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THE STATE OF RACING REGULATION

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Bennett Liebman, Esq.
Coordinator/Staff Attorney
Racing and Gaming Law Program

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STATE OF RACING
RACING REGULATION

Bennett Liebman
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AFTER THE TWO PRIOR SPEECHES, I HAVE BOTH AN EASY AND A HARD JOB. ONE PART IS HARD. I'M NOT GOING TO BE EITHER AS ENTERTAINING OR AS INFORMATIVE AS THE PREVIOUS SPEAKERS. THE SECOND PART IS EASY. THAT'S MY TOPIC - THE STATE OF RACING REGULATION, AND THE FACT IS THAT THE STATE OF RACING REGULATION IS LOUSY.

IF I WERE SMART, I'D JUST SIT DOWN AND LEAVE IT AT THAT, BUT THE FACT IS THAT WE DO A LOUSY JOB OF REGULATING RACING IN THE UNITED STATES, AND WE HAVE PROBABLY ALWAYS DONE A LOUSY JOB. I'M NOT SAYING ANYTHING BAD ABOUT RACING'S REGULATORS. IN FACT, AT LEAST IN NEW YORK STATE, I DOUBT THAT THE MEMBERS AND STAFF OF THE RACING BOARD HAVE EVER BEEN BETTER. AT THE NATIONAL LEVEL WHERE WE HAVE TWO UMBRELLA ORGANIZATIONS REPRESENTING RACING

COMMISSIONS, BOTH FRANK LAMB AT THE NORTH AMERICAN PARI-MUTUEL REGULATORS ASSOCIATION AND LONNIE POWELL AT THE ASSOCIATION OF RACING COMMISSIONERS INTERNATIONAL DO EXCELLENT WORK.

THE PROBLEM IS THAT THE WHOLE SYSTEM HAS ALWAYS BEEN BROKE. ABOUT FIVE YEARS AGO, AT THE NEW YORK RACING BOARD WE WERE WORKING ON A SPEECH FOR CHAIRMAN MIKE HOBLOCK. WE FOUND THE TRANSCRIPTS OF THE EARLY PROCEEDINGS OF THE NATIONAL ASSOCIATION OF STATE RACING COMMISSIONERS FROM THE 1930'S. THE ISSUES WERE THE SAME. HOW DO WE ACHIEVE UNIFORMITY? HOW DO WE STOP ILLEGAL DRUGS? WHAT DO WE DO ABOUT SECURITY OF WAGERING? HOW DO WE KEEP THE BAD GUYS OUT? IT'S LIKE THE OLD TV SHOW DRAGNET. ONLY THE NAMES OF THE DRUGS AND THE DRUG TESTS HAVE BEEN CHANGED. WE COULD HAVE PLUGGED IN THE NAMES OF THE NEW DRUGS AND GIVEN THE SAME SPEECHES.

WHAT ARE OUR PROBLEMS? HORSE RACING PEOPLE ARE ALMOST REFLEXIVELY KNOCKERS BY NATURE. LISTEN TO A BUNCH OF HORSEPLAYERS FOR 5 MINUTES, AND THEY'LL KNOCK EVERYONE IN THE RACING GAME. RACING EVEN HAS A SPECIFIC TERM FOR IT IN REDBOARDING, WHERE YOU GRIPE AND COME UP WITH THE RIGHT RESULT AFTER THE RACE IS OVER. BUT ON REGULATION THE ISSUES ARE TOO EASY TO KNOCK. DRUGS, ENFORCEMENT, DIFFERING RULES, WAGERING SECURITY, PROFESSIONALISM, ETHICS, RECIPROCITY, PAT VALENZUELA WALTER CASE. WHERE DO WE START? THE FACT IS THAT HORSE RACING IS DIFFERENT. ONLY RACING AND BOXING ARE SPORTS WHERE THE GOVERNMENT DOES THE LICENSING. THAT'S NICE. LICENSEES GET DUE PROCESS RIGHTS WHICH THEY CERTAINLY DESERVE. IN THE OLD DAYS, THE STEWARDS JUST ABOUT HAULED EVERYBODY THEY DIDN'T LIKE OFF THE TRACK. AND IT'S BETTER THAN IT WAS 50 OR 60 YEARS AGO, BUT IT STILL DOESN'T WORK.

