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**THE FUTURE OF VLT'S IN NEW YORK,  
REMARKS DELIVERED TO THE NEW YORK  
STATE ASSOCIATION OF COUNTIES**

**DECEMBER 4, 2003**



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SPEECH TO ECONOMIC DEVELOPMENT ACADEMY OF THE NEW

YORK STATE ASSOCIATION OF COUNTIES DECEMBER 4, 2003

**THE FUTURE OF VLT'S IN NEW YORK**

MORE THAN TWO YEARS AGO – ONE MONTH AFTER 9/11 THE STATE OF NEW YORK PASSED LEGISLATION ALLOWING FOR A MULTI-STATE LOTTERY GAME, INCREASED INDIAN GAMING, AND VIDEO LOTTERY TERMINALS AT MOST RACETRACKS IN THE STATE. SINCE THEN, WE'VE SEEN THE STATE JOIN THE MEGA MILLIONS LOTTERY GAME. WE'VE SEEN THE SENECA NATION OPEN UP A CASINO IN NIAGARA FALLS, NEW YORK, BUT WE STILL ARE AWAITING THE FIRST VIDEO LOTTERY OR VLT OPERATION. WE MAY NOT HAVE A LONG WAIT FOR THAT OPERATION IF SKIP CARLSON AT SARATOGA HARNESS HAS HIS SAY.

BUT MY ROLE HERE IS TO EXPLAIN HOW VLT'S CAME TO THIS DAY. THE STATE OF NEW YORK DIDN'T DECIDE TO EXPAND GAMBLING BECAUSE IN THE WORDS OF HOMER SIMPSON

“GAMBLING MAKES A GOOD THING EVEN BETTER.” IT DECIDED TO EXPAND GAMBLING BECAUSE “GAMBLING MAKES GOOD REVENUE COLLECTION EVEN BETTER.”

AND THE NEED FOR REVENUE COLLECTION COULD HARDLY BE OVERSTATED. WE HAD AN \$11.5 BILLION DEFICIT LAST YEAR. EVEN WITH A STRONG STOCK MARKET, THE STATE IS FACING A \$6 BILLION DEFICIT FOR NEXT YEAR ACCOMPANIED BY A COURT OF APPEALS MANDATE THAT THE LEGISLATURE MUST PROVIDE APPROPRIATE FUNDING FOR PUBLIC SCHOOLS. THE LEGISLATURE PASSED SOME TAXES AND FEES EARLIER THIS YEAR, AND BOTH ASSEMBLY SPEAKER SHELDON SILVER AND SENATE MAJORITY LEADER JOE BRUNO HAVE GONE ON THE RECORD IN OPPOSITION TO TAXES FOR NEXT YEAR’S SESSION. THUS, WE HAVE A NEAR PERFECT CLIMATE FOR EXPANDED GAMBLING TO COME IN AND SOLVE MUCH OF THE STATE’S REVENUE NEEDS. WE MAY BE NEARING A HOMER SIMPSONESQUE VISION OF GAMBLING MAKING A GOOD BUDGET EVEN BETTER.

THIS IS ALL A FAR CRY OF WHERE WE WERE BEFORE  
SEPTEMBER 11. IN THE SPRING OF 2001, THE HARNESS  
HORSEMEN STAGED A PROTEST. THEY MARCHED AROUND THE  
STATE CAPITOL LOBBYING AND SHOUTING FOR VLT'S. I  
WORKED IN THE CAPITOL BACK THEN, AND ALL I HEARD  
ABOUT THE PROTEST FROM PEOPLE IN THE CAPITOL WAS  
EITHER: WHAT'S A VLT? OR, MORE FREQUENTLY, WHY DO THE  
HARNESS PEOPLE WANT BACON, LETTUCE, AND TOMATO  
SANDWICHES?

TODAY, MOST EVERYBODY AROUND THE CAPITOL KNOWS THE  
DIFFERENCE BETWEEN VLT'S AND BLT'S. BUT THERE'S STILL A  
LINGERING DIETARY DISORDER. ON VLT'S THE STATE WANTS  
TO HAVE ITS CAKE AND EAT IT TOO. THE STATE HAS ALWAYS  
VIEWED VLT'S PRIMARILY AS A FUND RAISING MECHANISM  
AND NOT AS A WAY OF BOLSTERING HORSE RACING IN THE  
STATE.

SO TO UNDERSTAND VLT'S I'M GOING TO TRY TO ANSWER FOUR QUESTIONS – AND THEN LEAVE YOU WITH A FIFTH QUESTION.

