

**TESTIMONY OF DIRECTOR JOHN PETER SUAREZ  
BEFORE THE HOUSE SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS OF THE HOUSE COMMITTEE  
ON FINANCIAL SERVICES  
THURSDAY, JULY 12, 2001, 2:00 P.M.**

THANK YOU, MADAME CHAIRWOMAN, AND MEMBERS OF THE  
SUBCOMMITTEE FOR AFFORDING ME THE OPPORTUNITY TODAY TO SPEAK TO  
YOU REGARDING INTERNET GAMBLING. BEFORE ADDRESSING DIRECTLY  
INTERNET GAMING, I WOULD LIKE TO GIVE YOU SOME PERSPECTIVE, FROM A  
LAW ENFORCEMENT OFFICER AND REGULATOR, OF THE GAMING INDUSTRY IN  
NEW JERSEY.

GAMING WAS LEGALIZED IN NEW JERSEY IN 1977. OUR FIRST CASINO  
OPENED SHORTLY THEREAFTER, AND TODAY WE HAVE 12 CASINOS OPERATING  
EXCLUSIVELY IN THE CITY OF ATLANTIC CITY. LAST YEAR, THOSE 12 CASINOS  
DIRECTLY EMPLOYED NEARLY 50,000 PEOPLE, AND GENERATED REVENUE OF  
\$4.4 BILLION. BY SOME ESTIMATES, OVER 34 MILLION PEOPLE VISITED ATLANTIC  
CITY LAST YEAR, MAKING IT ONE OF THE MORE POPULAR DESTINATIONS IN THE

UNITED STATES. IN TERMS OF GAMING REVENUE, ATLANTIC CITY'S 12 CASINOS ARE SECOND WORLDWIDE ONLY TO LAS VEGAS.

THE INTERNET COULD CHANGE ALL OF THAT. BY OUR ESTIMATES, THERE ARE WELL OVER 1,000 INTERNET CASINOS, LOCATED PREDOMINANTLY IN OFF-SHORE LOCALES SUCH AS ANTIGUA AND THE NETHERLANDS ANTILLES. THE TYPICAL INTERNET CASINO, THOUGH ALICENSED@ BY THE HOST COUNTRY, FACES NONE OF THE REGULATORY SCRUTINY THAT IS NORMALLY ASSOCIATED WITH A LAND-BASED ENTITY IN THE UNITED STATES. INDEED, I SUBMIT THAT MANY OF THE OPERATORS OF OFF-SHORE CASINOS SEEK OUT THE JURISDICTIONS WITH THE ALOWEST COMMON DENOMINATOR@ OF REGULATORY SCRUTINY, MOVING THEIR OPERATIONS TO THE PLACES WHERE THEY ARE LEAST LIKELY TO BE THOROUGHLY SCRUTINIZED. THESE OFF-SHORE CASINOS PAY LICENSING FEES TO THE HOST COUNTRY, AND THEN OPERATE THEIR SITES FREE FROM MEANINGFUL GOVERNMENT OVERSIGHT.

THE RISKS OF UNREGULATED INTERNET GAMING, OR POORLY REGULATED GAMING, SHOULD BE WELL KNOWN TO EVERYONE HERE: NO MEANINGFUL LIMITATIONS ON PARTICIPATION BY UNDER-AGED GAMBLERS OR PROBLEM GAMBLERS; NO ASSURANCE AS TO INTEGRITY OF THE OPERATORS OR THE GAME; MONEY LAUNDERING ISSUES; PROTECTION AGAINST SECURITY BREACHES, HACKING, AND INFORMATION THEFT, TO NAME THE MORE SALIENT CONCERNS. FROM AN ECONOMIC STANDPOINT, INTERNET GAMING AS IT EXISTS TODAY ALSO FAILS TO PROVIDE ANY POSITIVE BENEFIT TO THE UNITED STATES, EITHER IN THE FORM OF TAX INCOME OR JOBS.

