JOINT HEARING BEFORE THE NEW YORK STATE
SENATE STANDING COMMITTEE ON RACING, GAMING & WAGERING

PUBLIC HEARING:

TO DEVELOP POTENTIAL LEGISLATION TO ENHANCE THE
RACING INDUSTRY IN NEW YORK STATE

Ontario County Safety Training Facility
Rooms 2 and 3
2914 County Road 48
Canandaigua, New York

September 6, 2011
11:00 a.m. to 2:00 p.m.

PRESIDING:

Senator John J. Bonacic
Chairman

PRESENT:

Senator Patrick M. Gallivan

Senator Joseph A. Griffo

Senator George D. Maziarz

Senator Michael F. Nozzolio

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SENATOR BONACIC: I want to thank Ontario County for allowing us the use of this wonderful facility.

To my immediate right is Senator Nozzolio, and to my immediate left is Senator Griffo. And you all know Senator Gallivan, on the end.

I'm going to start with a couple preliminary remarks.

It's our intent to have statewide hearings. We're going to have three of them.

Today is the first hearing. We're going to address, basically, two issues.

First of all: How to bring improvements and efficiencies to the racing industry.

The second issue is, whether or not there is an interest to do a constitutional amendment for full-scale gaming in the state of New York. And, if there is, where, geographically.

We're here to solicit testimony.

And, tomorrow, we're in Albany, with a joint meeting with, Racing, and Judiciary.

And, Friday, we're in Mineola, in Nassau County.

That's the purpose. We have several speakers.

And, at this time, Senator Gallivan, is there anything you'd like to say?

SENATOR GALLIVAN: No.

I would like to welcome the Committee into the 59th District, and thank everybody for being here.

Hopefully, it will be an informative day, and, Mr. Chairman, you will learn some of the things that you're looking for.

SENATOR BONACIC: Thank you.

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. Chairman.

And I want to echo Senator Gallivan's comments, and thank you, as Chairman of the Racing and Wagering Committee, for undertaking this entire review, and bringing the review to Ontario County.

We are in the shadow of the Finger Lakes Racetrack. That is a multi-million-dollar employer for our region. The track itself presents a wonderful venue for horse racing. And that the breeders, the horse farms, the stablemen, the jockeys, the horsemen, are very much an important component of our Finger Lakes economy.

And that, I know, Senator, you have been a

leader as this industry has received a number of changes and challenges over the past few months.

That, I'm very pleased, though, that the Finger Lakes Horsemen are here today, to present to the Committee, for the record, the kinds of legislative changes that are necessary to make this industry competitive in New York State once again.

I fear that we are not competitive with other states. And that I appreciate your leadership Senator Bonacic, for bringing it, a forum, to provide attention to this very important issue.

SENATOR BONACIC: Thank you, Senator Nozzolio.

Senator Griffo.

SENATOR GRIFFO: Thank you, Mr. Chairman.

I want to also add my appreciation to you, because, as a member of the Racing Wagering Committee, I know that you have been very attentive and very responsive to trying to deal with some of the issues that are challenging the State of New York. And we do have some significant issues that are facing the racing industry, and it is very important that we continue to, not only solicit testimony, but to propose and take, in a pro-active effort, to try to sustain and grow the industry.

Along with that, the issue of gaming in New York State is very timely, in a sense that, we now know that the Governor has an interest in this subject, and has a position that he is formulating on this. So, it is appropriate that this Committee, and the members of this Committee, listen across the state to various segments of, not only the industry, but the population, to make a determination as to how we should move forward.

I personally have a couple of bills in the legislature that deals with the legalization of gaming in New York State. And, so, I look forward to listening today, and to asking some questions.

So, I want to thank, again, the Chairman and Committee for coming across the state to gain invaluable input by various groups and citizens.

So, thank you, Mr. Chairman.

SENATOR BONACIC: Thank you, Senator Griffo.

First of all, let me just, one other note before we call our first witness.

We'll be taking oral testimony today, as well as written testimony.

Anyone that would like to submit written testimony subsequently to this hearing, or any others, we will be accepting it up until

September 12th.

At this time, let me call our first witness.

That is: Robert Porter, who is president of the Seneca Nation of Indians.

Welcome, Mr. Porter, and thank you for coming.

ROBERT PORTER: Greetings, Senator Bonacic, and members of the Committee, and other Senators, Senator Gallivan.

I'm thankful that you are well, and I appreciate the opportunity to be here with you this morning.

I'm here today on behalf of the Seneca Nation of Indians, and on behalf of those New Yorkers who are employed by the Nation's enterprises, some of whom have joined us today, to share with you our perspective on the question of whether the Constitution should be amended to permit commercialized gambling in New York State.

A constitutional amendment allowing commercial casino gambling in Western New York would undermine the Seneca Nation's billion-dollar investment in Western New York, and it would also threaten the thousands of jobs we have created since 2002.

Please keep in mind the following, as I share with you my testimony.

The Seneca people have lived up to our promises, as expressed in the 2002 Class III gaming compact.

We invested hundreds of millions of dollars into getting up and running within a specific time frame.

New York State, on the other hand, was not required to spend a single nickel as part of that agreement.

Are we now faced with a New York State government breaking its side of that have promise?

Before I address these specific issues, I'd like to share with you some relevant historical information that will help to you fully understand the Seneca Nation's key role in the modern Western New York economy.

In 1794, the Seneca Nation, along with the other nations of The Six Nations Haudenosaunee Confederacy, signed a treaty with the newly established United States of America, that recognized the sovereignty of the Seneca Nation, and established peace between our nations.

This treaty also recognized the

Seneca Nation's aboriginal title to what is now known as "Western New York State," and promised that we would be secure in the free use and enjoyment of those lands.

This treaty is one of the earliest and most significant treaties in American history, as it unified our peoples in a military alliance that proved critical to repelling the last British effort to threaten the United States during the War of 1812.

This treaty was signed right here in Canandaigua; and, so, is especially significant that the Committee is conducting its first hearing on the subject of legalizing commercial gambling in the state.

In the history of the Seneca and American people, this is a sacred place; a place where solemn commitments were made to respect and honor one another, and to live together in peace.

While there have been many challenges in our relationship during the last 216 years, our treaty relationship with the United States has endured.

Most recently, the United States fulfilled one of its obligations under the Canandaigua treaty, by sending our share of $4,500 worth of cloth that

is distributed annually to the Haudenosaunee people. This annuity payment, although small by today's standards, clearly demonstrates that our treaty relationship is alive and well.

And I brought a small sample of it, just so you could see it. It's very modest. But, every year, it comes to us on the back of a big truck, and it is distributed throughout The Six Nations, ranging from, the Oneidas in Wisconsin, all the way through to the territories in New York State.

And it is a symbol of this enduring commitment made to us by the United States, that we would be secure in the free use and enjoyment of our lands, that our sovereignty would be respected, and that we would, forever, make a commitment to live in peace.

Unfortunately, many of the promises made to us by the United States have either remained unfulfilled or have been broken.

Most notably, the United States has inconsistently protected our nation from the predatory behavior of New York State and its officials.

From the time the Canandaigua treaty was signed, the Seneca Nation has confronted repeated

efforts by the State to take title and jurisdiction over our lands, to impose taxation in our lands, and to even take control of our children, and our identity, as distinct indigenous people.

These threats have continued to the present day.

Nearly 60 years ago, the State pressured us into signing an illegal right-of-way agreement for the New York State Thruway through our Cattaraugus territory.

50 years ago, the State actively supported the taking of 10,000 acres of our Allegheny territory, by the United States, for the Allegheny Reservoir and Kinzua Dam.

35 years ago, the State induced us into allowing the Southern Tier Expressway to cross our Allegheny territory, with promises that, to this day, have not been satisfied.

Despite this long history of predatory behavior, the Nation and the State came together in 2002 to enter into a Class III gaming compact that recognized the Nation's exclusive right to offer slot machines in Western New York.

While, recently, a disagreement has emerged, that I will address later in my testimony, the fact

remains that the Nation and the State have created thousands of jobs, and billions in economic benefit for our two governments and people of Western New York, through Indian gaming.

The question I have for the Committee is this: Will New York State head down the same old path of telling lies to Indians and breaking our agreements, by allowing commercial gambling in Western New York, in violation of our 2002 Class III gaming compact?

The Seneca Nation is the largest of the six indigenous nations that comprise The Six Nations Haudenosaunee Confederacy. We have a rich history that extends back hundreds of years, with origins in this very location.

According to oral history, our birthplace is -- as a people, is at Ganondagan, just down the road, in Victor, which, ironically is now controlled by New York State as a designated historic site.

Our ancestors formed a powerful union with the other indigenous nations in what is now Upstate New York and Southern Ontario.

We became known as "The keepers of the Western Door," and our influence extended as far south as Ohio and Western Pennsylvania.

Following the American Revolutionary War, we lost most of our aboriginal lands in a land-for-peace deal to secure the title to the lands that we now occupy.

Most of our 8,000 citizens live on or near our Allegheny and Cattaraugus territories in Western New York. Combined with our Oil Spring, Buffalo Creek, and Niagara Falls territories, we own and retain full jurisdiction over 50,000 acres of territory.

The loss of most of our lands 200 years ago changed life significantly for the Seneca people. Foremost, the loss of our lands constituted a loss of our national wealth, and we began period of chronic poverty and underdevelopment that has only recently begun to subside.

The Seneca Nation's economic revitalization began in the 1970s, based upon economic support from the United States in the form of, healthcare, and job-training assistance.

Later in the decade, a tobacco trade emerged, as a few Seneca entrepreneurs and the Nation government began selling tax-free cigarettes to non-Indians in our territory.

It is important to note, that, based upon the

Canandaigua treaty, and the treaty of Buffalo Creek of 1842, the Seneca Nation and the Seneca people have always been immune from State taxes. It is only when New York State began to heavily tax cigarette sales that the business opportunity was created.

Over the years, the tobacco trade has allowed for the Nation government, and many Seneca people, to start businesses and generated much-needed revenue for the services that we provide for our people. This would not have happened if the State had not raised its cigarette taxes to what is now the highest rate in the United States.

While the tobacco trade has been lucrative, the most recent economic success for the Nation has been through gaming.

In the early 1980s, the Nation commenced high-stakes bingo operations, which later expanded to include electronic gaming.

On January 1, 2003, the Nation opened our Class III gaming casino in Niagara Falls, and we have been growing ever since.

Today, the Seneca economy generates a little over $1 billion annually, employing approximately 6,000 people, including thousands of non-Indians in

New York, Pennsylvania, and Canada, who work at our gaming businesses, our tobacco businesses, and in our government.

Our economy has both public and entrepreneurial sectors, making the Seneca Nation the fifth largest employer in Western New York.

The Seneca Gaming Corporation has some 3,600 employees, most of whom are non-Indians. And the Nation's government has 1,300 employees.

The Seneca Gaming Corporation generated $95.4 million in payroll over the last year, plus $30 million in taxes, insurance, and benefits.

The Seneca Gaming Corporation spent a total of $166 million with nearly 1,400 vendors during the August 2010 to July 2011 time period.

Our construction projects over the last nine years, which includes casino construction and public works projects, total approximately $900 million.

As Seneca Nation leaders, we will do everything that we can to fight the erosion of our treaty rights, and to protect the Seneca economy and its positive impact on the regional and state economy. But, the numbers made clear that our fight for economic sovereignty is also a fight that

protects the livelihoods of thousands of non-Indians, their families, their businesses, and their communities throughout our region.

I can say with confidence, that no other organization or government during last ten years has made an economic contribution to Western New York like the Seneca Nation.

Because of its relevance to the question before the Committee, I'd like to share with you some specific information about our Class III gaming operations.

Pursuant to the 2002 compact with the State, the Nation owns and operates three Class III casinos:

In Niagara County, known as the "Seneca Niagara Casino and Hotel," on our Niagara Falls territory;

In Cattaraugus County, known as the "Seneca Allegheny Casino and Hotel," on our Allegheny territory in Salamanca;

And, in Erie County, known as the "Seneca Buffalo Creek Casino," on our Buffalo Creek territory.

I should also note:

That, Class III gaming is defined as a matter

of federal law, under the Indian Gaming Regulatory Act;

That, Class I gaming is referred to as, traditional gaming under the exclusive jurisdiction of the Indian Nation involved;

Class II gaming is, bingo, and related games, that is under the jurisdiction of the tribal government;

And, then, Class III gaming is, casino-style; particularly, slot machines, for which a compact is required, as a matter of federal law.

The 2002 agreement that we entered into provides that an exchange for the exclusive right to offer slot machines in our region, which is the area west of State Route 14 near Seneca Lake, we will pay the state 25 percent of the net drop on those machines.

There's a copy of the compact that you have with you, and I just wanted to draw your attention to the diagram that highlights the degree of exclusivity that we retain under the gaming compact.

Now, its important to keep in mind -- and we did not refer this into written testimony -- that federal law, under the Indian Gaming Regulatory Act, prohibits any taxes, charges, or fees by the State

on any Indian gaming activities. It's expressed prohibition under federal law.

And over the years, what evolved, was this notion that a state could receive an economic benefit from Class III gaming, if, in fact, it was offering something of value to the Indian Nation.

And, so, this notion of exclusivity arises from the concept that, the Indian Nations involved -- in our case, the Seneca Nation -- is purchasing from the State an exclusive right to offer gaming machines.

And it's driven by this federal-law requirement that New York State simply couldn't just, you know, tax the gaming activity, or take a piece of the action. It has to be an exchange of value in order for the State, under federal law, to receive any economic benefit from Indian gaming.

So, the line was drawn.

And I was not in those negotiations, and so I don't know exactly why it was drawn, but it's a very convenient line; that, State Route 14 runs, north to south, in a fairly straight line. And, it provides a clear geographic area upon which the Nation is able to conduct Class III gaming; in particular, the offering of slot machines.

And in exchange for that, the State of New York receives now, under the compact, a scheduled 25 percent of the net drop. The "net drop" being, frankly, monies paid off the top, before expenses, from the amount that's gambled by those playing those machines.

So, it's a very significant benefit.

And under the compact you'll see, it started off at 18 percent. And I think, after 4 years, it went to 22 percent. And now we're in the 25 percent range.

But that is the reason for the exclusivity; is that, it's an exchange of value between the State and the Nation, that we are purchasing, in effect, the exclusive right to offer slot machines in the exclusivity zone.

Let me be clear on this next point, because it's a critical one.

The 2002 agreement required the Seneca Nation to invest hundreds of millions of dollars to get up and running within a specific time frame.

And the last time frame on that was in, I believe, December of 2005, when we needed to have the Buffalo facility up and running.

The Nation took all of the risk.

Our people took all of the risk for this business investment, and the State really took none.

The initial gaming facility in Niagara Falls, where Senator Maziarz knows full well, was an abandoned convention center. And the State transferred that to the Nation for one dollar.

And, within 100 days, we were able to get our Class III gaming casino up and running, all on our backs, in terms of the dollars invested.

Under the State's law, that 25 percent of monies that are coming in to the state are then distributed to host communities.

25 percent of the 25 percent is distributed to the host communities, to mitigate the impacts associated with casino operations.

To date, the Nation has paid New York State and local municipalities $475.2 million, in exchange for this exclusive right to offer slot machines.

And an additional $310 million is currently being held in escrow, as a result of a dispute that has emerged. And I'll turn to that now.

It's important to keep in mind that the 2002 compact reflects a union of two historic adversaries, and that disagreements and disputes over minor issues are inevitable, as is true in any

business relationship. So, too, are agreements. And the Compact has been amended over the years, to reflect the addition of new games that have emerged.

Two significant disputes, however, have arisen, and serve as the basis for the Nation currently withholding significant amounts of monies otherwise due to the State.

The first relates to reimbursements of monies invoiced for state police and State Waging and Wagering Board expenses at the Niagara Falls facilities.

As a general matter, the Nation reimburses the State for its regulatory expenses, as required under the compact, including the salaries of the State personnel who are assigned for casino-related work.

Since gaming commenced at Niagara Falls, the state police have ostensibly provided law enforcement services at that facility, and the Nation has been billed for these expenses.

Almost from the beginning, however, the Nation, through our regulatory arm, the Seneca Gaming Authority, confirmed unsupported and exorbitant charges by the state police that were invoiced to the Nation. Because these charges were

not defendable, and because the state police has refused to provide any explanation, the Nation has denied paying these charges for years.

To a much lesser extent, we have also disputed charges assessed by the State Racing and Wagering Division.

The current unpaid balance of state police-assessed charges is approximately $48 million.

At the end of the Paterson Administration, some progress was made in resolving this outstanding dispute. Currently, we've been in discussion with representatives of Governor Cuomo, and we believe that we are on productive path that may lead to the resolution of this dispute in the near future.

The second major dispute involves the Nation's assertion that the State has grossly violated the exclusivity requirement of the 2002 compact.

In 2008, two events occurred that precipitated the current dispute over the Nation's exclusive rights to offer slot machines in Western New York.

First, the Nation discovered that an illegal slot-machine game, called "Moxie Mania," was being

offered in various taverns in our exclusivity zone.

And, second, the three racinos in our exclusivity zone, Hamburg, Batavia, and Finger Lakes, were renamed as "casinos" offering slot machines.

The compact is very clear, that a breach of exclusivity by the State completely relieves the Nation of its exclusivity payment to the State, from the time of the breach into the future.

In this way, the compact creates a strict liability scheme, of sorts. The Nation does not have to improve -- does not have to prove intent or damages; only that the State violated the compact, or allowed the compact to be violated by others.

Once the breach was discovered, the Nation held back the semi-annual exclusivity payment due at the end of June 2009.

The State did not respond.

The Nation then held back the next semi-annual payment in December of 2009.

And, again, the State did not respond.

In January of 2010, the Nation sent a letter to Governor Paterson, informing the State of its breach, expressing our legal reasoning why the Nation's exclusivity payment obligation was

breached, and asking for a meeting to discuss the issue.