WE HAVE AN ADMINISTRATIVE REGULATORY SYSTEM THAT IS SUPPOSED TO PROVIDE EXPERTISE, BE SWIFT,

AND SERVE AS AN INDEPENDENT GUARDIAN OF DUE PROCESS RIGHTS. WE FAIL ON MOST EVERY COUNT. ASK THE LOBBYISTS, THE LEGISLATIVE PEOPLE, OR THE RACETRACK PEOPLE IN THE AUDIENCE ABOUT ADMINISTRATIVE EXPERTISE. THEY THINK THAT ADMINISTRATIVE EXPERTISE IN RACING IS AN OXYMORON. SURE YOU MAY NEED SOME IDIOT SAVANT IN AN AGENCY TO HELP YOU NAVIGATE THE TECHNICALITIES OF THE LAW, BUT BASICALLY YOU ONLY DEAL WITH THE AGENCY IF YOU DON'T HAVE ANY OTHER OPTION. THEY BELIEVE ADMINISTRATIVE AGENCIES BRING NO EXPERTISE TO THE TABLE.

ASK THE LICENSEES ABOUT FAIRNESS AND DUE PROCESS. THEY BELIEVE THAT RACING COMMISSIONS ARE INHERENTLY BIASED AGAINST THEM. I REMEMBER A FORMER COMMISSIONER OF ANOTHER STATE TELLING ME, "THE ADMINISTRATIVE LAW JUDGES RULE FOR THE LICENSEE, AND THEN WE JUST OVERRULE THE JUDGES." WE USED TO HAVE A LAWYER WHO REPRESENTED CLIENTS BEFORE THE RACING BOARD, AND HIS SOLE APPROACH WAS I KNOW I CAN'T WIN, SO I'LL TRY TO EMBARRASS THE BOARD, AND IF I

EMBARRASS THEM, MAYBE THEY'LL DROP OR REDUCE THE CHARGES. THAT'S HOW THEY FELT ABOUT THE SYSTEM.

AND IT'S CREATED A LEONA HELMSLEY SYSTEM OF JUSTICE IN RACING. YOU REMEMBER LEONA HELMSLEY THE QUEEN OF MEAN BEFORE MARTHA STEWART. SHE FAMOUSLY SAID, "WE DON'T PAY TAXES. ONLY THE LITTLE PEOPLE PAY TAXES." IN RACING, ONLY THE LITTLE PEOPLE PAY THE BIG FINES AND SERVE THE MAJOR SUSPENSIONS. IF YOU'RE WEALTHY ENOUGH TO HIRE GOOD LAWYERS, YOU'LL BE ABLE TO DELAY, OUT-PAPER AND FRUSTRATE MOST ANY RACING COMMISSION.

AND SPEED - WE HAD A CASE ONCE WITH ANGEL CORDERO INVOLVING A TEN DAY SUSPENSION IN AUGUST OF 1989. BY THE TIME, THE CASE WAS RESOLVED IN 1992, CORDERO WAS RETIRED. HE CAME BACK TO RIDE IN THE FALL OF 1995, AND THE TEN DAY SUSPENSION WAS ACTUALLY IMPOSED ON HIM IN THE FALL OF 1995, A SCANT SIX YEARS AFTER HIS INFRACTION. BUT IF YOU THINK THE ADMINISTRATIVE

PROCESS IS SLOW IN NEW YORK, IT'S JESSE OWENS COMPARED TO NEW JERSEY. THE CAMPBELL CASE ON MILK SHAKING TOOK FOUR YEARS TO BE DECIDED BY NEW JERSEY'S SUPREME COURT. MINOR CASES HAVE TAKEN THREE AND FIVE YEARS TO REACH THE INTERMEDIATE APPEALS COURT. INSTEAD OF AN EXPERT SYSTEM PROVIDING JUSTICE SWIFTLY, WE HAVE A SYSTEM THAT IS PLODDING, UNVERSE AND FREQUENTLY UNFAIR. IT DOESN'T WORK.

