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CURRENT ISSUES IN NEW YORK RACING

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CURRENT ISSUES IN NEW YORK STATE RACING

BENNETT LIEBMAN

WARREN ANDERSON BREAKFAST SERIES

FEBRUARY 24, 2004

PATTY, EVEN IF YOU WEREN'T MY BOSS, I'D BE THANKING YOU FOR THAT OVERLY KIND INTRODUCTION. I'VE NEVER WORKED FOR ANYONE QUITE LIKE PATTY. PATTY IS THE ONE PERSON YOU WORRY ABOUT WHEN YOU DON'T GET AN E-MAIL FROM HER IN THE MIDDLE OF THE NIGHT. SHE HAS MORE ENERGY AND DECENCY THAN ANYBODY YOU'LL EVER ENCOUNTER.

BEFORE I GET TOO DEEPLY INTO THIS LONG SPEECH, LET ME SAY THAT IN A BETTER WORLD, THERE WOULD BE NO NEED FOR A PROGRAM ON RACING AND WAGERING LAW. HORSE RACING AND WAGERING WOULD SIMPLY BE FRIVOLOUS ENTERTAINMENT. THEY WOULD NOT BE WORTHY OF ANY SIGNIFICANT SERIOUS STUDY. BUT THE FACT IS THAT RACING AND WAGERING BUSINESS HAVE BECOME BIG BUSINESS IN NEW YORK STATE AND IN THE ENTIRE COUNTRY. THEY

EMPLOY THOUSANDS OF PEOPLE AND HAVE THE POTENTIAL TO RAISE MILLIONS, IF NOT BILLIONS OF DOLLARS IN TAX REVENUES. AND THEY HAVE POTENTIALLY DANGEROUS SIDE EFFECTS, THE CHIEF PROBLEM OF WHICH IS COMPULSIVE GAMBLING. COMPULSIVE GAMBLING IS NOT THE TOPIC OF MY TALK. I'M TALKING HORSE RACING HERE TODAY. BUT THE FACT IS THAT WE TOO OFTEN GIVE COMPULSIVE GAMBLING LIP SERVICE AND NOT THE SERIOUS ATTENTION THAT IT MERITS. WE FIND IT NECESSARY TO MENTION IT IN A SPEECH LIKE THIS ONE BUT NOT SUFFICIENT ENOUGH TO SUPPORT WITH ADEQUATE FUNDING.

AND WHILE RACING AND WAGERING IS WORTHY OF SERIOUS STUDY, THERE ARE MANY REASONS NOT TO TAKE ME SERIOUSLY. FIRST OF ALL, I WAS A RACING COMMISSIONER FOR OVER A DECADE. AS MIKE HOBLOCK WELL KNOWS – AND MIKE WILL BE SPEAKING AT 9:00 AM BEFORE SENATOR LARKIN'S COMMITTEE OM ROOM 123 OF THE CAPITOL, IN THE COURSE OF RECORDED HUMAN HISTORY NOBODY HAS EVER TAKEN A RACING COMMISSIONER'S VIEWS

SERIOUSLY. SECONDLY, I WORK AS A TEACHER IN A LAW SCHOOL. EVERYBODY KNOWS THAT THOSE WHO CAN'T DO, TEACH. THIRD, BEFORE I BECAME A RACING COMMISSIONER, I BASICALLY DID LEGAL ETHICS WORK IN STATE GOVERNMENT. EVERYBODY SHOULD KNOW THAT IN LAW, THOSE WHO CAN'T PRACTICE, PRACTICE ETHICS. THUS, MY VIEWS ON RACING ARE THRICE DAMNED. THEY MAY BE IMMATERIAL, IMPRACTICAL, AND IMPOLITIC. MARK TWAIN SAID THAT "IT IS THE DIFFERENCE OF OPINIONS THAT MAKES HORSE RACES," AND TRUST ME, YOUR OPINION IS CERTAINLY AS GOOD AS MINE. AND IF YOU WANT MORE KNOWLEDGABLE OPINIONS ASK JERRY WEISS OR STEVE BOCHNAK IN THE AUDIENCE.

THAT SAID, YOU DON'T NEED AN ACADEMIC TYPE TO TELL YOU THAT HORSE RACING IS HURTING IN NEW YORK STATE. NEW YORK STATE USED TO BE THE CENTER OF ALL RACING. IT WAS – IN THE WORDS OF AN OLD ROOSEVELT RACEWAY COMMERCIAL – "WHERE IT ALL BEGAN, WHERE IT IS TODAY." THE PROBLEM IS THAT WHERE IT IS TODAY, IS ONLY SLIGHTLY BETTER THAN ROOSEVELT RACEWAY. IN NEW YORK, WE'VE

DONE MOST EVERYTHING POSSIBLE TO EXPAND THE PRODUCT AND ITS DISTRIBUTION. THE TYPES OF BETS HAVE BEEN EXPANDED. YOU CAN BET ON RACING FROM MOST EVERY SPOT ON THE GLOBE 24/7. YOU CAN BET ON ALL KINDS OF HORSE RACING. YOU CAN BET AND WATCH RACES AT HOME THROUGH ACCOUNT WAGERING, AT AN OTB, AT RESTAURANTS, AT RACETRACKS. WE'LL TAKE YOUR BETS ANYTIME, ANYWHERE. WHAT HAS THAT GOTTEN US? WHEN YOU ADJUST FOR INFLATION, HORSE RACING HANDLE IN NEW YORK IS ONE-THIRD OF WHERE IT WAS IN 1975, WHEN THERE WAS NO SIMULCASTING, NO TV, NO OUT-OF-STATE RACING, AND MOST OF THE OTB'S WERE IN THEIR INFANCY. JUST BASICALLY 9 LIVE FROM YOUR REGIONAL TRACK.