Again, the State did not respond.

The Nation again held back the semi-annual payment in June of 2010. And in August of 2010, the Nation Council formally suspended all future payments.

Only then did the State respond.

We received an audacious response from Governor Paterson's counsel, accusing the Nation of violating the compact in retaliation for the State's efforts to impose taxation on cigarettes, and demanding immediate payment from us.

While there was very limited effort at the end of the Paterson Administration to address our concerns about exclusivity, there was no meaningful dialogue to resolve this issue.

We recently met with representatives of Governor Cuomo, including Lieutenant Governor Duffy; director of State Operations, Howard Glaser; and chief counsel, Mylan Denerstein.

While there are many issues that are outstanding between the Nation and the State, it is our hope that we will be able to resolve this dispute, and others, in the near future.

It should come, then, as no surprise that the Seneca Nation is opposed to the expansion of commercial gambling in New York where our interests our affected.

In our view, authorizing commercial casinos in Western New York would represent yet another injustice by the State to violate its written agreements with our Nation.

In 2002, we were promised slot machine exclusivity, and we used that exclusivity to invest $1 billion in New York. We made those investments, borrowing and spending hundreds of millions of dollars, employing thousands of construction workers and hiring thousands of new employees.

The future remains just as bright as the past.

Most recently, the Seneca Gaming Corporation announced plans to conduct a 53 -- to construct a $53 million addition to the hotel at the Seneca Allegheny Casino and Hotel.

Plans are also in the works right now for designing our Buffalo Creek Casino, and commencing construction next year.

Will the 2002 Class III gaming compact become just another of the State's broken promises to the

Seneca Nation?

Amending the State Constitution to allow commercial casino gambling in Western New York will not improve the Western New York economy. In fact, it will undermine the Seneca Nation's important economic contribution to the region, and jeopardize the investment plans currently underway.

We believe that Indian gaming can, and should, play an important role in gaming expansion in the state, if that is what is desired.

Recently, the United States Department of the Interior lifted restrictions on the ability of Indian nations and tribes to have lands taken into trust for gaming purposes.

We believe that great things that the Nation and the State have done in Western New York can replicated in the Catskills region.

We have reestablished our Catskills Development Committee, and begun the search for a development partner.

We've also met with local officials, and reaffirmed that our previously negotiated local mitigation agreement remains in effect.

I believe, with the proper focus, that Indian gaming can come to the Catskills much sooner than

passage of statewide referendum authorizing commercial gambling.

On behalf of the nearly 14,000 citizens and employees of the Seneca Nation of Indians, and the Seneca Gaming Corporation, I want to thank you for conducting this important hearing, and for inviting the Nation to testify on our economic development and job partnership and accomplishments in Western New York.

Our record is clear: When Seneca treaties, agreements, and sovereignty are respected, all will benefit.

We hope to continue our economic and job-development efforts in Western New York, and beyond, and look forward to continuing our dialogue with you on this important issue.

[Speaks in native language.]

Thank you for your time, and I would be glad to take any questions.

SENATOR BONACIC: Okay, thank you, Mr. Porter.

We've been joined by Senator Maziarz.

Welcome, George.

SENATOR MAZIARZ: Thank you, Mr. Chairman.

SENATOR BONACIC: I have a couple of questions I'd like to ask you.

When I look at this map, can you tell me, the acreage?

You referred to 50,000 acres as that of your reservation, but, is that reflect 50,000 acres, or a different geographical area?

ROBERT PORTER: Well, it once was all ours, of course, but, not currently.

I don't have the exact acreage, but, our territory is certainly much smaller than the entirety of Western New York State.

SENATOR BONACIC: No, but the exclusivity that you referred to, outlined in white, if you don't know today, could you --

ROBERT PORTER: Sure.

SENATOR BONACIC: -- inform our Committee of what you claim is the total geographical area?

ROBERT PORTER: Yes.

SENATOR BONACIC: Okay.

My second question is: Are you presently negotiating with anyone in particular in the Governor's Office, on these ongoing disputes?

You referred to a meeting, couple weeks ago, or couple months ago.

ROBERT PORTER: Uh-huh.

SENATOR BONACIC: Is there ongoing discussions?

ROBERT PORTER: Yes.

SENATOR BONACIC: Okay.

ROBERT PORTER: We have had a delegation, led by the Lieutenant Governor and the director of State Operations, I believe had -- well, several meetings, at various levels of delegation.

SENATOR BONACIC: And you do have a desire to expand casino gaming in the Catskill region?

ROBERT PORTER: Yes.

SENATOR BONACIC: And is it conceivable, as part of the negotiations with the Governor's Office, that your presence in the Catskills, with the Governor's blessing, might be tied in to resolving all these other disputes that you referred to?

ROBERT PORTER: Well, there is a long arm's list of disputes between the Nation and the State.

And what we have found over the years, that if the parties can focus their attention on the challenge that exists right in front of us -- and we believe that the gaming issues are all related, in many ways -- that it is possible to make progress, and to resolve the disputes.

One of the unintended consequences, of course, of our dispute with the State's behavior under the compact, is that the local governments have been adversely affected.

Salamanca, Niagara Falls, you know, Buffalo, we have great relationships with the local governments. And I think the local governments and the local communities have seen the benefits, in terms of the job creation, and the opportunities that exist, surrounding our gaming facilities.

And it is unfortunate, you know, that it has taken this long, as I mentioned in my testimony, over two years, really, to get any kind of meaningful response from the Governor's Office, to address these concerns.

We are active, and we are willing, to resolve the disputes, in part, for our own interests, of course, but also for the benefit of the local communities that are being deprived of what is, otherwise, their entitled receipts of the exclusivity funds.

SENATOR BONACIC: And my last question: Obviously, you wouldn't be embracing a constitutional amendment for gaming throughout the state.

Would that, your opinion, change, if the area of exclusivity, as the legislation was proposed, was omitted? Would that change your view?

ROBERT PORTER: It certainly would affect our view on this.

One of the things about our territory and or gaming facilities, is that, our patrons, and our economic impact, don't necessarily limit themselves to just our small territories. Where our patrons come from extend into Canada, extends into Pennsylvania, extends into Ohio.

And I think, to the extent that State policy emerges on commericial gambling in a way that does not affect our core business, and our rights under the compact, I think that definitely alters our outlook on what happens in New York State.

SENATOR BONACIC: Thank you, Mr. Porter.

Any other senators have a question?

Senator Griffo?

SENATOR GRIFFO: Thank you, Mr. President. I appreciate that.

Based on what you said, do you find a scenario where you think we can accomplish and achieve a mutually beneficial and successful approach to gaming with the nations, as well as, if

the State of New York were to be involved in this, mindful of the exclusivity that the Chairman just said?

Is there a way to do that?

ROBERT PORTER: It would seem theoretically possible.

In addition, I think, to our Nation, of course, the Oneida Nation and the Mohawk -- Saint Regis Mohawk Tribe also have Class III game can facilities. I don't know offhand what kind of exclusivity commitments were made under those compacts. But, it would seem to me that the State clearly needs to address its willingness to engage in a full-throated breach of previous agreements, you know, as it moves forward with gaming.

And assuming that's not the intent, and that the goal is to honor existing agreements, then it's a matter of, where, if at all, you seek to see an expansion of other gaming.

SENATOR GRIFFO: As we look at what you can really sustain; if you look at states where you've had legalized gaming, and where there have been some successes or failures, you can learn from those experiences.

ROBERT PORTER: Sure.

SENATOR GRIFFO: What do you envision, as somebody who's been involved in the industry, would be a successful number?

Obviously, we don't want to dot the landscape across the state.

ROBERT PORTER: Right.

SENATOR GRIFFO: So, what do you think would be a formula to have success, if we were to look at this, between some type of marriage between Native American facilities and, potentially, other facilities?

ROBERT PORTER: Quite honestly, I don't think I can give you a great answer on that, because so much of it is, not just an economic question, but a quality-of-life question.

I mean, there are certainly places in the United States where you can go, and there is gaming on every street corner, you know.

And I think that, to the extent that, you know, you fold in the lottery, which is, of course, State gaming, which already exists on street corners, and then you augment that with additional gaming, whether it be at the racinos, or whether it be Indian casinos, I think it's a matter of just public-policy choice, you know, that you, as

leaders, have to address.

Clearly, we have focused on, in part, because it has had a history of attraction as a vacation destination.

The Catskills; the Catskills, obviously, have seen better days, in terms of a tourist destination.

And, I don't think too long ago, people were saying that about Niagara Falls, you know, as a place where there had been a longstanding tourism path already established.

Why can't, and why shouldn't, casinos be augmenting the historic tourism experience.

Catskills, I think, are a natural. We have looked at this in the past. And wasn't -- if it weren't for the federal government's thwarting of the effort for a couple of years, we would have continued to move forward.

I tend to think, given the landscape right now, that the path is clearest and easiest through Indian gaming.

I've studied these issues over the years. I know that it's not something that everyone is supportive of, but, in terms of the legal infrastructure and mechanisms, it seems to me now, the path is much clearer than it's ever been.

SENATOR GRIFFO: And the last question, Mr. Chairman, I would ask, is: When you talk about that path then, using Indian gaming, and how do you approach cooperation amongst the various tribes, too? -- because, obviously a number of you may all have a very similar interest in a particular region.

Now, how would you accomplish cooperation in that regard too?

ROBERT PORTER: Well, we do have historic challenges, in terms of how we even get around the block, with each other. And, I don't really know.

But, other than through dialogue, and discussion, you know, we see, under exclusivity zone, it's not the whole state, you know, so there's plenty for others.

And I think, it's not even just the Indian nations, in terms of how we get along. I think even the racino operators, there are certain opportunities that exist, potentially, for us to partner with them.

You know, that, no one's really given much thought to it, but, if you want to have Indian Country in Saratoga, you know, we could probably help do you that. And we could work with the racino operator there, no differently than what we're

proposing in the Catskills.

I mean, I don't want to be too flip about it, but, I mean, the idea of moving land into trust is a concept that has a lot of legal challenges to it, but it's really based upon an opportunity that could exist for all.

And if the State wants to pursue commercialized State gambling throughout the entire state, you know, that's certainly an issue we will be concerned about, as it relates to our interests. But, if you wanted to move forward more quickly, we think that Indian gaming, in the Catskills in particular, you know, is the best path forward.

And, we think other Indian nations, there's three licenses there. We're not seeking to get all of them. There would be opportunity for others.

SENATOR BONACIC: Senator Nozzolio?

SENATOR NOZZOLIO: Thank you, Mr. Chairman.

Thank you, President Porter --

ROBERT PORTER: Thank you, Senator.

SENATOR NOZZOLIO: -- for your very detailed and helpful testimony; that, the issues are many.

I, in the interest of time, just want to focus on the exclusivity issue.

ROBERT PORTER: Sure.

SENATOR NOZZOLIO: That, it's clear that it's part of the laws of 2002. Appreciate you delineating the territory. And the map is, I think, graphically explanatory, in terms of what that exclusivity means.

Are there any other Indian gaming enterprises in New York that share that type of exclusivity agreement, to your knowledge?

ROBERT PORTER: I do believe that the Mohawk compact has some defined exclusivity zone, as does the Oneida compact.

I don't know what they are. I'm not as familiar with those agreements.

But, it is a very common reality in any situation in which the state gets a share of some of the revenues.

Now, it may be the case, in the Oneida situation -- and I would leave that to the Oneidas to speak for themselves -- but because their compact does not have a provision for any payments to the State, maybe it doesn't define exclusivity in the same way.

But, everywhere else in the United States, because the law is very clear that states cannot tax or otherwise burden the economic activity directly,

it's only through this exchange of benefits, that the state has the right to offer an exclusive franchise for slot machines.

We receive that. And in exchange, we've paid for it, under the compact.

SENATOR NOZZOLIO: What is the -- based on your concerns with the breach of the exclusivity clauses, as stated in law, what has been the outcome of withholding those funds, in terms of, how much, President Porter, to the extent, what type of dollars are now rationalized in dispute?

ROBERT PORTER: Currently, the outstanding disputed amount is $310 million. And it has, obviously, been growing since the summer of 2009.

And I think, after the first payment that was withheld, which was about $55 million, which, you know, to me, was a lot of money, we might have gotten a call from someone in the State, but, never did.

SENATOR NOZZOLIO: I think that's the most shocking of your testimony; that the Administration's prior had no interaction whatsoever, based on this discussion.

There were no meetings held?

ROBERT PORTER: No. We never had any

meetings. In fact, it took eight months, after we formally communicated our legal position to the Paterson Administration, before we even got a response.

SENATOR NOZZOLIO: What is the definition of "exclusivity," in terms of your view, stated by the statute?

You're an attorney -- for the record, you're an attorney, you're a law professor at my alma mater, and now the president of the Nation.

I appreciate your insights into, what types of definitions are we talking about, when you use the word "exclusivity"?

ROBERT PORTER: Well, obviously, it doesn't mean exclusive of all gaming, because, otherwise, there would be no lottery, and there would be no racinos.

Under the compact that was entered into, I believe it was the year prior, in 2001, the Legislature had authorized VLTs to be offered at the racetracks, the horse tracks. But, they weren't up and running yet.

And, so, when our compact was being negotiated, the definition of "gaming devices," under the compact, has two subdefinitions.

You know, one is the slot machine.

And the other is, the Video Lottery Terminal. You know, the other gaming devices that are referred to.

And, so, there was an acknowledged hole, if you will, in the definition, to allow for the VLTs to be offered at the racetracks.

But, really not much else defines under this. And that's the dispute.

And from our perspective, if a business changes its name, from racino, to casino, that offers slot machines, one of two things is happening: Either they're offering slot machines, in which case, those businesses are violating our compact, and the State has allowed that to happen, because we have the exclusive right for slot machines; or, those businesses are cheating their customers, because they're not really slot machines. They're VLTs, or some other device.

You know, so, one of two things is happening in our exclusivity zone. And we have put forth, you know, arguments, and positions, but we've not had any meaningful discussion with the administration, past and present, you know, on this.

And we may, in the very near future, do that.

But, right now, it is subject to, obviously, a very sizable economic dispute.

And keep in mind, from what I said in our testimony, the Nation's legal position would be, that once the State violates the compact, it's -- we are absolved of those payments, going forward, forever.

And, so, thus, while anything in a legal dispute has two sides to it, we, obviously, are interested in trying to resolve the dispute in a way that secures our economic position, and we think, the position of Western New Yorkers and the State as a whole.

SENATOR NOZZOLIO: Thank you very much.

Thank you, Mr. Chairman.

SENATOR BONACIC: Senator Maziarz?

SENATOR MAZIARZ: Thank you very much, Mr. Chairman.

And, thank you, President Porter, for being here.

ROBERT PORTER: Thank you, Senator.

SENATOR MAZIARZ: Just a couple of questions.

How many -- I'm obviously most concerned about the Niagara Falls operation of the Seneca Casino.

Do you know, offhand, the number of employees that you have at the Niagara Falls Casino?

ROBERT PORTER: It's about 2,700.

SENATOR MAZIARZ: And I suspect that -- and, just, I think I know the answer to this, but, just for the benefit of my colleagues here: They have a wage-and-benefit package that includes health insurance and --

ROBERT PORTER: Oh, sure.

As you can see, Senator, there are quite a few of our employees --

SENATOR MAZIARZ: I see.

ROBERT PORTER: -- who are here, and they look pretty healthy.

[Laughter.]

ROBERT PORTER: And, we're glad for that.

SENATOR MAZIARZ: Which ones are yours, now?

[Laughter.]

SENATOR MAZIARZ: And, in Buffalo?

ROBERT PORTER: Buffalo, the number is less than 100 right now, because it's a temporary facility.

And, in Allegheny, it's about 1,100.

SENATOR MAZIARZ: Okay. Just -- but my second question has to do with the exclusivity zone;

and, specifically, the racinos at Hamburg, Batavia, and the Finger Lakes.

Do you have any idea, has the Nation done any studies as to what you think the impact is? How much business do you think is drawn off?

ROBERT PORTER: Sure, yeah. And I think it's a natural consequence of being in a somewhat competitive environment.

Our business tracks what happens at those facilities. We also track what has been the injury, you know, as a result of the rebadging of those facilities.

They have expanded, somewhat, in terms of their infrastructure. And, obviously, it's a competing gaming venue, you know, for patrons.

So, as best as we can, you know, we do keep track of what is happening there.

SENATOR MAZIARZ: Any idea, like, what percentage you think it impacts you negatively?

ROBERT PORTER: Well, mainly, because these are somewhat in a negotiated framework with the State. I don't want to get too deep into, what we know, and don't know, about what's happening.

But it is clear, from what we've been able to discern so far, that millions of dollars, every

year, are being lost to the racinos. And it has mainly occurred, you know, as they have grown. And you can see the growth of those businesses.

And we're actually in the process of getting even more detailed, you know, information about how that has actually occurred, because we think that that's part of the negotiation, is to really highlight that this has not been a meaningless event, you know, these expansion of the racinos.

SENATOR MAZIARZ: You mentioned that you may be willing, or may be interested, in doing something in the Catskill nation, along with the other interests that are down there already.

I assume talking you're talking about the racetracks.

Would you be interested in partnering at all with those racinos within the exclusivity zone, as part of some sort of a settlement with the State?

ROBERT PORTER: Uhm, I don't want to get too far ahead of what the settlement might look like.

It's part of the problem that we're dealing with, which is, that we've spent a lot of money so far to build what we've got.

We just refinanced $500 million worth of debt. And, that's based on a time horizon, in terms

of paying it off.

You know, I think it's an interesting concept. It's not one that I had thought of. You know, I certainly was thinking of it, more outside of our exclusivity zone.

But I think, in terms of having meaningful dialogue, you know, it's -- I'm always one to want to try to talk through problems first, if we can.

