

Prepared Remarks to the New York State Senate Committee on
Racing Gaming and Wagering

9/12/2007

THANK YOU, SENATOR LARKIN, SENATOR SABINI,
MEMBERS OF THE COMMITTEE FOR INVITING ME TO
ADDRESS YOU THIS MORNING.

YOUR COUNSEL, STEVE CASSCLES, ASKED ME TO
SPEAK ON A VARIETY OF SUBJECTS. HE ASKED ME TO
FOCUS ON WHAT THE STATE SHOULD BE LOOKING FOR
IN A FRANCHISEE AND HOW TO IMPLEMENT A
FRANCHISE AGREEMENT. HE ALSO ASKED ME TO
COMMENT IN PASSING ON THE LAND CLAIM ISSUE,
VLT'S, THE NYRA MONITOR, AND THE INSPECTOR
GENERAL.

THIS IS A HUMBLING PROSPECT FOR SOMEONE LIKE ME.
I MAY TECHNICALLY BE THE ACTING DIRECTOR OF THE
GOVERNMENT LAW CENTER BUT I'M AS MUCH A STATE
BUREAUCRAT – ARGUABLY A POLITICAL HACK - AS AN
ACADEMIC. AND OF COURSE, THESE REMARKS ARE

MINE ALONE AND CERTAINLY DO NOT REPRESENT THE VIEWS OF ALBANY LAW SCHOOL.

SEVERAL WEEKS AGO, A TWO YEAR OLD COLT NAMED MAIMONIDES ATTRACTED A TON OF ATTENTION AT THE SARATOGA MEETING. ONE PARTICULAR STATEMENT OF THE PHILOSOPHER – NOT THE HORSE - MAIMONIDES APPLIES TO MY TESTIMONY.

MAIMONIDES SAID, “TEACH THY TONGUE TO SAY 'I DO NOT KNOW,' AND THOU SHALT PROGRESS.” WHEN IT COMES TO ISSUES SUCH AS BANKRUPTCY LAW AND ECONOMICS, I WILL PROGRESS BY CONFESSING LIKE SERGEANT SCHULTZ FROM HOGAN’S HEROES THAT I KNOW NOTHING.

FIRST, WHAT DO WE WANT IN A FRANCHISEE?

I THINK THE LODESTAR FOR WHAT WE WANT IN THE FRANCHISE HOLDER IS TRULY SIMPLE. WHAT WE WANT IN A FRANCHISE HOLDER IS WHAT IS BEST FOR THE FANS OF HORSE RACING.

THAT MEANS THE BEST QUALITY RACING, AT THE BEST PRICE, AT THE BEST FACILITIES, AND WITH AN ASSURANCE OF FAIRNESS IN THE RACING. LOOK, THIS IS THE ONE SPORT – BESIDES BOXING – THAT THE STATE REGULATES, AND IT'S THE ONE SPORT WHERE THE FANS THROUGH THEIR WAGERING DOLLARS ARE TRUE PARTICIPANTS IN THE GAME. IF WE AREN'T WORKING FOR THE FANS OF RACING IN GOVERNMENT, WE'RE NOT WORKING AT ALL.

TOO OFTEN IN GOVERNMENT, WE GET INVOLVED IN SPORTS ISSUES THAT ARE OF TANGENTIAL STATE CONCERN. IF CABLEVISION THREATENS TO TAKE OFF THE YANKEES FROM TV OR IF THE NFL LIMITS ACCESS TO SOME OF ITS GAMES, EVERYONE GETS EXORCISED. HOW CAN THEY DO THIS TO THE FANS? BUT RACING IS THE STATE'S SPORT. WE ARE BUD SELIG AND ROGER GOODELL COMBINED. IF WE DON'T SERVE THE FANS, WE SERVE NO ONE.