TO SAY THAT HARNESS RACING IS A DISASTER AREA IS PUTTING IT MILDLY. ATTENDANCE AT OUR HARNESS TRACKS IS ABOUT 5% OF WHAT IT WAS IN 1975. ATTENDANCE AT YONKERS RACEWAY WAS 25,000 PER NIGHT IN 1964. IN 2002, IT WAS 612. APART FROM SARATOGA, FLAT RACING IN NEW YORK STATE HAS ALSO DECLINED SIGNIFICANTLY. AQUEDUCT

AVERAGED 30,000 PER DAY IN 1964. THIS YEAR, IT'S DOING 5,000 ON WEEKENDS AND LESS THAN 3,000 ON WEEKDAYS. IF YOU FORGET SARATOGA, NEW YORK RACING HAS BEEN ON A LOSING STREAK FOR MORE THAN A THIRD OF A CENTURY.

AND WHAT HAS OUR LEGISLATIVE RESPONSE BEEN TO THESE PROBLEMS? LET'S FACE IT. MOST OF THE INTEREST ON RACING HAS COME FROM PEOPLE WHO HAVE TRACKS IN THEIR DISTRICTS. AND THEIR INTEREST IS NEITHER PARTISAN NOR IDEOLOGICAL. LEGISLATORS WHO ARE INTERESTED IN RACING BASICALLY WANT EVERYONE IN RACING TO BE – NOT SO MUCH HAPPY – AS CONTENT. AS A RESULT, THE DIRECTION TO THE STAFF IS TO CRAFT OR WORK ON PROPOSALS THAT EVERYONE IN RACING CAN EMBRACE. GET A CONSENSUS. WELL, YOU CAN ONLY FORGE A CONSENSUS IN THIS BUILDING AT THE END OF THE SESSION. SO AS THE END OF THE SESSION LOOMS, EVERYONE EVENTUALLY SIGNS OFF ON A SO-CALLED OMNIBUS BILL. THAT HAD LED TO THE INFAMOUS MAXIM, “THE LEGISLATIVE SESSION DOESN'T END UNTIL THE RACING BILL HAS PASSED.”

THE PROBLEM WITH THIS MAXIM IS THAT THIS CONSENSUS METHOD CANNOT BEGIN TO ADDRESS THE PROBLEMS OF NEW YORK RACING. ALL WE DO IS ADJUST THE SLICES OF THE PIE. WE'RE NOT GROWING THE PIE. WE'RE NOT BAKING A DIFFERENT PIE. AND NEW YORKERS ARE NO LONGER BUYING THIS PIE. WE'VE SUCCESSFULLY READOPTED A YOGI BERRAISM FOR RACING, "IF PEOPLE DON'T WANT TO COME TO THE RACETRACK, HOW ARE YOU GONNA STOP THEM?" WE'RE NOT GONNA STOP THEM THROUGH OUR RESORT TO OMNIBUS, CONSENSUS LEGISLATION. WE HAVE VIRTUALLY PROTECTED THE HORSE RACING INDUSTRY OUT OF BUSINESS.

THAT BRINGS US TO THE ISSUES AFFECTING RACING TODAY. FOR EASE OF MY SPEECH PREPARATION – RATHER THAN TRUE UNDERSTANDING - I'VE DIVIDED THE ISSUES INTO THREE DIFFERENT AREAS. 1. OMNIBUS, GENERIC ISSUES – WHICH AFFECT ALL OF AMERICAN RACING 2. ISSUES THAT ARE ENDEMIC OR NATIVE TO NEW YORK AND 3. THE EMERGING ISSUES IN RACING.

THE FIRST OF THE OMNIBUS ISSUES IS ONE THAT FROM MY POINT OF VIEW GETS EXCESSIVE ATTENTION. IT'S THE AGING OF RACING'S FAN BASE. NOW, I LOVE GOING TO THE RACETRACK BECAUSE IT'S THE ONLY PLACE OUTSIDE OF SOUTH FLORIDA WHERE I DON'T FEEL OLD. BUT IT'S CONVENTIONAL WISDOM THAT RACING NEEDS TO APPEAL TO THE YOUNG AND THAT RACING'S FANS ARE DYING OUT. I THINK THAT'S MISSING THE POINT. NOBODY'S WORRYING ABOUT THE AARP BECAUSE ITS MEMBERS ARE DYING OUT. THE POINT IS THAT RACING FANS TEND TO BE MATURE, AND THAT'S A GOOD THING. WITH BABY BOOMERS AGING, THE POPULATION OVER AGE 65 IS SUPPOSED TO DOUBLE BY 2030. BY THAT TIME, THERE WILL BE 69 MILLION AMERICANS OVER AGE 65. THEY ALSO WILL LIKELY HAVE MORE RESOURCES THAN THEIR ELDERLY PREDECESSORS. IN SHORT, DEMOGRAPHICAL CHANGES CREATING A GRAYING OF OUR POPULATION SHOULD END UP CREATING NEW FANS FOR HORSE RACING. THE ISSUE WILL BE GETTING THESE PEOPLE TO THE TRACK AND NOT TO THE SLOTS.