THE QUESTIONS ARE:1) WHAT IS A VLT? 2) WHAT'S IN THE LEGISLATION, AND HOW DID IT GET THAT WAY? 3) WHAT ARE THE CONSTITUTIONAL ISSUES? AND 4) WHY RACETRACK VLT'S? THE FIFTH AND ULTIMATE QUESTION IS WHAT'S NEXT? I OBVIOUSLY DON'T HAVE THE ANSWER TO THAT QUESTION – BUT I'LL TRY TO SUGGEST POSSIBILITIES.

FIRST – VLT'S ARE ELECTRONIC GAMING DEVICES OPERATED BY THE STATE LOTTERY. IT HAS TO BE THE STATE BECAUSE ONLY THE STATE CAN CONSTITUTIONALLY OPERATE A LOTTERY IN NEW YORK. THEY WILL BE CENTRALLY CONTROLLED GAMBLING MACHINES. TO THE PLAYERS, THE MACHINES MAYBE THE FUNCTIONAL EQUIVALENTS OF SLOT MACHINES, BUT DUE TO THE MIRACLE OF COMPUTER TECHNOLOGY, THEY WILL ACTUALLY FUNCTION AS A NEAR INFINITE ASSEMBLAGE OF INSTANT LOTTERY TICKETS. SO THE

PROPER ANALOGY IS TO THINK OF VLT'S AS ELECTRONIC  
VERSIONS OF INSTANT LOTTERY TICKETS.

AND IF YOU LOOK AT AN INSTANT TICKET, IT REALLY DOESN'T  
APPEAR ANY DIFFERENT THAN A SLOWER – NON-MECHANICAL  
SLOT.

SECOND, WHAT'S IN THE LEGISLATION. THIS,  
UNFORTUNATELY, I CAN'T EXPLAIN TO YOU IN A PARAGRAPH,  
AND I HAVE TO DELVE INTO LEGISLATIVE HISTORY. THE KEY  
POINT HERE IS THAT THE LEGISLATION THAT ACTUALLY  
EMERGED IN 2001 WAS NOT THE TRACK'S BILL. IT WAS THE  
STATE'S BILL. AND THE STATE WROTE A BILL WHERE THE  
STATE FINISHED FIRST, AND THE TRACKS NEARLY RAN OUT OF  
THE MONEY.

HERE'S HOW THE ORIGINAL 2001 BILL WORKED. THE STATE  
ESTABLISHED A VIDEO GAMING LOTTERY WHICH COULD ONLY  
OPERATE AT SELECT RACETRACKS.. NEW YORK STATE HAS  
SEVEN HARNESS TRACKS AND FOUR THOROUGHBRED TRACKS.

THREE OF THE THOROUGHBRED TRACKS ARE OPERATED BY NYRA – THE NEW YORK RACING ASSOCIATION.

FIRST, ONLY RACETRACKS – AND NOT HOTELS, RESTAURANTS, TAVERNS, OTB’S, NON-PROFIT GROUPS, OR BOWLING ALLEYS - COULD HAVE VIDEO LOTTERIES, AND THOSE RACETRACKS WERE DIVIDED INTO THREE GROUPS. THERE ARE THE ONES THAT AUTOMATICALLY WERE GIVEN VLT’S. THESE WERE YONKERS, MONTICELLO, FINGER LAKES, VERNON DOWNS, AND AQUEDUCT. THEN, THERE WERE THREE TRACKS THAT WERE TOTALLY EXCLUDED FROM VLT’S. THESE WERE BELMONT, THE SARATOGA FLAT TRACK, AND THE SYRACUSE MILE. THIS LEFT THREE OTHER TRACKS WHICH GET VLT’S PURSUANT TO LOCAL LAW. THESE THREE OTHER TRACKS WITH LICENSES – BUFFALO RACEWAY, THE NEW BATAVIA DOWNS, AND SARATOGA HARNESS– HAVE ALL OBTAINED LOCAL APPROVAL FOR VLT’S. ANY NEW TRACKS WOULD NEED LOCAL APPROVAL. THE ORIGINAL 2002 LAW SUNSET THREE YEARS AFTER THE FIRST MACHINES WERE IN OPERATION, AND THE MACHINES COULD ONLY BE IN OPERATION FOR 12 HOURS PER DAY.

TWO, THE VIDEO LOTTERY LEGISLATION WAS IN 2001 AND STILL IS ESPECIALLY BAREBONES LEGISLATION. NO ONE TRIED IN THE LAW TO DEFINE WHAT "VIDEO LOTTERY GAMING" IS. THE LEGISLATURE WAS SILENT ON HOW MANY MACHINES EACH TRACK WOULD GET. IT WAS SILENT ON THEY TYPES OF GAMES THAT WOULD QUALIFY AS VIDEO LOTTERIES. THE LEGISLATION WAS SILENT ON A WHOLE HOST OF ISSUES THESE QUESTIONS, AND MANY MORE, WERE PUNTED TO THE DIVISION OF THE LOTTERY WHICH FOR A QUARTER CENTURY HAS PRIDED ITSELF ON MAINTAINING A MINIMAL BUREAUCRACY AND BEING AN ENTREPRENEURIAL RATHER THAN A REGULATORY AGENCY. NOW IT'S BEEN FORCED INTO A MOST DEMANDING REGULATORY ENVIRONMENT.