AFTER THE FANS, THE FRANCHISE HOLDER NEEDS TO SERVE THE PARTICIPANTS IN THE RACING GAME: THE JOCKEYS THE TRAINERS, THE STABLE HELP, THE

OWNERS, AND THE BREEDERS. HOW DO WE ASSURE THEIR SAFETY AND SECURE THAT THEY WILL BE GIVEN A FAIR SHAKE?

WE ALSO NEED TO BE FAIR TO THE COMMUNITIES – ESPECIALLY SARATOGA SPRINGS – THAT ARE THE HOST COMMUNITIES OF RACING.

THE MOST LIMITED CONCERN SHOULD BE STATE REVENUE. THE FACT IS THAT HORSE RACING NO LONGER SUPPLIES MEANINGFUL REVENUE TO GOVERNMENT IN ANY NORTH AMERICAN JURISDICTION. JUST LAST WEEK, THE HEAD OF THE MEADOWLANDS SAID THAT RACING WAS DOOMED IN NEW JERSEY WITHOUT A SUBSIDY OF \$20 MILLION. IF WE'RE TALKING ABOUT REVENUE, IT SHOULD BE COMING FROM THE VIDEO LOTTERY.

OBVIOUSLY, ETHICS IS A PREREQUISITE, BUT THE HIRING OF COHORTS OF ETHICS ADVISERS IS NOT ENOUGH.

ULTIMATELY IT'S GOING TO COME DOWN TO WHAT SENATOR SABINI ASKED STEVE WYNN OF EXCELSIOR RACING AT THE APRIL PUBLIC HEARING ABOUT THEIR GUARANTEES. WYNN'S ANSWER WAS, "LOOK EITHER YOU TRUST US TO DO THIS OR YOU DON'T."

SO WHAT YOU'RE LOOKING FOR IN A FRANCHISE HOLDER IS ETHICS AND WHAT'S BEST FOR THE FANS, PARTICIPANTS, AND HOST COMMUNITIES: AND ULTIMATELY CAN THEY BE TRUSTED?

THEN ONCE YOU'VE DECIDED ON THE FRANCHISEE, YOU HAVE TO MAKE SURE THAT THEY ADHERE TO THEIR BID BY PLACING CLEAR BENCHMARKS AND, AND YOU NEED TO PASS LEGISLATION TO ENACT THE PLAN.

HOW DOES THIS PLAY OUT WITH THE GOVERNOR'S DECISION TO AWARD THE RACING PART OF THE FRANCHISE TO THE NEW YORK RACING ASSOCIATION?

I'M NOT ONE OF THOSE PERSONS WHO THINK IT'S NECESSARILY BAD TO SPLIT THE RACING AND THE

GAMING PARTS OF THE FRANCHISE. I DON'T SEE THE SKILL SETS INVOLVING CONDUCTING RACING AND GAMING AS BEING SIMILAR. SOME PEOPLE TELL ME THAT SPLITTING RACING AND GAMING IS AKIN TO WHAT WE DID WRONG IN THE 1970'S WITH THE OTB'S. I DON'T SEE IT THAT WAY. AS LONG AS THE SPLIT BETWEEN THE GAMING OPERATOR AND THE TRACK IS CLEAR AND FAIR, WE SHOULD BE FINE. ISN'T THAT WHAT HAS BEEN DONE DE FACTO WITH DELAWARE NORTH AND SARATOGA HARNESS AND BETWEEN NYRA AND MGM?

SO, I DON'T THINK IT'S WRONG TO SPLIT RACING FROM GAMING. AND ONCE YOU'VE DONE THAT, I CERTAINLY THINK THE CHOICE OF NYRA TO RUN RACING IS A REASONABLE DECISION. NYRA – WHETHER IT'S DUE TO SKILL OR SERENDIPITY - DOES HAVE ON THE WHOLE THE TOP RACING IN THE COUNTRY. IT RUNS THE SINGLE BEST RACE MEET IN SARATOGA. ITS PRICING TO BETTORS IS WELL BELOW THE INDUSTRY AVERAGE, AND IT HAS THE HIGHEST HANDLE IN THE MARKETPLACE.