IN ADDITION TO THESE CONCERNS, FROM NEW JERSEY'S PERSPECTIVE, THE FUNDAMENTAL PROBLEM WITH OFF-SHORE INTERNET CASINOS, IS THAT BY ACCEPTING WAGERS FROM NEW JERSEY RESIDENTS, THEY VIOLATE NEW JERSEY'S CONSTITUTION AND LAWS REGARDING GAMBLING.

THE NEW JERSEY CONSTITUTION EXPRESSLY PROVIDES THAT ANO GAMBLING OF ANY KIND SHALL BE AUTHORIZED . . . UNLESS THE SPECIFIC KIND,

RESTRICTIONS, AND CONTROL THEREOF HAVE BEEN . . . AUTHORIZED BY A MAJORITY OF THE VOTES CAST BY THE PEOPLE . . . @. SEE N.J. CONST. ART. IV, ' 7,

&2. IN ORDER FOR CASINO GAMING TO BE APPROVED IN NEW JERSEY, A CONSTITUTIONAL REFERENDUM WAS REQUIRED TO BE PASSED. THE QUESTION OF INTERNET GAMING HAS NEVER BEEN PUT TO THE PEOPLE, AND IS SIMPLY NOT PERMITTED, AND THEREFORE REPRESENTS A VIOLATION OF OUR CONSTITUTION AND OUR CRIMINAL AND CIVIL LAWS.

SOME HAVE ARGUED THAT IN ORDER TO COMPLY WITH NEW JERSEY-S LAW, LEGISLATION COULD BE CRAFTED THAT WOULD ALLOW THE EXISTING CASINO LICENSEES IN NEW JERSEY TO OPERATE INTERNET GAMING SITES WITH THE HOST SERVER LOCATED IN ATLANTIC CITY, THEREBY ELIDING THE CONSTITUTIONAL REQUIREMENT OF A PUBLIC REFERENDUM. IN FACT, THERE IS CURRENTLY PROPOSED LEGISLATION IN NEW JERSEY THAT WOULD PROVIDE FOR JUST THIS SCENARIO.

IN OUR VIEW, IT IS A RATHER LARGE CONSTITUTIONAL LEAP TO ARGUE THAT INTERNET GAMBLING FALLS WITHIN THE EXISTING CONSTITUTIONAL PROVISION AUTHORIZING CASINOS WITHIN ATLANTIC CITY. ALTHOUGH THE PROPOSED LEGISLATION REQUIRES THAT A LICENSED ATLANTIC CITY CASINO OPERATE THE INTERNET SITE, UNDER THE BILL, THE BETTOR OR THE TERMINAL FROM WHICH THE BETS ARE PLACED MAY BE LOCATED ANY PLACE IN THE STATE.

TO ALLOW NEW JERSEY RESIDENTS TO ENGAGE IN CASINO GAMING FROM ANY LOCATION WITHIN THE STATE, RATHER THAN EXCLUSIVELY IN ATLANTIC CITY, WOULD REPRESENT A FUNDAMENTAL SHIFT IN THE PUBLIC POLICY OF OUR STATE, AND WOULD COMPLETELY REDEFINE THE GAMING ENVIRONMENT. SUCH DRAMATIC SHIFTS IN PUBLIC POLICY CANNOT AND SHOULD NOT BE ACCOMPLISHED MERELY BECAUSE THE ACTIVITY TAKES PLACE ON THE INTERNET. INSTEAD, CONSTITUTIONAL REQUIREMENTS IN OUR STATE MUST BE ABIDED, AND THE VOTERS MUST DECIDE WHETHER OR NOT THEY WANT SUCH A VAST EXPANSION OF CASINO GAMING IN NEW JERSEY.

INDEED, WHEN YOU CONSIDER SOME OF THE STATED PUBLIC POLICY OBJECTIVES TO BE ACHIEVED IN ALLOWING CASINO GAMING IN ATLANTIC CITY, YOU QUICKLY REALIZE THAT INTERNET GAMING SIMPLY CANNOT MEET THOSE GOALS, NO MATTER WHERE OR HOW IT TAKES PLACE.