THREE, WE ALL KNOW THAT MONEY TALKS IN POLITICS, AND A TON OF MONEY WAS THROWN AROUND ON GAMBLING ISSUES IN NEW YORK IN 2001. BUT VERY LITTLE OF IT HAD TO DEAL WITH VIDEO LOTTERIES. LOOK AT THE CAMPAIGN CONTRIBUTIONS. NYRA'S TRUSTEES GAVE A LOT OF MONEY, BUT IN 2001 THIS HAD ALMOST NOTHING TO DO WITH VLT'S. NYRA WAS TRYING TO ACQUIRE NEW YORK OTB, MAINTAIN ITS

FRANCHISE, AND FIGHT OFF FRANK STRONACH'S MAGNA ENTERTAINMENT. VLT'S WERE AT BEST A TERTIARY CONCERN OF NYRA'S. THE REST OF THE PRIVATE ENTITIES IN NEW YORK RACING DIDN'T HAVE THAT KIND OF FUND-RAISING ABILITY. THE HARNESS TRACKS AND HARNESS HORSEMEN TOGETHER IN 2001 DIDN'T HAVE ENOUGH MONEY TO LEASE A LOUISIANA LEGISLATOR. THIS ISSUE, FOR BETTER OR WORSE, WAS NOT DECIDED ON THE BASIS OF CAMPAIGN FUND RAISING.

THE FLIP SIDE IS THAT THE TOP STAFF OF THE GOVERNOR'S OFFICE, THE SENATE, AND THE ASSEMBLY WROTE THE ACTUAL BILL. THIS WAS NOT YOUR LOBBYISTS' VLT BILL. AS A RESULT, THE LEGISLATION WAS FAR LESS BENEFICIAL TO THE RACETRACKS THAN VLT LEGISLATION IN OTHER STATES AND PROVINCES. THE TRACKS COULD RECEIVE UP TO BETWEEN 12% AND 25% PERCENT OF THE GROSS PAYOUT FROM THE MACHINES. THIS WAS SHARED WITH THE HORSEMEN IN PURSES AND THE BREEDERS. THE DIVISION OF THE LOTTERY DECIDED THAT THE RACING AS A WHOLE WOULD GET THE FULL 25%. THAT MEANT THAT IN THE FIRST YEAR, THE TRACKS WOULD HAVE GOTTEN 15% OF THE REVENUE AND 12.5% IN

SUCCEEDING YEARS. THE STATE WOULD HAVE RECEIVED 60% AND 15% WOULD HAVE GONE TO THE LOTTERY FOR ADMINISTRATIVE COSTS. EVERY OTHER RACETRACK WITH VLT'S DOES SIGNIFICANTLY BETTER. RHODE ISLAND DOES THE WORST OF ANY OF THE OTHER VLT RACING STATES, AND IN RHODE ISLAND THE TRACKS GETS 31%. 12.5% IS A LONG WAY FROM 31%.

THERE WERE A NUMBER OF REASONS FOR THIS APPARENT LOWBALLING OF THE RACETRACKS. THE LEADERS WANTED TO FUNNEL THE MAXIMUM AMOUNT OF AID TO EDUCATION. GAMBLING ISN'T PARTICULARLY POPULAR WITH A LOT OF THE MEMBERS, AND FUNNELING A TON OF AID TO EDUCATION HELPED MAKE THE LEGISLATION MORE PALATABLE. IT WAS A SPOONFUL OF SUGAR HELPING THE MEDICINE GOES DOWN. THE LEADERS WERE CONCERNED ABOUT THE CONSTITUTIONAL PROVISION THAT ALL NET PROCEEDS FROM A LOTTERY GO TO EDUCATION, AND THEY ALSO DID NOT WANT TO REWARD THE TRACKS FOR THEIR PREVIOUS FAILURES. AS A RESULT OF THIS LOWBALLING, THERE WERE SERIOUS DOUBTS, OVER WHETHER THE TRACKS – IF THEY

WERE TO PAY SALARIES, CAPITAL COSTS, SECURITY, AUDITING, OVERHEAD AND MARKETING COSTS – COULD ACTUALLY NOT LOOSE MONEY ON VLT’S.

SO BECAUSE THE 2001 LEGISLATION DID NOT EVEN COME CLOSE TO MEETING THE BASIC FINANCIAL NEEDS OF THE RACETRACKS, AND BECAUSE THERE WERE SIGNIFICANT UNRESOLVED ISSUES ON THE CONSTITUTIONALITY OF THE PROPOSAL, NOBODY MOVED FORWARD ON VLT’S.