MOREOVER, THERE ARE NO WHITE KNIGHTS AMONG ITS COMPETITORS. EXCELSIOR RACING ACCORDING TO THE AD HOC COMMITTEE HAD THE BEST PLAN FOR RACING, BUT IT LOST MUCH OF ITS SPORTS FRANCHISE EXPERTISE WHEN THE STEINBRENNER FAMILY INTERESTS LEFT THE BID. THERE IS ALSO AN ISSUE OF TRUST INVOLVING EMPIRE'S MAJOR PARTNER. CAPITAL PLAY WAS RULED OUT OF THE AD HOC PROCESS. THEY PROPOSE TO RAISE TAKEOUT. THEY HAVE LIMITED EXPERIENCE IN RUNNING TRACKS, AND SOME ASSOCIATIONS ARE QUESTIONABLE. EMPIRE RACING HAS THE EXPERIENCE, BUT WITH THE UNDERPERFORMING MAGNA ENTERTAINMENT AND THE BOTTOM LINE VIEWS OF CHURCHILL DOWNS MANAGEMENT, THAT'S NOT NECESSARILY A BENEFIT. THEIR BID ALSO A TOOK A HIT WHEN THE HORSEMEN GAVE UP THEIR SUPPORT OF EMPIRE.

SO IF IT COMES DOWN TO SENATOR SABINI'S QUESTION, YOU CAN PROBABLY TRUST NYRA ON THE RACING END AS MUCH AS ANY OF ITS COMPETITORS.

THE MOU BETWEEN NYRA AND THE STATE IS,
HOWEVER, A HORSE OF A DIFFERENT COLOR.

FIRST OF ALL, THE AGREEMENT IS EXTRAORDINARILY UNFAIR TO THE HORSEMEN AND THE BREEDERS. IT CALLS FOR THE HORSEMEN TO RECEIVE A MAXIMUM 6.5% OF THE VLT REVENUES. NYRA HAD A DEAL WITH THE HORSEMEN WHERE THE HORSEMEN WOULD START WITH MORE THAN 7% OF THE REVENUE AND END UP WITH 10% OF THE REVENUE. EVEN IN THE ORIGINAL 2001, LEGISLATION WHERE TRACKS WERE ONLY ALLOWED TO RETAIN 25% OF VLT REVENUE, THE HORSEMEN EVEN IN THE FIRST YEAR RECEIVED 8.25% OF REVENUE. HOW CAN YOU DO THIS TO THE HORSEMEN?

THE SAME CAN BE SAID ABOUT THE BREEDERS. HOW CAN YOU GIVE THEM A MAXIMUM OF 1% OF VLT REVENUE WHEN THE ORIGINAL LEGISLATION GAVE THEM 1.25% AND THE 2003 LEGISLATION GAVE THEM 1.5% AFTER THE FIFTH YEAR OF OPERATION? THE WHOLE POINT OF NYRA BEING A NOT-FOR-PROFIT IS TO BE ABLE TO PLOW THE MAXIMUM REVENUE INTO

RACING. WHY ARE WE SHORTCHANGING THE PARTICIPANTS?

ONE OF THE GOVERNORS'S CITED REASONS FOR REJECTING THE AD HOC COMMITTEE RECOMMENDATION WAS THAT THE 20 YEAR TERM OF THE FRANCHISE HOLDER WAS TOO LONG. WHY IS THERE NOW A 30 YEAR FRANCHISE PERIOD?

I'M SENDING ALONG AN ARTICLE I WROTE FOUR YEARS AGO THAT THE NY TIMES PUBLISHED ON NYRA AND TRANSPARENCY. I CALLED FOR ALL NYRA'S FINANCIAL RECORDS TO BE AVAILABLE TO THE PUBLIC. WE SHOULD HAVE PUBLIC AGENDAS, AND WE SHOULD KNOW ABOUT THE VOTING RECORDS OF THE NYRA TRUSTEES. WE SHOULD HAVE TRULY PUBLIC MEMBERS OF THE NYRA BOARD FROM AMONG THE FANS OF HORSE RACING.