WHEN GAMING WAS APPROVED BY REFERENDUM, ONE OF THE EXPRESS PURPOSES WAS TO ALLOW FOR THE REINVIGORATION OF THE TOURISM INDUSTRY IN ATLANTIC CITY AND TO REVITALIZE THAT CITY THROUGH THE BUILDING OF HOTEL ROOMS AND INFRASTRUCTURE DEVELOPMENT. A VIRTUAL CASINO CONTRIBUTES NO HOTEL ROOMS, ANCILLARY BENEFITS OR DEVELOPMENT TO THE CITY, AND CAN SATISFY NONE OF THE PUBLIC POLICY GOALS ENUNCIATED.

THUS FACED WITH AN INDUSTRY THAT IS IN VIOLATION OF NEW JERSEY'S LAWS AND CONSTITUTION, AND IS CONTRARY TO THE EXISTING PUBLIC POLICY OF THE STATE, NEW JERSEY HAS INSTITUTED LEGAL PROCEEDINGS TO STOP

INTERNET GAMING COMPANIES FROM ACCEPTING OR SOLICITING WAGERS FROM NEW JERSEY RESIDENTS.

IN JUNE OF THIS YEAR, THE DIVISION OF GAMING ENFORCEMENT AND THE DIVISION OF CONSUMER AFFAIRS TOOK THE UNUSUAL STEP OF FILING CIVIL COMPLAINTS AGAINST THREE SUCH INTERNET CASINOS SEEKING TO ENJOIN THEIR ACTIVITY AND TO HAVE THE COURT IN NEW JERSEY ORDER THAT THE SITES PERMANENTLY EXCLUDE NEW JERSEY RESIDENTS. THESE THREE PARTICULAR INTERNET CASINOS WERE IDENTIFIED BECAUSE THEY HAD ADVERTISED ON BILLBOARDS THROUGHOUT THE STATE OF NEW JERSEY, AND ACTIVELY SOLICITED RESIDENTS OF NEW JERSEY TO WAGER WITH THEM. TWO OF THE SITES OFFERED BOTH CASINO STYLE GAMES AND SPORTSBOOK WAGERING, AND THE THIRD SITE OFFERED ONLY CASINO STYLE GAMES.

IN OUR ACTIONS, WE HAVE ALSO ASKED THAT THE COURT ORDER THE SITES TO PROVIDE AN ACCOUNTING TO US OF ALL WAGERS MADE BY NEW

JERSEY RESIDENTS, AND WE HAVE ALSO SOUGHT THE RECOVERY OF ALL FUNDS LOST BY NEW JERSEY RESIDENTS.

AFTER WE WIN THESE THREE CASES, WE ONLY HAVE ABOUT 997 MORE TO GO. AND THEREIN LIES THE PROBLEM FOR US. ALTHOUGH WE FULLY BELIEVE THAT OUR CASES CAN AND WILL BE WON, THEY WILL PRESENT INTERESTING ISSUES FOR THE COURTS, AND IN THE TIME THAT THE LITIGATION IS PENDING, THE OFF SHORE CASINOS WILL CONTINUE TO OPERATE AND PROLIFERATE.

ONE OF THOSE INTERESTING ISSUES, AND ONE THAT PROPONENTS OF INTERNET GAMING OFFER TO DEFEAT CLAIMS THAT THEY ARE IN VIOLATION OF EXISTING LAW, IS THE QUESTION OF JURISDICTION. AS MANY OF THE MEMBERS KNOW, OFF-SHORE CASINO OPERATORS CONTEND THAT THEIR SITES DO NOT VIOLATE FEDERAL OR STATE LAW BECAUSE THE WAGERS ARE APROCESSED@ IN A HOST COUNTRY WHERE SUCH WAGERING IS LEGAL. ACCORDINGLY, THEY ARGUE THAT THERE IS NOTHING LEFT TO BE DONE BY THE STATES OR FEDERAL GOVERNMENT.

THIS ARGUMENT IS, QUITE SIMPLY, NONSENSE.