WHEN THE RACETRACKS RECOGNIZED THAT THEY HAD BEEN LOWBALLED ON THEIR RETURN, THEY LOBBIED FOR ADDITIONAL RETENTION OF GAMBLING HANDLE. THEIR EFFORTS IN 2002 ONLY REAPED LIMITED REWARDS.

THEY GOT THE LAW CHANGED SO THAT IT EXPIRED ON DECEMBER 31, 2007 RATHER THAN THREE YEARS AFTER THE FIRST VLT WAS INSTALLED - THE LAW ALSO WAS AMENDED TO PERMIT THE RACETRACKS TO NEGOTIATE WITH THEIR HORSEMEN OVER THE HORSEMEN’S SHARE OF THE PROCEEDS - IF THE HORSEMEN AGREED TO THE FULL ALLOWABLE REDUCTION, THIS WOULD HAVE MEANT THAT THE TRACKS

COULD NOW RECEIVE UP TO 17.5% OF THE VLT DROP. ALSO, NYRA WAS GIVEN GREATER ABILITY TO OBTAIN FINANCING FOR VLT'S WITH THE STATE SUBORDINATING ITS OWN LOANS TO NYRA . BUT THE 17.5% SOLUTION DIDN'T REALLY CUT IT FOR THE TRACKS.

FOR A WHILE IT SEEMED THAT THE DO-NOTHING STATUS QUO MIGHT PREVAIL IN 2003. THE GOVERNOR PROPOSED IN HIS BUDGET A VLT PROVISION THAT EXPANDED THE HOURS FOR VLT OPERATION, ENDED ANY SUNSET FOR VLT'S, BUT DID NOT CHANGE THE 25% SHARE THAT WENT TO THE RACING INDUSTRY. INSTEAD ALMOST ALL OF THE 25% SHARE WENT TO THE TRACKS. THE HORSEMEN AND BREEDERS WERE UP IN ARMS, AND THE LEGISLATIVE LEADERS DECLARED THAT THE GOV'S BILL WAS DEAD IN THE WATER.

SO THE LEGISLATURE IN THE FACE OF 2003'S ENORMOUS LEGISLATIVE FIGHT CRAFTED ITS OWN PLAN. SINCE THE GOVERNOR HAD ALREADY LIFTED THE SHARE FROM THE HORSEMEN, IT WAS COMPARATIVELY EASY FOR THE LEGISLATURE TO DEVELOP A PLAN THAT WOULD STILL GIVE

MORE TO THE TRACKS THAN THE 2002 PROVISIONS – WHILE HARMING THE HORSEMEN LESS THAN THE GOVERNOR’S PLAN. IN MAY, THEY SETTLED ON A PLAN WHICH ACTUALLY CHANGED THE WAY VLT’S OPERATE. THE GOVERNOR VETOED THE PLAN WHICH WAS PART OF THE OVERALL STATE BUDGET LEGISLATION, BUT THE LEGISLATURE OVERRODE THE GOVERNOR’S VETO. HERE’S WHAT THE BILL DID.

1. THE VLT LAW SUNSETS AFTER 10 YEARS OF THE FIRST MACHINE GOING INTO OPERATION INSTEAD OF THE 2002 T PROVISION UNDER WHICH THEY WOULD EXPIRE ON DECEMBER 31, 2007.

2. VLT’S CAN BE OPEN FOR NO MORE THAN 16 CONSECUTIVE HOURS PER DAY, AND MAY NOT BE CONDUCTED AFTER 2:00 AM. THIS REPLACES A PROVISION UNDER WHICH VLT’S COULD ONLY BE OPERATED FOR 12 HOURS PER DAY, AND COULD NOT BE OPEN PAST 10:00 PM ON MOST WEEKDAYS AND UNTIL MIDNIGHT ON WEEKENDS, HOLIDAYS, AND THE DAYS PRECEDING HOLIDAYS.

3. THE NYRA FRANCHISE IS EXTENDED UNTIL 2013 IF VLT’S ARE IN OPERATION AT AQUEDUCT BEFORE MARCH 1, 2004. THAT IS

NO LONGER A REALISTIC POSSIBILITY. CURRENTLY, NYRA'S FRANCHISE EXPIRES AT THE END OF 2007.

4. THE VLT FACILITY MUST HAVE A "PHYSICAL LAYOUT AND LOCATION THAT FACILITATES ACCESS TO THE HORSE RACING TRACK PORTION OF SUCH RACING FACILITY."