WE HAVE NOTHING LIKE THAT IN THIS MOU, AND THE SAD FACT IS THAT IF YOU BELIEVE THAT NYRA IS TRANSPARENT, YOU HAVE BLINKERS ON. DO WE KNOW WHETHER THE TRUSTEES VOTE, AND WHAT THEY'RE

VOTING ON? DO WE KNOW WHAT WAS IN THE SAFIROSETTI REPORT OF 2003, AND WHETHER NYRA TOOK ANY ACTION ON IT? WHY DON'T WE KNOW TWO YEARS LATER WHAT WAS IN THE FEDERAL MONITOR'S SEALED REPORT ON NYRA? WHAT ARE THE NYRA SALARIES? WHY DIDN'T THE SIMULCAST SITE LIEN GAMING GET PAID BEFORE BANKRUPTCY? WHAT CONTRACTS DOES NYRA HAVE WITH CONSULTANTS, AND SHOULD THESE CONTRACTS HAVE BEEN BID? WHAT WAS NYRA HANDLE ON THE 2007 AQUEDUCT MEET? WHO VOTED TO SUPPORT THE RAISE FOR NYRA'S UPPER LEVEL MANAGEMENT? WHY DON'T WE KNOW THIS? LOOK WHEN I WORKED ON A REDRAFT OF THE RACING LAW, I PUT IN A PROVISION TO SUBJECT THE FRANCHISE HOLDER TO BASICALLY THE SAME DISCLOSURE REQUIREMENT AS FOR PUBLIC AUTHORITIES. WHY CAN'T WE DO THIS?

THE CHANGE IN THE NYRA BOARD OF TRUSTEES IS INSUFFICIENT. IT'S NOT ONLY THAT PUBLIC REPRESENTATION ON THE NYRA BOARD IS REDUCED BY A GREATER PROPORTION THAN NYRA'S OWN REPRESENTATION. THE POINT IS THAT THERE IS

ALMOST NO REASON FOR THE PRE-2000 NYRA TRUSTEES TO REMAIN ON THE BOARD. (YOU DO NEED TO EXCEPT NYRA PRESIDENT CHARLES HAYWARD FROM THIS CRITICISM SINCE HE WAS THE ONE CLEARLY INDEPENDENT MEMBER OF THE BOARD DURING THIS TIME PERIOD.) THEIR PRESENCE WAS ONE OF THE PRIMARY REASONS WHY THE 9 MEMBERS OF THE AD HOC COMMITTEE UNANIMOUSLY VOTED NYRA LAST IN ETHICS. THESE ARE THE PEOPLE WHO MAINTAINED THE CULTURE “FUNDAMENTALLY OPPOSED TO CHANGE” AND WHO LACKED “OVERSIGHT AT THESE MAJOR PUBLIC ASSETS.” WHY ARE THEY STILL THERE? LOOK IT’S NOT ENOUGH TO PROCLAIM REFORM AT NYRA. WE SHOULD BE ACHIEVING REFORM AT NYRA.

THERE ARE OTHER ISSUES HERE ABOUT WHETHER NYRA WILL NEED TO HAVE AN AGREEMENT WITH ITS HORSEMEN ON SIMULCASTING, WHETHER IT CAN RETAIN NON-RACING REVENUE, WHETHER ANY TAXES WILL BE PAID ON WHAT WILL NOW BE STATE PROPERTIES, WHETHER THERE IS A REQUIREMENT TO CONTINUE LOW TAKEOUT, AND WHETHER THERE IS

ANYTHING TO INSURE THAT THE SAFETY OF THE TRACKS IS IMPROVED. WHY IS THERE A CAP PLACED ON THE NUMBER OF VLT'S AT AQUEDUCT? WHAT IF ANYTHING WILL BE DONE ABOUT NYRA'S USE AND RETENTION OF THE HORSEMENS' FUNDS? WHAT HAPPENS TO THE PROPERTIES THAT ARE OUTSIDE AQUEDUCT RACE TRACK THAT WERE OWNED BY NYRA? DON'T WE NEED BENCHMARKS TO HOLD NYRA ACCOUNTABLE?