SENATOR MAZIARZ: The second-to-the-last point that I wanted to make, was about the payments to the locals.

This is something that's very important to myself, to our colleague Senator Grisanti, I know, particularly in the city of Niagara Falls.

And I think it should be noted, that the Seneca Nation has now, through two administrations, the Paterson Administration, and the Cuomo Administration -- now, you've gotten a little further along with the current Administration -- has offered to make those payments to the localities.

I'm more familiar, again, with the Niagara Falls than I am with the Buffalo or the Salamanca one, but I know that they impact, not just the city of Niagara Falls, but, also, Niagara Falls hospital, Niagara Falls school district, and other

localities.

I think it should be -- it's important to know, particularly for my colleagues, that the Seneca Nation has offered to -- in fact, one time, we even held press conference, when you made that offer to pay the localities their money, upfront, as long as you received a credit from the State on the other end.

And I know those negotiations are ongoing with the second Administration.

The last thing, again, I want to get back to, about your reference to the Catskills, and willing to do some partnerships there: What about, again, back to the exclusivity zone, the city of Rochester, or anything, would you have any interest there at all?

ROBERT PORTER: Oh, sure we do. Yeah.

I mean, I think it's a matter of -- certainly, it's a market that's available to us. We've had very preliminary conversations with the public officials in that area. It's certainly an opportunity.

And we're largely rooted in working with the local governments. You know, I don't think we're in any position to be telling anybody what we want to

do. It's more, partnership. And these partnerships are rooted in very strong element of local control.

Local communities are the ones that end up supporting the facilities, in terms of infrastructure.

And, frankly, I don't want our Nation to be in a situation where we're at odds, you know, over significant issues with local communities, mainly because it's been, too positive, too strong, in the places that we are currently.

Rochester is a great opportunity for us. It's something that, if it opens up, that would be fantastic; more jobs, more opportunity.

And I think our businesses made clear, we're not just shuffling dollars around locally. We bring money in from other -- well, from other countries: Canada. Pennsylvania, and other states.

And I think, as destination, I think there's just a lot of growth to anticipate in the future.

SENATOR MAZIARZ: Thank you, Mr. Chairman.

SENATOR BONACIC: Mr. Porter, just one other thought.

ROBERT PORTER: Uh-huh?

SENATOR BONACIC: In all of the principals that have an interest in expanding into the Catskill

area, they talk of a resort destination. Not building just a gaming facility, but a resort with all of the amenities.

So my question to you, is, number one: If such an opportunity would be presented to the Senecas, do you have the financing?

And, would it include in your plan, to do resort, and not just a gaming facility?

ROBERT PORTER: Everything, Senator, that has been in our consciousness of entering the Catskills for a gaming opportunity is rooted in a resort destination. We know how to do that.

Our gaming corporation, staff, and executives, many of whom are here, do a fantastic job at creating destination experiences for people.

And that is exactly what we're hoping to do in the Catskills.

SENATOR BONACIC: Okay, thank you.

Anyone else?

Senator Griffo.

SENATOR GRIFFO: Just want to add on something that you mentioned again, because I'm, again, concerned about proliferation; what is the true formula for success.

And you talked about quality of life and

economics.

But, you just talked about, given an opportunity in Rochester, that would be great.

But, again, doesn't that become, that you just begin to dot the landscape: Niagara Falls, Buffalo, Rochester, Syracuse, Albany?

I mean, is that what we -- is that the vision?

I mean, because the idea here is, you're talking about attracting from various other states, and countries, potentially. But, if you begin to just dot the landscape with casinos, I don't see how that can be successful, or in anyone's best interest.

ROBERT PORTER: At the end of the day -- Senator, I'll reiterate -- it's not my choice, it's yours, you know, and I think, in terms of you being state officials.

I can tell you that, economically, Rochester is a viable opportunity for Class III gaming for our Nation.

Whether it's something that the community of Rochester and the State of New York want, that's a second question. And that's not within my ability, or my Nation's ability, to decide.

It becomes much easier because it is within our exclusivity zone. You know, and we have the same mechanism for acquiring land and restricted fee status. We haven't talked about that much today.

But, we had the ability in Buffalo and Niagara Falls, to be able to acquire land fairly quickly, to allow those facilities to grow.

That could also be true in Rochester.

Catskills are different, you know, because it is a feat-of-trust concept. It would take more time.

But, how much gaming, where gaming should go, that's, I guess, the purpose of the hearing.

And, I'm glad to have had the opportunity to share our thoughts and ideas about this, as you contemplate what the future is going to look like.

SENATOR BONACIC: I -- just react to Senator Griffo, we're concerned with saturation of product, if a constitutional amendment moves forward. And that's the challenges that will be facing this Committee, the Legislature, and the Governor, when they frame legislation.

But, to your point, saturation of product.

Senator Gallivan.

SENATOR GALLIVAN: Well, thank you, Chairman.

Thank you for your testimony, Mr. President. And I want welcome you, again, to the eastern-most part of the 59th Senate District. The western-most part, of course, being your territory --

ROBERT PORTER: Correct.

SENATOR GALLIVAN: -- out near Gowanda.

A couple of quick questions.

You talked briefly -- you testified, and answered a couple of questions about your employees.

Could you just talk a little bit about the demographic of the employee? Where they come from, who they are; part-time, full-time.

ROBERT PORTER: Sure.

Our employees come from throughout Western New York, and Canada, and Pennsylvania. Because our facilities extend, from Niagara Falls, to Buffalo, to Salamanca, you know, these are employees who come from a wide geographic area. Many of them, of course, you know, live in small communities. Some of them live in the cities.

And the full-time employment, almost 4,000 just in the gaming jobs, have the kind of benefits, and I think, the kind of opportunities, that, you know, no one really questioned, in terms of quality employment.

We have a significant number of non-Indians. You know, our nation has 8,000 people who live on -- who are citizens of our nation. About 6,000 of them live on or near our territories in Western New York.

We're at the point, frankly, where every able-bodied and interested Seneca who wants to work has a job, in terms of, our various businesses, including our gaming businesses.

When we talk about expansions of gaming, in many cases, we're really talking about the expansions of gaming jobs for non-Indians, because those are the new workers who are going to be coming into our business.

So, we'll be expanding our hotel at Allegheny, 53 jobs. Mostly likely, those will be mostly non-Indians who are employed in our businesses.

And while there have been controversy over this, in terms of where the dollars go, we've tried to make it very clear to people, through economic studies, that when the Seneca Nation receives money coming into our gaming businesses, that money is almost immediately, you know, spent back into the local economy.

You know, we're not a national corporation

that has shareholders scattered all over the place, taking dividends. You know, our Nation spends locally, we hire locally. We bring in contractors, we bring in vendors. We are people, to the extent we receive economic benefit, all spend locally.

And, in fact, in many ways, I know there's a lot of talk over the years about how much Albany gets.

Well, Albany gets its cut, if things are working properly, off the top. But, everything else really comes backs to Western New York. And we've tried to make it very clear.

And I think the leadership, and the people of Western New York, see it every day, about what our dollars can do to support the regional economy.

SENATOR GALLIVAN: Last year, you dealt with, approximately -- if I remember the number correctly, approximately 1,400 different vendors?

ROBERT PORTER: Yes.

SENATOR GALLIVAN: What's the demographic of the vendors?

ROBERT PORTER: The vendors range from the you know, construction, you know, folks who are building things, to folks who are selling us toilet paper, and food, and other services that we

need.

So, it's a multi-pronged extended business, you know, that when you look at what it takes to sustain, you know, a business of this size, you certainly can't do it alone, you know, and it requires these contractual relationships.

You know, a new relationship just emerged in Niagara Falls, where there's going to be a new culinary institute, where we are going to be, in effect, investing, you know, in an opportunity, an educational opportunity, for Senecas and non-Senecas.

Well, it's a good business, to have fresh baked goods, you know. And, so, it's something that will be just across the street.

It's an example of how we have taken our dollars, for both economic self-interested purposes, it's our business, but also for the benefit of the local community, being able to do something that will be an educational stimulus, as well as, you know, who can disagree with the fresh croissant, you know.

So, that's -- that's what we're hoping to have for our patrons, and keep 'em coming.

SENATOR GALLIVAN: Thank you.

ROBERT PORTER: Thank you, Senator.

SENATOR BONACIC: I think -- thank you very much, Mr. Porter.

ROBERT PORTER: Thank you very much, Senator.

SENATOR BONACIC: Our second speaker is: Michael Kane, the president and CEO of Western Regional Off-Track Betting Corporation.

MICHAEL KANE: Hi, everyone. It's nice to see you again.

This is Henry Wojtaszek, who's our general counsel at Western.

SENATOR BONACIC: Yes.

MICHAEL KANE: Hopefully, it's all right if he sits at the table as well, Senator?

SENATOR BONACIC: Sure, he can.

MICHAEL KANE: I think, at the moment, written testimony is being distributed.

SENATOR BONACIC: Thank you for being here.

MICHAEL KANE: We thank you for the invitation, very much, sir.

And it's interesting, the smallest racino in the state just follows the biggest casino operator in the state.

And then we have Mr. Gural coming up before us. I think we're the comic relief in between.

If it's all right with you, Senator, we weren't going to read the entire written testimony.

SENATOR BONACIC: It would make us all happy.

MICHAEL KANE: I thought so.

Basically, it's testimony that also covers two of our sister off-track betting corporations: Suffolk, and Capital. And it provides, we think, pretty concise answers to the sample questions that were sent out a couple of weeks ago, and addresses all those issues that were brought up, to the effect, OTBs.

There is one thing that's not in that testimony, that I would like to mention.

One of the impetuses, and a lot of the conversation, regarding OTBs, has been consolidation of efforts, shared Internet, shared telephone; that type of thing; shared tote system.

And those have all been discussed. And I can give you positive and negatives on all those.

But one thing I think we should point out, that there are significant things that all the OTBs do cooperate on.

One is extremely significant, and has been ongoing: The OTBs negotiate as a group, with all out-of-state tracks regarding simulcast contracts.

This allows us to leverage a handle of all five of the existing corporations. And, it allows us to, essentially, contract at a much, much lower rate than New York State tracks, or any one of the OTBs, could singularly.

And, so, there is a level of cooperation that we -- in fact, we have conference calls at least three times a month, to go over existing contracts as they come up.

And I think if you were to research, for example, what a racetrack ATW pays in simulcast fees to an out-of-state track, as compared to what OTBs pay for that same right to carry the signal, the differences are dramatic. And it is a substantial cost-savings to the OTBs; and, therefore, one way we generate revenues for member municipalities, counties, and in our case, the cities of Rochester and Buffalo.

That said, Mr. Chairman, if I may, I would like to point out, that Western OTB is significantly unique among, not only OTBs in the state, but also amongst the -- as Professor Porter said, the racinos within the state.

We are, obviously, the smallest of the racinos. We have 607 video gaming machines. And I

don't want to take exception to the term "slots," but, a rose is a rose by any name.

These are video gaming machines, they're not slot machines, when we come up to the exclusivity discussion.

But, based on our uniqueness, we have, probably -- I mean, our position, we have opinions on both sides. We can see both the tracks' positions and OTB positions as we look at issues that face the entire industry.

And, unlike the other tracks, due to the fact that we're a public-benefit corporation, any profits we generate go right back into our member municipalities; again, those 15 counties and the 2 cities of which I spoke earlier.

Because of that, everything we get, we don't make profit that doesn't go into our municipalities.

And, also, we're very unique amongst off-track betting corporations in New York State, based on our ownership of Batavia Downs Casino.

I'm a member of the board of directors of the "USTA," United States Trotting Association; and, also, a director for Harness Tracks of America.

No other OTB official in the history of the state has held directorships in both of those

organizations. And that gives us rather a unique opportunity to, not only provide input within the harness racing industry, but also to keep a finger on the pulse of how the industry is conducting itself, and the issues related to it.

Now, that said, we are also a member of the New York Gaming Association. We joined the Association approximately two months ago. We were the last to join.

We are fully supportive of all the efforts of the Association regarding a constitutional amendment. We think it is fully appropriate in our area.

I'm going to read this, if I may.

As a member of the New York Gaming Association, we support legislation that would allow full casino-style gaming at existing tracks with video lottery gaming licenses.

This is actually not an expansion of gaming. It simply provides the tools for existing locations to better compete with our Native American and out-of-state gambling centers, which will -- we will provide additional revenues for all present beneficiaries of video gaming in New York.

And we all know who those are.

We will also lead to significant financial investments in the operations, lending to increased revenues for New York State.

We are current with all our payments to the State of New York.

Also, substantial job creation.

We are presently looking -- we are presently ready to embark on a $23 million expansion at Batavia Downs Casino.

Essentially, those who are familiar with our facility, we built it upstairs. We want to move it downstairs. And with the assistance of the lottery, I think we're going to be able to do that.

But, we've already committed, we feel, probably 2 1/2 times that further investment, should casino-style gaming be allowed at Batavia Downs Casino.

We also feel, our research has told us, that this will bring on, approximately, 135 additional full-time employees to our facility. 65 additional indirect jobs would be created. And that's beyond those that will be created by our soon-to-be completed expansion.

The economic development we expect, and revenue generated, as opposed to gaming expansion,

would limit the locations.

I mean, we're talking, the proposal that NYGA's going to put before you, Senator, limits the number of casino locations to, essentially, the existing locations, with Aqueduct included, of course, presently operating in New York State.

And, that seems to answer the "glut" issue, or the over -- the worry about too many casinos in the state.

We're looking at areas that already have gaming. It's just, the type of gaming would be extended, and, sincerely, generate significant job creation and additional revenues for the State of New York, which we think are very important.

And that's the business we've been in: in the casino business, since 2005; and, obviously, in the OTB business since 1975.

I really have nothing else to add, unless --

Henry, do you have anything you'd like to?

But, other than that, Senator, any questions, we'd be more than happy to answer.

SENATOR BONACIC: I have no questions of Mr. Kane.

Anyone else?

Okay -- yes, Senator Gallivan.

SENATOR GALLIVAN: Could you explain; you talked about the profits of municipalities?

MICHAEL KANE: Uh-huh.

SENATOR GALLIVAN: I'm not quite sure how that arrangement works.

MICHAEL KANE: Well, it's twofold --

SENATOR GALLIVAN: Can you talk about that a little bit?

MICHAEL KANE: Certainly, Senator.

It's twofold.

First of all: We generate, what's called, "surcharge revenues" from winning wagers, and also from exotic wagers.

Those monies are divided up amongst our member counties, whether we make a profit or not. They're solely based on handle and type of bet that we take. All the OTBs in the state function similarly.

For example: Last year, we distributed approximately $2.1 million to our local municipalities. Obviously, the larger communities receive a larger share. Those distributions are based on a formula that encompasses, population, and source of wager.

Then, also, any revenues that we -- any

profits that we generate from any of our operations, be it, live racing, OTB, or our Batavia Downs Casino, they're also shared amongst all the municipalities.

So, essentially, what happens, every month, each community gets a surcharge check from us, similar to what the other OTBs provide.

And, every quarter, we're required to submit payment of any profits we made in that quarter. And we retain no reserve funds, other than a capital-acquisition fund, that's, essentially, 1 percent of winning --

SENATOR GALLIVAN: When you say "municipalities," you mean, the counties?

MICHAEL KANE: Yes. 15 counties and --

SENATOR GALLIVAN: City, towns, or villages --

MICHAEL KANE: -- well, it goes to the 15 counties, and the cities of Rochester and Buffalo, which are, by statute, large enough to have a separate representation.

SENATOR GALLIVAN: Is that similar to those -- is it a similar arrangement in Capital and Sussex also?

MICHAEL KANE: Yes.

SENATOR GALLIVAN: Okay, thank you.

MICHAEL KANE: You're very welcome, sir.

SENATOR BONACIC: Okay, Senator Griffo.

SENATOR GRIFFO: Mr. Kane, just quickly: Listening to you, and then, of course, a review of your testimony, there are great challenges that are facing the racing industry, and OTB being a part of that.

Is it my understanding, then, from what you're saying, and what I -- as I said, read very quickly, that you don't believe that we could find a different way, or an alternative, to look at how we handle off-track betting? That, you have rejected the possibility of a complete consolidation, or the possibility of an entire new entity, looking at this element of the industry?

MICHAEL KANE: Well, looking from our personal point of view, from Western, we're so different than any of the other OTBs, I think any effort of consolidation which includes us, because, essentially, we're a -- as Professor Porter said, a casino, as well as an off-track betting corporation.

And we feel, and we are, continue to provide profits and revenues to our member municipalities. We think that's very important.

I think the testimony -- the written testimony shows, that, we believe that off-track betting operations are regional in nature.

And, based on that regionalization, that the thoughts of consolidation providing significant savings? I think New York State found that, in their short period of time in operating New York City OTB, that unless there are legislative changes, that type of OTB model would be unsuccessful.

But, as you see, we're changing the model ourselves. We're getting away from fully staffed branches, going to, what we call, "Easy Bet" locations.

We now have, I think, sixteen, which are, essentially -- there's a betting terminal in a tavern or a restaurant; which, it doesn't provide jobs, but it does provide additional revenues for the off-track betting corporations.

And, we are a significant economic engine for, particularly, Genesee County, and the areas in which we serve. $15 million of goods and services purchased just in the last year alone.

SENATOR GRIFFO: Thank you.

MICHAEL KANE: Thank you, Senator.

SENATOR BONACIC: Mr. Kane, I'm just curious:

I see that a lot of your comments were Capital OTB and Suffolk OTB?

MICHAEL KANE: Uh-huh.

SENATOR BONACIC: Did they ask you to submit this report?

MICHAEL KANE: Yes.

Actually, this was written by our friends at Wilson Elsner, on behalf of all three of us, so you understand.

And, so, there are references to Capital, Suffolk, and ourselves, within the testimony, sir.