5. A TEMPORARY VLT FACILITY CAN BE IN OPERATION FOR NO MORE 18 MONTHS.

6. THE VLT SPLIT TO THE RACING INDUSTRY INCREASES FROM 25% TO 29%. THE AMOUNT RETAINED BY THE LOTTERY DECREASES FROM 15% TO 10%. THE AMOUNT GOING TO EDUCATION INCREASES FROM 60% TO 61%.

7. THE HORSEMEN CAN MAKE A DEAL WITH THE RACETRACK LOWERING THEIR SHARE OF THE SPLIT OF VLT REVENUE. THE HORSEMEN'S SHARE THEORETICALLY COULD BE REDUCED TO ZERO. AN AGREEMENT LOWERING THE HORSEMAN'S SHARE CAN ONLY BE IN EFFECT FOR FIVE YEARS. THERE IS, HOWEVER, NOTHING IN THE LEGISLATION, WHICH SAYS ANYTHING ABOUT A RENEWAL OF THIS REDUCTION, AND/OR WHETHER A NEW AGREEMENT REAUTHORIZING A REDUCTION IN THE HORSEMAN'S SHARE WOULD BE VALID.

8. IN THE ABSENCE OF A CONTRACT REDUCING THE HORSEMEN'S SHARE, THESE ARE THE PERCENTAGES OF TOTAL VLT REVENUE THAT GO TO PARTIES IN RACING AT LEAST FOR THE FIRST THREE YEARS.:

YEARS 1-3

BREEDERS 1.247%

HORSEMEN 7.511%

TRACKS 20.242%

10. VLT'S ARE NOT GIVEN TO ANY OF THE OTB'S.

11. THE SHARE TO THE STATE IS THE HIGHEST OF ANY RACINO STATE, AND THE AMOUNT GIVEN TO THE TRACKS REMAINS THE LOWEST OF ANY RACINO STATE.

WHILE HARDLY A GODSEND, - WITH A MINIMUM OF 20% OF THE PAYOUT FROM VLT'S, MOST OF THE TRACKS STARTED MOVING AHEAD. THEY MOVED AHEAD IN MORE IN EARNEST WHEN IN JULY, SUPREME COURT JUSTICE JOSEPH TERESI ALBANY COUNTY FOUND THE 2001 LEGISLATION - INCLUDING THE VLT PORTION TO BE CONSTITUTIONAL. IT'S NOT A GREAT PIECE OF CONSTITUTIONAL SCHOLARSHIP. IN FACT, MUCH OF IT SEEMS TO HAVE BEEN DERIVED FROM THE EENIE , MEENIE MINI MO

SCHOOL OF LEGAL THOUGHT. BUT IT CONVEYED – I THINK JUSTICE TERESI’S BELIEF THAT WHEN PUSH CAME TO SHOVE, THE COURT OF APPEALS WOULD LIKELY FIND THE LEGISLATION CONSTITUTIONAL.

FINALLY, THE LOTTERY DIVISION HAS FINALIZED ITS REGULATIONS ON THE VLT’S, AND WE APPEAR READY TO START THE PROGRAM – EXCEPT THAT THE CONSTITUTIONAL CHALLENGE IS STILL PENDING THE APPELLATE DIVISION IS HEARING THE CASE ON DECEMBER 16<sup>TH</sup>, AND WE CAN HARDLY TELL WHAT THE RESULT WILL BE.

THAT LEADS TO THE CONSTITUTIONALITY QUESTION. THERE IS ONE OVERARCHING SIMPLY STATED QUESTION. THAT IS, ARE THESE INTER-CONNECTED GAMING MACHINES LOTTERIES? IF THEY ARE LOTTERIES UNDER THE STATE CONSTITUTIONAL, THEY’RE LEGAL. IF THEY AREN’T LOTTERIES, THEY’RE ILLEGAL. IT’S NOT WHETHER THE CONSTITUTION BANS SLOT MACHINES OR WHAT MACHINES ARE SLOT MACHINES. WHETHER OR NOT THEY’RE SLOT MACHINES DOESN’T REALLY MATTER. IT’S WHETHER THEY ARE LOTTERIES.

THERE IS A SECOND SUBSIDIARY CONSTITUTIONAL QUESTION ON THE VLT'S. THE VLT'S PROVIDE THAT A SHARE OF THE REVENUE GOES TO RACETRACKS, PURSES, AND BREEDERS. BUT THE CONSTITUTION SAYS THAT ALL THE NET PROCEEDS MUST GO EXCLUSIVELY TO AID OR SUPPORT EDUCATION. THE VLT OPPONENTS ARGUE THAT THE VENDOR FEE AWARDED TO THE RACETRACKS – BESIDES BEING EXCESSIVE – CANNOT BE SPLIT WITH ORGANIZATIONS THAT ARE NOT DOING ANY OF THE VENDING. THAT MEANS THAT VLT MONEYS SHOULD NOT BE DIVERTED TO BREEDERS OR TO HORSEMEN IN THE FORM OF PURSES. IF THIS CHALLENGE IS SUCCESSFUL, IT WOULD NOT MEAN THAT VLT'S ARE UNCONSTITUTIONAL – BUT IT WOULD MAKE IT MORE DIFFICULT TO USE VLT'S TO FOSTER PURSES AND BREEDER AWARDS IN NEW YORK STATE.