THE OTHER ISSUES WE CONTINUE TO FACE LARGELY INVOLVE THE INTEGRITY OF THE RACING PROCESS. I STARTED AT THE RACING AND WAGERING BOARD ABOUT 15 YEARS AGO. IN THE EARLY 1980'S, THERE WAS A TRAINER, SINCE DECEASED, NAMED OSCAR BARRERA WHO DOMINATED THE CLAIMING GAME AT THE NYRA TRACKS. HE HAD THE ABILITY TO TURN AVERAGE HORSES INTO STARS ALMOST OVERNIGHT. I FIGURED I'D AT LEAST LEARN WHAT OSCAR WAS USING TO IMPROVE HIS HORSES. SO I SPOKE WITH GEORGE MAYLIN WHO DIRECTS CORNELL'S PROGRAM ON DRUG TESTING, AND GEORGE TOLD ME WE STILL DON'T KNOW WHAT HE WAS USING. AND THAT'S ONE OF THE PROBLEMS WITH RACING. WE DON'T KNOW WHAT THEY'RE USING. IT'S BECOME LIKE TRACK AND FIELD WITH LEGALIZED WAGERING. WHO'S GOT THE JUICE? WE'VE CREATED A CLASS OF SUPER-TRAINERS WHO ARE WINNING RACES AT EXTRAORDINARILY HIGH PERCENTAGE RATES, AND WE DON'T KNOW WHAT THEY'RE USING. RACING'S AUTHORITIES SOMETIMES LOOKS LIKE THE WASHINGTON GENERALS PLAYING AGAINST THE HARLEM GLOBETROTTERS. WE ALWAYS SEEM TO BE TWO STEPS BEHIND THE CHEATERS. ON

TOP OF RACING'S INABILITY TO CATCH THE CHEATERS, WE HAVE AN INABILITY TO AGREE TO UNIFORM NATIONAL RULES ON DRUGS. PENALTIES FOR DRUG VIOLATIONS DIFFER FROM STATE TO STATE, AND THE CAPABILITIES OF EACH STATE'S TESTING LABORATORY DIFFER MARKEDLY. ALL THIS MIGHT NOT HAVE MATTERED MUCH WHEN RACING WAS THE ONLY LEGAL GAMBLING GAME IN TOWN, BUT NOW WHEN PEOPLE CAN PLAY A LEGAL SLOT MACHINE THAT THEY KNOW ISN'T CHEATING, THE DRUG ISSUE – AS WELL AS ALL INTEGRITY ISSUES - HAVE TO AFFECT THE FUTURE SUCCESS OF HORSE RACING.

ITS NOT JUST DRUG RULES IN RACING THAT ARE IN DISARRAY. ALMOST ALL THE RULES IN RACING THROUGHOUT THIS COUNTRY ARE NOT UNIFORM. THE RULES GOVERNING WHAT A FOUL IS IN A HORSE RACE AND HOW TO PENALIZE A HORSE THAT COMMITS A FOUL ARE NOT AT ALL THE SAME IN RACING. NOW THAT I CAN DRIVE DOWN THE STREET TO THE OTB TELETHEATER AND BET ON MOST EVERY RACE IN AMERICA, I KNOW THAT EACH GROUP OF STEWARDS WATCHING THE RACES WILL BE APPLYING ITS OWN SET

OF FOUL RULES. THAT JUST DOESN'T MAKE ANY SENSE. THE NEED FOR UNIFORMITY IN APPLYING THE RULES OF THE RACE IS JUST AS GREAT AS IN THE DRUG AREA, BUT WE HAVEN'T COME CLOSE TO RESOLVING THIS ISSUE.

THE UNIFORMITY ISSUE ALSO APPLIES IN THE AREA OF RECIPROCITY. IT USED TO BE THAT A LICENSEE WHO WAS BANNED BY ONE STATE WAS AUTOMATICALLY BANNED EVERYWHERE ELSE. THAT'S NO LONGER THE CASE. THERE'S A WHOLE CAST OF CHARACTERS WHO CAN'T GET LICENSED IN NEW YORK STATE WHO NOW PLY THEIR TRADE IN OTHER STATES. I COULD SAY A LOT MORE ON THIS SUBJECT, BUT I'D DIRECT YOU TO AN EXCELLENT SPEECH ON THIS TOPIC BY COMMISSIONER CHERYL BULEY DELIVERED LAST YEAR AT THE ARIZONA RACE TRACK INDUSTRY'S SYMPOSIUM ON RACING. YOU CAN GET IT AT THE RACETRACK INDUSTRY'S WEBSITE.

MOREOVER, WE HAVE CONTINUED TOTE SECURITY PROBLEMS. IN THE WAKE OF THE PICK SIX SCANDAL, THERE ARE STILL ISSUES OVER WHETHER SOME

PEOPLE HAVE UNDUE ACCESS TO TOTE INFORMATION, AND THERE IS STILL THE PERCEPTION THAT WAGERING IS BEING CONDUCTED AFTER THE RACE HAS STARTED. HERE'S WHERE NEW YORK STATE DOES HAVE AN ADVANTAGE. NEW YORK HAS TOM CASAREGOLA, WHO IS THE DIRECTOR OF AUDITS AND INVESTIGATIONS AT THE RACING AND WAGERING BOARD. TOM SOLVED THE PICK SIX CASE. HE DID MUCH OF THE INVESTIGATIONS AND AUDIT ON DAVIS ETKIN. HE PURSUED AND DEVELOPED THE ISSUE OF TELLER BETTING AT NYRA. HE FOUND THAT CATSKILL OTB HAD SHORTED NYRA MILLIONS AND THAT IT HAD SHORTED ITS COUNTIES ON PROFITS. HE'S BEHIND THE NUMEROUS UNFAVORABLE AUDITS AND INVESTIGATIONS AT VERNON DOWNS. HIS REPORT FROM A YEAR AGO ON NYRA BELIED THE NOTION THAT NYRA HAD IMPROVED ITS MONEY HANDLING PRACTICES. NO OTHER RACING COMMISSION HAS ANY AUDITING CAPACITY LIKE TOM'S. HE'S PROBABLY THE MOST IMPORTANT PERSON IN NEW YORK RACING THAT NOBODY HAS EVER HEARD OF.