SENATOR BONACIC: Thank you very much, Mr. Kane.

MICHAEL KANE: Thank you, Senator.

SENATOR MAZIARZ: Is Nassau represented by this?

MICHAEL KANE: No, sir.

SENATOR BONACIC: Our next speaker is: Jeff Gural, chairman of Newmark Knight & Frank [sic].

Thank you for coming.

JEFFREY GURAL: My pleasure.

And thank you for inviting me. And, the other Senators, for taking the time to hear about this issue, which is important, I think, to

everyone.

And, I want to make it clear, also, that, while I'm a member of the New York Gaming Association, I'm really speaking on my own opinions. A lot of issues relating to racing, we really haven't formulated an opinion on. So, this is my take on things.

And for those of you who don't know -- I know Senator Griffo quite well -- I'm chairman of American Racing and Entertainment. And, we own two harness tracks in Upstate New York: Vernon Downs, in Vernon, New York; and, Tioga Downs, located in Nichols, New York.

And in addition to harness racing, both tracks have approximately 750 VLTs. And Vernon has a hotel as well.

Together, those two tracks employ about 600 people. And since we opened five years ago, we have contributed almost $200 million to education.

As a little background: I became interested in harness racing in the late 1950s, since I lived on Long Island near Roosevelt Raceway, and began going there with my friends, as a teenager.

Back then, horse racing was very popular. I can remember, on several occasions, having

difficulty finding my car in the parking lot because it was so crowded.

I continued to go to Roosevelt Raceway in Yonkers; and, occasionally, Belmont, for the thoroughbreds; and, eventually, The Meadowlands, when that track opened in 1976.

In the early '70s, along with some other friends, I bought my first standardbred horse. And over the last 40 years, I've owned hundreds of horses.

I can't say it was a financial success, but I've gotten many thrills, and met many interesting people, during that period.

In the late 1980s, I bought a farm in Dutchess County, for the purpose of raising standardbred horses and selling the yearlings at public auction. That farm has now grown to over 130 acres.

And, five years ago, I bought another farm near Tioga Downs, in Pennsylvania, to take advantage of the Pennsylvania breeding program.

So, together, I own, approximately, 45 broodmares; 25 yearlings, which would be sold this fall; and 25 winglings.

I also own part of 15 two- and

three-year-olds that are currently racing. And that operation employs 15 people, and has 230 acres of farmland as part of it.

In 2005, I purchased, with partners, Tioga Downs and Vernon Downs, both out of bankruptcy.

We opened both facilities in 2006. And we have recently -- recently expanded the hotel at Vernon in order to attract convention-type business as well.

We hope to build a hotel and convention facility at Tioga as well.

Unfortunately, the decision to purchase both tracks out of bankruptcy proved to be a financial disaster, as a result of the high tax rate, when we originally opened, and our inability to compete with Turning Stone, which is a full Indian casino, with real slots and table games, and pays no taxes of any kind to anybody.

Having said that, we were able to get the tax rate lowered. And, recently, the Governor agreed to eliminate the tax on free-play.

As a result of these changes, our business is now profitable; however, based on our total investment, it would not be considered a financial

success.

The good news for the State is, that the changes that were made in the tax rate have actually increased revenue for education, because it enabled us to spend more money on marketing, which is a key to driving revenue, and allowing us to compete with Indian casinos, as well as casinos in Pennsylvania, New York, and Connecticut. And New Jersey, I'm sorry.

I'm sure I was invited here, mainly, to talk about racing, so that will be my focus.

I believe both harness racing and thoroughbred racing are at a crossroads, as the continued businesses as usual, without changing the business model, will almost certainly lead to the demise of both sports; harness racing sooner than thoroughbred racing, but both industries have the same problem, which is, an aging fan base, and an inability to attract new and younger customers to the sport.

A recent study by McKinsey & Company presented to the Jockey Club, made it clear, that, without a new growth strategy, racing handle and attendance will continue to decline, and our fan base will continue to shrink.

According to their research: Approximately 2 percent of our fans die each year; 5 percent of our fans stop following the sport; and only 3 percent of our fans are new to the sport.

I believe the only way to reverse this -- that trend, is to spend more money on drug testing, as we clearly have an integrity problem, and more money on marketing, especially to young people, in an effort to make going to the track a fun experience.

This model works at the thoroughbred track in Saratoga, which, because of its short meet and its appeal to locals and tourists, is probably the best-attended meet in the country.

We have seen a similar effect at Keeneland in Kentucky, and Delmar in California, both of which have relatively short meets, and are considered the number one thing to do when in the area.

Year-round racing, however, has proven much less successful. And this also applies at Aqueduct, which races during the winter months, with much lower on-track attendance than Saratoga.

The other problem we have, is that we have no stars, as our best horses are typically retired as soon as possible because of their value in the

breeding shed. And, as a result, our fans develop no allegiance to our star horses.

Last year, when Zenyatta raced at four, because she was a mare, she attracted a huge fan base; a story on "60 Minutes," and was in every major newspaper.

I've tried to address this issue by changing the conditions for stakes races at Tioga and Vernon; and The Meadowlands, where I'm in the process of signing a long-term lease.

These conditions will force our best 3-year-olds to race an additional year at four, as their off-spring will be ineligible to race at the three tracks I control unless the stallion is 5 years old or older.

Several other tracks are considering a similar change, which I think will address the problem in standardbreds, but I doubt if the thoroughbreds will follow suit, which, in my opinion, will make it difficult for them to market their product.

The other suggestion that I strongly recommend, is that the Legislature mandate that a portion of the slots revenue, which is currently going to boost purses, be used for drug testing and

marketing.

If we took 1 percent of the slots money and used it for drug testing, it would provide Dr. Maylin and his lab in Morrisville with an additional $1 1/2 million, which I believe would give him the resources to catch the chemists that have infiltrated our sport.

Taking an additional 5 percent from the slots would provide approximately $7 1/2 million for marketing, which, based on my experience at Vernon and Tioga, would help bring young people to the track.

This would still leave $140 million for purses for the standardbred and thoroughbred industry, which I think anyone would agree is more than enough to make the purses substantial.

At The Meadowlands in New Jersey, the Governor has decided that horse racing should not be subsidized, so both industries are struggling, and the breeding industry is practically non-existent in New Jersey without a subsidy.

I believe standardbreds are down to five stallions.

I assume the horsemen will disagree, and claim that the track owners should use their own

money for marketing.

Unfortunately, the reality is, that racing revenues are a tiny portion of the total revenues at racinos.

For example: At Tioga, it's 2 percent. At Vernon, it's 5 or 6 percent.

And, obviously, in a capitalistic society, where track owners are trying to be as profitable as possible, it makes no sense to divert marketing money from the casino to racing, as you get far more bang for your buck by using the money to market the casino.

This actually helps the horseman because they are getting approximately 10 percent of the casino revenues for purses.

The legislature has already done something similar, by mandating that 10 percent of our VGM revenues must go to marketing, and 4 percent must go to capital improvements.

So, we already have laws which, basically, take money from the VGM, and provide that -- how it's allocated.

We are forced to spend -- and I'm not against it, it's a good idea. I helped write the law, as Joe knows. -- so, we're obligated, that, 10 percent

of the VGM revenues must be spent on marketing. If we don't spend it, we lose that money. And, 4 percent must go to capital improvements, that would help the lottery.

So, when Batavia talks about a $27 million capital improvement, and I guess, Buffalo Fairgrounds just spent, I don't know what they spent, it's because we have an obligation to spend that money on capital improvements.

Which, as Joe knows, we just renovated the hotel at Vernon. It came out beautiful. And it's helped our business.

It is my opinion that if people in the industry today want to see horse racing survive long time -- term, they're going to have to take the money out of their own pockets to solve the integrity problem, and take responsibility for marketing.

At Vernon and Tioga, I spent a great deal of money marketing, but only because of my love of the sport, and the fact that I own two breeding farms.

If that were not the case, it would make much less sense. Although, at Tioga, where we have integrated the racing and casino, you could argue that we do see a benefit from increasing attendance

for racing.

Unfortunately, Tioga is the only track in the state that was built from scratch, and as a result, we were able to completely integrate both the racing and the casino.

All the other facilities were renovations of existing racetracks. And, obviously, they weren't built from scratch, so that there's much less integration. Even at Vernon, it's totally not integrated, which is discouraging, but that's the way it is.

Unfortunately, I think, without these changes, both the support of harness racing and thoroughbred racing will have -- has a -- have a dim long-term future, as we will continue to see our older customers disappear.

In the your letter inviting me to speak, you also listed several subjects that you wanted me to discuss, and I will focus the remainder of my testimony on the questions that you raised.

Before discussing the OTB issue, in the interest of full disclosure, as part of my deal to lease The Meadowlands, I'm also opening a new OTB facility in Bayonne, New Jersey, right over the Bayonne Bridge.

Personally, for the success of that project, I would prefer to see New York City OTB never reopen, so that I can attract customers from Staten Island and -- to Bayonne, and Manhattan to The Meadowlands.

So, personally, I would like to see New York City OTB never reopen.

Having said that, I'll try to be objective, and keep in mind, wearing my New York State hat, I do believe the Legislature should allow the racetracks in the -- the racetracks in the state to reopen New York City OTB with a completely different business model.

Every borough should have one or two large OTBs, with a restaurant, sports bar, et cetera. And, allow -- also allow Easy Bet Terminals in bars and restaurants, similar to what has been done on Long Island and Upstate New York by Capital, Western, and Nassau, and Suffolk, OTB.

I think that NYRA should to be the lead agency in this effort, but should include all of the other tracks in the state, as partners, more or less, along the lines that we had originally agreed to when we tried to rescue New York City OTB.

As far as forcing consolidation of all

OTBs, I think certain functions should be consolidated, like tote systems, Internet and phone wagering. But, marketing, real estate, and other administrative functions should probably stay the way they are.

On the subject of expanding our current facilities to include casino gaming, including table games, poker, and possibly bingo, I think that will have a very positive impact on the horse-breeding and racing industry.

Table games and poker bring a much younger customer base, and that is the same customer we are trying to attract to racing.

If you go to Vernon, you'll see one customer base. If you go to Turning Stone, which is five miles away, you see a completely different customer base: college kids, young people.

And I think, if we're able to get them into our facilities by having table games, there's a better chance that we can interest them in racing. At least they know, that, when the races are over, they can go to the casino and play the kind of games they enjoy.

That would -- and would make it, as I said, much easier for us to attract young people to

racing. If we don't attract young people, mathematically, you don't have to be a genius to figure out, ultimately, we're going to be in big trouble.

I would expect that adding casino gaming would also increase slots revenue. And the racing industry receives approximately 10 percent, so they would see a benefit there as well.

I believe a constitutional amendment should include a component, whereas the net funds generated go to the vote -- generated should go to the voters, know exactly where this money is going to be used, rather than just have it go into the general fund, which everybody -- it seems to me, that the voters are much more willing to allow expansion of gaming when they know the money's going to be used for something that's important, like education.

And I think, as it's has been said, once Aqueduct opened, we'll be giving -- the racinos in the state will be giving over a billion dollars to education next year. And that's a lot of money.

I also think it is important to limit the expansion of gaming to the existing racinos, as, by looking at a map, they are fairly well distributed throughout the state.

Allowing the existing racinos to add table games would be a major job creator, as these type of games require two or three people at a time to run.

As to the question of whether horse racing is a growing sport, I think I've addressed that previously, as the current business model clearly does not work.

I do not believe the OTB should be authorized to accumulate millions of dollars of cash, as that money should be returned to the local communities where the money is generated from, as we heard prior.

I do not believe additional taxation of racing purses is warranted, other than my previous comment relating to using a portion of the slots money for drug testing and marketing.

I do not believe that State Racing and Wagering Board members should be paid on a per-diem basis, as I believe the current system of annual salaries is appropriate.

I would expect that the economic impact on thoroughbred racing, with the opening of Aqueduct, will be positive, as it will enable NYRA to operate in the black, and allow their purse structure to

keep them as the number one thoroughbred operation in country.

Without this, it makes it difficult for them to compete with other states that have a large subsidy from slots or casinos.

On the other hand, it will probably have a negative impact on purses at Yonkers, as one would expect that some of the Yonkers customers will patronize Aqueduct, and shift some of that business. But, I think we all expect that.

As for the issue of regulating out-of-state ADWs, it would seem that this should be studied further, but some form of regulation, and possibly taxation, should be considered.

As far as the issue raised earlier about the exclusivity, none of us think that we have slot machines.

I don't consider that we have slots. We have VLTs. It's against the law for us to have slot machines.

We changed the name, to casinos, from racinos, simply as a marketing effort, because I don't think anyone knows what a "racino" is.

So, clearly, we're partners with the State. 60 to 70 percent of our revenue goes to the State.

We know the State is struggling. And it would seem kind foolish not to try to get people to come to our facilities.

And that's the only reason we changed.

But, it's illegal for us to have slot machines. And I would hope that -- that, maybe, let the courts decide whether or not these Western tracks have slot machines.

I don't think they do. I think they have VLTs. And, hopefully, they're not in violation of the compact.

You know, in conclusion: I think the focus of government today has to be job creation. And adding table games at my two tracks would allow me to compete with Turning Stone and Pocono Downs, and add hundreds of jobs, and keep money that is currently being spent outside New York within our borders.

It's all about jobs.

As we have seen, you know, it's, just, all about jobs. We're really hurting, especially Upstate.

Joe knows this, and those of you who are Upstate, where I am. You know, because, coming from New York City, New York City's doing fine. But when

you go Upstate, boy, it's a different story.

In Sullivan County, where I spent some of the best years of my life, it's real depressing up there.

So, I think this is something, that, for better or for worse -- and, frankly, I'd be shocked -- I know there's going to be some testimony later from people who have a moral objection to gambling, and I understand that. But, in a perfect world, maybe there'd be no gambling. But, there's gambling all around. We're surrounded by gambling. And, people like to gamble.

And we give a lot back, up at Tioga and Vernon. Joe knows this.

We had a concert earlier this year -- he was there -- where, we gave all of the proceeds of the concert to the local food bank. We raised $60,000.

And we're -- I'd be shocked if you could find ten people in Tioga County who think it's a bad idea that I built that place. "Ten."

And I don't know anyone who thinks it's a bad idea. And I'm constantly thanked by the people there.

And I say: Do you come here often?

"I love it. I lose money, but I love it.

Thank you very much. I love coming here. It's a lot of fun."

We have promotions all the time.

We had a concert Thursday, that we had, three, four thousand people. We charged 20 bucks. Half our customers are comp.

So, you know, in conclusion: I'd just like to thank you for inviting me to speak. And I would be happy to answer questions or follow-up that anyone has relating to the industry.

As you may have surmised, I have invested heavily in this industry, and would like to see it make the necessary changes that will ensure its long-term future.

Thank you.

SENATOR BONANCI: I want to thank you for your testimony.

I have a couple questions.

Since you've been at Vernon Downs, have you ever heard any discussions of the issue of exclusivity with the Oneidas, at all?

JEFFFREY GURAL: No.

SENATOR BONANCI: Okay.

My second question: You know, I have spoken to many racing people, that have come and testified,

and have spoken to me, but they never put an exclamation point on the integrity and drug testing as much as you've talked about it.

Now, are your remarks based on your experience of your two tracks, or do you think this is something that's widespread in the state of New York?

JEFFFREY GURAL: I think the perception, clearly, is that it's widespread.

I own -- what I do, the easiest thing for me to do, because drug testing is tough, because these guys are ahead of the -- you know, why would you put a drug into a horse if you know they're going to test for it, and the horse is going to come out positive?

So, these guys, it's just like the Olympics. You know, you have bicycle racing. They try to stay ahead of the testers.

And what I do is, I use my right of exclusivity, to not allow people with bad reputations to race on my two tracks.

And, at Tioga, we do some additional testing, in addition to the State.

But, it's clearly a problem.

I think if you went into a racetrack today

and asked our biggest customers if they think it's a problem, they would tell you, definitely a problem.

And, I think it's an easily solve problem. We just don't spend enough money on it.

And, if we're going to have $150 million available to us from the slots, it would seem, take 1 percent of it, and use it to -- we have the best lab in the country, and the best expert. Dr. Maylin is considered the expert on drug testing.

And taking $1 1/2 million would enable him to hire, probably, five or six more people, buy the equipment, and send a message to these guys, that, we're going to try to catch them.

Because, when I talked to Dr. Maylin, he says, "If I had more money, I think I could catch them."

And that's my answer.

SENATOR BONANCI: And is that unique to harness, thoroughbred, or both, in terms of the integrity of horse racing and the use of drugs?

In your opinion.

JEFFFREY GURAL: It probably exists in both.

I know much more about the harness racing, but, I think that, you know, it's a crazy business. Any trainer who's successful, the assumption is,

he's using drugs.

I don't know why anybody would want to be a trainer today, because it's one of the few businesses, where, if you're successful, the perception is, you must be doing something illegal.

So, it's a real problem, and I think everybody knows that there's not enough money being spent to tackle it.

SENATOR BONANCI: Okay.

And my last question is: Your conclusions about the integrity of racing come from conversations with owners of other tracks throughout the state of New York, or just based on your experience on your two tracks?

JEFFFREY GURAL: I mean, I've been -- owned horses for 40 years. So, when you see a horse claimed by a certain trainer, and run off and win, you know, by ten lengths, a week later, it makes you think.

There's not a lot you can do to a horse, in a week, to make them, you know, that much faster.

And we've had trainers in the sport who have been able to consistently claim horses, or take over horses when a owner decides to give them to, what we call, "a drug trainer." It's almost a -- it should

be in the dictionary, I guess.

And you'll hear -- it's almost embarrassing, because you'll hear the announcer say, "First-time," somebody; which is the code word for, first-time that it's going to a trainer who's probably going to make this horse go a little bit faster.

