution in decades. It is clear from reading Bird's decisions that as long as she is Chief Justice no one will be executed in California. Whether or not you are in favor of the death penalty you should be concerned about a judge twisting the law to fit her personal views.

3. The ancient English statutes and cases cited in the text are: 12 Rich. II, c. 6 (1388). (Handball was added to the list of prohibited games in 1409. 11 Hen. IV, c. 4 (1409).) 33 Hen. VIII, c. 9 (1541). 9 Anne, c. 14 (1710). 12 Geo. II, c. 28 (1739); 13 Geo. II, c. 19 (1740); 18 Geo. II, c. 34 (1745). *Case of Monopolies*, 11 Co. Rep. 84, 77 Eng. Rep. 1260 (1603).

4. The Massachusetts Bay Colony law against cards, dice and gaming tables, even in private homes, is 2 Records of the Court of Assistants of the Colony of Massachusetts Bay 12 (1631)(1904), cited in *The Development of the Law of Gambling: 1776-1976*, 41.

5. The Ohio case is: *State v. Beane*, 52 Ohio Misc. 115, 370 N.E.2d 793 (1977).

6. The federal courts of Virginia, trying to interpret state law, have split over the question of whether a licensed New Jersey casino can sue and collect for unpaid markers in Virginia. *Resorts International v. Agresta*, 569 F.Supp. 24 (E.D.Va. 1983).

7. The U.S. Supreme Court opinion in *Federal Communications Com'n. v. American Broadcasting Co.*, 347 U.S. 284 (1954), allowing game show phone-in contests under federal law has been followed by some state courts, *State ex rel. Frizzell v. Highwood Service, Inc.*, 205 Kan. 821, 473 P.2d 97 (1970).

8. Bank night and similar schemes have been upheld by some courts since the landmark case of *Yellow-Stone Kit v. State*, 88 Ala. 196, 7 So. 338 (1890); although, other courts have disagreed. For further discussions on the use of lotteries to sell merchandise, see, 29 ALR3d 888, 87 ALR2d 659, Section 6, 103 ALR 866, s. 109 ALR 709, 113 ALR 1121; Williams, *Lotteries, Laws and Morals*, Vantage Press, 1958.

9. Pyramid franchising scheme declared illegal in *State ex rel. Ashcroft v. Wahl*, 600 S.W.2d 175 (Mo. App. 1980).

Chapter Seven

1. A punchboard is clearly a gambling device since the player pays money for the chance to uncover a number to see if he has won. California, by statute, has outlawed these devices as paper slot machines. "A punchboard as hereinafter defined is hereby declared to be a slot machine or device . . . For the purposes of this section, a punchboard is any card, board or other device which may be played or operated by pulling, pressing, punching out or otherwise removing any slip, tab, paper or other substance therefrom to disclose any concealed number, name or symbol." Cal. Penal Code Section 330c. Under the definition given by the Legislature a rub-off game card from a fast food outlet is an illegal slot machine.

2. The \$15 billion estimate on video gambling by the Permanent Subcommittee on Investigations, Committee on Governmental Affairs, United States Senate, and Eugene Christiansen's response, are reported in *Gambling & Wagering Business*, Dec. 1984, p. 26.

3. The description of "Dwarfs Den" is drawn from Holmes, "Video Games: Concepts and Latent Influences", *FBI Law Enforcement Bulletin*, Feb. 1985. The article contains descriptions and pictures of video poker devices and a useful listing of very current published works. The author is William L. Holmes, Supervisory Special Agent, Document Section, Laboratory Division of the F.B.I. He presented a shorter version of the article as a paper at the Sixth National Conference on Gambling and Risk Taking.

4. The cases deciding whether various slot machines are gambling devices are too numerous to list. The variations are practically limitless, and the cases have to be decided individually under each state's law, and occasionally under federal law. For a good recap on the development of the law, including citations to cases, see King, "The Rise and Decline of Coin-Machine Gambling," 55 *J. Crim. L.* 199 (1964).

The following cases discuss the devices mentioned in the text. As with all the citations, it is necessary to see whether the law has changed since these cases were decided, usually by action of the state legislature, and whether your local courts have made similar rulings. Updating the law is particularly important in the area of slot machines since the states are deeply divided on such issues as whether a free replay is a prize, and the law and technology are changing rapidly in this field.

City of Moberly v. Deskin, 169 Mo.App. 672, 155 S.W. 842 (1913), fact that a package of gum was dispensed each time a nickel was dropped in the slot machine did not remove machine from category of "gaming device" where machine also gave trade chips valued at from 10 cents to \$1 to a lucky player. *Ad-Lee Co. v. Meyer*, 294 Pa. 498, 144 A. 540 (1929), slot machines which gave chewing gum containing numbered slips of paper, some of which may be redeemed for prizes, are "gambling devices."

State v. Marvin, 211 Iowa 462, 233 N.W. 486 (1930), slot machines which dispensed mints and occasionally, along with the mints, tokens good for replays were gambling devices. *State v. Mint Vending Machine*, 85 N.H. 22, 154 A. 224 (1931), mint vending machine which from time to time also dispensed tokens good for free fortune telling if re-inserted in machine was a gambling implement. *Colbert v. Superior Confection Co.*, 154 Ok. 28, 6 P.2d 791 (1931), statute which prohibited gaming for money or thing of value held to prohibit the playing of slot machines which dispensed tokens marked "not redeemable," regardless of value of property or checks received and regardless of whether machine is a gambling device. *State v. Paul*, 43 N.J.Super. 396, 128 A.2d 737 (1957), pinball machine with flippers which gave free plays if a player's score was high enough held to be dispensing a thing of value within statute prohibiting slot machines. *Gardner v. Daugherty*, 10 F.2d 373 (D.Mich. 1925), machine showed guaranteed payoff in advance. *State v. Rand*, 238 Iowa 250, 25 N.W.2d 800 (1947), slot machine paid off in World War II ration tokens.

Mills Novelty Co. cases: *Mills v. Farrell*, 64 F.2d 476 (2nd Cir. 1933), *Davies v. Mills*, 70 F.2d 424 (8th Cir. 1934), *Mills v. United States*, 50 F.2d 476 (Ct. Cl. 1931).

5. The Montana Legislature reacted to the Montana Supreme Court decision on poker videos by legalizing the machines. The Legislature first tried to define "card game" to include games played on electronic and mechanical machines; but finally decided to let the Court's definition of poker stand and simply decreed that video poker machines are now legal. The law sets up strict requirements and manufacturers have not yet blanketed the thinly populated state with these slot machines. H.B. 236 (49th Leg. May 24, 1985).

6. The Pennsylvania Supreme Court case, *Commonwealth v. Two Electronic Poker Game Machines*, 502 Pa. 186, 465 A.2d 973 (1983), contains citations to the various lower court cases that split on the issue of whether video poker is a game of skill. Although the Supreme Court has issued the final word for this state, the cases are interesting to see the extreme contrasts in approaches and findings when different courts in the same state deal with the same gambling issue.

7. The Kansas cases are: *Games Management, Inc. v. Owens*, 233 Kan.444, 662 P.2d 260 (1983); and *State v. Durst*, 235 Kan.62, 678 P.2d 1126 (1984).

Chapter Eight

1. My article on "Litigator's Fallacy" can be found at 6 *Whittier L. R.* 85 (1984); reprinted in slightly altered form in *Litigation*, vol. 11, no. 3, p. 3 (Spring 1985).

2. The legal forms can be found in 12 Am. Jur. Pl. & Pr. Forms (Rev.) Gambling, Forms No. 1-12, 9.1 and 13; and in 9 Am. Jur. Pl. & Pr. Forms, Gaming and Prize Contests, Forms 9:791-797 and 6 Am. Jur. Pl. & Pr. Forms, Contracts, Forms 6:652

and 653. Many of these complaints involve causes of action created by state statute, and all require a knowledge of state law to know whether they are applicable under any particular set of facts. Sometimes federal law becomes involved. For example, trading in commodity futures without the intention of receiving the commodity is considered illegal gambling in the South and in Illinois. Congress has used its power under the Interstate Commerce and Supremacy clauses of the U.S. Constitution to make trades on national regulated exchanges legal, overriding state law.

3. The best single volume available on how to find the law is *The Legal Research Manual: A Game Plan for Legal Research and Analysis* by Christopher G. Wren and Jill Robinson Wren (A-R Editions, Inc., 315 West Gorham St., Madison, WI 53703).

4. The standard reference book for the proper form of legal citations is *A Uniform System of Citation*, also called the "Blue Book," as in "Make sure the brief is in proper Blue Book form." Harvard Law Review Association, Gannett House, Harvard Law School, Cambridge, MA 02138.

5. The California statute on antique slot machines is analyzed in *Bale v. San Jose Police Dept.*, 158 Cal.App.3d 168, 204 Cal. Rptr. 514 (1984). The court's opinion involves laborious reasoning, a finding that the statute is unconstitutionally vague but must be allowed to stand as a liberally construed defense to a criminal statute, to reach the same conclusion anyone would make by simply reading the statute, i.e., that there is a conclusive presumption that a slot machine manufactured before 1941 is a protected "antique" and that machines built after 1941 are also protected if they fall within a reasonable definition of "antique." The case does have a nice footnote, number 4, which discusses antique slot machine statutes in 7 other states.

Loose Change magazine is the best source for keeping up with the changing laws on antique slot machines. The September 1985 issue had a complete run down on the legal status of antique slots, including articles on how the California law was changed. The issue describes the requirements of the laws in 37 separate states.

Chapter Nine

1. The underground economy, including the relationship between the large amounts of dirty money floating through our society and casino high rollers is discussed in Skolnick, *House of Cards: The Legalization and Control of Casino Gambling*, pages 42-49.

2. The Supreme Court cases knocking out the self-incrimination aspects of the federal gambling taxes are *Marchetti v. United States*, 390 U.S. 39 (1968) and *Grosso v. United States*, 390 U.S. 62 (1968). When the taxes on gambling were first challenged in the 1950s, the Supreme Court ruled they were constitutional as revenue raising measures, ignoring the obvious ulterior motive of Congress to entrap criminal

gamblers. *United States v. Kahriger*, 345 U.S. 22 (1953).

3. For a discussion of the number of federal tax stamps given to illegal gambling devices see King, *Gambling and Organized Crime*.

4. You may photocopy and use any of the tax forms in this chapter or the case study that follows for filing with the IRS. In fact, you may have to use these forms. The IRS is almost completely incompetent and inconsiderate when it comes to supplying forms. In writing this book I made six separate attempts to secure copies of the tax forms, including calling (it takes about one hour to get through), writing and visiting the tax office in person. I was sent the wrong forms, someone else's forms, or simply ignored. It is amazing that the IRS expects the taxpayer to voluntarily pay but will not even help by supplying the proper forms. Of course government workers cannot be fired for mere incompetence, so I probably should not have expected anything different from them.

5. Gambling pinball machines are lotteries under the federal wagering tax laws, *Johnson v. Phinney*, 218 F.2d 303 (5th Cir. 1955). So are punchboard operations, *Lloyd v. Robinson*, 110 F.Supp. 540 (D.Mont. 1952).

6. The IRS can use whatever reasonable method it wishes to determine tax liability when the taxpayer does not keep records. *Mengarelli v. United States*, 665 F.2d 1053 (9th Cir. 1981). Using previous years' returns was approved in *Sailor v. United States*, 343 F.Supp. 1279 (1971), *aff'd*. 462 F.2d 488 (6th Cir. 1972). The \$101 bag of cash case is *Griffin v. United States*, 588 F.2d 521 (5th Cir. 1979).

7. Accepting wagers only part of the year doesn't get you off the hook. Rev. Rul. 81-258. Neither does being only "incidentally" engaged in the activity, *United States v. Simon*, 241 F.2d 308 (7th Cir. 1957).

8. State lottery ticket dispensers do not have to register, Rev. Rul. 71-487. Neither do OTB parlors, Rev. Rul. 72-446.

9. A numbers pickup man, who collects wagering slips from the actual sellers and delivers them to the banker, is held not to engage in receiving wagers, and is not subject to the occupational tax. The Supreme Court held "receiving" wagers means "accepting" the bets from the bettors. *United States v. Calamaro*, 354 U.S. 351 (1957).

10. The case of the almost forfeited Cadillac is *United States v. 1978 Cadillac El Dorado 2-Door Coupe*, 489 F.Supp. 532 (D.Utah 1980). If you can segregate the money that is your own from the cash that is part of the gambling enterprise, you forfeit only the cash used in the game. *United States v. Currency in Total Amount of \$2,223.40*, 157 F.Supp. 300 (N.D.N.Y. 1957), *United States v. \$1963 in United States Money*, 270 F.Supp. 396 (E.D.Tenn. 1967).

11. Tennessee Supreme Court case declaring constitutional an ordinance making it unlawful to possess federal wagering stamp: *Deitch v. Chattanooga*, 195 Tenn. 245, 258 S.W.2d 776 (1953).

12. The expansion of the Fifth Amendment to cover an independent FBI search

is *United States v. Haydel*, 486 F.Supp. 109 (M.D.La. 1980).

13. Mrs. Castillo, the welfare lottery winner, created quite a stir in the Colorado press. The story is also reported in "Lotteries: Not in Winners' Best Welfare," *Los Angeles Times*, May 13, 1983, part 1, p. 1. The public reaction reported in the Times included the following: "People on welfare shouldn't be gambling;" "Why should my taxes support her when she won \$10,000?" "The lottery should have warned her;" "The lottery shouldn't have let her play." Similar public uproar has occurred when stories of welfare recipients winning big in Atlantic City or Las Vegas appear in the press.

14. The Nevada tax statutes cited in the text are: NRS Sections 463.390, 463.370, 463.380, 463.373, 463.375, 463.383, 463.401, 463.385, 463.450, and 464 and 466.

Chapter Ten

1. You may photocopy and use any of the tax forms in this case study or in the preceding chapter for filing with the IRS.

2. The 20% withholding provision is Section 3402(q) of the Internal Revenue Code and Reg. Section 31.3402(q). Reporting requirements are in I.R.C. Section 6041 and Reg. 1.6041; this is the catch-all rule requiring the reporting of payments of \$600 or more. See also Temporary Reg. Section 7.6041-1 for reporting of gambling winnings for which withholding is not required.

3. Gambling winnings by nonresident aliens are subject to 30% withholding under Section 1441 of the Code. See Rev. Ruling 58-479, 70-543, and 1970-2 C.B. 173.

4. IRS Reg. 7.6041 requires that a winner supply two pieces of identification before a casino can complete Form W-2G for reporting or withholding taxes. To prevent a scene when a winner does not want to give this information, which the casino is required to obtain before paying, the Nevada Gaming Control Board has instituted hot lines throughout the state to render assistance from its Enforcement Division. G.C.B. Bulletin No. 20, July 1, 1982.