BUT I'M DISUSTED WITH KNOCKING THE SYSTEM. IT ACCOMPLISHES ZILCH. RACING IS FULL OF REDBOARDERS. THEY ONLY PROVE THE VALUE OF LEGENDARY HOUSE SPEAKER SAM RAYBURN'S OLD QUOTE, "ANY JACKASS CAN KICK DOWN A BARN, BUT IT TAKES A GOOD CARPENTER TO BUILD ONE."

SO WHERE DO WE FIND THE CARPENTERS TO BUILD UP RACING REGULATION? THE FIRST POINT IS THAT RACING REGULATION IS TOO IMPORTANT TO BE LEFT TO THE REGULATORS. THE REGULATORS ALONE CAN'T SOLVE THE PROBLEM. THEIR BUDGETS ARE MINISCULE. THERE'S NO STATE OUTSIDE OF KENTUCKY WHERE

HORSE RACING IS A PRIORITY TO STATE GOVERNMENT. AND WE SHOULD HAVE FOUND OUT FROM THE PICK SIX CRISIS, THAT WHERE THE NTRA GOT SERIOUSLY INVOLVED WITH WORKING OUT A REGULATORY PROBLEM, THERE ACTUALLY WAS A SOLUTION TO THE PROBLEM. REGULATION OF RACING IS EVERYBODY'S PROBLEM, AND IT WON'T BE SOLVED UNTIL EVERYBODY GETS INVOLVED.

ALSO, WE NEED SOME CARPENTRY ON PENALTIES. WE NEED TO FOCUS ON THE BIG PICTURE. LET'S FOCUS ON MAJOR CORRUPTION AND NOT ON THE SMALL TIME PENALTIES. WE NEED TO BE ABLE TO ARBITRATE PENALTIES THAT INVOLVE LESS THAN A 15 DAY SUSPENSION. LET'S GIVE APPEALS OF THESE CASES TO ARBITRATORS –SUCH AS FORMER STEWARDS WHO CAN MAKE A BINDING DECISION WITHIN A WEEK OR TWO. A TEN DAY SUSPENSION FOR INTERFERENCE OUGHT TO BE DECIDED QUICKLY. IT SHOULDN'T TAKE YEARS FOR THESE CASES TO WEND THEIR WAY THROUGH THE LEGAL PROCESS. LET'S GET THE RIDERS, TRAINERS, TRACKS, AND THE STATE TOGETHER TO ESTABLISH AN EFFECTIVE ARBITRATION SYSTEM. THIS SYSTEM

COULD ACCOMPLISH WHAT THE ADMINISTRATIVE LAW SYSTEM IS SUPPOSED TO DO: SPEEDY DECISIONS BY AN EXPERT, INDEPENDENT PANEL.

AND HOW DO WE FOCUS ON THE BIGGER PICTURE? THE BIGGER PICTURE IS THAT PEOPLE DON'T TRUST RACING, AND THE GOAL OF EVERYONE IN RACING OUGHT TO BE TO RESTORE THE TRUST IN THE RACING GAME. THE DISTRUST COMES FROM DRUGS, IT COMES FROM MANIPULATING RACE RESULTS, AND IT COMES FROM MANIPULATING POOLS. THAT'S WHAT WE'VE GOT TO FOCUS ON.