SENATOR BONANCI: Okay. I don't mean to keep on this subject, but you've tickled my answers that this is something that's worthy to look into more deeply.

In terms of, if there were more money in this area, tell me, specifically, how we could eliminate the drug testing in horse racing.

JEFFFREY GURAL: Well, truthfully --

SENATOR BONANCI: Take us through it.

JEFFFREY GURAL: -- the hardest thing to do is to catch them through drug testing.

The easier way, would be for the state police to have resources available, to try to catch these guys, because, clearly, there's some pattern.

There's a FedEx truck that pulls up every Monday with a package from Mexico.

You know, that makes no sense whatsoever.

Why would -- or, you know, in my real estate business, when we have problems, we can put a camera

in the ceiling, that's the size of a pencil. And, lo and behold, within a week or two, if the pattern persists, we'll catch the guy who's breaking into our buildings, or breaking into a tenant.

So, I just think that it's not -- it's not an area where -- it's understandable, that the state government, that there's not a clamoring from the taxpayers, to have, you know, clean up racing.

It's a small industry. And I think that, if we were able to take money that we're currently using for purses, a small amount, and maybe give Maylin -- he's the guy you should talk to, because he'll -- he's an expert, and he'll tell you.

And, also, maybe give some money to the state police, and have a small group dedicated. It would send a message, if they knew that the state police were involved.

Or, the other problem we have is, when they're caught, there's no penalty. The penalty typically is, okay, six months' suspension.

Then the guy appeals it; goes to court. By the time they get around to actually making a decision, it's three years later, and he's been training horses for three years.

Then, they're so disgusted, that they make

some deal: Okay, we'll suspend you for six months.

And he says: I'll do it as long as it can be over the winter.

He goes to Florida. And, he takes his horses to Florida, goes to a farm, and trains his horses on a farm. Puts somebody else down as the trainer.

So, there's almost no penalties.

If somebody knew they could go to jail for drugging horses, believe me, it would eliminate a lot of it.

And that's -- anybody will tell you that; that the penalties are -- I know we've heard that with the Dutrow issue, where it was raised, that -- and -- and, you know, someone's had 80 suspensions, or something, and still training horses at the NYRA tracks.

SENATOR BONANCI: Okay, thank you very much, Mr. Gural.

Senator Griffo.

SENATOR GRIFFO: Jeff, thank you.

Just to follow up on what Senator Bonacic said: As we know, you've seen professional sports, obviously, deal with the drug issue.

So, what you're basically suggesting, if I understand you, is the same approach should be being

taken here with our racing industry, as you see, whether it's in the NFL or major league baseball. And that's not what we're doing now.

And your suggestion is, that we approach it similarly?

JEFFFREY GURAL: Absolutely.

We've seen the Olympics, and that. They just spend more money. They've just allocated the resources to catch these guys.

And, absolutely.

Same -- same -- and you would think, that it would be almost more important, because people are betting on these horses. And, we're transmitting this stuff through, over state lines. So, people are betting on our races all over the country, in some cases all over the world.

So, it's important.

SENATOR GRIFFO: The next thing is -- that I would ask you is: When you look at the industry, it's ailing. And in the report that you talked about; the Jockey Club study, talks about racing's shrinking share of the gambling and spectator audience, and the gambling dollar.

Do you think, if you looked at racing right now, the way it's being done -- we've heard from

OTB; we know there are issues with NYRA -- should we be looking at a -- developing a whole new and different structure and approach, maybe, to, how it's organized, and monitored?

Is that an option that should be considered, and reviewed?

JEFFFREY GURAL: It has to be considered, because the current -- you know, what's the definition of, "insanity," is doing the same thing over and over again.

All you have to do is go to -- you know, look at the statistics that the Jockey Club puts out, or that the Racing and Wagering puts out.

I think we all recognize, without slot machines, there would be no harness tracks in New York State. So, they've saved the harness industry, totally.

I think, you know, we have this year-round racing.

It's -- Saratoga is -- the difference is, like, when -- I go to Saratoga for a week, every year. And I tell people, "I'm going to Saratoga."

And they say: Oh, Saratoga, that's great. It's a lot of fun.

If I told someone I was going to Aqueduct, in

December, they would say, "Gee, I don't know if I want Jeff managing. He might pull things."

You know, I mean, it's the "in" thing to do, to go to Saratoga.

It's not the "in" thing to do. It used to be the "in" thing.

When I was a kid, it used to be the "in" thing to go to the track. That was it.

If I said to people, on a Saturday, "Let's go to the track," I would need two tables at Roosevelt Raceway.

If I had a horse racing, I would need two tables at Roosevelt Raceway, the number of people that wanted to go with me to Roosevelt Raceway.

Today, I have one friend left that will go with me to the track, if I have a horse running at The Meadowlands, or Yonkers, or someplace.

So, clearly, we need a new model. And, you don't have to be a genius. Go look.

Our customer base are older. And, like me, I'm older.

And, I think, you know, even though everybody talks about the great success of the standardbred-breeding program, if you look, in 2004, they bred 800 more mares, before we had VLTs, than

they do now, than they did last year with VLTs.

That's shocking.

So, the number of mares being bred in New York has actually declined by a third.

So I think what's going to happen, Joe, is, there are not going to be enough horses to race at these tracks, ultimately, which is going to be a good thing. It's going the shrink the number of race days.

But, right now, the horsemen, they want to race their horses. And I understand that. But, our customers have voted with their feet, on this year-round racing, and, you know, they've gone to other forms of entertainment.

And, I think we've got to come up with a new plan, which everybody agrees with. I don't think it's -- I'm not, you know, the first one to say that. But, I think you guys have an opportunity, since you're -- you've taken the interest. It's really the first time I've been asked, in five years, by a committee like this for my opinion.

I think you have an opportunity, because I think we're going to address, the table-games issue, I think we should address the OTB issue, and I think we should address the integrity, and, how to make

horse racing a viable business; because, I don't think the taxpayers want to support a business that's -- you know, has no fan interest. That's silly.

SENATOR GRIFFO: And the last question, on the concern that we've expressed here on saturation, when you look at gaming, and you've had a couple of ideas that you've suggested; and, mindful of the exclusivity that exists in some of the compacts: Do you foresee -- and you talked about different target audiences in certain cases -- but, if some facilities we're allowed to expand, do you foresee how you would be able to complement one another; as opposed to, cause a problem, if -- relative to survivability, with Native American facilities, as well as, at racinos, or if certain racinos are identified, for gaming-table games?

JEFFFREY GURAL: Well, I think, with the way the racinos are currently located, we really don't currently compete very much with each other. Possibly, Buffalo and Batavia compete/overlap a little bit.

But, by and large, the way we have it now, you know, we all have -- if you drew a circle of 50 miles around each of our tracks, because that's

the market.

Our customer base is 50 miles. We're -- we're -- you know, now, at Aqueduct, it may be different, because Genting is a world-class gaming organization. And, my guess is, they're going to build something spectacular there.

But, you know, the rest of us have built regular, you know, racinos.

And, so, I think that, if you look at the model of, Vernon versus Turning Stone, as you know, I've -- you know, it was a horrible mistake buying Vernon and reopening it. I've lost $50 million. I'll never get it back. It's just, my own stupidity. I have no one to blame but myself.

Although, frankly, I honestly thought Spitzer would shut them down, because it's an illegal casino. But, he didn't.

So, there's no way we can compete with Indian casinos.

If there are Indian casinos within a 50-mile radius of our facilities, we're in trouble.

They pay either, nothing, like Turning Stone pays; or, when -- or they would pay 25 percent. But they don't pay it anymore, because they believe they don't have to pay it.

And in talking to John Sabini recently, he said, there's some new Indian casinos that are opening that are completely illegal, and not even being regulated by anyone, that are outside the -- the only -- Indian Nation.

So, it's a real dangerous thing.

But, you know, the Indian casinos pay 25 percent, and nothing on table games. And most of us pay, you know, 60 percent. And we would be willing to pay, roughly, 15 percent on table games.

So, to -- I think we've got a good setup. I think -- I think that we could easily -- we have -- there are nine facilities. And I think, if they all had table games, and I guess, ultimately, something will happen on Long Island, with the Shinnecocks, I think we'd be covering -- blanketing the state, and maximizing revenues for the State, because we pay a much higher tax rate than the Indians. But, as long as they're willing to pay the 25 percent, I think we could live with that.

At Turning Stone, it's a problem. They pay nothing, and, it's hard to compete.

SENATOR BONANCI: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. Chairman.

Thank you, Mr. Gural.

First, congratulations on, as you call it, your stupidity, for rehabilitating Vernon, and establishing Tioga. Your investment in New York is important, and we appreciate that.

A couple of things, though, I -- you mentioned in your testimony, I need to challenge.

And the first is, the issue of the commitment of more funding, particularly from the -- and I don't know if you said it had to be earmarked from racino revenue, for the drug-testing issue.

It's really, your comments, whether they're accurate or not, are really an indictment of the Racing and Wagering Commission, and the chairman of which you mentioned, John Sabini.

If the testing is not being done adequately and aggressively, is not that an indictment of them, as opposed to other enterprise?

JEFFFREY GURAL: No, because John is doing the best he can with the resources that are being made available.

I don't know for a fact, but I'll bet you, they've been reducing the amount of money that they give him for drug testing, every year.

So --

SENATOR NOZZOLIO: The question that I

have --

JEFFFREY GURAL: So, it's not fair to blame him.

Give him the money, and he'll solve the problem.

SENATOR NOZZOLIO: -- well, if it was a financial issue, I think that certainly should be addressed. And it's one that we will put on the laundry list of this review.

And I guess I want it to be clarified, though, that, racinos were established, and that element of gaming was established, not to help, necessarily, any enterprise, but to promote the horse racing industry in New York State.

And, to me, right now, we are faced, at a very critical juncture, that the horse racing industry -- and your -- you have a multi-state view -- that, it's my view, that we are not competing with other states, appropriately, adequately. New York is not presenting enough incentives to our horsemen, our trainers, our -- the infrastructure established around racing.

And what's happening is, the racing industry is voting with its feet, and leaving the state.

And I know you -- that our concern, is that,

originally, racinos were established to enhance the horse racing and development in New York.

Clearly, that is not happening, and to the degree that we need it to happen.

Adding additional regulation, more money for testing, I can put that aside for discussion on another day.

Adding more focus on marketing, I think that's an important component: marketing the product that's out there. And that's, the obligation, and the role, of the tracks.

And, to have a different share of that revenue, to let the private sector engage in it, I think makes sense, and could be aggressively supported.

The issue, though, of the percentage for those who develop the horses, how do you come down on that issue?

JEFFFREY GURAL: I think the breeders are struggling.

I'm a breeder, and it's not profitable.

And I know a lot of small breeders in New York, on the thoroughbred side, have gone out of business.

I will tell you, that, in the standardbred

business, New York is considered very successful, from the standpoint of an improved product.

Yonkers has great purses, first-class drivers, a first-class product.

Even Tioga, we have -- Tioga and Vernon, we have -- at Tioga, next Saturday, I have the first leg of the Triple Crown, in pacing: The Cane Pace.

We have a major stake -- we have a major -- this year, at Tioga, I had the winner of The Hambletonian, and the winner in The Meadowland's, pace. Both race at Tioga Downs.

So, I -- we're doing well.

Aqueduct, and NYRA, the thoroughbred horsemen will be fine once these slot revenue kicks in.

They've suffered, because of the fact that it's taken longer than we had hoped to get Aqueduct open, up and running.

But, I think that the thoroughbred horsemen will be okay.

The thoroughbred breeders, it's a real difficult -- it's real difficult, because the costs of raising a horse just keep going up and up.

And, the same problem; the number of people who want to buy these horses, they're aged like me. You know what I mean?

My kids have no interest in it. So -- and most of my -- most of the people I know in the business that breed horses, we started going, like I said, when -- to Roosevelt, 40, 50 years ago, in the heyday.

And, we need to get young people in, as fans, and then, hopefully, they would buy yearlings.

That's what we need. And that would help the breeders.

Because, the reality is, when you buy a young horse, the odds are, it's not going to be a champion.

SENATOR NOZZOLIO: And, Mr. Gural, that's my -- we share that concern.

And I look at what's happening to New York. It's not a universal situation, in that, people are leaving New York to go to other states. And it appears that, in large part, the reason for that, is that there's a greater commitment to purse development in those other states.

JEFFFREY GURAL: Well, Pennsylvania gives much more money to the breeders than New York does. That's a decision that the government there made.

So, if you're a breeder -- as I said, I have a farm in Tioga, but it's in Pennsylvania, simply

because, to take advantage of the breeding program. They have a great program.

I got a check last year for, like, sixty, seventy thousand dollars.

Like -- like, you know, I had a horse that won, like, $200,000 in Pennsylvania. And I got, like, 60,000, as the breeder, which is phenomenal.

Whereas, in New York, I would have probably -- I got ten -- I had a horse in New York that won more money; that won 300,000. I got $5,000 back.

So, clearly, if you -- I didn't address that issue, but it's something that we should certainly look at, helping the breeders, because, in New York, the breeders are struggling.

SENATOR NOZZOLIO: And --

JEFFFREY GURAL: And that could be -- that could be diverted, some money, to help the breeders.

SENATOR NOZZOLIO: And the breeders, the horsemen, that was the whole reason to establish these racinos in the first place.

JEFFFREY GURAL: Right.

SENATOR NOZZOLIO: That it wasn't the other way around.

It was, the public decided that this was

going to be a commitment, yes, to help education, but, also, to help the job development that is commensurate with this.

And, again, I want to congratulate you on your job development, and your commitment to New York jobs. You've done a great deal to help the Upstate economy.

And for that, you are to be thanked, aggressively, and appreciatively.

But, as we look forward, I want to see the focus more on, how we change the formula to help, all horsemen, all breeders, in New York State, as opposed to having them take their operations to other states.

JEFFFREY GURAL: Well, again, you know, we could do that.

I still think it comes down to, we've got to get young people back as, fans, and potential horse buyers. And people, you know, we've got a market.

I have people -- Tioga, Vernon, I get a lot of people. But, they come, because it's fun. They don't bet a lot, because they don't know how to read the program.

I've probably done a bad job.

But, again, when your revenue is so -- it's

2 percent at Tioga.

So, you know, how much should I kill myself to, you know, get that revenue up?

I just like having people in the grandstand.

Sunday, we filled the grandstand, because we had a thing, a promotion, where we dropped golf balls out of a balloon, and you could have won a million dollars.

The place was packed.

And it was the first Sunday we ever did over $3 million of business. And it was directly because of this horse racing promotion, because Tioga integrates the racing.

I'm going to try it at Vernon next year, it was so successful.

But, it's, you know, the horsemen have to be willing to make some changes. I think you'll see, I'm not sure they are. I think they like it just the way it is. They look at it, and say, "Hey, the purses are great," because, they are.

I mean, the purses at Yonkers are phenomenal. And the purses at the other tracks are good.

And I think they're being shortsighted.

You have to invest money in your -- if you don't believe in yourself, then the Legislature

should turn their back on you, because, if you're not willing to invest for -- on your own, for your own success.

And the young people; we have a lot of young people. Grooms, drivers, they have no future if we don't get this figured out.

SENATOR NOZZOLIO: Well, thank you very much for your insights.

SENATOR MAZIARZ: Did anybody win the million?

JEFFFREY GURAL: Fortunately, no.

[Laughter.]

JEFFFREY GURAL: We had insurance, but you want to know something?

The fifth -- we gave -- the closest to the hole, won $5,000.

We gave out about $10,000.

The fifth-closest to the hole would have won the $1 million. That's how close. And it was only, like, three or four inches away from the --

SENATOR MAZIARZ: You dropped them out of a balloon?

JEFFFREY GURAL: We didn't. We were supposed to, but, if you remember what the weather was like.

But, we ended up dropping them out of a

forklift that went up about 40 feet. So, we ended up dropping them out of that.

But, we had the balloon there. He just wouldn't go up.

SENATOR NOZZOLIO: (inaudible) job (inaudible) defend us.

SENATOR MAZIARZ: It was, where all the trial lawyers in the stand, waiting for the golf balls --

SENATOR BONANCI: Jeff, it looks like a trial lawyer's dream, those golf balls hitting somebody.

Jeff, thank you very much.

JEFFFREY GURAL: Thanks, guys.

SENATOR BONANCI: I'm going to just take a five-minute adjournment, to stretch your legs. And we'll start immediately at five to one.

[A recess was taken.]

[The hearing resumed.]

SENATOR BONANCI: Can I have your attention, please?

We would like to resume the public hearing.

Our next speaker is: Tracy Egan, the executive director of the Thoroughbred Breeding and Development Fund; and, Jeffrey Cannizzo, executive director, New York State Thoroughbred Breeders Association.

Welcome, and thank you for being here.

You may not have to say anything after Jeff Gural spoke.

[Laughter.]

TRACY EGAN: I don't know. Jeff -- this Jeff, almost jumped out of his chair a few times.

So, while I speak, Jeff can calm down.

And, I thank you for inviting me.

I've been on the job for about 16 months, and I hope that I've have made some changes there, that will benefit our breeders all across the state.

I'm trying to restrict my answers to your questions, to questions that relate to the Breeding Fund, and that I know something about.

Question 1: On behalf of the Fund, and the thousands of people that it serves, I'm happy to see the Legislature is looking into opening up betting sites in New York City. The closure of New York City OTB hurt the state's breeders significantly, and continues to affect our programs, because it has traditionally supplied more than a third of the Fund's revenue. 36 percent, in the most recent year.

It was our single largest source of income. And the Fund and its stakeholder need that source of

revenue replaced by betting kiosks, betting machines, or parlors in New York City.

There is a gambling audience for our sport that hasn't yet turned to phone or on-line wagering, and the State needs them to come back to a regulated wagering venue.

Do you want me to review how the Fund has been hurt by the bankruptcy? -- because I'm sure you are all familiar with it.