5. The courts have held the catch-all reporting requirement for payments of \$600 or more applies to gambling winnings. *United States v. Wyman*, 125 F.Supp. 276 (W. D.Mo. 1954), *United States v. Carroll*, 117 F.Supp. 209, *appeal dismissed*, 211 F.2d 579 (8th Cir. 1954). There are few reported cases requiring illegal gambling operations to file the reporting form 1099-MISC under the \$600 or more rule because it is practically impossible for the IRS to prove the amount that a winner has gained; the amount paid out is not enough since the court does not know the size of the initial bet.

6. The statute allowing you to take gambling losses off your taxes is Section 165(d) of the Internal Revenue Code; also see Reg. 1.165-10.

7. The tax court held a taxpayer who did not keep detailed records was doubly penalized. The court held the entries of winnings were admissible as declarations against interest while entries showing losses were disregarded as self-serving declarations. *Stein v. Commissioner*, 322 F.2d 78 (5th Cir. 1963). Another taxpayer was allowed a deduction for gambling losses shown in his monthly diary. The diary was considered reliable evidence because the gambler had entered not only winnings reported to the IRS but also additional winnings the taxpayer did not report because he thought that only the racetrack winnings were taxable. *Faulkner*, 40 TCM 1, Dec. 36,847(M), TC Memo 1980-90.

There are a number of cases holding that a gambler can prove gambling losses by keeping records, including cancelled checks and tickets stubs. See, e. g., *J. T. Gauthier*, 35 TCM 746, 33,845(M), TC Memo 1976-166; *Gradwell L. Sears*, 14 TCM 182, Dec. 20,897(M).

8. Oswald Jacoby's case is reported at 29 TCM 1068, Dec. 30,307(M), TC Memo. 1970-244.

9. The hobby loss provision is I.R.C. Section 183; the statutory presumption that an activity which makes money in two out of five years was done with the purpose of producing income is I.R.C. Section 183(d).

Chapter Eleven

1. The statistics on Atlantic City casino credit are reported in *Casino Chronicle*, vol. 2 no. 29, December 31, 1984.

2. For discussions of the obsolete statutes allowing losers to sue winners, see *Commonwealth v. Novak*, 172 N.E. 84 (Mass. 1930), Case Note at 10 B.U.L.R. 550 (1930).

3. The federal case that required Nevada casinos to pay taxes on gambling markers is *Flamingo Resort, Inc. v. United States* 485 F.Supp. 926 (D.C.Nev. 1980), *aff'd*, 664 F.2d 1387 (9th Cir. 1982).

4. A player who owed \$1.5 million in unpaid casino markers did try and raise the due process and equal protection constitutional challenges to the new Nevada debt collection statutes. He argued that no rational basis supports the different procedures available for players and casinos. The Nevada Resort Association argued that a proper government purpose was served by 1) guaranteeing an immediate adjudication of the player's claim, 2) providing for immediate investigation of gaming law violations by a casino, and 3) permitting a court to have the benefit of the expertise of the Nevada Gaming Control Board. The Court ducked the issue by deciding the defendant lacked standing; I suppose the court is saying that this defendant has access to the court to defend this suit and so cannot complain that another player cannot use the courts to sue when it is the casino that refuses to pay. *GNLV Corp. v. Ayala*,

No. CV-LV-84-331 RDF (D. Nev., removed to federal court May 16, 1984) reported in National Association of Gaming Attorneys, *News Notes*, Jan. 1985.

This case was decided, or rather not decided, by the federal court in Nevada. If it had been brought in Nevada state court there is no doubt how it would have come out. The Nevada Supreme Court stated, in dicta, that it was proper to allow only the casinos to use the courts since they had a greater interest than the players in protecting their licenses and the purpose of the laws was to perpetuate public confidence in the integrity of the gaming industry. *State Gaming Control Bd. v. Breen*, 661 P.2d 1309 (Nev. 1983).

5. Playboy's successful defense of its Atlantic City credit system is *Playboy-Elsinore Associates v. Strauss*, 189 N.J. Super. 185, 459 A.2d 701 (1983).

6. The split in opinions in Virginia whether a licensed casino debt is collectible is reported in *Resorts International Hotel, Inc. v. Agresta*, 569 F.Supp. 24 (E.D. Va. 1983).

7. The Kentucky case is *Thomas v. Davis*, 46 Ky. 227 (1846).

8. The somewhat sad case of Leonard H. Wolff is *West Indies v. First Nat. Bank of Nevada*, 67 Nev. 13, 214 P.2d 144 (1950).

Chapter Twelve

1. Every state has the right to draw up its own long arm statute, and the actual language of the statute must be carefully examined to see whether it allows service over a nonresident gambler for a suit for nonpayment. The contacts that the defendant has with the casino state then must be examined to see whether operation of the long arm statute would be constitutional in this particular case. This entire area of the law is called personal jurisdiction: the power of the court to drag an unwilling defendant across the country and render a valid judgment against him.

2. The Kentucky case distinguishing between an action to enforce a gambling contract between a winner and loser and an action to split winnings is *Thomas v. Davis*, 46 Ky. 227 (1846).

3. The Michigan case on splitting illegal Irish Sweepstakes winnings is *Miller v. Radikopf*, 394 Mich. 83, 228 N.W.2d 386 (1975).

4. The Texas case is *Castilleja v. Camero*, 414 S.W.2d 424 (Tex. 1967).

5. If the plaintiff and defendant are from different states or one of the parties is an alien and the claim is over \$10,000 the case can be brought in federal court on diversity, 28 U.S.C. Section 1332(a). If a case like this is brought in state court the defendant can remove it to federal court only if the defendant is not a citizen of the state where the suit was brought, 28 U.S.C. Section 1441(b).

6. Resort's unsuccessful attempt to collect against Mr. Agresta is *Resorts Interna-*

tional Hotel, Inc. v. Agresta, 569 F.Supp. 24 (E.D.Va. 1983). The prior federal case from Virginia holding that a casino can collect is not reported, but is mentioned by the judge in this case.

7. Casinos in Puerto Rico clearly are designed for tourists. A Puerto Rican statute prohibited casinos from offering their facilities to the Puerto Rican public, P.R. Laws Ann. tit. 15, Section 77 (1972). A lawyer who represents casinos in Puerto Rico told me in October, 1984, that a local judge had invalidated the law in an opinion as yet unpublished. Apparently, the law was interpreted so broadly that casino executives were prevented from answering questions from the press. This would raise serious constitutional questions of free speech, due process and equal protection. An appeal is pending before the U.S. Supreme Court. *Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico*, Docket No. 84-1903, 54 U.S.L.W. 3035 (7/30/85).

Chapter Thirteen

1. Much of this picture of an East Coast state is drawn from the conclusions of the Commission on the Review of the National Policy Toward Gambling, *Gambling in America* (1976).

2. The phrase "benign prohibition" was apparently coined by Helsing, "Gambling—The Issues and Policy Decisions Involved in the Trend Toward Legalization—A Statement of the Current Anachronism of Benign Prohibition", in *Gambling in America*, Appendix 1, at 773 (1976).

3. We do not know exactly why the law treats gambling offenders so much more leniently than other defendants.

"Since there does not exist any comprehensive description of the gambling business in any city nor any precise knowledge of the consequences of enforcement policies, it is not possible to make any assessment of the police role in gambling. We do know that the police make many thousands of arrests each year of writers and runners, the commissioned employees of firms who can be easily replaced. The great majority of these cases are dismissed without judgment. We do not know whether this is because the arrests are made improperly, the police testify imperfectly, or the district attorneys and the judges are corrupted or are indifferent to these kinds of offenses . . . We do not know if these payoff schemes originate with the men who receive the money, at a higher level in the department, or elsewhere in city government." Rubinstein, "Gambling Enforcement and Police Corruption", in *Gambling in America*, Appendix 1, at 600.

One police official even places the blame on the juries. Thomas J. Gibbons, Philadelphia Commissioner of Police, "Should Gambling Be Legalized," *Saturday Evening Post*, Jan. 3, 1959 at 26.

4. The statistics are from "Survey of American Gambling Attitudes and Behavior" in *Gambling in America*, Appendix 2; and from the final report, *Gambling in America*.

5. Gunnar Myrdal discussed the effects of individual morality on enforcement of the laws in America, *An American Dilemma* 15 (1944).

6. *Newsweek* reported the size of the Irish Sweepstakes smuggling operation on Feb. 12, 1973.

7. The Montana Supreme Court held that slot machines could be confiscated as a nuisance, despite the fact that the state board of equalization had issued licenses for the machines. The dissent points out that the law of nuisance is clear: nothing done under the express authority of a statute can be deemed a nuisance. The dissent has the better argument, unless the state board of equalization was simply issuing a general revenue tax license, without knowing that it was for a slot machine. A better argument would be that one arm of the state is estopped from bringing a criminal action after another arm granted a license.

8. A Hawaii statute, H.R.S. Section 842-4, provides for social gambling as an affirmative defense. The New Jersey statute was upheld in *State v. Fischer*, 183 N.J. Super. 79, 443 A.2d 249 (1981) as not depriving defendants of due process nor shifting the burden of persuasion.

9. *United States v. Colacurcio*, 659 F.2d 684 (5th Cir. 1981), holding food server/guards within the count of five; *United States v. Boss*, 671 F.2d 396 (10th Cir. 1982), holding waitresses and others not within the five count.

10. The criteria for including a lay-off bettor under the 18 U.S.C. Section 1955 five count is laid down in *United States v. Box*, 530 F.2d 1258 (5th Cir. 1976).

11. If you make a statement after being arrested the prosecutor may use it as direct evidence to prove your guilt, or to impeach your testimony at trial. Even if the police have not given the proper warnings required by the U.S. Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), any statement may be admissible to impeach your testimony at trial. *Harris v. New York*, 401 U.S. 222 (1971). But if you say nothing, your silence cannot be used against you. *Doyle v. Ohio*, 426 U.S. 610 (1976). I have not gone into any detail, on purpose, on what you should do to defend yourself from a criminal charge, other than to remain silent. Criminal law and procedure are so complicated, the stakes are so high, and the facts of the particular case play such an important role, that only your lawyer can tell you what to do. Follow his advice.

Chapter Fourteen

1. For a further discussion of the issues surrounding the present systems of legalization and the choices involved in further legalization, see Rose, "The Legalization and Control of Casino Gambling," 8 *Fordham Urban L.J.* 245 (1979).

2. The Nevada regulatory system is spelled out in the Nevada Gaming Control Act, NRS Chapter 463. The junket rep requirements are GCB Regulations 25.040—25.060.

3. Fred J. Glusman's attempt to avoid licensing Fredde's Dress Shops is reported in *State v. Glusman*, 651 P.2d 639 (Nev. 1982).

4. The Supreme Court in *State v. Rosenthal*, 93 Nev. 36, 559 P.2d 830 (1977), cites prior Nevada Supreme Court cases in support of its ruling; however, none of those cases indicate that the casino regulation system is beyond the scope of federal constitutional rights. *Nev. Tax Commis. v. Hicks*, 73 Nev. 115, 310 P.2d 852 (1957)(reversed Commission's holding of unsuitability for gambling license due to lack of evidence to support agency's decision); *State ex rel Grimes v. Board*, 53 Nev. 364, 1 P.2d 570 (1931)(Court reviewed agency standards for adoption of rules and issuance of licenses to see if actions were arbitrary); *Dunn v. Tax Comm'n.*, 67 Nev. 173, 216 P.2d 985 (1950) (Court reviewed statute on horse racing gambling information to see if violated state or federal statute). Compare these pre-*Rosenthal* decisions with post-*Rosenthal* holdings: *Goldberg v. State*, 93 Nev.52, 559 P.2d 821 (Nev. 1977) and *State Gaming Control Bd. v. Breen*, 661 P.2d 1309 (Nev. 1983).

5. The holding in *Rosenthal* that there are no federal constitutional rights was explicitly rejected in *United States v. Goldfarb*, 464 F.Supp. 565 (E. D. Mich. 1979); and implicitly rejected in the New Jersey cases that have considered the federal constitution in relation to the New Jersey Casino Control Act. The federal Court in *Goldfarb* said it was not bound by Nevada's interpretation of the federal constitution, which is undoubtedly correct. The Court also said that *Rosenthal*, although rejecting federal constitutional rights, required the state gaming boards to act in a reasonable manner. This is an incorrect reading of *Rosenthal*. The Nevada Supreme Court stated that the regulators could act without any standards, in other words, they are free to act in an unreasonable manner, so long as their actions are reasonable in relation to the underlying goal of preserving the general welfare.

6. Following the Supreme Court's decision in *Rosenthal* the Nevada Legislature amended the Gaming Control Act to require a casino to fire an employee denied a license because of lack of good character, honesty or integrity. *Rosenthal* himself was the first victim; Argent Corp. put him in charge of entertainment at the Stardust in the apparent belief that he would not have to be licensed in that position. Apparently, he was actually in charge of a lot more than "comp" passes to the midnight

show. The Commission found he was still a key employee and once again he was directed to apply for a license. Once again he was found unfit. He sued because under the new law he lost his right to work in any position in the casino. The Supreme Court agreed that he had been denied the right to work without due process and struck down the new statute. *Rosenthal v. State*, 620 P.2d 874 (Nev. 1980). For a detailed account of Rosenthal's problems and involvement in Nevada gambling, see Skolnick, *House of Cards*, p. 211 *et seq.*

7. The recent Nevada case holding there is no property right in limited gambling licenses was reported in the National Association of Gaming Attorneys *News Notes*, Second Issue, January, 1985, and is cited there as *Cloud's Cal Neva v. Nevada Gaming Commission*, No. A226829 (8th Dist. Nev. 1984).

8. The U.S. Constitution prohibits bills of attainder, imposing punishment by a legislature on a specific individual without a trial. The actions of the Nevada regulators are probably not bills of attainder, since they are not directly done by the legislature, although the board operates on delegated legislative power; and the purposes of license denial and revocation are not for punishment as such but rather to regulate the industry. The courts of the United States have, for the most part, avoided the issue of whether an administrative body can violate the prohibition on bills of attainder.

The Ninth Circuit held there was no violation of the bill of attainder clause when an "undesirable" individual was listed in Nevada's black book and excluded from entering casinos in the state. *Marshall v. Sawyer*, 365 F.2d 105 (9th Cir. 1966). A Florida federal court rejected a bill of attainder attack on a statute which bars convicted bookmakers from race tracks. *Mones v. Austin*, 318 F.Supp. 653 (S.D.Fla. 1970).

The federal Constitution also prohibits *ex post facto* laws, creating penalties for an act after the fact. The Court has allowed regulators to exclude individuals from working because of their prior convictions, so long as the motive is to regulate the industry, not to punish the individual. *DeVeau v. Braisted*, 363 U.S. 144 (1960).

9. My thanks to my colleague, Whittier College School of Law Professor Richard Gruner, and his research assistant, Richard Herman, for their help in finding the constitutional rights involved in gambling license cases. Professor Gruner will be publishing an analysis of the constitutional and other issues involved in the Casino Control Commission policy of professional and corporate banishment. The work is entitled "Banished From The Boardwalk: Control of Corporate Casino Operators Through Executive Disqualification," and will appear in volume 16 of the *Rutgers-Camden Law Journal* in 1985.