FINALLY BESIDES THE TOTE SECURITY ISSUES, THERE'S THE BASIC STRUCTURE OF WAGERING ON RACING. IT'S NOT THE STOCK MARKET. THERE'S NO SEC. INSTEAD, IT'S IMCLONE AND PETE ROSE EVERYDAY. PARTICIPANTS, LIKE TRADITIONAL ALBANY DEMOCRATS, BET EARLY, LATE AND OFTEN. EVERYBODY TRADES ON INSIDER INFORMATION. WE HAVE OUR MARTHA STEWARTS IN EVERY RACE. AND WITH PURSES, ESPECIALLY IN PRE-RACINO HARNESS RACING AT MEDIEVAL LEVELS, IT'S HARD TO MAKE A LIVING ON PURSE MONEY ALONE. THE TEMPTATION TO NOT TRY IN SOME RACES, TO HELP YOUR PALS IN OTHER, AND TO MANIPULATE THE OUTCOMES OF ADDITIONAL RACES IS ESPECIALLY HIGH. NOBODY HAS DEVELOPED A CSI SQUAD OR EVEN CSI TECHNIQUES TO COMBAT THESE MANIPULATED RACES. AGAIN WHILE THIS GENERAL INTEGRITY ISSUE MAY NOT HAVE HURT RACING WHEN IT HELD A MONOPOLY ON LEGAL GAMBLING, IT'S A KILLER WHEN PEOPLE CAN CHOOSE TOTALLY ABOVE BOARD OPTIONS THE LOTTERY OR A SLOT MACHINE.

NEW YORK SPECIFIC ISSUES

SO EVERYBODY INCLUDING NEW YORK HAS PROBLEMS WITH DRUGS, ARGUABLY AN AGING FAN BASE, RULES OF RACING, RECIPROCITY, AND BASIC INTEGRITY, NEW YORK ALONE HAS MORE STATE SPECIFIC ISSUES THAN MOST ANY OTHER JURISDICTION. WERE I TIM RUSSERT AND BE ASKED ABOUT NEW YORK'S RACING'S ISSUES. I WOULD START BY SAYING WE HAVE A TRIFECTA OF NYRA, NYRA, AND NYRA.

I DON'T KNOW WHAT TO ADD TO THE PUBLIC RECORD ON THE TAX CASE. IT'S BEEN PRETTY MUCH DEVELOPED.

I'M GLAD THAT NYRA SURVIVED THE TAX PROBE. I REALLY DON'T THINK THAT WHAT TRANSPIRED ON THE TAX SIDE IN THE LATE 1990'S WAS IN ANY WAY SUBSTANTIAL ENOUGH TO TERMINATE NYRA'S EXISTENCE. SURE NYRA SHOULD NOT HAVE LET ITS TELLERS WAGER IN VIOLATION OF THE RACING BOARD'S RULES, BUT TELLER BETTING HAS BEEN A FACT OF LIFE. IT WAS TERRIBLE CASH MANAGEMENT POLICY TO LET THE TELLERS GO SHORT, AND IT WAS ALMOST INCOMPREHENSIBLE AND TOTALLY ILLEGAL WHY MANAGEMENT WOULD GIVE A TAX BREAK TO

TELLERS WHO WENT SHORT. BUT ENDING NYRA'S FRANCHISE AND PUNISHING NYRA'S CURRENT MANAGEMENT LARGELY FOR CONTINUING A POLICY THAT WAS INITIATED TWO DECADES AGO SURELY SEEMED TO BE OVERKILL.

THE PROBLEM I HAVE WITH NYRA IS THAT THERE ARE SO MANY MORE QUESTIONS THAT NEED TO BE ASKED AND ANSWERED. WHERE WERE NYRA'S TRUSTEES, ESPECIALLY THE PUBLICLY APPOINTED TRUSTEES DURING THE INVESTIGATION? WHAT WAS NYRA'S PUBLIC AUDITOR DOING WHEN THE RACING BOARD STARTED INVESTIGATING IN 1998? WHY DID THE MID-LEVEL NYRA BUREAUCRATS WHO IMPLEMENTED NYRA'S POLICY GET PROSECUTED WHILE THE TOP BRASS ARE ONLY IDENTIFIED IN THE INDICTMENT AS JOHN DOES? IS THIS TRICKLE-UP CRIMINAL PROSECUTION? SHOULD THE PUBLIC BE ENTITLED TO REVIEW THE SECURITY FIRM SAFIR-ROSETTI'S EVALUATIONS OF NYRA OPERATIONS? WERE THE CONTRACTS WITH SAFIRROSETTI AND MGM MIRAGE'S VLT CONTRACT VALID UNDER THE LAW THAT NYRA IS SUPPOSED TO COMPETITIVELY BID ALL CONTRACTS IN

EXCESS OF \$250,000? NYRA IS SUPPOSED TO BE COMMITTED TO TRANSPARENCY, BUT FOR THE SHORT TERM, THEY'VE LARGELY BEEN QUIET. THANKFULLY, WE HAVE BARRY SCHWARTZ WHO REFRESHINGLY IS UNABLE TO SIGN ON TO HIS OWN CORPORATION'S COMMUNICATIONS POLICY, AND EVERY FEW WEEKS OR SO TELLS TOM PRECIOUS OF THE BUFFALO NEWS – WHILE STRINGING FOR THE TRADE PUBLICATION THE BLOOD-HORSE – WHAT'S GOING ON AT NYRA. TRANSPARENCY AT NYRA BASICALLY EMANATES THESE DAYS FROM TOM'S "FRIDAYS WITH BARRY" ARTICLES.