UNIDENTIFIED SPEAKER: I think, for the record, it would be very helpful.

TRACY EGAN: Okay.

In 2009, the Fund was owed $2.1 million in pre-petition money, which was never collected.

In 2008, the year before the bet-makers stopped making timely payments to the Fund, New York City OTB had paid us $3.8 million.

Remember, this was more than a third of our income, and the state's breeders took it on the chin.

The Fund did not have enough money to pay breeders all that they were owed in 2009. The Fund was forced to change the Breeders' Awards programs.

It stopped paying awards to the fourth place, which, by statute, we should. And still pays only

first through third.

It cut breeders' awards to second- and third-place finishers in half.

It instituted a 30 percent withholding, which is still in place, to make sure that the Fund had sufficient revenue to pay all awards' earners equally in case there was not enough money for the entire year to pay full awards.

In 2010, the Fund did pay back 100 percent of withholdings, plus it made a supplemental payment to breeders in early 2011.

The Fund was forced to drop purse enrichment for 2011. It did not anticipate having sufficient revenue in 2011 to pay purse enrichment to the Finger Lakes and NYRA.

While NYRA's upsurge in business has benefited the Fund, because it pays us as if its new phone and on-line customers are making their wagers on the track, it has only made up for about a third of what New York City OTB paid us.

Many farm owners in the state could not hold on for a brighter day. As you can read in our annual report for 2010, which is viewable on-line at NYBreds.com, we note a decline in breeding farms, from more than 430 a few years ago, to just 307.

The Mayor's bred reports indicate many breeders were forced to cut back on production.

In 2008, 1,857 mares were bred.

By 2010, 519 fewer mares went to the breeding shed, and that meant, just 1,338 mares were bred to produce foals for 2011. And, of course, not every mare will continue to produce a live foal.

These declines are red flags to all those who care about agriculture and preservation of farmland in our state.

These declines are red flags to all those who care about the racing product in our state. We need New York-breds to take their place in the starting gates at the State's tracks, for the benefit of handle, to create income for the State, and to help reverse the decline in interest in horse racing, as a sport, and as a gambling proposition.

In spite of the declines, by the way, I'd like to point out, that New York-breds are shining in the sales ring and on track.

Sheikh Mohammad of Darley purchased a New York-bred at Saratoga for a half million dollars.

A New York-bred brought the second highest price at the most recent OBS yearling sale; $100,000

for a son of Political Force, bred by Carolyn Rae Swenson (ph.).

And the State's roster of Grade 1 winners keeps growing.

I'd like to take this opportunity to congratulate the breeders of the New York-bred, 2-year-old Weemissfrankie, who won the Grade 1 at Belmont Debutant, on Saturday, in California.

She joins a growing list of New York-bred horses that demonstrate that quality is becoming a consistent hallmark of our product.

She's the daughter of the late-stallion Sunriver, who stood at Empire Stud near Hudson, New York.

And I believe that the Fund has given consistent revenue sources that allows us to deliver on promises we've advertised, we can produce more Grade 1 New York-breds, such as Weemissfrankie, Haynesfield, and, A Shin Forward, who notched his Grade 1 victory in Japan.

At the board meeting in August, the members adopted a budget revision. Largely based on the fact that NYRA contributed so much more than we expected, that we were able to make $820,000 available for purse enrichment.

Purse enrichment was desperately needed by the horsemen and -women at the Finger Lakes.

NYRA did not need the money, because of the infusion of money from the former New York City OTB customers, and because of their expected VLT money that will be part of the revenue for this year.

Still, the Fund had to pay both entities, because the statute dictates, that, if we pay one track, we must pay the other.

So that is something you may want to address as you consider making changes that could help the racing product and New York breeders.

In this part of the state, especially, farms are competing with boarding operations in Pennsylvania.

In this part of the state, horsemen are always keeping an eye on the purses being offered by Penn National and Presque Isle Downs.

In all parts of the state, breeders are aware that the New York program is the envy of every other state, and those states would love to attract our program participants to move over to their state-backed programs.

The Fund is keenly aware that we serve owners, breeders, and stallion owners in all parts

of New York State. We recognize that, in every section of our state, people are struggling to stay in business, and we want to help.

We appreciate that you are holding this hearing, because you have the same goal: to help the New York thoroughbred breeding and racing industry.

Question 6: Where is horse racing a growing sport, and why?

This is the billion-dollar question.

It is thriving in Hong Kong, where more than $80 billion a year is wagered on horse racing.

My knowledge of racing in Hong Kong is largely based on having heard Bill Nader, the executive director of racing for the Hong Kong Jockey Club, speak at a symposium at Belmont earlier this year. It was a symposium on race-day medication.

Also, I recently read a lengthy interview with Mr. Nader in the "Pollock Report."

So, Hong Kong thrives because the government there loves it. It pays nearly $2 billion, U.S.-dollars equivalent, annually, in taxes. It's the largest single taxpayer in Hong Kong.

So, their government has an interest in a healthy horse racing industry.

The fans love the on-track experience. From food, to the racing plants themselves, at Sha Tin, and Happy Valley, customers are more than satisfied.

Also, Nader stresses, and he can't stress this enough: The consumers there, the bettors, have absolute faith that the racing product is honest.

SENATOR BONANCI: Tracy, excuse me a minute.

TRACY EGAN: Yes?

SENATOR BONANCI: You gave us the questions and answers, and we can read those.

TRACY EGAN: Yes.

SENATOR BONANCI: And we have specific questions for you that are not addressed in here.

TRACY EGAN: I'd --

SENATOR BONANCI: And I know. I have two other speakers.

TRACY EGAN: Sure.

SENATOR BONANCI: And the Senators have to be out of here by 2:00.

TRACY EGAN: Okay.

SENATOR BONANCI: And that's not to be rude to you, because, if there's anything else that you want to highlight in that report, we'll listen. But, to read what you already have given us --

TRACY EGAN: Sure, okay.

I -- well, it's kind of --

SENATOR BONANCI: -- if you would kind of highlight.

TRACY EGAN: -- picking up on what Jeff meant -- talked about, you know, getting a younger generation of bettors, I think things, such as, having the televised racing product, having high-definition TV.

I mean, I didn't used to like watching golf on TV. But, now, with high-def, you can tell if the ball is going to go in the hole or not.

With high-definition TV -- and I believe NYRA, this year, is considering having high-definition TV at its racetrack, and putting that on television.

For example: NBC Sports' "Versus," won't put anything on their sports channel if it's not in high definition.

So, the racing product has to catch up with the times in that regard. Just having it televised, I think, will open up the sport of horse racing to many more people.

I think about, they had, uhm, 700,000 or so viewers for the Alabama and the Travers on this Versus network, NBC Sports.

And, I know I became interested in sports racing, as a child, watching racing from Big A, with my dad, on Saturday afternoons. It was racing from Aqueduct.

That's very important.

The Jockey Club is going to reinstitute something that had been out there a few years ago. And the company was bought by another company, and they stopped having a free-to-play site, where you have an imaginary bank roll, and you can read the racing form, and you can place wagers, and you can learn how wagering works.

Because, when you're a newcomer to the game, it's -- you don't really know, other than, win, bet, and show. It's pretty easy to figure out.

But, what if you want to have an exacta or quinella or triple or superfecta?

And these free-to-play sites will help get you interested in the game.

And, some people, from that experience, will decide: Ha, I would lose a lot of money. I'm never going to do this.

And others may decide: I like this puzzle-solving. I like knowing the percentage of wins my trainer has, how the jockey does, and the

breeding pedigree of this horse.

And, that's a way to get people interested in the game.

He mentioned poker, and how popular it is.

It was a dying sport. Casinos had -- had considered it a place, where they had small rooms in the back for the old codgers.

The game of poker was revised when they started having a lap cam, in Britain, and they started to televise the games.

It came over to America, through the Learning Channel, then it grew to the Discovery Channel, and now it's on ESPN -- one of the ESPN channels -- because, that inside look, with the lap cam, where you can see what people's card are, brings you inside the game.

So, for example: A kind of a, helmet cam, with a high-definition video, that could take you inside the game, might also be a way to awaken younger -- younger viewers.

I come from a background in television.

Younger -- a younger audience for the racing game.

SENATOR BONANCI: Okay.

Jeff, do you want to jump in?

JEFFREY CANNIZZO: Yeah, sure.

SENATOR BONANCI: Because we all have a series of questions about the breeding business.

So, why don't you jump in.

JEFFREY CANNIZZO: I -- you have a hand-out here, which is just a few charts that I think will help paint the picture a little bit, as well.

I'm the executive director of the New York Breeders Association.

The difference between my organization and Tracy's, is, I'm actually the trade association of all the people that are breeders and make up this state.

The Breeding Development Fund is a public-benefit corporation that manages the awards' system and registry.

So, that's the difference between the two of us here.

It's pretty simple.

You were talking about economics. We've talked about job growth.

And, I think that we're addressing questions relevant to: How do we develop this business back into what it was once, in the '50s and '60s?

And I think there are solutions for that, and

we briefed on them quickly. And, I have some thoughts as well.

But, the breeding industry -- thoroughbred-breeding industry, you know, just the equine industry here in the state, it's important to know, that's the second largest agri-business for New York. It generates about $2 1/2 billion for the State's GDP. There's 43,000 acres that make up equine land across this state, and it's in 50 different counties.

So, it's a very unique industry, that's an agri-business.

And the important part of horse racing, and horses, is, we talked about the trickle-down effect, I believe, with the casinos.

Well, the trickle-down effect in the horse population is just the same, if not greater, because we're -- again, we're talking about agri-business.

So, the person, that owns a horse, that boards a horse, to someone who owns a farm, who buys products and services for that farm, who goes to the local grocery store to buy their food, to feed their family; there's a significant trickle-down effect that comes out of the equine community in the state. And it's important to note.

Breeders supply this product that we're talking about. You know, there would be no horse racing if people weren't breeding horses.

Just, vice versa, there's no racing without the horses that are there. Or the racetrack itself.

So, the product that we're talking about, is -- comes from the breeders, and the people that we're discussing.

Quickly, I want to talk about the economics that are important here.

The last -- and we're -- you heard some -- Jeff Gural mention the comparison between out-of-state and in-state, and, well, what's going on?

What's the difference between: Why are people are going to Pennsylvania? Why are people going to Canada? Why are surrounding states becoming lucrative, in terms of the thoroughbred business?

It's pretty simple.

They all have alternative gaming supplying the purse structures that are driving everyone into racing there.

So, people race horses -- it's very simple mechanics -- where the money is.

Horses follow money. Where the purse structures are the best, that's where the horse population is occupied.

Well, Pennsylvania has had VLTs and alternative gaming for a significant number of years. And over the course of those years, people started to flood that state.

Canada, same exact equation; people started to enter the Canadian market to breed and own horses, and to race there.

Well, in New York State, on the harness side -- and this is another major, major piece that I want to distinguish.

There's a significant difference between the harness industry and the thoroughbred industry.

And a lot of times, we talk about it, and we might get them a little bit confused.

There's a significant divider between the harness business and the thoroughbred business in this state. And there's even a difference between the racetracks themselves between those industries.

Now, the harness industry has had these alternative games, VLTs, since the legislation was put in place, and, a few years later, for almost a decade.

The thoroughbred business, Finger Lakes has had VLT machines, which has completely revitalized the business there, for a handful of years.

Well, we've been waiting for Aqueduct to come on-line since 2001. So, for ten years, it hasn't happened, as we know.

And that's why it's going make a complete change.

But the important point to mention, is, what those ten years have done to the breeders and owners in this state, is, it's completely drove them out.

So, we passed legislation. People entered the New York market.

And, why? Well, there's going to be all this new money in New York, to race here. I want to build a business here.

So, we had a peak in 2004, in terms of breeders, and horses that were bred here in the state.

Since 2004, it's dropped over 40 percent.

Where are those 40 percent of those horses gone? Outside state lines.

And, Jeff mentioned why it would be hard to recover.

Well, the reason that the recovery time is

going take a while, is that you don't take your horse and go breed it out back, and expect you're going to have a foal on the ground that's gonna race tomorrow. It's a three-year cycle.

So, make plans to breed it, develop the horse, train the horse.

Half of those horses don't even make it to the racetrack. And then it enters the grounds, and races.

So there's a significant lag in determining this business. And that's part of the problem, why we're going to see it take a while to recover from what's happened in the last ten years.

There's projections that we've lost about 4,000 jobs because of what's happened outside of the state to in the state.

There's ratios that the American Horse Council uses, that they can associate four full-time positions with one brood mare in the state.

Well, we've lost, roughly, 4,000 jobs, based on the number of brood mares that have left the state.

Quickly, I want to talk about some of the things, well, how we build this back up.

And you mentioned, there's two focus groups that make up the important piece of this sport.

"The customer." And when I mean "customer," it's not the guy that goes into -- onto the track, takes his $2, and buys a hotdog and a soda.

It's the guy, that's a customer, that takes his $2, puts it through the betting window, and fuels this entire system that we're talking about.

So, it's the horse-player handicap. There's a lot of terms used for it, but, the wagerer is the number one customer of this sport. But, without them, none of this exists.

The second part, "the owner-breeder." Without people producing this product, there's no correspondence between the two.

So, it's a simple business: Customer. The product developer.

Our industry does the worst job at developing both of them. And that's the problem that this group, and everyone, needs to identify with the sport:

How do we build the customer base? Not necessarily the fan, people that are wagering.

And, how do we grow ownership, and attract people back into New York, to buy farms, to put

money into the horses and build this agri-business?

Well, you know, to be specific to some of those in your questions: You know, New York City OTB, from the thoroughbred side, was a huge -- has left a huge vacuum of people in the New York Metro market, that were wagering on thoroughbred racing, that don't anymore.

And what's happened is, is, NYRA's picked up, roughly, 30 percent -- and you'll hear more this week, Senator Bonacic, about the specifics of those numbers -- of their business. But the remainder of it, which, there's estimates of, it's about $1 million a day that's wagered, that's left the state; that's being wagered outside of the state lines on the same sport.

But those are New York Metro clients and customers.

So, to make the short end of it is: There's this desperate need to have some type of off-track-wagering model in the New York City area, because there's people that, and consumers that, demand that there.

And what are they doing? They're leaving, or they're betting through ADWs or Internet platforms that allow them to do so.

So, in saying that, current legislation permits NYRA to open up OTB outlets in the New York Metro five boroughs.

One of the failures of this sport, is that, back in 1971, when they created the legislation that permitted OTBs to exist, they didn't know how it would shape, they didn't know the way that it would grow, they didn't know what effect it would have on the racetrack.

Well, we have seen, over time, what is the effect of that; how the effect has been on the track. It's actually deteriorated from on-track handle, and people going to the races.

But what it's also done is, it's created a competition for that same $2, that exists between a retail outlet and the actual racetrack itself.

So, there's a unique opportunity now for the State to get this equation right, and perhaps create a single source of where someone could go wager.

And what I mean is, that, NYRA has the ability to go open these outlets and be the face of racing in New York Metro area, which I think is very important.

Another other part that piggybacks off of this, is that, we have -- at one point, we had

six different OTBs. Now we have five in the state itself.

We had six different distribution channels, six different television networks, six different tote companies.

The point is, is that it's not easy for somebody to go make a wager. You have to -- you receive a lot of different brands out of this, and there's no one centralized hub to be a brand for the customer, so to speak.

What horse racing needs? It needs to be on television, one channel, across the state, on cable, and available in the face of the consumer.

That's what the customer wants. That's what the next generation of people that are involved in this.

And, right now, we don't have any of that. We're the furthest thing from that.

You know, in talking about alternative gaming, the impact of Aqueduct's Casino is going to be huge on the thoroughbred business.

Why? We've been waiting for it for ten years.

It should have, based on estimates, a $10 million effect on the breeding industry, on the

thoroughbred side, similar to what it's done on the harness side, that you've talked -- you've heard about.

The important part that's specific to your question, "Should any constitutional amendment include a component as to where the funds should go?" you know, Senator Nozzolio, you talked about why VLT legislation was put in place, and how it was, essentially, going to affect the racing and breeding industry.

I think it's important to remember, that, if we do other sources of table games, we need to keep that in mind, of what effect this is going to have on the breeding and racing industry.

So, I think that similar rules should apply if we open up the window to other games.

The purse; the taxation on purses: You know, it was the Governor's motto for 2011: There was no new taxes.

It's pretty simple.

Well, why would we want to go create one new tax in this state, that's on New York State residents, which are New York State taxpayers, the owners of horses?

That makes no sense. The complete opposite

of what the Governor's motto was this year.

And it's pretty simple.

You know, there's other ways to find revenue to support the Racing and Wagering Board, and the other entities that govern our sport. We shouldn't be looking to tax the people that we're looking to lure back into the state.

Simple business, again.

Uhm --

SENATOR BONANCI: Are you ready now for a question?

JEFFREY CANNIZZO: Sure, sure.

Go right ahead.

SENATOR BONANCI: I'm going to be quick with you.

How does one get the title of "a breeder"?

Part owner? Does he have to -- does he have to own a horse? A number of horses?

JEFFREY CANNIZZO: It's the person that owns, the mother, or brood mare, and has a foal in this state.

So, it's the person that actually owns the mare at the time it gave birth to a foal.

SENATOR BONANCI: 100 percent owner?

JEFFREY CANNIZZO: It doesn't have to be, no.

SENATOR BONANCI: So, there could be ten partners in a horse, they're all breeders?

JEFFREY CANNIZZO: That's correct.

SENATOR BONANCI: Okay.

Do you know how many breeders there are in the state of New York?

JEFFREY CANNIZZO: There's several thousand.

We have, roughly, 3,000 brood mares in this state, so that's an easy way to contrast how many people are involved.

There's, roughly, 35,000 jobs that are created from the equine community in the state.