10. The federal Court denying due process to the potential New Hampshire racetrack owner is *Medina v. Rudman*, 545 F.2d 244 (1st Cir. 1976). The Court discussed the constitutional protections given property rights, rights under state law, and fundamental rights. It drew the distinction between driver's licenses and "the right to purchase or obtain liquor in common with the rest of the citizenry" on the one hand and gam-

bling licenses on the other.

11. The New Jersey regulatory system is set down in the New Jersey Casino Control Act, NJS 5:12-1 et seq.

12. The U.S. Supreme Court upheld the right of New Jersey regulators to license and disqualify labor unions, but held a state could not impose sanctions that would have the effect of destroying the union. The case was remanded for a determination of whether taking away the union's power to impose dues was such a destruction. *Brown v. Hotel Employees*, 104 S.Ct.3179, 82 L.Ed.2d 373 (1984).

13. Copies of the actual decisions of the New Jersey Casino Control Commission are difficult to obtain; the NJCCC is uncooperative and charges one dollar a page for copies, assuming you know the exact document you want. The *Seton Hall Legislative Journal* provided a great service by reprinting 216 pages of actual decisions, including the applications of Resorts International, Boardwalk and Bally's. They are in volume 6, No. 1, Summer 1982. Unfortunately, the other NJCCC documents are not so readily available. The Opinion on the application of *Playboy* was obtained by a personal visit to the New Jersey Attorney General's office, this Opinion alone is 138 pages long.

14. The New Jersey cases that considered whether actions by the NJCCC are constitutional include *In Re Martin*, 90 N.J. 295, 447 A.2d 1290 (1982) (right to privacy, freedom of association beyond political associations); *In re Tufi*, 182 N.J. Super. 631, 442 A.2d 1080 (1982) (license procedure requires due process, although deposition without attorney approved); *Bally Mfg. Corp. v. N.J. Casino Control Comm'n.*, 85 N.J. 325, 426 A.2d 1000 (1981) (equal protection and due process in rule making).

15. The Perlman's problems are reported in *In re Boardwalk Regency Casino License Application*, 180 N.J. Super. 324, 434 A.2d 1111 (1981), *modified*, 90 N.J. 361, 447 A.2d 1335 (1982), as well as 6 *Seton Hall Leg. J.* 153 (1982), *See, Note 13 above.*

16. Information on *Playboy* was obtained from the 10-K reports filed by Playboy Enterprises, Inc., with the SEC; from the Opinion In The Matter Of The Application Of Playboy-Elsinore Associates For A Casino License, NJCCC Docket No. 81-CL-3, April 7, 1982; and, from an unpublished opinion from the Superior Court of New Jersey, Appellate Division, A-418881T1, Aug. 31, 1983.

Chapter Fifteen

1. Nevada's black book statute is NRS 463.151.

2. Ken Uston's reported Nevada federal case is *Uston v. Hilton Hotels Corp.*, 448 F.Supp. 116 (D.Nev. 1978). The unpublished federal case is *Uston v. Airport Casino, Inc.*, No. 76-2287 (9th Cir. decided May 24, 1977).

3. Mark Estes' unreported case is *Estes v. State*, No. 10420 (Nev. Supreme Ct., briefs filed 1978).

4. Uston's current battle with the Nevada Gaming Commission is reported in *Rouge Et Noir News* and *Casino Chronicle*, see, e.g., *Casino Chronicle*, vol. 3, No. 6, July 8, 1985, at p. 3.

5. Uston's New Jersey cases are reported at *Uston v. Resorts International Hotel, Inc.*, 179 N.J. Super. 223, 431 A.2d 173 (1981); and *Uston v. Resorts International Hotel, Inc.*, 89 N.J. 163, 445 A.2d 370 (1982). The Supreme Court spent a lot of time discussing the common law right to exclude people, since this issue is important to non-casino public establishments. The Court held the Casino Control Act had almost completely eliminated a casino's right to exclude. In general, the common law right to exclude must be balanced against the public's right to reasonable access to a public place. A casino still could exclude someone who is disrupting play.

6. The Casino Control Act is NJS 5:12-1 to 5:12-152. The statements of public policy the Supreme Court reminded the NJCCC to look at before making a rule excluding card counters are NJS 5:12-100(e), 5:12-1(14), and 5:12-1(6).

7. "The shuffle at will" rule and restrictions on the maximum bets are contained in 14 N.J. Admin. Reg. Section 841(b) (1982). The rules are designed to cancel out the card counters' advantage. It does not do a player any good to count cards and make a big bet when the remaining cards are positive, only to see the dealer shuffle. Uston was apparently able to counter this rule to some extent by use of team play; the card counter continues to bet small amounts but secretly signals a team high roller who walks into the middle of the game when the cards turn positive. The house does not suspect the high roller of counting since he was nowhere near the table. By making a big bet, a clever card counter can also sometimes use the "shuffle at will" rule to fool the dealer into shuffling when the count favors the house.

8. Prinz's case is *Prinz v. Greate Bay Casino Corp.*, 705 F.2d 692 (3rd Cir. 1983). The decision involves legal technicalities: a discussion of proper pleading of collateral estoppel under FRCP 8(c); amendment to pleadings by consent under FRCP 15(b); and from the dissent's point of view, the law of collateral estoppel.

Chapter Sixteen

1. 18 U.S.C. Section 1305 was added in 1950 and reads: "The provisions of this chapter [dealing with lotteries] shall not apply with respect to any fishing contest not conducted for profit wherein prizes are awarded for the specie, size, weight, or quality of fish caught by contestants in any bona fide fishing or recreational event." It would be interesting to see what the overhead and other costs are on one of these big fish contests to see how they met the provisions requiring them to be non-profit. The news report on Mr. Anding, and his possibly felonious fish story, is reported at *L.A. Times*, May 8, 1985, at Part III, p. 4, col. 1.

2. The study of bingo in Los Angeles is from Robert D. Burns, General Manager, Social Service Department, to the Police, Fire, and Public Safety Committee of the Los Angeles City Council, dated March 9, 1983.

3. The Indian Bingo controversy dates back to the Act of Congress passes in 1953 giving some of the states criminal jurisdiction over the reservations. Public Law 280, 18 U.S.C. Section 1162. California amended its Constitution to allow bingo, Cal. Const. Art IV, Section 19(c). California Penal Code Section 326.5 puts limits on the amounts charities can offer as bingo prizes.

4. The federal statute used to close down the Indian casino in Washington is 18 U.S.C. Section 1955. The court construed that statute very broadly, since it only makes illegal under federal law those gambling operations that are already illegal under state law, but the court itself ruled that Washington state had no power to make it criminally illegal for one Indian to gamble with another on Indian land. *United States v. Farris*, 624 F.2d 890, (9th Cir. 1980).

5. Pennsylvania's legal casinos are reported in *L. A. Times*, January 30, 1985, Part I, p. I.

6. Alberta's accidental legalization of casinos is discussed in Colin S. Campbell, "Parasites and Paradoxes: Legalized Casino Gambling in Alberta," *The Gambling Papers: Proceedings of the Fifth National Conference on Gambling and Risk Taking*, vol. VII (ed. by W. Eadington, 1981); and in Colin S. Campbell and J. Rick Ponting, "The Evolution of Casino Gambling in Alberta," *Nevada Review of Business & Economics*, vol. VIII, No. 2, p. 5, Summer, 1984.

7. Frank Sinatra's lawyer, Milton A. (Mickey) Rudin, made his remarks at the Laventhol & Horwath Gaming Conference, October 12, 1984, in Las Vegas.

8. The U.S. Supreme Court case discussing labor law and the New Jersey casino regulatory system is *Brown v. Hotel Employees*, 104 S.Ct. 3179, 82 L.Ed. 2d 373 (1984).

9. Compulsive gambling was rejected as an insanity defense in *United States v. Torniero*, 735 F.2d 725 (2nd Cir., 1984).

10. Toshi Van Blitter, the incompetent blackjack player, has her case reported in the Oakland Tribune, April 12, 1985, p. 2 and in *Variety*, July 3, 1985, p. 68, col. 5.

Chapter Seventeen

1. The Bank Secrecy Act of 1970, Pub. L. 91-508, 84 Stat. 1114, (Oct. 26, 1970) has been codified in two parts: Title I, relating to document requirements imposed on financial institutions, is now found at 12 U.S.C. Sections 1730d, 1829b and 1951-1959; Title II, The Currency and Foreign Transactions Reporting Act, is now at 31 U.S.C. Sections 5311-5322. Everyone, including the U.S. Treasury and the U.S. Supreme Court, calls this law simply "The Bank Secrecy Act."

2. The Treasury regulations implementing the Bank Secrecy Act are 31 CFR Part 103. Recent amendments of 31 CFR Part 103 forcing casinos to keep records and report are in 50 Fed. Reg. no. 25, Feb. 6, 1985.

3. Section 146 of the so-called "Tax Reform Act of 1984," P. L. 98-369, added Section 6050I to the Internal Revenue Code of 1954. See also Regulation 1-6050I-1 and Temporary and Proposed Regulations, published May 23, 1985, T. D. 8025, 50 Fed. Reg. 21,239 and 21,308.

4. The recent reports linking casinos with money laundering can be found in *Casino World* June 1985, p. 1; and, *Variety*, July 3, 1985, p. 70. col. 1.

5. The estimate of between \$5 billion and \$15 billion in drug money laundered each year was made by Stan Hunterton, deputy chief counsel for the President's Commission on Organized Crime, quoted in *Casino Gaming Magazine*, vol. 1, no. 1, May, 1985, p. 27.

6. Reports of the Treasury Department's incompetence in enforcing the laws already on the books for large currency and foreign transactions appear almost every week. See, e.g., *L.A. Times*, March 13, 1985, Part I, p. 10, col. 1; June 7, 1985, Part I, p. 1; June 8, 1985, Part II, p. 1; June 14, 1985, Part I, p. 1; June 19, 1985, Part IV, p. 8; June 25, 1985, Part IV, p. 1.

Although I have had no direct dealings with the enforcement arm of the Treasury Department, so I cannot say whether they are really as incompetent as they appear in the press, I do know that the Treasury Department as a whole, and its subsidiary, the Internal Revenue Service, are the most incompetent government bureaucracies that I have ever had the misfortune to deal with. In preparing this book, literally days were wasted trying to get the proper forms from Treasury and the IRS. My research assistants and I found it nearly impossible to get through by phone, no matter which office we called anywhere in the United States. I wrote to Treasury requesting forms by full name and number, only to receive no response, the wrong forms, someone else's form, or, in one case, my own letter back with the notation that the Department of Treasury form was "not stocked by this office." If the Department of Treasury does not stock its own forms, who does? By the way, do not ask for the "Currency Reporting Division," you will get the furnaces where they burn old currency.

My thanks to Marilu Marshall, Vice President of the Golden Nugget, for sending me a copy of Treasury Form 8362, which the Treasury Department said did not exist.

7. The Nevada casino cash regulations are Proposed Regulation 6A, adopted by the Nevada Gaming Commission May 6, 1985, effective May 7, 1985.

Cases

For a quick discussion of the system of legal citations see Chapter Eight, "How to Find The Law."

A

Ah Sin v. Wittman, 198 U.S. 500 (1905). The U.S. Supreme Court held a state's power to suppress gambling is practically unrestrained. It upheld a California statute increasing penalty from misdemeanor to felony for gambling conducted in "barred or barricaded" room as a constitutional classification.

Aicardi v. Alabama, 86 U.S. 635 (1873). Roulette operation for Mobile School fund held not authorized by purported legislative lottery grant.

In Re Allen, 59 Cal.2d 5, 27 Cal.Rptr 168, 377 P.2d 280 (1962). California Supreme Court ruled that the card game bridge is legal despite a Los Angeles city ordinance outlawing "games of chance" because bridge was held to be predominantly a game of skill and not luck.

People v. Ambrose, 122 Cal.App.2d Supp. 966, 265 P.2d 191, 194 (1953). Poker clubs do not violate the California Penal Code Prohibition on "banking games" because the players are merely renting the use of the table, cards and chips, and playing against each other, not against the house. Accord, *In re Hubbard*.

Armstrong v. American Exchange Nat. Bank, 133 U.S. 433 (1890). U.S. Supreme Court allowed bank to collect since the bank stated it did not know the money it loaned was going to be used for a gambling transaction.

Army Navy Bingo, Garrison No. 2196 v. Plowden, 281 S.C. 226, 314 S.E.2d 339 (1984). Supreme Court of South Carolina upheld restrictions on charity bingo, stating license to conduct bingo is not a property right, merely a permit issued pursuant to the state's police power.

B

Bally Mfg. Corp. v. N.J. Casino Control Com., 85 N.J. 325, 426 A.2d 1000 (1981). Supreme Court of New Jersey upheld regulation prohibiting casino from acquiring more than 50% of its slot machines from any one manufacturer. Bally, which makes 80% of slot machines used in the U.S., was forced to buy from its competitors for its casino, a victim of its own success.

Barona Group of Capitan Grande Band of Mission Indians v. Duffy, 694 F.2d 1185 (9th Cir 1982). U.S. Court of Appeals for the Ninth Circuit followed the reasoning of *Seminole Indians v. Butterworth* and ruled that California has the power to make any gambling game criminal on an Indian reservation, but once the game (in this case bingo) is made legal the state has no power to set up regulations over the Indians. Thus, charities in California have strict limits on how they run their bingo games (such as limiting jackpots to \$250.00, Calif. Penal Code Section 326.5), but Indians can run the games any way they see fit on their reservations, including offering jackpots of thousands of dollars.

Bell v. Prince Georges County Commissioners, 195 Md. 21, 72 A.2d 746 (1950). Maryland Act purporting to allow licensing of slot machines as "amusement devices" held invalid as deceptive legislative subterfuge.

Bibb v. Allen, 149 U.S. 481 (1893). A typical commodity futures case decided by the U.S. Supreme Court. The Court upheld the contracts against challenges that they were illegal gambling contracts because there was no understanding that the goods would not be delivered. *See, Browne v. Thorn*.

Bingo Catering and Supplies, Inc. v. Duncan, 237 Kan.352, 699 P.2d 512 (1985). A very recent Kansas Supreme Court decision, consistent with the trend around the country: The Court held that the State Legislature could constitutionally limit bingo games to a limited number of days and places each week.

In re Boardwalk Regency Corp. Casino License, 180 N.J.Super. 324, 434 A.2d 1111 (1981), *modified*, 90 N.J. 361, 447 A.2d 1335 (1982). New Jersey Casino Control Commission found a corporation was qualified to run a casino, except for the presence of two corporate executives/principal stockowners. The lower Court upheld this idea of corporate banishment, but modified the requirements to allow the two individuals to maintain control over non-New Jersey subsidiaries. The New Jersey Supreme Court reinstated the original conditions requiring a cleansing of the corporation. See Chapter Fourteen. The lower Court decision contains a complete discussion of the standards a court uses in reviewing decisions by administrative agencies.