OBVIOUSLY, WE NEED UNIFORM RULES ON DRUGS. BUT IT'S NOT THE HOLY GRAIL. IT'S A SIGNIFICANT PART OF THE PROCESS, AND WE NEED TO ACHIEVE IT. BUT WE ALSO NEED TO RECOGNIZE THAT THERE WILL BE WELL-INTENTIONED MEANINGFUL POLICY DISPUTES BETWEEN THE STATES ON THESE ISSUES. MAYBE WE CAN'T GET 100% CONCURRENCE, BUT IT MIGHT BE BEST TO TREAT THIS LIKE ANY ONE OF THE UNIFORM STATE LAWS, SUCH AS THE UNIFORM COMMERCIAL CODE. LET'S STRIVE FOR 98% UNIFORMITY WITH SOME SMALL

MEASURE OF RECOMMENDED ALTERNATIVES – IN THE FEW DISPUTED AREAS. IF IT WORKS FOR SALES OR PROBATE CODES, IT OUGHT TO WORK FOR DRUG RULES.

BUT OUR MAJOR DRUG ISSUE IS STOPPING THE CHEATERS. WE'VE DEVELOPED A WHOLE CADRE OF SUPER-TRAINERS WHOM NOBODY TRUSTS. WE NEED TO MAKE SURE THAT RACING DOESN'T TURN INTO TRACK AND FIELD, AND WE NEED EXTENSIVE RESEARCH TO STOP THE CHEATERS. THE FUNDING WON'T COME FROM THE STATES. THEY HAVE THEIR OWN FISCAL PROBLEMS AND PRIORITIES. THE ENTIRE INDUSTRY HAS TO BE THE CARPENTERS HERE TO FUND A COMPREHENSIVE RESEARCH PROGRAM TO COMBAT NEW DRUGS. WE COULD HAVE THE MOST WONDERFUL DRUG RULE IN THE HISTORY OF MANKIND, BUT IF WE CAN 'T PREVENT NEW DRUGS, WE HAVE ACHIEVED ALMOST NOTHING.

ON THE RACING SIDE, WE DESPERATELY NEED UNIFORM RULES THAT GOVERN THE ACTUAL RUNNING OF THE RACE. WITH NEAR UNIVERSAL SIMULCASTING,

THE FANS SHOULD KNOW THAT THERE IS ONE UNIFORM STANDARD APPLIED BY STEWARDS THROUGHOUT THE NATION TO THE ACTUAL RUNNING OF THE RACE. RIGHT NOW, MOST EVERY STATE HAS A DIFFERENT RULE ON HOW YOU PLACE HORSES IN THE EVENT OF A FOUL. DOES THE FOUL HAVE TO AFFECT THE ORDER OF FINISH? DO YOU TAKE DOWN A HORSE IF THE FOUL DIDN'T AFFECT THE ORDER OF FINISH? WHAT IF THE FOUL ONLY MIGHT HAVE AFFECTED THE ORDER OF FINISH? EVERY STATE HAS ITS OWN RULES, AND THESE RULES DIFFER FROM THE RULES IN EUROPE AND THE PACIFIC RIM. EACH STATE HAS ITS OWN RULES ON HOW AND WHETHER LICENSEES CAN BET AND ON THE ISSUE OF COUPLED ENTRIES. AT THE SAME TIME, WE'VE GOT NO POLICY AT ALL IN THE UNITED STATES ON WHETHER JOCKEYS OR HARNESS DRIVERS CAN BET USING CELL PHONES FROM THE JOCKEY'S QUARTERS OR THE HARNESS PADDOCK. WE HAVE NO RULES ON THE USE OR TRANSMISSION OF INSIDER INFORMATION. WE HAVE NO UNIFORM RULES ON WAGERING SECURITY OR HOW TO STOP BATCH WAGERS WHERE THOUSANDS OF DOLLARS GET

WAGERED BY ONE PERSON OR A SYNDICATE RIGHT BEFORE WAGERING STOPS.

MOST IMPORTANTLY, WE LACK A FOCUS ON STOPPING ACTUAL MANIPULATION OF RACES. LOOK AT THE UNITED KINGDOM. THE HEAD OF LADBROKES – ONE OF THE WORLD’S MOST SIGNIFICANT BOOKMAKERS - RECENTLY SAID THAT AT LEAST ONE RACE A DAY WAS FIXED IN THE UK.