MOREOVER, HAVE WE REALLY CHANGED THE FINANCIAL MODEL? WE'VE GIVEN NYRA A SUBSIDY, BUT IS IT ENOUGH AND AREN'T WE CERTAIN TO HAVE DISTRIBUTION PROBLEMS WITH THE OTB'S IN THE YEARS TO COME? SHOULDN'T WE BE WORKING TO ALTER THE DISTRIBUTION SYSTEM AND TO RESTRUCTURE OR AT LEAST MOVE THE OTB'S INTO SHARED SERVICES ARRANGEMENTS?

EVEN IF YOU LIKE NYRA A LOT OR A LITTLE, THERE'S LITTLE TO LIKE ABOUT THE MOU.

WHERE DO WE GO FROM HERE? IF YOU STRAIGHTEN OUT THE MOU, YOU NOW NEED TO WORK ON THE GAMING ISSUE. FIRST OF ALL, IS THERE ANY REASON NOT TO ALLOW VLT'S AT BELMONT? IF THERE'S EVER BEEN A LOCATION IN THE STATE WHERE VLT'S WILL NOT ADVERSELY AFFECT THE LOCAL COMMUNITY, IT'S BELMONT. IT WILL BE HELPFUL FOR JOBS AND IT WILL BE HELPFUL FOR REVENUE FOR SUPPORT OF EDUCATION. MORE IMPORTANTLY, THE NYRA TRACKS HAVE A TON OF CAPITAL NEEDS. BELMONT AIN'T BEAUTIFUL BELMONT ANY MORE. IF YOU WANT TO IMPROVE THE TRACKS, THEY'RE GOING TO NEED MASSIVE AMOUNTS OF MONEY, AND THEY'RE GOING TO NEED THE FUNDS FROM VLT'S AT BELMONT.

SECONDLY, WHO CAN BID FOR THE VLT'S? ARGUABLY, THE EXISTING BIDDERS ALL HAVE POTENTIAL TO BE TERRIFIC OPERATORS. MOHEGAN SUN'S FOR CAPITAL PLAY HAS BEEN TREMENDOUSLY SUCCESSFUL. THE SAME CAN OBVIOUSLY BE SAID FOR RICHARD FIELDS AT STEVE WYNN AT EXCELSIOR. AT EMPIRE, DELAWARE NORTH OPERATES THE MOST SUCCESSFUL

VLT'S IN THE STATE. CAN NEW BIDDERS GET INTO THE GAME? WILL WE SEE MGM RETURN?

AND WHAT ARE THEY BIDDING ON? WILL THEY HAVE TO PAY BACK THE ENTIRE \$360 MILLION THAT NYRA OWES IN LIABILITIES? WILL THE CASINO OPERATOR OR NYRA RECEIVE THE CURRENT MARKETING FEE? WILL SENATOR LARKIN'S BILL S.3830 BE PASSED? WILL THERE BE A MORE FAVORABLE CHANGE IN THE STATUTE GOVERNING DISTRIBUTION OF VLT REVENUE FOR THE LARGER TRACKS THAT IS SIMILAR TO S. 3830? WHAT EXACTLY CAN THEY DEVELOP? THE BIDDERS WILL NEED COMPLETE ANSWERS.

IF YOU HAVE COMPLETE ANSWERS, I'D SUGGEST A STRAIGHT OUT AUCTION OF THE RIGHT TO CONDUCT GAMING. IT RESULTS IN THE MAXIMUM REVENUE TO THE STATE, AND IT TAKES THE POLITICAL CONSIDERATIONS OUT OF THE PROCESS. IT WOULD WORK.