Bond v. Hume, 243 U.S. 15 (1917). U.S. Supreme Court upheld a decision of a federal trial court in Texas in enforcing a contract made in New York for sale of cotton for future delivery, despite the public policy of Texas that makes transactions

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in commodity futures illegal as gambling contracts. *See, Browne v. Thorn.*

Booth v. Illinois, 184 U.S. 425 (1902). U.S. Supreme Court upheld as constitutional an Illinois statute prohibiting options to buy or sell grain or other commodities at a future time. *See, Browne v. Thorne.*

Boynton v. Ellis, 57 F.2d 665 (10th Cir. 1932). Federal court held mint-vendor slot machines to be gambling devices.

Brown v. Hotel Employees, 104 S.Ct. 3179, 82 L.Ed.2d 373 (1984). U.S. Supreme Court upheld the right of New Jersey regulators to disqualify union officials involved in casino service industry. Local 54 of the Hotel and Restaurant Employees and Bartenders International Union tried to get the regulators' actions under New Jersey Casino Control Act thrown out on the grounds that federal law had preempted the field of labor law. The Supreme Court rejected that argument, but remanded the case to the district court to see whether the casino regulators can sanction the union for refusing to get rid of its disqualified officials.

Browne v. Thorn, 260 U.S. 137 (1922). Another case where the U.S. Supreme Court struggled with the state laws against gambling contracts, and the popular notion that speculation in commodities raised the price of food. The Court knew better. In this case it ruled that "hedging" is *prima facie* lawful, manufacturers and others who have to make contracts for future deliveries can guard against price fluctuations. If hedgers do not disclose their intentions not to accept delivery of the goods no gambling contract is created. Only within the last few years has Congress finally overruled the state laws making commodity trades illegal gambling contracts; transactions conducted on a national exchange are now legal despite local anti-gambling laws.

C

California Bankers Association v. Shultz, 416 U.S. 21 (1974). U.S. Supreme Court upheld the constitutionality of the federal Bank Secrecy Act, 31 U.S.C. 5311-5322, and the Regulations of the Treasury Department. Under the current Regulations, "financial institutions" are required to photocopy and keep records of all checks over \$100 and to file reports with the IRS on all cash transactions over \$10,000. Pawn shops, stock and commodity brokers, travel agents and jewelers are defined in the statute as "financial institutions," and every cash purchase of over \$10,000 is reported to the IRS. Licensed casinos have apparently lost the fight and are now also "financial institutions" under the Act. Although not yet challenged, this case indicates the laws requiring casinos to report cash transactions to the states are constitutional.

Caribe Hilton Hotel v. Toland, 63 N.J. 301, 307 A.2d 85, 71 ALR 3d 171 (1973). Supreme Court of New Jersey found public policy of state had changed, even before casinos were legalized; valid casino debt from Puerto Rico can be enforced in New

Jersey. Annotation on foreign gambling debts with explanation of the law and references to other cases in 71 ALR 3d 171.

People v. Carroll, 22 P. 129 (Cal., 1889). "Wheel of chance" held to be illegal as a "banking" game. California Supreme Court said they need not define the law, since everybody knows what is a banking or percentage game. Maybe they did in 1889.

Carroll v. State, 361 So.2d 144 (Fla. 1978). Florida Supreme Court upheld bingo statute against constitutional attack.

Champion v. Ames, 188 U.S. 321 (1903). U.S. Supreme Court upheld the 1895 Lottery Act and Congress's power to regulate interstate commerce was greatly expanded. The specific ruling is that an express company can be prohibited from carrying lottery tickets across state lines.

In re Chase, 119 Cal.App. 432 (1931). California Appellate Court interpreted California Penal Code Section 318, passed in 1880, entitled "Pimping, Capping or Soliciting Patrons." A troublesome statute, it states that anyone who "prevails upon any person to visit any room, building, or other places kept for the purpose of gambling or prostitution, is guilty of a misdemeanor." The court in *In re Chase* stated that the California state Legislature could not have meant to limit advertising by legal casinos in Nevada.

People v. Chase, 117 Cal.App.Supp. 775 (1931). Also interpreted Cal. Penal Code Section 318, *See, In re Chase*. Indicates statute might apply to legal gambling; however, mere advertising is not enough.

Clews v. Jamieson, 182 U.S. 461 (1901). U.S. Supreme Court held that there is no presumption that a contract for future delivery of stock is a gambling contract simply because the seller is selling stock that he does not yet own. This allowed the creation of the short sell, a vital part of today's security and commodities markets.

Coleman v. State, 77 Mich.App. 349, 258 N.W.2d 84 (1977). An interesting case in lottery law. Poor Mrs. Coleman was awarded, wrongly, a \$200,000 grand prize by the Michigan Bureau of State Lottery. The Lottery then tried to take back the prize. The Michigan Court of Appeals held that the terms of the Lottery's contract with the purchaser of a lottery ticket were clear and that there was no unilateral mistake or remission. Mrs. Coleman does not win despite the mistake of the Lottery.

State v. Countdown, Inc., 319 So.2d 924 (La. 1975). *See, Finish Line Express, Inc. v. Chicago*.

D

Dickson v. Uhlmann Grain Co., 288 U.S. 188 (1933). The last commodity futures case the U.S. Supreme Court heard. The Court held a broker entering into a contract for wagering on the price of grain traded on exchanges could not recover commis-

sions or advances; contracts were illegal under state bucket shop laws. A bucket shop is a broker who bets against the speculator without actually purchasing the commodity. *See, Browne v. Thorn.*

Ditunno v. Commissioner of Internal Revenue, Paragraph 80.12 P-H TC, 80 U.S.T.C. 362 (1983). The tax court held that the test for whether a person was in the trade or business of gambling, and could thus take expenses off his taxes, was a flexible one. The tax court specifically rejected the "holding out" test used by other courts as being too restrictive. *See, Gajewski v. Commissioner of Internal Revenue.*

E

Easton v. Iowa, 188 U.S. 220 (1903). U.S. Supreme Court ruled Congress has preempted entire field with respect to national banking system.

Embrey v. Jemison, 131 U.S. 336 (1889). Defendant had executed a note on the balance due on a speculative transaction involving margins and cotton futures. The question was whether the law of New York or Virginia would apply. The Supreme Court avoided a conflict between states by stating that gambling contracts are unenforceable under the laws of both states. Since the underlying contract was void as a gambling contract, the note was also void being without consideration. *See, Browne v. Thorn.*

Erlenbaugh v. U.S., 409 U.S. 239 (1972). U.S. Supreme Court held causing scratch sheets to be carried by a facility of interstate commerce with intent to facilitate operation of illegal gambling business violates Travel Act, 18 U.S.C. Section 1952. Bookmakers arranged for Illinois Sports News to be put daily on board a train to Indiana. Although Section 1953 (interstate transportation of gambling paraphernalia) has an exception for newspapers, section 1952 does not.

F

Fairchild v. Schanke, 232 Ind. 480, 113 N.E.2d 159 (1953). A pre-third wave gambling case; Indiana Supreme Court held criminal gambling statute exempting religious, patriotic, charitable or fraternal clubs was unconstitutional.

Fauntleroy v. Lum, 210 U.S. 230 (1908). U.S. Supreme Court held that the courts of one state must enforce a judgement of a sister state, even if the judgement is on an illegal gambling debt.

Federal Communications Comm'n. v. American Broadcasting Co., 347 U.S. 284 (1954). The leading U.S. Supreme Court case on the anti-lottery statutes, 18 U.S.C.

Sections 1301-1307. The statutes were originally part of the U.S. postal laws, but have been expanded significantly to include radio, television, and federally insured financial institutions, such as banks. The Federal Communications Commission (FCC) has issued regulations prohibiting broadcasters from carrying "advertisements of or information concerning any lottery, gift enterprise, or similar scheme" with special rules for state lotteries. Although there is no definition of lottery in the statutes, the Supreme Court has held that the statutes, being penal in nature, must be construed strictly. Although the Court defines lottery as being anything with consideration, chance and prize, the cases always involve traditional lotteries and related schemes, and the Court requires the players to expend cash, not just time and effort, for there to be "consideration." See, Chapter Five.

Finger Lakes Racing Ass'n. v. N.Y. St. Off-Track Parimutuel Betting Com., 30 N.Y.2d 207, 331 N.Y.S.2d 625, 282 N.E.2d 592 (1972). New York's highest court upheld OTB law against constitutional challenge by racetracks claiming the law took their property without due process.

Finish Line Express v. Chicago, 59 Ill. App.3d 419, 375 N.E.2d 526, reversed, 72 Ill.2d 131, 379 N.E.2d 290 (1978). In a rare decision, quickly overturned by the Supreme Court, the Appellate Court of Illinois had ruled it was unconstitutional for the legislature to outlaw track messenger services that placed bets and picked up winnings for a flat fee. The Appellate Court held the state could regulate but not prohibit, and declared that the public policy of Illinois was not to prohibit legal gambling; the Supreme Court disagreed. The Supreme Court distinguished a decision by the Louisiana Supreme Court, *State v. Countdown, Inc.*, 319 So.2d 924, that was similar to the Appellate Court's ruling.

Flamingo Resort, Inc. v. United States, aff'd. 664 F.2d 1387 (9th Cir. 1982), 485 F.Supp. 926 (D.C.Nev. 1980). The United States District Court in Nevada ruled that a casino on an accrual basis accounting system had to pay taxes on its markers, even though those markers were not collectible under Nevada law. The casinos reacted by having the Nevada Legislature change the law on gambling debts. See Chapter 11.

Forte v. United States, 83 F.2d 612, 105 ALR 300 (D. C. Cir. 1936). Federal court in Washington held a numbers writer guilty of operating a lottery, not bookmaking, despite fact that winners were determined by outcome of selected horse races.

Francis v. United States, 188 U.S. 375 (1903). U.S. Supreme Court limited reach of anti-lottery laws holding that transporting slips in "policy" game does not violate lottery law because these are mere receipts, "like stubs in a check book." Actual tickets are required for a violation to occur.

Francis v. County of Stanislaus, 249 Cal.App.2d 862, 57 Cal.Rptr. 881 (1967). The Court of Appeals in California held it was constitutional for a county ordinance to outlaw commercial card rooms while allowing private parties and charities to play draw poker for money.

G

Gajewski v. Commissioner of Internal Revenue, 723 F.2d 1062 (2nd Cir. 1983). The most recent word on taking gambling expenses off your taxes. The federal Appellate Court held that a gambler must hold himself out to others as offering goods or services, such as operating a bookmaking service or placing bets for others, to be in the trade or business of gambling. Betting on your own account, even if you do it full-time, is not enough.

Gallatin County v. D & R Music and Vending, Inc., 654 P.2d 998 (Mont. 1982). Supreme Court of Montana held keno to be legal as a form of bingo under the state's Bingo and Raffles Act. The court had held video keno machines legal six years earlier; *See, Treasure State Games, Inc. v. State of Montana*. Although the Act expressly forbids playing either bingo or keno for money prizes, county prosecutors do not enforce those provisions and there is wide-open gambling in Montana.

Gallatin County v. D & R Music and Vending, Inc., 676 P.2d 779 (Mont. 1984). Montana Supreme Court held video poker to be illegal as a form of slot machine. The court found that video draw poker is not a form of poker within the Montana Card Games Act because "no variation of poker involves only one player," and poker "is a game played with playing cards, not with electronic images displayed on a screen." The dissent pointed out that this same court held video keno legal as a form of keno; and, that there are as many forms of poker as the mind of man can devise.

Gentile v. Commissioner, 65 T.C. 1 (1975). Tax Court sets standard for being in the trade or business of gambling. Bettor must hold himself out to others, by taking bets, betting on own account not enough. Overturned by *Ditunno v. Commissioner of Internal Revenue*; upheld by *Gajewski v. Commissioner of Internal Revenue*.

State v. Glusman, 98 Nev. 412, 651 P.2d 639 (1982). Nevada Supreme Court held state could require anyone who does business on casino grounds, including clothing stores, to undergo licensing process; however, Court held it was unconstitutional to require the clothing store to pay the \$100,000 required to investigate itself.

GNLV Corp. v. Ayala, Unreported, No. CV-LV-84-331 RDF (D.Nev. 1984). An attack on Nevada's new statute, allowing casinos but not players to use the court system to collect gambling debts. A player who owed \$1.5 million in unpaid markers asked the federal court to declare the statute unconstitutional as a denial of due process and equal protection. The court sidestepped the issue by ruling the player lacked standing. See Chapter Eleven.

People v. Gravenhorst, 32 N.Y.S.2d 760 (1942). New York court held gambling pinball devices outlawed under New York gambling statutes.

Grosso v. United States, 390 U.S. 62 (1968). Companion case to *Marchetti v. United States*. The Supreme Court declared the federal excise tax on wagers unconstitutional

because the law required illegal gamblers to file tax reports with the government, which could then be used to prove criminal gambling violations. This violated the Fifth Amendment right against self-incrimination. Congress amended the tax to prohibit the IRS from allowing any other government agency to see the reports.

H

Hernan v. Texas, 198 U.S. 579 (1905). U.S. Supreme Court held it is constitutional for a state to put a heavier punishment on a person who is in the business of gambling than on the individual bettor; and, that the law is not punishing the same act twice.

Higgins v. McCrea, 116 U.S. 671 (1886). Another commodities case making it up to the U.S. Supreme Court; the Court again ruled futures contracts are illegal gambling contracts and not enforceable. *See, Browne v. Thorn*.

Horner v. United States, 147 U.S. 449 (1893). Conviction for selling Austrian bonds with lottery feature through mails upheld. The Supreme Court discussed the elements of a lottery.

In re Hubbard, 62 Cal.2d 119, 41 Cal.Rptr. 393, 396 P.2d 809 (1964). California Supreme Court declared the state Legislature had not occupied the entire field of gambling nor the entire field of gaming (all games played with cards, dice or other devices), there was thus room for local government to outlaw, or legalize, games not specified as illegal under state law. Regulation of gambling is within the police power of a local government, unless in conflict with the general law of the state. The case is significant because the Court, for the first time, stated explicitly the law in California: the state Legislature made only certain games illegal and all other games are legal, unless a local government decides to make them illegal.

I

Iannelli v. United States, 420 U.S. 770 (1975). U.S. Supreme Court held 18 U.S.C. Section 1955, making it a crime for five or more people to run an illegal gambling business, is a different crime from the crime of conspiracy. It is easier to prove mere conspiracy; for Section 1955 the prosecution must prove that the defendant actually did conduct, finance, manage, supervise, direct, or own part of the business.

In re. *See*, name of party.

Irwin v. Williar, 110 U.S. 499 (1884). Contracts for sale of grain futures, without bona fide intention to deliver grain, declared illegal gambling transactions. *See, Browne v. Thorn*.