FINAL ANSWERED QUESTION, WHY DO THE RACETRACKS – AND NOBODY ELSE GET THE BENEFIT OF VLT'S. DOESN'T IT SEEM WRONG TO AWARD AN INDUSTRY WITH THAT HAS VIRTUALLY FAILED OVER THE LAST FOUR DECADES WITH THE SUPER

BOWL TROPHY? IN 1964, YONKERS RACEWAY AVERAGED NEARLY 25,400 FANS PER DAY. IN 2002, YONKERS AVERAGED 612 FANS. MONTICELLO AVERAGED 6,179 FANS IN 1964. 2002 ATTENDANCE WAS 284. FARM STANDS HAVE MORE CUSTOMERS. OTHER THAN THE SARATOGA FLAT TRACK, RACING HAS FAILED AND FAILED UTTERLY IN NEW YORK STATE – AND EVEN WITH SARATOGA IT’S CLEAR THAT NYRA’S FINANCES ARE A TOTAL MESS. WHY SHOULD THIS INDUSTRY BE AWARDED FOR ITS FAILURES?

THIS ISN’T JUST AN ACADEMIC QUESTION. IS IT BECAUSE OF THE JOBS OR THE TRADITION OF RACING IN NEW YORK? IF THAT’S THE CASE, LOTS OF INDUSTRIES COULD MAKE THE SAME CLAIM TO VLT’S. CLEARLY, YOUR LOCAL WAL-MART EMPLOYS MORE PEOPLE THAN YOUR BASIC HARNESS TRACK. RIGHT NOW, MOST ANY INDUSTRY’S JOBS COULD BE SAVED BY VLT’S. TODAY, IT’S ABUNDANTLY CLEAR THAT THE DRIVE-IN MOVIE THEATER BUSINESS IN THIS STATE IS FAILING. DO WE WANT TO MAINTAIN THE JOBS AND THE TRADITION AND HERITAGE OF DRIVE IN MOVIE THEATERS IN THE STATE? WHY

NOT GIVE THEM VLT'S? DO WE WANT TO KEEP GE JOBS IN SCHENECTADY OR KODAK JOBS IN ROCHESTER OR CARRIER JOBS IN SYRACUSE? GIVE'EM VLT'S. WHO KNOWS MAYBE WE CAN BRING BACK BETHLEHEM STEEL BY GIVING SOMEONE VLT'S IF THEY RESURRECT THEIR PLANT IN LACKAWANNA? VLT'S COULD SUBSIDIZE ANY BUSINESS AND PROTECT THEIR JOBS.

BUT THERE ARE SOME REASONS FOR AWARDING VLT'S TO THE RACETRACKS. FIRST OF ALL, THE STATE HAS NOT BEEN A PASSIVE PLAYER IN THE DEMISE OF THE RACETRACKS. IT HELPED MAKE RACING WHAT IT IS TODAY. THE STATE CREATED A GOVERNMENT –OPERATED OFF-TRACK BETTING SYSTEM WHICH IN LARGE MEASURE HAS COMPETED WITH THE TRACKS FOR CUSTOMERS. THE STATE CREATED AN ATMOSPHERE AT THE OTB'S UNDER WHICH RACING WAS PRESENTED IN A MOST NEGATIVE LIGHT. THE STATE ESTABLISHED A LEGISLATIVE LABYRINTH OF PROCEDURES AND RELATIONSHIPS FOR RACETRACKS THAT ARE LITERALLY MINEFIELDS FOR PARTICIPANTS. THE STATE HAS CREATED A

LOTTERY SYSTEM WHICH HAS SIPHONED CASUAL BETTORS FROM THE TRACKS. RACETRACKS HAVE BEEN UNIQUELY HARMED BY THE STATE'S PRIOR ACTIONS.

ADDITIONALLY, IF THE RACETRACKS DID NOT RECEIVE VLT'S, IT'S CLEAR THAT THE RACETRACKS WOULD BE UNIQUELY HARMED BY VLT'S. AGAIN, THE STATE WOULD BE CREATING DIRECT GAMBLING COMPETITION FOR THE RACETRACKS. IT'S HARD TO CONCEIVE THAT YONKERS WITH ITS 612 FANS OR MONTICELLO WITH ITS 286 FANS COULD SURVIVE IF THE STATE LET OTHERS OPERATE VLT'S. THE RACETRACKS HAVE BEEN UNIQUELY HARMED BY PAST STATE ACTION, AND THEY COULD BE UNIQUELY HARMED BY FUTURE STATE ACTION.