IN NEW JERSEY, AS FAR BACK AS 1953, OUR STATE SUPREME COURT HELD THAT WHERE INDIVIDUALS USE THE TELEPHONE TO TRANSMIT WAGERING INFORMATION, BOTH THE WAGERER AND THE RECIPIENT ARE ENGAGED IN ILLEGAL BETTING. THIS REMAINS THE LAW IN NEW JERSEY TODAY, AND INDEED IS A FAIRLY BASIC PREMISE UPON WHICH TO FIND JURISDICTION AGAINST INTERNET GAMING COMPANIES. THE FEW CASES OF WHICH I AM AWARE THAT HAVE DIRECTLY ADDRESSED THE ISSUE OF INTERNET GAMING AND JURISDICTION HAVE ALL FOUND THAT JURISDICTION CAN AND DOES LIE IN THE PLACE WHERE THE BETTOR IS LOCATED, AND NOT WHERE THE SERVER IS FOUND. IN FACT, THE DEPARTMENT OF JUSTICE HAS CONSISTENTLY HELD THAT VIOLATIONS OF THE FEDERAL WIRE ACT CAN OCCUR WHERE THE WAGER OR CALL IS MADE, AND IS NOT DEPENDENT ON WHERE THE ILLEGAL BET OR WAGER IS RECEIVED. SEE, E.G., UNITED STATES v. COHEN, S.D.N.Y.; TESTIMONY OF KEVIN V.

*DIGREGORY BEFORE THE SUBCOMMITTEE ON CRIME ON THE JUDICIARY, DEPUTY ASSISTANT ATTORNEY GENERAL, JUNE 24, 1998.*

BUT EVEN WHEN WE DEFEAT THE CLAIMS ABOUT JURISDICTION, WE ARE LEFT WITH THE DIFFICULTY OF USING OUR EXISTING LAWS, WHICH WERE NEVER MEANT TO ADDRESS DIRECTLY INTERNET GAMBLING. SO, FOR EXAMPLE, IN NEW JERSEY WE CAN PROCEED EITHER CIVILLY OR CRIMINALLY AGAINST OPERATORS OF INTERNET GAMING SITES, BUT CONFRONT DIFFICULTIES EVEN WITH THE SIMPLE TASK OF ATTEMPTING TO EFFECTUATE SERVICE OF PROCESS. IN OUR CURRENT CASES, WE ARE ATTEMPTING TO USE EVERY MEANS POSSIBLE, BUT THE PROCESS IS DIFFICULT AND TIME CONSUMING.

AND IN THE TIME THAT IT WILL TAKE US TO EFFECTUATE SERVICE, WE SUSPECT THAT MANY MORE NEW INTERNET GAMING SITES WILL OPEN FOR BUSINESS, LURING MORE OF OUR CITIZENS TO THEIR VIRTUAL CASINOS, AND TAKING FROM THEM REAL DOLLARS. CHANGES TO OUR EXISTING LAWS WOULD, IN MY

VIEW, GREATLY ENHANCE LAW ENFORCEMENT'S ABILITY TO RESPOND TO THIS ISSUE.

BEFORE I SPEAK ABOUT POSSIBLE LEGISLATION, PLEASE LET ME ADD TWO CAVEATS. FIRST, ALTHOUGH UNDER CURRENT NEW JERSEY LAW, INTERNET GAMING IS ILLEGAL, THIS COULD CHANGE WERE A CONSTITUTIONAL REFERENDUM TO BE PASSED. IN TESTIFYING HERE TODAY, I DO NOT INTEND TO BE ADVOCATING EITHER FOR OR AGAINST THE PASSAGE OF SUCH A REFERENDUM. AT THE FEDERAL LEVEL, ALTHOUGH SOME COURTS HAVE HELD THAT INTERNET GAMING VIOLATES THE WIRE ACT, A RECENT CASE IN LOUISIANA HAS THROWN THIS PROPOSITION INTO SOME DOUBT. NOTWITHSTANDING THAT HOLDING, AND REGARDLESS OF ALMOST ALL STATE LAWS RELATING TO GAMING, THERE IS LITTLE DEBATE BETWEEN REGULATORS, LAW ENFORCEMENT, AND THE REPUTABLE CASINO INDUSTRY REGARDING SPORTS BOOK WAGERING. EXCLUDING THREE STATES, SPORTS BOOK WAGERING IS SIMPLY ILLEGAL AS A MATTER OF FEDERAL LAW, AND HAS BEEN SO FOR NEARLY A DECADE. NO MATTER WHERE ONE STANDS ON THE SIDE OF