J

Ex Parte Jackson, 96 U.S. 727 (1877). U.S. Supreme Court upheld anti-lottery mail prohibitions but greatly restricted the government's right to open or seize letters.

Jacobson v. Hannifin, 627 F.2d 177 (9th Cir. 1980). Federal Court of Appeals, hearing case from Nevada District Court, upheld impact of *State v. Rosenthal*, that there is no property right in an application for a casino license, while ignoring *Rosenthal's* assertion that there are no federal constitutional rights with legal gambling.

Johnson v. Phinney, 218 F.2d 303 (5th Cir. 1955). Federal Court of Appeals held gambling pinballs to be mechanical lotteries, subject to ten percent wagering tax, if operated without coin chute, i.e., if not "coin operated."

K

Karafa v. New Jersey State Lottery Commission, 129 N.J. Super. 499, 324 A.2d 97 (1974). An important case in the developing body of lottery law. John Karafa had purchased a lottery ticket that won a \$50,000 drawing; unfortunately, after showing the ticket around after the drawing, he gave the ticket to his mother for safe-keeping—she accidentally threw it out! No one disputed that Karafa had the winning ticket, but the Superior Court of New Jersey threw out Karafa's suit. The case stands for two important holdings: 1) lottery laws must be stringently enforced; and, 2) unlike other writings, a lottery ticket is not merely evidence of an underlying obligation but the winning ticket is the obligation itself.

Katz v. United States, 389 U.S. 347 (1967). "Bug" on public phone booth was illegal invasion of privacy of persons using booth, even though only one end of conversations intercepted. The case involved a bookmaker and the U.S. Supreme Court established an important new standard, holding he had a "reasonable expectation of privacy" in the phone booth.

Kennedy v. Annandale Boys Club, Inc., 221 Va. 504, 272 S.E.2d 38 (1980). Supreme Court of Virginia refused to allow a bingo winner to use the courts to collect. The case shows that just because the legislature has made a form of gambling legal, in this case bingo for charities, it does not follow that it is legal for all purposes. Like licensed casinos, the bingo operator cannot be prosecuted for a criminal offense of gambling, but the common law traditions remain. Mrs. Kennedy's suit was thrown out of court because gambling debts, even legally incurred ones, are uncollectible in Virginia.

L

Lewis v. United States, 348 U.S. 419 (1955). U.S. Supreme Court made it clear that paying federal wagering occupational tax does not give a person the right to engage in wagering, even in a federal jurisdiction, such as the District of Columbia. There is no fundamental right to gamble under the U.S. Constitution.

People v. Lim, 18 Cal.2d 872, 118 P.2d 472 (1941). California Supreme Court held that it was not within the power of any court to establish the standards for public morality; only the legislature could decide whether an activity was a public nuisance which could therefore be enjoined under a court's equity power. The Court explicitly held that even though a gambling house may have been a nuisance under the common law there must be a statute to prohibit this activity or no injunction would issue. There are no statutes prohibiting the playing of draw poker or making the playing of poker a nuisance. Being a poker club is not enough. (In this particular case the district attorney alleged that the card club was a danger to the public's health and safety because it created traffic and fire hazards, and the court held those particular allegations were sufficient to get the case to trial.)

M

Madara v. Commonwealth, 13 Pa.C. 433, 323 A.2d 401 (1974). Another heartbreaking case in the developing law of lotteries. William Madara lost his wallet, containing a winning lottery ticket, in a flood. He found the wallet and turned in the ticket 1 year and 2 days after the drawing. The majority of the Commonwealth Court of Pennsylvania held the lottery rules put a 1 year deadline on redeeming winning tickets, since the prize money was turned over to the state there was no money to pay Madara's claim. Another example of the courts requiring strict compliance with lottery rules.

Marchetti v. United States, 390 U.S. 39 (1968). An important case—the Supreme Court overturned a conviction for failure to obtain the federal occupational tax stamp to operate as a bookmaker because the requirement that an illegal gambler file tax returns, which could then be used against him, violated the Fifth Amendment protection against self-incrimination. Companion case is *Grosso v. United States*.

Marshall v. Sawyer, 365 F.2d 105 (9th Cir. 1966). The federal Court of Appeals held Nevada's black book exclusion of undesirables was constitutional.

In re Martin, 90 N.J. 295, 447 A.2d 1290 (1982). The New Jersey Supreme Court struck down some of the intrusive licensing forms and procedures required of casino employees, holding the N.J. Casino Control Commission's practices must have at least a rational relationship to excluding from casinos individuals with known criminal

records, habits or associations or who are deficient in business ability or experience.

Marvin v. Trout, 199 U.S. 212 (1905). The U.S. Supreme Court stated explicitly that states have the right to regulate gambling under their police power. The Court upheld as constitutional a statute which allowed the state to sell a building used for gambling purposes to pay back money lost by a gambler-informer.

Ex Parte Meyer, 5 Cal.Unrep. 64, 40 P. 953, 954 (1895). An early California Supreme Court case holding draw poker is a form of gambling but is legal because the state Legislature had not passed a statute making it illegal. The case involved two types of gambling houses, one in which the game of faro (a popular game of the time) was played and the other involving draw poker. The Court stated the difference in unequivocal terms: "Faro is a game prohibited under heavy penalties . . . Poker, played for money, . . . is, in the eyes of the law, as innocent as chess."

People v. Milano, 89 Cal.App.3d 153, 152 Cal.Rptr. 318 (1979). California appellate decision held it is not a crime to transmit horse racing and other information, unless the defendant knows the information will be used for illegal gambling. Newspaper and broadcasters cannot be penalized even if they have actual knowledge of illegal gambling. Cases like this allowed newspapers and radios to tell racing and sports results, including the betting odds; and gave rise to the creation of legal bookie information services. The Court quoted a decision to the same effect from the Supreme Court of Massachusetts, *Opinion of the Justices*, 229 N.E.2d 263, 267 (Mass. 1967).

Mills-Jennings of Ohio, Inc. v. Dept. of Liquor Control, 70 Ohio St.2d 95, 24 O.O.3d 181, 435 N.E.2d 407 (1982). Supreme Court of Ohio held video poker was a form of poker, poker is gambling and therefore video poker is illegal as a gambling device.

Moberly v. Deskin, 155 S.W. 842 (Mo. 1913). Missouri Supreme Court held machine that gave "lucky trade chips" was a gambling device.

Molina v. Games Management Services, 58 N.Y.2d 523, 462 N.Y.S.2d 615, 449 N.E.2d 395 (1983). An important case in lottery law. Mary Molina claimed she won \$166,950 in the lottery, but the sales agent failed to keep a record of the purchase as required by the state lottery rules. She sued the sales agent. The highest court of New York threw her claim out, stating that the State and the sales agents were immune from liability under the law, and that the lottery rules had to be strictly complied with to prevent cheating.

People v. Monroe, 349 Ill. 270, 182 N.E. 439, 85 ALR 605 (1932). A leading case distinguishing parimutuel betting on horse races from lotteries and gambling games.

Monterey Club v. Superior Court of Los Angeles, 48 Cal.App.2d 131, 119 P.2d 349 (1941). The California Court of Appeals refused to issue an injunction that would have closed the poker clubs in Gardena. The Court held that "Gambling is neither unlawful per se nor a public nuisance per se in California." The legislature listed the games that are criminal, and although "stud-horse poker" is on the list of prohibited games, draw poker is not. If draw poker is not unlawful the City of Gardena

could license the game, and being duly licensed it cannot be enjoined as a nuisance.

Morrow v. State, 511 P.2d 127 (Alaska 1973). A recent case discussing that old quandary: chance v. skill. In this particular case the question involved tickets for a football pool. The Supreme Court of Alaska understood that there are two lines of cases: one line requires that chance predominates, the other requires that there be no skill at all. The Court decided that Alaska should go with the more modern dominant factor test; and that the burden is on the prosecution to prove at trial the factual question that chance, rather than skill, predominates.

N

National Conference on Legalizing Lotteries v. Farley, 96 F.2d 861 (D.C. Cir. 1938)—A test case against the Postmaster General, the federal Court discussed chance v. skill in a lottery.

Nevada Gaming Comm'n. v. Consolidated Casinos Corp. 94 Nev. 139, 575 P.2d 1337 (1978). The Nevada Supreme Court held that the Gaming Commission acted arbitrarily and capriciously by failing to follow regulations adopted by the Gaming Control Board. The decision shows that regulators, even in Nevada, are not free to do whatever they wish, despite *State v. Rosenthal*.

O

Opinion of the Justices, 353 Mass. 779, 229 N.E.2d 263 (1967). See, *People v. Milano*.

Otis v. Parker, 187 U.S. 606 (1903). The U.S. Supreme Court ruled the federal government has the power to forbid all contracts for sale of shares on margin.

P

Palmer v. State, 625 P.2d 550 (Mont. 1981). Montana Supreme Court upheld gambling statute that is backwards from the traditional law: the Legislature listed the games that are *legal*, not those it wants to outlaw.

Pearce v. Rice, 142 U.S. 28 (1891). Another U.S. Supreme Court decision holding commodity speculations were illegal gambling contracts. See, *Browne v. Thorn*.

People v. See, opposing party.

People v. Philbin, 50 Cal.App.2d Supp. 859 (1942). The Appellate Department of the Los Angeles Superior Court held it was illegal to "prevail upon" a player to

enter a gambling house, even if that gambling house was a legal card club. The case involved a letter by a licensed card club which resulted in a visit to the club. Although discredited and ignored, this case has never been explicitly overruled.

People v. Pierce, 14 Cal.2d 639, 96 P.2d 784 (1939). The California Supreme Court held that the Horseracing Act, which permitted wagering at a licensed track, is merely an exception to the general ban on gambling and did not repeal any part of the Penal Code laws against gambling. The burden is on the defendant in a criminal case to show that he falls within the exception. Accord, *People v. Haughey*, 48 Cal.App.2d 506 (1941).

Ex parte Pierotti, 43 Nev. 243, 184 P. 209 (1919). Supreme Court of Nevada held slot machines not "lotteries" within prohibition of Nevada Constitution.

Posadas De Puerto Rico Associates v. Tourism Co. of Puerto Rico, U.S. Sp. Ct. Docket No. 84-1903, 54 U.S.L.W. 3035 (7/30/85). The U.S. Supreme Court has been asked to decide the constitutionality of a Puerto Rico statute which prohibits casinos from advertising or otherwise offering their facilities to the public of Puerto Rico. The Court should have no trouble finding the statute violates the commercial free speech rights of the casino as well as being a denial of equal protection to Puerto Rican citizens.

R

Remmer v. Municipal Court, 90 Cal.App.2d 854, 204 P.2d 92, *appeal dismissed* 338 U.S. 806 (1949). San Francisco ordinance outlawing "gambling" held legal, not in conflict with California state Penal Code Section 330, outlawing 12 specific games.

Resorts International v. Agresta, 569 F.Supp. 24 (E.D.Va. 1983), *affirmed*, 725 F.2d 676 (4th Cir. 1984). A federal judge held an Atlantic City casino cannot collect on a promissory note because gambling debts, even legal ones, are not collectible under the laws of Virginia. Decision affirmed by the Federal Court of Appeals.

Rewis v. United States, 401 U.S. 808 (1971). U.S. Supreme Court ruled mere act of crossing a state line to patronize an illegal casino is not a violation of the Travel Act. The Travel Act requires an intent to promote, manage, establish, carry on or facilitate illegal gambling, or other illegal activity.

Rodgers v. Southland Racing Corp., 247 Ark. 1115, 450 S.W.2d 3 (1970). Supreme Court of Arkansas held legalized gambling is a privilege, and the state can put any reasonable conditions it wants on greyhound dog tracks.

State v. Rosenthal, 93 Nev. 36, 559 P.2d 830 (1977); *appeal dismissed*, 434 U.S. 803 (1977). Important Nevada Supreme Court case holding there is no room for federal constitutional rights in the regulation of gambling. See Chapter Fourteen.

Rountree v. Smith, 108 U.S. 269 (1883). Another U.S. Supreme Court case on com-

modities as gambling contracts. The plaintiff was a broker suing for services rendered; defendant was unable to prove these were gambling contracts because he had no idea how the commodity exchange worked. See, *Browne v. Thorn*.

S

Sanabria v. United States, 437 U.S. 54 (1978). U.S. Supreme Court ruled that in a prosecution for violation of 18 U.S.C. Section 1955, the government need not prove that a defendant himself performed any act of gambling prohibited by state law. It is participation in illegal gambling business that is federal offense and it is only the gambling business that must violate state law. Regardless of how many state statutes are violated there is only one federal offense.

Scott v. Courtney, 7 Nev. 419 (1872). The case that set the law in Nevada: gambling was, and is, against public policy and gambling debts are not collectible.

Seminole Indians v. Butterworth, 658 F.2d 310 (5th Cir. 1981). Breakthrough case allowing gambling on Indian reservations. The federal Court of Appeals ruled that the state of Florida can make gambling, such as bingo and horse racing, a crime everywhere in the state, including on Indian reservations; however, once gambling is made legal the state has no power to regulate it on Indian land. Thus, when Florida set up a system allowing charities to run bingo games the state accidentally legalized bingo on the reservations, and the Indian tribes are not subject to the rules and regulations faced by the charities.

Shoot v. Illinois Liquor Control Commission, 30 Ill.2d 570, 198 N.E.2d 497 (1964). Illinois Supreme Court held state Constitution prohibits state Liquor Commission from cancelling liquor licenses for bars merely for having the \$250 federal gaming device stamp.

Spilotro v. State, ex rel. Nevada Gaming Comm., 661 P.2d 467 (1983). Nevada Supreme Court upheld black book list of persons excluded from casinos, but remands for Commission hearing on facts. Case involved Anthony John ("Tony The Ant") Spilotro, reported to be in charge of organized crime in Las Vegas.

Spinelli v. United States, 393 U.S. 410 (1969). U.S. Supreme Court set standards for search warrants; affidavit in support must contain a sufficient statement of underlying circumstances from which informer concluded that defendant was running a bookmaking operation.

St. John's Melkite Catholic Church v. Com'r. of Revenue, 240 Ga. 733, 242 S.E.2d 108 (1978). Supreme Court of Georgia upheld all sections of state bingo law as constitutional.

State v. See, opposing party.

T

Taunton Eastern Little League v. Taunton, 389 Mass. 719, 452 N.E.2d 211 (1983). Massachusetts Supreme Court upheld city council's action rescinding beano license granted nonprofit athletic association because the night the Little League wanted to play their gambling game conflicted with the night the local Roman Catholic church wanted to play their gambling game. The Court stated that the decision was not based on religion, rather there was a benefit to the city by having a religious school, supported by gambling revenue, take some of the load off of the local school system.