FINALLY, AND OBVIOUSLY MOST REALISTICALLY, THE RACING INDUSTRY WAS THE ONLY GROUP IN 2001 WHICH WAS ACTIVELY PURSUING VLT'S. EVEN BEFORE 9/11, 2001 MARKED A UNIQUE YEAR FOR THE RACING INDUSTRY IN NEW YORK. THE INDUSTRY WHICH IS COMPOSED OF RACETRACKS,

BREEDERS, AND HORSEMEN WERE ACTUALLY UNIFIED AND ORGANIZED IN SUPPORT OF VLT'S THIS TRIFECTA OF TRACKS, BREEDERS AND HORSEMEN ONE THAT HASN'T BEEN HIT BEFORE OR AFTER 2001. THEY HAD A PLAN FOR THE REVENUE, AND NOBODY ELSE DID. THEY WERE THE SQUEAKY WHEEL, AND THEY GOT THE GREASE.

FINALLY, THE FUTURE – WHILE I DON'T THINK I'M WEARING ROSE-COLORED GLASSES, I THINK THE OUTLOOK FOR VLT'S AND TRACKS IS ROSY, BUT BEWARE THE ADAGE “THERE IS NO GATHERING THE ROSE WITHOUT BEING PRICKED BY THE THORNS.” TO ME, THE VLT'S AT TRACKS OUGHT TO BE A CAN'T MISS PROPOSITION. I SEE IT ALMOST LIKE THE SLOT MACHINES AT RIVERBOAT CASINOS IN THE STATE OF ILLINOIS. I DON'T SEE THE DEMOGRAPHICS OF ILLINOIS AS BEING MUCH DIFFERENT THAN THE STATE OF NEW YORK. IN ILLINOIS, THE AVERAGE WIN PER DAY PER MACHINE IS \$423 THUS FAR IN 2003. THE PER DIEM WIN AT THE CASINOS NEAR CHICAGO ARE EXTRAORDINARILY HIGH WITH ONE CASINO WINNING AN AVERAGE OF \$756 PER MACHINE PER DAY. IF THE STATE OF

NEW YORK HAS 15,000 MACHINES, AND THEY AVERAGE \$400 IN WIN PER DAY, BY MY CALCULATIONS, THAT MEANS \$1 AND A THIRD BILLION IN EDUCATIONAL FUNDS TO THE STATE.

HERE ARE THE THORNS. FIRST, THE STATE IS LARGELY RUNNING THE SHOW. AS A LONG TIME STATE BUREAUCRAT AND AN EVEN LONGER TIME BETTOR, I KNOW THAT THE STATE (AND THIS APPLIES TO ANY STATE NOT JUST NEW YORK STATE ) CAN FOUL UP A PLACE BET ON A MATCH RACE. THEY COULD MAKE THE PROCESS SO DIFFICULT THAT NOBODY CAN MAKE ANY MONEY. THEY CAN MAKE THE GAMES UNATTRACTIVE. THEY CAN MAKE IT AN ADMINISTRATIVE NIGHTMARE. BUT THERE ARE SUCCESSFUL PRECEDENTS THAT THE STATE CAN EMULATE, AND AS LONG AS THE STATE DOESN'T FOUL UP THINGS TO BADLY, IT SHOULD BE RESOLVED.

SECOND, WHAT IF THE FINANCIAL STRUCTURE STILL DOESN'T WORK? WHAT IF THE TRACKS STILL CAN'T MAKE MONEY BECAUSE OF THE LIMITED AMOUNT OF MONEY

RETURNED TO THE TRACKS? CONVERSELY, WHAT HAPPENS IF THE VLT'S WORK TOO WELL, AND THERE'S LOTS OF MONEY FOR THE TRACKS? WHAT IF THE STATE'S REVENUE NEEDS REMAIN GREAT? THE LIKELIHOOD IS THAT MEANS GREATER COMPETITION FOR THE TRACKS, AND THE COMPETITION MIGHT BE EASIER FOR THE STATE TO DEAL WITH THAN THE RACETRACKS THE TAVERN OWNERS MIGHT WANT VLT'S, AND IN SOME STATES – SUCH AS OREGON AND SOUTH DAKOTA - VLT'S EXIST ONLY AT BARS ANDS TAVERNS. THEY MIGHT CLAIM THAT THEIR QUICK DRAW REVENUES HAVE BEEN HURT BY VLT'S AND THAT THEY NEED VLT'S TO COMPETE.