I'VE ALWAYS THOUGHT THAT OTHER ISSUES AT NYRA WERE BIGGER THAN TELLER BETTING AND TAXES. I THOUGHT THAT THE 1996 INVESTIGATION INTO NYRA'S CONTRACTING PRACTICES WAS MORE SIGNIFICANT, AND I'VE NEVER SEEN A SATISFACTORY REVIEW OF THAT MATTER. I STILL THINK THAT NYRA'S INVASION INTO HORSEMEN'S FUNDS WAS MORE SIGNIFICANT THAN THE TAX ISSUE, AND WE STILL DON'T HAVE ANY SORT OF DEFINITE FIGURE ON HOW MUCH MONEY WAS INVOLVED AND HOW THIS AFFECTED NYRA'S BOTTOM

LINE. AGAIN, THE ISSUES ARE THE SAME. WHAT DID THE TRUSTEES KNOW? WERE THE TRUSTEES INFORMED? WHY WASN'T THIS PICKED UP NYRA'S AUDITOR OR BY THE STATE COMPTROLLER? I'VE WRITTEN THIS BEFORE, BUT I STILL THINK THAT IN ADDITION TO THE FEDERAL MONITOR SOMEBODY NEEDS TO FULLY INVESTIGATE AND REPORT ON NYRA'S WORKINGS AND CURRENT FISCAL CONDITION.

BUT REGARDLESS OF WHAT TRANSPARENCY YOU GET FROM NYRA, SOMEONE WILL NEED TO GIVE NYRA FINANCIAL VIBRANCY. IN THEORY, NYRA WAS CREATED FIVE DECADES AGO TO PROVIDE NEW YORK RACING WITH THE BEST OF ALL POSSIBLE WORLDS. YOU GOT PROFESSIONAL, PRIVATE MANAGEMENT, A STEADY REVENUE STREAM FOR THE STATE, AND A PRESTIGIOUS BOARD OF TRUSTEES WHO WOULD MAKE DECISIONS SOLELY IN THE BEST OF INTEREST OF RACING. WHILE THERE WERE OCCASIONS WHERE YOU HAD A SELF-SERVING BUREAUCRACY WHICH PERPETUATED ITSELF IN THE ABSENCE OF TRUSTEE INVOLVEMENT, THAT REALLY HASN'T BEEN NYRA'S BASIC PROBLEM. THE PROBLEM IS THAT THE

FINANCIALS OF NYRA HAVE NEVER WORKED WELL. NYRA HAS CONTRIBUTED ALL ITS PROFITS TO THE STATE, AND WHEN IT'S HAD LOSSES, THERE'S LITTLE MARGIN FOR ERROR. NYRA CAN'T DO BASIC CAPITAL IMPROVEMENTS, AND THE STATE PAYS THE COSTS OF NYRA'S LOSSES. IN THE 1950'S, 1960'S AND 1970'S, THE STATE MADE UP FOR NYRA'S LOSSES BY INCREASING TAKEOUT AND DECREASING THE STATE'S PARI-MUTUEL TAXES. THE 1983 RESTRUCTURING BY LIMITING NYRA'S INTEREST PAYMENTS TO THE CAPITAL INVESTMENT FUND KEPT NYRA IN REASONABLY DECENT SHAPE FOR THE NEXT DECADE. BUT THE LAST DECADE HAS BROUGHT GREATER PROBLEMS WITH NYRA FORGOING PAYMENTS TO THE CAPITAL INVESTMENT FUND AND THE STATE CONTINUING TO LOWER NYRA'S TAXES. IN ADDITION TO THE STATE, THE HORSEMEN ARE STARTING TO PAY THE COST FOR NYRA'S FISCAL WOES WITH NYRA MOVING ON THE HORSEMEN'S FUNDS. AGAIN REGARDLESS OF TRANSPARENCY, THE STATE MUST FIND A WAY TO MAKE NYRA FINANCIALLY VIABLE.

RACINOS - IF RACINOS ARE FOUND UNCONSTITUTIONAL, MY GUESS IS THAT A FEW OF THE HARNESS TRACKS WILL SIMPLY PACK IT IN. THE TRACKS AREN'T FINANCIALLY VIABLE. SOME OF THEM – SUCH AS YONKERS – SIT ON COMMERCIALY VALUABLE PROPERTY, AND IT CAN'T BE WORTH IT TO THE TRACK OWNERS TO AWAIT THE UNCERTAIN OUTCOME OF A CONSTITUTIONAL AMENDMENT TO AUTHORIZE RACINOS. IF THERE ARE NO PROSPECTS FOR RACINOS, THERE ARE ALMOST NO PROSPECTS FOR HARNESS RACING IN NEW YORK.

IF RACINOS ARE SUCCESSFUL, WE'LL SEE AN OPPOSITE EFFECT – MAJOR FINANCIAL PROBLEMS AT THE OTB'S. I DON'T HAVE THE STATS, BUT IT'S CLEAR THAT 2003 WAS A LOUSY YEAR FOR THE STATE'S OTB'S. THEY'RE PAYING FAR MORE IN FEES TO STATES, AND THEIR HANDLE HAS DECREASED. THE GOVERNOR'S BUDGET ESTIMATES A 10% DECLINE IN WAGERING AT OTB IN THE NEXT FISCAL YEAR. SOME OTB'S ARE ALREADY IN THE RED. WITH ADDED GAMBLING COMPETITION AND WITH ALMOST NO PROSPECT OF FURTHER GROWTH, THEY ARE IN DANGER OF POSTING SIGNIFICANT

FUTURE LOSSES. ARGUABLY, UNDER THE GOVERNOR'S BUDGET, THEY CAN BID FOR THE EIGHT NEW PROPOSED FREESTANDING VLT FRANCHISES. BUT JUST IMAGINE THE PROSPECTS OF DON GROTH AT CATSKILL OTB BIDDING FOR A VLT EMPORIUM IN ULSTER OR DUTCHESS COUNTIES AGAINST CAESAR'S, MGM, OR HARRAH'S. WHO'S GOING TO WIN THAT AUCTION? UNLESS THE OTB'S ARE GIVEN SOME PREFERENCE IN THIS VLT AUCTION, THEY MAY BE IN DEEP TROUBLE.