IN THE UNITED KINGDOM, IN 2003, THERE WERE 3,336 REPORTS FILED WITH STEWARDS ON THE POOR PERFORMANCE OF HORSES AND 259 INQUIRIES ON HORSES NOT RUNNING UP ON THEIR MERITS. WE REPORT OR INVESTIGATE NOTHING REMOTELY LIKE THAT IN THE UNITED STATES. ABSENT THE GROSSEST OF CIRCUMSTANCES, NOBODY IS SERIOUSLY CHECKING FOR PULLED HORSES OR MANIPULATED OR FIXED RACES.

WE LOOK HARD AT INTERFERENCE BUT NOT AT ACTUAL CORRUPTION. IT’S LIKE THE OLD JOKE ABOUT THE PRESS. THE PRESS IS SUPPOSED TO SEPARATE THE

WHEAT FROM THE CHAFF AND THEN PUBLISH THE CHAFF. WE LOOK AT THE RACES AND INVESTIGATE THE CHAFF. THERE WAS MORE SPECULATION ABOUT ROCK HARD TEN AND EDDINGTON NOT RUNNING ON THEIR MERITS IN THE BELMONT STAKES THAN THERE WAS AT ANY OTHER RACES, WHICH SURELY WERE CORRUPTED. WE NEED TO LOOK AT MANIPULATION OF RACES MORE SERIOUSLY WHERE ARE THE INQUIRIES ON HORSES NOT RUNNING UP TO THEIR MERITS? WE NEED TO GET REPORTS FROM RIDERS, VETS, AND RIDERS, AND WE NEED THE ABILITY TO SERIOUSLY MONITOR BETTING PATTERNS TO SEE WHAT IS ACTUALLY HAPPENING ON OUR RACES. AGAIN, THERE'S NO WAY THAT THE RACING COMMISSIONS CAN DO IT ON THEIR OWN. THEY DON'T HAVE THE FUNDS. RACING HAS TO GET SERIOUS ABOUT CORRUPTION. PEOPLE TRUST SLOT MACHINES; WE NEED TO MAKE SURE THAT THEY TRUST THE RACES. IT'S EVERYBODY'S BUSINESS.

BUT THERE IS ONE AREA WHERE RACING COMMISSIONS CAN TAKE RESPONSIBILITY, AND THAT'S IN THE AREA OF ETHICS. WE NEED A SET OF ETHICAL RULES GOVERNING RACING COMMISSIONS AND THE TWO

NATIONAL UMBRELLA ORGANIZATIONS THAT REPRESENT THEM. LOOK IN TOO MANY STATES, RACING COMMISSIONERS CAN BET ON THEIR OWN STATE'S RACES. SOME OF US ON THE INSIDE MIGHT SCOFF THAT THIS ISN'T IMPORTANT. IN FACT, NOBODY EVER WENT BROKE BOOKING THE BETS OF RACING COMMISSIONERS. EVEN VERNON DOWNS COULD MAKE MONEY IF THEY COULD BOOK COMMISSIONERS' BETS. BUT THE FACT IS THAT THIS PRACTICE APPEARS ABSOLUTELY RIDICULOUS. HOW CAN THE PEOPLE REGULATING A RACE BET ON THAT RACE? AND THERE ARE OTHER SIGNIFICANT ISSUES AS WELL. DRUG COMPANIES MAY TRY TO INFLUENCE RACING COMMISSIONS BY HELPING TO SPONSOR PROGRAMS OF THE NATIONAL ORGANIZATIONS. THESE NATIONAL ORGANIZATIONS SHOULD NOT BE ACCEPTING ANY DRUG MONEY, AND THE NATIONAL ORGANIZATIONS CAN'T USE THEIR POSITION TO TRY TO EXTORT OR CAJOLE ASSOCIATE MEMBERSHIPS OR SPONSORSHIPS FROM LICENSEES. I CAN REMEMBER GETTING A CALL FROM DAVIS ETKIN OF CAPITAL OTB IN THE EARLY 1990' S HE CALLED – I ASSUME JOKINGLY - TO SAY THAT CAPITAL WAS NOW AN ASSOCIATE MEMBER OF

RACING COMMISSIONERS INTERNATIONAL, AND THERE WAS THUS NO LONGER ANY REASON FOR THE RACING BOARD TO TAKE ANY ACTION AGAINST A FELLOW COMMISSIONER.