Theriot v. Terrebonne Parish Police Jury, 436 So.2d 515 (La. 1983). Supreme Court of Louisiana upheld limit on bingo, stating private rights must yield to the public good and legislative restrictions on gambling had a rational relationship to a legitimate state interest. Accord, *Brown v. State*, 392 So.2d 415 (La. 1980) allowing police to destroy slot machines summarily.

Thompson v. Bowie, 71 U.S. 463 (1866). One of the first gambling cases to make it to the U.S. Supreme Court. The case is worth reading to see what life was like in a simpler time, and the law may still be good. The defendant claimed that some promissory notes he signed were not enforceable as gambling contracts; his proof was that he had a propensity to gamble when drunk and he was drunk the day he signed these notes.

Treasure State Games, Inc. v. State of Montana, 170 Mont. 189, 551 P.2d 1008 (1976). Montana Supreme Court declared electronic keno legal as a form of bingo under the state's Bingo and Raffles Act, as a simulation of a legal game; See, *Gallatin County v. D & R Music and Vending, Inc.*, (1982).

U

United States v. Ansani, 240 F.2d 216 (7th Cir. 1957). Federal Court of Appeals held remote control devices fall within federal ban on interstate shipment of slot machines.

United States v. Fabrizio, 385 U.S. 263 (1966). U.S. Supreme Court held carrying New Hampshire lottery "acknowledgements" across state line into New York violated the 1961 federal Wagering Paraphernalia Act; the federal anti-lottery laws apply to legal as well as illegal lotteries.

United States v. Farris, 624 F.2d 890 (9th Cir. 1980). The Puyallup Indians operated a full casino on their tribal land, and the federal Court of Appeals had a difficult time finding a way to rule it illegal. The Court first held that the state of Washington can make it a crime for non-Indians to gamble, but the Court was forced to admit

that the state has no power to prevent Indians from gambling in casinos run by other Indians on Indian reservations. However, by a broad interpretation of a federal statute, the Organized Crime Control Act of 1970, 18 U.S.C. 1955, the Court found that Congress has exercised its power to prevent this type of wide-open gambling.

United States v. Five Gambling Devices, 346 U.S. 441 (1953). U.S. Supreme Court invalidated the registration provisions of the Johnson Anti-Slot Machine Act for vagueness; but held Congress could regulate gambling devices, irrespective of their relationship to interstate commerce.

United States v. Goldfarb, 464 F.Supp. 565 (E.D.Mich. 1979). Federal court in Michigan rejected holding in *State v. Rosenthal* that Nevada gambling laws leave no room for federal civil rights. Decision gave no help to defendants convicted of federal crimes involving secret ownership of Aladdin Hotel & Casino in Las Vegas.

United States v. Kahriger, 345 U.S. 22 (1953). U.S. Supreme Court initially held the registration and return requirements of federal wagering taxes constitutional as legitimate revenue raising measures. The Court ignored the obvious intent of Congress to use gambling taxes to entrap illegal gamblers. Overruled in large part by *Grosso v. United States* and *Marchetti v. United States*.

United States v. Kelley, 254 F.Supp. 9 (S.D.N.Y. 1966). A federal statute, 18 U.S.C. Section 1084, makes it a crime for a person engaged in the business of betting to knowingly use a wire communication facility for the transmission in interstate commerce of information assisting in the placing of bets. Federal court held the statute constitutional, where the state penal code makes the betting a crime.

United States v. Korpan, 354 U.S. 271 (1957). U.S. Supreme Court declared gambling pinballs "so-called 'slot machines' " within statutory language of federal \$250 gambling device tax law; tax law later repealed.

United States v. Two Coin-Operated Pinball Machines, 241 F.Supp. 57 (W.D.Ky., 1965), *affirmed sub nom.*, *United States v. H. M. Branson Distributing Co.*, 398 F.2d 929 (6th Cir. 1968). Jury verdict that bingo-type pinball machines are gambling devices subject to prohibition under federal interstate commerce ban upheld.

Uston v. Resorts International Hotel, Inc., 89 N.J. 163, 445 A.2d 370 (1982), *affirming* 179 N.J.Super. 223, 431 A.2d 173 (N.J. Super. A.D. 1981). Card counting case; Supreme Court of New Jersey held the Casino Control Commission alone has authority to set rules for licensed card games, precluding the casino from excluding professional blackjack players.

W

Washington Coin Machine Ass'n. v. Callahan, 79 U.S. App. D.C. 41, 142 F.2d 97 (1944). Federal court held amusement games giving free replays only are not illegal

because amusement is not a "thing of value."

White v. Barber, 123 U.S. 392 (1887). U.S. Supreme Court upheld futures commodity contract against challenge that it was a gambling contract finding there was a bona fide intention to deliver. See, *Browne v. Thorn*.

Wind v. Hite, 58 Cal.2d 415, 24 Cal.Rptr. 683, 374 P.2d 643 (1962); also, *Wind v. Hite*, 221 Cal.App.2d 466, 34 Cal.Rptr. 662 (1963). The voters of Los Angeles County in 1962 refused to pass a ballot proposition that would have outlawed draw poker in the County.

Y

Yasin v. Byrne, 121 Ill.App.3d 167, 76 Ill.Dec. 683, 459 N.E.2d 320 (1984). The trial court held video blackjack was legal as a game of skill and video poker illegal as a game of chance. Only the question of video poker was pursued on appeal. The Appellate Court found video poker to be an exact simulation of draw poker and legal as involving skill. Significantly, the machines in question do not pay out in cash, tokens, or even free replays.

Yellow-Stone Kit v. State, 88 Ala. 196, 7 So. 338 (1890). A landmark case, the Alabama Supreme Court held that a drawing was not a lottery when ticket holders were not required to purchase anything or pay an admission fee. This is the first major case to set the precedent that neither benefit to the promoter nor time and effort expended by the customers is consideration; to be a lottery the customer has to pay money for the chance to win.

Resources

The following list contains the major works (other than cases and general legal resources) currently available for the serious study of gambling in general and gambling law in particular.

I have included some books that are out of print, although these are available through diligent search.

There are also a number of newsletters and magazines. Since gambling has only recently become a respectable subject for academic or financial study, and legal gambling is one of the fastest growing businesses in the world, current periodicals are a major source of information. However, as with any other rapidly growing field, publishing entrepreneurs enter and leave the field unexpectedly. I suggest writing to any publisher to see if they are still in business before sending money for a subscription.

To complete this list I have included institutions and individuals who have done extensive work in the field.

Although I have listed most of the major works relating to gambling, I have included only a handful of references to four major subclasses of gambling literature: "how to win" systems, crime novels, math treatises, and compulsive gambling.

The overwhelming majority of written literature related to gambling is of the "how to win" variety. I have included only a very few works that fit this description, such as Thorp's *Beat the Dealer*. In the past, and still sometimes today, authors who claimed to let the player in on secret systems, for a price, were often simply frauds. After all, if someone knew how to beat a gambling game, why would he want to sell the idea for a few dollars? However, today researchers using sophisticated computers have devised ways of beating the house. Games such as blackjack and poker can be beaten by a player willing to invest the time and money in learning and practicing; handicapping horse races is a complicated skill that requires hours of research. Other games,

such as roulette, can be beaten by the use of expensive equipment to time the ball and wheel, equipment recently made illegal in Nevada and Atlantic City. If you are interested in the latest works on how to win subscribe to *Gambling Times Magazine* and write to both Gambling Times, Inc. and Gambler's Book Club for their lists of books.

Connected to the recent serious study given on how to beat gambling games has been a rise in the number of published mathematical papers analyzing games of chance. These papers usually require advanced mathematical knowledge, far beyond college calculus, to be understood. Some of the best are available through *The Gambling Papers* and *The Gambling Studies* edited by William Eadington.

Probably the next most common literature, after "how to win" books, are works that mention gambling in connection with crime, organized or otherwise. Very few legitimate studies have been done on the actual extent to which organized crime controls illegal, or legal, gambling in America; and even fewer studies focus on gambling, rather than crime in general. I have included those studies that are of the most interest; such as Reid and Demaris's *Green Felt Jungle*. I leave the fictional literature for others.

The last subclass of gambling literature that has recently produced numerous published works is the study and treatment of psychological problems connected with gambling, particularly the compulsive gambler. I have included some references to work done in this field, such as *The Journal of Gambling Behavior*, but there are a number of other works available for the trained psychologist.

I have tried to make this list useful by briefly describing the resource listed. Naturally, any editorial comments are my own opinions; they are not meant to be statements of fact. You may find that a source I found of little value to be of great interest. It depends, in part, on what your particular interest is in the wide field of gambling. My goal has been to select sources that would be of use to someone wishing to follow up on the subjects discussed in this book and to give an overview of the resources generally available. I welcome comments, additions or corrections for future editions of this book.

A

Abt, Vicki. Professor Abt of the Pennsylvania State University, the Ogontz campus, has written a number of works on the sociology of gambling and play with James F. Smith, including "Ritual, Risk and Reward," *Journal of Gambling Behavior*, 64, Spring/Summer 1985. See, James F. Smith.

American Horse Council. The leading source of information on anything to do with horses. Its publications list every organization involved with horses and contain interesting statistics on horse breeding and racing throughout America. Publishes

The Horse Owners and Breeders Tax Manual, the definitive book on federal tax laws and regulations relating to taxation of a horse operation. 1700 K Street, N.W., Washington, D.C. 20006.

The Annals of the American Academy of Political and Social Science, July, 1984 issue is entitled "Gambling: Views from the Social Sciences;" edited by William Eadington and James Frey. A nice introduction to the social scientist's approach to gambling. Issues are available from *The Annals*, c/o Sage Publications, 275 South Beverly Drive, Beverly Hills, California 90212. *The Annals* ran a similar issue in May, 1950, which was one of the few cross-disciplinary studies of gambling at the time, and is now primarily of historical interest.

The Annals of Tourism Research is a multidisciplinary social sciences journal dedicated to academic and professional research on the social, political, and economic effects of tourism and tourist development on society. One of the areas of research that is appropriate for the *Annals* is gambling insofar as it is related to tourism. For additional information, write Professor Jafar Jafari, Editor, *Annals of Tourism Research*, Department of Habitational Resources, University of Wisconsin-Stout, Menomonie, Wisconsin 54751.

Antique Coin Machine Collectors Association. Founded in 1985 to fight proposed changes in the California law on possession of antique slot machines, the organization tracks and lobbies for changes in slot machine laws throughout the nation. 1300 W. Imperial Highway, La Habra, CA 90631.

Asbury, Herbert. *Sucker's Progress: An Informal History of Gambling in America from the Colonies to Canfield*. Dodd, Mead & Co., New York, 1938. Prior to the publication of the government's study, *Gambling in America*, this book was one of the two major printed sources of information on gambling in this country (the other was Chafetz, *Play The Devil*, listed below). It is still an interesting, and readable account of the spread of gambling throughout our history, and is comprehensive up to its date of publication. Its 9 page Bibliography is an excellent resource of printed material on gambling, if you can find the books that Asbury referenced.

Atlantic City Action. A newsletter covering developments in the casino industry in New Jersey, heavy on statistics reported by the casinos. I find *Casino Chronicle* covers the same area better and in a more interesting format. 33 S. Presbyterian Ave., P.O. Box 5059, Atlantic City, NJ 08404.

B

Bergler, E., *The Psychology of Gambling*. Hill and Wang, New York, 1957. This is the most quoted book on the psychology of gambling and is considered a breakthrough work by therapists. Bergler uses psychoanalysis and studies of com-

pulsive gamblers to arrive at his questionable conclusion that people gamble because they want to *lose!*

Blakey, G. Robert & H. A. Kurland, "The Development of the Federal Law of Gambling," 63 Cornell L. R. 923 (1978). Much of this material appears in the larger study, *The Development of the Law of Gambling: 1776-1976*, but this article is available in any law library.

C

Caro, Mike. One of the most prolific authors currently writing on gambling, with an emphasis on strategy, particularly poker strategy. His publications, including his book *Caro on Gambling* (Gambling Times, 1018 N. Cole, Hollywood, CA 90038, 1984), will give you a good flavor of the work being done by modern gamblers who are also thinkers.

Casino Chronicle is an important weekly newsletter on the New Jersey gaming industry, useful in keeping up with actions of the N.J. Casino Control Commission and financial figures and other developments from the New Jersey casinos. 2416 Laurel Drive, Cinnaminson, New Jersey 08077.

Casino Gaming. See, *Public Gaming*.

Casino Gaming Newsletter, no connection with *Casino Gaming*. A little newsletter covering the Atlantic City scene from the player's point of view. The information provided is sketchy, but this might be useful to someone who lives on the East Coast and is just beginning to follow casino developments; the information is available in much more complete form elsewhere, such as in *Casino Chronicle*, but annual subscriptions to this newsletter run \$24 and *Casino Chronicle* is \$135. Winners Circle, Box 562, Toms River, NJ 08754.

Casino Journal, a monthly newspaper, primarily for Atlantic City casino employees. 2524 Arctic Ave., Atlantic City, NJ 08401.

Casino World, an interesting and informative casino industry newsletter published monthly by Gramercy Information Services, Inc., P.O. Box 2003, Madison Square Station, New York, New York 10159. Little overlap with *Casino Chronicle* because *Casino World* is geared more toward those interested in investing in gambling stocks and takes a world view in its coverage.

Chafetz, Henry. *Play the Devil: A History of Gambling in the United States from 1492 to 1955*. Bonanza Books, a division of Crown Publishers, New York, 1960. The other great printed source on gambling, supplanted by the Government sponsored studies, *Gambling in America* and particularly *The Development of the Law of Gambling: 1776-1976* (See reference to Asbury, *Sucker's Progress* above). An historical and comprehensive account of the movements that periodically sweep America alter-

nating between more gambling and more reform. The text runs 454 pages and the Bibliography another 5 pages. The *Development of the Law of Gambling: 1776-1976*, seems to owe a great debt to this book; Chafetz develops the history and presents the anecdotes and the more legalistic *Development of the Law* fills in the gaps with more scholarly studies, including footnotes. These volumes complement and overlap Asbury's *Sucker's Progress* without merely duplicating the prior works.

Christiansen, Eugene Martin. Christiansen has published a number of articles on gambling from his unique perspective: he is a writer and a serious student of gambling laws, but he has the additional practical insights gained from his position with the New York City Off-Track Betting Corp. His articles have appeared in *Gaming and Wagering Business* and similar publications. His most recent work is *The Business of Risk: Commercial Gambling in Mainstream America*, (to be published in 1985 by The University Press of Kansas, co-authored with Vicki Abt and James F. Smith). This book promises to be the most comprehensive study ever made of how and why people gamble.

Conference Management Corp., 17 Washington St., P.O. Box 4990, Norwalk, CT 06856. See, International Gaming Business Exposition.

Connecticut Law Review, special issue "Symposium on Legal Aspects of Public Gaming," vol. 12, no. 4, Summer 1980. Nothing new, but it does contain useful references to other works, including a Selective Annotated Bibliography. U. of Conn. School of Law, 1800 Asylum Ave., West Hartford, Conn., 06117.