THEN, WE HAVE VERNON DOWNS. I'VE BEGUN TO THINK THAT THERE HAS TO BE SOME CURSE ON THIS TRACK. BEFORE THE FELON PATRICK BENNETT BOUGHT INTO THIS TRACK A DECADE AGO, THEY COMPLIED WITH EVERYTHING. IT WAS THE EASIEST TRACK IN THE STATE TO REGULATE. SINCE THEN, EVERY PERMUTATION OF FINANCIAL SHARPSHOOTER HAS DESCENDED ON THAT TRACK. NOW, THEY'VE GOT SHAWN SCOTT, THE PIED PIPER OF RACINOS – WHO HAS SUCCESSFULLY WON REFERENDA ON RACINOS IN LOUISIANA AND MAINE. IS HE THE PROFESSOR HAROLD HILL OF RACING OR A WARREN BUFFET, THE PURCHASER OF DISTRESSED AND UNDERVALUED

GAMBLING PROPERTIES? THE RACING BOARD STAFF HAS RECOMMENDED DENIAL, BUT YOU CAN ALREADY EXPECT A HEATED POLITICALLY-CHARGED BATTLE OVER VERNON. THE FIGHT, HOWEVER, TRULY ISN'T WHETHER VERNON GETS LICENSED. IF RACINOS ARE ECONOMICALLY VIABLE, VERNON WILL EVENTUALLY GET LICENSED. REALISTICALLY, IT'S OVER SHAWN SCOTT'S EVENTUAL SALES PRICES. IF HE CAN GET LICENSED, VERNON WILL SELL FOR FAR MORE THAN IF HE CAN'T GET LICENSED.

THERE ARE A FEW QUICK NEW YORK ISSUES THAT DESERVE SOME MENTION. GEORGE MAYLIN AT CORNELL IS THE TOP PERSON IN THE DRUG TESTING FIELD. NEXT WEEK HARNESS TRACKS OF AMERICA WILL PRESENT HIM WITH THEIR HIGHEST HONOR, THE MESSENGER AWARD. GEORGE HAS MADE NEW YORK STATE ABSOLUTELY PREEMINENT IN DRUG TESTING. HOWEVER, HE'S BEEN ON THE JOB FOR 33 YEARS, AND HE'S NOT GOING TO DO THIS FOREVER. THERE WILL BE NO REPLACING HIM IN THIS STATE.

THE WHOLE RACING LAW REALLY NEEDS TO BE REVIEWED AND MADE COMPREHENSIBLE. SINCE IT'S BEEN THE PRODUCT OF DECADES OF OMNIBUS LAWS, IT DOESN'T HOLD TOGETHER WELL AND IS OFTEN IMPOSSIBLE TO DECIPHER. TRY READING SECTIONS 527 OR 1017 OF THAT LAW IF YOU HAVE A FEW SPARE MONTHS OFF. OTHER STATES HAVE CONFUSING RACING LAWS, BUT NEW YORK TOPS THEM ALL BY ADDING A HOST OF SUNSET PROVISIONS TO THE MIX.

FINALLY, HERE'S MY PLEA TO CONSOLIDATE ALL AUTHORITY OVER NEW YORK RACING IN THE RACING AND WAGERING BOARD. THE BOARD WAS CREATED TO BE THE POINT ORGANIZATION OVER RACING. IT ISN'T. IT HAS MINIMAL POWER OVER OTB'S. IT SHOULD TAKE OVER THE ROLE OF THE CAPITAL INVESTMENT FUND. THERE IS NO REASON WHY THE HARNESS FUND AND THE THOROUGHBRED FUND CAN'T OPERATE AS BUREAUS OF THE RACING BOARD. THERE'S NO NEED FOR THE SEPARATE RACING COMMISSIONS. LET'S HAVE THE STATE SPEAK WITH ONE VOICE ON RACING.

EMERGING ISSUES

THE EMERGING ISSUES IN RACING LARGELY INVOLVE THE FACT THAT HORSE RACING IS NO LONGER A TIGHTLY CONTROLLED INTRA-STATE MONOPOLY BUSINESS. MARKETPLACE COMPETITION IS COMING TO EVERY FACET OF HORSE RACING. AS A NICE SEGUE TO THE EMERGING ISSUE PART OF THIS SPEECH, THERE IS ONE EMERGING ISSUE THAT THIS BUILDING CAN TAKE CREDIT FOR. WE ARE THE BIRTHPLACE OF REBATES. WE CREATED THE REBATE INDUSTRY IN 1995 BY RAISING THE TAKEOUT ON NYRA RACES. THAT DROVE A NUMBER OF MAJOR PLAYERS TO NEVADA WHERE THE CASINO RACEBOOKS MORE THAN MADE UP FOR THE TAKEOUT INCREASE BY OFFERING LARGE REBATES TO THESE MAJOR PLAYERS. IN THE LATE 1990'S, NEVADA BANNED REBATES, AND THESE PLAYERS AND MANY OTHERS MOVED THEIR BETS TO A SLEW OF DIFFERENT OUTFITS IN THIS COUNTRY AND IN THE CARIBBEAN. IT'S BEEN ESTIMATED THAT REBATE PLAYERS ARE NOW WAGERING \$1.5 BILLION A YEAR, OR CLOSE TO 10% OF THE NATION'S TOTAL HANDLE. A DECADE AGO NEARLY EVERY MAJOR BETTOR BET ON TRACK. NOW