ON THE PERIPHERAL ISSUES: THE LAND CLAIM
BACKGROUND:

I COAUTHORED A PIECE IN 2004 ON THE LAND CLAIM, AND I THINK IT'S ENTIRELY CLEAR FROM THE RECORD BOTH ON THE SENATE AND MOST ESPECIALLY THE ASSEMBLY SIDE THAT UNDER THE 1983 LEGISLATION, THE NYRA PROPERTIES WERE SUPPOSED TO REVERT TO THE STATE IF NYRA LOST THE FRANCHISE. QUICKLY, IN THE EARLY 1980'S AT A TIME WHEN NYRA NEEDED A RENEWAL OF THE FRANCHISE AND WAS NOT IN A POSITION TO BORROW MONEY, SPEAKER FINK IN THE ASSEMBLY STARTED TO TAKE THE POSITION THAT THE TRACK PROPERTIES EQUITABLY BELONGED TO THE STATE. THE STATE HAD CREATED NYRA, NYRA'S PROFITS WENT TO THE STATE, AND THE STATE HAD REGULARLY PROVIDED TAX RELIEF TO NYRA. NYRA OBJECTED, BUT IT WAS PRETTY CLEAR THAT NYRA WAS NOT GOING TO OBTAIN A FRANCHISE EXTENSION WITHOUT SOME DEAL WITH THE SPEAKER. THE ARRANGEMENT WAS A COMPROMISE. NYRA RETAINED THE PROPERTIES, BUT IN THE EVENT THAT NYRA LOST THE FRANCHISE, IT WENT OUT OF EXISTENCE, AND THE PROPERTY WENT TO THE STATE. THIS IS PRETTY CLEAR IN THE ASSEMBLY PROCEEDING WHERE THE TALK WAS

LOOK THE SPEAKER WAS RIGHT ALL ALONG AND HE WON.

THE PROBLEM IS WHETHER THIS IS CONSTITUTIONAL. CAN YOU DO THIS WITHOUT JUST COMPENSATION TO THE OWNER OF THE PROPERTY? WHAT IF THE STATE SAID TO FINGER LAKES OR VERNON DOWNS: WE'RE GIVING YOU A LICENSE FOR 5 YEARS TO OPERATE AS A RACETRACK, BUT IF WE REVOKE THE LICENSE OR FAIL TO RENEW THE LICENSE, YOU LOSE THE PROPERTY TO US? CAN THAT BE LEGAL? IN NYRA'S CASE, THE ISSUE IS FURTHER COMPLICATED BY NYRA'S UNIQUE LEGAL STATUS. THERE'S REALLY NOTHING LIKE IT. IS NYRA PROPERTY EQUITABLY THE STATES – WHICH IS WHAT SPEAKER FINK HAD MAINTAINED? WHAT ABOUT THE FACT THAT NYRA'S PROFITS GO TO THE STATE? IT IS A SUBJECT ON WHICH – LIKE SERGEANT SCHULTZ - I KNOW NOTHING.

VLT'S

STEVE ASKED ME TO TALK INITIALLY ABOUT WHETHER GRANTING VLT'S TO THE GAMING

OPERATOR RATHER THAN TO THE RACETRACK WOULD BE CONSTITUTIONAL. THE ANSWER SHOULD BE YES. THE EXEMPTION FROM THE GENERAL STATE CONSTITUTIONAL BAN ON GAMBLING UNDER WHICH VLT'S FALLS IS THE LOTTERY EXEMPTION. LOTTERIES OPERATED BY THE STATE ARE CONSTITUTIONAL. THIS PROVISION PLACES NO LIMITS ON WHOM THE VENDOR OF THE LOTTERY TICKETS IS. IT DOESN'T HAVE TO BE A RACETRACK. IT CAN BE ANYONE. IT COULD BE A GAMING COMPANY.