D

The Development of the Law of Gambling: 1776-1976. Prepared by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, United States Department of Justice. A massive work, 933 pages, it presents a comprehensive overview of the development of gambling law in the United States from a legal historian's perspective.

Dombrink, John. Professor Dombrink teaches in the Program in Social Ecology at the University of California Irvine. He has studied and written about the sociological aspects of gambling, including his successful Ph.D. Dissertation, "Outlaw Businessmen: Organized Crime and the Legalization of Casino Gambling;" *The Last Resort: Success and Failure in Campaigns for Casinos* (with William Thompson); and, works co-authored with Jerome H. Skolnick in *House of Cards* and *Connecticut Law Review*, vol. 12, no. 4 (Summer 1980).

E

Eadington, William R. Professor Eadington is one of the nation's leading experts on the field of gambling and one of its most prolific authors. He has been a driving force in focusing academic study on all aspects of gambling in our country and throughout the world. There have now been six National Conferences on Gambling and Risk Taking organized by Professor Eadington, roughly one every other year. The most recent, held in December, 1984, in Atlantic City, attracted experts from the U.S. and abroad; over 100 papers were published in five volumes entitled *The Gambling Studies*, 1985; the proceedings of the Fifth National Conference were published under the title *The Gambling Papers*, 1982; both sets are available through the Bureau of Business and Economic Research, University of Nevada, Reno 89557. The papers from the First National Conference were published in *Gambling And Society*, Charles C. Thomas Company, Springfield, Il., 1976. Eadington also co-edited *The Annals* with James Frey. I recommend any of his works, including these collections and his articles in the *Nevada Review of Business & Economics*, published quarterly by the Bureau of Business and Economic Research. Professor Eadington is a professor of Economics at the University of Nevada, Reno.

Ezell, John Samuel. *Fortune's Merry Wheel: The Lottery in America*, Harvard University Press, Cambridge, MA 1960. One of the two most cited books on lotteries (the other is Sullivan's *By Chance A Winner*). Written just before the third wave of legalized gambling began, Ezell missed all of the state lottery boom. The book describes the rise and fall of lotteries, and the development of anti-lottery laws.

F

Fey, Marshall. *Slot Machines*. Stanley Paher, Nevada Publications, Box 15444, Las Vegas 89114, 1983. The definitive book on the subject, and a beautiful volume, with full color photographs throughout.

Frey, James H. Professor Frey is with the University of Nevada, Las Vegas, Department of Sociology. His gambling-related publications have focused on the social sciences and sports: "Gambling on College Sport," in *Sociology of Sport Journal*, vol. 1, no. 1 (1984); co-edited with William Eadington, "Gambling: Views From The Social Sciences," *The Annals* of the American Academy of Political and Social Science, (July, 1984); and, co-edited with Arthur T. Johnson, *Government and Sport: The Public Policy Issues*, (to be published 1985 by Rowman and Allenheld).

Friedman, Bill. *Casino Management*. Lyle Stuart, Inc., 120 Enterprise Ave., Secaucus, NY 07094. A massive book, this is the definitive explanation of how to run a casino.

G

Gambler's Anonymous, a self-help organization modelled after Alcoholics Anonymous. G.A. now has 300 chapters and 8,000 members in the U.S., 450 chapters worldwide. Two related organizations: Gam-Anon for spouses of compulsives and Gamateen for their teenage children. P.O. Box 17173, Los Angeles, CA 90017.

Gambler's Book Club stocks more than 1,000 books in fifteen subcategories of gambling, and publishes various books and reprints under GBC Press. Gambler's Book Club also publishes a bimonthly newsletter, *The Overlay*; it contains tidbits and mini-reviews of the 25 or so new book titles acquired every two months by the Gambler's Book Club. A rich source of information, Gambler's Book Club is run by Howard Schwartz, one of the most knowledgeable men in the field of gambling. For further information, write Gambler's Book Club, P.O. Box 4115, Las Vegas, Nevada 89127. They'll send you a free catalogue.

Gambler's Digest. Defunct, 1985.

Gambling in America. A magnificent work. Congress authorized \$3 million to study gambling in the United States; Executive Director was James E. Ritchie. The final report and appendices shows how much \$3 million dollars can buy from academia, and how little serious study gambling had previously received; also, how little people listen: not a single one of their recommendations has become law. The Final Report is 192 pages and is cited more than any other text on gambling, the three appendices run an additional 2500 pages, and contain research papers, surveys, hearings and model statutes. It is now out of print; U.S. Government Printing Office, Washington, DC 20402.

The Gambling Papers: Proceedings of the Fifth National Conference on Gambling and Risk Taking, edited by William Eadington, Bureau of Business and Economic Research, College of Business Administration, University of Nevada, Reno, 1981. Professor Eadington has organized six conferences on all aspects of gambling, which have produced major research papers by psychologists, mathematicians, sociologists, economists, historians and others interested in the field. See Eadington, William.

The Gambling Studies: Proceedings of the Sixth National Conference on Gambling and Risk Taking, edited by William Eadington, Bureau of Business and Economic Research, College of Business Administration, University of Nevada, Reno, 1985. See, *The Gambling Papers* and Eadington, William.

Gambling Times Magazine. The leading source of information on gambling in the United States from the player's point of view. The magazine is home to a monthly column entitled "Gambling and the Law" by Professor I. Nelson Rose, the author of this book. Gambling Times, Inc., has created an industry out of supplying information and services to people interested in legal gambling. It publishes more books

on gambling each year than any other publisher in the United States; *Gambling Times, Inc.*, is the largest publisher of total gaming information in the world. Their other publications include *The Experts Blackjack Newsletter*, and *Poker Player* newspaper. 1018 N. Cole Ave., Hollywood, CA 90038.

Gaming & Wagering Business magazine. A major source of current information on anything to do with legalized gambling. The magazine was originally titled *Gaming Business* but added the word "Wagering" to its title in late 1984 to accommodate horse racing and lottery interests that do not consider themselves in the "gaming" field. The magazine publishes a comprehensive Industry Directory and Yellow Pages once each year: an extensive listing of all casinos, card rooms, parimutuel racing, lottery; gaming companies; and regulatory agencies. The magazine also commissions The Gallup Organization to survey both legal and illegal gambling in the United States each year. The magazine's editorial posture is pro-industry, but the articles published are detailed and objective. *Gaming & Wagering Business* is published for those working on the other side of the tables and thus makes a nice counterpart to *Gambling Times*, which is oriented toward the players. It is published monthly by BMT Publications Inc., 254 West 31st Street, New York, New York 10001.

Gaming Confidential, also titled *Geno Munari's Gambling Confidential*. A little newsletter less than two years old. Covers developments in Las Vegas from the player's perspective. Occasional tidbits, such as a breakdown of the actual profits and costs of a casino bus tour program, almost make it worth the price of \$24 for 12 issues, but not quite. Geno Munari, 3426 Biela Ave., Las Vegas, NV 89120.

Gaming International magazine. There have been a number of attempts to create a glossy newsrack magazine devoted entirely to gambling from the player's point of view. *Gaming International* went out of business in 1985.

Goodwin, John R. *Gaming Control Law: The Nevada Model, Principles, Statutes and Cases*. Designed as a textbook for an upper level undergraduate course in business law, this book offers an excellent complement to the book you are reading. While *Gambling and the Law* gives an overview of the entire field of gambling law, *Gaming Control Law* focuses in on the specific issue of regulatory law in Nevada. A solid introduction for college students into the world of gambling regulations. Goodwin also edits the *Hotel and Casino Law Letter*. Publishing Horizons, Inc., 2950 N. High St., Columbus, OH 43202, 1985.

H

Hotel and Casino Law Letter. Distributed at the College of Hotel Administration, University of Nevada, Las Vegas. An interesting little newsletter featuring articles on topics such as hotel dress codes and the collectibility of gambling debts in Nevada.

Designed for college students and working professionals, not lawyers, it is sometimes weak on the law, but gives a good overview and a starting place for future research. Editor, John R. Goodwin, Professor of Hotel Law, University of Nevada, Las Vegas.

I

Industry Directory and Yellow Pages. See *Gaming Wagering Business*.

International Association of Gaming Attorneys. The professional organization for lawyers practicing in the field, affiliated with the American Bar Association's Committee on Gaming Law of the Section of General Practice. The IAGA publishes, irregularly, a newsletter entitled *News Notes*. Although the emphasis in *News Notes* is on activities and people associated with IAGA, the occasional reports on current legal developments are excellent. The IAGA is in the process of compiling a two volume set of all the cases, reported and unreported, involving gambling law in Nevada and New Jersey; Nevada alone has over 100 cases. The set should be available for purchase in late 1986. Write IAGA, P.O. Box 7438, Las Vegas, NV 89125.

International Gaming Business Exposition, put on each year by Conference Management Corp., 17 Washington St., P.O. Box 4990, Norwalk, Ct 06856. A leading source of information for professionals working in the field of legal gambling, the expositions include seminars by experts and exhibitions of the latest equipment and services available in the industries.

International Gaming Magazine, published by the Public Gaming Research Institute, Inc., P.O. Box 1724, Rockville, MD 20850. See, *Public Gaming*.

J

The Journal of Gambling Behavior, sponsored by the National Council on Compulsive Gambling, is the first journal to be devoted to the study of social and pathological gambling. Aimed at professionals and lay persons interested in psychiatry, psychology, social work, anthropology, sociology and other social sciences, the journal serves as a vehicle for the dissemination of information about the diagnosis and treatment of pathological gambling. Inquiries regarding subscriptions should be addressed to Human Sciences Press, Publisher, 72 Fifth Avenue, New York, New York 10011.

K

King, Rufus. *Gambling and Organized Crime*. Public Affairs Press, Washington,

DC (1969). King is one of the nation's leading authorities on gambling law, particularly as it relates to amusement machines. He has written a number of articles on the subject; this book is a fairly comprehensive collection of his work in the field. Included are case summaries and references to statutes and other reference works.

L

The Las Vegas Insider. A newsletter geared to the novice gambler: where you can get coupons and discounts in Las Vegas, that sort of thing. Some coverage of new developments from the player's point of view. P.O. Box 370, Henderson, NV 89015.

Laventhol & Horwath, Annual Gaming Conferences. This national firm of Certified Public Accountants and Consultants, offering management advisory services, has taken the lead in supplying information on the financial aspects of the legal gambling industries. The firm organizes seminars for C.P.A.s and financial analysts, including a three-day long yearly conference, alternating between Nevada and Atlantic City, that coincides with the annual conference of the International Association of Gaming Attorneys. Contact Gailyn Fitch, 3699 Wilshire Blvd., Los Angeles, CA 90010.

Longstreet, Stephen. *Win or Lose: A Social History of Gambling in America*. Bobbs-Merrill Co., Indianapolis, 1977. A collection of anecdotes, almost entirely from other sources, such as Asbury's *Sucker's Progress* and Scarne's *Scarne's Complete Guide to Gambling*. This book contains more incorrect information than any other major source I have read; within the first few pages he inaccurately describes baccarat and then confuses it with chemin de fer; implies that poker is not played in Nevada casinos; says twice that faro is a complicated game (in faro the house shuffles a deck of cards, the player wins if the card he has bet on shows up first and loses if his card shows up second); and states, "Of the twenty-six most popular games of cards, the leaders are chuck-a-luck, keno, ecarte, monte, and thimblorig . . ." I do not know what the twenty-six most popular card games are, but I would bet that poker, bridge, pan, casino, cribbage, canasta, gin rummy and hearts are more popular than "ecarte," whatever that is. Since Longstreet never cites any of his sources I would stay away from this book, other than for amusement reading.

Loose Change Magazine, published by Mead Publishing Corporation. The magazine calls itself "A Journal for Enthusiasts of Slot Machines, Gambling and Related Subjects;" designed for hobbyists and collectors, it is an excellent source for keeping up with the changing laws on slot machines. Mead also has a catalog of related books and puts on an annual show of over 150 booths selling antique slots, trade stimulators and amusement collectibles. 21176 S. Alameda St., Long Beach, CA 90810.

The Lottery Journal, published by the Public Gaming Research Institute, Inc., P.O. Box 1724, Rockville, MD. See, Public Gaming.

M

Martinez, Tomas M., *The Gambling Scene*. Charles C. Thomas, Publisher, Springfield, Ill., 1983. Martinez is a professor of criminology at California State University, Fresno. A good survey and explanation of why people gamble. Appendix B "Gambling Argot Lexicon" by Marcus Landsberg is the most complete dictionary of gambling terms I've seen. It runs 42 pages.

N

The National Council on Compulsive Gambling, the only voluntary health agency established to combat the disease of compulsive gambling. They publish a newsletter and *The Journal of Gambling Behavior*. John Jay College, 444 W. 56th St., New York, NY 10019.

Nevada Gaming Control Board, 1150 E. William St., Carson City, NV 89710. Produces reports and economic abstracts available to the general public.

P

Poker Player, a newspaper produced by *Gambling Times*, carries up to date information on the legal card rooms of the Western United States.

Public Gaming, published by the Public Gaming Research Institute, Inc., P.O. Box 1724, Rockville, MD 20850. A good source of articles and stories about current events in the public gaming industry, particularly lotteries. In May, 1985, *Public Gaming* split into two magazines: the magazine *Public Gaming* now is devoted entirely to state lotteries and a new magazine, *Casino Gaming*, was introduced. This split reflects the conflicts inherent in the world of legal wagering: lotteries won't have anything to do with casinos, and horse tracks won't have anything to do with either of them. The Public Gaming Research Institute, Inc., was founded by Duane V. Burke in 1971 to help those in government and business interested in legalizing, operating and regulating state lotteries and other forms of gaming. The biggest problem you will face in trying to deal with the Institute is that they do not answer letters, ever, unless you are a large institution or government official. I can't get too mad at them, though; they not only quoted me once, but they did it fairly and accurately. *Public Gaming Magazine*, vol. XII, No. XII (Dec. 1984) at p. 37. The Institute puts on regular trade shows for the legal gambling industry and publishes other magazines, including *The Lottery Journal* and *International Gaming Magazine*, and lottery newsletters, including daily subscription news updates.

R

Reid, Ed and Ovid Demaris. *Green Felt Jungle*. Trident Press, New York 1963. Required reading for anyone interested in legalized gambling. A paperback history of organized crime's infiltration of legal gambling in Las Vegas.

Rose, I. Nelson. The author of this book. I have written a number of other works on gambling law, including *The Legalization and Control of Casino Gambling*, 8 Fordham Urban L. J. 245 (1979-1980), which contains extensive footnotes for further reference. My paper, "Legal Gambling: The Right To Advertise," appears in volume 2 of *The Gambling Studies*, edited by William Eadington, 1985. I have over 25 other articles on gambling law published to date. My column *Gambling and the Law* appears each month in *Gambling Times Magazine*.