MOST EVERY MAJOR BETTOR USES A REBATE SHOP, AND MANY PLAYERS ARE GETTING IN EXCESS OF 10% IN REBATES. THAT'S A HELLUVA LOT BETTER THAN THE DISCOVER CARD. REBATES HAVE CLEARLY INCREASED HANDLE, BUT THERE ARE DEBATES THROUGHOUT RACING OVER WHETHER THEY'VE ADEQUATELY CONTRIBUTED TO PURSES. ALSO WE HAVE NOT AUTHORIZED REBATES IN NEW YORK, AND IT MAY BE TIME TO LET THE TRACKS GET IN THE GAME TO COMPETE IN THE REBATE BIZ. IT'S INCREASINGLY DIFFICULT TO JUSTIFY THIS DENIAL SINCE THE VLT PROGRAM UNDER THE NAME OF "COMPLIMENTARY INCENTIVE PROGRAMS" PROVIDES FOR A REBATE TO PLAYERS. THE ONE THING PEOPLE SHOULD RECOGNIZE ON REBATES IS THAT THE GENIE HAS LEFT THE BOTTLE. REBATES ARE HERE TO STAY.

NOT FAR BEHIND REBATES IN EMERGING ISSUES IS THE POTENTIAL FOR EXCHANGE BETTING. IN EXCHANGE BETTING WHICH IS HANDLED THROUGH THE INTERNET, BETTORS BET DIRECTLY AGAINST OTHER BETTORS. THE EXCHANGE RECEIVES A FEE OFTEN ABOUT 5% FOR ARRANGING AND PROCESSING THE BET. SO IF I WANT

TO BET ON FUNNY CIDE NEXT SUNDAY IN NEW ORLEANS, I CAN POST THAT I'M BETTING \$100 TO WIN ON FUNNY CIDE AT 4 -1 ODDS. ANTI-FUNNY CIDE PLAYERS THEN CAN TAKE MY BET. YOU SET YOUR OWN ODDS. IT'S THE E-BAY OF WAGERING, AND BETFAIR IN ENGLAND HAS BECOME VERY SUCCESSFUL AND HAS TAKEN A LOT OF PLAY AWAY FROM TRADITIONAL BETTING VENUES. IT'S ALMOST INEVITABLE THAT A JURISDICTION IN THIS COUNTRY WILL ENACT AN EXCHANGE WAGERING LAW. NORTH DAKOTA NEARLY PASSED A BETTING EXCHANGE BILL LAST YEAR. ONCE THIS HAPPENS, THE FUR WILL FLY. MORE TRADITIONAL RACING ORGANIZATIONS WILL TRY TO FIGHT BACK AGAINST THIS MODEL WHILE EXCHANGE BETTING PROPONENTS WILL ARGUE THAT ELECTRONIC EXCHANGE BETTING WILL BECOME DE FACTO LEGAL IN MOST STATES UNDER THE INTERSTATE HORSE RACING ACT.

YET ANOTHER EMERGING TREND THAT WILL LIKELY HAVE A NEGATIVE EFFECT ON THE OTB'S IS THE LIKELIHOOD THAT THE MAJOR NATIONAL ACCOUNT WAGERING ORGANIZATIONS – SUCH AS YOUTBET, AND

MAGNA'S XPRESSBET AND TVG, THE TELEVISION GAMES NETWORK, WILL WORK THEIR WAY INTO NEW YORK. CURRENT NEW YORK LAW WOULD SEEM TO PROHIBIT OUT-OF-STATE ACCOUNT WAGERING ORGANIZATIONS, BUT THAT LAW IS LIKELY UNCONSTITUTIONAL UNDER THE DORMANT COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION. ADDITIONALLY, A GOOD CASE CAN BE MADE THAT NEW YORK'S RESTRICTIONS ON BROADCASTING HORSE RACES ARE SIMILARLY UNCONSTITUTIONAL. THE TIME WILL SOON COME WHEN THERE WILL BE INCREASING COMPETITION FOR PHONE WAGERING ACCOUNTS IN NEW YORK STATE. THAT'S AN ESPECIALLY NEGATIVE TREND FOR AN ORGANIZATION LIKE NEW YORK CITY OTB WHICH PROBABLY DOES MORE THAN A QUARTER OF ITS BUSINESS ON PHONE BETS.

AKIN TO THIS IS THE NATIONAL MOVE TOWARDS GREATER COMPETITION IS THE INCREASING OLIGARCHIC NATURE OF RACING. WE NOW HAVE TWO NATIONAL ORGANIZATIONS, CHURCHILL DOWNS AND MAGNA ENTERTAINMENT CONTROLLING MUCH OF THE NATION'S RACETRACK BUSINESS. MAGNA OWNS 13 US

TRACKS, AN ACCOUNT WAGERING SERVICE, A TELEVISION NETWORK AND PART OF A TOTE COMPANY. CHURCHILL HAS SIX TRACKS AND A VARIETY OF OTB'S. 20% OF THE INTERSTATE SIMULCAST MARKET IS BET ON CHURCHILL DOWNS' PRODUCTS. THEY'RE NOW BEGINNING TO LEVERAGE THEIR POSITIONS. MAGNA IS DENYING ITS SIGNAL TO A VARIETY OF ACCOUNT WAGERING SERVICES IN AN EFFORT TO BOOST ITS OWN ACCOUNT WAGERING SYSTEM. SO FAR, THE SHORT TERM RESULTS HAVEN'T BEEN ENCOURAGING FOR MAGNA. WITH FEWER SIMULCASTING OUTLETS, THE HANDLE AT THEIR SIGNATURE TRACKS HAS FALLEN. CHURCHILL HAS BEEN TAKING A PAGE OUT OF HARRAH'S PLAYBOOK. THEY'RE WORKING ON BRAND DEVELOPMENT AND USING AN OVERALL PLAYER'S AFFINITY CARD TO PROVIDE ADDED VALUE FOR THEIR BETTORS. THEY'RE ALSO TALKING ABOUT SETTING UP THEIR OWN ACCOUNT WAGERING SERVICE. IN SHORT, ALL THIS ACTIVITY BY MAGNA AND CHURCHILL MEANS MORE COMPETITION AND PERHAPS HIGHER PRICES FOR RACING OPERATORS IN NEW YORK.