YOU MAY REMEMBER THAT IN HIS THIRD TERM GOVERNOR PATAKI PROPOSED ON A NUMBER OF OCCASIONS THAT THERE BE FREESTANDING VLT OPERATIONS IN THE STATE. THAT PROPOSAL MAY EVEN HAVE PASSED YOUR HOUSE IN THE DAYS WHEN THE SENATE AND THE ASSEMBLY WERE PASSING COMPETING BUDGET AGREEMENTS.

ON ANOTHER VLT NOTE, THE REVENUE FROM YONKERS HAS BEEN EXTREMELY DISAPPOINTING. THE STATE'S NUMBERS ARE FAR BELOW THAT OF PENNSYLVANIA. WE NEED TO LOOK AT THE WHOLE SYSTEM AND THE

WAY THE VLT'S HAVE BEEN DEVELOPED, ORGANIZED AND SUPPLIED TO THE TRACKS. WHY ARE WE SO BAD?

ADDITIONALLY, IF YOU REMEMBER BACK TO LAST YEAR, NYRA HAD INSISTED THAT THE EXECUTIVE CHAMBER HAD INSTRUCTED THE LOTTERY DIVISION NOT TO APPROVE THE MGM CONTRACT. DID THIS HAPPEN? AND IF IT HAPPENED, HOW DOES THIS DIFFER IN ANY RESPECT FROM STEVE MITNICK TELLING CHERYL BULEY – WHO BY THE WAY WAS AN EXCELLENT RACING COMMISSIONER - HOW TO VOTE?

THE INDEPENDENT MONITOR CONTRACT AT NYRA

HERE'S THE ISSUE. IN 1997, THE LEGISLATURE WORKING AROUND GOVERNOR PATAKI PASSED A BILL EXTENDING NYRA'S FRANCHISE FOR 7 YEARS. AS A QUID PRO QUO FOR THIS MOVE, THE GOVERNOR PROPOSED AND RECEIVED APPROVAL OF CHAPTER 672 WHICH PROVIDED ADDITIONAL OVERSIGHT OVER NYRA. ONE OF THESE OVERSIGHT PROVISIONS WAS A REQUIREMENT THAT ALL CONTRACTS OVER \$250,000 WERE TO BE SUBJECT TO A PROCESS OF COMPETITIVE

BIDDING. THE MONITOR CONTRACT WAS NOT BID, AND IT COULD ONLY BE JUSTIFIED IF IT WAS A SOLE SOURCE OR EMERGENCY CONTRACT. TO QUALIFY FOR A SOLE SOURCE CONTRACT, NYRA WOULD HAVE HAD TO NOTIFY THE BOARD 15 DAYS BEFORE THE CONTRACT HAD BEEN ENTERED INTO. ADDITIONALLY, NYRA'S CONTRACT WITH THE MONITOR SEEMS TO INDICATE THAT CONTROVERSIES OVER THE CONTRACT WOULD BE GOVERNED PURSUANT TO NEW YORK STATE LAW.

THE INSPECTOR GENERAL'S REPORT ON ETHICS

LOOK, IT'S NOT EASY TO WRITE A REPORT ON EVERYONE'S ETHICS. IF SOMEONE WERE ASSIGNED TO DIG UP ALL THE DIRT ON LIEBMAN, IT WOULD BE AN EXTREMELY MESSY REPORT. BUT FOR WHATEVER REASON, AND I DON'T KNOW OF ANY REASON, THIS REPORT IS POOR. AS ONE PERSON SAID TO ME, "DID THEY JUST GOOGLE A LIST OF NAMES?" IF YOU'RE WRITING ABOUT CAMPAIGN CONTRIBUTIONS, JUST LIST THEM. YOU DON'T NEED TO SAY THAT THE NEW YORK TIMES OR THE DAILY NEWS NOTED THESE CONTRIBUTIONS. WHY ARE THERE NO CITATIONS OR

ATTRIBUTIONS FOR STATEMENTS? WHY IS THERE DIFFERING TREATMENT OF THE BIDDERS? WHY IS THE FOUNDING OF EMPIRE AN ISSUE BUT NOT THE FOUNDING OF EXCELSIOR OR CAPITAL PLAY? WHY IS A FORMER BOARD MEMBER OF EMPIRE IN PLAY BUT NOT THE FORMER BOARD MEMBERS OF THE OTHER ENTITIES? WHAT DO SENATOR BRUNO'S VIEWS ON PETER KARCHES AND STEVE DUNCKER HAVE ANY BEARING ON THE BIDDERS?