SENATOR BONANCI: When Aqueduct comes on-line, and we have available resources to help the breeding industry, is there Board discretion in terms of the Fund awards? Is it statutory, or is it administrative, or is it a combination of both?

TRACY EGAN: That's really a question for the Breeding Fund. The board of director will decide, you know, whether they can reinstitute the awards.

The awards that have been promised to people who have foals on the ground now, had been, that they would get 20 -- if your foal is sired by a New York sire, if you finish first, second, or

third, you will get 20 percent-equivalent of what that horse earned, first, second, or third.

But, there was not enough money, as our income dipped from, like, $15 million in, 2007, or '8, down to just $10 million in the last year.

There just wasn't enough money to fulfill the promises made.

SENATOR BONANCI: But that was a Board decision as opposed to a statutory decision?

TRACY EGAN: Yes.

SENATOR BONANCI: Okay.

My next question: You talked about a distinction between customer and wager.

Do you have any statistics now, of the people that participate at tracks, who's a customer, and who's a wagerer?

JEFFREY CANNIZZO: NYRA has those numbers.

That's a question for --

SENATOR BONANCI: Okay, so that's a question I ought to ask NYRA?

JEFFREY CANNIZZO: Yes.

SENATOR BONANCI: Okay.

And last, but not least: Allowing NYRA to take over OTB in New York City, do you see any negative repercussions to that, of them being in two

separate businesses that may be different than their mission?

JEFFREY CANNIZZO: Well, I think the mission should be one. That's probably part of the problem.

I mean, the mission is to drive handle through the windows, which supports this whole equation, which supports the state.

We talked about supporting municipalities and State taxes? Well, there's, roughly, $125 million generated through the pari-mutuel tax every year, for the State, which is the highest pari-mutuel tax across the country.

So, New York State makes more on horse racing than any other state in the country.

And -- but --

SENATOR BONANCI: But -- go ahead, Jeff.

JEFFREY CANNIZZO: -- but, I guess my -- the point is, is that, that should to be goal: we need to drive handle through the window.

SENATOR BONANCI: But, as I understand it now, if I make a bet out-of-state, NYRA gets a piece of that action.

And, if I make a bet to an OTB, they get a much smaller piece of action than what NYRA would have gotten from an out-of-state bet.

JEFFREY CANNIZZO: The customer does -- who gets smaller?

SENATOR BONANCI: The horsemen, and the breeders.

JEFFREY CANNIZZO: Yeah -- well -- but -- yes.

So, here's -- the difference is, for specific -- and that's part of the problem with this; is that the law is completely confusing.

SENATOR BONANCI: No, no --

JEFFREY CANNIZZO: And based on, where you bet, and what time you bet, and what track you bet at, or what OTB it is, the equations are all different.

But, in terms of breeders, breeders only get money -- and the easiest way to look at it -- is, if someone that's placing that bet has their feet stepped inside New York State lines.

SENATOR BONANCI: No, I understand that.

JEFFREY CANNIZZO: And --

SENATOR BONANCI: But having NYRA control an OTB, they can, perhaps, make decisions on where that bet should be, steered, or run through, and there's different economic results to the breeder.

JEFFREY CANNIZZO: Well, no, because, if the

bet's taken through NYRA, we receive a standard percentage of that. So, as long as NYRA controls that wager, it doesn't matter if it's on out-of-state, we're paid from it.

SENATOR BONANCI: All right, so what you're saying to me is: If the bet comes through OTB, and it's run by NYRA.

JEFFREY CANNIZZO: Uh-huh.

SENATOR BONANCI: And a bet comes through out-of-state, which comes to NYRA --

JEFFREY CANNIZZO: Right.

SENATOR BONANCI: -- the breeders get the exact same amount of money?

JEFFREY CANNIZZO: If the bet's taken inside New York state, yes.

SENATOR BONANCI: No, no, but --

JEFFREY CANNIZZO: But you're -- well, that's the point; is that, if they're wagering at an OTB parlor in New York City, it's inside New York State. So --

SENATOR BONANCI: No, but, outside the state.

JEFFREY CANNIZZO: That's when the breeders don't get money.

SENATOR BONANCI: Right. So --

JEFFREY CANNIZZO: That's right.

And those are the ADWs that we're talking about.

TRACY EGAN: If I understand what you're asking, I think you're concerned, that, can they kind of pool the bets, this way, and say: This came and --

SENATOR BONANCI: I see a potential conflict in allowing them to wear two hats. And I don't know if it's -- because, when you spoke, in your remarks initially, you seemed to indicate that that was a favorable thing, because we have legislation in place [snaps fingers] that we can do immediately.

JEFFREY CANNIZZO: That's right.

SENATOR BONANCI: And I'm not so sure that it's a positive. I'm just saying --

JEFFREY CANNIZZO: Well, again, I mean, we could introduce another third party, but we're going to have the same problems that we already have, that we had in New York.

It -- to me, it's the quickest resolution to getting an off-track-wagering outlet in the Metro area, because we're losing --

SENATOR BONANCI: I don't want it to create other problems down the road.

JEFFREY CANNIZZO: Right -- I -- you're

right.

SENATOR BONANCI: You've been very good.

Anybody else who would like to speak, or have questions?

SENATOR NOZZOLIO: I have a couple.

SENATOR BONANCI: Senator Nozzolio.

SENATOR NOZZOLIO: Mr. Chairman, thank you.

Ms. Egan, the additional funds, the infusion of money, that you talked about at your August board meeting, what was Finger Lakes proposed to get? And, what did the statute impede them from getting?

TRACY EGAN: Well, NYRA, actually, didn't -- doesn't need the money, you know. And they basically sent that message to me through one of our board members, that they didn't need the money.

But, that doesn't mean I can't send them the money, because the statute says, if I send money to one track, I must send to the other. And that the split has to be no worse than 60/40.

So, I could send 60 percent of the money, which we're doing to Finger Lakes, and 40 percent, the smaller portion, to NYRA.

SENATOR NOZZOLIO: How much was that?

TRACY EGAN: The total portion is 820,000.

SENATOR NOZZOLIO: 820,000.

And Finger Lakes was able to receive --

TRACY EGAN: They'll get 60 percent.

SENATOR NOZZOLIO: About 240 --

TRACY EGAN: 60 percent. So, over 400.

SENATOR NOZZOLIO: -- about 500,000. A little less than 500,000.

TRACY EGAN: Can I borrow your calculator, Jeff?

SENATOR NOZZOLIO: Well -- and that statute sets forth an impediment or a guarantee?

TRACY EGAN: Right.

It's, like, even if NYRA tells me, "We don't want the money," it violates the statute.

SENATOR NOZZOLIO: Thank you.

Jeff, your comments were very helpful. Both of you.

Jeff, what's your reaction to that situation?

JEFFREY CANNIZZO: We're looking at putting together some legislation, hopefully, which would permit the Breeding Fund to distribute monies based on the current situation at the time.

I mean, they shouldn't have to have rules as to, well, you have to give 40 percent to NYRA, or 60 to Finger Lakes. It should be based on where the demand is for those -- that revenue.

SENATOR NOZZOLIO: And taking that a step further: As this legislation is developed, if one New York City OTB model was established, and NYRA was running that, how would we guarantee that the Upstate tracks and Upstate horsemen would benefit from that new model?

JEFFREY CANNIZZO: Well, the thing -- the product itself is going to dictate who's wagering on it. You know, if the consumer doesn't want to wager on a certain racetrack, it's ultimately up to that consumer.

What we need to do is, actually, market that product.

So, for example: At that, New York City off-track facility, sports book, call it, we want to make sure the Finger Lakes Racetrack is displayed prominently there.

We want to make sure that the New York product comes first, maybe over some of the out-of-state tracks that are being run.

SENATOR NOZZOLIO: The breeding trends in New York State, to highlight it in your very helpful testimony, leaving the state: why?

JEFFREY CANNIZZO: Purses, and Breeding Fund. Two pieces.

So, the owner; when we're talking about a purse that goes solely to the owner, which could perhaps be a breeder, too.

So, if -- why would I take my horse and run him for -- and I'm making numbers up -- $15,000 at Finger Lakes, when I can take the same exact horse, run in the same exact race, maybe with fewer horses, down at Presque Isle, which is in Erie, Pennsylvania, for thirty, why would I not do is that?

Because it's an hour -- I forget how long of a way it is -- but, it's a couple hours away. You're going to make the same trip, and you're going to run against the same field. I'm going make a business decision, and run against, for more money.

Second part of that, the Breeding Fund; so, the breeder of those horses is going get paid almost double for that Pennsylvania race.

SENATOR NOZZOLIO: Heard Mr. Gural's comments, going to the cleaners in Pennsylvania.

JEFFREY CANNIZZO: Right.

I was surprised that he owns a farm in Pennsylvania. I didn't know that.

He should buy another one in New York.

But, anyways, the -- there's more money on

the table in these other states that support the industry.

And, right now -- well, for ten years, we've seen, as you can see in the slides, downward trends.

SENATOR NOZZOLIO: Thank you both very much.

SENATOR BONANCI: Thank you both.

Okay, our next speaker is: David Brown, and Dennis Petrisak.

David Brown is president, and Dennis is vice president, of the Finger Lakes Horsemen Benevolent & Protective Association.

Gentlemen, thank you for your patience.

DAVID BROWN: No, that's fine.

Senator, thank you very much for inviting us.

And it's good to see all of you here, because, I think we feel a little lonely up here at Finger Lakes. And, every once in a while, it's nice to see you coming to us.

And, we do appreciate it. We really do.

On behalf of all the horsemen at Finger Lakes, I appreciate it. And I know Dennis does as well.

SENATOR BONANCI: Just before you continue, it's never lonely in Albany, with the Finger Lakes, because of Senator Nozzolio. He always talks about

the Finger Lakes, and the track.

DAVID BROWN: Yes, he does.

Over the years, he's been a very good friend of Finger Lakes.

You have written testimony, and I'm not going to belabor the testimony that we have already submitted to you in writing.

I do want to talk about a couple of things. And the nice thing about being later in the program, it's usually going to be a little shorter.

And, second of all, I get to comment on those who have preceded me.

Mr. Gural, I enjoyed thoroughly. I've heard him speak on a number of cases. He's a thoughtful man, and he comes up with some very interesting ideas.

And the one that -- the two ideas that I gleaned from his testimony, which is helpful to me as well, is that we need to maintain the integrity of the sport. And I think that is absolutely true.

Finger Lakes is a little different than NYRA, and most of the trainers at Finger Lakes are also owners. The people at -- you know, we don't have the big owners at Finger Lakes, to speak of. Most of the horses that run there are owner-trainers.

They're people that live in the community. Their families grew up in the community. We have generations of trainers there, that have followed their fathers' or mothers' footsteps through the Finger Lakes doors.

And, we consider it a family.

The people that run at Finger Lakes are not like any other track in New York. They are local people. They raise their own horses, they train their own horses. And, they work harder than any human beings I have ever been accustomed to be around, in my lifetime. And they're the ones that put on the show that we are all talking about here.

Unfortunately, when there are cuts made, whether it's because New York City OTB closes, or because the OTBs don't want to pay the statutory percentage to the purse account, when our purse account goes down, it directly affects these people, and it directly affects jobs in this community.

Certainly, each of these stables are businesses. They're small businesses. They have to pay salaries to people that work there.

And a lot of people that work a Finger Lakes Racetrack, and all racetracks, are people that otherwise not be employable in the normal community.

These are people that love the animals, they love the horses, and they don't make a lot of money.

We hear about the thoroughbred racing being the "sport of kings."

We don't have any kings. We don't even have any princes at Finger Lakes. We have a lot of hard-working people that spend 12 hours a day taking care of their horses. Take a lot pride in what they do, and they don't make a lot of money at it.

If any of these people decided to go off and do some other job, they'd probably make a lot more money than they do as trainers at Finger Lakes.

So, every time a dollar is taken out of our purse account, every time any amount of money is taken out of our purse account, it directly affects them the most.

Delaware North's a big corporation. They make money. Its casino makes money.

We talked about the OTBs; their business enterprises.

We talked about The Breeders Fund. We talked about the breeders.

But, really, when it comes right down to it, the people that are at the bottom of this pyramid, and the people that are most affected by anything

you do, are these people that work so hard every single day of their lives.

So, I'm here to advocate for them.

And Mr. Gural is absolutely correct, that we need integrity in this business. But, unfortunately -- or, fortunately, at Finger Lakes, I don't think any of the trainers at Finger Lakes can afford these exotic drugs, frankly.

I think there was always been a drug issue in horse racing. But -- and I heard of one drug that was $1,800 for an injection, that some fancy chemist came up with.

Well, I don't think anybody at Finger Lakes has $1,800 that they can spare for that injection. Plus, that, they're not running for very much money, so it wouldn't be worthwhile to do it in any event.

So, I don't -- I see that as, that we need to -- I think there's more of a perception of a problem than there is a problem, but I do think it needs to be corrected; the perception needs to be corrected. And anything, we, as horsemen, can do to do that, we're certainly willing to do.

Secondly, Mr. Gural brought up a very interesting point, on marketing. And I absolutely agree with him.

The future of -- if there is a future -- the horse racing in the state of New York is going to be based on the younger generation.

If you walk into Finger Lakes on any day, you will see that most of the people that are there are 50 and over. When that generation passes, I don't know who's going to fill their -- fill those chairs or bet on these horses.

And, so, I think that marketing should definitely be directed at the younger generation.

We have a marketing committee with the HBPA. We've suggested -- we have suggested several marketing techniques to college students, and things like that.

But I will tell you, frankly, Delaware North isn't going to spend a lot of money on marketing for a horse racing business that they don't make very much money at, or no money, as the case may be. They're going to spend their money, and they spend a lot of it, on marketing for the casino.

If you drive by Finger Lakes, you're going to see "Finger Lakes Casino." And, then, in really small letters, if you've got really good eyes, it says "and Racetrack."

And that's the whole -- and, that right

there, that demonstrates exactly what's happened at Finger Lakes: Racing has become a side issue. Racing has not been vested in the way it should be invested in.

And I'm not blaming them, because they're a business. They're a profit-making business.

But, they get 10 percent of VLT revenue that they can put towards marketing for the casino. Not racetrack. They can't use that for money -- that money for racetrack.

That, should be changed.

They should be able to use some of that VLT "10 percent" money, either, to help the purses at Finger Lakes, or help the marketing at Finger Lakes.

And I'm sure our horsemen will help in that regard.

We've done everything, as an HBPA, we can do to help these people.

We've set up a wholesale store on the backside of Finger Lakes; that no other track in the country has, is a wholesale. These people can get wholesale feed.

And we've helped out in every possible way to keep these very hard-working people in business, but

we're failing. We've given out more benevolence, which we did -- this year than we have in any other two years combined, just to keep people; just to pay their rent, to help them pay their gas bill.

This is a group of people that are hurting badly.

Our purse account has gone, from $20 million two or three years ago, to 16 million now.

Now, 4 million might not sound like a lot. And this is a New York OTB gap, right there. That's most of it. You can throw in Suffolk, you can throw in a few other decreases, but, that's basically where that $4 million has gone.

$4 million to the -- into a purse account, for the people that I represent, is their profit margin.

And this year, what's happened, because of the fact that we have lost so much money in our purse account, is, my horsemen are looking for another place to run their horses.

They can go 2 1/2 hours down the road, and run at Presque Isle for a purse that's twice as much, sometimes more than twice as much, what we can offer them at Finger Lakes.

And I don't blame them, because how else are

they going to make money? They certainly can't run exclusively at Finger Lakes and make money. They're going to lose money.

And, again, they're the owner, and breeder sometimes, and also the trainer.

So, we're -- we have a mass exodus. I average -- I'd say, we average about 40 Finger Lake horses running at Presque Isle every week. It's actually more than that. I underestimated that by 10 or 12.

We have trainers that have moved to Presque Isle. We have people that have -- trainers who have never had stalls in Pennsylvania before, that now have stalls at Presque Isle, and have a whole -- and have a string of horses down there instead of running a Finger Lakes.

What's that's done is, it's decreased our field size. So, now, we -- our field size is going down, which then has the effect of decreasing our betting handle.

So, everything that -- is done.

So, how do we correct this?

Well, we correct this by, somehow, increasing our revenue stream.

We can't -- we can market better, with some

help from the VLT revenue.

We have contract negotiations come up, we're going to ask for more VLT revenue from Finger Lakes.

But, you know something? The Finger Lakes Racing Association, or Delaware North, they're -- we are -- we have the lowest paid -- as far as percentage of gaming revenue, lowest paid horsemen in the country, with the exception of one track in Iowa. Other than that, every single other horsemen's association, that have gaming in the state, get a much larger percentage than we do, by a significant amount.

But that's also true of the vendor.

That's also true of Delaware North and Finger Lakes. They don't get a percentage like most of the vendors do in the other states, either.

So, that's a problem.

Now, am I saying, Well you better give it to the horsemen, and not to education? Obviously, you're not going to do that. But, we need to work out something, some way, in which our purse account can get a new revenue stream.

Now, does that mean we tax out-of-state ADWs or betting platforms? Yeah, that would help significantly.

Does that mean that we open up, or we allow it to be opened, betting -- more betting parlors in New York City? Sure. But, it can't NYRA, because we don't get a cut of that.

So, all that money, sure, NYRA's doing fine. They're returning the money that The Breeders' Fund is giving them. They don't need it.

We need every penny.

Now, last year, we had 1.2 million from The Breeders' Fund. This year we got 500,000.

We had to cancel 13 stakes races in order to balance our purse account, because of that.

Now, I hope, with the opening, and I pray, with the opening, of Aqueduct we will at least get money through The Breeders' Fund. We're not go benefit from that otherwise. But at least The Breeders' Fund will have more money available to them, so that they can give us more purse enrichment, which will certainly help the New York-bred program at Finger Lakes, for sure. But, we're never going to be competitive with Pennsylvania.