FINALLY RACINOS. FIRST OF ALL, RACINOS ARE GOOD FOR TRACK OWNERS, HORSEMEN, AND BREEDERS. THEY DON'T NECESSARILY MAKE MORE FANS FOR RACING. IF ANY OF YOU HAVE EVER GONE TO A RACINO LIKE DOVER DOWNS OR MOUNTAINEER PARK, YOU KNOW THIS. YOU CAN BASICALLY COUNT THE LIVE RACING AUDIENCE ON YOUR FINGERS. WHEN RACINOS COME IN, THE SLOT MACHINES PLAY THE BIG ROOM. RACING PLAYS THE LOUNGE. AND WITH THAT, ONE OF THE TRENDS OUGHT TO BE INEVITABLE. THE CASINO CORPORATIONS WILL BE INCREASINGLY MOVING INTO THE RACINO FIELD. WE SEE THIS AS MGM MIRAGE PURCHASES WEMBLEY PLC WHICH RUNS A RACINO IN RHODE ISLAND AND A NUMBER OF TRACKS IN COLORADO. BOYD GAMING IS RUNNING DELTA DOWNS IN LOUISIANA. HARRAH'S OPERATES THE LOUISIANA DOWNS RACINO IN SHREVEPORT. THERE WILL SOON BE LEASES OFFERED ON THE MAJOR TRACKS IN NEW JERSEY, AND IT WILL BE INTERESTING TO SEE NOT WHETHER - BUT HOW MANY - CASINO OPERATORS ARE INTERESTED.

THIS ONLY MAKES SENSE WHEN YOU CONSIDER THE CASINO INDUSTRY. CHURCHILL AND MAGNA ARE THE GIANTS OF RACING. YET, THEIR COMBINED GROSS REVENUES ARE LESS THAN PENN NATIONAL – WHICH WE IN RACING THINK OF AS AN ORGANIZATION RUNNING 3 MINOR LEAGUE RACETRACKS - AND WHICH NOW OPERATES A STRING OF CASINOS. PENN NATIONAL ISN'T IN ANY WAY A CASINO GIANT, BUT IT'S FAR LARGER THAN ANYTHING IN RACING. IF THE OPPORTUNITY FOR REVENUE IS THERE, YOU CAN EXPECT TO SEE MORE CASINO CORPORATIONS IN THE RACINO GAME. MAYBE THESE CASINO GIANTS ARE BETTER RUN THAN OUR MOM AND POP RACETRACKS, BUT YOU DON'T SEE THESE FIRMS ALLOCATING MUCH SPACE TO RACE BOOKS IN THEIR CASINOS. INEVITABLY YOU WILL SEE RACING IN THESE OPERATIONS FADE FURTHER INTO THE LOUNGE AREA.

I DON'T WANT TO SEEM TOO PESIMISTIC. WE INVOLVED IN RACING OFTEN WONDER WHETHER MUCH LIKE THE STAGE MOTHER IN THE MUSICAL GYPSY WHEN IS IT OUR TURN? WE'VE SEEN PRO WRESTLING, NASCAR, THE

X GAMES, AND NOW EVEN POKER BECOME FASHIONABLE AND POPULAR. WHEN IS IT OUR TURN?

MY ANSWER IS SOONER THAN WE MIGHT THINK. MOST OF THE EMERGING TRENDS AREN'T NECESSARILY BAD FOR RACING. THEY'RE ONLY BAD FOR MAINTAINING THE STATUS QUO. THERE ARE A NUMBER OF TRENDS THAT ARE IN THE LONG RUN FAVORABLE TO RACING. SEABISCUIT AND FUNNY CIDE HAVE SHOWN THAT RACING CAN COMPETE FOR NATIONWIDE PUBLICITY. COMPETITION THROUGH REBATES IS BRINGING DOWN THE COST OF WAGERING WHICH CAN ONLY INCREASE INTEREST IN RACING. YOU'RE GOING TO BET MORE IF YOU ACTUALLY THINK YOU CAN WIN AT THE GAME. INCREASED BROADCASTING AND MORE COMPETITIVE ACCOUNT WAGERING SERVICES WILL HELP RACING EXPLOIT ITS UNIQUE NICHE AS THE ONLY SPORT/GAMBLING VENUE WHERE YOU CAN LEGALLY BET FROM YOUR HOME. MOBILE PHONE WAGERING WILL HELP RACING. RACINOS WILL IMPROVE THE FINANCIAL PROSPECTS OF HORSEMEN AND BREEDERS. BABY BOOMER DEMOGRAPHICS ARE SET UP TO HELP SUPPORT RACING. THERE IS THE POTENTIAL FOR A

LARGE INTERNATIONAL MARKET FOR AMERICAN RACING. IT MAY BE THAT NOT ALL OF RACING'S CURRENT PLAYERS WILL CARRY ON, BUT UNLESS WE IN THIS BUILDING FOUL THINGS UP TOO BADLY, RACING ITSELF IN NEW YORK SHOULD NOT ONLY SURVIVE BUT SHOULD THRIVE. IT WILL BE RACING'S TURN. EVERYTHING WILL COME UP ROSES. THANK YOU!