RACING COMMISSIONERS NEED A UNIFORM APPROACH TO RECIPROCITY. YEARS AGO, SOMEONE BANNED IN ONE STATE WAS BANNED IN ALL STATES. YOU EVEN SAW THAT IN BOXING. MOHAMMED ALI GOT CONVICTED OF DRAFT EVASION, AND HE WAS SWIFTLY SUSPENDED IN NEW YORK. BASED ON HIS NEW YORK SUSPENSION, HE COULDN'T FIGHT ANYWHERE UNTIL HIS CONVICTION WAS OVERTURNED. NOW, YOU JUST GO SHOPPING FOR A LICENSE. WALTER CASE OR HERVE FILION CAN'T RACE IN NEW YORK, BUT THEY TURN UP IN OTHER STATES. MIKE TYSON CAN GET BANNED IN ONE STATE AND SHOW UP SOMEWHERE ELSE AND GET PUMMELED. WE NEED A UNIFORM APPROACH TO RECIPROCITY ISSUES.

WE NEED TO REMEMBER THAT EVERYBODY OTHER THAN RACING COMMISSIONERS IN THIS GAME HAS A DISTINCT AND SPECIAL ECONOMIC INTEREST. THE

RACING COMMISSIONERS DON'T. ONLY THE RACING COMMISSIONERS ARE SUFFICIENTLY INDEPENDENT OF ANY PAROCHIAL INTEREST TO ASSERT THE PUBLIC INTEREST. THE RACING COMMISSIONERS CAN NEVER MATCH THE ECONOMIC POWER OF THE FOLKS THEY REGULATE. THEIR ONLY AUTHORITY DEPENDS ON THEIR INTEGRITY, AND INTEGRITY WILL ONLY WORK IF THERE IS AN ENFORCEABLE CODE OF ETHICS FOR RACING COMMISSIONERS.

FINALLY, IT'S TIME TO HAVE ONE UMBRELLA ORGANIZATION OF RACING COMMISSIONERS. TWO ORGANIZATIONS MAY, IN FACT, SERVE A PURPOSE. THEY EACH WORK TO HOLD THE OTHER IN CHECK TO AVOID THE EXCESSES OF PAST ORGANIZATIONS, BUT AGAIN IT LOOKS ABSURD TO THE OUTSIDE WORLD. HOW CAN RACING COMMISSIONS CONVINC OTHERS IN RACING TO SERVE THE PUBLIC INTEREST WHEN THEY CAN'T EVEN AGREE ON ONE ORGANIZATION? IT'S TIME FOR THE RACING COMMISSIONS TO REMEMBER THE WISDOM OF SAM RAYBURN AND BE CARPENTERS AND NOT JACKASSES.

ONE OF MY FAVORITE RACING STORIES INVOLVES MATT WINN WHO RAN CHURCHILL DOWNS FOR MOST OF THE FIRST HALF OF THE 20TH CENTURY. ONE DAY HE WAS CONCERNED THAT HIS RACING ACTIVITIES MIGHT INTERFERE WITH HIS ASCENSION INTO HEAVEN. HE ASKED THE CARDINAL OF IRELAND ABOUT HIS DILEMMA. THE CARDINAL SAID, “SON, IF YOU DON’T DO ANYTHING WORSE THAN BET ON HORSES, OR OPERATE A RACE TRACK WHERE OTHERS BET ON HORSES, YOU WON’T HAVE ANY TROUBLE GETTING TO HEAVEN.” MAYBE OUR INVOLVEMENT IN RACING WON’T HARM US IN THE AFTERLIFE, BUT OUR FAILURE TO DEAL RESPONSIBLY WITH THE ETHICAL AND REGULATORY PROBLEMS FACING RACING SURELY CANNOT HELP US IN THE FUTURE.