In fact, I think Presque Isle just upped their purse another 20 percent. It's just too big a pot for our horsemen to ignore, and, otherwise,

they're not going to stay in business. It's simple as that.

So, that's basically it.

I think, the future of racing is, as Mr. Gural said, is marketing. I think no money spent on marketing, particularly for the racetrack, on the racing side now.

I think, if some of that VLT marketing money could be spent on the racetrack side, that that would be extremely helpful.

Taking anything more from our purse account would be a disaster for these people.

And, opening a casino, that doesn't supply income to the track, in Rochester, New York, would end racing at Finger Lakes, because, any competition -- "any competition" -- with this VLT system that we have now, where we -- about 55 percent of our purse account comes from that, we -- if that decreases, we might as well just close it up, move to Pennsylvania.

That's what I would do if I were a trainer here.

So, basically, I don't want to -- I don't want to be all negative here. There's a lot of good things at Finger Lakes. You should visit it.

They're good people. They're hard-working people.

You're all welcome. We'll try to treat you as well as, as best as we.

But, we're in trouble. And, we truly are in trouble.

SENATOR BONANCI: Mr. Brown, let me ask you: Is any of that fallen business attributed to the deepening recession? Or do you think it has -- you know, do people have just less money to -- disposable income to spend?

DAVID BROWN: Well, certainly, some of it has to do with the recession. And it's hurt our horsemen, too. Costs have gone up, and the income hasn't gone up.

But we don't see a big drop-off in our export handle. We can maintain -- we maintain that pretty well. Our VLT revenues have gone up, because of the good job that, Chris Riegle, and everybody, has done at Finger Lakes at marketing that casino.

I think they could -- I think, if they were allowed to have a, bigger, more of a place where people could go, you know, with a hotel and resort, where -- with table games, I think that we would do better, obviously. But, I am concerned that opening

up that Pandora's box, of opening up gambling with a constitutional amendment that isn't very restrictive, is going ultimately kill us.

And, that I can't -- I can't support that.

SENATOR BONANCI: Okay. Thank you, Mr. Brown.

Anybody have any further questions?

SENATOR NOZZOLIO: I have a couple, yes.

SENATOR BONANCI: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. Chairman.

Thank you, David, and Dennis, for your input.

Focus, for the Committee's attention, more on the horrendous losses that the horsemen, achieve, or established, as a result of the New York City OTB failure.

DAVID BROWN: Well, the statistics, I mean, it's clear -- we know the exact amount.

We lost 3.5 million to our purse account in past monies. And we're losing, approximately, $2,750,000 a year in revenues, each year.

SENATOR NOZZOLIO: And none of that is being gained back. Although, NYRA itself, appears to have actually prospered as a result of this.

DAVID BROWN: Yeah, NYRA, as much as we, at Finger Lakes, are concerned about them, have done a

very good job of marketing. They have a geographical advantage, obviously.

They're able to -- they were ready to pounce, immediately, upon the New York City gaming dollar, immediately after New York City OTB closed.

Unfortunately, we don't have that same advantage. And it was -- it was close to 20 percent of our purse account. And, it just disappeared.

SENATOR NOZZOLIO: Do you expect any growth in the purse account, based on current formulas, with expansions in the city of New York?

DAVID BROWN: If the expansion in the city of New York provided for statutory payments, as all OTBs make to the racetrack; and, therefore, to the purse account, then that would be exceptionally helpful.

If it's taken over by NYRA, where those statutory payments are not required, it's not going help us at all. It really won't.

And, I suppose, if they market Finger Lakes a little better, and market the -- you know, and market us on their screens a little better, we could see a small increase on our own product.

But, people in New York City are more likely to bet New York City racetracks than they are

Finger Lakes.

SENATOR NOZZOLIO: Dave, the issue of Pennsylvania and Western New York, what is Pennsylvania doing to enhance those purses?

And, is this a new phenomena, or is it something that's been in existence?

DAVID BROWN: No. If you look across the country, the horsemen get anywhere, from 12 to 19 percent of gaming revenue, whatever the gaming revenue may come from; VLTs, or table games, or whatever.

We get 8.75 percent.

I'm not sure where the "10 percent" came from.

We get 8 -- statutorily, we get 8.75 percent.

We can negotiate a higher rate, and I suspect we're going to be in the process of that pretty soon. Or try to, anyway.

But, 8.75 percent is the lowest in the country, with the exception, as I say, of one track in Iowa, where the horsemen get less of the VLT revenue. They get 8 percent.

SENATOR NOZZOLIO: Dave, and as I discussed where Mr. Gural, I've had to discuss it with the members of this Committee; when the current head

from the Lottery Commission came before the Committee, and Senator Bonacic asked him a number of questions, the question that was asked, that surprised me, is to his lack of understanding, as to what went first, the chicken or the egg? -- in effect, why was the racinos establish in the first place?

And, clearly, the legislative history was: To enhance the horse racing industry in New York State.

It appears that the Lottery Commission had forgotten that.

I want to make sure that no one forgets it.

And, that, the sense, you, as going forward, what policy changes would have to occur to better reflect that original mission, through the racinos?

DAVID BROWN: Well, I'd love to tell you, I'd like it to be statutorily mandated that we get 12 percent of the VLT revenue. I'd love to tell you that, but, where's that going to come from?

Is it going to come from a vendor who isn't paid what other vendors across the country are? Or, is it going come from the State of New York's education?

You know -- you know, that's the difficult

issue here. It's truly a difficult issue.

And you're right; OTBs were set up to enhance the industry as well, to allow for betting in a more local locale than having to come to the track. That, has hurt us. OTBs ultimately hurt us.

That's why we had the statutory payments, because, OTBs took away from our on-track handle.

And the casino takes away from our on-track handle.

You won't -- you can't imagine how many bettors, that used to come in and spend two or three hundred dollars a day, betting on horses, that now spend, maybe, $50 a day on the horses, and run over to the casino and spend the other $200.

And, so, it's like that old Pac-Man game; or, it's like the little dog -- the little dog that you brought home, and then it ate your furniture -- VLTs have been a wonderful thing for us, but they've also had the downside, too.

SENATOR NOZZOLIO: Well, thank you, Mr. Chairman. I have no further questions, except to say: That we need to continue to have your input as these issues go forward in the next legislative session.

Thank you for being her today.

DAVID BROWN: Thank you, Senators.

Thank you, Senator.

SENATOR BONANCI: Gentlemen, thank you very much for being here.

Our last set of speakers are:

Nelson Acquilano, who is the executive director, Council on Alcoholism and Addiction; and,

David Young, which is, Problem Gambling Prevention Coordinator.

NELSON ACQUILANO: And, thank you, Senator.

And I will keep my remarks short, given the time frame.

My name is Nelson Acquilano. I'm the executive director of the Council on Alcoholism and Addictions of the Finger Lakes.

We are a prevention and education and information and referral agency that covers the five-county Central Finger Lakes region.

I'm also on a number of community coalitions, and serve on the board of directors for the Council on Addictions of New York State.

And, currently serve as chairperson for the New York State OASAS Advisory Council on Underaged Drinking and Substance Abuse.

We have a terrible problem in New York. Our families, our communities, are in great crisis.

Society has been slowly deteriorating, but this is not an economic problem. No, New York has a quality-of-life problem, and it is a real crisis for families, for our neighborhoods, and for the whole community, and it will only further decline if we allow it.

In one recent year, we had over 517,000 crimes committed in New York State, both violent and property crimes.

New York State has the highest rate of AIDS in the country, and a high rate of other sexually transmitted diseases.

We have 2 1/2 million adults who have serious problems with alcohol, drugs, and gambling.

Divorce is running at about 50 percent.

Our mental health clinics, our shelters, and social service organizations are straining at the seams.

And we have many other risk factors that we need to contend with: child abuse, academic underachievement, and a higher-than-acceptable rate for teen pregnancies.

Our jails are full, our schools are

faltering, and our families are failing.

Now, given this background, the introduction of gambling in New York is contraindicated.

Given this background of community problems, to allow a known environmental carcinogen, such as gambling, into an otherwise delicately balanced community, to take a powerful, a potent risk factor, a known risk factor, and allow to it flourish within the local community, or anywhere in New York, will only further jeopardize the family unit, and healthy community lifestyle we are trying to build and maintain.

Gambling is one of the most destructive dynamics that can be introduced into a community. And when it is, it spreads like a cancer, like an epidemic, leaving broken lives, broken families, and broken communities in its wake.

All states that have legalized gambling have found subsequent dramatic increases in the incidence of compulsive gamblers, and, in crime, family dysfunction, divorce, bankruptcy, and mental illness; but, by then, it's too late.

Once legalized, communities cannot reverse the trend and control the increase in the gambling addiction and negative consequences.

Compulsive gambling leads to many thousands of personal and family bankruptcies each year.

Gambling leads to lost homes, broken families, lost savings accounts, lost college funds, and to a dramatic increase in crime, including embezzlement at business and industry.

It is strongly correlated with mental illness, including anxiety disorders, depression, nervous disorders, and suicide, and is associated with a rise in alcohol and drug abuse.

Furthermore, problem gambling also seriously affects the spouses, children, parents, and friends of the problem gambler.

Some states have reported that divorce tripled after the introduction of casinos. Others reported an explosion in domestic violence.

The ultimate cost in broken families and disintegrated communities from gambling never even comes close to justifying it as a mean to raise revenue.

Casino gambling is often promoted based upon economic improvements, including more jobs for the local community.

There is now ample evidence pointing to exactly the opposite findings.

Professor Robert Goodman, in his study on legalized gambling, showed significant declines for selected area businesses. Gambling can remove valuable resources, monies, from the community, and can hurt small businesses in the overall economic development strategy critical for community sustainability and growth.

Other research shows that gambling is indirectly subsidized by the taxpayers.

Field research throughout the nation indicates that, for every dollar that gambling contributes in taxes, it usually costs the taxpayers at least $3 -- and higher numbers have been calculated -- because of major increases in the welfare system, the mental health system, and the criminal justice system.

Gambling is exploding across America, but America is not ready for the consequences.

About 5 percent of gamblers are caught up in an addiction every bit as powerful as drug addiction.

For many of these individuals, their families are destroyed, their jobs are lost, their children are devastated, and they have lost all hope.

The National Council on Problem Gambling has

found this to be true. And, has also found that pathological gamblers have a suicide rate 20 times higher than non-gamblers.

The United States has had previous experience with legalized gambling. With the proliferation of gambling, however, people saw the negative effects, and started a trend to prohibit gambling activities. And, by 1910, there was virtually no legal gambling in the United States. Gambling activities were not just prohibited via state statutes -- excuse me -- and local ordinances, but more importantly, these prohibitions were incorporated into most state Constitutions, to make it virtually impossible for future generations to legalize gambling activities.

Now, in New York State, we have a constitutional law, not that prohibits us, but that protects us, and our families, from the consequences of gambling. But that law has been circumvented by technicalities, and now stands to be changed fully to accommodate the interests of the gambling industry.

Our State Constitution also mandates the Legislature to pass appropriate laws to prevent offenses against any of the provisions of that section.

I have pages of facts that I have submitted, showing how much the poor gamble;

That, African-Americans and Hispanics have higher rates of pathological gambling;

That, communities experience an increase in crime;

And that, in this next decade, our youth will face more problems with gambling than with drugs.

I also submitted one page of local residents, for Senator Nozzolio and Senator Gallivan, including, two suicides, an attempted suicide, a number of embezzlements. And this is going on more and more.

In Rochester, as David will speak to, attendance at Gamblers Anonymous meetings has tripled over the last year or so.

I also have included my analysis of the research, in terms of an environmental impact study showing the pros and cons of gambling.

Please review it. It is very enlightening.

All right, the National Commission on Gambling recommended a moratorium on the expansion of the gambling industry.

As a social worker, as an addictions professional, as an advocate for the families that

suffer, as a parent, as a voter and a taxpayer, I agree, and I strongly recommend, that all community and governmental representatives actively reject, both the growth and the public acceptance of gambling throughout New York State.

If we could stop an epidemic, something that would destroy 5 percent of our families, tens of thousands of families, and this would probably increase to 10 percent within one or two generations, wouldn't we have an imperative, a compelling moral and ethical responsibility, to serve and protect our residents, especially those who are most vulnerable?

For the health, safety, and welfare of our families, our legislators, our leaders, should not gamble with our futures.

Our families, our children, can't handle any more dysfunction.

Thank you.

SENATOR BONANCI: Mr. Young, would you like to speak?

DAVID YOUNG: Thank you.

Hello, Senators.

My name is David Young, and I've been working for the past five years at the Problem Gambling

Prevention Coordinator for the National Council of Alcoholism and Drug Dependence in the Rochester area.

Thank you for the opportunity you're giving me to speak today on the issues related to gaming and gambling in New York State.

What I've -- what I have to share is a little different than most of the other speakers today, but it's equally as important.

It is an undeniable fact that gamblers will eventually cross the line into compulsive or problem gambling.

It's also true, that many changes to the gaming operations or oversight will have an impact on the extent of problem gambling in our state.

Despite the decisions made by policymakers, the legislators, the effect of problem gambling will remain the same: a negative impact upon the communities of New York State.

We advocate for the treatment, services, for problem gambling, compulsive gamblers, and prevention and support services for their families.

We advocate for the problem gambler, and their families, when necessary; call attention to the areas of concern on recommended changes, to

serve and protect the public health and safety.

Any increase or expansion that gambling, gaming, must include dedicated funding to respond to, both, prevention, treating, a problem gambling and compulsative gambling.

The scope of the problem: Pathological gambling is a significant mental health problem in New York, and across the United States.

The addiction is recognized by the American Psychiatric Association, which is included in the DSM.

The key reference to mental health field in New York, an estimated 1 million New Yorkers are -- currently have a gambling problem, 20 percent adolescents currently are at risk of developing a gambling problem, 5 percent of adults over eighteen have a gambling problem, according to the OASAS Problem-Gambling Survey.

In, 2010-2011, the New York State-sponsored gambling generated approximately 3.1 billion in revenue for New York.

The projection for 2011-2012 year increases the revenue to $267 million in increases.

We know that increasing gambling or gaming opportunities consequently increases costs to

society, social costs which include increased rates of problems, or pathological gambling, problems for New York State residents.

This encompasses addiction to mental health problems, to bankruptcy, fraud, foreclosure, suicide, domestic violence, divorce, embezzlement.

They say, every new slot machine or "VLT," video lottery terminal, at a casino will destroy one job each year by taking money out of the consumer's economy.

According to John Warren Kindt, business professor at the University of Illinois, 4,000 slot machines mean 40,000 lost jobs over a decade.

Each VLT or slot machine conservatively takes $100,000 a year, which the -- multiply that, affects spending means. That means, that the 4,000 planned slot machines will remove 1.2 billion from the consumer economy each year.

Kindt predicted that the loss of 120 million in sales tax, just for starters, to set against the 140 million in the county and city profits, not to mention the heavy blow to our struggling economy.

There are years of academic research showing that gambling destabilizes local economies.

The state's proposed gambling expansion will

only hurt our economy. Up to 90 percent of gambling profits come from VLTs or slot machines, and slot machines don't create jobs.

Costs to government goes up.

Gambling addiction rises, doubling with casino-feeder markets.

Bankruptcy climbs, 18 to 42 percent higher than in area around casinos.

The crime rate goes up about 10 percent a year.

This means, costs to government; for every $3 of -- costs to government, for every three -- for every one gambling revenue.

Twenty years ago, Illinois, the increasing of number of casinos were proposed as a solution for their state budget problems.

Now, Illinois has -- and two other states with large gambling industries, California and Nevada, lead the nation in budget shortfalls.

I personally have countless stories of devastation from people living with their -- in the Rochester area, that include losing everything that they have worked for all their lives, and now finding themselves in position to work three or four jobs, just to stay afloat, when they should be

enjoying their retirement.

I receive phone calls on a daily basis from people seeking help for gambling addictions or for GA meetings. Our family members -- or, family members reaching out to find some help for their loved ones who have a financial devastation for their family.

I have just worked with a gentleman who called, for help for his wife, who was in tears the whole time I was talking to him.

And he said, he had no idea about the gambling addiction, and how it worked. There was no education out there, there was no information out there, for him to get. He had no clue to where to go for help for his wife; or who to turn to, or what to do.

His wife had spent $30,000 of their retirement fund, going to Finger Lakes Casino, on gambling.

She was lying about where she was going. She was spending -- you know, saying, she was going to store. Or, she was just going to be out for an hour, and she was gone or four to five, six, hours.

He was just wondering; he was, like: How come there is no resources or information or

services available, as there are -- as many as there are for drugs and alcohol?

The families just need to have the information. They need the education. They need the prevention. They need the treatment. And, they need to know that the State will provide that for them.

Some thoughts regarding funding for community prevention, education, and treatment services for problem gamblers and their families:

Funding for compulsive gambling services can be usually -- can be, and usually is, generated by dedicating a portion of new revenues, or through annual licensing fee. Responsible gambling programs across the country, and throughout the industry, virtually always include such funding and provisions, which may be viewed as cost of doing business.

New York State is the only state without dedicated funding for gambling revenues for problem gambling services.

We propose that 1 percent of gambling revenue, $15.5 million, be dedicated to that.

Thank you for the opportunity to give me a chance to speak, and share our concerns about this.

SENATOR BONANCI: Any of you gentlemen have any questions?

Thank you very much, gentlemen.

First of all, I'd like to thank all of the speakers today. They were professional, and they were enlightening.

They know more about their business than we do. And, you educate us, so we may be more informed to make the right decisions.

To my colleagues: Thank you for your attention, and your attendance.

This meeting is now adjourned at five after two. We started at eleven, on September 6th.

A safe trip home to everyone.

Thank you for being here.

(Whereupon, at 2:05 p.m., the Senate Standing Committee on Racing, Gambling & Wagering hearing concluded.)

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