Rouge Et Noir News. This is the granddaddy of all casino newsletters, started in August, 1966. Anyone with a typewriter and a photocopy machine can start a casino newsletter, and with the rising interest in legal gambling many have tried. But few, if any, put in the work each month of Walter Tyminski. As merely two examples, *Rouge Et Noir News* had the most complete analysis of the new currency regulations and the new law prohibiting casino "star war" devices that I have seen of any publication. A must for any serious student of casino gambling. *Rouge Et Noir News* is geared toward the serious casino gambler; the company also publishes *Resort Management Report*, a newsletter devoted to management consulting reports on publicly traded hotel/casinos. Rouge Et Noir, Inc., P.O. Box 1146, Midlothian, Virginia 23113.

Royal Commission on Gambling, *Final Report*, also called the *Rothschild Report*. This two volume set is the definitive study of gambling in Great Britain. Presented to Parliament in July, 1978, by its Chairman, the Lord Rothschild. A little difficult to read because of its organization and enormous amount of material, the book is exhaustive in its coverage of everything connected with legal and illegal gambling. Published by Her Majesty's Stationery Office, now available from Bernan Associates, 9730-E George Palmer Highway, Lanham, MD 20706.

S

Scarne, John. A prolific author and student of gambling, Scarne wrote 28 books before he died in 1985 at age 82. He started out as a magician and sleight of hand expert; gambling has had a long and often uneasy relationship with magicians. Scarne first came to fame in World War II by teaching enlisted men how to avoid cheats. Scarne's works, though sometimes dated, provide a valuable overview of the development of gambling throughout the world and lessons on how to play the games. You

cannot understand the present laws of gambling unless you understand its history, and how commercial gambling operates. But take his legal analysis with a grain of salt. His books include *Scarne on Dice* (1945), *Scarne's New Complete Guide to Gambling*, *Scarne's Encyclopedia of Games*, and *Scarne's Complete Guide to Gambling* (Simon and Schuster, New York, 1961). As you can tell by the titles, Scarne's main drawback is his insistence on calling himself the "World's Foremost Gambling Authority," a title he may have deserved in the 1950s and 1960s. He destroyed his own credibility in the late 1960s by refusing to admit that card counting works.

Schwartz, Howard. A one-man library of Congress on the field of gambling literature. See, Gambler's Book Club.

Seton Hall Legislative Journal, vol. 6, No. 1, Summer 1982. An issue devoted entirely to a New Jersey Casino Gaming Symposium. The articles add nothing new, but the issue contains copies of five actual decisions of the New Jersey Casino Control Commission: Resorts International, Caesars Boardwalk, Ballys, Golden Nugget, Marina Harrahs. The NJCCC is uncooperative and charges \$1.00 a page for copies; the Journal reproduced 216 pages. Seton Hall Law Center, 1095 Raymond Bl., Newark, NJ 07102.

Skolnick, Jerome H. *House of Cards*. A wide-ranging discussion on the control of legalized gambling, focusing on Nevada. The work includes detailed accounts of actual cases; some of which, unfortunately, are disguised under false names to protect the parties involved. Little, Brown & Co., Boston, 1978.

Smith, James F. Professor Smith is one of the leading authors on the role gambling plays in modern America. His works, many co-authored with Vicki Abt, have appeared in various publications, including *The Annals*, *The Gambling Papers* and *The Gambling Studies* and articles in the *Journal of Gambling Behavior*. His latest major work is *The Business of Risk: Commercial Gambling in Mainstream America*, (to be published in 1985 by The University Press of Kansas, co-authored with Vicki Abt and Eugene Martin Christiansen).

Arnold Snyder's Blackjack Forum is a newsletter geared toward the serious blackjack player. It is published quarterly by RGE Publishing, 2000 Center Street, Suite 1067, Berkeley, California 94704.

The Society for the Study of Gambling. Formed in 1977 to provide a forum in England for those concerned with research into gambling, to promote its scientific study especially as far as the psychological, social and economic aspects are concerned, and to educate and inform the public about these matters. The Society draws its membership from a wide circle of people with diverse expertise and interest. It is a condition of the Society that there should be freedom of opinion among its members; thus, the Society does not take any particular stance in relation to gambling. The Society holds regular meetings, the proceedings of which are published in the Society's Newsletter. For further information, contact the Society for the Study

of Gambling; Gerry Taylor, Treasurer; 41 Baginton Road, Coventry CV3 6JX, United Kingdom.

Sternleib, George and James W. Hughes. *The Atlantic City Gamble*. A Twentieth Century Fund Report, Harvard University Press, Cambridge, MA 1983. A fairly complete analysis of the sociological impact casinos have had on Atlantic City. This same subject is covered in more depth in the mutli-volume sets: *The Gambling Papers* (1982) and *The Gambling Studies* (1985), papers from the Fifth and Sixth Conferences on Gambling and Risk Taking, edited by William Eadington (University of Nevada, Reno).

Sullivan, George. *By Chance A Winner*. Dodd, Mead & Co., New York, 1972. The second most cited book on lotteries (the first is Ezell's *Fortune's Merry Wheel*). Slightly outdated, but contains good research on the historical background of lotteries in the U.S. and abroad.

T

Thompson, William N. Professor Thompson is in the School of Public Administration at the University of Nevada, Las Vegas. He has studied the spread of legalized gambling with John Dombrink and written a number of works on the subject, including, "Campaigns for Casinos: A Stalled Movement," *State Government*, No. 2 (1984); "Campaigns for Casinos: Political Issues and Prospects," Association of University Business and Economic Research, National Meeting, October 26, 1983; and, *The Last Resort: Success and Failure in Campaigns for Casinos* (with John Dombrink).

Thorp, Edward O. *Beat the Dealer*, Blaisdell Publishing Co., New York, 1961. The breakthrough book on card counting; Thorp is a professor of mathematics who proved that a casino game can be beaten by a skillful player. His strategies for blackjack still work and have been the foundation for further, more sophisticated systems. This book revolutionized the casino industry, from both sides of the tables, and still creates legal problems that have yet to be resolved. See my chapter on Card Counting. His latest book, *Mathematics of Gambling*, is published by Gambling Times, Inc.

U

University of Nevada, Las Vegas. Special Collection. This is the leading collection of gambling materials in the United States, with well over 2,000 books on all aspects of gambling.

V

Variety. The weekly newspaper is a major source of news stories involving the casino

industry, news that is often unavailable from any other source. For example, the July 3, 1985, edition had a front page story, "U.S. Games For Sale At San Vincent Casino; Concession Revoked," discussing a casino scandal in Italy. Other news items that issue discussed Nevada employment figures; Del E. Webb Corporation's seeking new Nevada casinos to manage; the first foreign company to be licensed by Nevada gaming authorities; testimony on Atlantic City casino money laundering; a lawsuit over the use of the Trump name on Donald Trump's new casino; a reformed card cheat getting a gambling license in Nevada; and suit by a losing gambler against Nevada casinos, claiming the casinos took advantage of her incompetence at blackjack. The major problem with *Variety* is you have to dig through hundreds of other articles covering everything from hit movies, to cable television, to rock concerts in Australia, most having headlines like "King Brynner Leaves Throne, Keeps Treasury" (on Yul Brynner's retirement from "The King And I"). Variety Inc., published weekly, 154 W. 46th St., New York, NY 10036.

W

Weinstein, David and Lillian Deitch. *The Impact of Legalized Gambling: The Socio-Economic Consequences of Lotteries and Off-Track Betting*. Contains an extensive bibliography. Praeger, New York (1974).

Williams, Judge Francis Emmett. *Lotteries, Laws and Morals*. Somewhat of a tirade against private lotteries and court decisions allowing merchandise promotions, but contains an extensive listing and discussion of cases interpreting the elements of a lottery. Vantage Press, New York, 1958.

Winning Gamer. A fun little newsletter that covers the latest developments in Nevada, purely from the view of "can this be exploited by a player." Examples: how to get a free buffet, beatable video poker machines, strategy for slot tournaments. It is written by Stanford Wong, one of the nation's leading card counters. Pi Yee Press, 7910 Ivanhoe Ave. #34, La Jolla, CA 92037.

World Gaming Report. Yet another newsletter covering legalized commercial gambling, with an emphasis on Nevada. Some interesting tidbits, but overall I think the field is covered better by *Rouge Et Noir News*, *Casino Chronicle*, *Casino World*, *Casino Gaming*, and particularly *Gaming & Wagering Business*. 2265 Westwood Blvd. #B214, Los Angeles, CA 90064.

Wren, Chris and Jill Wren. *The Legal Research Manual: A Game Plan for Legal Research and Analysis*. This is the best guide available for how to do legal research. A-R Editions, Inc., 315 West Gorham St., Madison, WI 53703.

Other Books on Gaming Published by Gambling Times

Blackjack

Beginners Guide to Winning Blackjack
Gambling Times Guide to Blackjack
Million Dollar Blackjack
Winning Blackjack

Poker

According to Doyle
Caro's Book of Tells
Free Money: How to Win in the Cardrooms of California
How to Win At Poker Tournaments
New Poker Games
Poker For Women
The Railbird
Tales Out of Tulsa
Winning Concepts in Poker and Blackjack (1986)
Wins, Places and Pros

Sports and Handicapping

Fast Track to Harness Racing Profits (1986)
Fast Track to Thoroughbred Profits
Gambling Times Guide to Basketball Handicapping
Gambling Times Guide to Football Handicapping
Gambling Times Guide to Greyhound Racing
Gambling Times Guide to Harness Racing
Gambling Times Guide to Jai Alai
Gambling Times Guide to Thoroughbred Racing
Winning Ways (1986)

Continued on overleaf

Casino Games

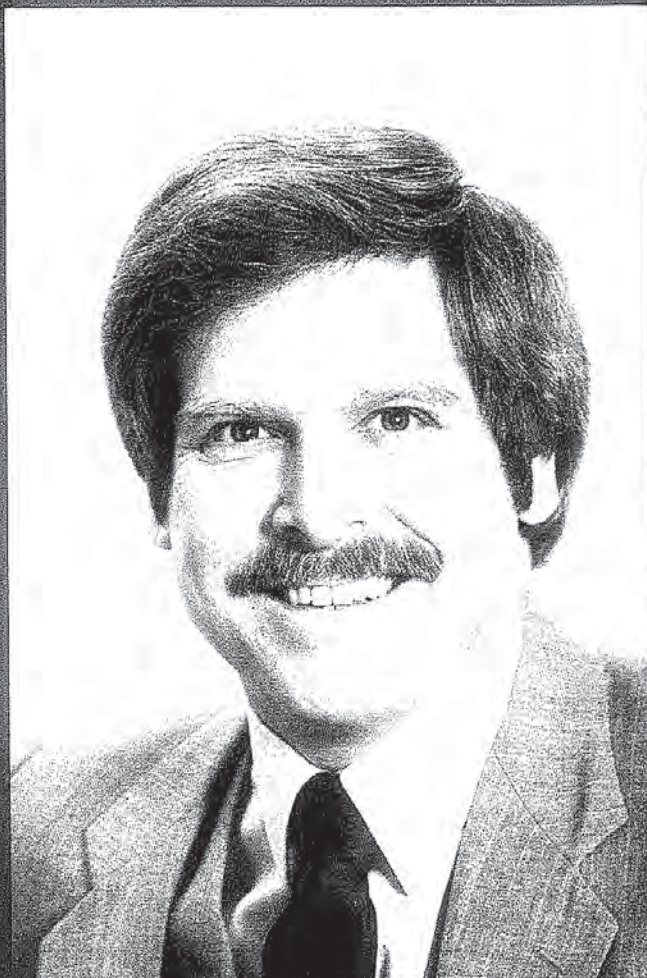
Gambling Times Guide to Casino Games
Gambling Times Guide to Craps
Gambling Times Guide to Roulette

Systems and Methods

Gambling Times Guide to Systems and Methods, Vol. 1
Gambling Times Guide to Systems and Methods, Vol. 2
Gambling Times Guide to Systems That Win, Vol. 1
Gambling Times Guide to Systems That Win, Vol. 2
Gambling Times Guide to Winning Systems, Vol. 1
Gambling Times Guide to Winning Systems, Vol. 2

General Interest

Caro on Gambling
Gambling Times Guide to Bingo (1986)
Gambling Times Guide to European and Asian Games (1986)
Gamblers, Grifters and Good Ol' Boys (1986)
Golf, Gambling and Gamesmanship (1986)
How to Win at Casino Gaming Tournaments (1986)
The Mathematics of Gambling
Psyching Out Vegas
The Gambling Times Quiz Book
Winning By Computer



I. Nelson Rose is a graduate of Harvard Law School and is currently an Associate Professor of Law at Whittier College School of Law in Los Angeles, California. Professor Rose is a licensed attorney specializing in gambling law. He has served as an expert witness in court hearings requiring the interpretation of gambling law and is a member of the California State Bar, the Hawaii Bar Association, The Committee on Gaming Law of the American Bar Association and The International Association of Gaming Attorneys.

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LINDA HOLT AYRISS

"Nelson Rose reads the pulse of developments in gambling law better than anyone else in this country. As a practitioner and a scholar he is unmatched in the breadth of his knowledge in this increasingly complex area; he provides astute observations and advice on several critical issues. All this would be sufficient to produce a good book, but he is also a compelling writer, making this an excellent work. There does not currently exist a more comprehensive book on this topic written by a more attuned legal scholar."

—Professor John Dombrink, Program in Social Ecology,
University of California, Irvine

"Professor Rose has prepared a most comprehensive treatise on gambling law. While he incorporates all the pertinent literature on gaming into his survey, he also leaves room for the introduction of his fresh analytical concepts (e.g. 'third wave' and 'J-curve') and for a speculative treatment of existing cases in litigation and potential cases which may yield new law.

"This book is a must for academic scholars and all attorneys who now have, or ever anticipate, having gaming institutions as clients. Professor Rose's copious listings and annotations of legal cases and statutes reveal a devotion of unlimited energy to this project, and this expended energy will save attorneys countless research hours in their endeavors. As a student of gaming policy, I see this work as a seminal milestone which will be cited and quoted for years to come.

"While academically solid and conceptually strong, Rose's work reads very well and can be of great value to the non-academic, lay-student of gaming. All persons with a true interest in gaming should reserve a place on their bookshelf for Professor I. Nelson Rose's *Gambling and the Law*."

—Dr. William N. Thompson, Associate Professor of
Public Administration, University of Nevada, Las Vegas
Gambling Consultant, President's
Commission on Organized Crime

"There has been a need to get professional work on gambling law since the 1974 Final Report of the *Federal Commission on the Review of the National Policy Toward Gambling* and the 1977 United States Justice Department's *The Development of the Law of Gambling, 1776-1976*—including Professor Rose's own journal articles—out of the law journals and into the general public's hands. I. Nelson Rose's apt translation of gambling law and judicial opinion into English supplies that need. Everyone with an interest in gambling should be grateful.

—Eugene Martin Christiansen,
Special Assistant to the New York City
Off-Track Betting Corporation



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Gambling and the Law
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WH