INTERNET GAMING, THERE IS LITTLE DISPUTE THAT SPORTS BOOK WAGERING CANNOT BE PERMITTED VIA THE INTERNET ABSENT A CHANGE IN THE PROFESSIONAL AND AMATEUR SPORTS PROTECTION ACT AND THE FEDERAL WIRE ACT.

AS FOR LEGISLATION, THERE ARE TWO OBVIOUS CHOICES FACING STATES AND THE FEDERAL GOVERNMENT, AND THEY ARE EITHER PROHIBITION OR THE IMPOSITION OF A REGULATORY MODEL SIMILAR TO THAT USED FOR LAND-BASED CASINOS. SHOULD A DECISION TO ALLOW AND REGULATE INTERNET GAMING BE MADE AT THE STATE OR FEDERAL LEVEL, THEN THERE ARE MANY METHODS TO ENSURE THE CHARACTER OR FITNESS OF INTERNET OPERATORS AND TO PROTECT THE PUBLIC. ALTHOUGH NO REGULATORY MODEL COULD EFFECTIVELY PREVENT DISREPUTABLE OPERATORS FROM LURING PLAYERS, REGULATORS COULD INSURE THAT SITES OPERATING LEGALLY WITHIN A JURISDICTION SATISFY WHATEVER LICENSING STANDARDS THAT THE PARTICULAR JURISDICTION FEELS ARE NECESSARY TO ENSURE INTEGRITY OF THE GAMES.

IF PROHIBITION OF INTERNET GAMING IS CHOSEN AS THE COURSE OF ACTION BY AN INDIVIDUAL STATE OR BY THE FEDERAL GOVERNMENT, THEN THERE ARE ALSO SEVERAL WAYS IN WHICH SUCH A PROHIBITION COULD BE ENFORCED.

I KNOW THAT MOST PROPONENTS OF INTERNET GAMING HAVE DECLARED THAT A PROHIBITION SUCH AS THAT PROPOSED BY THE KYL BILL WOULD BE IMPOSSIBLE TO ENFORCE, AND HAVE CLAIMED THAT THE BILL-S DEFEAT IN CONGRESS-LAST SESSION WAS A VICTORY FOR REALITY OVER FUTILITY.

AS A FORMER FEDERAL PROSECUTOR AND THE DIRECTOR OF THE DIVISION OF GAMING ENFORCEMENT RESPONSIBLE FOR THE LAWS OVERSEEING THE CASINO INDUSTRY IN THE STATE OF NEW JERSEY, I UNDERSTAND THE NEED TO HAVE LAWS IN PLACE THAT CAN BE EFFECTIVELY ENFORCED, AND THAT A PROPOSAL THAT CANNOT BE ENFORCED DOES NOT SERVE THE INTERESTS OF LAW ENFORCEMENT OR THE BODY POLITIC.

BUT IT IS ASTOUNDING TO ME HOW SOME CAN TRUMPET THE WONDERS OF TECHNOLOGY, AND CAN PRAISE THE GROWTH OF THE INTERNET AS INEVITABLE AND IRREVERSIBLE, AND AT THE SAME TIME DECLARE THAT TECHNOLOGY IS SIMPLY INCAPABLE OF EFFECTIVELY STOPPING INTERNET GAMBLING.