I DON'T KNOW IF THIS IS PARTICULARLY FAIR BUT DELAWARE NORTH HAD A FEDERAL FELONY CONVICTION FROM THE 1970'S WHEN IT WAS KNOWN AS EMPRISE. DELAWARE NORTH HAS BEEN DOGGED BY THIS CONVICTION FOR DECADES. DELAWARE NORTH CAN'T GO ANYWHERE WITHOUT SOMEONE THROWING "EMPRISE" AT IT. DELAWARE NORTH OFFICIALS HAVE CALLED IT "THE GHOST THAT WON'T GO AWAY." YET IN A REPORT WHICH SUPPOSEDLY CONTAINED EVERYTHING POTENTIALLY BAD ABOUT ALL APPLICANTS, THIS FELONY CONVICTION - THE MOST OBVIOUS OF GHOSTS - WAS NOT INCLUDED. AGAIN ONE OF THE REASONS GIVEN FOR NYRA

GETTING LOW MARKS ON ETHICS FROM THE AD HOC COMMITTEE WAS NYRA'S RECORD OF REGULATORY VIOLATIONS. YOU WOULDN'T KNOW ABOUT IT FROM THE IG'S REPORT. THERE'S NOTHING THERE.

LOOK I WORKED FOR THE STATE FOR 25 YEARS. I HELPED WORK ON A LARGE NUMBER OF REPORTS. SOME WERE CLINKERS. I LIKE TO THINK THAT THE STATE CAN WORK, BUT I READ THIS REPORT AND I START SERIOUSLY WORRYING ABOUT WHETHER GOVERNMENT CAN GET ANYTHING RIGHT.

ONE WAY TO HELP GET THINGS RIGHT IS BY ENACTING A BAN ON CAMPAIGN CONTRIBUTIONS FROM BOARD MEMBERS AND MANAGERS OF ENTITIES THAT HAVE APPLIED FOR OR HAVE A VLT LICENSE. I ARGUED FOR THAT IN 2003, AND IT MAKES JUST AS MUCH SENSE NOW. PENNSYLVANIA DOES HAVE SUCH A LAW, AND IT MAKES THIS PROCESS A LOT SIMPLER. AS JEFF GURAL WHO OWNS VERNON DOWNS AND TIOGA DOWNS, AND HAS NOT BEEN RETICENT ABOUT MAKING NEW YORK CAMPAIGN CONTRIBUTIONS SAID ABOUT

PENNSYLVANIA, “THAT LAW TO ME IS THE RIGHT WAY TO DO IT.”

YOU HAVE A TOUGH JOB FACING YOU. YOU HAVE TO FIND YOUR OWN ANSWER TO SENATOR SABINI’S COLLOQUY WITH STEVE WYNN. TO DO THAT, BEFORE RESORTING TO MAIMONIDES, YOU MAY NEED TO FIND THE GREEK PHILOSOPHER AND TRUTH SEEKER DIOGENES.

BUT DON’T FORGET MAIMONIDES BECAUSE IT WAS MAIMONIDES WHO MAY HAVE BEEN THINKING ABOUT YOU WHEN HE WROTE:

THE RISK OF A WRONG DECISION IS PREFERABLE TO THE TERROR OF INDECISION.

GOOD LUCK IN YOUR DELIBERATIONS, AND THANK YOU FOR INVITING ME HERE TODAY.