DURING THE BUDGET DEBATE IN THE SPRING AND EVEN RECENTLY, THE GOVERNOR'S OFFICE HAS FLOATED A TRIAL BALLOON OF VLT'S AT OTB'S. IT MIGHT HAVE SOME POSITIVE REVENUE IMPLICATIONS FOR YOU PEOPLE IN THE COUNTIES, BUT IT COULD CLEARLY HURT THE RACETRACKS.

FINALLY, COMPETITION COULD COME FROM THE CASINO HOTEL CHAINS. WHAT'S TO PREVENT HARRAH'S OR DONALD

TRUMP FROM COMING TO THE STATE AND SAYING WE'LL PUT IN PLACE VLT'S IN NEW HOTELS IN THE CATSKILLS, IN MANHATTAN, OR THE ROCKAWAYS? THEY COULD ARGUE THAT WITH THEIR EXPERTISE THEY WOULD DO A BETTER JOB AT SERVING PATRONS WHILE DEMANDING LESS FROM THE STATE IN RETURN THAN THE OTB'S OR THE TRACKS. SINCE IT'S BEEN VIRTUALLY IMPOSSIBLE TO GET TIMELY FEDERAL ACTION ON CASINOS IN THE CATSKILLS, THIS MIGHT PROVE A SIMPLER WAY TO BRING CASINOS TO THE CATSKILLS. AND FOR THOSE OF YOU WHO THINK THAT CASINOS MEAN TABLE GAMES, YOU NEED TO LOOK AT THE NUMBERS. CASINOS NOW ARE MACHINE-DRIVEN. AGAIN LOOK AT ILLINOIS. ILLINOIS HAS NINE CASINOS. IN THOSE NINE CASINOS THERE ARE 223 TABLE GAMES AND 9,861 SLOT MACHINES. SLOT MACHINES OUTNUMBER TABLE GAMES BY MORE THAN 44-1. THE MACHINES ACCOUNT FOR MORE THAN 85% OF THE REVENUE IN ILLINOIS. CASINO GAMBLING IN AMERICA NOW MEANS SLOT MACHINES. SO I THINK DOWN THE ROAD THE RACETRACKS ARE LIKELY TO FACE THE THORN OF INCREASED COMPETITION FROM OTB'S, TAVERNS, AND CASINO HOTEL CHAINS.

THE THIRD THORN IS WHAT HAPPENS TO RACING WHEN VLT'S COME IN. HOW DO WE KEEP THE RACE IN THE RACINOS? LOOK AT SARATOGA HARNESS. THEY BET ABOUT \$30 MILLION PER YEAR AT THE TRACK IN TOTO. WHAT HAPPENS WHEN YOU BRING IN 1,000 VLT'S WITH A WIN OF \$250 PER DAY? YOUR REVENUE FOR THE YEAR FROM MACHINES IS \$91 MILLION. THE HANDLE ON YOUR MACHINES IS OVER \$900 MILLION. ALREADY, YOUR HANDLE ON MACHINES IS 30X YOUR HANDLE ON RACING. THE FACT IS THAT WHEN MACHINES COME IN, THEY PLAY THE BIG ROOM, RACING IS LEFT TO PLAY THE LOUNGE. SARATOGA HARNESS REPRESENTED BY SKIP HERE ON THIS PANEL HAS SHOWN A LEVEL OF COMMITMENT TO RACING. THEY'RE EXPANDING THE CIRCUMFERENCE OF THE TRACK, AND THEY'RE PROVIDING GREATER SERVICES TO THEIR BETTORS, BUT AT OTHER TRACKS WITHOUT THAT COMMITMENT, IT'S GOING TO BE HARD TO GET MANAGEMENT TO KEEP FOCUSING ON HORSE RACING WHEN THE MONEY IS IN THE MACHINES.

. FINALLY, THE ULTIMATE THORN. WHAT IF THE COURTS FIND VLT'S UNCONSTITUTIONAL? IF THE ONLY CONSTITUTIONAL FLAW IS THAT THE MONEY IS IMPROPERLY DISTRIBUTED TO BREEDERS AND HORSEMEN, THERE IS ENOUGH LEGISLATIVE INGENUITY TO WORK OUT A SYSTEM TO PROVIDE ADDITIONAL REVENUE FOR THESE GROUPS. IF VLT'S ARE SIMPLY UNCONSTITUTIONAL PER SE, THAT'S NOT A NEEDLE. THAT'S THE APOCALYPSE. YOU'RE GOING TO FIND FAR MORE DRIVE-IN THEATERS IN THE STATE OR EVEN MORE BUGGY WHIP MANUFACTURERS THAN HARNESS TRACKS. OUR HARNESS TRACKS WILL LIKELY BE MALLS. MY ROSE COLORED GLASSES WILL FALL FROM MY EYES, AND A VLT MIGHT JUST AS WELL BE A BACON, LETTUCE, AND TOMATO SANDWICH.

THANKS FOR LISTENING TO ME.