HOW DO THEY REACH THAT CONCLUSION? IS TECHNOLOGY INCAPABLE OF IDENTIFYING PEDOPHILES WHO SELL SUCH IMAGES ON THE WEB? OR IS LAW ENFORCEMENT INCAPABLE OF STOPPING SOMEBODY FROM PURCHASING ILLEGAL DRUGS OVER THE INTERNET? AND DO WE GIVE UP ON THOSE FRONTS SIMPLY BECAUSE THOSE WHO WOULD STAND TO GAIN FROM A CHANGE IN THE LAW HAVE DECLARED THE TASK IMPOSSIBLE?

AGAIN, MORE NONSENSE. OF COURSE THERE ARE WAYS TO CONTROL AND ENFORCE A PROHIBITION OF CERTAIN TYPES OF ACTIVITY, INCLUDING INTERNET GAMBLING, ON THE INTERNET. AS SOME CREDIT CARD COMPANIES HAVE DONE, THEY CAN REFUSE TO PROCESS CERTAIN WAGERS FROM COMPANIES THAT ENGAGE IN INTERNET WAGERING. WE CAN TAKE

ENFORCEMENT ACTIONS AGAINST ISP-S THAT KNOWINGLY ALLOW FOR ACCESS TO INTERNET GAMBLING SITES.

OR THE U.S. CONGRESS OR STATE LEGISLATURES CAN SIMPLY DECLARE THAT ANY CREDIT CARD OR OTHER WAGER PLACED VIA THE INTERNET IS ILLEGAL AND THEREFORE UNCOLLECTIBLE IN THE UNITED STATES. AND IF CONGRESS SO SPOKE, THE PROFITABILITY OF INTERNET GAMBLING WOULD BE SEVERELY ERODED. INDEED, SUCH A PROPOSAL WAS ENDORSED BY THE NATIONAL GAMBLING IMPACT STUDY COMMISSION, BUT HAS YET TO FIND PURCHASE IN THIS CONGRESS.

AND YET SOME DECLARE THE TASK IMPOSSIBLE WITHOUT EVER HAVING TRIED. IF THAT MENTALITY PERVADED THE DEVELOPMENT OF THE INTERNET, WE WOULD STILL BE USING TYPEWRITERS AND SENDING MESSAGES THE OLD-FASHIONED WAY, VIA SNAIL MAIL.

A MISTAKEN BELIEF IN THE IMPOSSIBILITY OF ENFORCING A PROHIBITION IS NOT A LEGITIMATE BASIS FROM WHICH SIGNIFICANT POLICY DECISIONS SHOULD BE MADE.

PERHAPS ILLEGAL INTERNET GAMBLING IS INEVITABLE, AND WE WILL BE PROVEN WRONG. BUT I BELIEVE THAT SUCH A CONCESSION IS FAR TOO PREMATURE, AND THAT TO MAKE THAT CONCESSION NOW WOULD CHANGE THE GAMBLING LANDSCAPE IN WAYS THAT NONE, NOT EVEN THE PROPONENTS OF INTERNET GAMBLING, CAN FULLY APPRECIATE.

INSTEAD, IT IS MY VIEW THAT THE TIME IS UPON US TO ENGAGE IN A FULL DEBATE ON THIS ISSUE, AND TO DECIDE HOW, OR MORE IMPORTANTLY, IF, WE AS A SOCIETY WANT TO PROCEED WITH INTERNET GAMBLING. ONCE THE ANSWER IS CLEAR, THEN CAN WE BETTER DETERMINE WHAT THE NEXT STEP SHOULD BE. BUT WE SHOULD ENGAGE IN SUCH DECISIONMAKING NOW, RATHER THAN ALLOW INTERNET GAMING TO BECOME A REALITY FOR ALL US

SIMPLY BY DEFAULT. IT IS FAR TOO IMPORTANT AN ISSUE WHOSE FATE SHOULD NOT BE DECIDED BY INACTION.

I THANK YOU FOR THE OPPORTUNITY TO PRESENT MY REMARKS, AND I AM AVAILABLE FOR ANY QUESTIONS THAT MEMBERS OF THE COMMITTEE MAY HAVE.